

ETHICS REVIEW BOARD MEETING MINUTES WEDNESDAY, AUGUST 17, 2016

A meeting of the Ethics Review Board (ERB) was held on Wednesday, August 17, 2016 at 6:00 pm in the Media Briefing Room of the City Hall Building, 100 Military Plaza, San Antonio, Texas with the following present:

Ethics Members Present: Courtney Hilliard, Ruben De Leon, Adriana Garcia, Linda Jackson, Sam Millsap, and Marc Whyte

Ethics Members Absent: Melanie Castillo, Magdalena Alvarado, Victoria Moreno-Herrera

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

Others Present: Frank Garza, *Outside Counsel*; Will McLeod, *Complainant*; Shawn Fitzpatrick, *Counsel for Councilmember Shirley Gonzales*; Amber Garza, *Citizen*; Gay Wright, *Citizen*; Cynthia Brehm, *Citizen*

CALL TO ORDER

Chairman Sam Millsap called the meeting to order at 6:05 pm.

ROLL CALL

Mrs. Diaz called the roll noting that a quorum was present. She noted that Magdalena Alvarado and Victoria Moreno-Herrera had recused themselves from discussions and attendance of meetings regarding the complaint submitted by Mr. Will McLeod against Councilmember Shirley Gonzales.

1. Approval of the minutes of the Ethics Review Board Meetings held on February 2, 2016 and May 27, 2016.

Mr. De Leon moved to approve the Minutes of the Ethics Review Board Meetings held on February 2, 2016 and May 27, 2016. Mr. Hilliard seconded the motion.

The motion prevailed by the following vote: **AYES:** Hilliard, De Leon, Garcia, Jackson, Millsap, and Whyte. **NAY:** None. **ABSENT:** Castillo, Alvarado, and Moreno-Herrera.

2. Discussion and possible action on the sworn complaint filed by Will McLeod against Councilmember Shirley Gonzales, District 5.

Chairman Millsap noted that Mr. McLeod was present at the meeting. He added that Councilmember Gonzales was not present but Mr. Shawn Fitzpatrick, her representative, was available to answer any questions. At the request of Chairman Millsap, Mr. McLeod reported that he had no witnesses but had additional evidence to provide the Board for their consideration.

Mr. Fitzpatrick responded that he had no witnesses. Chairman Millsap went over the procedures that the Board would follow for the meeting.

Chairman Millsap entered the following documents into the record:

- Exhibit 1 – Sworn Complaint filed by Mr. McLeod against Councilmember Shirley Gonzales
- Exhibit 2 – Response from Councilmember Gonzales to Mr. McLeod's Complaint
- Exhibit 3 – Rebuttal from Mr. McLeod to Councilmember Gonzales' Response

Chairman Millsap informed the Complainant and Respondent that they would each have fifteen (15) minutes to make a statement. He added that the Board could ask follow-up questions after each statement. Chairman Millsap asked Mr. Garza if the additional evidence submitted by Mr. McLeod could be accepted by the Board. Mr. Garza replied that the Chair of the Board could accept or reject the additional information and suggested that a decision be made after testimony was presented in order to determine relevance to the complaint.

Chairman Millsap asked Mr. Fitzpatrick if he had any comments regarding the additional information submitted by Mr. McLeod. Mr. Fitzpatrick replied that he objected to the late notice of additional information since his client had no time to prepare a response. Chairman Millsap explained that he would make a determination whether to allow the additional documents submitted by Mr. McLeod after testimony was presented.

Mr. McLeod was sworn in by Chairman Millsap. He read from his prepared statement and explained how the Councilmember's Facebook Account could be accessed from the City of San Antonio's Website. He noted that there was no disclaimer notifying the Public that they were leaving the City's Website or that the views expressed on the District 5 Facebook Page did not reflect those of the City of San Antonio. Mr. McLeod went over Facebook rules regarding account registration. Mr. Garza reported that the Board did not have jurisdiction over rules mandated by Facebook.

At this time Chairman Millsap entered the following documents into the record:

- Exhibit 4 – Mr. McLeod's statement
- Exhibit 4a – Printed copy of the City of San Antonio Mayor & Council City Webpages
- Exhibit 4b – Printed copy of Shirley Gonzales, Council District 5 City Webpage

Mr. Mark Whyte clarified that Mr. McLeod alleged that Councilmember Gonzales possibly violated Sections 2-49 and 2-50 of the Ethics Code. He explained that the Board would have to determine if Councilmember Gonzales utilized City resources and if posts on her Facebook were attempts to support a candidate.

Mr. Ruben De Leon asked if the City had an official Facebook Page and if yes, what were the guidelines for placing information on that site. Mr. Garza reported that guidelines were denoted in the City's Social Media Administrative Directive and that it prohibits religious or political support. Mr. De Leon asked if Elected Officials were required to follow the same guidelines. Mr. Garza replied that Elected Officials were allowed to support and endorse candidates on their own time but could not use any City resources to do it.

Mr. Fitzpatrick voiced concern with the Ethics Code not allowing for Councilmember Gonzales to respond to the additional allegations made in Mr. McLeod's Rebuttal or to the ones he submitted today. He reported that the District 5 Councilmember's Facebook Page was a private nongovernmental account to which she had complete editorial discretion over. He noted that she did not post to her private Facebook Page using City equipment or during City time. He stated that individuals share their posts on the District 5 Councilmember Facebook Page and that the Councilmember does not encourage how individuals should vote. He read a prepared statement from Councilmember Gonzales. He stated that the Councilmembers are provided by the City a courtesy link to social media sites.

Mr. Garza stated that the Board needed to determine if the evidence provided illustrated that Councilmember Gonzales violated Sections 2-49 and 2-50 of the City Code. Chairman Millsap allowed both parties to make a brief statement before the Board convened in Executive Session.

Mr. McLeod stated that it was misleading when someone accessed the City's Website and scrolled down to a Councilmember's Webpage and clicked on a Councilmember's Facebook Page to know that they were being directed to a Private Account outside of the City's Website. He noted that he had reviewed other Councilmember's Facebook Pages and they did not contain any partisan political activity or postings. He recommended that the City place a disclaimer notifying the Public that they were leaving the City's Website and entering a Private Account. He stated that links accessed from a City Website should be nonpartisan and only contain City related information.

Mr. Fitzpatrick reiterated that Councilmember Gonzales' Facebook Page was private and that the link available on the City's District 5 website pointed to this Private Account. He stated that the posts on the Facebook Page did not encourage individuals to vote in a specific manner.

Chairman Millsap recessed the meeting at 7:25 pm to convene in Executive Session, pursuant to Texas Government Code Section 551.071 (consultation with attorney) and 551.074 (personnel matters) related to Item 2.

Chairman Millsap reconvened the Ethics Review Board Meeting at 8:15 pm at which time it was noted that the Board had been briefed on the above-styled matter but took no action.

Mr. Hilliard moved that the complaint filed by Mr. Will McLeod against Councilmember Shirley Gonzales failed to prove by a preponderance of the evidence that Councilmember Gonzales violated Sections 2-49 and 2-50 of the City's Ethics Code. Mr. Whyte offered a friendly amendment that the ERB recommend to the City that the City's Website not contain links to Webpages that contain material promoting private interests and/or political activity. Said friendly amendment was accepted by Mr. Hilliard. Mr. Whyte seconded the motion.

Mrs. Diaz administered a roll call vote and reported that the motion prevailed with the following vote: **AYES:** Hilliard, De Leon, Garcia, Jackson, Millsap, and Whyte. **NAY:** None. **ABSENT:** Castillo, Alvarado, and Moreno-Herrera.

Chairman Millsap asked how the Board's recommendations would be communicated to the City. Mr. Edward Guzman proposed that a letter be sent to the Mayor & Council, City Manager, and specific City Department Directors. Chairman Millsap requested that Mr. Garza draft a letter

expressing the Boards recommendations. He then thanked Mr. McLeod for bringing the issue to the Board's attention.

10. Citizens to be Heard.

Ms. Amber Garza described how private and public Webpages operate. She stated that she assumed that the District 5 Webpage was a Governmental Webpage since Councilmember Gonzales was a Government Representative. She reported that when she signed up to receive District 5 emails District 5 Staff also sent her political advertisements for other candidates.

Ms. Gay Wright expressed concern about a previous Complaint she submitted against Mayor Ivy Taylor that was not forwarded to the ERB for their review. Chairman Millsap informed her that she had contacted him and he had written back to her explaining the Complaint process. He detailed for Ms. Wright that the Compliance Auditor or Outside Counsel review the facts alleged in a Complaint and determine whether an Ethics Code violation occurred. He added that if it was determined that no violation occurred the Complaint would not be forwarded to the ERB for their review.

Ms. Wright stated that the summary of her Complaint was not adequately reported on the ERB Annual Report. She added she was not informed that she could appeal the decision.

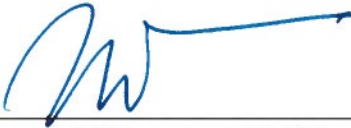
Chairman Millsap announced that a meeting of the whole ERB would be scheduled after September 15, 2016 to discuss the Ethics and Municipal Finance Code Revisions. He stated that he intended to invite Councilmembers, the City Manager, and City Staff to the next ERB Meeting to gather their input on additional Code changes.

ADJOURNMENT


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

The motion prevailed by the following vote: **AYES:** Hilliard, De Leon, Garcia, Jackson, Millsap, and Whyte. **NAY:** None. **ABSENT:** Castillo, Alvarado, and Moreno-Herrera.

There being no further discussion, Chairman Millsap adjourned the meeting at 8:36 pm.

APPROVED: 
SAM MILLSAP, CHAIR

DATE: 1/25/2017

ATTEST: 
ROSALINDA G. DIAZ
OFFICE OF THE CITY CLERK