



City of Santa Fe

AGENDA

ETHICS AND CAMPAIGN
REVIEW BOARD
APRIL 19, 2024
3:00 PM
CITY COUNCIL CHAMBERS,
CITY HALL
200 LINCOLN AVENUE

PROCEDURES FOR ETHICS AND CAMPAIGN REVIEW BOARD MEETING

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.

Written Public Comment: Members of the public may submit written comments on legislation by clicking on the comment bubble to the right of the meeting on the public portal at <https://santafe.primegov.com/public/portal> three hours prior to the start of the meeting.

The agenda and packet 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 CONSENT AGENDA**

5. **APPROVAL OF MINUTES**

- a. Request for Approval of the December 14, 2023 Ethics and Campaign Review Board Minutes. (Gerald Cardenas, Interim City Clerk; gfcardenas@santafenm.gov)

6. **PRESENTATION**

- a. Introduction of New Members
 - Christina Brennan
 - Jose Puentes
 - Andrew Black

7. **DISCUSSION AGENDA AND POSSIBLE ACTION**

- a. **Case #2023-3.** Complaint Brought Forward by Arcy Baca – 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

- b. **Case #2024-1.** Complaint Brought Forward by Stefanie Beninato – 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

- c. **Case #2024-2.** Complaint Brought Forward by Stefanie Beninato – 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

- d. **Case #2023-5.** Complaint Brought Forward by Pilar Faulkner – Status Report and Motion to Extend the Time for Final Investigation Report to the Board.

- e. Appointments to the Independent Salary Commission

8. **MATTERS FROM STAFF**
9. **MATTERS FROM THE COMMITTEE**
10. **MATTERS FROM THE CHAIR**
11. **PUBLIC COMMENT**
12. **NEXT MEETING: No Meeting Scheduled**
13. **ADJOURN**

**SUMMARY OF ACTION
ETHICS AND CAMPAIGN REVIEW BOARD
FRIDAY, APRIL 19, 2024, 3:00 PM
CITY HALL, CITY COUNCIL CHAMBERS
200 LINCOLN AVENUE, SANTA FE, NM**

<u>ITEM</u>	<u>ACTION</u>	<u>PAGE</u>
CALL TO ORDER		1
ROLL CALL	QUORUM	1
APPROVAL OF AGENDA	APPROVED	1
APPROVAL OF CONSENT AGENDA	NONE	1
APPROVAL OF MINUTES	APPROVED	1-2
 <u>PRESENTATION</u>		
INTRODUCTION OF NEW MEMBERS	INTRODUCED	2
 <u>DISCUSSION AGENDA AND POSSIBLE ACTION</u>		
CASE #2023-3. COMPLAINT BROUGHT FORWARD BY ARCY BACA - 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	POSTPONED	2-4

PROCEEDING.)

CASE #2024-1. COMPLAINT BROUGHT FORWARD BY STEFANIE BENINATO - 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.) **DISMISSED** **4-10**

CASE #2024-02. COMPLAINT BROUGHT FORWARD BY STEPHANIE BENINATO - 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.) **DISMISSED** **4-10**

CASE #2023-5. COMPLAINT BROUGHT FORWARD BY PILAR FAULKNER - REPORT AND MOTION TO EXTEND THE TIME FOR FINAL INVESTIGATION REPORT TO THE BOARD. **MOTION TO EXTEND INVESTIGATION APPROVED** **10-13**

APPOINTMENTS TO THE INDEPENDENT SALARY COMMISSION. **APPROVED** **13**

MATTERS FROM STAFF	NONE	13-14
MATTERS FROM THE COMMITTEE	INFORMATION/DISCUSSION	14
MATTERS FROM THE CHAIR	NONE	14
PUBLIC COMMENT	INFORMATION/DISCUSSION	14
NEXT MEETING	JULY 25, 2024	
ADJOURN	ADJOURNED	14-15

**ETHICS AND CAMPAIGN REVIEW BOARD
FRIDAY, APRIL 19, 2024, 3:00 PM
CITY HALL, CITY COUNCIL CHAMBERS
200 LINCOLN AVENUE, SANTA FE, NM**

1. CALL TO ORDER

A meeting of the Ethics and Campaign Review Board was called to order by Chair Biderman at 3:00 pm, on Friday, April 19, 2024, at City Hall, in the City Council Chambers, 200 Lincoln Avenue, Santa Fe, New Mexico.

2. ROLL CALL

MEMBERS PRESENT

Paul Biderman, Chair
Justin Miller
Andrew Black
Jose Puentes
Khristina Martinez
Christina Brennan
Judy Amer, arrived later in the meeting

OTHERS PRESENT

Geralyn Cardenas, Interim City Clerk
Marcos Martinez, Senior Assistant City Attorney

3. APPROVAL OF AGENDA

MOTION A motion was made by Ms. Brennan, seconded by Mr. Miller, to approve the agenda as presented.

VOTE The motion passed on unanimous consent.

4. APPROVAL OF CONSENT AGENDA

None.

5. APPROVAL OF MINUTES

A. REQUEST FOR APPROVAL OF THE DECEMBER 14, 2023 ETHICS AND CAMPAIGN REVIEW BOARD MINUTES

MOTION A motion was made by Mr. Miller, seconded by Ms. Martinez, to approve the minutes of December 14, 2023 as presented

VOTE The motion passed on a voice vote.

6. PRESENTATION

A. INTRODUCTION OF NEW MEMBERS

***CHRISTINA BRENNAN
*JOSE PUENTES
*ANDREW BLACK**

Chair Biderman introduced Ms. Brennan, Mr. Puentes and Mr. Black as new members of the Ethics and Campaign Review Board.

All of the Board members, introduced themselves.

7. DISCUSSION AGENDA AND POSSIBLE ACTION

A. CASE #2023-3. COMPLAINT BROUGHT FORWARD BY ARCY BACA - 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 PROBABLY CAUSE TO BELIEVE THERE WAS A VIOLATION.**
- 3. ACTION ON ANY STEPS AS PERMITTED UNDER SECTION 6-16.**

Chair Biderman stated that the Board will pass on this item until Ms. Amer arrives at the meeting.

The Board moved to Item B.

The Board came back to item A to address the case.

Chair Biderman said he will have to recuse himself as one of the people charged with unethical conduct is a very close family friend.

Mr. Miller said if the same Board members recuse themselves as they did the last time we tried to hear this case we will not have a quorum to vote.

Chair Biderman said if we do not have a method to substitute people for our members how can we ever get to a vote. Can the remaining members vote because there will be a quorum of those present when the members recuse themselves and leave the meeting.

Mr. Martinez said he does not believe so. You need to have a quorum of members to vote.

Chair Biderman said we will be in this position with no quorum to vote on this case continually. The Board has expressed concerns. Is there a way to dismiss this matter that does not violate the quorum rule.

Ms. Martinez said as she reads the rule, it does not say we have to have four people vote.

Ms. Amer said 6-16 allows for Advisory Members. No one has asked for that.

Mr. Miller said the same recusal issues would apply.

Ms. Amer said what if it was only on a specific set of facts.

Mr. Miller said we cannot leave Mr. Zamora in limbo forever.

Ms. Cardenas said she reached out to Mr. Baca about attending this meeting. He did not seem interested at all.

Chair Biderman said this is the second time we have met on this and he did not attend. He would like to ask the City Attorney to look at what we can do to clear this from our agenda.

Mr. Martinez said understood.

Mr. Zamora said if three members recuse themselves four can vote. That is a quorum.

Chair Biderman said we have four members who are recusing themselves.

Chair Biderman said we will move now to item D.

B. CASE #2024-1. COMPLAINT BROUGHT FORWARD BY STEFANIE BENINATO - 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.**
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Chair Biderman stated that complaints B and C were both brought forward by Stephanie Beninato against two members of the staff of the City. They were brought forward to the Board to enforce the ethics code of the City by the authority of the Board. What we are doing today is not determining these cases, but as provided by our rules, we are taking the first step in determining if the cases meet the criteria to be considered at all. That involves the reviewing each case to determine if all the facts provided are true and if they fall within the jurisdiction of the Board and whether or not the complaints have been brought forward as harassment as alleged by both respondents. We will be reviewing the complaints on their face.

Ms. Amer arrived at the meeting.

Chair Biderman said he sees that Ms. Beninato is here as well as Heather Lamboy, Assistant Director of Planning and Land Use. Ms. Feghali let us know that she is unable to attend today.

Chair Biderman said Ms. Beninato, you can present both cases together or individually to the Board. Please give us a short summary of the cases addressing the items that need to be heard by this Board.

Ms. Beninato said she will address both complaints. She brought these complaints because she is tired of City employees lying to Boards and to the public.

That is what happened in the Lucchese case, which these two cases are about. She has filed the complaints against Ms. Feghali and Ms. Lamboy. She was well within the timeline requirements for the case when she filed appeals, including at the January 2023 hearing. At that Board of Adjustment hearing, it was brought up that there was an Ordinance 14-52 that says buildings are allowed to become less nonconforming, but other structures that are not buildings, but including signs, are not allowed to be nonconforming or changed and must be removed. She appealed to the Historic Preservation Board in August, 2022 and was told she would not be allowed to appeal because the procedure had been changed and that she should wait and she would be allowed to have input. Every time the representatives of Lucchese got up to speak they said the new sign was less nonconforming than the old one. That is not the standard at all. The Land Use staff and the legal staff continued to allow Lucchese to go forward and have the issue voted on. She challenged this in the meeting. At that meeting, Ms. Feghali read the first two sentences of the subpart and then said this is not about signs. That section of the subpart has five sentences. The third sentence referred to the statement I references previously regarding signs not being allowed to change if nonconforming and having to be removed. When Ms. Feghali came to that third sentence she said it did not have anything to do with signs, which was incorrect. You need variances and exceptions for the new sign which means it did not meet the standards. The minutes and Findings of Fact have not yet been adopted and were not adopted until January, 2023. I am tired of having to deal with people who are unethical and don't want to be ethical. The ethics code talks about City officials and employees having integrity in the preface or beginning. She believes Ms. Feghali, in her opinion, violated the standard of the tribunal which is an ethics standard and therefore, misrepresented the standards.

Ms. Beninato said in terms of Ms. Lamboy, she also should have told the applicant that the sign did not meet the standards. We had several meetings in which the standard, as interpreted by staff, was used over and over again. She tried to appeal based on a point of order she put in. Ms. Lamboy made sure to let the Board know about other party's points of order, but not hers. She was treated differently. When she filed her documents, she was told by Ms. Lamboy that Jason Kluck wanted to review them so she should not pay. That was one of the reasons the City Council made the decision they did. There is a lot going on in this case. The Historic Review Board allowed the design without having a quorum. She was told that they were just making a recommendation. She has brought this up several times and it has not gone anywhere. This case is very odd. There are questionable procedures. The standards are not being used.

Ms. Beninato stated it is important that City employees operate with honesty and integrity. If you allow people to use standards that are not standards, that does not promote integrity to the public. She was within the required time frame of one year. The former City Clerk said it was an HR matter. Her complaint did not go forward. She was told by Ms. Cardenas that she and the City Attorney were reviewing her complaint. She feels this needs to be heard by this Board.

Chair Biderman thanked Ms. Beninato for her presentation.

Chair Biderman asked Ms. Lamboy to give a summary regarding Ms. Beninato's complaint against her.

Ms. Lamboy introduced herself as a certified Planner, saying she takes very seriously her ethics. In the packet before you she has provided information on the cases and procedures and details about the proposed sign. Also included is the discussion around the sign being higher than the code allows. She noted that the proposed sign is smaller than the existing sign. The Board did act to allow the height. The Historic Review Board and the Board of Adjustment both have the jurisdiction to allow the exception. This was an exception to the code that went before both Boards. It went before the Board of Adjustment as a zoning standard. The Findings of Fact and Conclusions of Law were adopted in May. They were compiled by staff within the 35 day limit and were considered adopted on the 35th day.

Ms. Lamboy said Ms. Beninato was able to appeal.

Ms. Lamboy said she was not copied on the emails between Ms. Beninato and the former Chair of this Board. Those could be considered ex parte communication. She is concerned that a garden variety Land Use case where she represented the code, is not one of the criteria that illustrates an ethics violation. She addressed all of that in her memo to the Board. She has worked in all aspects of Land Use in her career. She finds it important to lay out cases in a clear and understandable manner for the Board.

Ms. Lamboy said as to the appeal, the item I stated was misstated, but that did not effect Ms. Beninato's ability to appeal. She filed early and it was within the allotted time frame within the code. There is a City Council Resolution that lays out the appeal process. Director Kluck has found that the appeal needs to be found as sufficient and that it meets all the criteria. Mr. Kluck, as Director, reviews it first. The City Attorney's office reviews it for sufficiency and that it has standing. It then goes to the Governing Body. In the most recent appeal that Ms. Beninato filed, I went against Mr. Kluck's wishes and allowed Ms. Beninato to pay for the appeal because of her expressed concern and my interpretation of the code. That may not have been right since my boss requested that it not be done. I did allow Ms. Beninato to pay for the appeal.

Ms. Lamboy said, in reference to Lucchese, the City Attorney determined, in November, 2022, that the code has been falsely interpreted and that all exceptions needed to come before the Governing Body and it was a recommendation by the Historic Review Board. We have now corrected that. In the Lucchese case, the applicant decided not to go further. They did not go before the Governing Body.

Chair Biderman said this Board is not going to review the wisdom of legal interpretations made. We are only here to decide if this will go any further as to the

ethics of what staff did. You can limit yourself to the ethics and skip the technical which we are not going to review.

Ms. Lamboy said the complaints do not meet the criteria. The complaint does not state a specific violation of the ethics code. This is a garden variety Land Use case that went before the Historic Review Board and the Board of Adjustment and now, to this Board. The staff report was a team effort in our recommendations and on our interpretations of the code. In this particular case, the recommendations made are consistent with the code.

Chair Biderman said Mr. Martinez, we need to clear up the representation of Ms. Lamboy regarding the City Attorney's office in order to not have a conflict, if that was done.

Mr. Martinez said he has not been coordinating with any representation that Ms. Lamboy may or may not have had. He is representing the Board. He has not communicated with Ms. Lamboy in order to avoid conflict.

Chair Biderman said if that correct Ms. Lamboy.

Ms. Lamboy stated that is correct. She has her own personal attorney. She felt that was necessary due to a possible conflict of interest.

Chair Biderman said he wanted that to be clear.

Chair Biderman said Ms. Beninato would like to respond. He is going to allow her to do so under the same statement given to Ms. Lamboy regarding the fact that we are not reviewing the legal issues or findings themselves. If he is not mistaken, you also have a case pending in District Court.

Ms. Beninato said yes. That case has a lot to do with the discussion at the City Council meeting where they rejected her appeal without notice to her and without any opportunity to be heard or to present any information in a reasonable manner and because of the 30 day review. The Board of Adjustment has no recording of their meeting. They just have the minutes. If you look at the minutes they did not review the findings. They just made a decision without discussion. She put in a point of order because Ms. Feghali misrepresented the standard to them. Ms. Lamboy made no effort to give them the information. The purpose section speaks to this. It is important. It says employees must act with integrity. That must be given importance. It is an incredible misrepresentation to the public. Ms. Lamboy went into the minutia of the cases rather than addressing her own actions.

Chair Biderman asked how the Board would like to proceed.

Mr. Miller said he had a question of Ms. Beninato.

Mr. Miller said it is his understanding that for your two cases, you are relying only on Section 107.2, the Statement of Policy, as the section of the code you allege has been violated. Is that correct.

Ms. Beninato said that is correct.

Mr. Miller said he wanted to give her a chance to see if there are any other sections you want to state have been violated.

Ms. Beninato said she looked at that and did not find any other areas to be applicable. They are all about financial situations. She does have to say that being as cynical as she is, she does wonder how many Lucchese boots may be sitting in peoples closets at this point.

Chair Biderman asked if there were any other questions.

Mr. Black said Ms. Beninato, you said Ms. Feghali deliberately misrepresented this section. Why do you say that.

Ms. Beninato said Ms. Winston, Co-Chair of the Board of Adjustment, asked Ms. Feghali to read that section of the subpart. Ms. Feghali read the first two sentences and when she reached the third sentence, which addresses signs she said this has nothing to do with signs. There are five sentences in the subpart.

Mr. Black asked to what benefit would she deliberately do that.

Ms. Beninato said she doesn't know. The correct standard was not used. They were pushing through the sign. They were allowed to again and again make presentations without the correct standard. She has listened to this for two years with members of the Boards saying they are using the spirit of the law. We should not allow this. That is why she came forward. She cares about due process. This is offensive. She thinks the standard was deliberately misrepresented.

Chair Biderman asked if there were any more questions.

There were none.

Chair Biderman said the issue before us is not to decide the merits of these cases. The decision is for the Board to determine weather or not to continue to research this and move forward with a full hearing.

MOTION A motion was made by Ms. Martinez to dismiss both cases.

Ms. Martinez said she does not think they meet our standards for determining legal sufficiency per 6-16.4. She will start with the case against Ms. Lamboy. After

hearing Mr. Miller clarify that Ms. Beninato bases her complaint on 1-7.2, the statement of policy in the Code of Ethics, it applies only to public employees and public officials. Ms. Lamboy is neither so we do not have jurisdiction to adjudicate the complaint. Ms. Feghali is a public employee and would fit under the Code of Ethics, however; for us to proceed with the complaint it must set forth legally sufficient facts, which if true, show probable cause. We require a complaint to list specific violations. She does not believe the complaints of Ms. Beninato have done that. The phrase “integrity of its government: does not allege a violation. Misrepresentation is the only subject. Misrepresentation has been discussed by several Boards and now District Court. She does not believe this gives us anything to rule on.

Chair Biderman asked is there a second.

Mr. Miller said he does not understand the motion regarding Ms. Lamboy. Is Ms. Lamboy a City employee.

Chair Biderman said yes, she is.

Ms. Martinez said she misunderstood that.

Mr. Miller said he is willing to second a motion to dismiss both cases due to the failure of the cases to specify a provision within the code that has been violated. He thinks section 1-7.2 is a statement of policy. It is aspirational. It is a statement of what City government should be. That is the only thing Ms. Beninato relied on. That is why he asked for specifics on that. What we are charged with deals with specific aspects of the code. In this case, we are asked to assess the conduct of the Board of Adjustment and the other entity on a sign variance. That is outside of our purview.

Ms. Brennan said she is also concerned about the jurisdiction of this Board to allow the Lamboy case to go forward with the District Court case pending. It appears there is a lot of overlap in the process here and the appellate process with the Court. She thinks we can dismiss the Lamboy case on jurisdictional issues. She doesn't see an ethical violation. She can second with respect to that.

Chair Biderman said he is familiar with the New Mexico Supreme Court case versus Gutierrez, 2023 New Mexico Supreme Court 002. A similar issue was raised. The Governmental Act was challenged on several issues of integrity. The Supreme Court said there are no legalities as to which hours and resources of public officials qualify as criminal conduct. In other words, there was nothing specific enough to leave someone liable. Now that was in a criminal prosecution. We are not talking about that here. He feels the same standard applies regardless of it is a criminal proceeding or civil. There needs to be a clear definition to proceed against a person. That plus the fact that there is a District Court case pending.

Ms. Beninato said the District Court case does not have to do with unethical

behavior so it is not overlapping with this case.

Chair Biderman said you raised due process here and that is being dealt with by District Court. We are not going to look at that here.

MOTION Ms. Martinez amended her motion to include the language given by Mr. Miller. Mr. Miller seconded the motion.

VOTE The motion passed on a roll call vote as follows:

Mr. Miller, yes; Mr. Black, yes; Mr. Puentes, yes; Ms. Martinez, yes; Ms. Brennan, yes; Ms. Amer, yes; Chair Biderman, yes.

Chair Biderman said we will move back to the first item at this time.

C. CASE #2024-02. COMPLAINT BROUGHT FORWARD BY STEPHANIE BENINATO - 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.)

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- 3. ACTION ON ANY STEPS AS PERMITTED UNDER SECTION 6-16.**

This case was dismissed under the previous motion.

D. CASE #2023-5. COMPLAINT BROUGHT FORWARD BY PILAR FAULKNER - STATUS REPORT AND MOTION TO EXTEND THE TIME FOR FINAL INVESTIGATION REPORT TO THE BOARD.

Chair Biderman said this case was filed by Ms. Faulkner before she was elected to the City Council. The case alleges that advertisements purchased on Facebook and on KKOB's website, which were very argumentative against her and another candidate

that were unsigned. They were clearly advocacy against her and the other candidate and are then required to be disclosed. We ruled that the expenditure needs to be over \$500. He was authorized to consult with an investigator to find out the amount of funds spend on the advertising. This has not been an easy process. We have been trying. The investigator's advice was to issue subpoenas. He asked Mr. Martinez if he would see if the City could issue subpoenas. We agreed that a subpoena could be issued to KKOB, but there would be issues with Facebook.

Mr. Martinez said in summary, Facebook has rules in Federal law to defend themselves when considering any kind of subpoena. Federal law includes the Stored Communication Act. Facebook has a policy where there are criminal disclosures, but does not state specifics. A court order is required. There is a series of criteria that must be met. It is extremely difficult in light of Federal law to subpoena anything from Facebook.

Chair Biderman asked if any progress had been made in issuing a subpoena to KKOB.

Mr. Martinez said no. He is ready to prepare one if you wish.

Chair Biderman said the Board has given him the authority to proceed. He would like to determine who placed the ad. This is very frustrating.

Councilor Faulkner said they used an IP address connected to Google. No matter where you go online if you are connected to that app the story will show up on whatever platform Google has dominion over. It is not a singular post. It was done under an IP address. What we have to do is find out how to do that. She has had informal discussion about J Baker. The story told about me endangered my living.

Chair Biderman asked do we think this means we should engage an IT expert.

Councilor Faulkner said yes. We need to track down the IP address and that will tell us exactly where it came from.

Chair Biderman said can City staff give us a hand in finding this out. That would be helpful.

Chair Biderman said he received anonymous email with a receipt for \$450. The email said they made the purchase and that we need to dismiss the case.

Councilor Faulkner said she would like to continue this effort. It continues to be a form of harassment. If it is happening to her, it is happening to others.

Mr. Puentes said a situation similar to this happened to him. This morning there was a post from J Baker. He wants to clarify that yes he is a State employee, but he

did take annual leave to do this meeting. He was mentioned by J Baker. He does not appreciate the intimidation tactics. J Baker also addressed other members of this Board. He thinks it is an important roll for the City to go on record to address this. He thinks volunteerism is going to save our democracy.

Ms. Amer said she too is a State employee who takes leave to attend these Board meetings. She thinks the City code is going to have to address anonymous sources. Finding the IP address is crucial. In order to do that, the anonymous person has to send an email to you to find the origin.

Councilor Faulkner said maybe we could refer to the email you received with the receipt and trace it back to the person who makes the posts.

Chair Biderman said that is a good idea.

Mr. Martinez said the origin of this complaint is beyond the scope of anything we have ever done before. He doesn't know if we have the resources to do the investigation if this is not grounded in the complaint. He needs to know if we want to do the subpoena to KKOB. He feels he does not have clear direction from the Board.

Chair Biderman said the subpoena for KKOB should go forward. The question is are there potential violations regarding the two members of our Board who are falsely accused. He is not sure we have the authority to undertake an investigation involving lying. The Faulkner complaint is about failure to disclose if the expenditure is over \$500.

Ms. Beninato said you can hide behind several IP addressed. The subpoena to KKOB is a good start. Your narrow interpretation of integrity goes beyond your authority. This could be far reaching and outside the Board's purview.

Chair Biderman said he is concerned about the sense of urgency when someone is acting under the veil of secrecy.

Chair Biderman stated that we will move forward with the subpoena to KKOB and he will talk to staff about following up on the IP address.

Mr. Martinez said he does not have clarity on what to do on the IP question of how it relates to the complaint.

Chair Biderman said the IP issue would come after we find out how much was spent.

Chair Biderman said the rules say we can have an investigator. We may want to call the investigator back in on this. We need a motion to extend the deadline by three months.

MOTION A motion was made by Ms. Brennan, seconded by Ms. Martinez, to extend the deadline for the investigator three months.

VOTE The motion passed on a voice vote.

E. APPOINTMENTS TO THE INDEPENDENT SALARY COMMISSION.

Chair Biderman said this is a new aspect of our authority. We are to be the impartial body that approves members to the seven seats on the Independent Salary Commission. The list of applicants is attached in our packet and there is a handout with their resumes. There are specific categories for 6 of the appointments. The 7th appointment is at large. Per code 6-19.3 (A), the categories are:

Santa Fe Chamber; a representative from a Neighborhood Association; a representative from a community organization; a current or retired attorney or Judge; a representative from the HR industry or a consultant and a retired Chief Executive Officer.

Chair Biderman said there is a short deadline on this.

The Board reviewed the resumes of the applicants. There was discussion about the categories as related to the applicants.

MOTION A motion was made by Mr. Black, seconded by Mr. Miller to appoint the following members to specific categories as assigned:

Santa Fe Chamber - Bridget Dixon; Neighborhood Association - Fabian Trujillo; community organization - Raymond Sandoval; attorney - James Sullivan; HR industry - Cynthia Sandoval; retired CEO - Earl Beckner.

VOTE The motion passed on a roll call vote as follows:

Mr. Miller, yes; Mr. Black, yes; Mr. Puentes, yes; Ms. Martinez, yes; Ms. Brennan, yes; Ms. Amer, yes; Chair Biderman, yes.

MOTION A motion was made by Ms. Brennan, seconded by Mr. Black, to appoint Ms. Beninato as the at large member.

VOTE The motion passed on a roll call vote as follows:

Mr. Miller, yes; Mr. Black, yes; Mr. Puentes, yes; Ms. Martinez, yes; Ms. Brennan, yes; Ms. Amer, yes; Chair Biderman, yes.

8. MATTERS FROM STAFF

None.

9. MATTERS FROM THE COMMITTEE

Ms. Amer said the rule of necessity may be used in the Zamora/Arcy case. Can we get an opinion from the City attorney as to that possibility.

Mr. Martinez said there is a provision in the rules for the formation of a subcommittee to consider the complaint. The Chairman could appoint a subcommittee of three consisting of the three members who do not need to recuse themselves. He can put that in writing as well as the rule of necessity.

Chair Biderman said he is happy to appoint the three remaining Board members to the subcommittee.

10. MATTERS FROM THE CHAIR

None.

11. PUBLIC COMMENT

Ms. Beninato thanked the Board for her appointment. She said she thinks the Ethics Ordinance needs to be revised so there is something about integrity and honesty. Her other avenue is to go to the disciplinary Boards of these people. She may do that.

Councilor Faulkner said J Baker is posting things from the County. County documents. Someone has to be requesting these documents and if they are they have to be giving their name. We can do an IPRA request for the County.

12. NEXT MEETING: NO MEETING SCHEDULED

It was decided that the next meeting of the Board would be on Tuesday, July 25th at 3:00 pm.

13. ADJOURN

There being no further business before the Board, the meeting adjourned at 5:09 pm.

Paul Biderman, Chairman

Elizabeth Martin, Stenographer