

**CITY OF POMPANO BEACH**  
**Broward County, Florida**

**AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, AMENDING CHAPTER 32, "DEPARTMENTS," OF THE POMPANO BEACH CODE OF ORDINANCES BY CREATING SECTION 32.49, "CONE OF SILENCE," PROVIDING DEFINITIONS, PROHIBITING CERTAIN COMMUNICATIONS DURING CERTAIN TIME PERIODS WITHIN COMPETITIVE SOLICITATIONS, PROVIDING EXEMPTIONS, AND PROVIDING PENALTIES FOR VIOLATIONS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to law, ten (10) days' notice has been given by publication in a paper of general circulation in the City, notifying the public of this proposed Ordinance and of a public hearing in the City Commission Chambers of the City of Pompano Beach; and

**WHEREAS**, a public hearing before the City Commission was held pursuant to the published notice described above, at which hearing the parties in interest and all other citizens so desiring had an opportunity to be and were, in fact, heard; now, therefore,

**BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:**

**SECTION 1.** That Section 32.49, "Cone of Silence," of Chapter 32, "Departments," of the Pompano Beach Code of Ordinances, is hereby created to read as follows:

**§ 32.49 CONE OF SILENCE.**

(A) *Definitions.* The following definitions when used in this Section shall have the meanings ascribed to them, except where the context clearly indicates a different meaning:

(1) ***AFFECTED PERSON.*** Any person, and that person's support staff, appointed, hired, designated or authorized to evaluate, rank, recommend, or select a Vendor or a Vendor's response to a Competitive Solicitation or to make an award in a Competitive Solicitation process.

(2) **COMPETITIVE SOLICITATION.** A formal process by the City of Pompano Beach relating to the acquisition of goods or services, particularly Request for Proposal (RFP), Request for Qualifications (RFQ), Request for Letters of Interest (RLI), Invitations to Bid (ITB) or other competitive solicitations governed by Chapter 32, City Code, which process is intended to provide an equal and open opportunity to qualified persons and entities to be selected to provide the goods or services. The term shall not include a competitive process which seeks to enter into a contract or award money to perform governmental, quasi-governmental, social, or human services primarily for charitable, benevolent, humanitarian, or other philanthropic purposes, such as the award of grants or support assistance to organized nonprofit entities that promote or assist with the care, education, health, standard of living, or general welfare of people in the City of Pompano Beach community, or that promote or assist community or neighborhood enhancements.

(3) **CONE OF SILENCE.** A time period during which there is a prohibition on communication between a Vendor or Vendor's representative and an Affected Person regarding a particular Competitive Solicitation as outlined below.

(4) **EVALUATION OR SELECTION COMMITTEE.** A group of persons appointed or designated by the City Commission, City Manager, General Services Director or head of a city office, agency, department, or division, or their designee, to evaluate, rank, select, or make a recommendation regarding a Vendor or the Vendor's response to the Competitive Solicitation.

(5) **VENDOR.** A person or entity that has entered into or that lobbies to enter into a contract with the City of Pompano Beach, or that seeks an award from the City of Pompano Beach to provide goods, perform a service, render an opinion or advice, or make a recommendation related to a Competitive Solicitation for compensation or other consideration.

(6) **VENDOR'S REPRESENTATIVE.** An owner, individual, employee, partner, officer, or member of the Commission of directors of a Vendor, or a consultant, lobbyist, or actual or potential subcontractor or sub-consultant who acts at the behest of a Vendor in communicating regarding a Competitive Solicitation.

(B) *Prohibited communication.* Except as set forth in subsection (E), a Cone of Silence shall be in effect during the course of a Competitive Solicitation prohibiting communication between:

(1) Any person or entity, including a Vendor or Vendor's Representative, that seeks a contract, award, recommendation, or approval related

to a Competitive Solicitation or that is subject to being evaluated or having its response evaluated in connection with a Competitive Solicitation, and

(2) Any City Commissioner, Commissioner's staff, the City Manager, Assistant City Manager, their respective support staff, any member of the Evaluation or Selection Committee appointed for the competitive solicitation, or Affected Person as defined in subsection (A)(1).

(C) *Effective dates.* A Cone of Silence shall begin and shall end for Competitive Solicitations within the scope of this ordinance as follows:

(1) For any City Commissioner or the Commissioner's staff, the City Manager, Assistant City Manager, their respective support staff, any member of an Evaluation or Selection Committee appointed for the competitive solicitation, or Affected Person as defined in subsection (A)(1), a Cone of Silence shall be in effect during a Competitive Solicitation upon the appointment of the Selection Committee for a Request for Letters of Interest, upon the appointment of the Evaluation Committee for a Request for Proposals, or at the time of advertisement for Invitations for Bids.

(2) The Cone of Silence shall terminate at the time the City Commission or other authorized person makes final award, gives final approval of a contract, rejects all bids or responses to the Competitive Solicitation, or takes other action which ends the Competitive Solicitation.

(D) *Notice.* When the Cone of Silence becomes effective for a particular Competitive Solicitation, the City Manager or designee shall provide public notice by posting notice at City Hall. The City Manager or designee shall issue a written notice to affected departments, file a copy of such notice with the city clerk and the mayor and each city commissioner. Any advertisement and public solicitation for goods and services shall contain a statement disclosing the requirements of this Section. The City Manager shall also include a statement that generally discloses the requirements of this Ordinance in the public notice and, if any, the solicitation document for the goods or services.

(E) *Permitted communication.*

(1) Nothing in this section shall prohibit a City Commissioner, the City Commissioner's office personnel, and other City employees from communicating with each other, subject to the provisions of Government in the Sunshine Laws.

(2) The Cone of Silence shall not apply to communications with the City Attorney and his or her office personnel, the City Auditor and his or her office personnel, or with other City personnel, provided that such person is not a

member of the Evaluation or Selection Committee appointed for the competitive solicitation or an Affected Person as defined in subsection (A)(1).

(3) Nothing contained in this section shall prohibit any Vendor or Vendor's Representative:

(a) From making public presentations at pre-bid conferences or at a selection meeting related to the Competitive Solicitation;

(b) From engaging in contract negotiations during a public meeting related to the Competitive Solicitation;

(c) From making a public presentation to the City Commission during any public meeting of the Commission;

(d) From communicating with the person or persons designated in the Competitive Solicitation as the contact person for clarification or information related to the Competitive Solicitation; or

(e) From communicating in writing as provided in subsection (4) below.

(4) The General Services Director or designee shall accept written communications from a Vendor or Vendor's Representative during the time a Cone of Silence is applicable to a Competitive Solicitation. Such writing, including any response thereto, shall be provided to the person or the members of the applicable committee appointed or designated to recommend a Vendor for award or to the public upon request.

(F) *Penalties for violations.* A complaint alleging a violation of this section may be filed with the City's General Services Director. In such instance, an investigation shall be performed and the results of each investigation, including a determination of violation, if any, shall be set forth in a written report. If there is a determination of violation an existing or potential vendor or vendor's representative during the cone of silence, such violation:

(1) Shall render any response or award voidable, at the sole discretion of the City; and

(2) May subject the potential vendor or vendor's representative to debarment for a period not to exceed two years as determined by the City Commission after it issues written notice to any violator and provides the violator with thirty (30) days to request a public hearing.

**SECTION 2.** That any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

**SECTION 3.** This Ordinance shall become effective upon passage.

**PASSED FIRST READING** this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**PASSED SECOND READING** this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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**REX HARDIN, MAYOR**

**ATTEST:**

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**ASCELETA HAMMOND, CITY CLERK**

JES/jrm  
11/13/18  
l:ord/ch32/2019-28a