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CITY SECRETARY  
DALLAS, TEXAS

## City of Dallas

1500 Marilla Street,  
6ES Briefing Room, 6th Floor  
Dallas, Texas 75201

POSTED CITY SECRETARY  
DALLAS, TX



### Ad Hoc Committee on General Investigating and Ethics

November 4, 2021  
1:00 PM

## 2021 CITY COUNCIL APPOINTMENTS

COUNCIL COMMITTEE	
<b>ECONOMIC DEVELOPMENT</b> Atkins (C), Arnold (VC), McGough, Narvaez, Resendez, West, Willis	<b>ENVIRONMENT AND SUSTAINABILITY</b> Blackmon(C), Ridley (VC), Arnold, Bazaldua, Resendez, Schultz, West
<b>GOVERNMENT PERFORMANCE AND FINANCIAL MANAGEMENT</b> Mendelsohn (C), Willis (VC), Atkins, Bazaldua, McGough, Ridley, West	<b>HOUSING AND HOMELESSNESS SOLUTIONS</b> Thomas (C), Moreno (VC), Arnold, Blackmon, Mendelsohn, Ridley, Schultz
<b>PUBLIC SAFETY</b> McGough (C), Mendelsohn (VC), Atkins, Moreno, Resendez, Thomas, Willis	<b>QUALITY OF LIFE, ARTS, AND CULTURE</b> Bazaldua (C), West (VC), Arnold, Blackmon, Narvaez, Ridley, Thomas
<b>TRANSPORTATION AND INFRASTRUCTURE</b> Narvaez (C), Atkins (VC), Bazaldua, Mendelsohn, Moreno, Schultz, Willis	<b>WORKFORCE, EDUCATION, AND EQUITY</b> Schultz (C), Thomas (VC), Blackmon, McGough, Moreno, Narvaez, Resendez
<b>AD HOC JUDICIAL NOMINATING COMMITTEE</b> Resendez (C), Arnold, Bazaldua, Ridley, Thomas, West, Willis	<b>AD HOC LEGISLATIVE AFFAIRS</b> Atkins (C), McGough, Mendelsohn, Narvaez, Willis
<b>AD HOC COMMITTEE ON COVID-19 RECOVERY AND ASSISTANCE</b> Thomas (C), Atkins, Mendelsohn, Moreno, Ridley	<b>AD HOC COMMITTEE ON GENERAL INVESTIGATING &amp; ETHICS</b> Mendelsohn (C), Atkins, Blackmon, McGough, Schultz

(C) – Chair, (VC) – Vice Chair

### Handgun Prohibition Notice for Meetings of Governmental Entities

"Pursuant to Section [30.06](#), Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun."

"De acuerdo con la sección [30.06](#) del código penal (ingreso sin autorización de un titular de una licencia con una pistola oculta), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola oculta."

"Pursuant to Section [30.07](#), Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly."

"De acuerdo con la sección [30.07](#) del código penal (ingreso sin autorización de un titular de una licencia con una pistola a la vista), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola a la vista."

"Pursuant to Section [46.03](#), Penal Code (places weapons prohibited), a person may not carry a firearm or other weapon into any open meeting on this property."

"De conformidad con la Sección [46.03](#), Código Penal (coloca armas prohibidas), una persona no puede llevar un arma de fuego u otra arma a ninguna reunión abierta en esta propiedad."

Note: A quorum of the Dallas City Council may attend this Council Committee meeting.

The Ad Hoc Committee on General Investigating and Ethics meeting will be held by videoconference and in the Council Chambers, 6th Floor at City Hall. Individuals who wish to speak in accordance with the City Council Rules of Procedure must sign up with the City Secretary's Office.

The public is encouraged to attend the meeting virtually; however, Council Chambers is available for those wishing to attend the meeting in person following all current pandemic-related public health protocols.

The following video conference link is available to the public to listen to the meeting and Public Affairs and Outreach will also stream the Ad Hoc Committee Meeting on Spectrum Cable Channel 95 and [bit.ly/cityofdallastv](https://bit.ly/cityofdallastv):

<https://dallascityhall.webex.com/dallascityhall/onstage/g.php?MTID=e14906e7882c66b65fbefc90a7239aee6>

### **Call to Order**

### **MINUTES**

[21-2178](#) Approval of the October 14, 2021 and October 21, 2021 Meeting Minutes

**Attachments:** [Committee Meeting Minutes of 10-14-2021](#)  
[Committee Meeting Minutes of 10-21-2021](#)

[21-2180](#) Public Comments

### **BRIEFING ITEMS**

[21-2196](#) Ethics Reform and Best Practices  
[Amy Kurland & Rose Gill, Bloomberg Associates]  
[Presentation]

[21-2179](#) City Staff Feedback on Ethics Reform  
[Presentation]  
[Councilmember Paula Blackmon]

[TC Broadnax, City Manager]  
[Chris Caso, City Attorney]  
[Biliera Johnson, City Secretary]  
[Mark Swann, City Auditor]

[21-2197](#) Update on Bryan Riser Investigation

[21-2198](#) Update on Data Loss Investigation

### **ADJOURNMENT**

**EXECUTIVE SESSION NOTICE**

A closed executive session may be held if the discussion of any of the above agenda items concerns one of the following:

1. seeking the advice of its attorney about pending or contemplated litigation, settlement offers, or any matter in which the duty of the attorney to the City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act. [Tex. Govt. Code §551.071]
2. deliberating the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.072]
3. deliberating a negotiated contract for a prospective gift or donation to the city if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.073]
4. deliberating the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or to hear a complaint or charge against an officer or employee unless the officer or employee who is the subject of the deliberation or hearing requests a public hearing. [Tex. Govt. Code §551.074]
5. deliberating the deployment, or specific occasions for implementation, of security personnel or devices. [Tex. Govt. Code §551.076]
6. discussing or deliberating commercial or financial information that the city has received from a business prospect that the city seeks to have locate, stay or expand in or near the city and with which the city is conducting economic development negotiations; or deliberating the offer of a financial or other incentive to a business prospect. [Tex Govt. Code §551.087]
7. deliberating security assessments or deployments relating to information resources technology, network security information, or the deployment or specific occasions for implementations of security personnel, critical infrastructure, or security devices. [Tex Govt. Code §551.089]



# City of Dallas

1500 Marilla Street  
Council Chambers, 6th Floor  
Dallas, Texas 75201

## Agenda Information Sheet

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**File #:** 21-2178

**Item #:**

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Approval of the October 14, 2021 and October 21, 2021 Meeting Minutes



# Ad Hoc Committee on General Investigating and Ethics Meeting Record

The Ad Hoc Committee on General Investigating and Ethics meetings are recorded. Agenda materials are available online at [www.dallascityhall.com](http://www.dallascityhall.com).

**Meeting Date:** October 14, 2021

**Convened:** 9:06 a.m.

**Adjourned:** 11:59 p.m.

**Committee Members Present: (in Chambers)**

Cara Mendelsohn, Chair  
Jaynie Schultz  
Adam McGough

**Committee Members Present: (Virtually)**

Tennell Atkins  
Paula Blackmon

**City Staff Present: (in Chambers)**

Chris Caso, City Attorney

**City Staff Present: (Virtually)**

Elizabeth Reich, Chief Financial Officer  
Bill Zielinski, CIO, Information and Technology Services  
Dr. Brian Gardner, ITS Risk Management, Security, and Compliance Services  
Chief Albert Martinez, Dallas Police Department

**Presenters:**

Michelle Reed, Attorney, Partner at Akin Gump  
Erin Nealy Cox, Attorney, Partner at Kirkland & Ellis  
Harry Jones, Attorney, Polsinelli PC

## AGENDA

Call to Order (9:06 a.m.)

- A.** Chair Mendelsohn called the meeting to order. She extended an invitation to the public to sign up to speak at next week's meeting which will focus on the recently released ethics report. The committee welcomed input, comments and suggestions and requested speakers to sign up with City Secretary's website at least one day in advance.

**B. Approval of the September 10, 2021, Ad Hoc Committee on General Investigating and Ethics Meeting Minutes**

**Presenter(s):** Cara Mendelsohn, Chair

**Action Taken/Committee Recommendation(s):** A motion was made to approve the minutes for the September 10, 2021, Ad Hoc Committee on General Investigating and Ethics meeting.

Motion made by: Adam McGough  
Item passed unanimously: X  
Item failed unanimously:

Motion seconded by: Paula Blackmon  
Item passed on a divided vote:  
Item failed on a divided vote:

### C. Interview proposed law firms

**Presenter(s):** Chris Caso, City Attorney

**Action Taken/Committee Recommendation(s):** Chair Mendelsohn invited Mr. Caso to introduce the three law firms who provided a brief overview of their firms and then the committee held a question-and-answer session for each firm in a round robin format. The committee then voted on which firm they chose to provide an investigative report on the IT data loss incident.

After the September 10<sup>th</sup> meeting of this committee, Mr. Caso and his team developed a request for submittals and provided a scope of work seeking law firms based on their experience in cyber security, data legal issues in internal investigations, proposed staffing, diversity fees, proposed forensic firms to handle technical piece of investigation, and thoughts about timing and approach to the assignment. Request for proposals was sent to 16 law firms. 12 proposals were received and reviewed by the City Attorney Review Team which consisted of Tammy Palomino, 1<sup>st</sup> Assistant City Attorney, Patricia DeLaGarza, Chief of Litigation, Ayeh Powers, Managing Attorney and Stacey Rodriguez, Chief of General Litigation.

The three firms were: Akin Gump, represented by Michelle Reed; Kirkland & Ellis, represented by Erin Nealy Cox and Polsinelli by Harry Jones.

Each firm (in alphabetical order) provided a brief overview of their firm's backgrounds and qualifications and then participated in a question-and-answer session by the Committee. Each firm presented one at a time and the other two firms waited in the briefing room until their turn was called.

- Akin Gump - Initial presentation made by Michelle Reed, partner with Akin Gump and serves as co-lead of cyber security and data protection. Akin Gump's basic approach was to address what happened; how did it happen, why was data not recoverable and what is needed going forward. Forensic part of investigation to be handled by Stroz Friedberg.

Questions asked by all committee members relating to Akin Gump's experience in cyber security cases, timeline to perform investigation, staff considerations, pricing factors, familiarity with City of Dallas systems, Dallas Police Department, and any other prior related experience with other cities/government systems. Ms. Reed provided answers to all questions and elaborated on firm's experience in handling similar investigations.

- Kirkland & Ellis - Initial presentation made by Erin Nealy Cox, partner with Kirkland & Ellis. Ms. Cox stated the biggest differentiator between all other proposals received is that Kirkland & Ellis is a world class firm and has large talent of people, resources, and experience available for these types of investigations. Ms. Cox has 25 years of experience in public service and 10 years of cyber consulting. Stroz Friedberg will also be a part of their investigative review/team.

Questions asked by all committee members relating to clarity on scope of recommendations and findings, timeframe to perform investigation, cost of investigation, how many members on the investigation team, familiarity with City of Dallas systems, Dallas Police Department, and any other prior related experience with other city governments. Ms. Cox provided answers and elaborated on firm's experience in handling similar investigations, especially her experience with public service and cyber investigations.

- Polsinelli PC - Initial presentation made by Harry Jones, Attorney with Polsinelli. Mr. Jones mentioned the last 20 years of his 30-year career, had been spent on investigations dealing with corruption and bond issues,



malfeasance and working closely with FBI and various police departments. LGC would also work on the forensics aspect of this type of investigation.

Questions asked by all committee members inquiring about Mr. Jones' firm's experience with government entities to which he mentioned within the last year his firm worked on an estimate of 85 cases with 50 to 60 cases relating to school districts, (Harris County or various counties), timeframe on delivery of investigative report, how many members would be assigned to the investigation team; familiarity with City of Dallas systems, Dallas Police Department, and any other prior related experience with other city governments. Mr. Jones provided answers and elaborated on firm's experience in handling similar investigations and noted his experience with public service and cyber investigations. His firm has 38 lawyers that work only on cyber security, but he would design a team of two, three or four lawyers to work on this investigation.

After individual firm's presentations and question and answers sessions concluded, Chair Mendelsohn defined next step for committee members and that was to deliberate on who to choose to work on the IT data loss investigation. Analyses and reviews were provided by each councilmember and their individual choice announced. Councilmember McGough chose Kirkland & Ellis; Councilmember Blackmon chose Kirkland & Ellis; Councilmember Schultz chose Kirkland & Ellis; and Councilmember Mendelsohn chose Kirkland & Ellis. Councilmember Atkins was absent during two of the three presentations and did not partake in the selection process.

**Action Taken/Committee Recommendation(s):** A motion was made for Kirkland & Ellis as the selection to full Council for consideration to help us with breach of data.

Motion made by: Paula Blackmon  
Item passed unanimously: X  
Item failed unanimously:

Motion seconded by: Adam McGough  
Item passed on a divided vote:  
Item failed on a divided vote:

**D. Initial Report, Identifying Data Types Lost and Possible Root Causes of the 2021 Data Loss Events at the City of Dallas**

**Presenter(s):** Bill Zielinski, CIO, Information and Technology Services

Elizabeth Reich, Chief Financial Officer, introduced Bill Zielinski, CIO, Information and Technology Services, who presented the ITS Data Loss Analysis Report. When presentation was concluded, Mr. Zielinski and Dr. Brian Gardner were available for questions from committee members.

Prior to questions from committee members, Chair Mendelsohn asked Chief Albert Martinez, Dallas Police Department, to provide an update on the FBI investigation. Chief Martinez had reached out to one of the supervisors on the investigating team and they are still in the assessment phase and no further update is available at this time.

Chair Mendelsohn and Councilmembers Blackmon and Schultz shared their concerns and asked multiple questions regarding the report. Committee members questions will also be shared with the law firm investigating the incident and seeking answers not found in the data loss analysis report.

**E. Forecast of Future Ad Hoc Meetings**

Chair Mendelsohn provided an update on future Ad Hoc Committee meetings planned for the remainder of this 2021 year.

- Ad Hoc General Investigating and Ethics Committee meeting scheduled for Thursday, October 21<sup>st</sup> at 1:30pm with the focus on the ethics report.
- City Council Agenda meeting scheduled for Wednesday, October 27<sup>th</sup>, to confirm contract for outside auditors.
- Ad Hoc General Investigating and Ethics Committee meeting tentatively scheduled for Thursday, October 28<sup>th</sup>, 9am to talk about data.
- Ad Hoc General Investigating and Ethics Committee meeting, Friday, November 5<sup>th</sup>, 9am centered on ethics.
- Ad Hoc General Investigating and Ethics Committee meeting, Friday, November 12<sup>th</sup>, 9am centered on ethics.
- Ad Hoc General Investigating and Ethics Committee meeting Thursday, December 2<sup>nd</sup>, 9am centered on ethics.

Chair Mendelsohn will share remaining meeting calendar information with all committee members.

Meeting adjourned (11:59 a.m.)

**APPROVED BY:**



**Cara Mendelsohn, Chair  
Ad Hoc Committee on General Investigating  
and Ethics**

**ATTESTED BY:**



**Monica Anderson, Coordinator  
Ad Hoc Committee on General Investigating  
and Ethics**

# Ad Hoc Committee on General Investigating and Ethics Meeting Record

The Ad Hoc Committee on General Investigating and Ethics meetings are recorded. Agenda materials are available online at [www.dallascityhall.com](http://www.dallascityhall.com).

**Meeting Date:** October 21, 2021

**Convened:** 1:34 p.m.

**Adjourned:** 3:13 p.m.

**Committee Members Present: (in Council Briefing Room, 6ES)**

Cara Mendelsohn, Chair  
Adam McGough  
Paula Blackmon  
Tennell Atkins  
Jaynie Schultz

**City Staff Present:**

Chris Caso, City Attorney  
Biliera Johnson, City Secretary

**Presenters:**

Tim Powers, Chair, Ethics Reform Task Force  
Thomas Perkins, former City Attorney, UNT College of Law

## AGENDA

Call to Order (1:34 p.m.)

Chair Mendelsohn called the meeting to order. There were five registered speakers. City Secretary, Biliera Johnson, read the speaker guidelines and called each speaker to begin their comments and provided each speaker with three minutes to speak.

In accordance with the City Council Rules of Procedure, the city council provided "open microphone" opportunities for the following individuals to comment on matters that were scheduled on the city council committee agenda or to present concerns or address issues that were not matters for consideration listed on the posted meeting agenda:

**Open Microphone – Beginning of Meeting:**

SPEAKER: Yolanda Williams (Videoconference)  
SUBJECT: Ethics reform/task force recommendation

SPEAKER: Alexandria Stein (In-Person)  
SUBJECT: Racist misgendering

SPEAKER: Kevin Felder (Videoconference)  
SUBJECT: Council Ad Hoc Committee

SPEAKER: Rabbi Debra Robbins (Videoconference)  
SUBJECT: Ethics reform

SPEAKER: Anna Offit (Videoconference)  
SUBJECT: Ethics reform proposal

During commentary from speaker Kevin Felder, Councilmember Paula Blackmon raised a point of order as he was not speaking germane on the topic of ethics. Chair Mendelson read a section of the speaker rules to which he readdressed his comments.

Chair Mendelsohn announced a revised schedule:

- Thursday, November 4th, 1pm - agenda to include public input on ethics, ethics experts, receive staff comments, possibly an additional item about data loss; and approval of meeting minutes from October 14<sup>th</sup> and 21<sup>st</sup> meetings
- Thursday November 18th, 4pm - agenda to include ethics, public input, and review proposed ordinance and data loss
- Thursday, December 2nd, 1pm – agenda to include ethics if needed and data loss, if needed.

Chair Mendelsohn also encouraged everyone to sign up and speak at future Ad Hoc Committee on General Investigating and Ethics meetings about ethics reform by contacting the City Secretary's Office.

Before the presentation of the City of Dallas Ethics Reform Task Force report and recommendations, Chair Mendelsohn thanked all the members of the Ethics Reform Task Force for their time, commitment, and reporting. Members are:

Timothy E. Powers, Hayne and Boone, LLP – Chair  
Elizabeth B. Gibson, Toyota Motor North America, Inc.  
Daniel J. Micciche, Akin Gump Strauss Hauer & Feld, LLP, and Dallas ISD Board of Trustees  
Professor Anna Offit, SMU Dedman School of Law  
Professor Thomas P. Perkins, Jr., UNT Dallas College of Law  
Rabbi Debra J. Robbins, Temple Emanu-El

#### **A. City of Dallas Ethics Reform Task Force report and recommendations**

[Tim Powers, Chair, Ethics Reform Task Force]

[Thomas Perkins, former City Attorney and UNT Dallas College of Law]

Mr. Powers presented an overview of the City of Dallas Ethics Reform Task Force report and spoke briefly summarizing the report's four core recommendations:

1. Establish Office of Inspector General for Complaint Handling and Oversight.
2. Foster Top-Down Culture of Ethical Excellence and Integrity
3. Simplify and Clarify the Ethics Code
4. Improve Reporting Transparency

Mr. Perkins spoke briefly regarding the report and stated the primary focus and top core recommendation was on the establishment of Office of Inspector General for Complaint Handling and Oversight.

Chair Mendelsohn opened the floor for discussion and/or questions and answers from committee members to task force members. Questions from councilmembers ranged from sources used to develop report, timeframe on establishment of an Office of Inspector General, staff concerns and future implementation plans.

After discussion and Q & A concluded, Chair Mendelsohn thanked everyone for their participation. Next meeting would include feedback from staff and other councilmembers to share with task force members seeking their review and input on ethics reform.

Meeting adjourned at 3:13pm

**APPROVED BY:**



**Cara Mendelsohn, Chair  
Ad Hoc Committee on General Investigating  
and Ethics**

**ATTESTED BY:**



**Monica Anderson, Coordinator  
Ad Hoc Committee on General Investigating  
and Ethics**

DRAFT



# City of Dallas

1500 Marilla Street  
Council Chambers, 6th Floor  
Dallas, Texas 75201

## Agenda Information Sheet

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**File #:** 21-2180

**Item #:**

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Public Comments





# City of Dallas

1500 Marilla Street  
Council Chambers, 6th Floor  
Dallas, Texas 75201

## Agenda Information Sheet

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**File #:** 21-2196

**Item #:**

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Ethics Reform and Best Practices  
[Amy Kurland & Rose Gill, Bloomberg Associates]  
[Presentation]







# City of Dallas

1500 Marilla Street  
Council Chambers, 6th Floor  
Dallas, Texas 75201

## Agenda Information Sheet

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**File #:** 21-2179

**Item #:**

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City Staff Feedback on Ethics Reform  
[Presentation]  
[Councilmember Paula Blackmon]

[TC Broadnax, City Manager]  
[Chris Caso, City Attorney]  
[Biliera Johnson, City Secretary]  
[Mark Swann, City Auditor]



# Memorandum



CITY OF DALLAS

DATE October 15, 2021

TO The Honorable Councilmember Paula Blackmon

SUBJECT **Ethics and Compliance Program Review**

I am providing the following memorandum in response to Chair Cara Mendelsohn's e-mail sent on October 11, 2021 requesting City of Dallas staff input on improvements to the Code of Ethics.

## **Input from City Staff**

In May 2020, the City of Dallas conducted an Employee Engagement Survey, which among other questions, asked for feedback on the extent to which employees agree or disagree with ethics-related statements. Results from the survey indicate that 78% of responding employees know how to report an ethical issue and only 10% do not know how to report ethical problems. A significant majority of responding employees agreed that the City of Dallas clearly communicates its expectations of ethical behavior. Employees were finally asked to agree or disagree with the statement "High ethical standards are always maintained throughout the organization." 46% of responding employees agreed this was true while 30% of employees disagreed, and 25% of the employees were "neutral", not willing to agree or disagree.

In May 2021, a pulse survey was conducted of employees and this time posed a single ethics statement – "High ethical standards are always maintained throughout the organization." 48% of the employees who responded agreed this was true. 27% of the employees responding did not agree this was true and 25% of the employees were unwilling to state if they agreed or disagreed.

Generally, within survey design analysis, if people are given a "neutral" option between 10% and 20% will select it for varying reasons, so it does not enhance data analysis. However, given that year-over-year, we have 1 in 4 employees who are either unsure or unwilling to express an opinion on whether high ethical standards are always maintained across the organization, one could reasonably draw the conclusion that there may be trust issues among our employee population.

Trust issues have already been highlighted by the City of Dallas Human Resources Department (HR) and a variety of training programs are incorporating the key culture need of building trust. I have also tasked our Ethics Officer, Misty Hernandez Pederson, to review our ethics program and make recommendations to enhance and improve during FY21-22. The recommendations are incorporated into this memorandum.

## **Review of City Ethics Program**

### **A. Section 12A – Code of Ethics**

The Code of Ethics (Code) was last revised in 2017 (changes designed in 2016 and primarily written by the City Attorney's Office). Links to the briefing presentation on proposed changes and to the actual changes passed on March 22, 2017 may be found in the Appendix (#4). The amendments and the creation of the separate Gift Policy were intended to provide some clarifications around conflicts, doing business with the City of Dallas (City), lobbying, and representing interests before the City. The changes also refined the authority of the Ethics Advisory Commission (EAC) and created a method for the City Auditor to refer complaints to the EAC. This revision also officially created the position of Ethics Officer and a provision mandating ethics training for employees.

Although 28 Sections were amended and 11 Sections were created, the changes may largely be viewed as technical corrections. The entire Code of Ethics was not assessed for holistic design changes. The changes also primarily were directed at outward facing parts of the Code of Ethics (doing business with the City, complaints from residents, representing private interests) rather than changes designed to support the average City employee. There are also notable gaps; for example, amendments were inserted on "civil behavior," yet the Code does not actually prohibit discrimination and harassment, a fundamental component of almost every code of ethics. Anti-discrimination clauses are fundamental in corporate and non-profit organization codes, and found in cities such as Philadelphia, Houston, and Phoenix.

The single largest issue with the existing Code of Ethics is the complex language, which has remained fundamentally the same since the Code was written in 2000. It is written in legalese, is needlessly complicated, and contains many exceptions. Best practices in the ethics and compliance space always suggest that a code be written to the literacy level of your workforce. In our case, an additional factor is that it should be written to the literacy level of our residents. The National Association of Adult Learners has conducted studies that show the average American reads at an 8<sup>th</sup> grade level. Our Code of Ethics is written at a post-graduate level of literacy. Additionally, it may provide greater clarity for our employees if we provide better scope definition on which provisions are inward facing and which are external facing requirements, such as lobbying.

Though there are specific provisions in the Code of Ethics and the Gift Policy that need to be amended, it would be best to incorporate any such corrections into a complete overhaul of the Code of Ethics instead of taking the easier route of just fixing the more problematic sections.

### **B. Ethics and Compliance Program**

An Ethics and Diversity Office was originally created in 2015. The Ethics Officer position, which was created under the 2017 Amendments to Chapter 12A, was conceptualized as a position to “promote a culture of ethics” within the City. It was not authorized as a role for designing and leading an ethics and compliance program. Oversight and day-to-day operation of the ethics program was noted as a gap in the 2012 Audit of the Ethics program performed by Craig D. Kinton, City Auditor in 2012 – a link is provided in the Appendix (#1).

This role was apparently added as a supplement to the various existing components of an ethics program scattered across different functions. Ethics and compliance-related duties are fragmented across the organization. Roles and duties are spread among the City Secretary’s Office, the City Auditor, the City Attorney, the Human Resources Department, the Ethics Advisory Commission, and the Office of Ethics and Compliance. Information is siloed or captured without any uniform level of data analysis or audit. A simple query on how many allegations were received of potential violations of the Code of Ethics in 2020, their categorization, substantiation rates and remediation proved impossible to gather as different groups manage their information differently and are not required to share information. Lack of a single source of information presents serious barriers to reporting, analysis and risk assessment. If we want to create a transparent program, we must do so with cohesive reporting of potential issues.

### ***1. The Complaint Process***

The following is a description of issues with our current complaint process. The City cannot currently ensure that all ethics complaints are treated consistently and fairly. The treatment of complaints is dependent on where the complaint is received. Complaints may be received by either the City Secretary or the City Auditor. Earlier this year, the Office of Ethics and Compliance received a complaint directly from a resident and was advised by the City Attorney’s Office that the Ethics Officer should respond to the resident with an explanation of how to file a complaint with the City Secretary or the Fraud, Waste, and Abuse Hotline. HR frequently receives complaints via email, but they are the sole department to determine if the complaint is a violation of the Code of Ethics or a violation of Personnel Regulations. The Office of Ethics and Compliance is only informed if they decide it is an ethics violation and refer it for handling.

If a resident or employee wants to file a complaint with the Ethics Advisory Commission, they must file it using a specific form with the City Secretary’s Office. The City Secretary reviews the form for compliance with certain statutory requirements, and if complete, then sends it to the EAC without investigation for a preliminary hearing. The preliminary hearing is not sworn, does not hear witnesses or discuss evidence outside the four corners of the written form. If the preliminary hearing finds that there is “just cause” to believe that a violation of the Code of Ethics may have occurred, the complaint is referred to the full EAC for an evidentiary hearing. The EAC is not authorized to initiate an investigation of potential ethical violations absent a complaint.

If a resident or employee chooses to make a complaint by calling the hotline, a different process ensues. The City has chosen to have the hotline “owned” by the City Auditor’s Office. The City Auditor’s Office need not impose any statutory requirements, but only determine if the conduct described if true would violate the Code of Ethics. If the City Auditor’s Office believes the allegation relates to fraud, waste, and abuse they may investigate and resolve the complaint. They may refer anonymous complaints to the EAC but are not obligated to do so. They may also determine that a complaint received through the hotline constitutes an HR issue. One of the issues with this process is that it is unclear when the subject of the complaint should be provided notice of the complaint received thru the hotline. This should be clarified in the Ethics Code.

If so, the City Auditor’s Office team asks HR if it agrees to accept the complaint. If HR accepts the complaint, they investigate and reach their conclusions under their process without informing any other group of the findings or resolution, other than the impacted department. The standard HR process involves an initial determination as to whether the complaint will be handled by the Employee Relations team, or whether it should be construed as a grievance under Civil Service rules and managed by the assigned department’s HR partner. The alleged violator is given notice of the complaint and an investigation is performed by the responsible HR team. Complex or high-risk areas of complaint have the investigation report reviewed by the City Attorney’s office. If the complaint is substantiated, then the HR team makes a discipline recommendation to the department head. The department head may choose to follow the recommendation but is not required to do so.

Additionally, if a complaint that involves the Dallas Police Department (DPD) is received by the hotline, HR, or the Office of Ethics and Compliance, it must be referred back to DPD, which uses its own processes and does not inform the Office of Ethics and Compliance of its findings or resolution, except to the extent the findings may be made public.

The City does have an anti-retaliation policy in place, but due to the lack of one source reporting retaliation is difficult to detect, monitor, and assess absent a live direct complaint. In a large organization, one should be able to run an annual report of employees who have filed complaints, witnesses, and employees who have been the subject of complaints against demographic data on promotions, demotions, terminations, and resignations. If employees do not believe they will be protected from retaliation, it is highly unlikely they will come forward with complaints.

The above-described issues serve to highlight the fact that although the Code of Ethics needs to be simplified and clarified, a fair and transparent process for managing complaints around potential violations of the Code of Ethics would require a fundamental restructuring of the City’s Ethics and Compliance program.

## ***2. Training, Communication and Awareness***

Training, communication, and awareness is one of the original “Seven Core Elements” of an effective ethics and compliance program under the U.S. Federal Sentencing Guidelines. These guidelines have been in place for decades and although originally designed for corporations are now understood to equally apply to government agencies and non-profits. Recent discussions from the U.S. Department of Justice (DOJ) emphasize that organizations are not required to deliver any certain amount of ethics training, but that ethics training should be addressed to the actual risks the organization faces and appropriate to the employee role.

This recommended approach assumes that the organization conducts annual risk assessments across the entire enterprise and that ethics and compliance matters flow into the Enterprise Risk Management process. It also assumes that case management reports of all reported issues are maintained in a centralized repository for analysis so they may be used to inform needed areas of training. This is an additional area where the current fragmentation of ethics responsibilities creates barriers to providing effective training.

### **Guidance for an Effective Ethics and Compliance Program**

Listed below are the most common essential elements of a quality ethics and compliance program – similar frameworks exist across various resources including the U.S. Federal Sentencing Guidelines, the U.S. Department of Justice, and organizations like the Ethics and Compliance Initiative. The current design of the City’s Ethics and Compliance program impacts almost every one of these core elements, but the two critical areas of concern have been discussed above in the program review (the complaint process and training efforts).

<b>Core Element</b>	<b>Description of Core Element</b>	<b>Current Status</b>
Stated core values	A set of ethical principles that are stated and actively referenced to guide stakeholders’ decisions and actions.	The City of Dallas fully meets this standard, but it could be advanced further by requiring regular review of the Code of Ethics for improvement.
Leadership and oversight together with “tone at the top”	The Ethics and Compliance program is overseen by a suitably senior person tasked with oversight of the entire program. Ethics messages are regularly sent by the most senior person in the organization (functional equivalent of CEO). There is perceived commitment of senior and mid-level managers and supervisors to Ethics and Compliance.	This was addressed as a key gap in the 2012 Audit of the City’s program. The role of an “Ethics Officer” was created in 2016 and codified in 2017, but not given authority or oversight over the entire program - the City of Dallas partially meets this standard.



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A “speak-up” workplace	There are easily available and confidential processes to encourage employee reporting of perceived misconduct and for fairly, efficiently, and consistently investigating and resolving such reports (the complaint process).	The City of Dallas established an anonymous hotline through a third party in 2016 and technically meets the standard, but it could be improved with regular reporting shared across departments to ensure fair and consistent resolutions and clarification for notice requirements to the subject of the complaint.
Due Diligence, Enforcement and Discipline	There are processes in place for avoiding delegation of authority to unethical individuals. There are strong processes in place for enforcing the Code of Ethics and disciplining violations of the Code.	The City of Dallas meets this standard through routine background screening of job candidates and vendors, as well as having formal disciplinary measures for both employees and other officials who violate the Code of Ethics. Our program could be evolved further as under the current system department heads are encouraged but not required to impose the discipline suggested.
Recognition	There are processes in place for recognition of ethical behavior.	The previous Ethics Officer began an “Ambassadors Program” to help advance ethics as a core value and recognize those employees exhibiting ethical values in the workplace. This standard has just appeared within the last 5 years, yet the City has attempted to meet it. This program has not been in operation since early 2020 and should be revisited during this process.
Strong Anti-Retaliation Policy	Protection of employees who report suspected or observed misconduct from any form of retribution.	The City of Dallas has policies prohibiting retaliation within the Code of Ethics and technically meets the standard. This element needs to evolve further as our employees doubt the policy according to 2020 Employee Engagement Survey.
Program review and assessment	Ongoing assessment and monitoring are performed. There is clear ownership of the organization’s ethics and	The City of Dallas does not meet this standard. There is no clear owner of the Ethics and Compliance program. The City does not routinely audit the

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	compliance risks and mitigation strategies.	program against baseline assessments. The City's risk assessment processes do not appear to cover ethical issues. This must be addressed during this process to ensure we meet this core element.
Robust and relevant training	Regular training of employees at all levels on organizational values and high-risk ethics and compliance issues to which they may be exposed. Training is relevant to the highest risk areas and appropriate to the job role.	The City partially meets this standard since 2018 when Ethics training became mandatory under the revised Code. Currently, we provide a brief overview of ethics as part of the new hire orientation and we have begun to develop trainings for mid-level managers. These trainings will continue to be developed but are dependent on comprehensive reporting and risk analysis. Higher quality online training will need to be acquired in 2022.
Prevention of future occurrences	Develop a process for identifying repeated incidents of ethical misconduct; report to management and City Council on repeated ethical violations; and amend the Code of Ethics as needed to incorporate prevention of repeated incidents.	The City does not meet this standard. Comprehensive reporting needs to be developed in order to create processes for prevention of future violations.

## **Recommendations**

In addition to the background information provided herein, I make the following immediate recommendations:

1. **Simplify and clarify the Code of Ethics.** This should include adding an equity/anti-discrimination provision.
2. **Establish a centralized Ethics and Compliance function.** The City Manager would lead an effort to more closely coordinate the efforts of various components that would enable full access to and review of the hotline reports, require HR to provide quarterly reports on employee issues that overlap Personnel Regulations and the Code of Ethics, and require the City Attorney's Office to notify the Office of Ethics and Compliance whenever a request for advice on the Code is received.

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3. **Allow the Office of Ethics and Compliance to issue advisory opinions.** This would require amending the current ordinance.
4. **Create and enable transparent reporting.**

My staff and I are pleased to be available for comment if you need further insights into these or the City of Dallas Ethics Reform Task Force recommendations. Please do not hesitate to contact me or Misty Hernandez Pederson, Ethics Officer, at [misty.pederson@dallascityhall.com](mailto:misty.pederson@dallascityhall.com) should you require additional information.



T.C. Broadnax  
City Manager

## Appendix

1. *Presentation to the Budget, Finance & Audit Committee: Audit of City's Ethics Program*, Craig D. Kinton, City Auditor, City of Dallas (February 16, 2012) <https://docplayer.net/103336655-Presentation-to-the-budget-finance-audit-committee-audit-of-city-s-ethics-program.html>
2. *Presentation to the Budget, Finance & Audit Committee: Ethics & Diversity Update*, Jeanne Chipperfield, Chief Financial Officer, City of Dallas (July 29, 2016) [https://dallascityhall.com/government/Council%20Meeting%20Documents/bfa\\_3\\_ethics-and-diversity-update\\_combined\\_080116.pdf](https://dallascityhall.com/government/Council%20Meeting%20Documents/bfa_3_ethics-and-diversity-update_combined_080116.pdf)
3. *Presentation to the Dallas City Council: Amendments to the Code of Ethics*, Rosa A. Rios, City Secretary, City of Dallas (December 30, 2016) [https://dallascityhall.com/government/Council%20Meeting%20Documents/b\\_ame ndments-to-the-code-of-ethics\\_combined\\_010417.pdf](https://dallascityhall.com/government/Council%20Meeting%20Documents/b_ame ndments-to-the-code-of-ethics_combined_010417.pdf)
4. *Amendments to the Code of Ethics* (March 22, 2017) [http://citysecretary2.dallascityhall.com/pdf/forms/ORD\\_30391.pdf](http://citysecretary2.dallascityhall.com/pdf/forms/ORD_30391.pdf)
5. *Evaluation of Corporate Compliance Programs*, U.S. Department of Justice, Criminal Division (June 2020) <https://www.justice.gov/criminal-fraud/page/file/937501/download>

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6. *DOJ Updates Guidance on Evaluation of Corporate Compliance Programs*, White & Case, LLP (June 15, 2020)  
<https://www.whitecase.com/publications/alert/doj-updates-guidance-evaluation-corporate-compliance>



## Memorandum

DATE October 20, 2021

TO Ad Hoc Committee on General Investigating and Ethics

SUBJECT City Attorney's Office Response to the Report of the Dallas Ethics Reform Task Force

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This memorandum is in response to Chair Mendelsohn's request to provide input on the recommendations of the City of Dallas Ethics Reform Task Force (Task Force), regarding proposed revisions to Chapter 12A of the Dallas City Code and our review and comments, support, and recommendations at the request of the chair of the Ad Hoc Committee on General Investigating and Ethics (Committee).

After the mayor announced his appointment of Ethics Reform Czar, Tim Powers,<sup>1</sup> who was tasked with overhauling Dallas's Code of Ethics and establishing safeguards to ensure ethical behavior in city government, our office met with Mr. Powers and provided him with the ethics codes from the top 10 cities in the country, and offered our insight and support as needed.

After the report was released in September 2021, our office met with Chairs Powers and Mendelsohn to provide our feedback about the report and identify potential legal issues. CAO then met with Councilmember Blackmon to advise her on our prior discussions with Chairs Powers and Mendelsohn. This memorandum provides additional review and comments, support, and recommendations to the Committee.

### I. COMPLAINT HANDLING, ENFORCEMENT, AND RELATED PROCESSES

#### a. Recommendation #1: Establish Independent OIG under the City Attorney's Office.

The CAO is very supportive of establishing an inspector general process and agrees with the Task Force that the inspector general should be a division (office) within the CAO.

Providing an appointed position and fixed term, however, would require an amendment to the Dallas City Charter. The division/office could currently be established by ordinance, similar to the Office of Community Police Oversight,<sup>2</sup> whereby the IG is hired by the CAO and is under the supervision of the CAO.

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<sup>1</sup> Tim Powers is also the Chair of the Ethics Advisory Commission (EAC).

<sup>2</sup> See Dallas City Code Section 2-154.

CAO agrees that to be successful, the IG must have investigative authority regarding complaints received, jurisdiction over ethics related complaints, have budgetary protection, sufficient staff, direct subpoena power.

CAO also supports the recommendation that all ethics complaints should be reviewed by the IG, and that the IG should investigate to determine if a complaint states a claim that is supported by just cause and dismiss complaints that do not meet this threshold, or complaints that are not otherwise credible. To this end, CAO recommends deleting the current provisions regarding the preliminary panel as the IG will act as such and only bring complaints that are substantiated by evidence.

CAO recommends that the IG's investigatory authority be limited to ethics related complaints. Because of the city's civil service system established by the Charter, due process requirements, and state laws applicable to peace officers and firefighters, employment-related complaints should be referred to HR or internal affairs units of the Dallas Police Department, Dallas Fire-Rescue, or Dallas Marshal's Office. Criminal complaints should be referred to the Dallas Police Department's public integrity unit and the District Attorney's Office, when appropriate. Ethics complaints that have merit as determined by the IG should be referred to the EAC for further action.

b. Recommendation #2: Streamline/consolidate the complaint process and provide greater protection against the risk of baseless reputational harm by reconfiguring complaint forms.

As noted above, CAO recommends that HR and applicable internal affairs division for Dallas Police Department, Dallas Fire-Rescue, and/or Dallas Marshal's Office handle employment issues in accordance with the civil service process, and criminal complaints be referred to the public integrity unit and/or the District Attorney's Office, when appropriate.

CAO also supports a revision of the complaint form as well as a review of the process for bringing a complaint, including anonymous complaint process, as well as the rules of procedure for the EAC. With the establishment of the IG, the Code of Ethics and the EAC rules of procedure must be amended to reflect that ethics complaints are to be received and processed through the IG instead of the through the City Secretary's Office or the City Auditor's Office (in the case of anonymous complaints) while eliminating all references to the EAC preliminary panel. Powers and duties of the IG must then be added to the code with a description of the new IG process for receiving and investigating complaints, possibly including a new process for making determinations on frivolous complaints.

Any amendments to the EAC's rules of procedure must be approved by the EAC.<sup>3</sup>

c. Recommendation #3: Allow and encourage issuance of advisory opinions by the IG.

CAO generally supports these recommendations, including that a person cannot obtain an advisory opinion regarding the application of the code to another person. The CAO currently issues two types of advisory opinions: public and attorney-client privileged safe harbors. CAO recommends that both types of opinions continue to be available to encourage city officials and employees to ask the IG if an action is permissible without reputational harm and as a resource for frequently asked questions

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<sup>3</sup> Section 12A-25(c)(1).

and general guidance. The CAO agrees that the Code of Ethics should be amended to clarify this process.

CAO also recommends that the IG have a central location for public advisory opinions similar to the Texas Ethics Commission whereby city officials, employees, and residents may search for public advisory opinions. Currently, the CAO issues public advisory opinions regarding many topics.

d. Recommendation #4: Permit the settlement of cases, with EAC approval, to facilitate the efficient resolution of cases by agreement of parties.

CAO supports this recommendation as part of the IG's power, duties, and/or responsibilities.

## II. CULTURE OF EXCELLENCE/COMPLIANCE

a. Recommendations #1: Strengthen current training programs for all city officials and employees; #2: Demonstrate mastery of online training; #3: Incorporate an anti-discrimination provision into the ethics code; and #5: Analyze and Improve Effectiveness of Ethics @ Work emails.

CAO agrees with these recommendations.

b. Recommendation #4: Incorporate ethics concepts into Value Ambassador Program.

While CAO agrees that all employees should know and understand the Code of Ethics, to ensure that all ethics questions/inquiries are answered consistently and accurately, CAO recommends that ethics inquiries/advice be provided by the IG and not an Ambassador. CAO is frequently asked to clear up misguided or incorrect advice provided from one city employee to another about a variety of issues, including gifts, gift reporting, conflicts of interest, etc.

Additionally, with a central location for city officials and employees to view advisory opinions that answer frequently asked questions or confusing areas, such as election law, everyone would receive the same accurate information/advice.

## III. CONFLICT OF INTEREST

a. Recommendation #1: Simplify conflict of interest provision in the Ethics Code.

CAO supports this recommendation. In reading the redlined ordinance provided, CAO recommends further simplifying the definition of "personal interest" and adopting one standard of "intent" for every violation of the code.

b. Recommendations #2: Establish a clear chain of command for reporting violations of the Ethics Code.

CAO supports the recommendation.

c. Recommendation #3: Update the Ethics Code provisions to err toward disclosure and recusal, if necessary.

CAO supports erring toward disclosure and recusal. However, CAO disagrees with the recommendation that the IG should have authority to require recusal.

The current Code of Ethics requires disclosure and recusal from the time a city official or employee “knows” they have a conflict and states that the city official or employee immediately refrain from further participation in the matter, including discussions with any other persons likely to consider the matter. The city official or employee must also file a conflicts disclosure form with the city secretary, which is a public document, stating the conflict and providing the specific section of the Code of Ethics. The IG should continue to provide advisory opinions to city officials and employees regarding potential conflicts of interest, but the decision to recuse should be the decision of the individual city official or employee. If a city official or employee violates the code after seeking an advisory opinion, the IG can bring a complaint.

d. Recommendation #4: Establish a clear standard or test to determine whether a conflict of interest exists.

CAO supports this recommendation. In reading the redlined ordinance, CAO would recommend further simplifying the definition of “personal interest.”

#### IV. GIFTS, LOBBYING, AND REPORTING

Recommendations #1: Revise Ethics Code to streamline and clarify gift and travel reporting requirements; #2: Clarify recipient of gift or expenditure; #3: Convert paper reporting system to online system with searchable public database; #4: Clarify vague and/or unclear lobbying provisions in Ethics Code; #5: Establish \$300 limit on permissible value of gifts; and #6: Enhance the functionality of the online lobbyist database.

CAO supports these recommendations. Quarterly and annual reporting is more efficient with the potential volume of gifts received.

#### V. CAMPAIGN FINANCE

Recommendations #1: Create online searchable electronic database to increase transparency; #2: Establish 18 as the minimum age for donors; #3: Extend the jurisdictional reach of the Ethics Code to ensure that it covers actions of all persons in connection with election and campaign activities; #4: Expressly authorize a “Copy on the Beat;” #5: Increase the frequency of campaign finance reporting; and #6: Provide comprehensive campaign-finance training for candidates and staffs.



CAO supports these recommendations with one caveat. Regarding Recommendation #2, CAO recommends adopting rules similar to the federal election commission rules regarding contributions by minors.<sup>4</sup>

If you have any questions, please feel free to call me.

A handwritten signature in cursive script that reads "Christopher J. Caso".

CHRISTOPHER J. CASO  
City Attorney

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<sup>4</sup> § 110.19 Contributions by minors. An individual who is 17 years old or younger (a Minor) may make contributions to any candidate or political committee that in the aggregate do not exceed the limitations on contributions of 11 CFR 110.1, if (a) The decision to contribute is made knowingly and voluntarily by the Minor; (b) The funds, goods, or services contributed are owned or controlled by the Minor, such as income earned by the Minor, the proceeds of a trust for which the Minor is the beneficiary, or funds withdrawn by the Minor from a financial account opened and maintained in the Minor's name; and (c) The contribution is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed, or is not in any other way controlled by another individual.

City Secretary's Office (CSO) Responses -  
**REPORT OF THE CITY OF DALLAS ETHICS REFORM TASK FORCE**

**I. Complaint Handling, Enforcement, and Related Processes**

Recommendation # 1: Establish Independent OIG under the City Attorney's office.

Recommendation # 2: Streamline/consolidate the complaint process and provide greater protection against the risk of baseless reputational harm by reconfiguring complaint form.

Recommendation # 3: Allow and encourage issuance of advisory opinions by the OIG.

Recommendation #4: Permit the settlement of cases, with EAC approval, to facilitate the efficient resolution of cases by agreement of the parties.

**Comment(s) / Recommendation(s):** CSO supports Task Force recommendations with identified concern(s):

- **Recommendation #1** – The Task Force recommends, “...*employment-related complaints will be referred to Human Resources.*”; however, does not address complaints that may affect Civil Service Department/Board, as their duties are outlined in the Chapter XVI of the Dallas City Charter.
  - **Recommendation #3** – The Task Force recommends the timely preparation and issuance of “ethics advisory opinions”.... This would allow **candidates**...” Besides campaign related violations (outlined in 15A of the Dallas City Code), candidates reporting and ethical matters are handled by the Texas Ethics Commission (TEC).
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**II. Culture of Excellence/Compliance**

Recommendation #1: Strengthen current training program for all City Officials and City employees.

Recommendation #2: Demonstrate mastery of online ethics training by City Officials.

Recommendation #3: Incorporate an anti-discrimination provision into the Ethics Code.

Recommendation #4: Incorporate ethics concepts into Values Ambassador Program.

Recommendation #5: Analyze and Improve Effectiveness of Ethics @ Work e-mails.

**Comment(s) / Recommendation(s):** CSO strongly supports all five (5) of the Task Force recommendations with no comment.

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**III. Conflicts of Interest**

Recommendation #1: Simplify conflict of interest provisions in the Ethics Code.

Recommendation #2: Establish a clear chain of command for reporting violations of the Ethics Code.

Recommendation #3: Update the Ethics Code provisions to err toward disclosure and recusal, if necessary.

Recommendation #4: Establish a clear standard or test to determine whether a conflict of interest exists.

**Comment(s) / Recommendation(s):** CSO strongly supports all four (4) of the Task Force recommendations with the following comment(s):

- **Recommendation #2** – The Task Force recommends, “...If a public online database is adopted for campaign contributions and/or gift reporting, conflicts of interest should be added to such database and be shared publicly.” The City of Dallas’ Campaign Finance Electronic Filing (CFEF) System is the city’s public online database for campaign contributions, expenditures, etc. CSO will be upgrading the CFEF System.

However, CSO recommends that we keep the proposed upgrade to the Campaign Finance Electronic Filing (CFEF) System separate from the recommended city gift reporting and conflicts of interest database. The reason for the recommendation is to keep election/campaign related documents separate from city reporting documents. Our office currently maintains a public online system for city council members filed disclosure of conflict form.

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## **REPORT OF THE CITY OF DALLAS ETHICS REFORM TASK FORCE**

### **IV. Gifts, Lobbying, and Reporting**

- Recommendation #1: Revise Ethics Code to streamline and clarify gift and travel reporting requirements.
- Recommendation #2: Clarify recipient of gift or expenditure.
- Recommendation #3: Convert paper reporting system to online system with searchable public database.
- Recommendation #4: Clarify vague and/or unclear lobbying provisions in Ethics Code.
- Recommendation #5: Establish \$300 limit on permissible value of gifts.
- Recommendation #6: Enhance the functionality of the online lobbyist database.

**Comment(s) / Recommendation(s):** CSO strongly supports all six (6) of the Task Force recommendations with no comment.

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### **V. Campaign Finance**

- Recommendation #1: Create online searchable electronic database to increase transparency.
- Recommendation #2: Establish 18 as the minimum age for donors.
- Recommendation #3: Extend the jurisdictional reach of the Ethics Code to ensure that it covers actions of all persons in connection with election and campaign activities.
- Recommendation #4: Expressly authorize a "Cop on the Beat."
- Recommendation #5: Increase the frequency of campaign finance reporting.
- Recommendation #6: Provide comprehensive campaign-finance training for candidates and staff.

### **Historical / Current Information – Campaign Finance Electronic Filing System (CFEFS):**

In 2007, the City of San Antonio partnered with the City of Dallas to assist with the implementation of a web based online electronic filing system to create and file campaign finance reports, in accordance with the State requirements.

On April 23, 2008, the Dallas City Council approved an ordinance amending Chapter 15A of the Dallas City Code, which requires all officeholders, past candidates and specific purpose committees who have not terminated their campaign treasurers (considered to have active status) to file campaign finance reports electronically effective with the January 15, 2009 Semiannual Report.

Following Dallas City Council approval of the system allowed the City of Dallas to join the City of San Antonio as the only two cities in the state to implement an online municipal campaign finance electronic filing system, which is still accurate to-date.

Since implementation of the CFEFS, there have been two State updates and one City of Dallas update to the system. There have been several "fixes" to the system to adjust for recent changes, user needs and increased number of users accessing the system at the same time. There have been recent improvements and issues identified, resulting in CSO to begin the 'enhancement' process with the City's Information and Technology Services (ITS) Department, with the goal to be completed by the January 15, 2021 semi-annual reporting period.

The City Secretary's Office (CSO) is very excited with the Task Force recommendation of the creation of a revamped Dashboard that will increase transparency from candidates and inspire greater confidence from citizens, with reference to New York's campaign finance system. This will allow CSO the ability to procure a new system or aggressively work ITS on revamping the City's CFEFS that will meet expectations.

**Comment(s) / Recommendation(s):** CSO supports the Task Force recommendations, with following comment(s) or concern(s):

- **Recommendation #1** – The "Dashboard" be included with the proposed upgrade to the Campaign Finance Electronic Filing (CFEF) System maintained by the City Secretary's Office.

**V. Campaign Finance (Cont'd)**

- **Recommendation #2** – The Task Force recommendation of ‘*Establish 18 as the minimum age for donors*’ may not be needed, as [253.152\(1\)](#) of the Texas Election Code (implemented in 2019), defines child (minor) as follows:
  - “Child” means a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.  
Further, [253.158\(b\)](#) of the Texas Election Code states in part, “...a contribution by a child of an individual is considered to be a contribution by the individual.”
- **Recommendation #4** – The Task Force recommendation of “...*OIG should be established and expressly authorized to investigate and pursue campaign finance violations in municipal races.*” may be problematic as the Texas Ethics Commission powers and duties are defined in Texas Government Code [571.061](#), which includes local filers. As a result, the Texas Ethics Commission has developed Guide to a Local Filing Authority’s Duties Under the Campaign Finance Law, which states:
  - **Penalties:** You (Local Filing Authority) have no responsibility for making sure that candidates, officeholders, or political committees file the required documents; nor do you have authority to penalize a filer for failure to submit a required filing. Filers should be aware, however, that there are penalties for violating Title 15. See “Part V. Penalties” in this guide.
- **Recommendation #5** – The Task Force recommendation of “*Increase the frequency of campaign finance reporting*” may be problematic as it would only apply to candidates and PACs...**not officeholders**; as [254.038](#) of the Texas Election Code only identifies these two groups.
- **Recommendation #6** – The Task Force recommendation of “*Provide comprehensive campaign-finance training for candidates and staff*” is perfect timing, as the Texas Ethics Commission has just recently created a webpage for [Online Training For Filers](#). An online training video for Local Municipalities is expected to be released October 15, 2021. CSO will publish the Texas Ethics Commission’s webpage on its City of Dallas “Elections” webpage, but will adhere to any request and or directives from task force and/or city council.

# Memorandum



**DATE:** October 15, 2021

**TO:** Councilmember Blackmon and Honorable Members of the Ad Hoc Committee on General Investigating and Ethics

**SUBJECT:** Thoughts, Questions, and Suggestions on the Proposed Ethics Reforms

Per the October 11, 2021, email from Chair Mendelsohn, Ad Hoc Committee on General Investigating and Ethics, the Office of the City Auditor has made a review of the [\*Report of the City of Dallas Ethics Reform Task Force\*](#) (the "Report"). Please accept this memorandum sharing the thoughts, questions, and suggestions of the Office of the City Auditor on the proposed ethics reforms.

Taken as a whole, the Report includes multiple ideas and proposed innovations that we believe could be very beneficial in assisting City Officials and employees in having the guidance and support needed to carry out their duties ethically and conscientiously, while fostering within the people of Dallas the utmost confidence that their local government operates in a fashion that is fair, equitable, and fully transparent. The Office of the City Auditor is very supportive of the recommended reforms to the City of Dallas' Code of Ethics.

With that being said, there are certain aspects or sections of the Report for which we would like to offer our thoughts, questions, and suggestions, as not all of the statements in this report regarding Office of the City Auditor's tasks and functions are completely accurate, while other proposed reassignments of duties may require further development or actions on the part of the City.

- On Page 7 of the Report, in the third paragraph of Recommendation #1, the Report uses the word "prosecuted" when it states that *"anonymous complaints received by the City Auditor must be 'prosecuted' by the City Auditor, while other complaints must be prosecuted by the complainant."* Strictly speaking, it appears the word "prosecuted" is not being used correctly in this context. An ethics complaint that is directly filed with the City Secretary's Office by a complainant who is willing to identify themselves does not result in the complainant appearing in person before the Ethics Advisory Commission (the "EAC") and acting as the "prosecutor" of the ethics complaint, in the same manner, a Prosecutor (on behalf of the State) presents a case in criminal court against an individual alleged to have broken the law. Further, under 12A-28, if a complaint survives the Preliminary Panel to go to the EAC for a full

hearing, *"the members of the ethics advisory commission or its legal counsel shall conduct questioning of witnesses."* Continuing under 12A-28, *"[T]he complainant has the right to attend the hearing... [and] ...the right to make a statement"* but is not required to "prosecute" the case against the accused. Under 12A-26(g) of the Ethics Code, when forwarding an anonymous complaint to the EAC, the City Auditor, *"shall act as the complainant for purposes of the preliminary panel review."* As outlined above, the "complainant" is not required to "prosecute" the case against the accused and *"the members of the ethics advisory commission or its legal counsel shall conduct questioning of witnesses."*

- Also, on Page 7 of the Report, in the third paragraph of Recommendation #1, the Report states that, *"[I]mportantly, neither the City Secretary, City Auditor, nor the EAC have the authority to investigate complaints."* This statement is not accurate. The Office of the City Auditor's Investigative Services Unit investigates certain complaints received via the City's Hotline (Speak Up Line) or at the request of the Mayor or City Council. Under the following documents, it has been well established that the Office of the City Auditor has the right (and duty) to conduct investigations on behalf of the City:
  - Dallas City Charter, Chapter IX, Section 3, (1) *"The city auditor shall have the following duties and responsibilities: (1) Conducting financial audits, compliance audits, economy and efficiency audits, special audits, and investigations."*
  - Dallas City Charter, Chapter III, Section 18
  - Council Resolution 904027 (December 12, 1990)
  - Council Resolution 920779 (February 26, 1992)
  - Council Resolution 980751 (February 25, 1998)
  - Administrative Directive 2-14: Fraud, Waste and Abuse Procedures (April 15, 1999)
- It can also be reasoned that the Report is not accurate with respect to the EAC's ability to conduct investigations. Under 12A-25(c)(6) of the Ethics Code, the EAC has the power *"[T]o make notifications, extend deadlines, and conduct investigations of violations within the jurisdiction of the Ethics Advisory Commission."* [Emphasis added] Further, under 12A-26, *"[T]he ethics advisory commission shall have the power to issue subpoenas for the attendance of witnesses or subpoenas for the production of documents or other evidence that the ethics advisory commission deems necessary for an evidentiary hearing."*
- If it is the intention of Ethics Reform, that *neither* the Office of the City Auditor nor the EAC continues to possess the investigatory powers clearly delineated and conferred

upon them by the sources listed above, it must be required that these sources be amended or reformed to eliminate the language allowing for investigations.

- On Page 8 of the Report, in the last full paragraph of Recommendation #1, the Report discusses the proposal to have the new Office of Inspector General (OIG) conduct “full investigations” *before*, *“Ethics complaints will be referred to the EAC; criminal complaints will be referred to the District Attorney’s office; and employment-related complaints will be referred to Human Resources.”* As currently worded, this proposal raises some concerns. Investigations of possible criminal activity by City employees are currently handled by the Public Integrity Unit (PIU) within the Dallas Police Department. PIU has a direct liaison to the District Attorney’s Office for forwarding cases in which arrests have been made after PIU’s investigation. PIU Officers do the fieldwork, including stakeouts and sting operations, and present themselves as witnesses for the prosecution in cases the District Attorney accepts. There are numerous legal and logistical reasons why having law enforcement handle the criminal investigation can be more efficient and preferable. Possibly, this area of concern can be cleared up with a more definitive definition of what constitutes a “full investigation” by the OIG. Without such clarification, this current wording raises questions such as:

- Will the IG or OIG Investigators be initiating stakeouts and sting operations to catch City employees in criminal acts?
- Will the IG or OIG Investigators appear in court as witnesses?

The Office of the City Auditor’s Investigative Services Unit has worked in conjunction with PIU on many occasions and has helped in gathering preliminary information regarding possible criminal wrongdoing by City employees – but only up to a certain point. It has repeatedly proven beneficial to have the expertise of PIU handle the actual criminal investigation where complaints have included criminal allegations.

- HR-related investigations certainly have aspects that are similar to fraud, waste, and abuse investigations (data/document acquisition, data/document review, interviews, etc.). However, it is a specialized type of investigation that also varies from fraud, waste, and abuse investigations in nuanced but important ways. Without further clarification, the concept of a “full investigation” regularly being conducted by the OIG raises questions such as:
- Is the OIG staff meant or required to be experts in fraud, waste and abuse, ethics, criminal, and HR-related investigations?
  - How many employees will be required to staff the OIG Office?

- On Page 3 of the Report, in the first paragraph of Section 1 of the "High Level Overview," the Report states, *"...no one is currently responsible for investigating ethics complaints or other reports of misconduct; fraud, waste, and abuse; or other similar issues."* Clearly this statement is inaccurate as the EAC (via the Ethics Code) and Investigative Services Unit within the Office of the City Auditor (via the Charter, Council Resolutions, Administrative Directive) have investigatory powers entrenched within their duties and responsibilities. (See previous citations above)
- Also, on Page 3 of the Report, in the first paragraph of Section 1 of the "High Level Overview," the Report states, *"...the entities currently responsible for one or more aspects of complaint oversight do not necessarily have the ideal qualifications, experience, or resources to perform their respective complaint-related duties."* The Investigative Services Unit within the Office of the City Auditor is staffed by employee/investigators who are all Certified Fraud Examiners. The manager of the Investigative Services Unit is also a licensed attorney, having worked for the City Attorney's Office as a prosecutor in the Municipal Courts before joining the Office of the City Auditor. The Auditor's Office pays for and "hosts" the City's hotline (Speak Up Line) and provides other resources for the Investigative Services Unit to *"perform their respective complaint-related duties"* including, but not limited to, investigations. I cannot speak to the specific qualifications or experience of HR's investigators, but the Investigative Services Unit has seen their work product in the past and found it quite thorough and professionally presented. Also, as discussed earlier, the EAC has the power to investigate and subpoena documents and witnesses.
- On Page 8 of the Report, in Comprehensive Recommendations, Section I, Recommendation 2, the Report states, *"To that end, the Task Force recommends that the existing ethics complaint form be replaced with a broader, universal complaint form similar to Houston's current form. Importantly, Houston's current form is carefully structured to solicit the necessary basic information about the nature of the complaint, the complainant, and the party against whom the complaint is being made in an efficient manner."* The concern here is that the City of Houston's "Complaint of Employee Misconduct" form does not appear to allow for a complainant to remain anonymous. Currently, the City of Dallas' hotline (Speak Up Line) allows complainants to remain anonymous if they so choose. Also, the current version of the Ethics Code allows for ethics complaints to be made by complainants who are willing to self-identify (filed via the City Secretary's Office) and complainants who prefer to remain anonymous (filed via a complaint made to through the hotline/Speak Up Line to the Office of the City Auditor). If Dallas's ethics complaint form is modeled after Houston's, it produces the possibility of creating a "chilling effect," whereby some complainants might not feel comfortable reporting their concerns if they cannot do so anonymously.



- On Page 9 of the Report, in Comprehensive Recommendations, Section I, Recommendation 4, the Report states proposed ethics reforms would, “[P]ermit the settlement of cases, with EAC approval, to facilitate the efficient resolution of cases by agreement of the parties.” The question/concern here is exactly how this process would work. If the OIG does a full investigation, clearly finds that wrongdoing has occurred, then enters into “settlement” negotiations with *“the person who is the subject of [the] ethics complaint”* – does this mean the person who is the subject of the ethics complaint agrees to a certain level of discipline? If the person who is the subject of the ethics complaint is a Councilmember, only their fellow Councilmembers can mete out discipline against a Councilmember – how would this “settlement” proposal work under these circumstances?
- On Page 13 of the Report, in Comprehensive Recommendations, Section III, Recommendation 2, the Report states, *“Currently, the Ethics Code specifies that any violation of the Ethics Code may be filed as a complaint with the City Secretary or reported through the FWA Hotline to the City Auditor. However, these complaints, when filed, are only reviewed for statutory completeness before being passed on for review by the Ethics Advisory Commission. No preliminary investigation of the complaint is undertaken at the time of filing.”* Within the Office of the City Auditor, we have had many internal discussions regarding the fine line the Office has to walk with respect to conflicts of interest and threats to independence regarding any anonymous ethics complaints made against Councilmembers and received via the hotline (Speak Up Line). However, in spite of the possible conflicts of interest and threats to independence created by the fact that it is the Council that hires the City Auditor, renews their contract, and determines their wage increases, we have occasionally undertaken preliminary investigations of the underlying facts included in allegations we have received prior to sending them to the EAC’s Preliminary Panel.

It is my hope that this memorandum expresses the support of the Office of the City Auditor for the important reforms contemplated and enumerated in the [Report of the City of Dallas Ethics Reform Task Force](#), and further that the thoughts, questions, and suggestions shared above are found to be of value to you, the Ad Hoc Committee on General Investigating and Ethics, and the Task Force.

If there are further questions relating to this matter, please feel free to contact me at 615-974-8700 or by email at [mark.swann@dallascityhall.com](mailto:mark.swann@dallascityhall.com).

Sincerely,

A handwritten signature in blue ink that reads "Mark S. Swann". The signature is fluid and cursive, with a long horizontal line extending from the end.

Mark S. Swann  
City Auditor



# City of Dallas

1500 Marilla Street  
Council Chambers, 6th Floor  
Dallas, Texas 75201

## Agenda Information Sheet

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**File #:** 21-2197

**Item #:**

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Update on Bryan Riser Investigation





# City of Dallas

1500 Marilla Street  
Council Chambers, 6th Floor  
Dallas, Texas 75201

## Agenda Information Sheet

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**File #:** 21-2198

**Item #:**

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Update on Data Loss Investigation