

11-1-17 Ethics Review Commission Meeting

Re: Anti-Lobbying Ordinance Revision

Sue Palmer: Fredda Holmes.

Fredda Holmes: Here.

Sue Palmer: Brian Thompson.

Brian Thompson: Here.

Sue Palmer: Ben Stratmann.

Ben Stratmann: Here.

Sue Palmer: Meagan Harding.

Meagan Harding: Here.

Sue Palmer: Mary Kahle.

Mary Kahle: Here.

Sue Palmer: Dennis Speight.

Dennis Speight: Here.

Peter Einhorn: Thank you Sue. All right, it's the first of November, we're in City Hall. We're in room 1027, for the record. Anyway, we have one general issue area on our Agenda this evening and we're going to start. We have some folks who signed up for general citizens communication but I'm assuming that y'all want to speak on the Agenda item in question, not just telling us about black helicopters flying over...

Michael Whellan: Or about the Astros.

Peter Einhorn: Considering allegiances...

Michael Whellan: Let me figure out how many votes are for Astros...

Peter Einhorn: So, we're taking up the issue related to the Anti-Lobbying Ordinance and procurement. We have a couple of agenda items on the agenda tonight. We can go into Executive Session if we have any questions. Cindy is actually out of the office today but Chris Weema from the Law department is here and he can answer any legal questions. And we may just kind of want to dive into this and if legal questions come up we'll take up Executive Session. Do we have a room to go to upstairs? Okay. So let's jump to the old business items; discussion and possible action regarding proposed amendments to Article 6, Anti-Lobbying and Procurement of the City Code, Chapter 2-7, Ethics and Financial Disclosure, including the possible recommendation to Council. And in your backup, your Working Group met twice over the last couple of, over the last week with stakeholders to discuss this process. We've received a lot of information, and by email we kind of kicked around, at the last Working Group meeting we kicked around some of the things we wanted to prioritize and I sent out an email to the Working Group and it should be in your backup. And the issue areas that we coalesce around you'll see on this are the Restricted Communication Period, Enforcement, Debarment, the Reporting Obligation and then a recommendation around the usage of the American Bar Association's model procurement rules, and so we'll just dive into this. The first one is the Restricted Communication Period. We found it compelling that there was a lack of sort of free and clear time for vendors to speak to pertinent staff at the City, so we felt like a review was probably warranted and this says general agreement, it should say, 'there was general agreement among the various stakeholders about the start date for the Restricted Communication Period should be at the final effective date and time a response to a solicitation is due,' though by email, actually, Commissioner Kahle raised a good point, which is that the Restricted Communication Period should start when the solicitation is published and I find that to be compelling. Do you want to speak a little bit about that?

Mary Kahle: Well, one of the things that we discussed in the Working Group last week, and I mentioned it to Mr. Scarboro in a specific question, was whether or not respondents have an opportunity to ask questions and have them answered in the period after the solicitation is published. And so the response was ‘yes, they can ask questions, have all the answers published to all the respondents,’ and so, that tells me that although some of the respondents have concerns and believe they should be, have the availability to ask questions of any staff, of other staff members right after it’s published, that told me that that was not necessary, that in fact if they ask question of the contact person, the contact person is obligated to find them and publish them. So, in the interest of transparency for everyone and kind of a competitive process, we thought that it was more important to start that No-Contact Period when it was published.

Peter Einhorn: Okay, and then with regards to the end date of the Restricted Communication Period there was not general agreement. Texas Disposal Systems had asked for 30 days. Texas Campaign for the Environment – sorry, 30 days following to Council authorization, I should say, to clarify. Texas Campaign for the Environment had said that they were okay with either 30 days or 60 days, and staff recommendation was 60 days. Other stakeholders had signed on for 60 days, and I think some of the stakeholders, and Republic said they wanted to stick to the old rules from the existing ALO, is that correct?

Woman: Yes.

Peter Einhorn: Yeah, okay. So there wasn’t general agreement and as we kind of discussed it, you know, we thought a recommendation would be to split the difference go with the 60 days.

Debra Danburg: 45 days. But because of what staff had offered, one post I would like for us to consider is 60 days or when the contract is signed, whichever is sooner. That way, if it really does take staff 60 days, that’s fine, but if the contract is signed in 15, or 30, or 40, that can be _____.

Peter Einhorn: You’re saying 60 days or whenever the contract is signed, whichever is sooner?

Debra Danburg: I wanted to give a little bit of overview to the whole group as to the context, if I might.

Peter Einhorn: Sure.

Debra Danburg: Council had bids before them and what we have to realize as the Working Group is that while we were being pushed because of the solid waste aspect of it, whatever it is that we’re doing is applying to all the bidders. All the purchasers, all the procurements, and so we wanted to try to make it so that it was clear, the definitions were tightened up. There were some places where it was loosey-goosey. I mean, are you representing somebody if your next-door neighbor is a City Council member and you say, “I had that landscaper and they were great.” You know what I mean? So, we recommended a lot of tightening up of those kinds of definitions. The other thing that really bothered us and one of the reasons we went to the eventual recommendation, the recommendation that we eventually get to the ABA model proposal, is that appeals from decisions didn’t have the due process that we felt like was an important thing. If staff ruled against somebody they were kind of in a hellhole for a length of time, and made it so that there may not be as many bidders. And our feeling was that the more bids you have, the better it is for the taxpayers of the City because they’ll be able to have competitive bidding; they’ll be able to see more ideas for how to fulfill a contract. So to try to get rid of that, that bar to bidding, we wanted to make it so that there was clear due process and that there was an appellate group that was outside of staff so that people, if they felt like they were being disfavored by staff, they would have a route to go, that was an appellate route that they felt was fair and approachable. So that, plus trying to get clearer on the time, the quiet times, the No-Contact times, so that we didn’t have a situation where if you’re a big guy and you can afford to hire lawyers or you have compliance department that can say ‘these days are okay, these days are not’, you know, or appeal to Federal Court, that’s one thing. But we want to be able to have a situation where it’s sufficiently clear that smaller bidders trying to make an entrance to the market feel like it’s clear enough that they can go forward without having to have those kinds of backups outside of the usual system. Is that fair?

Peter Einhorn: Yes. Thank you. Okay. So then the next piece that we focused in on was the enforcement provision and if y’all will remember, all of this came out of the Waste Management Policy Working Group of the Council, where they made some recommendations to staff that lead to the ALO amendments, and they had recommended to staff that the Anti-Lobbying Ordinance be rewritten ‘to clarify procedures for determining violations, judgments, and penalties and

penalty enforcements and incorporate an option to engage a third party reviewer such as the Ethics Review Commission to determine violations, judgments, and penalty enforcement.’ One of my big things is making sure there is due process. As Debra said, an appellate process to clarify that the entity that makes the determination is not also the entity that appoints the person overseeing and hearing the appeal. I think that the Working Group found that to be compelling and so the suggestion, the suggested language is ‘the Ethics Review Commission feels strongly that a fair and impartial due process is vital to any conflict resolution process and urges the City Council to carefully consider this when amending the Anti-Lobbying Ordinance. We concur with the Waste Management Policy Working Group that a third party enforcement entity should be put in place. Whether the Ethics Review Commission is the appropriate entity to provide that enforcement oversight we do not take a position on. We serve at the pleasure of the City Council and will execute our duties as defined by the Council.’ And I should say I have some extra copies of all this. I don’t have enough copies for everybody but if you guys want to take one. So, that’s kind of the important... I mean, for me, whether the Ethics Commission is the right entity to do this, is not a huge addition to our work load... *(inaudible)* Every little bit adds to our workload, we have a lot of Working Groups that are looking at recommendations to Council on various pieces of code in our jurisdiction... *(inaudible)* So, I think we can finish it off by the final hearings, so... I’m certainly hoping for the possibility that it is not a huge addition to our workload and staff, but I will leave that up to Council. Then the next part is Debarment. So the staff recommendation had removed debarment but I think there’s consensus among the Working Group that giving the ALO some teeth, and enabling some at least temporary debarment could be reinserted into the Anti-Lobbying Ordinance. Reporting obligation and self-recusal provision... Debra, do you want to speak to that a little bit? Because that was the one you really felt... *(inaudible)*

Debra Danburg: There was a provision that would, in fact, allow staff to recuse, for example, a City Council member, if a staff member and a City Council member got into a situation where if that City Council member has talked to a constituent, the constituent doesn’t know whether the periods of on and off are. The bidders do, the constituents don’t. So by making it tighter as to who is a representative on the subject area, and then also making it a self-recusal, rather than having one entity who’s already decided that they wanted a different contractor, we thought that was a fairer way to do it. So if for example, a City Council member felt like they in fact were conflicted because of input they had, they can recuse themselves but if it was just a casual recommendation to them, it was not a cause for recusal.

Peter Einhorn: *(inaudible)* It’s up to us to figure out when we need to recuse ourselves and I think that’s the appropriate way to go forward with this. *(inaudible)* The onus should be on them to know when they should self-recuse. Then the last item was the American Bar Association model procurement rules. We didn’t have a chance to dive deep into this, but it sounds like the American Bar Association has some guidance on this and I think there was consensus that the Council should explore finding ways to make our system more unified and more consistent with other procurement systems, just to make the process of doing business with the City as easy and consistent as possible. I think that creates opportunity... *(inaudible)* We’re didn’t make a specific recommendation that they adopt it but that they explore that.

Debra Danburg: On that subject, both the City staff and the bidders who were represented in our meetings have dealt in other cities by and large with those procedures.

Peter Einhorn: So that is, in a nutshell, the Working Group recommendations. There are stakeholders here who would like to speak, and I think we’ll just go through them in order. Steve Shannon.

Steve Shannon: Stand here somewhere?

Peter Einhorn: You can come up here and stand or have a seat at the table.

Steve Shannon: Thank you.

J. Michael Ohueri: Before we do that...

Peter Einhorn: Sorry, yeah, do you want to share some comments before we start?

J. Michael Ohueri: I just have one thing I would be concerned about in terms of the recommendation of the ERC... *(inaudible)* but as far as the general start date, what is your understanding of what the recommendation could be... *(inaudible)*

Peter Einhorn: ... at the time the solicitation is published.

J. Michael Ohueri: I guess what I was also suggest as well, is either at the time or some prescribed period after the time...

Peter Einhorn: You're talking about the end date?

J. Michael Ohueri: I'm talking about the beginning date. So let's say the beginning date was published is anywhere from 7 to 14 days after being published. I think that's something that should be considered as well in terms of taking into account the concerns that some stakeholders had (inaudible) the solicitation itself and how it effects policy of the City, giving stakeholders some short period to be able to speak on that issue.

Peter Einhorn: Did you have anything else you wanted to add on any of the other points?

J. Michael Ohueri: No.

Peter Einhorn: Okay. Mr. Shannon.

Steve Shannon: Good evening; appreciate the opportunity to address you. My name is Steve Shannon, I represent Waste Connections. We are the second largest solid waste services provider in North America, the third largest in the United States. Waste Connections and its predecessors have been in the Austin marketplace for more than 20 years. I've personally been in the industry for 42 years, mostly working with local government. We participated in the Solid Waste Policy Focus Group and submitted comments to them, to the City Council, to ZWAC and to this body. We want a fair and level playing field. The recent solicitations that were put out, we chose not to bid those because we anticipated interference, which it appears to us that is exactly what has happened. We don't want to spend the time, effort and money that it takes to go through a solicitation and have it thrown out by somebody that either bid or didn't bid for real, or perceived, or not real reasons. It's been our experience that the Purchasing Department puts out legitimate bids, vets them properly, and this kind of interference... we think that we've got a lot that we can bring to the benefit of the City of Austin and its citizens, but until we get a fair and level playing field, we're not going to bid. The Purchasing Department recommendation that the ALO begins at the time of contract award is contrary to the recommendations of the Focus Group. That, in our opinion, totally subverts the intent of this. We agree that it should begin at the time the solicitation is issued. We might agree to a 5 day or 10 day period after that, but one of the points that was made up in some of the documents by, or made by Texas Campaign for the Environment is that there's no opportunity for people to complain or challenge the RFP or anything like that. It's a matter of record when these things are issued that there is a question and answer period. There is a pre-bid conference to answer questions, ask questions, challenge things, get things changed. And then, normally, there's even more time after that to respond to the City's answers from the pre-bid conference; you can ask for further clarification, or further challenge what's going on. So there is a process, it's a matter of public record. We think that it should start as soon as possible. The Anti-Lobbying should start as soon as possible, not once the bids are due. That just allows all the lobbying to go on.

Debra Danburg: Excuse me, Peter. Let me ask for a little more elucidation on this point if you would, because one of the things we were concerned about is number one, we were told there's not always a pre-bid conference, but that they try to have them. Number two is, if the bid is restrictive in a way that some creative people could do better for the taxpayers with some different language, do you think there's adequate means for input on that so that the bid can be altered after it's originally proposed, as long as everybody knows about it, and it's public knowledge.

Steve Shannon: Good question. You're correct, there's not always a pre-bid conference, but generally on these solid waste bids, they're large enough that there is. On something small there may not be, but generally on these things, I've never known there not to be. The other thing, to answer your other question, I believe that there is adequate opportunity through the question and answer period, in the pre-bid conference, and post pre-bid conference period to suggest things. I mean, that could be, the question could be, 'Would it make any sense to do it this way?', or 'that way?', or 'change this or change that? 'Would the City perceive that as a benefit?' Through that process those changes or modifications can be suggested and then the onus on the City staff to consider that. It's a matter of public record.

Debra Danburg: One of the things we had to keep considering is, we understand that all of the bids that affect mostly all of our, are of that magnitude, but what we're writing has to be, you know, landscape around the library.

Steve Shannon: Yes. Well perhaps there needs to be some sort of, I don't know, differentiation between small bids and big bids, or something, that all of them over, you know, a hundred thousand dollars or something, have to have a pre-bid conference, or something like that; smaller ones perhaps do not. I tell you, it's been my experience, I've responded to hundreds of municipal solid waste bids. Almost always there's a pre-bid conference.

Debra Danburg: My feeling is that the Department can do that, just by their own internal procedures, if that's needed.

Steve Shannon: May I continue, then?

Debra Danburg: Sure.

Steve Shannon: I know that the Purchasing Department suggested that the Anti-Lobbying start at the time the bids are due because it's difficult for them to ascertain if somebody might be in violation. It would seem to me it would be a simple enough thing, and I know some things are never as simple as they seem; to issue an email to everybody in the City that says these solicitations are ongoing, on this date, intended to end on this date. If somebody comes into your office and starts talking to you about this, look at this email, start taking notes, record this. But for it to not start until the time the bids are due, it has totally subverted... allowed all this lobbying to go on prior, and we're not in favor of that.

Brian Thompson: Okay, let me interrupt you a sec, Peter, were we doing the three minute... we didn't technically start it.

Peter Einhorn: We did not, and we should, we probably should, yes.

Brian Thompson: Okay. I actually timed it and it was right about 3 minutes, even after...

Peter Einhorn: I think we should give him a hair more time since he didn't know a clock was on him.

Steve Shannon: I appreciate that.

Dennis Speight: I'm the normal timekeeper...

Steve Shannon: I do appreciate the opportunity to address you and I believe that I've made the gist of what I'm wanting to say. We want a fair and level playing field. We've got a lot that we can bring to the City, we think, but we want that to be judged upon its merits under a fair and level evaluation process, without interference. Thank you.

J. Michael Ohueri: And before our next person comes, Chris, can I just ask you a quick question. Are people allowed to speak to the Council, or make any communications during a pre-bid period?

Chris Weema: Under the current Anti-Lobbying Ordinance?

J. Michael Ohueri: Under the current Anti- and under the draft.

Chris Weema: So there is an exception for any communications made to quote 'bodies', at a body-called meeting, under the Meetings Act. That language, I believe, may have been slightly revised, but I don't think the intent was revised, it was intended to clarify. So to the extent that the communications happen at a regularly called, a properly posted and called Council meeting, or a Board or Commission meeting, that would be acceptable under both the current Anti-Lobbying and... *(inaudible)*

Peter Einhorn: Okay. Any other questions? All right, next speaker we have signed up is Gary Newton, who is donating to Michael Whellan, but Michael you didn't sign up yourself. So, do you also want to have an opportunity?

Michael Whellan: Yeah I would like an opportunity. I didn't mean to but I'll sign up.

Peter Einhorn: Just sign it...

Michael Whellan: I'll sign it when I'm done.

Peter Einhorn: Six minutes.

Michael Whellan: Thank you. I'll be quick, maybe. So I've handed out two pieces of paper, and first of all, thank you very much for creating a Working Group and going through this. I appreciate that very much. And I appreciate you encouraging the stakeholders who wanted to participate to get together, and we've spent over five hours looking at this, and we came to an extraordinary amount of agreement that I wanted to review, and I'm hopeful that you'll support, ultimately. The two documents that I handed out: one that lists seven items; it's a two-page document that has seven items on the front that were Open Discussion items that we did not reach agreement on. But then the second and third page had 18 areas that there was some general consensus among at least Texas Campaign for the Environment, TDS, and Synagro. Republic can speak for themselves, they weren't able to, I know Beth was sick, and Gay wasn't able to be there yesterday, but these were areas that were represented as general consensus items, and you can see that in the document. I handed out a better copy of the document that I emailed because it doesn't have that formatting so you can read it a little bit more quickly. And embedded in it, I have in brackets where there was agreement and where there was disagreement so that you can kind of quickly scan and see large areas of agreement that I hope ultimately, especially in areas that are pretty critical like "Agent". We spent over an hour talking about what is an Agent and what is not an Agent, and when you look at the definition at the very bottom of the first page, dated October 31, with good revisions. And that effort continued even today with Nikelle Meade sending some language that you can see on the first page of my two-page summary under Discussion Items, regarding Debarment. So, first and foremost I want to agree, remarkably, with Mr. Shannon that we, too, want a fair and level playing field, and we do not have that right now. We've already identified some of the serious concerns we have and I think they've been highlighted, certainly even by some of the comments Mr. Shannon made. For example, his comment about, that you're able to make suggestions about a solicitation is accurate, but you only get to make it to the Purchasing officer who may, or the Appointee, who may or may not decide to alert City Council that there is a major policy discrepancy between the staff's solicitation and City Council's policy. So we do... and I think everybody that was present – at least Synagro, City staff, 'cause you heard Mr. Scarboro himself testify, or talk to you directly about the fact that having the restricted communication period begin on the final effective date and time a response to the solicitations is due, not when they first hit the street, allows for the iterative process to be more broadly absorbed, and allows people to throw a red flag if in fact a policy initiative of City Council is being undermined by the very solicitation. The bidding process, and Mr. Scarboro can speak to this, but the pre-bid conferences is a much more complicated process that happens on big, big, bigger I should say, solicitations. He's already told you that there are about 300 solicitations per year, and the most effective and efficient way to manage getting feedback from staff... from vendors, and if there is a policy discrepancy, having that policy discrepancy raised by vendors prior to the due date, and at least giving those people the opportunity to raise the policy discrepancy at Council. I would also point out with regard to something I think is critical, and you'll hear obviously from Mr. Dobbs later, he's been stronger on this than I think anybody, is getting the contracts that are negotiated posted on the agenda. It might be that it's a certain dollar amount, maybe it's contracts that are bigger than \$300,000 dollars, or \$250,000 dollars, but once it's posted, a negotiated contract is posted, that gives everybody an opportunity to really see what is happening and whether it meets the policy initiative and directive of Council. On the items that we still have open, as 'open items', and that you have not talked about, one is, and I hope you will consider, because the Rules that are being drafted directly impact due process. I would plead with you to please have a recommendation that the Rules be reviewed and approved by City Council. I know that in... Ms. Meade, and she'll speak to it, her debarment language had that the City Council review the Rules related to debarment. And the reason for that, and the reason why disqualification should also be able to be appealed, not only to the ERC but to the City Council; we would ask that you add that. If debarment is truly going to be the penalty that y'all want to impose, a very onerous penalty, three years of no vending at all with the City, shouldn't it be the case that to get to the debarment place, you have the ability to appeal, not just to the ERC but to the City Council? It just seems like 1. that's the safest way, and as somebody mentioned at our stakeholder meeting, how are small businesses going to be able to go to Federal Court? So far, right now, the only place to appeal is Federal Court. I would urge you to please give everybody a fair and level playing field by having the opportunity to take an appeal not only from, for disqualification, not just to the Ethics Review Commission, or a third independent commission, but also to City Council. So, I would especially urge you to add something about the Rules being considered and established ultimately by City Council after review here and that the disqualification be a final appeal to the City Council. The other pieces that we feel like are important are being sure, and this is our fifth one, that a single prohibited representation... so if somebody has seven solicitations out... is that three minutes? I would just end by saying on Number 5, if there's

seven solicitations out and somebody has a single prohibited representation it shouldn't be the case that that automatically counts as seven disqualifications. And I think there should probably be some direction on that... that's Number 5 on my list. Thank y'all very much.

Peter Einhorn: Alright, next we have signed up Bobby Gregory, with Adam Gregory donating, and Ryan Hobbs donating. Nine minutes.

Bob Gregory: May I do handouts?

Peter Einhorn: Yes you may.

Bob Gregory: Can I just slide...

Peter Einhorn: You want to hand 'em to me and I'll hand 'em down.

Bob Gregory: Thank you.

Peter Einhorn: Is there enough for staff as well?

Bob Gregory: I've given one to James and I do have others, two extras I believe. I'm Bob Gregory with Texas Disposal Systems and I too want to thank the subcommittee for all the time that they spent on this. I sent you an email on, I believe it was the 6th of October, and then also one on Monday. And the one on the 6th of October was much more detailed with background information of what we've dealt with. Some of you have been on this committee for a long time and you remember when we came and dealt with you on the Daniella issue; what the City staff had done. We have nine years of long history of dealing with City staff. We're the largest service provider in solid waste with 20-year contracts and 30-year contracts. We can have seven bids out at one time. And we have many years of experience at bidding these, that's how we're the largest service provider. But the history that we've developed with staff, particularly Robert Goode, over the last nine years, has been extremely, extremely bad, to the point that we could not bid. The main reason we could not bid is because we could not bid and expose the concerns that we had for violations of City policy; very serious policy, even illegal acts, in some cases, that would allow an illegal action. So we chose to miss the chance to win those contracts so that we could speak about it. We're very, very serious about the First Amendment. They violated the First Amendment on us on one thing, they just made a basically a basic error of disqualifying us before we were even qualified to be disqualified before, because of an interpretation. And that's why these proposed changes are before you. We're really hoping you can help us get interpretation out and more specificity in the regs. What you have before you is a different approach if you were inclined to use it. Michael Whellan just gave you one that we've spent a lot of time on. Very specific redlining of the ALO, of actually the staff's proposed Anti-Lobby Ordinance version, that we believe will meet these concerns as well as meet the concerns that TDS sent to you on Monday. I was responding to Texas Campaign for the Environment's email, which we were in agreement almost on every single thing, there were just slight deviations on a couple of things, and I pointed those out. You see a copy of that email that I sent you. If you chose to, and I hope you would do one or the other, be very specific, kind of a macro, or a micro. The micro gets down to the very detail, and that is what Michael Whellan and we all have worked on so hard, and Nikelle. This is more in line with what ZWAC recommended and with their recommendations on this concern. They, too, were very concerned about these contracts over the last year and a half. And that's one reason Council pulled them down, to allow the process to continue on so that we could make our comments without being under the Anti-Lobbying Ordinance. Next Thursday there is two agenda items on, one of them moves to reinstate it. None of the policy issues that were discussed in the Working Group, the Policy Working Group issues have been discussed and dealt with, although the Working Group calls for them and asks for them to go to ZWAC for their recommendation before coming back to Council. So I think whether you do something on a topical basis like this – by topic, by topic – and let the staff go make those revisions to the ALO, and then come back to y'all, to ZWAC for that matter, and to Council for approval, or whether you want to do the exact redline version, albeit all the stakeholders have not weighed in, they're just catching up on it, but the ones who were interested and able to weigh in, spent a lot of time doing it. You can see Texas Campaign's position, Texas Campaign for the Environment, and highlighted, if you go to the ZWAC on the ALO, you'll see that they thought that the recommendations by the Policy Working Group did not well reflect the draft changes in the ALO, so they gave specific recommendations, the last one of which is to keep the ALO in a suspended state until such time that both the final ALO and subsequent

governing Rules are drafted and adopted by Council, which we hope y'all will feel comfortable in recommending and that the staff will stick with. You can see in addition to those recommendations on two different occasions, one in July, one in August, the ZWAC passed identical resolutions asking that a Scope of Work and a scoring criteria be presented to them before the solicitation is even issued, so that the policy issue could be weighed at that point in time, even before its issuance. That has not been done yet by staff. The other one is to ask that negotiated contract documents be presented to ZWAC for waste contracts prior to requesting a recommendation for approval of the contract related, going to the City Council. The last thing you will see is the Resolution, Ordinance actually, that the City Council passed on April the 6th when they, and they clearly state what their intention was, to leave the discussion open where all players would have an open discussion opportunity to talk throughout the entire policy-making process. When we reestablish the Anti-Lobbying Ordinance and getting people established under it, totally defeats this intent because it makes it where we can't go and meet and talk and openly discuss it with a staff member, and a Council aide, Council members with the exception of maybe a three minute window, and that's generally too late. These kinds of things require a whole process, which is why they did this. So I hope you will not support staff's move to quickly reestablish it before the work is done. So, one of the things I included in my email to you on October 6 was an editorial on what is happening in Los Angeles. We're seeing that exact same thing with franchising the collection of commercial waste here in Austin. Most of these contracts last year that were set aside by Council, were headed in that same direction. I've been in business 40 years, this is our 40th year. The City actually can keep us from driving on the City streets and we would like to be able to talk about that. We have contracts that cover everything; we have to bid on something when that issue comes up. We cannot bid on everything else and it may go to people who don't even have the authorization to do the jobs, but we have to bid on that one. Please give us something that the staff can't wrongfully, and by their interpretation, what's the word, disqualify, because they'll do it. They've done it before, they've done it again, it's that bad of a situation. Give us a level playing field. Thank you very much. I'm happy to answer any questions.

Peter Einhorn: Thank you Mr. Gregory. Donna Beth.

Donna Beth McCormick: I've been wading through your dissertations for quite some time trying to figure out exactly what you're trying to say...

Bob Gregory: Did I let you know?

Donna Beth McCormick: ...and as I told Michael, bullet points as to exactly, 'We'd like to have this, this, this and this', because you've referenced lots and lots of things and by the time we go through and read what you reference and then try to remember what you say, we're not getting the message, I don't think. So, and this is very long and very detailed, that you gave us, so I don't know whether we can get through this right now.

Bob Gregory: Can I respond?

Donna Beth McCormick: Yes.

Bob Gregory: Michael gave you bullet points...

Donna Beth McCormick: Yes, he had to give them, you didn't, then I got something else from you and I was trying to decipher that.

Bob Gregory: ...that I'm in agreement on Michael's. That's by the very specific redlining and explanation of that redlining. This is actually a page and a half, and it's the second and third page in the handout. It represents every single one of ZWAC's recommendations, as well as Texas Campaign for the Environment, as well as ours, bundled together. So if you disregard everything I said and go to this as an option for you to consider, this addresses all of those issues.

Donna Beth McCormick: One sentence, one bullet point. We can fill in blanks.

Bob Gregory: Okay.

Donna Beth McCormick: I'm a politician so that's my life.

Bob Gregory: We're good. Thank you.

Peter Einhorn: Any other questions? All right we'll move on. Thank you Mr. Gregory, appreciate it. We have Gay Erwin signed up.

Gay Erwin: Thank y'all for the opportunity to be here and say a few words, and thank y'all for letting some of us come and visit with you during the Work Group. I too want to commend you all for sitting through a lot of discussion and haggling and everything else at the Work Group, so thank you.

Donna Beth McCormick: And your name is?

Gay Erwin: Gay Erwin with Strategic Partnerships. We do represent Republic Services but as I have said over and over to this group, and to also Mr. Whellan and Mr. Gregory, we represent about 20 to 25 companies that either have contracts right now with the City of Austin, or that bid on contracts with the City, so we hear talking about this across the board. All you've heard about really so far is solid waste contracts, and solid waste services, and there are a multitude of other types of contracts, other vendors, I believe that Mr. Scarborough said in one of the Work Group meetings that there are 40,000 vendors registered with the state of Austin. They don't all bid on solid waste contracts. So, in that vein, we're here talking about across-the-board types of contracts. One of the things the companies that we represent would like the contact period to end when the bid comes out. We know of no public sector entity in the state or federal government that allows contact after the bid is published, and if someone knows of one we'd love to know about it because we don't see that. We do research in 50 states for companies and we work at all levels of government in the State of Texas, and Higher Ed, and K through 12, so it's a puzzle to us as to why Austin needs to be different. I want to keep Austin weird because I live here and I want us to be different, but sometimes different isn't necessarily a good thing, so that's still a real puzzle to me. One of the things that came up at our first Work Group meeting is how to address that. The federal government started about 10 or 15 years ago about having draft RFPs published in advance, so that all these comments that everybody's been talking about can be done before the bid comes out. The State of Texas does it, all the big cities do it, Mr. Scarborough said that Austin does that sometimes. Sometimes they do. But for the solid waste contracts it seems to be that they would prefer to have a published statement of work in advance for the comments to come in, because you can use that time in advance of the procurement, if there is an error, and if something needs to be corrected. But we see those all the time in cities besides Austin at the state level. And it wouldn't need to be for everything, there could be as, I believe as Mr. Shannon said earlier, that it could be a certain threshold, either the amount of the contract, services contracts, long contracts, long-term... those rules could be done, and it just seems like that would allow for comment to come in before the bid is published. The one other thing, the Chairman had said at one of our Work Group meetings, and we agree with this, and I think you all know, that Austin has a City Manager form of government, and in those types of government the staff is supposed to be making policy decisions as well as executive decisions on business. So I don't know if our City Council wants to get into signing off on contracts, and having comment periods so that they could be lobbied over the course of a procurement. They'll be voting on this so they'll know then, but it seems like it's odd that they're supposed to be doing certain things, staff's supposed to be doing certain things in a City Manager's form of government. So that would be up to the Council to decide on that. We also are opposed to not having a debarment situation. Again, every public sector entity we're aware of in the state, has some type of policy, and we're not quite sure why that should be abandoned. So, have any questions? Mr. Stratmann?

Ben Stratmann: No, I was about to tell you we need you to wrap up. You were doing so smoothly no one wanted to jump in there. That was good.

Gay Erwin: You're very kind.

Ben Stratmann: Have you done this before?

Gay Erwin: No, I've never been here before. Thank you for the time.

Peter Einhorn: All right, Andrew Dobbs, Texas Campaign for the Environment. Andrew, how are you?

Andrew Dobbs: Doin' okay. Sorry, I was moving all day actually. Hey everybody, Andrew Dobbs, Texas Campaign for the Environment. I am here today to talk about this issue, and I've been asking myself 'Why am I here?' I think a lot of people ask that. You know, it comes down to the fact that a lot of the services that are most sensitive for our environment in this city, that are reflective of the values of our city, are subject to competitive bidding processes. They

are things that we contract with other businesses to provide, and we have seen a lack of competition for important services in the last couple of years, and because of that lack of competition, firms that are operating... that have records and operations that are not reflective of the values of this city or our members here in Austin, have been winning bids that they probably wouldn't have if the process had gotten competitive. I was actually really interested to hear Mr. Shannon say that Waste Connections wasn't bidding, and it's one of these cascade things where the Anti-Lobbying Ordinance has gotten to the point where one firm is not bidding, and they're not bidding so that they can lobby, and then that lobbying is leading other firms to say 'Well we're not going to bid either.' Right? And now we're left with just one or two firms instead of getting the best competition, the best bids, so that we can let our values and our bottom line drive this process. Ultimately the reason that the ALO has gotten out of whack is because we've seen an imbalance between the powers of staff and Council. And I think it's interesting that the last person was raising the prospect of Council overstepping its bounds because to date we've seen some pretty substantial oversteps. I think the way the ALO is constructed right now puts tremendous powers in the hands of staff. Yeah, if you look at right now, essentially, I think there is a great example not long ago where a bidder was at a City commission meeting and was told by City staff, because they were bidding on a contract that they weren't allowed to speak at the Zero Waste Advisory Commission. That's completely false. Under the current Ordinance they're allowed to speak at open meetings. Right? The thing is, if that person had spoken and said, 'Screw you, I understand the Ordinance, I'm allowed to speak here.' If they had done that, staff could have had the power to tag them under the ALO and then any appeals of that would have gone back to that same staffer, and that person would have been facing the loss of multi-million dollar business, and they were a small firm. For some big multinational company like Republic, you know, they lose a contract here, they get disqualified here in the City of Austin, it's not good for them but they'll live to fight another day. For small businesses, like some of the ones that are providing crucial services for our environment in the city, they can be life and death. So that's why we have to get this fixed. What's good news is that we have a consensus emerging, I feel like, after the last couple of days, at least between some of the stakeholders, and that's what this document indicates. There's a few remaining issues but what I'll say to wrap up is I think that we're a lot closer, we're pretty close on those, and it's a fragile document where one change could cause shifts in other places but nonetheless I think that we're in the right direction and I hope that you'll continue to encourage this at this point. I'm happy to answer any questions.

Debra Danburg: I really appreciate all the work that you've been doing and I think that you really are very much on target as far as the balances that need to be reached. My overarching concern is as hard as y'all are working, and you really are, the Council is wanting us to give more generalized recommendations. So, while I agree with so much of what y'all have come together on word by word, and certainly I would encourage us to attach those things as documentation to Council, I don't know that our position, or our authority is to get that far into the weeds. But what y'all have done I think is really, really beneficial and that your priorities are in good shape.

Andrew Dobbs: Thank you Representative, and what I would say is that obviously if you want to like take that document and say 'Hey, we're down for this too', and you know, pitch it, you know, that would be great, I don't expect or anticipate that. You know, we can go to Council also, you know, we know where their offices are and we can hit them up with this. I think that the generalized kind of recommendations that y'all are providing are going to be really important and when it comes... I ran out of time and there's a lot of details there. I think that y'all have been leaning in the right direction on those and I hope that the past statements that we've made will be taken into consideration.

Peter Einhorn: Thank you Mr. Dobbs.

Andrew Dobbs: Thank you.

Peter Einhorn: All right. The last one I have is Nikelle Meade.

Nikelle Meade: Chair Einhorn and Commissioners, Nikelle Meade with Husch Blackwell and I think we are all so proud that we came to some consensus on some points. We can't help ourselves but to talk about it, but I feel like I need to just walk up and say, "We support your recommendation." Really, I think, Commissioner Danburg, you really kind of hit the nail on the head that all of our detail points are sort of beside the point for tonight's meeting and the thing that's of importance to me is I don't see anything in the recommendation that you all have before us that contradicts anything that we have agreed to in the detailed fine points. There has been, I think, one of our points still in discussion, not in

agreement yet, is what that time period is after the contract is awarded. Is it 30 days? Is it 60 days? So, I just wanted to speak about that briefly and I also wanted to say with regard to the No-Contact Period starting at the time proposals are due, I just want to say Michael maybe overstated my love for that a little bit. I don't love it. I do think it opens the door, I think it was as Mr. Shannon said, for a lot of behavior during that time period from the time the RFP is released to the time proposals are due. For folks who maybe have more influence to have more information about the proposal or the solicitation that will help their proposal, and so I worry about that. I don't think it necessarily is the best approach for a level playing field, but I was convinced by Mr. Scarborough's arguments and even Mr. Gregory's arguments with regard to some of the reasons why we need to start it at the date the proposals are due so we are good with that. We do strongly feel like the back end needs to be 60 days. I see that in your recommendation and I heard you all talk about 45 days, but we feel that it is extremely important to give some time for that contract to actually be negotiated before you open up a lobbying free for all, and I will also say that 60 days is short for that.

Debra Danburg: Would you have any problem with 60 days or finalization of the contract, whichever is sooner?

Nikelle Meade: Not at all, and I actually read it that way, Commissioner Danburg. So I must have been thinking that in my head because that's what I've been thinking all along. I think that's exactly the way to do it. So, if the contract is signed in a week, there's not a reason to keep that prohibition in place. A couple of other points – I do want to say that I felt very strongly... I, like Strategic Partnerships, represent lots of clients who have lots of different contracts with the City. I know Mr. Whellan does too. And I really do think although we... sort of our clients who are in waste management started all this discussion, nothing that we've reached consensus on is specific only to waste management. Really, we were trying to come up with solutions that would work across the board. So, as you all, if you all, have to dig into this later, just keep in mind that I do think we really did try to come up with broad solutions that would be beneficial for everybody. Thank you very much.

Peter Einhorn: Thank you.

Meagan Harding: Thank you.

Peter Einhorn: Questions?

Brian Thompson: I've got a question. On the recommendation that talks about appealing both the Ethics Review Commission and the City Council, how would that work?

Nikelle Meade: So, I hate that, personally. Let me tell you...

Peter Einhorn: Michael, do you want to come up and speak to that?

Nikelle Meade: I think that's total overkill, but ...

Brian Thompson: It seems to me, I mean is it you appeal to the Ethics Review Commission and you can appeal the Ethics Review Commission to the Council?

Nikelle Meade: That's right, and I think the way we structured it was you are notified that you are disqualified by the Purchasing officer. The Purchasing officer has to send you a written notice to confirm that so that you know when a time period is triggered. You have a time period, and I'm sure there'll be discussion about what that that is, 10 days, 15 days, whatever it may be. Four days, I think we came up with...

Michael Whellan: It's on Page 5. Page 5.

Nikelle Meade: ...in which you can appeal to the Ethics Review Commission. You probably want to say Page 5 of which document you're talking about...

Michael Whellan: Well, the one that I handed out this morning... this evening. So this language is, as Nikelle's pointed out, language that we spent quite a bit of time on.

Nikelle Meade: Well, let me finish going through it. So you can appeal to the Ethics Review Commission. Ethics Review Commission has a prescribed time period within which to make a decision: 31 days. And we'll tell you why we did that. If a decision is not made within 31 days, your disqualification... your appeal is upheld. Your disqualification is overturned. And if a decision is made within that 31 days by the Ethics Review Commission to uphold the disqualification, you can appeal that to the Council. I don't love that, I think it's overkill. But I do see some merit in it, only that... and I think this is really a point that Andrew Dobbs brought up: a disqualification is kind of a big deal for a lot of companies. That's a big deal. You spend a lot of money preparing the response to the RFP and if Council... I think where we landed was if Council is willing to be the final arbitrator, we don't see a reason why they shouldn't be. We just felt like you should have that right if Council's willing to give you that right, and we think they will make the final decision on that. You should have that right to have the Ethics Review Commission's decision decided. Now I will say that we have some concern that whereas we see you all as sort of a neutral body, we see Council as more of a political body, and we have some concerns about that. But we just didn't really know a great way to deal with that.

Meagan Harding: Is the 31-day... so if we don't make a decision, that's like overruling it by operational law or something like that?

Michael Whellan: Yeah.

Meagan Harding: I'm just thinking practically about how our schedule works. That is... a 60-day...

Nikelle Meade: We knew y'all would hate that. The only reason... let me also tell you why we did that...and I didn't get into that. So, we thought of the fact that you meet once a month, so some months that means you're meeting 31 days apart. We understand you may cancel a meeting, you may not have a quorum, we know that those are problems that everybody has. Every entity, board or commission will have. The only thing I think everybody will come to grips with this kind of a provision was if we also built in the fact that if you are going to appeal a disqualification, there's a stay of the solicitation process until you get through that appeal, and the reason we thought that was important was because it has happened, and it can happen that you can be disqualified. Right now you would go through a protest but in this situation you would go through an appeal, and while that... you haven't even had your appeal heard, that solicitation is on the Council agenda and it's being approved, and then the Council or the staff...

Peter Einhorn: Sure. After you spent all that time.

Nikelle Meade: ...is in the position of taking that contract away from the person to whom it was awarded. We want you... if you win that disqualification appeal to still have the opportunity to be considered for the contract. So because of that, we didn't want to slow the solicitation process down too long, so that's why we tried to prescribe some number of days and I think Michael said y'all were gonna not like 31 but...

Michael Whellan: Yeah, I did say that. But I mean to Nikelle's point, the stay, we thought... and again, I said this earlier at the smaller Working Group meeting, it pains me to say that Nikelle had a great idea. But on Page 6 of our document, this idea of a stay really is fair when you think about it could be tens of thousands or hundreds of thousands of dollars put into a big solicitation and if somebody is disqualified and you don't stay the process and it keeps going, and then they're not even considered and yet they've reversed a disqualification, that seems completely unfair and...

Nikelle Meade: It sort of becomes moot...

Michael Whellan: ...and I thought that was a very good catch and that's why we added the stay provision. A stay provision which has an explicit way out. The City Council can lift it, it's just like bankruptcy court. There's an automatic stay and the bankruptcy court can lift the stay and the proceedings can continue.

Nikelle Meade: And so since the Council can lift the stay, we felt like if this body felt like 60 days or 45 days made more sense, there was a backstop there. It wouldn't be the end of the world. And since, per Director Scarborough, it's only 2 or 3 times a year that this happens anyway, we felt like you guys were very likely to say you would want more time.

Michael Whellan: Yeah, we recognize that, so. And the only other thing I would add, and I mentioned this in my comments, just to add to what Nikelle said about the effort people put into some of these bids and why going to Council

is important, that's one reason. And if we're going to add back debarment, it is a big deal and you have to disclose if you're disqualified. Some of these companies have all sorts of compliance officers that demand publication of when you've been disqualified... other people... when you've then bid in other jurisdictions, have you been disqualified? It's a big deal and I think there should be an appeal to Council, especially also if you're gonna have debarment in there, I think. And each time you get a disqualification that's a ding towards debarment as well.

Donna Beth McCormick: It has been mentioned about us at the Council and mentioned that the Council is more political, which is true because we are very much like a jury or a court.

Nikelle Meade: Exactly.

Donna Beth McCormick: And rules are utmost at the front with us. So, do any of y'all think you might have some kind of concern that people will get to the Council and influence them?

Nikelle Meade: Definitely have that concern.

Michael Whellan: On which issue, on the disqualification issue?

Donna Beth McCormick: Well, yeah, any of the appeal issue or any of it, that they might change their mind or flip or something?

Nikelle Meade: Yes, I think it's...

Donna Beth McCormick: That has been known to happen.

James Scarboro: We'll have to have an ordinance for that too, I guess.

Nikelle Meade: Yes, I think it's a problem, and you know, that's why I was saying I don't love that idea.

Donna Beth McCormick: Yeah, and staff could influence them because they're so busy with a lot of other stuff and then they get staff members to influence 'em. Of course I've been a neighborhood president twice so I know how some of that stuff is ...

Nikelle Meade: It is a concern.

Michael Whellan: The only thing I would say is to some extent back to the statement by Mr. Scarboro that there's one to three of these a year, to some extent, some of this is a problem in search of a problem, I mean... where this isn't going to happen that often and I think especially for a business that can't go to Federal Court, you're allowing a little bit of backstop also by having this ability in the one to three times it may happen in a year to go to Council. That's all.

Andrew Dobbs: And the voters.

Michael Whellan: And the what?

Andrew Dobbs: The voters.

Michael Whellan: The voters, yeah. They are voters also.

Peter Einhorn: Real quickly, Commissioner Ohueri.

J. Michael Ohueri: Just one question I had, has anyone considered just sending this to a municipal judge? Why does the Ethics Review Commission have to deal with it? It seems like it's something that some administrative person could deal with and then you could go to a judge if you needed to and then they'd still have prescribed periods of how long it has to take. Has that been considered?

Michael Whellan: We haven't talked about that.

Nikelle Meade: We didn't talk about it but I wouldn't... it's not something I would think I would rule out, for sure. I know I always hear that the municipal judges have more on their plates than they can deal with already, but so do you guys. So, it's not something we even thought of. I don't think a bad thing... a bad idea to explore that.

J. Michael Ohueri: Okay.

Peter Einhorn: Does anyone else have any thoughts on that they want to share? These are the folks that are at the table, but does anyone else want to share anything?

Andrew Dobbs: It's a good idea.

Peter Einhorn: Okay. That is a good idea.

Steve Shannon: We're in favor of it.

Peter Einhorn: Okay. Thank you, Mr. Shannon. Okay. Any other questions? Commissioner Danburg, you had a question.

Debra Danburg: Well, I just wanted to mention, until y'all had said that about other jurisdictions asking if you've been disqualified, debarred, or otherwise sanctioned in other jurisdictions... I mean, it's really kind of like a death penalty that can carry over into something way beyond just one problem, and I hadn't considered that before.

Michael Whellan: It's a big deal.

Debra Danburg: It's a big deal.

Nikelle Meade: Yeah, but we feel like with even the appeal to the Ethics Review Commission or a judge, some appeal outside of the Purchasing department – no slight to the Purchasing department – just to get you out of that process and let some fresh eyes look at it. We feel like it's gonna be hard for somebody to get disqualified unless it's warranted.

Man: Yeah, well the basis of an appeals process is to go outside of the jurisdiction...

Nikelle Meade: Exactly.

Man: ...in which the decision was originally made in the first place, so...

Peter Einhorn: Correct.

Nikelle Meade: Exactly.

Michael Whellan: And the municipal court might be a fair and pretty inexpensive backstop for a smaller business as well.

Nikelle Meade: I agree.

Michael Whellan: We had not... so that was a good suggestion.

J. Michael Ohueri: I guess if the Council did go in that direction with the ALO but also I think it would be just a bench trial and not a jury trial. I don't think that would make sense. I guess that's kind of getting into the weeds and we won't know how we'll ultimately recommend. It would seem like that's a lot easier with a system that's set up, there's already judges always there, get on the docket...

Nikelle Meade: Yeah.

Michael Whellan: It's a good idea.

Nikelle Meade: It's a great idea.

Peter Einhorn: Any other questions, Commissioners?

Dennis Speight: I have just kind of a general question. One thing that I've been sort of hoping to see in all of this is some sort of a broad comparison of similarly situated municipalities and what their rules are with regards to the No-Contact

Periods or just general procurement policies. I don't know if anyone's been apprised of this magic document that I have in my head... *(inaudible)* the different actions, too right. So what's defined as the period, what are the definitions for who can and can't, like what's an agent respondent, is there an appeal process for... *(inaudible)* It'd be really great if someone had...

Peter Einhorn: Well we don't have a magic document, but I think a couple of folks, a couple of stakeholders have spoken to that, and I think Gay, you had spoken about your experience working with other municipalities and other governments...

Gay Erwin: I'd have to see, there may be out there but... *(inaudible)*

Peter Einhorn: Yeah, and I think Adam has...

Adam Gregory: As part of the Working Group, the Waste Management Policy Working Group, we looked into a number of cities and the City staff even did an analysis of several cities in Texas that have Anti-Lobbying Ordinances and several don't have anything like this. But comparing the existing ordinance with those cities, it was clear that Austin was the most restrictive and the most punitive of all of those. I think James will even agree with me on that characterization. There were several differences and there were several that began their No-Contact Period when it is issued. There were some that began their Contact Period when proposals are due. There are some cities in Texas, San Antonio, for one, which list the No-Contact Period when contracts are posted. So prior to a decision. There's only one city in Texas of those that were analyzed that had a debarment and that was El Paso. I'm sorry, I don't have it in front of me. It was one of the 150-something pages of material that got posted, I believe this morning, as backup to the Item. But that was in a staff presentation given during the Working Group and that was comparing the existing ALO, but upon looking at that comparison, we all agreed, even staff, that significant changes were necessary to bring it in line. But I don't think it's unfair at all to characterize what we have now as the most restrictive and punitive ordinance that we could find.

Peter Einhorn: Can you identify yourself for the record please?

Adam Gregory: I am Adam Gregory. I'm with Texas Disposal Systems. I apologize.

Peter Einhorn: No, no problem. And if you'll identify yourself in the front, just for our records.

Mark Nathan: Mark Nathan, also with Texas Disposal Systems. In addition to El Paso being the only municipality in Texas that we could find with debarment, we looked at 25 other large cities across the country and we didn't find any other municipalities with debarment, either. What appears to me is debarment is very much the exception to the rule.

Nikelle Meade: I would just say we should scrub that because I think that there's some different information out there. I'm not saying what you're saying is not right, but I'm just thinking we should look at what 25 cities. I just think there's a lot of information out there and that should probably come from your staff and lawyer rather than all of us because I think there's differences in the way people look at strict or punitive...

Adam Gregory: Well I was only characterizing staff's...

Nikelle Meade: No, I got you...

Peter Einhorn: Commissioner.

Debra Danburg: The input that y'all are hearing right now is very much behind why I was pushing for us to eventually – they can't do it in time for these contracts – but eventually get to the point where you do the ABA recommended procurement and purchasing model. It does vary widely... and I think that the public in Austin wants us to be stricter, wants us to be more punitive and more careful, but, in making that decision, I don't think that it's been very well considered that that also limits competition and therefore the taxpayers may end up with fewer options and higher prices. So while we want the ethics to be really tight and strict and clear, and violations to be taken very seriously, if it's done in such a way that it is punitive to the point that we don't have some of the bidders that might be better for the taxpayers, we haven't really done a service to the public.

J. Michael Ohueri: Well I will say this, to comment on that. The restriction period and when it begins really is important whatever our recommendation is, because in the same way that TDS is saying that they aren't bidding and this isn't a competitive process, we're really seeing small businesses or out of town businesses being discouraged from getting involved in the process at all and they know that they don't already have influence and contacts on the ground, which is why the current ALO starts at the time the solicitation is published. So if we move away from that, I definitely think we should do it cautiously and with thought and really minimize it. I don't know what the appropriate time period is but I certainly believe that making a No-Contact Period start when the solicitation is due is absolutely the wrong way to do it. Because I think people just aren't going to bid. They know they're not influential, they don't have lobbyists, and it's really just gonna benefit bigger companies and more well established companies. So, my position right now is I'm absolutely against a No-Contact Period that begins once the solicitation is due. It needs to be sooner than that. It needs to be a clear time period, and hopefully a small time period.

Peter Einhorn: Okay. Any other comments or questions?

J. Michael Ohueri: The only reason I'm not in favor completely of when the bid comes out is because I do think that citizens should have a right to comment on the bid itself and if they think there's some red flag that's being raised, I mean, that does resonate with me but it just needs to be a small period. Accordingly, I don't know how small it should be. I don't know if 7 days, I don't know if 2 days is enough time if 24 hours is too restrictive. But generally speaking my opinion is that there should be a period only because of people's ability to address the government. But it should be a limited period after the solicitation is closed.

Peter Einhorn: Is it worth hearing from Mr. Scarboro about the process and how it sort of rolls out in what a reasonable period of time might be, not that we're asking him to take a position on it. But you know, when a solicitation comes out is there a period of time where it might be appropriate to have open communications available so that comments on the process can be shared?

James Scarboro: *(inaudible)*

Peter Einhorn: Would you come forward just so everyone can hear you?

James Scarboro: Good evening. James Scarboro. Here we go. Okay. James Scarboro, Purchasing Office. So your question was...

Peter Einhorn: The question was, you know, obviously.... you've forgotten more about the procurement process than we're probably ever gonna know so, I mean, if we were looking for that sweet spot of 7 days, 14 days, is there anything that you can tell us about, you know, if we're gonna wait after the solicitation is issued, you know...?

James Scarboro: So waiting after the solicitation is issued, that means you're contemplating...

Peter Einhorn: Allowing the communication...

James Scarboro: ...starting the No-Contact Period on a day other than the day we issue the solicitation but before the proposals are due.

Peter Einhorn: Correct.

James Scarboro: So, are you attempting to limit communications or are you attempting to limit lobbying? Or are we differentiating between the two? Because that's what we debated when we were contemplating the Anti-Lobbying Ordinance. Not the Anti-Communication Ordinance. Some might say that...

Peter Einhorn: Lobbying is communication though.

Donna Beth McCormick: One in the same.

James Scarboro: But we use that time on the street to determine if we are speaking the language of that market. We rely on their feedback so that we can optimize the competitiveness of the process so that we can receive their feedback

and make changes to the solicitation, so the document that goes out is not always the document that the offerors have submitted on because it changes through a series of iterations. We learn while the document is on the street. We try to expedite that learning by having pre-offer conferences where we invite prospective offerors in. We don't know if they're offerors though. They could be citizens. They could be interested parties. They could be small companies that think they want to get into the space and they want to learn about the process. So we communicate with a large variety of persons while the solicitation is available for public consideration, and certainly, we are used to and currently apply the Anti-Lobbying Ordinance from the time that the solicitation issues. And we are prepared to continue doing so. But when we were asked, and staff was asked to recommend any revisions to the Ordinance, I was contemplating how, and we as staff were contemplating how, we could recommend starting it at the time the solicitation issues. Because the definition of a prohibited representation is a communication that's made by a respondent who has submitted a response. And so the violation before the responses are due would be based on a response that has not yet been submitted. So, it would be an anticipatory violation at the time that the violation occurred. And then later...

Debra Danburg: What you're saying is that from the time it's issued until the time of the deadline, they are not yet respondents necessarily, and so they can communicate during that period of time.

James Scarboro: The way that the Ordinance is written now, the violation still counts even though they have not submitted a response and they're not a respondent yet. So there's ambiguity in the language and we were trying to address the ambiguity with a clear start point so that you knew who was subject to the Ordinance.

Debra Danburg: But if we did make it from the time of issuance that would negate your ability to reflect the market in your considerations, wouldn't it? Or would it?

James Scarboro: No, we would still ask that all communications go through the authorized contact person. We would handle it as a procedural matter and as a communications and we would not necessarily consider it an act of lobbying or influencing the decision. Because when the solicitation is on the street we control what changes are made to the solicitation. We receive feedback from the customer based on what they heard at the pre-offer conference. Based on the questions that we receive we start to determine that maybe we're not speaking the right language for this market or maybe our specifications are too restrictive.

Debra Danburg: You keep getting the same question over and over.

James Scarboro: Exactly. If we hear the same thing over and over we know that we're not clear in that one area. So we rely on that information. But we need that information coming through the authorized conduit.

Debra Danburg: I hear what you're saying, I'm just concerned that there is a chilling of communication by the lack of clarity in what is and is not authorized communication versus lobbying.

James Scarboro: I understand. I understand, and like I said, we're prepared to continue supporting the Ordinance from the issuance of the solicitation. We were asked to make the recommendation and we came at it from an operational perspective. For Council and staff, for all City staff to realistically observe Anti-Lobbying while the solicitation is on the street and we don't know who the offerors are, you essentially have to document all your communications with anybody.

Debra Danburg: Sure.

James Scarboro: And not just who you spoke to but what you spoke to them about, and then when we receive the offers and we know who the offerors are. You really have to look at that list week in and week out and ask yourself, "Did I speak to any of these companies or any agents of these companies over the last couple of months, and did we speak about anything associated with that offer?"

Debra Danburg: It would disfavor the other bidders that don't know this information we discussed.

James Scarboro: So, it's a pretty high bar in terms of data collection. We would be monitoring each other when we should be monitoring each other regularly to determine if anybody that we don't know about now, subsequently responds to the solicitation.

Debra Danburg: Yeah, I guess what I'm looking for is sufficient clarity that everyone feels comfortable doing the kind of communication you say is valid and helpful without somebody being tagged as 'Oops, they're lobbying' just because they're a disfavored company in some way. You know, I don't want somebody singled out for doing what everybody else is encouraged to do.

James Scarboro: Being at the receiving end of allegations, determining a violation is a very... it's not an enjoyable activity.

Debra Danburg: I've been there.

James Scarboro: So we take these things very seriously. I take these things very seriously. The allegations come to me, and in a competitive environment, the allegations can be based on a conversation in the lobby or who walked out of a Council meeting next to each other. So we take these things very seriously and we don't make these kinds of decisions lightly. I empathize with the experience that these various parties have shared with you in regard to the past application of the Anti-Lobbying Ordinance. All I can do is assure you that myself and my staff apply it to the best of our knowledge, and trust me, we do not go out looking to find violations. It is one of the more difficult things that is our responsibility to do. Council passed the Anti-Lobbying Ordinance and we enforce it because they require us to enforce it, so we take that obligation seriously. And ultimately, we will enforce the version of the Anti-Lobbying Ordinance that they wish to see. But when you ask us to make an operational recommendation, I have to be careful not to get into estimating the policy and the political perspective of the elected officials; to give them something that I think they want to hear. We try to stay in staff role and to make the recommendation based on our experience and expertise.

Peter Einhorn: Appreciate that. Vice Chair?

Meagan Harding: About how long, and it might be in here somewhere, I don't know. But, about how long is a solicitation on the street from the time it is published to the time it's due?

James Scarboro: It's gonna vary, but by state law we're required to have it on the street at least 14 days, for a formal solicitation. So that would be any competitive process where the resulting contract or contracts are expected to exceed \$50,000. So, at least 14 days. Typically longer, and sometimes as long as several weeks, maybe a couple months.

Meagan Harding: Okay, so then to Commissioner Ohuery's point, 14 days would obviously be too long because that's the minimum, if we were to find some time period that's workable. Okay. Thank you.

Peter Einhorn: Any other questions? Mr. Gregory, you had wanted to make some comments on this. Do you want to come up?

Bob Gregory: We have long considered the problems that y'all are talking about, of cutting off... when to start the Anti-Lobbying period of time. I'd like to call your attention, it's this tab from the document I gave you where it says 'ZWAC', on 'SOW Scoring and Contracts.' And while you're looking at it, twice the Zero Waste Advisory Commission passed this, the same identical Resolution, one in July, which was before the recommendations came out from the Solid Waste Policy Working Group, and then again, after the recommendations came out because it ignored them both times. And it speaks to this concern, I believe directly, and possibly offers a solution for this issue. What ZWAC saw, or recognized, is the four 'Whereas-es' up front. It has the responsibility as a Commission to review, evaluate, and make recommendations to the Council regarding City policies concerning waste issues. Secondly, implementation or adherence to City policies must be reflected in the process of soliciting for procuring goods and services. Third, the Zero Waste Advisory Commission desires the opportunity to effectively review, evaluate, and make recommendations concerning solicitations and contracts derived from those solicitations. So the fourth one is, 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, I'll remind you, before I go into the three recommendations, all of this concern for solid waste came out because of concern that staff was not sticking with firm policy from past Councils. That's where all of this came out of. So, what they recommended was this: they were requesting that staff present to the Zero Waste Advisory Commission the Scope Of Work, not the entire RFP, we understood that could be too much, but the Scope Of Work and the Scoring Criteria for proposed solicitations prior to official issuance of any solicitation. That's prior. So it could start at the issuance if these three things could happen. Secondly, ZWAC requests the staff to present negotiated contract documents to the ZWAC prior to requesting a recommendation for approval of a contract related to a waste issue. Third, just to get it straight, ZWAC asked the City Council to provide directive to ARR staff to comply with this recommendation. So, really, if you want it to start at issuance, then have process up front where the policy is reviewed within the Scope Of Work of the RFP or the bid, whatever, and the Scoring Criteria is reviewed. Then, the policy issue should, as long as they stick with that policy issue throughout the process, it should have been rectified or questioned or challenged. Hopefully that will be helpful because in them wrestling with this for a year, this is what they were coming forward with, with solutions. Thank you for letting me make that comment.

J. Michael Ohueri: And Mr. Gregory, just so I understand you correctly, what you're saying is you would be okay with a No-Contact Period beginning at time of the solicitation issuance as long as before that there was a Scope Of Work and Scoring Criteria before the proposal issuance.

Bob Gregory: The answer is yes, in a word. Yes. What we have seen, though, so many times, and what has just happened on the biosolids bid that's on the street now, it's an RFP so people can come back with all kinds of variations. But within the RFP there was a Request for Information that came out with kind of a Scope Of Work. That changed dramatically when it was issued. They received comments and it was changed dramatically when it was issued. After the pre-bid meeting, which we do have on most of these solid waste issues, when that... after the pre-bid meeting it changed dramatically again. So that brings the question, "Well, what is the policy?" "What are you going to do?" So that's the reason I believe ZWAC came in, and we support, that that policy be ferreted out at the first and then policy be stuck with and then the contract is posted with enough days, 14 days ahead, so that there can be comment. Now that's where we differ. We think the Anti-Lobby period should stop there to allow us more than 3 minutes or 6 minutes. Y'all are very gracious tonight. Sometimes we don't get this sort of treatment to have more time. And sometimes that's after a decision has been made and staff has had many hours with the policymakers. So that's why... it's all about policy. We wouldn't have been here asking about this if it wasn't for the consistent deviation in policy. So that is a way, I think, to answer the question, to get a solicitation when it's issued rather than upon the due date. And the due date gets changed sometimes, and it happens, you know. One person shows up, they may delay it two weeks hoping they'll get some more. It's actually the effective turn-in date on the sealed proposal, is what we meant.

Peter Einhorn: Thank you, Mr. Gregory.

Bob Gregory: Any other questions? Thank you very much.

Peter Einhorn: Thank you.

Donna Beth McCormick: I have a comment.

Peter Einhorn: Commissioner McCormick?

Donna Beth McCormick: We're here because of waste, but we're also talking about other contracts, and I think that we need to be aware that other contracts, whatever they may be, will be different from waste. So we probably have to take into consideration some other things we haven't brought up tonight and there may be different timelines needed for different things other than waste.

Andrew Dobbs: Just real quick, Andrew Dobbs, Texas Campaign for the Environment. Like I think Michael and Nikelle said this, we really did seek to bring that into the consideration.

Donna Beth McCormick: Well and I know Strategic Partnerships, Gay did also too because they said Nikelle does too. So there may be some other guidelines in others.

Bob Gregory: And there may be a threshold. As you know, under \$50,000 or something, doesn't even have to go to Council anyway. So there really is a start of a threshold. There may be another...

Donna Beth McCormick: If you're talking about buildings, that's a whole lot different.

Bob Gregory: There may be a higher threshold at which this would apply.

Peter Einhorn: Commissioner Ohueri.

J. Michael Ohueri: So then, just to understand this. Would it be helpful to just have a very clear expectation and process on the Notice of Solicitation for every solicitation that's put out, a prescribed period that says the Notice of Solicitation has to be put out in a certain number of days beforehand and it objectively has to do these things? If that's put out, would that be helpful? And this is just anyone, the stakeholders...

Michael Whellan: With the solicitation attached or what are you thinking?

J. Michael Ohueri: Right now is there a requirement that there be a Notice of Solicitation?

Nikelle Meade: It's not a requirement, Council stated it as a policy that they want you to adopt on waste... I don't think it's in the code anywhere or the rules.

James Scarboro: The notice of...

Peter Einhorn: Can you come up to the table just so we can hear you?

Donna Beth McCormick: You might as well stay up here.

Brian Thompson: We've got five chairs for a reason.

James Scarboro: So the notice of an upcoming solicitation has, it's been a mitigating activity, where staff and the City Manager's office try to come up with a way to satisfy or better satisfy expectations with regard to possible policy areas being addressed in a solicitation. Sometimes a policy is something you can put your finger on and sometimes a policy is perception of the reader saying, 'there should be a policy for that.' So when Procurement looks at a solicitation we evaluate it for compliance with known policies, and we assume the same is done by our customers in their fields of expertise. And to the extent that we find out that there is a violation of a policy, then we can address it. But when there is an interpretation that there is a violation of what should be a policy, or we feel is a policy, then we're kind of stuck. And so we would like to know what others perceive as policies in the solicitation as early as possible, and we have the ability to receive that feedback when the solicitation is on the street, so long as the feedback goes to the authorized contact person we can do something about it. Sometimes we get feedback about things that aren't real policies that they don't have a citation, they don't live in a policy book. But citizens and stakeholders can feel very strongly about these things, and we understand that, but ultimately, outside of our line of business we kind of rely on the customer or department to tell us if that is a policy or not and then there is a change or not. So, the pre-solicitation notice is a way, has been something that we're trying, to get that policy feedback or get the feedback on the meat of the solicitation, the scope, the requirements if you will, as early as possible so that we can do something about it. 'Do something about it' means sometimes changing the contents of the Scope of Work and when you change the contents of the Scope of Work then there could be a subsequent evaluation and a subsequent determination that there's another policy that may not be preferable, and then we make that change based on feedback and then there could be another review, and then there's... so this is an iterative process while normal, assumes that what you start out with may not be the same thing as what you end up with. So that just... it complicates maintaining a consistent requirement so that what we issue is exactly the same thing as what we close with. If that's the case then we really can't act on any of the feedback that we receive. If we didn't change the contents of the solicitation then we can't meaningfully ask for feedback. You know we want to know if there's something that needs to be changed, and then we need to be able to make that change in order to address any operational, market or policy issues. So I hope that answers, I know it's a long response.

J. Michael Ohueri: It sort of does and this is an elementary question, but I need to understand this, so when a solicitation is put on the streets, so that a person may come back and says 'well I think this solicitation needs to be

changed and these are all the reasons,' and staff says 'you know what, that's a good idea.' Is the solicitation that's currently on the streets then cancelled and another solicitation gets put out, or does that solicitation get updated? How does that work?

James Scarboro: That's a great question. We have to determine the magnitude of the change. So if the change is so substantial that it may communicate to a different market segment, then we would cancel, make the change, and reissue the solicitation. If the change is a clarification of a requirement, or a refinement, or an improvement of a requirement, then we would addend the solicitation and incorporate the change without canceling and without reissuing the solicitation.

Luis Soberon: And you notify all the current bidders at any time it's amended or...

James Scarboro: We issue a notice to all offerors... excuse me... we issue a notice to all vendors who are registered in the City vendor registration system who have told us they want to be notified of solicitations based on commodity codes that they have selected with their profiles. So they tell us what kinds of products and services. If we are soliciting for those products and services they say 'notify us of these types of products and services' buy picking the commodity codes. So we send notices to them, but we also publish it on our website which makes it publicly available to anybody in the public.

J. Michael Ohueri: And so with the pre-bid conferences, how much time does it take for communication to pass back and forth, I guess, in an effective way between the potential bidders and the Purchasing Office?

James Scarboro: Pre-bid, pre-proposal, pre-offer conferences, it's a way for us to expedite the information retrieval. So, we articulate the requirements for our customer departments and the solicitation, and we describe the competitive process and we include terms and conditions that we hope go into the resulting contract. And then we ask for any inquiries, any questions so that we can determine if we are communicating effectively in the market. And sometimes a way to speed up that Q&A, that inquiry, is to have a meeting, and to ask for questions and kind of hope that the verbal communication will kind of speed up the communication that otherwise could occur in writing. Ultimately, however, a pre-offer conference is a snapshot within a period of time that you are published, so you may have a different solicitation in a week because we have made changes. And so what we always say at a pre-offer conference is 'there's no right to rely on verbal contents' and we try not to emphasize the verbal exchange because ultimately the contents of the solicitation can and often do change when we hear things at the pre-offer conference and we receive questions, and a lot of times offerors don't want to talk to these conferences, they just want to listen. They submit their questions later and then we respond to them either answering the questions, clarifying circumstances, or changing the requirements of the solicitation. So because it's an iterative process, we use the meeting to assist the Q&A, assist the communication exchange but it's not the only time that communication occurs or should occur. It's just a snapshot that occurs during the time we're on the street.

J. Michael Ohueri: That answers my question.

Peter Einhorn: All right Commissioners, so we still have the option before us if there are any legal questions that we want to ask, we can go into Executive Session on those. We can also begin to sort of hone in on what our recommendation is going to be. So you have the Working Group's thoughts in front of you. I think, you know, we have to sort of address the question of: What time... at what point the Restricted Communication period begins, whether it's at the time it's published, or otherwise, and then when it ends. I think we have currently 60 days or when the contract is signed, whichever is sooner. We have to address Enforcement and Debarment, Reporting Obligations, and then the ABA's Model Procurement Rules and then if there is anything else you'll want to throw on the table.

Donna Beth McCormick: In considering this, do we need to have more explanation on the ABA to fit into this? Or can we just use this statement as is?

James Scarboro: If I could clarify... the reference to the American Bar Association Model Procurement Code came up when there were some questions from the Work Group, the ERC Work Group, regarding the hearing that's being contemplated by the Stakeholders and I was asked if I was familiar with a hearing process. And I indicated that I was, but went on to clarify that I'm used to a hearing being an element of an appeal, a second step to a complaint, first step being

a protest that's dealt with by the procurement officer and then the second step being an appeal to an outside or higher authority, which a hearing could be an element of an appeal. So the reference to the ABA model procurement code was only within the context of the protest and appeal discussion to the extent that it is a source of model regulations, certainly. But it's a substantial body of regulations and I won't say anything bad about it, I've spent most of my career under model procurement code, procurement organizations, but at the same time it would be a substantial move if we were to consider pursuing that body of regulations or a body of regulation like that. Given some the elements that you are also considering, like debarment and like the confidentiality of proposal contents, these are elements that are dealt with in a body of procurement regulations like the model procurement code. To deal with those elements in your Anti-Lobbying Ordinance may make it difficult later if we were going to move towards a full body of procurement regulations because we might end up with some disconnects between the Debarment process set forth and the Anti-Lobbying Ordinance, and the Debarment process set forth for all other procurements, or the confidentiality process set forth in the Anti-Lobbying Ordinance or the confidentiality policies that we would apply to all other procurements. So I'm not recommending against the model procurement code, I'm a career fan of it, but the context in which it came up was just associated with hearings.

Debra Danburg: So if I can help clarify a little bit. Everything that Mr. Scarborough said is absolutely right. We're not recommending that they go to it, what we're recommending...

Donna Beth McCormick: As a resource?

Debra Danburg: No, what we're hopefully recommending is that they look at it for future. It would take a good year, year and half of study by a select group to decide whether or not they would want to go to that. We did ask a number of the interested parties if they have clients or if they themselves have operated under it in other cities and got a fairly good representation that they were familiar with it and they saw it as something that they knew how to work with.

Donna Beth McCormick: I just didn't know whether it was something that we really needed to explore ...

Debra Danburg: It's not something that we'll be doing ourselves. It's big.

Peter Einhorn: Okay. All right, should we take these one at a time or do you want to make a motion?

J. Michael Ohueri: I think we should take this one at a time just to get agreement 'cause I think most of these we can have an agreement on. Enforcement, Debarment, Reporting, American Model Procurement Rules. The only recommendation I would make, for one of them is, for the Restricted Communication, I think the Council should establish a time that's prior to the solicitation being due, a short time... that's about it. A time that's after the solicitation is issued but before the time it's due, should be the beginning of the no-contact period. The number of days and how long and that should be, I don't have a specific recommendation on.

Peter Einhorn: Yeah I'm trying to think about how to write that up. So you're... is that a motion? Is that a motion?

J. Michael Ohueri: Yes, that is a motion.

Peter Einhorn: So a motion for the Restricted Communication period to begin after the solicitation is issued but before it is due.

J. Michael Ohueri: ...but before it is due for the purpose of giving potential bidders time to respond to any policy concerns, but a period short enough to discourage unfair lobbying.

Meagan Harding: Undue influence as well.

J. Michael Ohueri: Undue influence? All right that's better.

Peter Einhorn: Sorry I'm writing it down. All right so what I have is, 'Restricted Communication period to begin after the solicitation is issued and before it is due for the purpose of...'

Meagan Harding: Discouraging undue influence.

Peter Einhorn: All right.

J. Michael Ohueri: Yeah, discouraging undue influence and giving potential solicitors time to address policy concerns.

Peter Einhorn: Giving respondents?

J. Michael Ohueri: Respondents.

Peter Einhorn: 'Giving respondents time...' Say that again.

Meagan Harding: To address policy concerns.

Peter Einhorn: All right that's a motion by Commissioner Ohueri. Do we have a second?

Donna Beth McCormick: Second.

Peter Einhorn: Second by Commissioner McCormick. Any discussion on the motion? Commissioner Danburg.

Debra Danburg: I'm not sure that I haven't been convinced by the staff that they're not already in a position of being able to have these pre-meetings and get enough input. I agree with you that I want the input to be able to be there, but I'm not sure that I feel necessarily comfortable that once it's on the streets it's not a legitimate concern to want it to go to one contact person within the department. Those pre-meetings might be enough to iron out the issues that we're talking about. And I'd like to have anybody let us if know if they have a big heartburn with either way on this.

Peter Einhorn: Well let's have...hold on, how about we see if we have a second for the motion first. I'm sorry, we do. Okay. I'm sorry. Go ahead, Mr. Gregory.

Adam Gregory: Okay, I was just going to point out that for us, it's the difference between – and there is an opportunity to talk to staff about the solicitation – for us, it's the needed level of accountability to staff to be able to communicate beyond just that individual to verify that the solicitation has adhered to the policies that they may have shown to a board or commission beforehand or released as part of a pre-solicitation, check, or something like that. To us it's similar the appeal of a disqualification. Staff makes the decision about what goes into the disqualification. They can accept or ignore certain things. So, we believe that after the solicitation is issued that hopefully it remains consistent with policy, and in compliance with policy. But in the event that it is not and staff chooses to disregard those concerns, you can, not as part of a formal appeal process, but you can take those concerns to someone other than the individual staff member.

Nikelle Meade: Commissioners, what if you said like a week, five days, seven days, after the issuance of a proposal, the No-Contact period starts and that gives anybody who has a major...and that's what we were just talking about – a major problem, policy, concern, something's really awry... time to read it and let their council member or commissioner know, but not probably not enough time to launch a big lobbying campaign. Just a thought.

J. Michael Ohueri: I was thinking along the line of three days.

Nikelle Meade: Yeah, I thought about three days too.

Peter Einhorn: Some of them are really big. Commissioner Kahle.

Mary Kahle: I wanted to hear Mr. Shannon on this though. Mr. Shannon I wanted your opinion on having a short time period, say three to five days or five to seven days, or something like that. What are your thoughts on that?

Steve Shannon: Yes ma'am, thank you for the opportunity. We would agree to a short time period, I think three to five days gives people an opportunity to read these things, identify if there's an issue. Yes, some of them are thick. That's what 24 hours a day are for. We read 'em until we get 'em done. Also, having that shorter time frame keeps a major lobbying effort from being launched and pursued. So, we'd be in agreement with three to five days.

Adam Gregory: Five business days?

Meagan Harding: My suggestion was going to be five business days. It's hard without seeing a RFP. I've been sitting here wishing I could actually see one, to know what we are talking about, because when you say they are that thick, I'm thinking they're like two to three pages.

Steve Shannon: Well I mean some are highly technical and can be long, but the people who are bidding on those understand what that is, it's not foreign language to them... *(inaudible)*

Peter Einhorn: So, the RFP is this thick, but how much of it is the Scope of Work and the scoring criteria that Mr. Gregory talked about?

Steve Shannon: They can be read pretty soon.

Meagan Harding: Okay.

James Scarboro: Just a point of clarification, this would apply to all solicitations. So this would be an Invitation For Bids, Request For Proposals, and Request For Qualifications statements. Request For Qualifications statements do not have scopes. They have an area of professional expertise. There's no technical proposal, rather there's a Statement of Qualifications. Invitation For Bid is hard specifications where the evaluation is based on low bid and the contract is completely available at the time of posting of award recommendations. A lot of what's been discussed only pertains to Request For Proposals, which is greater than Request For Qualifications but less than in quantity to our Invitations For Bid.

Nikelle Meade: Are you saying that the three to five days is probably not enough or?

James Scarboro: No, I just wanted to clarify because the references are the RFPs. RFPs would function differently than IFBs.

Andrew Dobbs: It wouldn't really... it could happen that there was a Request for Qualifications that reflects some sort of alienation of established policy but it also seems a lot less likely with those kinds of documents. And IFBs, Invitations For Bids, I don't even know if the Anti-Lobbying Ordinance is always applied to those simply because it's pretty clear, either you put in a low bid or not.

Nikelle Meade: It just seems that having a solicitation to which the ALO is applied...

Meagan Harding: Right.

Andrew Dobbs: Yeah, this sounds like a good middle ground to accomplish everybody's aims here, to have that opportunity for in the instance that policy is being changed or ignored or violated in some way that there's an opportunity to weigh in. But, at the same time that doesn't allow for any of the troublemaking that Steve was raising earlier.

Meagan Harding: Is there a consensus amongst the stakeholders between three to five days? Is there a preference on three or a preference on five?

Michael Whellan: I have a quick question on this. Since we're talking about solicitations, were we thinking, Commissioner Ohueri, that there would be a Scope Of Work and Scoring Criteria would at least be made available in advance and then we would have this limited period of time?

Meagan Harding: No, at the time of publishing.

Andrew Dobbs: It's like a totally different topic.

Nikelle Meade: You get the whole solicitation. Like, it's published. It's on the streets.

Meagan Harding: Right.

Nikelle Meade: You need to look at it, read it, and if it says something that you know is a problem then you have to go to your commissioner or council member.

Michael Whellan: We had been talking about fourteen days at one time.

Nikelle Meade: Right, but James is saying some solicitations are fourteen days...

Meagan Harding: Fourteen days.

Nikelle Meade: You need something very shortly...

Donna Beth McCormick: So is it five days?

Peter Einhorn: Now, we do have a motion, until the movant, until the second want to amend their motion, we have...

J. Michael Ohueri: Let me just say this. So, I'm just going to make a specific number. Five days sound good but should it actually, and I hate to be too technical here, but should it just be four days after the bid is issued? So, if it's issued on a Thursday, the first day starts on Friday, so it's very clear. If we say five days after, that's actually six days. Four days after is like four and half days...

Meagan Harding: If you count the day...

J. Michael Ohueri: ...depending on when it's issued.

Peter Einhorn: Four days, so you're saying, are you amending your motion to say "restricting communication period to begin four days after solicitation is issued"?

J. Michael Ohueri: Correct.

Peter Einhorn: "For the purpose of discouraging undue influence and giving respondents time to address policy concerns?"

Meagan Harding: My suggestion would be to make a friendly amendment to restrict it...

Peter Einhorn: Four days after solicitation is issued.

Meagan Harding: Just to somehow make it clear that day one of the count is the next day. So if it's issued... the next business day.

Fredda Holmes: I was just going to say, isn't that already in the General Procurement Code, of how to count days?

Peter Einhorn: It's in the Rules of Civil Procedure.

Meagan Harding: Civil Procedure but...

Fredda Holmes: I don't know that they apply.

Peter Einhorn: I'm going to let the lawyers figure out how to skin this one.

Meagan Harding: We just need to count the day.

Michael Whellan: I would also encourage what Commissioner Harding said, 'business days'. Otherwise you're going to get beat up for that.

J. Michael Ohueri: I'm against business days because there are holidays that fall in between, and in my mind that's just too long of a time. If it comes down on a Friday, in four business days it comes back on a Thursday or whatever that may be. It'd just be better to leave it at four days.

Peter Einhorn: So, Commissioner Harding, Vice Chair... Vice Chair Harding, would it address your issue if we said "restricted communication period to begin four days after the day solicitation is issued"...four days after the day? I don't know, I mean... and then we have to make sure it's okay with the second. Is it okay with you?

Meagan Harding: I'm not so...

Donna Beth McCormick: No, me.

Peter Einhorn: Yeah, I know, Commissioner McCormick. So, four days after the day?

J. Michael Ohueri: Four days after the day.

Andrew Dobbs: You might want to specify business days so that...

Peter Einhorn: Well I think, I think Commissioner Ohueri is saying he is not in favor of business days.

Andrew Dobbs: I'll just say that you may end up with a situation where when the department staff decides they want to play games and stuff then they're gonna issue it Friday before Christmas or something like that. Then we're never going to get a chance to weigh in on it.

Meagan Harding: I think business days are generally understood to be days in which business is conducted. So if business is not conducted on Christmas Eve that does not count.

Donna Beth McCormick: Then state “business days.”

Peter Einhorn: I’m going to push back against this. I mean, to me, you know we can’t write the perfect code. If staff is truly doing that then we’ve got a bigger problem than the Anti-Lobbying Ordinance. That problem may exist, but to me, that problem is not the charge of this Commission on this day.

Brian Thompson: So, it’s business days or not. It needs to be the decision of who made the motion, so...

Donna Beth McCormick: It’s business days...

Peter Einhorn: Well, but the person who made the motion said he doesn’t want business days. So y’all either need to remove your second or you’ll need to change J. Michael’s mind.

Brian Thompson: Yeah, or we have to substitute motion.

J. Michael Ohueri: So you think business days is better?

Donna Beth McCormick: Yeah. You don’t want holidays and weekends.

Peter Einhorn: Okay. Four business days? And that’s good with the second?

Donna Beth McCormick: Yes.

Peter Einhorn: All right. So, what I have is: “restricting communication period to begin four business days after the day a solicitation is issued for the purpose of discouraging undue influence and giving respondents time to address policy concerns.” Is that...I got it?

Donna Beth McCormick: Got it.

Peter Einhorn: Good with the second? Is there any discussion of the motion?

Mary Kahle: I’d like to ask one more question to Mr. Scarboro. So for solicitations that don’t have a long period on the street, say it’s just something where you’re going to accept a low bid and it only take a matter of days. Does having this four-day opening, will that cause any problems when you award a bid and somebody else says ‘Oh, but I have four days to contest this.’ Do you see any complications with bids that are really short term? That’s my question.

James Scarboro: I was under the understanding that the four days would apply to when Anti-Lobbying would occur, not to contest.

Peter Einhorn: Yeah. I think that’s right.

James Scarboro: My follow on to the proposal... but because we make changes in the solicitation while the solicitation is on the street, the assumption that the policy concern will occur in the first four days would not allow for policy concerns that derive from changes that occur after the four days. So, would it be the first four days or four days after any changes, or would it be consistent? I just... I wonder...

Peter Einhorn: Let’s ask the movant.

J. Michael Ohueri: And so I think to that issue, that’s really something that staff would have to handle. If staff felt like there were significant changes that they would need to cancel the solicitation, then obviously the four days would start over. But if the solicitation wasn’t canceled, then it’s just within the four business days, that’s just the way things work.

James Scarboro: Right. But the policy concern would be brought to staff.

J. Michael Ohueri: It would be but I think if that became a systemic problem stakeholders would petition their Council members to... *(Inaudible)*

James Scarboro: Yeah, I’m asking for clarification, ‘cause I have to operationalize this and so...

J. Michael Ohueri: The four days would begin at the initial issuance. So any amendments or addendums, in four days it would start over.

James Scarboro: Okay. All right. I appreciate the clarification.

Peter Einhorn: All right. So that's the motion on the beginning of the restriction, Restricted Communications Period. Any further discussion? All those in favor?

Commissioners: Aye.

Peter Einhorn: Opposed?

Ben Stratmann: Nay.

Peter Einhorn: Okay. We have everyone else voting aye. Any abstaining? We have Commissioner Kahle, and Commissioner Stratmann in opposition. And then is there a motion on ending the Restricted Communication Period? Commissioner Danburg?

Debra Danburg: I move that we recommend sixty days or upon completion of the contract. Or how would you word it? Or upon the contract being signed and final or something like that.

James Scarboro: That was staff's recommendation.

Debra Danburg: Whichever is earlier.

Peter Einhorn: 'Restricted Communication Period to end sixty days after'...the words... 'after Council authorization'... 'following Council authorization, or when the contract is executed, or whichever is earlier'.

Brian Thompson: Is that not just the language of the, what we're we talking about, isn't that just the language of what the staff draft is?

(inaudible discussion)

Peter Einhorn: Okay. So it really is to support the staff language. Okay, that's motion by Commissioner Danburg. Do we have a second?

J. Michael Ohueri: Second.

Peter Einhorn: Second by Commissioner Ohueri. Any discussion of the motion?

Brian Thompson: Are the parties generally... are our friends in the crowd generally agreeable on this part?

Andrew Dobbs: We support having it end before the end of ... before Council vote. That's been our position. We understand that even ZWAC didn't seem to have that appetite, and so it's not something...that's just our position.

Nikelle Meade: We feel like that grabs the whole intent of what... *(inaudible)*.

Michael Whellan: We also feel that when it's agendized that should be it.

Peter Einhorn: Okay. Any further discussion? All those in favor of the motion, aye?

All: Aye.

Peter Einhorn: Opposed? Abstaining? That one passes unanimously.

Meagan Harding: I would like to make a motion on the following recommendations from the Working Group, with the titles 'Enforcement, Debarment, Reporting Obligation'. I would like to make a motion that we accept the recommendation of the Working Group.

Donna Beth McCormick: Second.

Meagan Harding: On 'Enforcement, Debarment and Reporting Obligation', I'm leaving out ABA 'cause I think there is some discussion on it.

Donna Beth McCormick: ABA has a lot of concerns with it.

Meagan Harding: Oh sorry, amendment to my motion...

Steve Shannon: I have a question, ma'am.

Meagan Harding: Yes?

Peter Einhorn: Hold on, hold on one second. Let's just get the motion.

Meagan Harding: Under 'Enforcement' where we have The Ethics Review Commission being the body of review for that to be changed to the Municipal Court.

Donna Beth McCormick: Which line? Is it, "The muster should...?"

Meagan Harding: Yes, the muster should.

Donna Beth McCormick: Change it to Municipal Court?

Peter Einhorn: Instead of Ethics Review Commission. So the intent of that section there was really to say that we didn't weigh in. We were calling for due process but we weren't weighing in specifically on what entity it should be. It could be the Ethics Review Commission, it could be the City Council, it could be the Municipal Court. I think we all decided as a Working Group, correct me if I'm wrong, colleagues, that we were open to that as long as there was a due process that was outside of the Purchasing department.

J. Michael Ohueri: I think one thing...

Peter Einhorn: Now we can certainly add the Municipal Court to the list.

Meagan Harding: That's fine, I agree with that.

Peter Einhorn: Okay, so that was a motion by the Vice Chair and do we have a second on that?

Donna Beth McCormick: Me.

Peter Einhorn: Commissioner McCormick. Thank you, thank you Commissioner McCormick.

Steve Shannon: Are you saying that you are agreeing that there can be disbarment if there is or isn't an appeals process which could be perhaps a municipal judge?

Donna Beth McCormick: It's a temporary disbarment.

Peter Einhorn: It's a temporary disbarment. It's always been temporary and the Working Group felt that gave the ALO teeth. Whether it's whatever others jurisdictions do, I think...

Michael Whellan: You can get disqualified with a death sentence, this is like mutilating a dead body with debarment, basically, and that's the only concern we have, is getting disqualified is such a difficult thing to overcome.

(inaudible discussion)

Donna Beth McCormick: It's a temporary that can go before the court.

Michael Whellan: But temporary is three years. Three years is the length of time.

Donna Beth McCormick: It's a temporary... and if you go to appeals...

Peter Einhorn: I think this recommendation lowers the bar for appeal out of Federal Court which was your point earlier...way lowers. We are definitely not the Federal Court.

Brian Thompson: My concern would be several times small businesses, smaller businesses have been mentioned and I think when you lower it on the Municipal Court level, a very good suggestion by Commissioner Ohueri, that that threshold for appealing is much more manageable.

Peter Einhorn: Okay, so the motion that I have is accepting the Working Group recommendation on Enforcement, Debarment, and Reporting Obligation adding Municipal Court to the option of third party due process consisting of options. Okay, any discussion of the motion? All those in favor?

All: Aye.

Peter Einhorn: Opposed? You guys are good with the motion? Any opposed? Any abstaining? Passes unanimously. All right, well that gets us to the last item which is the American Bar Association model procurement role in making a recommendation that Council work with staff and stakeholders to explore the possibility of incorporating that model of procurement. Do we have a motion?

Debra Danburg: So moved.

Ben Stratmann: I'll second it and only because all we're saying is... we're not telling 'em to do it, we're just telling 'em to look at it. 'Cause I don't know much about that process. I bet a lot of us don't.

Mary Kahle: Peter?

Peter Einhorn: Hold on, let me...

Mary Kahle: Okay. I know you're writing as fast as you can.

Nikelle Meade: While Peter writes, there is a professor at the University of Maine who's sort of the ABA expert on this... (inaudible) ...and so I asked the section from contract law section to get in touch with Chris, to just make the connection because she was saying he was willing to come speak to this body, or Council or whomever just to talk about the model rules if that's something...

Mary Kahle: Oh, that's great.

(inaudible)

Peter Einhorn: Okay, sorry. Was there a question? Commissioner Kahle, did you have a question?

Mary Kahle: I think I've satisfied my question but I was going to see if there are other... I'm not an attorney. I don't know if the ABA model is the model or if there are other best practices out there for how procurement works, and so I was going to suggest another amendment, 'ABA or other best practices model.'

Peter Einhorn: Is that friendly to the movant? To say 'ABA or other best practices models'?

Debra Danburg: I don't know of any but that would be fine.

Ben Stratmann: I'll move as a second.

(inaudible discussion)

Peter Einhorn: Okay. So the motion I have is a recommendation that Council work with staff and stakeholders on implementing the model procurement rules of the Austin... American Bar Association – sorry, I was writing too fast – American Bar Association or other best practices models. Any discussion on the motion? All those in favor?

All: Aye.

Peter Einhorn: Opposed? Abstaining? All right, that passes nine-nothing. Is there anything else that we want to recommend to the Council that was not part of the Working Group's recommendations but that y'all heard tonight?

Nikelle Meade: Commissioner Stratmann.

Ben Stratmann: From our last hearing we discussed the rare but unfortunate incidents in which staff had their hands tied related to communications initiated by Council or City employees, City staff, City officials, and their... staff having to treat them the same way as someone else who may have intentionally communicated outside of the, or during that No-Contact Period. Have we done anything in here that I've missed, because I don't think we have, that unties their hands a little bit?

Peter Einhorn: You're talking about, so, if a City Council member contacts, or the representative of an entity that is in the process of going through the solicitation process...

Ben Stratmann: I can't remember the specific example and maybe staff can... okay. And if not appropriate, maybe don't cite it, in fact. But I know there was a specific example with staff. We sympathized with them because their hands were very much tied with strict enforcement of the ALO. That was something we discussed and I think there was relatively general consensus that that was terribly unfortunate for those businesses.

Debra Danburg: I think that we covered that in the self-recusal aspect of it. If a councilmember has some interaction that they feel has put them in a conflicted situation, they would report it and self-recuse the same way we do on the sign-in sheet. But if it was just getting information then they could not be arbitrarily recused by a staff person against their will, just because they disagreed with the recommendation or whatever.

Ben Stratmann: I agree with what you're saying, I guess more specifically I'm referring to if someone's going through the bidding process and a councilmember or what is much, much more likely, a staff member or City official in some capacity reaches out to them about it or asks them a question, if they reply and that's reported to staff, their hands are tied to enforce the ALO, and that's a violation. Would we not agree? Wasn't that what we discussed last time? You won't hurt my feelings about misremembering.

James Scarboro: No, it's okay. I believe you've already voted on it. Our language was in 106B and the edits proposed by the stakeholders moved that treatment to the mitigating factors that would be considered by the Ethics Review Commission, so I would still be in a position where I'd have to find the violation and then you would have the ability to not observe or overturn the violation. I would not be able to avoid the violation. I'd still have to find it.

Ben Stratmann: Okay.

James Scarboro: But language proposed by staff would allow us to avoid the violation.

Peter Einhorn: All right. Mr. Dobbs.

Andrew Dobbs: Yeah, with regard to the kind of, logic there, there was... we were really concerned about letting staff consider mitigating factors which were undelineated and ambiguous. Because you can't appeal a non-decision. Right? So there is some sort of violation even if it's a thing like that. There is some sort of violation and staff decides to not mitigate, in fact we are not going to charge this one. There is no way for me, if I am a competitor with them and they actually did do something wrong for me to say, 'No, you have to charge them.' Right? So it's better, we felt, to have to say, 'Okay, this was a violation, you're charged.' But then to have the review body, whether it be this or municipal court or City Council that is empowered to consider that mitigating factor at that level. Right, because there's a much more public, there's some scrutiny at that point and it's not the kind of arbitrary decision making we might have had, that's directly accountable.

Ben Stratmann: So, do you feel that that's built in by our motion that passed, I believe unanimously to, on the enforcement piece, to send these appeals to a municipal court. Do you feel that that will be rolled in there? De facto?

Andrew Dobbs: To be completely honest, I think that that is not indicated in what y'all have passed. It is indicated in what we are going to propose. If you want to make sure that they hear that, then I would see that you would need to add that.

Ben Stratmann: I'm not trying to dumb this down to such a level that we put a gaping hole into the ALO, but again, the instance that, and I want to be very clear I'm not badgering or hitting on staff here, they did their job. But the instance that we talked about seemed extremely unfortunate, unfair to the business involved, or to the bidder, I guess, involved and so I want to avoid that if possible.

Andrew Dobbs: If you were to say something like mitigating factors should be able to be considered by whatever that due process body...

Peter Einhorn: Sure. Let's hang on a second. Let's defer to the Chair.

James Scarboro: I was pointing out the interlineations made by the stakeholders where essentially the staff's language would just be moved to the language that would be subject to the ERC so whereas staff would consider mitigating factors in not finding the violation, now staff will find the violation and ERC will be able to consider mitigating factors in overturning the violation.

Michael Whellan: But it works the other way too. Then they can mitigate to find the violations which is why everybody, at least some of us, thought it should be moved to the Ethics Review Commission or City Council at some level.

Michael Ohueri: And to speak to that, no one's brought up this argument but I'm not for mitigating factors, even having it in there, because it is ambiguous. It's not clear and someone can't be certain why this... there wasn't mitigating factors in this instance. I think if there are mitigating factors they should just be clearly delineated, and I know that's difficult because you can't predict everything. I don't even know if we need to even respond to it. But I'm not for the mitigating factors. It's not a good idea and it isn't clear for people at all. I don't know if that adds anything, but...

Peter Einhorn: I'm not sure how we write code to create staff discretion without opening up a wide loophole around the Anti-Lobbying Ordinance. It's not that I don't trust staff, it's just that I am not sure that it should be written in the code. It should just be a message to staff, 'Use your discretion.' You know?

Meagan Harding: I also think that adding this due process provision allows for some alleviation if staff is not able to use their discretion. I am also not in favor of delineating mitigating factors. I just think if someone comes before the body whether it's the Ethics Review Commission or it's municipal court or whatever, they can present their case as a whole and whoever is sitting as the judicial body in that circumstance, can consider those mitigating factors. They don't need to be outlined because in that way when things are outlined in statute then you essentially say whatever is outside of this that we did not contemplate now doesn't count as a mitigating factor.

Michael Ohueri: Yeah, but I think the problem is... and I don't know we address it at the Ethics Commission... is that mitigating factors should only be considered in the punishment. So the punishment right now is temporary disbarment and permanent disbarment if you do it twice. Mitigating factors really should only be relevant on that issue. It shouldn't be relevant as to whether you did it, it's what the punishment is. Like, if I hit you and it hurts, it's clear I hit you. I'm having a bad day. You say something to me, that determines whether I should be punished...

Meagan Harding: I understand the analogy but I think in this situation it's a little bit different because the person is saying, 'I did it because I was asked a question by a staff member and I responded.' So that effects whether or not it should count at all as a violation. That's different than...

Ben Stratmann: I'm comfortable with the fact that there is some remedy that can be sought at the municipal court level but I do think it is unfortunate in the, albeit, very likely rare instances that this would happen, I think that it's very unfortunate that they would have to go all the way to court to deal with it. Again, I'm trying to think from the business' perspective.

Dennis Speight: Quick question. Is there a motion currently on the table?

Peter Einhorn: There is not a motion on the table.

Ben Stratmann: I've just been talking.

Dennis Speight: No that's okay, so I think, I think it's worthwhile at least to express the concern because I think it's a legitimate one. We don't think we want an ALO that allows for staff or city-caused violations. That sounds absurd. I agree with you, Commissioner Stratmann. So I think, I wouldn't be opposed to a motion that at least like raised the concern to say, 'Council, please, when you are setting out definitions of what counts as a respondent or response, or agent, that you take into consideration these albeit rare but strange circumstances.

Peter Einhorn: I think when parties have violated the restricted communication period it's incumbent on them to remove themselves from the process. So if it's somebody who is responding to a solicitation and they violate their restricted communication period then they should be removed from the process. If it is staff or a decision maker who is doing it then they should be recusing themselves from the process. So, I'm not sure how they codify that.

Dennis Speight: Sorry, I just think that my concern is that like city staff isn't subject to disqualification or debarment. That's the concern I have. Is that you know like, I think it matters where the violation comes from, what the source is.

Peter Einhorn: Right, but there is a recusal process because in the solicitation process there are staff that are included in the scoring process. Right? So, if somebody, if staff, if someone on staff has violated the restricted communication period then they should be removed from the scoring process.

Nikelle Meade: The only comment, if I may, Chair Einhorn, I think the difference though, is that we're talking about the respondent being disqualified because of that staff person.

Peter Einhorn: And I totally agree. What I'm saying is that we need to move away from that to whoever it is who violated, once they have been identified, they're the ones who need to be removed from the process because the respondent can't do anything if they pick up their phone. You know and, "Hey it's so-and-so from Austin Resource Recovery and I want to talk to you about this, this and this...", and the respondent is like, "I'm trying to respond to a solicitation. I can't talk to you about this." They haven't actually had a conversation with them.

Ben Stratmann: My only concern is just the... again, I'm not trying to dumb it down, I'm just trying to get to the rudimentary level. If I'm in the shoes of, if I'm in the shoes of Mr. Gregory and I get a phone call from a council member asking about something, what do you do when a Council member ask you a question? You're not going to immediately go through, 'Well, let me talk to my attorney.' He's going to talk to him. He's going to answer the question, even if it's not with poor intention and I generally agree with you about the complication of it. I think it's difficult.

Peter Einhorn: I'm open to a motion.

Nikelle Meade: There is also the issue of how is this is even enforceable in an equitable manner. So, if you have a phone call, I mean it's really going to be he said, she said. You know, 'Well I didn't initiate', 'I didn't initiate.' I guess you could get a phone record of who the call came from, but what was said first and second and all of that, you wouldn't know. But if you have something in writing, an email, then it's different. So in some degree it's aspirational.

J. Michael Ohueri: But, I guess the concern I have, and I have not researched this legally, but, I would think that leaving the mitigating factors in there makes the statute, I would think, ambiguous and unclear. What guidance do I have from looking at the statute to say that what I am doing is not a mitigating factor? There's no guidance whatsoever, and I understand the concern. I understand there was an example of something unfair happening. But these mitigating factors don't make it clear. We have discussed it a lot. I don't know if we have to take a position on it but absolutely that makes the statute unclear. What is a mitigating factor? No one knows.

Peter Einhorn: I agree.

Andrew Dobbs: Once again, one of the things that we talk about that I think is really important is about accountability. Right? We want staff to have to make black and white decisions because staff is ultimately sort of shielded. You know the staffer that makes a decision, we might not ever know who it is, right? It can be totally anonymous. It's behind closed doors. There's public information and that sort of thing but ultimately they are independent of any sort of direct public accountability. A body like this, you may not be elected but you're appointed by an elected official and if you start making crazy decisions, they're ultimately gonna face some accountability from their voters potentially. If it is the City Council that's making that decision or even a municipal judge, who's likewise appointed by the City Council, in those kind of decisions there is a direct accountability. The public can weigh in and say, "You're making mistakes. This is a bad thing for you to do," and they also have to think about that. They have to proactively consider that when they think about how they're going to be looked at by the voters. So that's why it's okay for a body like this or the City Council or even a judge to make judgement calls. Right? Because ultimately there is going to be a day when their judgement is subject to ratification by the people of Austin. Right? That is not true of staff, and so that's why any kind of mitigating factors should not be considered by staff, but by an appointed or an elected body or individual.

Dennis Speight: Could I just interject? I think number seven on the document that Mr. Whellan distributed accomplishes what Mr. Dobbs just said, which is removing mitigating factors... (*inaudible*). Number seven on this document.

Michael Whellan: I know, Commissioner Danburg, you had talked about whether consideration of a statute, at least the other item we've got some general working on the problem of pages two... (*inaudible*).

Ben Stratmann: Yeah, I actually agree.

Michael Ohueri: I agree as well.

Ben Stratmann: I make a motion to codify Number 7. See, that was easy y'all. It took a few minutes.

Peter Einhorn: All right, so we have a motion by...

Meagan Harding: Second.

Peter Einhorn: Stratmann, yes... and a second by the Vice Chair. The motion is to “eliminate the proposed authority of the purchasing officer to consider mitigating factors when determining violations and instead authorize both the Ethics Review Commission and City Council to consider mitigating factors upon appeal.”

Meagan Harding: Friendly amendment to include Municipal Court.

Nikelle Meade: Yeah, you probably just want to say the ‘Appellant Body’.

Peter Einhorn: All right, so what is says, “eliminate the proposed authority of the purchasing officer to consider mitigating factors in determining violations and instead authorize the Appellate Body to consider mitigating factors upon appeal.’ We have a motion by Stratmann, a second by the Vice Chair. Is there discussion of the motion? All those in favor?

All: Aye.

Peter Einhorn: Opposed? Abstaining? That also passes unanimously. Is there any other stuff that we would like, stuff that we would like to recommend? Or can we all go home and watch the baseball game?

Dennis Speight: Do we need to make a motion?

Peter Einhorn: Commissioners, Commissioners we’re not quite done yet. I know we all want to go watch baseball. Is there an appetite to make a motion on a lot of the recommendations that the stakeholders came together to work on? There was broad consensus on some of them.

Dennis Speight: My questions was I guess a parliamentary one, but it was just, do we have to have a separate motion to attach specific background documents?

Brian Thompson: I guarantee you they’re sending them to Council themselves.

Adam Gregory: Even if you don’t have the appetite to jump in and decide one way or the other, we would really appreciate elevating it to Council through this body, not just on our own, because that does lend credence to the process that, I would respectfully request a motion to at least elevate it.

Debra Danburg: So moved.

Dennis Speight: I would just add that the 18 are a very clear, distinct group of items... *(inaudible)*

Steve Shannon: That’s not necessarily true, sir.

Adam Gregory: You weren’t participating, Steve.

Steve Shannon: I don’t necessarily agree with those recommendations.

Debra Danburg: In the interest of Council having as much information before it as possible, I recommend, I move that we recommend that the various interlineations and notations that were gathered by the Committee be attached to our recommendations to Council to consider.

Meagan Harding: Is that the consensus items?

(indistinct discussion)

Debra Danburg: What I’m talking about is those things where we have agreement and non-agreement, and lack of agreement noted.

Dennis Speight: My concern with that is just what is and is not agreement as defined by the participants and without... I don’t even know exactly who all the participants were in discussion of this specific document, and I’m sure that this document will be circulated again and again and again.

Peter Einhorn: Real quickly, the perspective that I will give is I don't think that the efforts of the stakeholders was wasted. I think that the fact that you guys have gotten to a broad consensus on 18 issues can be communicated to the Council. Y'all have as much influence on the Council, or more than we do...

Ben Stratmann: Just to be clear, I think Commissioner Danburg is just suggesting that this be attached for consideration...

Peter Einhorn: Not as our recommendation.

Ben Stratmann: Yeah, just to consider...

Debra Danburg: We just want them to have it in front of them in case they're looking for magic words they can come up with magic words that most people agree with or not.

Peter Einhorn: If that's a motion, I would second it just out of courtesy and respect to the work that's been done, 'cause Council can throw this in the trash, y'all know that. But...

Andrew Dobbs: Recycling.

Peter Einhorn:Recycling. There you go. Yes. Who's got the contract for that? And then, you know, at least nothing else, to quote somebody over on this side of the room, it'll lend some credence to them at least considering it but it will be their decision, so...

Donna Beth McCormick: Just as an attachment.

Peter Einhorn: Yes, and that's also protective of people who said that they did not necessarily agree with it. It leaves it open-ended.

Dennis Speight: The only problem I have is it doesn't say who the participants are in this. It doesn't say...

Nikelle Meade: And I would say, I worked on this... I was one of the ones who spent my Monday, Tuesday, and most of today working on it, but it also, just out of fairness to Mr. Shannon and Strategic Partnerships and others, it does say at the top of the document "The Ethics Review Commission recommends the following changes to Staff's Draft".

Ben Stratmann: Strike that. I vote no.

J. Michael Ohueri: I'm also gonna most likely vote no as well, and the reason is, look through these 18 statements. Eighteen statements, some of these I don't agree with. I've actually only marked two of them...

Peter Einhorn: I'll just lay my cards on the table. I'm going to vote no too just because I don't see the reason to forward things if we're not specifically recommending them. It's not that I'm not supportive of some of these, I just don't...

Donna Beth McCormick: I don't think we need to muddy the waters with the City Council. They get muddied enough.

Ben Stratmann: The only point of order I think Commissioner Danburg is saying that she's gonna remove the motion...

Peter Einhorn: All right. Is there any further action before...?

Dennis Speight: I'll make a motion that we adjourn.

Meagan Harding: Second.

Peter Einhorn: Motion to adjourn, seconded by the Vice Chair. Without objection, we're adjourned at 8:39 p.m.