



MIAMI BEACH

OFFICE OF THE CITY ATTORNEY

JOSE SMITH, CITY ATTORNEY

COMMISSION MEMORANDUM

TO: MAYOR MATTI HERRERA BOWER
MEMBERS OF THE CITY COMMISSION
CITY MANAGER JIMMY MORALES

FROM: JOSE SMITH
CITY ATTORNEY

DATE: MAY 8, 2013

SUBJECT: ORDINANCE AMENDING MIAMI BEACH CITY CODE CHAPTER 2, ARTICLE VII, DIVISION 2, ENTITLED "OFFICERS, EMPLOYEES AND AGENCY MEMBERS," BY AMENDING SECTION 2-450, ENTITLED "DISCLOSURE OF INTEREST IN/RELATIONSHIP WITH BUSINESS ENTITY," AND SECTION 2-458, ENTITLED "SUPPLEMENTAL ABSTENTION AND DISCLOSURE REQUIREMENTS," TO REQUIRE ADDITIONAL PUBLIC DISCLOSURE OF CONFLICTS/INTERESTS POSSESSED BY CITY OFFICERS AND EMPLOYEES VIA PUBLIC DISCLOSURE STATEMENTS; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

Pursuant to the request of City Commissioner Jerry Libbin, the attached Ordinance has been drafted amending portions of the City of Miami Beach's ethics regulations to provide for stricter voting conflict disclosure requirements. Specifically, City Code Sections 2-450, entitled "Disclosure of interest in/relationship with business entity," and 2-458, entitled "Supplemental abstention and disclosure requirements," currently provide for the filing of a *written* statement disclosing conflicts or relationships possessed by City officials in relationship to their official actions. The proposed Ordinance will require an additional disclosure by a public announcement made either: 1) at the City meeting immediately following the written disclosure (per Code section 2-450); or 2) immediately prior to a discussion of the agenda item (per Code section 2-458).

At the request of Commissioner Jerry Libbin, the attached Ordinance is submitted for the City Commission's referral to the Neighborhood/Community Affairs Committee for its review and recommendation.

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING MIAMI BEACH CITY CODE CHAPTER 2, ARTICLE VII, DIVISION 2, ENTITLED "OFFICERS, EMPLOYEES AND AGENCY MEMBERS," BY AMENDING SECTION 2-450, ENTITLED "DISCLOSURE OF INTEREST IN/RELATIONSHIP WITH BUSINESS ENTITY," AND SECTION 2-458, ENTITLED "SUPPLEMENTAL ABSTENTION AND DISCLOSURE REQUIREMENTS;" TO REQUIRE ADDITIONAL PUBLIC DISCLOSURE OF CONFLICTS/INTERESTS POSSESSED BY CITY OFFICERS AND EMPLOYEES VIA PUBLIC DISCLOSURE STATEMENTS; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1. That Miami Beach City Code Chapter 2, Article VII, Division 2 entitled "Officers, Employees and Agency Members", Sections 2-450 "Disclosure of Interest in/Relationship with Business Entity" and 2-458 "Supplemental Abstention and Disclosure Requirements" thereof, is hereby amended to read as follows:

Sec. 2-450. - Disclosure of interest in/relationship with business entity.

- (a) (1) If a public officer or employee of the city directly or indirectly (via participation in any type of business entity) has or holds any employment or contractual relationship with any other business entity which the officer or employee knows or with the exercise of reasonable care should know, is doing business with the city, and which relationship is otherwise permissible under state and county ethics law, he/she shall within 15 days of said knowledge file a sworn statement with the city clerk disclosing, (consistent with relevant privilege exemptions) the specific nature of employment and interest in such business entity as well as commencement date of the subject employment or contractual relationship and (if applicable) term of such relationship, and (in the case of a public officer) shall further publicly announce into the record the matters disclosed in said sworn statement at the City Commission meeting immediately following said filing. The city clerk shall publish logs on a quarterly basis reflecting the disclosure forms referenced herein.
- (2) If a member of the city commission establishes a business relationship with any person or business entity within 12 months after a city commission vote, which vote the city commission member knows directly benefits that person or business entity, the subject member of the city commission shall disclose any such business relationship in writing to the city clerk within 15 days after the business relationship is established, and shall further publicly announce into the record the matters contained in such written disclosure at the City Commission meeting immediately following said filing.

(b) Definitions.

Business entity means any corporation, partnership, limited partnership, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not.

Business relationship, for purposes of subsection (a)(2) above, shall mean that a member of the city commission has a relationship with a person or business entity wherein:

- (1) The person/business entity is a customer of the member of the city commission (or of his/her employer) and transacts more than \$10,000.00 of the business of the member of the city commission (or of his/her employer) in the 12-month period immediately after the subject vote; or
- (2) The member of the city commission (or his/her employer) is a customer of the person/business entity and transacts more than \$10,000.00 of the business of the person/business entity in the 12-month period immediately after the subject vote.
- (3) The \$10,000.00 threshold referenced hereinabove shall be adjusted annually to reflect increases in the Consumer Price Index.

Contractual relationship shall exclude situations in which a person's shareholder interest in a publicly traded company is less than five percent.

Public officer includes any person presently serving who has been elected or appointed to hold office in any agency.

(c) Regardless of the requirements of subsection (a) hereinabove, the validity of any action or determination of the city commission or city personnel, board or committee shall not be affected by the failure of any person to comply with said disclosure provisions.

Sec. 2-458. - Supplemental abstention and disclosure requirements.

In addition to those conflict of interest abstention and disclosure requirements currently required by state and/or county law, the following requirements shall also apply to public officers:

(a) *Conflicting relationships.*

- (1) A public officer with a conflict of interest on a particular matter is prohibited from participating in that matter. "Participation" means any attempt to influence the decision by oral or written communication, whether made by the officer or at the officer's direction.
- (2) Written disclosures of conflict of interest shall contain the full nature of the conflict at issue, including, but not limited to, names of individuals whose relationship with the officer results in the subject conflict, and all material facts relevant to the conflict

~~issue. The written memorandum disclosing conflict of interest shall be stated into the record before any discussion begins on the subject agenda item. This written disclosure memorandum must be filed regardless of whether the officer possessing the conflict was in attendance or not during consideration of the subject item the subject meeting. If in attendance at the subject meeting, the public officer shall also publicly announce into the meeting record immediately before discussion begins on the subject agenda item the nature of the officer's interest in the matter from which he is abstaining from participation.~~

(b) *Other relationships requiring disclosure.*

In those instances involving neither a legal conflict or declared appearance of conflict, each public officer shall further disclose by a written disclosure memorandum and public announcement the existence of any family and/or business relationship of which the public officer is aware, with any person or business entity who is directly benefited by the subject vote of the agency on which the public officer serves. This written disclosure memorandum must be filed regardless of whether the subject public officer was in attendance or not during consideration of the subject item. The public officer shall also publicly announce into the meeting record immediately before discussion begins on the subject agenda item the nature of the officer's subject family or business relationship.

(c) *{Duration of requirements.}* The disclosure requirements set forth in subsections (a)(2) and (b) above shall have continuing applicability for a period of up to 18 months after the subject relationship has ended.

(d) *Definitions.* As used in this section, the following definitions shall apply:

Agency shall mean any board, commission, committee or authority of the city, whether advisory, ad hoc or standing in nature

Business relationship (for purposes of subsection (b) above) shall mean the situation in which a public officer has a relationship with a person or business entity wherein:

(1) The person/business entity is a customer of the public officer (or of his/her employer) and transacts more than \$10,000.00 of the business of the public officer (or of his/her employer) in the 12-month period immediately preceding the subject vote; or

(2) The public officer is a customer of the person/business entity and transacts more than \$10,000.00 of the business of the person/business entity in the 12-month period immediately preceding the subject vote.

(3) The \$10,000.00 threshold referenced hereinabove shall be adjusted annually to reflect increases in the Consumer Price Index.

Family shall mean the spouse, domestic partner, parents, stepparents, in-laws, children, and stepchildren of the public officer.

Public officer includes any person presently serving who has been elected or appointed to hold office in any agency.

SECTION 2. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 3. SEVERABILITY.

If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

SECTION 4. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect the _____ day of _____, 2013.

PASSED and ADOPTED this _____ day of _____, 2013.

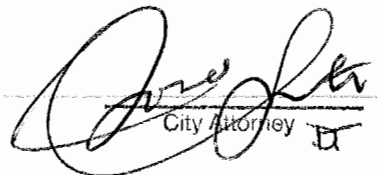
ATTEST:

Matti Herrera Bower
Mayor

Rafael E. Granado
City Clerk

(Sponsored by Commissioner Jerry Libbin)

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney
4/30/13
Date

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