

1 **Ethics Review Commission Transcript, July 29, 2014: Item 4A**

2
3 Austin Kaplan Alright, thanks everybody for coming. Calling to order the regular
4 meeting of the Ethics Review Commission. Today is July 29, 2014. It
5 is 6:11 on my watch. We are here at One Texas Center, room 325.
6 Cindy Tom our staff liaison is here with us today. Cindy, would you
7 call roll?
8

9 Cindy Tom Peter Einhorn?

10
11 Einhorn Present.

12
13 Cindy Tom Dennis Speight ?

14
15 Speight Present.

16
17 Cindy Tom Austin Kaplan?

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19 Kaplan Present.

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21 Cindy Tom Donna Beth McCormick?

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23 McCormick Present.

24
25 Cindy Tom Velva Price?

26
27 Price Present.

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29 Cindy Tom James Ruiz?

30
31 Ruiz Present.

32
33 Cindy Tom And James Sassin is not present. You have the floor.
34

35 Kaplan Alright, thank you Cindy. We're going to move through the agenda. We're
36 going to take some items up out of order to do it in the most efficient fashion
37 for folks, specifically staff who have come to visit us today. I do want to start
38 with citizen communication in general. Is there anyone who wishes to, any
39 citizen who wishes to communicate with the Ethics Commission that has not
40 filled out a form and already come up? Okay. We're going to reach those,
41 because I believe they all go to agenda items; we're going to reach those when
42 we reach the agenda items. Okay, one more.
43

44 So unless there is an objection I would like to move to item 3A, which is
45 discussion and possible action regarding city council election candidate
46 foreign planning, including reports from working group and from staff, and I'd
47 like to, I believe, defer to staff for an update on our 10-1 forums. Thank you
48 all for being here.
49

50 Foss

Thank you. My name is Lara Foss and I am new with the Public Information Office. Patricia Prada is my predecessor, she was working on 10-1 until my supervisor realized it was pretty much a full time position, and so that is my focus, and so I have taken over the duties that Patricia Prada was doing. She has met with the Ethics Review Commission, and the League of Women Voters, and so I have taken the reins from those projects.

56

57 So we are here today to provide an update on the venues and dates that we've
58 settled on for the venue forums. Cindy, do you want to go to slide number
59 one? I have a very, very brief presentation, and if you can read that at all,
60 everybody has a handout with the dates and venues which we settled on. The
61 Asian American Resource Center for district number one, North West
62 Recreation Center for districts seven and four, and there was some back and
63 forth on districts six and ten. We've had some controversy about the _____
64 church, so we have steered clear of that and landed at Hope Presbyterian
65 Church for six and ten; eight and five at the Stassney location of Austin
66 Community College; district nine at Palmer Event Center. Two and three will
67 be at the Montopolis Recreation Center, and the Mayoral candidate forum will
68 be at the Austin Convention Center.

69

70 If we need a run off forum, my hunch is we will, it will be back in chambers,
71 and we'll have all of the construction finished by then. Do you want me to add
72 anything - it's a really short presentation guys. I'm pretty much just here to
73 present that these are the places we have landed on.

74

75 So here is an update for you guys. We are in the CardPlus July edition, and
76 they gave us a ton of real estate, the entire back page, and if you want to go
77 slide number three, as I said it's pretty short, we are in discussions about being
78 also in the August edition. This is not yet formatted, but this is pending
79 approval, but if they ahead they will give us some more real estate in the
80 August edition too. We get the 10-1 logo in there and we just wanted to see it
81 go a bit differently and go to registration, and getting out the vote with of
82 course all the ways that citizens can figure out which district they're in, and
83 any resources they need to look up regarding 10-1.

84

85 Also online we created a candidate resources page, which we have our
86 candidates fleshed out, and they'll be able to go the back page and access a
87 candidate Q & A resource, so they can see what other candidate's questions,
88 what candidates are asking, then have access to all the answers on an equal
89 playing field. They also want to use that resource as a place to sign up for their
90 candidate's statements, and we will record the five minute candidate
91 statements from September 22nd through October 3rd, and then we'll have a
92 couple of dates through to the 8th for any who were unable to make it. So
93 they'll be able to make reservations through that candidate resources site. And
94 I think that's the last line.

95

96 Price

I just have a few questions. I apologize. Francis, I know you're here. Did you want to add anything to the presentation on behalf of the League of Women Voters?

97

98

99

100 Francis Unless you all have some questions, we're all ready for forums, and our
101 volunteers are in line and all the questions are in line. The candidates will not
102 see the questions before they are asked.
103

104 Price Yes, that's what I was going to ask. And I mean I was on the subcommittee,
105 unfortunately I was not able to attend any of the meetings, which explains
106 another reason why I am doing what I am doing later on the agenda. I guess
107 my only question was, and I kind of put this out there, is one, how was it
108 decided that district four and seven, that four would go first, or seven would
109 go first?
110

111 Foss So that's a great question. What we decided to do is the district that has the
112 most amount of candidates will go second. So that all the forums that start
113 second will start at the same time, which is 7:30 I believe, and so there won't
114 be any time constraints for the districts that have many, many candidates
115 running in it. For example, ten.
116

117 Francis If you have six, or eight, or ten, or eleven candidates, you can get very few
118 questions in one hour. You know, so what we decided to do, was when there
119 were two together to put the one that had the most candidates, as the second
120 forum, so that if we needed to we could go over, because you can't go over
121 with the first one.
122

123 Price Yes, you know, I'm actually fine with it. I just know that a lot of people are
124 like me, and it isn't until it actually occurs that they start wondering why it
125 was done, and I just want to make sure since the Ethics Commission is all on
126 this document, that there's going to be some actual and practical reasons. The
127 other question is...
128

129 Francis And we won't go on for two hours, but we will want to get in a decent number
130 of questions.
131

132 Foss That was the question. We went back and forth on it and decided that in the
133 forum that one with the most candidates goes second.
134

135 Price Yes, I think that's a great response, and great reasoning, and I think it makes
136 sense to have them have more time than an hour and a half. I think people will
137 be able to get their information out. The other question of course is, and the
138 reason I'm focusing on district four and seven, I'm in four, why was it decided
139 to be in one area like Northwest Rec?
140

141 Francis The city planned all the places, and there was so much criteria they needed to
142 satisfy.
143

144 Price Okay.
145

146 Francis They needed to have it where a number of people, so that at least a hundred
147 people could get in it, and have it that channel six could come to it and film it,
148 and so they made the decision on where, hopefully close enough, so that both
149 districts could get to that place without too much trouble. There were a lot of

150 places that look like they could have met, but they didn't. They didn't really
151 come together.
152
153 Price Okay, we'll just see. Because I know that some of them seem to be a little bit
154 far afield from where the district ends. Like where district four ends, the
155 Northwest Rec center is pretty far from there. So I just want to make sure that
156 when people start asking - I'm not saying it wasn't a good idea - I'm just
157 saying that when the questions start asking, and people feel there is some
158 favoritism, that the city, and the Ethics Commission, since we're doing it, has
159 some really practical reasons. And I understand what you guys all are saying; I
160 just think we need to be ready for some conversations.
161
162 Francis And somewhere where we didn't have to pay a big sum of money.
163
164 Foss Well, yes.
165
166 Francis I'm sure that's going to be a lot cheaper then. I think we did a really good job,
167 even though it's true that some of them are closer to one district than another,
168 but it had to do with what's available.
169
170 Foss And, Velva, on four and seven, in particular, if there are more candidates than
171 four seven will go first so the folks that have to come all the way from four
172 will have a little more time to get there.
173
174 Price Yes, I know.
175
176 Lara And all the ones that came a little bit further will have a little bit of time to get
177 back.
178
179 Price I understand all of that and I'm in four and I know we have eleven potential
180 candidates, that's what I've seen that in articles, but I just know that we've all
181 been here in this wonderful city of ours for a long time, and people have very
182 strong opinions, and I just want to make sure we are all in consensus about
183 why we decided to do it the way it was done.
184
185 Foss There's another point. All of them are free except one. We've have only had to
186 pay for one of them, and that was the Hope Presbyterian Church.
187
188 Francis It was difficult to find some place that was even halfway because...
189
190 Foss They all had to be ADA accessible, they all had to be on accessible public
191 transportation routes, so as Francis said, they are all...
192
193
194 Price No, I'm not disputing, I know you guys did a great job, I know you worked
195 really hard, and I'm really sorry I wasn't able to be there in person due to my
196 own schedule, but I just know that we're going to have some conversations
197 and some questions, and I just know that we're going to have to say that it was
198 very thought out, that we looked at all of the options, and these are the reasons

199 why we did what we did. And so I just want to make sure that that is said, and
200 that people are going to be contacting the commissioners, me.
201
202 Francis Yes, you're right. That's a question to be ready for, because it's going to come.
203
204 Price I know it's going to come. I have a question.
205
206 Ruiz We discussed that, and we came to the conclusion that there are all these live
207 online and on TV, and beyond that there are all these, and to be as successful
208 as possible, for everyone to get there, you know, advertise on radio, TV. Yes,
209 we decided that planning was a much more difficult process than we
210 anticipated, and then we realized that there is going to be a lot of attention to
211 that, and no matter what decision we make, people are going to analyze it and
212 ask questions.
213
214 Foss And one other thing to add is that there will be a Spanish interpreter at each of
215 them. We have some technology for any participant wants to listen in Spanish,
216 they will have headphones on, and we will have an interpreter interpreting the
217 forum as it happens.
218
219 Price What about a deaf interpreter?
220
221 Foss I'm working on that.
222
223 Price Okay
224
225 Kaplan Any further discussion or questions from the commissioners?
226
227 McCormick I have a question for you all since this is going to be our last regular meeting.
228 At a prior meeting different commissioners had assigned themselves to certain
229 forum locations, and I just wanted to clarify that all of you, this is your intent
230 to commit to?
231
232 Kaplan I can address this. We talked about this, and we actually do have a resolution
233 on this. Thank you. Donna Beth was good enough enough to bring it along.
234 Does everyone remember which forum that each commissioner is responsible
235 for? Does anyone need a refresher?
236
237 Price Yes, why don't we all refresh ourselves?
238
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241
242
243 Kaplan Okay, the expectation is that each of us will be at our forum, and will be there
244 before hand to assist with anything Francis and Malika may need, for purposes
245 of set up, if there are any questions for the Ethics Commission, specifically in
246 respect to these issues that have been raised, and then to stay throughout the
247 forum and help after the forum is over. And of course Francis, if you have any
248 questions specific to that forum, we can direct you to the particular

249 commissioner. Seven and four is commissioner Price, nine is James Ruiz, six
250 and ten is James Sassin, eight and five is commissioner Dennis Speight,
251 district one is commissioner Donna Beth McCormick, two and three
252 commissioner Peter Einhorn, and I will be doing, Chair Kaplan will be doing
253 the Mayor forum in October.
254

255 Kaplan And then the run off, we'll cross that bridge when we get there, but we will
256 probably need more than one commissioner assigned to it. Because I think we
257 will be doing a lot of organization as we go. It's November 21st at City Hall.
258

259 Price Some of these dates have changed.
260

261 Kaplan Some of it is TBD and that is by design. There are no unknowns. Anything
262 further from y'all? Anything further from commissioners?
263

264 Price I just want to say that even with my comments, good job, great job.
265

266 Kaplan Thank you so much.
267

268 Foss And I was just wanted to say too, that Austin, Chairman, for the record the
269 Chair will be inviting all of the candidates to take an application ballot to the
270 forum, and that letter it can be sent out after.
271

272 Kaplan And just so the other commissioners are aware, it's a little tight if we send out
273 a letter August 19th and 20th for a district one candidate, forum starts
274 September fourth, this information has already been publicized on the city
275 websites, currently available, it's being distributed here. Please tell candidates
276 that you know, candidates that haven't filed yet, candidates that don't know
277 about this, tell them this is not a secret, but just for efficiencies sake, we are
278 going to wait until the filing period is done before we send our notifications,
279 so that we don't have a situation where there is someone that has filed who we
280 have not notified. We do not want to do that.
281

282 McCormick And it's all on the city's 10-1 website, right Lara? All the locations and times?
283

284 Foss It's all on the 10-1 website, and you can also link to it from the court's
285 website.
286

287 Kaplan Alright, well thank you so much for coming.
288

289 Foss Thank you guys.
290
291
292

293 Kaplan Alright, so I'm going to move along. Again taking some items out of order, to
294 try to get folks who have come to address us, to kind of get to go sooner rather
295 than later. Janette, did you have something that you wanted to offer for us with
296 respect to the training of conflicts of interest? Like a presentation or anything
297 like that?
298

299 Janette No presentation, just kind of an update.
300
301 Kaplan Okay, do you need to run sooner rather than later?
302
303 Janette No, I don't think so. I'm listening to some of your other items.
304
305 Kaplan Okay, very good. I just want to make sure that I've got everybody where they
306 need to be. In that case, I would like to move along, unless there's any
307 objection, to item 4A. That's a staff briefing on the City Auditor's Integrity
308 Unit Complaint and Investigation Procedures and Reports, including the
309 Auditor's report on allegations on the Zero Waste Commissioner regarding
310 Daniela Ochoa Gonzalez. We have here a representative from the City
311 Auditor's office who is going to provide us with a presentation.
312
313 Hadvai Good evening Commissioners, my name's Jason Hadavi, I'm the Chief of
314 Investigations with the City Auditor's Integrity Unit, I'm here to do today's
315 presentation. I believe you all received an e-mail from our office regarding our
316 ability to discuss, or specifically our inability to discuss the details of the
317 investigation, we stand behind the findings in the report, and for the reasons I
318 explained in the e-mail, our work papers are covered by an exemption from
319 the Texas Public Information Act, and in order to fully seize that exemption
320 and protect our work papers and to protect identities of witnesses cooperating
321 with our investigations, we don't discuss the details of our investigation
322 without authority in any report.
323
324 That being said, the second part of the agenda item asked for a brief on our
325 investigative process. I have a presentation, what looks to be a blurry
326 presentation, here today.
327
328 I wanted to start with authoritative guidance. There's a number of different
329 documents that address the Auditor's authority to do investigations starting
330 with city charter article seven, section seventeen, the term here actually used is
331 investigative audit, but it does list that as one of the responsibilities of the city
332 Auditor. The second one is city code 2-3-5. This is the powers and duties
333 section related to the city Auditor's office, there is a number of responsibilities
334 and duties outlined there. One of which includes investigations, this time the
335 term investigations was used as opposed to investigative audit, but there is a
336 responsibility to conduct investigations included in that section of the city
337 code.
338
339 And finally, the city's fraud, waste and abuse administrative bulletin, this is a
340 document that is equivalent to city policy, put out by the city manager's office,
341 this was drafted, I forget how many years ago now, but by the Management
342 Integrity Committee, which is an internal committee to focus on ethics issues,
343 and in addition to listing the city Auditor's responsibility, is it outlines the
344 possibilities of a number of investigate authorities. It talks about the
345 responsibilities of management, of employees who cooperate with
346 investigations, and human resources department, the Austin police department,
347 and ourselves. And in that document it talks about our responsibility to run the

348 fraud hotline for the city, and to conduct investigations related to fraud, waste
349 and abuse.

350
351 Moving forward into our investigative process. See, our investigative process
352 always starts with the receipt of allegations. And we have a number of sources
353 of those allegations. As I stated the fraud, waste and abuse bulletin requires us
354 to run the fraud hotline, and our fraud hotline program, so to speak, is made up
355 of an actual phone line, where we receive calls, and an online reporting form,
356 that is accessible from the city's website, and it's there for citizens and
357 employees alike to submit allegations of fraud, waste or abuse or any
358 wrongdoing for that matter, and they can do so anonymously.

359
360 We also receive a number of allegations from departments, which is the
361 department referral section, we also receive department referrals from the
362 other side of our own department, the audit services side, who will go out and
363 conduct planned audits related to city programs, city functions, city
364 departments, they may stumble upon fraud, waste and abuse and refer that
365 over to us.

366
367 And finally there's direct contact, and the reason that we always highlight
368 direct contact separate from any of these other sections, is twofold. One, we
369 consider direct contact as a situation where an individual is not reporting
370 through the hotline, maybe they are aware of our office, maybe they've called
371 the hotline before and they feel comfortable with us, they don't feel the need
372 to remain anonymous so they'll contact us directly. And it's separate from a
373 department referral, in that it's an individual lodging of a concern on their own
374 accord, as opposed to a division in a particular department that is referring the
375 matter for us to deal with.

376
377 Moving from the allegation receipt, we go into allegation triage, and there's
378 two big buckets here. Non-fraud, waste and abuse issues, and fraud, waste and
379 abuse issues. As I stated earlier our area of responsibility is fraud, waste and
380 abuse. I'm going to start with non-fraud, waste and abuse. For non-fraud,
381 waste and abuse issues we refer them to the appropriate authority, and this
382 could be any one of a number of entities. First, we'll refer operational issues to
383 management. So if we receive a concern from an employee about a particular
384 procedure, or an operational decision that is purely an operational issue, we're
385 going to refer that to the appropriate department director, and we always copy
386 the applicable assistant city manager, as well as the city manager, and human
387 resources director on all of these referrals.

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392 Human resources: we receive a number of concerns related to personnel
393 matters that I would separate from fraud, waste and abuse, as in it's purely a
394 personnel issue. Something along the lines of a hostile work environment, an
395 unfair hiring practice, discrimination, so on and so forth; we refer those to
396 human resources.

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The Austin Police Department handles criminal matters, as outlined in the fraud, waste and abuse bulletin. We've had issues where a pool house was broken into, the cash register was broken, and the money taken out of the cash register was stolen. So that's something that is purely a criminal issue. While it is theft and fraud and includes that, it's more of a physical issue, and that's what APD's going to investigate.

And then third party. We spend a lot of time trying to make sure that people know how to contact us, putting our information on the hotline program out there, and as a result people from all over the country find us, and call in complaints completely unrelated to the city, but we often get complaints from citizens about concerns they have that are maybe related to fraud, they just don't involve the city of Austin. And as a service to those citizens, we make sure that we try to point them in the right direction. We refer a lot of concerned citizens to the consumer complaint division of the Attorney General's office. Some people confuse the county with the city, so we refer people to the county, and a number of different entities.

Moving over to fraud, waste and abuse issues. We don't necessarily investigate every single complaint that is potential fraud, waste and abuse that we receive. We do what's called preliminary inquiry, and that's the use of non-invasive techniques to establish predication.

Predication we define as the reasonable basis to believe the allegation may be true. And when I say non-invasive, if I were being investigated I might consider it invasive, but what we're saying is we're not going into the department, we're not interviewing a number of different employees from a particular division or workgroup, we're trying to see what information we can find through files without upsetting the operations of the city. So if we have access to a personnel database or to another database of information that can help us establish with predication without involving interviews and stopping operation, we use those techniques.

If we don't establish predication, there's a couple of different things that can happen. We can close the matter out; it may not even warrant a referral. If we do establish, if we do confirm that there is a concern or a risk, but it's not predication for significant fraud, waste or abuse, we will refer it to the appropriate authority. This is kind of a convoluted issue to describe, so let me give you an example.

If we received an allegation of payroll fraud, that a particular employee was stealing money using the time keeping system, and when we used our preliminary inquiry process to look into it, we determined that they were leaving 15-20 minutes early from work, not stealing thousands of dollars, technically that's a violation, it's a misuse of city resources, but it's a de minimis violation, so we're going to refer that to the department to handle

447 from an operational perspective, as opposed to conducting a full-fledged
448 investigation.

449
450 For those investigations that we do establish predication, we then open an
451 investigation. And all of our investigations follow standards. This is a
452 mouthful, the Council of the Inspector General on Integrity and Efficiency,
453 and they issue of a number of different quality standards. One body of which
454 is the Quality Standards of Investigations, and these standards address
455 objectivity, integrity, competence of investigators, proper investigation
456 planning, record keeping and performance measure tracking for investigations,
457 a whole host of issues related to an investigative entity. And we follow those
458 standards.

459
460 So in line with those standards we begin with objective investigation planning.
461 We try to establish what is the crux of the issue, what are the potential
462 applicable policies, and how can we conduct an investigation in a manner that
463 is going to yield evidence or information that will support, or not support, that
464 allegation. Then we move from there into field work, which includes a wide
465 variety of investigative techniques, we conduct a lot of interviews, we do a lot
466 of document requests and analysis, online research, we've done GPS analysis
467 so on and so forth.

468
469 Investigative results. There are three possible results at the end of an
470 investigation. The first one is substantiated. That means that we substantiated
471 the allegation. The allegation was accurate at least to some degree, and we
472 issue a report in that situation. Those reports are public documents, although
473 our work papers are not, as I described earlier. Not substantiated is where we
474 find evidence or information that suggests the allegation was completely
475 untrue, and we generally do not issue a report in those circumstances. There is
476 one exception that we engaged in a couple of times. If the allegation is very
477 public, if it has been covered by the media before our investigation is
478 complete, and we find evidence that yields the allegation not substantiated,
479 and we have an opportunity to exonerate the individual, we will talk to the
480 department director and the employee, or whoever it may be, to determine
481 whether or not they would prefer a public report in this situation to help
482 address the matter. And we've issued a report under those circumstances
483 twice.

484
485 And then the final result is inconclusive. This is where there's not enough
486 evidence, or the evidence doesn't yield enough information to arrive at a
487 conclusion, and we will not issue a report when our cases are inconclusive.

488
489
490 For those that are substantiated, this is our reporting information. The image
491 on the right is pretty small, you can't read that, but I think you all have seen a
492 copy of our report before. They are addressed to the applicable decision
493 maker, and the decision maker is going to vary, depending on the person, or
494 persons, involved in the investigation. Most often it's an employee and the
495 respective department director.
496

497 We report to the Mayor and council and to city management, so all of our
498 reports are sent to Mayor and Council. And we include in our CC list city
499 managers, all assistant city managers and the Public Information Office,
500 because they are public documents. We include other parties, as necessary,
501 depending on investigations. If there's a related board or commission that
502 should be aware of this information, we'll copy them on it. If it involves an
503 employee, and there's a potential disciplinary action resulting from our
504 investigation, then we'll copy the human resources department. We've copied
505 law on situations where there's been a legal issue, those types of situations.
506

507 Accountability action. Accountability action is any type of action that is taken
508 subsequent to our investigation, in response to the information produced in our
509 report. Disciplinary action, removal from a specific position, restitution,
510 sometimes it's criminal prosecution and investigation. We don't make any
511 recommendations as far as the accountability action that should, or should not,
512 be taken in a particular situation. If the decision maker asks us what we think
513 should happen, we let them know that we're the fact finders in the situation,
514 that they are the decision makers, that if we have similar reports or
515 investigations that have been produced in the past, that might be helpful, we'll
516 provide that information to them, and we'll do an evidence review session
517 with them if they need more details on the matter, but we won't make
518 recommendations on the accountability action.
519

520 And finally, that is how we hope to arrive at an improved ethical environment.
521 This is just one segment of the city's ethic structure, I can't reiterate enough
522 the fraud, waste and abuse bulletin identifies a number of investigative
523 authorities. There is overlap in the responsibilities for investigations, and
524 variations in how other investigative authorities conduct their investigations,
525 or run their investigative process. The easiest variation to identify is
526 anonymity, we're the only party in the City that provides for anonymity, I
527 suspect because we are charged with running the fraud hotline, and I think
528 that's the reason why we get a lot of calls that are unrelated to things we need
529 to investigate, but people find a lot of comfort and security in being able to
530 lodge a complaint without putting their name to paper, and everyone knowing
531 what they said.
532

533 So that's the conclusion to my presentation. I can take any questions that you
534 might have.
535

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537
538 Kaplan I'm sure the commissioners would like to ask questions. What I'd like to do
539 here, is just have, we don't usually do this you all, but just moving for this
540 meeting, such a big meeting, so many folks here, I'd like to have you ask for
541 recognition from the Chair, and we'll take it that way so we make sure
542 everybody gets a chance to speak.
543

544 What I'd like to do is have the commissioners first post questions to
545 Mr. Hadvai, and then what we'll do after we're done here, is we'll open up the
546 next group of agenda items together, and have public comment on those items.

547 So, why don't we get started with the commissioners? Does anyone want to
548 start the questions? Commissioner Einhorn?

549

550 Einhorn In your report you recited chapter 2-3-5 of the City code, section G, talks about
551 when an auditor determines a city employee or official that may have violated
552 a law, or maybe reasonably anticipated to commit a violation the auditor shall,
553 and it states that you all shall immediately report the suspected violation to the
554 appropriate authority. I'm just wondering what you think the appropriate
555 authority with regards to an ethics violation.

556

557 Hadvai I'm glad you asked. In discussions with the management integrity committee,
558 which includes the city attorney, we worked on that piece of our responsibility
559 significantly, and the advice we have been given has been when we're in a
560 situation where, when we make a determination that an employee has
561 committed a criminal violation, that is the part of our city code that is
562 triggered. So for example, the payroll fraud example I gave earlier, if we
563 confirm that somebody was using the payroll system to embezzle money, it's
564 obviously going to be a criminal violation, we consult the city attorney and
565 then subsequently queue the district attorney and the Austin Police
566 Department. If it was a federal issue that involved HUD, for example, we
567 would consider HUD to be the appropriate authority. But for general situations
568 of fraud, waste and abuse where it's not a criminal violation, or where the
569 relative authority has declined to take on the issue, we handle it through our
570 normal investigation process.

571

572 Einhorn How many conflict of interest investigations has the auditor's office
573 undertaken in the past five years?

574

575 Hadvai I couldn't tell you off the top of my head. Are you asking for investigations
576 where we substantiated violations, or are you asking just in general?

577

578 Einhorn Both.

579

580 Hadvai I'd have to get back to you on numbers. I don't want to give you false
581 numbers, but several.

582

583 Einhorn Okay. I looked around on the auditor's website, and I understand that your
584 website is in the process of being redone, which it seems the city of Austin's
585 website is constantly in process of being redone. I'm just wondering where the
586 public can go on the web, on the internet to find these reports? Are they posted
587 on the internet for the public to access?

588

589 Hadvai They are not posted on the internet.

590

591 Einhorn How would the public know that they exist?

592

593 Hadvai Well, it depends on which member of the public. So anyone involved in an
594 investigation can call, we frequently get follow up phone calls or
595 communications, sometimes we get e-mails from people that have participated
596 in an investigation and want to know what the result was. We have at times

597 received blanket requests, so I would consider it a public information request,
598 of someone periodically submits a request for all investigation reports for a
599 period of time, or involvement with the City department for a certain period of
600 time.

601

602 Einhorn Is there a process for the subject of an investigation to be notified when the
603 report of an investigation is done? Do they get a chance to see it before it's
604 published, and respond to it?

605

606 Hadvai That would be up to the applicable decision maker. So one thing I didn't talk
607 about with is our report system, prior to the issuance of a report we provide a
608 draft copy a week in advance to the applicable decision maker, and if they
609 want to share that with the person involved in the investigation, that is up to
610 them. We report our findings to the decision makers. If they want to involve
611 the person involved in the investigation, then that's their prerogative.

612

613 Kaplan Any further questions from the commissioner? I have a question - are we
614 allowed to know who the decision maker was in this instance?

615

616 Hadvai Yes, so we looked at the appointing council member, which was council
617 member Martinez.

618

619 McCormick I have a question.

620

621 Kaplan Commissioner McCormick?

622

623 McCormick Commissioner Einhorn asked a similar question. In your distribution list you
624 have the Director of Communications and Public Information. So this is going
625 out to the world, possibly before the person being investigated knows about it.
626 Is that correct?

627

628 Hadvai I wouldn't say it's going out to the world. We make them aware of it, we
629 provide them a copy; we don't provide it to any media outlets or send it out to
630 anybody. We provide it to them in the event that a public information request
631 is received later on.

632

633 McCormick So you do not know who the Director of Communications and Public
634 Information, when they send it out, or how they send it out, how fast, after this
635 was dated April the 18th?

636

637

638

639 Hadvai It is my understanding that they don't just send it out. That they have a copy, a
640 courtesy copy if you will, in the event that a public information request comes
641 in. So it's not a pushing it out, it's making it available to them so that if
642 requests come in for the report they have it.

643

644 McCormick But you don't know really who it goes to? From the Director of
645 Communications and Public Information, you don't know anything about their
646 list? And whether they send it to the newspaper? As it seems that they do.

647 Hadvai When a public information request comes in it gets logged in a city system,
648 that staff in our office has access to, so we become aware of the public
649 information request. If somebody provides it to somebody outside of that
650 process, then no, we don't know.
651

652 Ken Mory We're not aware – I'm Ken Mory, City Auditor - we're not aware of them
653 actually releasing it to anybody else.
654

655 McCormick Well it seems like they do.
656

657 Kaplan I'd just like to take a moment to thank Mr. Mory for being with us today, thank
658 you.
659

660 Price I have two questions.
661

662 Kaplan Okay.
663

664 Price I'm not going to limit myself to two. One is on the reason - one of the reasons
665 why we have so many people visiting is - you said you sent it to distribution,
666 but the person being investigated wasn't on the distribution list.
667

668 Hadvai Correct.
669

670 Price So she, or her representative, never got this, and why is that?
671

672 Hadvai Our process, I think I articulated poorly earlier. Our process if focused on
673 reporting our results to the decision makers and to the bodies that we report to,
674 that's the Mayor and council, and the respective decision maker in any given
675 situation. Whether they choose to involve the person involved in the
676 investigation or not, is truly in their own court, if you will, we don't make any
677 recommendations on how they handle it, that's not part of our process.
678

679 Price So generally, not generally, but exclusively, when you are investigating a
680 claim against an individual - I'm not going to talk about a corporation or a
681 company - an individual, that individual is being investigated no matter what
682 the determination is, that individual is never notified of your findings, unless
683 the decision maker, or whoever you guys decide, tells that person?
684

685 Hadvai Correct.
686

687 Price And that is based on this standard, the national standards, that's how they do
688 it?
689

690 Hadvai Well, the standards has flexibility in the reporting. It requires for verbal
691 reports, which we don't provide. We only provide written reports, we don't do
692 anything verbally. I don't think they've reached that level of detail. They don't
693 set out the actual policies and procedures, they provide guidance for standards
694 issued, which we seek to reach out too during the investigation. The
695 confidence of investigators, a system by which you track your investigations,
696 these types of issues.

697 Price And this is separate from the particular reason why we are, that's on our
698 agenda, but just in general about the auditor's office. Who audits the auditor?
699

700 Hadvai Other auditors. We are required by government auditing standards to undergo
701 a peer review every three years. The peer review is done, we're part of an
702 association, it's called ALGA, the Association of Local Government Auditors,
703 and we participate in their peer review process where every three years they
704 send a team of auditors from different shops to come in and evaluate our
705 practices, and look at how we conduct various projects, and then they issue a
706 report for lack of a better term, they issue and present a letter to the audit
707 finance committee and talk about our office.
708

709 Price So they usually send it to the city council members who are sitting on the city
710 audit finance committee?
711

712 Hadvai Yes ma'am.
713

714 Price Okay. Then you said that sometimes you have a, you issue a report, well no,
715 my notes are really bad, that if you find to some degree that the complaint is
716 substantiated, then I guess...
717

718 Hadvai What I was trying to communicate there was we may receive a host of
719 allegations, and let's say that three of the four turned out to be substantiated,
720 but the fourth did not, so we'll issue a report for those three.
721

722 Price Okay, well I'm a lawyer and so we always have this, maybe some people call
723 it, I'm sure jurors would call a very wishy-washy standard, which is a burden
724 of proof. What is the level that you guys need to meet in order to find that
725 something's substantiated? I'm very confused about it.
726

727 Hadvai A preponderance of evidence. When I was talking about when we would issue
728 a report, I wasn't talking about the level of evidence, I was talking about...
729 often times an allegation is not just one straight forward issue.
730

731 Price Oh, that was not clear. So if there's several issues...
732

733 Hadvai We'll report on the ones that we substantiated and not the others.
734

735 Price Okay. Then the greater weight and degree of the credible evidence, that is
736 when you find the allegation has been substantiated. Okay. And then my only
737 other question, you said if it's not substantiated then there's no report, most of
738 the time.
739

740 Hadvai Correct.
741

742 Price So the person who's being investigated, who may know they're being
743 investigated, will never get a written document saying that you guys did not,
744 that there was no support for it.
745

746 Hadvai That's correct. We have a, we include in our process, we try to protect the
747 identities of witnesses and informants, and so we're balanced with what
748 information we're putting out there. And we're also, if someone did not do
749 what was alleged, that they did not perform that action or that event did not
750 take place, we don't want to present a public report that ties them to that
751 action, because people are just going to associate them with that, regardless of
752 what our finding is stating.
753

754 Price So is it your position any findings you guys write out and issue to a decision
755 maker is public record?
756

757 Hadvai Correct, our reports have to be public record. The Public Information Act, the
758 portion that addresses the exemption for audit working papers does not protect
759 reports at all, it only protects working papers.
760

761 Price Okay, I think I'm done.
762

763 Einhorn I think you addressed this in your presentation, but I just want to make sure I
764 fully understand it. What is the force in effect of the investigation report from
765 the auditor's integrity unit? I mean, does the report constitute a finding or
766 determination that a violation has occurred, or does it just highlight an
767 allegation, and a potential allegation, to be further investigated by the
768 appropriate authority?
769

770 Hadvai The report documents our conclusions, our findings, so it's not a court of law
771 but it's not merely an allegation.
772

773 Kaplan Any questions from any other commissioners?
774

775 Einhorn And so when you present the report to the decision maker, then it's the
776 decision maker's responsibility to take further action or no action at all?
777

778 Hadvai I wouldn't say responsibility.
779

780 Einhorn Or option.
781

782 Hadvai Correct. So action's not always taken as a result of our investigation.
783

784 Kaplan Any additional questions or discussion? I'd like to take a couple to share my
785 few cents, I guess. I don't know if I speak for all of us, but I'll speak for
786 myself, and say obviously I'm disappointed that we can't find out more about
787 this particular investigation using this forum, I know that the ZWAC was
788 disappointed when you all addressed the ZWAC for the same thing, but I
789 understand that the PIA keeps your working papers private, I think any
790 additional information that you all are at liberty to share, able to share, helps
791 sheds a little bit of light on this discussion, which has been going on
792 vigorously of course, in the public ever since the report was issued.
793

794 I want to highlight, you know, there certainly is an irony here that we have an
795 anonymous complaint, and we still don't know who made the complaint

796 against a very non-anonymous commissioner. All of us are commissioners, we
797 all serve because we care about the city, and we love to do what we do for as
798 long as we can. And we're unpaid, we just do this because we care, and we'd
799 like to make the city a little bit better. And I'd like to think that every city
800 commissioner, and there are lots of them, and there are going to be even more
801 of them after 10-1, everyone's in it for the same reason. And part of what we
802 do here is to try to make life as straight forward and as easy as possible for
803 City Commissioners, and also kind of give them the rules of the road, and it's
804 a concern when people can make anonymous complaints against city
805 commissioners, and people feel like their rights are...they're not able to
806 vindicate their rights in public. And I understand that concern. So in trying to
807 address this moving forward -
808

809 Mory If I may, I think another side of that, if the person is not guilty and it's made
810 public, in our society quite often they're guilty and so the reputation can be, I
811 mean y'all's reputation, you can just make an allegation and just throw it out
812 there. We need to protect not only our witness but I think also we need to have
813 some protection for a person from having an allegation made against them. So
814 that's, and we're subject to the same thing, I will guarantee you I've been
815 accused of a few things in my career, and luckily, they were not substantiated
816 for the most part, have never been substantiated, and I was glad that it just
817 didn't become public knowledge. And especially at y'all's level and at the City
818 management level and people with high visibility jobs, it's important we look
819 at all things and balance it so everybody's reputation and rights is protected, so
820 this is what we do in order to do that. And the idea is if they're not
821 substantiated it will never get out. So I think that's some assurance, if you're
822 not guilty of it, it's not gonna get out. I think part of the solution for
823 Commissioner's is, I think we do have a rule book, we just need to look at it,
824 is the training, the education, make sure all the commissioners are very clear,
825 what they can and can't do. That's probably the best thing, because it's
826 preventative. You end up with no problems at the end of the day.
827

828 Kaplan I just want to add one more point and then I'll defer to you, Commissioner
829 Einhorn. If – what's your position - and thank you again to Mr. Mory and Mr.
830 Hadvai for being with us tonight, I appreciate it. What's your position, if the
831 Ethics Commission were to suggest to council that the Ethics Commission
832 should have exclusive jurisdiction over allegations of conflicts of interest, and
833 lobbyists with respect to commissioners, so folks like us, people that are
834 sitting on these public boards and they run into these issues, distinguishing
835 commissioners from city employees, people who are paid by the city. So do
836 you have an opinion on that, whether or not you would agree? How do I put
837 it? Do you have an opinion if the Ethics Commission were to make that
838 suggest to council that the Ethics Commission should be the place to go if you
839 have a complaint against a sitting commissioner?
840

841 Hadvai I don't have an opinion on that in general. My only caution that I would
842 communicate would be, as frustrating as the anonymous portion is, we get a
843 lot of calls from people that want to make complaints, I can't tell you how
844 many times myself, or my investigators, have referred someone to the Ethics
845 Review Commission process, and the putting their name to paper and being

846 publicly associated with that complaint is a fearful practice for them, and so
847 they choose to refer it to us instead. So what I would do is, I would
848 recommend if you go down that path that you at least consider some form of
849 anonymous reporting.

850
851 Kaplan I appreciate that.

852
853 Einhorn Mr. Hadvai, in trying to learn a little bit about the city auditor's integrity unit, I
854 found in your accomplishment report in 2013 a little statement that says, 'city
855 auditor's integrity unit conducted several integrity related projects. Through
856 these projects the CAIU helped improve ethics city wide by maintaining a
857 visible integrity system, and ensuring compliance with applicable policies,
858 laws and regulations.' But based on everything you guys have said, it doesn't
859 seem all that visible. And I agree with you, I understand the need to have an
860 anonymous reporting process, and I definitely think that is something that we
861 need to address, but 2-7 of the city code makes a pretty clear process for a
862 visible ethics compliance process. It is a process where we have open
863 deliberation, everyone has access to everything we do, they can come and hear
864 us deliberate on it, and you know, I am troubled by the word 'visible process',
865 when it doesn't appear to be a particularly visible process.

866
867 Hadvai Well we engage in a lot of activities internal to the city that other people don't
868 see. We participate in the development and the implementation of annual
869 ethics training. We work very closely with the ethics compliance teams. We
870 talk about what are the trends and issues that are coming up, what are the
871 things that it seems like employees are not getting, or are particularly having
872 struggles with, we participate in the supervisors and manager's academy,
873 which is part of our orientation development academies. And we talk about the
874 ethic structure as a whole, we talk about the other investigative authorities, we
875 talk about the resources that are available to them, the processes that are
876 available to them, we make sure that people coming in are aware of the
877 applicable policies and procedures, administrative bulletins of the city code,
878 we do the same for new employee orientation. And there's a number of other
879 things we do along those lines that help maintain the visibility of the integrity
880 system which you guys play a very major role, I'm familiar with the role that
881 you play, and the process that you guys follow, but there's also a human
882 resources element, a police department element, a management integrity
883 element, ethics compliance, there's multiple pieces to the City's ethics that
884 exist within the structure that come together, sometimes overlap, and build up
885 the ethical environment that is the City of Austin. That includes management,
886 the tone that they set, during their day to day operations.

887
888
889
890 Speight When it became clear that it was a conflict of interest complaint, was there any
891 ability on y'all's part to forward to it to us, before you all engaged in an
892 investigation? Understanding that it was an anonymous complaint, is there,
893 going forward, a method for us to do it together? Any means for that?

894

895 Hadvai If I could address just the second part, I can't speak about the details of this
896 particular investigation. From a process standpoint, there's been no precedent
897 for that. That's certainly an option, something to discuss, we don't have any
898 advice or direction from our law department, for example, or any other
899 department that that's the process that should be followed or any authority that
900 says this is the way it should be handled, but I'm not saying that that couldn't
901 be part of the process going forward. That, or what you were talking about
902 earlier, related to separating city official from city employees, and the way that
903 they're handled with respect to ethics issues. I think that either one of those
904 are realistic possibilities.
905

906 Kaplan And I'll address that briefly. It seems to be me if we're both doing the same
907 thing, so we came to the realization that we're both on parallel tracks, but it
908 seems to me to be somewhat inefficient to have us both do the same thing.
909 Certainly 2-7 sets out our rules and those rules are published, and everybody
910 knows the rules of the road with respect to that stuff, and that's kind of what
911 we do. But certainly we don't want to be handling 2-7 complaints that are HR
912 issues for city, for city employees. That's not what we do. And we struggle to
913 make sure people understand that distinction as well. But that aside, I think for
914 city officials who are appointed who serve publicly and are subject to the rules
915 we oversee, it seems to me to make sense to have us to be the process, to have
916 complaints go against those people, and not have an anonymous option. Not
917 that it's not available, but have the complaints referred to us instead. My
918 concern is that the anonymous option doesn't, for exactly what you said,
919 people are fearful when they have to actually make a public complaint. And I
920 don't think that it's a bad thing when you're going to swear out a complaint
921 against someone who's a city commissioner. Because I think that it will make
922 people think twice, and make sure they've got a good reason to bring this
923 complaint. And people have done it. You know, we have a complaint coming
924 up soon. It's already been filed. And that I won't talk about, but stay tuned. In
925 any event, that's the process, and there's a reason for the process, and I see
926 good reason to go through that process, and I'm concerned given what we've
927 learned about this situation, and given, obviously, the concern behind you in
928 the room at the anonymous method, which none of us knew about before we
929 were alerted to this issue even existed, is a potential for abuse of the complaint
930 process. So my personal opinion is I think moving forward we should figure
931 out a way, and maybe the hard part is just to figure out how we set that process
932 out, but a way that works for you all, works for us and the council agrees with,
933 so that complaints are made publicly when made against city officials.
934

935 Speight In that vein, it seems to me there's nothing that precludes them from filing a
936 complaint with them, and then filing a complaint with us.
937

938

939 Cindy Tom That's what I was thinking.
940

941 Speight They can keep the anonymity if they so choose, but then the investigation
942 portion, or the review, comes to us.
943
944

945 Kaplan So it's a way protect the anonymity of the person filing the complaint, but it
946 seems to me you would issue this report, and then you're going to drop it on
947 us without filing a complaint, and then you won't talk to us about your
948 investigation so that we can flesh out whether we want to take up the issue on
949 our own. So would you guys be in favor of maybe a change to clarify that if
950 you guys find a possible violation of ethics or rules that you actually file a
951 complaint with us?
952

953 Hadavi I think the cleaner way to do it would be earlier, and again, we report to mayor
954 and council so we would want to run it past them, but providing that we have
955 their support for this, would be to file the complaint at the allegation point, and
956 you guys would process from beginning to end. So there's no differentiation
957 between someone coming directly to you and one step of them reporting to us.
958 But we haven't done any investigative work, we say we've received this
959 complaint, we're filling out this complaint form that goes to the Ethics Review
960 Commission and we're not attesting to anything in here, other than the fact
961 we've received this information.
962

963 Cindy Tom I have to just interject here as legal counsel. You guys are aware, of course,
964 that under the process set out currently in chapter 2-7 for complaints and
965 hearings, generally the individual who filed the complaint does need to swear
966 to the complaint, and that person would have the burden of proof at a
967 preliminary hearing, and if we moved towards a final hearing to present the
968 evidence and witnesses to prove the allegation if the auditor's office, or
969 someone from the auditor's office going forward, were to file a complaint with
970 the ERC, the expectation would be that that the office would continue to be
971 involved in the preliminary hearing.
972

973 Speight And that was my scenario.
974

975 Cindy Tom Unless there was a change to that process made by council, or unless the
976 Ethics Review Commission were to file a complaint on its own initiative, but
977 if so, I think one of the challenges is that the Ethics Review Commission's full
978 time staff, well consists of me, I'm not full time with you all, and I'm not an
979 investigator, and it might be difficult without anything else from the auditor,
980 with no investigation, with no kind of plaintiff presenting the case for you, for
981 you guys to try to come up with the facts on your own, when you're a part
982 time volunteer commission. It just might present logistical challenges under
983 the current code, under the current process.
984

985 Speight And the scenario I was referring to would have kept them involved in the
986 process.
987

988 Kaplan I have a question for our staff liaison Cindy Tom, from the law department.
989 Can the auditor under our current rules, do we know if an auditor can swear
990 out a complaint and then take that advocate role in the process, the
991 complainant's role? That may be something we need to clarify.
992

993 Cindy Tom I don't see any restriction, at least in chapter 2-7. I'm not sure about the
994 auditor's own policies, or the auditor's own code, the chapter 2-7 in the city

995 code which governs Ethics Review Commission complainant hearing process
996 states any person can file a complaint – an ethics complaint. It does need to be
997 sworn, that’s part of code. It does need to list the section that was violated, list
998 some facts, summarize some evidence or witnesses that might be presented to
999 prove it. But, there’s no restriction against city staff filing a complaint with the
1000 Ethics Review Commission that I’m aware of.
1001

1002 Kaplan I would be more in favor of that than having us as part of the revision to the
1003 process sua sponte, because that would take three special called meetings of
1004 the Ethics Commission to come to any kind of formal final finding of a
1005 violation, a final hearing, that’s a lot of coordination.
1006

1007 Hadvai So in order to address just that type of process, I would want to go back and
1008 look at our standards, look at our other processes, what our responsibilities are
1009 for the Public Information Act for reporting. I’m having a hard time
1010 conceptualizing how our public reports, and reporting to you is going to work,
1011 and how we would logistically get those things done. I’m not saying it’s not
1012 possible, but I would want to consider those things before we propose a final
1013 solution.
1014

1015 Price I would suggest that we have a working group, which I of course I will not be
1016 a part of, to meet with the auditors, because this was a lot of thought that we
1017 have to have, and we have limited time for us to have a working group, which
1018 I’m not volunteering for, would work with the auditor so we that we can have
1019 a specific process that we would consider and maybe vote on at the next
1020 meeting, which I probably will not be at.
1021

1022 Kaplan Thanks. Just to catch everybody up, we are at agenda item 4A. We are
1023 discussing possible action regarding the auditor’s report. We discussed the
1024 report, we discussed the processes of the auditor, we are now discussing some
1025 potential improvements to our parallel processes. Moving forward I just want
1026 to let you all know, commissioners and the public here, obviously the next set
1027 of items is going to be 3C, not in this particular order, we’re going to take
1028 them up together. So 3C, 5C, I’m sorry, excuse me. 3C, 4C and 4D. Or if you
1029 prefer, 4C, 4D and then if necessary, 3C. But essentially, the ZWAC report,
1030 our ability to act on those issues.
1031

1032 But I think what I’m hearing here is that regardless of what we do with this
1033 particular complaint that’s going on, I’m getting the sense that we need to look
1034 at our processes moving forward. I don’t have a motion on the table yet we
1035 can move on.
1036

1037 Price I so move that we put together a working group.
1038

1039 Kaplan Okay, there’s a motion on the table to create a working group, and what’s the
1040 working group?
1041

1042 Price What’s it going to do?
1043

1044 Kaplan Yes.

1045 Price Oh, I'm sorry. It's going to work with the auditor's office in regards to
1046 reviewing the city's Ethics Review Commission's processes, and the auditor's
1047 processes, in conflict of interest complaints. The best way to address it so we
1048 don't have duplication.
1049

1050 Einhorn Would you consider it friendly to add the law department to that working
1051 group?
1052

1053 Price Well, I thought they always were, but okay.
1054

1055 Einhorn Okay, I'll second it.
1056

1057 Kaplan Hold on, hold on. You guys have lost me here. We have an amendment, and
1058 what is the amendment?
1059

1060 Einhorn It's just about the law department, going through the city attorney's
1061 department is also in the conversation. They are also in the working group.
1062

1063 Kaplan Okay, all in favor of this amendment to add the law department to the motion?
1064

1065 Cindy Tom, Einhorn, Speight, Einhorn, McCormick, Price, Ruiz
1066 Aye.
1067

1068 Kaplan Any opposed? Nothing about the carriage of the main motion?
1069

1070 Cindy Tom That amendment's fine, but not that I'm going to make an amendment, but I
1071 just want to clarify that the working group that you're proposing is to discuss
1072 ERC, and auditor, and law departments processes with regard to conflict of
1073 interest complaints only, or?
1074

1075 Price Violations generally. Let's just make it that broad.
1076

1077 Cindy Tom And the amendment passed unanimously?
1078

1079 Price Yes.
1080

1081 Kaplan And the amendment passed unanimously to add the law department. So the
1082 motion as I understand it is to create a working group, the Ethics Review
1083 Commission to work with the auditor's office to review the Ethics Review
1084 Commission's, and auditor's process with regard to ethics, including the law
1085 department. Correct?
1086

1087 Price Yes, okay.
1088

1089 Kaplan Okay, is everyone clear what we are voting on?
1090

1091 Price Yes, a working group.
1092

1093 Kaplan We can create it, and then appoint.
1094

1095 Kaplan Commissioner Einhorn was the second. Motion made by Commissioner Price.
1096 Any more discussion on this motion?
1097
1098 Ruiz Well I guess one issue I have is they don't file a complaint with the auditor's
1099 department, they just get a tip. So what are you talking about, when they file a
1100 complaint?
1101
1102 Price It can be broad like, I guess what I want is what we've been talking about for
1103 the past thirty minutes. So that if the auditor gets a tip, or what do you call it?
1104
1105 Hadvai Allegation.
1106
1107 Price Allegation, if it falls within our preview, there would be a process so it
1108 wouldn't be duplicated, that we wouldn't have the same kind of issue that
1109 we're having now. I mean it's not very succinct, but...
1110
1111 Kaplan Does anyone have a substitute motion?
1112
1113 Price No, I like my motion. I'm just going to take away complaint and say
1114 allegation.
1115
1116 Kaplan Are you offering a substitute motion?
1117
1118 Ruiz Yes she is.
1119
1120 Kaplan Yes she is. Alright so the associate motion is... Can you state the motion so we
1121 know what it is?
1122
1123 Ruiz I think she can revise her motion right?
1124
1125 Price Yes.
1126
1127 Kaplan That's fine. What's the revised motion?
1128
1129 Price The revised motion is that the Ethics Review Commission and the auditor's
1130 office work together in order to review both processes, in order to address
1131 ethic issues in general. Like T & T, right? That broad.
1132
1133 Kaplan Okay. So the motion that's on the floor now then is to create a working group
1134 to review ethics issues in general, with the Ethics Review Commission and the
1135 city auditor's office, and the law department?
1136
1137 Price And the law department, yes.
1138
1139 Kaplan Any discussion on this motion? Alright all those in favor?
1140
1141 Cindy Tom, Einhorn, Speight, Einhorn, McCormick, Price, Ruiz
1142 Aye.
1143
1144 Kaplan All those opposed? None. Motion carried unanimously. Thank you.

1145 Einhorn The working group has no members.
1146
1147 Kaplan I will join this working group. Who else would like to join this working
1148 group?
1149
1150 Einhorn Why not.
1151
1152 Kaplan Kaplan, Einhorn. We have room for another member. Do we appoint our
1153 absent member, as is our general process?
1154
1155 Ruiz I believe Mr. Sassin would second that motion.
1156
1157 Price That's what you get for not being here.
1158
1159 Kaplan They call a parting gift I believe. Thank you. I want to thank the city auditor
1160 and Mr. Hadvai for coming and addressing us and giving us the presentation,
1161 and telling us what they were able to tell us. Thank you for spending the time,
1162 I'm sure that members of the public would love to give you their thoughts if
1163 you can sit down. I'll leave that to you all.
1164
1165 The next set of agenda items as I mentioned, and let me do it in this order.
1166 We're going to take them up together, but it's going to be 4C, 4D and 3C if
1167 necessary, but you all can feel free to address that if you would like. I'm going
1168 to read these agenda items to everyone in the audience here so we know what
1169 we're discussing. And then what I would like to do is open up citizen
1170 communication, I want to let everybody know what's going on though.
1171
1172 We've got 25 people signed up to speak at three minutes apiece. We're looking
1173 at 75 minutes of discussion, so we're over an hour, it will probably take an
1174 hour and a half. I'd like to ask everybody to form a kind of queue if you can,
1175 in order, and I'll read out the order real quick so you all can get a sense of
1176 what's happening, if that's helpful. And some folks have some time to be
1177 donated, that comes kind of towards the back of the list. So I just want to try to
1178 move people through pretty efficiently. If the commissioners have questions
1179 for any of the speakers, we'll stop and take those questions. Just stop me if I
1180 forget to ask as we go on. And if any commissioner needs to leave the dais for
1181 any reason, personal or otherwise, feel free to do so if necessary. I'm going to
1182 read off the agenda items now.
1183
1184 So, 4C is Zero Waste Advisory Commission recommendation number
1185 201461138, that's a ZWAC response to city auditor integrity unit report,
1186 regarding city auditor conflict of interest investigation of city commissioner
1187 Daniela Ochoa Gonzalez. 4D is possible action by the Ethics Review
1188 Commission to make a recommendation to the city council regarding ethic
1189 complaints jurisdiction, and city code chapter 2-7, and then number 3C is
1190 essentially a reconsideration in light of new facts, possible action by the Ethics
1191 Review Commission to file a complaint on its own initiative against former
1192 zero waste advisory commission member Daniela Ochoa Gonzalez.
1193

1194 I represent to all of you that in putting these agenda items on the agenda our
1195 attempt was to give this commission as much power as it has to act given the
1196 facts before it. So we are limited as a commission to what we can do, we
1197 attempted with this agenda to try give us as much leeway to do whatever the
1198 commission decides to do that it can do. That was out intent here.
1199

1200 So I want to let you all know this is how the speakers go. Daniela Ochoa
1201 Gonzalez, Brandi Clark, Ken Schroeder Stacy Guidry, I hope I'm saying that
1202 right, sorry Stacy. Heidi Harris, Gail Vittori, Morgan Whitney, Iyam Nyick,
1203 who's donating time, I apologize. Nancy Schroeder, Teresa Holmes, Andrew
1204 Dobbs, Randy Jewart, Saul Sussman, Monica Jewart also donating time.
1205 Michael Whellan, Robin Schneider, Adam Gregory, Annalese Lotman,
1206 Mariano Conde de Frankenberg, Saul Sussman. And then I believe we have
1207 five additional people who are not on this list. Cathy Gattuso, Bob Gregory,
1208 Mitchell Harrison, Gary Newton, Paige Hill Oliverio and Paula McDermott.
1209

1210 If anybody else has wishes to speak and hasn't had a chance to sign up come
1211 see Cindy over here, and we'll sign you up, make sure you get a chance to
1212 speak. So we're just going to go ahead and get started down this list. Daniela
1213 is first.
1214

1215 Commissioner Speight has been good enough to keep time for us. Everyone's
1216 limited to three minutes. If you would like to have time donated and you
1217 haven't already sort of worked that, we're allowing each speaker to have two
1218 other speakers donate time for a maximum of nine minutes per speaker. I
1219 believe you have two donations, right?
1220

1221 Gonzalez If you don't mind I'd like to go last.
1222

1223 Kaplan That's fine. So the order is Brandi Clark, Ken Schroeder, Stacy Guidry. If you
1224 all can just be ready so that we can kind of keep moving. And you each have
1225 three minutes each. Thank y'all.
1226

1227 You can sit right at the table if you would like, right there. And just speak up
1228 so that we make sure to have you on the record here. Thank you.
1229

1230 Clark I didn't expect to go first, but thank you for having us. My name is Brandi
1231 Clark Burton and I serve on multiple boards and commissions, and I have
1232 chaired commissions in the past, and I am very involved with this city. I'm
1233 also very involved in the zero waste movement, and have attended ZWAC
1234 meetings, and also personally know Daniela Ochoa. When I found out about
1235 the allegations and the report was released I read the report. I could not
1236 understand the substantiation that was put forth, and I went to ask Daniela
1237 many more questions, and felt like she gave every effort from the time she was
1238 been asked us to serve on the commission. She said "is it okay - I'm working
1239 for a waste hauler - for me to serve on this commission?" She was told yes.
1240 There was something where a vote was coming up, that there was going to be
1241 a financial benefit to help you, before the need to recuse yourself.
1242

1243 And she asked for that clarification again, and she was trying to make sure,
1244 she was going to say no if it was a problem, she didn't want to cause anybody
1245 any problem. And she asked when the training was given, the ethics training
1246 was given, she said, 'is this available in Spanish? I want to make sure that I
1247 understand this, like exactly what it meant'.
1248

1249 And I think that as we become a more diverse city that our ethics training
1250 needs to be available in Spanish. Even though meetings are conducted in
1251 English, the understanding of the nuance of the legal facts should be clear to
1252 everybody in their native language.
1253

1254 And furthermore, I think that, I just hope that you will take action. Whatever
1255 action you have the power to do to dismiss this report, and to change the
1256 process. I got from your, from listening to their testimony, that you guys want
1257 a fair and transparent process. You want to honor the service of
1258 commissioners, and make this be as transparent and fair as possible. I don't
1259 want to take more time, there's a lot of people waiting to speak, but thank you
1260 for the opportunity to be here, and I believe that Daniela is innocent. In
1261 knowing her passion, and wanting to go back to Mexico and basically be like
1262 the Bob Gedert of her, you know, territory, an ethics violation that does not
1263 reflect the intention of her service here in America is not fair, I don't believe.
1264 And I hope that we can do whatever we can to remove that.
1265

1266 Kaplan Okay, any questions from the Commissioners? Okay, thank you Miss Clark.
1267 Mr. Schroeder?
1268

1269 Gonzalez I've changed my mind, I might go next.
1270

1271 Kaplan Okay, will you go ahead of Mrs. Schroeder? You all tell me.
1272

1273 Gonzalez I'll just go, it's easier. Because I was asked go next. Thank you.
1274

1275 Kaplan Okay, that's fine. I know you have nine minutes.
1276

1277 Gonzalez Thank you. First of all thank you for everyone to have this opportunity, thank
1278 you that we can try to train things up, and thank you for all of the support, I
1279 feel really blessed and I appreciate it.
1280

1281 And especially thankful that these, that this will set a precedent, so that there is
1282 a precedent to make it easier for all commissioners in the future.
1283

1284 I wanted to tell personally how the situation was for me. It's not like I'm
1285 trying to learn English still. I graduated from a Master program in the United
1286 States, and English is something I feel very proficient about. I took the
1287 training of ethics three times, because there is a chance to repeat it. I also read
1288 the ethics code, and the ethics guidelines, because I did call and ask for it in
1289 Spanish, and sure as long as you completely understand the guidelines. Make
1290 sure you know them perfectly, so I review them and have no questions.
1291

1292 What I did, I did as the director of the department, I was gratified that it was
1293 not a problem. So I was with my clear mind, thinking I was making a
1294 difference, spending three hours of my time, and taking another ten hours to
1295 read the 250 pages as you have to review every agenda item and supporting
1296 document, reading the document in English was better than Grad school, you
1297 know, understanding everything, learning all the terminology and trying to
1298 provide my time there.

1299
1300 I was appointed, at least I was appointed because there weren't that many
1301 people in the Hispanic community that actually care about issues that are
1302 related to waste reduction, and they couldn't find anyone that was more
1303 passionate about this than me. So I thought that was a good opportunity to
1304 have this learning opportunity and when it came, I really felt that when I went
1305 to sleep, and I still do today, that I come out clean.

1306
1307 So that was in January when I started, and back in December 2013, after
1308 almost a year of that, I got a call from Mister Nathan Willy, who by the way is
1309 here today, and I appreciate that you gave the time and have the interest to
1310 come here, and Miss Tucker, who are part of the investigator unit from the
1311 auditor. And I was told in English, we had a phone call saying that you had a
1312 wrongdoing. A wrong doing? I was like what am I doing wrong? Can you
1313 explain what wrongdoing means? Well, we have to make an interview with
1314 you if you don't mind.

1315
1316 I call right away and say 'yes, let's do it as soon as possible'. I went there with
1317 my three month old baby, I couldn't find a babysitter, in a tiny room like the
1318 policeman play with a lamp, and they asked me all these questions and they
1319 record me, and I look at them like in a normal situation I give my best. I am
1320 like whatever is needed here, I'm in the clear. I have no wrongdoing.

1321
1322 And they went through the questionnaire in late December. I notified the
1323 office of Mike Martinez and they told me not to worry about it, as long as you
1324 are clear, you're clean, right? I'm absolutely clean. Then let them do the
1325 process, the process will most likely find you not substantiated, and that will
1326 be it.

1327
1328 I never heard anything more about it in 2013 until I got a phone call on April
1329 22nd from Andrew Morris saying 'Ms. Daniela, we're going to need you to
1330 resign from your position'. And I said, 'why, why?' 'There is this report.
1331 Remember that interview you had back in late December? Well a report has
1332 been issued that says you have a conflict of interest and I'm sorry to tell you,
1333 but I'm going to have to ask you to resign'.

1334
1335 And I said 'well, can I see the report?' 'Well, I guess if you must, but can you
1336 just tell me right now on the phone that you will resign?' And I said, 'well, I
1337 don't know much about legal process in this country, but I think it's at least
1338 like when you sign a contract, I would like to read the report before I tell you
1339 this, so I totally understand what I am being accused of'. He said 'okay I will
1340 send you the report if you must do that. But make sure that you respond to me
1341 with an e-mail saying that you resign as soon as possible'.

1342 So I send an e-mail to Mr. Richoff, who is the chair of ZWAC, and a couple
1343 other friends saying, 'what do you think of this? How do I go about it?' And
1344 he responded in a very ethical and professional way saying, 'for the note, I'm
1345 not your attorney, I'm not giving you legal advice on this matter but, I think
1346 you should resign'.

1347
1348 So I said, 'well you know, I was raised Catholic in a developing country where
1349 you're supposed to nod your head and obey. I have never even perceived that
1350 when someone tells you to resign that you have the option to not resign. You
1351 know, so they had believed in me, they wanted me to represent my
1352 community, but they don't want me anymore. And in addition my chair tells
1353 me this, well I go ahead and resign.

1354
1355 Now I know it wasn't the best decision because if I had the report, I would be
1356 able to prove that I am innocent. And to also prove that there is a better way to
1357 come out and participate in the commissioner process without feeling this fear.
1358 Because what I felt was a lot of fear. I don't feel fear anymore. I believe in
1359 democracy in this country and I have been very impressed by the commitment
1360 that the Zero Waste Advisory Commission has, by the commitment this board
1361 has, and by the commitment of the people that know me in this community.

1362
1363 I think I probably donated more than two hundred hours a year of volunteer
1364 work, in addition to my work with the city as a composter. And I just, I believe
1365 I was born to be serving to be an environmental steward in the world. All my
1366 life I have done this, whether it has been as a public servant, whether it has
1367 been a public employee, whether it has been a private employee. Now I cannot
1368 do it anymore unless this is fixed. Because it is a stain, like the scarlet stain, I
1369 really feel like that. I always look at it like a stain; that that's the way I feel.

1370
1371 So if you can help me with a resolution being approved, I know it's not like a
1372 jury, and it's not 'not-guilty', but ultimately this nation and this city is for the
1373 people, by the people, and the zero waste goals, and everything is for the
1374 betterment of all of us, right? So for me it's important enough to use it in the
1375 resolution, that it's not only me going cuckoo, it is your clear mind that there
1376 were some facts there that make no sense, and that there is no direct economic
1377 effect, and that there could be a precedent for this loophole in the system, to be
1378 fixed. And if happened that I was a guinea pig for it, yes, maybe my career has
1379 to take backlash for now, but at least if this resolution passes my life can move
1380 on.

1381
1382 Because there is a lot of money, and money even for the employees in the city,
1383 and time and resources and energy that has been devoted to this issue, that
1384 could have been devoted to more productive things. That's my personal
1385 belief. I think I'll stop right there.

1386
1387 Another very important point about this process is that I believe other people
1388 will learn tonight. So thank you, and thank you for your attention.

1389
1390 Kaplan Hold on, before you take off, there may a question, Ms. Gonzalez.

1391

1392 Einhorn Yes, I have one question. Are you referring to the Ethics Review Commission
1393 resolution that we have - the three page resolution on this matter?
1394

1395 Gonzalez Yes, here is an alternative. I know there might be a process that you decide to
1396 open, or I might have to open it myself right? But where will that take us? It
1397 will take more money, more resources, more expenses, and then, if I'm put it
1398 to the test, I think that there is nothing else I can do than to try to make the
1399 best possible effort so that this doesn't happen to another commissioner. And
1400 that there is no fear on the ground where people actually, we all have lives and
1401 we're busy providing for our families, and trying to make a difference out in
1402 the world, in addition with providing to the city. The city is busy, the city has
1403 more boards and commitments than people have time.
1404

1405 Einhorn I know.
1406

1407 Gonzalez We don't need more commissions for god's sake, with more people in each
1408 commission. We need to raise the standard where we say if you're going to be
1409 devoting your time and doing this, we're not going to chase you and hunt you
1410 for trying to point the white elephant in the room, and for trying to make this
1411 city better. Thank you.
1412

1413 Kaplan Do our commissioners have any questions for Ms. Ochoa Gonzalez? Just one
1414 more follow up question, in respect to this resolution, did you write this
1415 resolution?
1416

1417 Gonzalez I helped draft it. I wrote some publications so that people may get more
1418 knowledge of the lingo, but it's really hard with my time. I think that I'm
1419 really not getting the nature of the language, because I can make a form today,
1420 that I understand everything is said, that I have reasonable plans about wanting
1421 to help the community do more. I didn't even think that that company wanted
1422 me to work for their benefit, because I have always been known to speak my
1423 mind. Whoever knows me has to deal with my always speaking my mind,
1424 that's the problem that I have. If we do have to advise something ethically and
1425 diplomatically speaking, no commissioner, no citizen should feel afraid to
1426 speak their mind. So I don't want this to be like, 'oh, you're speaking your
1427 mind, you know what's going to happen to you? What happened to that
1428 Mexican girl.
1429

1430 Kaplan Any more questions?
1431

1432 Einhorn When you were appointed to the Zero Waste Advisory Commission were you
1433 given the handout that's called 'Ethics for City of Austin Boards and
1434 Commissions?' Is that a document you were given?
1435

1436 Gonzalez I was not given one of the supportive documents.
1437

1438 Einhorn It was given to me in a packet of information when I was appointed.
1439

1440 Gonzalez Yes, I was given a legal document.
1441

1442 Einhorn And when we spoke to you last time, you mentioned that when addressing the
1443 potential conflicts of interest you talked to somebody from Austin Resource
1444 Recovery. On the last page of this document it says that if you have any
1445 questions you can contact the city of Austin Integrity Officer. Did you ever
1446 contact the Integrity Office and ask any questions about the potential conflicts
1447 of interest?
1448

1449 Gonzalez No I didn't because when I met with Bob Gedert, back in February 2013,
1450 before any of the time I was working there. So before I even had any question
1451 of any conflict, they address me. They called me to address that I might have a
1452 conflict of interest, because I used to teach composting for the city. So before
1453 there was anything foreseen as a conflict, even any agenda, they sat me in the
1454 office and said, 'as long as you stay clear that you have nothing to do with any
1455 decision making of any company involved with this, that you're only focusing
1456 on education or translation, you're doing your training and you are not talking
1457 on behalf or benefiting any company, you're gonna be clean'. So I said, 'I
1458 won't have to rescue myself?' And they say, 'no, because under the code 2-7-
1459 1, I think, or something like that, it says that people that have an indirect
1460 effect, you know like, they do not need to rescue themselves, it isn't in the city
1461 code. That's what I understood from it.
1462

1463 Kaplan Alright. Any further questions from the commissioners? Okay, thank you Ms.
1464 Ochoa Gonzalez. It was good to see you again.
1465

1466 Whellan I'm happy to answer your question. Michael Whellan on behalf -
1467

1468 Kaplan Hold on, I want to give you time but why don't we go ahead. We'll address the
1469 resolution in more detail later. We want to give all members of the public their
1470 shot. So Ken, Stacy, Heidi is our order.
1471

1472 Schroeder Thank you. I share your -
1473

1474 Cindy Tom Will you go ahead and state your name for the record.
1475

1476 Schroeder Sorry. I'm Ken Schroeder. I live in Southwest Austin. I am retired now. I
1477 served at one time on the civil rights commission in another city, in that sector.
1478 And I know Daniela from my time, or our time together, serving the extension
1479 service as master gardeners. So I do know something, now I know even more,
1480 seeing this enthusiasm and energy. She is an energetic and active proponent of
1481 the environment.
1482

1483 The thing that I come today for this, is I'm really troubled by this whole
1484 business and due process. I understand the need for some kind of anonymous
1485 information. But I also understand that there comes a time even for an
1486 anonymous accuser, or an anonymous donor, that when it really gets tough,
1487 somebody's got to stand forward. Because Daniela, or anybody else, has a
1488 constitutional right to face an accuser.
1489

1490 I find it repellent that in this city, of all cities in the state of Texas, and the city
1491 in which I live, that Daniela wakes up in the morning to see this story splashed

1492 on the front page of the American Statesman. Like three or four days after she
1493 has learned about the report.

1494
1495 And the result of that has been the tremendous loss of livelihood and training
1496 without her really having any recourse whatsoever. I don't believe that is the
1497 way we want to do business here. And when it comes down to an ethical
1498 violation, I think that this violation of her due process, and the loss of
1499 livelihood is the real ethical problem here that needs to be addressed by this
1500 group, one way or the other. Any way you can. This is wrong.

1501
1502 I'm done.

1503
1504 Kaplan Alright. Commissioners, any questions for Mister Schroeder? Alright, thank
1505 you very much for your time.

1506
1507 Schroeder Thank you.

1508
1509 Kaplan Stacy Guidry?

1510
1511 Guidry Guidry.

1512
1513 Kaplan Guidry, I apologize.

1514
1515 Guidry Hi, I'm Stacy Guidry and I am - I sit on the board of the Central Texas Zero
1516 Waste Alliance, a citizen watchdog group. I also chair the local Austin Zero
1517 Waste Alliance chapter, of which Ms. Ochoa is a member. I am also the owner
1518 of Texas Zero Waste Strategies, which helps the city help implement the
1519 universal recycling ordinances, which is the business of recycling policies. And
1520 I have known Daniela for many years, and is probably one of the most honest
1521 and most ethical people I have ever met.

1522
1523 This process has really shined a light on some very troubling issues, and I
1524 really feel that if we want to see people from our community serve in a
1525 volunteer unpaid capacity, to serve the city of Austin, and they're experts in
1526 their fields, we can't treat them like this. It is wrong. This office has just
1527 thrown the book at Ms. Ochoa. There was no warning, there was no extra
1528 training. It was like a red card in soccer, you're out. And none of this was
1529 done to remedy the perceived violation, and I don't know if anybody is going
1530 to say it here today, but shame on Council Member Martinez, for dropping her
1531 like a hot potato, and throwing her under the bus.

1532
1533 It may not be a violation of professional ethics for him to drop a person that he
1534 appointed personally, but talk about a violation of personal ethics, in my mind.
1535 And so, as commissioners I'm asking you, would you go to bat, for the city
1536 and serve unpaid and volunteer if you knew previously that you had been
1537 thrown under the bus, that you would not have your person, your council
1538 member that's appointing you, standing behind you on allegations like this,
1539 before you even have the chance to defend yourself? I know I wouldn't. And
1540 I've got a lot of expertise in this field. I'm a person that could serve. I
1541 wouldn't do it. I don't agree with the anonymous tips and complaints. This

1542 has allowed for a smear campaign against Daniela. She's a young professional,
1543 she's also a young mother, and she was robbed of livelihood when she was
1544 fired from UT because of this. And I would like to see the city retract this
1545 report. The city needs to apologize to her publicly, and I would love to see
1546 this resolution that has been crafted passed. Thank you.
1547

1548 Kaplan Commissioners, any questions? I'd like to ask the public just to hold the
1549 applause. We'd like to keep this thing moving. Miss Heidi Harris?
1550

1551 Harris I'm Heidi Harris. I'm a licensed professional counselor and a retired pastor. I
1552 met Daniela during a presentation of environmental studies at Saint Martin's
1553 Lutheran Church, and she has a great knowledge about the topic. She is very
1554 passionate about her work. She wants to make this city, and the world, better.
1555 And I am shocked and concerned that she has been accused of conflict of
1556 interest. And I'm sad that an anonymous person could cause so much harm,
1557 that she lost her job, and I agree that somebody needs to apologize and that she
1558 needs to be reinstated.
1559

1560 Kaplan Thank you. Next up is, sorry, Commissioners, any questions? Next up is Gail
1561 Vittori, followed by Morgan Whitney and Iyam, I'm sorry, Iyam is donating
1562 time. I don't know to whom offhand. Nancy Schroeder. And I'm butchering
1563 all the names, I apologize.
1564

1565 Schroeder I'm donating time.
1566

1567 Kaplan And you are?
1568

1569 Schroeder Nancy Schroeder.
1570

1571 Speight Okay, we gave her nine minutes, so.
1572

1573 Kalan And who are you donating too Nancy?
1574

1575 Whellan Us.
1576

1577 Kaplan Okay. Thank you.
1578

1579 Vittori Good evening, Commissioners, my name is Gail Vittori. I speak tonight in
1580 support of my friend and colleague Daniela Ochoa Gonzalez, and her efforts
1581 to be cleared of any assertions of violation of conflict of interest. I am also
1582 here to support the resolution proposed by the Ethics Commissions
1583 consideration and adoption.
1584

1585 As background, I was the founding chair of the city Solid Waste Advisory
1586 Commission, and served on the commission for ten years, until 1998. SWAC,
1587 now ZWAC, prized by having its members represent various facets of the solid
1588 waste industry in addition to community stake holders. It includes service
1589 providers, people representing environmental organizations, and many others.
1590

1591 While I am not currently actively involved with ZWAC today, I imagine it
1592 continues to benefit from having some members who are actively involved
1593 with the focus of the commission, such as Daniela. These people are
1594 invaluable, we rely on them, we depend on them, our commissions are not
1595 effective without them, and I'm sure you have experienced this on your ethics
1596 commission.

1597
1598 This relationship does not inherently represent a conflict of interest.
1599 Specifically in this case, it does not establish a direct economic effect. As put
1600 forward in the ZWAC response to the city auditor's integrity unit report
1601 anonymously adopted by ZWAC members, and signed by Austin Resource
1602 Recovery's director, Bob Gedert. Daniela informed director Gedert two times
1603 of her contract with the waste hauler, was told she did not need to rescue
1604 herself as she just said.

1605
1606 That of a volunteer doing what you would imagine to be due diligence, to
1607 make sure you're cleared, every sense of consciousness and awareness about
1608 that, and guidance from the department director, should have assuaged her
1609 sense of whether or not she was to consider that any further. It's interesting to
1610 note what you mentioned about the ethics report, but again I think that Daniela
1611 absolutely did her due diligence in this case.

1612
1613 On April 29th, I along with I'm sure many other folks who know Daniela, read
1614 the Austin American Statesman in the morning and was stunned to read of the
1615 alleged conflict of interest on the front page of the paper. It was an alarming
1616 moment to imagine what decisions lead to this public violation of due process.
1617 The action of the city auditors integrity united blast upon what the elements of
1618 integrity is. It's not in line with the principles of transparency, nor with the city
1619 that prides itself on being the best managed seat in the United States. It should
1620 prevail upon those of us who choose to serve the city as volunteer
1621 commissioners with a goal to share our knowledge and expertise, to make
1622 Austin a better city.

1623
1624 In closing I ask that you clear Daniela of any allegations associated with
1625 conflict of interest, within your power, retract the report, and to adopt the
1626 proposed resolution to ensure that such a violation of due process will never
1627 happen again.

1628
1629 Kaplan Thank you. Any questions from Commissioners? Alright, thank you. Morgan
1630 Whitney. Then next up is Teresa Holmes, Andrew Dobbs.

1631
1632 Whitney My name is Morgan Whitney, thank you for the opportunity to speak today. I
1633 have never been to a meeting like this. I work in the zero waste field as well, I
1634 manage federal grants, which you have federal grants to reduce waste and
1635 pollution, and I work on zero waste projects and I am also a young
1636 professional. I have gained a lot just from some of the folks in this community
1637 who are in this room and Daniela as well. She's a force. She's also bilingual,
1638 I've worked in different parts like South East Austin where the kind of work
1639 she is doing is literally opening up a whole door of possibilities for the
1640 community of Austin, and when I as well, learned about these allegations from

1641 papers I was pretty floored and puzzled. I'm here today to urge you guys to
1642 pass this resolution, and also I think it's just the right thing to do, to really
1643 acknowledge and retract the statements made, and allegations listed against
1644 her, she's 100% cleared, that she's not had any financial gain from this. I just
1645 want to be short and sweet and communicate about the resolution to be passed
1646 today. Thank you so much. Any questions?
1647

1648 Kaplan Alright. Thank you Ms. Whitney. Teresa Holmes I believe is next. Then
1649 Andrew Dobbs. Is Randy Jewart donating time to you, Teresa?
1650

1651 Jewart No.

1652
1653 Kaplan Okay, sorry, sorry. Teresa, Andrew then Randy.
1654

1655 Holmes I'll be short. My name is Teresa Holmes and obviously I'm here on behalf of
1656 my friend Daniela to hopefully urge you guys to clear her name and pass the
1657 resolution before you.
1658

1659 I am a certified horticulturalist, master gardener, on the board of Keep Austin
1660 Beautiful. You'll notice that a lot of people here, a lot of us give our time
1661 because we're passionate about helping other people, and for no other reason
1662 than that.
1663

1664 To say that, it also needs to be said that Daniela makes us look lazy. Because
1665 she gives more than anybody else I've ever met. She went to a really great
1666 school, she went to Cornell, and is very educated, and she could do a lot of
1667 different things with the degree and education that she has. But she chooses,
1668 against her husband's advisements, probably wishes to take a job where you
1669 get pretty little money. But she does it, and I her why one day, and she said she
1670 does it because she just wants to be a public servant, because that's what her
1671 life is about, and that is her life goal. To have this happen to her makes me
1672 very emotional because it's so unfair the way this process has unfolded, and I
1673 just hope that there's some visibility, like you said, that comes out of this. And
1674 to prove further know how passionate she is about this, whenever this has all
1675 been happening and she asked me to come to this, and she said that even if her
1676 name wasn't cleared she wants to make the change in this process so
1677 something like this doesn't happen to somebody else.
1678

1679 So I think that speaks very highly of her. That's it.
1680

1681 Kaplan Thank you. Any questions?
1682

1683 Mister Dobbs? Next up Randy Jewart, then Saul Sussman.
1684

1685 Dobbs Good evening, Commissioners. My name is Andrew Dobbs, and I'm the
1686 program director with Texas Campaign for the Environment.
1687

1688 I'm here today, because not only is Daniela one of our communities foremost
1689 experts on zero waste, especially on compost, she's a vital part of the
1690 environmental community here, and has been a tremendous servant, as you've

1691 heard. We feel the need to defend our allies and our friends when they're
1692 coming under attacks of this sort.

1693
1694 I do have to note that I find it particularly galling that the only words that the
1695 city auditor has said himself, in this entire process, where that this process is
1696 designed to protect the innocent when there clearly is a person that has been
1697 harmed by the process, okay. She's clearly innocent, because one of the key
1698 components of violation of this ordinance is to prove substantial economic
1699 benefit to the party that she's employed by.

1700
1701 Nobody to date has shown that at all, whatsoever. At that point the claims have
1702 not been substantiated. We are watchdogs of that commission. If there was
1703 ever any kind of out of line, or irresponsible, or suspicious behavior going on,
1704 if there was going to be anybody that was gonna notice it, it was gonna be
1705 Texas Campaign for the Environment, the Austin Zero Waste Alliance, those
1706 folks. Not once did we ever see anything that would indicate any kind of
1707 wrongdoing. I believe that any votes that are in question here are unanimous
1708 votes. There's nothing on any of these where she has caused any benefit or
1709 harm to any party. So I think that that's important.

1710
1711 I recognize the importance of maintaining some - I recognize that there's a
1712 legitimate valid argument in keeping an anonymous reporting process in place
1713 on something like this. I can foresee instances where that might be a good
1714 idea. I think that Chairman Kaplan's argument earlier that someone who's
1715 making a claim against a public official should be publicly known. I think
1716 there's an important argument there.

1717
1718 But the important thing here is also that who made this matters, because if it
1719 was another hauler that filed this complaint, in order to cause harm, in order
1720 harm TDS's reputation, in order to remove a zero waste advocate from a city
1721 commission that oversees the waste department, then the conflict of interest
1722 didn't happen when she voted on these items. The harm and the corruption, the
1723 waste, fraud and abuse happened when she was removed on their word.

1724
1725 Now maybe that's not what happened. But I have a sneaking suspicion,
1726 knowing a little bit about the waste industry in this city, that that might be
1727 exactly what happened here. So I think further we need a truly robust process
1728 here. We need to know who filed this complaint against her. This was in fact a
1729 lack of due process throughout this entire system, where she was accused first,
1730 harm accrued to her first and now we're getting the public process afterwards.

1731
1732 Our democratic process and environmental protection are intricately
1733 connected. That is the public interest that we are here to represent. The
1734 environment is in the public's interest, and when a private entity is able to
1735 harm somebody like this, it harms not only Daniela; it harms our entire
1736 environment as a city. We need to get this taken care of, and I hope you pass
1737 the resolution tonight.

1738
1739 Kaplan Thank you Mr. Dobbs. Any questions from the Commissioners?
1740

1741 Mr. Dobbs, are you running for city council?
1742
1743 Mr. Randy Jewart. And followed up by Saul Sussman and then Michael
1744 Whellan after that.
1745
1746 Jewart So you can tell that I dressed up to come to and support Daniela.
1747
1748 Kaplan We appreciate that, thank you.
1749
1750 Jewart I run a small business in town called Resolution Gardens. We work closely
1751 with the city, we're working with the St David's Foundation and a number of
1752 the rec centers building gardens for senior citizens. That's how I met Daniela,
1753 when she came as a city employee to help with the composting operation that
1754 we started at the South Austin Senior Center.
1755
1756 And I came tonight and I could talk a lot about her, her company, my company
1757 has worked at her house, so I know a little about her. But apparently this
1758 process on a college educated person, and reading these pronouncements, and
1759 trying to follow this presentation that happened earlier is really galling to me.
1760
1761 Jane Austen in one of her books says that the definition of legal is the
1762 protection of the rights of property and it's very clear that this is a legal issue,
1763 that the city of Austin has a hell of a lot of property, and a hell of a lot of
1764 interest in supporting some notion of legality and ethics against a person, that
1765 usually when I see her, is dressed like me.
1766
1767 And she's lost her job, and she's lost her standing in the community. This is
1768 disgusting. It's really, really, terrible. And I agree with Stacy about
1769 Mike Martinez, because that's part of this process, too. Apparently this secret
1770 council can tell the council member whatever, and then it just goes public.
1771
1772 So we're not here to defend Daniela, this isn't a hearing. We're here to help
1773 you folks do what you can do about it. And what I hope you can do about it is
1774 pass this resolution, because she's being really big here, to only ask for an
1775 apology, and only ask that you guys do something to help this process for
1776 people in the future. And it could be a hell of a lot worse if she had the
1777 resources because there's a lot of demonstrable harm that has happened to her,
1778 at the city's expense and processes.
1779
1780 As far as conflict of interest goes, our President has appointed our Ag
1781 Department person in the United States, is a former Monsanto employee,
1782 okay? Conflict of interest is part of how business is done in this country. It's
1783 part of everything. And there's a hell of a lot of people that benefit incredibly
1784 financially by that back handed, conflicting, good old boy, bullshit.
1785
1786 This woman has not benefited, this is not a conflict of interest, and it's really
1787 important as an ethics committee, that you guys have a handle on what a
1788 conflict of interest really is. And that this group that is attacking people, they
1789 better know what it is. Thank you.
1790

1791 Kaplan Thank you. Any questions for Mister Jewart?
1792
1793 Okay, Saul Sussman, and then Michael Whellan, followed by Robin
1794 Schneider. Saul?
1795
1796 Sussman Saul Sussman.
1797
1798 Kaplan Oh, I apologize for misreading it, it's the other Saul. Sorry about that.
1799
1800 Sussman Thank you. Saul Sussman. I was planning to come to just say, to add my
1801 personal voice on behalf of the integrity of Daniela.
1802
1803 I met her very soon after she moved to Austin when I was working at the
1804 Texas General Land office. I retired from the Texas General Land office, and
1805 I've rarely seen a volunteer with as much commitment to sustainable issues as
1806 I saw with Daniela. She gave considerable time and effort, and I can't, there is
1807 no doubt in my mind that she would have acted in any way to compromise her
1808 integrity, or the integrity of the body.
1809
1810 As I heard the presentation though, from the integrity unit, I was really
1811 appalled. I understand the need for some avenue of, for anonymous
1812 complaints, but there needs to be due process in this, for the person who is
1813 accused, and there were no safeguards, and I really would call on this
1814 commission to do whatever it can, to make sure that this unfair process is
1815 changed and brought under control. Thank you.
1816
1817 Kaplan Thank you for your time. Any questions from Commission?
1818
1819 Okay, next up is Michael Whellan with two folks donating time, so he gets
1820 nine minutes.
1821
1822 Whellan Can I grab the laptop, because I will need it real quick?
1823
1824 Kaplan Why don't we, with your permission, while you set up the tech stuff, hear
1825 from the next person? Okay, is that Robin Schneider?
1826
1827 Schneider Yes, I'm Robin Schneider. I am the executive director of Texas Campaign for
1828 the Environment and I've been in the Austin Zero Waste Alliance and the
1829 Central Texas Waste Alliance. I've attended many, many ZWAC meetings
1830 over the last 12 years or so, and what I'm troubled by – well, I was horrified
1831 by what happened.
1832
1833 I'm very troubled that there is no, at least in this case, that there was no
1834 provision for the auditor's making mistakes. There's no appeals process it
1835 seems, or at least there wasn't here, and now we're met with stonewalling.
1836 And I think there are some very fundamental flaws here. There was not an
1837 opportunity guaranteed to Daniela to see the report before it was issued, to
1838 correct mistakes that were in the report regarding the supposed benefits of the
1839 votes that they sighted.
1840

1841 There needs to be some kind of do over. Whether that's you folks doing your
1842 own investigation and clearing her, whatever it takes, this wrong needs to be
1843 righted. And you folks seem to be the ones that have the power to do that. Or
1844 at least, help us put pressure on the City Council to do that.

1845
1846
1847 How come the City Council was not notified of this case when the
1848 overpayment of that city employee? We've seen a lot of problems with the
1849 auditor's department. I was very troubled back recently another Latina
1850 commissioner was accused of wrongdoing, and her reputation was dragged
1851 through the mud, and there was no basis for those allegations either.

1852
1853 I hope that new leadership at the auditor's office can help change this, but it
1854 goes way beyond just new leadership in terms of the auditor. The process is
1855 flawed and needs to be fixed. When you have a commissioner like Daniela
1856 who, and I'm sure most of our commissioners are this way, are trying to do
1857 what they think is right for the city. They confer with the people that they are
1858 taking direction from in that department, and then not only are they on the
1859 front page of the paper, they lose their job.

1860
1861 This was really beyond the pale, and we need to make this situation right, and
1862 I really urge you to pass the resolution before you, so that we can get down the
1863 road, and that future commissioners do not have to fear for their reputations
1864 and their livelihoods.

1865
1866 Kaplan Thank you. Any questions from the Commission?

1867
1868 Thank you. Mr. Whellan, are you a ready to go?

1869
1870 Whellan Technology's easy.

1871
1872 Kaplan Okay, following Mr. Whellan we've got Adam Gregory, and Annalese
1873 Lotman.

1874
1875 Lotman I'm donating my time.

1876
1877 Kaplan Donating to whom?

1878
1879 Lotman To whoever wants it. Do I have to name a person?

1880
1881 Kaplan Otherwise they won't know, and nor will we.

1882
1883 Cone de Frankenberg We need nine minutes. As long as I have.

1884
1885 Kaplan Okay. Can we...?

1886
1887 Einhorn He's got nine already.

1888
1889 Kaplan He already has nine? Anybody else? I'll let you all figure that out.

1890

1891 Whellan She's donating to Mariano.
1892
1893 Kaplan Okay, Mister Whellan.
1894
1895 Whellan Thank you. Michael Whellan, I'm here on behalf of Texas Disposal Systems.
1896 You've already heard me speak on this issue, and I wanted to highlight,
1897 frankly, the kind of the continuing troubling process that results in this flawed
1898 report, really the flaw of the city.
1899
1900 The reason I refer to this as flawed, is that the city auditor, even today, despite
1901 having an advanced copy of the resolution by the joint effort by several
1902 people, has failed to identify from where the authorization comes from for the
1903 auditor to reach the conclusion that someone has violated 2-7-63 or 2-7-64: the
1904 conflict of interest provision.
1905
1906 There is no such authority in the city code, the city charter, or the state
1907 statutes. In fact Commissioner Einhorn in response to your question, he finally
1908 said these are not merely allegations, he upped the ante and little bit and noted
1909 that it is more than just an allegation once it is in a report. It is a finding of
1910 guilty by the city auditor without any effort to have a public process that is
1911 specifically identified in 2-7 in terms of a preliminary hearing or a final
1912 hearing
1913
1914 As I've indicated publicly, each one of you, and every one of you, and every
1915 member of the board or commission is at risk given the auditor's interpretation
1916 of direct economic benefit. Nothing prevents the auditor, nothing, from
1917 explaining tonight how discussions on a special events ordinance, or on the
1918 universal recycling ordinance, had a direct economic benefit to Solurso, which
1919 is Daniela's company, or TDS a company that hired Solurso as an independent
1920 contractor.
1921
1922 We all know that there is nothing secret about policy determination, and there
1923 shouldn't be anything secret about policy determination, but if the city auditor
1924 is allowed to make decisions that are policy related, and in his web capture
1925 commissioners, because it's such a large web, then you're going to find that no
1926 amount of training, no quality integrity officer, would have saved Daniela, or
1927 will save any of you, or any other boards or commissioners, if the auditor is
1928 allowed to independently make a determination about what direct economic
1929 benefit means.
1930
1931 I want to run through this, and then obviously I will answer questions. By the
1932 way, we did find the course on the website. I'm surprised they say they're not
1933 on the website. I believe this one may have been on the website for some time,
1934 so that's something I want to clarify, Commissioner Einhorn.
1935
1936 In the time required, before I forget, we will run through this, of course it's
1937 now working now. So the failures, they didn't apply the code, we're going to
1938 get into that in a minute. They didn't act within prescribed authority. We also
1939 know that there was a failure to notify the findings we've already gone over,

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and a failure to provide a copy of the report for full distribution, to either Daniela or to TDS.

There's no authority at all, there's no provision of the code that authorizes the auditor to conclude that a city official has violated conflict of interest prohibition, and yet you note at the end of the report, that's precisely what the commissioner - what the auditor has done on the very last page. He says, 'the evidence gathered through our investigation substantiated the allegation that Ochoa Gonzalez violated the conflict of interest requirements stipulated by the city of Austin.' It is not the auditor's job, and not within his prescribed authority. The Ethics Review Commission, on the other hand, is the only body authorized to determine whether someone has violated 63 and 64, after the already described undertaking of rigorous public process.

If you look at the language in 2-7, it is very specific: only the Ethics Commission gets to make this decision. Obviously after undertaking a public review process you then have five different violations which reflect proportionality of the alleged violation, it doesn't just jump to resignation. You have five options under 2-7-48.

We know that the auditor admits that he doesn't have any authority to decide. Mr. Hadvai, the same Mr. Hadvai you heard here today, on June 11th 2014, told ZWAC precisely that - 'I would like to stress that our role is that of fact finders, not the decision makers.' Then why were they making decisions? Why were they reaching conclusions that were beyond their authority, and then publishing that not the decision makers, which are you, but publishing it to a full list of people on the cover sheet of their document?

The prohibition on conflict of interest, you are all very familiar with it, so I'm going to fly through this. There are two components. It has to effect, a natural person or entity and there has to be a substantial interest. The same is true for 64, you see the same definition, substantial interest, and it has to effect. What is important is the definition of affected. It means that you are reasonably likely to be subject to a direct economic effect or consequence either positive or negative, as the result of the voter's decision in question. More importantly, it does not include those persons or entities who are subject to an indirect, or secondary effect, from official action.

This is astounding in light of the three agenda items that were identified in the report. The URO's - Universal Recycling Ordinance - the Austin Energy Waste Disposal contract and special events ordinance. So the characterization first of all on the very front of the cover page on the auditor's report. He says, 'TDS agenda items, he says it several times under findings on the cover sheet. When you look at the sheet on the URO he says on the second to last page, and these are highlighted, he talks about the URO being TDS represented in attendance and advocated for a particular definition. For a generalized ordinance.

With the Austin Energy Waste Disposal contract TDS requested their contract, not the agenda item by the way, TDS requested that their contract, TDS's

1989 contract with the city be extended before the re-bid process, but that's what
1990 was not in front of the ZWAC for decision.

1991
1992 And then finally, the Special Events Ordinance. TDS expressed concerns
1993 about stake holders not having input in ordinance development. What about
1994 the chilling effect on the public to speak up, and give their expert opinion on
1995 it. That's exactly what is happening here. I think Mr. Dobbs hit the nail on the
1996 head. Some quote "anonymous person" is trying to get back at others in the
1997 hauling business, they clearly provided this tip.

1998
1999
2000 Even in the letter by Ed Shack, who has over thirty years of governmental
2001 experience in conflicts of interests, and he noted his thoughts on it that the
2002 URO special events ordinance affected all, or similarly, without any direct
2003 economic effect to any particular hauler. On the Waste Energy Disposal
2004 contract he said that TDS was not being awarded the contract, it was no longer
2005 in competition for the contract, and that ZWAC was only considering whether
2006 to award the contract to a totally different hauler. No direct economic benefit,
2007 no direct economic effect to TDS.

2008
2009 There was no fact finding. All the information I'm asking, there was no fact
2010 finding, all the information that Ed Stack relied upon was in the city staff back
2011 up to reach these conclusions.

2012
2013 And his conclusion. If the direct economic effect to TDS on agenda items as
2014 those set forth in the report, where any possible economic effect on TDS is so
2015 extremely remote, then it becomes highly likely that many other members of
2016 city boards and commissions are also violating the conflict of interest rule.

2017
2018 Here are my questions, none of which have been answered. What was actually
2019 before the ZWAC on each of these agenda items? We haven't heard from the
2020 auditor, and we know from the auditor's report that he hasn't been able to put
2021 it in there. I am the one that has been able to tell you. It was the Universal
2022 Recycling Ordinance, which applies equally to everybody. It's the Special
2023 Events Ordinance, which applies equally to everybody. And the Austin Energy
2024 Waste Disposal contract, which Texas Disposal System could not, it was not
2025 going to be awarded to them. They were not in competition for it.

2026
2027 Where is the analysis in the report concerning direct economic effect? There is
2028 none. And how is it that items of interest, read this report at the very, second to
2029 last page, before he identifies the agenda items, the city auditor's report says,
2030 'the following items of interest to TDS, because they showed up and made a
2031 few comments to help the process, to help the public process, they now
2032 become TDS's agenda item? No, that cannot be the case. That cannot be the
2033 standard.

2034
2035 What was Daniela's status? She's not an employee of TDS, she owned and
2036 operated Solurso. I still have one or two more -

2037
2038 Lotman Then I would like to donate my time.

2039 Kaplan Well we can't donate more time, but with the permission of the other
2040 commissioners, how much more do we have to go?
2041

2042 Whellan I think just two more spots.
2043

2044 Kaplan Is that alright with everyone? Go ahead and finish up then.
2045

2046 Whellan We know that our city benefits from expertise. We know that it places city
2047 officials in jeopardy, the city auditor's interpretation, I've already covered that.
2048 Without some action to repair some of this damage, I think there will be, and
2049 you will see repercussions for those serving, or considering service.
2050

2051 You're already starting to see it with the complaint for the code rewrite, where
2052 this is going be a way to take out commissioners that you don't like, with an
2053 anonymous sworn complaint, and a report that comes out from the auditor,
2054 because the auditor applies a different standard for direct economic effect than
2055 you would apply.
2056

2057 You know, you've already seen the anonymous ZWAC determination from
2058 June 11th, their recommendations, what we would request in the contest, I'm
2059 not asking to make fact findings, I'm asking you to look at the reports, look at
2060 the standards of direct economic effect and simply find that the report contains
2061 conclusions that were beyond the city auditor's authority, because he hasn't
2062 provided any place, anywhere, where he can reach a conclusion. Note, that the
2063 auditor failed to follow the review process, that's carefully outlined, the two
2064 step process I already referenced.
2065

2066 I ask you to find that the report failed to apply the direct economic effect
2067 standard of city code. I ask you to find that the recommended, that recommend
2068 to city council that the city auditor retract the report. And finally, that the city
2069 council reform the reporting investigatory and ruling process. And I think with
2070 a commission, with Einhorn's working group, we can at least take the very
2071 first step at trying to improve that.
2072

2073 So a lot of information, and I'm happy to answer any questions. Thank you for
2074 listening.
2075

2076 Kaplan And Commissioners, we are going to discuss this resolution, which has been
2077 referenced now a number of times by the members of the public here. But we
2078 have a number of additional speakers, some of whom are going to speak on
2079 this resolution as well, so we don't need to make any kind of decision or
2080 action on this now. While we have Mr. Whellan, is there a question in
2081 particular?
2082

2083 Ruiz Yes, I have one question. In the report it states that the evidence gathered
2084 through their investigation substantiated the allegation against Ms. Gonzalez,
2085 and then in the last page it says, 'the evidence gathered through their
2086 investigation substantiated the allegation'. And they conclude by saying 'the
2087 CAIU believes that Ochoa Gonzalez actions appear to constitute a violation.'
2088 Do you know what evidence they're referring to?

2089 Whellan I have no idea. We've never seen any evidence; this is all we've ever seen. We
2090 have provided, to anybody who would accept it, copies of the transcripts of
2091 these hearings, we provided all the staff backs ups to these hearings, and
2092 what's important is you don't have to look beyond this report because there is
2093 no analysis of direct economic benefit. You know that there's two things you
2094 need to do. Substantial impact, which would be fact finding, I'm not asking
2095 for fact finding today, and direct economic effect. And you can't, sitting as a
2096 judge, sitting in judgment on an issue, make as a matter of law a decision
2097 about whether something has a direct economic effect, and if special events
2098 ordinance has a direct economic effect on TDS, then we are all in trouble. All
2099 64 boards and commissions are in trouble. It's just not right.
2100

2101 Kaplan Additional questions from Commissioners?
2102

2103 Price I just wanted to ask you on the recommendation that was passed by the Zero
2104 Waste Advisory Commission, did they make any changes to the...did they
2105 pass that, am I not correct? Yes, that's passed by them. What is their intentions
2106 to do with this? The City Council...or?
2107

2108 Whellan I think there was circulated here, on the agenda here, I'm sure Chair Kaplan
2109 spoke at the ZWAC meeting, and Mr. Cofer invited him to speak and he had
2110 some questions about the process, and the hope is, that has been forwarded to
2111 the Council, and I believe that it has been brought to Council.
2112

2113 Price Okay, thanks.
2114

2115 Cindy Tom Council may not have not had a chance to put it on a Council agenda yet.
2116

2117 Price Okay.
2118

2119 Kaplan I have a question with respect to 3C, the ethics commission filing a complaint
2120 on its own initiative. Am I correct to assume that TDS's position is that we
2121 should not take that step?
2122

2123 Whellan Well, our position is that if it be postponed to the next meeting to allow
2124 Daniela, and her lawyer, because I think this really rests with them, to evaluate
2125 whether a resolution that we hope gets passed tonight here is sufficient for
2126 their purposes. I think Ms. Ochoa Gonzalez, I can't speak on her behalf, she
2127 has a lawyer here, probably would like to see this, this portion, this chapter of
2128 her life, closed and move on to the next chapter of her life, and a resolution
2129 from you would have a lot of meaning, because you are the authorized entity.
2130 You are the only authorized entity in the city of Austin to decide whether
2131 somebody has violated the conflict of interest rules, and we're not asking you
2132 to make a finding that she is innocent, which would require a final hearing in
2133 this resolution. Instead we're simply asking that you recommend that the
2134 report be retracted, and Council order its employee, the City Auditor, retract
2135 the report.
2136

2137 Kaplan Any other questions from the Commissioners? Alright, thank you very much
2138 for your time, Mr. Whellan. Moving on to Adam Gregory.

2139 Gregory

2140 Good evening, Chair and Commissioners, I am Adam Gregory with TDS, and
2141 I will briefly address the concept of the direct economic effect of similar to
2142 what Michael has done, but I'm going to talk about how it specifically how it
2143 pertains to the agenda items that the auditor's report incorrectly called TDS
2144 agenda items.

2145 The first item of issue I will address is the April 10th 2013 item concerning the
2146 award of an Austin Energy Waste Disposal contract through Republic
2147 Services. A significant portion of discussion that night had to do with the staff
2148 determination that recycling was not appropriate for the material that was
2149 subject of that contract. It had little to do with the commission's only potential
2150 action regarding this agenda item, which was to recommend that the city
2151 council either approve, or not approve, the staff proposed contract between the
2152 city and the Republic Services.

2153 Clearly approval or disapproval of the contract with the Republic Services did
2154 not have a direct economic effect on TDS. Even if the ZWAC had
2155 recommended that the council not approve the item, several more steps by the
2156 council staff and board and commission would have had to take place before
2157 any agenda item on this topic could even possibly have a direct economic
2158 effect on TDS. If any effect existed at all, it could only be construed as an
2159 indirect effect, which is specifically excluded from the criteria for an ethics
2160 violation, which is specifically excluded from the criteria for an ethics
2161 violation.

2162 Another item cited by the auditor's report was the URO phase two ordinance,
2163 which, as you may know, is a requirement for all properties in the city to
2164 provide recycling services on a phased-in timeline depending on the size of the
2165 business. Nothing in this ordinance had a direct effect on TDS because there
2166 was no guarantee of TDS receiving any new business through this ordinance.
2167 And there are numerous other haulers engaged in these cases. If it did
2168 constitute a direct economic effect, then no commissioner if they work for a
2169 business that conducts business within the city would be able to discuss this
2170 item without committing an ethics violation, which of course would be absurd.
2171

2172 The same reasoning applies to the other URO related item that the report
2173 references, related to the data reporting contract for the URO, which pertained
2174 only to the award of a contract to a software company, and to data that was
2175 provided by waste generators, not waste haulers.
2176

2177 The other item cited in the auditor's report concerned the City of Austin
2178 Special Events Ordinance. Our interest in this item was limited to a complaint
2179 to the Commission that an ordinance was being put forward that had no stake
2180 holder involvement, and it's development concerning portions of that
2181 ordinance that were of concern to the ZWAC. The ordinance only placed
2182 requirements on generators of waste, not the haulers and processors. It did not
2183 confer on any hauler, including TDS, any rights or responsibilities. It is clear
2184 to us that no direct economic effect on TDS could come from any action the
2185 Commission could take on this item.
2186

2187 Although the city auditor has no authority to make these...
2188

2189 Price Your time is up. How much more do you have?
2190
2191
2192 Gregory About fifteen, twenty seconds.
2193
2194 Price Okay, go.
2195
2196 Gregory Thank you very much. Although the city auditor had no authority to make the
2197 determination, or any determination on these items, indeed they did so, even
2198 widely publishing the report prior to this commission, which has the sole
2199 authority to make these determinations was even aware of the issue.
2200
2201 It is our hope that you will determine that there was no direct economic effect
2202 on TDS with any of these decisions. And I'm happy to answer any questions.
2203
2204 Price Thank you very much. Wait, wait. Any questions? Okay, thank you very much.
2205
2206 Kaplan Alright. Ms. Lotman was donating time and up next up there's Mariano Conde
2207 de Frankenberg.
2208
2209 Speight Do you know how much time he has?
2210
2211 Kaplan Nine minutes.
2212
2213 Cindy Tom Do you need a computer?
2214
2215 Conde de Frankenberg No, no, no.
2216
2217 Kaplan And just following this is Cathy Gattuso, Bob Gregory, Mitchell Harrison and
2218 Gary Newton, Paige Hill Oliverio and Paula McDermott. I believe that's
2219 everyone, is that right? I believe we have three more minutes for you all. So
2220 any of those folks who have not donated their time and wish to speak on this
2221 can.
2222
2223 Conde de Frankenberg So my name's Mariano Conde de Frankenberg, and I represent
2224 Ms. Daniela Ochoa Gonzalez. And before going forward I do want to make
2225 specific reference to some of the issues that members of the auditor's staff
2226 mentioned.
2227
2228 If you listen to what they said, they said that they had authority to conduct this
2229 report, to draft this report, to publish it under city charter, under section 2-3-5
2230 of the city code, and under some kind of administrative bulletin relating to
2231 fraud, waste and abuse. We are not talking about fraud, waste and abuse here.
2232 We're talking about two specific violations which were alleged, that don't fall
2233 within that category. That's number one.
2234
2235 And then number two. The city auditor puts us in a situation that really creates
2236 a catch 22 situation because their culture is the problem. We're free to act as
2237 jury, we're free to act as jurors, to publish this report, and by the way, we don't
2238 need to release any information, any information at all, about how we

2239 conducted the procedure, or how we reached those findings. That is truly
2240 appalling, especially when it refers to a hard working commissioner.

2241
2242 The other issue is that they claim, you know, your question was very adequate.
2243 Who do they respond to? Who are they accountable for? If we can validate, if
2244 we validate or prove their actions, they're not responsible to anybody. And so
2245 that creates a situation to where they can tar and feather anybody and they
2246 don't have to disclose any information about how they reached that
2247 conclusion. And notice that they said, 'yes, we followed those standards and
2248 made reference to the quality standards for investigations that are promulgated
2249 by the federal government.

2250
2251 Now those standards are there, we took the time to review and they site very
2252 specifically that they have to provide an opportunity to gather all the evidence.
2253 That they have to protect the basic rights of all the parties involved. They
2254 seem more interested in protecting the rights of the person who made the
2255 anonymous tip, than they are in protecting the due process and basic rights of
2256 the person who is being accused of this violation. So I want to point that out.

2257
2258 Now, as to their authority. Let's be clear and I think it's worth highlighting,
2259 what does the city code say about this? The city code says that if the city
2260 auditor determines that a city employee or official may have violated the law -
2261 I'll skip the rest of the part - the auditor shall consult with, and obtain the
2262 advice from a city attorney, immediately report the suspected violation to the
2263 appropriate authority. And if the violation is criminal, notify the appropriate
2264 chief prosecuting authority.

2265
2266 Now, who is the appropriate authority in this specific case? Under section 2-7,
2267 under chapter 2-7, the only appropriate authority to make findings or
2268 determinations regarding conflicts of interests violations, is the Ethics Review
2269 Commission. What they put out here, what they put out here in this report, it
2270 doesn't say she *may* have. I mean this is pretty unequivocal, and it's a done
2271 deal. Once this is issued, and this is what's important, this is what's truly
2272 important to highlight, once this report is issued they say they're not
2273 recommending sanctions in here, but what effectively happens is that
2274 punishment occurs. And so we have a situation to where, on the basis of one
2275 report, which clearly says that Daniela Ochoa Gonzalez's actions constitute a
2276 violation of city code. They constitute a violation of city code. They don't say
2277 this merits further analysis.

2278
2279 On the basis of this, a commissioner loses her job. She's forced to resign. She
2280 suffers great reputational damage, and huge emotional distress and anguish as
2281 a result of it.

2282
2283 So clearly today you have two options and these are pretty clear. One option is
2284 that you can approve, and you can do this - either expressly or by inaction -
2285 you can say we approve what the city auditor has done. That's one option we
2286 have. And so the consequences of that, for whatever motive, for whatever
2287 motive there may be, the city auditor will be free to publish any report about
2288 any commissioner without guaranteeing any basic due rights. I mean, Ms.

2289 Ochoa Gonzalez had only one interview. She offered to provide information to
2290 the city auditor; they never took her up. They never provided her an
2291 opportunity. They could have said, 'these are our findings. What do you have
2292 to say?' And on top of that, if you look at this report, and if they're going to
2293 have the authority to do something like that, which they don't even have under
2294 the code, if they're going to do something like that, then at least they have to
2295 have the minimum responsibility, considering what's at stake here, they have
2296 to have the minimum responsibility that they have to clarify how a certain
2297 conduct meets a legal standard for that to constitute a violation. Do you see
2298 anything in the analysis? Do you see any reference at all indicating, or any
2299 kind of explanation, saying why any of these actions on these matters was
2300 reasonable linked towards the direct economic benefit of TDS. No
2301 explanations whatsoever.

2302
2303 So you have that one choice, where they can operate in the black box with
2304 unfettered power, to tar and feather anybody. And ironically if the report
2305 refers to a commissioner, there is no recourse. Because if you are a city
2306 employee, at least you have the recourse you can take with the manager, you
2307 can resort to the ombudsman process, there is no recourse once the city auditor
2308 issues that report. So they would be allowed to operate in a black box without
2309 providing any explanation whatsoever.

2310
2311 And the other alternative is to approve that resolution that we have, that we
2312 provided to you. In order for you to approve that resolution, number one you
2313 have the power and jurisdiction to do so, because that's clearly set forth in the
2314 city code, that you have the jurisdiction to take actions on matters regarding
2315 violations of conflicts of interest, you have the authority to do so, and there's
2316 no requirements to approve that resolution. You don't have to make any
2317 findings of that whatsoever. I mean this is clear as daylight, that you can't
2318 accuse somebody, you can't make a determination that they, whether it's you
2319 or whether it's the city auditor, you can't accuse and make a determination that
2320 a person violated the conflict of interest rules of the city without even
2321 explaining how the votes generated direct economic effect or was reasonably
2322 likely to generate direct economic effects.

2323
2324 So I think that those are the two choices that you have in front of you, and I
2325 hope that you will approve this resolution today. And let me tell you, speaking
2326 on behalf of Daniela, you know, it is very, very difficult, when you're a single
2327 commissioner, having to face up to the numerous attorneys, and the numerous
2328 resources that the city of Austin has. So you need to take that into
2329 consideration. That we're up here against an army of attorney's, an army of
2330 tax payer resources, and this is not a good use of tax payer funds, and attorney
2331 funds, trying to cover up for the city when they have done something that was
2332 inadequate, and it was wrong. And you know my mama told me, when you do
2333 something wrong, you own up to it. And it's time for the city auditor to own
2334 up, and to make what's right in this specific case, and make what's right for
2335 the precedent of the city. Which is establish your authority, and establish the
2336 proper authority of the city auditor. Thank you very much.

2337
2338 Price Wow, that was perfect timing... man.

2339 Kaplan Commissioners, any follow up questions for Mr. Conde de Frankenberg?
2340
2341 Ruiz Mr. Conde de Frankenberg, putting aside this case, you said that, do you
2342 believe that conflicts of interest are examples of fraud, waste and abuse?
2343 Putting aside this case, if there's a substantiated incident of fraud, waste and
2344 abuse, would you believe, I mean a conflict of interest, do you believe that to
2345 be fraud, waste and abuse?
2346
2347 Conde de Frankenberg What I believe is the following. That if they're characterizing,
2348 what's occurring in this specific report is if they're making accusations,
2349 determinations, that this person has violated the conflicts of interest rules, that
2350 are expressly set forth in 2-7-64, and 2-7-63. So there's only one process to do
2351 that. And the only process that's established in the code to do that is the Ethics
2352 Review Commission. That's what I believe.
2353
2354 Ruiz Do you believe that the Ethics Review Commission, which has jurisdiction
2355 over 2-7-63 and 2-7-64, can make a determination without following our
2356 process, without following our preliminary and final hearing process?
2357
2358 Conde de Frankenberg Well, so my thought process, and this is very important, is that
2359 on its face, to me on its face, the report produced by the city auditor, first of all
2360 exceeds its authority. It reaches conclusions that are beyond its authority. And
2361 then on top of that, we're not going to get into a fact contested issued, but on
2362 top of that it doesn't even substantiate or explain how, or why, these actions
2363 had a likelihood of creating a direct economic benefit on TDS. And so, those
2364 irregularities, those flaws, are so glaring that to allow the report to stand is just
2365 to me inexcusable.
2366
2367 So the action that needs to, and so by the way, the city auditor, we shouldn't
2368 allow the city auditor to come back again, and say, 'oh okay, so we'll take this
2369 back and we'll channel this through another manner.'
2370
2371 Kaplan Any further questions from Commissioners? Thank you very much.
2372
2373 We're going to move forward to these folks if they want to speak. Cathy
2374 Gattuso. Can y'all just raise your hands if you're here and would like to
2375 speak? Bob Gregory, we'll give you some time. Mitchell Harrison, did you
2376 want to speak as well? Okay. Gary Newton, are you donating, or do you wish
2377 to speak as well?
2378
2379 Newton I donate if somebody needs it. If not, I'll say a few words.
2380
2381 Kaplan Okay. And Paige Hill Oliverio. And Paula McDermott. Paula? Okay. Paige did
2382 you want to speak as well?
2383
2384 Hill Oliverio Yes please.
2385
2386 Kaplan Okay, that's the list.
2387

2388 Gattuso Hello, I'm Cathy Gattuso, and I'm a co-chair for the Zero Waste Advisory
2389 Commission. And I'm so pleased that we passed the resolution that's been put
2390 in front of you all. I can't speak for all the members, but I can say that it was
2391 unanimous, that we wanted this to come to you all because frankly we didn't
2392 have anyone else to take it to, and we really appreciate being here, and know
2393 you have a lot of questions.
2394
2395 Beyond that it was, we felt pretty helpless, so we were pleased that we could
2396 forward this issue of Daniela on to you all. I was on the commission the entire
2397 time Daniela was a commissioner, and I just want to speak about my personal
2398 views about her.
2399
2400 She was very professional, much expertise, and as you heard from so many
2401 people has great compassion and sometimes taking unpopular positions for the
2402 environment, they were for waste. So I think she put herself out there in
2403 different ways. I do feel though that she has been helpless in this situation,
2404 how we've all felt, I know we were. I don't think she's been treated in a very
2405 humane way, and I'm thrilled that you all are going to make a working group
2406 to look at this. But I'm also hoping you do not forget her in this process, you
2407 just can't do that, it's been a travesty the way she's been treated.
2408
2409 There has been a lot of protection for the person that made the complaint and
2410 that's okay, I guess, I'm not sure, but there's been no protection for her. And
2411 frankly I found her knowledge that I'm a little concerned to be on the
2412 Commission at this point.
2413
2414 So I know that on the commission we were concerned about accountability,
2415 her recourse, you know, transparency. We don't know all the facts, as you all
2416 don't. But I'm hoping that you can work to support her. In knowing her, no
2417 one on the commission, I know I certainly didn't see any hint of sociopathy or
2418 that she was there for herself. She was there truly for her community and did
2419 the best that she could.
2420
2421 So thank you for your, looking at this issue in such a way, and I can see how
2422 you are all going to hopefully do what you can to help her out.
2423
2424 Price I have a couple of questions. One is when you, when ZWAC, I love that name,
2425 was looking at it, did you guys make any changes to the resolution? Or did
2426 you vote on it without any alterations or changes? As it was presented to you?
2427
2428 Gattuso I'm pretty sure that we did not make any changes. Do you remember what was
2429 it?
2430
2431 Kaplan So they didn't draw it up?
2432
2433 Price I knew that.
2434
2435 Unknown It was basically, it calling on the auditor to revoke the report and make an
2436 apology. And I think that was a considered a little bit too much, and so it was

2437 asked instead of a replacement clause, it asks for city council to send it to
2438 y'all.
2439
2440 Gattuso Thank you very much. That's true.
2441
2442 Price And then, I guess, I know there were a lot of questions to our Chair, but in
2443 your mind, just in general, what were some of the issues, or the questions that
2444 the members had before they voted on it, in regards to either this
2445 recommendation?
2446
2447 Gattuso Well we really didn't get any more information at all.
2448
2449 Price Okay. That was a big issue.
2450
2451 Gattuso We were just stopped.
2452
2453 Price Did the auditors come and speak to you also?
2454
2455 Gattuso Yes.
2456
2457 Price Okay.
2458
2459 Gattuso We didn't get any information, so we were just hoping, thinking that you all
2460 would be able to get more information on this.
2461
2462 Einhorn Did you get a similar presentation to what we got?
2463
2464 Gattuso No, we didn't get a presentation.
2465
2466 Price Okay, I think that's all I had.
2467
2468 Kaplan Any other questions from other Commissioners? Thank you, Co-Chair. Thank
2469 you for coming and joining us tonight. I appreciate it.
2470
2471 Next up is Bob Gregory. And I think we've got at least one time donation, is
2472 that right? For Bob, or no? Last chance. Do you want it?
2473
2474 Bob Gregory I'll take it.
2475
2476 Kaplan He's got it. Six minutes. Okay, thank you.
2477
2478 Gregory Thank you very much. I'm Bob Gregory. I'm the president and principle
2479 owner of Texas Disposal Systems. I am happy to stand –sit – before you
2480 tonight, and offer myself for any questions whatsoever. I'm also happy to
2481 declare here, sadly that I have to declare to you under these circumstances,
2482 that I am convinced of Daniela's innocence. I'm also convinced that TDS is
2483 innocent of these things that have been charged to us, against us.
2484
2485 And to give you a slight bit of background, hopefully I'll not talk too long and
2486 take up my time to do it. Four years ago you may have read that I was on the

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front pages, as Daniela was the other day. I had been disqualified. My company had been disqualified from a process for a recycling contract. As it turned out, we took that, had to take it to court, because the staff would not reverse the position. It went to state district court; the city staff elevated it to federal district court. The federal district court ordered the City staff out, and made them reverse the disqualification.

The city staff disqualified TDS before we were even qualified to be disqualified, and it took a federal judge, Judge Yeakel, to overturn that. It is my 100% belief that the city of Austin, solid waste services city manager, the city staff, and the department, want to make public utility out of commercial collection of solid waste in this community. Like Austin Energy. It's an opportunity for the city to make a lot of money.

They did not get a good response from me. I took them to court in it after going through their appeals process, and had no other place to go. I think they felt they thought they had an easy mark with Daniela here. You've seen tonight that these people that have been speaking to you, that she's not an easy mark. People believe in her. People believe in the process. And people were appalled by this process.

I believe she's completely innocent. I believe she was a target to get to TDS in a way that TDS could not respond. I'm happy to respond tonight that I believe in her innocence, I believe they had a motive to do this, to attack her. And if you read the report, the first time you have read it with no other input whatsoever, you too probably would have taken it hook, line, and sinker. Like Rick Cofer, Mike Martinez, and the American Statesman did because it was so convincing and so definitive in its positions.

However we have no ability to go see those things. We've asked through an open records request, we've also asked the attorney general to release the information. They said we can't have it. These are audit documents; work papers.

This could happen to any of you, it could happen to any commissioner on any board or commission in the city of Austin. A city staff for whatsoever reason make accusation against you, and not have to even respond to the reasons why. It's appalling that this could happen.

I have some resources. I've wasted a lot of them to overturn that disqualification because it was wrong. I will take whatever resources I can have, that I can muster, to stand up for Daniela. She's an innocent person here who has been wronged. I urge you to take the action that you can to make this right. Not only for Daniela, but for others who can be attacked by city staff, and try to silence them like they tried to silence TDS before, and like I think they're trying to do here.

I don't want to blur the issue by bringing in this past history, but I think it's important for you to know that there is motive, in my opinion, by city staff on what they're doing here. I urge you, please, to take action, to right this wrong,

2537 and to reverse it and to bring about a process change, so that this information
2538 can become public. I have no problem with anonymous complaint, but the
2539 information, the basis. I was told by Mike Martinez that there were other
2540 things in their file, far worse, far worse that they couldn't talk about it. What is
2541 that supposed to make you feel, or the Council feel? If you could only see
2542 these hidden documents you would think otherwise. Let it be known. These
2543 things have to be known to have this sort of thing happen to someone like
2544 Daniela, or to us.

2545
2546
2547 So I encourage you to take action, and I'm happy to answer any questions.

2548
2549 Kaplan Alright, Commissioners. Any questions? Alright, thank you very much for
2550 your time.

2551
2552 Mr. Harrison, would you prefer to go now?

2553
2554 Harrison I was going to donate my time to anyone who wants it.

2555
2556 Kaplan Well, I've got two names. Paige, are you here? Would you like to speak Paige?

2557
2558 Hill Oliverio Sure.

2559
2560 Kaplan Come on up. And then Mitchell, it's up to you if you wish to speak, or if you
2561 want to donate to Paige. You just tell me what you'd like to do.

2562
2563 Hill Oliverio He has three minutes to think about it.

2564
2565 Kaplan That's right. No pressure, but we have a gong.

2566
2567 Price Yes, we have a gong.

2568
2569 Hill Oliverio Thank you Commissioners, I'm Paige Hill Oliverio. The cool thing about
2570 going last is that everybody before you has said pretty much everything you
2571 think, so I'll try to make it short. Including you all tonight, I've been heartened
2572 by hearing your questions, your concerns expressed during previous
2573 presentations. I feel like there's still an opportunity for process.

2574
2575 I've lived in Austin for 20 years and it took half of that time for me to come
2576 out of my shell and figure that I knew enough about city process, or at least
2577 could delude myself into thinking I knew a lot about city process, to serve my
2578 community and to serve my city.

2579
2580 Some of you remember, including the City Auditor's office, that my coming
2581 out party involved over 3,000 citizens and a lawsuit against the City. So I hit
2582 the ground running, and I haven't stopped. However, I may be stoppable now.
2583 What I've heard over the last few months has really, really raised my concern.
2584 I'm petrified, I'm terrified to continue sitting as a commissioner, board
2585 member of this city, which I have done since I committed to serving my
2586 community.

2587 I, as well, especially after hearing more tonight, and because I was appointed
2588 by Councilmember Martinez - you know it sounds like before the process
2589 ever, ever, hit due process, the Statesman heard about it, the public heard about
2590 it and everybody had heard what is supposedly not a conclusion, announced as
2591 a conclusion about a person who didn't even know that this had hit conclusion
2592 yet, until it hit the papers. She lost her job. She lost her livelihood.

2593
2594 As much as I love my community, I'm not up for that kind of potential future
2595 for myself. My future family, my current family. So I look forward to you
2596 passing this resolution. I love that you're putting together a working group. I
2597 would hope that the auditor's office also agrees, and collaborates with you, to
2598 fix the things that are broken in the process, so that I and 64 times 11 other
2599 boards and commissions members in this city, and more of them after 10-1,
2600 don't all go running and screaming and quit our jobs as civil servants. I don't
2601 know how many of you are now a little nervous about your position here on
2602 this commission, but I am very nervous. If this doesn't get fixed I may be
2603 quitting and a lot of other people too. Thank you.

2604
2605 Kaplan Thank you for your time. Any questions? Alright, Mister Harrison, you're
2606 last.

2607
2608 Harrison As the last speaker before you, Mitchell Harrison, member of Austin boards
2609 and a commission member on the Community Development Commission
2610 representing the South Austin Neighborhood Center, more importantly just to
2611 thank you for your willingness to pick this up. Thank you everyone that's
2612 here, the staff that's involved, everyone that's learning through this, thank you
2613 for everything you can do to correct this.

2614
2615 Kaplan Alright, thank you. Any questions from the commissioners? Alright.

2616
2617 So we have two, or perhaps three agenda items, three relevant agenda items
2618 that we have taken up together. And just to circle back now that we've had a
2619 chance to hear from the public, and take us back to our agenda, we're on 4C,
2620 and D, and also 3C. These all have to do with the commissioner Ochoa
2621 Gonzalez. 4C is the ZWAC recommendation, D is an agenda item for us to
2622 make a recommendation to city council regarding jurisdiction and chapter 2-7,
2623 and then 3C is similar to what we considered at our last regular meeting,
2624 possible action to file a complaint under our own initiative.

2625
2626 Cindy, do we, should we get, can we get a legal briefing, similar to what you
2627 have in your e-mail during this public meeting? Or should we just refer to it
2628 ourselves as we move forward? Try to figure out what we can and can't do.

2629
2630 Cindy Tom Did everybody read the e-mail?

2631
2632 Kaplan Did every commissioner have a chance to read the e-mail from Cindy that
2633 came out earlier today? Okay.

2634
2635 Cindy Tom So I would say that if you have any additional questions, ask me, and I will
2636 answer them.

2637 Kaplan Okay.
2638
2639 Cindy Tom This isn't your first rodeo on conflicts of interest on board members. You had
2640 a hearing, filed a complaint, and filed a hearing on this involving different
2641 board member. So you know that if you were looking at it on the merits, which
2642 you're not tonight, you're not having a hearing tonight, that what you would
2643 be looking at under code is whether there was a substantial interest in an entity
2644 that was effected by the voter decision before the ZWAC commission, so
2645 when it comes to the definition of effected, yeah, direct economic effect is part
2646 of that.
2647
2648 I hope you all remember some of that from last year. We talked about it a lot.
2649 But definitely I can answer any further questions you may have.
2650
2651 Kaplan I'd like to kind of draw everyone's attention to a few of the options that we
2652 have on the table here in addressing the situation. So obviously we've already
2653 constituted a working group, and we've talked about that. We have before us a
2654 draft resolution provided by Ms. Ochoa Gonzalez and folks aligned with her in
2655 committee, with a long list of whereas findings, and then what I see as four
2656 resolutions. It's on pages two and three.
2657
2658 And just for purposes of discussing this, if you all will humor me, I sort of
2659 numbered those resolutions one, two, three and four. Each of them asks us to
2660 do a distinct thing, so just for purposes of discussing them, number them.
2661
2662 We also have this ZWAC resolution, which is in our packet and, I believe, asks
2663 us to take some sort of action. And then we are agenized for filing a complaint
2664 under our own jurisdiction, which as we've talked about before, is something
2665 that is laid out in code, and the Ethics Review Commission can do. Generally,
2666 the Ethics Review Commission exists to hear complaints of conflicts of
2667 interest, violation of ethics rules, campaign finance violations, pursuant to the
2668 city code.
2669
2670 People - generally the process is that a complainant will swear out a
2671 complaint, and then we will have a hearing on it. However, we also have the
2672 ability under, to swear out our own complaint against someone if we think
2673 that, that that's something that we want to do.
2674
2675 So we discussed this at our last meeting and there was a discussion on it, a
2676 healthy discussion, and the commission took no action. It's back on the agenda
2677 for reconsideration based on the facts that we've heard tonight as another
2678 possible avenue for action that we can take.
2679
2680 As we discussed last time, the commission has no ability to kind of clear
2681 someone's name under the code, it's just not the way that code is laid out, and
2682 something we can do. We can consider the allegations and have, hold hearings
2683 and find facts, and find whether or not there was a violation.
2684
2685 So what we could do is go through a hearing and find that in fact there was no
2686 violation, or even earlier, we can decide to file a complaint and then find that

2687 there's no due process, or good cause, to continue to a final hearing. But as far
2688 as I see it, it's not the same as an acquittal. It's just voting to not proceed.
2689
2690 So, I don't know if there's kind of a best way to take in what the action will
2691 be.
2692
2693 Einhorn Is it fair to say they would rather us look at the resolution first than to pursue
2694 that?
2695
2696 Kaplan Alright. If there's no other objection I think we can take a look at the
2697 resolution. And so I would draw your attention then to, first in the interest of
2698 time, to 'therefore be a resolved section' then the paragraphs 'be it further
2699 resolved' which I'm referring to as one, two, three and four. Let's take a look
2700 at number one.
2701
2702 Be it further resolve that the Ethics Review Commission finds that the city
2703 auditor erred in not following the ethics review process, expressly established
2704 by the city code, for complaints alleging violations of conflicts of interest
2705 rules.
2706
2707 We have received some legal advice on what our abilities are as an Ethics
2708 Review Commission, to act in an appeal, no capability or to even make some
2709 kind of finding in respect to the auditor. And my understanding is that if the
2710 auditor is relying on code section 2-3, that is not a code section that is within
2711 our jurisdiction as the Ethics Review Commission.
2712
2713 So we would have no ability to do anything with respect to the auditor, with
2714 respect to 2-3. However, we certainly have jurisdiction over 2-7, so if we
2715 wanted to do or say something, with respect to the auditor, that's something
2716 that we may be able to do.
2717
2718 So I want to open it up on discussion. Discussion on this first 'be it further
2719 resolved.'
2720
2721 Speight Is it fair to say that the 'therefore be it resolved' is linked to that first 'be it
2722 further resolved?' Because of the 'therefore be resolved?'
2723
2724 Kaplan Yes.
2725
2726 Speight If this review commission finds that the City Auditor Integrity Unit's April 18,
2727 2014 report on the allegations involving Zero Waste Advisory Commissioner
2728 contained conclusions that were beyond the city auditor's authority. To me that
2729 to me is linked with that first.
2730
2731 Kaplan I stand corrected. We should probably handle that therefore be it resolved. The
2732 very first one first. So renumber it one, two, three, four and five.
2733
2734 Einhorn But you're also arguing that one and two are the same.
2735

2736 Speight Well they're not the same, but they're linked, right? It calls into the question
2737 whether we have the authority to, in any way, you know, review or step in
2738 front of or step on top of the auditor, in their actions.
2739

2740 Cindy Tom I was just going to add a little bit more legal advice. You have more than two
2741 options before you. You have many options. You have a resolution before you,
2742 you don't have the authority to make resolutions, but you have authority to
2743 make recommendations to council regarding provisions of city code and city
2744 charter under your jurisdiction, you can write your own resolution or your own
2745 recommendation if you don't like what's been brought before you. You can co-
2746 op some of what's in that, if you do like it, your choices aren't 'nothing' or
2747 'adopt exactly what has been brought to you.' You have authority to adopt
2748 your own language, and we can totally type that up right now if you want to
2749 do it.
2750

2751 Kaplan Well, you know, let's do this so we know where we are. Am I hearing a motion
2752 to adopt this resolution as it is written right now? Right - not hearing a motion
2753 like that. Would discussion help this body to understand how we want to act, if
2754 we want to act at all, on the particular topics of this resolution?
2755

2756 Price What I will say is I think there's a lot of information in here that we probably
2757 cannot pass, but I do like, probably the very last paragraph of this resolution
2758 that we could put in the ledger. Because I do feel, and I think there was an
2759 understanding from all of the commissioners, that there was not an effort to
2760 get all the information out from the person who they were investigating, and
2761 therefore I do think that there was some type of due process violation. And so I
2762 like that last paragraph, but then we've already decided to work on that by
2763 having the working group anyway. So I like that, and that's what I think we
2764 should put in the letter to the city council.
2765

2766 Kaplan Okay, so I think number five is handled by the working group. We can
2767 additionally write a letter or we can have the working group draft a letter for
2768 adoption at the next meeting.
2769

2770 I don't know if we can move a working group to do something.
2771

2772 Price I believe I can.
2773

2774 Kaplan Certainly the working group sitting on the other side of me. What's the
2775 motion?
2776

2777 Price That the working group set up the letter to the city council expressing our
2778 position on the city auditor, our disappointment, well I'm not going to tell
2779 them to say that.
2780

2781 Kaplan Do I hear a motion that the working group draft a letter to the city? Draft a
2782 letter to the city council regarding the auditor for review at the next special
2783 meeting.
2784

2785 Price Yes, that's my motion.

2786 Cindy Tom Do you want to do it at the special meeting?
2787
2788 Price Yes, we've got to do this stuff. They've got to work on it.
2789
2790 Cindy Tom You're not going to come.
2791
2792 Price I may be here.
2793
2794 Cindy Tom You may not be.
2795
2796 Kaplan Do we have a second for that particular motion?
2797
2798 McCormick Yes, I will second it.
2799
2800 Kaplan You have the second. Alright. Discussion on the motion directing the working
2801 group.
2802
2803 Speight I have some concerns with the working group writing the letter to the City
2804 Council. I would rather have the working group do its work and report back to
2805 the commission, and let the commission take action based on that report.
2806
2807 Kaplan The motion as it is currently written is that the working group draft the letter
2808 to council for review at the next special called meeting of the Ethics Review
2809 Commission.
2810
2811 McCormick And how soon do you think that will be?
2812
2813 Kaplan By code, it will be very soon.
2814
2815 McCormick Okay.
2816
2817 Cindy Tom Less than twenty working days from now.
2818
2819 Einhorn And as a member of the working group, this is a particularly busy time of the
2820 year.
2821
2822 Kaplan Do you want to authorize an amendment to this...?
2823
2824 Einhorn Nope, I just don't want to support it.
2825
2826 Kaplan Any other further discussion of this motion? Alright, I'm hearing no further
2827 discussion. All those in favor of this motion say aye.
2828
2829 McCormick, Price, Kaplan Aye.
2830
2831 Kaplan All those opposed.
2832
2833 Einhorn, Speight, Ruiz No.
2834
2835 Price We've never had that before.

2836 Cindy Tom So for the record, Einhorn and Speight.
2837
2838 Price It's three to three.
2839
2840 Cindy Tom Three to three?
2841
2842 Kaplan Not a pass.
2843
2844 Price That's why we have an odd number.
2845
2846 Cindy Tom Let me record for the record who voted which way.
2847
2848 Kaplan All those we were aye's, raise your hands. McCormick, Price and Kaplan.
2849
2850 Price The three in the middle.
2851
2852 Kaplan I'm certain we will do something.
2853
2854 Price So it fails right? The motion fails?
2855
2856 Kaplan The motion fails.
2857
2858 Cindy Tom It fails as the commission can only take any action on it...
2859
2860 McCormick And it's all James' fault, because he wasn't here.
2861
2862 Cindy Tom He could have decided it.
2863
2864 Einhorn I'll make a motion. I'll make a motion that we task the working group with
2865 addressing the issues in that last 'be it further resolved' with regards to due
2866 process. So that's part of the recommendation that comes back to the Ethics
2867 Review Commission.
2868
2869 Speight Second.
2870
2871 Kaplan Okay, we have a motion and second. Motion by Einhorn, second by Speight.
2872 Any discussion on this motion? Cindy do you have a handle on it? Task the
2873 working group with the issues be it resolve...
2874
2875 Cindy Tom Yes, the chair will you restate the motion before us?
2876
2877 Kaplan I will attempt. Task the working group, add an additional task to the working
2878 group to address the issues in the 'be it' in the final 'be it resolved' in the
2879 resolution, the proposed resolution in our packet.
2880
2881 Cindy Tom Add a task to the working group, for the working group to address the issues
2882 discussed in the final paragraph of this proposed resolution, and report back.
2883
2884 Kaplan That's right.
2885

2886 Cindy Tom At the special call meeting.
2887
2888 Kaplan When it's bought up, yes.
2889
2890 McCormick At the special call meeting in twenty days.
2891
2892 Cindy Tom It doesn't have to be on the agenda for the special call meeting.
2893
2894 Kaplan Is that part of your motion, or not?
2895
2896 Einhorn I'm not sure that's part of my motion.
2897
2898 Kaplan Okay, it's not part of the motion. So, report to the full ERC. So once again,
2899 additional tasks of the working group to address the issues in the final 'be it
2900 resolved' to the proposed resolution in the packet, with a report to the full
2901 Ethics Review Commission. We have motion by Einhorn, second by Speight,
2902 further discussion on motion?
2903
2904 Einhorn And let me just say the reason I'm not urging it be bought back at the next
2905 special call meeting is because I think this actually requires some diligence
2906 and some attention, and it means meeting with the law department, it means
2907 meeting with the auditor's office, it means taking this up. I would rather do it
2908 right than do it quickly.
2909
2910 Kaplan Further discussion on this motion? All those in favor, aye.
2911
2912 Kaplan, Einhorn, Speight, Ruiz, Price, McCormick Aye.
2913
2914 Kaplan All those opposed? Motion carries unanimously. Thank you, Commissioner
2915 Einhorn.
2916
2917 Looking back in time to one and two on this resolution. That is report of
2918 allegations of involving Zero Waste Advisory Commissioner contained
2919 conclusion that were beyond the city's authority, beyond the city auditor's
2920 authority, and that the Ethics Commission find that the auditor erred in not
2921 following the ethics process expressly established by city code for complaints
2922 regarding violations of conflicts of interest rules.
2923
2924 Do I have any motion with respect to considering this? Commissioner
2925 Einhorn?
2926
2927 Einhorn I make a motion that, you know, and I mean it as a question for staff before I
2928 make the motion, but I would like further legal guidance from the law
2929 department on better understanding the auditor's authority with regards to
2930 these types of investigations. So a potential motion would be that we make a
2931 formal request to the law department for guidance on this.
2932
2933 Kaplan Before we make that, well I guess the motion is on the table, do we have a
2934 second?
2935

2936 Speight Yes.
2937
2938 Kaplan Okay, motion by Einhorn, second by Speight.
2939
2940 Cindy Tom And the motion was?
2941
2942 Einhorn The motion is for the Ethics Review Commission to make a formal request for
2943 legal guidance from the law department, with regards to the city auditor's
2944 integrity unit's jurisdiction on these matters, and also...
2945
2946 Cindy Tom By these matters you mean?
2947
2948 Einhorn Essentially the issues that are under 2-7 of city code.
2949
2950 Cindy Tom The Ethics Review Commission to seek information from the law department
2951 on?
2952
2953 Einhorn With regards to their jurisdiction, with regards to ethics complaints.
2954
2955 Cindy Tom City auditor's jurisdiction on ethics complaints under 2-7.
2956
2957 Einhorn And about the requirement that they follow the ethics review process outlined
2958 in 2-7.
2959
2960 Cindy Tom And whether the auditor is following the process.
2961
2962 Einhorn Yes.
2963
2964 Kaplan I'll ask commissioners to try to think of their motion, write it down, because
2965 poor Cindy, we're driving her crazy when we do that.
2966
2967 So we have the motion, do we have a second on that motion?
2968
2969 Speight Yes.
2970
2971 Kaplan So again, motion by Einhorn, second by Speight. Discussion on this motion?
2972
2973 McCormick Can they turn down the AC?
2974
2975 Kaplan Yes. Hearing no discussion on this motion. Can you restate, I can't restate, can
2976 you restate the motion, so we're clear on what we're voting on?
2977
2978 Einhorn A formal request from the Ethics Review Commission of the law department
2979 for legal guidance on the jurisdiction of the auditor's office with regards to
2980 investigations under 2-7 of the city code, and whether they are expressly
2981 required to follow the ethics review process outlined in 2-7.
2982
2983 Kaplan Okay, that's the motion. All those in favor?
2984
2985 Kaplan, Einhorn, Speight, Ruiz, Price, McCormick Aye

2986 Kaplan All those opposed? Motion carries unanimously.
2987
2988 Cindy Tom Okay.
2989
2990
2991 Kaplan Thank you. Moving on to number three. Be it further resolved that the city
2992 auditor’s conclusions did not apply the direct economic effect standards, the
2993 city code that is necessary to establish the existence of a conflict of interest
2994 case. You know, we discussed this already; we can’t make findings of fact.
2995 We’ll open this up to discussion.
2996
2997 Price I was just going to short cut it and say that I think we’ve addressed it all.
2998
2999 Kaplan Okay.
3000
3001 Price By doing the motion and having more, I don’t think we can do anything until
3002 we get further advice, and also get information from the working group.
3003
3004 Kaplan Okay, that’s three and four that are left to be it further resolved. Can I make a
3005 fact and retract the report? Do we want to address these issues?
3006
3007 Einhorn I’ll just say for myself in the testimony tonight we heard folks say “clear her
3008 name, find her not guilty, this process has harmed the innocent, and the
3009 process is flawed.”
3010
3011 And I guess the other thing we that heard from the auditor’s office was an
3012 explanation of their process. The city auditor’s office, the city auditor stated
3013 that they, that their determination was not a finding of guilt, and then they
3014 went on to use the word guilt in discussing the report. I don’t know, and I’m
3015 almost willing to write that off as just an unfortunate slip of the tongue.
3016
3017 But the city auditor’s office did not ask her to resign, the Ethics Review
3018 Commission did not ask her to resign, this was on our agenda last time we
3019 met, and we didn’t take action. So that to me indicates something about of
3020 what we thought of the report from the auditor’s office.
3021
3022 Council member Martinez asked her to resign, and she accepted that request
3023 and resigned. And I agree with her that that’s an unfortunate thing that she did,
3024 because it, you know...
3025
3026 McCormick A knee jerk reaction.
3027
3028 Einhorn It was a knee jerk reaction, thank you. I’m concerned with the processes
3029 outlined by the auditor’s office. I think it is flawed. I think that due process has
3030 to be protected, even in a process that rightfully respects the need for an
3031 anonymous reporting process.
3032
3033 But, you know, based on what I know of our powers, I don’t feel comfortable
3034 taking up these two “therefore be it resolved’s” without having our formal
3035 process.

3036 Price Yes.
3037
3038 Einhorn We're asking whether the auditor has to follow that formal process, but I know
3039 that we do have to follow that formal process. So I'm not, I'm not comfortable
3040 taking those steps without that process.
3041
3042 Kaplan Okay. Any further discussion of three and four of this resolution? Not hearing
3043 any motion of discussion. I'm just going to move on. I want to talk about our
3044 agenda item, and I believe we have completed all of our discussion at this
3045 point of agenda item, sorry, I just got lost in my papers. Of agenda items 4C
3046 and D. Is there any further discussion from the commission on agenda items
3047 4C and D tonight?
3048
3049 I want to circle back then to agenda item 3C, possible action by the Ethics
3050 Commission, and there's a reason for my circling back here.
3051
3052 Price Okay.
3053
3054 Kaplan I'll put this back on the agenda to make sure that we have ability to act, but as
3055 I mentioned, I'm thinking of this as a motion to reconsider. And so Mr.
3056 Whellan suggested that we, if we're thinking about doing it, that we wait.
3057 Don't think that we have that ability. I think that if we're going to act on this
3058 that we should act on it tonight, and if we want to wait somebody's going to
3059 have to file a complaint. Because we have already, as you said we've already
3060 been through it twice, it's been up for us tonight. So this agenda item 3C and
3061 we'll be -
3062
3063 Conde de Frankenberg Mr. Kaplan, I'm sorry -
3064
3065 Kaplan Hold on, hold on. This is the Ethics Review Commission, if you'd like to
3066 address the Chair, address the Chair, and I will recognize you, if it's time to
3067 recognize you. Thank you, Counsel.
3068
3069 Now, I'll continue what I was discussing. Agenda item 3C is considered a
3070 reconsideration. We've already had this agenda item. So we can't reconsider it
3071 twice under Robert's Rules. So if we're going to consider it, we're going to
3072 consider it and if we're not, we're not.
3073
3074 We can't continue to have this non-complaint come before this council for
3075 potential sua sponte resolution into infinity. And we won't do it again with
3076 other similar complaints. It's not that we're singling out with respect to this
3077 situation. It's that we need to have a process that is the same for everybody.
3078 And putting it up twice is probably pretty extraordinary in the first place.
3079
3080 So we already voted last time to not move forward on action. But, you know,
3081 given the discussion that we've already had, and I understand that we want to
3082 have additional public comment, but that's what I want to know from the other
3083 commissioners. Whether or not we want to take any step.
3084
3085 Would you like to address the commission?

3086 Conde de Frankenberg Yes, please.

3087

3088 So what we'd like to do in supporting that decision, and this is why this is
3089 important. Because we believe that what's happened here has no recourse
3090 through your process now. Because in fact what's happened so far is that Ms.
3091 Daniela Ochoa has already been punished. She's already suffered all the
3092 consequences. So even if you now find her guilty, the sanctions that will be
3093 applied are less severe than what has occurred to her already.

3094

3095 And on the opposite side, your determination, your determination will not
3096 entirely clear her name either. So that's why we were so strong in favor of not
3097 going through this process because it's ludicrous to go through this process
3098 because she's already been punished. In fact, she has already been punished.
3099 And if we go through the hearing process, you're not going to be able to
3100 resolve this situation.

3101

3102 But in any case, in light of what has transpired in the course of your
3103 discussions, what we'd like to do, we'd like to present our own complaints. So
3104 my client right now in front of the city clerk. We'll present our own
3105 complaints in which she, complaints against her, because we're concerned of
3106 the implications of what may be perceived in the public view that you are also
3107 now proceeding against her.

3108

3109 Kaplan I'll defer, having heard that for the first time, I'll defer to staff's thoughts
3110 about whether or not that's possible, but I will say that generally if any
3111 member of the public wants to swear out a complaint, pursuant to the rules of
3112 the city code then we will follow our procedure. The complaint has to be a
3113 sworn written complaint made to the city clerk, I don't think we have the form
3114 with us today, and the clerk's open every day, and anybody could have gone in
3115 at any point of time through this process. So you don't need to do it tonight.

3116

3117 Cindy Tom I just want to remind you all the process is set out in code. The individual who
3118 swears in the complaint is considered the complainant, and they have the
3119 burden in proof in making the case against the respondent. It would seem
3120 somewhat nonsensical for the respondent and the complainant to be the same
3121 person.

3122

3123 A different person could make a complaint. The answer may be that this
3124 commission has no authority over the city auditor with regard to their reports
3125 so you might need to look somewhere else.

3126

3127 Kaplan Hold on one moment, Commissioner Einhorn. Mr. Whellan, you said "how
3128 else do we?" and then you stopped. Can you finish that sentence please?

3129

3130 Whellan My concern with 2-7-26 is that the Ethics Review Commission has
3131 jurisdiction over this chapter, which is 2-7. And that's why we have this
3132 second to last item, which is you can make a recommendation to the city
3133 council that the report be retracted, because it reached conclusions that are,
3134 can only be made by this body, which is set forth in 2-7. And that is what,
3135 that's the relief, the bottom line kind of relief that Daniela was seeking.

3136 Otherwise she has to swear a complaint against herself just to get another
3137 hearing – an initial pre-hearing here. It’s the only way to really demonstrate
3138 what a kangaroo court the auditor has created by his actions. There is no other
3139 way to take action that is stronger for her to turn this upside down, and
3140 demonstrate how ludicrous this has become.
3141
3142 Einhorn Mr. Whellan I don’t entirely agree with that because I think that as resolution
3143 itself states, ours would only be a recommendation to the city council to order
3144 the auditor retract this report. So I think the recourse for her is to go directly to
3145 the city council.
3146
3147 Whellan With your recommendation that the council do that, it gives it more weight
3148 than her just going to the city.
3149
3150 Einhorn But how do we do that without our formal process?
3151
3152 Whellan Because your formal process requires fact finding, and we’re not asking you to
3153 do fact finding. We’re asking you to look at the code, which says you’re the
3154 only ones who have the discretion to make a conclusion. And as Mr. Ruiz
3155 pointed out, the very first page of the auditor’s report, the very first page
3156 makes conclusions under findings. He says “constituted conflict of interest
3157 violations.” He says it twice in the middle of the page. It isn’t done in a way
3158 that is equivocal. It says her subsequent participation in discussions and voting
3159 related to TDS agenda items on February 13th and August 14th, quote
3160 ‘constituted conflict of interest violations as defined in the city code’. So he’s
3161 made, just as a matter of law, not with any fact finding, almost as a motion for
3162 summary judgment, he has found, made conclusive, the finding that is solely
3163 in your discretion in chapter 2-7.
3164
3165 Einhorn And I would say that the advice that we are trying to get from the legal
3166 department is to determine whether we do have sole jurisdiction over that. For
3167 me...I’ll leave it there.
3168
3169 Kaplan Okay, we have a comment for a member of the public, unless there’s an
3170 interjection from the commission.
3171
3172 Cindy Tom Please state your name again.
3173
3174 Kaplan Please state your name.
3175
3176 Schneider My name’s Robin Schneider. I think it’s really this commission should stand
3177 up for itself. If you folks are the ones that are supposed to determine conflict
3178 of interest violations, your words to city council is important. And we can go
3179 to city council about it, and we will probably go to city council about it, but
3180 your backing gives it much more impact. You’ve had this on your agenda
3181 twice. By failing to take a strong stand tonight, you are basically giving a
3182 signal to the city council that we can’t make a decision about whether there
3183 was any, whether the auditor stepped over the line. I think it’s clear that the
3184 auditor stepped over the line, and in fact what I want to do is, is to file a

3185 complaint against the auditor for their abuse of the law, in terms of crossing
3186 over that line.
3187
3188 Kaplan Thank you. Any questions from commissioners? Alright. Anything further in
3189 respect to this issue?
3190
3191 Conde de Frankenberg You know to me it's trouble. There's no finding of fact that's
3192 required here. You can just look at that auditor report and you can see that
3193 there's nothing in here that makes any explanation as to how there's a
3194 likelihood of direct economic benefit, or direct economic effect. And so is it
3195 that difficult for you to look at that? Is it that difficult for you to take a stance
3196 and say they put out all these allegations here, we have to do it right. And the
3197 right process to do it is the process that you have jurisdiction over.
3198
3199 Kaplan Counselor, it's not difficult. We're just trying to find a place within our
3200 authority, in code, to do that. If we don't have the authority to do it, I don't see
3201 a way for us to do it. It's not difficult; it's just maybe not possible.
3202
3203 Conde de Frankenberg Could I ask you a question? So is there anywhere in the code, is
3204 there any reference to the city auditor having authority over 2-7-64 and 2-7-
3205 63? There is no reference to it. But there are reference to your jurisdiction over
3206 it.
3207
3208 Kaplan So this is one of the questions that the working group is going to address.
3209 Whether or not there is exclusive jurisdiction for the Ethics Review
3210 Commission over these particular provisions of 2-7. We don't have an answer,
3211 we've sought legal guidance on it, we have some, it's not entirely clear, which
3212 means that the answer is not an absolute yes. Never addressed this issue
3213 before, that's why we've constituted a working group on this already. So
3214 we've already taken action, and the action will happen quickly, because of our
3215 quick turnaround. It's not going to be a quarterly thing, because we have a
3216 quick turnaround for our next meeting. Hopefully we will have some
3217 recommendation by that time. But at this point that is the action that the
3218 commission has decided to take.
3219
3220 What we have to still discuss on the agenda is whether the commission wants
3221 to file a complaint under its own power against Ms. Ochoa Gonzalez. Again,
3222 this is the second time it's come up and so it will be the last time the
3223 commission decides whether to take this particular action. It does not stop a
3224 member of the public from making a complaint, and the members of the public
3225 are free to do what they want to do.
3226
3227 But I do want to see if there is any motion with regard to 3C, a possible action
3228 to file a sua sponte complaint against Ms. Ochoa Gonzalez.
3229
3230 Einhorn Cindy, if we filed a complaint ourselves, does the burden of proof fall to us?
3231
3232 Cindy Tom The process for the commission filing a complaint on its own initiative with
3233 itself is possibly a case of first impressions within the whole history of the
3234 commission. I obviously have only been your liaison for almost a year and a

3235 half. I have some records going back into 1990, none of which reference the
3236 commission ever filing a complaint on its own initiative. So, we will figure it
3237 out as it goes, but code does have a little bit of evidence. Code says that legal
3238 counsel for the commission will present the case at the preliminary hearing,
3239 and if there's a final hearing. I don't know how that would work if you all
3240 were to go forward. I would figure it out with the city attorney. Whether we
3241 would get another attorney from the law department to assist so the same
3242 counselor wasn't both advising you on the law in executive session and then
3243 making the case. Possibly outside counsel might be hired. Again, it's nothing
3244 that's ever occurred, but yes, essentially the commission, or legal counsel for
3245 the commission, whether that's me, or outside counsel or someone else, would
3246 have the burden of proof at the preliminary hearing and the final hearing. So
3247 the commission would have to try to gather evidence and witnesses, counsel
3248 for the commission – obviously - council for the commission does not have
3249 subpoena power to gather that evidence, not does the commission itself so it
3250 would be interesting.

3251
3252
3253 Speight So we couldn't even subpoena the auditor's office to give us the records they
3254 have?

3255
3256 Cindy Tom You cannot subpoena the auditor's office. It might be possible if...I don't
3257 know, we would have to see. The law department has no authority over the
3258 auditor, so legal counsel for the commission would have authority to require
3259 the auditor to give any information to the commission, or council, we can only
3260 ask.

3261
3262 Einhorn Mr. Chairman, I'm in this difficult situation where based on the auditor's
3263 report, and on the presentations we've seen tonight, I don't actually, I don't
3264 actually believe that a conflict of interest existed, but at the same time I am
3265 sympathetic to the notion that with this dangling out there forever, Ms. Ochoa
3266 Gonzalez's name, you know, has been called into question. So I'm in this
3267 position of almost wanting to file our own complaint. But I have this exact
3268 same frustration.

3269
3270 Price Well if we filed it, we would take the decision on the preliminary hearing
3271 whether or not there was substantial information to go to a final hearing.

3272
3273 Kaplan That is our process.

3274
3275 Price So we would have a preliminary where we would get all the information and
3276 make a decision.

3277
3278 Kaplan If we voted to move forward with it then we would set a preliminary hearing,
3279 which would be held within twenty days of when we filed a complaint, it
3280 would be here.

3281
3282 Einhorn The special meeting is going to be fun. What would the complaint be?

3283
3284 Cindy Tom You would have to fill out a complaint form like anybody else.

3285 Einhorn And what would it be?
3286
3287 Kaplan Potential violations of the conflicts of interest?
3288
3289 Price I think we just attach the auditor's report.
3290
3291 Einhorn The auditor's report? That's the problem; the auditor's report is unclear, as far
3292 as what the violations are.
3293
3294 Price No, they have the specific violations. It's 2-7-63 and 2-7-64.
3295
3296 Cindy Tom You could pool whatever violations you think, you swear to that you think
3297 happened.
3298
3299 Price No, I don't think we...no, no, no.
3300
3301 Cindy Tom Code requires a specific complaint.
3302
3303 Einhorn I think that's the point, we have to swear that she did it, and I'm not willing to
3304 do that because I actually don't believe it.
3305
3306 Cindy Tom Well that's the problem. If the person swearing the complaint doesn't really
3307 think there's a violation, it kind of defeats...
3308
3309 Einhorn If the commission brings a complaint of its own, then the commission has to
3310 swear?
3311
3312 Einhorn That's what it says. Now you know why one has never been filed.
3313
3314 Kaplan Respectfully, as I see the problem, and this is unfairly diluting it, but the
3315 commission does not exist as an appeals court for what the auditor does, or
3316 does not, do. Frankly, no other city bodies. So right here we're trying to make
3317 some kind of appeal to the auditor, we don't have that power, we have the
3318 power to hear complaints and rule on them. Hearing your complaint went
3319 through another channel, everyone's concerned. Council exists to address
3320 these problems, but if the problem continues to come before us, asking us to
3321 essentially find facts, the way I see it is we can't adopt or dispute. We can't do
3322 either; we can't adopt or dispute the report of the auditor without finding some
3323 kind of facts. And we can't do that without going through our process. And
3324 we're having trouble going through the process because this is not a standard
3325 process for us. The process is not built for us to be an appeals court for the
3326 auditor, that's why we're having this difficulty.
3327
3328 It's not that there's anything wrong with our ethics process, it's that there was
3329 another process. And so, you know, the key piece for me is to discuss what the
3330 auditor and the law department, what we can do to figure out how we don't
3331 have two parallel tracks moving forward.
3332
3333 That will resolve the problem moving forward, but in respect to the problem
3334 that already exists, that's the problem we're facing tonight. How do we fix

3335 something that's already out there? I don't know that we have the tools that
3336 everyone hopes, and perhaps us commissioners hope that we would have to do
3337 that.
3338
3339 Ms. Ochoa Gonzalez, did you want to make a brief statement?
3340
3341 Gonzalez I only want to ask three very simple questions. Can I file a complaint against
3342 the auditor, or is that not even possible?
3343
3344 Price We can't speak to that.
3345
3346 Kaplan I would refer to the law department, but I...
3347
3348 Price Well, we can't speak to that.
3349
3350 Kaplan Yes, we're not agenzized to answer that anyway.
3351
3352 Gonzalez Can I speak to the liaison here?
3353
3354 Kaplan You will have to discuss that outside. We're not, thank you Commissioner
3355 Price. That is not on our agenda to talk about.
3356
3357 Cindy Tom I would just say generally, to the general process, complaints are laid out in
3358 chapter 2-7, if you are to file them they are to be filed with the city clerk. And
3359 so if anyone is interested in filing a complaint against anyone, just know that if
3360 it's coming to the ERC it needs to be within their jurisdiction, their code
3361 provisions, and contact the clerk for the form.
3362
3363 Gonzalez I just contacted the clerk and they said that there was no form. I called twice
3364 and they said you have to put it in written. I don't know who was on the front
3365 desk, but they said that there is not a specific form.
3366
3367 Cindy Tom I would say go contact...
3368
3369 Price No that's wrong.
3370
3371 Kaplan So we unfortunately, they are going to kick us out of here at ten, and we have
3372 some additional business that we have to reach tonight. So we're going to have
3373 to have rapid discussion on this.
3374
3375 Price But the city clerk is sitting right there, you can talk to her.
3376
3377 Kaplan So again we are on 3C, possible action by the ERC to file a complaint on its
3378 own initiative. We were having a discussion. Commissioners, any further
3379 discussion on that?
3380
3381 Price No.
3382

3383 Kaplan Okay, do I have a motion on that? Okay, hearing no motion we're taking no
3384 action on 3C. And that closes our discussion on 3C and the other items, 4C
3385 and D.
3386

3387 Cindy Tom Are we going to go to 4B? The clerk still has a presentation.
3388

3389 Kaplan Yes, please. Let's move to 4B. Thank you, Janette, for staying with us. Just so
3390 everyone knows what's happening next, in case you do want to stick it out and
3391 sweat it out with us, it's, we have a staff briefing on ethics training including
3392 conflicts of interest training that's provided by our clerk.
3393

3394 Janette Now, I'm going to keep this as short and sweet as possible.
3395

3396 Kaplan I think that's a good idea.
3397

3398 Janette I am Janette Goodall, the City Clerk and so Cindy asked if I could come and
3399 report back on training, and I asked a question that I thought that you all were
3400 creating a working group to talk about training. And she said "no" that she
3401 thought I was coming back to talk about training, so here I am.
3402

3403 So I just want to kind of very briefly update you on some of the things we're
3404 doing and one thing that I would like is input from you all, but not tonight.
3405 We're currently reviewing all of the board and commissions training,
3406 comparing it against other cities for suggestions on best practices out there. I,
3407 myself, have spent lots of time researching what other cities are doing and
3408 other types of trainings that they have been providing.
3409

3410 So our goal really is to try to clarify anything in all of the Boards and
3411 Commissions that is unclear, needs more definition or more emphasis. And
3412 we're really trying to focus on how we can better define what your role as a
3413 board member is, what your responsibilities are, what the staff responsibilities
3414 are, including what it means to be a Chair. There's a lot of - Chairs are coming
3415 to us without any specific training on Robert's Rules, or conducting a meeting.
3416

3417 A lot of this came out of discussions with past boards. We're also looking at
3418 how we can work with not only board and commission members, but the staff
3419 liaisons, on how we help you all develop a good working relationship between
3420 your members and the staff liaisons. Y'all have a good working relationship.
3421 I've been to enough of you meetings that I know you have a good working
3422 relationship. That's not the case for all boards and commissions. And as I
3423 stressed to the board and commission members, and the staff liaisons, this
3424 shouldn't be an adversarial relationship, but in some instances it is.
3425

3426 So we want to try to focus on some of that, try to provide tools and training
3427 that we can give them. Staff training currently is mandatory...
3428

3429 Kaplan Hold on. Can the members of the public please step out? Step outside. We're
3430 having a hard time hearing back here. Appreciate it. Thank you all for your
3431 time. Alright, please continue.
3432

3433 Janette Sure, the staff training. Currently we provide training, but it is optional. They
3434 don't report to me, I don't have jurisdiction over staff because they report to
3435 the city manager typically. So I have got at least a commitment from the city
3436 managers office to make at least initial training for all staff liaisons to be
3437 mandatory, using the 10-1 as an excuse that we're going to have lots of new
3438 board members, lots of changes. These staff need to understand what your role
3439 is, what their role is, and how they need to assist you. So we have that
3440 commitment, and so we will be working on developing some training that will
3441 be required for all of them, to be conducted this Fall and probably into
3442 December.

3443
3444 What I need from you all that might be helpful, is you do have the ethics
3445 handout? I would really appreciate any feedback, or suggestions, or additions,
3446 or enhancements, or whatever, that we need to make to this training material
3447 going forward.

3448
3449 Kaplan I've got one right out of the box. Can we get this thing in Spanish, and when
3450 can we get that?

3451
3452 Janette Yes, that's something I was going to talk about, and figure out. The clerk's
3453 office has increased, slightly, our budget for Spanish translations, but not to
3454 the extent that I can translate everything in Spanish, but we will work on
3455 trying to figure out how to do some of that.

3456
3457 Kaplan Okay, good. I think we're going to put that on a future agenda item, to just
3458 follow up and make sure we get it.

3459
3460 Janette It's something council has expressed interest in. The problem is trying to
3461 figure out what to translate, city wide, and absorbing the cost for all those
3462 types of translations. We have increased the number of items that we are
3463 translating in Spanish related to elections so Board and Commission training
3464 must be another area we can look at.

3465
3466 Price My only, you know I haven't looked at this in detail, but my only other
3467 suggestion when you're talking about a Chair, I think that's a great idea, but
3468 have that as a completely separate module for the Chairs, because as much as,
3469 I really did, I was surprised by how much I did like the training online, you
3470 guys did a great job of making it interesting and keeping it moving. But if I
3471 had to add another hour to it, I would...

3472
3473 Janette Some of the other things we are considering in addition to, you know we went
3474 strictly to online training. Some folks like it, some folks don't.

3475
3476 Kaplan I like when the videos are working.

3477
3478 Janette Right, because there are some technical difficulties we can't fix. And, you
3479 know, honestly, sometimes when I'm doing online training, you know, go up
3480 and down and I find myself lost. And so one of the things that came out of the
3481 board and commission task force was maybe having a workshop where folks
3482 who wanted to come and have face to face training could come in, knock out

3483 all of their training all in one session. So we're going to be able provide some
3484 options. If you don't want to come down to city hall and do face to face, you
3485 can spend eight hours on your time to do the training online. But if you want
3486 to knock it out in a shorter amount of time, come down to city hall and we'll
3487 knock it all out for you. That way we can bring in some speakers, so maybe
3488 someone from the Ethics Commission could come and speak about ethics.
3489 Some of the board members are really good experts in their parliamentary
3490 procedures. So it's just natural to ask them.

3491
3492 Kaplan And I just want to point out that the clerk did what I think was a very detailed
3493 and useful job for the ZWAC at their last meeting, well the last meeting I
3494 attended. And you know there was a power point and everyone was rapt. Or at
3495 least I was.

3496
3497 With respect to this, can we have the contacts, have like questions, contact
3498 city, Austin City, Austin Integrity Officer and the number right on the very top
3499 of the front page.

3500
3501 Janette We need to actually update that.

3502
3503 Kaplan Update the number?

3504
3505 Jeannette Yes. Well, there is no number.

3506
3507 Price There's no number.

3508
3509 Kaplan Right. I think what we're going to plan to do is to put this on a future agenda
3510 item, just so we can follow up and make sure that the process is moving. Any
3511 other suggests for Janette at the moment, and of course we can all
3512 individually...

3513
3514 Price We can email you, right?

3515
3516 Jeannette Email me, and we'll compile everything, and then we'll, whenever you want
3517 us to bring it back to you for review of the entire document; we're happy to do
3518 that. And I sent everybody the link to the online training. I don't think that we
3519 have time to watch that right now at the meeting. If you want to watch through
3520 it again, if you had trouble accessing it originally, you can see that. So that's
3521 the standard training that new board and commission members get on ethics,
3522 plus what's in the handout. There's also an in-person upon request. So the
3523 clerk's office will go out to boards and commissions and do in-person training
3524 if requested. The law department has done the same thing, it requested, and
3525 there's also the ethics and compliance team, which fairly regularly, at least
3526 once or twice a quarter, answers a conflict of interest question from the city
3527 board and commission members.

3528
3529 So this is - consider this your report back from your request at the last meeting
3530 to find out about what ethics training is provided to city boards and
3531 commission members.

3532

3533 Kaplan I just want to point out for the record before we close this agenda item that
3534 when we discussed the particulars of Ms. Ochoa Gonzalez's ethics, rather
3535 conflict of interest complaint, the room was packed with over thirty people,
3536 and upon taking up this item almost all have left, with the exception of five.
3537 So if the concern really is ethics and compliance I'm disappointed to see that
3538 everyone has not stuck around for the meat and potatoes, or I guess the nuts
3539 and bolts of it, that apply in the future for other commissions. Obviously this
3540 commission is very committed to that, but to her credit, Ms. Ochoa Gonzalez
3541 is still here in the room, as is staff from the auditor's office, listening carefully
3542 to this presentation. So I want to thank you all for being here, I know it's late,
3543 and it's been a long night.
3544
3545 Anything else? Any other questions before we move forward?
3546
3547 Price I still thank the city clerk was staying for this whole entire, it was much
3548 appreciated.
3549
3550 Janette No council meeting?
3551
3552 Kaplan This is in lieu of.
3553
3554 Price You should just take the gift and move on.
3555
3556 Kaplan And move on.
3557
3558 Cindy Tom Just to remind you, you have twenty minutes left
3559
3560 Price Yes, we know, we're running through it.
3561
3562 Kaplan We're gonna run through the rest of the agenda. Which agenda items are we
3563 on?
3564
3565 Price E. 4E, right here.
3566
3567 Kaplan 4B was concluded. We're on 4E. Board and commission transition task force.
3568
3569 Deena I am the events and commissions coordinator. I have these forms here if you
3570 haven't already seen them, you probably should have already seen them if you
3571 have been checking your board and commission emails, and your personal
3572 emails, because I have blind copied you in. This just states that your terms are
3573 currently, you are appointed council members, so your terms will be ending
3574 December 15th, 2014.
3575
3576 Section one of the transition task force recommends that your terms be
3577 extended to June 30th of 2015 to allow the new council a transition period to
3578 learn their own roles, and to learn the roles of boards and commissioners, and
3579 how to best appoint. Also, to give you an opportunity to reapply during that
3580 transition period, if you would like to continue your service under the new
3581 council.

3582 So section one of the transition task force has been approved as a resolution,
3583 and asking the clerk's office to bring this back at the August 17th meeting as an
3584 ordinance for, well I assume, approval.
3585

3586 So if it's not very much cart before the horse to ask for your commitment to
3587 June 30th 2015. So if you don't have copies, I have some and I'm happy to
3588 wait for you to sign.
3589

3590 Price I have a quick question because I'm getting ready to resign, which is on the
3591 agenda. But will the person who gets appointed, will she, or he, only have to
3592 serve until December, and then they have to...
3593

3594 Deena Then they have to sign this. They have to sign this form as well.
3595

3596 Einhorn They have to sign if they want to stay.
3597

3598 Einhorn Being on the board or commission is not unlike being in the mafia, every time
3599 you try to get out...
3600

3601 Price They pull me back.
3602

3603 Kaplan Well, you don't have to sign this. It's not required.
3604

3605 Deena Part of it is also just to give the council time – the new council - time to make
3606 all of this. That in itself will take us a while to process. And you've got the one
3607 page of the wording of the boards and commission task force report that really
3608 references the ERC and the recommendation it just to go from a seven
3609 member board to an eleven member board.
3610

3611 You're more than welcome to give your opinion on any section of the report,
3612 including section four, which talks about recruitment. If you want to see the
3613 report I can pull it up. I just know we have other stuff on the agenda.
3614

3615 Kaplan Why don't you pull it up while we move on? Deena, anything further for us?
3616

3617 Deena No, if you'd like to send me your individual survey links, they were sent to
3618 June 11th at 2pm in August last year.
3619

3620 Kaplan I'll do it, I'll start.
3621

3622 McCormick As a group can we do it?
3623

3624 Kaplan I missed that. The survey?
3625

3626 Price You've already done it?
3627

3628 Kaplan I don't remember.
3629

3630 Price I think I started and I thought, 'I'm too tired'.
3631

3632 Deena We will be reporting to council how many members completed it for each
3633 commission.
3634
3635 Kaplan For a commission? Okay, but they can guess.
3636
3637 Deena Yes.
3638
3639 Kaplan Alright.
3640
3641 Deena Plus they asked. And they will close Friday the 1st of August at 11:45pm. So
3642 did you want to make comments as a group on the survey? This is probably
3643 your only chance, because we're not going to have a special call before then.
3644 Or you can just make comments on your own individually.
3645
3646 Price Yes, let's do that.
3647
3648 Kaplan Does anyone feel the need to comment as a group? Our comments aren't an
3649 issue. Anything further from you all on this agenda item? Alright, moving on.
3650
3651 Price Thank you.
3652
3653 Kaplan Why don't we move on to F. 4F.
3654
3655 Einhorn Let's get rid of her.
3656
3657 Kaplan Yes, let's get rid of her.
3658
3659 Price We can't do 4F.
3660
3661 Kaplan Alright, 4F.Resignation of - fine, alright we'll come back to it.
3662
3663 Price No.
3664
3665 Kaplan We'll do it last, I just want to make sure that we get to it. If you all want to
3666 approve the minutes.
3667
3668 Einhorn So move.
3669
3670 Price Second.
3671
3672 Kaplan Motion made by Einhorn, motion second by Price. Any discussion? All those
3673 in favor?
3674
3675 Kaplan, Einhorn, Speight, Ruiz, Price, McCormick Aye.
3676
3677
3678
3679 Kaplan All those opposed? None. Motion carries unanimously. We'll go back to the
3680 record. It's a motion by Einhorn, second by Price, unanimous. Minutes are
3681 adopted. Okay, moving on. Let's see. Bylaws, where are the bylaws?

3682 Yes, so this. Motion set by Einhorn, bylaws motion second by Einhorn. All
3683 those in favor?
3684
3685 Kaplan, Einhorn, Speight, Ruiz, Price, McCormick Aye.
3686
3687
3688 Kaplan Any opposed? None. Carried unanimously.
3689
3690 McCormick We still have to do D.
3691
3692 Kaplan Yes, we're coming around to it. Let's go to, actually we'll do that next. So 3D
3693 adoption of Ethics Review Commission Complaint and Hearing procedures
3694 and rules including possible revisions. Alright, an ethics complaint form and
3695 report form working group. We have rules in our packet. Do we want to
3696 review and adopt those rules?
3697
3698 Price All I will say is that the working commission worked with, I mean the
3699 working group also worked with Cindy, and basically we just tracked like the
3700 other working groups saw, we tracked the code, and ordinance, and that's
3701 what's basically in this language. I do want to make a change because I feel
3702 my typing was really bad. But D disqualification is - it was really late in the
3703 night. So that should be disqualification, that change should be made.
3704
3705 James, do you want to add anything?
3706
3707 Ruiz No.
3708
3709 Kaplan Has everyone had a chance to review them? I'm sure they were in out packet
3710 earlier. I had a chance to review them and I thought they were excellent.
3711 Thrilled to have a set of working rules we've adopted. Thanks so much to the
3712 working group for its hard work. We need motion with the amendment,
3713 second?
3714
3715 McCormick I'll second.
3716
3717 Kaplan Second by McCormick. Any discussion? All those in favor of adopting these
3718 working, or adopting these rules?
3719
3720 Kaplan, Einhorn, Speight, Ruiz, Price, McCormick Aye.
3721
3722
3723 Kaplan Carries unanimously. We now have our rules, thank you all.
3724
3725 Does the working group still have its charge to continue and work on the
3726 complaint form?
3727
3728 Price No.
3729
3730 McCormick Yes, that's part of the charge it has.
3731

3732 Einhorn Yes it does.
3733

3734 Kaplan Okay. Can we hear back from the working group on something to date about
3735 the complaint form? Alright, very good.
3736

3737 Cindy Tom We need to make it very clear on the form what the jurisdiction of the ERC
3738 was.
3739

3740 Kaplan It can only help. Not too much left to do, moving to 3C, possible action, no,
3741 never mind. 3D, sorry, false alarm. City public financial information clearing
3742 reports from two working groups. Form revision, possible government
3743 recommendation and update for proposed plan commission review of forms.
3744

3745 On the forms, I'll give a quick overview of what Peter and I have been up to.
3746 We've had no less than two meetings on this. We met with HR, we met with
3747 Janette the city clerk, we've discussed some possible changes to code, which
3748 we think we'd like to make a recommendation to this group to recommend, we
3749 also discussed some possible form changes, but we don't have those
3750 documents pulled together yet. So we'd like to do them at the special call.
3751 Ideally, it's the next meeting. Our plan is to do them at the special call, time
3752 permitting to just take a look at those. Nothing in there is going to be too,
3753 what's the word, earth shattering, but it's been cleared.
3754

3755 McCormick You want to do them before for the meeting?
3756

3757 Kaplan, Einhorn, Speight, Ruiz Yes.
3758
3759

3760 Ruiz We have all of ten minutes. Can you summarize quickly sort of what that is?
3761

3762 Kaplan Yes, yes. Commissioner Einhorn will check me if I get any of this incorrect.
3763 So we were concerned first about the reactions happening, about people's
3764 spousal information. We found out that that information is redacted pursuant
3765 to state law, city, and city has no ability to change that. We actually thought,
3766 like you all did, that you had to potentially fill out a form that says you want to
3767 redact my spouse's information, but then that automatically happens on the
3768 back end when a public information request occurs.
3769

3770 Cindy Tom The city code can't overrule it.
3771

3772 Kaplan It's state law. So that's what effects the redaction of spousal information. With
3773 respect to the people who have to file, we found out that there is a change to
3774 code that we can make to change it. I believe it is the assistant department
3775 head who can get that power.
3776

3777 Cindy Tom Definition is city official. Possible amendment
3778

3779 Kaplan Yes, we can change it. We can make the amendment, and make it consistent.
3780

3781 Einhorn Assistant department or office head.

3782 Kaplan I think that's right, yes. Consistent with what HR told us, they call people. And
3783 that would clean up that, and everyone would know who then is required to
3784 file.
3785
3786 We found out that there's no real consistency with respect to the commissions
3787 that have to file, it's not like a list of sovereign boards, nothing's, you know.
3788 It's not just the sovereign boards, so we need to look at that and make a
3789 recommendation.
3790
3791 Cindy Tom It started out being boards, that I think was land and stuff, I think that's why
3792 there's a lot of it in there.
3793
3794 Kaplan There's one, there's a language in the code about a board that no longer exists.
3795 We're going to recommend that be removed from code.
3796
3797 And then our forms, once again, somehow, some way, don't match up to code
3798 as last I looked, so I'm going to take a look and see if we can match those
3799 again. Don't know how that continues to happen.
3800
3801 Price Because you have nothing else to do.
3802
3803 Kaplan Good grief. Electronic forms we discussed this with the clerk, and with HR,
3804 IT. My understanding is that IT are working on those electronic forms, and is
3805 going to pre-populate some of that information. So one of the big complaints
3806 was that people didn't list the city of Austin in their income area, and so we
3807 can pre-populate that. Of course if everyone is filling out these forms they're
3808 employees going through the computer system, would work for the city of
3809 Austin. So we can pre-populate that, if they want to change that and make it
3810 more specific they can do that. But that would solve a lot of the problems I
3811 think, people just neglecting to put that in there.
3812
3813 With respect to following up of people who haven't yet filed, or just forgot to
3814 file, or whatever the case is, we're working on some recommendations for
3815 improving that process.
3816
3817 Einhorn Notification
3818
3819 Kaplan Notification in the background. That's something that we can make a
3820 recommendation to you to have a discussion about. I think that's about it. Is
3821 there anything?
3822
3823 Cindy Tom Okay, at special call.
3824
3825 Kaplan Yes, yes.
3826
3827 Einhorn Very briefly, Sassin and I were tasked with the whole idea of whether or not
3828 we should initiate our own review process of whether or not PFS's were being
3829 done.
3830
3831 Price That's right.

3832 Einhorn I have my own opinion of it, but Sassin and I, have not actually visited.
3833
3834 McCormick You haven't talked on the phone?
3835
3836 Einhorn No.
3837
3838 Cindy Tom Are you going to visit before the special call?
3839
3840 Einhorn I have no idea.
3841
3842 Cindy Tom Alright.
3843
3844 Einhorn It's sort of within the same jurisdiction, so if you want to leave it on there.
3845
3846 Cindy Tom We'll post broadly.
3847
3848 Kaplan Okay, we'll post broadly for the same agenda item and get an update for y'all.
3849 I encourage you all to chat to the clerk to find out the best way, because we
3850 can apparently we can get you, we can get you that information digitally.
3851
3852 Einhorn I will say, well I will say what we were tasked to do was to figure out whether
3853 or not the ERC should have a review process about these.
3854
3855 Price Forms.
3856
3857 Einhorn I'll give you my personal opinion on the working group, and that is we clearly
3858 have enough to do, then taking on filing our own complaints, or doing our own
3859 review process, as to whether or not people are filling these things out
3860 properly. And to sort of set that up at the state level, they don't do that at state
3861 level. It's up to somebody to file a complaint about whether something's been
3862 filed properly or not.
3863
3864 Kaplan Alright, we need a recommendation from the group next time, and some
3865 potential moving forward from there. Alright, anything else? Oh, we're not
3866 done yet. That's it on 3C, hold on we got one more.
3867
3868 Einhorn 3B.
3869
3870 McCormick One more.
3871
3872 Kaplan Is it F, are we finally there? Before we get there, I always forget this, future
3873 agenda items. Cindy, do you have a...
3874
3875 Einhorn Literally, she has all those.
3876
3877 Cindy Tom You want to you bring items in respect, related to the auditor stuff, I'll
3878 remember those. What else? In respect to officers, if Velva resigns, we will
3879 probably want a new Vice-Chair, unless we want to wait until October meeting
3880 when we do the regular elections.
3881

3882 Kaplan No, I don't. As the Chair I would prefer to have a Vice-Chair in case I'm on
3883 vacation and we have a complaint filed.
3884
3885 Cindy Tom I would have advised a Vice-Chair on this meeting, except you know, but I've
3886 been really sick and I totally forgot.
3887
3888 Price Plus I haven't resigned yet.
3889
3890 Kaplan You got it.
3891
3892 Einhorn We can pick that up at the special call meeting.
3893
3894 Kaplan We can, that's on our future agenda items, so...
3895
3896 Do we have time to be able, do we have any information on updates of forms
3897 for the training on conflict of interest within like two weeks? Or should we
3898 revisit that down the road? Is it too soon?
3899
3900 Cindy Tom I would revisit it down the road.
3901
3902 Kaplan Alright, that's fine. We'll go ahead and put in on a future agenda.
3903
3904 McCormick It doesn't have to be done now. Did you write your letter?
3905
3906 Price Yes.
3907
3908 Kaplan Okay, Commissioner Price. Here we go. We're moving to the final agenda
3909 item. Got through everything. 4F - resignation of Ethics Review Commission
3910 Vice-Chair, Velva Price.
3911
3912 Einhorn I would like to move that we kick Velva off.
3913
3914 Ruiz Motion to not accept the resignation.
3915
3916 McCormick You might be an elected official.
3917
3918 Einhorn Might be, I think that's a foregone conclusion.
3919
3920 McCormick But she has an opponent.

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