



GRAVES DOUGHERTY HEARON & MOODY

A PROFESSIONAL CORPORATION

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October 20, 2014

Austin Kaplan,
Chair of the Ethics Review Commission
The Cook Law Firm
919 Congress Avenue, Suite 1145
Austin, Texas 78701

RE: Request for Ethics Review Commission to Condemn the City Auditor's April 18, 2014 "Report on Allegations Involving a Zero Waste Advisory Commissioner" for Exceeding the Auditor's Authority as established in the City of Austin's Charter and Code.

Dear Mr. Kaplan:

On behalf of Texas Disposal Systems, we are requesting that the Ethics Review Commission set the record straight by passing a resolution, which explicitly invalidates the City Auditor's Report based on the invalid conclusions that were reached and the failure of the Auditor to act within his authority. As reported in the attached October 18, 2014 Austin American Statesman article, the Auditor's representative continues to publicly state that the Auditor's office was correct in its conclusions and the process that it followed, despite the City Council's rebuke, which is why we are asking the Ethics Review Commission to invalidate the City Auditor's Report.

Specifically, the City Code and City Charter do not allow the City Auditor to reach unequivocal conclusions concerning whether a Board or Commission member has violated conflict of interest rules set forth in the City Code at sections 2-7-63 and 2-7-64. The City Council recognized this when it stated in Resolution No. 20141016-024 that passed on Thursday, October 16, 2014 (attached) that "The Ethics Review Commission under authorization of the City Code, has *sole* jurisdiction to rule on sworn complaints in violations of the Code of Ethics." (emphasis implied).

TDS further requests that the Ethics Review Commission find that the City Auditor failed to follow the process explicitly set forth in the City Code for conflict of interest allegations. *See* City Council Resolution and page 1-2 ("The City Auditor's Report concluded that Daniela Ochoa-Gonzalez violated conflict of interest provisions of the City Code without following the Ethics Review Commission process expressly established in City Code for these allegations.").

We are not asking for a hearing on a sworn complaint, instead we are asking the Ethics Review Commission to do what is well within its authority: pass a resolution emphasizing the importance the Ethics Review Commission's process for conflict of interest allegations.

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We implore you to post this on the October 28, 2014 Ethics Review Commission agenda for the purpose of discussion and adoption of a resolution to invalidate the unauthorized actions that were taken by the City Auditor in his Report and to affirm the importance of following the Ethics Review Commission process established in the City Code protecting individual rights.

Respectfully submitted,

GRAVES, DOUGHERTY, HEARON & MOODY, P.C.

By: 

Michael J. Whellan

Cc: Ethics Review Commissioners

Enclosures

MJW/cll



81°

Scattered Clouds

H: 81° L: 61°

Weather | Traffic

Monday, October 20, 2014

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Former Austin advisory panel member cleared of wrongdoing

Posted: 6:18 p.m. Friday, Oct. 17, 2014

0 0 0 New

By Sarah Coppola - American-Statesman Staff

advertisement

A city of Austin commission member who was accused of conflict-of-interest violations in April and lost her job over the allegations has been cleared of wrongdoing.

The Austin City Council unanimously passed a resolution Thursday saying that Daniela Ochoa Gonzalez, who served on the Zero Waste Advisory Commission, did nothing wrong and that city auditor Ken Mory failed to follow proper procedures when his office investigated Ochoa then concluded in a public report that she was guilty.

The resolution thanked Ochoa for her service and her commitment to helping Austin reach its zero waste goal

In this Section

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UT, Seton reach agreement linking medical school, clinical care

Greg Abbott, Dan Patrick hold commanding leads in latest poll

Central Texas man tests negative for Ebola; more tests pending

The Woodlands hits 40 with much to celebrate and things to worry about

of dramatically reducing the trash it sends to landfills by 2040.

“I am very grateful that the City Council was receptive and willing to listen,” Ochoa said Friday. “I was starting to lose faith, but ultimately, justice prevailed.”

Mory, the auditor, is retiring soon; he was told by the City Council at a recent job evaluation that he would not be reappointed.

The zero waste commission reviews policies about trash and recycling for the City Council. Its members are not paid.

In an April report summarizing his office’s investigation into a complaint about Ochoa, Mory wrote that Ochoa violated ethics rules by discussing and voting on commission items that affected a company she did contract work for, and by failing to disclose the business relationship to the city.

Mory’s report said Ochoa was appointed to the zero waste board (by City Council Member Mike Martinez) in December 2012 and soon after, she signed a consulting agreement with Texas Disposal Systems, a local landfill and recycling company that sometimes has issues before the zero waste board. (Ochoa owns SOLURSO, a small company that offers consulting services about recycling and composting.)

When Mory released those findings in April, Ochoa told the American-Statesman she had done nothing wrong and would explain her position in more detail to the city’s Ethics Review Commission. That commission took no action against her.

County on Friday

Driver killed in early morning crash on TX 71 identified

Cool, cloudy Sunday ahead for Central Texas

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At the time, Ochoa had a position at the University of Texas to help coordinate and improve its recycling and composting efforts; she was asked to resign after the report came out and voluntarily did so. She was also asked to resign from the city's zero waste board by an aide to Martinez. (Martinez has since apologized and sponsored Thursday's resolution.)

TDS and Ochoa have both refuted Mory's claims, saying that none of the items she voted on directly benefited TDS; the auditor never gave Ochoa a chance to respond to the report before releasing it publicly; and that the report failed to show how Ochoa's conduct constituted a conflict of interest.

Mory also overstepped his authority by drawing conclusions about Ochoa's guilt rather than handing over his fact-finding and investigative work to the ethics commission and letting that group decide if Ochoa had a conflict of interest, said Michael Whellan, an attorney for Texas Disposal Systems.

Mory didn't return phone calls Friday.

Jason Hadavi, the chief of investigations in Mory's office, said the auditors followed standard procedures for the Ochoa investigation, and "before and after we issued the report, we reviewed the evidence collected and determined it was sufficient to support our conclusions."

He said the auditor's office is working with the Ethics Review Commission to clarify rules about how to handle conflict-of-interest complaints in the future.

RESOLUTION NO. 20141016-024

WHEREAS, Daniela Ochoa Gonzalez, during part of her tenure as a volunteer Commissioner at the Zero Waste Advisory Commission (ZWAC), also worked as an independent contractor for Texas Disposal Systems (TDS) helping schools to reduce waste; and

WHEREAS, the Integrity Unit of the Office of the City Auditor issued a report on April 18, 2014 entitled "Report on Allegations Involving a Zero Waste Advisory Commissioner," which concluded that ZWAC member Daniela Ochoa Gonzalez "violated the conflict of interest requirements stipulated by the City of Austin" in City Code Sections 2-7-63 (Prohibition on Conflict of Interest) and 2-7-64 (Disclosure of Conflict of Interest); and

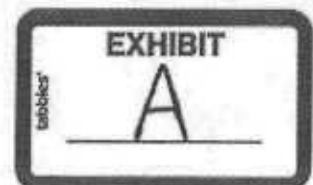
WHEREAS, prior to the publication of the City Auditor's Report, Daniela Ochoa Gonzalez was not given an opportunity to make a formal response to the claims of the City Auditor's Report; and

WHEREAS, the Office of the City Auditor plays an important role in investigating whether conflict of interest allegations may require further review by the City's Ethics Review Commission; and

WHEREAS, the Office of the City Auditor typically handles internal departmental investigations related to City employees; and

WHEREAS, the Ethics Review Commission, under authorization by City Code, has sole jurisdiction to rule on sworn complaints alleging violations of the Code of Ethics; and

WHEREAS, the City Auditor's Report concluded that Daniela Ochoa Gonzalez violated conflict of interest provisions of City Code without following



the Ethics Review Commission process expressly established in City Code for these allegations; and

WHEREAS, the Ethics Review Commission during two separate meetings, on April 29, 2014 and July 29, 2014, considered the allegations in the City Auditor's Report concerning Daniela Ochoa Gonzalez and decided not to take action; and

WHEREAS, City Code Section 2-7-2(1) states that "Affected means in the case of a person, entity or property, means reasonably likely to be subject to direct economic effect or consequence, either positive or negative, as a result of the vote or decision in question;" and

WHEREAS, City Code Section 2-7-2(1) further states that "Affected does not include those persons or entities who are subject to an indirect or secondary effect from official action;" and

WHEREAS, the City Auditor's Report characterized ZWAC agenda items as "TDS agenda items," without any explanation as to how these agenda items were "reasonably likely to be subject to a direct economic effect" on Texas Disposal Systems, and, therefore, the Report failed to demonstrate how the alleged conduct might constitute a conflict of interest; and

WHEREAS, as a result of this matter, the Office of the City Auditor and the Ethics Review Commission are collaborating in order to propose an improved process for handling conflict of interest allegations; and

WHEREAS, concerns from the community have been voiced to City Council in which opinions have been presented concerning the process followed by the City Auditor, the failure of the City Auditor to disclose evidence, the perceived

flaws in the Report and the possible chilling effects that similar reports could have on citizen participation; and

WHEREAS, it is possible that reports containing determinations of guilt can result in damage to livelihoods and reputations; and

WHEREAS, the City Council relies heavily on the recommendations of the citizen volunteers who participate on our Boards and Commissions and the critical role they have in our community; and

WHEREAS, our citizens provide expertise and a commitment to the policy areas covered by their respective Boards and Commissions; and

WHEREAS, it is critical that the integrity of the Boards and Commissions process is maintained; and

WHEREAS, the City Council believes the Ethics Review Commission process for conflict of interest allegations against Boards and Commissions members must be followed; **NOW, THEREFORE,**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

The City Clerk and City Auditor are directed to coordinate meetings between the Ethics Review Commission working group and the Integrity Unit of the Office of the City Auditor to discuss process clarification and improvement for conflict of interest allegations which the City Auditor receives against Boards and Commissions members, and results are to be reported back to Council within 90 days.

BE IT FURTHER RESOLVED:

Council objects to the failure to follow the Ethics Review Commission process and does not accept the City Auditor's "Report on Allegations Involving a Zero Waste Advisory Commissioner," which concerned Daniela Ochoa Gonzalez.

BE IT FURTHER RESOLVED:

Council directs that any copy, electronic or otherwise, of the City Auditor's "Report on Allegations Involving a Zero Waste Advisory Commissioner" or any reference to the report shall contain on the first page a conspicuous notice in bold type which shall read: "Notice: This Report has not been accepted by the Austin City Council and is subject to Resolution No. 20141016-024, passed on October 16, 2014."

BE IT FURTHER RESOLVED:

The City Auditor is not prohibited from filing sworn complaints with the Office of the City Clerk and following the Ethics Review Commission process outlined in City Code for allegations concerning violations of City Code's conflict of interest provisions.

BE IT FURTHER RESOLVED:

Council thanks Daniela Ochoa Gonzalez for her service to our community on the Zero Waste Advisory Commission and her commitment to helping Austin move toward its Zero Waste goals.

BE IT FURTHER RESOLVED:

Council apologizes to Daniela Ochoa Gonzalez, members of the Zero Waste Advisory Commission and our community for not following the Ethics Review Commission process for Boards and Commissions members to address conflict of interest allegations investigated by the City Auditor.

ADOPTED: October 16, 2014 **ATTEST:** _____

Jannette S. Goodall
City Clerk