

ORDINANCE NO. 20240215-034

**AN ORDINANCE AMENDING TITLE 2 AND TITLE 25 OF THE CITY CODE
RELATING TO THE CITY AUDITOR.**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. City Code Section 2-1-8 (*Council Audit and Finance Committee*) is amended to read:

§ 2-1-8 - COUNCIL AUDIT AND FINANCE COMMITTEE.

~~[(A)]~~ The ~~c[€]~~ouncil ~~a[A]~~udit and ~~f[F]~~inance ~~c[€]~~ommittee shall:

- (1) ~~[review each board's internal review report that is required by Section 2-1-46 (*Annual Internal Review and Review Report*);]~~
- ~~[(2)]~~ make recommendations to the council on the continued need for and role of each board;
- ~~(2[3])~~ review and recommend that the full council approve or disapprove a board's requested amendment to the City's standard board bylaws;
- ~~(3[4])~~ receive notice of a board's failure to convene for a period of six months and make a recommendation to council on the continued existence or dissolution of the board;
- ~~(4[5])~~ make recommendations to council on other issues related to City-related boards; and
- ~~(5[6])~~ direct [receive annually from] the city auditor to consider [an assessment of the] risks related to boards when developing the annual audit plan required by Section 2-3-7 [using available information about board actions and recommend to the full council boards for performance audits].

~~[(B)] The committee may review a board audited by the city auditor.]~~

PART 2. Subsection (C) of City Code Section 2-1-46 (*Annual Internal Review and Review Report*) is repealed.

PART 3. City Code Section 2-3-2 (*Selection Process; City Auditor Vacancy*) is amended to read:

§ 2-3-2 - SELECTION PROCESS; CITY AUDITOR VACANCY.

(A) The members of the council audit and finance committee shall serve as~~[The council shall appoint]~~ a nominating committee to recommend candidates for city auditor. The chair and vice chair of the council audit and finance committee will hold the same positions on the nominating committee. The nominating committee may seek advice from individuals with audit expertise.~~[The committee shall consist of five members, including:~~

- ~~(1) three council members appointed by the council;~~
- ~~(2) the state auditor; and~~
- ~~(3) the city manager.]~~

~~[(B) Not later than the 15th day after its members are appointed, the nominating committee shall hold its first meeting to consider applicants for city auditor. The committee shall select a chair and vice chair by majority vote.]~~

~~(B[€])~~Not later than the 90th day after the city auditor position is vacated, ~~[its first meeting,~~]the nominating committee shall recommend to the council three candidates selected by a majority of the committee members.

~~(C[Ð])~~Not later than the 30~~[15]~~th day after the council receives the nominating committee's recommendation, the council shall select a city auditor from the recommended candidates.

~~(D[£])~~If the city auditor's position is vacated, the auditor's first assistant shall serve as acting city auditor during the vacancy.

PART 4. City Code Section 2-3-5 (*Powers and Duties*) is amended to read:

§ 2-3-5 - POWERS AND DUTIES.

(A) In this section:

- (1) ABUSE means the use of a City office, employment, contract, or other position with the City to obtain personal gain or favor for the City official or employee or another person from a citizen or other City employee or vendor.
- (2) FRAUD includes, but is not limited to:
 - (a) the unauthorized use of a City resource for personal gain by

deception, including by forgery or by altering a document;

- (b) the misappropriation of funds, supplies, or other City resources, through methods including, but not limited to theft, embezzlement, or misrepresentation;
- (c) the intentional improper handling of or reporting of money or a financial transaction;
- (d) the intentional improper destruction or removal of records or other City resources; or
- (e) the use of official City information for personal benefit.

(3) WASTE means:

- (a) the grossly inefficient or uneconomical use of a City asset or resource; or
- (b) the unnecessary incurring of costs to the City as a result of a grossly inefficient practice, system, or control.

(4) PERSONAL BENEFIT means anything reasonably regarded as economic gain or advantage, including benefit to another person in whose welfare the beneficiary is interested.

- (B) The city auditor shall examine City operations to identify an opportunity to reduce costs, increase efficiency, quality, and effectiveness, or otherwise improve management of a City function, program, service, or policy.
- (C) The city auditor shall communicate directly with the council audit committee and the council, attend council audit and finance committee meetings, and regularly meet with council.
- (D) The city auditor shall establish audit policies and procedures consistent with government auditing standards established by the Comptroller General of the United States, and applicable law and regulation.
- (E) The city auditor may conduct a performance or financial-related audit, investigation, and other [audit]-work to determine if:
 - (1) a current City function, program, service, or policy:
 - (a) is authorized by the council or other legal authority; and

- (b) is conducted to accomplish its intended objective;
- (2) a function, program, service, or policy is effective in achieving its stated or intended result or benefit, including the level of effectiveness;
- (3) an audited function, program, service, or policy effectively, economically, and efficiently acquires, protects, and uses its resources, including personnel, property, and space;
- (4) a function, program, service, or policy complies with a mandate regarding efficiency, economy, effectiveness, or expenditure of public funds adopted by council or other legal authority;
- (5) management for a function, program, service, or policy has adopted an administrative and accounting control system to effectively, economically, and efficiently carry on the function or program; and
- (6) a function, program, service, or policy is providing financial and performance reports that accurately, fully, and fairly disclose all information required by law or other criteria necessary to:
 - (a) ascertain the nature and scope of the function, program, service, or policy; and
 - (b) establish a proper basis for evaluating the results of the function, program, service, or policy.
- (F) When required or implied by audit objectives, the city auditor shall determine the cause of an inefficient, uneconomical, or ineffective function, program, service, or policy.
- (G) The city manager shall provide an update on the status of all audit recommendations to the city auditor at least twice a year. The city auditor may conduct a follow-up review [~~determined to be necessary by the city auditor~~]to verify a report or plan from the city manager in response to an audit recommendation. [~~The city auditor shall review a follow-up report or plan from the city manager in response to an audit recommendation.~~]
- (H) If the city auditor determines that a city employee or official may have violated the law, or may be reasonably anticipated to commit a violation, the city auditor shall:

- (1) consult with and obtain advice from the city attorney;
 - (2) promptly report the suspected violation to the appropriate authority; and
 - (3) if the suspected violation is criminal, notify the appropriate chief prosecuting authority.
- (I) The city auditor may hire a certified or registered public accountant, qualified management consultant, or other professional expert necessary to perform the city auditor's duties, in compliance with the City's procurement requirements.
- (J) The city auditor shall manage a reporting system through which a City employee or a member of the public may submit an allegation of wrongdoing. The person making an allegation is not required to provide the person's name. An allegation may include an allegation of:
- (1) fraud, waste, or abuse;
 - (2) a violation of personnel policy; or
 - (3) a violation of law, including a violation of City Code Chapter 2-7 (*Ethics and Financial Disclosure*).
- (K) In response to a subpoena or request for investigative materials from a City board, commission, task force, or similar body, the city auditor shall not disclose any information that qualifies as an audit working paper under the Public Information Act (Chapter 552, Texas Government Code), including information that identifies any informant or witness. [This subsection applies to an allegation of a violation of City Code Chapter 2-7, Article 4 (*Code of Ethics*) by a member of the city council, a member of a council member's direct staff, or the city manager.
- (1) ~~The city auditor shall hire an external party to investigate the allegation if the city auditor finds that an allegation merits an investigation.~~
 - (2) ~~The city auditor shall submit the results of a substantiated external investigation to the Ethics Review Commission by filing a sworn complaint with the commission under City Code Section 2-7-41 (*Complaints*).~~

- (a) ~~Not later than the fifth working day prior to filing the complaint with the Ethics Review Commission, the city auditor shall send a written notice to the person who is the subject of the investigation and to any person mentioned or referenced as being involved in the alleged inappropriate conduct informing the person that the city auditor intends to file a complaint with the commission.~~
 - (b) ~~The Ethics Review Commission shall make the final determination on the allegation.]~~
- (L) [(+)]If the city auditor receives~~[investigates]~~ an allegation of a violation of City Code Chapter 2-7, Article 4 (*Code of Ethics*) by a member of the city council or their direct staff; a person appointed by the city council pursuant to the City Charter; or a person appointed by the city council to a City board, task force, or similar body, and finds that the allegation merits an investigation the city auditor shall:
 - (1) hire an external party to investigate the allegation if the alleged violation is by a member of the city council or their direct staff or a person appointed by the city council pursuant to the City Charter; and
 - (2) submit the results of a substantiated investigation to the Ethics Review Commission by filing a sworn complaint with the commission under City Code Section 2-7-41 (*Complaints*).
 - (a) Not later than the fifth working day prior to filing the complaint with the Ethics Review Commission, the city auditor shall send a written notice to the person who is the subject of the investigation and to any person mentioned or referenced as being involved in the alleged inappropriate conduct informing the person that the city auditor intends to file a complaint with the commission.
 - (b) The Ethics Review Commission shall make the final determination on the allegation.
- (M)[(2)]If the city auditor investigates an allegation of a violation of City Code Chapter 2-7, Article 4 (*Code of Ethics*) by a City official or employee[;] not listed in Subsection (L[+])~~[-above]~~, and who is neither a member of the City's classified municipal civil service system nor of a state civil service system, the city auditor shall prepare a draft investigative report

of a substantiated investigation. The draft report shall include any information tending to negate guilt or mitigate the seriousness of the offense.

(1[a]) The city auditor shall deliver the draft investigative report to the person who is the subject of the investigation and any person mentioned or referenced as being involved in the alleged inappropriate conduct. The person who is the subject of the investigation or a person mentioned or referenced as being involved in the alleged inappropriate conduct may submit to the city auditor a written response to the draft report by the 20th working day after the person receives the report.

(2[b]) The city auditor shall include any written responses received, and deliver the draft report to the city manager. The city manager shall provide written comment on the draft investigative report, including any action that has occurred in response to findings in the draft investigation report by the 10th working day after the city manager receives the report.

(3[e]) The city auditor shall include any written comment received from the city manager, and finalize the report.

(4[d]) The city auditor shall, pursuant to standard reporting procedures, deliver the report to city council.

(N[M]) The city auditor may conduct an investigation of an allegation of a violation of law or policy by a City employee who is a member of the classified municipal civil service system or of a state civil service system.

(1) The city auditor must conduct an investigation of an employee covered by a civil service system in a manner that is consistent with the applicable law and with an applicable labor agreement.

(2) The following provisions apply to an investigation under this subsection:

(a) If the city auditor obtains sufficient evidence to indicate that a violation has occurred, the city auditor shall provide a copy of the results of an investigation under this section to the city manager or other appropriate authority.

(b) The city manager or appropriate authority may conduct a separate investigation. The city manager or appropriate

authority has the authority to determine that a violation has occurred and to take appropriate disciplinary actions.

- (c) For each investigation in which the city auditor obtains sufficient evidence that a violation has occurred, the city auditor shall prepare a draft investigative report and deliver the draft report to the person who is the subject of the investigation and a person mentioned or referenced as being involved in the alleged inappropriate conduct.
- (d) The person who is the subject of the investigation and a person mentioned or referenced as being involved in the alleged inappropriate conduct may submit a written response to the draft report by the 20th working day after the date the person receives the report.
- (e) The city auditor shall deliver a copy of the final report, including a response submitted, to the appropriate authority, the person who is the subject of the investigation, a person mentioned or referenced as being involved in the alleged inappropriate conduct, the council, and the city manager.
- (f) The city auditor shall retain a copy of the report in the city auditor's office for the applicable retention period under the City's records management program.

(O[~~N~~]) A person who is the subject of an investigation by the city auditor may bring a representative or advisor of the person's choice to an interview with the city auditor.

(P[~~Θ~~]) The city auditor shall refer an allegation enumerated in this subsection to the city manager. The city manager shall design a process to inform the city auditor of the disposition of the referred allegations for recordkeeping purposes. The allegations covered by this subsection are those related to:

- (1) a personnel issue;
- (2) an operational issue;
- (3) a de minimis fraud, waste, or abuse violation;
- (4) a public safety issue that is not related to fraud, waste, or abuse;

- (5) an issue that the city auditor is not authorized to investigate and that is not within the jurisdiction of the Ethics Review Commission; and
- (6) a secondary employment matter that the city auditor determines does not interfere with or impede the job performance or productivity of a City official or employee; does not interfere with or impede the City's conduct of official business; and is too small, minor, or insignificant to have an economic impact on City operations.

(Q[P])City officials and employees [~~and officials~~]shall cooperate with city auditor audits, investigations, and any other work specified in this section.

(R) The city auditor shall distribute the results of an audit in accordance with City Code Section 2-3-8 (*Report Preparation and Release*).

(S[Q])The city manager shall produce a report on the status of investigations [~~regarding fraud, waste, and abuse~~]conducted by the city manager at least once per [~~twice a~~] year to the c[~~C~~]ouncil a[A]udit and f[~~F~~]inance c[~~C~~]ommittee.

PART 5. City Code Section 2-3-7 (*Annual Audit Plan and Special Audits*) is amended to read:

§ 2-3-7 - ANNUAL AUDIT PLAN[~~AND SPECIAL AUDITS~~].

- (A) [~~Not later than the 30th day before the beginning of a calendar year, the~~]The city auditor shall submit an annual audit plan to the council for review and comment through the council audit and finance committee.
- (B) An annual audit plan under this section shall identify the scope of each audit the city auditor intends to conduct, including:
 - (1) the department, organization, service, program, function, or[~~and~~] policy to be audited; and
 - (2) each potential audit objective to be addressed.
- (C) If the city auditor notifies the council audit and finance committee and obtains comments from the committee, an annual audit plan may be amended by the city auditor. The city auditor may request an amendment independently, or at the request of the council audit and finance committee or the city manager.

- (D) The city auditor may initiate, conduct, or expand the scope of an audit or investigation if the city auditor determines that:
 - (1) fraud, waste, or abuse, as defined in Section 2-3-5 (Powers and Duties) may have occurred or is occurring; or
 - (2) illegality may have occurred or is occurring; or
 - (3) an audit finding requires expansion of the scope of an audit or investigation in progress.
- (E) ~~The city auditor shall distribute the results of a special audit in accordance with Section 2-3-8 (Report Preparation and Release).~~

PART 6. City Code Section 2-3-8 (*Report Preparation and Release*) is amended to read:

§ 2-3-8 - REPORT PREPARATION AND RELEASE.

- (A) The city auditor shall prepare a draft audit report for each audit and deliver the report to the city manager.
- (B) The city manager shall send the city auditor written comment on the reported audit findings and a written response to each recommendation on or before a date agreed to by the city manager and the city auditor. The city manager's response shall:
 - (1) state whether the city manager agrees or disagrees with each recommendation;
 - (2) include the reason for a disagreement; and
 - (3) describe the action and timeframe, if any, that will occur in response to a recommendation.
- (C) If the city manager's response is timely delivered to the city auditor, the city auditor shall include a copy of the response in the city auditor's final report.
- (D) The city auditor shall provide[file] a copy of the[final] audit report to the Austin History Center for retention[with the council and the city manager, and retain a copy in the city auditor's office] as a permanent record.
- (E) The city auditor shall communicate the final audit report publicly by:

- (1) posting on a website or via other electronic means;
- (2) providing a hard copy upon request; and
- (3) providing a summary to the council audit and finance committee.

(F[E]) An audit report prepared under this section shall adhere to the reporting standards for financial-related and performance audits prescribed by government audit standards~~[-]~~ established by the Comptroller General of the United States. Any adjustments to a final report will follow the requirements in those government auditing standards.

(G[F])~~[If appropriate, the]~~ The city auditor may issue other advisory reports to provide information to the city manager and council.

(H[G]) The city auditor shall prepare a summary of the reporting program's activities at least twice a year for presentation to the ~~c~~[C]ouncil ~~a~~[A]udit and ~~f~~[F]inance ~~c~~[C]ommittee.

PART 7. City Code Section 2-3-10 (*Peer Review*) is amended to read:

§ 2-3-10 - PEER REVIEW.

(A) The city auditor must obtain an external peer review~~[is subject to peer review]~~ in accordance with ~~[not less than once every three years]~~the government auditing standards established by the Comptroller General of the United States.~~[by a professional, non-partisan, objective person or group, including an auditor or other professional with appropriate government auditing expertise and experience.]~~

~~[(B) Peer review shall determine compliance by the city auditor with government auditing standards and the quality of the auditor's audit effort and reporting, including:~~

- ~~(1) general standards, including staff qualifications, due professional care, and quality assurance;~~
- ~~(2) fieldwork standards, including planning, supervision, and audit evidence; and~~
- ~~(3) reporting standards, including report content, presentation, and timeliness.]~~

~~(B[C]) The city auditor~~[After the council audit and finance committee has

~~reviewed and approved the written peer review report, the committee]~~ shall provide a copy of the final~~[written]~~ peer review report to each member of the council and make a copy of the final report publicly available.

- (C~~[D]~~) The city auditor shall pay the cost of the peer review~~[, including reasonable travel and living expenses,]~~ from the city auditor's budget.

PART 8. City Code Section 2-3-11 (*Access to Records and Property*) is amended to read:

§ 2-3-11 - ACCESS TO RECORDS AND PROPERTY.

- (A) Each City officer and employee shall provide the city auditor with free and open access to, and furnish copies of, all information in any medium.~~[, including a record, book, account, internal or external memorandum, tape, report, file, diskette, computer data, money, fund, or other information.]~~
- (B) Each City officer and employee shall provide the city auditor with free and open access to all property, equipment, facilities, and operations for inspection or observation.~~[by the auditor.]~~

PART 9. Subsection (C) of City Code Section 2-7-64 (*Disclosure of Conflict of Interest*) is amended to read:

§ 2-7-64 - DISCLOSURE OF CONFLICT OF INTEREST.

- (C) ~~[To comply with this section, a]~~A City employee shall notify in writing his supervisor of any substantial interest he may have in a natural person, entity or property which would be affected by an exercise of discretionary authority by the City employee or that he serves as a corporate officer or member of the board of directors of a nonprofit entity for which a decision regarding funding by or through the City is being considered, and a supervisor shall reassign the matter.

PART 10. City Code Section 2-7-65 (*Substantial Interest of Relative*) is amended to add a new Subsection (A), to renumber existing Subsection (A) as Subsection (B) and to renumber the remaining subsections accordingly, to read:

§ 2-7-65 - SUBSTANTIAL INTEREST OF RELATIVE.

- (A) For purposes of this section, SPOUSE of a City official or employee includes a domestic partner, which means an individual who lives in the same household and shares common resources of life in a close, personal,

intimate relationship with the City official or employee if under Texas law the individual would not be prevented from marrying the City official or employee on account of age, consanguinity, or prior undissolved marriage to another. A domestic partner may be of the same, or opposite, gender as the City official or employee.

- (B[A]) A substantial interest of a spouse of a City official or employee shall be deemed to apply to that official or employee for the purposes of Sections 2-7-63 (*Prohibition on Conflict of Interest*) and 2-7-64 (*Disclosure of Conflict of Interest*) concerning disclosure and recusal or reassignment.
- (C[B]) If the spouse of a City official or employee does business through a partnership or other entity, the substantial interests of that partnership or entity shall not be deemed under Section 2-7-61 (*Conducting Business Through Partnerships, Professional Corporations, and Other Entities*) to apply to the City official or employee.
- (D[€]) A City official or a City employee may not participate in a vote or decision affecting a substantial interest of a person to whom the official or employee is related in the first or second degree of consanguinity or affinity. This subsection does not apply to a substantial interest of a relative based on the relative's employment by a governmental body.
- (E[Ð]) For the purposes of Subsection (D[€]): A relative other than a spouse has a substantial interest if:
- (1) the person owns 10 percent or more of the voting stock or shares of the entity or owns either 10 percent or more or \$15,000 or more of the fair market value of the entity; or
 - (2) funds received by the person from the entity exceed 10 percent of the person's gross income for the previous year; or
 - (3) the person has a substantial interest in real property if the interest is an equitable or legal ownership in real property with a fair market value of \$2,500 or more.

PART 11. City Code Section 25-9-286 (*Auditor Review; Release of Official Statement*) is amended to read:

§ 25-9-286 - AUDITOR REVIEW; RELEASE OF OFFICIAL STATEMENT.

- (A) An independent certified public~~[The city]~~ auditor shall review the preliminary and final official statements of the water district that include the City's financial statements and audited opinion.
- (B) Until the independent certified public~~[city]~~ auditor completes the required review, an official statement described in Subsection (A) may not be disclosed to a person, other than:
- (1) an employee of the City; or
 - (2) a consultant who is assisting the water district to structure the issuance of a water district bond.

PART 12. This ordinance takes effect on February 26, 2024.

PASSED AND APPROVED

February 15, 2024

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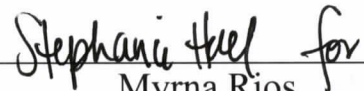
Kirk Watson
Mayor

APPROVED:



Anne L. Morgan
City Attorney

ATTEST:



Myrna Rios
City Clerk