

ORDINANCE No. 2008-32-168

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AMENDING SECTION 23 OF ORDINANCE NO. 2005-10-48 ("THE CONE OF SILENCE ORDINANCE"); TO DELETE THE PROHIBITION ON COMMUNICATIONS BETWEEN THE CITY MANAGER AND HIS STAFF, AND THE MAYOR AND CITY COUNCIL AND THEIR STAFF ON PENDING SOLICITATIONS; PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK: PROVIDING FOR ADOPTION OF REPRESENTATIONS; REPEALING ALL ORDINANCES AND RESOLUTIONS IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN CODE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council previously opted out of Miami-Dade County's Cone of Silence and adopted its own Ordinance, and

WHEREAS, the adopted ordinance prohibits the Mayor and Members of the City Council from communicating with the City Manager and the Manager's staff, if directed by the Manager, about pending purchase solicitations, and

WHEREAS, the City Council would like to adopt this Ordinance permitting the Mayor and City Council the opportunity to discuss purchasing solicitations with the Manager prior to their award,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, as follows:

SECTION 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas Clauses are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Ordinance.

SECTION 2. AMENDMENT: Section 23 of Ordinance No. 2005-10-48 is amended as follows:

Section 23: Cone of Silence.

- A. **Purpose.** A Cone of Silence shall be applicable to all RFP, RFQ, ITB, RFLI, or any other advertised solicitations for the provision of goods and services, professional services, and public works or improvements for amounts greater than \$24,999, unless otherwise exempted herein.
- B. **Definition.** "Cone of Silence" is defined to mean a prohibition on:
- (1) any communication regarding a particular RFP, RFQ, ITB, RFLI, or any other advertised solicitation between a potential Proposer, Offeror, Respondent, Bidder, lobbyist or consultant and the City's staff including, but not limited to City Manager and his staff;
 - (2) any communication regarding a particular RFP, RFQ, RFLI, ITB or any other advertised solicitation between a potential Proposer, Offeror, Respondent, Bidder, lobbyist, or consultant and any member of the selection/evaluation committee therefore; and
 - (3) any communication regarding a particular RFP, RFQ, RFLI, ITB or any other advertised solicitation between a potential Proposer, Offeror, Respondent, Bidder, lobbyist, or consultant and the Mayor and City Council and their respective staff; and.
 - ~~(4) any communication regarding a particular RFP, RFQ, RFLI, ITB or any other advertised solicitation between the City Manager and his staff, and the Mayor and City Council and their respective staff; and~~
- C. **Exemptions.** Notwithstanding the foregoing, the Cone of Silence shall not apply to:
- (1) Competitive processes for the award of CDBG, HOME, and SHIP Funds administered by the Community Development Department;
 - (2) Communications between a potential Proposer, Offeror, Respondent, Bidder, consultant and City purchasing staff, prior to bid opening date or receipt of proposals, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document;
 - (3) Duly noticed pre-bid/proposal conferences and site inspections;
 - (4) Duly noticed site visits to determine the competency of Bidders/Proposers regarding a particular solicitation during the time period between the opening of Bids/receipt of Proposals and the time the City Manager presents his written recommendation to City Council;

- (5) Emergency Procurements;
- (6) Communications with the City Attorney.
- (7) Sole Source Procurements
- (8) Those purchases that are exempted from competitive requirements in accordance with Section 15 of Ordinance No. NO. 2005-10-48
- (9) Bid waivers;
- (10) Oral presentations before selection/evaluation committees and communications occurring during duly noticed meetings of selection/evaluation committees;
- (11) Public presentations made to the City Council and communications occurring during any duly noticed public meeting;
- (12) Communications in connection with the collection of industry comments or the performance of market research regarding a particular RFP, RFQ, RFLI, ITB or any other advertised solicitation by the Purchasing staff;
- (13) Contract negotiations that occur after an award-; and
- (14) Any communication regarding a particular RFP, RFQ, RFLI, ITB or any other advertised solicitation between the City Manager and his staff, and the Mayor and City Council and their staff.

D. Procedure:

- (1) **Imposition.** A Cone of Silence shall be imposed upon each RFP, RFQ, RFLI, ITB or any other advertised solicitation when the solicitation is advertised in a newspaper of general circulation. At the time of imposition of the Cone of Silence, the City Manager or his designee shall issue a notice thereof to the affected department(s), the City Clerk, Mayor and City Council and shall include in any advertised solicitation a statement disclosing that the solicitation is subject to the Cone of Silence.
- (2) **Termination.** City Council awarding authority - Except as otherwise provided herein, the Cone of Silence shall terminate at the date and time of the City Council meeting where the award will be made; Provided, however, that if the City Council defers the matter to a future date, the Cone of Silence shall be reimposed until such time as the matter is brought back before the City Council for further deliberation. In the event, the City Council decides to reject all bids, then the Cone of Silence shall be lifted.

City Manager awarding authority – Except as otherwise provided herein, the Cone of Silence shall terminate at the time the issuing department issues a written recommendation to the City Manager; provided, however, that the City Manager refers the recommendation back for further review, the Cone of Silence shall be reinstated until such time as the City Manager issues a recommendation for award pending the bid protest period.

- E. **Penalties.** Violation of the Cone of Silence by a particular bidder or proposer shall render the award to said Bidder or Proposer voidable by the City Council. A violation of this section by a particular Bidder, Proposer, Offeror, Respondent, lobbyist or consultant shall subject said Bidder, Proposer, Offeror, Respondent, lobbyist or consultant to \$500.00 fine, per violation and debarment.

SECTION 3. INSTRUCTIONS TO THE CITY CLERK: The City Clerk is hereby directed to send a copy of this Ordinance to the Miami-Dade County Ethics Commission.

SECTION 4. CONFLICT: All ordinances or Code provisions in conflict herewith are hereby repealed.

SECTION 5. SEVERABILITY: If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 6. INCLUSION IN CODE: It is the intention of the City Council of the City of Miami Gardens that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Miami Gardens and that the sections of this Ordinance may be renumbered or relettered and the word "Ordinance" may be changed to "Chapter," "Section," "Article" or such other appropriate word or phrase, the use of which shall accomplish the intentions herein expressed; provided, however, that Section 1 hereof or the provisions contemplated thereby shall not be codified.

SECTION 7. EFFECTIVE DATE: This Ordinance shall become effective immediately upon its final passage.

PASSED ON FIRST READING ON THE 23rd DAY OF July 2008.

ADOPTED AND PASSED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON THE 24th DAY OF September 2008


SHIRLEY GIBSON, MAYOR

ATTEST:


RONETTA TAYLOR, MMC, CITY CLERK

PREPARED BY: SONJA KNIGHTON DICKENS, ESQ.
City Attorney

SPONSORED BY: COUNCILMAN OLIVER GILBERT, III

MOVED BY: Vice Mayor Watson
SECOND BY: Councilman Campbell

VOTE: 7-0

Mayor Shirley Gibson	<u> X </u> (Yes)	<u> </u> (No)
Vice Mayor Barbara Watson	<u> X </u> (Yes)	<u> </u> (No)
Councilman Melvin L. Bratton	<u> X </u> (Yes)	<u> </u> (No)
Councilman Oliver Gilbert, III	<u> X </u> (Yes)	<u> </u> (No)
Councilman Aaron Campbell	<u> X </u> (Yes)	<u> </u> (No)
Councilwoman Sharon Pritchett	<u> X </u> (Yes)	<u> </u> (No)
Councilman André Williams	<u> X </u> (Yes)	<u> </u> (No)

City of Miami Gardens

1515 NW 167th Street
Miami Gardens, Florida 33169



Mayor Shirley Gibson
Vice Mayor Barbara Watson
Councilman Melvin L. Bratton
Councilman Aaron Campbell Jr.
Councilwoman Sharon Pritchett
Councilman Oliver Gilbert, III
Councilman André Williams

Agenda Cover Page

Meeting Date: September 24, 2008

Fiscal Impact: No Yes

(If yes, explain in Staff Summary)

Funding Source:

Contract/P.O. Requirement: Yes No

Sponsor Name/Department:

Councilman Oliver G. Gilbert, III

Public hearing

Ordinance

1st Reading

Advertising requirement:

RFP/RFQ/Bid # _____

Quasi-Judicial

Resolution

2nd Reading

Yes No

Title

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The City Council previously amended Ordinance No. 2005-10-48, to opt out of the Miami-Dade County Cone of Silence. The Ordinance as amended, prohibits the Mayor and Members of the City Council ("Council") from communicating with the City Manager and the Manager's appointed staff about pending purchase solicitations. This means that if a member of the Council has questions about the solicitation process, that they would have to wait until the date of the award to speak with the Manager or his appointed staff.

The attached Ordinance will allow for a more productive process for the award of bids. It is inefficient to wait until the date and time of the award for the Council to ask questions of the Manager and his appointed staff. Instead, it would be more efficient if

questions or concerns could be posed to the Manager and his appointed staff prior to the meetings so that the Manager would be made aware of these concerns in advance of the award, and could be prepared to address them at the council meeting where the award will be made.

Recommendation: That the City Council adopt this Ordinance.