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Friday, November 14, 2014 by Kara Nuzback

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## Ethics panel wants last word on complaint inquiries

Austin's Ethics Review Commission voted unanimously this week to recommend City Council ensure the commission has the last word in ethical complaints against the mayor, members of City Council and all of its appointees, city executives, and assistant city attorneys.

“The main issue is the lack of due process,” said commission Vice Chair Peter Einhorn.

The discussion stems from a City Auditor investigation and final report condemning former Zero Waste Advisory Commissioner Daniela Ochoa Gonzalez for allegedly violating conflict of interest regulations. The auditor claimed Gonzalez discussed and voted on items related to Texas Disposal Systems at three separate meetings in 2013, while her company, Sustainable Urban Solutions, was working under contract with Texas Disposal. Gonzalez ultimately resigned from the commission and lost her job over the allegations.

Einhorn said the auditor's office provided the ERC with its report on Ochoa Gonzalez, but the report lacked detail. The ERC never filed charges against Ochoa Gonzalez. In October, Council members voted to imprint on the auditor's report a note indicating the Council's rejection of its conclusions.

Austin's Chief of Investigations Jason Hadavi, who attended the ERC meeting Wednesday night, said the auditor's office agrees to create more detailed reports for its investigations.

Graves Dougherty Hearon & Moody attorney Michael Whalen also attended the meeting, representing Texas Disposal Systems. He asked the commission to clarify that the auditor should not make decisions about anonymous complaints like the one filed against Ochoa Gonzalez.

"I think anonymous complaints are our most vulnerable area," he said. He added anonymous allegations allow the greatest opportunity for abuse of power by the auditor's office.

The ERC's recommendation urges Council to require the auditor's office provide more detailed reports so the ERC can use the report as a basis for a preliminary hearing.

The recommendation allows anonymous complaints, but notes, "The Commission as currently established does not have the staff or resources to adequately investigate anonymous (and often unsubstantiated) complaints."

Einhorn said, "Anonymous complaints would never be investigated by the auditor's office under this provision."

While the ERC's recommendation would allow the auditor's office to investigate complaints filed against city executives and assistant city attorneys, the accused would have an opportunity to review a report of the auditor's investigation and file a response. The entire report, including the response, would then be sent to the ERC for a final determination.

Einhorn said the ERC would retain sole jurisdiction over sworn complaints alleging code of ethics violations filed against Council members, their appointees and their direct staff.

He added the ERC also currently has jurisdiction over complaints filed against rank and file employees of the city, but it has never exercised that power because its members were not aware of it.

“We didn’t know we had the jurisdiction,” he said.

He added the number of rank and file employee complaints would overburden the ERC, and it does not need jurisdiction as long as the accused receive due process from the investigating body — typically the City Auditor or the human resources department.

In its recommendation, the ERC calls the jurisdiction over city staff, who are already protected by a civil service process or labor agreement, unnecessary.

“The City Auditor and human resources department are better equipped to investigate such allegations and the employees have other due process protections in place,” the recommendation states.

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#### KEY PLAYERS & TOPICS IN THIS ARTICLE

**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.

**Graves Dougherty Hearon & Moody** (<http://www.austinmonitor.com/stories/tag/graves-dougherty-hearon-moody/>): Local law firm with practice areas that include Real Estate issues. GDHM is a donor to the parent organization of the Austin Monitor.

**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.”

**Texas Disposal Systems (TDS)** (<http://www.austinmonitor.com/stories/tag/texas-disposal-systems-tds/>)

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