

City Council Meeting 10-19-17

Item 18. Approve an ordinance amending City Code Chapter 2-7, Article 6 relating to anti-lobbying and procurement.

Steve Adler: That gets us up to Item number 18. Councilmember Alter?

Alison Alter: Thank you. So at Work Session on Tuesday, Councilmember Pool asked us to postpone this item until the November 9th meeting because of a need for the Ethics Review Commission to look at this in Working Group, and as I mentioned on Tuesday and I mentioned back on September 28th when we looked at the ALO the last time, I am concerned about having an ALO in place for the biosolids contract particularly when the offers come back. So as I understand it, this solicitation's on the street already. It has a provision in the RFP that would allow us to apply some sort of ALO in it, but when it comes back on November 7th, if we do not act, it will have no ALO in place of any kind. So, what I would like to propose is that... I would move to direct the City Manager to bring an item back to Council to modify Council Resolution No. 2017-0406 Item 023 that waive the Anti-Lobbying Ordinance from all waste management solicitations to allow for a modified version of the current ordinance to be applied to the current solicitation for the beneficial reuse of biosolids. Specifically I'm asking that this modified version of the current Anti-Lobbying Ordinance include the following changes: The No-Contact period shall begin on the date and time when the proposals are due and the debarment penalty shall not apply. So, as I have had some discussions with Purchasing over the last couple days, we cannot apply the current ALO because that starts when the solicitation goes on the street. So we have to, in order to apply the current ALO, we have to modify it so that it applies when the solicitation comes back, which is part of the proposal of the proposed ALO, which we may or may not choose. And then I understand that one of the key concerns of the folks involved is the concern about debarment if they are engaged in the process. I have been working closely with Purchasing and they have been working with Law and it is my understanding that that is legally what we would need to be doing if we want to have an ALO in place. This would come back on the 2nd. The solicitation is due back on November 7th.

Ann Morgan: Mayor, just so the record is clear, I think you're asking the Manager to do is to take this action and bring it back. It's not a motion; it's a request for you all without an objection.

Alison Alter: Okay, so there was... I had language that was prepared for me that said 'I move to direct.' But I'm perfectly fine to just provide the direction to come back. Thank you.

Leslie Pool: Mayor, I just wanted to say... and Councilmember Alter, thank you for the sentiments that you've been raising for the last couple of weeks. I don't support the additional direction to insert a modified ALO. If you look at our Work Group recommendation on the last page under 'Other Recommendations' it states the existing Anti-Lobbying Ordinance should remain suspended until Council approves proposed revisions. Staff from Law and Purchasing are working on draft language to address issues identified in the discussions with stakeholders and the revisions to the ALO may require continued participation from stakeholders.' And just yesterday, my office had really good conversations with two specific stakeholders, two representatives of groups of stakeholders, and we are achieving really good progress. There are a number of items that were identified as having disagreement, and yesterday a lot of progress was made toward checking off the 'agreed' boxes and there are still some discussions to be had. I am very optimistic about the work that is happening with the representatives of the stakeholders and I don't want to do anything that would get in the way of that. And then, lastly, I would say that the Ethics Review Commission on Tuesday took in the, or maybe it was Wednesday... anyway, I was there to lay this out for them and to ask for their input. And that Commission has formed... sent that Item to their Work Group as they have promised and they will be having a special called meeting in order to take formal action on November 1st so that this would be ready with their recommendations for us to act on

November 9th. So, I respectfully do not agree to the additional direction that is being offered. And then, if I have an opportunity I'll make a motion to postpone this Item to the 9th of November.

Steve Adler: Should we go to speakers? We have four people.

Leslie Pool: That would be great, thank you.

Steve Adler: We have four people that have signed up to speak. Let's call them down. Unless, Mr. Flannigan, you wanted to say something first?

Jimmy Flannigan: I just wanted to lend my support for Councilmember Alter's proposal.

Steve Adler: Okay. Okay, anything before we go to speakers? Okay, Mr. Pena, you're up first. Michael Whellan, you're up second.

Gus Pena: Mayor, I don't need to speak on this item.

Steve Adler: Thank you, Mr. Whellan do you want to speak? Jim Hemphill is on deck.

Michael Whellan: Yeah, Mr. Hemphill doesn't need to speak. Michael Whellan on behalf of Texas Disposal Systems. I think there's a solution here to what we're talking about. The vote on the revised ALO will be November 9th. The solicitations are due November 7th. I think if we just ask Purchasing whether they can back up by two days, or three days, the solicitation due date, I think that solves all of our problems. So, I think changing the past ALO on the fly doesn't solve the problem, it'll still leave people in a Hobson's choice where they won't be able to bid on this biosolids contract because there isn't the protections that the Working Group specifically identified were needed in the ALO, such as third party review of any disqualification. So I would instead encourage a perfectly logical solution which is having the biosolids solicitation due on November 10th, the day after your November 9th meeting as a way to manage this, rather than changing the ALO on the fly. I think that solves the problem. So I guess that's a question not for me 'cause I'm not in charge. City Attorney Ann Morgan is in charge. Thank you.

Gus Pena: I'm sorry, can I be considered?

Steve Adler: Thank you, Mr. Whellan. Did Adam Gregory want to speak? Okay. Mr. Pena?

Gus Pena: I'll make it brief. Again, I support Mr. Whellan's position and verbiage. We've been studying this also, I know Kerry Getter. I know Mr. Gregory also. I support Mr. Michael Whellan's comments to a T and work on it. Thank you.

Steve Adler: Thank you. I think those are all the speakers we have signed up for this Item. That brings us back to the dais.

Kathie Tovo: Mayor? We have Mr. Dobbs is also signed up to speak.

Andrew Dobbs: Yes, I just showed up really late.

Steve Adler: Okay, I see you now. Come on down. Thank you, Mayor Pro Tem.

Andrew Dobbs: Sliding into home plate here. Andrew Dobbs, Texas Campaign for the Environment. Good to see you all. You know, we... I appreciate the suggestions that Councilmember Alter has made. I think that's an improvement over putting... the basic point I wanted to make here is that we can't put the old ALO on this contract because that would literally be doing the same thing again and hoping for a different result. We've got two commissions that have been taking a look at these proposed revisions. ZWAC put out some really good suggested changes last week. I know that the

Ethics Review Commission's going to be looking at it too. They obviously had a chance to just go ahead and bless the proposed revisions as they stood and decided not to do that and instead to take a deeper look at it, and so I hope that we would take that time. You know... I don't think... I don't know that Mr. Whellan's suggestion is possible. It's a good idea if it is. Another possibility would be to let the process move forward as it stands and then once the new ALO is put into place, impose it at that point. Both of those are good ideas, I think. The one thing... the two last things I'll say is that one is, if we use the old ALO, I think that we end up with more lobbying and not less, because we'll end up with the exact same scenario that we had last time which was where some interested parties don't bid so that they can lobby. I don't think that's an ideal scenario that anybody wants. The best way to keep the lobbying to a minimum is to fix the ALO. And then the last thing I was gonna say is just to flag this as one of the key topics that we've been pressing on in this process, which is to make sure... it's also the rules, it's not just the Ordinance. It's also the rules. In fact, the rules for the Ordinance may be more important, in some ways, than the Ordinance itself, and we need to make sure that those rules are brought back before you for final authorization and to relevant commissions also for review before they are adopted. I'm happy to answer any questions.

Steve Adler: I guess, there are two things that were proposed. I guess three things. One was just postponing it the way that it is, one was postponing it with the direction from Councilmember Alter, and the other one was asking that the time be put back to the 10th for response. Do you have a preference or do you see...

Andrew Dobbs: I would say our preference is probably Councilmember Pool's suggestion which is to postpone the consideration of this Item and to wait and to not add the old ALO, even with revisions. That's... I would say that I think Councilmember Pool's suggestion is the best. I think that these are all kinda things that could be combined in some way, pieces of each of them could be adopted. I think that if Mr. Whellan's suggestion of keeping the solicitation open a little bit longer so that we could put the new ALO on it, presuming it's adopted by this Council on the 9th...if that's a possibility that's a good idea also, just to kind of avoid some of these problems. And I think that when I was walking in here, I was understanding that the proposal was to put just the old ALO as it stands on there and I think that Councilmember Alter's proposal as it stands right now is better than that, but I think that the best case scenario would be to wait until we've got an Ordinance that's fully fleshed out, that's ready to go, and use that.

Steve Adler: Thank you. Councilmember Alter?

Alison Alter: I don't have a question for him.

Steve Adler: Okay. Any other questions? Thank you.

Andrew Dobbs: Thank you.

Steve Adler: I think those are all the speakers that we had. Now we're back up to the dais. Councilmember Alter?

Alison Alter: So I appreciate Mr. Whellan's suggestion and it was the first direction that I tried to take with this. The challenge that we have, because we've been postponing this multiple times, is that rules have to be promulgated for the new ALO in order for it to go into effect. There are rules that govern creating the rules and that process itself will take at least 30 days, and this change doesn't only apply to waste management. It applies to all of our contracts. At the same time, we have been saying for months that we need to move forward on this biosolids contract. And so, I personally am not in favor of getting to the point that the offers come back and not having an ALO in place so that the decision on that contract will be a result of who lobbies more. I think that we should have a fair process and although I would love for us to have an opportunity to do it the way that Mr. Whellan suggested, because we have kept postponing and postponing, I have yet to find another alternative because the rules still need to be promulgated. The way that we've set this up, it will come back in two weeks with a direction... with an ordinance that would allow us to waive that section that waived the waste management and if there were one or two additional tweaks to what I've proposed that might make it more

palatable, those could be added at the point in time. My fear is we get to November 9th and we're not done with the ALO because the groups haven't agreed or other groups who are a part of this process chime in and then we never get this biosolids contract done or we have it going forward without the ALO in place.

Greg Casar: Mayor?

Steve Adler: Okay. Councilmember Casar, then Councilmember Pool.

Leslie Pool: I just want to make a motion.

Greg Casar: So I'm gonna risk brainstorming here on the dais for a minute. I thought that the proposal here that Councilmember Alter and Mr. Whellan shared seemed to make sense to me, but if there is that logistical difficulty and we're just talking about the biosolids issue, is there a way that we could ask for something to be posted on that day, the 9th, that could help us... because I think part of the challenge is if we're being expected to sort out on the 9th the whole ALO just because we have this one contract before us, it sounds like we're trying to solve a global issue because of a timeline on just one very particular, pesky thing, which is the disagreement about the protections within the ALO for this one particular contract. So, is there some way that we could have the submittal after the 9th, handle the ALO on the 9th, and have something posted also on the 9th, as some level of direction or ordinance that helps us deal with the very particular issues with one contract?

Alison Alter: Umm...

Greg Casar: And you may have already thought about this...

Alison Alter: Yeah, that was where I originally kind of started and ended up back on the 2nd with the advice of the staff, and maybe Mr. Scarboro or Legal can share their perspective on what options that we have beyond what we've discussed, or their thoughts on what we have discussed.

Steve Adler: I think that'd be helpful.

James Scarboro: Good morning Mayor, Council Members, Councilmember Alter. James Scarboro, Purchasing Office. So, of the options that are being contemplated, first, staff is prepared to proceed with the solicitation without the Anti-Lobbying, if that's the desire of Council. We're also prepared to proceed with the solicitation to include a version of the Anti-Lobbying Ordinance so that your concerns regarding any lobbying that may occur after the offers are received and we're in evaluation prior to Council authorization of the award, we're prepared to do that as well. There is a logistical element as Councilmember Alter alluded to. If a version of the Anti-Lobbying Ordinance comes back to Council on November 9th, and Council authorizes that version, it would not be a simple matter of just putting that version of the Anti-Lobbying Ordinance into the solicitation immediately thereafter and then closing and opening up the proposals. One, we would have to do an emergency so that we could implement the Ordinance immediately. Two, we would do so without the benefit of any new or revised rules, as was commented on earlier. And a lot of the feedback that we received from the Work Group did address the contents of the rules. So, we imagine that there's gonna be a fair amount of work with the rules as well, and time necessary to address those rules. So, in contemplating this kind of middle way approach, some of the most hotly debated elements of the current Anti-Lobbying Ordinance would essentially be... would be waived for this one solicitation. So that this one solicitation can proceed under a modified version of the current Ordinance, while giving Councilmember and interested parties and staff time to work on the longer term solution for the remainder of the Ordinance. That's my... and that's staff's interpretation of the proposed approach, is to allow for a solution for this solicitation and to address the most debated elements of the... or to waive the most debated elements of the current Ordinance.

Chris Weema: Mayor?

Steve Adler: Please.

Chris Weema: Good morning, Mayor and Council, Chris Weema, Assistant City Attorney. Councilmember Casar, to your point, we can certainly post for the 9th to allow you to address both, if that was your choice, to allow both. To address both that the overall revisions to the Anti-Lobbying writ large is that they apply to every solicitation that they apply to, as well as to address this particular solicitation for which the Anti-Lobbying Ordinance is currently waived. They could both be posted.

Steve Adler: Is it your recommendation that we do as was recommended by Councilmember Alter?

James Scarboro: Based on the feedback that I've heard – not the feedback – based on the discussions that I've observed at previous Council meetings and at Work Sessions, I believe that there is some interest in having some of the protections of the current Anti-Lobbying Ordinance. The discussions that we observed at the Ethics Review Committee centered on those elements of the current Ordinance that were proposed to be removed in the revised Ordinance, namely the shortening of the No-Contact period and the exclusion of the debarment penalty. Most of the conversation was associated with putting those elements back in. So given the variety of discussions with the recommended version, but also some of the desire that we've seen from discussions from Council and from the Commission, we believe that the proposed approach from Councilmember Alter would address those concerns.

Steve Adler: Okay. Councilmember Casar?

Greg Casar: Would Councilmember Alter restate one more time what her direction is?

Alison Alter: Sure. So, my direction to the City Manager is to bring an item back to Council to modify Council Resolution No. 2017-0406 Item 023 that waived the Anti-Lobbying Ordinance from all waste management solicitations to allow for a modified version of the current Ordinance to be applied to the current solicitation for the beneficial reuse of biosolids. Specifically, I ask that this modified version of the current Anti-Lobbying Ordinance include the following changes: the no-Contact period shall begin on the date and time when the proposals are due; the debarment penalty shall not apply.

Greg Casar: Okay.

Alison Alter: And the first one of those has to happen, sort of by default because it's already on the street and you wouldn't change that mid-process so the only time you could apply it is when they came back due, and then the debarment addresses one of the key concerns of TDS with respect to that contract.

Greg Casar: So the idea... essentially what I said we should brainstorm is actually what you have already laid out here, I think, which is that we could sort out the global issues related to the Anti-Lobbying Ordinance and we would not have the ability for vendors to lobby us during... after the proposals have been submitted and the objection that Mr. Dobbs raised which is, well, if we have a debarment provision we couldn't have extra lobbying because people wouldn't bid. That would no longer be an issue because we would not have a debarment... we would not have a debarment clause. That seems to make some sense to me. I'd be interested in hearing what anybody sees as a downside of that approach.

Steve Adler: Councilmember Pool.

Leslie Pool: There are no downsides to those two items because that is the direction that the Anti-Lobbying Ordinance is moving in. We, as you will remember from how I've described it the past few times, we are removing debarment, although there were some issues around that that needed to be settled. As far as how long the no-Contact period would last, we moved it to be a shorter one, to start later and end sooner, and there were some issues around that. So the very

two pieces which were the hallmarks of what we were going to put in place, that Councilmember Alter is talking about, are the very ones that the disagreements occur on. And I just urge everyone to allow the continued discussions to happen. I think that we put Mr. Scarboro in kind of an awkward position to have to choose between the two approaches because he has amply indicated that both proceeding, as I have requested, with just a straight postponement, or a more modified version that Councilmember Alter has offered, he would also be fine with that. And I think that that is the appropriate place for the Purchasing Officer to be. But he's not making this decision here. So I just reiterate, please allow the sticking points that still exist to have time to work out and we can get reports back from the Ethics Review Commission, have a look at the rules, see what we need to do there. As far as Mr. Whellan's suggestion, that we push the issuance date back a day, I think that was also addressed, I think by our attorney. We have to have at least... what is it, ten days before an ordinance takes... is enacted unless we put an emergency clause on it. So, I've been waiting to make a motion simply to postpone this to the 9th of November.

Steve Adler: And it would take eight votes to make it to an emergency situation? Councilmember Pool, can you help me understand, what is the... 'cause I don't understand. What is the issue or the problem with what Councilmember Alter is proposing?

Leslie Pool: It puts into place the two of the specific issues that are at question with the stakeholders. And I was hoping to get the disagreements resolved. If there are some other things that are happening that I'm not aware of, then maybe we should just put this on the table so that I can get better briefed on it. But that's my understanding.

Steve Adler: I'm not sure I understand yet. Councilmember Houston?

Ora Houston: Mr. Scarboro, I'm not sure that I understand, 'cause I had concerns about removing the Anti-Lobbying Ordinance, period, and...

James Scarboro: Yes, ma'am.

Ora Houston: ...putting me at risk, but I want the biosolids to go through because we've been dealing with that for a while. I also have a concern about it now including everybody that we have that responds to our solicitations. How long is it gonna take to make sure that all of the stakeholders are comfortable with what we're doing, and is there a way to continue that conversation and let biosolids continue their way.

James Scarboro: Councilmember Houston, I think that's what's being contemplated with the discussion here. I don't think we're... we're not discussing Council making a decision on this now. Rather, it's for staff to bring back an item for Council then to make a decision, if you indeed want to allow some version of Anti-Lobbying to be applied to the biosolids solicitation. The biosolids solicitation is on the street now, so lobbying can occur now. It can occur after the offers are received, it can occur after we make an award recommendation prior to and after Council authorization. So, if that is what Council wants, then we can proceed on our current track. If there is a desire to have some level of Anti-Lobbying Ordinance applied to that particular solicitation, then we would need something from Council to lift the... or to apply the Anti-Lobbying Ordinance, or a version of the Anti-Lobbying Ordinance to that solicitation. I think that's what's being contemplated. To have something... some level of protection for that particular solicitation. Now, the timing of the due date for the offers is subject to our control and we can push that back a little bit if that assisted the conversation, but there is a downstream timing compression that will occur. The current contract does expire in the spring. We need to receive the proposals, evaluate, negotiate if necessary, make the award recommendation, and then go back through the posting and getting your authorization for the resulting contract. So all of that will have to occur between the time that we close and receive the offers and the current contract expires. Thus the urgency with the close date. We can push it back a few days, but the more we push it back the more we compress the remaining things that have to get done before the current contract expires.

Steve Adler: So that I understand, Councilmember Pool's motion is just to postpone this. Councilmember Alter's suggestion is when this comes back to come back with an action that we could or not take, on the 9th. Isn't that right? And if it's just a decision to come back with something, then the decision we're making here today is to postpone it and then gives ourselves an option to either adopt an interim thing or not. Because we're not adopting that today. We're saying bring that back to us, which would give us then this intervening period of time to consider that further about whether we were gonna want to do that. Do I understand that correctly?

Alison Alter: The one piece that you didn't get correctly is that the direction was to bring it back on the 2nd because the solicitation currently comes back on the 7th. So one could postpone the solicitation to the 9th and have this come back on the 9th. My fear is that this ALO will not come back on the 9th for a decision and we will be in this ad nauseam just like we were in ad nauseam on the other.

Steve Adler: But on the one hand, it's to postpone it, leaving the dates out, and the other one is to come back with an alternative that we can consider but we're not voting on that today. We could decide on the 2nd whether we want to do it or not do that.

Alison Alter: Yes, and we didn't do it today, I couldn't make that motion today because we weren't posted to be able to do that.

Steve Adler: Okay. I understand. Councilmember Flannigan then Councilmember Kitchen.

Jimmy Flannigan: I'll just reiterate why I support Councilmember Alter's thought process on this is that we are deciding either way when this contract moves forward to have either no provisions or some provisions. There's no 'no decision' option. Either it moves forward under no Anti-Lobbying or it moves forward under some modified as Councilmember Alter has laid out, and that's why I support what she's talking about. Because it's... the 'no decision' is actually not a 'no decision', it's 'let biosolids move forward with no Anti-Lobbying' and that's not where I want to see it go. And I agree with Councilmember Houston that we want to see this contract move forward sooner than later, and so does my preference, as Councilmember Alter has laid out, to move forward with Anti-Lobbying as modified and laid out, then we can have this contract executed, and that way the ALO broader discussion is not being hamstrung or distracted by a single contract dominating the conversation. We can have the broader convo, and that's why I'm supporting the direction that Councilmember Alter's laid out.

Steve Adler: Councilmember Kitchen.

Ann Kitchen: I prefer to stay with the motion that Councilmember Pool is bringing forward. This has been a long and involved process with the stakeholders at the table and I think we should honor that process. I think giving direction today is more than just giving direction to come back. I think it is actually making a statement about what we want to see happen, and I'm not ready to do that. I want to wait and honor the process that has been occurring. And so... that process can include discussing the action that's being considered today can be discussed in that process. And so I think we're short-circuiting the process that we set up if we don't move forward. I understand Councilmember Alter's concern about... her concern about delay and concern that perhaps the process won't produce a result in time. But I think we can deal with that at the time if that doesn't happen.

Steve Adler: Further discussion on the dais? Councilmember Alter.

Alison Alter: I want to reiterate a point that Mr. Scarboro made is that what we were hearing out of the Ethics Review Commission is that they actually want the ALO to be stronger than was what is proposed, and those are the pieces that are of the most sticking point for this particular contract. So we would be able in this case to modify them for this contract without having to make changes ad nauseam for every contract in the city if we decide that are uncomfortable

making those changes. I was not able to... because we were not posted for this, I was not able to make this as a motion, and so I'm not sure procedurally, how this actually plays out. But we do need to have this posted at some point so that we have the option to make that decision, whether is it the 2nd or the 9th and if it's going to be the 9th then we have to have some direction that they extend the solicitation and I frankly do not believe that when we come back on the 9th that the ALO will be ready.

Steve Adler: My sense is I'm still missing something here. I'm not prepared to vote on the recommendations that Councilmember Alter is making because I haven't had them ahead of time. They weren't posted for me to be able to see or to discuss, which is why we have those posting rules. So I hear what you're saying as an intent to ask the Council to do something in the future and I would support your ability to be able to ask the Council to do something in the future as I would support anybody's ability to ask the Council to support something. And I support Councilmember Pool's request that this item be postponed and we not take action on it now. So... because I don't think that giving Councilmember Alter the chance to be able to ask to the Council to consider something is an indication, at least for me, of the substance of it, because I'm not prepared to consider the substance of it. Councilmember Casar.

Greg Casar: So are we able to be posted on the 9th if the submittal date is after the 9th? If that is possible. Is it possible for us to be posted on the 9th, if we can't handle the whole ALO to make a decision on the 9th about what we would like the rules to be governing interaction with Council related to this one contract?

Robert Goode: Robert Goode, Assistant City Manager. I believe I have a solution for you.

Steve Adler: Thank you.

Robert Goode: Since you don't have consensus on direction to give to staff, postpone the ALO, whichever... I think everybody agrees to, because the Ethics Review Commission needs time to work through it. And then an IFC could come forward, directing staff, it's gonna be a little bit of a delay directing staff to bring forward a revision on the ALO for the biosolids. So since you don't have consensus to give direction to staff you're gonna have to approach that with an IFC, 'cause we're gonna need direction some... because you can't vote on it, like Councilmember Alter suggested. An IFC would then have a vote where you're gonna discuss it and have a vote amongst yourselves on whether to give direction to staff to do that or not.

Steve Adler: And could we adopt as part of... could we adopt rules governing Anti-Lobbying on a contract mid-contract processing?

Robert Goode: Via that... ask Ann to weigh in, via that IFC I assume you could direct staff to implement the revised... exactly what Councilmember Alter's trying to do today, you could do via an IFC on the 2nd.

Steve Adler: Or you could do it on the 9th. My question is could you do it anytime? You would just say that as concerns this contract... as concerns behavior going forward, these are the rules. So... we wouldn't be stopped out from being able to say these are the rules that should exist going forward, regardless of when the contract... when the submittals were received.

Chris Weema: If I could clarify your point, Mayor.

Steve Adler: Please.

Chris Weema: Speaking of... just for clarity, speaking of rules and ordinances consistently, the rules are an administrative process and I don't think you mean that. What I think you mean to say is that however it comes back to Council, Council could, for this particular solicitation, make a determination as to how Anti-Lobbying should apply in whatever form Council decides, on prospective basis as to that solicitation. And the answer is, yes you can. The solicitation contained a

notice when it went on the street that Council was currently considering the Anti-Lobbying Ordinance and that there would be... there may be modifications or a modified Anti-Lobbying Ordinance put in place by the time the solicitation closed. The practicalities of when the solicitation closes, when the solicitation needs to close, that's... that's certainly an issue there.

Steve Adler: Okay. We're at the dais. Further discussion? Councilmember Alter.

Alison Alter: So Mayor, even if we do an IFC, there are no... we could do an IFC and put the modified in place, but there would be no rules if we were to adopt, if we adopt the new one on the 9th, we can't impose that on this contract without rules, unless we're saying there's no...

Robert Goode: You would modify the existing, which has rules.

Alison Alter: Right. So we still have to modify the existing rather than taking anything that we had passed for the new one on the 9th. I would be perfectly happy to work on an IFC, however I would need to have a request to staff to move the due date to the 10th or after, otherwise there is a value in having... if we were to go down this route, there is a value of having it apply when the offers are back, as opposed to the offers being back for several days and then it applying. It's just not particularly neat, from a legal standpoint. I don't know whether the date would be the 10th or... because the potential...

Robert Goode: The 14th.

Alison Alter: The 14th?

Robert Goode: We'd do the 14th. We'd do a week.

Alison Alter: And then I would be happy to bring it on the 9th as an IFC. Then it would be on our agenda if that is the will of the Council. Rather than providing the direction today I would be more than happy to do that and if any of my colleagues are interested in participating in that, it would give us the way, which is what I've been looking for, to make sure that we have an ALO in place for the biosolids in the event that we don't pass it on November 9th and given the fact that even if we do pass it we can't apply to this contract midway without delaying the contract further.

Steve Adler: Councilmember Casar.

Greg Casar: I'd be supportive of that. I just wonder procedurally if there isn't consensus on the dais on how to handle this, and we aren't posted to vote on it... it sounded like the Mayor's objection was that you didn't want to make a decision today. Is there not consensus on the dais now that we would just like staff to post this decision for us on the 9th as a decision we should just make on the 9th? I think that there might be consensus that... there might not be consensus that we even want to take this question up. I just thought... it seemed clear to me that there wasn't consensus about making a decision today, but if it has to go IFC, I guess it could be that way.

Leslie Pool: Mayor?

Robert Goode: If I may clarify, I think there's consensus on the postponement of action today for the ALO. I'm not hearing consensus on the direction that there, the subsequent direction on bringing something back for biosolids. That's what we're not hearing consensus on. There's consensus for the delay for the ALO, the item before you, but there's not consensus on the direction to staff.

Greg Casar: Right, and it seemed to me that there was consensus on the fact that on the 9th we have to make some decisions about what to do about biosolids, and that we might want to just be posted to make that vote. But if the Manager doesn't want to post on it then the Council can get four co-sponsors to do so.

Steve Adler: Councilmember Pool.

Leslie Pool: Well, that's what will happen on the 9th is we will have, I hope, a modified... a recommendation for changes to the Anti-Lobbying Ordinance that will then result in it going back into effect and then the Administrative Rules making process would flow from that and as our attorney pointed out, that's not Council's action, that's administrative process. So the IFC that Councilmember Alter is talking about and Assistant City Manager Goode is talking about is the same thing that's going to happen on the 9th which is this is going to come back with the recommended changes to the Ordinance, unless I'm completely missing something.

Robert Goode: Yes but biosolids won't be in the 9th action unless you tell us to bring something.

Leslie Pool: So, that could be an action that we take on the 9th, I agree. But the point is the modified ALO that could then be applied to biosolids would then be coming back on the 9th.

Robert Goode: The rules wouldn't be in place.

Leslie Pool: They wouldn't be in place anyway, Mr. Goode. Because they operate on a separate timeline...

Robert Goode: Right.

Leslie Pool: ...from what we do here. So there isn't any way.

Robert Goode: The new ALO, there's no way that can take effect for biosolids, you are absolutely right. So what we're talking about is do you want to modify the existing ALO for biosolids or do you want to keep it waived.

Steve Adler: I don't think we should make that decision today. We're not posted to make that decision today. Councilmember Alter you can bring an IFC on the 9th to do that. So it seems like the only question really in front of us... bring your IFC, don't bring your IFC. Bring your resolution, don't bring your resolution. Whatever's in front of us and posted, we'll deal with. So the only question it really seems is, are we going to take a solicitation and cut it off... require it to come back on the...

Robert Goode: 14th.

Steve Adler: 14th. Are we gonna say come back on the 14th as opposed to come back on the day that it's currently scheduled to come back...

Robert Goode: The 7th.

Steve Adler: The 7th.

Robert Goode: Solicitations are due on the 7th.

Steve Adler: And if we could... and is there any harm in saying bring it back on the 14th instead of the 7th?

Robert Goode: We're not bringing that back to Council; those are when the solicitations are due at the Purchasing Office.

Steve Adler: Is there any way to change the solicitation due date from the 7th to the 14th? Any harm in that? Does anyone object to that? Okay with that said then, I think the direction would be go ahead and change it to the 14th, and we'll deal on the 9th with whatever it is that's set in front of us and comes to us. Does that work? Okay. Councilmember Alter.

Alison Alter: That works. I just want to clarify that we weren't able to have the conversation today because it was not posted, and if we don't have the IFC and we don't have that, we won't be able to deal with biosolids and no ALO will apply.

Steve Adler: But now you have the opportunity to...

Alison Alter: I will do it that way. I did not realize that it ...having the option to have a decision in a few weeks was going to create such concern, so I will be happy to do it in the alternate way and if any of my colleagues are interested in joining me in that IFC, please let me know.

Steve Adler: Okay. So with the direction for staff to change the solicitation due date to the 14th, please, there is a motion to postpone this Item to the 9th. Is there a second to the motion to postpone to the 9th? Councilmember Kitchen seconds that. Any further discussion? Those in favor please raise your... go ahead, Mr. Renteria.

Sabino Renteria: I just want to state that you know, and I want to say that this is... I want apologize really, because, you know, I get kinda insulted when somebody tells me that some lobbyist is gonna come lobby me and make me change my mind. I'm always looking out for the City and what's best benefit the City and to get these contracts going so it won't cost us any more money than it's constantly costing us now. I don't know why there's such a big fear over lobbyists. I listen to 'em and if I don't believe that what they're saying to me is right, then I don't vote for them, you know. I just... to me, I feel like I'm mature enough to make a decision that's gonna be right for the City and I'm not gonna be lobbied and like... they're gonna make me change my mind. I just... I don't work that way, so... I'm ready for the vote.

Greg Casar: Mayor? I would just say that, Councilmember Renteria, if all council members in all the future had the integrity that I've gotten to know from you, I would not care if we had this law at all. But unfortunately our governments aren't composed forever, probably, of folks that are like you and that's why I think these sorts of laws are real important. But it's a compliment, totally a compliment to you.

Steve Adler: Moved and seconded. Any further discussion? Those in favor of the postponement, please raise your hand. Those opposed? Those abstaining? Everyone voted aye. Council is unanimous. This item is postponed. Thank you.