

## 11-9-17 City Council Meeting

**Item 50. Approve an ordinance amending Ordinance No. 20170406-023, which waived chapter 2-7, article 6 (anti-lobbying and procurement) of the City Code regarding solicitations for the collection, processing, resale, reuse, and/or disposal of municipal solid waste, refuse, biosolids, compost, organics, special waste, and recyclables.**

**Steve Adler:** Let's see if we can do the Lobbying Ordinance, Item Number 50. This was pulled by speakers. Do we want to hear from the speakers first on this or does somebody on the dais want to start us off? Speakers? All right, let's go to speakers. Gus Pena. Michael Whellan. Steve Shannon is on deck, and then David King.

**Michael Whellan:** Thank you. Michael Whellan on behalf of Texas Disposal Systems. I wanted to kind of remind folks where we were and where we're going. We were promised that the Anti-Lobbying Ordinance would be suspended for waste related solicitations in order to allow all the stakeholders to participate and frankly we trusted this commitment. This was a commitment that was made when the City Council Working Group was established. I would note also that Synagro also wanted to have the Anti-Lobbying Ordinance – they're a competitor in the biosolids area – wanted to have it waived back in the fall of 2016. The Council, on two occasions, has waived the ALO in connection with waste related contracts, solicitations. One of those occasions was in December of 2016 in order to cure any questions related to whether Synagro had violated the ALO. And although TDS, back in 2016, had filed a complaint based on Synagro's communications with unauthorized City officials and employees, that was done to demonstrate the inconsistent application of the current ALO and the problems with the current ALO. TDS had no objection to the December 15<sup>th</sup> ordinance that protected Synagro by waiving the ALO at that time. It seems ironic that we're talking about now applying the old ALO after we've forgiven and basically dismissed a complaint in that regard. I would also note that when the Working Group was established they published a document that has eight Working Group recommendations. Only one of the eight Working Group recommendations has even been initiated, and that is a discussion about the Anti-Lobbying Ordinance. Everyone should have the ability, in my opinion, to participate, as promised, in the Working Group policy discussions. Noteworthy, the biosolids solicitation has no local business presence factor, which was one of the things that everybody unanimously thought should be addressed and considered. It doesn't even take it up. So again, we're back to a solicitation making policy despite the fact that at least four council members concurred in the Working Group that local business presence should be modified. I would also note that the position by some that a solicitation without an ALO is somehow unfair or without integrity is completely undermined by the American Bar Association model rules, which many have touted as the direction this City should be going. Those model rules do not have anything, they have nothing like this No-Contact Period. When you read the rules, the model ABA rules, that have ethical standards, it's all about public servants' ethical standards. There is nothing in here at all about what vendors are supposed to do. So, we're ready to do the ABA model rules. I don't think you are. In fact, TDS is not opposed to creating a No-Contact Period and I would just end by pointing out that there's an opportunity here to allow the biosolids to go forward without an ALO and allow everybody to participate in the Working Group process. Thank y'all very much.

**Steve Adler:** Thank you. Next speaker is Steve Shannon. David King is on deck and then Donna Shaver.

**Steve Shannon:** Long day. Good evening. My name is Steve Shannon, representing Waste Connections. As I expressed to you before, we want a fair and level playing field. There was an ALO put in place years ago for a reason. It's been suspended for various reasons but there's an opportunity here to reinstate it for this particular solicitation. We want a fair and level playing field. We want bids to stand on their own merit and not be influenced by lobbying. It's our perception, having been a participant in all of these things, that the Solid Waste Policy Focus Group generally wants an ALO, that the Ethics Commission wants an ALO, that the ZWAC is in favor of an ALO and it's our perception that the majority of the stakeholders that have been involved in this that are actually potential service providers are in favor of an ALO, save one. There is... you've heard an assertion through

some memos that you've received that the ALO as currently written, if a potential vendor is found to be in violation, that their only course of appeal is back to the Purchasing department which found them in violation or to go to court, and that that would knock out potentially small vendors. Two points I'd like to make about that. One is, I think, that given the attention that this matter has had recently, and now, I think it'd be very unlikely that the Purchasing department would make a frivolous accusation of a violation of the Anti-Lobbying Ordinance. Very unlikely, I think. The second thing is, there are no mom and pop biosolids management companies. This is a massive project, and anybody that has the wherewithal to be a viable candidate for a vendor on this project certainly has the wherewithal to go to court if that's what they feel like they need to do. This particular amendment, the way it's presented, also addresses another concern that some people have expressed that a problem with the existing ALO is that we can't come, a potential bidder can't come to the City and talk about some other solid waste matter. This amendment clearly allows that to happen as long as they don't come and talk about the biosolids project. So it addresses a lot of the issues that have been brought up and that have been prohibitive. If an ALO is in place, we may bid. I can't stand here and say that we will, but we're interested. If the ALO is not in place, our propensity to bid is greatly diminished. Not having an ALO in place is definitely having a chilling effect on competitive bidding. We would rather that the ALO kick in at the time that the solicitation is issued rather than being at the time the bids are due, but any ALO is better than none. We support Item 50 and hope that you will. Any questions?

**Steve Adler:** Thank you.

**Steve Shannon:** Thank you.

**Steve Adler:** Next speaker is Steve... I'm sorry, David King, and then Donna Shaver's on deck. Sorry, Mr. King.

**David King:** Thank you, Mayor Pro Tem. Mayor. Sorry, it's a little late.

**Steve Adler:** It's okay, I called you by the wrong name, too.

**David King:** Sorry. Mayor, Mayor Pro Tem, and Council Members. You know, I agree with the comments of the last speaker and, you know, I think public perception is really important here. As a person who's not really into the weeds in this particular issue here, it concerns me that the Anti-Lobbying Ordinance was just wiped away for this particular contract. And I, and the public, when I hear that, that worries me. And then when I hear, "Well, you know, maybe it's not a big deal," and here I am appointed to the Zoning and Planning Commission subject to the ALO and I get my email saying No-Contact during... on these contracts, I take it serious. But when I hear, "Well in this case let's just wipe this out," how serious really are we about public trust in these multimillion dollar contracts, that they are above board and there's no lobbying going on behind the scenes? This is important, and that... what's not to like about this resolution that's before us, this ordinance? It covers the free speech concern. It handles that. It addresses that. We all support free speech. And it also puts into place protections that is of important public interest to us. And it does not stop the Work Group whatsoever. They can still talk about everything they plan to talk about including the Anti-Lobbying Ordinance. So I think in a matter of public service and public perception and public trust that this is a slam dunk. You should pass this with really no, your debate that you need to have, but you should really pass this. So, I hope that you will and, you know, send the message that this is important to you and to your appointees to these boards and commissions, too. Thank you.

**Leslie Pool:** Could I?

**Steve Adler:** Thank you. Yes, Councilmember Pool?

**Leslie Pool:** Could I just respond to Mr. King? Some of the things that you were talking about, I just wanted to clarify for you. The Working Group that took up the waste management policy issues, I chaired it and there were four councilmembers on it, and we convened all the stakeholders that are in the waste hauling business here in Austin. And one of the concerns was in order to have a free and open conversation about it, we needed to suspend the Anti-Lobbying Ordinance only for the Austin Resource Recovery contracts and only for the amount of

time that was needed to work through all of the sticky issues that were confronting people and causing issues, because we had had a series of about a half a dozen contracts over the last year that we had had to slow down or postpone or halt because we couldn't get past these sticky issues. So the whole idea about having the Working Group was to try to take all that information in and then have some resolution to that. So, the No-Contact Period Ordinance was suspended only for those contracts that come under Austin Resource Recovery. So, it's not all of them. The changes, of course when we do finalize them, and we're really, really close, will apply throughout for everybody who is affected by them and that is why the staff had asked for additional time so they could go back out to the other vendors who are not Austin Resource Recovery. My concern about this Item is that it's actually slowing it down because we are so close and there's really a lot of work going on behind the scenes that you can't see, but it's at the staff level. They're working with the stakeholders to work through the additional concerns that were itemized and they assure me they are down to like one issue that is still in contention and that I trust we will get over that hump. We have one contract that is at issue here. That's it. And I'm looking at a list of the other contracts that are potential and they're further out, and if we can get through that one issue with all the stakeholders in agreement then we will have really made significant progress on an issue that has long plagued these contracts in this department. And so, I recognize the concern that you are raising and I realize that some of the press reports make it look like there's something untoward going on, but that isn't actually what's happening, and so I wanted, Mayor, I just wanted to thank you for giving me that point of personal privilege to kind of expand on that since I had lead on the initiative and I just... it matters to me that the public perception of this is accurately conveyed. So, thank you for giving me the opportunity to kind of respond to you. Thank you.

**Steve Adler:** Donna Shaver? Bob Gregory. Is Adam Gregory here? Okay. You have five minutes, Mr. Gregory. Andrew Dobbs will be on deck. Is Ed English here? Gotcha. You'll have five minutes and then you'll be on deck. Mr. Gregory.

**Bob Gregory:** Thank you, Council. Thank you, Mayor, for the opportunity to speak to you on this issue. I would like for you... like to ask you to please vote 'no'. I am handing out a handout; I traditionally do that. It has a summary of my comments with the Ordinance that's before you tonight and you can look at it and I've highlighted areas and numbered them 1 through 5. I'd like to point those out please. This is much too soon to come back, to restrict this contract. As Michael said, we were told that not only would the ALO be finished before it was reinstated back on these bids, but also the policy issues would be discussed, and only one of eight policy issues, which is this one, has come before you. There's much to do, and I'll talk about one of those other policy issues in just a minute. The Ordinance says, it predicates it on staff, City staff has proposed recommended revisions to the Anti-Lobbying Ordinance. As you know, we've worked very, very hard to get those provisions and thought they were going to be dealt with today, but they were withdrawn by the staff. TDS has worked very, very hard. Our entire team has worked very hard. It's been represented to you that we are a company that does not want an ALO. If it's a legal ALO and it allows the proper allowance under the Constitution, we totally support an ALO, and thought we were going to get there this week, but it didn't happen, and so we're working very hard... and it should never take six months to get it done. There's no reason for that. It should be just a few more weeks to get it done, but I would certainly hope much quicker than six months. Next thing, I would go to, and you'll see my broader comments on the front page, it says, "The fairness and integrity of the City's solicitation process necessitates the reinstatement of the ALO." If that were the case, most of the contracts that we've had over the last 15 years would not be fair or have integrity, because a lot of the contracts we had, especially before 2007, there was no ALO. So, I think this is an overreach. Number 4 is of particular importance. It's Number 12, finding, it's in the findings, and it says, "This action will not prevent any respondents or potential respondents to the biosolids solicitation from communicating with any City employee or official regarding any matter that is not related to that party's response to the biosolids solicitation." This has been referred to already tonight. But you notice that's in the findings, it's Number 12 finding. Go down right below that. You see, "Amendment to the Ordinance, Ordinance Number..." which is the ordinance y'all passed in the spring to take the requirement of the ALO off of solid waste and waste services solicitations, "is amended to add the following." "Is amended to add the following." And you're gonna see when you turn the page it does not include anything that was in Number 12. Because what it says, and it says, basically,

“The suspension of the ALO is only waived with respect to...” and it gives the biosolids RFP number. It talks about it, it identifies the delayed implementation, which is not when it’s issued but when bids are submitted, and it says that the debarment will not apply. There’s nothing in there that says that we could do and talk about things other than our solicitation. So I suggest that the staff is being disingenuous with you on this representation. Because we’ve already identified many, many areas where we cannot abide and we cannot bid with those restrictions. And the staff has already disqualified us before when we... and it was overturned. We weren’t even qualified to be disqualified. The next two pages you’ll see the recommendation from the Waste Management Policy Working Group: “The existing ALO should remain suspended until Council approves proposed revisions.” We’ve not approved those proposed revisions. The Zero Waste Advisory Commission recommendation: “Continue to keep the ALO ordinance in a suspended state until such time that both the final ALO and subsequent governing rules are drafted and adopted by Council.” Is that six? Thank you very much. I’ll be happy to answer any questions if anyone has any.

**Andrew Dobbs:** Thank you. Andrew Dobbs. Texas Campaign for the Environment.

**Steve Adler:** You have five minutes.

**Andrew Dobbs:** Thank you. Liquor stores, professional soccer, and sewage sludge? Such is the business of a City Council. Thank you for your service. It’s been a long day. I wanted to set the stage here and remind us how we got to this point, which is that it all started with an attempt by staff to do an end-run on your policymaking authority. This was... there was a proposal to privatize a City service, which we now in retrospect, after having looked at it, it’s something that probably should be privatized, but that was not a discussion that was brought to commissions, it was not brought to y’all, it was not brought to city groups, citizens groups or anything else; it was just put out there. And then when the contract came out it was unclear exactly what kind of changes they were gonna make and they were going to the press and saying that land application of sewage sludge was a zero waste strategy, which is also a major departure from City policy that was never brought to you, never brought to any City commissions, never brought to us, and, you know, we were put in a position where we were afraid that staff was gonna be unilaterally changing City policy through the contracting process. We kicked up a storm and that’s how we’ve ended up here now. The problem with the current ALO is that it presents ample opportunities for staff to manipulate the procurement process in such a way that can abuse, that can set policy and that can do things to abuse people who’ve engaged in the process to that point. I have sat in this very room and watched a department head in a City Commission meeting tell a vendor that they were not allowed to speak to the Zero Waste Advisory Commission and that the Zero Waste Advisory Commission was not allowed to ask them questions because the ALO was in place. That’s a direct contradiction of the ALO’s actual text. But if he had decided to say, “You know what, the law says otherwise. I’m gonna stand on principle here and speak,” the staff could have unilaterally and anonymously found him in violation of this Ordinance and the only recourse he would have had after that is to go back to that same staff as an appeal. Then he might have been able to file a lawsuit, but by the time the lawsuit works through the thing that contract is long gone. Right? And for a smaller business like that one, which is something of a mom and pop and that was a 20 million dollar contract also, 21 million dollar contract. For that kind of operation that would have been the end of their business. That is an existential threat that this ordinance can pose to vendors under certain circumstances. The good news is that we are really close to fixing those problems through the process that’s been joined. The bad news is that even with the changes that are presented to you on Item 50 today, and I thank Councilmember Alter for her leadership on this, they still do not get at those fundamental problems. They don’t get to the basic ambiguity of this thing. They don’t get to the lack of an effective appeals process. There’s a lot of other issues as well. We cannot allow that abuse to be posed here. You know, the Council Working Group has said “Let’s leave the ALO off until we’re finished.” ZWAC has asked you to leave this off until we’re finished. I would ask that you not go back on those advisory boards’ and bodies’ advice to you, tonight, on this Item. You know, we need a competitive process here. The best chance that we have for competition on this is to not have an Ordinance that has been identified as the very driver of the lack of competitive processes in the past. Essentially I’m asking you, and I’ve said this before and I’ll say it again, to not do

the same thing again and expect a different result. You know, right now, we ... two last things I want to say. One is, just because there's not an ALO doesn't mean you have to be lobbied. I think that Councilmember Renteria's brought this up before. You can tell ... I urge you, that if you do vote against Item 50, and I hope that you will, that you also make a statement from the dais tonight that you're not going to be lobbied on this and make it clear to all the parties involved that you're not gonna take their appointments on this and that you don't want to be bothered about it. I think if you do that that will take a step forward in the right direction. And the last thing I'll say is this is actually one of those times when a contract is getting urgent. I don't believe that we have time to continue delaying the biosolids contract. It is getting to the point where if we delay it much further, we're going to run out of the contract that we have now and we're going to start land-applying 100% of our biosolids, which is not an acceptable solution, environmentally or for the public good. Oftentimes, staff will tell you that things, when they don't want to do something it's gonna take six months or nine months; when they do want to do something it's an emergency and you gotta do it tonight. This is a time where I believe that the public interest is in taking action now. We're about to close this process. We're very close to finishing this. We're very close to having a lot of these core problems solved. I'd ask that you not take a step forward by voting for Item 50. I'm happy to answer any questions. Thank you.

**Steve Adler:** Nikelle Meade? Last speaker. Two more items after this one, Council.

**Nikelle Meade:** Mayor and Council Members, Nikelle Meade with Husch Blackwell and I appreciate you all listening to all of us when it's so late in the evening. It's just amazing to me that in a city whose citizens place such a tremendous value on transparency and openness and restrictions on lobbying, we're having, spending your valuable time having this discussion. We applaud the Council for bringing Item 50 forward. We think it's needed and it's important, but I have to tell you, we are at a point with this biosolids debacle that honestly, we don't frankly think that applying or not applying Item 50, the ALO per Item 50, will make much of a difference. We think solicitations that a City as professional as the City of Austin does need lobbying restrictions. The past year has been a perfect example of this. There's been so much shameless lobbying and self-promotion by lots of different persons that it ought to be a good example to the Council of why we need these restrictions in place. We do not have a competition problem. If you all looked back at the biosolids solicitation that went forward before with an Anti-Lobbying Ordinance more restrictive than what is proposed tonight, there were five teams that submitted proposals in response to that solicitation. The chilling effect on competition is when there are none of these restrictions in place and it's a lobbying free-for-all. And the industry believes that if they don't have somebody lobbying on their behalf, they don't stand a chance. There is just... we are working hand in hand with Texas Disposal Systems and others to try to move the Anti-Lobbying Ordinance forward with changes that everybody can live with, and I am one of a few, a handful of participants involved in that process, and I'm here to tell you nothing about Item 50 would slow down anything that we're doing with regard to making the necessary or desired amendments on the larger Anti-Lobbying Ordinance. So, we just, you know... I would make one recommendation to the Council. I feel like there's maybe a little bit of paranoia about being charged with lobbying restrictions. We've been victims of that, but I feel like the items that are in the proposed Item 50 really deal with that and protect against those kinds of violations, and one thing that I would suggest to the Council that you maybe add, is go forward with Item 50 but add an appeal of any disqualification or any claim of an allegation against a vendor, add an appeal to Council in that case. I actually don't think you need to add an appeal because obviously Council can always take an action if a violation is claimed, but I feel like doing that would really set aside any concerns or fears that anybody may have that they may be subject to an erroneous claim.

**Steve Adler:** Thank you.

**Nikelle Meade:** Thank you.

**Steve Adler:** Those are all the speakers. Back up at the dais. Ms. Kitchen.

**Ann Kitchen:** I just wanted to explain again why I'm opposing Item 50. This is not about whether or not we want an Anti-Lobbying Ordinance. We do. I do. I was on the Policy Working Group and participated in the recommendations about having an ALO, but making the changes to it to make it an effective, fair ALO. So, we have a set of recommendations that came out of that Policy Working Group. We also have a set of recommendations out of the ZWAC for specific changes to the ALO. We are not finished with that process. Now, I am very hopeful that it will not take six months. Six months seems like an inordinate amount of time to me, but I do not want to... I just can't... to my mind it is not appropriate to set a process in place with recommendations along the way, and with working out the language on those recommendations and then just intercept that process with different or not complete changes, and so I just don't think it's appropriate at this point. I think it creates a lack of trust in our process, but worse than that, it just creates difficulties in coming up with an Ordinance that actually carries out the recommendations of two groups, so far. Not to mention the stakeholders that are working on this, and so I just cannot support Item 50 and I really object to any suggestions that that means that I am somehow not in favor of ethics or not in favor of an ALO, because I do strongly believe that we need an ALO but we've got to get it right.

**Sabino Renteria:** Mayor?

**Steve Adler:** I tell you what, this is Councilmember Alter's deal and I want to give her a chance to say something if

**Alison Alter:** Yeah, I have a couple of questions for staff.

**Steve Adler:** Okay, then we'll come back to you. Mr. Renteria.

**Sabino Renteria:** Mayor, I'm not going to be supporting it either and I'm not afraid to make that commitment that I'm not gonna be accepting any lobbyists to try to lobby me on any of this contract.

**Steve Adler:** You ready to go yet, Councilmember Alter? Ms. Houston?

**Ora Houston:** Well, I have a question for Mr. Scarborough.

**James Scarborough:** Mayor, Councilmembers. James Scarborough, Purchasing.

**Ora Houston:** Thank you so much for staying so late. I have a question about the ... seems like there's some allegations that you guys have treated people unfairly. Have there ever been any disbarments? You've only been here for what, three years now? Do you remember that we've ever disbarred anybody or...?

**James Scarborough:** I've never disbarred anybody with the City of Austin.

**Ora Houston:** Okay.

**James Scarborough:** In fact, I've never disbarred anybody in my career. It's a very rare activity. But it is something that is recognized in our profession and established fairly broadly across the country, but it is a very rare activity.

**Ora Houston:** Okay. I just didn't know how often. It seems like there's some fear that you all will be doing that but... okay.

**Alison Alter:** I wanted to ask a few questions and then I know that Councilmember Casar has an amendment. I first of all wanted to clarify something and make sure that it's on the record. When I spoke with you, Mr. Scarborough, about this I was very concerned that we would write and draft this Ordinance in such a way that any bidders on the biosolids solicitation would be able to participate in any further discussions that the Working Group had. Number 12, under Part 1 says, "This action will not prevent any respondents or potential respondents to the biosolids solicitation from communicating with any City employee or official regarding any matter that is not related to that party's response to the biosolids solicitation." Mr. Gregory implied that he did not see that as addressing that. Can you speak to what you think the draft ordinance says, in your interpretation?

**James Scarboro:** My interpretation is that there would be no restrictions on communication with regard to Anti-Lobbying as it pertains to participants in the biosolids solicitation. I have consulted with my colleagues at Law and have been reassured that there's no omissions in the language that would cause this concern. I'm not concerned.

**Alison Alter:** Did you have any additions to that?

**Chris Weema:** Thank you, Councilmember. Chris Weema, Assistant City Attorney. What the proposed ordinance does is implement the current Anti-Lobbying Ordinance. The current Anti-Lobbying Ordinance only restricts communications that are related to a response to a solicitation and so Item 12 does recognize that that is the current implementation of the Anti-Lobbying Ordinance. There will be no further amendment to the Anti-Lobbying Ordinance or modification to the waiver that would be necessary in order for that to be effective. That is the current state.

**Alison Alter:** Thank you. And then I had a question, I think, for Mr. Slusher about the biosolids contract. So I just want to make sure that everyone understands that the biosolids contract is already on the street. They have already got the solicitation which clarifies what needs to come back. Can you tell us broadly what's changed in that from the former contract and, you know, the most relevant parts of that for us to know about what's in that solicitation request?

**Daryl Slusher:** You might want to yield to our Director on that, but ...

**Alison Alter:** If I asked the wrong person, I'm sorry.

**Daryl Slusher:** That's all right, I appreciate you calling me up. Daryl Slusher with Austin Water. One thing we've done is we've altered what went out there slightly, based on the comments and we also have a section in there where we can allow something ... if there's technology beyond that we don't know about right now that we can be able to propose on that as well.

**Alison Alter:** I'm sorry, I didn't recognize you.

**Greg Meszaros:** Councilmember, Greg Meszaros, Director of Austin Water. Could you restate your question again?

**Alison Alter:** I just wanted to... one of the assertions that was made was that under the old solicitation we were not following our policy and it's my understanding there were changes made in this solicitation to what we are asking for with respect to how you dispose of the biosolids that would be more in line with our policy. So I wanted to have a little bit more detail on that.

**Greg Meszaros:** After our initial procurement, there was a lot of activity. A Working Group was formed between two commissions, Zero Waste Commission and the Water Commission. That Working Group made a series of recommendations to modifications to our next procurement. That was also reviewed and ultimately endorsed by the Council's Working Group that was formed. And we configured the new solicitation that's currently out on the street to comport with that revised approach to biosolids. So, essentially we adopted the Working Committee's recommendations, both at the Commission level and Council level and configured a solicitation to meet those.

**Alison Alter:** And, so to date, since the solicitation's been on the street, there's been no Anti-Lobbying Ordinance so folks are free to talk to folks. Have you heard any complaints about the nature of, the way it is written, with respect to policy from ZWAC or any of the vendors at this point?

**Greg Meszaros:** Have I heard any complaints?

**Alison Alter:** Yeah.

**Greg Meszaros:** Not directly. We haven't taken the solicitation awards through. Obviously, it's still an active solicitation.

**Alison Alter:** Right. I just meant like ... were there any criticisms of how it was structured that it would not potentially deliver a good contract at the end?

**Greg Meszaros:** I can't speak for each ... we did give each commission an opportunity to provide input on the solicitation. Just a brief history there, the Zero Waste Advisory Committee ... we were scheduled to appear before them about during the time of the Harvey hurricane, and several of the staff for Austin Resource Recovery could not attend. We offered to attend that Commission meeting and be the sole subject of discussion for that, before we solicited. They ultimately ended up cancelling that meeting. I then sent a memo to each ZWAC member and asked for their comments on our proposed solicitation. I did not receive any comments from them. We also appeared before the Water Commission and also provided them with a similar memo that they could either in person or in written form provide us comments on the solicitation. We did not receive comments on the solicitation from them. We also asked for comments from the general public and potential respondents during the solicitation process and we incorporated some feedback we got from that and ultimately, you know, are near the very end of that solicitation.

**Alison Alter:** Okay, and I served on the Working Group and one of the things that we did recommend was having some of these processes and so I appreciate that they were followed in the resolicitation. The last thing I want to say before maybe we can recognize Mr. Casar for his amendment is that my goal in bringing forward Number 50 is to preserve the integrity, credibility, transparency, and fairness of our procurement process for the City in general and also for this particular solicitation. Thank you, Greg.

**Steve Adler:** Okay. Mr. Casar?

**Greg Casar:** Mayor, I would like to move an amendment to this Ordinance and we'll explain it at ... maybe better after I get a second, but it would be not about biosolids specifically but more to the bigger issue that folks have talked about here which is setting a deadline for ourselves on this process and getting an ALO in place.

**Steve Adler:** Let me get the motion.

**Greg Casar:** So I'm making a motion to ...

**Steve Adler:** I don't have a main motion yet.

**Greg Casar:** Oh, excuse me.

**Steve Adler:** So let me get that.

**Alison Alter:** I move.

**Steve Adler:** Councilmember Alter moves passage of Item 50.

**Alison Alter:** Yes.

**Steve Adler:** Is there a second to that motion? Mr. Flannigan seconds that motion. Now Mr. Casar.

**Greg Casar:** So, I would move and then I'll explain an amendment to this Item to stop having a waiver to the ALO on any contracts in six months, which would ultimately be six months at the latest. And once I get a second I will explain that.

**Steve Adler:** Is there a second? Mr. Flannigan, Councilmember Alter seconds that. Go ahead and explain.

**Greg Casar:** So I wasn't with you all for Work Session, but from Work Session and from today I think it's really clear that there is a lot of different opinions about whether or not the ALO, or a modified ALO, should apply to biosolids or not, but I think that there's agreement amongst people that testified today and folks on the dais that when we waived the ALO for these sets of contracts that the hope was to be able to get done, work done speedily enough that we wouldn't have contracts coming up where we would then have the debate. I think we're in this



awkward situation and there's this disagreement because we were hoping, I think, to get the ALO modified in time that we wouldn't wind up in this sort of place. And I think that's what people testified to. And so, I think that this... what I hope would be is that we can have a vote later, right after this, on biosolids. But I'm hoping to have a conversation now about whether or not we can just state in this Ordinance that we're not gonna have a waiver for any contracts on the ALO in 180 days, to sort of set a deadline for ourselves, and for everybody that's participating, because I thought six months ago that we were gonna be done and now today we're hearing that it's gonna take another six months and so the hope would be to stop having a waiver to the ALO, or I'm sorry, stop having a waiver for certain contracts for Anti-Lobbying in 180 days. My hope would then be we could take a vote on this and hopefully get some consensus that we're... that means we would probably get this done in three or four months so that any new Anti-Lobbying Ordinance could apply in six, and then we can take a separate vote on the biosolids issue. I know I didn't lay that out super clearly, 'cause we've been through soccer and liquor stores and the like, and so I'd like to answer y'all's questions but I hope that this sets us up on a process for some success.

**Steve Adler:** Okay. While we're in the middle of Councilmember Alter's motion here it is now past ten o'clock. Does anybody want to move we continue past 10 o'clock? Councilmember Pool moves, makes that motion. Is there a second? Mr. Flannigan seconds that. Let's take a vote. Those in favor of going past ten o'clock please raise your hand. Those opposed? Ms. Troxclair votes 'no' with everyone else voting 'aye'. We will go past 10 o'clock. Okay. Mr. Casar moves an amendment to, on Number 3, to make the waiver of the Anti-Lobbying Ordinance only effective for another 180 days, at which point the Lobbying Ordinance would come back. Councilmember Kitchen.

**Ann Kitchen:** Okay, I'm just wanting to understand. So, Item Number 50, so your motion is to amend Item Number 50, right? Okay. But Item Number 50 reinstates the Anti-Lobbying Ordinance for certain purposes.

**Greg Casar:** Can I speak to that?

**Ann Kitchen:** Well, wait, so yes, in just a second. So, let me make sure I'm understanding. So, Item Number 50 reinstates the Anti-Lobbying Ordinance for certain purposes but your amendment says it's not reinstated, that it remains waived for six months. Did I understand that correctly?

**Steve Adler:** Mr. Casar.

**Greg Casar:** So, what I would like to do, and the Mayor and Legal can help me with this procedurally, is, regardless of whatever decision we make on biosolids having Anti-Lobbying or not, that six months from now we just put Anti-Lobbying back into full effect to set a deadline for ourselves. And so, the answer to your question is, let's... we should take a vote on whether or not it applies to biosolids or not. So if you are... if what you've stated prevails with the majority, then yes, it would remain waived for six months, but then go into effect in six months. If the other side prevails, then there would be modified Anti-Lobbying for biosolids, but there's still a waiver for Anti-Lobbying and on all waste contracts still for six more months. The idea is regardless of biosolids, can we agree that we want to shut the door on this six months at the latest?

**Ann Kitchen:** The reason I don't think it's regardless of biosolids is because you're amending onto a main motion that is all about biosolids, so it's not possible to, it's not possible to vote for your amendment and against the main one because in that case your amendment doesn't apply.

**Greg Casar:** So, can I then say that maybe I made my amendments poorly? I'm trying to state my intention and I want to know how I can get us to that intention, which is... maybe it's a separate motion and a separate... but I'm just trying to get that part done, if that makes sense. So maybe, what I'm saying is maybe procedurally it's not working right, but my intention is, since we are posted to amend our waiver to Anti-Lobbying and since I think there is a lot of consensus that we don't want to just have this, continue to have this waived indefinitely because this has felt like a tricky process with it being so open-ended, can we set out what the end of this process is going to look like?

**Steve Adler:** So, I'm looking at this. Is this ... we had Part 3 of the Filed Ordinance says that the Ordinance ... the Waiver Ordinance remains in full force and effect. That was a waiver as to all waste management contracts. So, the Ordinance in front of us takes that waiver as to all waste management contracts, it says it remains in full force and effect. That's one provision of this. Is that right?

**Greg Casar:** That's right.

**Steve Adler:** Is that right? Wait, wait, wait.

**Alison Alter:** You're asking if 50 is that, 50 as drafted in the back...

**Steve Adler:** 50 as drafted...

**Alison Alter:** ...does that.

**Steve Adler:** Takes the Ordinance waiver as to all waste contracts and says it remains full force and effect. Another portion of the measure as filed says that as concerns biomass contracts there are certain provisions that are going to apply. So, if I understood what you said correctly, your amendment goes to the second one of those. That seems like two different issues to me. So, the first one would be to decide if we wanted the waste management... the biosolids contract to have some provisions now. That would be one question. And the next question is do we want the ALO waiver to remain in full force as to all waste management contracts or do we want to put a time limit on it so that the waiver expires in six months which means hopefully we will have replaced it within six months or we would have accepted no contract. Does that sound right to you?

**Chris Weema:** Yeah, I believe Councilmember Casar's current motion is suggested in Part 3, which currently is posted in backup. The Draft Ordinance said that the waiver from April 6<sup>th</sup>, 2017 remains in full force and effect until modified and repealed by Council. Councilmember Casar's current motion is to modify that language to remove "until further modified by Council" and replace it with "only until 180 days after the effective date of the Ordinance." So, Councilmember Casar's motion is just to amend Part 3.

**Steve Adler:** I understand that part, but you agree that that's germane.

**Chris Weema:** Yes, I believe it is.

**Steve Adler:** Okay.

**Greg Casar:** I could suggest what we could do to address Councilmember Kitchen's procedural question. Is a vote on whether or not we want to close the door in 180 days and then a vote on whether to strike Section 2 which is the biosolids contract, so then we can take simple majority votes on either... on both issues.

**Steve Adler:** Okay, I'm inclined, and I'll learn more... I'm not in favor of taking back some of the Lobbying Ordinance for the purposes of the biosolids contract. Just because I still have some of the same questions that I had before and the Committee really hasn't come back yet and I don't know what the answers are. So I would like to vote no to that part. I would also... I want an Anti-Lobbying Ordinance in the City. Mr. Scarborough came to us last week and said that staff wanted not just to be looking at ALO ordinance in a vacuum, but to look at it in a wider perspective, which I support, and it makes sense to me. We shouldn't have our lobbying ordinance being drafted by any subset and we want to make sure that it applies across the board. So, for that reason I would vote no to Part 2, but I also don't want to just leave us in a situation where we're not gonna have a lobbying ordinance. I'd like to have the default date that we actually have to act on this in six months to bring it back to decide something, so the default would be that we all have to keep working. Because if we don't do this then the old Ordinance comes back. That gives us six minutes to come back with something that's right.

**Alison Alter:** Six months.

**Steve Adler:** Which sounds like we could do that. Well, I'm not sure what... I would do that after. I would move to amend it to strike 2 after we consider your... I don't think I can amend your amendment to do that, I have to stay within Part 3 on your issue now. So that's how I would vote absent someone convincing me otherwise. Ms. Pool.

**Leslie Pool:** Thanks. I think that that's a good recitation of what we have in front of us and I agree with the way you've laid that out and I would also point out that staff did say that they thought that six months they could get us something back. I really want to have this thing buttoned up and finalized and answered and I want to reinstate the No-Contact Anti-Lobbying Ordinance across the board. We've all felt that way from the very beginning. It's just that the problems have been so thorny and sticky we haven't been able to get there. And with the additional time, I think, I have to hope that we will. So, putting a deadline on it, a timeline, and then having the existing one that we have waived go back into effect, it kind of just sets that as an additional parameter and it may indeed force us to have that finality. I think in the end we probably would end up having to have that conversation anyway. So, we can fast forward it and I would support the amendment based on the Mayor's discussion of what Councilmember Casar was saying, while voting against the other part of Item 50.

**Steve Adler:** What is in front of us is amending Part 3 to say "In 180 days the old Ordinance comes back." I'm sorry, what?

**Greg Casar:** It's not the old ordinance. The Anti-Lobbying Ordinance.

**Steve Adler:** Okay. The Anti-Lobbying Ordinance.

**Greg Casar:** So it would be whichever Anti-Lobbying Ordinance we have at that point. So, by default, right now it would be the old one, but if we came up with a new one, it would be the new one.

**Steve Adler:** It would be the new one.

**Leslie Pool:** Thank you for that clarification because I did think you meant the one we were trying to change. All right.

**Steve Adler:** Any further discussion on that amendment? Okay. Those in favor of it, please raise your hand. Those opposed. That's everybody. I would now move to strike Part 2. Is there a second to that? Councilmember Kitchen seconds that. Is there any discussion? For me, it's just that a lot of the questions I had, I still have. Maybe it's because I wasn't on that Working Group, but it... I still have all those questions. Any further discussion? Yes, Councilmember Garza.

**Delia Garza:** I don't think this can be an amendment, but there were several requests that we state that we do not want to be lobbied on this current open contract and I don't know if it takes each of us going down the dais saying that, but I do not want to be lobbied on this contract.

**Steve Adler:** Okay. Mr. Flannigan.

**Jimmy Flannigan:** I'll just repeat what I said in Work Session. To me, it's not whether or not I have faith in my colleagues' ability to resist the allure of lobbyists, it is more that when a bidder for a contract thinks they have to lobby or thinks they can gain an advantage by lobbying, somebody's paying for those lobbyists and that gets built into the contract, and that is the place that I come from to this point. So, I don't support removing Part 2. I thank Councilmember Alter for bringing it forward. I don't... I think we are in a difficult position as a result of this Anti-Lobbying Ordinance, but I think there are reasons that we're put in this position that... I would love to lay out right now if I were in a better state of mind, but I am not. So, the folks who know who I'd be talking about can rest easy for at least this week.

**Steve Adler:** Mr. Scarboro, did you come up because you wanted to say something?

**James Scarboro:** Just a point of clarification. Staff's not taking a position in this discussion, but I did want to point out, and a couple of my colleagues had pointed out to me after the Work Session that the No-Contact would apply

not only to the members of Council and Mayor but also to City officials and to City staff members. So, we just wanted to point out that while you may agree that you do not or are not receptive to lobbying, the Anti-Lobby would not apply to Boards and Commission members and it would not apply to City staff. So, just wanted to make that clarification.

**Steve Adler:** I understand. It's been moved and seconded. Does anybody have any further discussion on omitting Part 2? Councilmember Alter.

**Alison Alter:** I'm glad that we are at an opportunity to decide whether or not we want the ALO to apply to the biosolids in a modified form or not. This is the linchpin contract. This is the one that has been the subject of lobbying. Whether we asked to be lobbied or not, we will be lobbied on this. There will be shenanigans; we know that. There's a track record here of that happening. My concern is in that environment we will not get the competitive bids that our City deserves and I think that the modified ALO that I proposed along with my co-sponsors would offer the protections that are most important here that would allow people to move forward with a bid. I think that we may not have an ALO back in six months if the same kind of lobbying that we've seen on the ALO happens, and if the same kind of mission creep happens. When you start talking about debarment and appeals processes, as Mr. Scarboro has explained, it opens up the whole Pandora's Box of the entire procurement process. And you have to have consistencies across different parts of that and it becomes a much larger overhaul and the kinds of questions that the particular stakeholders from waste management are raising are of the kind that it goes well beyond the ALO. I think it is important to note that we have one company out of 40,000 that is complaining about the ALO. Yes, some others are in there trying to rewrite it, but that does not strike me as surprising if they're given an opportunity to do that. If this portion gets struck I will have some other comments that I would like to make about how we proceed with that ALO revision, but I think we have to be careful that we are proceeding with policies that leave us in a place where businesses are confident that they are winning business based on the merits of their application and not by who has the largest lobbying budget. It's about the perception in the public and the perception of the bidders. Thank you.

**Steve Adler:** Councilmember Pool.

**Leslie Pool:** So, the good news is this is coming back to us on December 14<sup>th</sup>. So we can... we only have a real short amount of time between now and then. I mean, the contract for approval.

**Steve Adler:** Let's take a vote. Those in favor of the amendment to strike Part 2 please raise your hand. Troxclair, Garza, Mayor Pro Tem, Renteria, Kitchen, Pool. Those opposed? The four others. Casar, Flannigan, Alter, and Houston voting no. 7-4. That amendment passes. Any discussion on the overall motion here, 50 as amended? Councilmember Alter.

**Alison Alter:** Mr. Scarboro, I have some thoughts or questions for you about the process that you're planning for the ALO and I have some concerns that we make sure that we have some guardrails on this process. How are you envisioning this playing out in terms of how you would approach this you're your professional standpoint?

**James Scarboro:** Sure. Thank you for the question, Councilmember. The feedback that we received from the ERC was received shortly before this Item came before you. So staff hasn't had much time to react to it. So, we would like to take the feedback that we received from the ERC as well as the content of the drafts that were developed outside of the ERC by the various representatives of the waste industry stakeholders, and to contrast that with what was recommended by the Work Group and staff's recommendation and to consolidate what we can. What we would like to then do is to follow up in a series of discussions with the Audit and Finance Committee, to lay out a path for vetting this consolidated content and then putting together a revised version... a consolidated, revised version of the ALO to bring back for Council consideration. Certainly that's going to involve putting this new consolidated information out for feedback from the larger vendor community. We would envision that taking at least a month, likely through the end of the holidays, but we feel like with the feedback that we received so far, it has been predominantly on staff's version. Not on the version that had been brought to us by the various

representatives of the waste industry stakeholders, and not on the recommendations made by the ERC. We think that content deserves to be considered and feedback provided by the market as well. So, we would like to proceed with putting that together but at the same time checking in with the Audit and Finance Committee to make sure as we proceed, they're in concurrence with the approach that we're laying out.

**Alison Alter:** So, how will you reach out to the 39,996 other companies?

**James Scarboro:** We have a very large vendor database and through our updates to the Audit and Finance Committee they're aware that we're in the process of cleaning up that database and in so doing we are making a number of notices to all of the vendors and to targeted vendors, vendors that need to update their information, and so forth. So we're already actively communicating with all the City's registered vendors so we intend to add to that activity, to seek their feedback on the Anti-Lobbying Ordinance and, in fact, in discussing this with staff, there are specific elements of the ALO that are most in discussion. That's the beginning of the No-Contact Period, that's the end of the No-Contact Period, that's debarment... these are the most discussed and debated elements of the ALO. We would call those elements out specifically and ask for specific feedback on those elements and point out positions that have been put forth thus far to elicit feedback on those positions. This ordinance applies to all of our vendors and we feel like some of the revisions that have been made are moving in the right direction, some of them need some further discussion, but we think that at a minimum we need to give the rest of our vendor community the opportunity to give feedback on this revised content.

**Alison Alter:** Thank you. I just want to make clear that for myself, I won't speak for the rest of Council, I very much hope that you will provide your professional opinion and that this will be something that is based on the knowledge of procurement policy, you'll take stakeholder information into effect, but there will not be writing of this ordinance by the stakeholders directly, that it will be feedback and vetted... and I know you do this anyway, I've just seen what's happened over the last three months in terms of what people have attempted to do and it scares me, and I want to be very clear that when this comes back it should be representative of what you and your professional opinion, given the stakeholder feedback, you think is the best next step from us... and I know, Mayor, you had some thoughts on that. I'd invite you to share those as well. I think it's really important that we have these guardrails as we move forward.

**Steve Adler:** I'd repeat that. That is important to me as well. This is a charged issue as we've seen now on many sides and I too want to make sure that at the end of the process we get back not only your assessment of what different stakeholders may want, but your independent view, professional view on what is best for the City is something that I think we very much want to see. So make sure we get that, please. Councilmember Kitchen.

**Ann Kitchen:** I would echo that. I think it's fair to say that everybody would echo that and I would hope that there's no implication that councilmembers are not wanting that, councilmembers or anybody in the community is not wanting that result. We very much value your opinion, as well as the opinion of law, because one of the things that is important, and I appreciate the participation of our Law department, is how the words are written and how they're interpreted and so I'm looking forward to that, too. But I would also like to say that I honor and respect the participation of all the stakeholders and I am not going to imply that any of our stakeholders have any ill will at hand. So, thank you.

**Steve Adler:** Okay. Vote on the main motion. Those in favor please raise your hands. Those opposed. It's unanimous on the dais. Okay, we'll move on.