



"The Best Waterfront City in Which to Live, Work And Play."

---

---

**CITY OF RIVIERA BEACH**

---

---

**TO:** HON. MAYOR, CHAIRPERSON, AND CITY COUNCIL

**THROUGH:** JONATHAN EVANS, CITY MANAGER, MPA, MBA, ICMA-CM

**FROM:** ELIZABETH T. MCBRIDE, ESQ., DEPUTY CITY MANAGER

**SUBJECT: DISCUSSION – PROPOSED REVISIONS TO CONE OF SILENCE ORDINANCE**

**DATE:** FEBRUARY 17, 2021

**CC:** GENERAL PUBLIC

---

**BACKGROUND:**

Section 2-166 of the City Code provides for a Cone of Silence be established on all City competitive solicitations including RFPs, RFQs, ITNs and bids for the procuring of goods and services. The Cone of Silence is designed to protect the integrity of the procurement process by shielding it from undue influences prior to the recommendation of contract award. Its essential purpose is to ensure fair, transparent, ethical and open competition in the procurement process and to secure the best values for government at the lowest possible expense. *Wester v. Belote*, 138 So. 721 (Fla. 1931)

**COMMENCEMENT AND TERMINATION OF THE CONE OF SILENCE**

Presently, the ordinance requires the Cone of Silence to be imposed on the “deadline to submit the proposal, bid, or other response to a competitive solicitation.” The proposed revised ordinance recommends the Cone of Silence be effective “as of the date and time the solicitation is released to the public.” Additionally, the revised ordinance requires the Procurement Director to provide a written notice to the affected department(s), City Clerk, City Manager, Mayor and each City Councilperson.

The Cone of Silence ordinance continues to provide for its termination at the time the city council or the city manager, acts on behalf of the city, awards or approves a contract, rejects all bids or otherwise takes action which ends the solicitation process. The revised ordinance proposes the reinstatement of a cone of silence if the City Council refers a solicitation back to the City Manager or Purchasing Director.

## **CONE OF SILENCE FOR RFPs, RFQs, and BIDS FOR THE PROVISION OF GOODS AND SERVICES**

Presently, the Cone of Silence prohibits any communication, *except for written correspondence*, between any person or the person's representative seeking an award from the city and members of the city council and their respective staff, or a city employee authorized to act on behalf of the council.

Amendments to the Cone of Silence continue to prohibit any communication upon the imposition of the Cone of Silence, unless provided as an exception. Of the proposed exceptions, written communications regarding a solicitation are permitted with the Procurement Department, and written communications are permitted with the City Attorney. Other exceptions to the Cone of Silence include:

- (1) *Oral communications at any public proceeding, including pre-bid or pre-proposal conferences and site inspections;*
- (2) Interviews or *oral presentations before selection or evaluation committees;*
- (3) *Public presentations to the City Council* and communications occurring during any duly noticed public meeting;
- (4) *Contract negotiations during any public meetings;*
- (5) *Protest hearings;*
- (6) *Contract negotiations between the designated employee(s) and the intended awardee(s);*
- (7) *Any dispute resolution process following the filing of a protest between the person filing the protest and the designated employee;*
- (8) *Any purchases made in an amount less than the competitive bid threshold set forth in the city procurement ordinance;*
- (9) Emergency procurements;
- (10) Written and/or oral communications with the City Attorney and his or her staff;
- (11) Sole source procurements;
- (12) Contract negotiations that occur after an award; or
- (13) Any communication regarding a particular competitive solicitation or advertised solicitation between the city manager and staff, or the mayor and city council and their respective legislative staff.

**Note:** The above italicized provisions are in the existing ordinance. The non-italicized provisions of proposed additions to the ordinance.

### **Attachments:**

1. Draft revised cone of silence ordinance.