

1 **Zero Waste Advisory Committee Meeting, June 11, 2014: Item 3H (Part 1 of 2)**

2 **Rick Cofer:** We're gonna take some items up out of order because we are joined today by many special
3 guests. The order on this will be, first, we will take up Item 3H, Discussion and Action, Proposed
4 Recommendation, Conflict of Interest Investigation – so that'll be number one. Number two will be a
5 staff briefing from the City Clerk. And then Item 3, that we take up in order, so I guess Item C will be
6 what's now labeled Item I, Discussion and Action, Waste to Energy STAR Rating, because we're joined
7 for the second month in a row by our City's Chief Sustainability Officer, Lucia Athens. We've got a rock
8 star line up.

9 What I would like to do – and suggest for Item 3H, which is the Conflict of Interest Investigation – is this:
10 we have a number of people who have signed up to provide citizen communication on it and so what I'd
11 like to do in introduce the item, invite staff to come talk with us about it and then invite up citizen
12 comments. Is there any objection to that game plan or do we think there's a better way to handle it?

13 Alright, this item is a resolution that I am sponsoring along with Co-Chair Gattuso. I'm not going to read
14 it because it's quite long, but it is available to y'all up there at the entrance. The "THEREFORE" clauses
15 at the end, "Therefore be it resolved that the Zero Waste Advisory Commission disputes the City
16 Auditor's conclusions and objects to the process followed to arrive at these conclusions. Be it further
17 resolved that the Zero Waste Advisory Commission recommend that the Austin City Council order the
18 City Auditor to retract this report and to apologize to Commissioner Ochoa. Be it further resolved that
19 the Zero Waste Advisory Commission recommends that the Austin City Council reform the reporting,
20 investigatory and ruling process of the City Auditor's office in order to prevent similar actions against
21 other members of this commission or other Boards or Commissions in the future." And this, of course,
22 is in the context of the City Auditor's Integrity Unit report concerning former Zero Waste Advisory
23 Commission member, Daniela Ochoa Gonzalez. So with that, I'd first like to – let's invite up staff. And
24 what we've done on this is we've invited the City Auditor, we're invited a representative from the City
25 Attorney's office, who is with the ethics team. This is the team that does the function that used to be
26 done by the City's Ethics Officer. We've also invited Chair of the Ethics Commission, Austin Kaplan, and
27 he's here to help educate us about the actions on their end. And we also have the City Clerk, of course,
28 available and we have the City Clerk's Boards and Commissions liaison also available, so lots of resources
29 to help educate us and so with that I've like to invite the City Auditor and the representative for the City
30 Auditor to introduce their perspective on this matter.

31 And for the record it is 6:39 PM and Commissioner Kazi is also present. Apparently we're supposed to
32 say now when people show up.

33 **Ken Mory:** Good evening, my name is – is it on? Good evening, my name is Ken Mory. I'm the City
34 Auditor.

35 **Jason Hadavi:** And I'm Jason Hadavi, the Chief of Investigations over the City Auditor's Integrity Unit.
36 We received your request and we are happy to attend today and I just wanted to reiterate – we sent an
37 email so you may have already heard this communication – but we stand by our report and the findings
38 placed in it. Our work papers fall under an exception to the Texas Public Information Act and when we

39 receive requests for our work papers or for specific information related to our investigations we
40 routinely seek that exception from the Attorney General's office and in order to fully protect our
41 working papers and the identities of those cooperating with the investigations, we *always* seek that
42 exception and do not publically discuss the investigations or the details of any investigation and that is
43 the same in this case. We're unable to discuss the specifics of this investigation, but once again, we
44 stand by our report and the findings in it.

45 **Rick Cofer:** Alright. Question from the Commission members?

46 **Dave Sullivan:** Yes, okay. I emailed you all a question. I understand the gravity of what you do and the
47 importance of what you do and I appreciate it. My question is: why isn't there a warning given first if
48 there's a transgression that is based on a mistake that a public servant has committed, especially an
49 unpaid volunteer? Why can't that person be given a warning first before there are findings made and
50 pushed up the line?

51 **Jason Hadavi:** Well, there's a couple of moving pieces here. First, I'd like to stress that our role in this is
52 fact finders, not decision makers. We report our conclusions to decision makers and while I can't
53 discuss this specific investigation, from a general process perspective – you know, most common we're
54 dealing with employee matters. We don't report our findings to the employee; we report our findings
55 to the applicable department director and probably a related HR manager or HR representative and they
56 are free to take whatever action they see fit at the time that we provide a draft copy of our findings, so
57 we let them know in advance of issuance what our findings are and at that juncture they can respond in
58 a number of ways - they can just move forward and wait for issuance; they can sit down with us and ask
59 us questions or express concerns about the findings; they can start their process for any action they plan
60 to take, so on and so forth. So anything regarding action relating to someone involved in the
61 investigation and it's completely outside our purview. We don't make any recommendations. We often
62 receive requests for recommendations – what do I do with this person now that you've told me this –
63 and we always make it a point to say we can't make that statement. We just are merely providing you
64 the information that we determined during the course of our investigation and the decision is yours.

65 **Dave Sullivan:** So, could you be a little bit more specific about that process? You report that to the City
66 Manager, or you report that to all the Council offices or you report that to the Ethics Commission?

67 **Jason Hadavi:** Are you talking about this specific investigation?

68 **Dave Sullivan:** Any finding. Any investigation.

69 **Jason Hadavi:** So, again, in general it would depend on – it's going to be different on a case by case
70 basis. The way we would handle an employee in a department that reports ultimately to the City
71 Manager is going to be different than an employee in a department that does not report to the City
72 Manager so it's going to vary depending on which department we're talking about. It's also going to
73 vary on the size of the department. Some departments are large enough they have their own HR groups
74 or teams so they might have someone internal that's going to help guide them through a disciplinary

75 action for example. Other departments are small and don't have that kind of resource built in so there
76 may be people that they seek from the corporate HR department to involve in the process.

77 **Dave Sullivan:** Well what about in the case, though, of a citizen board where we're unpaid volunteers
78 and we're not full-time in this capacity?

79 **Jason Hadavi:** Correct. We would notify the appointing council member.

80 **Rick Cofer:** And you mean notify that an audit had begun or had been completed? At which stage?

81 **Jason Hadavi:** Both, actually. So from an investigative process standpoint, at the point we receive an
82 allegation we don't automatically open an investigation. We do some due diligence to determine
83 whether or not there's predication, and we define that as a reasonable basis to believe that the
84 allegation may be accurate and at the point that we obtain predication we decide we're going to open a
85 case. Before we open a case we make a case notification. As I stated before, most often it's employees
86 so if it was in Austin Energy, for example, we would notify the department director or the appropriate
87 deputy general manager in Austin Energy that we're opening an investigation and the general nature of
88 it. We would not provide details. In the case of a council appointee or board member or commissioner
89 we would notify the appointing council member that we're opening an investigation. At the point that
90 we conclude our investigation, before we issue a report we would prepare a draft report and we try to
91 always provide a draft report a week before issuance. Sometimes it goes a little bit longer, sometimes
92 there's a couple of days less, but that is our general practice. We provide that to the same decision
93 maker that we notified at the beginning of the investigation that these are our findings; this is what
94 we're planning on issuing, if you have questions, let us know. Does that answer your question?

95 **Rick Cofer:** I think that helps. Let me ask you about your determination of the decision maker. In an
96 instance where a board or commission member is the subject of an audit, it's your policy to inform the
97 sponsoring council member or the Mayor of that particular commission member?

98 **Jason Hadavi:** Correct.

99 **Rick Cofer:** It's my understanding, and I believe this is still accurate, that while commission members
100 and board members are recommended by particular council members or by the Mayor, they're voted on
101 and approved by the entire City Council. Is that right?

102 **Jason Hadavi:** I believe so, but I would probably defer to the City Clerk to confirm that.

103 **Rick Cofer:** If a board or commission member were to be asked to resign but refused to resign, what
104 would the process be – and this may certainly be out of your purview or your knowledge –

105 **Jason Hadavi:** It absolutely is.

106 **Rick Cofer:** – but are you familiar with the process of removing it?

107 **Jason Hadavi:** I'm sorry?

108 **Rick Cofer:** Of removing a board or commission member?

109 **Jason Hadavi:** I would have to ask –

110 **Rick Cofer:** And again I'm not trying to trip you up or anything. The point that I'm driving at, though, is
111 that if the authority to appoint a board or commission member rests with the whole council and the
112 authority to remove a board or commission member rests with the whole council, how do you make the
113 decision to notify one particular council member instead of all six, plus the mayor?

114 **Jason Hadavi:** Well we've chosen to do that based on the recommendation of the sponsoring council
115 member for, I guess, an efficiency perspective, for ease, so we're not notifying all of them all the time.
116 They all get the report when it's final, but we feel that they have the primary role as the recommending
117 or sponsoring council member as you put it.

118 **Rick Cofer:** So once the report is done you send it to that sponsoring council member. What other
119 entities or individuals would receive that report?

120 **Jason Hadavi:** Are you talking about the draft report or are you talking about when it's finalized?

121 **Rick Cofer:** The final report.

122 **Jason Hadavi:** The final report is...the addressee list is going to vary on a case by case basis. The reason
123 being there's different...every investigation is different and it's going to involve different matters.
124 Sometimes there typically is a human resources element involved so we would copy the human
125 resources director. As a matter of process we always notify Mayor and Council, the City Manager and
126 the Assistant City Managers. If there was a legal element we would copy the City Attorney, but that's
127 not necessarily the case for every investigation that we conduct. Because our reports are public we do
128 always notify the Public Information Office so we would add to that list based on parties that we believe
129 need to know or should know the results of our investigation.

130 **Ricker Cofer:** Thank you. That was a very good answer, but then to draw it specifically to this audit, in
131 determining who to distribute the report to, do you feel that there were any individuals or entities that
132 may have been included that shouldn't have been, or may have been excluded that shouldn't have
133 been?

134 **Jason Hadavi:** I would say that that questions falls under the specifics of the investigation, the decision
135 making process during the reporting phase of the investigation and so I'm unable to address that.

136 **Rick Cofer:** I understand, and again, I think everyone up here and in the audience understands that you
137 have limitations in terms of what you're able or capable under the law of revealing. What I might
138 suggest, and where I was sort of trying to go with that is that I believe that Mr. Gedert received a copy of
139 that report, is that correct?

140 **Jason Hadavi:** He should have.

141 **Rick Cofer:** It's not a trick question. Did you get it?

142 **Bob Gedert:** Yes, I received it.

143 **Rick Cofer:** Okay, so Mr. Gedert - and it totally makes sense that you would send it to the Department
144 Director, right, that's fair. I think in instances in the future where you are doing an audit of a board or a
145 commission member that it would be helpful to inform the leadership of that board or commission. I
146 tend to think that it probably would have been helpful to me and helpful to Cathy Gattuso if we had
147 been informed. And that's not a knock on you –

148 **Jason Hadavi:** No, I completely understand.

149 **Rick Cofer:** After your audit – your final audit – is prepared and distributed, what role if any would you
150 have in terms of action subsequent to the report?

151 **Jason Hadavi:** Typically our role would take place prior to the issuance. Usually what happens is when
152 we provide a draft copy to a decision maker, often times it's a Department Director and/or their HR
153 representative. They want to get the disciplinary action process started immediately so that when the
154 report is finally issued they've already started that and they have demonstrated a responsiveness to the
155 investigation. And it varies. There are some individuals who are extremely experienced in this type of
156 process and feel comfortable taking our report and they understand the information presented in it and
157 they feel confident to move forward. Like I mentioned earlier there are some who are asking us, "What
158 should I do in this situation?" and we explain to them that we can't make any recommendations, we
159 can't tell them what to do. That's a management decision, that's not our decision. And there are some
160 who have some questions about the investigation who want to understand a little bit more about
161 maybe a relative policy. A typical question that we get is, "Have you investigated this type of issue in
162 other situations and what were the actions taken by those departments or managers involved?" so, you
163 know, with an intent to be consistent across the City in other instances where an event may have taken
164 place.

165 **Rick Cofer:** Have there been instances in the past where after you have completed an audit report and
166 distributed the audit report that there has been action taken by a board or a commission, a legal entity,
167 the City Council, some type of prosecuting authority where there was a need for evidence or facts that
168 had been collected in the audit process? In other words, y'all serve in the function of a fact finder and
169 sometimes with an audit there might be an action taken on the audit that might require facts to build a
170 case.

171 **Jason Hadavi:** Right. Well, the City Code in Section 2-3 and, I'm sorry, I don't remember the subsection
172 of that, but that's the part governing the City Auditor. There are requirements when the City Auditor
173 determines that an employee may have committed a criminal violation. In such an instance we have
174 very specific steps that we need to take. First is to consult with the City Attorney's office to get their
175 opinion on the criminality or the nature of the potential violation and get a recommendation on
176 whether or not we should proceed to the next step which is to work with the local prosecuting
177 authority, who is the Travis County DA's office. Now in this case the DA's office does not have a large
178 investigative staff so they consider the Austin Police Department to be their investigative arm so we
179 work through APD to work with the DA if that makes sense. If those situations where they decide they

180 do want to prosecute a particular violation and they're going to open a criminal investigation we will
181 refer the whole matter, including our work, to them because it's protected under – I'm not sure of that
182 exact section under the Public Information Act – but the part effecting law enforcement and APD. And
183 to address your other, the rest of your question, so noncriminal...I can't think of one. I've been with the
184 City Auditor's office for almost nine years and that's long enough to know I should not say "absolutely
185 that's never happened" but I can't think of a situation where that's happened other than the criminal
186 investigative process.

187 **Rick Cofer:** And this is the last question from me and then I'm sure other folks might have questions and
188 you've been very generous with your time. When you're actually doing the fact finding part of the audit,
189 generally speaking - without going into anything you can't talk about - generally speaking, what types of
190 activities does the department engage in to do its fact finding?

191 **Jason Hadavi:** A wide range. So, we do a lot of interviewing so we gather a lot of testimonial evidence.
192 We seek to corroborate that testimonial evidence to the degree possible. Some investigations involve
193 heavy amounts of documentation and data. Others are more of a testimonial nature depending on
194 what was alleged. So we will do documentation and data retrieval. We will use a number of different
195 methods to obtain information by searching through City systems, by searching non-City systems, by
196 seeing what's publically available just on the internet, which is quite a bit these days. We will conduct
197 quite a bit of data analysis. We've used GPS analysis in different cases, surveillance in some situations
198 we've – you know – there's a number of different investigative methods depending on the type of the
199 investigation.

200 **Rick Cofer:** Alright. Other questions from Commissioners?

201 **Fayez Kazi:** If we could go back to the comment you made about the warning. Not being within the
202 purview of your office, did I hear that correctly? Warning a potential...

203 **Jason Hadavi:** Right, so we were talking about notifying the person involved - the subject of the
204 investigation. What I tried to articulate earlier was that we are the fact finders reporting our
205 conclusions to the decision makers and that's where our role stops.

206 **Fayez Kazi:** So I want to try to get some more detail around that. Is it within the purview of your office
207 to initiate the investigation?

208 **Jason Hadavi:** Yes.

209 **Fayez Kazi:** Okay, so you could potentially initiate the investigation, but there's not someone else that's
210 asking you to initiate it? There's not another authority - in the case of an employee, there's not a
211 department manager, for example, asking you to initiate an investigation? And then that responsibility
212 of warning may have lied on them rather than you because you don't have the purview? Does that
213 make sense?

214 **Jason Hadavi:** Yes, I see what you're saying. I wouldn't necessarily articulate it that way. So a
215 department director could come and ask us to do an investigation. We initiate investigations in

216 response to a number of different – we refer to them as sources. So, we run the fraud hotline and any
217 citizen, employee, contractor, anybody can call the traditional phone line or submit an online allegation
218 that would result in a communication to our office. Likewise, a department director could call us and
219 say,” I’ve recently become aware that this has been taking place in my department and I would prefer
220 that you investigate it and report your findings.” So we could initiate an investigation based on a
221 department director’s notification to us. Did I clear that up?

222 **Fayez Kazi:** Yeah, I guess what I was trying to figure out was if there were – I know you can’t discuss
223 specifics of this case – but I could talk about it. What I’m trying to get at is if there were someone, let’s
224 say a sponsoring council member of a hypothetical commissioner that was in trouble, right? Would they
225 have been able to warn the commissioner in trouble because you can’t?

226 **Jason Hadavi:** I wouldn’t say that we can’t. I would say that our process doesn’t...doesn’t...

227 **Fayez Kazi:** Doesn’t require you to?

228 **Jason Hadavi:** Correct. So could a council member notify someone? Sure, they could.

229 **Fayez Kazi:** And before you initiated...well, you can’t talk about...

230 **Jason Hadavi:** Before we’d gotten to the portion of the process that involves the draft report I would
231 have concerns that that communication could interfere with the investigation so I would prefer for the
232 investigation to run its course before any communications are made and after that I would have no
233 opinion on whether or not a council member should or should not make any communication. That’s
234 completely out of our authority to make that declaration.

235 **Fayez Kazi:** Okay. Now that the results, I mean, the report’s finalized and the report’s public
236 information, correct?

237 **Jason Hadavi:** Correct.

238 **Fayez Kazi:** Knowing what you know about the report would you say that other Commissioners are in
239 danger of similar conflicts?

240 **Jason Hadavi:** I will...wow. I have no other information to suggest that – we have no information on any
241 other commissioners. We completed an investigation, we issued a report and we thought that was the
242 end of our process, but (laughs) we have no other information to address in that manner, I guess, if that
243 makes sense. I’m trying to be helpful here without...I don’t want to make a blanket statement that
244 there’s no other issues.

245 **Fayez Kazi:** Okay.

246 **Ricker Cofer:** Commissioner Hering?

247 **Rachel Hering:** Yeah, how many of these investigations have happened with different boards and
248 commissioners over the years?

249 **Jason Hadavi:** (Heavy sigh) Um...

250 **Rachel Hering:** Is this a fairly frequent thing that happens?

251 **Jason Hadavi:** I wouldn't use the word frequent. I would hesitate to name a specific number, to put a
252 specific number on it, but we conduct far more investigations into employee related matters and
253 contractor related matter than we do board members and commissioners.

254 **Rick Cofer:** Commissioner Gattuso?

255 **Cathy Gattuso:** So, um, I don't work in this area. My professional life is not in this area so I'm pretty
256 squeaky clean on this, but I get concerned because I think there is a chill in the air that people who do
257 work in this area now have some trepidation about that because what we understand is
258 that...supposedly because there was no direct economic benefit to the agenda items that were going on
259 with that one vendor that this person had something to do with, so it seems really indirect and I know
260 you're probably not going to be able to speak on this, but it just seems so broad and not pointed in the
261 right direction. It makes me concerned.

262 **Jason Hadavi:** As you mentioned, I can't speak to the specifics of this investigation, but what I would say
263 is that somewhere behind me is Sabine Romero, who's the head of the Ethics and Compliance team in
264 our law department and if there were any concerns about potential conflicts, I would highly recommend
265 reaching out to her (turns to audience and looks at Sabine Romero). Sorry. Who's very knowledgeable
266 in this area and that's the role the Ethics and Compliance team plays. Where we are the reactive entity
267 regarding ethics and investigations, they are the proactive, they are the guidance, they provide the
268 training, the provide advice on particular situations.

269 **Rick Cofer:** Folks, any additional questions or comments for the City Auditor? Mr. Sullivan?

270 **Dave Sullivan:** Yeah, one. So you mentioned that you thought this was over, but it's still going on. It's
271 also the case that you'll be talking to the Ethics Commission in July.

272 **Jason Hadavi:** That is our intent. Our understanding is they wish to learn a little bit more about our
273 process and how it occurs in parallel with their process and the nature of the work that we do and so my
274 plan is to go talk about our process in general and give them a presentation on how we receive
275 allegations, the work that we do and the reporting mechanisms. Much of what we've talked about
276 today.

277 **Dave Sullivan:** Right. Do you have any sense or – we have the Chair for the Ethics Commission here, is
278 that correct?

279 **Jason Hadavi:** I don't know.

280 **Dave Sullivan:** I wonder if they would take up the substance of this particular case as opposed to simply
281 the process that you've outlined.

282 **Jason Hadavi:** I have...I don't...I'm not able to speak to that.

283 **Dave Sullivan:** Okay, so can I ask the gentleman from the Ethics Commission?

284 **Rick Cofer:** What I was thinking is terms of process is after we thank the Auditor for their time and
285 service and then invite Mr. Kaplan and then Ms. Romero and then the City Clerk if there was additional
286 information that the clerk might have and then, if not, going into citizen's communication assuming all
287 those same folks will stay around because we'll probably have more questions and when that's done,
288 vote, and if there is a motion to vote on and then go onto the other item from the City Clerk, which is
289 remedial training on conflict of interest for sorta of the slower kids on ZWAC. Does that sound good?
290 So, anything else for the Auditor? Well, thank y'all both very much for your time and we appreciate it.
291 So with that, Mr. Austin Kaplan, Esquire, distinguished Chair of the City of Austin Ethics Review
292 Commission.

293 **Austin Kaplan:** Thank you, Chair Cofer, for that unwarranted, but very beautiful introduction. Hi
294 Commissioners, how are you? Good evening, so I'm the Chair of the Ethics Review Commission and I
295 guess I'll just open it up for questions from y'all. I don't have any prepared remarks but I guess you may
296 have some questions for me.

297 **Dave Sullivan:** Well, you heard my question and that's that in your July – I read the transcript from your
298 May meeting, is that correct, so you meet every other month? Or once a quarter? You met in May,
299 you'll meet in July. So the um – or you met in April and you'll meet in July. So at that April meeting you
300 heard from our former Commissioner and you heard testimony also from a TDS representative and you
301 didn't make any findings because there was no motion. Do you expect to talk about this again next
302 month or only about the process that the City Auditor described?

303 **Austin Kaplan:** Well, I can kind of give you a sense of where we are right now. You put it kind of
304 perfectly. There was a motion that was withdrawn so the Commission took no action on the issue. To
305 your earlier question, the Commission doesn't...it's not kind of contemplated that the Commission can
306 kind of exonerate people that come under – that have allegations against them. Usually what happens
307 is someone, an individual, will bring a complaint before the Commission complaining about another
308 individual and then we'll hold hearings pursuant to the City Code and we'll either have a finding that
309 suggests that they did violate some sort of rule that's within our jurisdiction or we'll have a finding that
310 says there was no violation and that's pretty much what we can do in situations like this so, you know,
311 we can't kind of exonerate and just to kind of give you a little more sense of the process, the Ethics
312 Commission, much like every other board and commission, well...much like *most* boards and
313 commissions doing most of their business is 100% public and so unlike the City Auditor's report, which
314 kind of happened privately, if we were to take facts and evidence all of that would become public
315 record, so that would be a public hearing and I don't really have any...I can't speak to what would
316 happen if we were to go through this process. What we were agendized to do last time was to take a
317 look at the situation because the Auditor's report was sent to us and it raised a potential issue for a
318 conflict of interest so it got on our agenda because we have the ability to file a sua sponte complaint.
319 We as the Ethics Commission can file our own complaint against people who may have violated conflicts
320 of interest rules, and that's what we were considering whether or not we would do. We took no motion

321 on it, we took no action on that, and as I stand here today we don't have any plan to put that particular
322 action item back on our agenda.

323 **Dave Sullivan:** I guess what I wish is, I wish we could give someone a yellow card instead of a red card.

324 **Austin Kaplan:** So actually I think, and I'm hearing that from the Commissioner's today that Sabine from
325 the law department and the Clerk will explain kind of the things that the Commissioners can do if they
326 feel like they're stepping into kind of unsafe waters on these issues and kind of get some information.
327 The Ethics Commission is not the go-to for that. We're at the end of the process, much like I guess the
328 Auditor's Integrity Unit is. Things have already gone wrong, people come to us and usually people are
329 complaining about other individuals who they think broke the rules.

330 **Dave Sullivan:** Alright, but that's kind of where I see that a Commission might be able to do something
331 that the professional Auditor couldn't. That you could give it a grey as opposed to black and white and
332 say this is a minor infraction, we do recommend more training as opposed to guilty as charged or not
333 guilty.

334 **Austin Kaplan:** I can hopefully address that and I'll defer to Sabine who might have a slightly different
335 interpretation of the City Code and how it works with the Ethics Review Commission, but what you're
336 kind of talking about would be like guilty with explanation almost. In other words, we could have a
337 finding, but find a lot of mitigating factors and have a lesser sanction, but I think that if the Commission
338 were to meet and find that their conflicts of interest rules were violated then it would be a simple as a
339 finding of a conflict of interest.

340 **Dave Sullivan:** Right. What if it was only 9% of their income or \$4,900 instead of 10% of income and
341 \$5,000? Then you would probably want to say...

342 **Austin Kaplan:** I mean I can only speak for myself. I can't really speak for what the Commission would
343 do in a hypothetical situation, but I mean, I think that if we get the law and the facts were to match up
344 with the law it would be probably likely that we would have to find some kind of violation, but I don't
345 know. Like I said, we haven't gone through it. We voted to not look at this in particular.

346 **Dave Sullivan:** Thanks.

347 **Rick Cofer:** Let me ask you then about the process a little bit more, and you can speak generally into the
348 extent you can specifically about this instance. You as the Commission Chair received the report from
349 the Auditor, right?

350 **Austin Kaplan:** Correct.

351 **Rick Cofer:** And then your decision – or your decision in conjunction with staff to sua sponte, which just
352 means “on your own,” – post it for action. Is that right?

353 **Austin Kaplan:** That is correct

354 **Rick Cofer:** And then at your meeting two months ago on this the action that could have been taken
355 would have been to have a hearing which would gather facts and evidence and testimony, but the
356 action was not at that meeting to say “guilty.” Is that...I’m not using the right words.

357 **Austin Kaplan:** No, you’re absolutely right. I can go a little bit deeper into the process since no one is
358 falling asleep quite yet. We actually, we would be able to file our own complaint, the Commission would
359 file a complaint and then the next step would be to have a preliminary hearing so, and this is all – I
360 mean, in recent memory the Commission has not filed its own complaint against anyone because
361 generally people will come to us, you know with major complaints and then we just set the preliminary
362 hearing. Here, as Chair Cofer mentioned, you know we became aware of a potential conflict of interest
363 and I, as the Chair, you know I can’t unilaterally make decisions on behalf of the Commission, so when I
364 became aware of something that could be a conflict of interest, I felt like the safest route for our
365 Commission was to put it on the agenda, have a public hearing so that the public could come and discuss
366 it with all the Commissioners and decide what we wanted to do as a Commission about this and
367 obviously we decided to take no action, but normally I guess the way the process would work would be
368 we would meet in a publicly - you know in a public meeting with notice - we would decide whether or
369 not the Commission was going to file a complaint, we would file a complaint then we would have a
370 preliminary hearing to determine kind of whether or not there’s cause to move forward and then we
371 have another meeting which is the final hearing where we go through the processes and take testimony.

372 **Rick Cofer:** And so what happened at your meeting two months ago was that, there basically was
373 no...the motion was withdrawn to have a hearing at a later –

374 **Austin Kaplan:** To even file a complaint in the first place. So it would be file a complaint, preliminary
375 hearing, final hearing and each of those take votes and so the first, to even just take action to file a
376 complaint, we decided to take no action.

377 **Rick Cofer:** This is going to sound really ignorant. Who is the complaint actually filed with? Is it with?

378 **Austin Kaplan:** With us. That’s the strange part about it.

379 **Rick Cofer:** So you’re voting to file with yourself a complaint?

380 **Austin Kaplan:** Yes.

381 **Rick Cofer:** Ok, and then after you vote to have a hearing and then have a hearing, what are the possible
382 outcomes of a hearing?

383 **Austin Kaplan:** Of the final hearing?

384 **Rick Cofer:** Yes.

385 **Austin Kaplan:** I don’t have the Code right in front of me, but essentially in this scenario, as I recall,
386 essentially if we get to final hearing it’s up or down on vote, whether or not there is a violation and
387 there’s a list of sanctions. The most serious sanction would be recommendation of removal from the

388 board and commission seat. When Ms. Ochoa Gonzalez appeared before us she had already resigned
389 her position and so that was, she offered that as live testimony to the Commission and we heard about
390 that, we were informed about that before we made the decision to take no action.

391 **Rick Cofer:** In general is there the ability to make a referral of a criminal complaint to whatever the
392 appropriate prosecuting entity would be?

393 **Austin Kaplan:** There is and I just can't recall if we would have that as one of our one of our available
394 sanctions in this instance and maybe Sabine...we may have that. I'd have to take a look back at the
395 Code. There are instances where we can refer to and this may be one of them.

396 **Rick Cofer:** So if it's determined here and maybe at your Commission that there was some type of
397 wrong that occurred here, what possible remedies, if any, would exist at the Ethics Commission?

398 **Austin Kaplan:** Well I mean, like I said, we have a different levels of sanctions depending on the
399 culpability that we find but I should have probably brought our sanction list with us so I can just run
400 down the code. I believe they're in 2-7.

401 **Rick Cofer:** Well let me clarify that, sorry. What I meant was if we pass this resolution, basically we are
402 saying we dispute this Auditor's Report and we think that there's been harm caused by the Auditor's
403 Report. Are there any possible remedies that could come from your Commission? I don't know of any,
404 but I am asking you.

405 **Austin Kaplan:** Yeah, not that I'm aware of. All of this is kind of uncharted territory. Certainly it's the
406 first time I was made aware of any Auditors Report against a Commissioner and, as I mentioned,
407 generally what we'll do is we'll hear complaints about violations of ethics and campaign finance rules.
408 People will come to us because, you know, they've got a real concern about something that they've
409 seen that's gone wrong. Usually we are not the ones kind of discovering the issue, although we do have
410 that power. So you know, it's a little bit of uncharted territory, or kind of things that we don't usually
411 do, but we don't, as far as I understand it, really have the power to kind of exonerate or even second
412 guess kind of other decisions. We can discuss and we can kind of recommend actions to Council, other
413 things like that but, none of it is kind of enumerated powers.

414 **Rick Cofer:** Questions for Mr. Kaplan?

415 **Jeffrey Paine:** Can you speak as to why you choose not to file a complaint?

416 **Austin Kaplan:** Commissioner Paine, I kind of can't, because I can't speak for all the other
417 Commissioners. I mean I can speak on my own personal behalf if that's helpful, but I don't know if that's
418 gonna be all terribly helpful to you. I mean I can say that, you know we were made aware of this report.
419 The report was circulated to the Commissioners. Miss Ochoa Gonzalez came and appeared before us
420 and made a statement to the Commission. We reviewed kind of our - what we could do. There was a
421 motion made to - I think the motion was made to take no action. But in any event, the motion was
422 withdrawn and we moved on to the next agenda item. So as I understand it we are not necessarily
423 prohibited from taking action in the future, but you know...I can only speak on behalf on myself. I mean

424 I don't know exactly what action we would be able to take. I mean especially since the most that we
425 could do basically is to recommend removal from office, but this Commissioner has already resigned.

426 **Rick Cofer:** Further questions?

427 **Fayez Kazi:** So if the Commissioner hadn't resigned would the potential motion be that you have your
428 own hearing and your own fact finding in a public setting and come up with a different outcome than
429 the auditors did? Is that a potential possibility that could have happened if she hadn't resigned?

430 **Austin Kaplan:** Well, I mean, it could have happened regardless and that was potential action we could
431 have taken. It was on our agenda for potential action that the Ethics Commission could file its own
432 complaint against Miss Ochoa Gonzalez and continue on to preliminary hearing to determine whether or
433 not we believe there is reason to go to a final hearing so that would be two public hearings out. Taking
434 testimony and determining whether or not there was a conflict of interest.

435 **Fayez Kazi:** Did I hear you say you could still do that?

436 **Austin Kaplan:** Yeah, my understanding is that we haven't taken any action that would bar us from
437 doing that so, you know, I guess it is a possibility. You know, I guess my concern – and I'll speak on my
438 own behalf here – is, like I said, we go through our process our public process it's not set up and as I
439 understand it, it's not contemplated to kind of exonerate folks who've done right. It's contemplated to
440 punish folks who have done wrong, and so if we go through our process and we have and, you know, we
441 go through all our facts, those will all become public and the best we can do is say that there was no
442 violation, but we can't – we don't have the power to restore her to her status as a Commissioner or
443 anything along those lines. All those decisions, you know, were made separately. We met and did what
444 we did in the public meeting.

445 **Fayez Kazi:** Thank you.

446 **Jeffrey Paine:** So, sorry just one more question. So by choosing not to file a complaint does that
447 suggest – does that mean the Commission basically had at least majority consensus that there was not,
448 did not look like a case that you wanted to pursue? Is that fair to say then?

449 **Austin Kaplan:** I mean, I guess all I can really say is, you know, there was a Commissioner who made a
450 motion to take no action on it. That motion was withdrawn and there was no other Commissioner who
451 made a motion to move on this thing and so, although we could have taken action, no one saw fit to do
452 that. And so that's where we were and I guess that's where we are. We'll meet again in July. The
453 Auditor will hopefully, or a representative from the Auditor's office will join us, and we'll take it from
454 there.

455 **Rick Cofer:** Last question. If you have a hearing and then at the end of the hearing you vote whether to
456 sanction or not sanction, is voting to not sanction the equivalent of a "not guilty" which just means there
457 wasn't enough sufficient evidence to prove your guilt, or is it more like in a civil trial where you're really
458 saying no no...the not guilty people won? You see what I am trying to say, is this fifty percent plus one
459 or...

460 **Austin Kaplan:** Thank you for that, Chair Cofer. That is an excellent question.

461 **Rick Cofer:** Like beyond a reasonable doubt? What type of standard are we talking about here?

462 **Austin Kaplan:** I don't have a great answer to that question because it's not crystal clear under the
463 statute, but you know, I would say based on experience - and this is me talking personally - it tends to be
464 more of a, well you know, I really shouldn't say. I don't know. We've had a final hearing in recent
465 memory. It has involved another Commission member. We voted unanimously that there was no
466 violation. What I can tell you is that that hearing made the television news. I think it made it on multiple
467 channels. It's a public process and so, I mean, if the concern is publicity, or negative publicity here, you
468 know, that's the nature of what, of how, we do our business at the Ethics Commission.

469 **Rick Cofer:** So if a Commissioner or former Commissioner potentially has one of these audits against
470 them, they can ask you - and they felt it was unfounded - they could ask you to proceed with the hearing
471 and that could then be potentially a venue to prove that there was no violation?

472 **Austin Kaplan:** I guess that's potentially...yeah. I guess that's potentially true. A Commissioner could
473 ask us to put it on the agenda and I guess we'd be obliged to do it if we are aware of a conflict of
474 interest. We can go through our public process and see what, you know, what the Ethics Commissioners
475 decide. After, again, taking facts, comparing them to the law, but the best we can do is just say we don't
476 see any violation under these facts. You know my take on what the Ethics Commission does is we take
477 those facts, we apply it to the law, and in that situation we just decide whether there was a violation or
478 not based on what we see.

479 **Rick Cofer:** You act like a jury.

480 **Austin Kaplan:** Yes, yes, a very qualified jury.

481 **Rick Cofer:** Hopefully you actually follow the law. Further questions for Mr. Kaplan? Austin, thank you
482 very much for joining us.

483 **Austin Kaplan:** Thank ya'll

484 **Rick Cofer:** It was a privilege. Sabine Romero, City of Austin Legal Department. And I'm embarrassed,
485 but I'm corrected that it's Sabine and not Sabina. Is that right?

486 **Sabine Romero:** Sabine.

487 **Rick Cofer:** Thank you so much for joining us we very much appreciate your counsel and guidance.

488 **Sabine Romero:** You're welcome

489 **Rick Cofer:** Do you have any initial comments on what we've already discussed or would you like to go
490 into Commissioner questioning, what would work best?

491 **Sabine Romero:** Well, I can say that I agree with Austin's description. He said he would be deferential
492 to other takes on his responses to your questions and I think he did a great job, and to follow his lead, as

493 far as process goes, just to give all of you a sense, a little more of the sense, of how the pieces fit
494 together. The Ethics and Compliance team and the Law Department is three lawyers and a trainer who
495 provide front end advice and guidance to everybody in the City family. So Council, staff, board, and, as
496 Jason mentioned, we are always available to answer questions as people try and figure out how to - how
497 to behave, how to make a decision, that sort of a thing. And when it comes to the back end where
498 there's an investigation, those are the steps of either the auditor or the Human Resources department.
499 So together we are sort of a three legged stool and then the Ethics Review Commission compliments our
500 activities with their own set of guidelines from the Code, so that's how we work together and I think it
501 was a very good idea to have each of those represented tonight. Thanks for having us.

502 **Rick Cofer:** Well thank you for taking the time, we certainly appreciate it. Questions for Ms. Romero?
503 Anyone want to start? Did you have an opportunity to review the audit yourself?

504 **Sabine Romero:** No, we are not part of the investigation.

505 **Rick Cofer:** But not as part of the investigation, but after the report had been issued, it's sent to the City
506 Attorney's office, right?

507 **Sabine Romero:** The copy...the report is online, so yes anybody can see it and no even then, the
508 Auditor's office does have rules of professional responsibility for their work product, so no. I have seen
509 the report that you have seen.

510 **Rick Cofer:** And that's what I mean, you've had the opportunity to see the report?

511 **Sabine Romero:** Sure.

512 **Rick Cofer:** You're not really in a fact finding position, right?

513 **Sabine Romero:** That's right.

514 **Rick Cofer:** If the content of the report - if the facts as laid out in the report are considered to be true,
515 let's just say for the sake of this question consider that they're true, would you have any legal
516 conclusions about how those facts would match the law?

517 **Sabine Romero:** No, as a support department, we're here if the Auditor's office wants our feedback or
518 HR or the Ethics Review Commission. In fact, I think our Ethics and Compliance team one who staffs the
519 Ethics Review Commission, but no, as Jason mentioned once their report is done it's complete and it's
520 submitted for the consideration for the recipients.

521 **Rick Cofer:** Additional questions, folks? For a Commission like ZWAC would you have any
522 recommendations for future actions or processes that we could implement to address potential conflicts
523 of interest?

524 **Sabine Romero:** Well I think you are doing it tonight. I see that the City Clerk is here to do a training for
525 you and I think that's a resource that is always available to every City board whether its conflicts or any
526 other aspect of your responsibilities as City officials. I think that you are taking the proactive step of

527 asking someone to come in and give you a refresher. All of you took this training when you became
528 board members, but it's always thoughtful of board members to invite Staff to provide refreshers either
529 specific to something that is going on or just in a proactive manner. So I think you are doing what we
530 would recommend.

531 **Rick Cofer:** Any additional questions? Thank you very much, Ms. Romero.

532 **Sabine Romero:** Thank you.

533 **Rick Cofer:** Members, do you all have questions for the City Clerk about this or the Boards and
534 Commissions Liaison? Alright so what I am going to suggest then is that we'll do the citizen input and
535 then we'll move on right to the training if that's comfortable with y'all's time. Ok great.

###

1 **Zero Waste Advisory Committee Meeting, June 11, 2014: Item 3H (Part 2 of 2)**

2 **Rick Cofer:** A lot of folks signed up. I'm going to call this out in order. If people are donating time,
3 that's fine, I would just sort of plan on coming up. I've got Adam Gregory, Michael Whellan, Mariano de
4 Frankenberg, Gary Newton, Stacy Guidry, Ryan Hobbs, Eric Goff, Mitchell Harrison and Andrew Dobbs
5 again. And Scott Johnson's here and when we move on to...I'm gonna take you up at some point. I'll
6 give you three minutes somewhere in there.

7 **Rick Cofer:** Mr. Whellan, I'm gonna –

8 **Michael Whellan:** Adam Gregory, I think's gonna donate to me.

9 **Rick Cofer:** Alright, thank you, sir.

10 **Michael Whellan:** Michael Whellan on behalf of Texas Disposal Systems. Thank you for taking this up
11 tonight. As I indicated last time, and I hope you'll take my comments from the last time into
12 consideration, this is very serious. This is a somber moment, I think, for our Council. I mean, for y'all
13 and for the City and I wanted to briefly highlight why this a continuing and troubling process, and why I
14 still cannot believe we don't have a retraction and an apology yet from the City Auditor. First, the City
15 Auditor stood up here after knowing about this meeting, knowing about all the attention and still has
16 not identified from where authorization comes to prepare and circulate the report. There is no such
17 authority in the City Code, City Charter or state statutes. We actually have briefed this issue in response
18 to a request for open records. They submitted documents to the Attorney General claiming they were
19 protected and we filed a response. I'm going to circulate that response in a moment and you'll see our
20 analysis. There is no such authority to do what they did. I want to pause. I find it quite unbelievable
21 that tonight the City Auditor claims that they are fact finders – this is a quote – “fact finders and not
22 decision makers.” They actually said that. You probably heard the oxygen come out of the room in the
23 back when the very front of their report says under findings, quote, the evidence gathered through our
24 investigation substantiated the allegation that Ochoa Gonzalez violated the City's conflict of interest
25 requirements, and again later says, Ochoa Gonzalez's subsequent participation in discussions and voting
26 related to TDS agenda items – they go ahead and characterize them as TDS agenda items – on February
27 13, 2013 and August 14, 2013, quote, *constituted* conflict of interest violations as defined in the City
28 Code and they repeat that statement with regard to April 10, 2013 ZWAC. So I find it quite remarkable
29 to hear that statement today. I also want to remind you of the testimony of Ms. Ochoa Gonzalez who
30 can't be here. She's with her ill mother in Mexico. Again, I'll provide a copy, but she noted, quote, the
31 entire manner in which the investigation was conducted and the premature wide publication of this
32 inaccurate report denied me basic due process rights all in complete disregard of the process expressly
33 established in the City Code for complaints of ethics violations. And I really appreciate Mr. Kaplan being
34 here and talking about the proper purpose and the proper process that should be implemented. As I
35 indicated before and I think...I'm going to say this wrong, Ms. Gatsu?

36 **Cathy Gattuso:** Gattuso.

37 **Michael Whellan:** Excuse me. Gattuso. As you noted, each one of you and every member of a board or
38 commission is at risk given the auditor's interpretation of direct economic benefit. There is nothing
39 tonight, no secret, no audit paper, no anonymous tipper that prevents the auditor from giving you their
40 interpretation of direct economic benefit. And how is it, for example, that the Special Events Ordinance
41 and that Data Collection and Reporting contract is a, quote, TDS agenda item, as they concluded on the
42 front of their page and has, somehow, a direct economic benefit on TDS. Ask them to explain that. All
43 that is is a secret policy determination. That should be a public policy determination because, as you
44 pointed out, Commissioner, that's exactly what everybody is at risk at if they're involved in hauling or if
45 they're involved - or have any expertise or any economic interest in any industry related organization
46 that may appear or may be imbedded in, although very minor, like the Special Events Ordinance in a
47 particular ordinance. Without a public discussion concerning the auditor's policy decision you and other
48 volunteers who serve are at risk, that a secret policy determination concerning direct economic benefit
49 will become an ethics violation. There is no training. There is no training tonight that would prevent the
50 auditor from making a secret policy determination that somehow you had no idea, but that the Special
51 Events Ordinance had a direct economic benefit on hauling or on something else that you're involved in.
52 There is no training tonight that's going to prevent that. Make them publically tell you, where is the
53 direct economic benefit between the Special Events Ordinance and TDS? Make them tell you, where is
54 the direct economic benefit between the URO Ordinance and TDS? Make them tell you, where is the
55 direct economic benefit between the Data Collecting and Reporting Contract and TDS? There is none.
56 We have a right - TDS has a right to give input as a stakeholder. That doesn't make it a TDS agenda
57 item. It's just outrageous that we don't have an apology today for this mischaracterization. The time
58 has come for the Auditor to [audio cuts out] himself for improperly conducting business, failing to
59 follow the City Code, robbing a volunteer Commissioner of her due process, and castigating TDS, a
60 private company without ever discussing the issue in advance of issuing a report and, therefore, we
61 would request that you pass the resolution. I've offered a few changes that are in red. I think they're
62 minor. I hope you'll consider those changes and I hope as you have done tonight, as you all with
63 courage have done tonight, stepped up and led on this issue and request the Council recommend that
64 this flawed and inaccurate report be retracted and an apology issued since they can't and they don't
65 have the guts to do it themselves in the Auditor's office. Everybody makes mistakes. We get that. Own
66 it. Own it, Mr. Mory. Own it. Stand up and apologize and retract the report. And we would request
67 that the City Council take a closer look at the policies and the process that the Auditor goes through
68 because we can't have, and we have to prevent rogue actions like this. It's disrespectful, it's harmful
69 and I think it will quash volunteerism on our boards and commissions. Thank you very much and, I hope
70 if you have any questions, we'll be here. As you can tell...very disturbing action on behalf of the Auditor.
71 I do want to hand out, if I may, since I mentioned it for your consideration our response to the Attorney
72 General, which does have the analysis I was referring to.

73 **Rick Cofer:** Thank you, sir. Questions for Mr. Whellan? You can answer this when you're done passing
74 out the material. Could you elaborate a bit about the standard for direct economic benefit and the
75 interplay of direct economic benefit and the determination of a conflict of interest?

76 **Michael Whellan:** That's a great question. I think the thing that's so interesting – I left my Code in the
77 back – but it actually is referenced in the – if you have something that is affected by the – actually, can I
78 get the Code because I think –

79 **Rick Cofer:** Yeah, and this is kind of a dorky legal question.

80 **Jeffrey Paine:** Is there a copy for staff of that document?

81 **Rick Cofer:** Mr. Whellan, if you have an extra copy for Staff please.

82 **Michael Whellan:** Of this? Seriously?

83 **Rick Cofer:** No, no. Not the Code. Of your hand-outs to us.

84 **Michael Whellan:** Oh, yeah, yeah, yeah. Of course.

85 **Rick Cofer:** No, Staff can find its own Code.

86 **Michael Whellan:** Well, I don't know. They didn't seem to be willing to address the fact they don't have
87 any authority.

88 **Rick Cofer:** That's not fair. That's not fair. No sidebars, sir.

89 **Michael Whellan:** By the way, they cannot impose – Mr. Kaplan was correct. The provision doesn't
90 allow the Ethics Commission to impose criminal penalties for a violation of these particular provisions.
91 So, the word affected "a-f-f-e-c-t-e-d" is defined as to – all it says is it means in the case of a person,
92 entity or property means reasonably likely to be subject to a direct economic effect or consequence,
93 either positive or negative as a result of the vote or decision in question. And then the example that it
94 gives says, "for instance, a person or entity owning real property entering into a contract with a City or
95 seeking a permit or franchise is affected by votes or decisions such as zoning of the property approval of
96 the contract or granting of the permit." It's pretty direct, right? You've gotta piece of property, a
97 contract, and you'll be affected directly by a vote on that. It goes on because they knew this was going
98 to come up and it says, "affected does not include those persons or entities who are subject to an
99 indirect or secondary affect from official action." So, and it gives independent creditors, contractors or
100 guarantors of a person affected by vote or decision are not also deemed to be affected by virtue of their
101 relationship with the affected person." So that would be much closer, that would be if a bank had a lien
102 on a property even there it seems like it's saying it would not be affected even though that property
103 may be subject to a vote on zoning. That seems to be much closer than Special Events Ordinance and
104 TDS. I mean, really? There just isn't a direct connection between the Special Events Ordinance or the
105 Data Collection. Anyway.

106 **Rick Cofer:** Mr. Sullivan? Oh, sorry. I didn't understand your hand gesture.

107 **Dave Sullivan:** Well that I wanted to ask a question.

108 **Rick Cofer:** Now I do.

109 **Dave Sullivan:** Sir, were you interviewed by the City Auditor?

110 **Michael Whellan:** No.

111 **Dave Sullivan:** Thank you.

112 **Michael Whellan:** I was not interviewed by the City Auditor. The City Auditor interviewed, as you
113 already heard, Ms. Ochoa Gonzalez one time in December and then had no further contact with her or
114 follow up with her. And I believe –

115 **Dave Sullivan:** And when I say you, I mean you or any TDS member.

116 **Michael Whellan:** No, there was no –

117 **Dave Sullivan:** Who could have made that argument about direct versus indirect –

118 **Michael Whellan:** Yes, thank you. I'm so glad you mention that. No, there was no contact with TDS.
119 The first time we heard about it was when we either read about it in the paper or a reporter called
120 because it was either leaked by the Auditor's office or by somebody else that they released it to because
121 it was widely distributed without anybody that is Ms. Ochoa Gonzalez seeing it before it was finalized or
122 TDS seeing it. They just sent it out to the world. Oh, that reminds me, who asked a question about
123 whether there was any other report ever issued? Somebody asked that question. We asked the Public
124 Information Request for any other reports that had ever been done. There has never been another one
125 about a Commissioner. It's been some employees, but none with regards to a Commissioner. Or if
126 they've done it, it would be double secret because they didn't produce it in response to the open
127 records request.

128 **Rick Cofer:** I share your concern about direct economic benefit and the vague definition there because I
129 can look at something like say the Universal Recycling Ordinance and when we passed that I was pretty
130 confident that it would expand the market for composting and for recycling in this community. That was
131 the whole point of it and I would tend to think that a direct consequence of that would be that some
132 waste haulers and waste providers would make more money, in theory, and I would also tend to think
133 well TDS probably would get a chunk of that because TDS has a large market share and they're very
134 competitive here, but at that point it seems like I've made quite a few assumptions to get to a direct
135 economic benefit. If we vote to approve this recommendation to City Council that they signed a
136 contract with TDS for about a million dollars a year or \$600,000 a year in recycling, that seems really
137 direct.

138 **Michael Whellan:** Yeah, that would be direct. If there was a contract on TDS to award something to
139 TDS that would be direct economic benefit, but URO, it just can't be.

140 **Rick Cofer:** But what about something that falls in the middle ground like the Hauler Ordinance because
141 part of what that Hauler Ordinance required was that all haulers pretty much, with some exceptions,
142 pretty much all haulers had to pay some type of permit fee to the City so there's a direct economic cost,
143 but I wouldn't characterize that as a benefit. It treats some haulers differently than other haulers but

144 basically applies to all haulers. Is that something where there could potentially be a conflict of interest
145 or not?

146 **Michael Whellan:** I can't speak to that hypothetical. I would be – if I were a Commissioner in the
147 hauling business I would be very nervous about continuing to serve and voting on anything that relates
148 in any way to hauling because there will be a secret policy decision made unbeknownst to you that –
149 and it can be done because we've just seen how it can be done where somebody finds a direct economic
150 benefit and is unwilling to tell you why and how they came to that secret conclusion. I'm not asking for
151 facts here, I'm asking for somebody to have the courage to stand up from the City of Austin and explain
152 how is it that the Special Events Ordinance has a direct economic impact on TDS. A direct economic
153 impact so that everybody here and on other boards and commissions can begin to operate with the
154 knowledge of how extensive and broad the City Auditor is going to consider direct economic benefit.
155 And again, no training until they stand up and tell you how it is there is a direct connection, no training is
156 going to protect you from the same thing that happened Ms. Ochoa Gonzalez. Nothing will protect you.

157 **Rick Cofer:** Questions for Mr. Whellan? Thank you, Mr. Whellan. Signed up next on this agenda item,
158 Mariano de Frankenberg?

159 **Eric Goff:** Mariano Conde de Frankenberg.

160 **Rick Cofer:** Very good. And that was Eric Goff of Compost Peddalers, with an "a." And let me begin by
161 apologizing for mispronouncing your last name. I left out some of the words. You have so many words
162 in your name.

163 **Mariano Conde de Frankenberg:** There's many of them. Alright, so I'm here to speak on behalf of
164 Daniela Ochoa Gonzalez.

165 **Rick Cofer:** And please identify yourself first.

166 **Mariano Conde de Frankenberg:** Mariano Conde de Frankenberg. And I'm here to speak on behalf of
167 Daniela Ochoa Gonzalez. And I'm also speaking on behalf of all the volunteers and the businesses that
168 participate in the public policy making process and that make Austin thrive. I ask that you support the
169 recommendation that you have in front of you and if we want Austin to thrive with volunteer and
170 business participation in the process of setting policy we cannot allow the City Auditor unfettered
171 power, a black box, to operate in a black box, to tar and feather any person that's dedicating time to the
172 City. And again, all operating in a black box and without any accountability at all. As you've heard,
173 we've made public records requests and they were denied based on attorney/client privilege and based
174 on audit information. This is truly something that is astonishing. Let me tell that what's at stake here,
175 and I remind you, are people's reputations and livelihoods. As you know, Commissioner, or former
176 Commissioner Ochoa Gonzalez was a volunteer. She was forced to resign from the Commission and she
177 was forced to resign from her job, okay? Just so we have that clear. And in addition to that, the City
178 Auditor has cast a cloud of ill repute on TDS, which is an Austin based business. And let me tell you two
179 things. The Auditor and the investigation unit, they were saying that this is a secret process, right? And
180 so they issued this report, they disseminate it to a – they make it public, right, without even allowing an

181 opportunity for Ms. Ochoa to actually provide data. And their report did not even comply with the City
182 Auditor's own process and own standards and I'd like to address a little bit of that. First of all, as you
183 know, the report has to address two factors that must be met for a conflict of interest to exist: number
184 one, substantial interest and, number two, a likelihood of direct economic affect. Neither of those two
185 factors were analyzed. And in fact, the report makes incorrect findings of fact because in two of the
186 meetings Ms. Ochoa had not even met the substantial interest test that's set in the City Code. And
187 number two, in relation to the investigation standards – I'd like to offer what the standards and
188 processes per the City Auditor and I'll provide that in a second. It says that the quality standards for
189 investigations that these reports have to abide by and these are established, these are regulations
190 established by the office of the City Auditor and it's unclear whether the investigation was performed by
191 qualified personnel. It's unclear whether due professional care was exercised to ensure that the
192 investigation was thoroughly conducted and I'll give you an example. They met with Ms. Ochoa
193 Gonzalez one time. They did an interview one time. She offered to provide information, financial
194 information regarding the payments that she had received, but they never took her up on the offer, so
195 how can they make a finding without knowing how much income she had received from TDS? This is
196 just absurd. In addition to that, the same standards say that the investigations have to be thoroughly
197 conducted with due respect for the rights and privacy of all those involved. I remind you this was not a
198 criminal investigation. This was possibly an ethics violation. There was no yellow card. There was no
199 training provided. What happened is that they issued this report to everybody. There was an article in
200 the Austin American-Statesman that came out in the front page and this is without giving her an
201 opportunity to provide full information without requiring full information to able to substantiate the
202 report. And again, they say that they are fact finding, but they say in here that they determined in there
203 that her actions constituted a violation of City Code. So effectively what they're doing is that they're
204 tarring and feathering somebody, they're effecting somebody's reputation and livelihood and there's no
205 recourse. There is absolutely no recourse. This cannot be done here in Austin. And in relation to the
206 City Code it expressly says that complaints alleging a violation of conflicts of interest and recusal rules
207 are handled according to the process established in Chapter 2-7. This was never done. This was never
208 done, ok? So overall the entire process was conducted in complete disregard of the procedure expressly
209 set forth in the City Code and due to the legitimate questions as to the process and the standards
210 utilized in the investigation and report, Ms. Ochoa Gonzalez, again, she made an open records request,
211 but the City of Austin has rejected it. The totality of the circumstances create a situation in which the
212 City Auditor is free to accuse and publically condemn any volunteer or any business through a secret
213 process without any accountability and without any institutional recourse for that person. You know,
214 ironically, the City has launched "Imagine Austin" which prides itself on Austin's greatest assets: its
215 people. We're not protecting our people and for this reason I ask that you approve that
216 recommendation that you have in front of you. Thank you.

217 **Rick Cofer:** Thank you, sir. Questions? I have Gary Newton signed up. Do you want to speak? Giving
218 the time? Very good. Stacy Guidry.

219 **Stacy Guidry:** I'm donating as well.

220 **Rick Cofer:** Alright, then I have Mitchell Harrison and Andrew Dobbs. Y'all can decide between y'all who
221 speaks.

222 **Andrew Dobbs:** He asked me to go first so I'll do that. Thank you, Commissioners. Andrew Dobbs with
223 Texas Campaign for the Environment and the Austin Zero Waste Alliance. You know our big concern
224 here is that a member of the Austin Zero Waste Alliance – Daniela is a member of the Austin Zero Waste
225 Alliance – she is an incredibly effective advocate for Zero Waste, an expert on composting in particular
226 and who had experience working on these things in the City of Austin and she has been removed from
227 this Commission. I can reiterate some of the things that were said. You know, the Auditor's office
228 reports everything to City Council unless somebody's overpaid hundreds of thousands of dollars and
229 that slips their mind. The fact of the matter is this agency, this office, is clearly operating in a reckless
230 and rogue kind of way and it's time for somebody to put their foot down and we should be honored that
231 this Commission gets to take the lead on that. That you get the opportunity to speak up about
232 something that really does matter, on fundamental issues of our rights and the way that we do things as
233 Americans and as a free and democratic republic. One of the real problems here is that Mr. Kaplan, who
234 we're grateful to have here today, said explicitly that the Ethics Commission cannot exonerate people,
235 so what we're left with is a situation is the Auditor's office can come along and level an accusation
236 against somebody, can say "this is our finding" - they're a fact finding institution - "the facts as we see
237 them say that this person has committed a crime" or has at least committed a violation of the City Code,
238 right? And that's just left floating in the air. And if it's not true there seems to be very little recourse
239 that can be done, you know? It's a lot of hoops to be jumped through to get fixed and at this point I
240 don't see anybody – I mean they say they stand by their report, but what does that even mean? It's
241 been said before and let's say it again: there is no actual demonstration of direct economic impact here.
242 And we all know, I mean I'm not a lawyer, we've had a lot of lawyers up here tonight, bless their heart.
243 I'm not a lawyer, but we all know what they mean. Everybody knows what they mean. They mean
244 "don't be voting on contracts that are going to benefit your employer or somebody that's giving you
245 money." It's about corruption. We know what corruption looks like and we know what corruption
246 doesn't look like. You're not supposed to vote on a contract that's gonna benefit you, okay, where you
247 can get some money out of the thing because that's corrupt and we don't like that because it runs
248 contrary to the interest of a democratic republic, right? So that's what we're trying to avoid here. Did
249 Daniela engage in corruption? Was what she did undermining our democratic values? No. In fact the
250 Code goes so far as to explicitly say indirect economic benefits don't count so that this very situation
251 could be avoided. Daniela didn't do anything to undermine our civil society; that's on the part of the
252 Auditor's office and it's time for people who have committed themselves to public service to stand up
253 and to say no. Thank you.

254 **Rick Cofer:** Thank you, Mr. Dobbs. Questions? Comments? With that, the last individual signed up to
255 speak is Mitchell Harrison. Ms. Guidry, your time is donated to Mr. Harrison? Is that correct? Okay, so
256 up to six minutes. Mr. Harrison.

257 **Mitchell Harrison:** Good evening. Thank you for the opportunity to speak with you this evening. I'm
258 here in place of Daniela, my wife. She's at home in Mexico being with her mother who is suffering from
259 cancer. You all know Daniela, how passionate she is as a volunteer, how compassionate she is as an

260 advocate, how loyal and how intentional she was as a staff member that many people in the ARR had an
261 opportunity to work with. I don't think I've ever met anyone that is so willing to give of themselves with
262 no remuneration, yet she did take the opportunity to work for the University of Texas at Austin as a Zero
263 Waste coordinator while our child was about six months old, so sacrificing her time as a young mother
264 and being with – and then she finds out her mother has cancer – yet she still wants to continue to serve
265 in Austin as an advocate, as a volunteer. Many people have made points earlier this evening, but the
266 ones I want to bring up I think are just points of clarification. I appreciate that the folks involved in the
267 public distribution of this report are here this evening – *finally* – but when all the background was given
268 everything was in the context of an employee of the City of Austin. People were trying to distinguish
269 what is your role as a Commissioner, a voluntary member of the public. I'm also a Commissioner on the
270 City – on the Community Development Commission – so I'm learning through this process as well. But
271 other people have pointed out that this maybe has never happened before, that a Commissioner, a
272 volunteer Commissioner, is subject to a process that's reserved for City staff. And a process that
273 provides them opportunity for advice and support from other paid City staff. Maybe she missed the
274 opportunity, maybe she wasn't advised she had the opportunity, maybe it doesn't exist, maybe this has
275 never had the opportunity to make that question. So I just want to make this question: is this process
276 that is touted and followed really and truly for commissioners and board members or is this something
277 that's reserved for staff members and therefore maybe the right process has not been followed? Now,
278 as a few other people have mentioned, and let me just speak hypothetical just for the sake of it. What if
279 an anonymous tip happens, the Auditor goes through the process that's clearly defined for their work,
280 something is published, distributed widely, included on the front page of the newspaper and then has
281 further garnered more attention – speaking hypothetically still – what if that is inaccurate? What
282 safeguards are there for the due process of the individual? What if, out of a mistake, limited time, new
283 staff that haven't been trained as well as possible, negligent work – are there any safeguards in place for
284 that person being accused? Are there any repercussions or opportunity to retract that and apologize?
285 Right the wrongs that were caused, most likely intentionally? Is there any due process for an individual?
286 I greatly support this motion that's being made and really hope that it will serve both your Commission
287 and the rest of the City of Austin, especially as the Commissions are reviewed in the new 10-1 election
288 process. Thank you.

289 **Rick Cofer:** Thank you, sir. Questions? Comments? Thank you very much for coming down. Members,
290 do we have additional questions for staff? Are there any items you heard about from citizens you want
291 staff to clarify? All right. Ms. Romero, are you still... oh, hi, there you are. Would it be possible for you to
292 clarify this idea of a direct economic benefit? Is that an appropriate question?

293 **Sabine Romero:** I can absolutely open the Code and share with everyone what it says on the page,
294 because I think there have been differing opinions expressed tonight, and I think it underscores the
295 point that there are minds that differ. But the common words of the discussion are those on the page.
296 Would that be helpful?

297 **Rick Cofer:** Sure. Thank you.

298

299 **Sabine Romero:** The phrase “direct economic effect” doesn’t have a formal definition of its own; it’s
300 within the formal definition of the word affected. And this definition in the code is a little unusual in that
301 part of it, as a definition, is some examples, and I think that’s what you’ve heard tonight. So I’ll just read
302 it straight.

303 This is 2-7-21 in the Code. “AFFECTED means in the case of a person, entity, or property, means
304 reasonably likely to be subject to a direct economic effect or consequence, either positive or negative,
305 as a result of the vote or decision in question. For instance, a person or entity owning real property,
306 entering into a contract with the City, or seeking a permit or franchise is affected by votes or decisions
307 such as zoning of the property, approval of the contract, or granting of the permit. Affected does not
308 include those persons or entities who are subject to an indirect or secondary effect from official action.
309 Creditors, independent contractors, or guarantors of a person affected by a vote or decision are not also
310 deemed to be affected by virtue of their relationship with the affected person. The vote or decision
311 need not be the only producing cause of the economic effect or consequence reasonably likely to result.
312 In determining whether a person, entity or property is or was affected by a vote or decision, it shall not
313 be necessary to prove the actual existence or occurrence of an economic effect or consequence if such
314 effect or consequence would be reasonably expected to exist or occur. Additionally, a vote or decision
315 to place a matter on a ballot is deemed to affect a person, entity or property to the same extent that the
316 results of the election would affect the person, entity or property.

317 **Rick Cofer:** If there’s a disagreement between parties about what constitutes a direct economic effect,
318 how could, or how would that type of disagreement be resolved?

319 **Sabine Romero:** Well I think some of that depends on who the disagreeing parties are.

320 **Rick Cofer:** Let’s say this situation, for instance. It appears that sort of maybe the nugget of the issue
321 here, I mean if this was a law school exam ... issue spotting... maybe the nugget here is, you’ve got some
322 folks who say, “There was no direct economic effect, there was no direct economic consequence, of the
323 items on which Commissioner Ochoa Gonzales participated or voted for one particular company.” And
324 then maybe other folks are saying, “No, those votes constituted a direct economic effect or
325 consequence.” What would be the mechanism, if any, to resolve that disagreement?

326 **Sabine Romero:** I think Austin Kaplan the Chair of the Ethics Review Commission referenced the
327 jurisdiction they have over hearing complaints regarding that section of the code; and I think whether, I
328 think the Ethics Review Commission has probably had a discussion or two on that topic. That’s probably
329 the most, the most shared setting for conversations about the Code.

330 **Rick Cofer:** So you would tend to think that the Ethics Commission would be potentially, or likely, an
331 appropriate venue to resolve that disagreement.

332 **Sabine Romero:** Well there are parallel tracks. There are different aspects of the City that address issues
333 in different ways, and the Ethics Review Commission has a very special role. You know they’re the ones
334 with the jurisdiction to follow through with the sanctions that Austin Kaplan described whether it be an

335 admonition all the way up to a recommendation to Council. So their ability to comment on the Code is
336 one of the most well explained that the City has in the Code.

337 **Rick Cofer:** You've heard from folks that are advocating for Ms. Ochoa Gonzalez a desire for an
338 exoneration, or an apology, or a retraction. Other than through the Ethics Commission, are there any
339 possible remedies or courses of action that could be taken to achieve those ends?

340 **Sabine Romero:** That's not a question that I have thought through. I think that the most obvious answer
341 is the one that Austin gave, which is one venue, one spelled out venue, is the Ethics Review Commission.

342 **Rick Cofer:** Any additional questions for Miss Romero? Thank you very much. You're very, very helpful.
343 Is there a motion?

344 **Dave Sullivan:** Chair?

345 **Rick Cofer:** Mr. Sullivan.

346 **Dave Sullivan:** One approach that we used to take on the Planning Commission was to make one
347 motion on the main thing that you've handed out and then accept amendments.

348 **Rick Cofer:** Right.

349 **Dave Sullivan:** I could do that, or... but I do have an amendment that I'd like... if you want me to just...

350 **Rick Cofer:** That's fine. Yeah, make your motion, get your second, and then...

351 **Dave Sullivan:** All right. My motion is to approve the resolution with the "whereas" clauses. Remove
352 the first two, I'm sorry, keep the first "Resolved" clause which says, "The Zero Waste Advisory
353 Commission disputes the City Auditor's conclusions and objects to the process followed to arrive at
354 these conclusions", but then omit the next two "Resolved" and replace it with "Be it further resolved
355 that the ZWAC, refers this to the Ethics Commission for a public hearing, for their process."

356 **Rick Cofer:** All right, let's take this up one vote at a time. There is a motion to adopt this Resolution. Is
357 there a second?

358 **Cathy Gattuso:** I second.

359 **Rick Cofer:** All right, we're in line for discussion. We had a proposed amendment to the
360 recommendation as Mr. Sullivan described. Discussion about that proposed amendment.

361 **Fayez Kazi:** Could I ask a question about the amendment?

362 **Rick Cofer:** Yes.

363 **Fayez Kazi:** So how does this play out? Are we, is this resolution going to encourage the Ethics Review
364 Commission to put that on the agenda?

365 **Dave Sullivan:** May I address this? All right, so, what I'm troubled with is that we are placed in the
366 position similar to what I see the Ethics Commission in their role, and that is to decide questions about
367 words like "affected" and "direct economic consequences" so they have more expertise in this area. If
368 they had questions about recycling or composting, I'm sure they would refer those to us. So, the main
369 idea, is to refer the resolution of this to them. We've made findings throughout here about our opinions
370 based on what happened, on what is a direct effect, according to our opinions; but the point is, ask
371 them to resolve it based on their expertise. So we go on record by saying that we do contest what the
372 City Auditor has said. And that's based on our expertise and our understanding of direct economic
373 consequences, but still, we would like the Ethics Commission to follow up on it.

374 **Fayez Kazi:** Has that amendment been seconded?

375 **Dave Sullivan:** Well I believe that that is the motion. As opposed to what's here on three pages, it's this,
376 what we have in front of us, edited to remove the last two "Be it resolved", and replace it with one
377 which says, "we refer this to the Ethics Commission".

378 **Fayez Kazi:** And would you, Commissioner Sullivan, would you explain why the last "be it further
379 resolved" is scratched out? I mean, just your thoughts on it.

380 **Dave Sullivan:** The, I guess I would like the Ethics Commission to consider that, that what should the
381 process be. I would consider it a good idea that we include that in the resolution, that they consider
382 changing or making a recommendation on the policy.

383 **Rick Cofer:** Where I might disagree with you on that one, Mr. Sullivan, is I do think that based on what
384 we've seen that there are enough facts and evidence for us to make a recommendation to the Council
385 that there is a need for reforming this audit process.

386 **Dave Sullivan:** Well the only... part of my concern is that that could appear to be self-serving for us as
387 Commissioners. How would it look to you, if you were standing out there, and you heard a Board that
388 had some responsibility for regulation saying, "Well, we think we should reduce the standards that we
389 are held to."

390 **Rick Cofer:** Well, or clarify the standard. Also I tend to think that no one really cares what we do,
391 but...okay, that's a fair point.

392 **Dave Sullivan:** That was my concern when I read it.

393 **Rick Cofer:** Let me suggest that we shouldn't be cowed by public perception; be afraid of doing what's
394 right.

395 **Dave Sullivan:** My point though, would be to let a third party look at this; look at all of our conclusions
396 and say, "Gee, maybe there should be another approach."

397 **Fayez Kazi:** So, if I were to offer an amendment to put that back in there, how would this play out? How
398 do you vote on two different amendments?

399 **Dave Sullivan:** Well, once a motion... can I answer that, Chair?

400 **Rick Cofer:** Sure.

401 **Dave Sullivan:** So once a motion has been made and seconded, it belongs to the body. The Chair can
402 say, "Does anybody object to that motion, or that amendment?" and if nobody objects, then it becomes
403 part of the motion. And if somebody objects, then somebody else has to second it, and then you vote on
404 that amendment.

405 **Fayez Kazi:** Could we potentially go back and forth, and we could friendly amend and put them back
406 and forth, delete and add... I guess the short question is I would like to make a friendly amendment to
407 put that back in there.

408 **Rick Cofer:** All right, let's do...

409 **Dave Sullivan:** And I don't object.

410 **Rick Cofer:** Let's do a quick vote on whether or not to accept your amendment.

411 **Dave Sullivan:** My amendment to...

412 **Rick Cofer:** The motion. So, not a vote on the final motion, but a vote on the amendment. That's within
413 the rules, right? In parliamentary procedure?

414 **Dave Sullivan:** Well the motion is this, amended with my change to say take out the two "Be it further
415 resolved's" and include the "Direct it to the Ethics Commission." So if you want to amend that, then you
416 would make a motion to add back in the second "Be it further resolved".

417 **Rick Cofer:** So what that means, Mr. Kazi is we start with yours. We can vote on yours first. Right?

418 **Dave Sullivan:** Yes.

419 **Rick Cofer:** Okay. Any further discussion? All right. So what we're voting on here; there is a motion to
420 adopt this recommendation, which has been amended, offered as an amended motion by Mr. Sullivan,
421 to remove the last two "Be it further resolved's" and replace it with the language that Mr. Sullivan had
422 used. What we're voting on is an amendment to that amended motion to reinstate the final "Be it
423 further resolved". Essentially swapping the first "Be it further resolved" that says the City Auditor should
424 retract the report, with the language suggested by Mr. Sullivan about referring it to the Ethics
425 Commission. We all clear? All right. All in Favor of that say aye.

426 **All Commissioners:** Aye.

427 **Rick Cofer:** Opposed? (To Sullivan) So you're not even going to vote for your own thing?

428 **Dave Sullivan:** No, I did.

429 **Rick Cofer:** Wait, but I thought we were adopting his (Commissioner Kazi) thing.

430 **Dave Sullivan:** I'm not objecting to his change.

431 **Rick Cofer:** Oh, oh, okay. So we all agreed to all of this, and we didn't need to think through it?

432 **Dave Sullivan:** Right.

433 **Rick Cofer:** Okay. Very good. All right. And I know, I know, Mr. Whellan has some suggestions. There
434 are a couple of 'wordsmithing' recommendations I'd like to add into this. Mr. Sullivan, do you have the
435 redlined copy up there? This might make your life easier. Okay. Very good. The first "Whereas" clause
436 that has redlined items, what I'd like to do is add in the part that says "ZWAC agenda items as TDS
437 agenda items AND agenda items of interest to TDS." So that the only redlined part that we'd be adding
438 back in would be the part that starts with quotation mark, quote "TDS agenda items and". And the
439 reason for that is that when I was wordsmithing this document I was under the mistaken understanding
440 that the first page of the Auditor's report was a cover letter, but that first page is actually part of the
441 Auditor's report and that is a fair characterization of the Auditor's report; it did say "TDS agenda items"
442 on that first page. I was mistaken. And then I'd also like to clarify the final "Whereas" clause with
443 redlining which is about Commissioner Ochoa's employment. I don't know, and I don't think anyone on
444 this Commission knows, or could say with metaphysical certitude, if Ms. Ochoa Gonzalez was asked to
445 resign, or was terminated, left her employment voluntarily, non-voluntarily, if it was a direct
446 consequence of media coverage of the report, or because of the report, because we're not a fact finding
447 body, I mean just genuinely, but I do think it is fair to say that "after the release of the Auditor's report
448 and subsequent media coverage Commissioner Ochoa's private employment ended." And I realize that's
449 kind of wimpy, and it's the passive voice, but I think it's at least accurate. So I would ask that we make
450 those two modifications. And the reason I'm not adding in the language about direct economic benefit is
451 basically for the same reason that you identified, Mr. Whellan, which is, I genuinely don't know what
452 that means. I mean, it's a legal term, and I just, I have no idea what it means, now, in the context of the
453 City based on this report. Does that make sense? Okay. Well, very good. All right, so with that, we're in
454 line to adopt the motion from Mr. Sullivan and seconded by Commissioner Gattuso, I believe. Who
455 made the second on your motion?

456 **Cathy Gattuso:** I did.

457 **Rick Cofer:** Okay, Commissioner Gattuso. And this is to adopt the resolution with the two redlined
458 changes that I have just articulated, and including the first and second "Therefore" clauses, not the
459 second, and replacing the second with the language that Mr. Sullivan used earlier, which if you could
460 repeat it here so that it's in the record and our staff liaison, Mr. Sullivan, knows what you're going at.

461 **Dave Sullivan:** All right, so let's be clear about this, the first "Therefore be it resolved" remains. That's
462 that we dispute the City Auditor's conclusions.

463 **Rick Cofer:** Correct.

464 **Dave Sullivan:** The second one is removed.

465 **Rick Cofer:** Correct.

466 **Dave Sullivan:** The third one that's printed there remains.

467 **Rick Cofer:** Correct.

468 **Dave Sullivan:** And then we add one that says "Be it further resolved, the ZWAC recommends that the
469 Ethics Commission hear the issues described in this Resolution." And I can... we can wordsmith... I mean,
470 I would appreciate it if we got help from the City about wordsmithing that, if my intent is clear that we
471 do hope that at their July meeting the Ethics Commission would take up the question of "Are the
472 definition, are the ... was there a substantial interest and were there direct economic consequences?"
473 because we've laid out an argument in our Resolution stating our view of those questions.

474 **Sabine Romero:** Chair Cofer, Sabine Romero with the Law Department. Just from an open meetings
475 standpoint, we wanted, we as Staff, wanted to express to you that the recommendation posting item is
476 traditionally used for the Boards to exercise their jurisdiction of advising Council, as opposed to
477 communicating sort of laterally to other Boards. So while we can't quickly find something immediately
478 on point for you, the safest thing may be to limit your recommendation to what you would like Council
479 to do and separate your motion, your communication to the Ethics Review Commission as a separate
480 agenda item. And then as far as your hope that the Ethics Review Commission would answer some
481 specific questions, I think Austin Kaplan did a nice job of going over what their options are, so I'm not
482 sure, again, we're not able to say definitively on such a short timeline, we would not be certain whether
483 the Ethics Review Commission could answer your questions per se. They have certain motions that they
484 are given jurisdiction over in the Code; and of course I'm deferential to Mr. Kaplan if he'd like to add to
485 those comments.

486 **Rick Cofer:** Would it be possible for that language then to be... "The Zero Waste Advisory Commission
487 recommends that the Austin City Council refer the Auditor's Integrity Report number whatever, to the
488 Ethics Review Commission for appropriate action and recommendations"?

489 **Sabine Romero:** I would certainly say you have room to make recommendations to Council regarding
490 anything that's within your jurisdiction, and functions of Boards are a generally understood topic for the
491 Boards, so, at a minimum, I would say...

492 **Dave Sullivan:** And I would say, though, I did, I do believe that I was - my recommendation follows the
493 way I interpreted your testimony.

494 **Rick Cofer:** Well I think what Ms. Romero is saying, is that we can't resolve to recommend something...

495 **Dave Sullivan:** No, no, no, I get that. I get that. I get that. But the point about the expertise of the Ethics
496 Review Commission versus the ZWAC on deciding questions such as the interpretation of Section 7, 2,
497 2.7.21, or 2.1, 2721, so...

498 **Sabine Romero:** I see what you're saying.

499 **Dave Sullivan:** So, that's an example. It was from your statements that made me think that we should
500 refer this to the Ethics Commission and if the route to do that is to refer it to the City Council, and ask
501 them to send it, then that's the remedy.

502 **Sabine Romero:** Thank you.

503 **Rick Cofer:** Thank you very much. All right. So, she does bring up a good point. So, how about we make
504 that final "Be it therefore resolved..."

505 **Dave Sullivan:** That "The ZWAC requests that the City Council refer it to the Ethics", is it the Ethics
506 Review Commission, is that the exact term? "A question of making findings with regard to the
507 statements made in the ZWAC's Resolution." I mean, our Resolution is explicit about the questions. And
508 so the question would be for the Ethics Review Commission to grade our homework.

509 **Rick Cofer:** Are all of the Commission members clear on what the motion is that we're voting on? All
510 right, we're now in line for discussion. Discussion? I just want to say two things, really briefly. One to the
511 City Auditor, and the City Auditor's office. I did want to make an apology. At our May 14, 2014 meeting I
512 was under the mistaken understanding that you and your office had been invited by the Director. It
513 came to my attention later that that was not the case, and so I apologize for any language that
514 insinuated anything about y'all's absence at that meeting. And I very much, and I think we all appreciate
515 your presence here tonight. And then two, if you take a step back from the legal perspectives, and all
516 the arguing on this, I think here's the sort of fundamental problem what happened here. It was sort of
517 like a nuclear bomb for a fly. And this was the type of action that was outside of the normal course for
518 the City. And that's why a lot of people are riled up; because it's novel, and it's new and it's different.
519 And as a consequence of what had happened several lives were affected in a *really* significant way.
520 Materially, personally, emotionally. It was to some folks, especially Daniella Ochoa Gonzalez and her
521 family, a type of trauma. And that's why you see the type of response, that's why you see the type of
522 response here tonight. And I think that's why, maybe it would make more sense to the folks that are
523 involved here, why there's been such scrutiny of this report. Does that make sense? Okay. All right with
524 that, any further discussion?

525 **Fayez Kazi:** I have a question. Are we expecting the Ethics Review Commission to make a motion, to file
526 a complaint to themselves, and then go through a preliminary, and final? Is that what we're expecting?

527 **Rick Cofer:** I don't feel like that's what we're asking for.

528 **Fayez Kazi:** Okay.

529 **Rick Cofer:** It's not my expectation.

530 **Jeffrey Paine:** I think that's all they can do, though, right? So... if we're expecting them to do anything, I
531 think we're expecting them to do that.

532 **Dave Sullivan:** And also I would expect that we might send some representative to their meeting.

533 **Rick Cofer:** Yes. I think that would be a good idea. And so Mr. Kaplan, if you could, or if your Staff liaison
534 could make sure that someone, or have your people talk with our people so that we know when the
535 meeting is.

536 **Austin Kaplan:** I feel your pain. Sitting in the back trying to work through how we can possibly help
537 answer your questions at the Ethics Review Commission given our sort of limited scope of powers and
538 jurisdiction. One thing that comes to mind that we could do is bring an item up for discussion amongst
539 the Commissioners with respect to the City Code Section that talks about Conflicts of Interest. Perhaps
540 in the course of that discussion we can recommend some language that will clarify this for everyone
541 who's having a difficult time sort of wrestling with how to apply this. So one of the powers that we have,
542 if I recall, and you know I haven't looked at this very recently so I'm speaking off the top of my head
543 here so I might be getting it a little bit fuzzy ... but is to make recommendations to Council on any City
544 Code provisions that have to do with ethics and campaign finance. This would have to do with Ethics,
545 Conflicts of Interest. We could bring it up on our agenda, discuss it, and perhaps take action to
546 recommend to Council some changes to that provision. And certainly, if any, or all of you, would like to,
547 well I guess not all of you because then we'd have an open meetings problem, but if less than a quorum
548 of you would like to come and discuss with the Ethics Review Commission your feelings on that Code
549 provision, we would of course be happy to have you. Is that helpful at all?

550 **Rick Cofer:** I think that is very helpful. And I think, honestly, Austin, the nut of the issue is a lot of the
551 folks who serve on these boards and commissions have gone through the training and they might
552 intellectually understand the conflict of interest, or direct economic benefit, but when the rubber hits
553 the road, it's not that clear. And, you know, in my seven years on this Commission I've certainly seen
554 numbers, and numbers, and numbers of instances where maybe I thought people were voting on stuff
555 they shouldn't have been voting on, but they didn't. And my understanding is that whether or not to
556 recuse it up the discretion of the individual member. And clearly different members have felt different
557 ways about whether or not to recuse. Sometimes on the same item, sometimes on items where the
558 conflicts are functionally the same. And it really would be nice to have clarification. But we're not the
559 rodeo for that. It's either y'all or someone else.

560 **Austin Kaplan:** Right. And the Ethics Commission is obviously very interested in making the rules as
561 clear as possible. I think it's pretty, it's become pretty clear with this process that more can be done with
562 these sections, and perhaps what we can do is agendize this at our group for discussion and potentially
563 suggest action to Council. We can't make changes to the code, of course. Council can do it, but we can
564 make suggestions to Council on those issues. And certainly if we put it on the agenda then we can talk
565 about it. That's my understanding of it at least.

566 **Rick Cofer:** Thank you, sir. Further discussion? The specific language, Mr. Sullivan, that Commissioner
567 Sullivan provided states... Can you read it? I can't read your handwriting, I'm sorry.

568 **Dave Sullivan:** Oh come on. All right, "The ZWAC asks the City Council to send to the Ethics Review
569 Commission, to the, asks..." All right, "the ZWAC asks the City Council to ask the Ethics Review

570 Commission to assess the ZWAC Resolution on the City Auditor Integrity Unit regarding a former ZWAC
571 Commissioner.” So that is the, that is this Resolution.

572 **Rick Cofer:** That’s what we’re voting on?

573 **Dave Sullivan:** Right.

574 **Rick Cofer:** All right. Any further discussion? Hearing none, all those in favor please say aye.

575 **All Commissioners:** Aye.

576 **Rick Cofer:** Any opposed? Any abstaining? All six Commissioners present vote aye unanimously. Which
577 would be all six current members of the Commission. Thank you all for your patience and tolerance. And
578 thank you for your attendance.

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