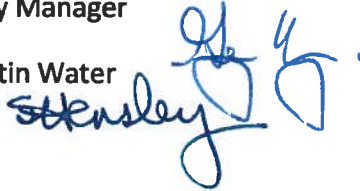




MEMORANDUM

TO: Mayor and Council Members

CC: Marc A. Ott, City Manager
Robert Goode, P.E., Assistant City Manager
Bert Lumbreras, Assistant City Manager

FROM: Greg Meszaros, Director, Austin Water
Sara Hensley, Director, PARD 

DATE: April 21, 2015

SUBJECT: Lone Star Riverboat postponement request and explanation for April 23 Council agenda

At the April 23, 2015 Council meeting staff will be requesting a postponement of agenda item 28 regarding a contract with Lone Star Riverboat Inc. This postponement has to do with the confluence of the Lone Star Riverboat issue and an ongoing Austin Water process examining and rewriting the marine sanitation provisions of City Code Chapter 6-5, Article 3 (Watercraft and Marinas ordinance). Staff will extend the current Lone Star contract for 60 days.

Additionally, at the May 7 City Council meeting staff will bring forward an item for Council's consideration recommending waiver of parts of the Watercraft and Marinas ordinance until Austin Water staff completes a rewrite of the ordinance. If strictly enforced now, that ordinance would result in the shutdown of excursion boats currently operating on Lady Bird Lake, Public stakeholders meetings in this ordinance rewrite process were completed on April 16, 2015. Staff is continuing to collect public comments and plans to begin the board and commission process within 30-60 days, followed by Council.

The City is not endangering public health and safety during the code rewrite because state law does not allow discharge of sewage from boats into water bodies, and there is no evidence that this has occurred. State law also allows sewage from the boats to be pumped out by hauling companies who take the waste to wastewater treatment plants for treatment, a common practice also allowed under state law. On May 21 the Lone Star Riverboat contract will be back on the agenda and staff will move approval with the provision that, when the new code is approved, Lone Star and all excursion boat operators will come into compliance within 180 days.

Background

The Lake Austin Task Force in August 2013 identified that sections of the Watercraft and Marinas ordinance regarding marine sanitation, or sewage disposal regulations for boats and marinas, were not being enforced. The task force recommended that the City begin enforcing the ordinance. Although the City ordinance was not being enforced, it should be noted that state law was still in effect and state law prohibits discharge of sewage from boats or marinas into inland bodies of water, including Lady Bird Lake and Lake Austin.

Subsequently, the Special Services Division (SSD) of Austin Water was assigned enforcement of the ordinance. The Special Services Division reviewed the existing ordinance, substantially adopted in 1968, and determined that it contained significant flaws. SSD is currently concluding a stakeholder process in

regards to rewriting the ordinance and will bring a new ordinance through the boards and commissions to Council.

However, during the period of the stakeholder process, the Parks and Recreation Department's (PARC) contract with Lone Star Riverboats, Inc. neared completion and PARC brought forward a new contract for excursion boat services. If that contract were to be approved now, however, two of Lone Star's three boats would not be in compliance with the Watercraft and Marinas ordinance because they do not have the required restrooms. There are several other boats currently operating on Lady Bird Lake and Lake Austin which also do not comply with this part of the ordinance. In fact, over 60% of the excursion boats operating on Lady Bird Lake and Lake Austin are not in compliance with this code provision.

Lone Star and all other excursion boats operating on Lady Bird Lake are also not in compliance with code regarding the pumping and hauling of waste. Under the existing code, the only allowed way of removing waste from boats is to an on-shore disposal facility, i.e. (discharging to a boat pump-out facility connected to either a septic tank or sewer). This option is not available on Lady Bird Lake and PARC, Austin Water and Watershed Protection all recommend against having a boat pump out facility installed on Lady Bird Lake, due to flooding concerns.

The boats on Lady Bird Lake have been removing waste through pumping into a waste hauler truck and the waste is then taken to a wastewater treatment plant. This is a standard process throughout the City, but is not allowed under the existing Watercraft and Marinas ordinance. Thus the existing ordinance has a Catch 22 when it comes to removing waste from the excursion boats. State law, however, does permit pump and haul, so the boats are operating within state law.

When SSD examined the ordinance and discovered these flaws, it was determined that immediate enforcement of the ordinance, and the resulting shutdown of some two-thirds of the boats -- affecting jobs, revenue and lake access to many residents and visitors -- was not a prudent course of action. Thus the code rewrite and stakeholder process was begun.

Other problems with the existing ordinance

SSD also found other problems with the existing ordinance. Those include:

1. The authority to enforce existing rules currently resides with the Health Department, not Austin Water.
2. There is no definition of "Excursion Boat" in Chapter 6-5.
3. Requirements for gender-specific restrooms in recently adopted Chapter 4 -16 conflicts with Sections 6-5-34 and 6-5-35.
4. Requires provision of toilets at all commercial marinas, parks and picnic areas, but prohibits use of temporary toilets at any marina. However, septic tanks and sewer connections may not be allowed at many marinas based on set-back requirements in the Land Development Code.
5. Includes right of entry for inspections, but does not establish an offense for unreasonably delaying or denying it. Makes access difficult.

SSD held its last stakeholder meeting on April 16, 2015, and will be completing the rewrite within the next month and begin the board and commission process and then bring the ordinance to Council.

While, along with other operators, Lone Star is not in compliance with the Watercraft and Marinas ordinance, as described above, Lone Star is in compliance with all other terms of its contract.

Reporting Issuing

After an Open Records request, deficiencies in record keeping were discovered and addressed, as follows.

- ✓ Lone Star River Boats Inc. and Capital Cruises engaged the same permitted hauler to remove sewage from their boats. The hauler did not create or provide documentation to Lone Star River Boats, Inc. for seven out of eight invoiced sewage removal events in 2014 as required by State and Local law.
 - ✓ Austin Water issued a Notice of Violation to the hauler for not properly documenting sewage removal from Lone Star Riverboats, Inc. for those seven out of eight invoiced sewage removal events in 2014.
 - ✓ Austin Water issued a Warning to both vendors which specifically stated the legal responsibility waste generators have to retain manifests proving proper disposal.
 - ✓ Lone Star Riverboats, Inc. has subsequently complied with this requirement by providing required documentation on April 1, 2015.
- No Evidence of any Water Quality violations has been identified related to Lone Star Riverboats Inc.

Recommendations

1. Staff will extend the current Lone Star contract for 60 days.
2. Staff will request that Council, at its April 23, 2015 meeting, postpone approval of the authorization of a new contract with Lone Star Riverboat, Inc. to provide boat excursion services on Lady Bird Lake to the May 21, 2015 agenda.
3. Staff will post approval of an ordinance amending the City Code to delete Sections 6-5-33(A), 6-5-34, and 6-5-35 on the May 7 agenda. This will allow boats to continue to operate until a new ordinance is adopted.
4. Staff will continue to complete the code rewrite of the Watercraft and Marinas Ordinance, Austin City Code, Chapter 6-5, Article 3 and bring a final ordinance to Council for approval with a 180 day effective date, which will allow excursion boat operators a reasonable time to be in compliance with any new requirements.

Staff is developing the action items that would be required for these recommendations and will return to the Council.