

**ORDINANCE NO. 4168**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, PERTAINING TO THE CONE OF SILENCE, AMENDING SECTION 2-166 OF THE RIVIERA BEACH CODE OF ORDINANCES TO RESTRICT COMMUNICATION WITH THE MAYOR, MEMBERS OF THE CITY COUNCIL AND THE CITY MANAGER AND CITY PERSONNEL AT CERTAIN TIMES DURING A COMPETITIVE PROCUREMENT SOLICITATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the City of Riviera Beach desires to amend the Cone of Silence Ordinance which prohibits certain communication between vendors and the Mayor, members of the City Council, various City officials, and City personnel during a competitive solicitation.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA** that:

**SECTION 1:** The Code of Ordinances of the City of Riviera Beach, Florida at Chapter 2, ADMINISTRATION, ARTICLE IV, OFFICERS AND EMPLOYEES, DIVISION 1.5, LOBBYIST REGISTRATION, is hereby amended at Sec. 2-166 to read as follows:

**Sec. 2-166. - Cone of silence.**

(a) *Cone of silence* means a prohibition on any communication, except for written correspondence as provided herein, regarding a particular request for proposal, request for qualification, bid, or any other competitive solicitation between:

(1) Any potential or actual proposer, bidder, or any other person or entity with the potential for a financial interest in the award, or their respective agents or representatives ~~person's representative seeking an award from such competitive solicitation~~; and

(2) The mayor or his/her legislative staff, Any city councilpersons or their respective legislative staffs, or any employee authorized to act on behalf of the council to award a particular contract; or

(3) The city's professional staff including, but not limited to, the city manager and staff; city department directors and their staff; or any city consultants involved with the solicitation; and member(s) of an evaluation, selection, or negotiation committee therefor.

(b) For the purposes of this section, a person's agent or representative shall include, but not be limited to, the person's employee, partner, officer, director, consultant, lobbyist, or any actual or potential subcontractor or consultant of the person.

(c) Commencement. The cone of silence shall be in effect as of the date and time the solicitation is released to the public. Notice of the requirements of this section shall be included in any city competitive solicitation. At the time of the imposition of the cone of silence, the procurement director shall:

(1) Issue a written notice thereof to the affected department(s), city clerk, city manager, mayor and legislative staff, and city council members and their respective legislative staff.

~~the deadline to submit the proposal, bid, or other response to a competitive solicitation. The cone of silence shall remain in effect and subject to the terms of this section for any person or person's representative who responds to a particular request for proposal, request for qualification, bid, or any other competitive solicitation, and such response is either rejected by the city or withdrawn by the person or person's representative. Each request for proposal, request for qualification, bid or any other competitive solicitation shall provide notice of cone of silence requirements and refer to this division.~~

(d) Exceptions. This ordinance shall not be interpreted as prohibiting the following communications.

(1) Written communication between a bidder, offeror or proposer or their agent or representative and the Procurement Department regarding the solicitation;

(2) Written and/or oral communications with the City Attorney and his or her staff;

(3) Oral communications at any public proceeding, including pre-bid or pre-proposal conferences and site inspections;

(4) Interviews or oral presentations before selection or evaluation committees;

(5) Public presentations to the City Council and communications occurring during any duly noticed public meeting;

(6) Contract negotiations during any public meetings;

(7) Protest hearings;

(8) Contract negotiations between any designated employee(s) and the intended awardee(s);

(9) Any dispute resolution process following the filing of a protest between the person filing the protest and the designated employee;

(10) Any purchases made in an amount less than the competitive bid threshold set forth in the city procurement ordinance;

(11) Any emergency procurement of goods or services pursuant to the City Code;

(12) Sole source procurements; 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.

~~The provisions of this division shall not apply to oral communications at any public proceeding, including pre bid conferences, oral presentations before selection committees, and contract negotiations during any public meeting, presentations made to the council, and protest hearings. Further, the cone of silence shall not apply to contract negotiations between any employee and the intended awardees, any dispute resolution process following the filing of a protest between the person filing the protest and any employee, or any written correspondence at any time with any employee, city council member, or advisory board member or selection committee member, unless specifically prohibited by the applicable competitive solicitation process.~~

~~(e) — The cone of silence shall not apply to any purchases made in an amount less than the competitive bid threshold set forth in the city procurement ordinance.~~

~~( e f) Termination. The cone of silence shall terminate at the time the city council or the city manager, acts on behalf of the city, awards or approves a contract, rejects all bids, proposals or other responses, or otherwise takes action which ends the solicitation process. If the City Council refers the item back to the City Manager or Procurement Director for further review, the cone of silence shall remain in effect until an award is made, a contract is approved, or the City Council takes any other action which ends the solicitation or other procurement process.~~

~~( f g) Any contract entered into in violation of the cone of silence provisions in this section shall render the transaction voidable.~~

**SECTION 2:**                    **Repeal of Law in Conflict.** That all sections or parts of sections of the Code of Ordinances, all Ordinances or parts of Ordinances, and all Resolutions or parts of Resolutions in conflict herewith, be and the same are hereby repealed to the extent of such conflict.

**SECTION 3:**                    **Severability.** If any portion of this Ordinance is determined by any Court to be invalid, the invalid portion shall be stricken, and such striking shall not affect the validity of the remainder of the Ordinance. If any Court determines that this Ordinance, or any portion hereof, cannot be legally applied to any individual(s), group(s), entity(ies), property(ies), or circumstances(s), such determination shall not affect the applicability hereof to any other individual, group, entity, property, or circumstance.

**SECTION 4:**                    **Codification.** Specific authority is hereby granted to codify this Ordinance.

**SECTION 5:**                    **Effective Date.** This Ordinance shall be in full force and effect immediately upon its final passage and adoption.

**PASSED AND APPROVED** on the first reading this \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_.

**PASSED AND ADOPTED** on second and final reading this \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_.

**APPROVED:**

\_\_\_\_\_  
**RONNIE L. FELDER**

\_\_\_\_\_  
**SHIRLEY D. LANIER MAYOR  
CHAIRPERSON**

**ATTEST:**

\_\_\_\_\_  
**CLAUDENE L. ANTHONY,  
CERTIFIED MUNICIPAL CLERK  
CITY CLERK**

\_\_\_\_\_  
**KASHAMBA MILLER-ANDERSON  
CHAIR PRO TEM**

\_\_\_\_\_

**TRADRICK MCCOY  
COUNCILPERSON**

**DOUGLAS A. LAWSON**

\_\_\_\_\_  
**COUNCILPERSON**

\_\_\_\_\_  
**JULIA A. BOTEL, Ed.D  
COUNCILPERSON**

**REVIEWED AS TO LEGAL SUFFICIENCY**

\_\_\_\_\_  
**DAWN S. WYNN, CITY ATTORNEY**

**DATE:** \_\_\_\_\_

**1<sup>ST</sup> READING**

**2<sup>ND</sup> & FINAL READING**

**MOTIONED BY:** \_\_\_\_\_

**MOTIONED BY:** \_\_\_\_\_

**SECONDED BY:** \_\_\_\_\_

**SECONDED BY:** \_\_\_\_\_

**T. MCCOY** \_\_\_\_\_

**T. MCCOY** \_\_\_\_\_

**K. MILLER-ANDERSON** \_\_\_\_\_

**K. MILLER-ANDERSON** \_\_\_\_\_

**S. LANIER** \_\_\_\_\_

**S. LANIER** \_\_\_\_\_

**J. BOTEL** \_\_\_\_\_

**J. BOTEL** \_\_\_\_\_

**D. LAWSON** \_\_\_\_\_

**D. LAWSON** \_\_\_\_\_