

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 ~~Zero Waste Advisory Commission (ZWAC)~~ 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 ~~hear and~~ 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 TDS 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 provides a public venue process for conflict of interest allegations against Boards and Commissions members must be heard 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 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 ~~providing a public forum for~~ our following the Ethics Review Commission process for Boards and Commissions members to address conflict of interest allegations investigated by the City Auditor.

~~— This Resolution, with the exception of the 90-day reporting requirement, shall take effect on the day following execution by Daniela Ochoa Gonzalez of the City's Release of Claims.~~

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

Jannette S. Goodall
City Clerk