

9-28-17 Austin City Council

Item 44. Approve an ordinance amending City Code Chapter 2-7, Article 6 relating to anti-lobbying and procurement.

Steve Adler: Councilmember Pool, do we have one that we can postpone?

Leslie Pool: Item 44. Is that the one you're thinking of, Mayor?

Steve Adler: Yes. The Anti-Lobbying Ordinance.

Leslie Pool: So we talked about this in Work Session and of course, papers are all... dropping all over the place, so let me just talk off the top of my head. We... this is the Anti-Lobbying Ordinance. We wanted the Ethics Review Commission to have an opportunity to review it. They will meet, I think the second week of October. I think it's the 11th. We also... so we are pulling this down and not taking any action on it today. I don't know if October 12th is the date to put it on our agenda because that would only give us... that would give us less than 24 hours to look at any responses the Ethics Review Commission might make, and in fact, once they get it they may want to spend a little bit of time so I just want to, right now, just not put a date on when it comes back, but it will come back as soon as possible. And then as far as the biosolids contract, there was concern with Austin Water Utility about moving forward with the planned biosolids bidding process, and we indicate... I signaled to them on Tuesday to proceed with that process.

Steve Adler: That is my understanding as well. Then we could proceed on that contract, because initiating it, we could still get these answers back and if there was some change we needed to make, we could still do that and it didn't conflict with what the language was, as I recall.

Leslie Pool: That's right, and we don't want to unduly delay the work that we've been trying to move forward with on the biosolids.

Steve Adler: And then I think we've also got some other emails in the meantime from some people participating in this. I know that Mr. Dobbs sent in an email saying that he wanted us to consider some additional changes. This would also provide an opportunity for those stakeholders to surface, or bring those questions.

Leslie Pool: That's exactly right.

Sabino Renteria: Mayor.

Steve Adler: Yes. Elaine, did you want to say something?

Elaine Hart: We'd recommend you bring it back on the October 19th agenda, which would be after the Ethics Review Commission.

Leslie Pool: That sounds good to me.

Sabino Renteria: That was going to be my recommendation.

Leslie Pool: Okay, great.

Steve Adler: Okay. Commissioner Renteria is suggesting that we postpone this to October 19th with the instruction that staff can still proceed with the biosolids solicitation initiation. Is there a second to that amendment? Or is it acceptable? Any objection to that amendment? Hearing none, that's added. Ms. Houston.

Ora Houston: Thank you Mayor. My concern was, at Work Session and again today, is that it seems that the Anti-Lobbying is broader than we started out with, and so I would like to insure that other individuals who do business

with the City have an opportunity to look at it and make sure that the changes that have been suggested are, in fact, agreeable to them, or if they have any disagreements. Because this has started out as waste management and now it's broader than that. It's everybody that we contract with.

Leslie Pool: We are, and we are in touch with the various people who would be bidding on contracts, but we'll make sure that staff alerts everyone these changes are being proposed.

Steve Adler: And best I can tell, I think I've received emails from like four different people or entities asking for other changes. This provides, now, those folks the opportunity to surface those and to speak with Council about them. Councilmember Alter.

Alison Alter: In some conversations we had I understood that it's possible to have some ALO language in place in the RFP in case we keep extending our discussion of the ALO, so that if we have the RFP go out, and we continue to have this discussion about ALO, I want to make sure that we have a mechanism for having some version of the ALO in place when that biosolids contract is coming back. I'm not exactly sure of, legally, the best way to proceed with that but I understand that there's a way, in the event that we have a need to postpone it beyond the 19th, that we could assure that.

Anne Morgan: That's correct. Chris Weema in our office is working on that to make sure that we have language in the RFP to clarify that it may come back to Council.

Chris Weema: Good morning Mayor and Council, Chris Weema, Law Department. Councilmember, that's correct, we will... in discussions with staff we are contemplating issuing the RFP with a suggestion that it may be subject, or will be subject in the future to Anti-Lobbying, or to some modified version. If necessary, Austin Water may need to come back to Council and request a modification of the prior Ordinance that waived Anti-Lobbying wholesale for biosolids contracts.

Steve Adler: By the 19th we'll have either a final... one, you're going to put it in the RFP. Second, on the 19th when it comes back you'll have us prepared either to approve something on an interim basis, or to approve something permanently, depending on what the Council wants to do at that point, it would be helpful. Mr. Flannigan.

Jimmy Flannigan: Am I to understand that what we're initiating is reissuing an RFP with no Anti-Lobbying provisions whatsoever?

Chris Weema: Councilmember, the proposed revisions to the Anti-Lobbying Ordinance start the no-contact period at the close of the solicitation. If that is ultimately accepted by Council and put into place that would be the net effect of issuing this RFP or any other RFP without a current ALO in place. Because the ALO would not be applicable until the solicitation closed. So while it was out on the street it would not be subject to the no-contact period, just as the staff proposed recommendation for revisions.

Jimmy Flannigan: Okay.

Chris Weema: So the idea is that there will either be a revision in place at the time that the solicitation closes or that staff will come back to Council and ask for a modification so that an Anti-Lobbying Ordinance or a modified version of the Anti-Lobbying Ordinance is as at least in place as of the close, as it comes to Council.

Leslie Pool: And I think maybe my colleagues will remember that we had suspended the Anti-Lobbying Ordinance only for Austin Resource Recovery contracts of which there's been one that was... that came through a couple months ago and this one is the second one simply so that we could target the concerns that vendors were making about various provisions in the Anti-Lobbying Ordinance. So the suspension of it is literally only for those contracts that are teed up for Austin Resource Recovery in which case, right now, we just have one bid, or RFP, rather.

Steve Adler Okay. Yes. Councilmember Alter.

Alison Alter: I'm seeing some puzzled looks so I just want to say, what I was just asking for was to make sure that there would be some sort of ALO provision in there at the point that they were coming back with the solicitation so we would not be in that situation, regardless of whether we pass the ALO on the 19th or not.

Greg Casar: Mayor.

Steve Adler Yes.

Greg Casar: Can I ask for further clarification?

Steve Adler Yes.

Greg Casar: Councilmember Alter, when you say 'some sort of ALO,' do you just mean the ALO that we've all been used to? Just the standard ALO? Or are we talking about a new, modified format? I'll just give my inclination is to stop having no ALO contracts until there's been real deliberation with the full dais on the ALO. So if there's some way that we can make sure that that biosolids contract just goes out like a normal one, that is, an ALO-covered contract, that would be my preference. But I'm interested in what your take is.

Alison Alter: Essentially what I think that we're asking for is just through the period until the solicitations come back it would not apply because it's part of this wastewater exception... this waste exception that we're operating under right now. So when the solicitation came back it would be under the ALO. Is that the correct interpretation?

Robert Goode: Robert Goode, Assistant City Manager. Let me clarify what we're suggesting to do, is to go out with the RFP without an ALO in place and then coming back hopefully before the submittals are due, to add the amended ALO. So right now, you're right, we're going out with an RFP without an ALO per the previous Council's direction that solid waste services, which is biosolids, are exempt from ALO. So we will go out right now to get the RFP on the street with the intention of coming back and having an amended ALO adopted by Council that would take effect before the solicitation was due. That hopefully clarified what the intent is to go out on the street today.

Alison Alter: And that procedure matches what is in the proposed ALO in any case.

Robert Goode: That's correct.

Alison Alter: So if we were to accept what's in the draft it would have the effect of matching for this contract. It just prevents us from delaying... keeps us from having to delay this contract any further.

Robert Goode: That is correct.

Steve Adler Okay. Yes?

Leslie Pool: Last thing. On Tuesday I asked if staff could pass along the comparison matrix to the Anti-Lobbying Ordinance revision. It was this chart and it shows what the current recommended changes are with the discussion that staff has provided. I don't know if that's in the backup or not but I'd like to make sure that everybody gets to see what the recommended changes are and the piece that the Ethics Review Commission will be responding to.

James Scarboro: Mayor, Councilmembers, James Scarboro, Purchasing Office. We are posting all of these documents onto the Purchasing Office external website and are currently completing a notice that will be sent to all registered vendors with the City of Austin. So this will be a very large communication that will occur in the next day or so.

Leslie Pool: And then you'll send the comparison matrix to the Council?

James Scarboro: We'll certainly do so. We'll include it in the backup. We'll be glad to share that.

Leslie Pool: Okay. Thank you.

Steve Adler Yes, Councilmember Alter.

Alison Alter: Mr. Scarboro I just want to make sure then. You're going to make sure the RFP goes out with the necessary ALO language to the extent that Legal has worked out, what is legally appropriate to make sure that we're covered in the event that the ALO... the new ALO is not in place for this contract moving forward.

James Scarboro: Councilmember, that's correct. We've already had discussions with our colleagues at Law. Given the review of the proposed Ordinance and the possible inclusion of that Ordinance while the solicitation is underway, we're going to include language in the solicitation that anticipates the addition or the application of either the current Anti-Lobbying Ordinance, the revised Anti-Lobbying Ordinance, or some other version of the Anti-Lobbying Ordinance added to the solicitation at some point while we are underway.

Alison Alter: Thank you for the clarification.

Steve Adler Okay? All right, the motion is to postpone this until October 19th, to go ahead with the biosolids contract with all the conditions and comments and directions that Council raised. Is there a motion? Councilmember Pool makes it. Is there a second to that motion? Mr. Renteria seconds that. Any discussion? Those in favor please raise your hand. Those opposed? Mr. Flannigan votes no, the others are voting aye, Troxclair off the dais. Thank you very much.