

**WHAT FREE SPEECH ACTIVITIES WOULD THE ANTI-LOBBYING ORDINANCE PURPORT TO BAN?**

It is clear that both the current and proposed revised Anti-Lobbying Ordinance (ALO) allow City management to interpret the ordinance in a manner that can disqualify and debar solicitation respondents for exercising free speech rights protected under the U.S. Constitution's First Amendment. To protect free speech rights and honor the law, TDS believes that the ALO must allow City-licensed waste services providers – and all other City vendors who respond to City solicitations, if the Council so chooses – to:

- 1. Communicate about any facility, product, service, program, permit application, proposal or contract, including any solicitation or solicitation response, to any audience at any time without restriction, excluding identified City officials and employees.**
- 2. Express any view about any political or policy issue, including any City contracting or operations issue, to any audience at any time without restriction, excluding identified City officials and employees; and**
- 3. Communicate about any facility, product, service, program or permit application and express any view on any political or policy issue to any City official or City employee at any time without restriction, excluding only direct, solicitation-specific advocacy during the procurement process as defined by the ALO, assuming the ALO is Constitutionally compliant.**

Given the ambiguity in the proposed revised ALO, and City staff's previous instances of overly broad and unpredictable interpretation and application of the ALO, TDS has been forced to choose between bidding for contracts and giving up its free speech rights. Without clarification from the City, a court may have to determine what activities are allowable under the ALO and/or the First Amendment.

Thus, TDS asks: Would the employees and agents (as defined in the ALO) of a contractor responding to a solicitation be restricted from conducting any or all of the following activities outside of a public meeting, even if the communications are not made directly to City officials or City employees?

1. Advocating the contractor's views and positions on a variety of local waste policies and ordinance revisions currently under consideration by City officials, boards and commissions and City Council members?
2. Describing the contractor's response to the solicitation, including the advantages of that response, to the media, stakeholder groups, advocacy groups, industry trade associations, and similar organizations?
3. Promoting and advertising the contractor's services, facilities, products and programs through various forms of media, stakeholder groups, advocacy groups and industry trade associations?
4. Executing a public campaign to identify and promote greater reliance on the contractor and its state and county exempt tier, notification tier, registration tier, permit tier and/or County Solid Waste Siting Ordinance compliant facilities, to achieve the City's Zero Waste goals and objectives?
5. Voluntarily proposing various amendments to the contractor's existing long-term contracts, which allow such contract amendments for the provision of services and programs needed by the City, and actively promoting the benefits of those proposed contract amendments?

6. Participating in the public discussion involving the selection of a new City Manager and a new Director for Austin Resource Recovery?
7. Defending against attempts to displace and/or diminish the contractor's role or rather to participate in the Austin marketplace?
8. Defending against attempts by the City management staff to take over, either directly or indirectly through City contractors, any current or prospective customers of the contractor?
9. Seeking City support and utilization of new and/or expanded contractor facilities?
10. Proposing privatization of curbside residential collection services with the contractor and articulating the merits of doing so?
11. Commenting on and potentially contesting attempts to re-open, combine and/or expand any closed or operational landfill facility currently located in the Austin service area?
12. Presenting and publicizing evaluations of City operations and City contracts for solid waste, recycling and organic waste processing and composting services?
13. Pursuing, as the plaintiff or defendant, any necessary litigation against the City or another waste services provider?
14. Asserting the contractor's positions and views on revisions to or new administrative rules for ordinances involving waste services within Austin's jurisdiction, including the pending 5-year update of the Austin Resource Recovery Master Plan, even if those administrative rules , ordinance discussions or Master Plan updates involve same or similar services as those being solicited at that time?
15. Communicating with City ARR, Purchasing, Legal and City Manager's office regarding the ongoing management of an existing contract between the contractor and the City, even if that contract involves same or similar services as those being solicited at that time?