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Audit Report

**Boards & Commissions Audit:
Water and Wastewater Commission**

September 28, 2010

Office of the City Auditor
Austin, Texas

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Date: September 28, 2010

To: Mayor and Council

From: Kenneth J. Mory, City Auditor

Subject: Boards & Commissions Audit: Water & Wastewater Commission

I am pleased to present this audit report on the Water & Wastewater (WWW) Commission. This audit is part of our office's ongoing review of Boards and Commissions as required by Section 2-1-8 of the City Code.

We found that the WWW staff liaison is providing sufficient information in a timely manner to board members. We also found that the WWW Commission is generally in compliance with City Code. However, some items related to potential conflicts of interest may need to be addressed to ensure that the intent of the City Code is met.

Based on our work, we have made three recommendations related to potential conflicts of interest. First, the City Council may wish to consider eliminating the requirement that no more than two Commissioners be involved in development or development-related activities. Second, the Council should consider directing City staff to monitor conflict of interest documentation on a periodic basis and report any exceptions for possible action. Finally, the City Council should consider creating a task force to review and recommend modifications to the conflict of interest procedures and practices.

We appreciate the cooperation and assistance we received from staff in the Austin Water Utility, the Office of the City Clerk, the Law Department, and from the City's Integrity Officer.

cc: City Manager
Assistant City Managers
City Clerk
Austin Water Utility Department Director
Chairman of the WWW Commission
Public Information Officer

COUNCIL SUMMARY

This report presents the results of our audit of the Water and Wastewater Commission.

The Water and Wastewater Commission is an advisory commission that reviews and analyzes policies and programs relating to the water quality, water supply and the fiscal health of the Austin Water Utility. The objective of this audit was to assess risks related to this commission, including the quality and timeliness of support services from City staff, compliance with Commission bylaws and the City Code, and conflicts of interest.

We found that the Water and Wastewater Commission staff liaison is meeting the needs of the board members by providing sufficient information in a timely manner. We also found that although the Commission is generally in compliance with City Code provisions related to its operations, the composition of the Commission consistently departs from the direction to have only two commissioners involved in development or development-related activities. Additionally, although the Commission is in compliance with the conflict of interest portion of the City Code, there are inadequate controls in place to identify potential conflict prior to appointment as a Commissioner.

To address these issues, we suggest that the City Council may want to reconsider the requirement that no more than two Water and Wastewater Commissioners be involved in development or development-related activities. Having well-qualified advisors on the Commission is needed to provide valued advice to Council, and this requirement could negatively impact achievement of that objective. We also recommend that City Council direct City staff to monitor conflict of interest documentation on a periodic basis and that any exceptions are reported to the City's Ethics Commission and/or the Council's AFC for possible action. Finally, we recommend that the City Council consider having a task force led by the City Integrity Officer and comprised of members of the Law Department, the Ethics Review Commission, and the Office of the City Clerk to review and recommend modifications to the conflict of interest procedures and practices.



ACTION SUMMARY BOARDS & COMMISSIONS AUDIT: Water Wastewater Commission



| Recommendation Text | Management Concurrence | Proposed Implementation Date |
|---|---------------------------|---------------------------------|
| <p>01. Having well qualified advisors on the WWW Commission is needed to provide valued advice to the City Council. The requirement that no more than two WWW Commissioners be involved in development or development-related activities negatively impacts achieving that objective. As such, the City Council may want to reconsider that requirement.</p> | | |
| <p>02. We recommend that the City Council direct City staff to monitor conflict of interest documentation on a periodic basis and that any exceptions be reported to the City's Ethics Review Commission or the Council's Audit and Finance Committee for possible action.</p> | | |
| <p>03. We recommend that the City Council consider having a task force led by the City Integrity Officer and comprised of members from the Law Department, the Ethics Review Commission, the Office of the City Clerk, the Water and Wastewater Commission, and City management to review and recommend modifications to the conflict of interest procedures and practices.</p> | | |

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BACKGROUND

The Water and Wastewater (WWW) Commission is an advisory commission that provides recommendations to the City Council. City Code stipulates that the Commission reviews and analyzes policies and programs relating to the protection and quality of water resources, water supply and water demand management, and the fiscal health of the Austin Water Utility (AWU). The WWW Commission can make recommendations on City contracts, bond issuance, and budget appropriations. The Council appoints seven Austin residents to serve on the Commission, with administrative and support services provided by AWU staff.

OBJECTIVES, SCOPE, AND METHODOLOGY

Objectives:

The objectives for this audit were to assess risks related to the WWW Commission in order to:

- Determine the impact of conflict of interest risks as identified through the Office of the City Auditor's (OCA) Boards and Commissions Risk Assessment audit conducted in FY09
- Determine whether the Water and Wastewater Commission is operating in compliance with the Commission's bylaws and the City of Austin Codes or Ordinances
- Assess whether the Commission staff liaisons are providing the support services needed by the WWW Commission

Scope:

Review of the operations of the WWW Commission from January 2009 – June 2010, including the Fiscal Year 2009 and 2010 Commission work plans.

Methodology:

For this audit, OCA:

- Analyzed the Commission's workplans for calendar years (CY) 2009 and 2010, and the Commission's annual reviews for CYs 2008 and 2009
- Analyzed agendas and minutes for meetings held in CY09 and during the first six months of CY10
- Reviewed the City Code and other relevant statutes related to Commission operations
- Collected information from relevant stakeholders including Commission members, AWU staff, the City's Integrity Officer, and staff from the Office of the City Clerk and the Law Department

We conducted this performance audit in accordance with the Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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AUDIT RESULTS

The WWW Commission is generally in compliance with City Code, however there are items that should be addressed in order to ensure that the intent of the Code is met.

Finding 1: WWW Staff liaison is meeting the needs of the board members by providing sufficient information in a timely manner.

City Code calls for the City Manager to appoint a department to provide staff support for each Board, including an employee to serve as a liaison between the department and the Board or Commission. This liaison is responsible for tracking absences from Commission meetings, transmitting meeting agendas to the City Clerk and Public Information Office, and maintaining copies of meeting minutes. The WWW Commission bylaws also require the liaison to prepare and distribute meeting agendas to the Commission members no less than 72 hours prior to meetings and to prepare the Commission minutes.

In our review of meeting minutes and our discussions with AWU staff, the Office of the City Clerk, and Commission members, we determined that the AWU staff liaison is performing duties as required. The Commission meets the second Wednesday of each month, and agendas and backup documents are posted to a public website the Friday before each meeting. This gives the Commissioners time to review the documents and ask questions as needed. The Commissioners had no complaints about the staff liaison's performance, and one Commissioner stated that AWU staff does a "great job" supporting the Commission.

Finding 2: Although the WWW Commission is generally in compliance with City Code provisions related to its operations, the composition of the Commission departs from specifications in the Code.

The WWW Commission generally complies with City Code requirements. City Code sets requirements for Commissioner eligibility, Commission activities, and meeting processes and documentation. Our review of board operations, based on documents filed with the City Clerk, showed that the WWW Commission is in compliance with these requirements, with only minor exceptions noted.

We found that meeting agendas and minutes met all statutory requirements, that the Commissioners completed applications, training, and financial disclosure as required, and that no action was taken without a quorum of Commissioners present. However, in one instance, a Commissioner recused himself from an item due to conflict of interest, but did not note this conflict on the attendance sheet as required in the Code. In addition, one Commission meeting went beyond 10 p.m. without the Commissioners voting to extend the meeting as required by the Code. These discrepancies were not of material significance to the operations of the Commission, and we saw no evidence of a pattern of recurring problems.

City Code establishes the scope of work for the Commission. The Code also specifies that the Commission should develop an annual work plan setting out goals and objectives, as well as the necessary activities to meet them. We reviewed the WWW Commission's Fiscal Year (FY)

2009 and 2010 work plans and confirmed that the plans conform to the duties established by the Code and verified that the items coming before the Commission meet Code requirements.

Composition of the Water and Wastewater Commission departs consistently from the requirement of having only two WWW Commissioners with development, or development-related, experience. City Code states that no more than two members of the WWW Commission should be involved in development or development-related activities. However, the Code states that all membership qualifications are directory rather than mandatory, so City Council is not required to adhere to this limit. Additionally, the Code states: “The Commission shall act as an advisory body to the city council and shall review programs and make recommendations” regarding a list of items related to the operation of the Water and Wastewater Utility (Utility). As such, we recognize that Council Members have a need for information on Utility programs from sources independent of the Utility itself. In this case, that is the WWW Commissioners. This may be, in fact, more important to the Council Members than receiving a recommendation from the full Commission.

Therefore, we analyzed the effect of having more than two Commissioners on the Commission with development or development-related experience. During the period audited, we noted that there were consistently more than two Commissioners involved in development-related activities. For example, there are currently three professional engineers on the Commission, and since August 2009 these three Commissioners have accounted for more than 90% of all recusals. During the entire period audited, more than one-fifth of all the items considered by the Commission involved at least one recusal (See Exhibit 1 below.)

Exhibit 1
Number, Percentage, and Impact of Commissioner Recusals January 2009 – June 2010

| | Number | Percentage |
|---|------------|------------|
| Number of Items with Recusals | 64 | 22.9% |
| Number of Items with Multiple Recusals | 26 | 9.3% |
| Number of Items with Insufficient Votes to Pass | 15 | 5.4% |
| Number of Items with Insufficient Votes to Pass Due to Recusals | 13 | 4.6% |
| Total Items | 280 | |

SOURCE: OCA Analysis of meeting minutes January 2009 through June 2010 (unaudited)

However, as is also shown in the exhibit, we found that these recusals resulted in the Commission having insufficient votes to pass a motion for recommendation for only 4.6% of the items. Therefore, there has been no significant impact on the Commission’s ability to act on the items presented and make recommendations to the City Council.

Finding 3: Although the WWW Commission is in compliance with the Conflict of Interest portion of the City Code, there are inadequate controls in place to identify potential conflict prior to appointment as a Commissioner.

The WWW Commission is in compliance with Conflict of Interest provisions in the City Code. The Code states that if a board member has a conflict of interest and if the City Code or another law prohibits the board member from taking action on a vote or decision before the board; at each meeting, a board member shall sign an attendance sheet and shall indicate:

- (1) that the board member has no conflict of interest related to any item on the agenda; or
- (2) the number of an agenda item for which the board member has a conflict of interest.

Additionally, the Code prohibits a City official, including Commission members, from participating in a vote or decision on a matter affecting a person, entity, or property in which the official has a substantial interest as defined in the Code. The Code also provides that a sworn complaint alleging a violation may be filed with the City's Ethics Review Commission. If a violation has occurred, the penalty may include public sanction or possible prosecution.

Commissioners frequently disclose possible conflicts of interest and recuse themselves from voting on these items as required by the Code. However, the Code relies entirely on self-disclosure. While we were not able to confirm that Commissioners disclosed all potential conflicts, we did confirm that the Commissioners have sought guidance from the City's Integrity Officer on potential conflicts.

There are inadequate preventative controls in place to identify potential conflicts of interest before a Commissioner is appointed. A candidate for appointment is required to fill out an application that includes basic information which might highlight potential conflicts of interest. However, the applicant is not required to state if conflicts of interest exist. Additionally, there is no requirement to submit a financial statement at the time of the application. Such a form is required on an annual basis once a person is appointed as a WWW Commissioner, and includes information on a Commissioner's employment and a list of clients and investments. Having this information at the time of appointment could be valuable to a Council Member by helping to identify any potential conflicts of interest that would limit the appointee's ability to actively participate in the operation of the WWW Commission.

Improved review of required filings would provide better control over potential conflicts of interest for sitting Commissioners. As stated above, sitting Commissioners are required to file an annual financial statement. However, City staff does not review these documents once they are submitted. Additionally, we noted that some sections of Commissioner's financial statements were either left blank or noted as "not applicable." This lack of complete information circumvents the review process and makes it more difficult to identify potential conflicts of interest.

There are compensating controls in place that mitigate the risk related to potential conflicts of interest. Even though the Commissioners' financial statement filings are not being reviewed by City staff, the documents are public records and subject to open records requests. In addition, Commissioners are required to recuse themselves if they have actual or potential conflicts of interest with any items on the Commission agenda. Also, Citizens can file complaints if they believe that a Commissioner has a potential conflict of interest.

Recommendations:

01. Having well qualified advisors on the WWW Commission is needed to provide valued advice to the City Council. The requirement that no more than two WWW Commissioners be involved in development or development-related activities negatively impacts achieving that objective. As such, the City Council may want to reconsider that requirement.
02. We recommend that the City Council direct City staff to monitor conflict of interest documentation on a periodic basis and that any exceptions be reported to the City's Ethics Review Commission or the Council's Audit and Finance Committee for possible action.

03. We recommend that the City Council consider having a task force led by the City Integrity Officer and comprised of members from the Law Department, the Ethics Review Commission, the Office of the City Clerk, the Water and Wastewater Commission, and City management to review and recommend modifications to the conflict of interest procedures and practices.

Appendix A
Management Response

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ACTION PLAN
Water and Wastewater Commission – AU10117

| Rec. # | Recommendation Text | Proposed Strategies for Implementation | Status of Strategies | Responsible Person/Phone Number | Proposed Implementation Date |
|--------|--|--|----------------------|---------------------------------|------------------------------|
| 01 | Having well qualified advisors on the WWW Commission is needed to provide valued advice to the City Council. The requirement that no more than two WWW Commissioners be involved in development or development-related activities negatively impacts achieving that objective. As such, the City Council may want to reconsider that requirement. | | | | |
| 02 | We recommend that the City Council direct City staff to monitor conflict of interest documentation on a periodic basis and that any exceptions be reported to the City’s Ethics Review Commission or the Council’s Audit and Finance Committee for possible action. | | | | |
| 03 | We recommend that the City Council consider having a task force led by the City Integrity Officer and comprised of members from the Law Department, the Ethics Review Commission, the Office of the City Clerk, the Water and Wastewater Commission, and City management to review and recommend modifications to the conflict of interest procedures and practices. | | | | |

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Appendix B

Excerpts from City Code related to Boards and Commissions

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TITLE 2. ADMINISTRATION.

2-1. CITY BOARDS.

ARTICLE 1. GENERAL PROVISIONS.

Division 1. Administrative Provisions.

§ 2-1-5 COMPOSITION AND MEMBERSHIP QUALIFICATIONS.

Except as otherwise required by federal or state law, the City Charter, or this chapter, the board composition and membership qualifications contained in this chapter are directory and not mandatory.

§ 2-1-7 STAFF SUPPORT.

(A) The city manager shall designate a City department to provide staff support for each board, including a staff member to serve as board liaison for the department and the board.

(B) The city clerk shall assist each board and task force in complying with Government Code Chapter 551 (Open Meetings Act), including the posting of meeting notices.

Division 2. Member Requirements.

§ 2-1-24 CONFLICT OF INTEREST AND RECUSAL.

(A) This section is cumulative of [Chapter 2-7](#) (Ethics And Financial Disclosure) and Local Government Code Chapter 171 (Regulation Of Conflicts Of Interest Of Officers Of Municipalities, Counties, And Certain Other Local Governments). Under this section a board member has a conflict of interest if the City Code or another law prohibits the board member from taking action on a vote or decision before the board.

(B) At each meeting, a board member shall sign an attendance sheet and shall indicate:

- (1) that the board member has no conflict of interest related to any item on the agenda; or
- (2) the number of an agenda item for which the board member has a conflict of interest.

(C) [Chapter 2-7](#), Article 3 (Violation: Complaint And Hearing Procedures) applies to this section, and a sworn complaint alleging a violation may be filed under the procedures of that article. If the Ethics Review Commission determines that a violation of this section has occurred, it shall follow the procedure required by Section [2-7-47](#) (Prosecution).

Division 3. Board Requirements.

§ 2-1-44 MEETING PROCEDURES.

(A) Board meetings are governed by Robert's Rules of Order and the board's bylaws.

(B) Each board shall adopt the City's standard board bylaws. Not more than once a year, a board may adopt a revision to the standard bylaws. A bylaw amendment is not effective unless approved by the Council Audit and Finance Committee.

(C) A board meeting may not extend beyond 10:00 p.m., unless the board votes to continue.

(D) Boards may adopt special rules of procedure as required.

Source: Ord. 20071129-011; Ord. 20080214-012; Ord. 20080618-030.

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Appendix C
Excerpts from City Code related to WWW Commission

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TITLE 2. ADMINISTRATION.

2-1. CITY BOARDS.

ARTICLE 2. BOARDS.

§ 2-1-186 WATER AND WASTEWATER COMMISSION.

(A) The Water and Wastewater Commission members should reside inside the utility's service area. Not more than two members should be involved in development or development-related activities.

(B) The commission shall:

- (1) review, analyze, and advise the city council on the policies and resources relating to the city water and wastewater utility and water quality; and
- (2) assist the city council in ensuring that the City's residents are provided with an adequate, economical, and potable supply of water and a stable, economical, and environmentally safe system of wastewater disposal.

(C) The commission shall act as an advisory body to the city council and shall review programs and make recommendations regarding:

- (1) the protection and integrity of the water resources for the City;
- (2) minimization of water quality impacts to downstream areas;
- (3) implementation of programs that achieve goals and objectives relating to water supply management, water demand management, and land water quality control;
- (4) the fiscal solvency of said programs; and
- (5) the fiscal health of the utility.

(D) The commission shall develop an annual program setting out the commission's goals and objectives, and the activities needed to achieve these goals and objectives in the following areas, for the year covered by the program:

- (1) water supply distribution;
- (2) water demand and conservation management;
- (3) wastewater treatment and collection;
- (4) water quality;
- (5) service area master planning and capital improvement project development;
- (6) utility operating budget;
- (7) rates and fees; and
- (8) citizen education.

(E) The commission may review and make reports and recommendations to the city council, or other appropriate boards and commissions, concerning the following matters:

- (1) water and wastewater capital improvement program proposals;
- (2) water and wastewater bond programs;
- (3) monitoring of capital recovery fee revenues on a quarterly basis, and review of capital recovery fee dollar amount on an annual basis from the effective date of capital recovery fee ordinance;
- (4) review of the City's annual budget proposal for the water and wastewater utility;
- (5) quarterly review of water and wastewater ending balances;
- (6) cost effectiveness and financial impact on water supply and water conservation programs;
- (7) water and wastewater tap and connection fees;

- (8) quarterly review of the utility's total bonded indebtedness, including:
 - (a) contracts bonds approval, issuance, and expenditure: proposed and approved by council action, and issued;
 - (b) revenue bonds approval, issuance and expenditure: proposed and approved by council action, and issued; and
 - (c) municipal utility district bonds;
- (9) water and wastewater service extension requests and policy;
- (10) water treatment water supply, capacity, and demand projections;
- (11) water and wastewater treatment capacity, loadings, and effluent quality and quantity by the City on a monthly basis;
- (12) proposed and existing wastewater package treatment plants within the City's extraterritorial jurisdiction;
- (13) desired service areas that the City should serve and the timing of the service;
- (14) creation of area package treatment plant and alternative wastewater system conservation proposals;
- (15) creation or modification of municipal utility districts, water control and improvement districts, and all other entities authorized by the Texas Water Code;
- (16) water and wastewater treatment processes;
- (17) review and recommendation to the city council regarding all water and wastewater rates and fees;
- (18) annual review of the effectiveness of erosion and sedimentation controls and drainage criteria in protecting water quality; and
- (19) monthly review of water and wastewater discharge by the City.
- (F) The commission may obtain information from the Water Utility and communicate to the city council as follows:
 - (1) coordination with staff to develop programs to implement commission duties and responsibilities;
 - (2) evaluation of the economic feasibility and impacts of commission goals and objectives programs;
 - (3) coordination with the staff time and resource requirements for liaison activities with the commission;
 - (4) policy and budgetary recommendations to the city council relating to program implementation;
 - (5) periodic review of staff progress toward successful completion of utility programs;
 - (6) review of staff reports and studies relating to commission programs, including economic and rate impacts and environmental effects;
 - (7) review of development of program implementation strategies; and
 - (8) review of monitoring and enforcement of programs.
- (G) The commission shall promote close cooperation and open communication between the city council, other City boards, commissions and committees, City departments and individuals, and institutions and agencies concerned with the policies and procedures and operation, maintenance and construction of the Water and Wastewater Utility so that all similar activities in the City may be coordinated to secure the greatest public welfare.

Source: Ord. 20071129-01; Ord. 20080618-030.