

# **COMMITTEE OF THE ETHICS REVIEW BOARD**

## **MEETING MINUTES**

### **FRIDAY, JUNE 3, 2016**

A meeting of a Committee of the Ethics Review Board (ERB) was held on Friday, June 3, 2016 at 6:00 pm in the "C" Room of the Municipal Plaza Building, 114 West Commerce Street, San Antonio, Texas with the following present:

**Ethics Members Present:** Melanie Castillo, Courtney Hilliard, Adriana Garcia, Sam Millsap, and Marc Whyte

**Ethics Members Absent:** None

**Staff Present:** Tina Flores, *Compliance Auditor*; Edward Guzman, *Assistant City Attorney*; and Rosalinda Diaz, *Sr. Administrative Assistant*

**Others Present:** Raymond Baird, *UTSA*; Mike Andry, *Marshall University*; Andres Peña, *Kaufman & Killen*

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#### **CALL TO ORDER**

Chairman Millsap called the meeting to order at 6:00 pm.

#### **ROLL CALL**

Ms. Diaz called the roll noting that a quorum was present.

#### **1. Approval of the minutes of a Panel of the Ethics Review Board Meeting held on March 29, 2016.**

Mr. Whyte moved to approve the Minutes of the March 29, 2016 Panel of the Ethics Review Board Meeting. Dr. Garcia seconded the motion.

The motion prevailed by the following vote: **AYES:** Castillo, Hilliard, Garcia, Millsap, and Whyte. **NAY:** None.

#### **2. Discussion and possible action of potential revisions of the Ethics Code.**

Chairman Millsap informed the Committee that Dr. Garcia and Mr. Ray Baird would present Reports and asked that views be shared. He noted that 2 months was being dedicated to gathering Expert opinions with a Final Presentation to the ERB for review and consideration in August or September 2016.

Chairman Millsap introduced Mr. Baird and noted that he would be reporting on Best Ethics Practices from a National Level. Chairman Millsap informed Panel Members that he had contacted the Texas Ethics Commission but they had no information to provide.

Mr. Baird noted that his Report focused on identifying Policy Changes that would result in San Antonio's Ethics Code working better after implementing Best Practices. He explained that he would be referencing work completed by Robert F. Wechler, a National Figure on Best Ethics Practices, and that said would assist the Committee in identifying Ethics Code changes that

would further the Public's existing trust of its local government while building on trust that was lacking. He reported that Mr. Wechler's *Second Edition on Local Government Ethics* detailed how a successful Ethics Program should be developed and topics for inclusion in said Program.

He explained that the best method for restoring the Public's Trust would be for the Committee to analyze past and invented Ethics cases to determine how the decision furthered or undermined the Public's Trust. He stated that the intent was to implement Best Practices that would mitigate and even negate an adverse impact on the Community. Mr. Baird highlighted three influences that determine the level of Trust the Public had for their Local Government. The first influence discussed was laws which specified a minimum and maximum that a Person would accept and/or tolerate; second was personal morality used to inspire Public Trust; and third was custom which undermined the Public Trust by repeatedly committing wrongful acts. He spoke on various cases noted in Mr. Wechler's book which detailed the Public's Distrust in its Local Government based on perceived detrimental actions made by a Member of its Governmental Body.

Based on the scenarios in the book, Mr. Baird spoke of the strengths in the City of San Antonio's Appointment Process and Ethics Code. However, a weakness identified was the Mayor and Council having an indirect Budgetary control over the ERB via Staffing and Funding. Mr. Baird reported that this indirect control negatively impacted the manner in which ERB investigations were performed and opinions rendered. As such, he recommended that the ERB become an Independent Body of the City Council to include management of its own Staff and Budget. A suggestion made by Mr. Baird to ensure that said goal was accomplished was to inform the Mayor and Council that Budget Allocations would not be misappropriated or used to aggressively investigate individuals.

Chairman Millsap asked Mr. Baird to recommend changes that would result in San Antonio having a Best Practice Appointment Process. Mr. Baird reported that the emerging trend in Cities was for Community Groups to make Board Nominations. He noted that the Process entailed Community Groups forwarding Nominations to a Council Selection Committee for review with the full Council voting to either accept or deny the Nominees recommended by the Community. Dr. Garcia added that she found the same information in her research and voiced concern with the use of said practice in the City of San Antonio.

Mr. Whyte stated that his research concluded that 70% of other Cities used the same Appointment Process as that used in the City of San Antonio. He reported that the Process worked locally as the Public had a voice via the Election of a Mayor and Council Representative every two years. As a result of said Election, one responsibility given to Elected Officials was to make Board Appointments. Mr. Whyte recommended that the current Appointment Process not be changed at this time as proposed changes would not result in a better Policy. He added that the Ethics Code already contained provisions limiting Conflicts of Interest.

Dr. Garcia expanded on her concerns and reported on the lack of diversity that would result with Community Organizations like Chambers of Commerce and Universities making Board Nominations for the City of San Antonio. She clarified that the lack of diversity extended to social economic status and life experiences.

Mr. Hilliard agreed that there was no need to change the Appointment Process at this time. Based on research presented, he stated that the Committee should focus on other Ethics Code changes to include Investigations, Hearings, Sanctions, Budget, and Waivers.

Chairman Millsap spoke in support of Community Organizations making Board Nominations to a designated Council Committee. However, he expressed concern with said System being implemented in San Antonio based on historical events which resulted in White Males being elected to At-Large City Council Seats. He stated that the current ERB Appointment Process ensured representation of the entire City due to Nominee residency requirements. He added that increased Confidence and Public Trust resulted from Board Membership being demographically representative of the Community. It was noted that the Committee needed to develop a Plan of Action for presentation to the Mayor and Council that highlighted proposed Ethics Code changes by priority. Mr. Baird reported that the Appointment Process utilized by the City of San Antonio did not pose a problem at this time. It was confirmed by Chairman Millsap that the consensus of the Committee was to leave the Appointment Process as currently written.

Chairman Millsap asked Mr. Baird to provide insight on how the ERB could get independent Budgetary Authority. Mr. Baird stated that the ERB could propose that the City Council allocate Funds while also requiring the City Attorney and the Ethics Compliance Officer to report to the ERB. Mr. Baird and Dr. Garcia provided examples of how other Cities like San Diego and local entities like San Antonio's Tri-Centennial Commission receive and manage Funds Allocated by the Local Government and have a dedicated Staffing Compliment. Dr. Garcia spoke on the importance of establishing a Mission Statement as said would assist in determining the Ethics Board's authority, composition, and priorities while also increasing Public Perception.

The Committee took a break at 6:54 pm.

The Committee reconvened at 7:00 pm.

Dr. Garcia reported that some Cities Allocated Funds as well as hired Independent Attorneys and Staff to assist their Ethics Board. Based on findings presented, she asked for concurrence that the Main Objective of the Committee was to create an independent Ethics Review Board. Chairman Millsap clarified that the City Council requested for the ERB to review the Appointment Process and develop a Plan that allowed for the ERB to have greater independence. Dr. Garcia provided examples of Cities that established independent Ethics Boards with a dedicated Staff and authority to Appoint Members.

Mr. Whyte highlighted the Process utilized by the City of San Antonio for Appointing the City Auditor and the Ethics Compliance Auditor. He added that the selection of the Ethics Compliance Auditor was based on a recommendation made by the ERB with the final hiring decision made by the City Auditor.

Mr. Hilliard spoke on the importance of the ERB communicating to the Public research conducted and conclusions made. He noted that said Community Outreach Efforts needed to indicate the benefits of the current Appointment Process utilized by the City of San Antonio.

Chairman Millsap spoke of his continued support for the ERB being independent. However, he noted that Staffing issues created a challenge for the achievement of said goal. He provided an overview of the chain of command between the Ethics Compliance Auditor and the City Auditor and stated that he would recommend that the Committee continue to discuss how an independent Staff could be assigned to assist the ERB. Chairman Millsap added that any recommendations made regarding the ERB having its own Staff would result in a City Charter change.

Dr. Garcia proposed that the Committee develop two options requesting the ERB have an independent Staff. Chairman Millsap highlighted his vision for the ERB which entailed the Mayor and Council approving a Budget for the creation of an Ethics Office that was comprised of an Independent Attorney and Investigator. He added that some functions currently performed by other City agencies would be absorbed by the newly created Ethics Office.

Discussion ensued regarding the development of a Budget for the proposed Ethics Office with independent Staff to include an Attorney and Investigator. After discussion, it was agreed that more research needed to be conducted before the Committee could make a recommendation. It was noted that the Ethics Code already included provisions allowing for an independent Attorney to be retained if needed.

Chairman Millsap reminded Committee Members of comments previously made by former ERB Member Ileana Gonzalez concerning the Waiver issued by the City Council to Mayor Taylor. He stated that Ms. Gonzalez voiced concern with the City Attorney's Office not notifying the City Auditor's Office nor the ERB of the conversation that transpired with the Mayor. Chairman Millsap noted that Mrs. Camila Kunau responded that the City Attorney's Office could not notify City Departments as required by the Ethics Code due to Attorney-Client Privilege. He stated that a problem was created when the City Attorney's Office was put in the position of not being able to comply with the Ethics Code. Mr. Hilliard stated that Ms. Gonzalez was referencing Section 2-54 of the Ethics Code and stated that the Committee could recommend changes to said Section.

Mr. Whyte stated that the Ethics Code currently gives the ERB the authority to hire Independent Counsel when needed and he asked of the impact of the advice given by the City Attorney's Office. Chairman Millsap replied that it was difficult to assess the legal advice given to the ERB since the City Attorney's Office interprets the Ethics Code. Mr. Whyte reported that the ERB was allowed to retain Independent Counsel if it disagreed with the advice provided. Dr. Garcia informed the Committee of a process outlined by the Texas Municipal League regarding conflicts with Legal Opinions issued by its City Attorney.

Chairman Millsap highlighted the current Process utilized by the City Attorney's Office for selecting Outside Counsel to review Ethics Complaints filed against the Mayor or a Councilmember. He noted that the ERB has not been consulted prior to selections made by the City Attorney's Office. Mr. Hilliard recommended changes to the Ethics Code requiring consultation between the ERB and the City Attorney's Office when selecting Outside Counsel. Ms. Flores suggested that a list of independent legal firms be provided to the ERB so that Counsel could be selected as needed. Mr. Ed Guzman informed the Committee that there was no record of the ERB taking issue with selections made by the City Attorney's Office for Outside Counsel.

Mr. Whyte requested that Section 2-84(d)(3) of the Ethics Code be changed to clarify the Process for selecting Outside Counsel. He spoke on how the selection made by the City Attorney's Office could lead to a misperception by the Public and therefore recommended that the ERB take the lead in selecting Outside Counsel.

In preparation for the next Committee Meeting, Chairman Millsap asked that Panel Members review Division 8 of the City Charter.

Mr. Whyte asked of the role the ERB had in advising Members of the Council of Conflicts of Interest. Chairman Millsap reported that the ERB did not have the authority to advise Members of Council on Waivers. He stated that the ERB could request an Ethics Code change prohibiting the Mayor and Council from requesting Waivers resulting from alleged violations of either the Ethics or Municipal Campaign Finance Codes. Mr. Whyte proposed a change to the Ethics Code requiring that all Waivers be forwarded to the ERB prior to a Council Vote. He noted that the intent of said change was to allow the ERB to review and determine the appropriateness of issuing the requested Waiver. Mr. Whyte requested that Opinions, once finalized, be posted to the City's Web Page for the Public to view prior to the Council's Vote on the issuance of the Waiver to the Member of Council.

Chairman Millsap tabled the discussion on the issuance of Waivers to the next Meeting.

**3. Discussion and possible action of potential revisions to the Municipal Campaign Finance Code.**

Item 3 was not discussed.

**4. Citizens to be Heard.**

There were no Citizens to be Heard.

**5. Executive Session: Attorney-Client Matters may be discussed on any of the items listed above under Section 551.071 of the Texas Open Meeting Act.**

Executive Session was not held.

**ADJOURNMENT**

Mr. Hilliard made a motion to adjourn the meeting. Mr. Whyte seconded the motion.

The motion prevailed by the following vote: **AYES:** Castillo, Hilliard, Garcia, Millsap, and Whyte. **NAY:** None.

There being no further discussion, Chairman Millsap adjourned the meeting at 8:07 pm.

APPROVED: \_\_\_\_\_  
SAM MILLSAP, CHAIR

DATE: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
ROSALINDA G. DIAZ  
OFFICE OF THE CITY CLERK