



BOARD/COMMISSION RECOMMENDATION
Zero Waste Advisory Commission

Recommendation Number (20140611-003h): ZWAC Response to City Auditor Integrity Unit Report

WHEREAS the City Auditor Integrity Unit on April 18, 2014 issued a report entitled "Report on Allegations Involving a Zero Waste Advisory Commissioner," which concluded that that former Zero Waste Advisory Commission (ZWAC) member Daniela Ochoa Gonzalez "violated the conflict of interest requirements stipulated by the City of Austin," and

WHEREAS Commissioner Ochoa had a contract with Texas Disposal Systems (TDS) to provide educational training about composting in some Central Texas school districts, and

WHEREAS City of Austin Code Section 2-7-63 and 2-7-64 requires that a City official "may not participate in a vote or decision on a matter affecting a natural person, entity, or property in which the official or employee has a substantial interest," and

WHEREAS City of Austin Code Section 2-7-63 (C) expressly establishes that "Where the interest of a City official or employee in the subject matter of a vote or decision is remote or incidental, the City official or employee may participate in the vote or decision and need not disclose the interest," and

WHEREAS City of Austin Code Section 2-7-2(10) defines "substantial interest" in an affected entity as being paid \$5,000 or more by that entity, receiving 10% or more of the person's income from that entity or owning 5% or more of the equity, voting stocks or shares of that entity, and

WHEREAS Commissioner Ochoa owns no part of TDS, and has never participated in TDS management, and

WHEREAS the City of Austin Auditor's Report identified ZWAC agenda items as "TDS agenda items" and "agenda items of interest to TDS" which the Report claims violated the conflict of interest requirements stipulated by the City of Austin/ at the February 13, 2013; April 10, 2013; and August 14, 2013 meetings, and

WHEREAS the agenda item at issue at the February 13, 2013 meeting was regarding the "URO Phase 2 Ordinance" which affected all haulers similarly without preference to any specific hauler, and

WHEREAS the agenda item at issue at the April 10, 2013 meeting was regarding the Austin Energy waste disposal contract, from which TDS was disqualified for submitting a partial response, and

WHEREAS Commissioner Ochoa did not cast a vote on the Austin Energy waste disposal contract agenda item on April 10, 2013, and

WHEREAS the first agenda item at issue at the August 14, 2013 meeting concerned the Special Events Ordinance, which affected all haulers similarly without preference to any specific hauler, and

WHEREAS the second agenda item at issue at the August 14, 2013 meeting concerned the URO Data Collection and Reporting Contract which had no direct economic impact on any hauler, as haulers do not provide IT or other data services, and

WHEREAS Commissioner Ochoa had been paid less than \$5,000 by TDS at the time of the February 13, 2013 and April 10, 2013 meetings, and

WHEREAS Commissioner Ochoa provided testimony to the commission at our May 13, 2014 meeting that she informed Austin Resource Recovery Director Bob Gedert twice about her contract with a hauler and was told she did not need to recuse herself, and

WHEREAS While the decision to participate or recuse from any particular agenda item is at the discretion of a commissioner, neither Director Gedert nor the commission chair at any time suggested to Commissioner Ochoa that she recuse herself, and

WHEREAS Commissioner Ochoa was never given an opportunity to make a formal response to the claims of the City Auditor Report, and

WHEREAS the City of Austin Auditor did not provide Commissioner Ochoa with a copy of their report when it was issued, and

WHEREAS after the release of the Auditor's Report and subsequent media coverage, Commissioner Ochoa's private employment ended

WHEREAS the City of Austin Ethics Review Commission declined to take action against Commissioner Ochoa, and

WHEREAS the City Auditor is not authorized under City Code Sections 2-7-63 and 2-7-64 to make determinations as to whether a city official has violated the conflict of interest prohibition, and

WHEREAS the City Auditor's Report uses a broad interpretation of "direct economic effect," and

WHEREAS the City Auditor's office conducting investigations of this nature could result in other members of the Zero Waste Advisory Commission and other Boards and Commissions to be similarly deprived of due process and establish a reluctance to serve on Boards and Commissions,

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.

Date of Approval: JUNE 11, 2014

Record of the vote: UNANIMOUS, all Commission members present.

Attest: Bob Fedor, ARR Director

(Staff signature)