

**TEXAS DISPOSAL SYSTEMS PROPOSED CHANGES TO CITY STAFF'S REVISED
ANTI-LOBBYING ORDINANCE**

October 6, 2017

*To avoid infringing on **First Amendment free speech rights**, ensure administrative objectivity, avoid confusion, and deliver consistency and transparency, TDS proposes the following:*

NO CONTACT PERIOD

- To acknowledge that specific communications are permitted, change the name “NO CONTACT PERIOD” to “RESTRICTED CONTACT PERIOD”.
- In recognition of City staff’s dual role as waste industry competitor *and* regulator, for all solid waste, recycling and organics management solicitations, lift the “RESTRICTED CONTACT PERIOD” a minimum of 14 days prior to the date a contract or RCA is considered by the City Council and/or Zero Waste Advisory Commission.
- For solicitations unrelated to solid waste, recycling and organics management, clarify that the “RESTRICTED CONTACT PERIOD” begins at the final effective date and time solicitations are due, and ends at either initial execution of the resulting contracts or 30 days after Council authorization, whichever is earliest.

PERMITTED REPRESENTATIONS

- Ensure that the definitions of “PERMITTED REPRESENTATION” and “PROHIBITED REPRESENTATION” are mutually exclusive.
- Ensure that the definition of “REPRESENTATION” excludes communications to the media and community groups.
- Ensure that the definition of “REPRESENTATION” is specific to *direct* communications with identified parties, rather than encompassing all communications to all parties.
- Ensure that the definition of “PROHIBITED REPRESENTATION” is based on the content of the communication itself rather than on the listener’s reaction by removing words like “influences” or “persuades.”
- Eliminate all definitions of “PROHIBITED REPRESENTATION” that require subjective analysis, including “advances the interest of the respondent” and “discredits the response of any other respondent.”
- Ensure that the definition of “PERMITTED REPRESENTATION” includes communication related to any *existing* contract *not only* between the respondent and the City but also between *any* person or entity and the City.

- Clarify that while making a campaign contribution to a City Council member does *not* constitute a “PROHIBITED REPRESENTATION” in and of itself, any communication associated with making the campaign contribution continues to be subject to ALO restrictions.

DEFINITIONS

- Clarify that all definitions apply consistently across the ordinance.
- Narrow the definition of “AGENT” to mean *only* a person acting at the explicit request of a solicitation respondent in exchange for consideration.
- Narrow the definition of “RESPONSE” to mean *only* the contents of a sealed proposal submitted by a bidder in response to a solicitation.
- Narrow the definition of “RESPONDENT” to a person or entity who submits a “RESPONSE” *excluding* persons or entities who have withdrawn a “RESPONSE” or been disqualified by the City.

ENFORCEMENT / “MITIGATING FACTORS”

- Establish that the ALO is subject to enforcement by the Ethics Review Commission.
- Eliminate the proposed authority of the purchasing officer to “consider mitigating factors” in determining violations.
- As per the original recommendation of the Waste Management Policy Working Group, establish that all administrative rules associated with the ALO must be approved by the City Council before taking effect.
- As per the original recommendation of the Waste Management Policy Working Group, establish that all staff-determined ALO disqualifications are subject to an appeal process including a protest hearing before the Ethics Review Commission.
- Establish that all staff-determined ALO disqualifications are subject to a final appeals process including a protest hearing before the City Council.

PENALTY

- Clarify that a respondent who is disqualified under the ALO may not respond to a subsequent solicitation for the same – rather than a “similar” – project.
- Clarify that any contract awarded to a respondent later determined to have violated the ALO with respect to the original solicitation can be voided by the *City Council*, rather than by City staff.

RECUSALS

- Eliminate compulsory recusals of City officials who receive “a representation.” This staff-proposed *addition* to the ALO not only establishes an overbroad restriction but is also in conflict with existing ethics rules charging City officials, rather than staff, with determining when recusal is required.

ADMINISTRATION

- Clarify that if the purchasing officer makes any modifications to prohibitions for any solicitation, each solicitation respondent must be promptly notified.