

# Audit and Finance Committee Meeting Transcript – 4/25/2018

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>> Tovo: Good morning. I'm Kathie tovo. I serve as chair of the and you had and finance committee in councilmember troxclair's absence. It's 9:30. We're in the boards and commissions room and this is an audit and finance meeting. We have a little bit of unusual meeting today where we have posted just the items on the audit and finance meeting agenda that have to be taken up this month because our primary purpose is to interview candidates for the municipal civil service, which will happen in a little while. My hope is that we will conclude the business portion or non-interview portion of our meeting fairly soon first, we want to approve the minutes of the March 5 and April 5 minutes. Welcome to our newest member, councilmember alter. We're glad to have you board. I don't show anyone signed up to have citizen communications. Is anybody here who wants to address the committee? Seeing none, we will move on to item 3, please. >> [Off mic] >> Tovo: It does not show -- I have no citizen signed up for any item so there must be a disconnect, so thanks for letting me know for item 5. >> Good morning. Mayor pro tem and councilmembers, I'm city controller, here with two members of deloitte & touche to present the results of the fiscal year 2017 comprehensive annual financial report, audit. For the very first time, the single audit which covers grant compliance is also complete and the results of that audit will

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be presented today as well. Where's the -- can you pass me that? Thank you. This is the picture of the cover of our [indiscernible] For this year. Underneath is a link where you can find the information online. You'll receive your report, your copies of all these reports in the next few weeks. The controller's office is responsible for the preparation of the city's coffer and I work closely with the external auditor to obtain an audit of this report. This slide covers all of the requirements for financial audit. Deloitte & touche is an independent certified public accounting firm and this is their 10th consecutive year auditing the city of Austin. It was published on March 1st, the earliest since 2001. So we met the requirement of meeting that within six months. Finally, deloitte is here today, which is 55 days after the issues of the car, front to the audit committee which meets the final requirement of doing that within 60 days. The single audit report covers the compliance with federal and state grants. This report was issued yesterday

on April 24th, and it is the earliest we've ever issued that report, so cheers to our teams that all made that happen. The auditors, the departments, the staff and the controller's office, this was truly a team effort to get this done, and I appreciate everyone who made that come together. And again, you'll receive these reports in early may. There are two requirements for single audit, one under federal guidelines and one under state guidelines. Both are copied here. And then, finally, just another thank you to everyone who participated in

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this process, to the mayor and council, to city staff, to the city manager and his executive team, to department directors, and city -- as well as those in the controller's office and for deloitte -- with deloitte for the way that they conduct our audit in such a professional manner. I'm now going to turn it over to Tracy Cooley for the presentation. >> Good morning. It's good to be back again. We wanted to discuss the audit procedures as well as the audit results for fiscal year '17. And you have a packet, a rather large packet. We won't cover every slide in here, but if there is something that we're skipping that you want more clarification on, please stop us. But we know you have a tight agenda, so we will make sure that we move along. I'll just get started while we wait for the presentation. I'll start on slide 3, our audit scope. We audited the comprehensive car to the city. We issued an opinion consistent with prior years, and as Diana said, we dated not consistent with prior years, it was moved up. A big thanks to Diana's team. The only way to finish the audit earlier is start everything earlier, so we basically had an accelerated timeline this year, actually starting before January, which was typically our start date to move in, and november-december, just to get things rolling and moving along. So a big thanks to Diane and her team for getting us the material we needed in order to issue sooner than we have in the past. I'll skip to the next slide. Slide number 4. Our responsibilities under our audit guidelines is described in our contract and that was amended and renewed last may for the fiscal year '17 audit. There were no changes in the execution of our audit plan. At the beginning of every

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audit, we have a plan. We have a plan that identifies the risks, areas that we're going to focus on, where we're going to spend the majority of our time, what accounts are going to be the riskiest, and we didn't have any changes to the plan this year. One focus year that we have in the audit this year that really is a focused area in every audit we do is the concept of management override of controls. And, really, what this amounts to is, you have internal controls over financial reporting. And does management have the ability to circumvent those controls and perhaps reflect something in the financial statement that isn't accurate or isn't warranted or isn't a true adjustment that needs to be made. So we do a series of I see of tests related to this particular risk. We look at and test certain transactions that are made to the official books and records of the city, called journal entries. So we do a lot of journal entry transactions to make sure they're authorized, approved, in accordance with gap, there's rationale for those journal entries. We look at significant transactions that occurred during the year. Then lastly, we talked with a

lot of the folks in this room about their views on risk of controls, of fraud risks, just to make sure that we understand the control environment year over year. You know, we're here, we've been here for a number of years, but just to make sure that we understand if controls may have slipped from a prior year, so we make sure that we understand the control aspect. And our testing of management override of controls, we did not note any issues that we needed to report to the committee. So I'll skip to slide number 9, to talk about significant accounting policies. The city's significant accounting policies are outlined in footnote 1 to the car. Really, what these accounting policies do is tell the story on the balances on the balance sheet of the income statement. Typically, the government accounting standards for what issue pronouncements or

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statements that would change some of these policies. In this particular year, we didn't have anything that was significant as far as changing the accounting policies. There were a few new disclosures but there was nothing that changed the way the city was accounting for their account balances on the balance sheet and income statement. We evaluate the significant qualitative aspects of the accounting policies, of the city's disclosures, and concluded that they were appropriate, the disclosures were adequate understand and was consistently applied year after year. Continuing on to the next slide, number 10, accounting estimates. In those sets of financial statements that you pick up to read, there's going to be some type of accounting estimate. These aren't the basic accounts like cash, cash is cash. There's not a lot of management judgment involved in that particular balance, but for some estimates -- and we have a few of them listed here -- there's a significant amount of management -- of judgment in what is recorded on the balance sheet. So our audit procedure typically will be to involve outside specialists in some of these cases. For example, pensions or other post-employment benefits. The city uses an actuary for other post-employment benefit calculations and assumptions, so we, in turn, involve our deloitte actuaries to look at those particular assumptions. And in each of these cases, we have attached in your packet to appendix a, we have each of these outlined one by one that has the city's policy and their assumptions and also our audit plan associated with that. We weren't going to go over it in detail unless the committee is interested, but suffice it to say that we did not have any material adjustments as it relates to these accounting estimates, which, in turn, means that the assumptions that the city was using was -- were reasonable in these circumstances. Next slide, slide number 11, audit adjustments, when we conduct an audit, sometimes we come up with something that needs to change, as far as there's an adjustment that needs to be booked into

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the financial statements. Or management will come up with certain adjustments. What we do is we compile all of those adjustments, and at the end of the audit we determine if they're going to make any material impact to the financial statements. If there's no material impact to the financial statements, then management has the ability to record those and reflect them in the car, or not. And in this case,

these were immaterial adjustments. We were fine with management not recording those, but our responsibility at that point is to report them to the committee. So attached in appendix B, you'll see those adjustments that were basically passed in the current year. Item number -- I'm sorry -- page number 12, talking a little bit about internal controls, and when we're talking about controls here, we're talking, again, about controls over financial reporting. As part of our audit, we look at different control cycles, whether that's, you know, payroll or grant-related or cash and investments, whatever that might be, and we look at those controls specifically related to the financial reporting aspect for the city. We did note one item that we considered to be a significant deficiency related to internal controls over financial reporting, and that has to do with the city's preparation of the schedule of expenditures of federal and state awards. So this particular schedule relates only to the grant audit that we do for the single audit. It has really nothing significantly to do with the car. But this is a pretty important schedule in that audit process because what it does, the accuracy of this schedule allows us to do the planning for the audit correctly. The feds and the state requires that we test a percentage of federal and state awards for our audit, so that schedule is important to make sure we have the right coverage of expenditures. And really, the issue this year with preparation was cut off. So when you looked at the fiscal year '17 schedule, you had some amounts that should have been in the '16 schedule, so it was cut off

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year-to-year issue from '16 to '17. So we discussed that with management, and really our recommendation would be just to tighten the cutoff aspect as it relates to that particular schedule. I'll skip to slide number 15, and let Blake talk about the single audit report and the other reports that we've issued. >> So as Diana mentioned, we have -- in addition to the financial statement audit, we also conduct an audit of the city's federal and state award expenditures, and through that process, we have looked at, this year, four different federal awards and two different state awards. And we have to look at both internal control over compliance and the actual compliance with these particular awards. So on the next slide, you'll see that as a result of our work there, we issued an unmodified or clean opinion on both the federal programs and the city/state program expenditures this year. We did not have any instances of material non-compliance, but we did have a couple of instances of control deficiencies and non-compliance that we included in our report. So the next slide includes some of the details. The next couple of slides include those details. This first slide is talking about items that we noted that were not necessarily non-compliant with the awards, but we did find some areas for improvement and controls that we wanted to talk about, specific to the community development block grant or cdbg, we noted that there were instances of certified payrolls from contractors that weren't obtained in a timely manner and weren't reviewed to make sure that they were listing the correct address that the contractor worked on, so we identified some improvement areas there for that control. In addition, for the child safety seat program, we noted that the reimbursement requests that were submitted to the granting agency did not have evidence of a review before they were

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submitted from the preparer straight to the granting agency. On the next slide, these were instances of control deficiencies that also had some non-compliance associated with them with the grant provisions. For Ryan white, we noted that the agreements that the city enters into with subrecipients, where they pass through funding to those recipients, a few elements were missing from those agreements. For cdbg, again, we had a reporting -- they have to do an annual report to hud, to let hud know, the cognizant agency, some activity that's gone on during the year. And in that activity, they have to include some information about certain types of businesses that qualify as a section 3 business that they've utilized during the time period and some information about the number of section 3 businesses and the dollars spent. And so we found that some of that information in the report submitted to hud was inaccurate. And the last one here also related to cdbg in that anytime the city does federal procurement, procuring services that are associated with federal dollars, federal regulations generally do not allow the use of geographical preference in those procurement activities, and so we did find instances where a procurement included awarding points to certain vendors for geographical preference, although it didn't appear the results necessarily would have changed had geographical preference not been considered. But that was something that we wanted to point out in the report as well as an instance of non-compliance. In addition to the grant compliance audits that we do for the single audits for the city, there's also two other reports that we issue that are required. One is the passenger facility charge report or pfcs and this relates to the airport and the fee that the airlines actually collect on behalf of the

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city, remit to the city. And the FAA, the federal aviation administration requires that be spent on certain activities, so we do some procedures around that to test both the compliance with FAA regulations for pfcs, as well as the controls around that. We did issue that report also yesterday and had an unmodified or clean opinion, and no reported findings related to the facility charge program. Last but not least, the Texas commission on environmental quality requires the city -- agreed-upon report of the city's will feel operation, so we conducted those procedures and had no reported exceptions in the procedures that we were asked to perform there, and that was issued on March 19th. Then we have append cease for your reading enjoyment on some of the things that we mentioned. Any customers. That -- any questions? >> Tovo: Questions, accident? First of all, thank you all so very much, thanks to our controller and her staff, and deloitte & touche. We appreciate as always the fine work, and to all of the departments that worked so hard to make sure that we have a really great audit. This really speaks well of the record-keeping and other financial processes of our city. On page 17 you've noted a few areas of opportunity for improvement. And could you -- I just want to be sure I'm understanding both of them. Community development block grant, that item -- sorry, I have a headache so I'm going to take off my sunglasses while I'm talking. I forgot the camera was back on. As I understood your comments, the compensation forms were received but not in a timely fashion, and then there was another point to that that I wanted you to

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explain, please. >> Yeah, sure. We noted a couple instances where the certified payroll submitted by the contractor, but the address that they conducted the work at listed was not the actual address they had conducted the work at, it was just errors in the address. >> Tovo: I see. >> So contractors were able to correct that and provide support that this was the address that he worked at. But the original form they submitted had the incorrect address. >> Tovo: Thank you. But all of the payroll -- all of the payroll forms had been submitted, but not in a timely fashion? >> All the ones we selected. >> Tovo: Thank you. Then the failed safety seat program, I didn't understand the finding there. >> There's a request for reimbursement report with expenditures and request from the federal agency for those. Those submissions were prepared by an individual within the department but they weren't reviewed by anyone separate from that individual before they were submitted to the granting agency. We have got like those should be reviewed before they were submitted. >> Tovo: Okay. Thank you. Thank you very much. Councilmember pool. >> Pool: You may have looked at this but didn't have anything to comment about it, so I wanted to ask. Do you all also look and review for compliance, timeliness compliance to reimbursements to employees, like for travel, for example? >> Not specifically. When we -- it's not part of this federal or state grant. I mean, unless there is someone that one of the programs we're testing, where there's a travel cost, they look at compliance from that standpoint, but not necessarily the timeliness of the reimbursement. It's more an allowed cost under the grant. Then from the car standpoint, we could pick an expense that was a travel-related expense. I don't recall that we did, but we could potentially I can that. But we're more looking at, is it recorded in the required experience and with gap, but not so much the timeliness but actual accounting for that. >> Pool: What what would it take to look to see how long it takes for an employer to

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be reimbursed for permitted expenses, like travel, for example? >> That would be -- go ahead. >> I think that would be a special project that we would look for, and I'm not sure that we would ask our external auditor to do that work. >> Pool: Got you. >> If that's something you were interested in, our office could provide in calculator. >> Pool: I would be interested in that. If you could put a bookmark on that, that would be great. I agree it would be an internal look, not external. Thank you. >> Tovo: Councilmember alter. >> Alter: Thank you. Pleased to see they see results. I had first kind of a general -- because this is my first audit and finance committee, seeing these reports. When you do these reviews, you're looking at the accounting policies, not the financial policies and whether we're in accordance with the financial policies. Is that correct? >> We're more looking at your accounting policies, and if they're in accordance with generally accepted accounting principles. Accounting principles. >> Alter: Okay. On page 15, you mentioned you reviewed four federal programs and two state programs. I wanted to get a sense of the level of analysis because you said then was the Ryan white. What is the umbrella? Is it all of HUD? Is it -- you know, what level of analysis are you looking at when you say four fed programs and two state programs? Maybe you could list the six of them. >> So what we have to do with a single audit, it's actually rather prescriptive. The federal and state requirements require us to select what we call our

major programs, and that's from the city's full list of both federal and state expenditures. And so we look at both of those lists and, based on some calculations and thresholds that are required by federal and state regulation, we pick those programs. Those programs we identified this year to test are usually -- they're usually going to be some of the larger programs for the city, and we also are required, ultimately, to cover at least 20% of the federal awards, expenditures, total, for the city and for the state, 25%.

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So we did meet those thresholds, actually exceeded those thresholds this year. There are four federal programs this year, and, and give me just a second. We had Ryan White, the highway safety cluster, which includes an overtime grant within the police, as well as the child safety seat program, and then last is Austin Shines, which is a program that is run by Austin Energy. And then the state programs, we had Colony Park, which is a state grant working on Colony Park, and the Austin Police Department received a state grant for the purchase of body-worn cameras. >> Alter: And then over time, do you cover -- so like one year -- you're not doing the same thing in each year, so over time, we're getting a really analysis of these grants? >> You're correct. We have a requirement -- if it's a large program like Ryan White or CDBG, these are some larger programs. We have a requirement to audit those once every three years so we have it on a rotation schedule. For those that don't meet that large program threshold, which is dictated by the feds, this isn't a Deloitte process, we try to test those that we haven't tested before. For example, Shines, we have not tested before, so we try to rotate in, for lack of any other additional risk that we know, we'll try to rotate those in. If we know that a program is risky for one reason or another, that maybe the city auditor found something in that particular grant, we may adjust that and audit something before the three-year time frame. >> Alter: When you see the -- it looks like we're going to get a presentation with respect to the management responses in a minute here. What is the process for us, if these deficiencies are identified for getting that management response? Looks like they present to us today, but then over time, if there were deficiencies in past years, what is our process for

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making sure that we've addressed those moving forward? >> We have a requirement to audit in the next year. We have a requirement to audit the city's corrective action. >> Alter: Okay. And you didn't speak to any of the corrective actions, I don't think, if you are presentation from last year. Were those all addressed? >> There were no repeat findings. >> Alter: Okay. Good. Thank you. >> Tovo: Thank you. So I think you've set up nicely, Councilmember Alter, what we'll do next, which is the hear the management response. >> So, Councilmembers, we have not intended because we knew we were short on time, on doing a presentation. This information was presented for you -- if you would like any of the departments to respond to their findings, they are all here and able to answer your questions, but had not intended to actually do a presentation. >> Tovo: Thank you. Colleagues, are there any questions?

You see the management response presentation in front about Ryan white and cdbg and others. Are there any questions for our management about any of those findings or how they plan to address them? >> Alter: I'll look through them. I haven't had a chance to look at them yet, but I will bring it back up for a future agenda if I have questions. >> Tovo: Okay. Thank you all very much. Is there a motion to accept the external audit? Councilmember alter so movements councilmember pool seconds it. All in favor? Great. Thank you very much. Thank you all. >> Thank you. >> Tovo: Okay. So our next items are item 4 and 5. We do have a speaker on 5. Did you want to -- Mr. Whelan, would you like to speak now or would you prefer to wait for the presentation and then speak? >> Either way. Whatever your preference is. >> Tovo: We'll take the staff and then we'll hear from you. >> Good morning. Lynn Carter from the law

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department. This is the third quarterly report by the city attorney that's required under new lobbying regulations that took effect June of 2017. So the first page and the second page reflect the city clerk's statistic for the reporting period of October 1 to December 31, and it shows that there's an increase in the number of lobbyists registered. There's a decrease in the number of reports that were not timely, only four during this quarter. And all of those were resolved. There was only one timely pay annual registration. Then between -- in terms of client compensation reporting, you may recall in the past we had several attorneys that were taking the position that their client compensation was confidential, and so in the prior two quarters, there were between 18 and 19 who did not report client compensation, and there was only one between October and December. Late fees were also down. And then if you'll look to the last page, which was the enforcement for regulation of lobbyists, there were 19 citizen complaints filed against attorneys who had not reported client compensation. Do you not have a copy of the report? >> Tovo: We are all madly scrambling. Could you just put it up and so it to us? Ah-ha. >> Sorry. >> Tovo: No worries. Thanks.

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>> I apologize. Do you want me to patriot to wait and see if you have questions over the part that's been covered so far? >> Tovo: Do you want to start over again? Would you mind? I apologize. >> So on the first page, we have a total of 123 lobbyists that are registered. That is the largest so far that have been registered for any quarter. There were only four who filed a timely report, filed their quarterly activity reports, and then if you move on to the second page, there was only one lobbyist who failed to renew their annual registration fee. And then under client compensation reporting, there was only one who failed to file corrected reports on time. But that was corrected by January 23rd. And then in comparison, if you look at the prior two quarters, there were between 18 and 19 who -- or 19 who failed to file corrected reports, but those reports were filed in a corrected manner to disclose client compensation by January 23rd. 18 complied. One person who had not complied was a non-attorney who switched law firms to a firm that had been reporting client compensation since the new changes took effect. Late fees

were down. There were only six who did not -- who were required to file late fee notices for the -- past the October to December quarter, and all those were resolved by March 31st.

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And then the last page is the information required to be reported by the city attorney. There were 19 citizen complaints. Those were filed November 28th, 2017, by a citizen. And those complaints involved the attorneys who had not reported client compensation. There was -- there were communications between the attorneys and the law department about the law department's interpretation of their need to file client compensation. The attorneys, generally, as a rule, took the position that they felt like as attorneys, under the disciplinary rule, that they were not required to -- they had the right to keep their client compensation confidential. And some had said they are, you know, continuing their reporting, but they reserve the right not to -- I think they've requested an opinion from the state bar on that issue. And the city attorney is basically taking the position that when you lobby, you are not required to have an attorney license, and, therefore, you are acting as a lobbyist, not in your role as an attorney, and, therefore, when you act in the role as a lobbyist, you need to report that client compensation. So those complaints went to ethics review commission in February, at the February meeting. Because compliance issues had been resolved by that date, the complainant did not desire to go forward, so those complaints were dismissed. Any questions? >> Tovo: Councilmember alter. >> Alter: If a member of the public wanted to see these reports, how would they take a look at them?

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>> They are actually available on the city clerk's website. You can Google lobbyists, city of Austin, and also it will come up that way. Every lobbyist report is downloaded online, so you can look up by name, or you can go through the list, which is in alphabetical order. >> Alter: And please remind me what the schedule of fees is currently. >> There is -- I'm not sure I'm going to recall correctly. I think the annual registration fee is -- it's either 100 or \$200, and then the late fee is just an automatic \$50 if it is not filed timely. And then every ten working days, if it's not resolved by then. >> Alter: Thank you. >> Tovo: Councilmember pool. >> Pool: Do you know how many of the lobbyists that lobby at the city also lobby at the state? >> We do not have numbers on that. >> Pool: It would be interesting to see what the overlap is because my understanding is, the Texas ethics commission requires lobbyists to report compensation from their clients, and from what I hear and read, there is very little non-compliance by lobbyists at the state level, so I would be interested to see if indeed this were filed with the state bar, what their response would be. But you may remember that when we drafted the amendments to our ethics ordinance and the reporting, financial reporting for lobbyists, which I led on one of my initiatives, we mirrored to a great extent elements of the state ethics laws, in some cases, exactly the same. So I guess what I'm questioning is the

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foundation for their reluctance, that the tenets of the bar require them not to disclose that kind of information because I believe they are actually disclosing -- I know that lawyers and lobbyists close this information at the state level. So I would appreciate it if that additional research could be done so that we could kind of get our arms around it. Enforcement is key, and maybe ours isn't as robust as it ought to be, just like I think some of the penalty fines, \$50 for not paying timely, even if it is for every ten days, seems a little light to me. The important thing is to get people report, and the fees need to be at such a level as to encourage that and not to be dismissed as just a cost of doing business. >> Understood. I'm happy to research that issue of lobbyists who are registered at the state level and the city level, and you are correct that the requirements are highly similar to the state requirements in terms of reporting client compensation, other reporting matters. >> Pool: And having said that, though, I do have to also say that I am really cheered by the compliance. There's a huge uptick in voluntary compliance among our lobbyist core, and I really, really appreciate that. And I understand too that some of the reluctance at the front end for the first reporting was unfamiliarity with all the elements of what was required, and I have to say that I think that our staff working with the various lobbyists answered lots of questions and did a really good job, and I think the proof of that is in the fact that we had much better compliance in the succeeding reporting periods. And I thank everybody for that. >> Okay. And I can correct something I stated earlier about the annual registration fee, the city auditor has provided me that information. Thank you. So it's a \$300 annual

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registration fee, but there's an exception. There's an option for a lower fee for those that are with a non-profit or for a non-profit entity. >> Tovo: Thank you. And just so I'm clear, it sounds as if there's very little non-compliance at this point, among -- >> To the best we know. It's, you know, hard to know. >> Tovo: Well, sure. >> There's a threshold on the number of hours and amount of money spent. It's really those who lobby the city that would know how much time and money they have put into lobbying. >> Tovo: I guess I should have been more focused on my question. In he remembers the of those terms of those registeredas lobbyists, they're requiring for the most part, with the exception of handful. >> Correct. >> Tovo: Any other questions? >> Just a quick reminder for me, sorry, we have an audit on our audit plan this year that's required by city code along the lines of this. One of the things we would be looking at is things like overlap between the state and city registration, so that would be covered within that audit that will be starting here in the next month or so. >> Tovo: Great. Thank you for that reminder. Okay. Thank you. So our last item before we get to our interviews is number 5, the proposed revisions to the anti-lobbying ordinance. Welcome, Mr. Scarborough. >> Mayor pro tem, members of the committee, good morning, James Scarborough, purchasing office. We have me deputy procurement officer, Sean Willett, who will be assisting with the actual part of the presentation

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where we go over recommendations from version 3 of the revised or the proposed revisions to the city's anti-lobbying ordinance. The presentation is in three parts. First, to reorient yourselves, those in attendance, to Alo revision efforts to date, and Alo, we mean anti-lobbying ordinance. We refer to it so frequently, we refer to an acronym. Secondly, we will review the recommendations in version 3 and answer any questions regarding those recommendations. And then lastly talk about next steps, whether that be further recommendation -- further requests for changes and subsequent presentations to the audit and finance committee, or your approval to proceed with the revised version to council for the readings and authorization process. So with that, we'll go ahead and go over the background of the Alo revision efforts to date. >> Alter: Mr. Scarborough, could I just ask as you go through this, could you focus primarily on the differences between the last version? And I'll also say that we just got this last night, I believe, late yesterday afternoon, so I don't know what the will of this panel will be as far as a recommendation. But if you could focus on how this is different from the last version, I think that would help move us along pretty well. >> Okay. My apologies for the timeliness of the documents. We were in final reviews up until yesterday, so my apologies. In April of 2017, council revised lifting of the organs for waste management solicitation, to in doing council-established waste management work group and

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ask the work group to make recommendations concerning a number of areas including the anti-lobbying ordinance. In July of 2017, the waste management policy work group came back with a number of recommendations, including the recommendation to revise the anti-lobbying ordinance. In September of 2017, staff presented roadway advised -- staff presented a revised version. The first version was presented to the ethics review commission. In November of 2017, the ethics review commission recommended some further revisions be made to the anti-lobbying ordinance. Staff requested time -- at that time, staff requested more time to gather more input from the -- from the vendor community and to revise the Alo further. In January of 2018, staff published a further revised version of the anti-lobbying ordinance, version 2, and the associated documents. Notices were sent to many of the city's vendors requesting comments, and additional outreach was meant to target vendor segments. Staff returned to the audit and finance committee to review the anti-lobbying organs version 2. In March, staff met with committee members and other staff to receive their feedback on version 2. Staff made final revisions to the anti-lobbying ordinance based on prior public comments and any subsequent feedback from the committee members. So today, we wish to review anti-lobbying ordinance version 3 and seek any direction from the committee. >> Tovo: Thank you, Mr. Scar. >> >> Professor: Questions thank you, Mr. Scarborough any questions on this? If you could highlight what is different. >> Alter: If I could ask one quick question. >> Tovo: Councilmember alter. >> Alter: Thank you. How many vendors or

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industries have provided feedback? >> Unfortunately, I don't have a count in front of me, but we received a response from -- right around 20 different sources on the version 2. We received a number of additional responses when we put the version 1 version of the anti-lobbying ordinance out for public review back in the fall. So all total, it's going to be a few -- it's going to be a few dozen, but the last version, version 2, we received just over -- just over 20 responses. >> Alter: Are you able to speak to what industries responded? >> There were a variety of industries, professional services, architects, engineers, a number of other smaller markets were represented as well. For the most part, when we received comments, they were very short. They were generally positive. In some cases, we received much more lengthy responses and had more constructive contents. And those were typically from a specific market segment that has more interest in this particular ordinance. >> Alter: Thank you. >> Tovo: Councilmember pool. >> Pool: This document here, it's the recommended revisions that are dated 4/25/2018, version 3. It doesn't have a name on who provided this to us. Is this from y'all? >> This is from us, yes, ma'am. >> Pool: And did you underline the change? >> No, I did not. I'll have to get that to you. >> Pool: Can you just tell us what it is? >> I'll try to recall. I'm sorry. There were not that many changes from our version 2. The feedback that we received where we did make some changes was mostly on the feedback we received from the vendor community. I can tell you specifically one change that we did make -- and I'm jumping -- I'm jumping ahead a little bit, but there was a

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provision in version 2 where we had established that when a city official or city employee had initiated a violation of the anti-lobbying ordinance, that they would self-recuse from further participation in the solicitation. We felt like we could address the city employee aspect of that particular act in any resulting administrative rules and then copy the city official in the determination to waive the violation, and then leave it to their discretion whether they would recuse themselves or not. So that was in version 2. That's not in version 3. That was probably one of the more substantive changes. The remainder of the changes were small wording preferences that we received some feedback from the interested parties, but nothing too, too substantive beyond that. But I'm glad to give you a markup between version 2 and version 3. >> Alter: What about the definition of -- sorry -- what about the definition of "Agent"? >> We did -- >> Pool: Is that -- >> Tovo: Why don't we go ahead and move through the presentation. >> Pool: I'm sorry. I thought he was done. I had asked to mainly focus on changes and he said there weren't any. So I apologize. You're right, he still has some of the presentation to make so we should absolutely go through that. But my point was originally, when the mayor pro tem had stepped away, was that if we could move through this quickly and focus on the things that are different. >> We can definitely move through it quickly. >> Pool: Okay. >> And to the extent that I can recall those changes, but I can point those out to you in a subsequent document that we can get to you quickly. >> Pool: Thank you. And I apologize, mayor pro tem. >> Tovo: No, no, that's fine. I think we will all need the marked draft, for sure. >> Will do. Moving on to the second part of the presentation, I'll

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refer to my colleague Sean Willett who was responsible for the day-to-day oversight of the anti-lobbying ordinance compliance in the purchasing office. >> Good morning. I'm just briefly going to go over the draft that we have and -- I'm sorry -- and our recommendations. So in general, I want to point out that the majority of the feedback we received was positive. Most of the responses we got said this was very similar to what they were used to in other cities, so it was positive. And their responses showed the general desire to maintain most aspects of the current Alo. We did, as James said, receive some constructive feedback from parties associated specifically with waste management. In section 101, the findings and the purpose, this -- in version 2, it's basically unchanged, so I won't go into that because I know that that's -- so we're just going to pass that one. The next one, section 102, applicability, this section was reorganized but in general remains unchanged from version 3. This is just where we basically define which solicitations anti-lobbying ordinance applies to. It's where we exempt certain solicitations. It authorizes staff to comply Alo to other competitive processes and also waives criminal penalties. >> Alter: I just wanted to clarify, when you say it's unchanged, is that relative to version 2 or to -- >> It's unchanged from version 2 to version 3. >> Alter: Okay. So when this comes to council or depending on what happens, I think it would be useful to have, side-by-side, the existing -- >> Sure. >> Alter: -- Versus -- I'm more interested in it relative to the existing than to version 2. >> Tovo: So your request, councilmember alter, is that -- is that when we next talk about it, we have version 1 and version 3, and talk about -- and talk about the -- focus on the differences from 1 to 3.

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>> Alter: Yeah. I may be comfortable doing that at council, but we'll have to see where the committee's at. >> Tovo: Yeah. I just wanted to clarify what your point was. >> Alter: Yes. >> We attempted to provide a markup between the current version of the anti-lobbying ordinance that is applied on other city solicitations and version 2, but the markup was so extensive that it was difficult to make sense out of because whereas we may not have changed the contents, we rewrote the sections so that they were more clear in their intent and in their expression. They were more concise. So while -- while the markup may appear extensive, the content, the effective content was not substantially changed. So we looked at the -- we looked at the markup in version 2, and it just was not informative as much as we thought it might be, but we are glad to provide you the markup between the original, the current version and 2, and the markup between 2 and 3. The markup between 2 and 3 is much less substantive. >> Alter: I think I'm just looking to make sure that when this is presented to council for a vote, that we have some calculator -- >> Absolutely. >> Alter: -- On the difference between what's before us and the existing and it's not so much the need for the markup as some cheat sheets for people to be looking through that to see the most salient elements. >> And I think -- I think to that point, you will get that. Under each one of the sections, the section here 2-7-102, the section is reorganized but unchanged. And by that, we mean the intention is not changed. The basic elements are not changed. There may be some reorganization, whereas if you look at, to the right, subsection B, absent affirmative action by the council the office has discretion, that is in the current ordinance, it's just

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in a different section of the ordinance. But as it pertained to applicability, we thought that applicability related items should be in an applicability section. So we just reorganized that content. So if you look at the first sentence in each one of these sections, whether it be reorganize several changes, largely clarifications, or the section includes several clarified definition or what have you, that gives you a high-level explanation of the delta between the current version and version 3. But, like I said, we will provide markups and more specific information as to what was changed in the recommendation. Okay. >> Okay. Thank you. The next section is 103, definitions, and in this section we clarified several of these terms. The three most discussed -- the first one was agent. In this one, we clarified the definition and we also included a list of people who are presumed to be agents to try to provide additional," Clarification. The second was the no lobbying period. In this one, the start of the no lobbying period remains the same as the current active version of the Alo, however the ending now has a finite period so it's not something that could go on for an unknown period of time. And the last one is exponent respondent, and this N this one we included clarification as well as a inclusion of respondents. >> If I could add, this particular section of the discussions and revisions to the anti-lobbying ordinance is probably one of the more extensively reviewed area, definitions as they're used throughout the ordinance, can absolutely change the intent and function of the ordinance. So there was a great deal of discussion associated with the definition for agent, the definition of the no lobbying period, and the

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definition of respondent. Staff's responsibility was to make those terms as clear and finite as possible, whenever possible. But there are certain instances when we needed to use language that had the most operational impact, so we listened to multiple sources, including our colleagues at law department, but we feel like the current revisions to these particular definitions loud us the most clarity with regards to operationalizing the ordinance and enforcing it when it's necessary to do so. >> Okay. The next section, 104, which is restriction on lobbying. This section was reorganized and there were several changes, again just to make these more clear. This section basically limits the communication between respondents and city officials, as well as those between city officials and respondents. Section 105 is permitted communications. Again, this section was reorganized and there were some changes, but again, these were mainly clarifications rather than actual changes. And this is an attempt to make it more clear specifically what communication is allowed under the ordinance and which one would be a violation. This list of communications which you're allowed include communication with authorized contact person, communication about an existing contract, communication about non-substantive procedures, communication in regards to protests or hearings, communications with a small or minority business department, communication between attorneys, communications made during a publicly called meeting, communications with H.R. -- or risk management, I'm sorry, regarding insurance, as well as it clarifies that contributions are not considered communications

[10:28:09 AM]

that would violate this ordinance. Section 106 is more modification of restriction, and again, this section was reorganized and clarified and it generally authorizes staff to waive or modify Alo during emergency situations. >> Sections 107 and 108 were clarified only and there were no significant changes or actually no changes. Section 109 enforcement, this section was reorganized and it was further clarified. This authorizes staff to enforce the anti-lobbying ordinance. It authorizes staff to waive violations initiated by city officials or employees, and it -- I'm sorry, it exempts enforcement by the ethics review committee. >> Committee members, there was a fair amount of discussion with regard to the involvement of a third-party or an outside board or commission or the ethics review commission or some other entity to participate either in the enforcement of the ordinance or in the finding of violations. And we have reviewed the inclusion of separate -- of separate bodies for these purposes. But in our professional recommendation we're not -- we're unable to bring forward that kind of recommendation, or in our professional consideration we're unable to bring forward that recommendation. There are -- there are considerations for using these outside entities that you may want to ask questions to our colleagues at the law department, but oftentimes violations or alleged violations of the ordinance may involve confidential information that may be an issue with some of these boards and commissions. There also may be a question of legal representation for these boards and commissions should there be a challenge

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to decisions that they make. Again, not wanting to speak outside my language for legal perspectives I would defer to the law department, so based on our discussions we're unable to make a recommendation for the inclusion of these parties to enforce the anti-lobbying ordinance. To the extent that -- and this ties to the next section, section 110, regarding disqualification contract voidable. To the extent that there is a violation and a protest and any subsequent processes, whether it be an appeal or suspension or debarment, staff strongly recommends in lieu of putting these elements into an anti-lobbying ordinance and only making these subject to anti-lobbying, that we procure -- secure a procurement code that we protest, appeals, debarment, generally for all city-related activities. That way we'll have consistent operations, a body -- a procedural knowledge that will allow us to apply these regulations more consistently and more consistently meet the expectations of the vendors, the public and the -- the public and the council. So I'll turn it back over to SHAWN, but I wanted to acknowledge that there was a significant amount of discussion in that regard, and we didn't discount those recommendations. It's just that we could not return a recommendation for the inclusion of third parties as was discussed. >> Okay. The last section is section 110, and again this is disqualification and contract voidable. This section was reorganized and clarified, but in general not changed. This disqualifies respondents that violate the Alo. It prescribes violation notices. It extends disqualification under certain scans, and it authorizes debarment under certain circumstances. And that is the last section of the ordinance.

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>> Tovo: Thank you for walking us through those proposed changes. Colleagues, what questions do you have? Council member alter. >> Alter: Thank you. I have a question on the agent, and I was just wondering, sometimes you have agents who are lobbyists who are representing more than one client, and they may or may not have an active solicitation for one of those clients. I was just curious how this applies to them if they're talking to somebody about the other client. >> Council member, we discussed that fairly extensively, and to the extent that a -- an entity is acting on the behalf of a respondent and the respondent's knowledge and direction and what have you, then we would certainly consider that an agent. But to the extent that a person or group is representing a larger group of contractors of which the respondent may be a member, that was much more difficult for us to establish as -- in the definition of agent. That may get nuanced enough that I need to invite my colleague from the law department, Chris wimet, to respond to that more specifically, but we had -- we were unable to define these professional associations where the persons associated with them were representing the membership may be speaking on behalf of the membership and speaking on behalf of the membership may slip into conversation about a specific member. That was hard for us to effectively define into the definition of agent. So it's not part of the recommended changes at this time. >> Alter: I think I was talking like if you have a person who's representing two different clients on two different issue areas as opposed to an association that's representing multiple -- but your example is an interesting one, but that wasn't where I was

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going. >> My apologies. >> That's okay. >> To the extent that the agent is acting in the knowledge and approval and direction of the -- of the -- of the respondent, then they would meet the definition of agent as we've spelled out here. >> Alter: But can that agent speak to say a council member on another subject if the subject of the solicitation is not brought up? >> If -- >> Alter: They're unrelated. >> If the communication is not associated with the solicitation that is subject to the anti-lobbying ordinance, I believe that that would be allowable. That may be nuanced enough that I would defer to my colleague as well. >> Alter: All right. >> Council members Chris sweema, assistant city attorney. As currently structured the other prohibition as is the case with the current anti-lobbying ordinance is representation related to an open solicitation, so to the extent that somebody represents somebody else with respect to any other subject matter, that would not factor into the analysis under the ordinance either as it currently stands or as proposed amended. >> Alter: Thank you for the clarification. I don't remember seeing the campaign contribution as a permitted communication in prior versions. Can you give me a little bit of background about that? >> Council member, that provision is in the current ordinance. We just carried it forward. I believe the intention was that when a campaign contribution was made, that that act not be construed as a form of communication and possibly a form of communication that could violate the anti-lobbying ordinance. Do you want to expand on that, Chris? >> I have nothing to add. It's in the current -- current anti-lobbying ordinance, and I believe the wording is the same in this current

version. >> Alter: Is that a common thing within anti-lobbying ordinances across cities? Because that makes me

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uncomfortable. >> We can certainly look into that. >> Alter: Okay. I would appreciate that. That makes me uncomfortable that you can have an open solicitation during a campaign and make contributions and that not be communication. What do you need from council to proceed with the procurement, the larger procurement code revisions that you discussed? >> We can -- we can certainly follow up with the city manager to see if there's a specific approach that he prefers in this regard, but -- but to the extent that we're already contemplating an approach, we absolutely are, we're looking at our protest process and we're looking at our suspension, our probation and our debarment processes, and kind of preparing them for a review and a recommendation to pursue a combination of municipal code and administrative bulletin. As for -- as timing, we haven't put anything in front of the city manager, so I'm not able to kind of get into details, but that is something we're very interested in, and to the extent that you provide some commentary from the audit and finance committee supportive of that regard, I think that would be -- that would be -- that would be good. >> Alter: Okay. So that would be like in the form of a resolution from audit and finance committee supporting it or just stating that -- >> I believe comments would be fine. >> Alter: So I will publicly comment that I am in favor of us moving forward to develop this procurement revision process. Mr. Scarboro and I have talked about this on several occasions with respect to the Alo and making things more coherent across the whole procurement process and it certainly sounds like that is a step that we need to move forward with. My last question is if you could just give an example to walk me through the scenario should an official

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or an employee be the cause of the -- of the communication that leads to potential violations. >> Under the -- under the recommended version of the anti-lobbying or under the current version? >> Alter: I think if you could give me the comparison that would be -- >> Okay. Currently if a city official or a city employee initiates a representation, which is a term that we are not carrying forward in the new version, we're trying to use more direct language and be more clear in the ordinance's content, so that particular term that is in the current ordinance is not being carried forward. But if -- if a city official or a city employee initiates a representation from a respondent, so they call the respondent or they exchange communications, an email with the respondent and the respondent then acts on that -- on that initiation by sharing information that's precluded by the ordinance, that act would constitute a violation of the ordinance and therefore once that violation was -- or evidence of that violation were communicated to our office, we would then be compelled by the ordinance to disqualify the respondent. Under the recommended version, if a -- a city official or city employee initiates a communication that violates the ordinance, the staff would be authorized to waive that violation. Previously we had contemplated as a component of that act kind of a balancing of the equation, if you

will. If you're going to waive the violation, that those persons, whether it be city official or city employee, who initiated and received the prohibited

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communication, that they no longer be a part of that process for the remainder of that process. But we did receive some concerns, some feedback in that regard, and we feel like through the administrative rules process and internal policy we can manage city employees further -- on further solicitation process if they initiate an action, and to the extent that a city official initiates a violation, then we would document the violation as we would normally document the violation and copy the city official so that they could determine whether they needed to recuse or not but that would not be a requirement of the ordinance per se. That was us being responsive to the feedback that we received. We feel like we can accomplish the same balancing of the equation. We just put the onus on the city official to make the determination whether they need to recuse or not. >> Alter: Thank you. And my very last question is, what are the companion rules that need to go along with this revision? >> We didn't really -- other than -- other than concerns from the parties within the -- within the stated industry, we didn't really receive a lot of feedback regarding the contents, the elements of the proposed rules. We provided -- created an outline, and essentially what we envision is that the -- the administrative rules that would promulgate and further affect this ordinance would line up with the ordinance section by section. So the ordinance would provide policy-level regulation, and then the administrative rule would provide procedure that staff would perform to enforce and to comply with the ordinance. So if you would imagine the contents of the ordinance, the elements of the administrative rule would follow them section by section. So the ordinance would say what and the administrative rule would say how, who and how. >> Alter: Okay. Thank you.

[10:42:16 AM]

>> Tovo: Mr. Scarboro, what would be the timeline on you bringing forward the proposed changes for procurement? I know you said you needed to consult with the city manager and what not, but what would be -- I guess how far along are you all in thinking through what would be contained in such a proposal were it to move forward? >> I haven't speculated with an amount of time or a period of time with the city manager's office, so I hesitate to say anything. >> Tovo: Okay. >> Particularly given our city manager is kind of new to our environment still, and I really want to take the time to make sure that this is a direction that he wants to proceed. As council member alter mentioned, this has been something we've been discussing for a long period of time, and it is an advisable direction for the city procurement operation to evolve towards, but I really haven't had a chance to discuss this in any detail with the city manager's office so I hesitate to speculate about the period of time. >> Tovo: I understand. I think that's a very good direction, so if it makes sense in whatever action we take to provide that as part of the direction. But in the absence of that I would add my support for that direction. >> Thank you. >> Tovo: Other questions about what's been laid out here? >> Troxclair: I want to wait and hear from folks in the

community who want to speak to this, some of the stakeholders. >> Tovo: Let's go ahead and hear our one speaker. We have Michael Whelen signed up neutral wishing to speak. I don't have anyone else registered. Is there anyone else hold like to speak -- who would like to speak after Mr. Whelen? Mr. Whelen, you'll be our one and only speaker. >> Thank you. Michael Whelen on behalf of [inaudible]. >> Tovo: Mr. Whelen, you're not on. If you would hit the button. >> There we go. Sorry, Michael Whelen on behalf of Texas disposal systems. Thank you for allowing me to speak on this item. Staff, as you heard, is asking for support of version 3, which is distributed -- which was

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distributed yesterday. The version that I just picked up now, I didn't realize that the recusal was out. The only change we saw as of last night was just an additional sentence added, subparagraph D to agent. Unfortunately, we have to ask you not to give your support to staff's draft today, and I'll tell you why. There were key reforms at various advisory and stakeholder groups -- that they mentioned repeatedly that are not included in this draft today. This began more than a year ago when council waived the [inaudible] For all -- to let stakeholders participate in the waste management process working group process. And I have those recommendations that are specifically related to the Alo that I'll circulate in a moment. The working group chaired by council member pool issued specific recommendations for the Alo, and since then we've also had recommendations from the ethics review commission, zero waste advisory commission, tech campaign for the environment and others. What's extraordinary is that there was broad agreement on key reforms among nearly all of these groups, and yet almost none of those reforms are included in staff's draft today. It's truly astounding. This includes creating a third-party appeals process, so if a respondent is disqualified they can appeal to someone other than the staff that disqualified them. All stakeholders made that recommendation, including the council working group, and yet staff's draft does not include it. Likewise, nearly every group, including the council working group, also recommended that the administrative rules that were just discussed for the Alo be reviewed and approved by council and actually go up as a companion document to council, but staff's draft does not include that either. There is some random outline out there of the rules, but there are no rules themselves. Another area of stakeholder agreement had to do with the narrowing of the definition of prohibited communications and the timing of the restricted contact period to ensure that the anti-lobbying ordinance is preventing lobbying without preventing policy makers from getting information.

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I still do not fully understand why the staff wants to develop basically an anti-information ordinance rather than being sure that information about policy can be communicated. Draft -- in staff's draft currently expands rather than narrows the definition of prohibited communication, so if you look at it now says -- it now includes substantive information about any respondent or response which gives staff no boundaries and full discretion to control speech. Staff's draft also creates no window during the process for respondents to communicate about policy issues when in most cases the solicitation has

never even seen the light of day until it is first published. So it's published, no has seen it before and the restricted contact people period begins so there's no discussion about policy. This means the very people who may know the most about the policy solicitation in the area of energy, waste, transportation, are prohibited from sharing that information with policy makers. To use a real example, the prior biosolid solicitation would have implemented a staff directive to eliminate dillo dirt without any discussion at the city council level. There are other areas of concern as well. For example, subjectivity in enforcement provisions, which council member alter just reviewed. I hope we'll have more time to talk about this, but I do have one idea that has come up in our conversations, and it has to do with creating a public bulletin board for vendors, which could address some of these concerns. And we think it has some promise. We already have a vendor connect, a location on the web site. We know how to do a message board. I think there's a real possibility here, it doesn't solve all the problems with the draft ordinance but it creates an on-line space for council to utilize if they want to to go get further information. So -- >> Tovo: Mr.-- I apologize but your time is concluded. If anyone has questions for you, that would allow you to

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explicate your points. Any other questions for Mr. Whelen? >> Pool: Were you about done? Would you like to finish? >> The only thing I would just encourage and I'll pass out, is that these questions be reviewed and considered when asking staff to go back and take one more shot at some of these keys, especially the top three or four key points that have been made by every single stakeholder group, and those stakeholder groups and what they said are on the back of this page, and I'll hand this to the clerk to -- >> Tovo: Thank you. Thank you for preparing that. Any question -- any other questions for Mr. Whelen? For our speaker? Thank you, Mr. Whelen. Colleagues? >> I'd like to invite Mr. Scarboro, if he has any comments that might elucidate what we've just heard. >> Committee members, many of the concerns that Mr. Whelen has shared with you have been expressed previously, and as I restated here, in general we would disagree with many of them. Ultimately it is our responsibility to make a staff recommendation. The anti-lobbying ordinance is council's ordinance, council's regulation. Council requested it be established. Council has requested that it be changed over the years, and in this case you've asked for a staff recommendation. There were a number of sources of feedback. To synthesize all of those sources of feedback you'll note that they -- the very sources of feedback themselves do not agree. And ultimately it was left to us to make a recommendation based on our best professional judgment, and then we leave it to council in the readings process to adopt any changes that best reflect council's policy and council's direction in this regard. But if -- if the desire is for staff to just synthesize

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the various recommendations from the bodies and then represent that as a synthesis of the various recommendations of the bodies, that's a very different act than making a staff recommendation, a professional recommendation. SHAWN and I are career public procurement people, and we have

worked in this space for many years, and we have considered all of these areas of feedback, and we feel that we have provided a recommendation that best accommodates as many of them as possible. But we work in a competitive space. When we perform a procurement process, a number of the participants are disappointed at the end because we don't award to everybody. And so there's a lot of interest in how these rules are played out, and those interests don't always agree with each other. Even some of the recommendations that have been brought to you by the stakeholders acknowledge that there was not unanimous agreement on all the points that they brought to you. So to the extent that we could somehow do that in our recommendation and still reflect our professional judgment, it's just not possible. So we provide to you the best professional recommendation that we can make, and we'll take into consideration any sources of feedback, but beyond that we must then hand over the product to council and allow you, through the readings process, to make any further changes that you feel best represent your policy perspectives and what you contend is best for the city. >> Tovo: Thank you, Mr.-- >> If I can add real quick. Specifically there was a mention of a bulletin board and addressing policy concerns that may arise through a solicitation process. Currently through the anti-lobbying ordinance and the rules that promulgated to enforce the ordinance, there is an ability to file a complaint, and for us to then share that complaint

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through -- to the city officials and city staff. We also have the ability to receive q&a throughout the time the solicitation is on the street, and we take all of those questions and we post them into the solicitation and we respond to them so that all parties can see them. We have discussed the idea of a bulletin board, and we're willing to consider it further. We're concerned that any kind of open forum that could be accessed by competitors and parties with perhaps conflicting interests could become a forum for all sorts of communication that I'm not sure would necessarily always be constructive. So we would -- we would proceed with caution in further conversations in that regard, but we currently do have a complaint process that lasts throughout the entire solicitation and evaluation and through the award recommendation. We also have the q&a that lasts throughout the entire time the solicitation is on the street. So there are communication mechanisms already available, to the extent that council wishes additional communication methods we're glad to consider them. >> Mr. Scarboro, did you consider -- well, I know you considered, but can you provide us with the rationale for -- for your response about the third-party -- about having a third-party availability to consider complaints? >> There -- there may be some legal nuances that I might need to ask my colleague from law to come back up and explain it in more detail, but ultimately procurement is considered an inherently governmental activity, because we are acting as agents of the government, whether it be federal, state or local. And to have a third party perform an enforcement action in that process and then that enforcement action would be left to us to

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implement, there may be some legal question as to responsibility and to the extent that the attorneys representing the city, whether they can represent that third party the way that they represent city staff. So I would then refer to -- more detail to our colleagues at law. >> Council members, we're happy to send you a memo that we can circulate to the full council when this comes back with respect to any legal issues about third-party appeals or reviews to a particular board. So we will provide a memo for you. >> Tovo: That would be helpful. If the memo could also consider the option of having that third party just be city staff who are not in the same -- who are not among the same group who evaluated the group the first time. >> Certainly. >> Tovo: Thank you. >> Mayor pro tem, that would be -- that would be a constructive nuance to this particular discussion because that may, in fact, be an approach that we could discuss further when developing a city procurement code as it pertained to a second-level appeal process that may go outside of purchasing or the agent -- or the department conducting the procurement. It just doesn't exist yet. But absolutely something that is a -- is a more common approach you might see in other governments, by having a second-level review that would include city staff but be outside of the procuring department. >> Tovo: Thank you. Council member pool? >> Pool: It provides that independent review, which I think was what the ethics review commission, that concept was about there. Would you say -- and I was actually thinking that it could be a work group within procurement that wasn't involved in that particular contract, because it occurs to me that the expertise that you have in the procurement department is important to maybe hashing through some of the elements of a complaint. But I'll leave that point open and see what we hear

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back from our staff in the law department and see what -- where the conversation goes at that point. >> Tovo: Council member alter? And just as a time check, it's about -- just about 11:00. That clock is actually slow, and so we need to be mindful of the fact that our interviews are starting in about 30 minutes, and we'll need some time as a council -- as a council committee to talk about our process for those interviews. Council member alter? >> Alter: I'll be quick. How many companies does the Alo apply to? >> The anti-lobbying ordinance would apply to all of the city's solicitations that meet the definition of solicitation in the ordinance, so it would apply to all vendors who participate in competitive processes, generally speaking. >> Alter: Okay. Thank you. When you recognize, mayor, I'm prepared to make a motion. >> Tovo: Feel free. >> Alter: I would move that we forward this to the full council for consideration with direction to take whatever necessary steps are involved for moving forward, the procurement code revision process. >> Tovo: Thank you. And council member alter, so I'm clear, your motion is to forward it without a recommendation from this committee, Ju forward it for -- just forward it for council review and consideration? >> Alter: I'm happy to recommend it, but I would like to see where -- I wasn't sure what the appropriate motion would be in this case. >> Tovo: I think we have multiple options. One thing that -- >> Alter: And I don't know how many of us have to vote for it either. >> Tovo: Sure. Okay. So let me return to your motion in just a minute once we've clarified the rules. So our committee is a committee of four, three is a quorum. The mayor, and I forgot to mention this but I hope the minutes will reflect that the mayor is off the dais today. And so, yes, I think for the moment we just have four because council member troxclair for the period of time she's on family leave is no longer on the committee. So as I understand the

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discussion that our auditor and I have had here this morning, we would need three votes in the affirmative to take action here today -- no, I'm sorry, two votes in the affirmative, because it's a majority of the council members who are present. >> Right. A quorum is required to be present, and you are -- >> Tovo: Which we are. >> And then a majority of the quorum is required to take action, unless the action is to get the item on the council agenda, and I don't believe that's the action here today because I believe the item will appear on the council agenda and just needs associated action or recommendation or not recommendation from this committee. >> Tovo: And so as I see it, we have an option of recommending the changes, we have an option of not recommending the changes. , We have an option of forwarding it without a recommendation. There may be other options out there but I think we have at least those three in front of us. I will say, you know, having -- well, let me say two things. One, Mr. Whelen, the copy that most of us received was truncated on one side, and so we can -- on some of the sentences, I can pretty well figure out what the last word is, and then some I can't. So if you could -- if you could forward to us another copy of this at some point before the council discussion, that would be helpful. Having just received this last night and not really having time to review the changes, I'm not -- I'm not prepared to recommend it or not recommend it. I would be prepared to just forward it for council consideration. Council member pool? >> Pool: And I might make a substitute motion to do just that, and that would also give our staff the opportunity to provide us with the additional information that I think is important in this conversation. But I'd like to check with my colleague to see if that is satisfactory for her as well. >> Tovo: I said I would return to council member alter for motion after we had a a little discussion. >> So I'd move to forward this to council with the recommendation we move forward as quickly as

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possible with the revision process. >> Pool: Are you recommending adoption of this document or -- >> Alter: That we were forwarding the draft Alo revisions for council consideration with for recommendation. >> Tovo: As I understand your motion -- but with strong support for moving forward with the pro procurement process along the lines of what we have talked about vaguely? >> Alter: Yes. >> Pool: And I would sect that. >> Alter: I can say it one more time. >> Tovo: No, I think that's fine. Does that clarify for your purpose? Would you like to second it? >> Pool: Yes. >> Tovo: All in favor of the motion to forward this without recommendation to council, for council's consideration but with additional expression of support for moving forward with a procurement process along the lines of what we have discussed, raise your hand. And that is unanimous on the dais with mayor Adler off the dais. Council member pool? >> Pool: And I might just say as a postscript that we really need to put this to bed. We need to find a resolution to this that we can all move forward with. Not everybody is going to get on either side everything they want, but I would really like to see this finalized and put into effect so that we can put the anti-lobbying ordinance back into effect. I never anticipated that we would be sitting

here a year from when we first pulled this out to work on it, although I will say off the record that some staff [chuckle] Had told me that this would be a difficult discussion and finding resolution may -- might -- might be hard. Thanks. >> Tovo: Council member alter? >> Alter: I think it continues to be a difficult discussion, and no doubt will be interesting when it comes forward to us. I just want to say thank you to Mr. Scarboro and his staff for taking on this large stakeholder process.

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From my vantage point you have really taken the time to listen while also really presenting the staff expertise and its relevance to this process, which affects thousands and thousands of companies that interact with the city, and we need to remember that this Alo applies to more than just one industry. When you do forward this to council, if you can also include some backup on the processes that did change with respect to waste management issues coming before the solid waste working group, before the solicitation goes to the street, so some of those issues have been addressed through policy changes that were made by those groups in response to the working -- in response to our working group, I guess zwac is the one that would be seeing those. If you can also make sure that's part of the packet so we can understand some of the other things that have shifted and changed throughout this process to allow some of those concerns to be addressed in other -- in other matters. Thank you. >> Tovo: Thank you very much. So before we go into executive session, are there any other items that we want to discuss at future meetings or do we want to just forward those on to staff? Are there any suggestions at this moment? Okay. So that concludes no. 8. So when we return it will just be to -- if we have reached some recommendation of candidates, it will just be to announce those decisions, if we're in a position to do so. So the committee as I indicated earlier, the committee will now go into closed section to take up one item pursuant to 551.074. The committee will discuss the following item 2, discussion regarding candidates for appointment to the municipal civil service commission. Are there any objections to going into executive session on the item announced? Hearing none, the committee will now go into executive session. It is 11:05.

[11:05:05 AM]

[Executive session]

[11:12:56 AM]

[Executive session]

[12:44:19 PM]

>> Mayor Adler: Welcome back. We are out of closed session. We took up personnel matters related to item 2. It is 12:42. And -- that clock is slow. 12:45 and I'm Kathy Tovo. Mayor pro tem and I chair the audit and finance committee. Is there a motion? Council member Pool. >> I would like to make a motion we submit recommendation for reappointment to the city council for Michael Murphy and Ladi Dailey to the civil service commission for a new term. >> Is there a second? >> Second. >> Thank you. Any discussion? >> I wanted to thank the four interviewees who came and met with us. Mr. Petrowski and Will Morgan. It was a good pool of candidates and I think we have a good selection. >> Tovo: I think we're so fortunate that in the city of Austin to have people with such qualifications step up and be interested in serving. We had a strong pool of candidate force this process. >> That's what I was going together say. Before we vote that's our recommendation. That's our recommendation. It's not final until the council considers and takes up that issue. All in favor? That's unanimous on the dais with Mayor Adler off the dais. That's our recommendation we move forward to the city council and we have no other business before us, so we stand adjourn. Rejoined at a time that's not the one on the clock. >> 12:46. Thank you.