

## 5-5-17 City Council Waste Management Policy Working Group, Second Meeting

**Leslie Pool:** All right, here we go, we've got a full house today. Hi everybody. I'm Leslie Pool, Council Member for District 7, and I'm going to call us to order; the City Council Waste Management Policy Working Group and it is Friday, May 5, 2017, it's 1 o'clock and we're at Austin City Hall. I'm here, Council Member Alter is here, Council Member Kitchen is on her way, Council Member Garza, I believe, is out of town on City business, so she won't be here. Why don't we go around the room and everybody, there's some new faces around the table but, Gerry would you like to start?

**Gerry Acuna:** [microphone not on]

**Leslie Pool:** This is your opportunity to turn on and off your microphone button.

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

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

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

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

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

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

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

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

**Cindy Crosby:** Cindy Crosby, Law Department.

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

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

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

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

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

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

**Kaiba White:** Kaiba White. Public Citizen, I also serve on the ZWAC.

**Paul Daugereau:** Paul Daugereau, Waste Management.

**Larry Schooler:** And I'm Larry Schooler, from Communications.

**Leslie Pool:** Since we ended up with you, Larry, would you like to summarize our format?

**Larry Schooler:** Sure. Welcome to the new folks. I am here to enable all of the council members and everyone here to be able to participate and I'm going to facilitate the portion of the meeting after staff briefings at which we'll be able to discuss the issues that are before the working group and so what I would ask is, as we did last time, folks raise their hand to be recognized and I'll get to as many folks as I can. I think the important thing for a meeting like this is to make sure that we sort of protect the space for everybody to feel like they can participate. And so if you hear something you disagree with you can certainly disagree with it, but I think, do so in a way that respects the other person's right to their particular point of view and also be mindful that even though this is about a two hour meeting, it's probably insufficient to cover all of the aspects of this in as much depth as you might like so, please do your best to keep your remarks concise, but I look forward, after the briefings, to walking

us through the issues that are before us and giving everyone a chance to have their voices heard. And with that, back to the Chair.

**Leslie Pool:** Thanks Larry. I wanted to welcome everybody here again. Council Member Kitchen has joined us. This is the second meeting of the Waste Management Policy Working Group and Council created this working group to address some policy questions and to develop recommendations to help move us forward toward achieving our Zero Waste goals. I think we can all agree that we're not going to solve every waste management issue facing this city but I'm confident, and I'm sure my colleagues are as well, that we will be setting the bar for establishing good, sound policy. So let's see, let me just give you an advance on our third meeting, so you can mark your calendars, that will be at this same time, 1 o'clock on May, 10. That's just five, I think is that a Tuesday? Wait, is that a Wednesday? Wednesday, May 10<sup>th</sup>, in this board room and if it happens that we need a fourth meeting to tie up loose ends before the June 1 deadline, we are pushing at an accelerated and very ambitious schedule, then I imagine that date would probably be toward the end of May, but May 10 right now, is the only other for sure meeting day and time that we've got set. Larry did I miss anything? All right, thank you all. We'd like to hear now from staff. At the end of our meeting last time we talked about the Anti-Lobbying Ordinance and we talked about contracts so, staff is prepared to talk to us about the Contract Process and the Anti-Lobbying Ordinance, how they interact and there were some questions raised last week, which you may have on a sheet. I have a list of questions. Does everybody have a list of questions?

**Larry Schooler:** They're embedded within the staff's presentation, pretty early on.

**Leslie Pool:** Okay, great.

**Larry Schooler:** As well as on the notes from last time.

**Leslie Pool:** Do y'all see the notes from last time? You've got Executive Summary, High Level Recommendations on critical issues, and then you go over to some different policy questions, like on biosolids, compost product standards and so forth? All right, who wants to lead us off from staff? Mr. Scarboro, thanks for being here.

**James Scarboro:** Good afternoon Council. James Scarboro, Purchasing Office, first I'd like to express my appreciation on behalf of the staff and the Purchasing Office to share with you our information with regard to follow-up to the questions from the last meeting. When we looked at the questions we determined that there were two general categories that were of most interest, so we have divided our responses to those questions, associated with those two general categories. Thank you very much. Are we on? Okay, so as you can see the two general categories, one, questions associated with Anti-Lobbying, particularly the Anti-Lobbying Ordinance, how staff implements the ordinance, what other cities are doing regarding lobbying and anti-lobby as it pertains to their solicitations and contract formation, and possible impacts and alternatives. Secondly, questions concerning confidential information contained within the proposals and resulting contract. We'll have an overview of statutes pertaining to confidential information, types of information that offerors typically request to be kept confidential, what other cities are doing regarding confidential information in their procurement, and possible impacts and alternatives. So first off, questions concerning anti-lobbying. At this point, given this is going to be establishing the legal foundation of the City's Anti-Lobbying Ordinance, I'd like to turn it over to my colleague from the Law department, Cindy Crosby.

**Cindy Crosby:** Good afternoon Council Members, members of the public. Cindy Crosby with the Law Department again. We just wanted to give a very brief overview of the Anti-Lobbying Ordinance. I think most everyone in this room is familiar with it, but the Ordinance does spell out what the purpose and reasons for why this ordinance was implemented. Part of that we wanted a fair and equitable competitive process, and to make sure that everyone had equal access to information, and everyone had the same opportunity to present that information. The scope of the ordinance is, as we've learned sometimes difficult to discern and maneuver around, but generally it's the contracts that are approved, contracts that are approved by City Council and above, this ordinance applies to those contracts. So the ordinance does not apply to contracts that are below the City Council dollar authority which could be approved by the City Manager, and the Ordinance does permit some designation by the Director. So there's some discretion where the Director can impose anti-lobbying into the contracts that would normally not be subject to it. And there's also a very long laundry list of what the permitted

representations are and so if you are an offeror on a solicitation, then you can only make these certain representations and one of those ways is directly through the authorized contact person. This person is listed in the solicitation and this is the contact person, and only person, that the offerors can respond to, and then that authorized contact person can pass on the information. Now, comments and permitted representations are also allowed at public meetings so long they're posted under State law. Scope, so it begins with the solicitation's publication and generally it ends when the contract is executed. Now if the City decides that we are going to withdraw the bids, and we know that we're going to re-solicit, then the Anti-Lobbying Ordinance still continues.

**James Scarboro:** So in terms of staff implementing the Anti-Lobbying Ordinance, we perform a number of ongoing activities, in addition to activities that precipitate from notices to our office. So initially we construct, on a weekly basis a no-contact list, this would include the list of all solicitations that have been issued where offers have not yet been received as well as listing of all solicitations where offers have been received, and they are categorized by product or service type, as well as the name of the department that is associated with the solicitation. So, like I said, those are circulated once a week and made available to the respective directors to share with their various Boards and Commissions. We also stand available to answer questions with regard to the contents of the no-contact list. One of the other activities that we perform on an as-requested basis, is determined violations, so we're typically notified either by a City staff or official, or by a member of the public or another offeror, with regard to the possibility of a violation. We will look into that violation and make a determination if there was a violation applicable under the Ordinance.

**Larry Schooler:** Council Member, one of the members had a quick question.

**Leslie Pool:** Sure.

**Kaiba White:** Thank you. My question, my question slash comment is I've noticed that the actual companies who have put in proposals are not listed on those emails, and so as a Commissioner I find it difficult to make that list useful. If somebody should call me, how would I know if I shouldn't talk to them?

**James Scarboro:** Sure, we understand that. In my time with the City, the last two years, we've been examining that particular list to see how we can make it user friendly. We are developing some draft reports to identify the respondents in addition to the solicitation, but we're balancing between making the list kind of meaningful, you know with the names of the companies and the solicitations, but also manageable, because it could be a very, very long list, if we're listing all the names. Right now we would have numerous solicitations and then magnify that by numerous respondents, so it'll be a long list. We're just trying to determine what would work best. But we are, we recognize and we've received feedback from Mayor and Council that they would like us to redress that particular list and so we're trying to make it more user friendly. We also facilitate complaints and by that I mean complaints as defined under the Ordinance, so when a participant or a respondent to a solicitation wishes to do so, they can submit a complaint to our office and we can direct it the appropriate official within the City. We also oversee protests and those would be protests associated with disqualifications. We are also responsible for overseeing the rules as they may be edited from time to time, also providing interpretations for City staff that are not legal in nature. And we also provide training. We provide training as requested and we are in the process of developing a training schedule where we would have anti-lobbying training provided on a regular basis to Boards and Commissions and anybody who wanted a refresher. So, in addition to those activities, there are some practical issues associated with applying the Anti-Lobbying Ordinance. It's a broadly scoped regulation so, we do experience some procedural, not issues but some areas that make it a little bit more challenging than other areas, when we implement it. We do have a separate body of regulations, those would be the rules, to promulgate the Anti-Lobbying Ordinance. Right now they are limited to addressing protests only, so we might talk about that as a possible alternative later in the presentation. Practical issues associated with implementing the Anti-Lobbying Ordinance. It only applies to offerors, so it does not apply to individuals or companies that are not participating in the solicitation but may somehow be interested or motivated to communicate with regard to that solicitation. It applies retroactively, so a company could have violated Anti-Lobbying before submitting their response to the ordinance, upon receipt of their response, excuse me, to the solicitation, upon receipt of their response, then the violation would apply. The length of the no-contact period is also rather long. It starts when the solicitation is issued and ends when the resulting contract is signed, which could be immediately after Council authorization or it could be some time after Council authorization. That creates a practical obligation on staff to immediately

observe when that contract is signed and quickly take the solicitation off the no-contact list. It applies to communications, whether those communications are initiated by the offeror or City staff or officials. It does not address different phases of the solicitation process differently, and by that I mean some of the provisions in the Ordinance apply only when the solicitation is on the street and the offers have not been received yet. That same provision would not make sense after the offers were received. For example, when we receive a question, the Ordinance describes a process where we would share the response to that question with other offerors. You wouldn't do that when you were engaged in negotiations and you wouldn't do that before offers were received because you wouldn't know who the other recipients were so, there's some situational descriptions in the Ordinance that could be clarified. Other practical issues, we don't have, other than what's in the Ordinance, the definition of representations. We don't have a lot of guidance with regard to determining the violations, by that I mean, conducting investigations, requesting a second opinion, to what standard or measure should we apply the alleged violation to, to determine if it is in fact a violation? It also doesn't include remedies for representations initiated by staff and officials. I might have mentioned that earlier. It does not provide guidance regarding lesser remedies due to mitigating circumstances. It allows for lesser remedies but it doesn't give us guidance on what types of lesser remedies could be applied so that we could apply them consistently. It also can complicate unrelated communications regarding existing City contracts. That's a little bit more apparent in Austin because we have a larger quantity of contracts, and when you have a larger quantity of contracts, the likelihood that they could have similar scopes is a little higher. So, to the extent that contracts have similar scopes, where it's allowable to communicate with the City about the scope of your existing contract, to the extent that the scope of your existing contract is very similar to the scope of a contract that's on the street, complicates that exchange. So that's what we mean by the complication. Yes ma'am?

**Ann Kitchen:** So, I just need to understand that last one. So there's no provision in there that addresses... so if I'm a company and I hold an existing contract with the City, I can't talk to the City about my duties with regard to that particular contract?

**James Scarboro:** We believe that you can talk to the City. You should and are obligated to communicate with the City about your existing contract. To the extent that the scope of your existing contract is similar to, or may sound or appear similar to, the scope of another solicitation that's currently being competed, that communication could look or appear or be perceived to be improper under the Anti-Lobbying Ordinance. So, it's just a complication that we have to deal with when we're trying to determine a violation.

**Ann Kitchen:** So it's a question of how... it's a question of application, not a question of the law itself?

**James Scarboro:** Yeah, I just want to check in with our law colleagues. See if they want to add to...

**Cindy Crosby:** Correct. I don't have anything to add. I think it's when somebody else, a third party, that would see that company or vendor speaking with City staff, it's just a matter of clarifying that perception or other issue, or maybe it's, there's many different departments that may operate on that one agreement, and just making sure that staff is aware that it's only pertaining to the existing contract and the responsibilities and not related to any solicitation on the street.

**Ann Kitchen:** Okay, so, but the law itself is clear, that those types of communications are not prohibited.

**Cindy Crosby:** Correct.

**Ann Kitchen:** Would you, when you get a minute, can you point me to that section of law, not right now, unless you know it off the top of your head.

**Cindy Crosby:** Well it's not going to state exactly what you're looking for. It's silent as far as what you can do with your existing contracts because the whole Anti-Lobbying Ordinance is really addressing solicitations, and so it's a different subject matter and doesn't expand, however, as Mr. Scarboro pointed out, the contract does require a vendor in the City to have a contact personnel, contact staff, and have to have that communication. We don't want to have the vendor found in breach or in violation of their existing contract because of the ALO.

**James Scarboro:** So, one of the other questions that we received at the last meeting was regarding what the other cities, other local governments are doing with regard to anti-lobbying, so we reached out to our colleagues in

procurement and purchasing offices in following municipalities. [on the slide: Dallas, El Paso, San Antonio, Houston] We also contacted, given our location in the Capitol City, we contacted our colleagues at the County and the State and inquired, and for the most part, they observe or retain code and/or policy that is similar to our Anti-Lobbying Ordinance, although it might be more narrow or streamlined, or handled in a combination of ordinance and administrative processes. All of them had some kind of limitation on lobbying as it pertained to solicitation. So, in reviewing the questions that we received...

**Alison Alter:** I have a question.

**James Scarboro:** Yes ma'am.

**Alison Alter:** For the other cities, did they apply it clearly across all policy areas? Their lobbying ordinances, there were no carve-outs for particular policy areas in the other cities?

**James Scarboro:** In the lobbying ordinance, they differed in terms of scope. Some of them were more narrow, some of them were not established in ordinance, rather they were established in the instructions in the solicitation and were handled administratively by the buyers. So whereas a violation of anti-lobbying here, would be a violation of the ordinance and be a disqualification, there it would be a determination of non-responsiveness and just dealt with on that solicitation. So, in terms of comparing the ordinances or comparing the regulations from one government to the next, ours was substantially longer, but in terms of limiting lobbying activities as it pertained to solicitations, it was fairly consistent.

**Alison Alter:** Well, then help me understand that because it seems like there were two parts of what you said where if some cities are applying this in the contract solicitation rather than by ordinance, that must set up a whole different legal framework and then allow some flexibility, whether we want that flexibility or not, it would allow some flexibility by policy area, so help me to understand what that distinction is from a legal perspective?

**Cindy Crosby:** Well the instructions of the anti-lobbying prohibitions are in the instructions. Generally the instructions are then incorporated into the contract itself, and so it would be legally enforceable as part of the contract and part of determining whether or not they met the qualifications for the solicitation, and it would give more flexibility because at that point staff could craft it, maybe differently depending on the scope of work and the needs, or the contract itself. In the Ordinance, Council can make changes, can waive it, and can delegate certain things to staff in the Ordinance. The only difference is really the Ordinance has to be amended by another Ordinance. We can't amend the Ordinance by City decision, policy, or Council just telling us. It has to be formally in the Ordinance itself, in order to amend it or change it.

**Alison Alter:** So in the situation where it's done in the contract, the carrot for complying is that if you were to get... you can only get the contract if you had complied in the lead up, as opposed to, I mean, how do, it seems to create a different set of incentives, so I'm trying to understand.

**Cindy Crosby:** Well, either way, we do incorporate the Anti-Lobbying Ordinance itself into the instructions in the contract, so it's the same mechanism. Where the Ordinance or regulations are borne are a little bit differently, ours are in the Ordinance, in the City Code, versus if there's a policy or maybe there's a Council direction in those other cities that said you can do this by contract, but the same language would be in our contracts as it would in those other entities. Or maybe I'm not understanding the question.

**Alison Alter:** Well I'm trying to understand what the different, I mean, at its core I'm trying to understand what these other cities are doing differently than we are, because as I understand it we're trying to figure out if we should do something different, and the first place I would look is what other cities are doing. And I guess I just didn't understand what you're saying that they were doing that we are not doing, so maybe we could try that.

**James Scarboro:** So just to clarify, we only found one other municipality that had limits on communications, lobbying during the solicitation, that were not established in their ordinance, or their city code; the rest of them did. So it was a matter of they had the same preclusion, it's just that that one city managed it administratively and procedurally with the solicitation so that if it was violated, the buyer for that solicitation would determine that the offeror was non-responsive and handle it at the solicitation level rather than a regulatory violation that would live beyond the life of that one solicitation.

**Leslie Pool:** It may be what's hanging us up is the phrase "similar forms of regulations or policy", and maybe at our next meeting, or in the interim between now and next Wednesday, you could just send us a list that shows us what's different, and show us how substantially, or not substantially, similar or the same they are, so we don't get hung up on this one cuz I think we have some more to go here and then I also know that we have the elephant in the room question that Council Member Alter had raised when we first met, and that is why is one company choosing not to bid on projects, and we all know that that company is TDS and Adam is prepared to respond to that in about 8 minutes or so, we're done with this presentation. I want to make sure we have room for that.

**Ann Kitchen:** Can I take like two seconds? I'll be very quick, I promise.

**Leslie Pool:** Okay.

**Ann Kitchen:** So I think what I'm understanding, and you don't have to answer this now... we'll go back to the way that Council Member Pool was talking about it, but I think what I'm understanding is the other city probably puts it in their solicitation, that if you violate the, you know if you violate the contact, you're not eligible, as opposed to having it in their ordinance. So you can speak to that when you respond later.

**Leslie Pool:** I think I heard Cindy though saying that that language was in the contract, or maybe...

**Cindy Crosby:** It doesn't make any sense to put it in the contract because the contract, because the contract is after the fact...

**Leslie Pool:** I'm sorry, the solicitation.

**Ann Kitchen:** Yeah, I know, she did say contract but it wouldn't make any sense to put it in the contract because the contract happens after you're selected so...

**James Scarboro:** We're glad to clarify that.

**Leslie Pool:** Great thanks.

**James Scarboro:** So in thinking about the questions and our responses to the questions, and discussing it with our colleagues in the City, we felt we would list the possible impacts if the Anti-Lobbying Ordinance was not re-instated for the waste management contracts. So, possible prospective offerors and their representatives would be able to contact Council and their staff and City employees concerning the solicitation, while it was on the street and possibly subject to change. Proposal contents, not necessarily other proposal contents, but perhaps their own, any allegations that they may have had concerning other respondents or solicitations, all clarifications, evaluations, negotiations, any notices that they received, or that others received, regarding non-responsiveness, whether they were unsuccessful or what have you, any protests or related independent hearings and possibly any litigation that was associated with that. Beyond that we just weren't sure what else could occur, but it would be very different. So possible alternatives to a full reinstatement of Anti-Lobbying for these types of procurements. We could certainly look at updating and expanding our administrative rules that were promulgated to help interpret and apply the Ordinance. That would include, at least initially, helping us to determine violations and processing complaints. We could also revise and streamline the Ordinance, including narrowing the definition of lobbying, perhaps shortening the no-contact period, or providing options to resolve violations that may have been caused by City Staff or Officials. We can also choose to manage the communications process administratively. I mention that because much of my career was in State procurement and a lot of the communications that we dealt with in the procurement processes were typical in nature. You just have to have exchanges with the business community to be able to receive their feedback, with regard to your solicitation's intelligibility in the market, any issues there may be with the specifications, or the instructions or what have you, so these exchanges are a normal part of the solicitation process. To handle those types of communications separately from communications that are attempting to persuade and change the government's decisions, that might be something that could be handled using an Anti-Lobbying Ordinance rather than all communications associated with a solicitation, so something that might be available to us. Do you want to stop now and ask any questions on Anti-Lobbying or do you want to proceed and finish the part of our presentation on confidentiality?

**Leslie Pool:** How much more time on your presentation?

**James Scarboro:** Just a little bit short, that was roughly half so maybe...

**Leslie Pool:** All right. Let me ask if anybody has any questions around the table on the items that have been covered so far. Yes, Andrew.

**Andrew Dobbs:** Thank you Council Member. So, my big questions are, and it has to do with the same thing that I think Council Member Alter was concerned about on slide, they aren't numbered, but page 5, the first slide, you know where we have these cities, and it's like you contacted these other cities, and then it says if they have similar things, you know, and you're like well, there's some differences. And it's the differences that I think we're really concerned about. There's these practical issues that you outlined before that, and this is really fantastic to specify these things and thank you for outlining that. You know, are there differences in these specific issues that some cities may be doing a little bit better with? Namely like the length of the no-contact period and its variability? Are there others that have a shorter, a more defined, a shorter defined and more stable? Did we find that in any of those cities?

**James Scarboro:** I'm not sure. I need to work, but I would say this is Council's Ordinance, so I don't want to go speaking poorly of Council's Ordinance with regard to the scope of the... the types of communications that Council wanted to achieve with it, so...

**Andrew Dobbs:** No, I mean, I think that there's a question, not a question of value, but a question of fact here, namely like, do they have a more defined and less variable period. You know that's not, wait maybe some people really like long and variable periods, you know, that's just a matter of fact, do they have a more, a different style of doing this. Same thing with whether the offeror or the City initiates contacts, the different phases, pretty much all of these things. You know, if there are differences, between these cities on these issues, you know that's a possibility to make our policymaker's job easier I would think, and any kind of detail that we could have on that would be helpful, and I was frankly looking forward to hearing some of those things, and I'm slightly disappointed that we don't have those details, but I appreciate the work that you did do.

**Leslie Pool:** Well, and I think Mr. Scarboro is going to work on providing that additional layer of details to us, within the next 5 days. Okay, yes, Council Member Alter.

**Alison Alter:** On that, as Andrew was speaking, one thing occurred to me, it seems like there's a limited number of variables here and I'm wondering if we could somehow do some kind of chart across these and then see that, and then if there's like a link to the language in those, since you've already gathered them, so that we don't all have to do the same, it seems like we might be able to do some sort of table like that, even if it's just putting language in the table, of what they use and then we can figure it out if it's not easy to narrow it down, but I think if we are going to be making any changes, we need to understand: these are the ten things that we could be changing and here's somebody who's done it.

**James Scarboro:** Sure.

**Alison Alter:** And then we would have to of course understand the consequences for those.

**Leslie Pool:** Any other questions on what we've talked about so far? Let's go into confidentiality and then we'll be circling back around, hearing from Adam.

**James Scarboro:** So to, like we did with anti-lobbying, I'll hand it over to our colleagues from the Law Department to kind of discuss the statutory foundation of our handling of this type of information.

**Cindy Crosby:** So, Council Members, I'm basically going to go over two parts of State law that would apply in the purchasing competitive process area. The first one is in the Texas Local Government Code, in Chapter 252, it is the chapter in the LGC that governs how we procure and spend money in the City. The next item that I'll be talking about is the Texas Public Information Act. But this is the one section that I alluded to at the last meeting and it's divided up into two subsections. The first subsection A, applies to competitive sealed bids and it's just black and white and says, 'trade secrets and confidential information are not open for public inspection'. Subsection B applies a little bit differently and it only applies to Requests For Proposals, and for Requests For Proposals, if it's 'provided in the request for proposals, then proposals shall be opened in a manner that avoids disclosure of the

contents to competing offerors and keeps the proposal secret during negotiations'. And that language is necessary only because of the differences in the types of procurement methods. In a sealed bid, it's lowest bidder, you look at the information and then it's awarded. In a Request for Proposal, after receipt, oftentimes there are negotiations that would occur after the fact. Now, after the contract is awarded, the proposals are open for public inspection, except for the trade secrets and confidential information that is included in the proposals. That information is not open for public inspection. So, in the Texas Government Code, Chapter 552 is the chapter that regulates and monitors how we handle Public Information Requests. And so if we do receive a Public Information Request, then we have to, number one, notify the entity or company whose information is being requested, let them know that we received the Open Records Request, and then we have to seek an Attorney General Opinion whether or not we're allowed to disclose that information. Now, this is for the protection of the company or entity that's information is being sought and so therefore they have the burden to prove to the Texas Attorney General why this information should not be released. This is not a burden on the City, we just have to follow the requirements of the Act in notifying them and in submitting the Opinion Request. Now, this is the section that generally protects the City when we have information that's related to competition or bidding. 552.104 provides that if the information that's being requested would be released and that information would give an advantage to a competitor, or bidder, then the City, again, submits an Opinion Request to the Attorney General, asking that this information not be released. Generally that information that's released, if it's given to the public and helps a competitor or bidder, then in a sense, it harms the City. And so the City uses this exception when we want to make sure that it's a fair playing field, that we don't want that information being released because it could impact the negotiations. Now, this is a protection that can... this is a section that the City does not have to exercise every time. In 552.110, that's mandatory, we have to go to the Attorney General. In 552.104, we can decide "Well, yes this will provide an advantage to a competitor and harm the City, or it won't", and so it's a discretionary decision.

**James Scarboro:** So, additional questions that we received at the last meeting were associated with the types of information that offerors typically request to be kept confidential. So we sent out a notice to staff and asked them to respond back with the types of information. 'Look at your last few solicitations, RFPs, to see what kind of information were typically requested to be kept confidential.' Here's what, what we heard: tax identification number, references, financial information typically associated with determining the financial capacity of the offeror, so, employee names and related information about the contractors' employees, their prices that were proposed, their work plan or the method of work, or how they were going to perform the work under the proposed contract, and also any proprietary or trade secrets that they have identified in their response.

**Alison Alter:** I was just wondering what they allow to be made public after that list?

**James Scarboro:** Well, we have some specific examples in the next slide. Sometimes an offeror, who is recommended for award will choose to disclose more, or release more, of their proposal contents because there's an interest in the contents of their proposal, but for the most part the offerors request to keep the confidentiality associated with their original submission. In applying that same question to the last few ARR solicitations, we wanted to see if similar types of information was requested to be kept confidential or if it was different. We saw roughly the same types of information, tax ID numbers, references, employees' names and information, prices, work plans, specifically compost plans, and so forth, third party relationships, marketing plans, and exceptions that were taken to the terms and conditions. A few of these, because there was interest in the contents of the proposal, were later allowed to be publicly available, but for the most part these contents represent the information that the offerors requested to be kept confidential.

**Larry Schooler:** Council Member, it looked like we had a clarifying question over here.

**Andrew Bosinger:** If I may please. Mr. Scarboro, was there any look at who was requesting the information? You list the information that's typically requested but, is there any trace back to whether it was competitive firms, or public parties, or such that were requesting it?

**James Scarboro:** That wasn't a part of what we looked for. We could try to find that but it wasn't... we were looking more for the types of information that was requested to be confidential. It was, the content that was identified in the proposal but not the request that we might have received from third parties to access this information. So, no.

**Andrew Bosinger:** Council Members, we've been doing these kinds of procurements, I've personally been doing them for twenty years. I can very, very rarely recall anybody but competitors requesting that confidential information, just so you're aware.

**James Scarboro:** So, is there a question?

**Gerry Acuna:** Yes. Clarification here. Is this in perpetuity? In other words, guide me through this; I submit a proposal, they submit a proposal, we all give them to staff and you guys evaluate this. There's not a... at that point could I go and ask Open Records Request, to see the proposals that have been submitted? Is that what I could do?

**Cindy Crosby:** You could see certain information, but we would again have to request an Attorney General Opinion. Now the City does have a records retention schedule where we don't retain all of that information forever and ever, and so we only have to release the information that we have in our possession. And, if it involves or includes trade secrets or commercial or confidential information, we ask for the AG Opinion, so there's not a deadline or anything else, it's in the contents of the sealed bids. Now when the contract is awarded the contract can be seen, but again if there's confidential information, the dollar amounts will always be public, because that is super public information, as far as what the City is paying for the goods and services.

**Gerry Acuna:** So what's the time frame? If I ask for an Open Records Request, how much time does the City have to respond to that?

**Cindy Crosby:** Generally our requirement is we have to respond as soon as reasonably possible, but no later than 10 business days. And within that time period is when we submit the request to the AG.

**Gerry Acuna:** Okay, thank you.

**Leslie Pool:** And do you want to be specific about what that response is? Whether it's the substantive response or simply a response back to the Requestor that you will be providing them... that you were going to see if you can release the information?

**Cindy Crosby:** I apologize, I'm not...

**Leslie Pool:** If you know the information that they're asking for is releasable, do you release that within 10 days or do you respond back? What's the nature of your response back?

**Cindy Crosby:** Yes, if there's information that's releasable, then we do release it as soon as possible and it depends also if maybe there's charges involved, because we are allowed to charge if there's copies, exceeding, and personnel time. So, it depends also on the volume of what the request produces.

**Leslie Pool:** Okay.

**Alison Alter:** I just wanted to clarify, when you're going, so you said under section 552.110, you have to go to the AG, and that would be to release information, if you wanted to release information that should otherwise have been private or is it to keep it confidential that you're going to the AG?

**Cindy Crosby:** It specifically applies to the commercial or financial information. Basically we're asking the AG, do we have to produce this information to the member of the public that's asking for it? And so the AG, we give the information to the Attorney General, they take a look at it and then they send it back to us and say, 'yes, you can release it but you have to redact certain information'.

**Alison Alter:** So, if that request is made, either way, whichever would be your inclination, in that case you'd have to go to the AG to get a ruling either way?

**Cindy Crosby:** Yes. Yes.

**Alison Alter:** Okay. Thank you.

**Gerry Acuna:** So again, this is really a moot point until somebody actually responds to the RFP, correct? I mean we have a solicitation out on the streets and there's ten proposers or potential proposers out there, unless they actually respond to that RFP, this is pretty much just a moot point. In other words, I'm trying to, again, this is my

mental capacity here, bear with me, but as somebody who is participating in this, or is considering participating in this solicitation, I decide to submit a proposal, at that point, my proposal is already to the City for evaluation and consideration. When I ask for an Open Records Request, is that record, is that request asking you... I'm trying to figure out the, the balance here. Am I asking... does it affect the outcome, is my point here. Does it affect the outcome of a solicitation after all of these solicitations have been received? In other words, I can't change my solicitation that you've already received, so for me to ask my competitor for, what was your price, Andrew? And Andrew would probably tell me to get lost, which is understandable. And you probably would tell me the same thing, or you might share that with me. I guess I'm trying to gather an understanding of what the impact is after you receive the solicitations, because we can't change anything. Is that correct?

**James Scarboro:** Let me clarify, after we receive proposals in response to the solicitation, we would not share any of the contents of the proposals until after...

**Cindy Crosby:** After the AG Opinion.

**James Scarboro:** ...until after we've requested and received the AG Opinion.

**Gerry Acuna:** Okay, so the actual time period, the no-contact period begins once the solicitation goes out on the street?

**James Scarboro:** Yes sir.

**Leslie Pool:** I think Dobbs had a question.

**Andrew Dobbs:** If I may. Thank you very much. Clarifying question, you know, I don't remember any like, I remember clarifying in the last meeting that none of us were really interested in seeing proposals because proposals obviously have a lot of very sensitive information. How different would this be if we could see final contracts before they were executed, because the difference is, is that's the decision about how my money as a taxpayer is going to be spent. You know the proposal is about how a company is operated, and how a company is designed and how they propose to do it. Once the decision has been made, would this be very different if we were asking to see final negotiated contracts prior to execution?

**Cindy Crosby:** So the contract is part of the solicitation instructions. So the contract is already public. The proposal becomes an exhibit and part of the contract and so, when you say you want the contract, the contract includes the proposal, it includes the solicitation instructions, the general terms, the supplemental terms, etcetera, and all the contracts are, final executed contracts are posted on the City's website, under Vendor Connection.

**Andrew Dobbs:** Okay, but I can't, but what I'm getting at here then is, you're saying that I cannot see the final negotiated contract prior to execution because it has all this sensitive information, but then once it's executed, I can see it.

**Cindy Crosby:** With some redacting, possibly, because of an opinion from the AG, but we use form template contracts and so generally we try to apply the same form and template to every vendor. It's tweaked depending on whether they ask for exceptions to the terms and it, you know, it just changes maybe depending on whether it's a good, or a service, etcetera. So the contract itself doesn't change, what changes is the Exhibit A, for example, the proposal, because that is the terms as far as what the deliverables are.

**Andrew Dobbs:** Right. And so what you're saying is that there could be key elements of that, that are exempted from the public's view, prior to execution.

**Cindy Crosby:** Prior and possibly after.

**Andrew Dobbs:** Okay, so then there is a possibility that, like chunks of our taxpayer dollars are being spent without us knowing exactly where they're going or how they're being used?

**Cindy Crosby:** And there's actually a bill on file. This is a question that Senator Watson had brought up and I think the example they gave was the Salina statue in Corpus Christi. That price hasn't been released to the public and so this is a question for the legislature.

**Larry Schooler:** Council if I may, just procedurally I think we need to keep questions to the clarification level at this point. I understand there's a lot to discuss on what's being presented but, probably best to wait.

**Alison Alter:** I'm still trying to understand what we could find out, you know, if we could see the contract, if it's all that could be private, but like one might imagine in the case of waste management, that there would be environmental choices that would be different across contracts and not even another competitor but some environmental organization might want to review that, and if we didn't put it into the solicitation in the first place what those rules were, we'd have no way of evaluating unless the Council office was, had the foresight to want to look at the contract, and was able on their own, without any help from anybody else, since you can't reveal it to anybody else to understand the environmental impacts.

**Cindy Crosby:** And you could discuss it with our staff, we have environmental staff, on the City's payroll that possibly could help, but all of the Council members always have the right to look at those documents.

**Alison Alter:** Right, but if we don't know what questions to ask because we are not business people who, or scientists or whatever you need to know to be able to figure that out, I mean, I think that's part of what we're trying to understand here is that when we let these contracts, we're not just making a choice about how much we're paying in our tax efficiency, we're also, we also have choices that involve environmental implications and I think that, as least as I understand it, that that's part of what is at issue here, are those broader questions.

**Leslie Pool:** Well let's keep going through, let's proceed and try to get through to the end of the presentation and then we can be a little more free form.

**James Scarboro:** Almost there. So like we did with the Anti-Lobbying, we also inquired with our colleagues, the extent to which they managed their confidential information, because they're subject to the same statutes as us with the exception of the County and the State. There wasn't a regulatory source that was different than ours. We just wanted to see if they interpreted the statutes the same way that we did and again we did not see a large differentiation in terms of how they applied or managed confidential information in their proposals compared to how we did.

**Leslie Pool:** I think we'll probably want to see the similarities and differences on this one, the same as the other one.

**James Scarboro:** Well there's, so it would be.. we'd have to put together kind of a narrative of what a given city does and compare it to the statute because they're all under the same statute that we are, they don't have a separate ordinance or what have you, governing confidentiality, at least not that we saw. We did see one that posted a copy of the contract, but when we looked at it, it was the terms and conditions, not including the proposal content, so it's the same contract that we put into the solicitations that are available publicly when we issue the solicitations and through the award recommendation to Council.

**Leslie Pool:** And was that with a city or was it Travis County?

**James Scarboro:** It was a city.

**Leslie Pool:** Which one?

**James Scarboro:** San Antonio.

**Leslie Pool:** San Antonio. Okay, thank you.

**James Scarboro:** So another question was how would negotiations be impacted if proposal contents were publicly available? So we had to think about this one a little bit because there are two kind of times when negotiations can occur. Competitive negotiations would occur while you were evaluating the proposals and those exchanges occur before the award recommendation or before the evaluations are completed and then you would have consecutive negotiations, so those would be negotiations regarding the final contractor who was authorized, and then we would form up the contract after the award recommendation was made. Of the two, the consecutive negotiations would be impacted the most, given the knowledge of the award recommendation and the greater interest in the contents of the proposal and should the contents be available, they're more likely to impact the

negotiations. With regard to impacts on offerors and City staff, it may decrease the participation in City solicitations, it may increase the prices if we have fewer competitors, then they're not as incentivized to give the very best pricing. It may diminish the City's ability to negotiate favorable terms and conditions. If it's, when we open proposals, we know at the time of the opening, how many offers we have, so if there's a low number of offers, the incentive of the offerors is not as great to provide the most favorable terms. Lower participation may also negatively impact the City's procurement programs. We have a number of programs that occur while we are conducting our solicitations so we look for - we apply living wage, subcontracting programs, and sustainability programs, and so forth, so to the extent that something would impact the competitiveness of a process, it may unintentionally also impact these other programs. So staff contemplated what would the possible impacts be additionally were confidential information - if it was not allowed. There was a conversation at the last meeting, if we did not allow confidential information in waste management procurement so we could, again, receive fewer responses, again, less favorable prices and terms and conditions. We may also have less specificity in the proposal contents, and by that it may mean that the offerors don't provide you with the level of detail that they would if they were able to request this information be kept confidential. That may cause us not to fully understand the materials that would be included, the processes that they are employing or the background information of the company itself. It may also make it more difficult for us to meaningfully differentiate the proposals, so if we don't have the level of detail from the offerors, it's hard for us to determine which one is better than the other in a given criteria. There may also be security impacts with regards to information that was not disclosed, but may be significant to the security of operations of certain departments, and there are procedural differences associated with general procurements and procurements conducted for Austin Energy, given their competitive position in the market. So, this would just deepen those procedural differences and make us look a little bit more different to the public in terms of these processes. Some possible alternatives to managing confidential information in waste management procurements, we could just opt to doing more IFBs. This would cause more of the bid contents to be available earlier, but as Cindy indicated, if there were contents that the bidder determined were a trade secret or confidential, they could still make that request. This would also require the City to be more specific in prescribing the activities of the contractor and less able to take advantage of different approaches, different expertise or different ways to solve business problems in the marketplace. This could also limit the kinds of confidential... one other approach would be to limit the kinds of confidential information that the City recognizes. I believe there were some questions on that last time as well. This may still not be satisfying, if you have concerns about the availability of information, if we limit the types of information that we'll recognize as confidential that limitation may still not be satisfying to certain parties and it may still bring about the same consequences if we try to eliminate the confidential information altogether. That concludes our presentation.

**Leslie Pool:** Okay.

**Alison Alter:** I have a clarifying question.

**Leslie Pool:** Sure, Council Member Alter.

**Alison Alter:** So, it seems to, I'd like to clarify that I'm right that we have kind of like five stages here when we can intervene, so we have the solicitation design stage, so no solicitation has been sent out, we've decided we want to have an organic waste compost, whatever, process, and we're trying to design that solicitation. Then there's a stage when the solicitation is open. Then there's a negotiation stage, we've got all of our proposals back and we're negotiating, and then we have an execution stage, and then we have a post-execution stage where the contract is playing out. Is there any stage here that I'm missing? Other than perhaps a general policy stage?

**Cindy Crosby:** It might be wrapped into negotiation and execution, but we have to get Council approval prior to that so we do take those to Council, if it's over the City Manager's authority.

**Alison Alter:** And we could divide negotiation and execution and have to go to Council twice if we chose?

**Cindy Crosby:** Correct.

**Alison Alter:** The second question I had is, so we talked a lot about where Council comes in and that Council can request to see the full contract if we sign a thing that we're not going to reveal it. What is the role of the commissions right now, and what might be the role of the commissions moving forward?

**Cindy Crosby:** I don't know what the commissions are currently doing so I would have to ask the staff liaison who's been attending the commission meetings.

**Leslie Pool:** Or maybe Susan, can you speak to Water Wastewater, or Kaiba to ZWAC?

**Kaiba White:** Are you asking if we're doing executive sessions or...

**Alison Alter:** No, I'm just wondering, you know, it seems to me that part of the problem is how the solicitations have been framed in the first place and so, or that there may be issues that when they're being negotiated that we would want to know information, we have commissions that have expertise, that have an opportunity to go into executive session. I just don't know what your role has been or what your role could be, which is an alternative to having to go to Council, but a way for us still to get information and for the staff to get information without it necessarily have to being fully public.

**Leslie Pool:** Maybe Cindy can speak a little more directly to it, but the Water Wastewater and ZWAC I don't think have executive session as a standing possibility.

**Susan Turrieta:** The Wastewater Commission does to a certain degree, because we approve the budget. We approve the budget for the wastewater, water-wastewater utility, so we are very aware of the jobs up and coming, over the CIP program and the monetary values put in to each of those slots. Jobs that are bigger or phased, we get presentations from Austin Water Utility staff on the scopes of those projects, the magnitude, at the very high level, so that when they come through for negotiation, approval for negotiation, we do have a pretty good understanding of what...

**Leslie Pool:** And you take that information in an executive session?

**Susan Turrieta:** We don't take it into executive session.

**Leslie Pool:** That was the piece that we were just trying to identi... that's good to know, your interaction with contracts and I want to hear a little bit more about that but, I wanted, Cindy, could you just respond to the executive session piece of it?

**Cindy Crosby:** Sure, so the City Code provides that before an advisory board or commission can go into executive session, they have to ask the City Attorney for approval, and so this is a Code requirement. Right now, because there are so many boards and commissions, you guys know better than I do, but there's over 600, 60 boards and commissions and 600 plus members. Because of that, in the staffing of the Law Department and other priorities, we're not able to send an attorney to every single board and commission meeting and know whether or not they want an executive session. So, in past practice, sometimes the Chair will call the attorney that they know is assigned to that department and ask what the legal opinion... or legal question is, or they may transfer it or send it through the staff liaison. So, before a board or commission can have that executive session, we have to make the request to the City Attorney. These boards and commissions are advisory only, basically, and so generally legal questions mostly come up at the Council level or higher. There are some boards and commissions where we have standing City Attorney approval, for example, the Board of Adjustment. They're a quasi-judicial board where they can make decisions that could impact the City, versus if you're advisory only, you don't have that same level of risk. Now, the Texas Open Meetings Act only allows certain reasons to go into executive session. Economic development, real property negotiations, personnel; that generally does not fall into any of the jurisdictions of many of the commissions, and so the only probably viable one left is the provision that allows the body to speak to their attorney in closed session. But again, the attorney has to be there first of all, and it can only be legal questions. There's no policy discussion in executive session.

**Alison Alter:** But we could have a sub-quorum of a commission looking at contracts if each of those individuals signing the no-revealing, whatever it's called, we did this in Parks. We had contracts and sometimes we had commission members who signed that form and they were able to see the details of the contracts, and then that contract committee then, at a subsequent point in time would vote on that, but they would have to be careful not to reveal the information.

**Cindy Crosby:** And that's...

**Alison Alter:** That's not going into a legal... but if the idea is that we want some additional eyes on it, I think there are some procedures to do it, maybe not for the whole Board to be doing it collectively.

**Leslie Pool:** Susan, did you want to talk about the interaction that you have at Water Wastewater with contracts?

**Susan Turrieta:** We currently don't review the proposal, Exhibit A, of the contracts. We just understand that this is what's happening, we get to see the minority participation goals, the amount for the service, and the justification behind it, but it's not... we don't see their actual scope, which is what Andrew was discussing earlier, wanting to see. We don't go into that detail, but I can see Council Member Alter's discussion about taking a smaller group and looking at... it could be effective. That's how we do the budget and approve it, is a smaller subset of us meets privately and goes over the budget before we present it to the whole entire...

**Leslie Pool:** Kaiba, did you have anything you wanted to talk about ZWAC?

**Kaiba White:** Well, in the past we've often got these contracts and that's when we first start having these discussions, and so we have had, you know, whatever, there's been quite a bit of discussion because of that, so going forward, we have a commitment from the Department to bring us a general concept of what a solicitation is going to be for, and we will have the opportunity at that point to give input on things that we think will be important to include. We've been told that we cannot see the actual RFP, before it goes out to make edits to that but, that on the front end, we can say, well, you should be sure to include X, Y, and Z in that solicitation. So, that's what we're going to be doing going forward. We haven't really been doing that up to this point, which is why all the policy discussion has come once there's a contract before us, to either recommend or not.

**Gerry Acuna:** You know there has been precedent set. I mean we did work in the past, I guess Holly, who was a City Attorney, would attend our Solid Waste Commission meetings, back in the old day, the predecessor, Solid Waste Services, during the, I guess, negotiations for the landfill contract, which were again, it was a process that truly needed to take into consideration City Policy, Public Policy. Is this consistent where we're going to be disposing of our garbage for the next 30 years, is that consistent with our current policy? And we did have a quasi-executive session of which Holly was able to attend and assist us in asking some of the pertinent questions that were necessary to ensure that this truly is something that... or the disposal for the next 30 years, it's going to be done in a method that the City truly believed was in the best interest of the community, and it has been done before. And as Kaiba has suggested, we do have a commitment now from the Department to bring these RFPs before us so that we can craft these together, again, to ensure that the policies the City has, both environmental and in financially responsible priorities, are taken into consideration. Now, we're looking forward to that, and I think that if there was a way to perhaps, include some executive sessions to answer some of the questions that perhaps are proprietary where the Commission could ask these questions, with the understanding that these answers go nowhere but with us, and that would be a wonderful inclusion in this policy or future provisions with RFPs.

**Cindy Crosby:** Council Member Pool, if I may respond.

**Leslie Pool:** Yes.

**Cindy Crosby:** I think if your questions are just to look at the proprietary information, that's not a legal reason to go into executive session but if it's to ask what the impact or the negotiation, or something else where it impacts the legal documents, for example, then there would be cause to go into executive session. And I just wanted to take a step backwards and after thinking a little bit more about Council Member Alter's question about whether or not a subcommittee of these committees could then see the full proposal and contract without any redaction. Basically under the Public Information Act, you can either request the paper copy or look at it visually, and so because the committees are members of the public, I'm concerned. I would like to do some further research prior to your next meeting to make sure that the third-party subcommittees, members of the public, not City staff or elected officials, could actually do that. We just don't want to give any implications or violations of the PIA.

**Leslie Pool:** Okay. I think that sounds like a good idea, and then we can see what the research that you conduct comes up with, and then we can dig into that a little bit further. I'd like at this point to go ahead and shift over to

Adam Gregory. He's prepared some comments that he wanted to make on the Anti-Lobbying Ordinance and I promised him about eight minutes, Adam? Does that sound like...

**Adam Gregory:** Hopefully, it might hit ten, it's possible. We've been working on this for about ten years. I'd hope to get about ten minutes, if that's okay?

**Leslie Pool:** Ah, we'll give you ten. So....

**Larry Schooler:** Council Member, will it be okay for the company to distribute paper copies of his presentation?

**Leslie Pool:** Absolutely, yes. Thank you.

**Adam Gregory:** I also have a brief PowerPoint.

**Leslie Pool:** As soon as he starts, we'll key that up.

**Larry Schooler:** Council Member, while we have just a moment, I wanted to ask the group to sort of clarify a key question for our discussion to attempt to answer, because there are so many questions before this group, and I guess my instinct was that it would be something to do with whether or not the City should in any way reform the Anti-Lobbying Ordinance for future solicitations, and if so, how? The question on the agenda is 'should the City waive the Anti-Lobbying Ordinance for future solicitations', but it's clear from the presentation and from some of the Q & A, that it goes beyond simply should it be waived in certain circumstances but should it be changed? So, if that's the, if that's appropriate, then that's the way I can focus this after Mr. Gregory's presentation.

**Leslie Pool:** How does that sound? Because to waive or not, is either an up or down, but reforming it, we may come up with a better process.

**Larry Schooler:** True.

**Ann Kitchen:** I absolutely think that's the question on the table, rather than an up or down, waive or not.

**Larry Schooler:** Okay.

**Alison Alter:** I would say review, but I'm not gonna... let us do both.

**Adam Gregory:** Thank you Council Members for the opportunity to speak to you about the ALO today. I'll be as concise as I can. I've included our slogan on the title slide not for any marketing purpose, but to illustrate to you what can constitute a violation of the ALO. If we were to hand out a single business card with our slogan on it at the wrong time, City management could find us in violation, disqualify, and disbar us, debar us, and we'd have no recourse beyond the staff level. I want to be very clear about our position on the ALO. We simply seek to remove an unreasonable threat to our business as we work to help the City responsibly manage its waste and reach its zero waste goals. Our position on the ALO is 100 percent about recognizing the conflict inherent in our business and our industry being regulated by a demonstrated competitor. The unreasonable threat comes from staff's demonstrated interpretation and application of the ALO. Given that interpretation, which is that truly any communication related to waste, recycling and organics management constitutes a violation regardless of its relation to a solicitation. TDS cannot submit to the ALO restrictions as they currently exist. I want to direct you to the handout I've provided. This was a link within our communication with you prior to the first working group. That's the timeline document. This illustrates the ALO restrictions of all the waste, recycling, and organic solicitations since November of 2009. TDS could and would have liked to respond to all of these since we provide all of these services. I'll come back to this illustration again, but I wanted to point out that over the last seven and a half years, if we had responded to these solicitations, we would have had a total of 56 days that we would not be at risk of violating the ALO, had we responded. Fifty-six days in seven and a half years. Whether this is intentional or not, it is certainly problematic for a number of reasons. Now let's look at the authority City management and staff have over the waste and recycling and organics industry. Staff administers the ALO, including determining disqualifications and debarments. Staff operates their own solid waste recycling and organics collections system and ARR, often in competition with the licensed private haulers they regulate. And staff crafts the solicitations and negotiates the contracts for all solid waste, recycling and organic services, often containing significant policy implications that can affect the entire industry. Now I want you to understand what

makes this industry unique relative to virtually every other business. State law explicitly allows local governments to completely take over the provision of solid waste, recycling and organics management services, require generators to use city services or those designated by the city, and require generators to pay the rates set by the city without the oversight of a public utility commission. It is a fact that the solid waste, recycling and organics industry is uniquely vulnerable to a government takeover at any time. Now that might not be a problem if the City management and staff were simply neutral administrators and regulators of our industry, but unfortunately it has become all too clear to us that that is not the case. I'm going to provide you with some history that I believe demonstrates that the City management and staff are not the neutral administrators they ought to be. Please forgive me for taking you back to 1985, but at that time, without the knowledge or consent of Council, staff acquired commercial collection vehicles and dumpsters, notified customers that their contracts with private haulers were invalid, and they would be customers of the City and would have to pay the rates set by the City. When Council became aware of staff's unilateral actions, they forced staff to abandon their plans. Then in 1993 and again in 2008, staff moved to declare solid waste, recycling and organics management a public utility under Article 11 of the City Charter. Under Article 11, staff would've had the authority to dictate what parts of the city haulers could operate in, set rates for commercial waste collection, and designate the facilities, charge haulers a percentage of their revenue and designate the facilities to be used for processing and disposal of all the waste. In both cases, thousands of businesses and organizations signed petitions opposing staff's power grab, and the staff was forced to abandon its plans. Probably the clearest insight into staff's approach came in 2009, when City management issued a solicitation for provision of a MRF, a single stream recycling facility, and then without Council's knowledge, developed, submitted, and evaluated its own proposal. The City's public works director, who also oversaw ARR at the time, even signed an ALO compliance form certifying, I suppose, that staff would not talk to themselves. Yes, they issued a solicitation and submitted a proposal to itself, then scored its own proposal, which you might not be shocked to learn scored very favorably, only behind Republic and Waste Management. And in that RFP response, City staff stated explicitly that its goal in submitting the bid was to "control the flow of recyclables and eliminate the middle man." This is the same solicitation under which staff erroneously disqualified TDS for alleged violation of the ALO, which was later overturned by a Federal court. In 2012, staff sought the removal of haulers' right to appeal to Council the revocation or refusal to issue a hauler's license. Despite the vigorous opposition of stakeholders and multiple recommendations against it from ZWAC, staff brought the decision to Council, where it was rejected. This would have granted staff absolute leverage over the local hauling industry, but the Council once again decided the City was better off with a competitive market. Finally, most recently, staff sought to expand their ability to service commercial accounts through the city-wide dumpster services contract, through a single designated hauler. The RFP shows staff's intention to dramatically expand their event and city program service capabilities and the events they intended to service. This clearly goes beyond any directive from Council. I can't conceive how staff interpreted the limited directive in Resolution 2009-10-22-040 to require them to provide solid waste, recycling, organics, and portable toilet service to events beyond those sponsored by Council and to do so for free. The RFP also contained language that would allow staff to expand all the commercial services within the solicitation to literally any location in Austin, far beyond just City facilities. I believe all these examples clearly establish that City management and staff are not only regulators, but motivated competitors within the markets upon which private haulers have built their businesses. Now let's talk about staff's application and enforcement of the ALO. It has been inconsistent and problematic to say the least. Let's start with the disqualification of TDS. In 2009, after the MRF RFP was issued, but before TDS even responded, we spoke out against staff's proposal to extend the then-current recycling contract with Greenstar. Staff then found us in violation of the ALO. TDS exhausted the staff controlled appeal process to no avail. We were then forced to file suit to seek the removal of the erroneous disqualification. After suffering damage to our reputation, a Federal judge ruled that no violation of the ALO had occurred and ordered the City to remove the disqualification from our record. Since then, the staff's interpretation and application of the ALO has remained problematic. For example, the Austin Energy rate case public advocate issue and the recent Synagro and Click contracts. Now let's talk about the incredible punitive aspect of the ALO: debarment. A vendor is debarred for up to 3 years if they receive more than 2 violations within 5 years. That would include being prohibited from providing goods and services under existing contracts with the City. You might think it would be very difficult to get 3 violations within 5 years. It's not, and I'll show you how. Please take a look at your timeline handout again.

**Larry Schooler:** Mr. Gregory, just be advised, there's 2 minutes left in the ten minute...

**Adam Gregory:** I'm almost done.

**Larry Schooler:** Okay.

**Adam Gregory:** Please take a look at your timeline handout again. You can see numerous places where multiple solicitations are running concurrently. If a TDS representative were to do as little as to hand out a business card with our slogan on it to a City employee or official during one of those periods, staff could then declare TDS in violation of several ALO provisions based on a single contact and immediately debar TDS and our associated companies from doing business with the City for up to 3 years. In such an event, we would have no recourse beyond the entirely staff-controlled appeal process other than through the courts. I want to be very clear, after 40 years in business, with 900 employees who depend on us to manage our company responsibly, the existential risk associated with alleged violations of the ALO simply will not allow us to respond to City RFPs. Fortunately, there's a very simple solution to this problem. Precedent already exists for permanently exempting certain types of solicitations from the ALO. Social service funding, cultural arts, block grant funding as well as the sale or rental of real property are all exempt from the ALO. Obviously there are reasons for these exemptions. I believe there are clear and compelling reasons to exempt solid waste, recycling, and organics management as well. I respectfully request that you recommend that the full Council exempt our unique market segment from the requirements of the ALO. Please require that solicitations are subject to Board and Commission review for consistency with City policy prior to issuance. And please require that proposed contracts are posted for review with adequate time for comment prior to a request for approval to execute. In the alternative to a full exemption, please allow the opportunity for significant revisions to be made to the ALO to increase transparency and mitigate the extremely punitive effects of alleged violation. And I'll just say, as far as the contract posting issue, I believe there's a lot more flexibility than we've heard today. I know for a fact that 2, at least 2 of our contracts that we have, have been posted prior – I beat my 10 minutes – have been posted prior to a vote to execute. They were posted as backup and people were able to comment on. Balcones's long-term recycling contract was also posted for review. So I would ask the staff what, how does that mesh when certain contracts at certain times are posted for review with plenty of time before an execution, with the statements that it's entirely impossible to post contracts publicly.

**Leslie Pool:** So, it's entirely likely that staff is not able to answer that right now, but I think, unless you feel like you can, that we can give –

**Adam Gregory:** Thank you for the opportunity to speak very much, and I'm happy to answer any questions.

**Leslie Pool:** You bet, Adam. Thank you so much. And I think we can give staff the opportunity to respond in writing, too. Yes, Mr. Scarboro.

**James Scarboro:** As you suggested, we are glad to respond in writing, but we have to differentiate between contracts that result from RFPs and contracts that result from IFBs. And contracts that resulted from competition and contracts that, resulting from no competition. And in those cases, Council may have directed that the entire contract be available. I don't know in this case, but we're glad to provide background information in this regard.

**Leslie Pool:** That would be helpful, and I know you did attempt to draw the distinctions between RFPs and IFBs in your presentation. Does anyone have some questions for Mr. Gregory, or otherwise? Yes, Council Member Alter.

**Alison Alter:** So, part of what I'm hearing is that there's an argument that there is a distinction in this market and in this policy arena, where you have a regulator who's also a competitor, and that that creates a particular dynamic, and I appreciate that that's TDS's perspective. I'm just wondering if some of the other folks who are involved in this industry have different perspectives. There's also an interpretation that, depending on what we do, we end up with a monopoly, and that there's value in competition in this sector for allowing us to have the infrastructure that we need to achieve our zero waste goals. And I'm just learning about this sector, and I'd like to hear from some of the other folks, their perspective of...

**Andrew Bosinger:** If I may, Council Member. Andrew Bosinger with Synagro. I would tell you that, you know, anti-lobby, as you heard from staff earlier, it's a best practice nationally. We do business with 600 units of local government around the country, and I can't think of one, frankly, where you're allowed to contact staff, you

know, there's a process. You develop the policy, you develop RFPs, you get feedback from vendors, you get feedback from staff. Council and commissions and boards may request information, and then lobbying shuts down during an active procurement process. And in fact rather than repealing or rolling back those protections of fairness and, you know, investments in the equity that the city receives, they need to be strengthened. They need to preclude people from lobbying on contracts whether they're gonna bid or not. Because that exemption provides a very strong motivation for not bidding and not participating in the process, ignoring the public procurement process and seeking contracts through negotiated change orders, added additions to scope, things that you, that aren't necessarily transparent or that might not result in the best deal for the city. Would Synagro love to be able to just come in and negotiate with you an extension to our biosolids contract at Hornsby Bend? Sure, but I can't sit here and tell you I think that's good practice. That's not how I want my tax dollars spent. I want competition in there. And yes, lobbying provides good information to Council. You get information you may not get elsewhere. You get different opinions, and that's valid and important. People are gonna talk to you who don't agree with Synagro and our position on things, and you should have that. Make the decision that's right for the City of Austin. But it has to stop at some point. And the process has to be free of – it has to be free enough to allow a fair, open, honest, competition. And when lobbying becomes a free for all, it's just not good for anybody, including the vendors. We don't want to participate in that, because we, it's not a predictable outcome. It's not transparent, and pursuits are expensive. My time is expensive, to be here and to work on these things. When we submit a proposal like we did on the last biosolids contract, that got derailed by, you know, lobbying by a competitor who was outside the process, that's terribly expensive and a bad outcome for the city, because every other vendor sitting around this room is looking at that outcome and saying, 'yeesh, what should I do about that next procurement in Austin'?

**Larry Schooler:** So, before – I know there are red lights on and people that want to speak – Council, is it okay if I facilitate at this point? Would you rather keep it in a Q and A format for yourselves? Or...

**Leslie Pool:** Why don't you go ahead.

**Larry Schooler:** Okay. Well, I wanted to first of all thank Adam for his presentation, Andrew for his comment, but ask Andrew to respond to something that Adam was saying. Forgive me for first names, but just being informal here. It sounded as if there was a pretty sharp contrast between Adam's position that aspects of the ALO were, if I can put words into your mouth, overly restrictive, and in your eyes [looking at Andrew Bosinger] inadequately restrictive. But to dive a little deeper, Adam was talking about specific ways in which TDS either had been or could potentially have been accused of violating the Ordinance, and I'm curious whether you think that any clarification of the kind referenced in the staff presentation and in his, is needed in terms of what kind of communication constitutes lobbying under the Ordinance.

**Andrew Bosinger:** Well, I think you have to have some trust in your staff at some point to understand that, and to implement it, right? We have an existing biosolids contract; we are required to talk to the staff at Austin Water about performance of that work. You know, we were accused of anti-lobby violations for saying, passing each other in the lobby saying, 'How are you today?' That was something, you know, that was thrown back out there, 'Synagro is violating the Anti-Lobby.' So, I mean it's easy to throw around accusations, but I think, you know, that having a trust in your staff and laying out some clear guidelines – look, you can talk about current contracts, you can't talk about potential contracts – and trusting your staff to implement it.

**Larry Schooler:** And on the specific notion – I see your hand – on the specific notion of, you talked about potential tightening of the Ordinance for someone not bidding. In what ways would you have the City regulate that activity so a person speaking to Council or staff about a contract up for bid, and they're not bidding – in what ways would you want that activity restricted?

**Andrew Bosinger:** Well, I think that, you know, Council members for example, you're gonna get calls, and staff is gonna get calls about it, and I think the no-contact list is a great place to start. I mean, you have a list of contracts that are coming out, a simple description of the topics: Biosolids Composting at Hornsby Bend. So if somebody calls you to talk about biosolids composting at Hornsby Bend, we can't talk about that. That's how it's done in a lot of places.

**Larry Schooler:** So a blanket prohibition on a specific topic within the period of time that the proposals are under review – would that be what you advocate?

**Andrew Bosinger:** Yes.

**Larry Schooler:** So I know Adam had wanted to respond to something. I think the three gentlemen right there all had something. Guys, I want to really ask that you be brief, because there's not a lot of time here today to discuss. So Adam, you first.

**Adam Gregory:** Okay. I just take offense very quickly at the inference that we would be trying to limit competition. I think everybody at this table, most of the people at this table in the industry know that TDS has done far more to protect the competitive market in Austin than anybody. We've taken the lead on that, and we'll continue to do that. We also are not, I want to be clear, we're not talking about the ability to lobby, to talk more, to create a competitive advantage for ourselves. If you listened to my presentation, I think you saw that we're talking about removing the unreasonable threat, the existential threat to our business that, given staff's demonstrated application of this Ordinance, is incredibly problematic, so problematic – this isn't a hobby for us. We didn't wake up one day and decide, let's go pick on...

**Larry Schooler:** So before you go any further, I'm trying to understand whether your end goal is to have someone else overseeing the applicability of the Ordinance or specifically changes to it, or it's entirely waived for this industry. I mean, you've talked about all of those things. So are they all equally important, or...

**Adam Gregory:** I think it should be waived for this industry given how unique the industry is and how vulnerable we are to government intervention. There are other options, but I think the – it is a complicated Ordinance, and it would take quite a bit of time to redline the Ordinance in an appropriate way that everyone would agree on. But I hope we'll have that opportunity if we don't decide to include this along with several other types of solicitations that are exempt from the ALO. I don't – I think there are as compelling reasons to do that as those that are currently exempt.

**Larry Schooler:** Fair enough. Mr. Dobbs and Mr. Acuna, and then I'll get around. Yes ma'am.

**Andrew Dobbs:** Thank you, Larry. Yeah, I think that – actually I think both of y'all make really good points, believe it or not, as much as the conflict – it sounds like there's a conflict – I think there's a point to both of y'all, which is that right now I believe that the way it's being handled here is these long periods and the variability and the ambiguity about what's allowed and what isn't, is creating problems for both of you. Like the accusation that you had [points to Andrew Bosinger], but also then the fact that outside players are able to lobby, that does – and it seems like there's a common solution, right? If you shorten the period, and if you restrict this thing more effectively, then the harms to silencing anybody outside the process are more limited also, right? If that makes sense. My big concern on that, though, is that that is a First Amendment thing, right? Like, I mean, like I have not – if I'm not a bidder or a potential bidder, as TCE isn't, you know, and we're not allowed to talk about this at all with these people, then that is, you know, a restriction to my First Amendment freedoms I feel like, that I haven't agreed to, that I haven't... unlike the Anti-Lobbying Ordinance is today. And so that... and I mean, like, even if I agree that it might be a good idea on some level, you know that seems like an invitation for litigation, if I'm not, I'm not a lawyer, so I don't know. But what I will say is that I think that staff's recommendations or thoughts on how to reform the Ordinance on page 6 of the slide, the presentation from earlier, has some good ideas in it. Mainly, if we can narrow the definition of lobbying, right? If we can narrow what counts, right? So that when a vendor on another contract wants to talk about that contract they're not penalized, right, because they're bidding on the first contract. That makes sense. The shortening the no-contact period so that this very, you know, kind of stunning, you know, timeline does not happen, right? There's more gaps in there. And then the, you know, and then, I really like the idea of providing other alternatives to... you know right now there's only this kind of, you know, quasi death penalty involved, right? There's no other, you know, there doesn't seem to be any other, like, remedy here. If there was something else then I think that we could have a little bit more flexibility. And then I also like, I do like the idea of managing standard communications administratively. I think that there's some good ideas here that could be a starting place for negotiating this so that both of these situations can be resolved. So that, you know, TDS doesn't feel like they can't talk about their other contracts, they can't represent their

business, they can't represent their interests on anything while they're like negotiating a very simple issue. And, we could say, 'hey, you know what, like let's all agree to limit this communication.' I think that there's possibilities for solving both of these there. I'm kind of rambling, but...

**Larry Schooler:** That's all right.

**Andrew Dobbs:** But I wanted to clarify that.

**Larry Schooler:** Mr. Acuna, and then I'm gonna come to Ms. White.

**Gerry Acuna:** Can I defer my comment, it was...

**Larry Schooler:** Sure, yeah.

**Gerry Acuna:** It was the historical background of the department versus...

**Larry Schooler:** Okay. Ms. White.

**Kaiba White:** I wanted to address the issue raised about this being a unique industry that the City participates in this, in the same services and respectfully I have to disagree with that. My, you know, main work, is in the energy field and so I do a lot of work with Austin Energy, and there is a prime example of the Utility owns its own generation sources, it owns a whole bunch of infrastructure, and it also contracts out for energy sources and other services as well. So, it – this is not – that's just one just one big example, it's our, you know, largest City asset, and there is technically competition right there. So I don't think this is a unique situation. I understand there's maybe concerns that need to be addressed, but I don't think a blanket exemption for the waste industry would at all be appropriate. I guess that was the main thing that I wanted to address, that I hope people will keep in mind there are other services that the City provides, so...

**Gerry Acuna:** Great segue.

**Adam Gregory:** Absolutely, I agree with you, and I said virtually every other private business because I'm well aware of the difference in energy generation and transmission. That is, those are currently regulated under Article 11 of the City Charter as public utilities. We are not. So it's a separate instance, and then our State laws that allow the city and local governments to literally seize control and not pay any value for what they take away from you specific to solid waste.

**Larry Schooler:** Go ahead.

**Andrew Bosinger:** If I may say one – oh, I'm sorry...

**Kaiba White:** I just wanted to briefly respond to that. It is a public utility, but the utility still puts out RFPs for energy all the time. There's one out right now. So would it be appropriate for those companies who are putting in solar bids to come to Council and lobby that their bid should be accepted?

**Adam Gregory:** I think the history of interaction between the public entity and the private service providers is probably different for energy generation and transmission than solid waste provision.

**Andrew Bosinger:** If I may...

**Larry Schooler:** Excuse me Andrew. Meaning what, exactly?

**Adam Gregory:** The history I just talked about and the demonstrated desire of staff and almost the axiomatic desire to turn what is a competitive free market for solid waste into what you're talking about, something that's regulated under Article 11 of the City Charter. And that can happen, and we've been dedicated as a group of haulers for years and years and years to seeing that that doesn't, because the customers, the City, and all of the, all of our businesses have been built on that free market, and that would – it would wash out from under us if that fundamentally changed.

**Larry Schooler:** So I just feel obligated to look at my colleague from Austin Resource Recovery here for a minute, because of how much has been said about Austin Resource Recovery. So, if you'd like to respond to anything that was said, I'd like to give you the floor to do so.

**Richard McHale:** Well, Richard McHale, Interim Assistant Director with Austin Resource Recovery. You know, the City Director's rules explicitly tell us who we can service and who we cannot. We service residential units, we service multi-family up to four units. We do have some small commercial accounts, but we're, kind of, as they drop off, we're not adding new commercial accounts, so, in that sense I feel that there's no real competitiveness between us and the private sector since they are primarily handling commercial and other residential areas that we don't handle.

**Larry Schooler:** Hold any response to that if you don't mind. So, I know Andrew wanted to get in, but Gerry, did you want me to come back to you?

**Gerry Acuna:** Please, just kind of a wrap-up here.

**Larry Schooler:** Okay – oh, come back to you.

**Gerry Acuna:** Yes.

**Larry Schooler:** So, Andrew, and then it looks like Phil may want to...

**Andrew Bosinger:** I guess I would say with regard to the cities, government's ability to provide these kinds of services and it being unique, I don't think it's a unique industry. Governments can own hospitals, government can own lots of things. What it does is, it places the private sector in the position of responsibility of demonstrating value to the taxpayers. Can we provide a better service for the taxpayers? Can we provide an efficient, more efficient and cost effective service to the taxpayers? That's the question. If we can do that, you have a reason to not do it yourself, and cities around the country are our number one competitors in terms of biosolid services, because some can do it really cost-effectively and really have good programs that they run themselves. But the ones that we do, it's because we've gone in and shown there's a value to partnering with us. And that's it. It's that easy. If we can do it better, faster, cheaper, you won't feel the need to do it.

**Larry Schooler:** Mr. Gosh did you want to speak?

**Phil Gosh:** I did, and, Adam respect, but I don't... my experience of you guys really being for small business – I haven't experienced that, so I just want to speak plainly there. And if you look at small business or, in the past history of what has... how y'all have responded to other people that have been bidding, I think that, that some information from some other people in here, you know, how does that reflect, historically if you kind of look at that. So...

**Adam Gregory:** I think insisting that things be done by the rules and according to regulations is not in any way in conflict for our support for small businesses, we've...

**Larry Schooler:** So I'm gonna step in. I'm not sure that this particular thread of the dialogue is germane. I appreciate that there's issues that these two companies may need to talk about, but I need to keep us on the very narrow scope of what we're talking about here. I do want to check in with people who haven't had an opportunity to speak, to see if Alfonso or Andy, or Sara have anything they want to add. Sara. And then Josh, I'm sorry.

**Sara Koeninger:** Sara, Balcones Recycling. I just wanted to say that with our long history and working relationship with City staff and ARR and Solid Waste Services before that, we've found them to be nothing but professional and helpful and have enjoyed our working relationship with them. And so, in their defense, I would just like to give them a plug and say thank you. We've been happy to work with you for so long.

**Larry Schooler:** Josh.

**Joshua Blaine:** Yeah, I just wanted to sort of come back to I think some of the basis for why we're here. I think it's fair to say that a lot of this conversation came from ZWAC. The City Council looks to us to make recommendations, and when we were constantly butting up against barriers to making the recommendations, I

think they got the memo that something needed to be addressed. And the two things that from my perspective were most problematic were, we couldn't get the information we needed to make that judgement: 'Is this providing a good service for the City?' So, a lot of that was related to confidentiality and Anti-Lobbying Ordinance, and the other was that TDS was never on the playing field, even though they're one of the most well regarded, nationally renowned landfill facilities in the country, and they're right here, and they were never a part of the conversation. I'm not saying they should just get the contracts, but we should be able to consider them. So I think it's important that we do try to listen to the reasons why they're staying out and acknowledge that they're an amazing resource, if we are gonna be zero waste, we need to be able to utilize that and I think, I agreed mostly with Mr. Dobbs said. There are some really basic reasonable things that we can do that have already been established that I think can accomplish a lot of what we're trying to accomplish here.

**Larry Schooler:** And you're referencing suggested changes to the Anti-Lobbying Ordinance?

**Joshua Blaine:** Yeah. I mean, you know, the fact that TDS thinks they can't give a business card probably isn't the actual Ordinance, but we heard directly from Purchasing office that there's very vague direction in how to assess violations. So, I don't see those things as being... it makes sense that those would go together, and I think we can address that.

**Larry Schooler:** So before I continue, folks I'm gonna have to step away here in just a moment for an unexpected family matter, and so Council, I'll defer to you as to whether you continue yourselves or choose to stop, but I apologize that I have to leave before three o'clock. I also want to make sure everyone in this room and who's watching is aware that at [AustinTexas.Gov/WorkingGroup](http://AustinTexas.Gov/WorkingGroup) all of the documents that have been disseminated will be posted online. Again, [AustinTexas.Gov/WorkingGroup](http://AustinTexas.Gov/WorkingGroup). And the discussion board is active at [SpeakUpAustin.Org](http://SpeakUpAustin.Org). I'll come to Paul, and then I'll step away.

**Paul Daugereau:** Thank you, it's Paul Daugereau with Waste Management. I've been doing this for about ten years. I can't speak for what's happened in the past, I haven't had a whole lot of problems with any Anti-Lobbying issues. We do have contracts with the City of Austin. We had a multi-family contract, we've had the CBD contract. And we've gone through bids at the same time, never experienced any problems like that. I do understand everybody's point of view here, but I wouldn't say that we would want to throw the whole Ordinance out. I think that will, there's no doubt it will create an unfair advantage for larger companies and people who have lobbying teams. Us, being one of the larger companies, you know, whatever decision you guys make, we'll play within the rules and do our best, but I wouldn't throw the whole thing out. I think it's just a best practice, and from what we've seen, there may be some changes that need to be made, and we can work together to do that, but let's not throw everything out with it.

**Larry Schooler:** Council, I'll pass to you. Thank you.

**Leslie Pool:** Thanks Larry and thanks for being here, and we'll see you on the 10<sup>th</sup>. Let's go around and see if there's any – yes.

**Andrew Dobbs:** [Gesturing towards Gerry Acuna] Did you want to go first?

**Gerry Acuna:** Actually, I just wanted to summarize.

**Leslie Pool:** He wants to be the closer.

**Gerry Acuna:** Well, okay – sure.

**Andrew Dobbs:** Well if you do – far be it from me. I wanted to kind of highlight here the important bottom line issues, which, the most important thing here is that we want the City to get to zero waste, and we want to protect our environment, and that is the key element here. We don't want to have to have any new landfills in this area. And so the solution is, how do we get more competitive bidding so that we can get better services and better prices, because it's expensive to do that. And the impediment, it seems, is the very issues that were outlined, like I said, very well by staff on the Anti-Lobbying Ordinance, and so I'm hoping that we're reaching a point where we can see that there are some specific changes that can be made to that. The other half of that, though, is that, you know, I always – I sometimes write down two things when I'm about to speak so that I remember what my

priorities are, which is the environment and democracy, you know, protecting the democratic process. Corruption is globally one of the primary threats to democratic government. It is the – it is a corrosive and terrible thing, and once it gets a foothold into a community, it will destroy it. And it becomes almost impossible to root out. And I grew up in a place, in another city in this state where corruption is endemic, and it is such a beautiful thing that it is not here. This Ordinance is a protection against corruption, and it has to be – we have to have something in place to this regard. I agree that – I can understand that for a temporary period while we're working to reform it, we might withhold it so that we can get bids in with a lot of eyes on the process at that point, but we have to have an Ordinance that can protect us from those problems, but it has to be done – but it has to be better than what we have now. I'm hoping that there can be some sort of, if not consensus, then an alignment that this is a possibility and that this is a direction for this body to move forward with.

**Leslie Pool:** Any other red lights on? Yes, Alfonso.

**Alfonso Sifuentes:** Alfonso Sifuentes, Green Group Holdings. Andrew, though I disagree with you on another landfill – that's definitely needed – I do agree with you on this Ordinance. I do believe that waiving the ALO, I think it's gonna – what I'm concerned about, it's the negative perception it's gonna give to the public in regards to the City being open for these procurement policies and practices. So that's my number one concern. And I do think if we waive this ALO, I think what it's gonna do is just kinda, what my colleague Paul was saying, that I think it's gonna depend on who has the biggest lobbying budget. You know, I think it's gonna put an unfair burden on vendors and just gonna open up a whole new can of worms. But regardless, I think – and I'm kind of new to this working group, so I apologize if this is, you know, but I feel like we're at a good start here, we're talking about it, and I think that's always a good start to any issues. Thank you

**Leslie Pool:** So are you on the side of reviewing it and improving it?

**Alfonso Sifuentes:** I am.

**Leslie Pool:** Okay. Good. Kaiba?

**Kaiba White:** I was just actually kind of wondering if we could hear from staff as to whether or not, you know, this issue of just providing a business card or some sort of simple communication that is not about the solicitation in question, whether or not that is actually a violation, because that seems to be the concern, that any sort of communication is gonna be written up as a violation, and I do see how that could be a problem. But on the flipside, it seems like if it's only a limitation to discussing the solicitation that is out, then there is an opportunity to speak, unless I'm mistaken, at any public venue, so at any Council meeting, at any Commission meeting, right? So I guess – can we get some clarification on that, because I'm wondering if maybe there's just an interpretation.

**Cindy Crosby:** So the Ordinance does define what representation is, and basically it's to persuade or dissuade or say something disparaging against another competitor, discredit the response, advance the interest, encourage the City to reject, convey a complaint, directly/indirectly ask, influence, or persuade. And so I believe the simple act of a business card, unless there's something written on it other than your name and address, would not violate, would not constitute a violation.

**Leslie Pool:** And then what about the provision of information in an open meeting? That was the other piece that...

**Cindy Crosby:** Yes. So it is a permitted representation, and so it's not just an open meeting or public meeting, it's a meeting posted under the Texas Open Meetings Act. And so it's very explicit about where that representation may be made.

**Leslie Pool:** So that could be citizens' communication at a Council meeting?

**Cindy Crosby:** It could.

**Leslie Pool:** It could also be in response to an item that's a contract that is up for Council, that's on a Council meeting agenda?

**Cindy Crosby:** Absolutely.

**Leslie Pool:** Okay.

**Adam Gregory:** I would just like to say, we've seen a number of different interpretations over the years of what this ordinance means. And when I talked about a business card, it would be containing our slogan which is "Noticeably Different, Noticeably Better" and that would fall under the category of advancing our interest. So we have been the victim of vastly over-interpretations of this ordinance. It's a restriction on free speech. It's a first amendment issue, and when you're restricting free speech, even when it's voluntary, even when it's a time, place, and manner restriction, it has to be narrowly construed. The ordinance is not set up to where it can easily be narrowly construed.

**Leslie Pool:** Well I'll tell you what, Adam, we'll look at that specific with your motto on there and we'll have Legal look at that. We are only going to be speaking to the folks who are in our Law department at this time, and this Council, so whatever may or may not have happened in previous Councils we can't really respond to that, so let's keep things current. Council Member Alter, did you have something?

**Alison Alter:** Yeah, I just wanted to make sure that we have top of mind that we also can think about the solicitation process for this area, so it may be that, you know, totally apart from anything to do with TDS, we have the Simple Recycling contract that there seem to be some flaws in the solicitation process that maybe a little bit more daylight on that, we would allow to have more ideas. So I don't think this is strictly a, fully a TDS discussion there, and so I want to keep that there. I think if we can do this in public meetings there needs to be clarification given to the Commissions. I understand there was some confusion over whether someone could speak at Zero Waste, if that counted as a violation or not, so as we're trying to clarify this we should keep that in mind. One thing, though, that I wanted to just ask for clarification from staff on, with this threat of debarment, we have contracts with TDS that are critical for our meeting our zero waste goals, and I'm just, you know, we don't want to set up a situation where, you know, we have no landfill to send our waste because we decided to debar them for some reason. And that's just what I'm taking as a logical next step of what's been presented; whether that's true or not. Is that a fair interpretation or how should I be thinking about that if they have existing contracts with us, and were they to be debarred, what happens to those existing contracts?

**Cindy Crosby:** Under the plain language of the ordinance I could see where TDS may come up with that representation, but I would like to confer with staff separately, offline, on past practice because it's been imposed prospectively and in the future, not to current contracts. The current contract, of course, has terms for termination – either for convenience, for cause, for any reason separate and apart from even debarment, and so that's something that we would just like to discuss separately and have it ready for your next meeting.

**Alison Alter:** Thank you.

**Leslie Pool:** Anything else for the good of the cause before I turn to Mr. Acuna?

**Gerry Acuna:** I have a simple comment. Actually it's kind of a comment and a summation of everything that's been said. And I think at the end of the day we're all in agreement, competition is absolutely vital for us to receive the most efficient, cost effective services, period, available. You know the City, in the past, Mr. McHale commented that the City does single family collection, and it's done a great job at that for decades. The private sector on the other hand, provides the private collection of recyclables and garbage. Great synergy; it's worked for years. Recently there's been some indication of some encroachment into the City's goals, not with this current administration, I want to say, but for the last year or two, there was some encroachment into what the City considered an opportunity to enter into the private sector, I mean, we faced that in some of our Commission meetings. You know in the old days, the City controlled its own destiny; we owned our own landfill. We were much like Austin Energy. When coal was the key generator, we had a great coal fired plant in Fayette County. Well, coal is not the greatest thing anymore, we are out there soliciting – we still have that – we have an interest in a power, in a nuclear facility, we are now out there soliciting wonderful solar energy and wind, for that matter, it's necessary. We lost our interest in our landfill, as you suggested, that closed down. Landfill is no longer here so we have to out of necessity solicit the most responsible, cost effective, disposal options with the private sector. We're not going to get to the zero waste, as Mr. Dobbs suggested here, unless we start working together and acknowledge that this is a cooperative thing, that we do need to bring all of the available resources working

together to accomplish these goals. If we don't succeed at that this is kind of a moot point. It's gonna be three meetings, we're out, business as usual. I think this is a great opportunity to revisit this Anti-Lobby ordinance and modify it some. The gentleman over there's comment about getting rid of it, we probably don't want to get rid of it, but we certainly need to work it so that issues like this do not come up on a regular basis, and we get all the parties bidding on these contracts. The winner is all of us here who pay rates and expect the City to accomplish that zero waste goal. And those are my comments, I'm sorry.

**Leslie Pool:** And thank you for that summation, and I think we do want to make it possible for... to answer some of the questions and clear up any mis-apprehensions or misconstructions that may have happened in the past. I think we want to be really crystal clear on what's proper and what's not. It seems to stretch my credulity to think that simply handing a business card to a member of our staff would be grounds for debarment, so we'll chase these things down and get them straightened out. Yes, Phil, you had your light on.

**Phil Gosh:** I did. I just had a question for the City. Is there a way that we could, on the Anti-Lobbying create some boundaries that, where it's healthy, you know, towards zero waste? So what are some ways that we could build something that is healthy, where it's a level playing field? We've all kind of experienced what we've experienced over the last year, so what's a way to make it healthy? Is there a way to... cuz a lot of folks don't have a team of lobbyists, and we want new business, we want new opportunity for others to come in. So how do we create that level playing field? And the other question is, is there a way we could do something on even the point systems on a bid? Could it be focused on really the credibility of that business and their commitment to zero waste, and their commitment to others and supporting others and working together as a team to accomplish that goal? And so we put qualifiers on what, to define that level of commitment, and in terms of how a bid would be valued in that way.

**Leslie Pool:** Thank you Mr. Gosh, and we'll write those questions down and we're right at 3:00 which is the end of our meeting, but those are good questions to give some thought to. We're meeting again on Wednesday the 10<sup>th</sup>, same time, same place. I want to draw everybody's attention to really good backup information that our staff put together that was all requested at our first meeting. In particular there's an Austin Resource Recovery and Zero Waste history which really is pretty informative, starting back in 1970 and all the way up to 2016, including changes in the names of the Department and the expansion of our work in these areas. And then some better maps that were also requested. So thank you all for everything and we'll see you on May 10<sup>th</sup>. We are adjourned.