



## **Zero Waste Advisory Commission**

## **Regular Meeting Minutes June 11, 2014**

The Zero Waste Advisory Commission convened in a regular meeting on June 11, 2014, at 301 West 2<sup>nd</sup> Street, Council Chambers Room in Austin, Texas.

Chair Rick Cofer called the Commission Meeting to order at 6:33 p.m.

Board Members in Attendance:

Rick Cofer, Cathy Gattuso, Fayez Kazi, Jeffery Paine, Dave Sullivan, Rachel Hering. Commissioner Paine arrived after the meeting was called to order at 6:35 p.m. and Commissioner Kazi arrived at 6:38 p.m.

Staff in attendance:

Elizabeth Corey, Jessica Edwards, Gena McKinley, Jessica King, Donald Hardee, Natacha Delusca, Richard McHale, Richard Avila, Phil Tindall, Madelyn Morgan, Rosalyn Kygar, Myrna Rios, Jannette Goodall, Deena Estrada, Sabine Romero, Kenneth Mory, Jason Hadavi.

### **1. CITIZEN COMMUNICATION**

One citizen signed up to speak during the opportunity for citizen communication, but did not respond when called.

### **2. APPROVAL OF MAY MINUTES**

Minutes for the regular meeting of May 14, 2014, were adopted unanimously as corrected.

Item 3h was taken up out of order.

### **3h. Discussion and Action - Proposed Recommendation No. 20140611003h: Conflict of Interest Investigations**

City Auditor Kenneth Mory and Chief Investigator Jason Hadavi with the Office of the City Auditor (OCA) answered questions about the City Auditor's Integrity Unit Report released April 18, 2014 titled Report on Allegations Involving a Zero Waste Commissioner.

Mr. Hadavi explained that the working papers of the report fall under an exception to the Texas Public Information Act, which the OCA routinely seeks from the Attorney General's Office when requests are made of their office. OCA always requests this exception and does not publicly discuss specifics of investigations. Mr. Hadavi stated that the OCA stands by the report and its findings.

Commissioner Sullivan inquired as to why within investigations a warning is not first given before a finding is made. Mr. Hadavi responded that while the OCA role is one of fact gathering, a Director and/or HR contact from a City department are free to take action as desired. Commissioner Sullivan asked about the investigative OCA processes. Mr. Hadavi responded that a council member is notified when an audit begins and ends, and an investigation is only launched if there is a reasonable basis to believe the claim is accurate. Mr. Hadavi further described the process of investigating complaints.

Chair Cofer asked representatives from OCA in attendance to describe the decision making process in removal/resignations of Commission member and how a report is distributed. Mr. Hadavi explained that it varies case by case, usually with an HR element involved, and also may involve the Public Information Office, and City Attorney's Office. Chair Cofer acknowledged the limitations to what the OCA can reveal.

Commissioner Kazi asked Mr. Hadavi about investigation processes and protocol around communicating information. Commissioner Hering inquired about the amount of investigations the OCA conducts per year. Commissioner Gattuso voiced concern for future volunteers for Boards and Commission because of the potential for investigation. Mr. Hadavi said the OCA intends to present to the Ethics Commission in July to discuss the nature of the OCA's work and general processes and reporting mechanisms involving investigations, to which Commissioner Sullivan requested that the Ethics Review Commission take up the substance of this particular case during that July meeting.

Austin Kaplan, Chair of the Ethics Review Commission (ERC) answered questions about the role of the ERC. Mr. Kaplan noted the request to take action on the investigation was withdrawn. Commissioner Sullivan stated that a warning seemed more appropriate in this case. Mr. Kaplan responded that since the ERC voted to not look at the matter he cannot speak to details regarding it. Chair Cofer and Mr. Kaplan discussed the process that the ERC goes through in evaluating ethics matters that are brought before them. Commissioner Paine asked Mr. Kaplan if because the ERC didn't pursue an action regarding this matter it meant there was no majority of opinion regarding it. Mr. Kaplan replied that no member of the ERC voted to take action on the matter. Mr. Kaplan answered further questions regarding ERC processes and Chair Cofer thanked Mr. Kaplan for attending the meeting.

Sabina Romero, Austin City Attorney's Office, discussed processes and role of City Attorney in conflict of interest investigations. Chair Cofer asks if Ms. Romero had had an opportunity to review the investigation. Ms. Romero replied that she saw the report but had not viewed the investigative papers. Chair Cofer asked if there were any recommendations for processes ZWAC could employ to address this matter. Romero replied that by inviting the City Clerk to come and give an overview on conflicts of interest, that the Commission was doing what she would recommend.

Nine citizens signed up to speak on this agenda item.

Michael Whellan, Texas Disposal Systems, Adam Gregory, Gary Newton and Ryan Hobbs donated time. Mr. Whellan commented that the City Auditor lacked substance in establishing where its authority emanated from. Mr. Whellan noted that each Commissioner is at risk in that they could be accused of ethics violation via decision by the City Auditor. Mr. Whellan asked that the City Auditor explain the direct economic benefits involved in the agenda items in question, and offered changes in to the recommendation being presented. Mr. Whellan read from the City Code regarding the agenda items mentioned in the CAIU report and the ZWAC Commissioners discussed the CAIU report contents.

Mariano Conde de Frankenberg, Valenti Corporate, Eric Goff, Compost Pedallers donated time. Mr. Conde de Frankenburg mentioned he was speaking to advocate for Ms. Ochoa Gonzalez, and stated that she was forced to resign from her job because of the CAIU report, that the City Auditor cast a cloud of ill repute on TDS. He questioned the merit of the report findings, stated that substantial interest and likelihood of direct economic benefit were not evidenced, and that an offer by Ms. Ochoa Gonzalez to provide information to the audit was not accepted. Mr. Conde de Frankenberg noted that this matter was published on the front page of the Austin American-Statesman, and that the investigation was conducted with disregard for procedure put forth in City of Austin Code.

Andrew Dobbs, Texas Campaign for the Environment, Austin Zero Waste Alliance, commented that the OCA has been reckless in this matter and defended the record of Ms. Ochoa Gonzalez.

Mitchell Harrison, husband of Ms. Ochoa Gonzalez. Stacy Guidry donated time. Mr. Harrison discussed Ms. Ochoa Gonzalez' commitments to work and volunteering, questioned the context of her being an employee of the City of Austin as incorrect, because a Commissioner is not staff. Mr. Harrison questioned whether the correct process had been followed, and asked what safeguards exist for someone who is accused.

Chair Cofer asked Ms. Romero to clarify what is meant by the term "direct economic benefit". Ms. Romero quotes the City Code §2-7-2-1 for clarification. Chair Cofer discussed the concept of direct economic effect or consequence in this matter, and the differing opinions regarding it.

Commissioners Kazi, Sullivan and Chair Cofer discussed the language of the recommendation. Commissioner Sullivan commented that he would like the Ethics Review Commission to rule on the language.

Chair Cofer proposed discussion of an amendment to reinstate the final "be it further resolved" to use language below:

***THEREFORE BE IT RESOLVED*** that the Zero Waste Advisory Commission disputes the City Auditor's conclusions and objects to the process followed to arrive at these conclusions, and

***BE IT FURTHER RESOLVED*** that the Zero Waste Advisory Commission recommends that the Austin City Council reform the reporting, investigatory and ruling process of the City Auditor's office in order to prevent similar actions against other members of this commission or other Boards or Commissions in the future, and

***BE IT FURTHER RESOLVED*** that the Zero Waste Advisory Commission recommends that the Austin City Council direct the Ethics Review Commission to assess this Recommendation Number (20140611-003h): ZWAC Response to City Auditor Integrity Unit Report on City Auditor Integrity Unit Report regarding a former ZWAC Commissioner.

Chair Cofer suggests two edits to the wording of the body of the recommendation prior to the "Therefore" statements.

Chair Cofer asks City Attorney staff if ZWAC can recommend to Council to refer the matter to Ethics Review Commission. Ms. Romero says it is within the power of ZWAC to do so.

Chair Cofer apologized to City Auditor staff for any misunderstanding of their absence from a previous meeting, and explained the novelty of the issue and its impact on lives, stating that it was traumatic to Ms. Ochoa Gonzalez and her family, which is why the issue has merited such scrutiny.

Mr. Kaplan proposed that the ERC make a recommendation to City Council on changes to COI provisions and invites less than a quorum of ZWAC Commissioners to attend the next ERC meeting. Mr. Kaplan said the ERC is interested in making rules as clear as possible and offers to place an item on the agenda for the ERC that addresses this.

Commissioner Sullivan read the revised language again for clarity and the Commissioners unanimously vote yes to adopt Recommendation No. 20140611003h: Conflict of Interest Investigations, on Commissioner Sullivan's motion, Commissioner Gattuso second on a 6-0-0 vote.

Item 5a was taken up out of order.

### **5a. City Clerk - Conflicts of Interest Training for Commission Members**

City Clerk Jannette Goodall presented a slideshow of COI training. Ms. Romero commented on affidavit process. Commissioner Sullivan asked if spouses were affected by these rules. Ms. Romero stated that spousal employment or activities might cause one to voluntarily recuse if the appearance is such that participating in vote or review would seem unethical.

Item 3i was taken up out of order.

### **3i. Discussion and Action - Proposed Recommendation No. 20140611-003i: Waste to Energy STAR Rating**

Lucia Athens, Chief Sustainability Officer, was invited by ZWAC to discuss the item. Ms. Athens disagreed with the language, and detailed her experience with rating tools, including LEED. She discussed history with LEED and STAR and mentioned some prerequisites that were debated early on that had far reaching exclusions when examined. She noted the thousands of hours invested in STAR and warned not to let perfect be the enemy of good in this matter.

Commissioner Sullivan referenced a previous resolution against incineration that ZWAC had voted unanimously for. ARR Director Bob Gedert suggested that waste energy as a term is evolving, and can involve multiple technologies.

Two citizens signed up to speak on this agenda item.

Andrew Dobbs, Texas Campaign for the Environment, Austin Zero Waste Alliance, said that the rating doesn't speak appropriately to the reality of waste incineration and changing language would be accepted for refining.

Stacy Guidry, Austin Zero Waste Alliance, Central Texas Zero Waste Alliance, Texas Zero Waste Strategies, warned against language that doesn't recognize the reality of the matter, and said that Austin has a chance to lead in this area, and as such should disallow points for polluting industries.

Commissioner Gattuso questioned Ms. Athens and Mr. Gedert about the wording. Chair Cofer discussed history of ZWAC and how its origins were tied to a debate about incineration. Commissioner Gattuso mentioned that part of the goal is to raise visibility of zero waste and suggested that the issue of Waste to Energy be placed on a future agenda.

Motion to adopt the recommendation with changes was made by Commissioner Sullivan, Commissioner Paine second, was unanimously approved on a 6-0-0 vote using the language below:

**THEREFORE BE IT RESOLVED** that the Zero Waste Advisory Commission recommends that the Austin City Council direct the Office of Sustainability to advocate against the consideration of waste to energy incineration as a benefit to communities, and

**BE IT FURTHER RESOLVED** that the Zero Waste Advisory Commission recommends that the Austin City Council direct the Office of Sustainability to engage with the STAR Technical Advisory Group to provide input and expertise.

### **3. New Business**

**a. Discussion and Action -RCA for Landfill Landscaping** This item was withdrawn prior to the meeting.

**b. Discussion and Action-Marketing Collateral Supply Agreement**

One citizen signed up to speak on this agenda item but was not present at time of discussion.

Elizabeth Corey, ARR, requested a favorable execution of the agreement and explained the expenditures are for hats, pens, shirts and other items to support Austin programs for recycling.

Commissioner Hering asked if the City of Austin gives preference to recyclable/biodegradable items in purchasing.

Jessica King, ARR, responded to the question by stating that ARR intends to include recycled materials in the vast majority of all promotional items they seek to procure.

The recommendation to execute this agreement was approved on Commissioner Kazi's motion, Commissioner Gattuso's second on a 4-2-0 vote, with Commissioners Cofer and Paine voting no.

**c. Discussion and Action - Heavy Duty Vehicle and Equipment Purchase** – This item will move to July. Mr. Gedert agreed that ARR will address the item with ZWAC before it goes before City Council.

**d. Discussion and Action - Agreement for Direct Mail Services for ARR Brush and Bulk Collection**

No citizens signed up to speak on this agenda item.

Elizabeth Corey, Austin Resource Recovery, describes the agreement and the dollar amount involved.

Commissioner Kazi asks why the lowest bid wasn't selected. Ms. Corey responded that Print Mail Pro was evaluated as most suitable under metrics involved.

The recommendation to execute this agreement was unanimously approved on Commissioner Kazi's motion, Commissioner Hering's second, with all Commissioners present.

**e. Discussion and Action - Supply Agreement for Indoor Recycling Containers**

No citizens signed up to speak on this agenda item.

Elizabeth Corey, ARR, discussed container purchases for on-site recycling encouragement. Composting would also be encouraged by giving the containers provided via this purchase for no charge to ARR customers who take a free composting class.

Chair Cofer inquires about price of the products, and why a Canadian company was chosen, not an Austin one. Ms. Corey replied that because this was issued as an invitation for bid the financial consideration was the only qualifier that could be used in vendor selection.

The recommendation to execute this agreement was unanimously approved on Commissioner Kazi's motion, Commissioner Gattuso's second, with all Commissioners present.

**f. Discussion and Action - Agreement for Recycling Processing for City Building Collection**

No citizens signed up to speak on this agenda item.

Commissioner Hering is off dais 9:31 to 9:34. Commissioner Kazi inquires why there was only one bid. Chair Cofer provided some background on possible legal reasons for this. Commissioner Paine inquired about pricing differentiation between private and public entities.

The recommendation to execute this agreement was approved on a 4-1-1 vote on Commissioner Sullivan's motion, Commissioner Kazi second. Commissioner Hering recused herself from the item and was off dais for discussion and vote.

**g. Discussion and Possible Action - Appointment of Commissioners to Fill Current Committee Vacancies**

No citizens signed up to speak on this agenda item.

Commissioner Hering accepted Chair Cofer's invitation to be on the Construction and Demolition committee.

There were no volunteers to be on the Food Waste Prevention and Recovery Working Group.

Commissioner Sullivan made a motion to appoint Commissioner Hering to the Construction and Demolition Committee, Gattuso second. All commissioners present, approved on 6-0-0 vote.

Chair Cofer requested that the item be on agenda for a future meeting to fill the one vacancy left.

**j. Discussion and Action - Proposed Recommendation No. 20140611003j: URO Enforcement**

Two citizens signed up to speak on this agenda item.

Andrew Dobbs, Texas Campaign for the Environment, Austin Zero Waste Alliance, advocates for the recommendation, and discussed the debate between Austin Code Compliance and ARR. Mr. Dobbs requested a monthly report of compliance to aid in enforcement.

Stacy Guidry, Austin Zero Waste Alliance, Central Texas Zero Waste Alliance, Texas Zero Waste Strategies, understood that Austin Code Department could hire generalists instead of specialists and found it unusual that ARR had to be responsible for enforcement. Ms. Guidry requests to add language to the recommendation to ensure ongoing annual budgeting for compliance enforcement.

Eric Goff, Compost Pedallers, Austin Zero Waste Alliance, was asked back to the podium to comment on the distinction between generalists and specialists.

Kazi asks about clarification on 63% non-compliance figure.

Mr. Gedert responded with a description of how categorizations of compliance impact the percentage, and the difficulty of interpretation that results from this.

Commissioner Gattuso asks for report on compliance on a fairly frequent basis, how many site visits, enforcement actions, letters sent, metrics, etc. Gedert says this could be appropriate for August ZWAC meeting. Commissioner Gattuso agrees and asks if ARR targets apartment dwellers and office workers to

inform them that recycling is something they have a right to. Mr. Gedert discusses efforts toward identifying non-compliant entities.

Cofer says enforcement is a core competence of the city, it can be done, and is a cornerstone program of zero waste, and asked that ARR please get it done.

Motion to adopt the recommendation with “and future budget years” added to the last sentence of the language was made by Commissioner Sullivan, Commissioner Gattuso second, was unanimously approved on a 6-0-0 vote.

Chair Cofer made a motion to extend the meeting past 10 p.m. to 10:15p.m. All Commissioners were on the dais and no objections were made.

Eric Goff, Compost Pedallers, Austin Zero Waste Alliance approached the podium to note that he appreciates the effort and supports URO implementation.

## **STAFF BRIEFINGS**

No citizens signed up to speak on this agenda item.

**5b. Director’s Report** – Bob Gedert, Austin Resource Recovery, discussed Food Truck Updates, the Keep America Beautiful Ad Campaign, Give Us 5 Challenge, STAR Recycling/Diversion Study, the Recycling Investment Forum, EPA Brownfields Grant, Staff Hires and Promotions, Current and Upcoming Job Postings, Statistical Reports, and Performance Measures. Mr. Gedert showed a video on Shop Zero and discussed companies and retailers moving materials from a waste to product to sale. The concept is adding about 300 new green jobs to local economy. He discusses Natalie Betts, the newly hired Economic Development Liaison and noted that he will strive to put some investment ideas in a future report. He noted the alternate location for ZWAC next meeting- at Town Lake Center. Chair Cofer asked to receive press releases and notices from ARR via staff liaison.

## **FUTURE AGENDA ITEMS**

**Styrofoam Containers at City Facilities, Keep Austin Beautiful update, STAR ratings, Economic Development Study, Single Use Bag Report, URO Enforcement Statistics, University Neighborhood Overlay Collection, Treehouse concept, Facilities meeting scheduling, Boards and Commission Task Force Update.**

Chair Cofer made a motion to extend the meeting three minutes. All Commissioners were on the dais and no objections were made. Chair Cofer comments on an excellent job done by Vera Labriola in her former position as Staff Liaison.

## **ADJOURNMENT**

Chair Cofer adjourned the meeting at 10:13 p.m. without objection.