

September 30, 2024

Hannah Vahl
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City of Austin
P.O. Box 1546
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**Re: Impact of Illegal Provisions of Tentative Agreement with APA on this Case
(*Equity Action v. Broadnax, et al.*, Travis County Dist. Ct., No. D-1-GN-23-08687)**

Dear Hannah and Paul,

I am writing to express my client's concerns that the City's Tentative Agreement with the Austin Police Association would violate multiple provisions of the Austin Police Oversight Act if approved by the City Council. The Austin City Charter prohibits any amendment to a voter-initiated ordinance within two years of adoption by the City's voters. If the City Council were to adopt the TA as drafted, Equity Action would be compelled to amend its lawsuit to assert additional claims, as outlined below. My client will also explore whether adoption of the TA by City Council would constitute contempt of court, given the Travis County District Court's clear decision on August 31, 2024, requiring the City to end its use of a "g file."

City Charter

The Austin City Charter grants the City's voters the power of initiative — and once the voters exercise that power, the City Council is limited in how it may alter the will of the people. Here, in accordance with Article IV, Section 1 of the City Charter, Equity Action collected over 33,000 signatures in support of the Austin Police Oversight Act, and 79% of voters approved of the Act at the May 6, 2023 election. As Article IV, Section 5 of the City Charter provides, the ordinance enacted by Austin voters may not be amended or repealed by the City Council within two years of adoption.

Illegal Amendments to the APOA in the Tentative Agreement

Even though the APOA was adopted by voters less than two years ago, the proposed Tentative Agreement seeks to modify the will of the voters in multiple ways. Today, my client wishes to highlight two of the most egregious changes.

Violation #1: "G File" Contract Language

Article 16, Section 4 of the TA contains language that would limit the application of Section 2-15-6(A) of the Austin Police Oversight Act, which ends use of the "g file," to only apply during the term of the negotiated collective bargaining agreement with the Austin Police Association. Section 2-15-6(A) is not limited to prospective application, however, nor is it limited to conduct under a collective bargaining agreement. Thus, the TA would violate the City Charter by unlawfully amending the APOA within two years of its adoption.

Section 2-15-6(A) reads:

The City shall not maintain a secret personnel file related to conduct by police officers under Texas Local Government Code 143.089(g), nor shall the Department itself. The City and Department shall maintain personnel files in accordance with Texas Local Government Code 143.089(a).

The TA contradicts Section 2-15-6(A) in multiple ways. Article 16, Section 4(a) creates a two-tiered approach to personnel files: records of conduct that is “prior to the effective date” of the agreement, and records of conduct that occurs during the agreement. Section 4(a) only specifies that a “g file” will not be maintained for conduct occurring during the agreement. Article 16, Section 4(b) then refers to an “exception to 143.089(g) in Section 4(a) above,” which reinforces that the “g file” would only be eliminated for conduct occurring during the contract term.

By seeking to limit the application of Section 2-15-6(A) to police conduct occurring during the proposed contract term, the City would unlawfully amend the voter-initiated Austin Police Oversight Act, in violation of the City Charter.

Violation #2: Allowing Grievances Related to the APOA

Article 19, Section 2(b) of the TA would allow APA members to file grievances—and seek an arbitrator’s ruling—of issues that may not be grieved under the express terms of the APOA.

Section 2-15-7 reads:

The City Council shall not approve any contract or agreement concerning the employment of any officer or civilian within the Austin Police Department if such contract allows police personnel to file grievances based upon actions of the City, the Office or the Commission that are within the scope of this ordinance, such as maintaining personnel files, investigating incidents, making recommendations to the Chief and reporting to the public on policy or on individual incidents of misconduct.

Article 19, Section 2(b) of the TA violates Section 2-15-7 by allowing grievances of APOA provisions that are not “in effect” at the time of the agreement, and by allowing grievances of APOA provisions that are not “consistent” with this agreement. This term would create two massive loopholes that would obstruct APOA implementation. For example, under the APOA, Section 2-15-4, the City must create a Community Police Review Commission. This has not yet been accomplished, however, and so therefore the Commission is not likely to be “in effect” at the time of the agreement; therefore Commission actions would be subject to grievance, in violation of Section 2-15-7. Similarly, this provision would allow grievances over “g file” issues if the police contract contains language different from Section 2-15-6(a) and is therefore not “consistent.”

By seeking to allow grievances of issues that are explicitly barred by Section 2-15-7 of the APOA, the City would unlawfully amend the voter-initiated Austin Police Oversight Act, in violation of the City Charter.

Contempt of Court

A party that impedes, embarrasses, or obstructs a court in the discharge of its duties may be held in contempt of court. “The essence of contempt is the contemnor’s conduct obstructs or tends to obstruct the proper administration of justice.” *In re Reece*, 341 S.W.3d 360, 366-67 (Tex. 2011).

Here, this standard would likely be met if the City Council approves the Tentative Agreement as drafted. The Travis County District Court’s order on August 31, 2024, was clear: “Defendants Broadnax and Davis have unlawfully failed to perform their mandatory duty to end the City of Austin’s use of the “g file” in violation of City Code Section 2-15-6(A).” If the City Manager places the Tentative Agreement on the agenda for City Council adoption, and the Council ratifies the agreement, Equity Action will be forced to consider remedies including civil contempt.

Proposed Remedy

As my client has expressed in multiple communications, Equity Action asks the City to agree to fully implement the Austin Police Oversight Act prior to finalizing its contract with the Austin Police Association. Through a full and complete agreement regarding APOA implementation, Equity Action and Austin’s voters can assure that their desire for transparency, oversight, and accountability of the Austin Police Department will be fulfilled.

Please respond to this letter by email or phone at your earliest available opportunity.

Sincerely yours,

Michael Siegel