



August 11, 2023

City of Austin Ethics Review Commission
c/o Eric Nichols
301 W. 2nd Street
Austin, TX 78767
Via Email: eric.nichols@butlersnow.com

Re: Response to Complaint
Complainant: Daniel Llanes
Respondent: Council Member José M.A. Velásquez

To whom it may concern:

I represent Council Member José M.A. Velásquez (“Respondent”). Please allow this letter to serve as his response to the above-referenced ethics complaint (“the Complaint”).

I. Allegation

The Complaint alleges that Respondent violated Section 2-7-72(E) by failing to list East Austin Conservancy as a source of occupational income on his 2021 and 2022 Statements of Financial Information.

The Complaint further alleges that Respondent violated Section 2-7-72(E) by failing to disclose that he was a Director of the East Austin Conservancy on his 2021 and 2022 Statements of Financial Information.

II. Response

The filing of the Complaint proves the maxim that **no good deed goes unpunished**. On June 1, 2023, Respondent, as required by the local and state conflict-of-interest rules, disclosed his relationship with East Austin Conservancy and abstained from participating in two agenda items that may have affected that entity. As a result, the Complainant used the disclosure against Respondent, noting that Respondent had (inadvertently) omitted that relationship from his previously filed Statements of Financial Information.

a. Alleged Failure to Disclose Board Position

Respondent resigned his position as a Director of the East Austin Conservancy on October 28, 2021. (See Exhibit “A”). Therefore, Respondent was not required to list East Austin Conservancy as a board position on his SFI covering 2022. Regarding the omission

from his 2021 SFI, Respondent mistakenly believed that, since he was not on the Board for the entire calendar year, he was not required to list the position. However, in an effort to be fully transparent, Respondent filed a corrected 2021 SFI on July 20, 2023, thereby remedying his inadvertent omission.

b. Alleged Omission of Occupational Income

In November 2021, after his resignation from its board of directors, Respondent began providing consulting services to the East Austin Conservancy. As noted above, Respondent filed a corrected 2021 SFI on July 20, 2023, listing East Austin Conservancy as a source of occupational income.

Regarding his 2022 SFI, Respondent believed that listing the name of his sole proprietorship (JMAV Strategies) met the requirement of disclosing the source of his occupational income for 2022. After being made aware of the instant complaint, Respondent realized that the City of Austin SFI requires specific client-related disclosures in certain circumstances. (By comparison, the Personal Financial Statement required of state and local officers does not require the disclosure of self-employed officer's clients.) Upon confirming that client-specific information was required by local ordinance, Respondent promptly amended his 2022 SFI to show East Austin Conservancy as a source of occupational income.

III. Client Identity Requirements in SFI are Pre-empted by State Statute

Chapter 145 of the Texas Local Government Code requires municipal officers in cities with more than 100,000 residents to file a Personal Financial Statement. That law requires the city secretary to "require that the form designed by the Texas Ethics Commission under Chapter 572, Government Code, be used for filing the financial statement." However, in addition to the Personal Financial Statement required by Chapter 145, the City imposes additional, more intrusive requirements. State law requires only the disclosure of "all sources of occupational income, identified by employer, or if self-employed, by the nature of the occupation," including retainers for services yet to be performed. Through its SFI, however, the City requires additional filings that go beyond Chapter 572, mandating that self-employed officials disclose "the names and addresses of the clients or customers from whom the official ... received at least 10 percent of its gross income or \$5,000... during the reporting period."

Newly adopted Section 51.002 of the Local Government Code states that a municipality may "adopt, enforce, or maintain an ordinance or rule only if the ordinance or rule is consistent with the laws of this state." Here, the City's financial disclosure requirements are inconsistent with both Chapter 572 of the Government Code and Chapter 145 of the Local Government Code; therefore, the requirements are unenforceable to the extent that they conflict with state law. Any enforcement action undertaken by the Ethics

Review Commission will necessarily occur after the effective date of the new pre-emption legislation.

IV. Dismissal Requested

Respondent's affiliation with East Austin Conservancy was widely known, appearing on his social media pages, campaign website, and conflict-of-interest statement. The public was not harmed by the inadvertent omission on his SFI. Additionally, in an effort at full transparency and legal compliance, Respondent corrected his 2021 and 2022 SFI before the ERC accepted jurisdiction over the Complaint. **Importantly, the specific requirement which Respondent is alleged to have violated is inconsistent with, and pre-empted by, Local Government Code Chapter 145.** Pursuant to Section II(D) of the ERC's rules, Respondent respectfully requests that Ethics Review Commission find that there are no reasonable grounds to believe that a violation has occurred and dismiss the Complaint.

Sincerely,

A handwritten signature in blue ink that reads "Ross Fischer". The signature is written in a cursive style with a large, looping initial "R".

Ross Fischer
Ross Fischer Law, PLLC
ross@rossfischer.law

Cc: Lizette Benitez
Lizette.benitez@austintexas.gov

From the desk of
José M.A. Velásquez

October 28, 2021

Raul Alvarez - Board Chair

East Austin Conservancy

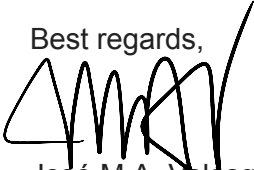
Dear Raul,

I am writing to inform you of my decision to resign my position on the Board of the East Austin Conservancy, effective immediately.

It has been a pleasure being a part of the EAC board. I am so proud of all we have accomplished in the past five years, and I have no doubt the board will continue these successes in the future.

If I can be of any assistance during the time it will take to fill the position, please don't hesitate to ask.

Best regards,



José M.A. Velásquez

Exhibit "A"