



City of Davis

Utility Rate Advisory Commission Minutes
Community Chambers, 23 Russell Boulevard, Davis CA 95616
Monday, April 5, 2018
7:00 P.M.

Please Note Special Meeting Date and Time

Commissioner Members Present: Gerry Braun (Chair), Olof Bystrom, Jacques Franco, Lorenzo Kristov, Richard McCann, Elaine Roberts-Musser, Johannes Troost

Absent: None

Staff Present: Stan Gryczko, Assistant Public Works Director

Council Liaison Present: Lucas Frerichs

Additional Attending: Richard Tsai, Environmental Resources Manager
Adrienne Heinig, Administrative Analyst
Linda Deos, Dan Carson, Matt Williams, Mary Jo Bryan

1. Call to Order and Roll Call

Meeting was called to order by Chairperson Braun at 7:02pm.

2. Approval of Agenda

J Franco moved to approve the agenda, seconded by J Troost. The motion passed as follows:

Ayes: Braun, Bystrom, Franco, Kristov, McCann, Roberts-Musser, Troost

Noes:

Absent:

3. Public Comment

None.

4. Regular Items

A. Davis Waste Removal Transfer Agreement and Contract Amendment.

S Gryczko provided a brief introduction to the documents under review, the staff report for the City Council on the Davis Waste Removal (DWR) franchise assignment (transfer) agreement, and the amendment to the 2015 Solid Waste Service contract. He outlined the request for the review of the transfer agreement and the amendment to provide feedback and suggested modifications for improvements. G Braun requested that the discussion follow a round-table format, where each Commissioner would consider his or her highest

priority question, and each take a turn with the highest priority questions around the table. The first round of questions he requested to be clarifying questions, with follow-up questions as the next round. He thanked the Task Group, of R McCann, J Franco and L Kristov, for their work of reporting the Commission's recommendations to the Council during the closed session on Tuesday evening, and Matt Williams, as an ex-officio member, for his contributions to the Task Group.

S Gryczko outlined the packet item for council, released earlier than the other items for review by the URAC for feedback on the transfer agreement and contract amendment. He stated any recommendations or information from the current meeting would be included with the packet going to Council as an attachment.

Discussion began with questions from the Commission to staff. When asked about the documentation related to the sale that supports the city's decision, staff responded the matter was still under legal review. The subsequent questions and responses are grouped by topic below, followed by public comment on the item and a summary of the motions and Commission discussion.

Rate Payer Impacts

In response to a question about previous rate increases by Recology in other jurisdictions, S Gryczko provided a study conducted by the consultant R3, *Review of Assignment of TRG Agreements to Recology Sonoma Marin*, available online, which outlined the transfer of services in the counties of Marin and Sonoma, and some of the reasons behind those rate increases. Staff provided additional information on the contractual terms for rate increases in Davis (as written in the contract, also online), and outlined that rate payers are paying for the cost of service and outreach programs. By the terms of the contract, which is valid through the year 2028, the current contract rates prevail. In addition, any rate adjustments must be calculated using methodologies adjusted by rate indexes that limit profit margins to no more than 12%. The actual cost to Recology of the DWR transfer cannot be included in any rates. R Tsai also provided a breakdown of "extraordinary rate increases" - requested by the contractor due to unforeseen major events, such as dramatic crude oil price changes, increases in labor rates due to unionizing, etc.

Ownership of Materials Recovery Facility (MRF)

Item 7 of the contract amendment, specifically Section 20 - Relocation of Contractor's Facility, generated significant discussion. Lead by comments from R McCann, concern was expressed that the intent of the current language presented in the amendment, specifically in the sentence: *For a period of two (2) years from the assignment of this Agreement to Recology Davis, CONTRACTOR and CITY shall cooperate in good faith to explore the feasibility of relocating the facilities currently located on the Property to one or more other suitable sites to be owned by CONTRACTOR [underline added for minutes]* is unclear. Based on the understanding of some commissioners, the language reads that the city would be prohibited to pursue joint ownership of the MRF, and could be interpreted that Recology would own a MRF built by the city (should the city pursue building its own facility). R McCann also pointed out that the language in the staff report presented to Council also refers to Recology retaining ownership of the MRF, without the specification of 'existing' or 'new.' S Gryczko outlined the intent: if the City decided after the two-year process to move the existing MRF, Recology would still own the 2nd Street site. The city would build a MRF, and Recology would work with staff to move once the facility is built, if it is within

the current contract term. If Recology relocates the MRF at the city's request, Recology must be made whole regarding the cost to relocate. If the construction is outside of the contract terms, the city can issue an RFP for Solid Waste services, designating the new MRF. The city would own the new MRF.

2-Year Study/Relocation of MRF

In response to questions about the two-year process to study the move of the MRF, staff explained that the type of work needed to adequately study moving something like a MRF would take time, and two years has been estimated as enough time. Councilmember Frerichs offered his perspective, that the work would be similar to the years-long planning processes undertaken for large infrastructure or multi-jurisdictional projects, such as the Surface Water project and VCEA. He emphasized the importance of not just "diving in," rather the need to establish a period to perform rate analyses with the URAC, Finance and Budget Commission (FBC) and Natural Resources Commission (NRC), to best inform the direction the City Council takes. The method had been successful with the other projects.

Members of the commission continued to express concern about the majority of the process for the sale being subject to closed session, and asked for clarifications on what was, and was not reviewed by staff during the decision-making process. S Gryczko reiterated that the intent moving forward would be to involve the URAC in the formation of the city's Solid Waste plan for the future, and staff would look to the commission to establish the guiding principles for the effort. G Braun requested the charge from Council be more explicit in terms of expected recommendations.

Artist in Residence Program

Returning to the discussion of the contract amendment and transfer agreement, the Commission reviewed the language of the Artist in Residence Program to be offered by Recology. E Roberts-Musser stated that the ambiguous nature of the language for the program could be a set up for failure, for example, no minimum budget was specified. There was general discussion around tightening up the language and requiring a minimum budget. *Further discussion on the Artist in Residence Program is included on page 6.*

Current State of the Solid Waste Fund

When asked by E Roberts-Musser if there was direction on whether or not the city could use surplus funds from one utility to purchase capital for another, S Gryczko replied that the City's attorney had not provided that direction. He also qualified that the funds are not intended for long-term loans, rather short-term stop-gap measures. J Franco provided the example of the Solid Waste fund, currently running in deficit, would be covered by the Wastewater or Water utility fund. S Gryczko replied that although no loan was currently in place, the Solid Waste fund would indeed need a loan to make it through the year.

The item was opened for public comment. The following comments were received:

- Mary Jo Bryan - Stated that the meeting helped her understand the DWR franchise transfer process and she found it to be very helpful. She said the commission was doing a good job.
- Matt Williams - Requested the Commission put the questions to the table. He expressed concern that the consultant used by the city during the process was being kept a secret, and reiterated that the city economic analysis of the 2nd Street site and the on-going contract is not, in his view, proprietary. He requested the

information regarding the impacts on ratepayers could be released, and the information that was proprietary regarding DWR or Recology could be redacted.

Returning to the Commission discussion, O Bystrom summarized his thoughts on the issue by agreeing with the public comment that the information being discussed in private, and kept confidential should not be secret, and releasing the information would be helpful and would build trust. He expressed that it was difficult to be confident that due diligence was done, and the concerns expressed at the Commission special meeting on Monday, April 2 still stood. He requested that the Commission reiterate the previous motion recommending Council defer action on the transfer until after a thorough comparative analysis by an independent third party and public discussion of the benefits and costs. The Commission discussed concerns that the questions directed to staff in early March were not addressed, and no additional information was provided as requested.

E Roberts-Musser expressed her concerns regarding the motion from the meeting on April 2, as she was absent from that meeting. She stated she was not in support of the motion. She expressed the view that the staff report did say the city hired a consultant, and a property appraiser, and had discussed the matter at length in closed session. She stated that she was not interested in hiring another consultant to revisit what the City Council had already decided.

The Commission discussed the process of providing recommendations to Council, and decided to separate out each motion for clarity. Each motion, and associated public comment and discussion, are listed in order below:

First Motion

O Bystrom moved, seconded by J Franco, to reiterate the recommendation the URAC concluded with at the April 2, 2018 special meeting.

“The URAC recommends that Council defer action on the Davis Waste Removal transfer, and undertake a thorough comparative analysis by an independent third party and public discussion of the benefits and costs of a city acquisition of the DWR property versus the current plan to transfer the property and business to Recology, including the three sources of ratepayer value identified by the URAC task group.”

Prior to the vote, the motion was opened for public comment. The following comment was received:

- Matt Williams: He stated that E Roberts-Musser brought up a good point, that the staff report does say that the city brought a consultant in, that an analysis was done, and decisions were made - however, he expressed concern that the city was not willing to say who the consultant was, and therefore could not assess if the consultant was independent, or good, and he praised the motion for being confrontational, not just flowery language.

The motion passed by the following vote:

Ayes: Braun, Bystrom, Franco, Kristov, McCann, Troost

Noes: Roberts-Musser

Absent:

Second Motion

R McCann moved, seconded by J Troost, that in the staff report, on page 6, bullet 5, the sentence that says “Recology would retain ownership of...,” replace “MRF” with “existing facility”

In the franchise agreement, in Section 20, Item 7, strike the phrase “to be owned by contractor” from first sentence.

No public comment was received on the motion. Commission discussion prior to the vote included clarification of whether or not future state legislation would require the MRF to be relocated (staff is unaware of any pending legislation), and further discussion of the intent of the language.

After the discussion, the motion passed by the following vote:

Ayes: Braun, Franco, Kristov, McCann, Roberts-Musser, Troost

Noes:

Absent:

Abstain: Bystrom

Third Motion

E Roberts-Musser moved, seconded by O Bystrom, to modify the amendment language in regards to the Artist in Residence program to have more specifics, such as a minimum budget. In addition, in the last paragraph of Item #3 on page 5, strike “wind down program...” remaining in the sentence and replace with “continue program with existing budget.”

No public comment was received on the motion. Commission discussion prior the vote included concern about the additional expense on top of the rates, the public/private partnership, and the concept of the program (scavenging recyclables for art pieces).

After the discussion, the motion passed by the following vote:

Ayes: Braun, McCann, Roberts-Musser, Troost

Noes: Bystrom, Franco, Kristov

Absent:

E Roberts-Musser left the meeting at 9:12pm.

Fourth Motion

G Braun moved, seconded by R McCann, the following:

- 1) URAC request that the second staff recommendation in the staff report clarify the City Council’s charge to the URAC and whether the term “work with” implies answering URAC’s relevant questions; and
- 2) The staff report be reworked to refer to the exact wording of the URAC, rather than briefly summarizing URAC recommendations; and
- 3) Staff ensures that Council refers to the amended staff report during its deliberations.

No public comment was received on the motion, and there was limited Commission discussion. The motion passed by the following vote:

Ayes: Braun, Bystrom, Franco, Kristov, McCann, Troost

Noes:

Absent: Roberts-Musser

Fifth Motion/Artist in Residence Program

After the vote on the fourth motion, the Commission discussion returned to the Artist in Residence Program offered by Recology.

J Troost asked if the money should be spent on existing city staff who work with art programs. L Kristov stated that the program was not something URAC would recommend, as it was an additional profit center for Recology.

O Bystrom moved, seconded by J Franco, to clarify the amendment language that no city funds or ratepayer money be used as part of the Artist in Residence program.

No public comment was received on the motion. Commission discussion prior to the vote included the intent of the program (to provide access to the recyclables that citizens otherwise would not have access to), and the confusion around the program caused by unclear language in the amendment. Discussion of the Commission included firm support of the arts, and the City's art programs, but expressed specific concern around using ratepayer funds for the program. There was also discussion around revenue audits, and who sees the contractor revenue data.

After the discussion, the motion passed by the following vote:

Ayes: Braun, Bystrom, Franco, Kristov, McCann, Troost

Noes:

Absent: Roberts-Musser

Closing

In closing the discussion on the item, G Braun reminded the Commission on the regular April meeting, to be held in a few weeks. He stated that he realized that the whole exercise and transfer process had been a huge effort, which was additional to the regular work and unplanned, and that staff and the City Council have had to accommodate the work, in addition to routine tasks. He underscored that it was not a perfect process. He said the take home is the Commission, as a body, have taken their job seriously, their responsibility to ratepayers and the Council, and have been frustrated by that same sense of responsibility, because of the disconnect. He continued that the Commission are advisors, and need the authority to ask questions and get answers, as well as assurance that the Commission will receive answers, or, he voiced concern that the Commission could "drift away." He said there would be an uphill period ahead to rebuild trust, and the Commission must be assured that they will have access to the information necessary to do the job, otherwise, he said, he did not know if the Commission could continue. He requested the Commission meet with Council about the charge, and what is needed to complete the work, before going down the road, to ensure that things will be different in the future.

There was extensive discussion on the breakdowns in the process, and the need to work together for the betterment of the City Council, staff and citizens. O Bystrom echoed G Braun's statements, and stated that in his opinion, the discussion was necessary with the City Council because the Commission wants to be relevant. In his opinion, it did not matter if the Council takes the advice of the Commission, as long as the advice is taken seriously.

L Frerichs discussed the history of the Commission and underscored some of the challenges faced by the Commission, as well as the “messy” process of providing advice to Council. The Commission discussed the upcoming workplan, and if it would be possible to take a break and not hold another regular meeting until after the City Council and Commission could meet. There was concern that with the upcoming election, the ability to meet with the current Council was limited, and it would take time for the new Council to settle in before they would be able to meet and be brought up to speed.

The item was opened for public comment, and one comment was received:

- Matt Williams - He stated that as council was wrestling with the issue of the transfer, engaging a nameless consultant, with information all about the rates, the secrecy was not necessary, and reiterated that information consistent with the Commission’s charge shouldn’t be held in closed session. He concluded that transparency and openness are important, and the lesson could be implemented immediately.

Commission discussion returned to the path forward. S Gryczko stated that forming the strategy for the Solid Waste program moving forward would be a chance to rebuild. Commission consensus on meeting again in April was mixed: L Kristov stated that sooner action would be better; however, R McCann voiced that in his opinion, the Commission should skip the regular April meeting.

5. Adjourn

J Troost made a motion to adjourn the meeting, seconded by G Braun. The motion passed by the following votes and adjourned at 9:55pm:

Ayes: Braun, Bystrom, Franco, Kristov, McCann, Troost

Noes:

Absent: Roberts-Musser