

Late Backup

Jannette —

See small amendments, p. 11

— Spelman

Updated Resolution #33

Council Member Spelman

October 16, 2014

KEY:

BOLD: additions based on feedback from Tuesday's worksession.

~~Strikethrough:~~ removed since Tuesday's worksession.

Underlined: the proposed changes to code from the original resolution.

RESOLUTION NO.

WHEREAS, in addition to conducting financial and performance audits of City of Austin operations, the Office of the City Auditor also investigates allegations of theft, misuse of City resources, and other forms of fraud, waste, and abuse by City employees and within City agencies; and

WHEREAS, the Auditor's financial and performance audits are organized to meet generally accepted government auditing standards, collectively referred to as the "yellow book"; and

WHEREAS, these auditing standards are incorporated into the Auditor's standard operating procedures and into City of Austin Code; and

WHEREAS, the Auditor's investigations are likewise organized to meet quality standards for investigations established by the Council of the Inspectors General on Integrity and Efficiency; and

WHEREAS, these investigative standards are incorporated into the Auditor's standard operating procedures but not fully incorporated into the City of Austin Code; and

WHEREAS, fair and accurate investigations often require that the investigators have access to legal advice that the investigators themselves, the accused parties, and the public may all reasonably regard as unconflicted; and

WHEREAS, transparency of the complaint, investigative, and judgment processes is important to establishing and maintain trusting in government, among both the public and the City's employees; and

WHEREAS, the City of Austin's ethics structure allows for significant overlap in investigative responsibility, such that the City Auditor, the Ethics Review Commission, and the City Manager all retain authority to conduct investigations of alleged ethical lapses; and

WHEREAS, recent ethics complaints involving volunteer board or commission members have created concerns about the process for handling those complaints; and

WHEREAS, the City does not have a documented process for dealing with allegations of ethical violations on the part of elected officials or the City Auditor; and

WHEREAS, the various methods used by the City's investigative authorities to investigate fraud, waste, and abuse may produce inconsistent and inequitable effects on the employees and other parties investigated; and

WHEREAS, quality standards for investigations are consistent with, but do not themselves consider due process in judgment and disposition of investigated allegations; and

WHEREAS, this overlap in responsibility may lead to confusion among employees when deciding how and where to report allegations; and

WHEREAS, the City does not maintain a central repository for investigations or ethical violations, reducing its capacity to assess the ethical environment, identify trends, and design proactive strategies to improve the situation; and

WHEREAS, the best interests of Austin residents require that allegations be properly and promptly reported, fully and fairly investigated, and brought to a conclusion through a process that appropriately protects the rights of the accused parties;

THEREFORE, BE IT RESOLVED, that the Council initiates amendments to City Code in a substantially similar form to the following:

~~WHEREAS, recent ethics complaints involving volunteer board or commission members have created concerns about the current process for handling those complaints, and~~

~~WHEREAS, transparency of the process is important to establish and maintain public trust in government; Now therefore,~~

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

~~The Council initiates amendments to City Code in a substantially similar form to the following:~~

§2-3- Definitions

In this chapter:

- (1) ABUSE includes but is not limited to the misuse of a City office, employment, contract, or other position with the City to obtain personal gain or favor from another City employee, vendor, or citizen.
- (2) COMPLAINANT in this chapter means an individual submitting an allegation of wrongdoing.

(3) FRAUD includes, but is not limited to:

- a. The unauthorized taking of a City resource for personal gain by deception including by forgery or by altering any document;
- b. The misappropriation of funds, supplies, or another City resource, through methods including but not limited to fraud, theft, embezzlement, and misrepresentation;
- c. The intentional improper handling of or reporting of money or financial transactions;
- d. The intentionally improper destruction or removal of records or other City resources;
- e. The misuse of official City information for personal benefit; or
- f. The misuse of City employment to obtain a personal gain or favor from a member of the public or from another City employee.

(4) RESPONDENT in this chapter means the subject of an allegation of wrongdoing.

(5) WASTE includes but is not limited to:

- a. The grossly inefficient or uneconomical use of City assets or resources;
or
- b. Unnecessarily incurring costs to the City as a result of grossly inefficient practices, systems, or controls.

§ 2-3-4 INDEPENDENCE, OBJECTIVITY, AND AUDIT STANDARDS.

(A) The city auditor shall organize and administer the auditor's office to operate without interference or influence that might adversely affect an independent and objective judgment of the auditor.

(B) The city auditor:

- (1) shall organize the auditor's office as necessary to perform the auditor's responsibilities and duties under this chapter;
- (2) may not be actively involved in partisan City political activity;

(3) may not conduct or supervise or allow an employee to conduct or supervise an audit of an activity for which the person was responsible or in which the person was employed during the two years before the date of the audit;

(4) shall adhere to government auditing standards established by the Comptroller General of the United States to conduct the auditor's work and be independent as defined by the standards;

(5) in addition to adhering to the government auditing standards established by the Comptroller General of the United States, shall also adhere to general and qualitative standards under the Quality Standards for Investigations established by the Council of Inspector Generals on Integrity and Efficiency to conduct the auditor's investigative work;
and

(6) is responsible for selection of an audit area and may consider requests from council and the city manager in selecting an audit area.

§ 2-3-5 POWERS AND DUTIES.

(A) The city auditor shall examine City operations to identify an opportunity to reduce costs, increase efficiency, quality, and effectiveness, or otherwise improve management of a City function, program, service, or policy.

(B) The city auditor shall communicate directly with the council audit committee and the council, attend council audit and finance committee meetings, and regularly meet with council.

(C) The city auditor shall establish audit policies and procedures consistent with government auditing standards established by the Comptroller General of the United States, and applicable law and regulation.

(D) The city auditor may conduct a performance or financial-related audit, investigation, and other audit work to determine if:

- (1) a current City function, program, service, or policy:
 - (a) is authorized by the council or other legal authority; and

(b) is conducted to accomplish its intended objective;

(2) a function, program, service, or policy is effective in achieving its stated or intended result or benefit, including the level of effectiveness;

(3) an audited function, program, service, or policy effectively, economically, and efficiently acquires, protects, and uses its resources, including personnel, property, and space;

(4) a function, program, service, or policy complies with a mandate regarding efficiency, economy, effectiveness, or expenditure of public funds adopted by council or other legal authority;

(5) management for a function, program, service, or policy has adopted an administrative and accounting control system to effectively, economically, and efficiently carry on the function or program; and

(6) a function, program, service, or policy is providing financial and performance reports that accurately, fully, and fairly disclose all information required by law or other criteria necessary to:

(a) ascertain the nature and scope of the function, program, service, or policy; and

(b) establish a proper basis for evaluating the results of the function, program, service, or policy.

(E) When required or implied by audit objectives, the auditor shall determine the cause of an inefficient, uneconomical, or ineffective function, program, service, or policy.

(F) The city auditor may conduct follow-up review determined to be necessary by the city auditor to verify a report or plan from the city manager in response to an audit recommendation. The city auditor shall review a follow-up report or plan from the city manager in response to an audit recommendation.

(G) The city auditor shall manage a reporting program, whereby City employees, contractors, and the general public can submit allegations of wrongdoing, including but not limited to fraud, waste, abuse, personnel violations, and other similar ethical issues. The city auditor shall give all

complainants the option of remaining anonymous when submitting allegations.

(H) In addition to following any reporting requirements established by the city manager, all city employees and officials shall promptly notify the city auditor of allegations of fraud, waste, and abuse as described in section G, anonymously if necessary. All city employees and officials shall also cooperate with all investigations.

(I) The city auditor shall be responsible for investigating fraud, waste, and abuse matters as well as violations of §2-7-61 through §2-7-111 involving salaried city officials, city employees, and city contractors. The city auditor shall notify the city manager as appropriate of the initiation of an investigation.

(J) The city auditor shall have the sole discretion to refer allegations or investigations to the city manager or other authority as appropriate including but not limited to allegations not covered in this section or allegations of a de minimis nature.

(K) In any investigation of an employee who is subject to Chapter 143 of the Texas Local Government Code, the auditor shall conform the investigation to the requirements of Chapter 143 and any applicable labor agreement.

(L) The city manager shall investigate all allegations referred by the city auditor and report the investigative results and any resulting action back to the city auditor for recordkeeping purposes.

(M) The city auditor shall refer any complainant who alleges that a non-salaried City official has violated Article 4 (Code of Ethics) or Article V (Financial Disclosure) of Chapter 2-7 to the Ethics Review Commission complaint and hearing procedures as set out in Article 3 of Chapter 2-7.

(N) If the city auditor determines that a city employee or official may have violated the law, or may be reasonably anticipated to commit a violation, the auditor shall:

- (1) consult with and obtain advice from the city attorney or outside legal counsel as necessary;
- (2) report the suspected violation to the appropriate authority; and

(3) if the suspected violation is criminal, notify the appropriate chief prosecuting authority.

(O) If the city auditor receives an allegation against the mayor or a member of the city council, the city auditor shall conduct a preliminary review of the allegation. The city auditor shall engage outside counsel to investigate any substantive allegations and immediately notify the mayor, or the chair of the Audit and Finance Committee if the mayor is involved.

(P) Allegations against the city auditor shall be communicated to the Mayor and chair of the Audit and Finance Committee. The Mayor and chair of the Audit and Finance Committee shall determine how to proceed.

(Q) The city auditor shall exercise discretion in to whom the referral or notification of allegations and investigations are directed in order to avoid compromising any subsequent investigation of wrongdoing.

(R) The city auditor may hire a certified or registered public accountant, qualified management consultant, attorney, or other professional expert necessary to perform the auditor's duties, in compliance with the City's procurement requirements.

§ 2-3-7 ANNUAL AUDIT PLAN AND SPECIAL AUDITS.

(A) Not later than the 30th day before the beginning of a calendar year, the city auditor shall submit an annual audit plan to the council for review and comment through the council audit and finance committee.

(B) An annual audit plan under this section shall identify the scope of each audit the city auditor intends to conduct, including:

- (1) the department, organization, service, program, function, and policy to be audited; and
- (2) each potential audit objective to be addressed.

(C) If the city auditor notifies the council audit and finance committee and obtains comments from the committee, an annual audit plan may be amended by the city auditor. The city auditor may request an amendment independently, or at the request of the council audit and finance committee or the city manager.

(D) The city auditor may initiate, conduct, or expand the scope of an audit or investigation, if the auditor determines that:

- (1) fraud, abuse, waste, or illegality may have or is occurring; or
- (2) an audit finding requires expansion of the scope of an audit or investigation in progress; and
- (3) notify the council audit and finance committee of action take under this section.

(E) The city auditor shall distribute the results of a special audit in accordance with Section 2-3-8 (*Report Preparation and Release*).

§ 2-3-8 REPORT PREPARATION AND RELEASE.

(A) The city auditor shall prepare a draft audit report for each audit and deliver the report to the city manager.

(B) The city manager shall send the city auditor written comment on the reported audit findings and a written response to each recommendation on or before a date agreed to by the city manager and the city auditor. The city manager's response shall:

- (1) state whether the city manager agrees or disagrees with each recommendation;
- (2) include the reason for a disagreement; and
- (3) describe the action, if any, that will occur in response to a recommendation.

(C) If the city manager's response is timely delivered to the city auditor, the city auditor shall include a copy of the response in the city auditor's final report.

(D) The city auditor shall file a final audit report with the council and the city manager, and retain a copy in the city auditor's office as a permanent record.

(E) An audit report prepared under this section shall adhere to the reporting standards for financial-related and performance audits prescribed by government audit standards.

(F) If appropriate, the city auditor may issue other advisory reports to provide information to the city manager and council.

(G) The city auditor shall prepare a draft investigative report and deliver the draft report to the appropriate authority. When the draft report is delivered, the city auditor shall also notify the respondent of the findings in the draft report.

(H) The city auditor shall file a final investigative report with the council and the city manager, and retain a copy in the city auditor's office as a permanent record. The auditor shall also provide a copy of the final investigative report to the respondent.

(I) The city auditor shall prepare an annual summary of the reporting program's activities for presentation to the Audit and Finance Committee.

§ 2-7-26 FUNCTIONS.

The Ethics Review Commission has jurisdiction over this chapter except that the commission only has jurisdiction over Article 4 (Code of Ethics) of this chapter as it applies to non-salaried City officials, Section 2-1-24 (Conflict of Interest and Recusal), Chapter 2-2 (Campaign Finance), Chapter 4-8 (Regulation of Lobbyists), and Article III, Section 8, of the City Charter (Limits on Campaign Contributions and Expenditures). The commission shall hear and rule on sworn complaints alleging violations of the provisions within the commission's jurisdiction. The city manager shall provide funding for all necessary and reasonable functions of the commission in fulfilling its duties. After consultation with the city attorney, the city clerk shall refer to the city auditor any complaint alleging violation of Article 4 of this chapter by a salaried City official or City employee.

BE IT FURTHER RESOLVED:

~~The City Manager shall process the amendments and present the amendments to Council for consideration. The City Manager may revise the proposed Code language to comply with City Charter requirements and other law and to conform the proposed ordinance to standard ordinance format and language.~~

BE IT FURTHER RESOLVED:

~~The City Manager may submit amendments to other Code provisions as necessary to harmonize Code provisions and avoid conflicts.~~

the Ethics Review Commission at its meeting of 20 October 2014 and to

BE IT FURTHER RESOLVED, that the City Manager shall process the amendments and present them to Council for consideration on or before 20 November 2014. The City Manager may revise the proposed Code language to comply with City Charter requirements and other laws and to conform the proposed ordinance to standard ordinance format and language;

BE IT FURTHER RESOLVED, that the City Auditor develop and implement training and procedures necessary to (1) improve the investigation close-out process by incorporating notification of the findings to the investigated party whenever appropriate; (2) expand the amount of detail and, whenever possible, use plain language in investigative reports to ensure clarity to third parties; and (3) continue to refer matters involving personnel issues, *de minimis* violations, operational issues, and public safety issues to the City Manager as appropriate; and

BE IT FURTHER RESOLVED, that the City Manager and City Auditor shall jointly create a process that eliminates the potential for conflict of interest among the City Attorney's staff, provides adequate legal representation to support the Auditor's investigations, and is consistent with both the City Charter and the ~~American Bar Association's Model Rules of Professional Conduct~~, and that any necessary codification of this process be incorporated into the amendments presented to the Council;

Texas Disciplinary

BE IT FURTHER RESOLVED, that the City Manager and City Auditor shall meet as needed to obtain joint agreement on any other disputed matters of investigative authority, and that any necessary codification of this agreement be incorporated into the amendments presented to the Council.