

Investigative Report

Special Report: Failure by City Management to Enforce City Code

June 2019



City management did not correct a violation of City Code despite being notified of the issue. Code prohibits an employee from serving on a commission that covers subject matter related to their department. However, management allowed an employee to continue serving on a related City commission while employed at the Human Resources Department (HRD) and subsequently at Austin Public Health (APH). The employee's commission considers matters that affect both departments. As of June 2019, the employee was still serving on the Commission and still appeared to be in violation of City Code.

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Allegation

In May 2017, we received an allegation that a City employee was in violation of City Code by serving on a City commission that covers subject matter related to her City department. After our initial review, we determined that the issue could be corrected by the employee's department management, and we followed our normal procedure to notify the department of the situation. Approximately nine months after we notified the department, we learned that the employee had been transferred to a different department, but the violation persisted. At this point, we opened a case into the issue.

Background

The City of Austin has more than 60 boards and commissions. Boards and commissions "enable citizens to participate in Austin's government processes," and "their activities help shape and influence public policy." The City of Austin has three types of boards and commissions: advisory boards, sovereign boards, and appellate boards. The Commission in question is an advisory board. Advisory boards are tasked with providing feedback and policy recommendations to the Austin City Council. The employee's Commission is specifically responsible for making recommendations related to residents' health and economic wellbeing, and some of these recommendations involve programs that are managed by HRD and APH.

City Code prohibits City employees from serving on any City boards or commissions that address subject matters related to the employee's City department. City of Austin Administrative Bulletin 07-04 echoes this prohibition and further explains that "service by City employees on City boards should... avoid conflicts of interest."

The employee in question has continuously served on the Commission since she was first appointed in December 2006. At various times throughout her service on the Commission, the employee has served as the Commission's Chair and Vice Chair.

Investigation Results Summary

City management did not correct a violation of City Code despite being notified of the issue. Code prohibits an employee from serving on a commission that covers subject matter related to their department. However, management allowed an employee to continue serving on a related City commission while employed at the Human Resources Department (HRD) and subsequently at Austin Public Health (APH). The employee's commission considers matters that affect both departments.

Finding 1 Serving on a City Commission whose Subject Matter Related to the Scope of their City Department

In August 2011, the employee was hired by the City to oversee a new program that was placed in HRD. When the employee applied for her City job, she disclosed her service on a City commission. The former Director of HRD, informed us that at that time he did not believe that the Commission was likely to consider topics that impacted HRD. Therefore, he felt that the employee's involvement with the Commission would not conflict with her position in HRD. In mid-2015, the former Director of HRD was promoted to Interim Assistant City Manager, and a new director was hired on an interim basis. Both of their positions became permanent in August 2016. When we spoke with the Director of HRD, she informed us that she also believed that HRD's subject matter did not fall within the scope of the Commission.

We did not find evidence that issues within HRD's scope came before the Commission in the year prior to the employee's hiring by the City. However, starting in mid-2012, we found at least 6 instances during the employee's time working in HRD in which HRD-related items were discussed and voted on by the Commission, or HRD staff attended the meeting:

- In the July 2016 Commission meeting, the employee participated in a vote that recommended an additional \$200,000 in funding for the City program that she directly managed as a City employee in HRD. At the time of this vote, the employee was serving as the Commission's Vice Chair.
- In the March 2016 meeting, the Interim Director of HRD presented before the Commission on the cultural diversity of the City's workforce. The employee was serving as the Commission's Vice Chair during this presentation, as well.
- On at least 4 additional dates, HRD staff, including their Chief Administrative Officer, attended Commission meetings and were listed on the meetings' minutes.

On October 1, 2017, the employee and the program she manages were transferred to APH. We found that not only did the Commission in question have a working group dedicated to physical and mental health issues, subjects directly in line with APH's mission, but that in the years

leading up to the employee's transfer, the Commission regularly considered issues related to APH in general. Specific examples include:

- A September 2016 Commission meeting in which members of the Commission's Health and Mental Health Working Group reported on a Travis County Health and Human Services meeting that they attended.
- A June 2015 Commission meeting in which an APH Assistant Director presented on APH's proposed Fiscal Year 2016 budget.
- At least 13 Commission meetings between January 2010 and September 2017 in which the current or former Director of APH was present and listed on the meetings' minutes.

Since the employee has worked in APH, there have been at least five Commission meetings in which public health issues have come before the Commission for discussion or vote:

- In September 2018, the Commission heard two separate items related to APH. One of those items involved an APH Assistant Director briefing the Commission on the department's proposed budget. Before this presentation began, the employee appears to have recused herself from the briefing.
- At the same September 2018 Commission meeting, however, we found evidence that the employee participated in a vote regarding an organization that had previously been awarded funds from APH's budget. Neither the meeting's agenda nor its back-up material, appears to have addressed the organization's prior funding source, and it does not appear that the employee was aware of the connection between APH and this organization.
- During at least four additional Commission meetings since October 2017, the Commission heard from citizens and non-City organizations about health and mental health issues.

Finding 2

Failure to Correct a Violation of City Code

In August 2017, while the employee worked in HRD, our office notified the Assistant City Manager over HRD and the Director of HRD that the employee appeared to be in violation of City Code by serving on a commission that considers matters related to her current City department. Following our normal procedures, we asked HRD to address these issues and to inform us of the resolution.

Approximately nine months after we initially asked HRD to address the issues we identified, we found that the issues persisted, and we opened a case into the situation. We found that HRD had not taken action to address the prohibition on serving on the Commission, but had given the employee coaching on when to recuse herself from an item before the Commission. Additionally, we learned that approximately five weeks after the employee voted to recommend increasing the funding to her own program in HRD, the Director of HRD received an opinion from the City's Law Department that advised the employee could continue her service on the Commission. The opinion was informed by the HRD Director's

assessment that HRD subject matter would not go before the Commission on a regular basis.

The opinion provided by the Assistant City Attorney appears to have been based on an inaccurate reading of City Code. The opinion appears to have mistakenly focused on the frequency that the Commission would consider subject matter related to the employee's Department, rather than the likelihood that the Commission would consider the subject matter, as specified by City Code. The information provided by HRD indicates that HRD issues would likely go before the Commission, just on an infrequent basis. City Code only requires these occurrences to be likely, not regular. A review of the Commission's meeting minutes and voting history clearly establishes that the Commission considered subject matter related to HRD. No evidence or witness statements provided any indication that the Commission would stop considering HRD-related topics in the future, and HRD management's decision to coach the employee on recusing herself when HRD-related topics come before the Commission indicated that HRD management also believed HRD-related topics would come before the Commission in the future. According to the Assistant City Attorney who provided the opinion, the Director of HRD has the discretion to determine whether the Commission was likely to consider subject matter related to HRD and to decide whether she would like the employee to continue to serve on the Commission. City Code does not specify who has the authority to make this determination, but City Administrative Bulletin 07-04 states that the decision "is solely within the discretion of the City Manager."

The employee was moved to APH in October 2017. We learned that the employee's service on the Commission was not considered when deciding which department she would be moved to. We received inconsistent statements about what information concerning this violation was shared between HRD and APH at the time of transfer. However, within two months of the transfer, the employee's former supervisor at HRD had shared concerns about the employee's service on the Commission with APH management. The employee's new supervisor did not take action and told our office that she was asked by the employee's previous supervisor to "hold off" discussing the issue with the employee until our office completed our investigation.

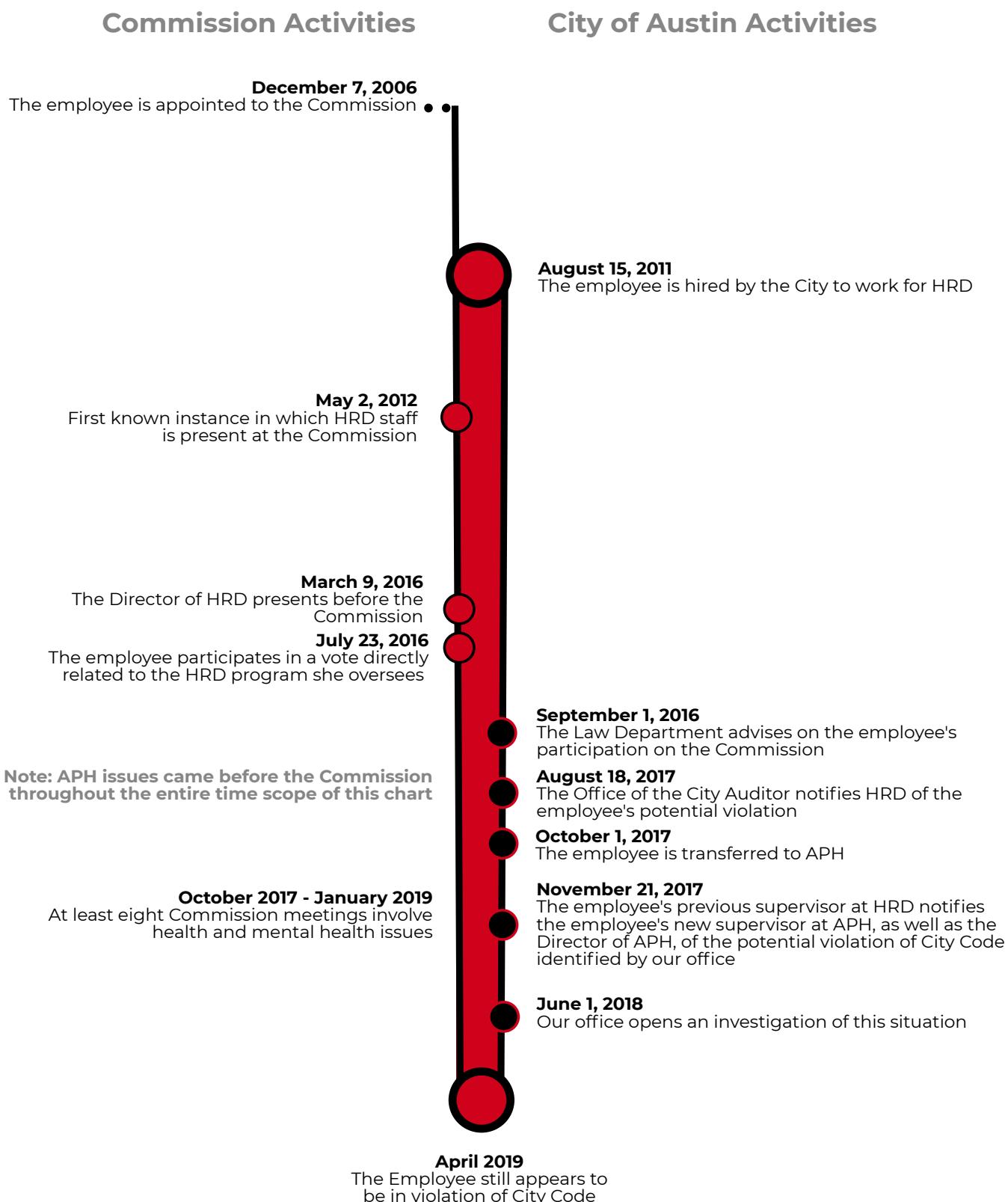
When we discussed our findings with the Interim Assistant City Manager overseeing APH at the time, she agreed that the employee's service on the Commission while working for APH was inappropriate. The Interim Assistant City Manager also stated that she and the Director of APH were taking steps to address the issue.

The employee's service on a commission that considers subject matter related to her City department appears to violate:

- City Code §2-1-21(K): Eligibility Requirements and Removal
- Administrative Bulletin 07-04: Service by City Employees on City Boards

Appendix A - Timeline of Key Dates

Timeline of Key Dates



Appendix B - Management Response

Manager's Response to Audit Report

The audit highlighted a Code provision I think should be amended. Thank you for the opportunity to respond.

I recommend that Council amend the City Code provisions that address when City employees may serve in a volunteer capacity on a city advisory board or commission. In turn, I intend to rescind the current Administrative Bulletin addressing the same issue.

The proposed changes would allow city employees to serve on city boards and commissions, and will clarify the criteria a city employee must meet before volunteering for a particular city board or commission. The decision about whether a volunteer opportunity may be a conflict with the employee's city job is a decision the individual employee should make, in consultation with the employee's department director. Also, the Law Department's Open Government, Ethics and Compliance Division is a good resource for employees if they have questions about volunteering on a city board or commission.

If City employees serve on city boards and commissions, they should be held to the same ethics requirements that govern all volunteers who serve on City Boards and Commissions. The proposed changes will require city employee volunteers to take personal responsibility to determine when recusal is required.

Regarding the factual findings in the Audit, I have attached a document that provides factual information from the departments involved in this matter.

Appendix B - Management Response: Directors' Input

Directors' Input Regarding Special Report April 2019

The draft report is accurate in that the employee in question was a member of the city advisory board for many years before she came to work for the city in 2011, and she disclosed her membership at the time of her hire.

HRD

At that time of hire the Director of the Human Resources Department [HRD] determined that there was no conflict. [According to the 2007 Admin Bulletin, the question should have gone to the City Manager to make the determination about the city employee serving on the commission. It is not clear whether that actually happened.]

In September 2016, the new HRD Director asked the Law Department to advise whether there was a problem with the employee serving on the commission. The lawyer who advised HRD appears to have read the Code, but not the Administrative Bulletin, and determined that the HRD Director had the authority to make the determination [incorrect; Admin Bulletin requires City Manager to make determination], and that the determination should be guided by how likely it was that the commission would review subject matter related to the employee's department, which might cause the employee to be required to recuse. Because the HRD Director determined that there would likely not be much overlap between the work of the department and the recommendations of the commission, the employee's service on the commission was allowed.

In August 2017, the Auditor's Office received an allegation that an HRD employee participated in a 2016 vote for the FY2017 Budget Request Proposal. The Budget Proposal included a recommendation to provide additional funding for a City Program, which was headed by the HRD employee in question. The Auditor's Office determined that there appeared to be a City Code violation, but also determined that the Auditor's Office did not have jurisdiction to investigate whether a violation had occurred. The Auditor's office asked HRD to review the matter, and requested a report on the final disposition.

HRD discussed the allegations with the employee. During the conversation, the employee confirmed that she had voted on the FY2017 Budget Request Proposal, and that she was unaware she should have recused. The employee agreed that going forward she would recuse as appropriate.

The other instances referenced in the current Audit, when HRD employees appeared in front of the commission in question, did not involve a vote by the commission members. They were situations in which HRD employees presented information about city employee demographics, introduced a new city employee, and introduced and explained recently passed City Ordinances. After HRD counseled the employee about recusal, HRD considered the complaint administratively closed, and so advised the Auditor's Office. At that time the Auditor's Office did not indicate that the course of action was inappropriate or needed further review.

Appendix B - Management Response: Directors' Input Cont.

In October 2017, the employee had moved from HRD to the Austin Public Health Department [APH].

APH

At the time the employee transferred from HRD to APH, the directors discussed the employee and her membership on the commission. The HRD Director relayed the information she had received from the Law Department. Because the APH Director had concerns about the continued dual service, given the overlap between the subject matter inherent in APH and the advisory commission, she contacted the Law Department to seek guidance. At that time the Law Department employee reviewed the Code and the Administrative Bulletin and advised that the Director should ask the new City Manager to make a determination if she believed there was a conflict with the city employee serving on the commission. The Director prepared a memo for the City Manager, and conveyed it through the Interim Assistant City Manager. That memo was under advisement at the time the Auditor conducted the audit in question.

Investigation Criteria

Findings 1 and 2

CITY CODE §2-1-21 – ELIGIBILITY REQUIREMENTS AND REMOVAL

(K) Unless otherwise provided by this chapter, a City employee may not serve as a member of a City board if: the subject matter within the scope of the City department in which the City employee is employed makes it likely that the board will consider subject matter related to the City department...

CITY OF AUSTIN ADMINISTRATIVE BULLETIN 07-04 – SERVICE BY CITY EMPLOYEES ON CITY BOARDS

(1)(e) A City employee may not serve as a member of a City board if: the subject matter within the scope of the City department in which the City employee is employed makes it likely that the board will consider subject matter related to the City department...

Methodology

To accomplish our investigative objectives, we performed the following steps:

- reviewed applicable City Code and policy;
- conducted background research;
- analyzed Commission minutes, agendas, and resolutions;
- interviewed City staff;
- reviewed supporting documentation provided by City staff;
- interviewed the employee; and
- consulted with the Law Department.

CAIU Investigative Standards

Investigations by the Office of the City Auditor are considered non-audit projects under the Government Auditing Standards and are conducted in accordance with the ethics and general standards (Chapters 1-3), procedures recommended by the Association of Certified Fraud Examiners (ACFE), and the ACFE Fraud Examiner's Manual. Investigations conducted also adhere to the quality standards for investigations established by the Council of the Inspectors General on Integrity and Efficiency (CIGIE), and to City Code.

The Office of the City Auditor, per City Code, may conduct investigations into fraud, abuse, or illegality that may be occurring. If the City Auditor, through the Integrity Unit, finds that there is sufficient evidence to indicate that a material violation of a matter within the office's jurisdiction may have occurred, the City Auditor will issue an investigative report and provide a copy to the appropriate authority.

In order to ensure our report is fair, complete, and objective, we requested a response from City management on the results of this investigation. Please find the attached response in Appendix B.

The Office of the City Auditor was created by the Austin City Charter as an independent office reporting to City Council to help establish accountability and improve city services. We conduct investigations of allegations of fraud, waste, or abuse by City employees or contractors.

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