



MEMORANDUM

TO: Mayor and Council

FROM: James Scarboro, Purchasing Officer *Jan*

DATE: January 5, 2018

SUBJECT: Revised version (V2) of the Anti-Lobbying Ordinance

At the November 9, 2017 Council Meeting, staff withdrew its recommendation to revise City Code, Ch. 2-7, Article 6, Anti-Lobbying and Procurement. As stated in our November 6, 2017 Memo to Mayor and Council, staff withdrew item (Item 42) in order to further consider the feedback received from the Ethics Review Commission and from the waste management stakeholders, and to allow more time for the City's entire vendor community to weigh in on the proposed changes to the ordinance.

Based on the feedback received to-date, staff has developed a further version of the Anti-Lobbying Ordinance ("Version 2" or "V2"), attached. A copy of the current Anti-Lobbying Ordinance ("ALO") is also attached for comparison. Given the significant differences between the current ALO and V2, a mark-up version showing the changes was not meaningful. An overview of the proposed changes is as follows.

- **Definitions.** Key definitions in the ALO are reestablished employing more simplified terminology, e.g., "Representation" was removed and "No-Contact Period" was changed to "No-Lobbying Period". Other definitions were revised to be more specific and more clear, e.g., "Agent".
- **Findings; Purpose; Applicability.** The contents of this section were not changed in V2, however the section was split into two – one for Findings and Purpose, and a separate one for Applicability. This section continues to include exclusions for social services and cultural arts contracts. For consistency of operations, staff recommends applying the ALO to all solicitations resulting in contracts requiring Council authorization. Although staff is not currently recommending any changes to the exclusions in this section, staff is prepared to discuss any of these exceptions with Council if there is a desire to remove or modify any of them.
- **Restriction on Contacts.** Previously the ALO described the prohibited activities as "Restriction on Contacts". Staff found this section to be unnecessarily broad and occasionally overlapping. While developing the revised ALO further, staff sought to simplify the section by using more common terms and using more straightforward descriptions, e.g., "Restriction on Lobbying". The result is a shorter, easier to read and more understandable section.
- **Permitted Representations.** Although not technically necessary (as any activity that is not prohibited is by definition permitted), the ALO still includes a section that lists those kinds of communications that are expressly permitted. The title of this section was simplified, "Permitted Communications", and the descriptions throughout this section were clarified.

- Disclosure of Prohibited Representation. This section of the current ALO includes more internally-directed requirements. As such, details associated with these notices and notification processes are better addressed in administrative rules. Staff also added a self-recusal provision in V2 for City officials and City employees. As presented to the Audit and Finance Committee on December 11, 2017, staff intends to promulgate rules in support of the revised ALO that include elements substantially similar to the requirements in this section.
- Enforcement. The Enforcement section of V2 was streamlined and added a provision allowing the Purchasing Officer to waive violations if the violations were solely the result of communications initiated by City officials or City employees.
- Contract Voidable and Debarment. These sections were consolidated in V2 but were not substantially changed. Although staff had previously considered removing the debarment requirement, based on substantial feedback the ability to debar a respondent based on multiple violations of the ALO was retained in V2.

In addition to this memo, staff will post the following documents to the Vendor Connection section of the City's financial services website, Austin Finance Online (https://www.ci.austin.tx.us/financeonline/vendor_connection): V2 version of the ALO; Rule Elements (a companion document listing the contents staff intend to put into the resulting rules); and a Feedback Form (formatted into sections corresponding with the major elements of the ALO). Staff will give at least one month for vendors to provide their feedback in this regard. Following this feedback period, staff will present V2 to the Audit and Finance Committee, including an overview of the feedback we received on V2. At that time staff will request feedback and further direction on continued revisions of the ALO from the committee.

Staff appreciates the additional time and consideration to perform a more thorough and inclusive review of the ALO. I remain available to answer any questions you have in this regard.

cc: **Elaine Hart, Interim City Manager**
Greg Canally, Interim Chief Financial Officer
Rolando Fernandez, Capitol Contracting Officer
Shawn Willett, Deputy Procurement Officer
Chris Weema, Assistant City Attorney