

7-10-19 ZWAC Meeting

Item 3C. Discussion and Action – Landfill Criteria Matrix

Gerry Acuna: The next item is Item 3C and that is a Discussion and Action Item on the Landfill Criteria Matrix. Commissioner Masino has submitted a Resolution for this Item and I'll let you speak to that at this point.

Amanda Masino: Sure. Okay, so what you're looking at is a Resolution to revise the Workforce Diversity item in the Landfill Criteria Matrix. You might remember that we had a long process of discussion and stakeholder input into developing a Landfill Criteria Matrix in order to collect information so that we can compare area landfills to inform decisions by the City of Austin in regards to solicitations. And the Council Working Group that directed this process gave the, directed us to generate four areas of concern including one area called Community Impact and Social Equity. And in the course of the discussion over the stakeholder process this item, which originally had many facets to it, was collapsed into two single measures, one of which was a Workforce Diversity and a Living Wage item to account for 25 points. 15 points for having a Diversity Plan. I will note that's just the existence of a plan, not the level of detail or success of implementation of the plan, just that it exists. And then 10 points for the Living Wage. And this was one of the many reasons that we discussed as a body when the matrix was brought before us and we voted to reject it, because we did not feel that it adequately reflected community and stakeholder concerns in several areas – carbon footprint, hazardous waste, history, but one of the areas was social impact. And so given that despite our recommendation the City is moving forward with this and the City Manager has empowered staff to collect information, evaluate landfills, and this will go to Council with whatever solicitations are relevant to the landfills, I am interested in doing what we can as a body, and with the help of ARR staff, to strengthen those weaknesses that we discussed back in October. So this is specifically focused on that, what I see as a 15 points being given as a participant ribbon for diversity, and strengthening that with some guidance from a national organization that has done this for years. And so the grid that you see on the back that takes that 15 points and breaks it down into smaller items, that is almost entirely based on the matrix, the scoring measures provided by an organization called GuideStar. GuideStar evaluates nonprofits and they developed this with the help of a group called Green 2.0, which looks at diversity in environmental organizations specifically because it is such an area of national concern. We do not do well in the United States about valuing diversity in environmental organization leadership. So that is the... oh, and then one of the others is keeping the one that is there. Measure 8 is basically the one that's currently in there. Hiring and/or recruiting efforts aimed at improving equity including Fair Chance. So that's the proposal. When I brought this up I got some stakeholder feedback that I want to really pay attention to because it is not my intention with this to approve of the rest of the Landfill Criteria Matrix, so I don't want this to be seen as tacit approval for the other areas of concern. This doesn't mean that we're okay with Carbon Footprint or any of the other areas that again we as a body discussed as being not reflective of the stakeholder and community process. So you have a version before you. I have some additional language that we can add to the section after the Therefore that we can, in addition to considering the revision of this 15 points and recommending the revision of this 15 points, also reaffirm that we do not advise Council to adopt the Landfill Criteria Matrix without significant revisions, only one of which is this piece. So, there's more detail we can get into on the language but I'm really curious to hear from you about what you think about this plan, from staff about the feasibility of using these measures. I looked at what changes for respondents and what changes for staff in evaluation of this. So respondents to this previously had to submit a plan, a Diversity Plan, to win 15 points. Now they would have to submit a plan, provide two links for publicly available information if it is present on their website and/or links to documents that are public documents and then answer four yes/no questions. So the impact on respondents should be minimal. As far as staff, rather than just reading that there is a plan, you would read the plan, you would have to check those web links, right, and then just look at the yes/no questions and tally the points. So it is more time, obviously, because there are more items but hopefully they're primarily very straightforward items where you're just looking at the submitted information and tallying up points. So that's the proposal. I'm looking forward to discussion.

Gerry Acuna: We do have a few folks who have signed up to speak to the Item. Let's see, Marisa Perales, Andrew Dobbs, and Lauren Ice. Three minutes each.

Adam Gregory: I signed up.

Gerry Acuna: You're up here. But I'm going three at a time so... Marisa Perales.

Marisa Perales: Good evening. My name is Marisa Perales. I'm an environmental attorney working on the public interest side. I'm also a member of a variety of environmental organizations and I'm a member of Communities of Color United for Racial Justice. And I was here back in the fall the last time that the, that this Commission was considering the Landfill Criteria Matrix or rather, two different versions that were presented by staff, and I agreed with your decision to reject those drafts and I thought that you provided some very sound and clear reasons for your decision and I continue to support that, those reasons that you articulated and I urge you to again, reject the Landfill Criteria Matrix before you. And in particular one of the reasons I heard you articulate was that the Landfill Criteria Matrix did not take into account community impacts or social equity. And even with the new language, it still fails in that regard and I'd suggest that tonight you take the opportunity to really emphasize that to the staff. And it's not as though we don't have any tools here that they could use to help achieve those goals or to address those issues. We have, for instance, the Equity Action tool which provides a number of very useful principles that are applicable here, such as engaging residents in the decision making process and prioritizing those that are adversely affected by current conditions, providing opportunities to engage that community and looking at the demographics of the community that's been engaged. These are the types of principles that need to be incorporated into the entire process before we can adopt or even consider any sort of Landfill Criteria Matrix. In other words, this is another way of articulating the mantra of 'nothing about us without us' and actually that's the objective of Green 2.0 is to include the voices of fence-line communities in any decision-making process that might impact them. And frankly I don't think that the stakeholder process that was convened here achieved those goals. I doubt that the impacted community would have said, you know, 'Yeah, we're impacted by the landfill in these different ways but hey, if you present us with some sort of diversity plan, we're okay.' I think that we all heard from neighbors of the landfill back in the fall and none of the complaints that we heard that evening had to do with diversifying the workforce. So again, I encourage you to send a strong message to the staff and to City Council that this is an opportunity to really try to implement the Equity Action tool. This is a real opportunity to address our historical practices of environmental injustice, to address the ways that we have historically decided where we wanted to site our industrial and polluting industry and to start coming up with at least processes that engage the most impacted communities. If I could just add one last suggestion?

Gerry Acuna: Go ahead.

Marisa Perales: I would suggest that in any Resolution that you pass, if the staff is determined to utilize the draft Landfill Criteria Matrix that they've come up with, that they change the description of criteria #4. Because it's not accurate when it says that it's addressing community impact and social equity. It's just not. Thank you.

Gerry Acuna: Thank you. Andrew Dobbs, Lauren Ice, and then Andrew, I'm sorry, Adam Gregory. Donated time also.

Andrew Dobbs: Hey y'all. Andrew Dobbs, Texas Campaign for the Environment. Grateful to be here today. You know, I think a lot of what Marisa just said, I can echo. And I can say, you know, and I know that not everybody was here for that meeting in October, it is really important for this Commission to not let itself get railroaded or run over, right. The prerogatives of this Commission need to be defended and the statements of this Commission need to be defended, and that's something that's valuable, right. When the Commission has said repeatedly over the course of months or even years that these are the things that we want out of a process and those things are completely disregarded in the end, and then you say, 'Okay well we don't stand by this,' and then they disregard that, you can't sit there and then turn over and say, 'Okay, we'll go along with it now.' Because then they have no reason to ever listen to you on anything, right, and then why are you even giving your Wednesday night to be here if you're just part of an exercise that they're just gonna do whatever they want anyways regardless of what you say, right. So the time that you put in here, the energy that you put in here has to be honored and maybe they'll ignore it anyways but don't let them ignore you with your permission, right. Like make sure that you stick to your guns and stand up. I think that the suggestions that Commissioner Masino make are valuable and valid ones. I think that if they're standing alone it does have that implication of you know, everything else is fine. So I want to thank her for adding other elements to this. I think among the most important of those would be that we had suggested and had called for throughout the process a consideration of complaints filed against facilities in this process. It's a factor. It should be considered. There is a landfill in this city that has over 215 complaints against it this year alone. There are other facilities that have none or very few. That should be taken into consideration. And while it is possible that somebody's picking up the phone and dialing for complaints or something like that, you know, let them, if they can prove, maybe there can be some way of demonstrating that that's the case, but what you're gonna find is actually that's not what's happening. That you've got a problem facility in this city that's getting scored the exact same as all the other facilities, and you've got a tool right now that's not actually

reflecting the interest of the community. I think that Marisa raised another really interesting point which is diversity, again, we've never had problems getting people of color hired at the dump. In all of our history, oppressed people have never had problems getting work working in the trash, right. Everywhere in the world oppressed people can find those jobs, right. The problem is are these facilities impacting oppressed and exploited communities. And there are very simple, extremely well established ways of determining that. The City Council asked for that, this Commission asked for that, it came up in stakeholder processes. There's no reason why we can't look at that. And then I would also add that throughout the stakeholder process there had become a consensus where it was, the point where me and the environmental community, Waste Management and the other vendors, TDS, the public folks that were there, everybody had kind of agreed that this process would work best if this document were to be used for providing information about facilities and not qualifying or disqualifying facilities or providing something like that. At the end of the day though, this became a qualifier/disqualifier thing. Now, it managed to just qualify all of them equally so again, what's the point, right? But if it is a robust tool, if you can take that out, if it's no longer about you get business or you don't get business, right, if it's not about that, then some of these other factors are, it's easier to include them because it's not life or death for somebody's business, right, and then you can have a really robust tool to provide a lot of information about what the actual impact of these facilities are. As of right now you have a document that says it's a landfill, it's run along pretty much contemporary landfill lines, you know, the end. And that's all it shows you, is that it's not being run as if it was 40 years ago. If they're running a landfill on normal terms right now it's getting about the same score and we know that because all the landfills got the same score, roughly, right? That is, let's make this something that's actually useful for policymakers, useful for the public, and that's exactly what this Commission has asked for over and over again, so just reiterate that demand, right. You don't have to recreate the wheel, all you have to do is say is 'What we said still stands. What you asked for is still a good idea.' Continue to ask for that, continue to reiterate that. There are other points I didn't get to here, and I don't know if I've gotten to three minutes yet, I haven't heard a bell, but I'll go ahead for everybody's sake and wrap it up here and say thank you for the work that you've done so far, please stick to your guns, and please add these things in. And thank you Dr. Masino for your leadership on this. I'm happy to answer any questions.

Gerry Acuna: Thank you, Andrew. That is a first, thank you, Andrew. Before three minutes.

Lauren Ice: Hi, thanks again for the opportunity to speak. I'm Lauren Ice. I was also here back in the fall. I live in District 1, northeast Austin, between two and three miles from the Austin Community Landfill and there were some other folks who lived much closer to the landfill who were here back in the fall as well. And I wanted to come and thank you for your vote that night rejecting the matrix and for all the work that it's clear y'all have put into this process and the thought and the care and the fact that y'all have listened to the community and you've listened to the environmental groups that have come who have the community's interest in mind. And you really took that to heart and just as Dobbs said, y'all put a lot of effort into this and I think you were really clear back in the fall, and I am here to support that decision and I hope that y'all will also stand by that decision and make that decision very, reiterate that decision and make that clear with any Resolution that you pass tonight. I was coming here to say that looking at the draft of the Resolution, it's a start, but I would really, really urge you to go much, much further and it sounds like that's something Commissioner Masino is already planning to do so I'm really happy to hear that. And just address all of those flaws, there were multiple flaws that y'all articulated in the matrix as proposed as to why it should be rejected at the time. They're still there, and not the least of which is, I think, the one directly related to community impact and environmental justice concerns and how the heading under which this item sits does not really reflect what the tool would actually do. So I would hope that y'all could really address that piece. I would also ask that any Resolution that you pass be clear that the rejection, what I heard at the time of ZWAC's rejection of the matrix and what I heard from the community was also a rejection of the process to date. That the community who is impacted should be included in the stakeholder process. They were not included in the stakeholder process and I would hope that we could do that going forward. And also that ZWAC made their rejection very clear, that Council did not get to hear the matrix, did not get to consider the matrix and that staff has now decided to adopt the matrix – that was a bit of shock to me – adopt and implement the matrix, and that, to me, seems like a fundamental breakdown in policymaking and it's going to impede our ability as a community to really address the issues that were raised in the fall, and so I would ask that any Resolution that y'all pass really point out that we need robust, proper, community-led policymaking to be a successful one and that's not what's happened so far. So thank you for your effort on this and Commissioner Masino for bringing this issue back up again. Thank you.

Gerry Acuna: [inaudible]

Adam Gregory: I'm sure that I won't need that much time. Adam Gregory. Good evening Commissioners, Adam Gregory with TDSL. You've heard from me several times on this issue. I've argued in the past that the LCM, as staff as implemented it, is woefully inadequate and cannot create a realistic picture of the quality of landfills design and operation. In October that was an academic or theoretical discussion. We now have the results of the staff's evaluation and the responses to really confirm the Commission's misgivings. Ryan's gonna hand out to you... I sent you an email and let you know that they were out there, and maybe you've had a chance to look at 'em. If you haven't had the opportunity to look at the scoring sheets, I have copies for each of you. I didn't print out copies of all the responses because I'm trying to save trees and they're available online, but I'm happy to answer questions on all of that. The upshot of this process is that everyone's qualified and that the Waste Management Austin Community Landfill is the highest rated landfill in the area. That's the upshot. Now, only three facilities responded: the ACL, the Waste Connections 812 facility, and TDSL. TDSL responded for Type I and Type IV because we're qualified to take, we're permitted to take all those wastes. But be clear, those are not the only landfills available to the City of Austin. There are 11 landfills, 11 or 12 landfills within 90 miles of City Hall. So those three are not all that's available. Just for your information. Now I won't take the time to go through each of these scoring sheets, you can look at them yourselves, but I'd be happy to answer any questions on 'em. I've studied 'em. The ultimate results are that the landfills are all supposedly within one point of each other. Literally one point. But make no mistake, the Austin Community Landfill is rated highest. I kinda laugh when I say that but I want to be very clear: the suggestion that the ACL is in any way objective, subjective, in any way superior to the TDSL facility, is ludicrous and I will never stand by and let a process go by that reflects that assertion. Please come and see for yourselves. You're each and every one of you invited. Open invitation to come see us as often as you like. Those of you that haven't been there, please come out. Please go see the other facilities. Given the results of the evaluation, I think it's an understatement to say that these results confirm the wisdom of the Commission's rejection in October. And it's my sincere hope that Council ultimately agrees with the Commission and does not make this flawed matrix flawed policy. You'll recall, staff removed this item from the Council's agenda November 15th but it still has to get Council approval. They've just said they'll take it back during the procurement process, which brings me to the Resolution that's before you tonight. While we're supportive of all the concepts in Dr. Masino's Resolution, I'm very concerned that as written it could obscure the Commission's position taken in October by focusing on only one of many inadequacies or deficiencies. If a Resolution is passed tonight, my hope is that it strengthens the October position rather than weakens it by focusing on only one of those positions and I know that that's the intention here tonight and I'm very grateful for that. So for your convenience, to that end, I've also included a highlighted version of the transcript from the October meeting. The highlighting begins beyond the tab there and those highlights are just statements from the Commissioners about what they wanted to see and what they thought wasn't there. I haven't put highlighted stakeholder things or anything like that but most of you and the folks that aren't here tonight are highlighted there and those might give you a good refresher of what we were talking about then. Those cover most of the problems with it. I don't know that we could potentially cover all the problems with it, 'cause it's drastically flawed. In conclusion, I hope you will reinforce the October position, specifically identify as many deficiencies as possible if we can, but in any event, I recommend that any revised version in addition to identifying those specific deficiencies, I would recommend that you recommend that any revised version of the LCM come back before ZWAC for official review and recommendation, as opposed to just staff saying we've changed a few things and point to this process and say 'Council just...', I don't want them to use this to get the LCM, as they perceive it, through. As a final note and very, very important, I hope you will join me in encouraging the staff to keep policy development separate from the purchasing process. Cloaking policy discussions and policy adoption in the Anti-Lobbying Ordinance where those entities that are most affected by a particular policy cannot speak other than the few minutes available at a meeting will do nothing but contribute to the conflict that has plagued us for a long time. I promise you, I'm very, very hopeful for a new era of good faith and cooperation, but that cannot happen if we keep putting these policy issues in the procurement process with the Anti-Lobbying Ordinance. I hope, and we'll have opportunities to revisit that theme, I'm sure, as we go forward but I hope you'll all join me in resisting the tendency to slide back into that habit. I'm happy to answer any questions you have. Thank you very much for your time and your consideration.

Gerry Acuna: Alright Commissioners, I guess before us, well let me ask, Staff, would you like to comment or speak to...

Richard McHale: Richard McHale, Interim Director for ARR, I just would like to thank Commissioner Masino for the input on those measures. I had a chance to take a look at them. I think a lot of them meet our requirements for items that are objective and publicly available, so we will go ahead and take those back and evaluate those and see what we can do to include those in any future iterations. So thank you.

Gerry Acuna: Richard. Now as far as the, just clarity here. Now there was a protest to the LCM. Correct?

Richard McHale: Correct.

Gerry Acuna: And that's still pending decisions, and/or...

Richard McHale: The company that had the protest has been mailed a response on that, so we've officially resolved that issue on our end.

Gerry Acuna: Alright. Thank you Richard.

Amanda Masino: So do you want me to read the kind of amended bit that you don't have in front of you?

Gerry Acuna: Please.

Amanda Masino: Okay, so, and thank you everyone for giving feedback on this. Again it's definitely not the intention to approve of the rest of the Criteria Matrix by suggesting changes to this one item, but, definitely want to be absolutely clear about that. So, an important revision, I guess a friendly amendment to this Resolution, my own Resolution, would be, 'Be it Resolved that ZWAC restates and affirms its recommendation that Council not adopt the Landfill Criteria Matrix without significant revision, due to the numerous deficiencies noted on October 10th, 2018, and that any revised version be publicly posted for at least 2 weeks of stakeholder consideration, and that Council approval of a revised Matrix should only be sought after its official ZWAC review, and', and then it would go to the recommendation that you see before you about editing 4A to the items you see below. So that would be a change to hopefully reflect some the stakeholder concern. I think we could also add additional language in there if desired to speak to some of the concerns that were brought up.

Gerry Acuna: Alright, so before us with the changes, with the additions, is a Resolution. Any comments Commissioners?

Cathy Gattuso: I think that's really important, what you said just now, what you added. I'm in favor of that.

Amanda Masino: Is that strong enough, to address our concerns and reflect community concerns.

Cathy Gattuso: It seems like it.

Ian Steyaert: So you are saying that there are concerns and we... I'm wondering if we could put in just a couple of words about what some of the specific deficiencies were right up front there.

Amanda Masino: We can. There's a little bit about it up front but we can also add it after the fact. There's, let's see, five, the fifth Whereas just has a brief summary in that it says 'we recommended the rejection over concerns that community and stakeholder input, short and long term community impact, carbon footprint, presence of hazardous waste and social equity were simplified or removed.' So we could put similar language after...

Ian Steyaert: Perfect.

Amanda Masino: ...to just reiterate that those were the areas. Is that appropriate?

Ian Steyaert: That works.

Gerry Acuna: But that is addressed in here.

Amanda Masino: That's addressed in there but we can...

Gerry Acuna: That is addressed in here already, so...

Amanda Masino: ...repeat it for emphasis perhaps. 'Numerous deficiencies', parenthesis, and put those same items in. Yeah? We can.

Ian Steyaert: That certainly works for me, I'm just thinking to pull it up into the statement.

Amanda Masino: Okay. Fair enough.

Gerry Acuna: Alright, any other comments?

Cathy Gattuso: What about, is it addressing complaints against...?

Amanda Masino: No, let's put in complaints.

Cathy Gattuso: In all caps.

Amanda Masino: Complaint history?

Cathy Gattuso: Yes.

Amanda Masino: Okay. Anything else?

Cathy Gattuso: No, 'cause you've got the stakeholder process, toughening that up.

Gerry Acuna: Alright Commissioners. Some edits to the Resolution. Gabe, did you get those?

Amanda Masino: And I'll get with you after to make sure.

Gerry Acuna: Alright, I'll entertain a motion for approval. Commissioner Ian. Do I hear a second? Commissioner Rothrock seconds. Alright, no further discussion. All those in favor raise your hand. [Buzzer goes off] This is a very special evening, I'm telling you, very special, but nonetheless, it passes unanimously.