

**BEFORE THE BOARD OF ETHICS
FOR THE CITY OF TACOMA**

In the Matter of the Complaint Against
Council Member Ryan Mello

**FINDINGS, CONCLUSIONS AND
ORDER OF DISMISSAL OF BOARD
OF ETHICS**

Board of Ethics Complaint No. 2015-001

I. PROCEDURAL HISTORY

- 1.1. On April 6, 2015 the City Clerk's Office received an anonymous complaint alleging a violation of the City's Code of Ethics by Council Member Ryan Mello occurred when he voted in favor of Council Resolution No. 39159 awarding a contract in the amount of \$50,000 to the Pierce County AIDS Foundation, when Council Member Mello's husband Jerry Hallman is a member of the Board of Directors of the AIDS Foundation.
- 1.2. The complaint is attached as Exhibit A.
- 1.3. The matter was referred to the Board of Ethics as is required by the City's Code of Ethics (Tacoma Municipal Code 1.46.040 B) and was assigned Board of Ethics Complaint No. 2015-001.
- 1.4. The Board of Ethics considered complaint No. 2015-001 in an adjudicative session of a regular meeting on April 8, 2015.
- 1.5. During the course of the April 8, 2014 deliberations the Board reviewed the Complaint, and the following publically available documents:
 - 1.5.1. City Council Resolution No. 39159 and its supporting documentation, including the Contract to be awarded to the AIDS Foundation.

- 1.5.2. The voting record showing Council Member Mello participated in the vote on Resolution No. 39159 and that the resolution passed the Council by a unanimous vote.
- 1.6. In order to establish a factual record to determine whether a violation of the Code of Ethics had occurred, the Board requested staff research additional publically available information to determine if Council Member Mello had disclosed Jerry Hallman's status as an AIDS Foundation Board Member.
 - 1.6.1. Staff located and provided to the Board Council Member Mello's 2014 Personal Financial Affairs Statement filed with the Public Disclosure Commission which did not disclose Jerry Hallman's status as a Board Member of the AIDS Foundation.
 - 1.6.2. Staff did not locate any City of Tacoma records or records held by the City for the years 2014 and 2015 which revealed Council Member Mello's disclosure of Jerry Hallman's status as a Board Member of the AIDS Foundation.
- 1.7. The Board further considered Complaint No. 2015-001 in an adjudicative session of a special meeting on April 29, 2015.
- 1.8. In order to establish further a factual record to determine whether a violation of the Code of Ethics had occurred, the Board requested written testimony be provided under oath from the Pierce County AIDS Foundation.
 - 1.8.1. The written testimony provided by the Pierce County AIDS Foundation is attached as Exhibit B.

II. FINDINGS OF FACT

- 2.1. City Council Resolution No. 39159 awarded a contract in the amount of \$50,000 to the Pierce County AIDS foundation, budgeted from the City Council Contingency Fund, for the purposes of supporting the final phase of the Pierce County AIDS Foundation's Capital Campaign, in order to provide increased capacity and services related to HIV/AIDS prevention and outreach.
- 2.2. The Pierce County AIDS Foundation is a Washington State nonprofit corporation.
- 2.3. Council Member Mello participated in the City Council's vote in favor of Resolution 39159 on March 31, 2015.

- 2.4. Council Member Mello and Jerry Hallman were married as of March 31, 2015.
- 2.5. Jerry Hallman was a member of the Board of Directors of the Pierce County AIDS foundation on March 31, 2015.
- 2.6. Jerry Hallman was not paid for his service on the Board of Directors of the Pierce County AIDS Foundation.
- 2.7. Council Member Mello did not disclose his husband's status as a member of the Board of Directors of the Pierce County AIDS Foundation when he voted in favor of awarding a contract to the Pierce County AIDS Foundation.
- 2.8. Although it is not specifically stated in Complaint No. 2015-001, it is presumed that the Complaint is intended to allege a violation of Tacoma Municipal Code 1.46.030 A, Beneficial Interests in Contracts Prohibited:

TMC 1.46.030 A. No City officer or employee shall participate in his or her capacity as a City officer or employee in the making of a contract in which he or she has a financial interest, direct or indirect, within the meaning of Section 6.6 of the Charter of the City of Tacoma or performs in regard to such a contract some function requiring the exercise of discretion on behalf of the City. Except, that this prohibition shall not apply where the City officer or employee has only a remote interest in the contract and where the fact and extent of such interest is disclosed and noted in the official minutes or similar records of the City prior to formation of the contract and thereafter the City Council authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer(s) having the remote interest. For purposes of this section, a "remote interest" means:

1. That of a non-salaried officer of a nonprofit corporation;
2. That of an employee or agent of a contracting party where the compensation of such employee or agent consists entirely of fixed wages or salary;
3. That of a landlord or tenant of a contracting party;
4. That of a holder of less than 1 percent of the shares of a corporation, limited liability company, or other entity which is a contracting party.

- 2.9. Based on the foregoing Findings of Fact, the Board makes the following:

III. CONCLUSIONS OF LAW

- 3.1 The Board has jurisdiction over this matter.
- 3.2 The Board exercised its authority under TMC 1.56.045 F (3) (b) to conduct an investigation in order establish a factual record necessary to determine whether a violation of the Code of Ethics may have occurred.
- 3.2.1 The Board is authorized by its duly adopted administrative procedures to conduct its investigation by taking testimony under oath in the form of interrogatories or other written testimony,
- 3.2.2 The Board is authorized by its administrative procedures to request records in order aid in the establishment of a factual record.
- 3.3 In order for a violation to be found under TMC 1.46.030 A, the following elements must be established by the factual record:
- 3.3.1 A City officer or employee must participate in the making of a contract.
- 3.3.2 The City officer or employee must have a direct or indirect financial interest in the contract.
- 3.3.3 The City officer or employee's interest is not remote and correspondingly disclosed.
- 3.4 Council Member Mello is a City officer and, by his vote in favor of Resolution No. 39159, participated in the making of a contract with the Pierce County AIDS Foundation.
- 3.5 Council Member Mello does not have a direct financial interest in the contract with the Pierce County AIDS Foundation.
- 3.6 Because Council Member Mello's husband was not paid for his services as a member of the Board of Directors of the Pierce County AIDS Foundation Council Member Mello does not have an indirect financial interest in the contract with the Pierce County AIDS foundation.
- 3.7 Jerry Hallman's interest in the contract with the Pierce County AIDS foundation is within the definition of a "remote interest" contained in TMC 1.46.030 A (1) "that of a non-salaried officer or a nonprofit corporation."

3.8 TMC 1.46.030 A cannot be read to place a City Officer or employee on notice that a spouse's remote interest in a contract would trigger a disclosure obligation on the part of the City Officer or employee.

3.9 No facts are established to constitute a violation by Council Member Mello of any provision of the City of Tacoma Code of Ethics, therefore Complaint No. 2015-001 is dismissed pursuant to 1.46.045 F (3)(a)(ii).

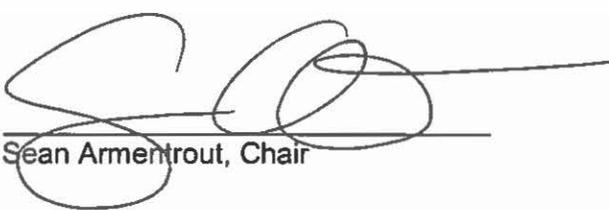
3.10 Although Complaint No. 2015-001 is appropriately dismissed, the Board nonetheless notes that the stated purpose of the Code of Ethics includes the caution to City officers and employees to strive to avoid even the "appearance of impropriety." TMC 1.46.010 A. As such, prudence may prompt disclosure even in situations where the Code of Ethics cannot be read to mandate disclosure.

IV. ORDER

Based on the foregoing, Complaint No. 2015-001 is hereby DISMISSED.

Dated this 4th day of June, 2015.

City of Tacoma Board of Ethics

By: 

Sean Armentrout, Chair

cc: City Attorney
Council Member Mello

"EXHIBIT A"

RECEIVED

APR 06 2015

CITY CLERK'S OFFICE

Resolution 39159, City providing \$50K to the Pierce County Aids Foundation

I believe CM Mello violated the City's Ethics rules when he voted in favor of RES 39159 – sending \$50,000 to an organization his husband has a governing role in.

What is most concerning to me is at 40:40⁰⁴ of the City Council meeting CM Mello literally gives thumbs up to Duane Wilkerson, the Exec. Director of PCAF, CM Mello so gitty about getting his friend and employee of his husband Jerry Hallman money the he forgot to second the next resolution to be considered and created a delay in regular business – see the video, I was there in person. It is embarrassing and I think an ethics violation.

This is not professional at a minimum and the fact that CM Mello's husband is a board member of the PCAF should raise concerns. It concerns me that CM Mello didn't see a potential conflict of sponsoring the resolution and voting for it. A wiser leader would have recused himself/herself from a vote that sends money to an organization where a family member is employed, has a financial interest or is serving in a governing capacity. What is ironic is recusing yourself is simple, in fact, other Councilmembers in this very meeting recused themselves from votes, but not CM Mello, he either doesn't see the conflict, wants to get credit for his efforts or just doesn't care, none of these reasons seem like the type professionalism Tacoma deserves from our leaders. Money simply shouldn't go to groups where elected officials have family members working or affiliated, it is just that simple.

This smacks of a quid pro quo and just shows how unprofessional CM Mello is that he didn't recuse himself and disrupts city business by giving thumbs up to friends he helped give our hard earned tax dollars to. This is embarrassing to our City. If you listen to the rationale as well it is interesting that the PCAF raised \$55K from its capital campaign and the City give them \$50K, that means we did nearly 50% of the entire funding for their building and campaign. Does the City habitually help fund up to 50% of a groups campaigns, I don't think so.

EXHIBIT "B"

RECEIVED

MAY 11 2015

CITY CLERK'S OFFICE

BEFORE THE BOARD OF ETHICS
FOR THE CITY OF TACOMA

In the Matter of the Complaint Against
Councilmember Ryan Mello

Board of Ethics Complaint No. 2015-001

BOARD'S INTERROGATORIES TO
PIERCE COUNTY AIDS FOUNDATION

I. INTRODUCTION and BOARD AUTHORITY

Pursuant to the powers and authority granted to the Board of Ethics under Tacoma Municipal Code 1.46.045 the Board of Ethics has been charged with evaluation of Complaint No. 2015-001 ("Complaint"). Complaint 2015-001 is attached for your reference.

A quorum of the Board met on April 8, 2015 in a duly noted regular meeting for the purpose of evaluating the Complaint and again in duly noted special meeting on April 29, 2015 for the purpose of further evaluation of the Complaint.

The Board has determined that the facts alleged in the Complaint, if true, presented only the following potentially applicable prohibited conduct under the City's Code of Ethics:

TMC 1.46.030 A. Beneficial Interests in Contracts Prohibited.

No City officer or employee shall participate in his or her capacity as a City officer or employee in the making of a contract in which he or she has a financial interest, direct or indirect, within the meaning of Section 6.6 of the Charter of the City of Tacoma or performs in regard to such a contract some function requiring the exercise of discretion on behalf of the City. Except, that this prohibition shall not apply where the City officer or employee has only a remote interest in the contract and where the fact and extent of such interest is disclosed and noted in the official minutes or similar records of the City prior to formation of the contract and thereafter the City Council authorizes, approves, or ratifies the contract in good faith by a vote of its

membership sufficient for the purpose without counting the vote or votes of the officer(s) having the remote interest. For purposes of this section, a "remote interest" means:

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4. That of a holder of less than 1 percent of the shares of a corporation, limited liability company, or other entity which is a contracting party.

However, the Board has determined it requires additional information in order to determine if a violation of the above referenced section of the Code of Ethics has occurred. The Board has determined to gather the necessary additional information by seeking your sworn testimony; such testimony be provided in the form of written interrogatories.

II. INSTRUCTIONS

You are respectfully requested to answer the following interrogatories separately and fully, under oath, within 5 days of receipt.

You may use the space provided on this document or you may attach your answers on a separate sheet.

The signed responses shall be returned to the Board of Ethics in care of Board Staff Liaison, City Clerk Doris Sorum. Any questions regarding these interrogatories may also be directed to the Board by way of the City Clerk.

III. INTERROGATORIES TO PIERCE COUNTY AIDS FOUNDATION

INTERROGATORY NO. 1: Was Jerry Hallman a member of the Board of Directors of the Pierce County Aids on March 31, 2015?

ANSWER: Yes. However Mr. Hallman has been on a leave of absence since October 2013.

INTERROGATORY NO. 2: If the answer to Interrogatory No. 1 is yes, does or has Jerry Hallman received monetary compensation for his services as a member of the Board of Directors of the Pierce County Aids Foundation?

ANSWER: No. All Board of Directors for PCAF are volunteers as noted in our annual Federal 990 Form.

(See Addendum)

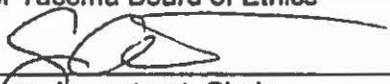
INTERROGATORY NO. 3. Please state the name and position of the person answering these interrogatories on behalf of the Pierce County Aids Foundation.

ANSWER:

E. Duane Wilkerson, MPH, MDiv
Executive Director

Interrogatories dated this 4th day of May, 2015

City of Tacoma Board of Ethics

By: 

Sean Armentrout, Chair



3520 South Pine Street
Tacoma, Washington 98409
Phone 253.383.2565
Fax 253.597.6682
www.piercecountyaids.org

Pierce County AIDS Foundation
Response to Complaint regarding Resolution 39159
May 7, 2015

Addendum

I approached Councilperson Ryan Mello about the possibility of getting a capital campaign award after a December Council meeting. I noticed that as part of the consent agenda for that meeting was a capital campaign grant to Associated Ministries for \$55,000. I asked Councilperson Mello what the process was to request a similar grant for our campaign. My discussions during the next four months were directly with Councilperson Mello and his staff regarding this effort.

I did not see Councilperson Ryan Mello give me the "thumbs up," as I left. Upon leaving the council chambers after the vote I did look up to the council seats. The only person I made eye contact with was Councilperson Victoria Woodward who gave me a smile and I returned the smile.

The more egregious error in fact is the anonymous person's misunderstanding of the percentage that the \$50,000 represents of the total capital campaign. The capital campaign's target is \$300,000, of which \$59,000 was from individual donors, primarily board members and staff. This is in addition to nearly \$450,000 that PCAF spent on the build out of the building, taken from our reserves (and depleting same). We only had to go to the community to ask for less than 15% of the total of \$1.6M to purchase and build out the building.

Finally, as you probably know, if the City restricted legitimate funds to any agency that had 'friends' related to that agency, very few non-profit agencies would be left standing in Tacoma! Transparency is the key from my perspective. PCAF and I believe we have accomplished that.

Respectfully,

E. Duane Wilkerson, MPH, MDiv
Executive Director

STATE OF WASHINGTON)
) ss.
County of Pierce)

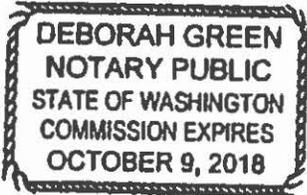
E. Duane Wilkerson on behalf of the Pierce County Aids Foundation being first
duly sworn upon oath, deposes and says: I have read the foregoing answers to the
foregoing interrogatories and believe the same to be true.

E Duane Wilkerson

E. Duane Wilkerson
PRINTED NAME AND TITLE

SUBSCRIBED and SWORN to before me this 7th day of
May, 2015.

Deborah GREEN
Printed Name: Deborah Green



NOTARY PUBLIC in and for the State
of Washington, residing at Pierce County
My commission expires OCT 9, 2018

cc:
City Attorney
Councilmember Ryan Mello
Members Board of Ethics

RECEIVED

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