

MINUTES

**ETHICS REVIEW COMMISSION MEETING
JANUARY 22, 2014
CITY COUNCIL CHAMBERS**

MEMBERS PRESENT

Francisco Ortega, District #1
Audrey Marrufo, District #2
Eduardo Miranda, District #3
Julian Gonzalez-Herrell, District #4
Kimberly Cook McDaniel, District #5
Anthony Giuliani, District #7
William H. Rivera, District #8

MEMBERS ABSENT

Maxey Scherr, Mayor

OTHERS PRESENT

Sylvia Borunda Firth, City Attorney
Kathryn Murphy, Recording Secretary

1. CALL TO ORDER.

Seeing a quorum, the meeting was called to order at 6:05 p.m. Ms Firth opened the meeting by reminding the members that the meeting was being recorded.

2. APPROVAL OF MINUTES FOR NOVEMBER 13, 2013.

Motion made by Mr. Miranda to approve the minutes of November 13, 2013. Mr. Ortega seconded the motion, all in favor and the motion passed unanimously.

3. ELECTION OF CHAIR AND VICE CHAIR.

At the suggestion of Ms. Firth, election of the Chair and Vice Chair was held prior to the approval of the minutes of the meeting of November 13, 2013.

Mr. Miranda nominated Mr. Gonzalez-Herrell as the Chair of the Commission based on the fact that Mr. Gonzalez-Herrell is the longest tenured person on the Commission and brings a lot of experience to the table. There being no other nominations, the Commission voted unanimously to elect Mr. Gonzalez-Herrell as the Chair.

Mr. Gonzalez-Herrell nominated Mr. Miranda as the Vice Chair of the Commission. There being no other nominations, the Commission voted unanimously to elect Mr. Miranda as the Vice Chair.

4. DISCUSSION AND ACTION REGARDING RECOMMENDATIONS FOR MODIFICATION OF THE EL PASO ETHICS ORDINANCE TO ADDRESS:

- a. Charter Amendment addressing the monetary sanctions

- b. 2 yr prohibition after leaving office
- c. Codes of Conduct regarding civility, diplomacy
- d. Limitations on receipt of campaign funds
- e. Leaking confidential information – Nothing in Ethics Ordinance at this time

Ms. Firth gave the Commission some background on the items above. She stated these were specific items the City Council has asked the Commission to consider and to formulate recommendations to the Charter. She gave a brief summary as follows:

- a. In the last Charter Amendment Election the voters approved the use of monetary sanctions for someone found to be in violation of the Charter. The Council would need to amend the ordinance in order to do that but they are looking to the Commission to recommend how much, what circumstances, etc.
- b. Our ordinance has a prohibition against a person who has been in a decision making capacity or elected official from representing an interest at the City for 2 years after leaving. The Council raised the question whether the 2 years was too long or not enough.
- c. The Council has become concerned with codes of conduct in the way they behave, treat others, civility etc. and have asked you whether or not it's appropriate to amend our Ethics ordinance to include Codes of Conduct. Ms. Firth stated some of the other cities include items like that.
- d. At one point in time the Commission considered whether or not there should be a time when Council members cannot accept campaign contributions; a time limit before the election date. It was dealt with by a previous Commission and at that time the advise was no, we shouldn't do it, but the Council is asking that you re-consider it.
- e. The City of San Antonio has some language in dealing with issues when it comes to the attention of the Ethics Commission that someone has provided confidential information that might be detrimental to the City. There is currently nothing in our ordinance that addresses this.

Ms. Firth stated these were the first 5 things Council would like considered and the Council also wants a general review of the Ordinance since it is a little dated and it is time for a review. The Council is looking for recommendations from the Commission.

Ms. Firth advised the Commission they could tackle them any way they wanted. She stated at the last meeting there was some discussion about breaking up into working committees to address the issues but the Council has made this Commission subject to the open meetings law and therefore meetings would need to be posted and open to the public.

Mr. Miranda asked Ms. Firth with respect to the first item addressing monetary sanctions, is there any information on what other Texas cities do with respect to this issue. Ms. Firth responded yes, in the binders that were provided at the last meeting there is information from the big cities in Texas.

Mr. Miranda asked Ms. Firth if she had a feel as to what the motivation was behind the recommendations, was there a concern that the current ordinance didn't have a big enough bite or that people were just not paying attention to the Ethics Ordinance. Ms. Firth responded that Mr. Gonzalez-

Herrell could give some information because even the Commission had some issues on whether or not there enough “teeth” in the ordinance to get people’s attention and even the fact that some of the things the Council would like prohibited are not addressed. Even if you don’t have a monetary fine, nowhere in the ordinance does it state that misusing confidential information is a violation of the ordinance, so even if the Commission decides not to attach monetary sanctions there are just some things that are not addressed and should be in there.

Mr. Gonzalez-Herrell gave background on the issue. He stated at the last meetings some of the items in the ordinance did not have the “teeth” required to bring ethics into play in the City Government. The Mayor wanted a total review of the Charter and the Ethics Ordinance and the Commission was to work it out and see what they could come up with to better the Ethics Review process.

Mr. Ortega stated his recollection was that the Mayor at the time through the City Attorney had asked the Commission to take a look at the penal nature of the Ethics Code to make sure it had sufficient “teeth” to deter unethical activity conducted by City officials.

Mr. Miranda asked Ms. Firth if there was a criminal sanction to a violation of any of these standards of conduct; if there is a violation and we decide to impose some monetary sanction, is there built into the ordinance currently some kind of criminal penalty for a violation. Ms. Firth responded no, that in fact there is an express statement that it is not criminal; this is intended to be self-governing with the Council itself. She went on to say if in course of doing our work you might in fact find about something criminal, you would make a recommendation at that time that it be referred to the District Attorney for further investigation; but most of these would not rise to that level, i.e. the disclosure of confidential information is not a criminal thing but the Council wants to be able to self-govern and say “You’ve been entrusted with this confidential information that’s for the benefit of the entity and you are misusing information you have come to have”.

Mr. Miranda asked Ms. Firth, as far as she knows, the City Council has no interest in posting any type of criminal sanction. Ms. Firth responded nothing at new at this time but the Council is willing to hear what the Commission may have to say about it. She also stated if the City’s Internal Auditor becomes aware of something criminal, he will refer it to the appropriate agency.

Mr. Miranda stated that the lowest criminal sanction in terms of monetary fines is \$200 or a Class C misdemeanor and that may affect the extent to which the Commission may impose a monetary fine that may exceed \$200; this may be a guide for the Commission to consider.

Mr. Ortega asked with the current code as written what is the range of sanctions that the Commission can impose if someone violates the code; are there letters of admonition, maybe recommendation to leave office. Ms. Firth responded yes there are letters of admonition all the way and up to removal from office, which is the most severe and needs to be dealt with very carefully.

Ms. Firth stated the Commission should decide or direct her to prepare for them a summary of the Charter amendment addressing the monetary sanctions and go through the other cities and see what they have done. She went on to say this wasn’t done because she didn’t know how the Commission wanted to address the five issues; how do you want to tackle it.

Ms. Marrufo stated the summary would be extremely helpful so that the Commission could have something to compare.

Ms. Firth stated the County Ethics Standards would be provided to the Commission for the next meeting.

Mr. Miranda asked Ms. Firth whether the issues in item c. Codes of Conduct regarding civility, diplomacy, that those were not addressed in the current Ethics ordinance under the Code of Conduct. Ms Firth responded the Council wanted to expand on them.

On the item regarding the limitations on receipt of campaign funds, Ms. Firth stated she would do some research and pull the old minutes and show what had been done or the Commission could look at the item with fresh eyes. It is up to the Commission how they want to handle.

Mr. Giuliani asked Ms. Firth what was the current policy on receipt or limitation of campaign funds and whether it was clearly stated. Ms. Firth responded no, the only thing they are obligated to report is gifts over \$500 and then there are rules if they haven't reported on their state disclosure and a matter comes before council that involves a donor, they are not prohibited from voting but have to make a statement at the meeting that they received the donation; but there is no limit to the amount they can accept. Ms. Firth also stated there was some question as to whether there should be some "dead time" before an election where they cannot accept campaign contributions.

Mr. Miranda questioned the Chair on how he would like to proceed, whether to consider all five issues as a Commission or break them up into committees or subcommittees then present the recommendations to the Commission.

Chair Gonzalez-Herrell suggested petit committees of 3 persons and he was inclined to work that way. Mr. Miranda stated his recommendation was for the Chair to appoint 3 to separate committees or one committee and to advise what issues you want the committee to work on and that could be done administratively by sending an email to the City Attorney and advising who you are appointing to the committee and what issue they will deal with.

There was discussion from the Commission members on how to handle the issues presented, whether to assign each issue to a committee. Ms. Firth advised that each meeting would need to be posted as a public meeting and ultimately what we are working for is to present the recommendations to the Council where the Chair would appear before Council to present the Commission's recommendations and Council would direct the City Attorney's office to amend the ordinance. Ms. Firth recommended that the Commission put down some timelines to have the work completed and discuss meeting times.

Mr. Ortega stated during his term on the Commission he found it helpful to break down the issues into committees or small groups.

Ms. Firth stated that members should not deliberate the issues among themselves and reminded the Commission that even though they are an advisory group and as such are technically not subject to the Open Meetings law, the City Council makes you subject to the Open Meetings so the public knows what the Committee is doing. She went on to state that as a general rule the City Council's advisory committees are subject to the Open Meetings law.

Ms. Marrufo asked Ms. Firth what the time frame was to bring this before City Council. Ms. Firth responded that the Council did not set a deadline but the Commission could set one to bring their recommendations to Council.

Discussion continued on how to address the issues and the Commissioners present expressed their interest in particular issues to be addressed.

Ms. Marufo expressed an interest in item e.

Mr. Ortega opted out of serving on any committees since his term was due to expire in February 2014.

Mr. Miranda expressed an interest in items a. and c.

Ms. Cook-McDaniel expressed an interest in items a. and c.

Mr. Giuliani expressed an interest in items b. and d.

Mr. Rivera expressed an interest in items c. and e.

Mr. Ortega suggested that the Commission address one or two issues at a time as a whole and table the rest since not all the issues received enough interest from members to form committees. He went on to say if the Commission addressed one or two issues at a time, and as a Commission, determine how much time you want to do research, meet as a Commission and present our findings to the City Attorney and to the City Council. Ms. Firth agreed that it would be better to focus on issues a. and b. and have it ready for the next meeting, then address c. and d. and so forth.

Chair Gonzalez-Herrell stated he would like to set some deadlines to address the items. Mr. Giuliani asked whether the Commission would receive the research in advance of the next meeting. Ms. Firth responded yes and if the Commission allows, the summary will be provided within 2 weeks and the next meeting two weeks after that.

Mr. Miranda stated that it was his understanding that for next month the items to be brought before the Commission will be items a. and b. and in the next 2 weeks the City Attorney will provide a summary packet. Ms. Firth responded that was her understanding and that a packet summarizing the big cities in Texas will be provided; but if the Commission wants to look elsewhere let her know. She advised the Commissioners if they had something they wanted to share with the other members to send it to the Recording Secretary and she would get it to all the Commission members.

Chair Gonzalez-Herrell stated in summary the Commission would work on items a. and b. and bring to the table for the next meeting and the discussion on those items will be at the next meeting.

Motion made by Ms. Marrufo to have the City Attorney provide a summary of items a. (Charter Amendment addressing the monetary sanctions) and b. (2 year prohibition after leaving office) on February 5, 2014; have 2 weeks to review the information and research; and meet again on February 19, 2014. Mr. Miranda seconded the motion. The motion passed unanimously.

Ms. Marrufo asked if one of the Commissioners could not make the next meeting but had notes or recommendations on the issues can they send them in. Ms. Firth stated that they could send to the Recording Secretary and she would make sure the notes were part of the back-up for the Agenda.

Chair Herrell asked if there was any further business. Mr. Giuliani asked if Ms. Firth could give some examples of behavior that the Council is looking to prevent for a certain period of time. Ms. Firth stated it was lobbying for a group before council and it goes farther than that because it talks about boards and commissions and meetings with employees so that may even need some adjusting also. She went on to say that the reason this is done is because these are people of some influence and it only applies to those high level people who had decision making powers so that they would not be able to come in and use information from when they were on City Council or still have influence over employees. She said it was a very common prohibition but the time limit varies from city to city; some cities only have a one year prohibition and there has been some discussion that it does hamper a person's ability to make a living after they leave here. The prohibition is mostly lobbying and appearing and representing the interest of another; you can come for yourself but cannot represent someone else.

Chair Gonzalez-Herrell asked if it was limited to those areas already discussed, are there any limitations say on procurement, marketing, influence on purchasing or buying. Ms. Firth said she would research and provide that information in the summary.

Mr. Miranda asked Ms. Firth for clarification on this prohibition would apply to someone who is an attorney. He stated this prohibition seems to only apply at the City Council meetings. Ms. Firth responded that it applies to the Zoning Board of Adjustment, the Plan Commission and any body of the entity that has final decision making authority and there is language addressing meeting with employees. Mr. Miranda asked whether Ms. Firth interpreted the language to prohibit an attorney from representing a client in a matter against the City of El Paso outside of the City Council chambers, let's say in litigation. Ms. Firth stated that attorneys who leave the City have the prohibition. Mr. Miranda asked if it applied to attorneys who are members of a board. Ms. Firth responded that it does not apply but she would include that information in the summary; it applies to attorneys who are on City Council or an employee who is an attorney for the City.

5. ADJOURNMENT.

Motion made by Mr. Miranda, seconded by Ms. Marrufo, and unanimously carried to adjourn the meeting at 7:01 p.m.

APPROVED: February 19, 2014