

## 5-10-17 City Council Waste Management Policy Working Group

**Leslie Pool:** Well, I'm just going to go ahead and get us started. Waiting for the TV to come on there. Great, thank you. Welcome everybody. Let's see, why don't we do our usual introductions all the way around and Mr. Goode, let's start with you today.

**Robert Goode:** Robert Goode, Assistant City Manager.

**James Scarboro:** James Scarboro, Purchasing Office.

**Richard McHale:** Richard McHale, Austin Resource Recovery.

**Jessica King:** Jessica King, Austin Resource Recovery.

**Sara Koeninger:** Sara Koeninger, Balcones Recycling.

**Alfonso Sifuentes:** Alfonso Sifuentes, Green Group Holdings.

**Steve Shannon:** Steve Shannon, Waste Connections.

**Adam Gregory:** Adam Gregory with Texas Disposal Systems.

**Joshua Blaine:** Josh Blaine, Zero Waste Advisory Commission.

**Gerry Acuna:** Gerry Acuna with Tri-Recycling and the Zero Waste Advisory Commission.

**Leslie Pool:** Let's jump over there.

**Andrew Dobbs:** Andrew Dobbs, Texas Campaign for the Environment.

**Andy Andrasi:** Andy Andrasi, Central Texas Refuse.

**Andrew Bosinger:** Andrew Bosinger with Synagro.

**Gary Gauci:** Gary Gauci with Republic Services.

**Phil Gosh:** Phil Gosh, Organics By Gosh.

**Susan Turrieta:** Susan Turrieta, Wastewater Commission.

**Rick Losa:** Rick Losa, Waste Management.

**Larry Schooler:** There we go, Larry Schooler with Communications.

**Delia Garza:** I'm Delia Garza, Council Member for District 2, which is southeast Austin.

**Alison Alter:** Alison Alter, Council Member for District 10, which is central and west Austin.

**Leslie Pool:** And Leslie Pool, Council Member for District 7, and I think we have a couple of additional folks.

**Daryl Slusher:** Daryl Slusher, Austin Water.

**Leslie Pool:** Great, who did I miss? Did everybody, all right. Thanks everybody for coming. This is our third meeting and I just want to start by saying a couple of things. We've had some very productive dialogue and I thank you all for that. And as we noted last week, we're not going to be able to answer all the many points in question, but I think we are now at a place where we've been able to find some common ground on two major concerns. Kaiba, feel free to pull a chair up if you can find a place to wedge in, there's some room down there. And then go ahead and introduce yourself, I was just making some opening remarks.

**Kaiba White:** Kaiba White, with Public Citizen, and I'm on the ZWAC.

**Leslie Pool:** Thanks. So I think where we are now is we've been able to find some common ground on two major concerns. One is that we want to maintain a competitive process for waste management contracts. We, being the City, and I think it's the general consensus around the table, and we see a need to update our Anti-Lobbying Ordinance in a way that addresses the issues that are important to all of the stakeholders and our staff and to the City Council. So, I think there's broad agreement on those two, on those two topics. We heard some good suggestions last week from staff and some really, really good feedback from all of you stakeholders around the table as well. So for anyone who would like to review the ground we've covered so far, if you haven't already, and thanks especially to the efforts out of Council Member Alter's office, we have all of our working papers online and I thank staff for the extra effort to get all these up. And you can go to [AustinTexas.Gov/WorkingGroup](http://AustinTexas.Gov/WorkingGroup). You'll find our agendas, transcripts and all of the back-up information. I just want to thank staff again for setting up the site for the Working Group, for all of our members here and for the public. Would you like to introduce yourself? We're just doing opening remarks.

**Ann Kitchen:** I'm Ann Kitchen, City Council, South Austin.

**Leslie Pool:** Great. So let's see, I think we are looking at the need to have a fourth meeting. We talked about this prospectively last time we met and I think to wrap things up, we'll schedule May 25<sup>th</sup> at 1 o'clock in this room, and that was the date that I had offered up last week as a potential. Yeah, 1 o'clock, 1 to 3, in this room at the end of the month.

**Leslie Pool:** And with that I'd like to turn the meeting over to staff to address the two areas on which I think we have some agreement and if we're able to get through those items we can begin to tackle the landfill question. So, I turn this over to staff and Larry, would you like to moderate us through everything today?

**Larry Schooler:** Sure, Council Member, thank you.

**Leslie Pool:** Great. Thanks.

**Larry Schooler:** I know that early in the staff presentation, which I think we have loaded and ready to go, there's a list on slide 2 of questions before the Working Group and it might be helpful just to look at those here as we get going. As you see, the first two refer to competitive solicitation and Anti-Lobbying Ordinance, and as the council member indicated, I think the group has certainly made some views known on those two topics and there does seem to be some coalescing around some ways forward on those two and so, the intent would be, once this presentation is complete and any further comments are made on those first two items, that we would move to the third question on the list, and perhaps make some progress on that particular question. So that'll be potentially the focus of our discussion, once the staff presentation is complete, and I think it'd be appropriate to turn it back to James to continue the presentation.

**James Scarboro:** Good afternoon Council Members, James Scarboro, Purchasing. Again, it's my pleasure to continue our discussion regarding, well, the initial two large questions before this work group. Continuing from our discussion last week, as it pertains to anti-lobbying, you requested some additional information in the form of a sort of analysis between the major elements of what we saw in the other large cities and in the County and at the State. And as you can see before us is a bit of a comparison. I will put some context around it, as you can see, Austin has the predominance of the detail. Basically, we based our comparison on what do these other municipalities have as compared to what Austin has. If we did that entirely, it would likely be a much larger blue bar on the left. To put it into a nutshell, Austin's Ordinance is substantially longer and substantially more detailed than what we saw in the other municipalities and at the County and State. Also to note that we all have somewhat of a different vocabulary when it comes to similar concepts. Some of them refer to this as "anti-lobbying", others refer to it as "no contact", "quiet period", "limits on communication" and what have you. What they share is that there is an effort to contain the communications that occur during a competitive process, that this period has a start time and it usually has an end time and that there's some limit on who communications can be directed to and who can respond to that communication. So, if you look at some of the points of comparison, you'll see how Austin's beginning of the period compares with the beginning of the period in other locations. You'll see that El Paso has multiple beginning points. They differentiate between unsolicited proposals and public/private partnerships which they don't initiate with the issuance of a solicitation, so there is no publication to initiate the phase. So they initiate their period upon the receipt

of the offer. You'll also see that San Antonio has multiple ending dates for their period and that would correspond with when the offerors can communicate with their department that provides assistance to small and certified firms, when the offer, excuse me, when the award recommendation is authorized by Council, and then finally when the staff authorize or sign the contract. You can see in other points of comparison, whether or not the prohibition applies to representatives of the offer. You see that generally the other municipalities have similar contents with a few exceptions. I would believe that most of them, if not all, would allow for communications made in posted public meetings, it's just that their particular regulation or instructions were silent as to that particular element. Ours expressed it clearly. Another point of comparison would be violations would result in disqualification from the solicitation or debarment. And as you look across the consensus is that the violation is associated with the competitive process itself, which is similar to ours but our Ordinance has a provision where these violations can accumulate over multiple competitive processes. The others did not address multiple violations, they address the violation within that single competitive process. And you'll see a few notes below because these are different governments, different jurisdictions, they have different nuances and some of them required explaining. Again, if we were to list all of the elements regarding Austin's Ordinance, it would be a much longer list and we wanted to compare apples to apples where we could, but just to show you that our Ordinance is overall much more broad than what we see in other municipalities. Any questions on that slide before I move on? Okay. So some other questions that we heard last week, 'Can contractors communicate regarding their existing contract without violating anti-lobbying?' Specifically in the rules promulgated to apply the Ordinance, Section 10, addresses this specifically, 'is not a violation of the Ordinance for a person with an existing contract or business to communicate with City staff or official.' So, contractors can communicate with staff and City officials regarding existing contracts without violating the Ordinance. A subsequent question was, 'Does handing a business card violate the anti-lobbying?' So, no. To violate the Anti-Lobbying Ordinance, the respondent would need to make a "Representation", as defined in the Ordinance. So a "Representation" is 'a communication to staff or official that is related to their response to the solicitation'. A business card in itself would not constitute a "Representation." Now if the business card was pinned to something else and that something else was a "Representation" well then it wasn't the business card that created the violation it was the something else, but the business card in itself would not do it. Can the Anti-Lobbying Ordinance be revised to apply to communications of non-respondents? So there was some concern at the last meeting regarding the communications of persons or entities that were not participating in the solicitation. We believe no, that... and staff does not intend to limit this type of communication. Staff's intent to implement Council's Ordinance in this regard is simply to ensure the level playing field that staff, that Council articulated in the Ordinance, so this is not something that we are requesting. And non-respondents are not subject to the regulatory control of the City. We do not have the ability or the authority to limit their speech. Another question was associated with whether or not a vendor, if they were debarred, if that would impact their existing contracts with the City? The simple answer would be no. Existing contracts that are not associated with a violation are not impacted. If you look specifically in the Rule, debarment is the process of excluding vendors from future awards and it can be done for a period of up to three years. That would impact the solicitation upon which the violation occurred and any future solicitations within the period of the debarment. If the violation occurred or was noticed after the contract was awarded, and was associated with that contract award, then that contract can be voided, but otherwise, existing contracts that were not associated with the violation would not be impacted. So there was interest and discussion and some beginnings of concurrence around some of the recommendations that we made last week. We believe, based on the conversation, and our own consideration, that we could narrow that discussion somewhat with some of the following recommendations.

- Regarding the Anti-Lobbying Ordinance we would recommend revising the Ordinance to narrow the definition of "Representations" to something that was more consistent with what we saw in other municipalities, or perhaps more consistent with Council's intention.
- To add some communications, regarding permitted communications to make it more clear that communications that are outside of the solicitation, or not associated with the "Response" are not violating the Ordinance.
- To possibly shorten the "no-contact" period. Possibly examine the provision where the no-contact period can be extended and either limit that or eliminate it, but to look at what other municipalities are doing, or to find a way to shorten it so that it meets the objectives of Council and doesn't create related concern.

- Also, to look at the Enforcement provision of the Anti-Lobbying Ordinance as it pertains to debarment and determine, or re-determine, if that is Council's intention, or if there are lesser standards that Council wishes to be applied, or if to remove the reference to debarments entirely.
- We can also revise the Anti-Lobbying Rules that promulgate the Ordinance to clarify the process for determining violations; that has been a challenge in the past and would be beneficial.
- Also to clarify the process for submitting and facilitating complaints. If there is a way to allow for participants to express their complaint that was more readily facilitated, that might address some of the concerns before we get into a position of dealing with a violation.
- We could also revise the solicitation instructions to make the process of communicating within a solicitation more clear, both from the perspective of administrative communications as it pertains to amendments or inquiries or common pedestrian communications, and other types of communications that more closely resemble lobbying.

That's the last slide I have on anti-lobbying. Any questions or discussions, we're glad to answer.

**Larry Schooler:** Council, I think it would be helpful to know whether you'd like to hear feedback to these now, or to continue with the second half of James' discussion on confidentiality.

**Leslie Pool:** I'd like to go ahead and address any questions that might be on this section right now.

**Larry Schooler:** All right. Council Member Alter.

**Alison Alter:** Thank you. One of the things we talked about last week was the solicitation phase and the creation of the actual RFP. If we wanted in the case of waste management to make it a standard practice that it would, that the RFP before it goes out would be reviewed by ZWAC or as appropriate Water and Wastewater, is that something that requires a change to the Ordinance? Or how would we implement that portion of any solution?

**James Scarboro:** Council Member, what you are referring to is a pre-solicitation release, basically where you take a draft solicitation and you put it out for public comments. Putting it out publicly is a way of addressing concerns that it was shared with specific parties or what have you. It's also a way for staff to document any feedback received on it so that any changes that result in the solicitation were clearly associated with the contributors. It is done; I've done it. It's not a typical practice with the City although it has happened from time to time in the past. It's not something that would be limited by the current Ordinance and it's something that we could apply.

**Alison Alter:** And if we wanted to apply that and, while it's great to have the broader public comment, you know, I would want to make sure that those Commissions had an opportunity to comment. What would be the process for doing that if it's not the Ordinance change? If that was the direction that we chose as a Working Group, what is the format that would have to take?

**James Scarboro:** Well, the approach itself, I would need to consult with the City Manager's office, because it would introduce an element of participation in the development of requirements that they would need to be comfortable with and make sure that it was representing the requirements and the business objectives of the Department. Putting that aside, because the solicitation would not be officially released, it would be a draft document, then the typical regulations that would apply to it would not be in effect yet. So, it would be a draft document that would be available, released by staff to the public and then we would just collect comments and those comments would be a part of the Public Record.

**Larry Schooler:** If I may, I think what you're trying to ask is, do you need to approve Ordinance Amendments to ensure that ZWAC and Water-Wastewater get to see the RFP beforehand, or can that become just an administrative procedural matter for Purchasing to adopt.

**Alison Alter:** Yeah, it seems to me that I don't want to create a precedent where every contract in the City has to be reviewed by a Commission before it goes out for solicitation, but it seems that we have a pattern of challenges for solicitations of a certain type that we're dealing with, this Working Group, and many of those issues seemed like they might have been addressed if we had been able to have a broader discussion at the solicitation stage with a particular eye for how the solicitation fits into our Zero Waste goals, and so I'm just trying to make sure that we have a clear path, whether it's a, you know, we have to have a Resolution, or a, you know, it clearly doesn't require an

Ordinance change to Anti-Lobbying Ordinance, but if that was part of the path that we wanted to pursue, you know, how do we ask Council, as a representative of Council and a Working Group when we go back, what do we need to do if that's the step we want to take?

**Robert Goode:** Robert Goode, Assistant City Manager, I'll weigh in here. I think that's a conversation that you all should have with the City Manager, because that's really the implementation and sort of her side of this equation. And I think that's an important conversation to have. And I think you've touched on a very important point. Is this just for waste management or, you know, we have broad, we have a lot of work that goes through the Commissions, and they look at more policy issues, and then it's the staff's job to implement the RFP and the RFQs, and everything else that goes through. The other thing I might mention is, and you see that at this table, there are a lot of interests represented and as we unveil an RFP, or RFQ, you're going to get vendors participating in how that should be written and we're a little uncomfortable with that.

**Alison Alter:** Thank you.

**Larry Schooler:** Council Member, are you okay with questions and comments from anybody? All right so, we're reacting really just to what's on the screen at the moment related to recommendations on ALO. I see Andrew's hand. By the way, I am infuriated that Andrew is sitting next to Andy, who's sitting next to Andrew.

**Andrew Dobbs:** Absolutely. Friends call me Dobbs, and almost all of y'all are my friends. So a few questions here. You know, first things first on the topic that was just at hand, if Council were to issue a Resolution directing staff, you know, to bring all RFPs, all ARR related or Austin Water related RFPs, to the appropriate Commission for the next two years or whatever, if they were to issue a Resolution of that nature, then that would be sufficient to direct staff to do so, correct? You wouldn't need an Ordinance change or just some kind of informal thing, that would be a formal direction?

**Robert Goode:** There's no Ordinance that would require that to happen. Again, I think it's the City Manager and Council discussion...

**Andrew Dobbs:** Right, but if the Council passed a Resolution like that, y'all would have to do it, right?

**Robert Goode:** There's a line between what Council does as policy and what the City Manager does in a Council-Manager form of government about implementing that policy, but that is a discussion between the Council and City Manager.

**Andrew Dobbs:** Okay. Other questions I had that are more specific to the things that y'all laid out, on page 3, at the top, I guess it's slide number 5. There are tiny little numbers there. It says, you know, that they can communicate with staff regarding existing contracts. That's good to know. But how is it determined whether the communication was appropriate or not? Like, if I'm, if I have Acme Trash and Recycling, and I have the curbside collection contract, and I'm bidding on a curbside recycling contract, and I tell you that what we were talking about was my existing contract, how do you know? Is it just the honor system? That it wasn't inappropriate. And how can that be determined?

**James Scarboro:** So if you look at one of the recommendations, 'clarify the process for determining violations'. It's hard. It is hard.

**Andrew Dobbs:** Yeah.

**James Scarboro:** So we look for evidence. We look for e-mails, we look for actual evidence that a representation was made. Like meeting transcripts or anything that shows that a communication occurred. What we try not to do is to look at, and I'm not an attorney, but look at circumstances where a violation, a *representation* could have happened, but we have no evidence of it. We actually look for the evidence of it.

**Andrew Dobbs:** Okay, that kind of goes to my second question, which I think you'll answer very similarly, which is, on the very next slide when it says, 'respondents violate the ALO when they make a representation'. Who's to determine what is a representation and what isn't? Is that the same answer? That it's ambiguous under the current code?

**James Scarboro:** No, my office makes the determination.

**Andrew Dobbs:** By what standard or what criteria?

**James Scarboro:** We would like to have a standard or a criteria.

**Andrew Dobbs:** Awesome. And then the very next slide, 7, talking about limiting non-response. I think if I'm understanding correctly, I think it was Andrew at the last meeting, this third Andrew, third Andrew from the end, that said that in other cities the way that it's handled is, rather than a limitation on the public or potential respondents, there's a limitation on Council and staff that says 'this is the list of things that you're not supposed to talk about with anybody regardless', and that would be a limitation on their speech, on y'all's speech, and not on the public's. Is that something that y'all have considered, or is that something that's possible? Like, what say you to that?

**James Scarboro:** Right now the Ordinance is written to apply to the respondents, whether the violation resulted from their doing or from, that they initiated it, or whether they were responding to a communication that was initiated by staff or a City official. So, the way the Ordinance is now, the responsible party is the respondent.

**Andrew Dobbs:** Okay.

**Robert Goode:** Let me add to that, I think what James is also trying to say is, we're not looking to expand the ALO, it's only about respondents and communications to staff and Council for that. So the question was, can we expand it? I don't believe Council is looking at that, and staff certainly isn't recommending that. So that's the answer to that, is we're not recommending expanding it to say what you said, is that it would be up to staff and Council to not talk about it to anybody, even if they're not respondents. We're not recommending expanding the ALO.

**Larry Schooler:** Josh.

**Joshua Blaine:** Is there, I don't see it explicitly in here, but is there any consideration to include some additional, sort of, checks and balances on the violations themselves and on the process of applying those violations, whether it's the Ethics Review Commission or the City Council itself, as having some sort of appeal process, because it's my understanding that it's entirely just within staff at this point. Has that been considered? Is that something Council or this Working Group would be willing to consider?

**James Scarboro:** Is that a question for me? Or...

**Joshua Blaine:** I suppose so, yeah.

**James Scarboro:** Okay. We implement the Ordinance, the way the Ordinance is written currently, so the determination of the violation occurs with staff. If there is a different method of making that determination, and hearing protests associated with that or appeals associated with that, then we apply the process that we have at hand. If the processes need to change, we're glad to implement those changes, but right now, we implement the Ordinance, the way it's written.

**Joshua Blaine:** So, can you just remind me, what is the appeal process currently, as it's written?

**James Scarboro:** There is none.

**Joshua Blaine:** There is no appeal process.

**James Scarboro:** Uh, hmm (affirmative).

**Larry Schooler:** And James, when you reference clarifying the process for submitting and facilitating complaints, does that in any way relate to what he's talking about there, which is to say what happens if I don't agree or...

**James Scarboro:** Right. The Ordinance directs staff to develop a rule for handling protests. So the protest is the single administrative review and through that process there's an option to bring in an independent hearing officer, but there's no review, beyond that process. It's just the protest.

**Larry Schooler:** But an independent hearing officer is just that, in other words it's not someone within Purchasing, it's a third-party neutral that would evaluate it. Is that right?

**James Scarboro:** You are correct, but it's not handled like a two-step protest appeal process, where one decision is made at one level and another decision is made at a separate level. That is a two-course option at one level.

**Larry Schooler:** Understood.

**Robert Goode:** And if I can add too, I think that since James has been here, he's struggled within the existing Ordinance. So, I think, hopefully the task force would agree, it's time to look at this Ordinance in a lot of different ways because it is very subjective in a lot of areas, and James would want a lot more 'just tell us what to do here', and it would... I think it clears the playing field for the respondents and as well as staff on trying to administer Council's intent on the policy.

**Leslie Pool:** I have a question on the two-part; the options on the review. Is it you can do one or the other or are they sequential? You can do both? If one doesn't get you the result that you want?

**James Scarboro:** It's similar to a regular protest process, where if there's plenty of evidence and it does not appear to be requiring a higher level legal review, then we would make the decision. If there's a question of law or interpretation, then we would typically request an independent hearing officer to provide a review and a recommendation.

**Leslie Pool:** And do you make that decision? Do you do that in concert with the person who is submitting the complaint?

**James Scarboro:** We look at the complaint.

**Leslie Pool:** Well, the person who's appealing?

**James Scarboro:** Sure.

**Leslie Pool:** Looking for the review.

**James Scarboro:** We look at their protest and determine on the contents of the protest, does it raise to a level of bringing an independent hearing officer. We have to look at our precedents in that regard and determine, of the types of protests that we've received in the past, which ones have generally we referred to an independent hearing officer and we try to be consistent with that. Sometimes, if we're just not sure, I try to refer it to an independent hearing officer.

**Leslie Pool:** Okay, but there's no conversation with the person who's raising the question before you make that decision?

**James Scarboro:** We could ask for clarification but what we try not to do is to get in front of the hearing officer.

**Leslie Pool:** Right. You don't want to then start talking about the merits of it. Okay, thanks.

**Larry Schooler:** I see a red light... I don't know if that means... Andrew number three.

**Andrew Bosinger:** I think from a vendor perspective, one of the things that we're struggling with a little bit in Austin, trying to understand, is the sequence of how you make the decisions on, you know, issuing a procurement, versus maybe negotiating through contracts that have an added services provision. And the interplay of those things, you know, the confidential information, the Anti-Lobby Ordinance, I mean that, for example, played out in a recent biosolids contract where there was a dual path thing going on, right? One vendor is chasing the same scope of work through a change order, to an existing contract, and the rest of the market is bidding on an Austin solicitation. The vendor who is negotiating is lobbying and has no restrictions. The vendors who are actively pursuing your solicitation at your request, are gagged. And it creates a lot of uncertainty in the contracting market. About, 'Hey, if I have an Austin contract, should I bid on anything, or should I just try to pursue a change order?' You know, what's the path forward? And I think if you want to encourage participation in the market, and I know you do, I mean that's part of the role, right? I think from our perspective you need to give vendors clarity on that. 'Oh, hey look, we have this contract, that we could have done, or are going to do, or are going to consider still a non-competitive single-source change order.' But, I think you need to make that decision before the procurement starts, because, you know, vendors are putting a lot of time and money into pursuits, their putting all their chips on the table, so to speak, in

terms of their approach and their prices and everything else, and then to have that come back around later as ‘Well, we might do it a little differently.’ I think there needs to be some clarity there and that’s where I did bring up what Dobbs suggested earlier about, you know, limiting contact, not from the vendors, you can’t limit that speech, but that’s where we would see a potential benefit to having staff say, ‘Look, until these decisions are made and we know we’re doing a procurement, or we know we’re doing this,’ then limiting what contact you’re having with the market then.

**James Scarboro:** I appreciate the feedback. I would hope that when staff issue a solicitation, we have done that make or buy analysis, and that by putting the solicitation on the street our intention is to not utilize existing contracts, but rather to seek competition, to establish a new one. You know, to the extent that we’re requested, later or reminded later, that this may be available through another contract, that’s an analysis that staff needs to do, whether it be the Department or whether it be the Purchasing representatives on behalf of the Department, that needs to be done before we issue the solicitation. If we’re on the street, we mean to create a new contract.

**Larry Schooler:** I think it would be appropriate to continue the second half of what you have, and if we have other discussion on this, we can return to it.

**James Scarboro:** Okay, so, last week we discussed confidentiality and there was some additional questions in that regard, so we have provided some additional information in response to those questions. So there was some desire to have more details regarding the policies and practices of other governments concerning their treatment of confidential information in proposals. So we have provided a handout, it’s far more information than you probably want to see slides on, so it is available in your packet. But basically it consists of the solicitation instructions and other references that we have identified from the local governments, from the County and from the State. Just to make some points of comparison,

- each of them were fairly similar with regard to their handling, or their compliance with Texas Public Information Act,
- regarding proposal contents being confidential through the evaluation process,
- requiring offerors to mark the contents that they wish to be kept confidential,
- and protecting confidentiality, or staff conveying their intent to protect confidentiality, but not being able to guarantee it,
- and also that the confidential information would be made available, most common time for that to occur, would be at the contract award.

So, if you wish to review the specific contents, we actually copied and pasted solicitation provisions. But you’ll see consistent elements, consistent citations, and what we believe is consistent application of the Texas Public Information Act.

Can Boards and Commission members view confidential proposal contents?, was an item that we discussed last week.

- In our discussions internally we have not determined that Council has granted this level of authority to a Board or Commission previously, and this would not be something that staff would recommend, just for some, from my perspective, for some practical reasons.
  - One, Boards and Commission members would all need to sign a confidentiality agreements from one solicitation to the next, and this would be in place for an extended period of time and would likely go beyond their respective tenures in that Board or Commission.
  - Members may unintentionally become involved in evaluations. It’s rare that you look at something and don’t have questions, and then those questions facilitate involvement in the evaluation process, perhaps even in the negotiation, and if you go that far into the exchanges, you may then become implicated in any protest that may result. These are common things for staff. It’s just these would be additional responsibilities that could possibly occur if persons outside of staff were to have in their possession these materials.



- Members wouldn't be able to discuss their observations or explain their recommendations, so they would know why they were for or against something, they just wouldn't be able to publicly explain it, and that might not be meeting their need.
- But based on our discussions last week, and something that we have been increasingly contemplating, it seems like we're moving in the direction of understanding and differentiating between proposal contents and contract contents and maybe it's the contract contents that are more meaningful to the members of the Boards and Commissions and to the Council and to the public. So if we pour our efforts, our consideration, into how we can make those contents more publicly available, I think we might have a more successful or more productive outcome.
- Other questions that we addressed previously regard the... a previous instance where a TDS contract was disclosed prior to Council action. We reviewed their current contracts and their items associated with them and past expired contracts. We only observed one, so if there were others, we just didn't find them. But that was associated with a non-competitive activity that occurred some years ago, where the Council directed staff to negotiate with specific firms and bring back recommendations and attached to those recommendations was the entire content of the contracts.

So, regarding confidential information, based on our conversations last time and our consideration since then, some recommendations from staff.

- One, we could certainly increase our reliance on the Invitation For Bids. Because Invitations or IFB, or bids in response to IFBs, are opened at the time of the due date, then their contents are available at that time. Now, offerors, bidders, can still request that certain trade secrets and confidential information be kept confidential, but because of the nature of IFBs being very prescriptive, the need to request work products or work techniques be kept confidential is less substantial.
- We could also consider use of other types of IFBs. Texas statute authorizes the use of what they call an invitation for bid best value. Essentially it's a criteria-based IFB, which is a lot like an RFP, but it places a higher emphasis on price.
- There's another form of IFB that is used by the Federal government we believe might be technically compliant with Texas statutes, referred to as the "Low Price Technically Acceptable". It just allows us to evaluate unpriced bids for compliance with the specifications, and once we determine compliance, then we would request the pricing from the compliant bids and not receive pricing from the non-compliant bids.
- Another approach would be to consider increasing the use of competitive negotiations and decreasing the use of consecutive negotiations. By that we mean evaluating the proposals, determining the competitive range, entering into discussions and allowing "best and final offers" and then determining the award recommendation, and not having subsequent negotiations after that. This would allow us to have, to possibly include a version of the contract with the item, if that's desirable.
- We could also explore approaches to maintain the confidentiality of the proposal contents, as requested by the offerors, while making a more stringent effort to make the contract contents available, prior to Council authorization.

So, with that, that is our remainder of our presentation and we'll go ahead and answer any questions regarding confidential information.

**Leslie Pool:** Could you repeat competitive negotiations again?

**James Scarboro:** Sure. So in a competitive sealed proposal's process, a typical element, and one that's established under the Texas State Procurement Statutes, is commonly referred to as "competitive negotiations" and basically that occurs after the evaluation committee has evaluated all of the proposals. They'll determine which ones are most competitive, also called a "short list" or "competitive range" or what have you, and then we would invite those offerors in and provide feedback on their proposals, tell them what are the strengths and weaknesses of their proposals, and then allow them the opportunity to revise their proposals. And then we would evaluate those revisions and then, based on the revised evaluations, then make an award recommendation.

**Leslie Pool:** And that is different from the low priced, technically acceptable, because there's conversation with bidders?

**James Scarboro:** Correct. The 'low priced technically acceptable' makes it so that you only receive pricing from the bids that are compliant with your spec.

**Leslie Pool:** Or the "short list"?

**James Scarboro:** Right. Right.

**Leslie Pool:** Okay.

**James Scarboro:** So usually they provide you with unpriced bids up front, and this would allow you to look through and determine if there was any issues in terms of compliance or what have you, and then any that are determined to be responsive to your spec, you would then ask them for pricing. Now, to be clear, that's not something that the City has done, but we believe it may be possible under the statutes. If it's not, it's not. But if it is, it might be an additional tool in the tool belt to allow us more flexibility.

**Leslie Pool:** So, that process, let's just assume that we vet it and it's something we could do, that process would be more streamlined for the bidder. It wouldn't be as time consuming because they wouldn't have to attach any pricing elements to their bid, unless they were on the short list and asked to provide the pricing, but you don't have the ability that you do in competitive negotiations to actually describe or discuss or improve your bid through conversations.

**James Scarboro:** Yeah, there's the ability to have limited exchanges, not to optimize the proposals but rather, to make the bids compliant with the specs. So, it's to make them technically acceptable, so they just, you have a bar, you want to get them above that bar. Now, again, this is not a process that we currently use.

**Leslie Pool:** Right.

**James Scarboro:** And we don't have any procedural knowledge of applying it, but it is a technique. It's a longstanding technique, and it's used by many governments, and it may be something we could explore to assist us with certain types of procurements.

**Leslie Pool:** Is that one the shortest time frame? Or, we haven't done it so we don't know.

**James Scarboro:** Right. We don't know. We believe it will be longer than a regular IFB.

**Leslie Pool:** Okay.

**James Scarboro:** It will be shorter...

**Leslie Pool:** Than the contract negotiations.

**James Scarboro:** Than an RFP.

**Larry Schooler:** Commissioner Blaine.

**Joshua Blaine:** Would the Commission be privy to that process, that short list invited back and kind of explained what the strengths and weaknesses are? Would that be something the Commission could participate in?

**James Scarboro:** Are you referring to the RFP?

**Joshua Blaine:** In this competitive negotiations process you're describing, this hypothetical process, right?

**James Scarboro:** At that point, because the award recommendation has not been made, all of the contents of the proposals would still be confidential because we would still be in evaluation.

**Joshua Blaine:** So it would still be staff who would be doing that?

**James Scarboro:** Yes sir.

**Larry Schooler:** And to make sure I heard correctly, you're less evaluating strengths and weaknesses as much as you are completeness or incompleteness of the proposal?

**James Scarboro:** You're talking about the invitation for bid low price technically...

**Larry Schooler:** No, I was talking about competitive negotiation.

**James Scarboro:** Okay.

**Larry Schooler:** He was saying can I be in those conversations. The conversations are really 'you're missing these things or...'

**James Scarboro:** Strengths and weaknesses.

**Larry Schooler:** Okay. What you called strengths and weaknesses, I'm just trying to...

**James Scarboro:** Yes. What we... you have to be very careful when you enter into discussions – capital D discussions – because you're not really negotiating because you're not telling them what to put in their proposal, because then you would end up evaluating...

**Larry Schooler:** But you could say, you were weak on such and such section?

**James Scarboro:** Yes.

**Larry Schooler:** Okay.

**James Scarboro:** You're giving them feedback regarding contents of the evaluation, what is strong and causing you to be rated highly, and what is weak and causing you to be rated less than high, and giving them the opportunity to improve or optimize their proposal.

**Larry Schooler:** Mr. Dobbs.

**Andrew Dobbs:** Thank you. Yeah, I'm looking at this and there's a lot of great ideas here actually, and I appreciate the work that y'all put into this. There's four bullet points though, and the first three kind of specify specific processes and then the last one is very general, and seems like a kind of a summary of what it is that we're talking about here, which is how do we get more, how are we able to see things before they're authorized? Are there other mechanisms, what other... why restate, what other mechanisms are we thinking of here? It's hard to ask the question... I'm just asking like, what are you thinking here?

**James Scarboro:** And it's hard to answer the question because we don't know what we don't know and, and you know, it sounds reasonable enough to look at the contents of a proposal and determine, 'I don't need your reference list to actually administer the contract'. So, that doesn't need to be in the contract. I don't need certain other information that was associated with your qualifications to operate the contract. So, certain information just would intuitively fall out and not be in the resulting contract, but there could be other information that is associated with, you know, their technique or their material blend or other processes that they've determined to be confidential. And I'm not sure right now if we would be able to get all of it out, but it's something that we could definitely move towards. We just have to figure that part out, and I just don't have it figured out just yet.

**Larry Schooler:** You're saying that there could be proprietary, or whatever the right term is, information in a contract that could not be released prior to authorization?

**James Scarboro:** We don't know yet. But what we could do is to look at coming up with approaches to minimize it to the extent possible. If we can eliminate it, that's great, but if we can't, we need to find a way to still protect that confidential information. That was our last slide.

**Larry Schooler:** Yeah. There's additional content in our packet related to landfills, but...

**Robert Goode:** That's if we're ready, if Council is ready to move to the next topic, we're ready to do tee that up for you.

**Larry Schooler:** Yes, so Council, I mean it seems to me like the staff would like to have some definitive direction from the Working Group on the first two topics, certainly with the input of everybody else who's here, and as Council Member Pool indicated at the beginning, there does seem to be general agreement that waste management

contracts should still be competitively solicited and that there should be updates made to the Anti-Lobbying Ordinance, but to the degree that the Working Group can be even more specific in their direction, I think staff would like to have that today.

**Leslie Pool:** So I think that what I might like to do at this point is just take some input from people and we'll be taking that input and fashioning a draft response to those two broader issues, and then that will be one of the things we bring back to you all on the 25<sup>th</sup> of May.

**Larry Schooler:** Let me recommend from a process standpoint that we, if possible, leave time within this meeting to continue the conversation that's outlined in the other slides, that we not let this topic go to the entire end of the meeting, since we only have half of this meeting and one meeting left to get through the rest of the scope of work. But, I think it would be appropriate now to take comments on these two items.

**Gerry Acuna:** Quick question, more of a clarifying question here. Neither, or none of these methods would preclude a Commission from forming a Working Group that would work with staff in putting together an RFP that's consistent with City policy, or would that be excluded from happening?

**Robert Goode:** Let me try to weigh in... we certainly understand ZWAC's, and all the Boards and Commissions, wanting to participate, especially in the goal-setting, and we absolutely want to do that, and I tried to mention this earlier, once we start getting into the details, especially with interested communities and interested vendors, then it gets tricky. It just does, because then you're starting to weigh interests of specific parties versus what we're trying to objectively put out is a fair solicitation. So from a policy standpoint and the goal standpoint and what we want to see in there, we absolutely want your input from the Commissions. After that then, once you start diving too deep, I'll just say it this way, we don't want to be jointly writing an RFP with a Commission. It's just going to be really challenging for us to do, not only this Commission, but in every Commission across the City.

**Gerry Acuna:** And that's understandable. I guess, again, my concerns are the consistency with City policy, making sure that we're all... we're putting an RFP out on the streets that's consistent with that policy and more importantly, the scoring evaluation matrix needs to be consistent with that policy at the same time. Now, we've had issues in the past, that I'm assuming are no longer going to be the case, where we've had contracts brought to us that turned out not to be consistent with policy that Council has set. I'm looking for the easiest way for us as a Commission, and staff, to work together so that we can eliminate, if not minimize, that from occurring again.

**Larry Schooler:** I did want to get one piece of what you originally asked though, that I think may have gotten lost, which is, I think what he's asking is, can Commission members influence goals in other, non-RFP type formats.

**Gerry Acuna:** Correct. Thank you.

**Larry Schooler:** So, if there's an IFB, if there's a competitive negotiation... so, in other words, could he, could Commissioners talk about goals that you would set in those contexts, in addition to RFP?

**James Scarboro:** Sure. Certainly.

**Larry Schooler:** Yes. Okay.

**Gerry Acuna:** Thank you.

**Leslie Pool:** I was just going to say, I think the answer, the specific answer to that would be, yes, you could set up a Working Group to work on the goals, more specifically, but I'm guessing that ZWAC may have, may do that kind of work already? Do you want to focus...

**Gerry Acuna:** Our goal is to work with staff and we have on previous contracts. We've worked together as a group to put together the main policy concerns and talk about a matrix scoring system that would, again, work towards, or be included in that solicitation. I think that was done, if I'm not mistaken, with the landfill contract at one time, the original landfill contract.

**Larry Schooler:** Other comments on these two items? Mr. Shannon.

**Steve Shannon:** Good afternoon. I'm Steve Shannon with Waste Connections. We want a level playing field. Responding to a bid or an RFP certainly of the magnitude of the size of the City of Austin would have, takes a considerable amount of time, effort, money, focus. To James' point and the man from Synagro, once the City has decided to issue a bid or an RFP, we favor the notion that there won't be sidebar negotiations going on during that process. If that's what's going to happen, we're not going to bid. We're not going to spend the time, effort and money to do that. We want a level playing field and we like what James had to say. Once the bid, an indication that once it's on the street for a bid, then that is where the City will derive its services from. Thank you.

**Larry Schooler:** Which sounds like a reiteration of the point made earlier, you don't want to see a contractor with an existing contract be negotiating a change order on their contract while there's an open call for bids.

**Steve Shannon:** That is correct.

**Larry Schooler:** Okay. I saw Sara's light on. I don't know if Council Member Garza wanted to jump in?

**Sara Koeninger:** Sara Koeninger, Balcones Recycling, and I'd just like to second Steve and third Andrew's comments that I appreciate the work put into the revision for the Anti-lobbying, but I don't think it addresses the initial reason why we're here, which is that several RFP processes were derailed by third-party, excuse me, people who didn't respond, and the elephant in the room, and so I think it doesn't address that issue.

**Larry Schooler:** I wonder if the elephant feels the need to express itself in some form or fashion?

**Adam Gregory:** I'd be happy to, Adam Gregory with Texas Disposal Systems. We, we've never just proposed that business should just be handed to us, however, if you're suggesting that we should be prohibited from reminding anyone that there are specific terms within contracts that were competitively bid and approved to procure these services, and that we should not be allowed to remind folks of that, and simply provide information on the process, then I don't know what to say to that. We'll continue to remind folks when the City has other options and we'll continue to provide information, and if a contract can't withstand information being provided on a variety of issues, then perhaps it shouldn't be approved.

**Larry Schooler:** Can you drill down a little bit into what reminding people of various things and providing information means? And I, and I don't want to seem like I'm putting you on the stand, obviously, but I think that there are concerns being expressed around what these conversations may or may not entail, and I think the more light you can shed on what you consider to be legitimate, might help assuage some of the concerns that are being expressed.

**Adam Gregory:** Sure, absolutely, the type of information we've conveyed is expert information as being very familiar with the types of services being provided when RFPs or solicitations are public. We can provide feedback on what portions of those have been or have not been in compliance with City policy, and when there are types of work being solicited that could be negotiated in a contract that specifically allows for that type of negotiation to take place, it's, I don't see any reason why we should not allow the City to avail themselves of all options. Certainly the City doesn't choose to take, chooses one option each time, but that's the kind of information we provide, information on the solicitation, information on what's consistent or not consistent with City policies. With the ALO there's often a lack of information provided to policy makers, so since under the current ALO, we've made the decision and are unable to respond, we've only proposed to provide the option of utilizing existing contracts when they explicitly allow for that type of negotiation, so that contract was something and those terms within that contract were something that we earned through a solicitation process.

**Larry Schooler:** Right. Ms. Koeninger's light is on and so is one of our Commissioner's. Council Member Garza.

**Delia Garza:** Of the recommendations that were given thus far, I'm still not seeing how those address the issue, which is the elephant in the room issue that everyone keeps talking about. I feel like these are addressing what appears to be, I can't see your name, third Andrew, said that there were kind of two paths where, you know, vendors bid and then, you keep on being "the elephant", says that it's within a certain interpretation of their contract, and I feel like these are addressing... these don't solve the problem. Changing these things are things that probably need to be changed, but they don't get to what we're trying to get at here. So, I'm wondering why we're not taking a more, a look at interpretation of current contracts and when things are within a contract or outside of a contract, and maybe tightening that up. And I understand the need for, you don't want it so tight that if some need comes, you know, the

emergencies happen and we need a vendor to provide a different kind of service, but have we looked at that approach, and I'm sorry if I missed it and I know I missed the last meeting, but have we looked at the approach of tightening that language so, and I know that wouldn't stop someone from saying, 'I still think this contract says that', but it would... and honestly that language would be helpful too, that says, for those of us who are interested, that shows what interpretation of that language is someone thinking means, 'this is within my contract, this is within my contract, this is within my contract.'

**Robert Goode:** So, let me try to answer that. I think we've tried to answer that in two or three different ways. The first question was, are we going to competitively solicit this? And as Councilmember Pool said, I think the answer from the task force recommendation to Council is yes. So, we're done, we're not going to look at existing contracts to change order something in with that direction, we would competitively solicit. The other question is, I know TDS has concerns about the Anti-Lobbying. We try, we're trying to work towards removing those obstacles so they can legitimately not worry about bidding these, so competitively solicit and make sure all of the players are at the table, I think that's where we're heading based on the conversations we've had. So I think, your answer... your question is valid; 'how are we solving that?' I think we are with the way we're heading because we're going to competitively solicit and hopefully remove any obstacles for any bidders here to feel uncomfortable about bidding those solicitation.

**Delia Garza:** When you say competitively solicit, I mean, I thought we were doing that already. Are you saying we will competitively solicit any new need?

**Robert Goode:** We were, but these have been brought up to say we can, by TDS has brought this up and said 'you can add it to our contracts.' We wanted to hear from you. Should we be looking at that or should we be bidding these? Based on what we're hearing, we're going to competitively solicit, so yes we could but we're not going to, we're going to solicit these contracts from this point on, we're going to competitively bid those. So, I think that question is removed now, we're going to bid these out.

**Delia Garza:** I'm not sure if that answers my question. Because mine was more of TDS's interpretation of a certain clause of their contract and so I don't know if I'm missing something...

**Robert Goode:** I think we could add it. I think one of the things in, and Adam can correct me, I think it's the Landfill Contract they're talking about. It is very broad. Legal has said that you could probably use the exception and just add it to their contract. So, then the point came to you, should we be looking at doing that and not competitively solicit, or should we just add it to the contract? That's the question number one that we asked, and I think we're hearing the answer, No, you should solicit it.

**Delia Garza:** Go ahead.

**Ann Kitchen:** I had my light on.

**Delia Garza:** Go ahead.

**Ann Kitchen:** Just quickly then, so I think what maybe Council Member Garza is asking for and I'd like to see too, and my question is, the language in an existing contract that allows the scope to be broadened, I would like to see that language from the standpoint of is it standard for us to put those in contracts? Is it standard language that just gives us flexibility? Is that why we include them? And that practice is the one that I think Council Member Garza is talking about, and you are too, and it has its pluses and minuses from the vendor-community standpoint. We can all understand what those are, but it could potentially lead to some, you know, some lack of clarity, and some lack of clarity both how the decision is made about whether that's going to be done, and also when it can be employed. So, I think it would be useful from my perspective, to understand, do we always do that, or are these contracts the only ones we do it in, and what kind of language do we use?

**Robert Goode:** We're talking again about a pretty old contract. Eleven years, Adam, ten years? It's quite a while ago, Landfill Contract.

**Adam Gregory:** Absolutely, signed in 2000. The contract was signed in 2000, but again our Master Recycling Contract signed in 2010 also includes and is worded to add things to it, and that was the intention of all parties, and I don't

believe, and when these contracts, in particular with the Landfill Contract, when they come from a competitive solicitation and they're approved by Council, I don't think we get into the realm of exemptions or anything, it's... the negotiations are allowed. It's a provision under... their, called "Negotiations", and there's a number of things listed, and we provided you highlighted copies of the contracts a number of times. I'd be happy to do so again, but I guess staff is apparently interpreting our decision to have a competitive process, and I think the answer always is, yes, we should have, there should be competition, but is that answering the question, do we absolutely not have a policy against using provisions within existing contracts?

**Delia Garza:** Okay. I'll just follow up, because that's what I'm getting at, the provisions in existing contracts. Is there a way to tighten those provisions up so there's not so much room for interpretation? That doesn't stop somebody from coming and saying, 'I think my contact says this', but it allows us to look at it and say, 'you know what, I don't think it does', and educate us as Council members to make better decisions.

**Robert Goode:** I get your point.

**Ann Kitchen:** It provides more certainty all the way around in the process.

**Robert Goode:** Sure. That's right.

**Larry Schooler:** Let me just, before I go to Council Member Alter, acknowledge both Zero Waste Commissioners two of them wanted to speak and I think...

**Kaiba White:** You know, I had a question on a different topic so let's continue.

**Larry Schooler:** Oh, okay and I know Chair Acuna also has his light on, but Council Member Alter do you want to?

**Gerry Acuna:** Actually I was going to put the elephant in the room on the spot. I mean, short of doing away with the Anti-Lobbying Ordinance, which I don't think anybody is in favor of getting rid of, what would it take, what would it take for all of us to begin working together, acknowledging these solicitations and actually participating in these? We've had some conversations on what it would take to do that, again, short of getting rid of the Anti-Lobbying Ordinance, let me ask you your thoughts.

**Adam Gregory:** Thank you Gerry, I appreciate the opportunity. I don't think there's any question we can make revisions to the Ordinance that everyone could be happy from, happy about, and we would be comfortable responding under. Again, the devil is in the details and I'm actually very encouraged to hear staff's proposal this morning on, this afternoon, on the ideas they have, the very general ideas for how to revise that, so I would say, and they did address a lot of our concerns, the length of no-contact periods, the level of how punitive it is, the subjectivity granted to the staff on determining these things. I think they would, it's been made clear they would like to have less subjectivity in the process, and we agree with that, so, I think it comes down to the devil's in the details, and I'm sure we'll get down to the level of red-lining the Ordinance and we look forward to participating in that, but really, the idea is to provide a means for additional communication to go to the Council at certain times and to remove the seriously punitive aspects, because we cannot just climb the gallows and put our head in the noose just because they say they won't hang us, so there are a lot of specifics that need to be addressed. Like they said it's a very long ordinance. But, if we want to get into the red-lining the ordinance right now, we can. It would take us a long time, but I am very encouraged and I'm more encouraged right now that I ever have been that we can revise it to a solution that's amenable to all parties.

**Larry Schooler:** Council Member Alter, I know you wanted to speak a while ago.

**Alison Alter:** Okay, I'm going to try and put my thoughts together here, go back to what I was thinking about. Am I understanding the implications of your, City Manager Goode, that if we were to make a decision to competitively solicit all waste management contracts, that that would mean then that we would be saying we're not going to, except in very emergency situations, we're not going to exercise those clauses in the existing contracts that would allow us to negotiate without going competitively?

**Robert Goode:** Yes, and especially, I think that...

**Alison Alter:** So that's a policy decision across all of those areas at the same time that would be...

**Robert Goode:** That's right, there's two, there's two – I want to make a distinction. There's an extension, that are in some of these contracts, of the same service that had been competitively solicited. I think what we're talking about is adding, it's not exactly a new service, but something to another contract that we didn't, I don't think, really had contemplated. So that's the thing I think we would talk about competitively soliciting and we wouldn't, staff wouldn't, based on Council's direction, wouldn't say, 'we're going to look at existing contracts to find a way to get this new service, a service accomplished'. We would competitively solicit that.

**Alison Alter:** So, I think part of the debate that we're having, is an understanding of what leads to a competitive market, and some are saying that if we competitively solicit all of the bids, we get a competitive market. Others are saying there's this route that goes through our contracts and/or you can competitively bid, but then there's an ambiguity there about if you do allow you to continue with an existing contract, that you don't know when that's going to come into play, and then that affects your willingness and your ability to go out and play for the RFP. Is that kind of the lay of the land there? So if that's the case, what is our current policy then, which seems to be the heart of the problem that we're having, about determining whether we would extend it, whether we take an existing contract and push forward with that, or go out and competitively bid?

**Robert Goode:** I'll have to ask James and Richard.

**Alison Alter:** This must be something we have in other contracts in the City, and is there a policy for how you do that?

**Robert Goode:** I want to ask James and Richard to respond. For one, I don't think, and you all correct me if I'm wrong, that we've added things to existing contracts. So, our policy has been to competitively solicit, but then we've had, especially TDS has said 'well wait a minute, you don't have to do that'. That's why we've called the question, do you want us to competitively solicit or not? So, Richard, James, have we added things to existing contracts?

**Richard McHale:** Not to my knowledge we haven't. Richard McHale, Interim Assistant Director for Austin Resource Recovery. There are elements in contracts that are options for us, especially for emergencies and those types of things, contingencies, and if those situations come up we would take advantage of them, but I guess it all comes down to the contract language and if the services that we're looking for are exactly what is listed in that contract, whether we can use it or not.

**Alison Alter:** So is this sui generis to waste management contracts, in particular contracts that we have with TDS, it's not something that we would see in any other contracts across the City, other than for emergencies?

**Richard McHale:** I can't speak for the contracts in the City. That's better for Purchasing.

**James Scarboro:** Sure. What we're kind of discussing here are kind of the art and the science of contract administration and change management. There are, there are provisions that when you establish a contract, you can anticipate. You can anticipate that if it's a term contract and you're going to want it beyond the initial term, that you're going to want an option to extend, whether that's the unilateral or bilateral option. You can anticipate there will be other types of changes that you're going to want to make, so you build them into the scope of the contract so that those changes can be acknowledged by the participants in the competition. So by staying within that scope, you maintain the connection of that contract in the original solicitation. The more the contract changes over the life of the contract, the more you distance that relationship. That's why State law actually addresses change orders and applies a 25% cap on them, so that you don't go too far away from what was originally solicited and what was the basis of the competition. So, to the extent that we occasionally need to amend the contract bilaterally, to add products and services that are within the general scope of the contract, that occasionally happens, but it's usually after we've ruled out alternatives. Now, do we have a process or do we have a policy for determining 'should we amend the contract and then seek competition?' It's usually the opposite. It's usually seek competition unless we're unable to, or it's not practical to, and then we would consider things like amending. Amending contracts that were not, for changes that were not contemplated with the original competition runs the risk of increasing the separation between the contract and the original competition. So, it's something that you can do and we occasionally do do it. It's just not the first thing that comes to mind when you are anticipating meeting the needs of a department.

**Larry Schooler:** Council Member Alter, anything further?



**Alison Alter:** So, just hypothetically, if we wanted to take this all off the table we could just say, we're not going to ever add these things unless it's an emergency and then it would just be a matter of tightening up the Anti-Lobbying Ordinance for certain situations where we think it needs to be tightened up? I mean, is that a direction that... I'm not advocating, I'm just trying to understand the nuances there, that that is a direction that we could go?

**James Scarboro:** Certainly, and I think that's the path we were on. We just wanted confirmation from Council to continue to competitively solicit this because the issue has come up. So we wanted confirmation.

**Alison Alter:** But I think that there's another piece of that, which is that there's also an argument that in doing solicitations and setting forth the solicitation, new policy is being made that has not been sanctioned by Council, and so there's another piece to that, I think, that I've heard, and arguments that are being made for the need to be able to interact with Council, is a concern over when we're putting this together that there's policy implications for the choices of how you structure those that are not being vetted through the policy process, and that, there is a desire to retain an ability to speak to the broader policy questions that is lost by bidding.

**Robert Goode:** No, I don't think lost by bidding. I think lost if you don't take some of the policy issues to the Commissions before you issue a solicitation.

**Alison Alter:** But I think that's what we've seen...

**Robert Goode:** I think that's what we're hearing from ZWAC is that 'Please come to us and let's talk about the policies before you issue.' And that's absolutely legitimate. So I don't think the policy issues would be lost by the competition, it's lost if we don't communicate what we're trying to achieve and ZWAC can help say 'yes, that's in line with the policy of Zero Waste, or not.'

**Alison Alter:** But weren't there issues in that process that what we've seen over the solicitations that we've had to say "no" to that were... that we said "no" to because there were policy that wasn't vetted by ZWAC, for instance.

**Robert Goode:** Perhaps. I'll use... it's not this exactly, I think the Simple Recycling one, is one that ZWAC needed much more involvement. But as far as some of these other issues, I'm not sure. I'm not sure what the policy problem is for us going out and soliciting somebody to handle biosolids. And how we handled that, I think there are some policy discussions that we should have had at ZWAC. I don't think the policy issue is a competitive solicitation issue. I think those are different.

**Alison Alter:** No, I'm just trying to figure out how we solve the problem to make sure we have the most, I think that we achieve our zero waste goals and we have the most competitive process and there are multiple dimensions to that.

**Robert Goode:** More involvement with the Commissions. I think that's absolutely required.

**Leslie Pool:** Yeah, I agree and I think that a number of the contracts that we put a hold on, if we had had the – and we did it because we didn't have sufficient input or sufficient time from Water Wastewater and ZWAC. So I think that is definitely something we need to look at and you know it's like any process over time, things erode, and sometimes it adds things to it that weren't ever intended in the first place and you lose things that weren't intended in the first place. So I think it's really healthy to go back over and review these procedures and remind ourselves what our missions are with them. And the City has set up a really strong citizen communication element with our Boards and Commissions, and I think the longer that all of us are on Council, every day we more and more appreciate the work that folks in the community provide to us as far as a layer of vetting and expertise, and then also, in working with the stakeholders, it just adds a more robust conversation to it so we can get to a more, a better, a more effective result. Let me introduce the idea, the concept, the issue of landfills. I think we need to, that was a really... wasn't that a great segue?

**Larry Schooler:** Remarkable really, in its seamlessness. So we do have a couple of slides from staff on the question labeled as 5A on the Agenda.

**Jessica King:** Good afternoon Commissioners, Jessica King. I'm currently in the Communications and Public Information Office, but previously with Austin Resource Recovery and still a part of my soul. So... landfills. Should materials be directed to or away from certain landfills in future solicitations? The map in front of you shows – thank

you. Oh, I was reading from my own – I didn't realize, I apologize. Yes, so the map in front of you indicates all landfills in our ten area region, the Capital Area Council of Government region, but in particular, if you'll take note of the dots that are in the black font, those are municipal solid waste, or Type 1 landfills. So those are the materials that, just for clarification purposes, are the materials we generate on a regular, daily basis in our homes, regular acts of business, and if people want to have – more putrescible base, and I didn't want to use that word, but that is the technical term, in terms of things that you just see on a daily basis, through regular course of business. You'll note, and it's a glaring issue, but the vast majority of those landfills – well, all of them – are to the east side of I-35, so I want to make that point clear simply because the issue of equity and the issue of how we balance that among the City is important. It is something that is at the forefront of our conversations regularly, and in particular there is a question as to why that's the case, but across all ten counties, these are the landfills that are probably primarily used for the region, and I'm sure you have enough of the stakeholders here who can testify to that. So the question remains – oops, sorry, this is not my day. Should materials be directed to or away from – and the current practice is that there is no policy direction from City Council that directs materials to or away from any specific landfill. In the past we've had, as I've discussed before, there have been long, ongoing discussions about certain landfills and whether or not, whether or not to support or deny their expansion requests, but there has been no specific direction from Council to direct material away from any specific landfill. So our City facility contracts don't have those specifications either, and City collection trucks haul the material currently through our contract with Texas Disposal Systems for our landfill contract. For other City contracts, the City solicits the bid, and then the respondents are only limited to landfills with a valid operating permit. So, those are the facilities that are open and eligible for use, as long as they have the valid operating permits. Using our contracts, the issue of flow control, you'll hear that term, so we wanted to take a moment to just pause and clarify what that means. The City can't control the flow of material that private sector manages as a result of their third party contract relationships. The City can control the flow of material that it generates or is responsible for managing. So for example, for our City facility contracts we can designate, we can clarify in our contracts what we would like to do with that material. And you oftentimes see that in terms of the different materials that we generate. But for the most part, when we're designating – when we're trying to clarify that issue of flow control, we cannot regulate where private haulers take that material under their own third-party contracts. And then as generators of the waste, just to reiterate, we can choose where the materials are managed or processed. Yes, ma'am?

**Leslie Pool:** I have a question about that, about designating the land to be a landfill. Are they primarily in counties so that cities don't have the zoning authority over them?

**Jessica King:** There are far more people in this office who, in this area, who can answer that question, but as I understand it, just keeping in mind, and please correct me if I'm wrong, my understanding of the evolution of landfills in the nation, really, nationally, is that we started with small landfills scattered all over the place that were unregulated. And if you look at really the breadth of how landfills have evolved over time, we didn't really start regulating new landfills until the 1980s with RCRA. So just take a pause. That's only 20 some-odd years, but landfills last how long? Decades and decades. And we are still over the years finding landfills that are just out there right now, so – and that have been there for hundreds of years, possibly. So, the location of those, of the ones that we have right now, I think, again, there are people here who have a better understanding of this, but when you went from small landfills located throughout communities to start to coordinating with larger landfills that were more permitted, regulated, and had oversight by a large authority, and in this case what many people don't understand is that landfills are regulated by the State. They are not regulated by the City, or the County for that matter, so when that has happened, you start to see this coalescing of where the landfills are located. And most of the landfills east of I-35, I think just in terms of development, scientifically, there is this understanding that the environmental, the land, limestone, certain types of clay, things like that that actually contribute to a, what some would argue as being a better environment for a landfill.

**Leslie Pool:** Right. And different parts of the County get quarries, for instance.

**Jessica King:** Yes.

**Leslie Pool:** Because of where those natural resources are, and so you need a certain type of soil, I suppose, and probably topography that would be best suited, especially for the larger community landfills that are going to be some kind of major size.

**Jessica King:** Correct.

**Leslie Pool:** Okay.

**Jessica King:** So, begs the final question – oh, I am just terrible at this today. So policy considerations, going back to that question, should the City focus on directing materials to or away from certain landfills in future solicitations specifically with regards to the materials that the City is responsible for managing. That would give some clarification on Council environmental goals. There are some pros and cons to doing all of that, and it would give some solid, or more direct information for us that we could identify. And you could look at a variety of ways to articulate what those environmental goals are in the solicitation process. But there could be some benefits, because as you know, the owners of the landfills are in various locations, and they are the ones who – whenever the City had its own landfill, it was the City, and it was a little bit easier, because it's a public facility. But now we're talking private facilities, and we can't direct or control or have any flow control issues with that, so we have to step back from that, and some vendors might be concerned about the competition issues related to that and what that would do to impact their bids, because the further you go, you're dealing with costs and things like that, so.

**Leslie Pool:** Well, and I'd just add on to that, it's not just the firms, it's also individuals. You know, if you have to haul off from a remodel you're doing on your house...

**Jessica King:** Yes.

**Leslie Pool:** ...you know, depends on how far you have to go, what time it's open, and how much it costs too, so it does affect individual residents as well.

**Jessica King:** Yes. And so this has been, and I'll... the reason this particular question is the top three, is the third question, is because every time we've brought a solicitation up because it's waste management related, the question of where is the material going comes up. But because we have not had any policy direction saying it must go to X, Y, or Z, then it gets stalled. And so to have this direction now so that even vendors who are making proposals know, rather than spending a lot of time proposing and then going through the process, it's, you know, it's just difficult for everybody, so to have that direction up front would be very helpful.

**Leslie Pool:** I think so too, and I'd like to hear from everybody and also let us know here, if you think this is something we should open up for a public hearing for the community. And I'll just caveat that by saying, I remember the conversations, maybe they were ten or, within the last 20 years where we were looking at closing one of the closer-in landfill, and I thought that the community had said, 'yes, we were going to close it,' but I understand that TCEQ came in and added additional space for that landfill to take more refuse.

**Jessica King:** So there are two landfills in that proximity. So I want to make sure that we are clear about which one you're talking about.

**Leslie Pool:** Me too.

**Jessica King:** There is an Austin Community Landfill managed by Waste Management. There was another landfill located in close proximity, and I forgot the actual name of it, but it was –

**Unknown Voice:** Sunset Farms.

**Jessica King:** Sunset Farms, see. Many more...

**Leslie Pool:** Sunset Farms?

**Jessica King:** Sunset Farms, and it was managed and owned by – well, it's had many names, but Republic? BFI? Is that right?

**Unknown Voice:** Allied. Whatever you want to call it.

**Jessica King:** Allied. There's probably a laundry list of names, but that has closed. That was, that closed in 2015, if I recall.

**Leslie Pool:** So was it located close to where the community landfill is?

**Jessica King:** Adjacent to each other.

**Leslie Pool:** Okay, so that explains my confusion on that.

**Jessica King:** And they've been there for quite some time. Richard probably has a better understanding, or Texas Campaign for the Environment may have a better understanding of how long, but I believe – and Waste Management is here, so maybe they can speak to it more clearly, but I believe Waste Management didn't take ownership of the landfill until the early 2000s, and since that point has put in – to address some of the concerns – have placed additional improvements to the property to address the concerns.

**Leslie Pool:** Yeah, so if you'd like to speak to that, that would be great, but I don't want to put you on the spot. And then I would kind of like to hear around the room what you think about opening that question up.

**Rick Losa:** Sure, thank you again. Rick Losa with Waste Management. Waste Management the company, not the topic of the committee. You know, I guess to get to your specific question, but first, you know, I guess our opinion in general on this question would be from our perspective, I think it would be considered a little unusual, some could argue even bad policy for a city to unnecessarily limit its options. Whether you're in an area that has two landfills or dozens of landfills – and some of the areas of the State there are that many landfills in an urban area – the future is the future, and any generator of waste, whether you contract it out or whether you handle it yourself as a government body, it's important where the material goes. Financially, environmentally, logistics for transportation; so options generally are always held in high regard. A landfill that may be in good favor today may not be in existence tomorrow, or in good favor. So none of us can foresee the future, so unless there was a compelling reason to do it, in general I guess I would offer: why limit your choices? Each individual procurement, depending on the circumstances, the City has the right and the ability to narrowly identify where it wishes for that procurement, the material to be handled or processed. But that's a decision that's at your disposal – pun – at any time. But to make a broad policy stating today, that forevermore only one landfill will be used for disposal, I believe unnecessarily limits the City's option, and at some point it could be at the City's disadvantage to only have one option. Either, again, the facility is no longer there, it's no longer in good standing, or the economics no longer justify it. The facility that we own and operate, the Austin Community Landfill on Giles road, we purchased, we acquired it in the '80s from the prior operator, and we've been operating it since the '80s. The site did go through a fairly public and controversial expansion in 2010, and so it garnered a lot of attention, certainly, during that time. As was mentioned, our adjacent neighbor is Republic, and they operated for many years the Sunset Ridge Landfill, and it did indeed close in 2015. It's now a closed site and is managed under the closed site rules that the TCEQ has. So, you know, again, I guess that's our general opinion on the question at hand is – should the City set policy to designate or to limit one site over the other? You could argue, although landfilling may not be in vogue, or for the foreseeable future, it's one of the disposal options that any community has. It's part of the infrastructure. It may not be the most desired, it may not be what the future holds, but it is an important part of the infrastructure of today. So today I would say there shouldn't be a policy that limits the City's options or choices.

**Larry Schooler:** Yes so, a general discussion on this. Mr. Dobbs.

**Andrew Dobbs:** Thank you very much Larry, and I wanted to note a couple of fun facts about the history, because as I understand it, this site has actually been a landfill site for over a hundred years of various sorts, and there's actually a third landfill there, which is the closed Travis County Landfill. It's been closed for many, many years. One of the implications of that is that this site has a substantial amount of pre-EPA hazardous waste onsite, and this is the kind of thing that at some point, somebody's gonna have to clean it up, and that should be weighed into the policy decision here as well. One thing I want to definitely note is that, while these pressures are real, the sooner that we get to zero waste the less that they will matter. So that should be an incentive for us to accomplish the basic goal here, and that is that. And I think the most important thing I'll say here is that the factor that has not been represented yet, as I understand it, in any of this, is that there residents of the City of Austin that live next to these landfills and are impacted negatively on a regular basis. I don't see any residents there. We have met... some of these residents are our members, and so if I may presume to speak on their behalf, you know, there is, there are significant quality of life impacts and potential health impacts. And that is, those are constituents of the City of Austin that we are being asked – that I believe that the Council has an obligation to protect. To those ends, it seems to me that it would make sense to not send things to this facility. And finally... yeah, so it would make sense not to do it because of

the liability issues, because of the impacts on the constituents, because it provides us with solid zero waste pressures to do otherwise. Because there are options, a north option and a south option. And finally there is, I was actually just handed this – you were asking, you said it was sometime in the last 10 or 20 years ago, I have a Resolution here that was passed 9 years and 51 weeks ago exactly, because it was from May 17, 2007, that says that the City of Austin opposed the expansion and sought the closure of both facilities in a formal Resolution by November 1, 2015. You know, it would be a change in policy to say, ‘we want to send things to a facility’ that you’ve already said that you wanted to – that the Council has said, you know, in some kind of, you know, spiritual sense, a different Council, that the Council has already said that they want to see shut down by two years ago. So, you know, that’s a lot of information there, but I believe that there are solid reasons for the City Council to make a policy saying ‘we’re not gonna send materials to the Austin Community Landfill.’

**Leslie Pool:** Tell me the Resolution number on that. Is it –

**Andrew Dobbs:** It is 20070517-030. And you can have this copy if you’d like.

**Leslie Pool:** Thanks.

**Larry Schooler:** Alfonso?

**Alfonso Sifuentes:** Hello, Alfonso Sifuentes, Green Group Holdings. I understand that these landfills, they’re controversial and, I mean, it’s a rough start. The permitting process, it’s a, I mean, it’s a long period, three to five years. We’re in year four and just to kind of familiarize yourselves, our, we’re permitting a Type 1 Facility, which is also going to have a recycling component, and we’re in year four, and it’s in northern Caldwell County just about four and a half miles north of Lockhart, which is about, less than 30 miles from the City of Austin. And I just want to say that you’re right, there’s controversy with these to say anything, but the truth of the matter is they are needed right now. It would be great down the road, we have this zero waste and negates the necessity of it, but today we need them. And I just, coming from a CAPCOG presentation about the growth in this central area, population, I believe is supposed to double by 2020, and that’s a lot of trash. So, a couple of these landfills, especially in this area, my understanding is there’s a lifetime, and I think yours, I’m not sure how much time you have left, but it’s not infinite. We have the Gregory Landfill, which, you know, has a great lifespan but with the growth and the generation of waste, I mean, we need these facilities. So, I just, I want to say that I think it’s, to keep the field competitive, I think it’s all going to be depending on having more than one facility so these haulers can give a competitive bid, and it’s all going to, the market will correct itself as far as being competitive because it’s all going to depend on what’s the rate that’s going to be charged at these disposal facilities. So I’m very confident in the market. We’re one that believes that competition is good and as I said, it’s one of the reasons we came to this market, because of the growth and also too, about the landscape that’s here. So, I just want to say that, you know, we definitely could use another facility here in this area. Thank you.

**Larry Schooler:** Before I go to Mr. Shannon, I know that there’s a lot of talk about the growth in Austin. I hadn’t heard before that we’re going to double in four years. So I don’t know if, I don’t know what the source of that information is. I’ve heard doubling by 2040. So, at any rate, a lot of people are coming on a daily basis. Mr. Shannon, you had your light on.

**Steve Shannon:** Yes sir. Thank you. Just as a matter of having been dealing with these things for 42 years, the idea that these things are east of 35 is basically geological reasons. They need the clay. If you go west of town, you’re going to have to blast, and that’s not suitable. It’s interesting to note, and you may not know, that these landfills that we have here now in Travis and Williamson County are taking the waste from all or parts of 28 counties. There were hundreds of landfills here in Texas that were closed by the State. There were a lot of them that were voluntarily closed by the local jurisdictions because they could not afford the liability insurance, the escrow money that they have to put in for post-closure, etcetera, which gave rise to these larger landfills. The facility out here that we’re talking about on Highway 290, is not only TCEQ permitted and inspected regularly, that permit modification was given an approval by the CAPCOG, any permit modifications have to go through the local Council Of Governments for approval, and that was done. The facility out there is using currently a synthetic liner, as well as a clay liner. They have extensive leachate collection, gas management system. In fact, those two landfills out there are the only two landfills in Travis County that are deriving the methane gas and creating energy that’s being sold out into the

electrical grid, which I think is in concert with the City's alternative energy philosophy, rather than just venting the gas to the atmosphere, they're creating electricity. I think for 5 or 6,000 homes, the equivalent of that. This notion that somehow the City of Austin is going to be held liable for something that might happen out there, I think is very far-fetched. The liability for anything that happens is assumed by the owner of the company, when it hits the gate, they have millions of dollars in liability insurance, as does any landfill that size. They have millions of dollars that they are required to put in post-closure accounts through an escrow account. Most of the haulers in this area are using that facility. To my knowledge, there hasn't been any evidence of pollutants leaving that site. I have heard rumors, I think the site has been the victim of a very well-orchestrated vilification campaign for years. I've heard that people are taking their kids out of schools over there. I went and visited the Principal. She said nobody's taken their kids out of school there. I went and visited the fire department across the street, asked them if they had had any problems. No.

**Larry Schooler:** Before you continue sir, could you just, could you, well, what I'm curious about is do you have thoughts specifically on the question that's before the group in terms of whether...

**Steve Shannon:** Should we keep it open? Yes. Let me say this, that certainly...

**Larry Schooler:** Not so much should we keep the landfill open, Sir, but should materials be directed to or away from certain landfills?

**Steve Shannon:** Well, I would say that when you're looking at your carbon footprint, when you're looking at hauling waste from the north side of this county all the way to the south side of this county through what is purportedly third or fourth or fifth worst traffic in the nation, the City really needs to think about using that facility and reducing traffic, reducing their carbon footprint. But I'll finish my comments by saying this. Our company certainly looks at risk and potential liabilities very thoroughly, and if we thought that utilizing that landfill posed any kind of unnecessary or unreasonable risk to our company or to our customers, we would not be using it. Thank you.

**Larry Schooler:** Council Member Garza, I just want to note we've got a couple of other lights so we'll get to you in a minute.

**Delia Garza:** I guess I was, with the breadth of topics that we need to cover, I'm not sure that this conversation right now is going in the direction that we want it to go. I would say that I appreciate the fact that it was brought up that these are east of 35, regardless if that's because of geography or not, the fact is much of our minority community resides east of 35, so regardless of why they're there, they're close to communities that already face many challenges, so I think it's important and I thank you for bringing that up. I am kind of on, I agree with Mr. Dobbs in that I'm not sure if this is a right conversation at this time, because I think we should be concentrated on Zero Waste, and once we get there, then those conversations could be had, but I, at this point I would prefer us prioritizing Zero Waste at this point, and that's just my thoughts.

**Larry Schooler:** A new speaker... I know Commissioner Blaine wanted to get in, but...

**Leslie Pool:** That sounds good, so the question is, really, should materials be directed to or away from certain landfills, in future solicitations.

**Larry Schooler:** Second Andy.

**Andy Andrasi:** Andy Andrasi, Central Texas Refuse. I am the only Andy here. What I wanted to do, we are an independent hauler that does not own a landfill, and so as it relates to a policy consideration as to directions to where materials can go, as it was mentioned in flow control, potentially with the City dictating where material goes from their contracts, we are not the only independent hauler. I would suspect we are one of the largest in the region, but it would have an impact on our ability to participate competitively in bids if we were directed to a landfill, say, that we don't have a business affiliation with.

**Larry Schooler:** Commissioner Blaine.

**Joshua Blaine:** Yeah, I wanted to make a few points. As the District 1 Commissioner, I feel a particular responsibility to be vocal on this because Council Member Houston sat me down when she appointed me to sit on this Commission and explained the history of East Austin, and particularly how this landfill is an issue, this one Austin Community

Landfill is an environmental justice issue, and I do think that it's important that we are intentional about where our waste goes when we look at this history and yes, it's geologic, but then it's sort of we're looking at it inversely, that's why these communities got pushed out, because that's where the landfills are and nobody wants to live there, right? Having said that, I think it's appropriate for us to say we have these standards that go beyond TCEQ because we, most of us here know that their standards are not very rigorous, that go beyond TCEQ that say Austin wants its landfill waste to go to facilities that meet these criteria, and then it's up to the landfills to meet those criteria. So, I think the conversation could be fruitful if we actually, and I'm not an expert in this but there are plenty of people who are, who could say this is what we expect our landfill criteria to meet. There's detailed reports out there that explain which landfills meet which criteria. We don't need to reinvent the wheel. On the same point, when we talk about where landfill waste goes, I absolutely agree and I asked the question in the first Working Group and I don't think I've gotten an answer to it yet, how much landfill do we need as a city? If we get to 2040 Zero Waste; we're diverting 90%; our population projection is this; how much landfill space do we need? I think that's a useful answer to have, but, until that point, there are inherent Zero Waste policies, to speak to Council Member Garza's point, that this isn't about Zero Waste. Actually it is, because sometimes what happens is it comes to the Commission, that a vendor wants to take our waste down to San Antonio landfill. That it's kind of written into the details somewhere that this is actually ending up in San Antonio. Well that's a huge carbon footprint. Similarly methane capture is not in line with our Zero Waste goals. That's because there's a lot of organic waste in the landfill, so that's not a good Zero Waste practice to be producing a lot of methane as a landfill and capturing it. These are some of the things that as a Commission, we're thinking about and that's why we need to be privy to this and having these discussions that do have impacts on our Zero Waste policy. So, I would advocate that we intentionally say maybe not specific landfills, but specific landfill criteria and qualifications.

**Delia Garza:** I just want to make sure that I wasn't, I didn't say this wasn't, I said it *was* about Zero Waste, so I don't know if that was misinterpreted. I said that's what we should prioritize.

**Joshua Blaine:** Sure, but I think it was implied that where we send our landfill waste isn't as important as thinking about Zero Waste, but I would argue that they are one and the same at this point.

**Delia Garza:** I didn't say that either, but...

**Joshua Blaine:** Okay, well, I misinterpreted your comment.

**Leslie Pool:** Well, I think there's a sequence to it. So, we have to work on our Zero Waste in order to reduce the amount that we are sending to the landfills in the first place. If we are going to close landfills, first we have to get to a place where we don't have very much that needs to go to a landfill.

**Joshua Blaine:** Right.

**Leslie Pool:** And we can, at the same time, and that's what the question is about, do we continue in the interim, to send refuse to the close-in landfills or the far-out landfills, what do we do at that point? And it's a tough question because, as you say, you still have your carbon footprint if you're hauling something in those big trucks, you know, 20, 30 miles, or 10 miles. I mean, it's all, that's why this is so complicated. But we want to get down to where we actually achieve zero waste, which will help with that, and get to a place where we can respect the fact that people who live in East Austin have a healthy environment to live in. That's definitely an achievable goal I think.

**Larry Schooler:** Just from a process standpoint, it's ten minutes before the hour and I've got lights on from Council Member Alter, Jessica King and staff, and one of our ZWAC Commissioners as well as Mr. Gosh I assume, I don't know, is it you who wanted to speak? Council Member Alter, if you'd like to start...

**Alison Alter:** I'll be really quick I think. First of all, I was wondering if we could hear from the Office of Sustainability, on this issue, so that we could understand some of those issues that have been brought up with the carbon footprint and other things. Also, as mentioned by ARR about the cost of closing, I thought that was an issue. If we had any information that would help us to understand what the additional cost might be, were we to choose to not close, but to not use a particular landfill? Also, I'm gathering from Mr. Dobbs sharing of that Resolution that there may be other Resolutions that Council has already passed in this regard, or reports that have been done with respect to landfills that would be helpful for us to make decisions and for the public to know if those could be posted to our site for the

Working Group, that would be very helpful. And then, finally I just wanted to clarify, we don't have to, we could also just say, 'we don't want it to go to this one landfill' if we wanted? I'm just clarifying that that could be an answer to the question. Or we could do something along the lines of what Mr. Blaine said with the criteria. So I just wanted to, I'm seeing a nodding of head over these so I'll just take that, and maybe, Mr. Blaine, if you have any of those documents, if we can find a way to share those with us so that we can see sort of some of those criteria over the landfills if that were a direction that we wanted to go.

**Larry Schooler:** Thank you. Ms. King.

**Jessica King:** Yes, so I was involved in the development of the Zero Waste Strategic Plan, which was the strategic plan and then also the Master Plan, the Strategic Plan serves as a policy foundation, and so that gave us a slew of options from a policy perspective as to what we could bring to Austin and implement here, and it is that foundational model. The Master Plan, is the Department's implementation tool, and it is one that eventually will need to be updated, especially as the budget is involved, but one of the things that Commissioner Blaine mentioned that I want to clarify, is that the issue of methane capturing was one that was not decided upon. So, methane capturing, there is a chicken and egg issue there, because in order for methane to occur, it occurs through the decomposition of the material in a landfill. So, there is a belief that if you add more decomposable material, organic material, to the landfill, that feeds that methane and therefore you don't want to encourage that, and you don't want to encourage methane recovery systems. That is one school of thought. The other school of thought is that you have methane, which is 21 times more potent than carbon dioxide, and you want to capture that, you want to recover that as much as you possibly can, to reduce the impact on our carbon footprint in this community. There are certain landfills throughout this community who have a heavy amount of methane recovery and have a lower carbon footprint through their operations, versus others who may not, and so that is the balancing act. It depends on which school of thought you want to subscribe to and which systems you end up investing in over time in this community. So, it's a policy issue but it's a chicken and egg issue, because you're right, Council Member Garcia, we want to focus on Zero Waste, I'm sorry, Garza, we want, moving forward, we definitely want to do that, but there is the matter of compliance with State law and disposal and the requirements for all businesses that they meet those disposal requirements, and a location for that material. So it's a challenge, and I don't envy you as our policy makers in having to make that.

**Kaiba White:** Thank you. I, so I want to second a lot of what you just said there, although I don't think that you necessarily need to choose one strategy or the other. I think that we both need to be reducing the organics that go into the landfills to reduce that methane, and, you know, I personally am really focused on the 20-year impact for climate change because we are running up against the tipping points and that number is 87 times the impact of CO<sub>2</sub>, so it's a real problem and I absolutely would also encourage every landfill to be capturing their methane. You know, I agree that we shouldn't be encouraging the production of methane in the landfill by actively sending more organics, but what's there is there and there's really nothing to do about that other than to capture it and absolutely I think that would be a great criteria to have, and I, you know, think that Josh's point about developing criteria is really solid. And you know, to the point about sending our trash, particularly our landfill trash out of the area, I think that there are a couple of issues there. Definitely the carbon impact is important. I think there's also just an environmental justice issue right there, too. Sending our trash as a city to another city, that's, I think at best there's really bad optics there. So, I would encourage that maybe another criteria should be that it at least stays in the Austin area so that we who are producing this trash are responsible for dealing with it, and that I think also provides a good incentive to all of us, our community, to reduce what is going to those landfills, to, you know, take that responsibility on ourselves.

**Larry Schooler:** Mr. Gosh.

**Phil Gosh:** I was going to talk about Zero Waste, so is that, that's what I was going to address.

**Leslie Pool:** Yeah, and I think we're going to be finishing up here pretty quick. I know a couple of us have another meeting at 3:00 that we have to get to, so, why don't you jump right in and anybody else that has final comments that you want to make and then I'll close this up.

**Phil Gosh:** Thank you. I just wanted to understand a question. It seems like in part why we're here is if I was to sum it up, would be really mistrust and lack of trust. And so my, it's more of a question that we would want to understand, but if we are trusting each other and we are working and collaborating together, I think it could be pretty powerful



towards the goal of zero waste. And so my question is, where are we, where do we need to work through as a group of where there is mistrust and how can we build trust and then work together to reach the goal of zero waste? Where we're generous and self-sacrificing for the good and together we support each other towards that end.

**Larry Schooler:** Thank you.

**Leslie Pool:** Thank you.

**Gerry Acuna:** Just a couple of really quick historical facts, one of them concerning methane gas. I think anybody who has been here for some years will remember the Water Dance Apartments, which was a victim of methane gas explosion, which is again, it was an abandoned landfill of which an apartment complex was built over, no longer there. Number two, I invite anyone here to please get a copy of the Carter Burgess Report, and that Carter Burgess Report pretty much outlined the landfill capabilities in the region. I think that was done in 1998 or 97, 99. I'm sorry what?

**Adam Gregory:** Late '98 or early '99.

**Gerry Acuna:** I had more hair then too. And the last comment I'm going to state here is literally these landfills are necessary today. Our current diversion rate as of today is approximately 38% and that's including the residuals. So we have a ways to go, and I think, as Mr. Gosh stated, this is an opportunity for us to literally start working towards trust and working together in accomplishing our zero waste goals. Thank you.

**Leslie Pool:** Well, thank you everybody for being here at this our third meeting. We will have one more. Jessica, did you have something?

**Jessica King:** Yes, just one thing. One thing that I did mention, the Sustainability Office, we worked collaboratively; there was a dedicated group for landfill operations and the contribution of those landfill operations towards the Community's Climate Protection Plan. Woody Raine helped lead that group and we can also engage with Lucia Athens' shop too...

**Leslie Pool:** I think that would be great and I think that would meet what Council Member Alter was looking for, so... we had, let's see, we talked a bit about the role of the Zero Waste Advisory Commission and Water Wastewater Commission crafting RFPs, and I think we're going to work on a process that is, that would encourage the review of goals and missions in advance of contracts being issued, but this would be outside of the RFP process. So we'll be working on the guidance for their role in procurement. We talked a bit about addressing the issue of confidentiality in the procurement process. How can we be assured that purchasers of materials from a contractor will adhere to our Zero Waste goals? Just some additional questions, and then probably on the 25<sup>th</sup> we will tackle the question of special events, and I think that that's the one last piece that we may not have yet gotten to. If anybody can think of anything else in the interim between now and say two weeks... biosolids issues. Thank you.

**Alison Alter:** And Council Member, I'll just point out that the biosolids is time sensitive in a way that some of the other things may not be.

**Leslie Pool:** Let's look at that in the next couple of days and see what our timeline looks like so if we need to accelerate that we can do that.

**Jessica King:** And in preparation for that what we can do is just recirculate the documents that were approved by the Working Groups as well as each commission, that set a foundation for the biosolids policies, and that can be a starting point.

**Leslie Pool:** That's great. Everybody, thank you so much, appreciate it. We'll see you on May 25.