

1 **Special Called Ethics Review Commission Meeting, December 18, 2014: Item 3A**

2
3 **In attendance:**

4 Austin Kaplan
5 Peter Einhorn
6 Donna Beth McCormick
7 James Sassin
8 Dennis Speight
9 Cynthia Tom

10
11 **Not present:**

12 Sylvia Hardman-Dingle
13

14 **Kaplan:** Moving on. Old business - discussion and possible action regarding the following.
15 This is 3A. The powers, duties and functions of the Commission and the City Auditor, including
16 City Council Resolution number 20141016-033 and report from working group and Staff
17 regarding action taken on item 217 at the December 11, 2014, City Council meeting regarding
18 proposed Chapter 2-3, City Auditor, and Chapter 2-7, Ethics and Financial Disclosure, City Code
19 Amendments. This is myself, Commissioner Einhorn, Commissioner Sassin, and Staff. Thank
20 you to the representatives from TDS who are here with us today to give us a little bit of
21 additional clarity as we're moving forward. We have Bob Gregory, Gary Newton and Michael
22 Whellan. I want to give just a really quick overview of where we were as quick as I can and I'll
23 turn it over to Mr. Whellan if you'd like and we can discuss the next steps for the working group.
24 Really what's happened here is you have – if you look at your back-up – you have a draft
25 ordinance. We were close to having that ordinance passed. There were some concerns in the
26 working group about the language in the ordinance. Specifically there was the ordinance as it
27 was amended still said the City Auditor in one specific instance made a determination, is the
28 language in there, and the working group preferred to have language saying something different.
29 Either that “the Auditor believes” or something less than a determination because what got us
30 down this road was that the Auditor cannot make final determinations of Code of Ethics things.
31 Those are in our jurisdiction and that's something we believe we should not be ceding to the
32 Auditor. So that was kind of the last fight at the time when this came up. It was item 217 and I
33 think it was last Thursday. So I came here to City Hall on behalf of the Auditor to kind of work
34 on a postponement. Councilmember Spellman was interested in not postponing it. His concern
35 was that the Auditor had a lot of cases and that if we postponed it would get dumped on this
36 Commission that would require us to call Special Called's and have lots of hearing that we were
37 not ramped up to do.

38
39 **Tom:** That might still happen. We don't know.
40

41 **Kaplan:** It may yet still happen. Although the thought was the Auditor had a stack this big and
42 the understanding is that the Auditor's stack is this big. We have not been referred anything by
43 the Auditor yet. That's not to say it won't happen although in any event. So we did discuss -
44 Cindy, me, who am I forgetting? Deborah Thomas, who is our attorney from the law department,
45 who drafted this. Corrie and Jason, representing the Auditor, all addressed Council and
46 ultimately Council decided to postpone the vote on adopting this Ordinance to January 29th. We

47 have another regular called meeting on January 27th and so here is kind of the next steps of the
48 working group believes will happen. And one other bit of background, I apologize. A little bit
49 out of order, but one other bit of background is every time this gets delayed more people end up
50 interested in coming to the table because they realize this affects them and we now have some
51 additional folks. We have AFSCME who's involved in the process; the Fire Fighters Association
52 is involved in the process. City HR on behalf of Management is now involved in this process so
53 our group is - not our working group – but our group of stakeholders is expanding. Oh, and the
54 Labor Relations Office for the City. So here are the next steps as I've planned them to go and
55 I'm curious to hear some feedback. Maybe we'll hear from TDS before we get some feedback
56 from y'all. I plan to circulate an email and we were just getting all the stakeholders together, and
57 I'm a little bit behind, but I plan to circulate an email to everyone to set a date for, I believe we
58 thought January 7th would work the best as a proposed date unless we have some serious
59 objections and we set a different date. That date would be for the working group and all the
60 stakeholders to meet and spend hopefully an hour, but spend some time possibly at lunch over at
61 One Texas Center and discuss the issues with the draft as it exists on that day.

62

63 **McCormick:** January 7th?

64

65 **Kaplan:** Yes, January 7th. And then go back – continue working on this thing. Try to get it as
66 close to final as we can, present it back to this Commission on January 27th, our regular called
67 meeting and have – and invite all the stakeholders to come once again, discuss it in a full
68 Commission in a public hearing and have this Ethics Review Commission adopt what it adopts
69 and then present that to Council for adoption on the 29th. If we have enough people on the same
70 page perhaps this thing can go on the consent agenda. If we don't for example we believe that
71 the Auditor should not have the word 'determined' or should not make any determinations and
72 the language reflect that and we disagree still we can't come up with language that we all agree
73 on then, you know, perhaps a representative will come to the 29th Council meeting and we'll
74 have a discussion and Council and make that decision. But that is kind of the way I see the
75 process going moving forward. Any questions or discussions or concerns from the
76 Commissioners? With any or all of that.

77

78 **Einhorn:** I'd like to hear from Mr. Whellan and the TDS folks before...

79

80 **Kaplan:** Okay. And while Mr. Whellan is getting prepared I'm going to take a look at this 2-7
81 in our working group will too since we're working on 2-7 I think we can probably tweak the
82 language that's in this draft ordinance. I don't know that any of the other stakeholders will care
83 that much about this particular section - it's page 5 of 6 - but as I read it I was like I can probably
84 suggest some changes so. Anything that the working group works on will come back before this
85 Commission. That's the plan.

86

87 **Sassin:** Just better writing, right?

88

89 **Kaplan:** Yeah, not any fundamental changes to the process necessarily I don't think, just
90 different language and just tweaking it a little bit. And we may also want to work our subpoena
91 request in here depending on how things go. Mr. Whellan. Oh, Commissioner McCormick?

92

93 **McCormick:** Did this come from y'all? This draft?
94
95 **Whellan:** Does it have redlines?
96
97 **Einhorn:** That's from the law department, right? The draft that we have?
98
99 **McCormick:** My only comment is the draft is a little dark. The water mark. It's hard to read
100 past it.
101
102 **Whellan:** That's Ms. Tom's responsibility.
103
104 (Laughter)
105
106 **Tom:** It wasn't me. I was out of town at an Ethics conference. It was Deborah Thomas, but I
107 can share that concern with her for the next version of the back-up. And it did come before the
108 Council as Councilmember Spellman's item. Councilmember Spellman is obviously not going
109 to be on Council anymore on the 29th so it may come back. Well, we'll see if it comes back. It
110 may come back as a different Councilmember's item in which case the Law Department will
111 work with that Staff member.
112
113 **Sassin:** Can it come back as a Staff item?
114
115 **Tom:** I'm not sure how it'll come back. It started out as Councilmember Spellman's item as a
116 resolution and then it became City Management Service's item in November. Then it went back
117 to being Spellman's item in December so we'll see.
118
119 **Sassin:** May I ask how Cathy Tovo has been involved or been involved at all? Since she's the
120 only returning member?
121
122 **Kaplan:** My understanding is she may be the Councilmember who brings it back.
123
124 **Tom:** It might come back as her item.
125
126 **Kaplan:** Mr. Whellan.
127
128 **Whellan:** Thank you. Michael Whellan on behalf of Texas Disposal Systems. First, thank you,
129 thank you, thank you. Especially the working group. All of y'all have been very patient and this
130 is extremely important. It hasn't been changed in 20 years and we're about to change something
131 pretty meaningful and significant that affects a lot of lives. A special shout-out obviously to the
132 Chair and Vice-Chair, Kaplan and Einhorn who have been working in the working group and
133 Vice-Chair Einhorn for your letter to Council. I very much appreciated the focus on this desire
134 to make determinations rather than something else. And I know 'believes' might not be what
135 Legal wants. I've heard that feedback from Deborah Thomas and I'm looking forward to
136 January 27th because that will be a great opportunity to maybe come up with some consensus
137 language. The two big items for us are the one you already identified in the letter to Council,
138 Vice-Chair Einhorn. And then, you can barely see it at the bottom here, this is a document - a

139 blue line. I circulated it to all members of the Ethics Review Commission. I circulated it also I
140 believe to - I think you got a copy, Ms. Tom, and I sent it also to Ms. Stokes. I sent it to as many
141 people as possible. We tend to do that. The language in particular that I want to talk about and
142 this theme runs throughout the Code and it is what brought TDS before you. If a third party is
143 going to get mentioned in a report, we believe that that third party should be given an
144 opportunity to respond and that response should become part of the report before it goes to the
145 authority that's ultimately going to make a decision about somebody's innocence or guilt. As
146 you can tell by our actions we feel rather strongly about this. I was to emphasize we had broader
147 language originally when we first showed up. I talked to - actually, Mr. Gregory and I went and
148 met with Ms. Stokes. We had a great meeting. I followed up with her and have shared with her
149 this new language which I know it's hard to read at the top of your screen, but it says, "and any
150 person or entity being mentioned or referenced as being involved in the alleged inappropriate
151 conduct." It's a little tighter; it's a little bit more narrow. It's not just if you're mentioned in a
152 report. Like if somebody says there's a vendor and that vendor's mentioned, but that vendor is
153 not implicated in any way as being involved in the alleged inappropriate conduct we're not
154 asking that that person necessarily be given such an opportunity. What we are asking - I had a
155 conversation one-on-one with Ms. Stokes and Mr. Hadavi about this and they concurred that it
156 seemed to make sense. They wanted to think about it more so again I hope they're going to be
157 invited on January 7th to the meeting as well because I think they'll have some good ideas and
158 some good input, but they seem to be open to, yes, let's allow a third party that is in one of our
159 reports that could get published in the newspaper where somebody finds out for the first time
160 ever that they're being accused of something, let's give that person an opportunity if they're
161 being mentioned as being involved in the alleged in appropriate conduct. So I wanted to bring
162 up those two as being big changes, and if you didn't get this Ms. Tom I'll be sure you do because
163 one thing I also have some concern about - and I'm going to get to it right here. The standard -
164 if you look at the very top, Ms. Tom - "if the Commission determines from information that a
165 preponderance of the evidence exists that a violation within its jurisdiction has occurred" that's
166 the original language. We've crossed it out. I would just a footnote for you to go back and
167 double check whether you've now created two different standards in the Code and that's why I
168 had crossed that out because I think you're creating two different standards within your own
169 Code.

170
171 **Tom:** May I ask you a question, Mr. Whellan? Again, I didn't write this, but when you say
172 creating two different standards are you referring to the fact that this says it's a preponderance of
173 the evidence and one of our other standards is something like a preponderance of credible
174 evidence on the record? Is that the different standard you're talking about?

175
176 **Whellan:** That's a good catch.

177
178 **Kaplan:** That was one of my concerns as well. The language in that part that you flagged - and
179 this is the stuff that I didn't think anybody else would care about, but I'm glad to hear that
180 someone does - is 2-7, 2-8 paragraph on page 6 I think it goes back to our preliminary hearing
181 standard 2-7-44 and, oh, I'm sorry, it should be the final hearing standard, shouldn't it?

182
183 **Tom:** 2-7-45, Final Hearing, Section B.

184

185 **Kaplan:** “Commission shall make its determination based upon the preponderance of the
186 credible evidence in the record.” So I think that we should have clarified language - one
187 standard throughout and that’s why I –
188

189 **Whellan:** And that’s why I was – yeah. That was the only thing. And then also on the previous
190 page. And this again, Ms. Tom, just to double check and I know you can’t read it there and I
191 apologize if you didn’t get it.
192

193 **Tom:** I can see it on my screen.
194

195 **Whellan:** At the very bottom we talk about 2-7-43, the ex-parte provisions. I think really –
196

197 **Tom:** I can’t read that. Sorry. Can we show the bottom? Whellan, you can send this to me. I
198 don’t believe I have a copy of this.
199

200 **Whellan:** I guess you were out of town. Deborah has a copy.
201

202 **Tom:** Deborah may have it.
203

204 **Whellan:** I tried to include at least three lawyers from the Legal Department.
205

206 **Tom:** I don’t believe Deborah has expressed an intent to attend the meeting on the 7th, but I will
207 be there if that’s when it occurs.
208

209 **Whellan:** The point on this particular one is - when he shows it up - I think it references just one
210 particular provision of the Code and really I think it should identify the whole chapter so that –
211 there you go, at the very bottom. “A Commission member may not receive an ex-parte
212 communication regarding information and shall treat the matter in the same manner of a sworn
213 complaint under a Section” and you had a specific section and I think you’re just safer saying
214 under Chapter 2-7 because sworn complaint shows up more than just 4-43, but that’s a technical
215 – I just wanted to bring it to your attention, that’s all.
216

217 **Tom:** Okay. Thanks. I think the intent of that section was to specifically reference that
218 prohibition on ex-parte communications. I think the intent was that other provisions that do
219 apply to a sworn complaint, such as the right to be represented by counsel, etcetera, etcetera
220 would also apply to this, but I would agree that there may be some room for improvement in that
221 language.
222

223 **Whellan:** It’s not something I’m going to care to bring up on January 7th. I mention the two big
224 issues for us. One, that Mr. Einhorn has already identified in a letter. The other one we feel
225 deeply committed to about third party’s that are being accused of inappropriate conduct in a
226 report that can end up in the public. I’m glad we’re having this meeting as soon as possible after
227 the New Year. I think it’s very important for us to reach consensus language. I know that’s what
228 you’re striving for, Chair Kaplan, especially given the number of new Council Members; you’re
229 gonna have ten new people who have never been on the dais. I think it’d be helpful to try to get
230 consensus language as soon as possible so that it can either get posted prior even to or at least

231 circulated to those Council Members prior to the 27th because on the 27th you've already missed
232 the posting deadline for the meeting on the 29th so we have some concern about reaching
233 consensus, getting City Legal on board and getting that language circulated well before the
234 meeting on the 27th and I know that you're not seeking authority from the entire Commission to
235 give the working group carte-blanche on making a decision, but it would be helpful if we at least
236 had a working group and consensus recommendation. I don't know if a special called meeting –
237 I know those are some words that you never want to hear uttered by anybody standing before
238 you – but because of the deadline on the 29th the deadline would be that Friday before which is
239 the 22nd or 23rd or whatever it is. So that's the only challenge I raise.

240

241 **Speight:** Why can't we give the working group the authority to speak on our behalf?

242

243 **Kaplan:** I think the working group does have the authority, but I wanted to do is have the full
244 Commission and also bless the final product. I don't know if I'm opening up a big Pandora's
245 Box here by taking another stab at it, but I do think that the working group has the final authority
246 to give its imprimatur to this thing.

247

248 **Tom:** I would add that the Commission has already passed a recommendation relating to these
249 issues. Obviously that was when you had an earlier draft of the ordinance before you. By the
250 time you meet on the 27th it would still be feasible if the working group brought another
251 recommendation for you to adopt that recommendation on the 27th and still be transmitted to the
252 Council and uploaded as back-up for the Council meeting even a couple of days before it's not
253 too late if you got it done that night. We have the special called meeting scheduled for the 5th.
254 Obviously that's before the other meeting on the 7th. As to whether another special called
255 meeting might be in the works, you never know but that would be a lot of meetings in January of
256 the full Commission.

257

258 **Speight:** My thought is this, and tell me if this sorta doesn't meet all your needs. We're gonna
259 have this meeting on the 7th. We may not iron this out by then. I actually don't expect we will. I
260 think it will be ironed out in emails and, you know, break-out meetings after that, but sometime
261 between the 7th and the 27th certainly and I would hope we can set this on the 7th far in advance
262 of the posting deadline - the Friday before that first Council meeting and so the idea would be we
263 would circulate to Council what is, we think, ready to go then and then hopefully the changes
264 that the Ethics Commission – the full Commission – make, if any, would be changes around the
265 edges, but Council would have the benefit of approval of the full Commission on the 27th.

266

267 **Whellan:** The only reason I raised that and I didn't mean to – yes, we can always do late back-
268 up. I don't know that that's the way with a brand new Council you want to have your first action
269 is to be late back-up less with less than 24 hour's notice on changing something that's 20 years
270 old. It seems like you'd want to be a little in advance of that.

271

272 **Speight:** I agree. The best way to do this is to make it as open and transparent as possible and
273 so we want to try to get - I don't want to inundate new council members with something that
274 we're going to change significantly, but just as soon as we have something we think is close to a
275 final product I think that Council needs to get a peek at it and know that it's coming. We need to
276 talk to the Council members as well and let them know that it's coming so they're not completely

277 blindsided by this. I think this – the Resolution, the ordinance as it is now fixes a lot of problems
278 and it really is a step in the right direction on reforming some of our Ethics laws and so I think
279 when we go to Council we can make that representation and my hope, again, is that we can get
280 this moving in January. Get Council on board as soon as we feasibly can on the new Council and
281 then also have the full Ethics Commission’s approval of the final product. That’s sort of my –

282
283 **Whellan:** I just want to emphasize getting it up by the 22nd or whatever that Friday is, is going
284 to be kind of key in my opinion.

285
286 **Speight:** We can get a working group draft up by then right and then say it’s pending full
287 Commission –

288
289 **Tom:** A recommendation needs to come from the full Commission. You do already have a
290 recommendation and my understanding is the recommendation that was already passed back in
291 November should be uploaded as back-up to that item when it comes up in January. If you want
292 to do a different resolution or a substitute one we could –

293
294 **Speight:** Well, I don’t know if there’s anything in the recommendation we’ve already made that
295 we’d necessarily wanted to back away from. We may just want to clarify some areas because I
296 think there was some miscommunication or some misunderstanding about what we were actually
297 speaking to in some of our recommendation items in the flow chart with regards to Auditor
298 making determinations –

299
300 **Kaplan:** Before we go too far down this road, here’s sorta the way that I see it and tell me if I’m
301 wrong here. We don’t need the full Ethics Commission to upload as back-up before the first
302 Council meeting a proposed ordinance that will be brought by, let say hypothetically
303 Councilmember Tovo, that’s similar but more detailed and different. You know – a tweaked
304 version of what we already have here. What I’d also like to do in addition to that is have the full
305 Ethics Commission look at this and issue a recommendation that Council adopt the finalized
306 ordinance. If the Ethics Commission on the 27th has changes to it then we’ll have to cross that
307 bridge as to how we want to work on those changes, right?

308
309 **Tom:** We would not wait until the 27th most likely to post back-up for that meeting. The
310 ordinance would be posted earlier. If the Commission were to make a new recommendation on
311 the 27th that could be posted on the 28th or maybe we hand it out as late back-up. There’s ways
312 to do that on Wednesday before the Council meeting. The ordinance though I would expect the
313 working group to work with the other parties to try to come up with that language –

314
315 **Kaplan:** In other words, the working group and the interested parties will basically draft what
316 they hope is the final product and my hope is that when the Ethics Commission in full
317 Commission meeting meets to discuss this on the 27th it will endorse it and tell Council to adopt
318 it as is. If that’s not the case and the full Ethics Commission sees it differently than the working
319 group and wants to advocate some different points then we’ll have to address it as is at that time.

320
321 **Whellan:** I have a quick question. Will the posting be broad enough to also allow the Ethics
322 Commission on the 27th to postpone or to request a postponement from the Council as a

323 Commission if it hasn't met, if there's been now more interest than you anticipated? I hope
324 AFSCME by the way has seen our changes and they're fine with our changes.

325
326 **Kaplan:** We can post it for discussion and action which would allow the Ethics Commission to
327 make that suggestion if that's what the full Commission decides.

328
329 **Tom:** We try to post fairly broadly with regard to this issue with the ERC so I would anticipate
330 the posting language would be broad enough to get a recommendation and if that
331 recommendation is to ask Council to postpone to a later date then I don't see any reason why the
332 Commission would be restricted from doing that based on the Commission's posting language.

333
334 **Kaplan:** Mr. Einhorn?

335
336 **Einhorn:** Mr. Chairman, Mr. Whellan made reference to a letter that I sent to Council to my
337 appointing Councilmember, Councilmember Riley and cc'd the entire Council. I did not share
338 that with the full Commission. I guess this is a question for Cindy. Is it okay for me to share that
339 letter? I shared it with Council so it's a public document right?

340
341 **Tom:** Do you have it today to share?

342
343 **Einhorn:** I could forward the email. Call it up on the screen.

344
345 **Tom:** I'm not able to bring it up. I mean I would say that at this meeting we are posted broadly
346 enough to discuss that. I tried to see if I could get it up, but I can't.

347
348 **Einhorn:** I have it on my phone, but –

349
350 **Tom:** Well, why don't you read it?

351
352 **Einhorn:** It's kind of long.

353
354 **Kaplan:** It's a public document, is it not something you can share with the full Commission?

355
356 **Tom:** Outside of a called meeting, no you cannot.

357
358 **Whellan:** Commissioner, Vice-Chair Einhorn, if I may. I can put on the screen at least the two
359 paragraphs that you had so you don't have to re-read it.

360
361 **Einhorn:** The letter I was seeking to write was to clarify some misunderstandings about our
362 recommendation - my interpretation of our recommendation.

363
364 **Tom:** You want me to go make a copy and come back and hand it out before this meeting ends?
365 I could do that. That would be permissible.

366
367 **Einhorn:** I just didn't for, obviously, for quorum reasons I didn't share with the full
368 Commission.

369 **Tom:** Sorry, I didn't think to print it out and bring a copy.
370
371 **Einhorn:** Neither did I. Sorry.
372
373 **Kaplan:** And he put the paragraphs in question on here?
374
375 **Tom:** Yes. I mean you're posted to discuss this including the working group and – in the open
376 meeting which was noticed and is a public meeting you can talk about your individual past
377 communication with Council regarding this issue if you like. I just would not recommend you
378 forwarding the email to the other Commission members.
379
380 **Whellan:** I think it was paragraph K? Wasn't it K and M that you referenced?
381
382 **Einhorn:** Yes.
383
384 **Whellan:** That way you don't have to re-read them.
385
386 **Einhorn:** Yeah. K and M.
387
388 **Tom:** It was a good letter. It was well written.
389
390 **Einhorn:** Sorry. I typed it very small and I'm trying to read a letter on my phone.
391
392 **Whellan:** I think the focus was of the word 'determines' and changing that to something like
393 'believes' was the focus.
394
395 **Einhorn:** So the letter, the section of that letter that deals with this says, "I want to urge the
396 Council to make some changes to the Code amendments you received from the Law Department
397 that leaves a bit ambiguity about who has the authority to make final determinations of
398 violations. I would suggest clarifying that with regards to the Code of Ethics the Auditor does
399 not have the authority to make final determinations. Michael Whellan, the attorney for Texas
400 Disposal Systems who has been tracking this issue quite closely has made a suggestion which
401 could address this. They are to replace the word 'determines' in subsections K and M with the
402 word 'believes'." The full sections are included I guess they're up there on the screen. And then
403 after that it says, "it is my understanding that there's a question about whether subsections K and
404 M apply to all Auditor's investigations. To be clear, the Commission is weighing in only on
405 determinations with regard to allegations of violations of the Code of Ethics. If the language
406 needs to be tightened to clarify that I recommend doing so."
407
408 **Tom:** This will be an issue I think to discuss with the other stakeholders including the Auditor's
409 representatives at the stakeholder meeting.
410
411 **Kaplan:** I'm certainly hopeful that we can come to an agreement. A grand bargain, but you
412 know, I'm more interested in due process and making sure due process is protected. Yes, Mr.
413 Whellan?

414 **Whellan:** Again, thank you very much. We're very appreciative of the time and attention. It's
415 an important issue. Obviously we take it very seriously and you have as well and we appreciate
416 it.

417
418 **Kaplan:** And, likewise, thank you for your diligence on this issue. One thing that I do want to
419 address while we're here in our open meeting - I'm concerned to hear that Deborah Thomas does
420 not plan to attend our large stakeholder meeting. It's not that I require Deborah Thomas in
421 particular to attend, but whoever is going to be ultimately responsible for drafting the ordinance
422 that we submit to Council I would say needs to be at this meeting and needs to be available for
423 all the stakeholders to work with.

424
425 **Einhorn:** I concur completely.

426
427 **Tom:** Was that a motion?

428
429 [Laughter]

430
431 **Kaplan:** No, no. I don't know that we need a motion. If there needs to be a motion requesting
432 your presence...

433
434 **Tom:** Do you have Deborah's email address?

435
436 **Kaplan:** Well, we will. We do.

437
438 **Tom:** Perhaps you could email her and request her. I intend to be there, however I believe that
439 Deborah is the attorney in the Law Department with, sort of, more responsibility for the exact
440 language that gets put in to what's back-up for this ordinance before Council. I can share with
441 Deborah my feelings, but if - there may be some nuances that might not come through if she was
442 not in attendance.

443
444 **Einhorn:** She needs to hear what all of the stakeholders are saying at that meeting.

445
446 **Kaplan:** I appreciate that and agree. And while we're here on the record, you know, just as this
447 process moved forward, the working group met, the Commission met, the working group met,
448 the Ordinance was ultimately submitted to Council. I took part of my working day, four hours,
449 to come here and make sure it was postponed in part because of the concerns of the working
450 group about the language of 'determines' or 'believes.' My two fellow Commissioners feel more
451 - felt more - strongly about that than perhaps I did, but I do feel that that's important. But
452 another motivating factor for me to take that time was I was concerned about the language in 2-8.
453 2-7 and 2-8. I was concerned about creating an unclear legal standard and frankly just concerned
454 about the fact that this language was never presented to the working group, never presented to
455 the Commission, and then it becomes our problem to deal with down the line and somebody put
456 this in here and so my point is I don't want to see another ordinance show up in front of Council
457 that none of us have looked at that affects what we do and so that's why I really think it's
458 important that all the drafters, whoever they are, or may be, are in on this process.

459

460 **Tom:** Are you asking for John Steiner to attend this meeting, Chair Kaplan?
461
462 **Kaplan:** I am asking and perhaps the working group we can get a sense from the working group
463 here, I don't think we need a motion but anyone who's going to be involved in drafting the final
464 ordinance I think needs to be in on this meeting so they understand what we're trying to
465 accomplish and so that we're all on the same page.
466
467 **Speight:** Mr. Chairman I actually think you do need a motion.
468
469 **Kaplan:** Would a motion carry more weight?
470
471 **Speight:** I think you do. We've had a situation where we've had a meeting and the Auditor
472 didn't show up that very first meeting that we all started talking about this so I think it's prudent
473 to –
474
475 **Kaplan:** Counsel, can we direct –
476
477 **Tom:** You cannot direct staff
478
479 **Kaplan:** That's a problem. Can we recommend or request?
480
481 **Tom:** You can. Sure. You can make some statement about how you would very much
482 appreciate the presence of certain people at the meeting and I believe you yourself are sending
483 the invitations to the meeting –
484
485 **Speight:** Mr. Chairman, you are the coordinator of this.
486
487 **Tom:** You can send an invitation to those two people.
488
489 **Kaplan:** I will be doing that inviting, but if the full Commission that's here today sees fit to
490 bring a motion to request the presence of all attorney's in the Law Department who will be
491 involved in drafting this ordinance I'd be happy to –
492
493 **Speight:** I'm moving that.
494
495 **Tom:** Okay.
496
497 **Kaplan:** Motion by Speight. Do we have a second?
498
499 **Sassin:** Second.
500
501 **Kaplan:** Second by Sassin. Any further discussion? All those in favor?
502
503 **Everyone:** Aye.
504
505 **Kaplan:** It passes five to zero.

506 **Tom:** And that motion was to request –

507

508 **Kaplan:** The presence of all attorney’s involved in drafting the ordinance.

509

510 **Tom:** At the stakeholder meeting. Okay. I will convey that to the attorney’s which I’m aware
511 have been involved in drafting the ordinance in the past. And I would just like to say if the Chair
512 would give me a second. The Chair did attend the Council meeting on December 11th despite
513 being rather ill with pneumonia and he really did a great job on behalf of the Commission and
514 the working group and I just wanted to publically thank him for making that effort to attend
515 despite not being at his best and I would like to commend him on his dedication to the
516 Commission and the working group.

517

518 **Kaplan:** I appreciate that. Thank you. And to Cindy as well for helping throughout this process
519 and then moving forward. So I think that finishes us off for 3A. Anything further on 3A? Very
520 good. Let’s move on.

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