



Zero Waste Advisory Commission

Regular Meeting Minutes October 10, 2018

The Zero Waste Advisory Commission convened in a regular meeting on October 10, 2018, in Council Chambers in City Hall in Austin, Texas. The following are the meeting highlights. For detailed information, please visit http://www.austintexas.gov/cityclerk/boards_commissions/meetings/97_1.htm.

CALL TO ORDER

Chair Acuna called the Commission Meeting to order at 6:35 p.m.

Board Members in Attendance: Gerry Acuna, Cathy Gattuso, Amanda Masino, Joshua Blaine, Melissa Rothrock, Jonathan Barona, Heather-Nicole Hoffman, Blythe Christoppher de Orive (Left dais at 8:48 p.m.), Phil Howry. Kaiba White joined the dais at 6:39 p.m.

Absent are: Kendra Bones.

Staff in attendance: Sam Angoori, Tammie Williamson, Richard McHale, Gabriel Gonzalez, Armelle Ouedraogo, Gena McKinley, Woody Raine, Jason McCombs, Ron Romero, Amy Slagle, Elizabeth Flores

1. CITIZEN COMMUNICATION: GENERAL

Item 1

No citizens signed up to speak.

2. APPROVAL OF AUGUST 8, 2018 MEETING MINUTES

Item 2

Commissioner Howry proposes a friendly amendment to change “sales tax” to “State sales tax revenue” in item 6C. A motion to approve the August 8, 2018 meeting minutes was made by Chair Acuna. Commissioner Hoffman moved for approval, Commissioner Howry seconded on an 8-0-1; abstention made by Commissioner Barona.

ITEMS FOR DISCUSSION AND POSSIBLE ACTION

4. NEW BUSINESS

4a. Joint Sustainability Committee

Commissioner Rothrock volunteers for the Joint Sustainability Committee. Chair Acuna moves for approval, Commissioner Gattuso seconds on 9-0-0, unanimous vote. Commissioner White and Bones absent.

3. OLD BUSINESS

3a. Council Working Group – Progress Report on the Parks Recycling Task Force

Andrew Dobbs, TCE, expressed his gratitude to the Commissioners and Austin Resource Recovery (ARR) and Parks and Recreation staff who participated in helping get this done.

Commissioner White reports that Council had not yet approved the budget and \$2 million dollars was allocated to 2019 for recycling to be added to Park and Recreation facilities. Commissioner White also stated an RFP will be needed to have a recycling contract for this project. Commissioner White noted that it is a 2-year implementation plan and that there is no funding for staff to assist, but she believes that ARR staff will be assisting.

4. NEW BUSINESS

4b. Landfill Gas Collection RCA

Richard McHale, ARR, seeking ZWAC recommendation to authorize a contract with Conrad Schmitt which will provide landfill gas collection services, control system operation maintenance, and repair services. A 5-year contract for a total of \$1 million. Commissioner Howry asks Mr. McHale if the contract was competed for; Mr. McHale responds that there were two bids.

Chair Acuna entertains a motion. Commissioner Masino moves for approval, Commissioner White seconds. Vote is 8-1-1. Against vote made by Commissioner Howry; and an Abstention vote made by Commissioner Barona. Commissioner Bones absent.

4c. Hornsby Bend Bio-Solids RCA

Andrew Bosinger, Synagro and Adam Gregory, TDS chose to speak on this topic.

Danielle Lord, Austin Water Utility (AWU), and Judy Musgrove, AWU, announce they are here to answer any Commissioner questions.

Andrew Bosinger, Synagro, announces that he is here to answer any questions because it has been a long procurement. Mr. Bosinger noted that it was decided that this contract was done as an IFB after two failed procurements.

Commissioner Gattuso asked Mr. Bosinger how this proposal is different from the last two. Mr. Bosinger, said from [Synagro's] perspective that it was an Invitation For Bid (IFB) which removes evaluations of subjectivity. The requirements of the contract put the requirements of the contract into the IFB.

Commissioner Gattuso asked if there were any differences in the new proposals. Mr. Bosinger said that the new procurement process included more specificities but it was not different from what was being proposed by Synagro.

Chair Acuna comments that one glaring difference is the price. Mr. Bosinger said that since [Synagro's] numbers became public they had to find ways to compete.

Chair Acuna adds that he hoped a local vendor would be working with Synagro staff. Mr. Bosinger said that there are many subcontractors that work with [Synagro].

Adam Gregory, TDS, chose to speak on this topic. Mr. Gregory is asking the Commission to not support staff's recommendation. Mr. Gregory explains to the Commissioners that the first solicitation was cancelled due to staff inadvertently violating the Anti-Lobby Ordinance, and Council absolved past violations. Mr. Gregory states that first solicitation was cancelled due to staff inadvertently violating the Anti-Lobby Ordinance. Mr. Gregory adds that this has come down to a choice between TLM (a TDS Subsidiary) and Synagro.

Mr. Gregory says that TLM was the lowest bid but staff still recommended Synagro. After TLM protested, the independent hearing examiner suggested that a new board of evaluators reevaluate the proposal, but Staff rejected that recommendation. Mr. Gregory said the second proposal was cancelled because City Staff inadvertently released TLM's proposal to Synagro. Mr. Gregory stated that Synagro won the IFB because they knew TLM's pricing.

Mr. Gregory conveyed to the Commissioners that he feels that staff has been dedicated to making sure Synagro gets this contract. Mr. Gregory states that there are people in jail because of [Synagro's] lobbying tactics, and [Synagro] lost contracts because of their lobbying tactics. Mr. Gregory proposes that the only way for the situation to be resolved is to recommend that Council negotiate with TLM to provide one of their very lowest cost offers to the City.

Commissioner White asked staff about the issue of giving away [TLM's] contract. Danielle Lord, AWU, responded that the Purchasing Office wasn't there to respond, but it was found by the Purchasing Office that TLM's protest had no reason to hold up or delay the process.

Commissioner White asks about giving away TLM's proposal to Synagro. Ms. Lord says it was public knowledge that it was inadvertently released.

Commissioner Orive asked if it was against the law to give away a competing proposal to another company. Ms. Lord said she isn't lawyer so she can't speak to that, but no pages were marked as confidential.

Commissioner Gattuso asks Mr. Bosinger how the current proposal is different from the last two proposals. Mr. Bosinger explains that it is an Invitation For Bid (IFB) and the requirements were listed in the contract.

Commissioner White asks staff why the TLM contract was given away. Ms. Lord states that staff looked at the protest by TLM and advised that there was no reason to hold up the process, but cannot speak to the specifics that happened, but it was public knowledge that the contract was inadvertently released. Commissioner Orive inquired that since it was a RFP, it was not against the law to release the contract to a competitor. Ms. Lord responded that she does not know the law to give a proper response, but there were no pages marked as confidential.

Nikelle Meade, Synagro, said that something improper happened with regard to the IFB process and somehow [TLM's] price was released before the bid opening, Ms. Meade claims that did not happen. She states that in a public information request, part of their proposal from an old RFP was released to [Synagro]. Ms. Meade also said that the price in old RFP proposal was not the price used in the IFB. Ms. Meade said that the IFB process was done because of the issues faced with the RFP.

Adam Gregory, TDS, said that [Ms. Meade] was wrong in stating that [TLM] didn't respond with the same amount in the IFB as the RFP; the pricing was the same. Mr. Gregory said the RFP was an entirely new process which involved the cancellation of Dillo Dirt and had no requirements for the processing standard of the material. Mr. Gregory said that as they've competed [Synagro's] price has gone down as the requirements have become more stringent. Mr. Gregory repeated that there are people in jail of [Synagro's] lobbying practices. Mr. Gregory added that the process should be thrown out completely and the only thing to save it is work with [TLM's] low cost bid. Mr. Gregory said that the work would be done for 25% of the cost.

Commissioner White asked to see if the bid was the exact cost as the proposal that was submitted. Ms. Lord said that the answer could not be given because it was cancelled, but the current price was released and published. Mr. Gregory interjected and said the price was fourteen dollars and fifty-three cents. Ms. Lord added that the last solicitation was cancelled and was restarted as a competitive IFB from multiple competitors.

Commissioner White motions that the commission recommends to Council to hold off on moving forward with the contract until the body can receive more information from purchasing by having them attend the meeting to answer these question to gain understanding. Commissioner Blaine seconds. Commissioner Gattuso offers a friendly amendment: wants information as to how the cost of grinding fits in.

Commissioner Hoffman asked if TDS, TLM had the specifics of what was required and if additional services for grinding in the bid proposal were included. Mr. Gregory answered that it allowed for proposing additional services, but they wouldn't consider it. Commissioner Hoffman asked if [TDS, TLM] have it as a line item so the prices could be compared without grinding. Mr. Gregory said it was a line item.

Ms. Lord said that there was an apples to apples comparison then there was an alternative bid that had the grinding services that TLM did provide both and that is what is shown on the bid tab.

Chair Acuna asked staff to explain the importance of the document being placed in front of Council is.

Ms. Musgrove says that contract needs to be in place because the funds are running out from the current contract. The funds for the contract will run out by the end of October.

Commissioner Blaine commented that it is hard for him to have faith in this process because of the situation around releasing of the pricing. Ms. Lord said that both solicitations were different. She explained that staff spent time trying to incorporate exactly what the requirement would be for all the control plans, sampling plans, emergency conditions, and taking into consideration the Work Group's recommendations.

Mr. Bosinger further commented that he not aware of what [TLM's] pricing was. Mr. Bosinger noted that the IFB process has been open, fair, honest, and equitable.

Commissioner White asked Mr. Bosinger if it no one at the [Synagro] knew what the price was, or if [Mr. Bosinger] personally didn't know what the price was. Mr. Bosinger replied that if anyone at the company knew about it, it was him. Commissioner White asked if he received the document. Mr. Bosinger said he's never seen it.

Mr. Gregory spoke on cancellation of the proposal due to the price releasing to Synagro. Ms. Lord responded that Synagro's proposal was made public and a public information request could be made after the solicitation was closed.

Micah King, Husch Blackwell on behalf of Synagro, commented that he received the records that have been talked about were sent to his paralegal. Mr. King further commented that the information was released in response to open records request 42083.

Chair Acuna entertains the vote, the motion, and the friendly amendment that occurred earlier.

Commissioner White motions that the commission recommends to Council to hold off on moving forward with the contract until the commissioners can receive more information from purchasing by having them attend the meeting to answer these question to gain understanding. Commissioner Blaine seconds. Commissioner Gattuso offers a friendly amendment: wants information as to how the cost of grinding fits in to the contract. Vote: 8-0-2; Abstentions made by Commissioners Barona and Hoffman. Commissioner Bones absent.

4d. Landfill Criteria Matrix RCA

Marisa Perales, FPAR; Lauren Ice, District 1 Citizen; Roy Waley, Austin Sierra Club; Melanie McFee, Barr Mansion; Steve Shannon, Waste Connection; Gary Newton, TDS; Bob Gregory, TDS; Adam Gregory, TDS; Robert Kier, Robert Keir Consulting; Andrew Dobbs, TCE; Rajiv Patel, TDS/Greenthink; chose to speak on this topic.

Sam Angoori, ARR, said that drafted documents were sent to stakeholders on August 13th, and staff received some comments. Mr. Angoori confirmed that the staff recommendation was drafted after they have received and reviewed the stakeholder option. The stakeholder option was reviewed by several departments and the law department. The document was then sent to stakeholders for review with a two week deadline for August 13th. Mr. Angoori discussed several options: Stakeholder Version, City Staff recommendation, a combination of the two matrices, take no action, or go for a bid. This criteria is going to Council on November 15th.

Staff advised the landfill matrix will be sent to City Council for review and approval on November 15th 2018 (This matrix is a response to a policy question and when it gets approved by council, it will become a policy). Staff is not responsible for making decision on this matrix and Council is the only one to make the final decision on the recommendations.

Chair Acuna confirms the two items to address are either the Stakeholder or Staff matrix. Chair Acuna also says a combination or to do nothing are also options.

Melanie McFee voiced her concerns about the Waste Management landfill.

Roy Waley voiced his concerns about expanding the landfill and the problems that come with it.

Lauren Ice urged the commissioners to vote against both matrices. Her concerns about the proposed matrices will drive more waste to the Waste Management landfill contrary to the goals of Zero Waste. She also said she was not happy about the lack of community outreach by ARR.

Marisa Perales urged to vote down both matrices. She said she is concerned with both matrices as it relates to the stakeholder process and the efforts that were made to ensure that residents that were impacted the most were included in the stakeholder process.

Andrew Dobbs said that both matrices should be voted against due to the harm that it poses to the City of Austin and how it is not considerate of the criteria that was originally set.

Adam Gregory recommended that the proposed landfill Criteria Matrix be rejected. He proclaimed that the process will expand several landfills. Mr. Gregory said that the current proposal is not a fair process and has several flaws.

Rajiv Patel talked about the flaws of the matrices as it relates to the quantification of emissions that is used to determine the landfill's minimizing of the generation of landfill gas.

Gary Newton opposed both landfill criteria matrices because it relies on TCEQ compliance ratings. Mr. Newton said that this matrix makes it too easy to gain approval of a facility without a true environmental site assessment.

Bob Kier voiced his concerns about the Austin Community Landfill. Mr. Kier said that the monitoring well reports showed contaminations at each well.

Bob Gregory spoke on the subject and his concerns focused around the idea that all landfills are not the same. Mr. Gregory urged the Commission to say no to this landfill criteria matrix.

Steve Shannon said that the City of Austin benefits from having multiple waste facilities in different geographic locations. He also mentioned that the matrix doesn't expand anyone's landfill or extend the life; it determines if a facility is eligible to receive City of Austin controlled waste.

Commissioner Barona inquired on why there are things omitted from the staff version that are on the stakeholder version; specifically items in the community impact and social equity sections around community relations and the history of opposition to existing landfill, and how the current gas calculation benefits all the landfills?

Mr. McHale, ARR, responded that the community impact and social equity portions were moved from the stakeholder version based on the advice of the COA Legal Staff. He added that for the gas calculations, there was not a consensus and there were no waste in place to normalize the numbers. Mr. McHale said there were some recommendations to include the numbers so they were included, but it was not originally put in the criteria, but believes that some calculations are double counted.

Commissioner Blaine was alarmed that the main points of the community concerns were omitted from the matrix. He said there is nothing in the legal memorandum that explains why hazardous waste, history of city opposition, and demographics of landfill were left out.

Commissioner Masino would like to speak to Mr. McHale's point that honors what staff has done but in a way that reflects what the commission's intention originally was. She mentioned that if part of the diversity practices are to publicize your employment data, the commission wants to incentivize that. Commissioner Masino is skeptical of the legal feedback. She argued that what the commission is learning is that a matrix, a scoring system, is not the way to add evaluations of hazard, impact, social equity and community impact. Commissioner Masino added that maybe it's appropriate to create a guidance document that is used when evaluating and not a score.

Commissioner Gattuso had two comments: the commissioner's first comment would be to say more about the matrix needs to be broadened enough to reflect the cities policies and each item on the matrix should be at a minimum be able to be linked to a certain City policy as in zero waste, fiscal responsibility, sustainability, social justice, climate change, etc. Commissioner Gattuso commented that there should also be points assigned to entities that have previously had violations like environmental regulations or potential exposure of the city to properly identify and confirm issues of environmental regulations. The other topic is on the 1999 Carter-Burgess report; she asked if any of those recommendations were followed through.

Mr. McHale said ARR did not look at any recommendations from the Carter-Burgess report; ARR strictly looked at working on a tool to identify the landfill's criteria. ARR also did not look at issues at landfills, it was not part of the scope. The scope was to merely develop the tool.

Commissioner Gattuso added that the commission is looking at a landfill that had a very negative critique and so she was wondering why we're wasting city money and this commission's energy on Landfill Criteria Matrix.

Mr. McHale added that ARR was given a task by council to develop a criteria. Commissioner Gattuso wants to go on the record that in 1999 the City of Austin paid for the Carter-Burgess report and they had a number of recommendations and she doubts if any of them were followed in this Landfill matrix process. She also mentioned that if the City gets involved in the landfill, even though the city is not going to put the municipal waste in the landfill, it will be in the vicinity of the landfill, and if there's ever a superfund that's going to happen there, the City will be liable for the cleanup which would be about \$20 million. Mr. McHale replied that it would be hard to estimate. He also mentioned if an industrial waste unit ever become a superfund site, the City has never put waste into that area so the City would not be a potential responsible party. Commissioner Gattuso understood that if this was given to Waste Management, then the City would be financially irresponsible. Mr. McHale reiterated that the City would not be a potential responsible party if the industrial waste unit becomes a superfund site, the City never deposited waste at that site. Commissioner Gattuso added that if we do deposit it in the future, what will be the implication?

Mr. McHale responded that it is a separate unit, and ARR would never be depositing in that area. He added that the methodology is for the interested parties to determine who the responsible parties are, and if there is material leaking from that industrial waste unit, there is no documentation that the City put waste in that area. Mr. McHale further explained that if the regular working face cell had a catastrophic leak and became its own superfund site, and the City deposited waste there, then the City could become a potential responsible party. Commissioner Gattuso wanted to go on record that she is not comfortable with either matrix at this point.

Commissioner Blaine said that he heard differently that there are some viable legal arguments for the Cities' responsibility should something go awry. He added that there are conversations going on about two different things, and Mr. McHale is focused on the task he was given. Commissioner Blaine explained the reason for the council working group was because there were conversations on the Austin Community Landfill and whether waste should go there. Commissioner Blaine thought that the strategy was to develop a matrix, but the purpose and need was to have these conversations.

Chair Acuna entertains a motion to extend the meeting by 30 minutes. Commissioner Hoffman moves to extend meeting for another 30 minutes, Commissioner Blaine seconds on an 8-1 vote. Against vote made by Commissioner White.

Commissioner Howry said that he prefers the commission votes it all down. He added that this is a very sad situation for him to listen to this, and see a City staff that has chosen form over function. He further said that City staff has chased their tail here and has done nothing. Commissioner Howry said that the commission has no results here so he chooses to vote to throw it out. He thinks that this criteria was a wasted effort, and the commission should throw it away.

Commissioner White thanked staff for all the time put into this, and the time put in by the commissioners. She added that the matrix hasn't achieved the overall goal and it doesn't address community concerns. She is not sure what we would be accomplishing by adopting it. She believes there are some good in it; particularly around the greenhouse gas and hopes the commission can come back to that topic on its own.

Commissioner Blaine moves to reject or not approve the matrix. Seconded by Commissioner Howry.

Commissioner Masino wants to make friendly amendment along with rejecting the matrix for being inadequate. She invites council to look at the work that was done and inform a future process for evaluating. She proposes to use both documents to inform a future non-matrix process in evaluating landfills.

Commissioner Blaine encourages council to return to the initial intent, and not just reject the whole project. He states that the matrix is not accomplishing the purpose which was to think critically of where the City is sending their waste.

Commissioner White believes this matrix doesn't address the concerns or put the issue to rest. She is worried the future process would take up more staff time and commission's time. Commissioner White is against the friendly amendment and Commissioner Masino says she can withdraw her amendment. Commissioner Masino advised commissioners to communicate with their individual council members if there is significant work here that can be informative.

Commissioner Gattuso suggest that the commissioners talk about the history that has been done on the landfill.

Commissioner Barona added that the matrix is a tool that creates an objective criteria and it's missing the community aspect and a lot of the things that the commission mentioned was important, but there is a second concept that they don't want to use one specific landfill. He believes there are two different conversations here. He questioned why we are trying to solve a problem with a specific landfill when staff has an objective tool that can be used to evaluate criteria?

Chair Acuna said that in a perfect world we would be at a 50% diversion as the master plan suggested we would be today, minimizing the need for landfills. He added that the City has exploded in growth, and going from north Austin to south Austin is challenging and an expensive process. Chair Acuna said that there is a need to figure out the zero waste diversion goal or figure out how we can more efficiently and responsibly handle our disposal needs.

Chair Acuna entertains a motion to reject everything. Commissioner Blaine moves to reject (not approve) all the matrices. Commissioner Howry seconds. Vote: 6-1-2. Commissioners: Howry, Blaine, Rothrock, Gattuso, Masino and White vote in favor of the motion. Commissioner Hoffman votes against the motion. Chair Acuna and Commissioner Barona abstain. Commissioner Orive left the dais at 8:48 pm. Commissioner Bones absent.

ITEMS FOR DISCUSSION AND POSSIBLE ACTION

5. STAFF BRIEFINGS

5a. Director's Report

Sam Angoori, ARR, suggests that the Director's Report move to November. Chair Acuna decides to move the Director's Report to November along with the Affordability Study.

6. FUTURE AGENDA ITEMS

Affordability Study.

ADJOURNMENT A motion to adjourn the meeting was made by Commissioner Howry seconded by Commissioner White on a unanimous decision. The meeting was adjourned by Chair Acuna at 10:18 pm to no objection (Unanimous).