

ORDINANCE NO. 2018 - 1684

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING THE TOWN CODE BY AMENDING SECTION 3-17, "OPT OUT INVOKED" OF CHAPTER 3 "PURCHASING" TO IMPLEMENT A CONE OF SILENCE PROVISION FOR PROCUREMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR EFFECTIVE DATE.

WHEREAS, the Town of Surfside ("Town") is committed to efficiency and integrity in the competitive solicitation process for procuring goods and services for the Town; and

WHEREAS, the purpose and intent of these regulations is to implement a cone of silence provision applicable to Town procurements; and

WHEREAS, the regulations intended effect is to protect the integrity, fair competition and ease of the competitive procurement process; and

WHEREAS, Chapter 3 of the Town's Code of Ordinances ("Code") pertains to the purchasing and the procurement process of goods and services on behalf of the Town; and

WHEREAS, the Town Commission wishes to amend Chapter 3, Purchasing, to adopt and implement a cone of silence provision applicable to procurements, similar to the process set forth in the Miami-Dade County Section 2.11.1(t); and

WHEREAS, the Town Commission finds that this Ordinance is in the best interests of the Town.

NOW, THEREFORE, THE COMMISSION OF THE TOWN OF SURFSIDE HEREBY ORDAINS:

**Section 1. Recitals.** The above-stated recitals are true and correct and are incorporated herein by this reference.

**Section 2. Town Code Amended.** The Code of the Town of Surfside, Florida Code Section 3-17 "Opt Out Invoked" of Chapter 3 "Purchasing" is hereby amended as follows:

**Section 3-17. Opt out invoked.**

Pursuant to Miami-Dade County Code Section 2.11.1(t)(4), the provisions of Section 2-11.1(t), "Cone of Silence," of the Miami-Dade County Code shall not apply to the Town

of Surfside. The Town clerk is hereby instructed to provide a copy of this ordinance to the Miami-Dade County Ethics Commission.

**Section 3-17- Cone of silence.**

(a) Definition. "Cone of silence," as used herein, means a prohibition on any communication regarding a competitive bid or solicitation for a purchase exceeding \$25,000.00, including but not limited to, a particular request for proposal ("RFP"), request for qualification ("RFQ"), request for expression of interest ("RFEI") or bid (hereinafter a "Solicitation"), between:

(1) A potential respondent, vendor, service provider, proposer, bidder, lobbyist, or consultant, and

(2) The Town commissioners, Town's staff including, but not limited to, the Town Manager and his or her staff, any member of the Town's selection or evaluation committee.

(b) Restriction; notice. A cone of silence shall be imposed upon each ~~RFP, RFQ and bid~~ Solicitation after the advertisement of said ~~RFP, RFQ and bid~~ Solicitation. At the time of imposition of the cone of silence, the Town Manager or his or her designee shall provide for public notice of the cone of silence by posting a notice at the Town hall and/or electronically, and shall include in any public solicitation for goods or services a statement disclosing the requirements of this section.

(c) Termination of cone of silence. The cone of silence shall terminate at the beginning of the Town commission meeting at which the Town Manager makes his or her written recommendation to the Town commission for award of a contract. However, if the Town commission refers the Manager's recommendation back to the Manager or staff for further review, the cone of silence shall be reimposed until such time as the Manager makes a subsequent written recommendation.

(d) Exceptions to applicability. The provisions of this section shall not apply to:

(1) Oral communications at pre-bid conferences;

(2) Oral presentations before selection or evaluation committees;

(3) Public presentations made to the Town commissioners during any duly noticed public meeting

(4) Written communications at any time with any Town employee, unless specifically prohibited by the applicable ~~RFP, RFQ and bid~~ Solicitation documents. The

respondent, bidder or proposer shall file a copy of any written communication with the Town Clerk. The Town Clerk shall make copies available to any person upon request;

(5) Written communications regarding a particular ~~RFP, RFQ and bid~~ Solicitation between a potential respondent, vendor, service provider, proposer, bidder, lobbyist or consultant and the Town's purchasing agent or Town employee designated responsible for administering the procurement process for such ~~RFP, RFQ and bid~~ Solicitation, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document;

(6) Communications with the Town attorney and his or her staff;

(7) Duly noticed site visits to determine the competency of respondents regarding a particular solicitation during the time period between the opening of solicitations and the time the Town Manager makes his or her written recommendation;

(8) ~~Any emergency procurement of goods or services pursuant to the Town Code Any solicitation or procurement which is exempt from the competitive bidding procedures as set forth in Sections 3-12 and 3-13 of this chapter;~~

(9) Responses to the Town's request for clarification or additional information;

(10) Contract negotiations during any duly noticed public meeting;

(11) Written communications to enable Town staff to seek and obtain industry comment or perform market research, provided all communications related thereto between a potential respondent, vendor, service provider, proposer, bidder, lobbyist, or consultant and any member of the Town's professional staff including, but not limited to, the Town Manager and his or her staff are in writing or are made at a duly noticed public meeting;

(12) Unsolicited proposals or solicited proposals pursuant to a public-private partnership with the Town in accordance with F.S. § 255.065, as amended from time to time, including, but not limited to, contract negotiations between the Town staff, consultants, and individuals or representatives of entities proposing a public-private partnership.

(e) Penalties. Violation of this section by a particular respondent, bidder or proposer shall render any ~~RFP, RFQ and bid~~ Solicitation award to said respondent, bidder or proposer voidable by the Town commission or Town Manager. Any person who violates a provision of this section may be prohibited from serving on a Town selection or evaluation committee. In addition to any other penalty provided herein, violation of any

provision of this section by a Town employee may subject said employee to disciplinary action.

(f) Opt out invoked. It is hereby provided that the provisions of section 2-11.1(t) "Cone of silence" of the Miami-Dade County Code shall not apply to the Town of Surfside. This opt out provision shall prevail over any conflicting Town ordinance.

**Section 3. Severability.** That the provisions of this Ordinance are declared to be severable, and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 3. Codification.** It is the intent of the Town Commission that the provisions of this ordinance shall become and be made a part of the Town's Code of Ordinances, and that the sections of this Ordinance may be renumbered or relettered, and the word "ordinance" may be changed to "section," "article," "regulation," or such other appropriate word or phrase in order to accomplish such intentions.

**Section 4. Conflicts.** All ordinances or parts of ordinances, resolutions or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

**Section 5. Effective Date.** That this Ordinance shall be effective immediately upon adoption on second reading.

**PASSED** on first reading on the 8<sup>th</sup> day of May, 2018.

**PASSED AND ADOPTED** on second reading on 22<sup>nd</sup> day of May 2018.

**On Final Reading Moved By:** Vice Mayor Gielchinsky

**On Final Reading Second By:** Commissioner Karukin.

**FINAL VOTE ON ADOPTION**

Commissioner Barry Cohen  
Commissioner Michael Karukin  
Commissioner Tina Paul  
Vice Mayor Daniel Gielchinsky  
Mayor Daniel Dietch

Absent  
yes  
yes  
yes  
yes



Daniel Dietch  
Mayor

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156 **ATTEST:**

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160 Sandra Novoa, MMC  
161 Town Clerk  
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167 **APPROVED AS TO FORM AND LEGALITY FOR THE USE**  
168 **AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:**  
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172 Weiss Serota Helfman Cole & Bierman, P.L.  
173 Town Attorney