

## MEMORANDUM

Date: May 26, 2023

To: Wajjha Rizvi  
Executive Liaison  
Ethics Review Commission  
City of Austin Law Dept

From: Evan K. Taniguchi, AIA

re: Preliminary Hearing before the COA Ethics Review Commission  
Statement Discrediting Teri Adams Sworn Complaint regarding Zilker Vision Plan Conflict of Interest

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Dear Honorable Ethics Review Commission:

I, Evan Taniguchi, formerly a member of the City of Austin Design Commission, do hereby submit this response to the ethics complaint filed by Teri Adams (“the Complaint”).

The Complaint alleges a violation of Section 2-1-24, but provides confusing and error-filled allegations about the “Zilker Vision Plan” without providing any evidence of a conflict of interest that would require recusal in this case, and therefore fails to allege a violation within the jurisdiction of the City’s ethics rules. First of all, the Complaint asserts that I am a board member of a “prospective unified nonprofit.” While the Vision Plan includes recommendations for the City to partner with a “unified (or umbrella) Zilker Park nonprofit” in the future, such a nonprofit entity has not been identified or selected by the City at this time. Accordingly, the Complaint is incorrect in asserting that I am a board member of the “prospective unified nonprofit” entity that does not yet exist, and unsubstantiated allegations that I have a future role with a nonprofit at Zilker Park do not meet any requirement of a “substantial interest” under the City’s conflict of interest ordinance. ***On this point, it should be noted that I am a board member of a nonprofit organization, Zilker 351, but Zilker 351 is not the “umbrella nonprofit” that is described in the Vision Plan.*** At some point in the future, Zilker 351 will likely apply through the City’s PARKnership process to partner with the City at Zilker Park, but again, ***Zilker 351 is not the “unified nonprofit” referenced in the Vision Plan.***

The Complaint also alleges (incorrectly) that “the prospective unified nonprofit” developed out of the “Zilker Collective Impact group.” This is incorrect. In fact, the “unified (or umbrella) Zilker Park nonprofit” was developed from and proposed by the Vision Plan. Independently from the recommendations in the Vision Plan, Zilker 351 was formed by the Zilker Collective Impact Working Group in 2022 as a 501(c)3 nonprofit organization to honor, preserve and enhance the natural, cultural, and recreational treasures of 351-acre Zilker Metropolitan Park for all. Again, ***Zilker 351 is not the “unified nonprofit” referenced in the Vision Plan.***

The Complaint also alleges that “Zilker Collective Impact group ... had close ties to the development of the Zilker Vision Plan.” While members of the Zilker Collective Impact Working Group did participate in the city’s community engagement process for the Vision Plan, there is no assertion in the Complaint that Zilker 351 has had any role in the development of the Zilker Vision Plan, much less, “close ties to the development” of the plan. Other than providing public statements supporting the “general direction and goals of the Vision Plan,” Zilker 351 has not provided input to the vision plan or taken a position on the merits of the plan, nor has Zilker 351 formally endorsed the vision plan details at this time. Finally, it should be noted that there is no allegation that I have any role with the Zilker Collective Impact Working Group.

Based on the foregoing deficiencies, the Complaint fails to state a violation because the City’s ethics rules clearly state that serving on a board of a nonprofit does not create a conflict for a board member. See, [City’s Ethics and Personal Responsibility Guidelines](#) (In defining “substantial interest under city code,” the guidelines note that the board service “criterion doesn’t apply to a non-profit entity.”). In addition, the Complaint fails to state a violation because the state law

requirements for a “conflict of interest” are not met. In particular, Texas Local Government Code Chapter 171 ties “conflict

of interest” to a “substantial interest” which is statutorily defined in a way that does not apply to my role as a board member of the nonprofit, Zilker 351 since I do not own voting stock or shares of Zilker 351, nor have I received any funds from Zilker 351.

Out of an abundance of caution on this question, I requested guidance from Anne Morgan (City Attorney) on whether there could be a recusal conflict under the city’s ethics rules. On March 27, 2023, Caroline Webster (Assistant City Attorney, Open Government / Ethics & Compliance Division) provided the following response:

“Anne referred your question to the Ethics and Compliance Team for a response.

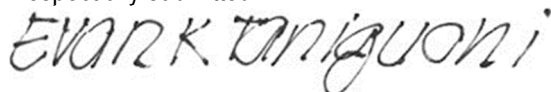
I agree that under the facts as you describe them and per the City Code, you are not required to recuse yourself from action on the item. However, note that even when there is no actual conflict, it is sometimes advisable to recuse when the public may perceive there is or could be a conflict of interest. Given the nature of the non-profit on which you serve and the fact that is directly concerns Zilker Park, it is at least possible that it will be perceived that you have a conflict. That being the case, you may wish to consider recusal in order to avoid even the appearance of impropriety, though again, it is not required by City Code under this circumstance.”

Email from Caroline Webster (March 27, 2023) (underlined emphasis added). As suggested by Ethics and Compliance Team’s response, I did consider recusing myself from the March 27 Design Commission meeting, and decided to recuse from that meeting because the Zilker 351 board had not yet been announced. While I had joined the Zilker 351 board on January 13, 2023, my concern on March 27, 2023 was that the public would not know I was formally a member of the Zilker 351 non-profit, so I didn’t want to give any impression of hiding this information. Once the Zilker 351 board was officially announced on April 3, 2023, this concern no longer applied, so I did not recuse from the Design Commission meeting on April 13, 2023.

In conclusion, there is no assertion in the Complaint (or supporting “reasonable grounds” for determining) that I have a “significant interest” in the Zilker Vision Plan or that I would be “affected” by the Design Commission’s review of the Zilker Park Vision Plan since it would have no “direct economic effect or consequence, either positive or negative, as a result of the vote or decision in question.” City Code, § 2-7-2(1) (defining “affected”). At best, I had no more than the code-defined remote or incidental interest in the subject matter of the vote. City Code, § 2-7-63(C) (“Where the interest of a City official or employee in the subject matter of a vote or decision is remote or incidental, the City official or employee may participate in the vote or decision and need not disclose the interest.”).

In the absence of any allegation in the Complaint of a violation of any applicable standard of conduct, I respectfully request that Ethics Review Commission (ERC) find that there are no reasonable grounds to believe that a violation has occurred and dismiss the Complaint pursuant to Section II(D) of the ERC’s rules.

Respectfully submitted:

A handwritten signature in black ink that reads "EVAN K TANIGUCHI". The signature is written in a cursive, slightly slanted style.

Evan K Taniguchi, AIA

attachment: Design Commission attendance roster for Zilker Vision Plan special-called meeting