

ORDINANCE NO.

**AN ORDINANCE AMENDING CITY CODE TITLE 2 RELATING TO THE
POWERS AND DUTIES OF THE CITY AUDITOR AND THE ETHICS REVIEW
COMMISSION.**

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

PART 1. Chapter 2-3(*City Auditor*) is amended by adding a new Section 2-3-1. The existing Section 2-3-1 is renumbered as Section 2-3-2, and the subsequent sections are renumbered accordingly. References in the Code to renumbered sections are changed accordingly. The new Section 2-3-1 reads:

§2-3-1 DEFINITIONS.

- (1) **ABUSE** means 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) **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.
- (3) **WASTE** means:
 - (a) the grossly inefficient or uneconomical use of City assets or resources; or

- (b) the unnecessary incurring of costs to the City as a result of grossly inefficient practices, systems, or controls.

PART 2. Subsection (B) of City Code Section 2-3-4, now Section 2-3-5, (*Independence, Objectivity, and Audit Standards*) is amended to read:

(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) shall adhere to general and qualitative standards under the "Quality Standards for Investigations" established by the Council of the Inspectors General on Integrity and Efficiency to conduct the auditor's investigative work; and

~~[(5)]~~ (6) is responsible for selection of an audit area and may consider requests from council and the city manager in selecting an audit area.

PART 3. Subsection (A) of City Code Section 2-3-5, now Section 2-3-6, (*Powers and Duties*) is amended to read:

(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. The auditor shall manage a reporting system through which a City employee or a member of the public may submit an allegation of wrongdoing. The person making an allegation need not provide the person's name. An allegation may include:

(1) an allegation of fraud, waste, or abuse;

(2) a violation of a personnel policy; or

(3) a violation of law, including a violation of Chapter 2-7 (*Ethics and Financial Disclosure*).

PART 4. Subsection (G)(2) of section 2-3-5, now Section 2-3-6, (*Powers and Duties*) is amended to read:

- (2) [~~immediately~~] report the suspected violation to the appropriate authority; and

PART 5. City Code Section 2-3-5, now Section 2-3-6, (*Powers and Duties*) is amended by adding new Subsections (I) through (P) to read:

- (I) Notwithstanding any other provision of the City Code, the auditor may not investigate an allegation alleging a violation of Chapter 2-7, Article 4 (Code of Ethics), by a member of the city council, a member of a council member's direct staff, the city manager, the city clerk, the auditor, the clerk of the municipal court, a municipal court judge, or a person appointed by the mayor or the city council to a City board, task force, or similar body.
- (J) If the auditor conducts an investigation of an allegation alleging a violation of Chapter 2-7, Article 4 (*Code of Ethics*) by a City employee who is not either a member of the classified municipal civil service system or of a state civil service system, the auditor shall submit the results of that investigation to the Ethics Review Commission.
- (K) The auditor may conduct an investigation of an allegation alleging a violation of law or policy by a City employee who is a member of the classified municipal civil service system or of a state civil service system. If the auditor conducts an investigation of an employee covered by a civil service system, the investigation must be done in a way that is consistent with the law and any applicable labor agreement. If the auditor determines that a violation has occurred, the auditor shall provide a copy of the result of an investigation under this section to the city manager. The city manager may conduct a separate investigation. The city manager has the authority to determine disciplinary action.
- (L) A person who is the subject of an investigation by the auditor may bring to any interview with the auditor a representative of the person's choice. Before the auditor issues a final report on the investigation, the auditor must provide the person with an opportunity to respond in writing to any allegation made against the person.
- (M) For each investigation in which the auditor determines that a violation has occurred, the auditor shall prepare a draft investigative report and deliver the draft report to the appropriate authority and to the person who is the subject of the investigation. The person who is the subject of the investigation may submit a written response to the draft report, which the auditor shall include in

1 the final report, if the response is timely submitted. The auditor shall file a
2 final investigative report with the council and the city manager, provide a copy
3 to the person investigated, and retain a copy of the report in the auditor's office
4 for the applicable retention period under the City's records management
5 program.

6 (N) The city auditor shall refer an allegation enumerated in this subsection to the
7 city manager. The city manager shall design a process to inform the city
8 auditor of the disposition of the referred allegations for recordkeeping
9 purposes. The allegations covered by this subsection are those related to:

10 (1) a personnel issue;

11 (2) an operational issue;

12 (3) a *de minimus* fraud, waste, or abuse violation;

13 (4) a public safety issue that is not related to fraud, waste, or abuse; and

14 (5) an issue that the auditor is not authorized to investigate, and that is not
15 within the jurisdiction of the Ethics Review Commission.

16 (O) Except as otherwise provided in this code, the auditor has the authority to
17 investigate fraud, waste, and abuse, or other wrongdoing. City employees and
18 officials shall cooperate with auditor investigations.

19 (P) The city manager shall produce a quarterly report on the status of
20 investigations regarding fraud, waste and abuse conducted by the city
21 manager.

22 **PART 6.** Subsection (D) of City Code Section 2-3-7, now Section 2-3-8, (*Annual Audit*
23 *Plan and Special Audits*) is amended to read:

24 (D) The city auditor may initiate, conduct, or expand the scope of an audit or
25 investigation[;] if the auditor determines that[:(1)] fraud, waste, abuse, or
26 illegality may have occurred or is occurring[;] or if [(2)] an audit finding
27 requires expansion of the scope of the [an] audit or of an investigation in
28 progress[; and (3)] The auditor shall notify the council audit and finance
29 committee of an action [~~take~~] under this section.

30 **PART 7.** City Code Section 2-3-8, now Section 2-3-9, (*Report Preparation and Release*)
31 is amended to add a new Subsection (G) to read:

32 (G) The auditor shall prepare an annual summary of the reporting program's
33 activities for presentation to the council audit and finance committee.

PART 8. City Code Chapter 2-3 is amended by adding a new Section 2-3-13 to read:

§2-3-13 REQUEST FOR LEGAL SERVICES.

- (A) To the extent practicable, the city attorney shall provide direct legal services to the auditor.
- (B) The auditor may request that the city attorney engage outside legal counsel for an investigation by the auditor. After consultation with the auditor, the city attorney may determine that employment of outside counsel is appropriate.
- (C) If the city attorney engages outside legal counsel, the auditor shall identify a source of funds available for outside legal counsel fees and expenses at a level estimated by the city attorney to be sufficient for the engagement.
- (D) Only the city attorney may supervise and direct the outside legal counsel's representation of the City.

PART 9. City Code Chapter 2-7 (*Ethics and Financial Disclosure*) is amended by adding new Section 2-7-27 and 2-7-28 to read:

§ 2-7-27 LIMIT ON THE COMMISSION'S JURISDICTION.

Notwithstanding any other provision of the City Code, the Ethics Review Commission may not hear or initiate a sworn complaint alleging a violation of Article 4 (*Code of Ethics*) against a member of the City's classified municipal civil service system or a member of a state civil service system.

§ 2-7-28 COMMISSION ACTION ON INFORMATION RECEIVED FROM THE AUDITOR.

If the commission receives information from the city auditor under Subsection (J) of Section 2-3-5 (*Powers and Duties*), the commission shall convene not later than the 30th day after the date the chair of the commission receives the information. The commission shall consider the information at that meeting. The chair of the commission shall cause a notice to be sent to the person who is the subject of the investigation no later than the 20th day before the date scheduled for the meeting. The person who is the subject of the investigation may present sworn testimony and other information relating to the investigation at the meeting. A commission member may not receive an ex parte communication regarding the information, and shall treat the matter in the same manner as a sworn complaint under Section 2-7-43 (*Prohibition of Ex Parte Communications*). The commission may take any action on the information that is within its jurisdiction, including dismissing the matter. If the commission determines from the information that a preponderance of the evidence exists that a violation within its jurisdiction has occurred, the commission may treat the information as if it were a final determination of

1 a sworn complaint. The commission shall forward notification of its findings and action
2 to the city manager. The city manager has sole authority to determine disciplinary action.

3 **PART 10.** Subsection (E) of City Code Section 2-7-41(Complaints) is amended to read:

4 (E) Not later than five [~~three~~] working days after the city clerk receives a sworn
5 complaint, the city clerk shall consult with the city attorney to determine if the
6 complaint is under the jurisdiction of the commission. If the complaint does
7 not appear to be under the commission's jurisdiction, and if the complaint
8 appears to be under the city auditor's jurisdiction, the city clerk shall send the
9 complaint to the city auditor. If the complaint is under neither the jurisdiction
10 of the commission or the auditor, the city clerk shall retain a copy of the
11 complaint but take no further action on the complaint. If the complaint does
12 not appear to be under the commission's jurisdiction, the city clerk shall advise
13 the complainant of the disposition of the complaint. If the complaint appears to
14 be under the commission's jurisdiction, the city clerk shall acknowledge the
15 receipt of the complaint to the complainant and provide a copy of the
16 complaint to the city attorney, the chair of the commission, and the respondent.
17 Not later than the 10th working day after receipt of a complaint by the chair,
18 the commission shall notify in writing the complainant and the respondent of a
19 date for a preliminary hearing. If the commission does not hold a preliminary
20 hearing within 20 working days of receipt of the complaint by the chair, it
21 shall notify the complainant of the reasons for the delay and shall subsequently
22 give the complainant the appropriate notification.

23 **PART 11.** This ordinance takes effect on _____, 2014.

24 **PASSED AND APPROVED**

25
26 §
27 §
28 _____, 2014 § _____
29
30 Lee Leffingwell
31 Mayor

32
33 **APPROVED:** _____
34 Karen M. Kennard
35 City Attorney

36
37 **ATTEST:** _____
38 Jannette S. Goodall
City Clerk