



**A Report to the
Austin City Council**

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**Development Services Department: Misuse of
City Position, Misuse of City Resources and
Entering Into a Business Relationship with a
Subordinate**

October 2015



REPORT SUMMARY

We found evidence indicating that Eric Gomez, Environmental Compliance Supervisor in the Development Services Department, misused his City position and City resources, and entered into a business relationship with a subordinate.

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CAIU INVESTIGATIVE STANDARDS

Investigations by the Office of the City Auditor are considered non-audit projects under the Government Auditing Standards and are conducted in accordance with the ethics and general standards (Chapters 1-3), procedures recommended by the Association of Certified Fraud Examiners (ACFE), and the ACFE Fraud Examiner's Manual. Investigations conducted also adhere to quality standards for investigations established by the Council of the Inspectors General on Integrity and Efficiency (CIGIE), and City Code.

The Office of the City Auditor, per City Code, may conduct investigations into fraud, abuse, or illegality that may be occurring. If the City Auditor, through the Integrity Unit, finds that there is sufficient evidence to indicate that a material violation of a matter within the office's jurisdiction has occurred, the City Auditor will issue an investigative report and provide a copy to the appropriate authority.

In order to ensure our report is fair, complete, and objective, we requested responses from both the subject and the Department Director on the results of this investigation. Please find attached these responses in Appendix B and C.

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Copies of our investigative reports are available on request from City Auditor's Integrity Unit



October 2015



Investigation Report Highlights

Why We Did This Investigation

We conducted this investigation consistent with our responsibility under the Austin City Charter and the City Code.

The objective of this investigation was to obtain sufficient evidence to indicate whether the subject may have committed a material violation of the City Code's standards of conduct, or other criteria.



DEVELOPMENT SERVICES DEPARTMENT: MISUSE OF CITY POSITION, MISUSE OF CITY RESOURCES, AND ENTERING INTO A BUSINESS RELATIONSHIP WITH A SUBORDINATE

ALLEGATION

In April 2015, the Office of the City Auditor received an allegation indicating that Environmental Compliance Supervisor, Eric Gomez, may be misusing City resources and may have secondary employment that is in conflict with his City position. Specifically, the informant provided documentation indicating the information summarized below.

Misuse of Position:

- Gomez has a private practice providing legal services to citizens with land use and development issues, particularly as it pertains to permitting.
- Gomez may be using his City of Austin connections to attract clients to his legal practice.

Misuse of City Resources:

- Gomez may be using his City phone to conduct non-City business.
- Gomez may be doing work for his law practice during City business hours.

WHAT WE FOUND

We found evidence indicating that Gomez advertised his City position to attract clients to his law practice and misused City resources. These acts appear to constitute violations of:

Misuse of Position:

- Fraud, Waste, and Abuse Bulletin 06-03: Abuse

Misuse of City Resources:

- City Code § 2-7-62 Standards of Conduct - (J)
- City Personnel Policy - (G) Use of City Resources
- Fraud, Waste, and Abuse Bulletin 06-03: Fraud
- Administrative Bulletin 98-06: Acceptable Internet Use

We also found evidence indicating that Gomez entered into a business relationship with a subordinate. This act appears to constitute violations of:

Entering into Business Relationship with Subordinate:

- City Code § 2-7-62 Standards of Conduct - (H) (1)
- Fraud, Waste, and Abuse Bulletin 06-03: Abuse
- City Personnel Policy – Chapter A, Section I. Condition of Work: (L) Outside Employment

BACKGROUND

Environmental Inspections within the Development Services Department (formerly the Planning and Development Review Department) manages environmental inspections on permitted site plans to ensure compliance with approved plans, City rules, regulations, and specifications.

Environmental Compliance Supervisor Eric Gomez works in Environmental Inspections and oversees a team of four environmental inspectors. Gomez has worked for the Development Services Department as an environmental compliance supervisor since August 2011.

INVESTIGATION RESULTS

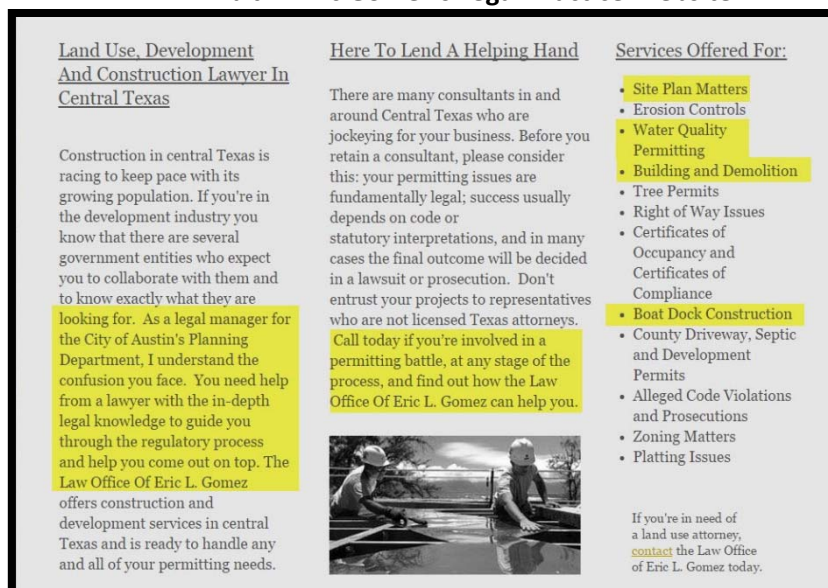
We found evidence that Gomez advertised his City of Austin position to attract clients to his law practice. We also found evidence indicating that Gomez misused City of Austin resources. Additionally, we found evidence indicating Gomez entered into a business relationship with one of his subordinates with the intention to sell outdoor recreational equipment.

We did not find evidence indicating that Gomez provided legal services to Austin residents or any individual regulated by Development Services Department.

Finding 1: Misuse of Position

We found evidence that Gomez has a secondary business aimed at providing legal services to citizens, particularly for cases involving land use and development. We also found that Gomez has a website for his law practice. On this website, Gomez stated that he works for the City's planning department and could help citizens with their land use development concerns. Gomez encouraged clients involved in the permitting process in Central Texas to contact him. Exhibit 1 shows a snapshot from Gomez's legal practice's website.

Exhibit 1: Eric Gomez's Legal Practice Website



SOURCE: Snapshot from Eric Gomez's legal practice business website, April 2015

When asked about his clients, Gomez admitted to having only one client to date, who lives outside of Travis County and is a family member. Gomez additionally stated that he drafted representation agreements for three potential clients. We found no direct evidence indicating Gomez represented clients involved in permitting proceedings, nor that he had clients regulated by the City of Austin. However, during his interview, Gomez stated that potential clients reached out to him because of his website.

When interviewed, Gomez stated his awareness of the obligation to disclose any secondary employment to his supervisor that may cause a conflict with his current position. However, Gomez admitted that his supervisor was not aware of his legal practice and that there was no formal disclosure to his supervisor.

When interviewed, Gomez's supervisor stated that Gomez approached him at one point and stated that he was thinking about starting a private law practice, but that he was not aware of Gomez actually starting the business. Gomez asked whether it would be a conflict for him to take cases outside of the City jurisdiction. The supervisor stated that he told Gomez that if he wanted to move forward with the business they would need to talk about it further. The supervisor stated that Gomez never formally disclosed that he started his business.

This appears to constitute violations of the following criteria, as detailed in Appendix A:

- Fraud, Waste, and Abuse Bulletin 06-03: Abuse

Finding 2: Misuse of City Resources

We found evidence suggesting that Gomez misused City of Austin resources, specifically the internet and his work computer for his secondary businesses. Between January and April of 2015, we found a significant number of web hits that appear to be unrelated to his job duties, and over 800 of those hits appear related to his secondary employment. In particular, we found evidence that he used his City computer to build websites for his law practice and for another business that involved selling recreational equipment.

Examples of Gomez's website activity include:

- over 300 unique web hits related to godaddy.com, a website hosting and email service provider;
- approximately 150 unique hits related to Gomez's law practice; and
- approximately 90 unique hits related to Gomez's outdoor recreational business.

We also found a significant number of documents stored on Gomez's computer, both personal and connected to his secondary businesses. Roughly 100 documents appear to be related to his secondary businesses; including, but not limited to the examples listed below.

Investigation Criteria

Fraud, Waste, and Abuse defines "Abuse" as the misuse of City office, employment, contract or other position with the City to obtain personal gain or favor from another City employee, vendor, or citizen"

Fraud, Waste, and Abuse Bulletin: Abuse – Misuse of City Employment

See Appendix A for more details

Investigative Criteria

The City Code on Standards of Conduct prohibits a City official or employee from using City facilities, personnel, equipment or supplies for private purposes, except to the extent such are lawfully available to the public. City Code: Standards of Conduct § 2-7-62(J)

Gomez's Legal Practice:

- draft representation documents for potential clients,
- client invoices,
- receipts for funds deposited,
- a demand letter sent from Gomez on behalf of a client to another party,
- letter delivery tracking that appears to be for the abovementioned letter,
- legal forms and templates,
- worksheets including business expenses,
- designs for stationary, and
- draft time log for billable activities in February and March of 2015.

Gomez's outdoor recreational equipment business, discussed in Finding 3:

- draft partnership agreement documentation between Gomez and his subordinate,
- federal tax documentation assigning an employer identification number to the business,
- Limited Liability Company worksheet with member names, including Gomez and his subordinate, and
- emails discussing the business between Gomez and others (including his subordinate).

When interviewed, Gomez admitted to using his City computer and internet access during work hours to check emails for his private law practices, to work on his private law practice's website, and to draft representation agreements in anticipation of taking on new clients. Gomez admitted that he believes that his use was a misuse of City resources. Gomez also admitted that working on his private business during City time was not an appropriate use of his time. For example, Gomez admitted to spending several hours a week for several weeks working on the website in late 2014.

We did not find evidence indicating Gomez misused his City phone. Gomez stated that he received calls on his private phone from potential clients soliciting his legal service on labor law issues; then using his City computer, he prepared documents, including representation agreements, following these phone calls in anticipation of taking the callers on as clients.

These acts appear to constitute violations of the following criteria, as detailed in Appendix A:

- City Code § 2-7-62 Standards of Conduct - (J)
- Fraud, Waste, and Abuse Bulletin 06-03: Fraud
- City Personnel Policy – Chapter A, Section I. Conditions of Work: (G) Use of City Resources
- Administrative Bulletin 98-06: Acceptable Internet Use

Finding 3: Entering into a business relationship with a subordinate

We found evidence indicating that Gomez entered into a business with his subordinate, which involves building and selling outdoor recreational equipment. When interviewed, Gomez admitted asking his subordinate to be a co-owner and that the business and the partnership structure was solely his idea. This was confirmed by the subordinate.

We found various documents for this business on Gomez's computer, as discussed in Finding 2.

We also found that Gomez did not disclose to his immediate supervisor that he was in a business relationship with his subordinate. Both Gomez and his subordinate admitted that management was not aware of their business relationship.

It appears that Gomez entered into a business relationship with his subordinate, for whom he has performance review responsibilities as part of his City duties. Such an arrangement could reasonably be expected to impair Gomez's independence in judgement and the performance of City duties.

These acts appear to constitute violations of the following criteria, as detailed in Appendix A:

- City Code § 2-7-62 Standards of Conduct - (H) (1)
- Fraud, Waste, and Abuse Bulletin 06-03: Abuse
- City Personnel Policy – Chapter A, Section I. Condition of Work: (L) Outside Employment

Investigative Criteria

*The City Code on Standards of Conduct prohibits a City official or employee from soliciting or accepting other employment to be performed or compensation to be received while still a City official or employee, if the employment or compensation could reasonably be expected to impair independence in judgment or performance of City duties. **City Code: Standards of Conduct § 2-7-62(H)(1)***

METHODOLOGY

To accomplish our investigative objectives, we performed the following steps:

- reviewed applicable City Code;
- conducted interviews with 2 employees in Development Services Department;
- obtained and analyzed the contents of Gomez's computer and emails;
- conducted background research on Gomez;
- obtained, confirmed, and reviewed Gomez's Human Resource information from Development Services Department;
- conducted research to obtain evidence of Gomez's secondary employment;
- reviewed and evaluated performance evaluations of Gomez's subordinates;
- interviewed Gomez's subordinate and business partner; and
- interviewed Gomez.

APPENDIX A

INVESTIGATION CRITERIA

Finding 1:

City Administrative Bulletin 06-03 states that “Abuse” includes the misuse of a City office, employment, contract, or other position with the City to obtain personal gain or favor from another City employee, vendor, or citizen” (**Administrative Bulletin 06-03: Fraud, Waste, and Abuse Reporting, Investigation and Prevention**)

Finding 2:

City Code on Standards of Conduct states that no City official or employee shall use City facilities, personnel, equipment or supplies for private purposes, except to the extent such are lawfully available to the public. **City Code: Standards of Conduct §2-7-62 (J)**

City Administrative Bulletin 06-03 states that “Fraud” includes the misappropriation of funds, supplies, or another City resource (**Administrative Bulletin 06-03: Fraud, Waste, and Abuse Reporting, Investigation and Prevention**)

City Personnel Policy states that Employees are prohibited from using City facilities, equipment, supplies, employee time, or any other City resource for personal use, except to the extent that such resources are available to the public, and that these resources are dedicated to City business. It further states that employees have no legitimate expectation of privacy when using these resources. (**City Personnel Policy – Chapter A, I. Conditions of Work - (G) Use of City Resources**)

City Administrative Bulletin 98-06 states that the use of City-provided internet, email and/or computer use must be related to, and for the benefit of, City Government. (**Administrative Bulletin 98-06: Acceptable Internet Use**)

Finding 3:

The City Code on Standards of Conduct prohibits a City official or employee from soliciting or accepting “other employment to be performed or compensation to be received while still a City official or employee, if the employment or compensation could reasonably be expected to impair independence in judgment or performance of City duties.” **City Code: Standards of Conduct § 2-7-62(H) (1)**

City Administrative Bulletin 06-03 states that “Abuse” includes the misuse of a City office, employment, contract, or other position with the City to obtain personal gain or favor from another City employee, vendor, or citizen” (**Administrative Bulletin 06-03: Fraud, Waste, and Abuse Reporting, Investigation and Prevention**)

City Personnel Policy states that Employees are prohibited from engaging in other employment, which would interfere with the performance of their City duties and are prohibited from engaging in other employment, which would represent a conflict of interest. (**City Personnel Policy – Chapter A, I. Conditions of Work - (L) Outside Employment**)

APPENDIX B

SUBJECT RESPONSE

Subject response was redacted to protect the identities of the named individuals.

TO: DSD Management
FROM: Eric L. Gomez, Environmental Compliance Supervisor
RE: E. Gomez formal response to Auditor Investigation Report
DATE: September 23, 2015

Dear Management:

Please accept my formal response (hereinafter, "Response") to the findings and allegations made by the City Auditor's Office and contained in its Investigation Report (hereinafter, "Report"). This Report was published on or around the 23rd of September, 2015 when it was sent by the City of Austin Auditor's Office to Rodney Gonzales, a third-party and Acting Director of the Development Services Department. I, Eric L. Gomez, am the object of the investigation in the Report; statements made in the Report are directed at me and my alleged activities while employed by the City of Austin as the Environmental Compliance Supervisor.

Findings 1 and 3 have been made erroneously, without sufficient proof, allege violations without providing prior notice, and are clearly unsupported by the referenced policies. These findings are also defamatory (see Tex. Civ. Prac. & Rem. Code §73.001; **Appendix A**; *Bentley v. Bunton*, 94 S.W.3d 561, 579, 586, 590 (Tex.2002); *WFAA-TV, Inc. v. Johnson*, 891 S. W.2d 640, 646 (Tex.1995); *Leyendecker & Assocs. v. Wechter*, 683 S.W.2d 369, 374 (Tex.1984)) and discriminatory on the basis of disparate treatment (see Tex. Labor Code §21.051; **Appendix B**; Civil Rights Act, Title VII, 42 U.S.C. § 2000e (1964); *Ricci v. Destefano*, 129 S.Ct. 2658 (2009); *Collins-Pearcy v. Mediterranean Shipping Co.*, 698 F.Supp.2d 730 (S.D. Tex., 2010)). As a result, I am suffering emotional distress and damages, including but not limited to loss of future earning potential, damage to reputation, and exposure to public hatred, contempt and ridicule.

It is worth mentioning that a person who expresses agreement with another's statement can also be liable for defamation (see *Bentley v. Bunton* at 585-86), along with a person who republishes a defamatory statement (see *WFAA-TV, Inc. v. McLemore* at 571). Simply couching a statement in terms of opinion, such as what "appears" to be the case, does not dispel its defamatory implications (*Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 18-19 (1990)).

I am requesting that the Auditor's office retract Findings 1 and 3 immediately and no later than 30 days from receipt of this report, and issue an apology, in order disabuse my good name and reputation of these statements and to mitigate further damages.

With respect to Finding 2, I take full responsibility for my actions and admit to using City property for non-city business, though not at all to the extent implied by the Auditor. For the past 3-4 months I have completely corrected my usage and behavior, and I do not anticipate this matter ever resurfacing as a problem in the future. As I detail below, internet usage and the abuse of City resources is a rampant problem in my section, as well as, I'm sure, my division and department. I would find it discriminatory and unequitable if I alone am singled-out for violating a policy that is being so openly and notoriously violated by so many others employees.

The following Response contains my comments to specific statements, allegations, and findings:

Pg.1 “What we found” – Allegation 1) Misuse of Position:

“We found evidence indicating that Gomez advertised his City position to attract clients to his law practice . . .”

1. I do not read anywhere in the Auditor’s cited “Bulletin 06-03,” or in the latest version of COA Personnel Policies that I cannot refer to my past or present experience in a side business. Nor do I see how in doing so this action is any different than having an up-to-date resume and using it to apply for other positions on public job boards. My website simply stated that I have experience managing land development matters. So does my resume, which is also publically available. Neither of these media state that as an employee for the City I can offer special services to clients, which is what is being implied by the Auditor. As a result, this finding is irresponsibly presumptive, speculative and fails to provide me with requisite notice to guide my behavior. Finding 1 is also defamatory, and it is severely stretches the language of the cited policies to find me in violation.
2. Bulletin 06-03 specifically states that I must be misusing my City position to obtain personal gain or favor from another City employee, vendor, or citizen. I have personally gained nothing that is in any way related to my position with the City in the outside practice of law, be it pecuniary or just “favor.” I have not had conversations with another person in any way related to any function that I am presently performing in my position with the City, including but not limited to land development, environmental, or permitting matters. Moreover, I have certainly not had contact with “another 1) City employee; 2) a vendor; or 3) citizen of the City of Austin, and the Auditor has supplied no proof of such contact. For the Auditor’s office to prove this abuse finding it must demonstrate that I have “misused my City position,” that I have “obtained personal gain or favor,” and that this favor or gain has been accorded to me from one of three (3) parties: a “City employee, vendor, or citizen.” The Auditor has absolutely no proof to carry any of the elements of this finding, because no proof exists. Accordingly, it is deeply troubling and irresponsible to publish such a claim without substantial proof to support it. This finding is irresponsibly presumptive, speculative and defamatory based on the evidence provided. Moreover, the cited policies have provided me with no notice in order to guide my behavior, and the Auditor has severely stretched the language of the cited policies to find me in violation.

Pg. 2 “Investigation Results”-- Finding 1: Misuse of Positon

“We found evidence that Gomez has a secondary business aimed at providing legal services to citizens . . .”

1. The City of Austin Auditor’s office is making a terribly unfortunate and irresponsible claim by reading into my website words that do not exist. Nowhere—nowhere—on my website does it say that I am providing legal services to the “City of Austin” or to “citizens.” Rather, my practice is aimed at “Central Texas.” Providing legal services to “Central Texas” could, and certainly does include San Antonio, Johnson City, Caldwell County, and a host of other geographies outside of

the City of Austin. Offering legal services to “Central Texas” is starkly different from “aiming” or targeting services to Austin citizens. In fact, when I told my supervisor that I would be considering starting a law practice on the side he told that he didn’t see a problem as long as I avoided Travis County. I have specifically done so. Permitting and land development issues don’t only concern the City of Austin or its citizens. The Auditor has made an erroneous finding from the evidence provided. As a result, this finding is irresponsibly presumptive, speculative and defamatory, and it severely stretches the language of the cited policies.

2. I am being singled out for unfair and unequitable treatment under this finding. There is at least one other person in my section who is actually “gaining” from a side business directly related to the industry we operate in. This person has also solicited business dealings with other employees in my section. This person’s actions are open and notorious, having been described to section staff by management during training meetings. The auditor has also been made aware of these actions, but nothing is being investigated with respect to that person. As a result, not only are the auditor’s findings erroneous, but they are being employed in an unequitable and discriminatory manner.

Pg. 3 “Investigation Results”-- Finding 1: Misuse of Position

“We found no direct evidence indicating Gomez represented clients involved in permitting proceedings . . . However, during his interview, Gomez stated that potential clients reached out to him because of the website.”

1. My admission cited here related to only 2-3 people who had called me on my personal phone regarding *labor & employment* matters, and whom I had no further dealings with. That was the proper context, which was detailed to the auditor during the interview; it had absolutely nothing to do with land use matters. Why, then, is this admission included as evidence in the “Misuse of Position” finding? Shame on the auditor for cherry-picking my words and perverting them to make their finding. Accordingly, this finding is erroneous, malicious and defamatory.
2. Stating that “no direct evidence” has been found implies that indirect evidence was found or could have been found. This description is also inconsistent with the remainder of the Report. It is misleading and defamatory to make this implication without proof.

Pg. 3 “Investigation Results”-- Finding 1: Misuse of Position

However, Gomez admitted that his supervisor was not aware of his legal practice . . .

1. This admission was not correct. I told my supervisor that I was going to start a law practice beforehand, and he advised me to not practice in Travis County. I did not recall having that conversation at the time of the audit investigation, but my supervisor reminded me afterward that it had, in fact, occurred. Moreover, there is nothing in the “Fraud, Waste, and Abuse Bulletin 06-03: Abuse” policy cited by the auditor in its report that discusses what I am required to communicate with my supervisor and how:

Finding 1:

City Administrative Bulletin 06-03 states that "Abuse" includes the misuse of a City office, employment, contract, or other position with the City to obtain personal gain or favor from another City employee, vendor or citizen" (Administrative Bulletin 06-03: Fraud, Waste, and Abuse Reporting, Investigation and Prevention)

The policy referenced above provides me with no notice with respect to the finding of a policy violation. Furthermore, I made an attempt, in good-faith, to comply with policy requirements by having a conversation about my law practice with my supervisor before it began. Therefore, this finding is erroneous, unfounded, defamatory and irresponsible.

Finding 2: Misuse of City Resources, pg. 3

"Our review of Gomez's browser history shows that he used the internet extensively for topics that did not appear to be related to his City duties [. . .] We also found over 600 documents, both personal and connected to his secondary business . . .

1. My job with the City is legal in nature. I deal with all kinds of legal matters spanning civil and criminal law. I have also been working heavily to develop a civil adjudication process for my department, including composing various legal forms and notices. It would be very difficult for me, or anyone else, to distinguish documents and websites on my work computer that were specifically intended for my side law practice versus those that were only related to my position with the City. The two functions overlap extensively. As a result, I take issue with the auditor attempting to pin what sounds like every kind of legal document and legal website that was on my computer or in my browsing history on my side business. The auditor fails to distinguish which of the "600" documents and "13,000" websites are specifically violating COA policies and for what reasons. Simply throwing out numbers that have been clearly estimated is careless and irresponsible. If I am to be found in violation of COA policies based on this finding, then I request that the Auditor identify each of the 13,000 website hits and 600 documents, with specificity and particularity, that are specifically in violation and for what reasons. Making a such a sweeping and conclusory finding based on what "appears" to be the case, without more, is unprofessional, speculative and defamatory.
2. This finding is being levied in a flagrantly discriminatory manner. The Auditor admits that it investigated [REDACTED] (pg. 5), and determined that [REDACTED] and I have an ongoing business relationship (pg.4), yet [REDACTED] was completely exonerated from any wrong-doing, in writing, by [REDACTED] and I was not. The investigator didn't even both to check [REDACTED] work computer for any misuse, even though he was also under investigation. Every person in my section, except for [REDACTED] has misused City Resources—some openly and notoriously. I hear and see music streaming over Youtube and people browsing Craigslist on a regular basis from just walking around the office. I find copies of personal documents all of the time on the copier when I approach it, but I'm somehow the only employee who's being held accountable. I am completely willing to accept responsibility for my actions, and I do, but I am not okay with being singled-out and disciplined. I am being disparately treated if you only hold me responsible for what is a rampant and open problem.

Pg. 3 "Investigation Results"-- Finding 3: Entering into a business relationship with one of his subordinates

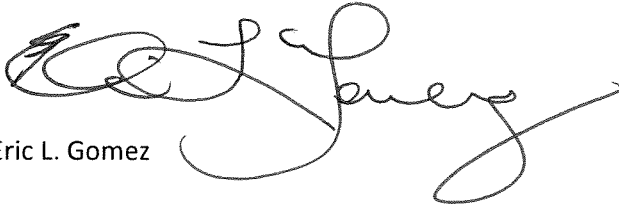
"It appears that Gomez entered into a business relationship with his direct report, for whom he has performance review responsibilities as part of his City duties."

1. I do not have a business relationship with my subordinate, because I do not have a side business "building and selling outdoor recreational equipment." Where is the proof that I have built anything? Where is the proof that I have made a single sale? What is the definition of "business relationship" that the auditor is using to make this finding, and what notice do I have with respect to that definition and its City policy implications in order to guide my behavior? Rather, under Texas' Business Organizations Code, §9.251, any and all of the activities that I have engaged in related to this finding have been specifically listed as "activities *not* constituting transacting business in this state." See **Appendix C** on pg. 5. The auditor claims that it found LLC formation documents, articles of incorporation, and IRS information on my computer for this alleged "business." None of those documents have been filed; none of them are records in this state, except for the tax id number, which literally took less than a minute to obtain online. Thinking about starting a business and actually having one in operation two entirely different scenarios. The auditor cannot make a finding of fact that I have a business enterprise based on unfiled, unregistered templates on my computer. That is preposterous and irresponsible. If I am conducting business in this state, such that I have a business relationship with a subordinate, then the auditor must prove that finding by providing an official record of a business filing or a contract for manufacture or sale. There are no such records, and there never have been so the auditor will be unable to meet this burden. Thus, this finding is erroneous, defamatory and irresponsible.
2. There is no City of Austin policy against fraternization. To hold me responsible for ideas that may have been tossed back and forth with another City employee during a recreational fishing trip on our personal time is absurd. Is the City telling me that I cannot go on recreational fishing trips with my co-workers on my personal time? Is the City now attempting to regulate my private conversations and thoughts? None of the city policies listed by the Auditor under Finding 3 provide me with requisite notice in this regard, and therefore, I cannot be held responsible for violating them.
3. The auditor claims that our fraternization could reasonably be expected to impair [my] judgement and the performance of City duties. It also claims that its concern was due to the fact that I have performance review responsibilities over [REDACTED]. The auditor admits to having investigated "reviewed and evaluated performance evaluations of [my] subordinates (pg. 5). Yet, after reviewing those records the auditor has produced no evidence that the independence of my judgment was ever impaired or the performance of my City duties compromised. The findings are purely speculative and irresponsible.

4. [REDACTED] is no longer my subordinate. This finding is moot.

Thank you for your time and consideration.

Regards,

A handwritten signature in black ink, appearing to read "Eric L. Gomez". The signature is fluid and cursive, with the first name "Eric" being more prominent and the last name "Gomez" written in a continuous, flowing style.

Eric L. Gomez

APPENDIX A

TEXAS CIVIL PRACTICE AND REMEDIES CODE

TITLE 4. LIABILITY IN TORT

CHAPTER 73. LIBEL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 73.001. ELEMENTS OF LIBEL. A libel is a defamation expressed in written or other graphic form that tends to blacken the memory of the dead or that tends to injure a living person's reputation and thereby expose the person to public hatred, contempt or ridicule, or financial injury or to impeach any person's honesty, integrity, virtue, or reputation or to publish the natural defects of anyone and thereby expose the person to public hatred, ridicule, or financial injury.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

APPENDIX B

TEXAS LABOR CODE

CHAPTER 21. EMPLOYMENT DISCRIMINATION

SUBCHAPTER B. UNLAWFUL EMPLOYMENT PRACTICES

Sec. 21.051. DISCRIMINATION BY EMPLOYER. An employer commits an unlawful employment practice if because of race, color, disability, religion, sex, national origin, or age the employer:

- (1) fails or refuses to hire an individual, discharges an individual, or discriminates in any other manner against an individual in connection with compensation or the terms, conditions, or privileges of employment; or
- (2) limits, segregates, or classifies an employee or applicant for employment in a manner that would deprive or tend to deprive an individual of any employment opportunity or adversely affect in any other manner the status of an employee.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.056. AIDING OR ABETTING DISCRIMINATION. An employer, labor union, or employment agency commits an unlawful employment practice if the employer, labor union, or employment agency aids, abets, incites, or coerces a person to engage in a discriminatory practice.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

APPENDIX C

TEXAS BUSINESS ORGANIZATIONS CODE

SUBCHAPTER F. DETERMINATION OF TRANSACTING BUSINESS IN THIS STATE

Sec. 9.251. ACTIVITIES NOT CONSTITUTING TRANSACTING BUSINESS IN THIS STATE. For purposes of this chapter, activities that do not constitute transaction of business in this state include:

[. . .]

(2) holding a meeting of the entity's managerial officials, owners, or members or carrying on another activity concerning the entity's internal affairs;

(3) maintaining a bank account;

(4) maintaining an office or agency for:

(A) transferring, exchanging, or registering securities the entity issues; or

(B) appointing or maintaining a trustee or depositary related to the entity's securities;

(5) voting the interest of an entity the foreign entity has acquired;

(6) effecting a sale through an independent contractor;

(7) creating, as borrower or lender, or acquiring indebtedness or a mortgage or other security interest in real or personal property;

(8) securing or collecting a debt due the entity or enforcing a right in property that secures a debt due the entity;

(9) transacting business in interstate commerce;

(10) conducting an isolated transaction that:

(A) is completed within a period of 30 days; and

(B) is not in the course of a number of repeated, similar transactions;

(11) in a case that does not involve an activity that would constitute the transaction of business in this state if the activity were one of a foreign entity acting in its own right:

(A) exercising a power of executor or administrator of the estate of a nonresident decedent under ancillary letters issued by a court of this state; or

(B) exercising a power of a trustee under the will of a nonresident decedent, or under a trust created by one or more nonresidents of this state, or by one or more foreign entities;

(12) regarding a debt secured by a mortgage or lien on real or personal property in this state:

(A) acquiring the debt in a transaction outside this state or in interstate commerce;

(B) collecting or adjusting a principal or interest payment on the debt;

(C) enforcing or adjusting a right or property securing the debt;

(D) taking an action necessary to preserve and protect the interest of the mortgagee in the security; or

(E) engaging in any combination of transactions described by this subdivision;

(13) investing in or acquiring, in a transaction outside of this state, a royalty or other nonoperating mineral interest;

(14) executing a division order, contract of sale, or other instrument incidental to ownership of a nonoperating mineral interest; or

(15) owning, without more, real or personal property in this state.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by: Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 14, eff. September 1, 2009.

APPENDIX C

MANAGEMENT RESPONSE



MEMORANDUM

To: Nathan Wiebe
Acting Chief of Investigations
Office of the City Auditor

From: J. Rodney Gonzales
Acting Director
Development Services Department

Date: October 14, 2015

Subject: Draft Investigative Report: E. Gomez

The Development Services Department (DSD) has received a copy of your draft investigation report on allegations against DSD employee Eric Gomez. The department will collaborate with the Employee Relations Division of the corporate Human Resources Department to review your preliminary findings and determine the department's next appropriate steps.

Please contact me if you have any questions or need additional information.

J. Rodney Gonzales
Acting Director
Development Services Department