

City of Miami Beach

F L O R I D A



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COMMISSION MEMORANDUM

DATE: JULY 31, 2002

TO: MAYOR DAVID DERMER
MEMBERS OF THE CITY COMMISSION

FROM: MURRAY DUBBIN
CITY ATTORNEY

JORGE M. GONZALEZ
CITY MANAGER

SECOND READING
PUBLIC HEARING

SUBJECT: AMENDMENT TO CITY'S "CONE OF SILENCE" ORDINANCE

On January 29, 2002, the Miami-Dade County Commission approved an amendment to the County's "Cone of Silence" Ordinance, with an effective date of February 8, 2002. The approved amendments to the County's Ordinance, which the City Manager and the City Attorney's Office herein recommend be incorporated as an amendment to the City's own "Cone of Silence" Ordinance, are as follows:

- (1) Extending the prohibition on oral communications regarding a particular RFP, RFQ, and bid for the solicitation of goods and services to those between a potential vendor, service provider, bidder, lobbyist or consultant, and the Mayor, Commissioners, and their respective staffs;
- (2) Extending the prohibition on oral communications regarding a particular RFP, RFQ, or bid between any administrative staff member, and any member of an evaluation and/or selection committee therefor;
- (3) Notwithstanding the prohibition in subsection (2) above, providing an exemption allowing the Manager and the chairperson of the evaluation and/or selection committee to communicate upon a particular evaluation and/or selection committee

recommendation, but only after the committee has submitted an award recommendation to the Manager and, provided should a change occur in the committee's recommendation, the content of the communication and of the correspondence change shall be described in writing and filed by the Manager with the City Clerk, and be included in any recommendation memorandum submitted by the Manager to the Commission;

- (4) Creating an exemption allowing communications regarding a particular RFP, RFQ, or bid between the Procurement Director (or his/her administrative staff responsible for administering the particular RFP, RFQ, or bid process) and a member of the evaluation/selection committee therefor, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding bid document;
- (5) Creating an exemption for duly noticed site visits to determine the competency of bidders regarding a particular bid, during the time period between the opening of the bids and the time the Manager makes his/her written recommendation to the Commission;
- (6) Creating an exemption for emergency procurement of goods or services; and
- (7) Creating an exemption to allow for communications regarding a particular RFP, RFQ, or bid between any person and the Procurement Director (or his or her administrative staff responsible for administering the bid process), provided the communication is limited to matters of process or procedure already contained in the bid documents.

The Miami-Dade County Commission on Ethics has consistently taken the position that the County's Ethics legislation, as codified in Section 2 of the Miami-Dade County Code, applies to municipal officers and employees, whether or not they chose to adopt corresponding legislation or not. However, one of the reasons that the City of Miami Beach adopted its own cone of silence legislation was not only to make it stricter in places where the County's ordinance is more lenient (which is legally permissible), but also, assuming the County ethics legislation only applies to municipal officers and employees, the enactment of the City's own cone of silence ordinance extended the prohibitions of the ordinance, and the sanctions therein, to potential vendors, service providers, bidders, lobbyists, and/or consultants doing business with the City of Miami Beach.

It is therefore recommended by the City Manager and City Attorney's Office's that the Mayor and City Commission herein adopt, on first reading, the attached amendments to the City's Cone of Silence Ordinance; said amendments mirroring the amendments already approved by the Miami-Dade County Commission (in its Cone of Silence Ordinance).

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 2 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "ADMINISTRATION", BY AMENDING ARTICLE VII THEREOF, ENTITLED "STANDARDS OF CONDUCT", BY AMENDING DIVISION 4, ENTITLED "PROCUREMENT", BY AMENDING SECTION 2-486, ENTITLED "CONE OF SILENCE"; SAID AMENDMENT, IN PART, EXTENDING THE PROHIBITIONS ON ORAL COMMUNICATIONS ON ALL REQUEST FOR PROPOSALS (RFP'S), REQUEST FOR QUALIFICATIONS (RFQ'S), AND INVITATION FOR BIDS (BIDS), BETWEEN THE MAYOR AND CITY COMMISSIONERS AND THEIR RESPECTIVE STAFF AND ANY POTENTIAL VENDOR, SERVICE PROVIDER, BIDDER, LOBBYIST, OR CONSULTANT; PROVIDING FOR ADDITIONAL EXCEPTIONS RELATIVE TO ORAL COMMUNICATIONS; PROVIDING FURTHER FOR REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, on January 29, 2002, the Miami-Dade County Commission approved Ordinance No. 02-3, amending Section 2-11.1(t) of the Miami-Dade County Code, the County's Cone of Silence Ordinance, with an effective date of February 8, 2002; and

WHEREAS, Miami-Dade County's approved amendments extended the prohibition on oral communications regarding a particular RFP, RFQ, and bid for the solicitation of goods and services to those between a potential vendor, service provider, bidder, lobbyist or consultant, and the Mayor, County Commissioners and their respective staffs; and

WHEREAS, Miami-Dade County's approved amendments added additional exemptions to the prohibition on oral communications regarding a particular RFP, RFQ, or bid for the solicitation of goods and services between any person and the procurement director or his/her designated staff responsible for administering the procurement process for such RFP, RFQ or bid, and between a member of the respective selection committee, provided the communication be limited strictly to matters of process or procedure already contained in the corresponding solicitation document; and

WHEREAS, Miami-Dade County's approved amendments added additional exemptions to the prohibition on oral communications between the County Manager and the chairperson of a selection committee about a particular selection committee recommendation, only after the committee has submitted a recommendation to the Manager and provided that, should any change occur in the committee recommendation, the content of the communication and of the corresponding change shall be described in writing and filed by the Manager with the Clerk of the County and be included in any recommendation memorandum submitted by the Manager to the County Commission;

WHEREAS, Miami-Dade County's approved amendments added additional exemptions to the prohibition on oral communications pertaining to emergency procurements.

WHEREAS, said Miami-Dade County amendments are applicable to the Mayor and City Commissioners of the City of Miami Beach, the City Manager, and their respective staffs; and in order to extend said amendments and their applicability to potential vendors,

service providers, bidders, lobbyists, and consultants doing business in the City of Miami Beach, the Administration and the City Attorney's Office herein recommends that the Mayor and City Commission amend the City's Cone of Silence Ordinance accordingly.

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

SECTION 1. Section 2-426, of Division 4 of Article VII of Chapter 2 of the Miami Beach City Code is hereby amended to read as follows:

Article VII. Standards of Conduct

DIVISION 4. PROCUREMENT

Sec. 2-486. Cone of silence.

- (a) Contracts for the provision of goods, services, and construction projects, ~~other than audit contracts.~~
- (1) Definition. "Cone of silence" is hereby defined to mean a prohibition on:
- (a) any communication regarding a particular request for proposal ("RFP"), request for qualifications ("RFQ"), ~~request for letters of interest ("RFLL")~~, or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and the city's administrative staff including, but not limited to, the city manager and his or her staff;
 - (b) any communication regarding a particular RFP, RFQ, ~~RFLL~~, or bid between the mayor, city commissioners, or their respective staffs, and any member of the city's administrative staff including, but not limited to, the city manager and his or her staff;
 - (c) any communication regarding a particular RFP, RFQ, ~~RFLL~~, or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and any member of a city evaluation and/or selection committee therefor; ~~and~~
 - (d) any communication regarding a particular RFP, RFQ, ~~RFLL~~, or bid between the mayor, city commissioners, ~~or their respective staffs~~, and ~~any a~~ member of a city evaluation and/or selection committee therefor;
 - (e) any communication regarding a particular RFP, RFQ, or bid between the mayor, city commissioners, or their respective staffs and a potential vendor, service provider, bidder, lobbyist, or consultant. ~~Notwithstanding the foregoing, the cone of silence shall not apply to competitive processes for the award of CDBG, HOME, SHIP and Surtax Funds administered by the city office of community development, and communications with the city attorney and his or her staff.~~

(2) Procedure.

a. ~~A~~ The cone of silence shall be imposed upon each RFP, RFQ, ~~RFLI~~, and or bid after the advertisement of said RFP, RFQ, ~~RFLI~~, or bid. At the time of imposition of the cone of silence, the city manager or his or her designee shall provide for public notice of the cone of silence. The city manager shall include in any public solicitation for goods and services a statement disclosing the requirements of this division.

b. The cone of silence shall terminate;

a)(i) at the time the city manager makes his or her written recommendation as to selection of a particular RFP, RFQ, ~~RFLI~~, or bid to the city commission, and said RFP, RFQ, ~~RFLI~~, or bid is awarded; provided, however, that following the ~~M~~manager making his or her written recommendation, the cone of silence shall be lifted as relates to communications between the ~~M~~mayor and ~~M~~members of the ~~C~~commission and the ~~C~~city ~~M~~manager; providing further if the city commission refers the manager's recommendation back to the city manager ~~or~~ staff for further review, the cone of silence shall continue until such time as the manager makes a subsequent written recommendation, and the particular RFP, RFQ, ~~RFLI~~, or bid is awarded;

~~or b)~~ (ii) in the event of contracts for less than \$25,000, when the city manager executes the contract.

(3) Exceptions. The ~~provisions of this ordinance~~ cone of silence shall not apply to:

(a) competitive processes for the award of CDBG, HOME, SHIP and Surtax Funds administered by the city office of community development; and

(b) communications with the city attorney and his or her staff.

~~(a)~~ (c) oral communications at pre-bid conferences;

~~(b)~~ (d) oral presentations before evaluation and/or selection committees;

~~(e)~~ (e) contract discussions during any duly noticed public meeting;

~~(d)~~ (f) public presentations made to the city commissioners during any duly noticed public meeting;

~~(e)~~ (g) contract negotiations with city staff following the award of an RFP, RFQ, ~~RFLI~~, or bid by the city commission;

~~(f)~~ (h) communications in writing at any time with any city employee, official or member of the city commission, unless specifically prohibited by the applicable RFP, RFQ, ~~RFLI~~, or bid documents; ~~or~~

~~(g)-(i)~~ city commission meeting agenda review meetings between the city manager and the mayor and individual city commissioners where such matters are scheduled for consideration at the next C-commission meeting.

~~(h)-(j)~~ communications regarding a particular RFP, RFQ or bid between the procurement director, or his/her administrative staff responsible for administering the procurement process for such RFP, RFQ or bid and a member of the evaluation/selection committee therefor, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document;

~~(k)~~ duly noticed site visits to determine the competency of bidders regarding a particular bid during the time period between the opening of bids and the time the city manager makes his or her written recommendation;

~~(l)~~ any emergency procurement of goods or services;

~~(m)~~ communications regarding a particular RFP, RFQ, or bid between any person, and the procurement director, or his/her administrative staff responsible for administering the procurement process for such RFP, RFQ, or bid, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document.

~~(n)~~ The bidder, proposer, vendor, service provider, lobbyist, or consultant shall file a copy of any written communications with the city clerk. The city clerk shall make copies available to any person upon request.

~~(b)~~ — Audit contracts.

~~(1)~~ — "Cone of silence" is hereby defined to mean a prohibition on: (a) any communications regarding a particular RFP, RFQ, RFLI, or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and the mayor, city commissioners or their respective staffs, and any member of the city's administrative staff including, but not limited to the city manager and his or her staff, and (b) any oral communication regarding a particular RFP, RFQ, RFLI, or bid between the mayor, city commissioners or their respective staffs and any member of the city's administrative staff including, but not limited to, the city manager and his or her staff; and (c) any communication regarding a particular RFP, RFQ, RFLI, or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and any member of a city evaluation and/or selection committee; and (d) any communication regarding a particular RFP, RFQ or bid between the Mayor, City Commissioners or their respective staffs and any member of a city evaluation and/or selection committee. Notwithstanding the foregoing, the cone of silence shall not apply to communications with the city attorney and his or her staff.

~~(2)~~ — Except as provided in subsections (b)(3) and (b)(4) hereof, a cone of silence shall be imposed upon each RFP, RFQ, RFLI, or bid for audit services after the advertisement of said RFP, RFQ, RFLI, or bid. At the time of the imposition of the cone of silence, the city manager or his or her designee

~~shall provide for the public notice of the cone of silence. The cone of silence shall terminate a) at the time the city manager makes his or her written recommendation as to selection of a particular RFP, RFQ, RFLI, or bid to the city commission, and said RFP, RFQ, RFLI, or bid is awarded; provided, however, that following the Manager making his or her written recommendation, the cone of silence shall be lifted as relates to communications between the Mayor and Members of the Commission and the City Manager; providing further if the city commission refers the manager's recommendation back to the city manager or staff for further review, the cone of silence shall continue until such time as the manager makes a subsequent written recommendation, and the particular RFP, RFQ, RFLI, or bid is awarded or b) in the event of contracts for less than \$25,000 when the city manager executes the contract.~~

~~(3) Nothing contained herein shall prohibit any bidder, proposer, vendor, service provider, lobbyist, or consultant (i) from making public presentations at duly noticed pre-bid conferences or before duly noticed evaluation committee meetings; (ii) from engaging in contract discussions during any duly noticed public meeting; (iii) from engaging in contract negotiations with city staff following the award of an RFP, RFQ, RFLI, or bid for audit by the city commission; or (iv) from communicating in writing with any city employee or official for purposes of seeking clarification or additional information from the city or responding to the city's request for clarification or additional information, subject to the provisions of the applicable RFP, RFQ, RFLI, or bid documents. The bidder or proposer etc. shall file a copy of any written communication with the city clerk. The city clerk shall make copies available to the general public upon request.~~

~~(4) Nothing contained herein shall prohibit any lobbyist, bidder, proposer, vendor, service provider, consultant, or other person or entity from publicly addressing the city commissioners during any duly noticed public meeting regarding action on any audit contract. The city manager shall include in any public solicitation for auditing services a statement disclosing the requirements of this division.~~

~~(e)(b) Violations/penalties and procedures. A violation of this section by a particular bidder, proposer, vendor, service provider, lobbyist, or consultant shall subject said bidder, or proposer, vendor, service provider, lobbyist, or consultant to the same procedures set forth in Division 5, entitled "Debarment of Contractors" from City Work; shall render any RFP award, RFQ award, RFLI award, or bid award to said bidder, proposer, vendor, service provider, bidder, lobbyist, or consultant voidable; and said bidder, proposer, vendor, service provider, lobbyist, or consultant shall not be considered for any RFP, RFQ, RFLI or bid for a contract for the provision of goods or services for a period of one year. Any person who violates a provision of this division shall be prohibited from serving on a city evaluation and/or selection committee. In addition to any other penalty provided by law, violation of any provision of this division by a city employee shall subject said employee to disciplinary action up to and including dismissal. Additionally, any person who has personal knowledge of a violation of this division shall report such violation to the city attorney's office or state attorney's office, and/or may file a complaint with the county ethics commission.~~

SECTION 2. 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 part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article", or other appropriate word.

SECTION 3. REPEALER.

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

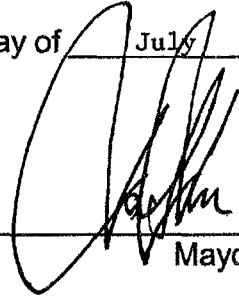
SECTION 4. SEVERABILITY.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is, for any reason, held invalid or unconstitutional, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity or constitutionality of the remaining portions of this Ordinance.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect on the 10th day of August, 2002, which is 10 days after adoption.

PASSED and ADOPTED this 31st day of July, 2002.



Mayor

ATTEST:

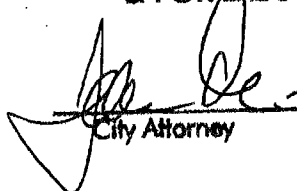


City Clerk

Letters or numbers that are stricken through are deletions from existing ordinance.
Letters or numbers that are underlined are additions to existing ordinance.

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APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

8-2002
Date