

NOTICE: This Report has not been accepted by the Austin City Council and is subject to Resolution No. 20141016-024, passed on October 16, 2014.

April 18, 2014



Investigation Highlights

Why We Did This Investigation

In September 2013, our office received information alleging a conflict of interest involving a Zero Waste Advisory Commissioner. As a result, we conducted an investigation as part of our responsibility under the Austin City Charter.

Distribution

Mayor and Council
City Manager
Assistant City Managers
Ethics Review Commission
City Clerk
Director, Austin Resource Recovery
Director, Communications and Public Information



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REPORT ON ALLEGATIONS INVOLVING A ZERO WASTE ADVISORY COMMISSIONER

The purpose of this report is to inform you of the results of a recent investigation conducted by the City Auditor's Integrity Unit (CAIU) regarding alleged integrity violations.

OBJECTIVE

The CAIU's objective was to determine if Daniela Ochoa Gonzalez, Zero Waste Advisory Commissioner, violated the City Code regarding conflict of interest.

BACKGROUND

The Zero Waste Advisory Commission's (ZWAC) provides advice to City Council on solid waste management policies and resources. The ZWAC also reviews and analyzes policies and resources that impact Austin Resource Recovery and the City of Austin. Texas Disposal Systems (TDS) is a vendor that operates within the City of Austin as a contractor for Austin Resource Recovery, providing solid waste and recycling services to the City of Austin. TDS regularly brings items of concern to ZWAC meetings.

FINDINGS

The evidence gathered through our investigation substantiated the allegation that Ochoa Gonzalez violated the City's conflict of interest requirements.

Specifically, the CAIU determined that Ochoa Gonzalez contracted with TDS, through her company SOLURSO and did not disclose this relationship as required by City Code. Ochoa Gonzalez subsequent participation in discussions and voting related to TDS agenda items on February 13, 2013 and August 14, 2013 constituted conflict of interest violations as defined in the City Code. Ochoa Gonzalez's participation in discussions related to a TDS agenda item during the April 10, 2013 ZWAC meeting also constituted a conflict of interest.

Ochoa Gonzalez's actions appear to constitute violations of:

- City Code § 2-7-63 *Prohibition on Conflict of Interest*
- City Code § 2-7-64 *Disclosure of Conflict of Interest*

Attachment 1 contains a more detailed summary of our findings on the conflict of interest violation.

We appreciate the cooperation and assistance we received from the Office of the City Clerk and Austin Resource Recovery staff during this investigation.

Jessie Hadari
for
Kenneth J. Mory, City Auditor

CAIU INVESTIGATION REPORT:

Report on Allegations Involving a Zero Waste Advisory Commissioner

SUMMARY

The purpose of this report is to inform you of the results of a recent investigation conducted by the City Auditor's Integrity Unit (CAIU) regarding a conflict of interest violation by a Commissioner on the Zero Waste Advisory Commission (ZWAC).

In September 2013, the CAIU received an allegation of a conflict of interest. Specifically, the informant stated that ZWAC Commissioner Daniela Ochoa Gonzalez was employed by Texas Disposal Systems (TDS), which she had not reported as a conflict of interest, and that she was still serving as a member of the ZWAC. The informant added that many items brought to the ZWAC involve TDS. Upon receiving this information, the CAIU initiated an investigation designed to gather evidence to determine the veracity of these allegations.

The CAIU determined that Ochoa Gonzalez's contract with TDS, through her company SOLURSO, and her subsequent participation in discussions and voting related to TDS agenda items on February 13, 2013 and August 14, 2013 constituted conflict of interest violations as defined in the City Code. Ochoa Gonzalez's participation in discussions related to a TDS agenda item during the April 10, 2013 ZWAC meeting also constituted a conflict of interest.

BACKGROUND INFORMATION

City Code §2-7-63 *Prohibition on Conflict of Interest*, restricts a city official from participating in a vote or decision "on a matter affecting a natural person, entity, property in which the official...has a substantial interest."

City Code §2-7-64 *Disclosure of Conflict of Interest*, stipulates that a "City official shall disclose the existence of any substantial interest he may have in a natural person, entity or property which would be affected by a vote or decision of the body of which the City official is a member..." To comply with this requirement an "unsalaried City Official, prior to the vote or decision, either shall file an affidavit as required by Chapter 171...of the Local Government Code or, if not so required, shall publicly disclose in the official records of the body the nature and extent of such interest."

City Code §2-7-2 *Substantial Interest*, means an interest in another person or an entity if: the interest is ownership of five percent or more of the voting stock, shares or equity of the entity or ownership of \$5,000 or more of the equity or market value of the entity; or funds received by the person from the other person or entity either during the previous 12 months or the previous calendar year equaled or exceeded \$5,000 in salary, bonuses, commissions or professional fees or \$20,000 in payment for goods, products or nonprofessional services, or 10 percent of the person's gross income during that period, whichever is less; the person serves as a corporate officer or member of the board of directors or other governing board of the for-profit entity other than a corporate entity owned or created by the city council; or the person is a creditor, debtor, or guarantor of the other person or entity in an amount

of \$5,000 or more except that a home mortgage loan for the person's homestead or a loan or lease of a personal automobile shall not be deemed a substantial interest in the creditor or guarantor if entered into at a market rate with a commercial lending institution before the previous 12 months.

INVESTIGATIVE FINDINGS

Daniela Ochoa Gonzalez contracted with Texas Disposal Systems after being appointed to the Zero Waste Advisory Commission. Ochoa Gonzalez was appointed as a commissioner December 6, 2012 and attended her first ZWAC meeting January 9, 2013. Ochoa Gonzalez completed ethics training on conflict of interest requirements on January 5, 2013. The contents of the training stated that board members and commissioners were not allowed to vote or discuss any item related to their conflict of interest.

In an interview with the CAIU, Ochoa Gonzalez admitted to being a contractor with TDS. The CAIU corroborated this testimony from documentary evidence obtained from TDS. Ochoa Gonzalez signed a consulting agreement with TDS on December 15, 2012 under SOLURSO, which she stated in an interview that she owned 100% of, and which the CAIU found that Ochoa Gonzalez filed a DBA for (Doing Business As). Ochoa Gonzalez stated during an interview with CAIU that TDS is her only source of income, which meets the definition of "substantial interest" as stated in §2-7-2, subsection 10 of the City Code.

Daniela Ochoa Gonzalez did not disclose her relationship with TDS. Ochoa Gonzalez did not submit an affidavit to the City Clerk to disclose her relationship with TDS once it arose as required by City Code §2-7-64. In an interview with the CAIU, Ochoa Gonzalez stated that she met with Austin Resource Recovery (ARR) management regarding the function of her business and received assurance that as long as she did not vote on items related to her private business, she would not be in violation of conflict of interest laws. However, ARR Management was unaware Ochoa Gonzalez was a TDS contractor.

The CAIU interviewed ARR management who stated that they met with Ochoa Gonzalez on February 8, 2013 to discuss a potential conflict of interest regarding proposed training work for the City of Austin. According to ARR management, Ochoa Gonzalez was initially going to contract with the City as a composting instructor but did not sign the City contract. During their meeting, ARR management and Ochoa Gonzalez only discussed the focus (or function) of her business with the City and Ochoa Gonzalez did not disclose that she had contracted with TDS. ARR management stated that they provided advice to Ochoa Gonzalez based on the information she provided and impressed on her the importance of not discussing or voting on any items relating to the function of her business.

Daniela Ochoa Gonzalez participated (discussed and voted) on commission items involving TDS. The CAIU reviewed ZWAC meeting minutes and video recordings and determined that Ochoa Gonzalez participated in the following items of interest to TDS:

- April 10, 2013 (discussed; did not vote)
TDS requested their contract with the City to be extended before the rebid process.
- February 13, 2013 (discussed and voted)

Discussion of definition of "composting facility;" TDS representative in attendance advocated for a particular definition.

- August 14, 2013 (discussed and voted)

TDS expressed concerns about stakeholders not having input in ordinance development.

Daniela Ochoa Gonzalez's actions constitute a violation of City Code.

The evidence gathered through our investigation substantiated the allegation that Ochoa Gonzalez violated the conflict of interest requirements stipulated by the City of Austin. Specifically, the CAIU determined that Ochoa Gonzalez's involvement with TDS and her subsequent participation in discussions of agenda items of interest to TDS on April 10, 2013 constitutes a conflict of interest. CAIU also determined that her participation in discussions and voting in February 13, 2013 and August, 14, 2013 may have constituted a conflict of interest. The CAIU believes Ochoa Gonzalez's actions appear to constitute a violation of City Code §2-7-63 and §2-7-64 of the City code.