



AGENDA

ETHICS AND CAMPAIGN
REVIEW BOARD
SEPTEMBER 28, 2021
3:00 PM
ATTEND VIRTUALLY

SPECIAL PROCEDURES FOR ETHICS AND CAMPAIGN REVIEW BOARD MEETING HEARING

Attendance: In response to the State's declaration of a Public Health Emergency, the Mayor's Proclamation of Emergency, the ban on public gatherings in excess of those permitted in the current Public Health Order, and the need to incorporate technology and practices to re-institute in-person meetings consistent with the limitations established by the Order, the Ethics and Campaign Review Board meeting will be conducted virtually.

Viewing: Members of the public may stream the meeting live on the City of Santa Fe's YouTube channel at <https://www.youtube.com/user/cityofsantafe>. The YouTube live stream can be accessed at this address from most smartphones, tablets, or computers.

The video recording of this meeting will also remain available for viewing at any time on the City's YouTube channel at <https://www.youtube.com/user/cityofsantafe>. Staff is available to help members of the public access pre-recorded meetings on-line at any time during normal business hours. Please call 955-6521 for assistance.

Public Comment: To provide public comment prior to the meeting, please click the virtual "comment" button next to the meeting at <https://santafe.primegov.com/public/portal>. To provide live public comment you must join the Zoom meeting by internet or phone, as follows:

Internet: To join the Zoom meeting on the internet using a computer, laptop, smartphone, or tablet, use the following link: <https://santafenm.gov.zoom.us/j/81341024188?pwd=TzJsTENYbXBPZGZwTmdkb2NTQ0lxdz09>

Passcode: 227918

Attendees should use the "Raise Hand" function to be recognized by the Chair to speak at the appropriate time.

Phone: To join the Zoom meeting using a phone, use the following phone number: 1 (346) 248-7799

Webinar ID: 813 4102 4188

Passcode: 227918



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Phone attendees should press *9 to use the “Raise Hand” function to be recognized by the Chair to speak at the appropriate time.

Agenda: The agenda for the meeting will be posted at <https://santafe.primegov.com/public/portal>.

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **APPROVAL OF AGENDA**
4. **APPROVAL OF MINUTES**
 - a. Ethics and Campaign Review Board Meeting – September 9, 2021
5. **DISCUSSION AND POSSIBLE ACTION**
 - a. **Case #2021-3.** Complaint Brought Forward by Virgil Vigil and Gilbert Romero – In Accordance with Section 6-16.4 SFCC 1987 “Determination of Legal Sufficiency; Setting a Hearing.” Consideration of Whether the Complaint Sets Forth Legally Sufficient Facts Which, if True Show Probable Cause to Believe There Was a Violation. (The Board May Go Into Executive Session Under NMSA 1978, Section 10-15(H)(3) to Deliberate in Connection with an Administrative Adjudicatory Proceeding.)
 1. Discussion of Actions.
 2. Action Regarding Whether the Complaint Sets Forth Legally Sufficient Facts, Which, if True, Show Probable Cause to Believe There Was a Violation.
 3. Action on Any Steps as Permitted Under Section 6-16
6. **PUBLIC COMMENT**
7. **MATTERS FROM STAFF**
 - a. CONSIDERATION OF BILL NO. 2021-23. An Ordinance Amending Section 9-1.7 SFCC 1987 Regarding Ranked Choice Voting to Amend How a Tie Vote Between Two Candidates is Resolved. (Councilor Garcia) (Marcos Martinez, Senior Assistant City Attorney: mdmartinez@santafenm.gov, 955-6502 and Kristine Mihelcic, City Clerk: kmmihelcic@santafenm.gov, 955-6846) **INFORMATION ONLY**



AGENDA

ETHICS AND CAMPAIGN
REVIEW BOARD
SEPTEMBER 28, 2021
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Committee Review:

Introduced: 09/20/21 (Finance Committee)
Ethics and Campaign Review Board: 09/28/21
Governing Body (Request to Publish): 09/29/21
Quality of Life Committee: 10/06/21
Finance Committee: 10/18/21
Governing Body (Public Hearing): 10/27/21

8. **MATTERS FROM THE COMMITTEE**
9. **MATTERS FROM THE CHAIR**
10. **NEXT MEETING: No Meeting Scheduled**
11. **ADJOURN**

**INDEX OF THE CITY OF SANTA FE
ETHICS AND CAMPAIGN REVIEW BOARD MEETING
September 28, 2021**

ITEM	ACTION	PAGES
CALL TO ORDER	Called to Order at 3:05 pm	1
ROLL CALL	Quorum Present	1
APPROVAL OF AGENDA	Approved	1
APPROVAL OF MINUTES September 9, 2021	Approved, as amended	2
DISCUSSION & POSSIBLE ACTION		
a. Case #2021-3 by Virgil Vigil and Gilbert Romero	Dismissed	2-16
1. Discussion		
2. Action regarding if a Violation		
3. Action taken Section 6-16		
MATTERS FROM STAFF		
a. Consideration of Bill NO.2021-23	Discussed	17
PUBLIC COMMENT	Comments	17-18
MATTERS FROM THE BOARD	None	18
MATTERS FROM THE CHAIR	None	18
NEXT MEETING	None Scheduled	18
ADJOURNMENT	5:15 PM	18

**MINUTES OF THE CITY OF SANTA FE
ETHICS AND CAMPAIGN REVIEW BOARD
THURSDAY, SEPTEMBER 28, 2021 @ 3:00 P.M.**

1. CALL TO ORDER

A meeting of the City of Santa Fe Ethics and Campaign Review Board was called to order on the above date by Justin Miller, Chair, at approximately 3:00 p.m. at a virtual meeting on Zoom at <https://www.youtube.com/watch?v=-rtgmW4QM00>.

2. ROLL CALL

Roll call indicated the presence of a quorum as follows:

Members Present:

Justin Miller, Chair
Judith Amer
Paul Biderman
Ruth Kovnat (joined after roll call)
Tara Lujan (joined after roll call)

Members Absent:

Kristina Martinez
One vacancy

Staff Present:

Kristine Mihelcic, City Clerk
Marcos Martinez, Assistant City Attorney

Others Present:

Melissa Byers, Stenographer

Member Lujan joined the meeting at this time.

3. APPROVAL OF AGENDA

MOTION: Member Amer moved to approve the agenda as presented. Member Lujan seconded the motion.

VOTE: The motion passed by roll call vote with Members Amer, Biderman and Lujan, voting in favor and none voting against. Member Kovnat was unable to connect for the vote.

4. APPROVAL OF MINUTES: September 9, 2021

Member Biderman said in the in the middle of page 13 the word “injection” should have been “injuncton.”

MOTION: Member Biderman moved to approve the minutes of September 9, 2021, as amended, seconded by Member Amer.

VOTE: The motion passed by roll call vote with Members Amer, Biderman, Kovnat, and Lujan voting in favor and none voting against.

5. DISCUSSION AND POSSIBLE

- a. **Case #2021-3.** Complaint Brought Forward by Virgil Vigil and Gilbert Romero – In Accordance with Section 6-16.4 SFCC 1987 “Determination of Legal Sufficiency; Setting a Hearing.” Consideration of Whether the Complaint Sets Forth Legally Sufficient Facts Which, if True Show Probable Cause to Believe There Was a Violation. (The Board May Go Into Executive Session Under NMSA 1978, Section 10-15(H)(3) to Deliberate in Connection with an Administrative Adjudicatory Proceeding.)

Member Kovnat call for a point of order. She explained that a motion to disqualify her had been made. She asked to recuse herself from the Board’s conversation on the motion to disqualify her.

Chair Miller provided background on the two complaints and the collateral issues attached. He said the Board could resolve the conflict questions, but he believed Member Kovnat’s input on the question of conflict was important. He questioned if she should recuse herself from the discussion.

Mr. Virgil Vigil indicated he had submitted a request to retract Member Kovnat’s recusal but want to continue the request for Member Martinez.

Chair Miller explained that the Board is present to consider the Complaint filed by Virgil Vigil and Gilbert Romero, and the Respondents, Mayor Alan Webber, and the Alan Webber for Santa Fe Campaign.

The Complaint alleges three violations. First, that the Campaign email related to the Santa Fe Cool Down Event violated City Ordinance, Section 1-7.7 E (prohibiting the use of City resources) and H (prohibiting improper campaigning). Second, the Respondents made comments that consist of bullying and violate Section 1-7.7K (prohibiting workplace bullying by Governing Body members). Third, that the Respondents violated City Charter, Section 2.01 Code of Ethics and City Ordinance 1.7.7M (regarding Conflicts of Interest) and C (representing private interests) by retaining the Egolf Law Firm.

Chair Miller said the attached two collateral motions for disqualification allege conflicts of interests by two Board members. First, Member Kristina Martinez has a conflict because her law firm represents the Respondent. Second, Member Kovnat has a conflict because of alleged campaign contributions. He noted that Mr. Vigil had indicated today that the Complainants withdrew the allegation against Member Kovnat.

Chair Miller explained the Board addressed the allegation against Member Kovnat at the last meeting and she has not made any contributions to Alan Webber. The Board found no conflict of interests and Member Kovnat participated in that meeting. He thought nothing further was needed by the Board on that allegation.

Chair Miller provided opportunity for Board members to comment, but there were none. He noted that Member Kovnat submitted sworn testimony that she did not contribute to the Campaign as alleged.

He said regarding the second alleged conflict involving Kristina Martinez. Member Martinez was excused today because of a prior commitment, but she brought this conflict on her own volition to the Board. She has recused herself from any consideration of the matter and would have done so if present for the meeting. She will not be taking action in connection with this Complaint.

Chair Miller said conflicts of interest arise occasionally. It is up to public officials and Board members to bring them to the Board's attention and recuse themselves. Member Martinez acted appropriately by doing that. He opened the floor for Board discussion.

MOTION: Member Biderman moved that the matter is moot because the Board is hearing the case today and Member Martinez is not present. Ms. Amer seconded the motion.

VOTE: The motion passed by roll call vote with Members Amer, Biderman, Kovnat and Lujan voting in favor and none voting against.

Chair Miller said the Complaint was submitted around September 7, 2021 and the Respondents answer to the Complaint are in the record. He outlined the steps to hear the case; to determine the legal sufficiency of the Complaint. If the complaint was filed too late; does not state a violation; is frivolous or is filed solely to harass or intimidate; or if the Board lacks jurisdiction to hear the Complaint, the Complaint would be dismissed. If the Complaint is dismissed, the matter is resolved and if not dismissed, a hearing will be scheduled.

Member Amer asked if the Board would need to go through probable cause three times for each of the three violations.

Chair Miller explained the Board could choose to address and make separate motions on each alleged violation. Or all three could be handled at once. He suggested the Board see how the discussion went first.

Chair Miller recognized that Mr. Vigil, speaking on behalf of the Complainants, and Ms. Ferlic representing the Respondents were present.

Ms. Ferlic asked to address two preliminary matters; one involving a conflict. She understood Member Lujan is the cousin of Virgil Vigil. She believed that Member Lujan would have disclosed that and recused herself, if true. She asked clarification from Member Lujan if they are cousins, and if so, did she plan to recuse herself. She indicated the second matter is a caption correction in the Response.

Member Lujan explained she is related to Mr. Vigil. She felt that would not be a conflict with regard to her making a clear decision, but was happy to discuss. She believed her judgment would not be impaired nor would she have any bias in making her decision. She said she also sits as a State Representative at the Legislature and has the same decision-making issues as a native Santa Fean who has many cousins and relations. She said this will not change the way she makes decisions and apologized for failing to disclose. She did not consider the relationship as it is three or four times removed.

Member Biderman said the Board should be aware of this kind of issue. He read City Code definition 1-7.5 for Conflict of Interest "*includes any member of a family for a City official conducting official business.*" The definition of family is "*members of the household, children, stepchildren, brothers, sisters, parents, stepparents, and domestic partners, and persons claimed as a dependent on Federal income tax returns.*" He believed this exceeds that limitation as a first cousin. He noted it would not even apply in the Governmental Conduct Act and suggested in this situation there was no concern.

Chair Miller addressed Ms. Ferlic and said based on Ms. Lujan's information there appeared to be no conflict.

Ms. Ferlic deferred to Ms. Lujan's disclosure and the wisdom of the Board.

Chair Miller said Ms. Lujan has stated this doesn't pose a conflict for her and the Board appears to not be concerned. He thanked Ms. Ferlic for bringing the matter to the Board's attention before they got to the substance of the Complaint.

Ms. Ferlic asked to acknowledge an error she made on the caption that she wanted to correct for the record. She said the caption read, "Response of the Complainants, Virgil Vigil and Gilbert Romero versus Alan Webber, Respondent." The proper Respondent is *Alan Webber for Santa Fe*.

Complainant Presentation:

Mr. Virgil Vigil asked that the Board vote on the Ethics complaint motion regarding Kristina Martinez and the Egolf Law Firm. He noted, per City Code "*A governmental body member shall not during his/her term of office, or within one year after termination thereof, accept monetary compensation from a third party for consulting with and representing, or advising the party, regarding any transaction in the governing body or matter before such governing body, in which he or she has had, or reasonably expects to have any influence or personal involvement in his or her capacity as a governmental body member.*" He continued reading the definition for a governmental body member, which is defined as,

“A body means that the governing body or any board, commission or committee appointed by the Governing Body, or by the mayor, with the advice or consent of the Governing Body.”

Chair Miller apologized and stopped Mr. Vigil. He explained the matter had been considered by the Board before the Complaint, Ms. Martinez was not present and had recused herself. The Board would no longer address that.

Mr. Vigil added that he also wanted to speak about the Egolf Law Firm.

Chair Miller replied that was part of Mr. Vigil’s motion and the Board was not addressing that further.

Member Biderman said he thought this a different motion and that Mr. Vigil was asking for a Complaint against the Mayor for selecting a law firm in which Ms. Martinez is a member. He believed the reference was to the third allegation of the Complaint.

Chair Miller said if it is to the third part of the Complaint that would be different. He thought Mr. Vigil was addressing the motion with Ms. Martinez. He asked Mr. Vigil if he was referring to the third part of his Complaint.

Mr. Vigil said this is different because it is about the Egolf Law firm as well.

Chair Miller invited Mr. Vigil to present the substance of the Complaint and the three violations alleged.

Mr. Vigil said first, is the way the Mayor and his team tried to “pull the wool over the public’s eyes”. He said the Mayor’s defense was to negate responsibility by saying he was not acting in official capacity as Mayor at the time of the infractions. The Mayor’s response placed the bulk of the complaint on his campaign and campaign staff.

Mr. Vigil said we do not agree. He continued that the Mayor tried to force the City Police Chief to take responsibility for “Stop the Riots” on the Plaza, and he is again doing the same with this response. The Mayor is the head of the City, and the buck stops with him, and the police chief and his campaign and campaign staff, answers to him. He said every one of these violations was done at the Mayor’s direction, or on his behalf and the Board should see the violations as such.

Mr. Vigil noted the Ethics rules are in place to protect the public and a public official should err on the side of Ethics to protect the public. He asked how the public could distinguish between the Mayor and the Mayor as a candidate, without believing that the machinery in government was being perverted by the Mayor. He said the lawyer is representing the Mayor and is withstanding a conflict of ethics.

Mr. Vigil said the essence of government ethics is not technical mistakes, it is a fundamental sense of trust the public places in its leaders. He said how can a voter know

that Ms. Martinez is serving anything but her client. The public wouldn't know, and neither would the employees of the City who were invited to help the Mayor with his election.

He respectfully requested that the Mayor, as Candidate Webber, be held accountable by the Board. He said the Mayor is not above the law as he has attempted, and this is common for the Mayor.

Respondent Presentation

Ms. Ferlic said it is important to untangle the Complaint as this appears to be a political disagreement, but it is not a not a proper Complaint. She pointed out, first, the Campaign is not subject to the City's Ethics Code, it is subject to the Campaign Code. The Complaint does not state a single violation of the Campaign Code and that alone justifies complete dismissal.

Ms. Ferlic said she represents the Campaign and Complainants are often lay folks who don't grasp proper entity names or the standards that apply. She indicated she was responding for both Mayor Webber and the Campaign because the issues appear to be conflated and they didn't want room for liability. She didn't hear from anyone who was representing the Mayor from the City Attorney's Office, so she was addressing both, as they did in the Response.

She said Count 1 accuses the Campaign and the Mayor of violating the Ethics Code on the basis of an email sent by the Campaign to promote a pre-existing public event. The Complaint as it pertains to the Campaign should be dismissed. The Ethics Code does not apply to campaigns and all of the Complaint's violations were raised under the Ethics Code. The Ethics Code adopts standards of behavior for public officials and employees of the City, and some are limited to public officials. The Campaign is not any of those things as defined in Section 1-7.5.

She said the Complaint as it pertains to the Mayor, does not state any facts that the Mayor acted improperly in an official capacity. Private entities are entitled to promote public events and public programs. A Campaign entity that promotes a taxpayer funded event is not a liability for elected officials under the Campaign Code. The promotion of public events, whether by campaign or private entity, helps in the interest of the public for a local government body to fulfill its public mission.

Ms. Ferlic pointed out that Member Lujan is the only elected official on the Board. She wanted to note that not to ask for a recusal, but to make a point that campaigns often promote public events throughout the State and country.

Ms. Ferlic shared examples of Ms. Lujan's Facebook page where she used promotion with photographs of Representative Lujan promoting a Hondo Fire Station event, posts of photographs with fire officials; press releases issued by Santa Fe County and the State. Ms. Ferlic said these are not just informational, but are a part of educating a voter base.

Ms. Ferlic said on Count 1 regarding the Mayor, there are no facts concerning his behavior. Therefore, the Complaint fails.

Member Lujan said she is the only person on the Board who has run elections. She said we have different roles when working officially and as a candidate. She has worked on federal, state and local campaigns and they have different codes and Ethics Codes. She said the Federal Campaign is very clear on distinctions. Her use of media posts and anything on her political page is in an informative role. She does not use her email or other resources when money is involved. When working at the State Legislature she is not engaged in campaigning. There are clear distinctions in the rules. When she makes decisions as an official, or a candidate, she looks at how the money is spent and how to use and work under the rules. A social media platform has no exchange of monetary expenses.

Member Lujan said these are issues that clearly need to be more defined and should be addressed.

Ms. Ferlic pointed out she was merely showing an example of what many campaigns do to promote public events. She was not making a comment on whether something was appropriate, lawful, or unlawful. She stated the Ethics Code applies to the Mayor, not to the Mayor's Campaign. The Complaint does not allege that the Mayor created the event to benefit his Campaign, or that his office coordinated with the Campaign, or that taxpayer dollars were used.

Member Amer asked to make a motion on Count 1 as having probable cause, and then hearing the other two allegations.

MOTION: Ms. Amer moved that the Board finds there is probable cause for Count 1 in the Violations of 1-7.7 (E) and (H).

Chair Miller said he preferred hearing from both sides all the way and then the Board could ask questions of the Representatives. He said if the motion has a second, the Board could discuss and ask questions.

There was no second to the motion and the motion died.

Chair Miller asked Ms. Ferlic to continue her presentation.

Ms. Ferlic asked in regard to the motion, that the Board be concerned with who the parties are and the Ordinance section that applies. She stated the Ethics Code is not applicable to the Campaign and no violation has been stated of the Campaign Code. She said the Board should be consistent. The precedent set in the last Complaint alleging a 501(C)(3) was making expenditures advocating for the defeat of a candidate without being required to disclose donors, was dismissed. The violation was clear and was clearly cited. The Board dismissed because it was not part of the primary purpose and said the

Complaint did not allege a violation as such. She said as a quasi-judicial body, the Board does have to pay attention to the law and what is applicable law, compared to the Complaint.

Member Amer pointed out there are two entities alleged on the Complaint; Mayor Alan Weber *and* Alan Webber for Mayor Campaign.

Ms. Ferlic responded but there are no facts related to the Mayor.

Chair Miller asked to first hear the presentations of the parties. Each will have an opportunity to ask questions and for Board discussion. He asked Ms. Ferlic to proceed.

Ms. Ferlic said Count 2 alleges that the Mayor and a Campaign spokesperson released events that violated the Ethics Code. Ethics Code language limits the statements to those that occur in a workplace context by a public official or employee. She said, again this does not apply to the Campaign. The statements in Exhibit 1 of the Respondents Response are campaign events, not a public workplace and statement made by the campaign, not directed at any public employee. Section 1-7.7 prohibiting Governing Body bullying any employee, defines workplace bullying as intentional behavior intended to create an abusive work environment. The statements were made outside of the workplace. There is no evidence of intent to create an abusive workplace. This would not be a practical or legal application of the Ethics Code and should be dismissed. The Mayor is permitted to opine on aspects of public life he feels is detrimental to the City.

Ms. Ferlic said Count 3 concerns the hiring of her firm as improper because Member Martinez is part of the firm. She said Ms. Martinez has appropriately recused herself in each instance where her representation of a client was an issue.

She said she works in the field of election law in various campaigns. She has represented public officials in various election questions in various fields of litigation in Santa Fe and is one of the few lawyers who practices in this area. The Complainant appears to accuse the Board of being influenced by Member Martinez' association with her. She said she would let the Board evaluate whether true in any way.

Ms. Ferlic continued that the Ethics Complaint targets the Mayor's Campaign for hiring her. The sections cited apply to the Mayor's conduct during his term of office and within one year of serving. The Mayor has not accepted any compensation to represent any party and there is no fact that could be at play.

Ms. Ferlic asked the Board to consider the last two Complaints and the precedent set for deciding those issues. She asked, for the reasons argued and in the brief, for the Board to dismiss the Complaint against the Campaign and Alan Webber. She said if anyone were present from the City's Attorney's office and Alan Webber, she would defer to them.

1. Discussion of Actions.

Member Biderman addressed Mr. Vigil on his first allegation where the City sponsored two “Cool Down” events in July. He said the Mayor’s Campaign sent out an email notice encouraging people to attend. Code dictates that a public official cannot use city services, personnel, or equipment for personal benefit. If the Mayor had misused the event because the City paid for it and there were City employees there, Code was violated. He asked to clarify the allegation and if because the Mayor did something in the nature of campaigning; or was it just that the Mayor was there as the Mayor.

Mr. Vigil said the Mayor had his signs at the event. He said he wanted to remind them that the Mayor works 24/7 at his job.

Member Biderman said that was the first he was hearing that, as it was not alleged in the Complaint. He said his concern is that the Code of Ethics points to the misuse of resources. The second issue was improper campaigning. He agreed with Ms. Ferlic that the Mayor’s Campaign was not subject to this Code provision. He said however, the Mayor could be subject. He said he welcomes that this issue is raised because in the last case he didn’t have his mind made up then, or now. He wanted to proceed with the merits of the Complaint to see if there is a violation.

He said the second part cited is improper political campaigning of a public official. They cannot ask, or have another ask a subordinate, public official, or employee to provide services, or engage in political campaigning while on duty, or use funds, facilities, or supplies to benefit the campaign. He couldn’t understand how the email sent out by the Campaign to encourage people on their mailing list to attend, violates the provision. This was a public event. He asked Mr. Vigil for clarification.

Mr. Vigil said the Mayor used this as a Campaign event and he was campaigning. He couldn’t recall a time when the Fire Department went out to the South Side for this type of event in the past three years. He said this event was for the Mayor to advertise to the South Side that he was running, because his ratings are not good there.

There were no further questions from the Board on Count one.

Member Biderman asked to confirm that Mr. Vigil had an opportunity to say everything he wanted.

Member Vigil said he still stands by his statements the Board has before them.

Member Biderman asked Mr. Vigil to explain how the email constitutes bullying City employees.

Mr. Vigil said in general, it attacked groups of City employees.

Member Biderman asked which groups.

Mr. Vigil said he didn't have names, but City employees in general.

Member Biderman asked if he was alleging that the Mayor's statements about MAGA and QAnon are real and that somehow was an attack on City employees.

Mr. Vigil said it attacks everyone that the Mayor doesn't like. He said who is the Mayor to bring up MAGA. He [the Mayor] knows this is anti-Trump company, and City and was trying to muddy the waters by attacking people in Santa Fe by saying they are MAGA.

Member Biderman said the Board is not here to monitor what people say. He said on Violation #3, that the Mayor improperly retained this law firm; in particular that he was aware that Kristina Martinez was a partner of the firm. Member Biderman said he doesn't doubt that the Mayor knew she was a partner of the firm and she would disqualify herself, as she had done so previously. He asked what harm was done that the Mayor hired a firm with knowledge in this area of law.

Mr. Vigil said that brings him back to what he wanted to say in the beginning. Ms. Martinez and her firm fall under the definition he talked about earlier. The agenda posted online for ECRB; it will be violating the amendment to the Ranked Choice Voting System that will directly affect the outcome of the election. He said Ms. Martinez literally cannot maintain the impartiality required by the Board any longer.

Member Biderman asked for clarification from Mr. Vigil and if he were saying that Ms. Martinez could not serve on *any* case, or just this case.

Mr. Vigil responded she can't serve on any case. Mayor Webber employs these employees, and this is the third time she has had to recuse herself.

Member Biderman said Mr. Vigil alleges a violation of the Code of Ethics provision preventing a conflict of interest by a representing private interest, and specifically, that the Mayor accepted monetary compensation from a third-party for consulting with, or representing, or advising the party regarding any transaction with the governmental body. He asked if the Mayor had provided service to someone else and then paid for it.

Mr. Vigil said the Mayor should not have asked this company because he knows that Ms. Martinez works for them.

Member Biderman said he had no further questions.

Chair Miller noted that the Board could go into executive session for discussion.

Member Biederman said he had nothing to hide and was happy to discuss this and his concerns about the Complaint in the executive session, or after.

Ms. Amer asked to renew her motion.

MOTION: Member Amer moved that the Board finds probable cause for a Violation on allegation #1 by the Mayor in the sections alleged in the Complaint, because he used a City event and had City employees participate in an event that was part of the Mayor's campaign.

Chair Miller paraphrased the motion. He asked to clarify the Mayor's Campaign was not included in the motion.

Ms. Amer agreed. She said the intention of the Ethics Code by the use of the term *public official*, includes City councilors or mayors, who use City funds for purposes of their campaign.

There was no second to the motion and the motion died.

Member Kovnat said based on the representations made and their understanding of the Code, the only colorable complaint is 1-7.7(H), prohibiting engaging in political campaigns while on duty for the City, or using City funds, supplies, facilities or employees to benefit a political campaign. She agrees a sitting Mayor has the authority and responsibility to be at public events but is prohibited from engaging in campaigning while at the event. The Board needs more facts on what happened at the parks.

Chair Miller confirmed that Ms. Amer's motion had no second, and Member Kovnat was continuing discussion on the Complaint.

Member Biderman said his concern was the Board would be creating a new precedent in comparison to actions taken in the last two Complaints. He asked if the case would remain open so more evidence could be introduced.

Chair Miller said this is looking at the Complaint and the facts alleged which show campaigning at the event. He noted when Mr. Vigil was asked about that, he stated the Mayor was campaigning. But the Complaint did not allege any of those facts.

Mr. Biderman pointed out that Mr. Vigil spoke as a Complainant and was not under oath.

Chair Miller asked Member Kovnat how she would proceed about not having enough facts.

Member Kovnat said one way is to dismiss for lack of facts of the allegation. Another is to consider an investigation.

Member Amer said additional facts would be nice, but not necessarily needed when taking data point one. The Campaign requested people attend the event. And two, the event occurred with City employees working the event during the workday, and the

Mayor was getting paid. When added up that means the Mayor was campaigning at the event, using City resources and personnel to promote the Campaign.

Member Kovnat responded that the events were open to the public as a celebration of opening the City after the pandemic. She said to assume that the Mayor's presence at such public events is informed by Code, makes a distinction where use is generally available to the public. To disable a sitting Mayor from attending would be to assume without additional facts, that this was a Campaign event. She said she would not be comfortable with that.

Member Amer said the Board is not assuming. The Mayor promoted attending the event and they know prior to those events that the Campaign was touting them.

Member Lujan asked if the Board would go into executive session as in the past.

Chair Miller said the Board could if they wish, but it is not required.

Member Biderman stated he was willing to speak without going into executive session if other members were. He said he agreed with Member Kovnat they cannot bar the Mayor during his Campaign from showing up at events run by the City. The campaign could go on for a year. That would preclude the Mayor or any Councilors from attending events. The question is if the Mayor maintained his independence and appeared strictly as the Chief Executive of the City and did not use the opportunity to campaign. He said the facts were insufficient.

Member Lujan said an elected official attending an official event should only be acting in an official capacity. The issue is if a candidate during an election cycle advertised through a political campaign. An official cannot remove himself from their official role, which is why there are guidelines. The Board has to differentiate those roles and how the official acts within them. She asked Member Kovnat what additional information she would like.

Member Kovnat replied that she wanted to know if the Mayor presided over a public event that was held for the City's benefit, in his role as Mayor.

Member Kovnat said that because the event was in the middle of a Campaign does not mean the Mayor was campaigning. Saying that would disable any sitting official up for reelection from participating. She pointed out that the Mayor had presided over the opening of the Teen Center that benefited the City. She thought it was likely the same in this case.

Member Lujan said she wasn't sure of is that the Board had addressed the local Ethics Code guidelines.

Member Kovnat said she was interpreting 1-7.7(E), which makes clear that *a public official shall not use city services, personnel or equipment for personal benefit,*

except when such use is generally available to the public. She views the use of these events as generally available to the public. She said that because it was promoted by the Campaign, it does not alter that.

Member Lujan explained she was saying in other Codes, you cannot have a political campaign and an official campaign happening within a certain distance. If she held a town hall in official capacity for a federal candidate, she could not hold a political rally three blocks down the road. She said the Board does not have anything to differentiate the rules.

She said an elected official must be cognizant of the time and space as they move through roles. She provided an example if she went to a public ribbon cutting event wearing a campaign badge, showing she is campaigning for reelection. That raises questions when you use your campaign to promote a public event you attend in an official role.

Member Biderman said he looked at the email he received from the first Complaint filed. He read from the flyer, *“Join the Mayor and fire department as they turn on the hoses for city sponsored fun water play”*. He noted as you continue to read, the flyer states locations where people will find the “fire trucks and Mayor Webber” and it says, “We hope to see you there.” He said the second flyer does say “from Alan Webber for Santa Fe” and comes from the Campaign.

Member Biderman said he has seen other campaigns with a strategy using events that are not campaign events to provide access to people for public services. That is not unusual. He thought that may be unwise because two complaints have been filed. He said, but this is not a violation of the Ethics rules.

He noted that everything criticized by the Complainants focused on the publicity from the Campaign and it only promoted a public event. That the Mayor attended is appropriate for the Chief Executive. Neither of the two Complaints stated anything occurred at the event that constituted campaigning.

Member Kovnat agreed with Member Biderman.

Chair Miller noted that the role of the Board is to focus on the Complaint and what the Complaint alleges. The Board looked for allegations of improprieties, but he had not heard anything along those lines.

Member Lujan said a person acting in an official capacity using a public event for political campaigning is in a precarious place. She thought there should be more discussion. She said she understood asking for more information, but wanted to be clear. This is not an arbitrary candidate promoting a public event. This is a candidate who is also a public official. That is at issue.

3. Member Biderman noted there had not been much discussion of Violations 2 and 3.

Chair Miller suggested making a decision on Violation #1 since the discussion appeared to have reached conclusion.

MOTION: Member Biderman moved to dismiss Violation #1, as alleged. Member Kovnat seconded the motion.

Member Lujan asked that Member Biderman state the grounds for the motion.

Member Biderman said this is the second time complaints have come up. Neither complaint describes nor alleges, any misconduct by the Mayor at the event of the Code section cited. The obligation of the Complainant is to come forward with at least a colorable claim. Only viable allegations against the Mayor's conduct and campaigning at the City event would have alleged a violation. The email does not do that.

Member Kovnat said as the second, she agrees.

VOTE: The motion passed by roll call vote with Members Biderman, Kovnat and Chair Miller voting in favor, and Members Amer and Lujan voting against.

Members Lujan and Amer asked to explain their votes.

Member Lujan said she felt they were asking for more information throughout the discussion and that could have happened before the Complaint was dismissed entirely. She thought the Board should look more closely at their local codes. They are not covering every aspect, just looking at how officials and candidates are acting. She said as someone who moves between those rules all the time, looking at local codes and addressing some of the Complaints could lead to looking further at improving their codes.

Chair Miller said a significant part of the Board's mission is to make recommendations. The Board learns something in every election cycle and with every complaint. He said he agreed they can improve Code and how they handle complaints.

Member Amer agreed with Member Lujan the Board should be looking at amending the Code. Also, she thought it artificial to distinguish between the Campaign, and the Campaign for Mayor, when the Mayor is also the Campaign for Mayor. The two become almost indistinguishable and she wasn't sure that is addressed by Code.

She said her understanding is that probable cause is not actually a finding that the violation occurred; it would just go to a hearing. She thought the Board was too technical with a probable cause determination and could have proceeded to a hearing to deduce more facts. She couldn't see how a campaign can say please come to our campaign

event, and the Mayor can attend while being paid with public funds and using public employees and facilities, and say he was not campaigning.

Chair Miller moved on to discussions for Violations #2 and #3.

Motion: Member Biderman moved to dismiss Violation #2 on the grounds only the Mayor is subject to the City's Ethics Code, not the Campaign; there was no credible allegation that the Mayor attacked a City employee; the Complaint allegation was vague, lacking specificity; the email flyer could not logically be read as being aimed at City employees; and as a protection of workplace bullying, nothing suggested that the workplace was involved.

Chair Miller clarified the motion.

Member Amer seconded the motion. She said she agreed with the grounds for dismissal.

VOTE: The motion passed by roll call vote with Members Amer, Biderman, Kovnat and Lujan voting in favor and none voting against.

Chair Miller moved to Violation #3 for discussion, or a motion.

MOTION: Member Kovnat moved to dismiss Violation #3 on the grounds nothing in the allegations suggests anything improper by the Mayor retaining that law firm, and Member Martinez has recused herself. Member Biderman seconded the motion.

Member Biderman said he agreed with the grounds to dismiss. He added that he understands that Code invites anyone to file a complaint. That includes those who are not lawyers and do not consult a lawyer. He said, "Politics is a dirty business and people say things about others" and legally there are no restrictions. He said he wished people would discuss the provisions with a lawyer and be more careful when writing Complaints. He agreed the rules probably need to be rewritten and are difficult to interpret.

He said he understands that Violation #1 is a viable claim and had been dismissed by a close vote. However, Violations #2 and #3 were not, and failed to even match the rule with the alleged facts. The privilege for a citizen to come before the Commission should be for the purpose of supporting the rules of ethics.

Member Biderman said the Complaints were frivolous and should never have been filed. His hope is that the Board will receive well thought out, viable claims they could consider seriously.

VOTE: The motion passed by roll call vote with Members Amer, Biderman, Kovnat and Lujan voting in favor and none voting against.

6. PUBLIC COMMENT

Jim Harrington, Common Cause New Mexico, asked to comment on the Ranked Choice Bill.

Chair Miller noted that was the next item. He said they would hear from Staff and then allow public comment.

7. MATTERS FROM STAFF

- a. CONSIDERATION OF BILL NO. 2021-23. An Ordinance Amending Section 9-1.7 SFCC 1987 Regarding Ranked Choice Voting to Amend How a Tie Vote Between Two Candidates is Resolved. (Councilor Garcia) (Marcos Martinez, Senior Assistant City Attorney: mdmartinez@santafenm.gov, 955-6502 and Kristine Mihelcic, City Clerk: kmmihelcic@santafenm.gov, 955-6846) **INFORMATION ONLY**

City Clerk Mihelcic said this had been discussed previously. Staff wanted to make the Board aware the legislation is moving forward and will be presented in the Governing Body meeting the next day. The primary purpose of the bill is to make Santa Fe City Code consistent with the Secretary of State's (SOS) administrative rules for Rank Choice Voting and elections.

Attorney Marcos Martinez said he had nothing to add.

Chair Miller explained this had been presented to the Board and they made a recommendation, which is the bill being considered.

He asked for comments from the Board. Seeing none, he opened the floor to public comment.

Mr. Harrington said Common Cause approves of the bill but believed it a partial and possibly temporary solution. There is a simpler approach that would solve the problem completely that he referenced in an earlier ECRB meeting.

Mr. Harrington said this bill solves the particular conflict between the City Ordinance on County Ranked Choice and the Secretary of State's rules. But it doesn't prevent future conflicts of this kind. There may be something a creative lawyer could find for a losing candidate to make into a complaint that could hold up the outcome of a City election. A simpler solution is to repeal that section of the rules and have the City adopt the SOS rules, as Las Cruces has done.

He explained this section of the ordinance was necessary when enacted because there were no State rules. Since then, the SOS has adopted a full set of rules. He said the Local Election Act can be argued ambiguous whether the SOS rules preempt City

law. That means there is potential for a lawsuit if a conflict between the City's rules and the Secretary of State. He thought the City's rules are identical to the SOS rules, but possible they have overlooked critical wording. Also, the Secretary could amend the rules and create new conflict, and this section is not necessary because the SOS rules cover the same issues.

Mr. Harrington said Common Cause recommends presenting a different bill that strikes through the entire section and substitutes a statement that the City adopts the rules prescribed by the SOS in matters of counting the votes in Ranked Choice Elections.

Mr. Harrington apologized he didn't speak up sooner. He said the recommendation would be simple and more effective and solve the immediate problem. In addition, it deters future problems.

Chair Miller thanked Mr. Harrington for his comment.

Member Biderman clarified the bill would go before the City Council. He asked if staff observed anything to suggest that City Council would be reluctant to adopt what the Secretary of State's Office decides.

Attorney Martinez said one Councilor addressed the issue of tie voting, but staff did not ask the broader question - whether the Governing Body would have reservation adopting by reference, the SOS administrative rules on Rank Choice Voting. He said he would need to read all of the rules with that question in mind. He appreciated Mr. Harrington's position. The Governing Body gives weight to what the ECRB recommends. He would first have the Board consider all of the rules and if there are areas where the Governing Body might want to retain some differences, or not. He was confident their recommendation would be accepted by the Governing Body.

Mr. Harrington said Attorney Martinez referenced another problem; the lack of clarity in case law, and when they can depart from that. He didn't think the City was interested in maintaining separate rules, except for the tie-vote. He said Common Cause is not aware of anything that should be done differently under the State law.

Chair Miller indicated this is an informational item. He wasn't sure the Board had the information needed to compare the SOS rules and City ordinance and make a recommendation. He agreed it could be good for the Board to consider, but not today.

Member Biderman said this is a month and a half from an election and adoption by City Council would implement the current rule of the Secretary of State. Then it would be effective for the election. He suggested letting City Council decide the issue and after the election the Board could reevaluate.

Chair Miller agreed that might be more efficient and if the Governing Body chose to, they could amend the ordinance. The Board recommended the Ordinance be aligned with the Secretary of State rules.

Member Lujan agreed an amendment should be left to Council.

8. MATTERS FROM THE BOARD

There were no matters from the Board.

9. MATTERS FROM THE CHAIR

There were no matters from the Chair.

10. NEXT MEETING: No meetings are scheduled.

Member Lujan said as they are waiting to hear from the Councilors on adopting the Secretary of State's code, and that could prompt another complaint. She asked if possible, to plan time after the election to address some issues. She said there are good members on the Board and addressing these issues is important. She didn't want too much time to lapse.

Chair Miller said that would be helpful. The Board should benefit from their experience and keep in mind issues and deficiencies that surface and ways to improve.

11. ADJOURNMENT

MOTION: Member Lujan moved to adjourn the meeting at 5:15 p.m. Member Amer seconded the motion.

VOTE: The motion passed by roll call vote with Member Amer, Biderman, Kovnat and Lujan voting in favor and none voting against.

Approved by:

Justin Miller

Justin Miller (Feb 15, 2022 16:08 MST)

Justin Miller, Chair

Submitted by:

Melissa D. Byers

Melissa D. Byers, Stenographer
For Byers Organizational Support Services