

AUSTIN MONITOR

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THE CODE

Committee fails to endorse lobbying rules changes

The City Council Audit and Finance Committee voted unanimously on Wednesday to forward changes to the anti-lobbying ordinance proposed by the city staff to the full Council, but did so without a recommendation. Three members of the committee, Mayor Pro Tem Kathie Tovo and Council members Alison Alter and Leslie Pool, were in attendance, with Mayor Steve Adler absent.

Not only did city Purchasing Officer James Scarboro get a tepid response from the committee, but a lobbyist for Texas Disposal Systems blasted the proposal.

Scarboro told the committee that although staff had significantly reorganized the ordinance – which prevents companies and their agents who are bidding on city contracts from contacting the Council or non-authorized city employees – there were actually very few substantive changes from the original ordinance. That was not what the committee or solid waste stakeholders were expecting.



Alter was also frustrated, she said, because even though staff members provided what they called “version three” of the ordinance, there was no red-line version. Scarboro told her that they tried to do a red-line version, but because of many changes in the language, it was difficult to read.

Alter told him that when the ordinance comes before Council, staff needs to produce a side-by-side comparison between the old ordinance and the new proposal. According to its presentations, staff was requesting feedback on additional changes and approval to proceed to Council with version three.

If the new ordinance is not completed by May 21, the current ordinance “will re-establish and will be applied to all new solicitations for waste management services,” according to Scarboro. But the one company that promoted changes to the ordinance, Texas Disposal Systems, is not likely to accept the new ordinance quietly. Nor does it want to see the old ordinance reinstated.

Attorney Michael Whellan, who represents Texas Disposal Systems, told the committee that what Scarboro and his deputy, Shawn Willett, had presented was not an anti-lobbying ordinance, but was rather “an anti-information ordinance.” Even though the city received

recommendations from the Ethics Review Commission, the Zero Waste Advisory Commission, the Council Waste Management Policy Working Group and the Texas Campaign for the Environment, staff ignored their recommendations on the most important issues, he said. Pool chaired the waste management working group.

Whellan pointed out that version three of the ordinance wasn't available until Tuesday night. "Unfortunately, we have to ask you not to give your support to staff's draft today, and I'll tell you why," he said. He stated that advisory and stakeholder groups asked for certain key reforms of the law that were not put into staff's proposal.

"This began over a year ago," Whellan noted. "There was broad agreement on key reforms in nearly all these groups – and yet almost none of those reforms are included in staff's draft today. It truly is astounding. This includes creating a third-party appeals process, so if a respondent is disqualified they can appeal to someone other than the staff that disqualified them. All stakeholders made that recommendation, including the Council working group, and yet staff's draft does not include it.

"Likewise, nearly every group, including the Council working group, also recommended that the administrative rules that were just discussed for the ALO be reviewed and approved by Council and actually go up as a companion document to Council. But staff's draft does not do that either. There is some random outline out there of the rules, but there are no rules themselves."

He also complained that the time period when the anti-lobbying provisions would be in effect prevents communication concerning policy. Perhaps the most important of those issues relates to allowing an appeal of staff decisions concerning violations of the ordinance. For example, the Council working group recommended engaging a third-party reviewer, such as the Ethics Review Commission, when a company has been disqualified or debarred.

When Council members asked Scarboro about the possibility of bringing in a third party to listen to appeals, he said staff had considered that, "but in our professional consideration we're unable to bring forth that recommendation." He suggested that committee members might want to ask members of the city's Law Department about what problems that might cause.

He noted that alleged violations of the anti-lobbying ordinance might involve confidential information. "There also may be a question of legal representation before these boards and commissions should there be a challenge to decisions that they make." In case of an appeal, Tovo suggested that it would be appropriate to have members of the Purchasing Office not involved in the procurement consider the matter.

Scarboro seemed to think that might be possible. His strongest recommendation was that staff pursue the writing of a procurement code that would help to establish procedures for dealing with alleged violations rather than putting those regulations into the anti-lobbying ordinance.

The committee members seemed to wholeheartedly endorse the procurement code idea, even though not one of them said they would endorse the new anti-lobbying proposal. Although they said nothing during the meeting, two other TDS lobbyists, David Butts and Mark Nathan, sat in the audience and watched the proceedings.