

**WHY TEXAS DISPOSAL SYSTEMS FAVORS REVISING
THE ANTI-LOBBYING ORDINANCE
OCTOBER 9, 2017**

TDS' position in favor of revising the ALO stems first and foremost from the unique conflict inherent in City staff's dual role as waste services industry regulator and industry competitor – a conflict specifically acknowledged in City staff's [2/15/17 "Policy Considerations" memorandum to City Council](#), which notes that the City's current practice of providing waste services to special events "competes with private haulers." (City staff regularly utilizes contracted "toll haulers" to provide a full range of waste-related services – including trash, recycling, composting, and portable toilets – to Austin special events, [often for free](#), in direct competition with non-contracted private waste services providers, including TDS, and in direct conflict with [city code](#) prohibiting such competition.)

In addition, in 2010, City staff pursued a plan to compete directly with City-licensed private waste providers for the provision of recycling processing services, spending over \$100,000 to secretly prepare and submit an internal bid in response to a City of Austin RFP for development of a Materials Recovery Facility (MRF), while at the same time [utilizing the ALO to attempt to disqualify TDS from responding to the same solicitation](#) – a disqualification that was later [rebuked as "improper" and "unsupported" by U.S. District Court Judge Lee Yeakel and ordered reversed](#). Demonstrating the absurd range of interpretations allowed by the current ALO and capitalized on by City staff in pursuit of competitive objectives in the waste management marketplace, Howard Lazarus, then Director of Public Works, in submitting the City's internal bid to the City, signed the required ALO certification indicating that City staff had not communicated with and would not communicate with City staff or City officials during the RFP response review, scoring, and presentation to boards and commissions and to City Council; something not possible to accomplish. City staff even scored their own RFP response as third, behind those of Republic Waste and Waste Management, Inc.

Even now, given the broad authority that Austin and municipalities across the state and country have to regulate and control the provision and pricing of many waste services (note, for example, the [City of Los Angeles' controversial ongoing takeover of much of L.A.'s commercial waste services](#)), the prospect of competitive conflict between City staff and licensed local waste services providers like TDS is and will remain ongoing, raising concerns about the potential for staff abuse of the ALO, which is essentially a 'gag order' against all competitors – other than City staff – under the penalty of debarment, with no independent oversight or ability to appeal.

Indeed, TDS has grown increasingly alarmed since the 2008 arrival in Austin of Assistant City Manager Robert Goode to witness City staff's misuse of the "no-contact" provisions in the current ALO to effectively silence criticism, quash questions and withhold information from Council about waste contracts and policies. As per [the document TDS presented to the Waste Management Policy Working Group](#) this summer, over a span of nearly 8 years beginning in Nov. 2009, there have been only two brief periods – totaling just 56 days – where there were no ALO "no-contact" restrictions in place for solid waste, recycling or organics management solicitations. In other words, if TDS had responded to every waste-related solicitation over the past 8 years, we would have been prohibited from speaking

with City officials about most waste-related issues for nearly the full length of that time – not only a plainly overbroad infringement on free speech, but also a ludicrously impractical restriction given TDS’ numerous City waste contracts and TDS services capable of responding to all of these solicitations.

Overall, TDS’ years of experience with City staff’s oversight-free interpretation and enforcement of the ALO has led us to the inescapable conclusion that the ordinance’s vague and broad provisions and penalties have been abused – especially as it relates to solid waste, recycling and organics management solicitations – to achieve staff’s competitive objectives and to punish those who raise concerns with the City Council or other concerned stakeholders.

For these and other reasons – including the existential risk to our business associated with a possible staff-imposed ALO debarment and resulting termination of our City contracts, among them a 30-year contract for waste disposal and yard trimmings processing, and a 20-year contract for recyclables processing and marketing – TDS determined in 2015 that we could no longer respond to City waste solicitations under the current ALO as interpreted and administered by City staff.