

From: Bob Gregory
To: ["nikelle.meade@huschblackwell.com"](mailto:nikelle.meade@huschblackwell.com); ["bc-Peter.Einhorn@austintexas.gov"](mailto:bc-Peter.Einhorn@austintexas.gov); ["bc-Jmichael.Ohueri@austintexas.gov"](mailto:bc-Jmichael.Ohueri@austintexas.gov); ["BC-Fredda.Holmes@austintexas.gov"](mailto:BC-Fredda.Holmes@austintexas.gov); ["BC-Mary.Kahle@austintexas.gov"](mailto:BC-Mary.Kahle@austintexas.gov); ["BC-Debra.Danburg@austintexas.gov"](mailto:BC-Debra.Danburg@austintexas.gov); ["Cynthia.tom@austintexas.gov"](mailto:Cynthia.tom@austintexas.gov); ["amy.smith@austintexas.gov"](mailto:amy.smith@austintexas.gov); ["James.scarbora@austintexas.gov"](mailto:James.scarbora@austintexas.gov); ["GERwin@spartnerships.com"](mailto:GERwin@spartnerships.com); ["bcorbett@spartnerships.com"](mailto:bcorbett@spartnerships.com); ["jackie.goodman@austintexas.gov"](mailto:jackie.goodman@austintexas.gov); ["alba.sereno@austintexas.gov"](mailto:alba.sereno@austintexas.gov); ["ken.craig@austintexas.gov"](mailto:ken.craig@austintexas.gov); dobbs@texasenvironment.org
Cc: ["bc-Robert.Stratmann@austintexas.gov"](mailto:bc-Robert.Stratmann@austintexas.gov); ["bc-Meagan.Harding@austintexas.gov"](mailto:bc-Meagan.Harding@austintexas.gov); ["bc-DonnaBeth.McCormick@austintexas.gov"](mailto:bc-DonnaBeth.McCormick@austintexas.gov); ["BC-Luis.Soberon@austintexas.gov"](mailto:BC-Luis.Soberon@austintexas.gov); ["bc-Dennis.Speight@austintexas.gov"](mailto:bc-Dennis.Speight@austintexas.gov); ["bc-Brian.Thompson@austintexas.gov"](mailto:bc-Brian.Thompson@austintexas.gov); ["mwhellan@gdhm.com"](mailto:mwhellan@gdhm.com); ["djbutts@sbcglobal.net"](mailto:djbutts@sbcglobal.net); ["Mark Nathan"](#); [Gary Newton](#); [Ryan Hobbs](#); [Adam Gregory](#)
Bcc: [Bob Gregory](#)
Subject: TDS Response to Andrew Dobbs" 10-27-17 Email
Date: Monday, October 30, 2017 11:38:00 AM
Attachments: [10-27-17 Email from Andrew Dobbs re TCE Positions on ALO.pdf](#)
[ZWAC Recommendation2017-10-18-111007.pdf](#)
[July, August 2017 ZWAC Recommendations re Solicitation Review Process.pdf](#)
[Ordinance 20170406-023 Waiving ALO for Waste Solicitations-.pdf](#)

Ethics Review Commission Commissioners and stakeholders:

Given the unique role of Texas Campaign for the Environment (TCE) as the only non-industry stakeholder currently engaged in the ERC review of proposed revisions to the Anti-Lobbying Ordinance (ALO), I'm writing in response to [Mr. Dobbs' 10/27/17 email](#) forwarded to me by Michael Whellan, linked and also attached, to briefly detail where Texas Disposal Systems (TDS) agrees and mildly differs with TCE's stated positions. I am sending this response to everyone on Mr. Dobbs' email for which I have an address. TDS values TCE's long history of advocacy on behalf of the environment and a transparent public process and would propose that the ERC consider utilizing TCE's stated positions on key ALO issues as the basis for an analysis matrix indicating where industry stakeholders may agree or disagree.

In addition, TDS would also request ERC's specific attention to the unanimous [10-11-17 recommendations of the Zero Waste Advisory Commission](#) (ZWAC) (also attached) with regard to ALO revisions. Also, please note that the Council recognized a need to review waste services policy issues, including concerns related to the current ALO, and that the initial proposal to revise the ALO originated with a recommendation from the Waste Management Policy Working Group. Not only did the City Council vote on [9-28-17](#) to request that the ERC review the proposed ALO revisions, but in voting on 3-23-17 (see [transcript](#) and [resolution](#)) to create the Waste Management Policy Working Group also specifically requested that each of the Working Group [recommendations](#) be reviewed by ZWAC prior to presentation to Council. Accordingly TDS would urge that ZWAC's stated positions on ALO revisions also be reflected in any matrix employed by the ERC to analyze the positions of industry stakeholders and develop final recommendations. Please note that the 10/27/17 TCE positions from Mr. Dobbs are consistent with the [10/11/17 recommendations](#) made by ZWAC and the ZWAC recommendations of [7/12/17](#) and [8/9/17](#).

KEY ALO ISSUES

APPEAL: TDS agrees with TCE's position in favor of a right to appeal "all ALO disqualifications and other penalties or determinations" to a non-staff body and to the City Council.

While TDS does not object to TCE's proposal to create a Council-appointed board to hear ALO

appeals if the ERC prefers to not be that entity, TDS continues to support allowing ALO appeals to both the ERC and the City Council. ZWAC's recommendation ([second bullet point in the ZWAC 10/11/17 recommendations](#)) also supports appeal to both the ERC and City Council.

VOIDING CONTRACTS: TDS *agrees* with TCE's position establishing that only Council may void a contract for violation of the ALO.

ZWAC's recommendation (third bullet point) also supports TCE's position.

SIMILAR PROJECTS: TDS *agrees* with TCE's position in favor of replacing disqualification for "similar" projects with a disqualification for the "same" project.

ZWAC's recommendation (tenth bullet point) also supports TCE's position of replacing "similar" with "same".

RULEMAKING: TDS *agrees* with TCE's position in favor of public participation in the ALO administrative rulemaking process, including final review and approval of administrative rules by the ERC and City Council.

ZWAC's recommendation (first bullet point) also supports TCE's position.

DEFINE RESPONSE: TDS *agrees* with TCE's position in favor of defining the term "response" as "only the contents of a sealed proposal or bid submitted by an offeror replying to a solicitation to provide the goods or services solicited by the City."

ZWAC's recommendation (seventh bullet point) also supports TCE's position, but without offering a specific proposed definition.

PUBLIC COMMUNICATION: TDS *agrees* with TCE's position in favor of assurance that the ALO will not consider public communications to be in any way a violation.

ZWAC's recommendation (fifth bullet point) also supports TCE's position.

INDEPENDENT ADVOCACY: TDS *agrees* with TCE's position in favor of assurance that independent advocacy from non-respondents will not be used to disqualify respondents. TDS believes First Amendment case law effectively prohibits what Synagro's attorney advocates.

ZWAC's recommendation (sixth bullet point) also supports TCE's position.

SUBJECTIVE TERMS: TDS *agrees* with TCE's position in favor of striking the subjective terms "influences," "persuades," "advances the interests," and "discredits." TCE's position appears to be more specific than ZWAC's position, which recommends Council give direction to staff to provide objective standards for these terms.

TDS supports TCE's position in favor of striking these subjective terms for the sake of strict clarity in

the Ordinance. TDS' strong preference is for the *elimination* of all subjective terms from the ALO. ZWAC's recommendation (eighth bullet point) supports TCE's position, but with some flexibility for Council to direct staff to provide objective standards for these terms as part of their rulemaking.

MITIGATING FACTORS: TDS *agrees* with TCE's position in favor of eliminating or delineating the power of purchasing officers to determine "mitigating factors" in violations.

While TDS supports TCE's comments and position, TDS' strong preference is for the complete *elimination* of the staff proposed authority of purchasing officers to consider "mitigating factors" in determining ALO violations. Staff requested Council to remove the ALO restriction from the 2016 Biosolids Management solicitation so they would not have to determine whether Synagro had violated the ALO restrictions applied to that withdrawn solicitation. ZWAC's recommendation (ninth bullet point) supports TCE's position.

RECUSALS: TDS *agrees* with TCE's position in favor of striking all sections that empower staff to require recusal of elected or appointed City officials.

ZWAC's recommendation (fourth bullet point) also supports TCE's position.

DEBARMENT AS A PENALTY: TDS *agrees* with the TCE position and understanding that debarment should be and will be eliminated as a possible penalty.

ZWAC recommendation (third bullet point) apparently deals with this by recommending that "only Council may void a contract for violation for the ALO."

RESTRICTED CONTACT PERIOD: While TDS proposes that there should be no ALO restrictions applied to waste services solicitations, TDS *agrees* with TCE's position in favor of beginning the restricted contact period after the close of the solicitation (after the sealed proposals, bids or RFP responses are submitted) and lifting the restricted contact period at some point between the time staff chooses a respondent to recommend and before it is finally decided upon by Council. However, TDS also recommends ALO restrictions be lifted before consideration of proposed contracts by Boards and Commissions and with sufficient time to review and respond to the posted proposed contract.

As noted, TDS agrees with TCE's position in favor of beginning the restricted contact period when solicitations are due; TDS also very strongly endorses TCE's suggestion of "a great deal of benefit in allowing some advocacy in the period between the vendor being chosen and before it is finally decided upon by Council" and likewise TCE's indication that "if the chosen contract departs from policy or reflects a bad expression of existing policy the people most likely to spot this may be firms involved in that industry and their voices could be of great benefit for the public interest." While TDS is not aware that TCE has proposed a specific timeframe for lifting the restricted ALO contact period prior to consideration of proposed contracts, TDS again strongly urges the ERC to support lifting the restricted contact period no later than 14 days before each proposed contract is posted for consideration by EITHER a citizen board or commission or the City Council. However, if the ERC ultimately chooses NOT to recommend lifting the restricted period before consideration of proposed

contracts, TDS would then *strongly* urge the ERC to specifically recommend that City staff present all negotiated contract documents to boards and commissions and the City Council prior to requesting a recommendation for contract approval – a recommendation that has been adopted unanimously, twice by ZWAC (also attached). To neither lift the restricted contract period prior to consideration of proposed contracts or to require staff presentation of all negotiated contract documents prior to requesting a recommendation would constitute a wholesale abandonment of the appropriate oversight role of public stakeholders and City officials vis-à-vis the City's contracting process.

Finally, TDS would call ERC's attention to ZWAC's important recommendation to Council to "Continue to keep the Anti-Lobbying Ordinance in a suspended state until such time that both the final ALO and subsequent governing Rules are drafted and adopted by Council." See ZWAC's recommendation (eleventh bullet point). Please recall that the City Council voted on 4-6-17 to temporarily waive the application of the ALO to all City waste solicitations (see attached Ordinance No. 20170406-023 and its Exhibit A) in order to allow stakeholders and City officials to "openly exchange information on Solid Waste policy issues" and "until Council has given staff direction on the policies applicable to such matters." As at least one Council member appears to be contemplating reapplication of an amended version of the current ALO to a pending waste solicitation, TDS would urge the ERC to please consider adopting the same recommendation as ZWAC in order to clearly establish the importance of allowing the ongoing policy review process – both with regard to the ALO and the other waste-related policy issues still pending before ZWAC, other Boards and Commissions and the City Council – to continue without impediment.

Thank you for your ongoing efforts and please do not hesitate to contact me directly with any questions or concerns. For your reference, here is a [link to our 10-6-17 email](#) to ERC commissioners detailing TDS' full position on ALO revisions.

Sincerely,
Bob Gregory
President & CEO
Texas Disposal Systems
512-619-9127

Bob Gregory

Subject: FW: TCE Review of Suggested Changes from TDS, Nikelle Meade and ZWAC

From: Whellan, Michael [mailto:MWhellan@gdhm.com]

Sent: Friday, October 27, 2017 6:55 PM

To: Bob Gregory <bgregory@texasdisposal.com>; Adam Gregory <agregory@texasdisposal.com>; Ryan Hobbs <rhobbs@texasdisposal.com>; Gary Newton <gnewton@texasdisposal.com>; Mark Nathan <mark@citylightsgroup.com>; David Butts <djbutts@sbcglobal.net>; Hemphill, Jim <JHemphill@gdhm.com>

Cc: Whellan, Michael <MWhellan@gdhm.com>

Subject: FW: TCE Review of Suggested Changes from TDS, Nikelle Meade and ZWAC

Fyi.

MJW.

From: Andrew Dobbs [mailto:dobbs@texasenvironment.org]

Sent: Friday, October 27, 2017 5:32 PM

To: Meade, Nikelle; 'Einhorn, Peter - BC'; 'Ohueri, J Michael - BC'; 'Kahle, Mary - BC'; 'Holmes, Fredda - BC'; 'Danburg, Debra - BC'

Cc: 'Tom, Cynthia'; 'Smith, Amy'; 'Scarboro, James'; 'Weema, Chris'; 'Palmer, Sue'; 'GErwin@spartnerships.com'; 'bcorbett@spartnerships.com'; Whellan, Michael; 'Gay Erwin (GErwin@spartnerships.com)'; 'Beth Corbett (bcorbett@spartnerships.com)'; 'jackie.goodman@austintexas.gov'; 'alba.sereno@austintexas.gov'; 'ken.craig@austintexas.gov'

Subject: TCE Review of Suggested Changes from TDS, Nikelle Meade and ZWAC

October 27, 2017

Commissioners:

As promised, here is my analysis of where the positions of the various parties are with reference to the ZWAC recommendations laid out on October 11. In this analysis I am suggesting some possible compromises that may bring us closer to a resolution to this important and challenging issue. These do not, of course, reflect the input of parties that have not yet weighed in, but should help clarify where things stand prior to their engagement.

Areas of Consensus or Near Consensus

Specific mention in the ordinance of a right to appeal all disqualifications and other penalties or determinations to the ERC and ultimately Council.

There is consensus that some sort of appeal to an authority outside of the Purchasing Department is advisable. Ms. Meade has objected to allowing an appeal to Council, and you all indicated a wariness to make ERC the body to consider the appeals. TCE does support allowing an appeal to Council, but more fundamentally we believe that some sort of appeal to a non-staff body is the key point here. We are okay with some other appointed body serving this role as opposed to the ERC, but we oppose any process that will keep the power to review in the hands of staff only.

Clarification that only Council may void a contract for violation for the ALO.

This is an area of flat consensus between the parties that have presented their positions to date.

Replace disqualification for “similar” projects with a disqualification for the SAME project.

This is an area of near consensus, with the concept apparently acceptable to all even if the mechanisms for doing so in the code being disputed. Ms. Meade proposed language to the effect of “same project or a project with a substantially similar scope of work.” While some of these terms are open to interpretation an independent appeals process should minimize the risk of abuse.

Areas Not Addressed or of Ambiguous Status

A guarantee that rulemaking will have an element of ongoing public participation, with rules ultimately brought back to the Ethics Review Commission (ERC) and Council for final review and approval.

This is not addressed in either Mr. Whellan’s or Ms. Meade’s documents. That said, no sides have to date objected to the idea that administrative rules should be subject to public approval, and we urge you to include this recommendation so that we avoid confusion and unnecessary conflicts in the future.

Definition of the term “response.”

TDS’ proposed changes to the definition proposed by staff were substantially agreed to by Ms. Meade with the insistence that the phrase “provide the goods or services solicited by the City” be kept in place. We hope that this will be acceptable to all parties, and with other protections introduced so far this suggestion from ZWAC may not be as significant as it would be under the present ALO, where this ambiguity has been abused in the past.

Assurance that the ordinance will not consider public communications to be in any way a violation.

This is a topic that has been addressed and agreed to in some ways, disagreed to in others, and unaddressed in yet others. All sides agree that statements to the media should be exempted from the ALO. As for protections that explicitly protect communications at public commission or Council meetings, this is still absent from the proposed document and nobody has expressed any objections to this so far. Finally, Ms. Meade objected to the inclusion of “business groups or advocacy groups” in permitted communications.

Assurance that independent advocacy from non-respondents will not be used to disqualify respondents.

All sides agree that organizations without any relationships to respondents are free to advocate. Ms. Meade both wants disclosure for any entities that receive contributions from respondents and opposes any explicit carve outs for this sort of behavior. We support an explicit guarantee of the right of non-profit groups to advocate on contracts. Although non-profit groups by federal law do not have to reveal their funding sources, a limited disclosure of relationships could be workable.

Clarification of subjective terms such as “influences,” “persuades,” “advance the interests,” or “discredit.” At minimum we recommend that you direct staff to provide objective standards for these terms as part of their rulemaking.

This has not been specifically addressed by the sides weighing in thus far. Ms. Meade did object to striking the term “indirectly” in sections using some of these terms, but expressed no problems with eliminating “influences” and “persuades.” She appears to have no objection to striking “advance the interests” and “discredit,” though she may also be suggesting that these could be the call of the appellate body for the ordinance. We recommend striking these subjective terms for the sake of strict clarity in the ordinance.

Areas of Remaining Disagreement

Eliminate or delineate the power of purchasing officers to determine “mitigating factors” in violations.

Ms. Meade says that they object to striking this provision, but then goes on to say that ERC (or, presumably, any entity appealed to) should have the ability to consider these factors. It strikes us as inappropriate for staff to unilaterally determine that a violation should NOT be considered because of undefined “mitigating factors,” since this non-decision cannot be appealed as far as we can tell. It may make sense to empower ERC to consider such factors, but even this may be problematic. With the revisions at hand the ordinance is essentially unambiguous, and those that violate its simple standards should not be subjectively granted passes to disregard City rules.

Striking all sections which empower staff to require recusal of elected or appointed City officials.

This is an area of substantial and significant disagreement. It seems appropriate to us to include somewhere in the ordinance an explicit prohibition on staff and other officials from contacting respondents (to supplement the existing prohibition on communications in the other direction--respondents contacting staff or Council), as well as some mechanism for recording such incidents if they do occur. What is totally inappropriate is any power given to City staff to direct elected officials or their appointments to compel recusal. It is likewise not appropriate for appointed officials to be able to compel elected officials in this way.

Some sort of authorization to publicly recommend recusal may be appropriate with elected and appointed officials able to determine whether they will comply with or reject this recommendation. But an imbalance between the powers of staff and Council is what brought us to this point; we need to prevent a new path for the same mistake.

Previously Addressed Areas Now Contested

Debarment as a Penalty

Staff's present draft revisions to the ordinance and their policy proposals earlier in the Council Working Group process had eliminated debarment as a possible penalty. There are a number of cities that rely only upon disqualification only as a penalty and do not provide for debarment. We see no reason to go back on this topic.

Beginning and Ending Points for the Restricted/No Contact Period

Staff's draft of the ALO revisions began the Restricted Contact Period after the close of the solicitation and ends it with either the cancellation of the process, the successful execution of the contract or sixty days after Council authorization to negotiate with the selected vendor. We believe that this starting point is the most appropriate, as it allows for advocacy in the instance that a proposed contract reflects bad policy or staff departure from policy. If the process begins when the solicitation opens it forces potential vendors to either go along with bad policy or to surrender their rights to bid. These are the very companies we want bidding the most, and the policy design being proposed now makes that the most likely.

As for the ending point, we see a great deal of benefit in allowing some advocacy in the period between the vendor being chosen and before it is finally decided upon by Council. Again, if the chosen contract departs from policy or reflects a bad expression of existing policy the people most likely to spot this may be firms involved in that industry and their voices could be of great benefit for the public interest.

As for the concept of a “Notice of Solicitation” before the solicitation is issued, this is better than status quo for sure, but there have been numerous concrete instances of solicitations changing between their initial design and their final issuance. Mr. Scarborough himself acknowledged the “iterative” nature of this process, so this notice seems insufficient to accomplish the goals suggested above.

Recommended Recommendation

If you wanted to make a recommendation to Council that reflects the areas of consensus or non-objection to this point you could say something to the effect of:

“The Ethics Review Commission recommends that the Austin City Council adopt proposed changes to the Anti-Lobbying Ordinance (ALO) with the following amendments:

- A guarantee that rulemaking will have an element of ongoing public participation, with rules ultimately brought back to the Ethics Review Commission (ERC) and Council for final review and approval.
- A guaranteed appeals process for all penalized violations to a board appointed by the Council.
- Clarification that only Council may void a contract for violation for the ALO.
- Clarification that disqualification only applies to solicitations for the same project or a project with a substantially similar scope of work.”

If you wanted to include our suggested recommendations for the areas of ambiguity, you could add:

- Amendment of the definition of “Response” to read “only the contents of a sealed proposal or bid submitted by an offeror replying to a solicitation to provide the goods or services solicited by the City.”
- Exemption for communications made in public meetings or to the media.
- Exemption for independent advocacy from non-respondents from being used to disqualify respondents.
- Elimination of subjective terms such as “influences,” “persuades,” “advance the interests,” or “discredit.”

Our suggestions for the areas that have not been agreed to yet or that remain areas of contention would be:

- Eliminate or delineate the power of purchasing officers to determine “mitigating factors” in violations.
- Striking all sections which empower staff to require recusal of elected or appointed City officials.
- Ending the Restricted Contact Period at some point before Council has voted to authorize the contract under consideration.

We do not at this time recommend any other specific recommendations.

Thank you again for your service on this important commission and your work so far. We look forward to the outcome of this difficult process, and are happy to answer any questions you may have on this or other topics.

Sincerely Yours,

Andrew Dobbs
Central Texas Program Director
Legislative Director
Texas Campaign for the Environment
(512) 326-5655
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**ZERO WASTE ADVISORY COMMISSION RECOMMENDATION
20171011-003b**

Date: October 11, 2017

Subject: **Recommendation from ZWAC Regarding City Code Chapter 2-7, Article 6 relating to anti-lobbying and procurement.**

Motioned By: Commissioner Blaine

Seconded By: Commissioner Bones

Recommendation

At the October 11, 2017 meeting of the Zero Waste Advisory Commission, the Commission made the following recommendation regarding the Anti-Lobbying Ordinance (ALO).

Description of Recommendation to Council

The Zero Waste Advisory Commission registers a serious concern that the recommendations of the Waste Management Policy Working Group are not well reflected in the drafted changes to the Anti-Lobbying Ordinance (ALO) and recommends adoption of the changes to the ALO detailed below:

- A guarantee that rulemaking will have an element of ongoing public participation, with rules ultimately brought back to the Ethics Review Commission (ERC) and Council for final review and approval.
- Specific mention in the ordinance of a right to appeal all disqualifications and other penalties or determinations to the ERC and ultimately Council.
- Clarification that only Council may void a contract for violation for the ALO.
- Striking all sections which empower staff to require recusal of elected or appointed City officials.
- Assurance that the ordinance will not consider public communications to be in any way a violation.
- Assurance that independent advocacy from non-respondents will not be used to disqualify respondents.
- Definition of the term “response.”
- Clarification of subjective terms such as “influences,” “persuades,” “advances the interests,” or “discredits.” At minimum we recommend that you direct staff to provide objective standards for these terms as part of their rulemaking.
- Eliminate or delineate the power of purchasing officers to determine “mitigating factors” in violations.
- Replace disqualification for “similar” projects with a disqualification for the SAME project.”
- Continue to keep the Anti-lobby Ordinance in a suspended state until such time that both the final ALO and subsequent governing Rules are drafted and adopted by Council.

Vote: 8-0-0-2

For: Commissioners Acuna, Blaine, Bones, de Orive, Hoffman, Masino, Rojo, White,

Against: 0 Abstain: 0 Absent: Joyce, Gattuso

Attest:



Michael Sullivan, ZWAC staff liaison



BOARD/COMMISSION RECOMMENDATION

Zero Waste Advisory Commission

Recommendation Number: (20170712-003a): Solicitation Review Process

WHEREAS, it is the Responsibility of the Zero Waste Advisory Commission (ZWAC) to review, evaluate and make recommendations to the City Council and the City staff regarding City policies concerning solid waste, recycling, organics management and Zero Waste; and

WHEREAS, implementation and/or adherence to City policies must be reflected in the process of soliciting for and procuring goods and services; and

WHEREAS, the ZWAC desires the opportunity to effectively review, evaluate and make recommendations concerning solicitations for goods and services, and the contracts derived from those solicitations; and

WHEREAS, the ZWAC cannot effectively ensure adherence to City policy or make recommendations regarding the proper interpretation and application of City policy without the opportunity to review proposed solicitation documents prior to their issuance, and proposed contract documents prior to a request for approval.

NOW, THEREFORE, BE IT RESOLVED that the Zero Waste Advisory Commission of the City Of Austin requests that staff present to the ZWAC the “Scope of Work” and the “Scoring Criteria” for proposed solicitations prior to the official issuance of any solicitation related to solid waste, recycling, organics management and/or Zero Waste.

BE IT FURTHER RESOLVED that the ZWAC requests the staff to present negotiated contract documents to the ZWAC prior to requesting a recommendation for approval of a contract related to solid waste, recycling, organics management and/or Zero Waste.

BE IT FURTHER RESOLVED that the ZWAC asks the City Council to provide directive to ARR staff to comply with this recommendation in an effort to facilitate sound and consistent policy throughout.

Date of Approval: July 12, 2017 **Vote: 8-0-0-2**

For: Commissioners Acuna, Masino, Gattuso, Rojo, Hoffman, Blaine, Bones, de Orive

Against: 0 Abstained: 0 Absent: Commissioners White, Joyce

Attest:

Michael Sullivan, ZWAC staff liaison



BOARD/COMMISSION RECOMMENDATION

Zero Waste Advisory Commission

Recommendation Number: (20170809-003a): Solicitation Review Process

WHEREAS, it is the Responsibility of the Zero Waste Advisory Commission (ZWAC) to review, evaluate and make recommendations to the City Council and the City staff regarding City policies concerning solid waste, recycling, organics management and Zero Waste; and

WHEREAS, implementation and/or adherence to City policies must be reflected in the process of soliciting for and procuring goods and services; and

WHEREAS, the ZWAC desires the opportunity to effectively review, evaluate and make recommendations concerning solicitations for goods and services, and the contracts derived from those solicitations; and

WHEREAS, the ZWAC cannot effectively ensure adherence to City policy or make recommendations regarding the proper interpretation and application of City policy without the opportunity to review proposed solicitation documents prior to their issuance, and proposed contract documents prior to a request for approval.

NOW, THEREFORE, BE IT RESOLVED that the Zero Waste Advisory Commission of the City Of Austin requests that staff present to the ZWAC the “Scope of Work” and the “Scoring Criteria” for proposed solicitations prior to the official issuance of any solicitation related to solid waste, recycling, organics management and/or Zero Waste.

BE IT FURTHER RESOLVED that the ZWAC requests the staff to present negotiated contract documents to the ZWAC prior to requesting a recommendation for approval of a contract related to solid waste, recycling, organics management and/or Zero Waste.

BE IT FURTHER RESOLVED that the ZWAC asks the City Council to provide directive to ARR staff to comply with this recommendation in an effort to facilitate sound and consistent policy throughout.

Date of Approval: August 9, 2017 **Vote: 9-0-0-1**

For: Commissioners Acuna, Masino, Gattuso, Rojo, White, Blaine, Bones, de Orive, Joyce

Against: 0 Abstained: 0 Absent: Commissioner Hoffman

Attest:

Michael Sullivan, ZWAC staff liaison

ORDINANCE NO. 20170406-023

AN ORDINANCE WAIVING CHAPTER 2-7, ARTICLE 6 (ANTI-LOBBYING AND PROCUREMENT) OF THE CITY CODE REGARDING SOLICITATIONS FOR THE COLLECTION, PROCESSING, RESALE, REUSE AND/OR DISPOSAL OF MUNICIPAL SOLID WASTE, REFUSE, BIOSOLIDS, COMPOST, ORGANICS, SPECIAL WASTE AND RECYCLABLES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. FINDINGS. The City Council adopts the following findings:

The Purchasing Office issues solicitations for a variety of municipal solid waste and waste related services, including but not limited to the collection, processing, resale, reuse and/or disposal of municipal solid waste, refuse, biosolids, compost, organics, recyclables and special waste such as Class 2 industrial non-hazardous waste (collectively referred to as “Solid Waste”); and

1. Chapter 2-7, Article 6 (Anti-Lobbying and Procurement) (“Anti-Lobbying Ordinance”) restricts respondents to a solicitation from making certain representations to City staff and officials while a solicitation is active and such restrictions extend for a period of ninety days when a solicitation has been withdrawn or all responses rejected with the intention of reissuing the request for proposals (the “No-Contact Period”); and
2. Council clearly stated on the record at their March 2, 2017 regular meeting that there is no intention to reissue Solid Waste solicitations until such time as the policy issues are vetted; however, in order to avoid any confusion of the application of the Anti-Lobbying Ordinance and to encourage open dialogue while developing City policy on these matters, Council finds it is in the public’s best interest to waive the Anti-Lobbying Ordinance for the solicitations specified by Council and expand the waiver to future solicitations related to Solid Waste; and
3. By waiving the Anti-Lobbying Ordinance, stakeholders and City staff will be able to openly exchange information and data on Solid Waste policy issues without the requirement of funneling all information through the authorized contact person for

the solicitations still subject to the Anti-Lobbying Ordinance or wait for the ninety day No-Contact Period to expire; and

4. Council has denied award of the solicitation related to citywide refuse, recycling, organics and special waste collections for City facilities (SLW0514), and postponed indefinitely the solicitation related to organics processing services (SLW0509REBID); and
5. The City Council took action on the following requests for proposals and on October 20, 2016, postponed indefinitely the sale and removal of compost materials solicitation (JXP0501), and withdrew the management of biosolids reuse (CDL2003) solicitation on December 15, 2016; and
6. As no new solicitations have been issued for the same or similar services for the request for proposals described in Section 6 above, and ninety days has passed since Council action, the No-Contact Period and the Anti-Lobbying Ordinance is no longer applicable to the request for proposals and respondents as listed in Exhibit "A;" and, further, the City has not received any anti-lobbying complaints on these two solicitations since Council's action on the items; and
7. On March 23, 2017, City Council created a working group to address a broad range of Solid Waste issues, as well as other issues related to solid waste policy and contracts as it deems necessary; and
8. The working group is scheduled to return to the full City Council with recommendations no later than June 1, 2017; and
9. Council finds this action does not create a precedent or bind the Council to waive the Anti-Lobbying Ordinance for future solicitations not otherwise described in this ordinance and each case is reviewed separately on its own merits and in the Council's sole discretion.

PART 2. Waiver of Chapter 2-7, Article 6. City Council waives the requirements and application of Chapter 2-7, Article 6 (Anti-Lobbying and Procurement) of the City Code to the following: (1) solicitations related to citywide refuse, recycling, organics and special waste collections for City facilities (SLW0514) and organics processing services (SLW0509REBID), and to the respondents to the solicitations shown in the attached Exhibit A, incorporated by reference; and (2) future solicitations, including request for

proposals and invitations for bid related to the collection, processing, use, resale and/or disposal of municipal solid waste, refuse, biosolids, compost, organics, recyclables and special waste such as Class 2 industrial non-hazardous waste, excluding solicitations and contracts related to consulting, marketing and outreach of same, until Council has given staff direction on the policies applicable to such matters.

PART 3. Council finds that the waiver presented in this ordinance constitutes an emergency. Because of this emergency, this ordinance takes effect immediately on its passage for the immediate preservation of the public peace, health, and safety.

PASSED AND APPROVED

April 6, 2017

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§
§

Steve Adler
Mayor

APPROVED: _____
Anne L. Morgan
City Attorney

ATTEST: _____
Jannette S. Goodall
City Clerk

EXHIBIT A

Respondents to the following Request for Proposals:

A. Waiver of Anti-Lobbying Ordinance:

1. Citywide refuse, recycling, organics and special waste collections for City facilities (SLW0514):
 - a. Republic Services
 - b. Waste Management of Texas
2. Organics processing services (SLW0509REBID):

Employee Owned Nursery Enterprises, LTD dba Organics “By Gosh”

B. Expired No-Contact Period of the Anti-Lobbying Ordinance:

1. Sale and removal of compost materials solicitation (JXP0501):
 - a. Allen Click
 - b. Organics By Gosh
2. Management of biosolids reuse (CDL2003):
 - a. Synagro of Texas-CDR, Inc.
 - b. Denali Water Solutions
 - c. Forsythe Brothers Infrastructure, LLC
 - d. Texas Elements Inc.
 - e. Allen Click