



July 31, 2014

## Former commissioner seeks to change city policies in ethics cases

By Elizabeth Pagano

Former **Zero Waste Advisory Commissioner Daniela Ochoa Gonzalez**, who resigned after accusations of conflict-of-interest violations, is asking the city to reconsider how it does business.

Her situation could change how the city deals with ethics complaints against people who serve on its many boards and commissions.

The **Ethics Review Commission** took a first step toward changing that process before public testimony about Gonzalez's situation even began Tuesday night. Commissioners formed a working group that will work in conjunction with the **City Auditor's Office** and the **Law Department** to review how the city handles conflict-of-interest complaints.

Changing the process would be a good thing, according to some of Gonzalez's supporters, who warn that the current state of affairs, which allows for anonymous complaints against commissioners, leaves (volunteer) commissioners at risk with little recourse to combat complaints that go through the auditor's office.

That was made abundantly clear at the **Ethics Review Commission** meeting, where commissioners struggled to address Gonzalez's situation. However, several commissioners were vocally irritated and concerned with the process, the fact that they did not have all of the information associated with the complaint, and the fact that the complaint did not go through their commission left them unable to proceed.

**Chair Austin Kaplan** said that the commission had no real way to clear someone's name under city code. Kaplan remarked that it "certainly seemed inefficient" to have two separate processes for ethics complaints against commissioners.

"It seems to me to make sense to have us be the process to have complaints against those people, and not have an anonymous option... People are fearful when they have to actually make a public complaint, and I don't actually think that is a bad thing," said Kaplan.

A brief presentation from the auditor's office stuck mostly to general practices of the City Auditor's **Integrity Unit**. **Chief of Investigations Jason Hadavi** explained that their office did not determine guilt. He said that their process was to issue a report, if warranted, and first send a copy to the appropriate "decision maker," not the party that was being investigated.

In this case, the auditor's office identified **Council Member Mike Martinez** as the "decision maker," as he had appointed Gonzalez to serve on ZWAC. Gonzalez's attorney argued that the relevant decision maker should have been the Ethics Review Commission.

Gonzalez told the commission that Martinez's office asked her to resign before she had read the report. Though she managed to read through the report before making the call, she now regrets her decision to resign.

"What I felt was a lot of fear. I don't feel fear anymore," said Gonzalez.

Gonzalez believes that she was born to be an environmental steward, and has worked in that capacity until the complaints against her made that impossible, she said.

"It's like a stain," said Gonzalez, who has lost her job at the University of Texas over the allegations in addition to losing her position on the **Zero Waste Advisory Commission**. She has not had a chance to formally respond to the charges against her.

A representative from Martinez's office explained that this was the first time that they had dealt with a conflict of interest report from the auditor about one of their appointees, and they had no set practice in place to deal with it.

In a statement to the *Austin Monitor*, Martinez explained his position.

"I wholly support the Ethics Review Commission's request to work with City Legal and the Auditor's office to determine a way to deal with ethics complaints in a transparent manner that allows our Board and Commission members the ability to respond to their accusers," wrote Martinez. "I understand there are some protections the Auditor's office has under state statute to exempt their documents from Public Information requests but I believe we need to find a better policy that protects everyone, especially those unfairly accused."

"Had we done nothing after the completion of the investigation, we would have been accused of having an appointee who had been cited for being in violation of our city code of ethics. Since we asked Ms. Ochoa to voluntarily step down, we are now at the ire of those who believe she was treated unfairly. This clearly is a situation that could have been handled much better by our Auditor and we will look for corrective measures until they are in place," said Martinez.

Gonzalez told the commission that she had voluntarily taken the city's ethics training three times, and had even requested a written copy of the guidelines to better understand them.

**Stacy Guidry**, who is a board member of the **Central Texas Zero Waste Alliance** was one of many that came to Gonzalez's defense.

"I have known Daniela for many years, and she is possibly one of the most honest, most ethical people I have ever met," said Guidry. "This process has really shined a light on some very troubling issues. I really feel like if we want to see people from our community serve in a volunteer, unpaid capacity, to serve the city of Austin (as) experts

in their fields, we can't treat them like this. It's wrong.”

“This has allowed for a smear campaign against Daniela. She is a young professional, she's also a young mother and she was robbed of livelihood when she was fired because of this,” said Guidry.

**Gail Vittori**, who served as the founding chair of the **Solid Waste Advisory Commission** (now renamed ZWAC) pointed out that the commission depends on having members that are active members of the community, which is not an inherent conflict of interest.

In this case, Gonzalez had a contract with **Texas Disposal Systems** to provide educational training about composting in schools. Her defenders argue that this contract and her votes on the **Universal Recycling Ordinance, Special Events Ordinance** and discussion (but no vote) on the **Austin Energy** waste disposal contract did not give her a direct financial benefit.

The April 18 Auditor's report states that evidence gathered through their investigation “substantiated the allegation that Ochoa Gonzalez violated the City's conflict of interest requirements” by contracting with Texas Disposal Systems after being appointed to the Zero Waste Advisory Commission, not disclosing that relationship, and participating on commission items involving Texas Disposal Systems.

**Graves Dougherty Hearon & Moody** attorney **Michael Whellan**, who was representing TDS, questioned the auditor's authority to determine conflict of interest under city code, charter or state statutes, without a public process.

“Every member of a board and commission is at risk, given the auditor's interpretation of 'direct economic benefit',” said Whellan. “If the city auditor is allowed to make decisions that are policy related, and in his web capture commissioners – because it's such a large web – then you are going to find that no amount of calls to the **Integrity Officer** would have saved Daniela, or will save you or any other board member or commissioner.”

Gonzalez has also received support from her former fellow ZWAC commissioners, who passed a unanimous resolution in June disputing the Auditor's report and recommending that City Council change the reporting, investigatory and ruling process of the city's Auditor's Office to prevent similar actions against other commissioners in the future.

Texas Disposal Systems owner **Bob Gregory** told the commission that he was convinced that Gonzalez was innocent of the charges and had been targeted because she was seen as an “easy mark” and a way to get at TDS.

“It's appalling that this could happen,” said Gregory. “I will take whatever resources I can muster to stand up for Daniela. She is an innocent person here who has been wronged.”