

## **TEXAS DISPOSAL SYSTEMS**

“Noticeably Different, Noticeably Better”

May 5, 2017

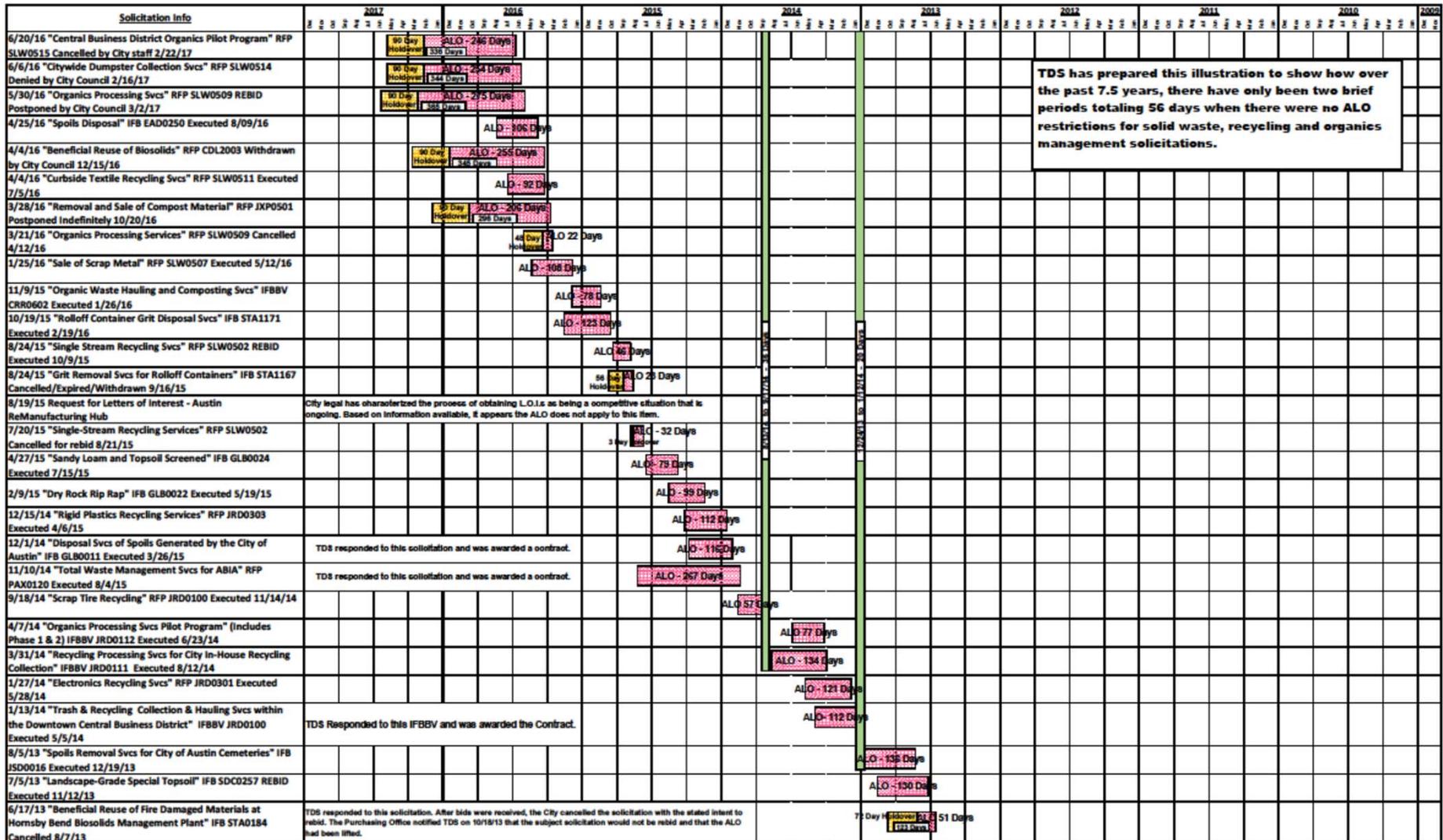
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# Anti-Lobbying Ordinance

- TDS issues with the ALO concern the unreasonable threat it poses to our business, and the potential limitation of information available to City policy makers.
- There is a conflict inherent in the staff's dual roles of regulator and competitor.
- ANY communication re: solid waste, recycling or organics management, regardless of its relation to a solicitation, is a violation
- Given City management's demonstrated interpretation of the ALO, TDS is unwilling and unable to submit to the restrictions of the ALO as they currently exist.

# Timeline of Waste, Recycling and Organics Solicitations with ALO Restrictions

Illustration of Anti-Lobbying Ordinance (ALO) No-Contact Period on Austin Solicitations Involving Solid Waste, Recycling and Organics Services, November 16, 2009 to Present



# City Management's Current Authority Over Waste, Recycling and Organics Management

- Administers the ALO
  - determines disqualification and debarment, and hires the hearing examiner to render staff's decision
  - no recourse beyond staff level, other than to file suit
- Operates Austin Resource Recovery
  - solid waste, recycling and organics collection for all single family residential properties with 4 units or less, and some commercial accounts.
- Crafts solicitations and negotiates contracts for these services
  - Solicitations and contracts can contain drastic policy implications
- Directly communicates management's perspective with Council, ZWAC members & the media to control the flow of information

# Waste, Recycling and Organics Management Industry is Uniquely Vulnerable to Government Takeover

## - State Law:

- Allows a local governmental to establish all rules for managing solid waste.
- Authorizes a local government to offer, establish fees, and require the use of solid waste services by all persons in its territory.

## - State Court Case Holdings:

- It is within the police power of a city to adopt ordinances governing the removal of garbage.
- A city may grant an exclusive contract to a private company for solid waste services.
- A private solid waste company has no vested property right to use city streets to provide services.
- The regulation of solid waste is a police power vested in the State which has delegated this power to local governments.

## - Attorney General Opinion:

A municipality that denies a private solid waste company permission to collect waste is not a taking of a private property right in violation of the State Constitution.

- **The solid waste, recycling and organics management industry is subject to local government takeover at anytime under the authority given to local governments by the State to regulate solid waste.**



# City Management is Not a Neutral Administrator/Regulator of this Industry

- 1985
  - Unilateral attempt by staff to seize commercial customers from private haulers.
- 1993 and 2008
  - Attempt to declare the industry a public utility under Article XI of the City Charter

# City Management is Not a Neutral Administrator/Regulator of this Industry

- 2009 & 2010 – Staff response to MRF RFP
  - Signed an ALO certification
  - Submitted and scored favorably a staff response
    - “The development of a MRF in the Austin area will allow the City to take control over the flow of recyclables and will provide a “regional solution” for these materials. By operating its own facility, the City can eliminate the “middle man” that otherwise would be sharing profits from the sale of commodities when processing is contracted out.” - Excerpt from City staff response to City staff MRF RFP
    - Erroneously disqualified TDS under the ALO, and limited the flow of information to ZWAC and Council

# City Management is Not a Neutral Administrator/Regulator of this Industry

- 2012- Attempted removal of hauler's right to appeal a staff revocation or refusal to issue a hauler's license to Council.
  - Sought final authority to uphold a revocation or refusal to issue a hauler's license to operate within the City.
  - Ignored the pleas of stakeholders and multiple recommendations of the ZWAC.
  - Would have granted absolute authority over hauling industry to City management.
  - Rejected by Council.

# City Management is Not a Neutral Administrator/Regulator of this Industry

- 2016- Citywide Dumpster Contract (Event and City Program Services)
  - Staff has gone far beyond the directive of Council
    - Resolution #20091022-040
  - Provide waste, recycling, organics, portable restroom services, etc., FOR FREE
- Not just Council sponsored events
  - City departments can declare any event City sponsored
  - Sought to dramatically expand event and City program service capabilities in competition with private haulers, and limit the flow of information to ZWAC and Council.

# City Management's Enforcement of the ALO Has Been Problematic

- TDS was disqualified from a solicitation before TDS was even qualified to be disqualified.
- City management actions and communications to the media damaged the reputation of TDS.
- City management demonstrated that their interpretations of the ALO go far beyond the letter of the ordinance.
  - Restrictions on speech must be narrowly construed.
- Federal District Court overturned City management's decision to disqualify TDS.

# Threat of Debarment

- A debarred entity is prohibited from providing goods or services to the City for up to three years.
- This includes existing TDS contracts:
  - 30 year Waste Disposal and Yard Trimmings Processing
  - 20 year Master Recycling Contract
  - ABIA Total Waste Management Services
  - Central Business District Services
  - Etc. (several others)

# Threat of Debarment

- Three disqualifications within five years causes debarment. Determined solely by City management.
- Given the structuring of concurrent solicitations with ALO restriction, three or more alleged violations could occur with only one communication deemed a violation by staff.
- TDS would have no recourse beyond City management, other than through the Courts.
- TDS cannot accept this level of threat to our business and reputation.

# Precedent For Exemption

- Several types of solicitations are currently exempt from the ALO. (2-7-102-E)
  - Social service funding
  - Cultural arts funding
  - Federal, State and City block grant funding
  - Sale or rental of real property
- Solid waste, recycling and organics management solicitations should also be exempted.

# Our Request

We request that solicitations for solid waste, recycling and organics management (collection, processing, and disposal) be exempted from the requirements of the Anti-Lobbying Ordinance (ALO) -

Or, in the alternative, the ordinance should be revised to only apply to specific subjects regarding individual solicitations and to lift the restrictions entirely well before a proposed contract goes before an advisory commission and/or the City Council. Further, the ALO should be revised to allow for an appeal of a disqualification or debarment before the Ethics Review Commission, and a final appeal before the City Council.

Transparency can only be ensured by either a full exemption from the ALO, or significant revisions to the ALO, and in City management procedures to ensure solicitations are consistent with City policy and proposed contracts are published in advance of action items to approve execution, and the ALO restrictions are lifted with adequate time for public comment (14 days) and direct communication with policy makers.

# Questions?

Adam Gregory

[agregory@texasdisposal.com](mailto:agregory@texasdisposal.com)

(512) 421-1300