

IN THE MATTER OF:

§ ISSUED BY

REPRESENTATIVE

§ THE ETHICS REVIEW COMMISSION

CASSANDRA HERNANDEZ

§ OF THE CITY OF EL PASO, TEXAS

**DETERMINATION OF
THE ETHICS REVIEW COMMISSION**

On the 19TH day and 20th day of July, 2023, a panel of the whole of the Ethics Review Commission of the City of El Paso convened to consider and conduct a hearing on a complaint filed under the City’s Ethics Ordinance. On May 26, 2023, George Zavala (Complainant) filed a Complaint against City Representative Cassandra Hernandez (District 3) (“Respondent”). The Complaint met the requirements of Section 2.92.170 of the Ethics Code and it was forwarded for review by the Ethics Review Commission.

Complainant alleges that City Representative Cassandra Hernandez violated two provisions of the Ethics Code when she misused the City issued fuel card based on the findings of the City’s Internal Audit Office for calendar year 2022. The Complaint alleges that Representative Hernandez violated Sections 2.92.030 (1) and (7) of the Ethics Code.

Complainant also alleged in his ethics complaint that Representative Hernandez actively and publicly advocated against Proposition J in the recent City Charter election alleging misuse of city resources. With regards to this part of the complaint, the City Attorney’s designee concluded that the Texas Ethics Commission has the primary jurisdiction over alleged misuse of public funds for campaign/election purposes and therefore, this part of the complaint against Representative Hernandez was dismissed because the Ethics Review Commission lacked jurisdiction.

The members of the Commission participating in the hearing and the deliberations on the Complaint filed by Mr. Zavala included Chair Casey Antonio Williams, Mark Thomas Bray, Marco Covarrubias, Richarda Momsen (virtual), Arnulfo Hernandez Jr., Ryan Woodcraft, Bruce Yetter and Casey Mangan.

Appearances

Complainant Zavala did appear and he restated his Complaint. Mr. Zavala was provided fifteen minutes for an opening statement. Mr. Zavala argued that Representative Hernandez

utilized the City issued fuel card for her personal benefit in violation of the City's ethics code. Specifically, his complaint alleges that her fuel usage was "excessive" in that her fuel purchases in 2022 represented thirty-five (35%) of all fuel purchases by the Mayor and City Council in that year. Mr. Zavala further identified that the Audit shows twenty-three (23) instances of purchases on consecutive days including one instance of consecutive purchases three days in a row (August 24-26). Mr. Zavala argued that based on the amount and frequency of fuel purchased, that the amount of fuel purchased by Representative Hernandez was excessive.

Respondent Representative Hernandez was provided fifteen minutes for an opening statement and provided information related to her usage of the city issued fuel card. She stated that the usage was for her work as an elected official representing District 3. She provided information as to the busy calendar she has in representing her constituents and she further provided bank statements and receipts showing her and her husband's personal purchases of fuel using their private accounts during 2022 and early 2023. Representative Hernandez also pointed out that the City's auditor never provided her an opportunity to provide an explanation regarding her fuel usage nor did he ever explain why he deemed her usage was excessive.

Commission requested the testimony of Edmundo Calderon, Internal Auditor for the City of El Paso. Mr. Calderon provided testimony regarding his May 1, 2023 report regarding his office's Commercial Fuel Card Review. Mr. Calderon responded to questions from the Commissioners regarding the audit and the process on conducting the audit. There were numerous questions regarding his determination that the fuel usage was "excessive" and why he did not follow up with Representative Hernandez regarding obtaining her response on the fuel card usage. Mr. Calderon also responded to questions from Mr. Zavala and Representative Hernandez's attorney Felix Valenzuela regarding why he did not speak to her during the course of his audit or the results of the police investigation.

Commission requested the testimony of Jeremy Jordan, husband of Representative Cassandra Hernandez. Mr. Jordan provided testimony regarding his usage of the City gas card while employed as a legislative aide for former Representative Courtney Niland. He also testified regarding the usage of the City gas card on behalf of Representative Hernandez. Mr. Zavala and Representative Hernandez were also provided an opportunity to cross-examine Mr.

Jordan regarding his knowledge of use of gas cards as an executive director of a local non-profit.

Record of Proceedings

The proceedings were recorded by the City. The following Exhibits were made part of the record:

1. Complaint by George Zavala, dated May 26, 2023 was placed in the record.
2. Response letter to the Complaint from City Representative Cassandra Hernandez's attorney, Felix Valenzuela, dated June 1, 2023, was placed in the record.
3. City of El Paso Ethics Ordinance 019139, dated February 16, 2021, was submitted by Complainant and placed in the record and marked as Exhibit 1.
4. City Council and City Manager Commercial Fuel Card Review conducted by the Internal Auditor Office, dated May 1, 2023, was submitted by Complainant and placed in the record and marked as Exhibit 2.
5. El Paso Police Incident Report dated April 11, 2023, was submitted by Complainant and placed in the record and marked as Exhibit 3.
6. City of El Paso Commercial Fuel Card Policy and Use Procedures, dated July 5, 2021, was submitted by Complainant and placed in the record and marked as Exhibit 4.
7. KVIA Media Report, dated May 25, 2023, was submitted by Complainant and placed in the record and marked as Exhibit 9.
8. KVIA Media Report, dated May 21, 2023, was submitted by Complainant and placed in the record and marked as Exhibit 10.
9. KFOX14 Media Report, dated May 26, 2023, was submitted by Complainant and placed in the record and marked as Exhibit 12.
10. Letter from Felix Valenzuela, attorney for Representative Hernandez, dated June 19, 2023, was submitted by Respondent and placed in the record and marked as Exhibit 13.
11. Bank statements and receipts showing gas purchases by Jeremy Jordan and Representative Hernandez in 2022 and 2023 was submitted by Respondent and placed in the record and marked as Exhibit 14.

Findings of Fact

After considering the Complaint, the testimony of Mr. George Zavala, the response by City Representative Cassandra Hernandez, the testimony of the City Auditor and Representative Hernandez's husband, Jeremy Jordan and the exhibits placed in the record as described above, the Commission **voted 8 to 0** that clear and convincing evidence did support a finding that City Representative Cassandra Hernandez violated Sections 2.92.030 (1) and (7), of the Ethics Code. The clear and convincing evidence showed that Representative Hernandez did use her position to secure unwarranted privileges for herself, relatives. Moreover, the evidence showed that Representative Hernandez did use the fuel card for her personal benefit and the benefit of others and therefore there was a misuse her city issued fuel card.

Conclusion of Law

Based on the Findings of Fact as set forth above, the Commission concluded that Representative Cassandra Hernandez's actions regarding her use of the city issued fuel card did violate Sections 2.92.030 (1) and/or (7) of the Ethics Code.

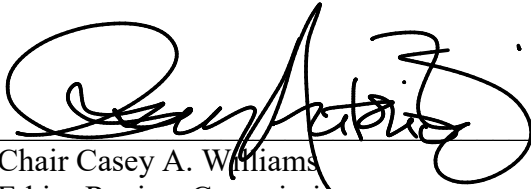
Opinion of the Commission and Disposition of the Complaint

It is therefore the opinion and order of the Commission that the allegations set forth in the Complaint of violations by Representative Cassandra Hernandez's regarding Sections 2.92.030 (1) and (7) of the Ethics Code should be and are hereby **SUSTAINED** by clear and convincing evidence.

It is further the opinion of the Board that Respondent Cassandra Hernandez did violate Sections 2.92.030 (1) and (7) of the Ethics Code, in the manner described above, and the order of the Board that the following disposition should be levied:

1. The Commission **voted 8 to 0** that A **LETTER OF REPRIMAND** shall be issued to the Respondent Representative Cassandra Hernandez regarding this violation as provided in Sections 2.92.200 (D) (3).

Signed this 24th day of July 2023.



Chair Casey A. Williams
Ethics Review Commission