

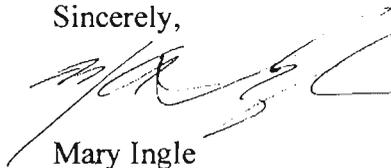
July 23, 2014

Austin Ethics Review Commission
C/o Chair, Austin Kaplan
301 W. Second St
Austin, Texas 78701

Dear Chairman Kaplan:

Please find enclosed Mary Ingle's sworn Austin City Ethics Review Commission complaint form, with the attached and incorporated Sworn Complaint of Mary Ingle, alleging that the respondent Melissa Neslund has violated Austin Code Chapter 4-8 by serving as a member of the Austin Land Development Code Advisory Committee (Committee) while being an unregistered, uncompensated lobbyist. Complainant Mary Ingle respectfully requests that the Austin Ethics Review Commission investigate this complaint, hold preliminary and final hearings, find respondent is a lobbyist and therefore cannot serve on the Land Development Code Advisory Committee, and recommend her removal from the Committee.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mary Ingle', written over a horizontal line.

Mary Ingle

Austin Texas

cc.

Mark Ott
301 W. Second St.
Austin, Texas 78701

City Attorney Karen Kennard
301 W. Second St.
Austin, Texas 78701

City Clerk
301 W. Second St.
Austin, Texas 78701

Sworn Complaint to the Austin Ethics Review Commission

To the Honorable Austin Ethics Review Commission:

Comes now, the complainant, Mary Ingle, an Austin resident, and files this sworn complaint, with the Austin Ethics Review Commission (“Commission”). Complainant Mary Ingle alleges and avers that respondent Melissa Neslund, a current commissioner of the City of Austin’s Land Development Code Advisory Committee (“LDCAC”) has violated the City of Austin’s Code of Ordinances, Chapter 4.08, by failing to register as a lobbyist. As a result, Complainant maintains that Neslund is disqualified from serving on the LDCAC and should be removed from the Commission. Complainant respectfully requests that the Commission investigate, hold preliminary and final hearings, find that the respondent is a lobbyist and disqualified from service on the LDCAC service, and recommend her removal from the Commission.

I. Jurisdiction: Austin Code, Section 2-7-6 provides that the “Ethics Review Commission has jurisdiction over... Chapter 4-8 (Regulation of Lobbyists)...”

II. Violation of the Lobbyist Registration Requirement in Section 4-8

A. Relevant Law. The Austin City Code (“Code”) provides that individuals and entities that lobby over a certain monetary threshold must register with the City Clerk. In particular, Section 4-8-4 provides:

Excepted as provided in Section 4-8-5 (Exceptions), a person must register with the city clerk if the person:

- (1) receives compensation of \$200 or more in a calendar quarter for lobbying;
- (2) receives reimbursement of \$200 or more in a calendar quarter for lobbying;
- (3) expends \$200 or more in a calendar quarter for lobbying; or
- (4) lobbies as the agent or employee of a person who:
 - (a) receives compensation of \$200 or more in a calendar quarter for lobbying;
 - (b) receives reimbursement of \$200 or more in a calendar quarter for lobbying; or
 - (c) expends \$200 or more in a calendar quarter for lobbying.

If a person receives compensation or expends \$200 or more in a quarter for lobbying, or if they lobby as an employee or agent of an entity that does so, then they must register as a lobbyist. Austin has set relatively low monetary thresholds for requiring lobbyist registration, apparently to ensure transparency and public confidence in the integrity of City government: “The council declares...that to preserve and maintain the integrity of the governmental decision-making process in the city, it is necessary that the identity, expenditures, and activities of certain persons who engage in efforts to influence a City official...be publicly and regularly disclosed.” Austin Code, Section 4-8-1.

1. Definition of Compensation. The Code defines “compensation” broadly to include “money, service, facility or other thing of value or financial benefit” for lobbying. The definition excludes “compensation paid to an individual regularly employed by a person if the compensation paid to the individual is ordinarily paid regardless of whether the individual

engages in lobbying activities and lobbying activities are an incidental part of the individual's regular responsibilities to the person paying the compensation” There are two components of this compensation exclusion: 1) the person ordinarily must be paid regardless of whether they lobby; and 2) the person’s lobbying activities are incidental to their regular job responsibilities. The key legal issue is what constitutes lobbying activities that are incidental to a person’s regular work. There is no definition of “incidental” in Chapter 4-8. Merriam-Webster’s Online Dictionary defines incidental as “being likely to ensue as a chance or minor consequence; occurring merely by chance or without intention or calculation.”(www.merriam-webster.com)(accessed July 16, 2014). Additional understanding can be garnered from the City Code’s definition of “incidental interest” in Chapter 2-7, Ethics and Financial Disclosure:

INCIDENTAL INTEREST means an interest in a person, entity or property which is not a substantial interest and which has insignificant value, or which would be affected only in a de minimis fashion by a decision. This chapter does not establish dollar limits on the terms “insignificant value” and “de minimis,” which shall have their usual meanings and be subject to interpretation on a case-by-case basis.

Section 2-7-2 (7). With these definitions in mind, an incidental part of a person’s regular job responsibilities should mean work activities that are insignificant, have a de minimis involvement or impact on a matter, and occur by chance and not as a recurring part of one’s job duties. Incidental lobbying is non-recurring, non-professional lobbying that has a de minimis impact or involvement. A classic example of incidental lobbying would be a field engineer who provides technical information to prepare a lobbyist to meet with city planning staff on a specific pending zoning matter. If, however, the engineer has as a recurring part of her job duties preparing lobbyists to influence government, or the engineer’s lobbying work involves a substantial public investment or significant public interest matter, then their lobbying is not incidental to their regular work responsibilities. This legal interpretation comports both with the meaning of incidental as well as the purpose of the statute to ensure that those that lobby on a recurring basis or on significant matters register so there is accountability and transparency in Austin government.

2. Definition of Lobbying. “Lobbying” is defined broadly in the Code to include soliciting city officials, including city boards and commissions, directly or indirectly to influence the official to take a position on a municipal question, Austin Code Section 4-8-2(6). “City official” is defined to include not only the council and key city staff, but also members of a City “board, commission, and committee,” Section 4-8-1(1). See also Section 4-8-3 (Applicability of Lobbyist Provisions). Similarly, the City Code defines “municipal question” very broadly to include not only proposed regulations and decisions, but proposed recommendations for action by the council or commissions: “Municipal Question means a proposed or proposal for an ordinance, resolution, motion, recommendation, report, regulation, policy, appointment, sanction, and bid, including the development of specifications, an award, grant, or contract for more than \$2,000,” Section 4-8-2(9).

When a person meets the basic legal elements for lobbying, then they are presumptively required to register under the City Code. Although the Code has narrow exceptions to the lobby registration requirements, a person who meets the Code’s essential lobbying elements has the

burden to show that they meet particular registration exceptions. Section 4-8-5 provides that “[t]he following persons are not required to register under this chapter...” if they satisfy particular exceptions, such as being a bona fide journalist. A person claiming a registration exemption has the burden of proof to show that they satisfy an exemption’s elements, and not the City’s burden to show a negative, i.e., that each exemption has not been met. This legal interpretation comports with standard licensing law as well as the ordinance’s goal of having a comprehensive lobbyist registration scheme that ensures public transparency and trust. Section 4-8-1. See Section 2-7- 45 (B).

3. Land Development Code Advisory Committee members are subject to the lobbyist prohibition in Chapter 4-8. The LDCAC is an advisory committee established by Austin City Council resolution. (Attached). While this resolution does not subject the LDCAC to all city commission regulations, it expressly subjects LDCAC to the lobbyist prohibition in Chapter 4-8. The council’s resolution provides: “A person who is registered or required to register as a lobbyist under Chapter 4-8 or is employed by a person who is registered or required to register as a lobbyist under Chapter 4-8 is prohibited from serving on the advisory board.” Lobbyist cannot serve on this important committee that is recommending important changes to the land development laws of Austin, impacting the neighborhoods and homes of thousands of Austinites.

B. Evidence.

LDCAC member Neslund appears to be a lobbyist, although she is not registered with the City of Austin. Neslund, according to her own Linked-In Profile (attached and accessed July 17, 2014), is “Senior Associate/Project Director- Land Use and Entitlements at Bury”. Bury describes itself on the front page of its web site as “an engineering and design firm,” that includes lobbying as a regular part of its work: “We’re the visionaries who imagine what a piece of land can become, the planners who make it feasible, the advocates who bring stakeholders along, and the engineers who design the details,” (You-Tube video script on Bury website front page, <http://www.buryinc.com/>, retrieved July 21, 2014. Neslund states in her Online Linked-In Profile (www.linkedin.com/pub/dir/Melissa/Neslund retrieved July 21, 2014 and attached) that her regular job duties at Bury include representing clients before governmental bodies (i.e., advocating to bring stakeholders along):

- I have worked for Bury+Partners for 8 years and manage a team whose responsibilities include:
- Completing extensive due diligence and site analysis;
 - **Representing developers through the zoning and entitlement processes throughout central Texas;**
 - **Tracking and responding to code and ordinance amendments being processed through the jurisdictions within the region;** and
 - Providing technical support to the company’s Business Development team.

Comments on her Linked-In page further evidence that lobbying is not an incidental part of her work for her employer Bury. For example, Chance Sparks, Director of Planning at the City of Buda, states on her Linked-In page (<https://www.linkedin.com/pub/melissa-neslund/16/239/aa9>): “Melissa is highly skilled in government relations and land development. She understands the perspectives of city officials and is able to effectively

sufficiently protected... In addition, her approach has resulted in great relationships with city staff and elected officials.”

A quick online search reveals that Neslund has represented clients frequently and for years before the Austin City Council and the City’s land development commissions, such as the planning commission, board of adjustments, and zoning and platting commission

- Austin City Council, June 26, 2014, Item 132 representing HEB (<http://www.austintexas.gov/edims/document.cfm?id=212075>);
- Austin City Council, May 23, 2013, Item 91 representing Koontz McCombs, Trove Gilbert (<http://www.austintexas.gov/edims/document.cfm?id=189600>);
- Austin City Council, April 11, 2013, Item 76 representing West Campus Partners (<http://www.austintexas.gov/edims/document.cfm?id=187032>);
- Austin City Council, March 7, 2013, item 63 representing Residents of the Spoke, LLC, represented by Transwestern (<http://www.austintexas.gov/edims/document.cfm?id=184802>);
- Austin City Council, May 12, 2011, item 70 representing Heritage Oak Hill (<http://www.austintexas.gov/edims/document.cfm?id=152331>);
- Austin Zoning and Platting Commission, representing HEB, agenda item C.5, on June 17, 2014, (<http://www.austintexas.gov/ledims/document.cfm?id=211740>);
- Austin Board of Adjustments, agenda item F-5, December 12, 2011 (<http://austintx.swagit.com/play/12122011-598>).

The readily available evidence strongly suggests Neslund lobbies as a non-incidental part of her regular work responsibilities for Bury.

A search of the City of Austin lobbyist records reveals that neither she nor Bury have registered. (Searched July 21, 2014). It is a Class C misdemeanor to fail to register as a City lobbyist. Section 4-8-11. As a lobbyist, albeit unregistered, Neslund is prohibited from serving on the LDCAC.

III. Conclusion and Prayer. Complainant Mary Ingle respectfully requests that the Austin Ethics Review Commission review this sworn complaint matter as expeditiously as possible. Neslund’s current service on the Land Development Code Advisory Committee-- while serving as a professional lobbyist for land developers-- taints the entire LDCAC process. A professional lobbyist for land developers should not, and is not, allowed to serve on an Austin city body recommending major changes, if not a wholesale rewrite, of the City’s land development codes. These changes will have inevitably a huge impact on Neslund’s and her clients’ businesses— resulting in a clear conflict of interest.

Complainant respectfully requests that the Austin Ethics Review Commission investigate, hold preliminary and final hearings, find that Neslund is a lobbyist under Chapter 4-8 and is disqualified from LDCAC service, and recommend her immediate removal from the LDCAC.

entitled under any law.

Respectfully submitted,

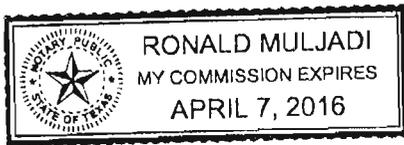


Mary Ingle, Affiant
Austin, Texas

STATE OF TEXAS
COUNTY OF TRAVIS

SWORN TO AND SUBSCRIBED before me, the undersigned notary, on this day, personally appeared affiant Mary Ingle, a person whose identity is known to me. After I administered an oath to her, upon her oath, she swore she read the statement and the facts stated above and that they are within her personal knowledge and are true and correct.



Signature of Notary

Printed Name of Notary

04/07/2014
My Commission Expires

07/23/2014
Date

ETHICS REVIEW COMMISSION
CHAPTER 2-7 CITY CODE

COMPLAINT

NAME OF PERSON(S) FILING COMPLAINT: Mary Ingle

ADDRESS: 3406 Duval ST, Austin, TX 78705

PHONE NUMBER: 512-320-8449

[PLEASE FILE A SEPARATE COMPLAINT FOR EACH PERSON COMPLAINED AGAINST]

NAME OF PERSON COMPLAINED AGAINST: Melissa Neslund

CITY OFFICE, DEPARTMENT, COMMISSION: Land Development Code Advisory Committee

ADDRESS:1) Land Development Advisory Committee, Austin City Hall, Austin Texas; 2) Bury, 221 West Sixth Street. Suite 600. Austin, TX 78701

PHONE NUMBER [IF KNOWN] 512-328-0011

[PLEASE LIST EACH VIOLATION SEPARATELY]See attached sworn complaint of Mary Ingle that is incorporated herein for all purposes. In short, Land Development Code Advisory Committee member Melissa Neslund has violated Chapter 4-8 of the Austin City Code that prohibits a Committee member from being a lobbyist.

SECTION OF ETHICS ORDINANCE VIOLATED: Section 4-8. See also City Council Resolution 20122016-074 (December 6, 2012) that expressly applies Chapter 4-8 to the Land Development Code Advisory Committee.

DATE OF ALLEGED VIOLATION: Every day respondent Neslund has served on the Committee, which has been since February 2013.

ACTIONS ALLEGED TO BE A VIOLATION: See the sworn complaint, attached and incorporated herein for all purposes. Respondent Neslund has served as a member of the Land Development Code Advisory Committee since February 2013 although she is a compensated lobbyist, albeit unregistered. This violated Chapter 4.08 and the City Council's resolution.

Witnesses or evidence that would be presented: Mary Ingle would testify to Ms. Neslund's Committee service and to the evidence in the complaint from City records and Neslund's Linked-In Profile that demonstrates that she is a lobbyist. Ms. Nelsund would testify as an adverse witness as to her compensation and work at Bury on "governmental relations." She also would testify as to her Committee service. City record keepers would

... would testify as to her work and compensation; their names are unknown at this time. Clients of Ms. Neslund would testify that she has represented them as a lobbyist; the witnesses are unknown at this time. We reserve the right to supplement this information as more witnesses and evidence becomes available.

II.

ALL THE STATEMENTS AND INFORMATION IN THIS COMPLAINT ARE TRUE AND FACTUAL TO THE BEST OF MY KNOWLEDGE.

DATE: 4/23/14

Mary A. Ingle

COMPLAINANT'S SIGNATURE

Mary A. Ingle
PRINT NAME

STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged, sworn to and subscribed before me by

Mary Ingle

On the 23rd day of July, 2014, to certify which witness my

hand and official seal.

Ronald Muljadi

Notary Public in and for the State of Texas

Ronald Muljadi
Typed or Printed Name of Notary

