Recommendations of the Waste Management Policy Working Group

During the fall of 2016 and spring of 2017, the City Council rejected a number of staff-recommended contracts in response to objections from the Zero Waste Advisory Commission and other stakeholders. In March, Council approved Resolution No. 20170323-055 to form a Working Group to surface concerns voiced by industry representatives, commissioners and citizen advocates.

More specifically, the Working Group – Council Members Pool (chair), Alison Alter, Delia Garza, and Ann Kitchen – was charged with providing policy guidance necessary to facilitate city action related to the solicitations that stalled when they came before Council, including 1) Citywide refuse, recycling, organics, and special waste collections from City facilities; 2) Organics processing services, and 3) Management of biosolids reuse. Each issue was carefully considered with the City's 2040 Zero Waste goals in mind.

Efforts to transform the City of Austin's waste management services to a zero-waste reduce/reuse/recycle philosophy began decades ago. Over time, the City developed a wide range of services designed to transform waste into resources, making the most of their continued utility, while keeping our community clean and minimizing the amount of material hauled to area landfills. The City's Community Climate Plan includes a resource recovery goal to achieve Zero Waste by 2040, which means reducing the amount of trash sent to landfills by 90 percent.

The Working Group appreciates the opportunity to examine these issues that are so valuable to our environment, our economy, and public health and safety. We are thankful to staff from Austin Resource Recovery, Austin Water, and the Purchasing Office for providing the necessary resources and support to the Working Group. We are especially thankful to the range of stakeholders – vendors, representatives of the Zero Waste Advisory Commission and Water and Wastewater Commission, and nonprofit advocacy groups – who joined us at the table for a series of robust discussions, artfully moderated by Larry Schooler. (See Appendix for stakeholder participants.)

To ensure all stakeholders, including vendors who had recently bid on contracts, played an active role in the conversation, City Council voted to temporarily suspend the Anti-Lobbying Ordinance. The Working Group recommends continuing the suspension until Council considers draft amendments to the ALO in late September.

This report summarizes the policy questions addressed in the four public meetings and provides recommendations to Council, along with policy justifications for improvements or continuation of existing ordinances or practices and provides recommendations to Council, along with policy justifications for improvements or continuation of existing ordinances or practices.

1. **Should the city continue to competitively solicit waste management contracts? Yes, with some procedural revisions.**

Justification:

- A competitive process provides an opportunity for small businesses to flourish in this industry and for the local economy to grow; it nurtures diversity of providers and prevents monopolies. Such capacity growth is key for achieving our Zero Waste goals.
- The City Charter requires competitive bidding except in case of an emergency involving public health and safety (City Charter Article 7, Section 15).
- Clauses in existing contracts which some argue allow for a non-competitive approach are designed to address emergency situations only.
- There are cost considerations if solicitations are not competitively bid.

Recommendations to Staff:

- Within waste management matrices, revise the definition of "local" to more accurately represent local business presence. The current point allowance favors businesses with offices within the city limits regardless of the type, nature, or history of their presence in the local community. At the same time it penalizes businesses with headquarters just outside the city limits but with substantial business presence in the Austin Area.
- Staff should strictly apply the health and public safety exemption in accordance with state statute. Using this exemption in non-urgent or non-emergency situations could have a chilling effect on potential vendor participation.
- Check all draft solicitations for alignment with policy goals such as zero waste and create a process for the ZWAC and WWC to provide input on policy alignment of the draft prior to issuing the solicitation.

2. **Should materials be directed to or away from certain landfills in future solicitations? Yes, materials should be directed to or away from certain landfills through the use of a landfill criteria matrix that reflects Council's environmental priorities.**

Justification: Prior Council has established environmental priorities relative to landfills. The City is in a unique position to be a culture maker around environmental practices. Although the City cannot single handedly affect the closure of any one landfill, the City can uphold and apply best positive practices relative to area sustainability, adhering to (Council) policy with contract

requirements and designations. A matrix reflecting these best positive practices would provide a transparent scoring mechanism to determine the use of any particular landfill.
Recommendation to Staff: Direct waste diversion by criteria not by landfill. Per previous Council priorities and issues enumerated during the Waste Working Group's meetings with stakeholders, staff should develop criteria for waste diversion to include considerations such as: community impact and social equity, carbon footprint, amount and type of waste, existing levels of hazardous materials at landfill. Staff should prepare this matrix and it should come before the Council for approval before implementation.

3. Should some contract services be consolidated? A cost analysis is necessary to decide this question.
Justification: Consolidation may create economies of scale and better reporting capacity; however, it also may have undesired effects on the ability of small vendors to compete. More information is needed. Austin Energy, the Convention Center and Aviation have tailored non-consolidated contracts because of their specialized waste; other departments may have like services.
Recommendations to Staff:

- Perform a cost analysis on the impact of consolidating "like" services which includes potential impacts on local business.
- A policy based on the cost analysis should be developed with input from ZWAC.

4. Should the City set diversion requirements for waste management contracts? No.
Justification: Diversion responsibility should stay with the generator because of cost and need for culture change with the generator. The generators in this instance are City Departments. Risk in this instance is most appropriately borne by the waste generator. During emergencies diversion is not required (though diversion is desirable where feasible).
Recommendations: Staff should examine options to build point incentives into contracts for vendor-based diversion. Vendors should not be required to bear responsibility, but can be scored accordingly if they are willing to do so. Increased vigilance on generator diversion rates needs to occur.

5. Is there a preferred way to manage utility poles? Reuse, store until further beneficial reuses are found. Seek alternative source for new poles to the extent possible.
Justification: New reuse possibilities were not determined during the working group tenure and will need to continue to be explored. Both the input and the exit process present an opportunity for improvement.
Recommendations to Staff: Staff should continue research on possible reuses for utility poles. Departments should implement a storage plan until beneficial reuses are found. A less contaminated type of pole should also be solicited if it exists and is cost feasible.

6. Should Austin Resource Recovery provide special events services? Leave as is for now; conduct cost of service study to determine changes.

Justification:

- The City maintains a list of vendors and acts only as the service provider of last resort for special events held in the city. Vendor of last resort is an appropriate role for the City. In this role, the City would provide service (using a vendor) only if a special event could not secure a vendor from the list. In this case the City would be paid for the service at Council adopted rates.
- When the City sponsors or co-sponsors a special event, it provides special events services, allowing fees to be waived. Even in these cases, the City contracts with private service providers.
- Waived fees have an impact on ARR rates and city budgets though ARR is an enterprise fund.

Recommendation to Staff: Conduct a service study to determine appropriate reimbursement rates for the City's role as vendor of last resort and whether fee waivers regarding waste services for special events are sustainable by relevant departments. This cost of service study can inform budget considerations.

7. Is there a preferred policy for bio-solids management? The Working Group agrees the Dillo Dirt program is important. We recommend retaining it, and adopting the October 2016 policy recommendations of the WWW/ZWAC Joint Working Group (Exhibit A), with some additional recommendations noted below.

Justification: Although current procedures generally conform to our Zero Waste goals, the Working Group wants to ensure there is a clear policy in place to provide direction that remains consistent with our goals.

Recommendations to Staff:

- Representative samples of compost will be collected and tested by city staff or an independent third party for stability and maturity;
- Austin Water should develop plans to return to normal operations at the termination of "emergency condition," and
- Per the joint working group recommendation, the working group recommends 100% of biosolids will be converted to compost, while allowing for a diverse range of composts in order to appeal to the widest range of potential markets.

8. Should the City waive the anti-lobbying ordinance (ALO)? No, but revisions are required per recommendations below.

Justification: During working group discussions, both city staff and stakeholders identified a number of ways in which we could clarify and improve the ALO to strengthen working

relationships with waste management vendors and the City. Since the ALO applies to all vendors regardless of industry, any changes to the ALO would apply to the City's interactions with all vendors. In order to reach a healthier and more transparent working climate with all City vendors, the working group recommends the following.

Recommendations to Staff:

Recommendations on the application of the ordinance, duration and allowable communications:

- Apply the anti-lobbying ordinance only to the solicitation. Vendors may communicate on all other matters without violating the ALO.
- Apply the ALO from the time a Request for Proposals (RFP) is released through Council's vote on executing the contract. Should an RFP be pulled down, then the ordinance does not apply during the timeframe the RFP is pulled down
- Narrow the definition of "Representations" to target lobbying. For instance, if staff tells a vendor that the ALO does not apply and a communication is allowable, then the vendor cannot later be disqualified for violating the ordinance by the communication.
- Add communications regarding existing contracts to "Permitted Communications."

Recommendations on enforcement, appeals and complaints:

- Develop a body of rules in a companion regulatory document to the ALO that defines enforcement, appeal, complaint and debarment procedures.
- The companion document should:
    1. Clarify the current definition of "Representation" and what triggers debarment
    2. Clarify procedures for determining violations, judgment, and penalty enforcement and incorporate an option to engage a third-party reviewer such as the Ethics Review Commission to determine violations, judgment, and penalty enforcement.
    3. Clarify the process for submitting and facilitating complaints.
    4. City Purchasing and City Legal should develop this companion document for approval by Council and prepare any language updates to the ALO that might be required to allow for adopted rules in the companion document.

Other recommendations:

- The existing ALO should remain suspended until Council approves proposed revisions. Staff from Law and Purchasing are working on draft language to address issues identified in discussions with stakeholders. Estimated date for Council approval is the end of September.
- Revisions to the ALO may require continued participation from stakeholders. The Purchasing Office should receive and compile further stakeholder input for Council and will work with adopted input as determined by Council.