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Thursday, October 16, 2014 by Elizabeth Pagano

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Council to do double-take on ethics complaints

Today's City Council agenda features two items that deal with the city's conflict-of-interest policy as it applies to those who serve on the city's many volunteer boards and commissions.

The resolutions — one sponsored by Council Member Mike Martinez, and one sponsored by Council Member Bill Spelman — were sparked by recent allegations against former Zero Waste Advisory Commissioner Danelia Ochoa Gonzalez. Those allegations led Gonzalez to resign from the commission and caused her to lose her job.

Because the allegations went through the Office of the City Auditor — which allows anonymous complaints — instead of the Ethics Review Commission, Gonzalez could not confront her accuser and had little recourse in disputing the allegations.

In light of the case, Zero Waste Advisory Commissioners and Gonzalez's supporters called for reform to the current system. Having heard the call, Council will now consider two separate resolutions to address the problem today.

At Tuesday's Council work session, Council Member Laura Morrison pointed out that there may be overlap between the two resolutions. She said that she was particularly concerned with a lack of context in Spelman's resolution, which could be handed to another City Council for implementation without a clear explanation.

Morrison co-sponsored the Martinez resolution and explained that it was intended to initiate a process that would figure out how to develop a clearer, more transparent system for conflict-of-interest allegations against volunteer commissioners and board members. (See the *Austin Monitor*, Sept. 30 (<http://www.austinmonitor.com/stories/2014/09/ethics-complaints-get-clearer-path/>).

She expressed concern that the Spelman resolution could pre-empt Martinez's resolution by changing the code outright. Spelman pointed out that his resolution was not an ordinance, also initiated an amendment process, and did not make immediate changes to the code.

"We realize there are going to be ongoing conversations between the Ethics Review Commission and the Auditor's staff in respect to who should do what, with respect to investigations. This is in addition to that particular conversation," said Spelman.

Spelman said that, currently, the City Auditor's auditing functions were codified in city code, but its investigations were not. Investigations are governed by the Office of the Inspector General, explained Spelman. He was not planning to change that process, but just commit it to city code.

In terms of how the Office of the City Auditor would handle boards and commissions conflict-of-interest allegations, Spelman said his amendment would "get the auditor out of that business."

Spelman's proposal would draw a thick line between investigations of city employees, which would be handled by the auditor's office, and of boards and commissions members, which would be handled by the Ethics Review Commission. Spelman said he was in favor of Martinez's resolution as well, but that his was a "market signal" that would inform the larger conversation the Martinez resolution would initiate.

"They would no longer be doing investigations against board and commissions members," said Spelman.

Getting into the details of Spelman's resolution, Mayor Lee Leffingwell wondered if there could be a larger legal question in allowing the Office of the City Auditor to hire an attorney or place certain requirements on the city manager, which he worried could be in conflict with the city charter.

"It seems to me that there are a lot of issues here. Perhaps we don't need to be in a rush to push this through," said Leffingwell.

Assistant City Attorney Deborah Thomas spoke to the issue of allowing the auditor's office to hire an attorney, and pointed out that the city charter explicitly identifies the city attorney as that office's legal adviser. Thomas noted that the city attorney could and does hire outside counsel, but in those cases is responsible for that outside counsel.

"The city attorney is the legal counsel for the city. If the auditor did hire an attorney — it just raises a multitude of questions," said Thomas.

Thomas said it would be unclear how to reconcile conflicting opinions between two sets of legal counsel, for example, and that was why the charter stated there should be one legal representative for the city, which is the city attorney.

Spelman said he understood the point, but it was an issue about which “reasonable people could disagree.”

In an interview with the *Monitor*, Spelman pointed out that there was room for conflict in the current setup as well, with city legal advising both the auditor and the city manager’s office.

“If you’ve got one arm of the city investigating a different arm of the city, then what’s the city attorney’s job?” he said. “Is it to represent the person being investigated or the person doing the investigation?”

City Attorney Karen Kennard addressed this in the work session, saying it wasn’t uncharted territory. She recommended that part be “stricken from the resolution.”

“We don’t think there is an issue right now,” said Kennard.

“We are very comfortable hiring outside counsel when there is a legal conflict where we are disqualified from providing advice to two parties where the outcomes may not be in concert with each other,” said Kennard. “We do that very frequently.”

Kennard noted that they had hired independent, outside legal counsel for the auditor’s office in the past, and would do so in the future if there were a conflict.

Spelman asked that the city attorney’s office speak with the auditor’s office to make sure that the current system was adequate. He promised that, if both parties agreed that it was, they “wouldn’t hear another word” from him.

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City of Austin Ethics Review Commission (<http://www.austinmonitor.com/stories/tag/city-of-austin-ethics-review-commission/>): The Ethics Review Commission is charged with review of, among other issues, ethics complaints leveled against City of Austin boards and commission members. They meet quarterly.

Office of the City Auditor (<http://www.austinmonitor.com/stories/tag/office-city-auditor/>): This city department is created by the city's charter in order to establish and ensure "accountability transparency, and a culture of continuous improvement in city operations."

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