

Agenda Item 15.B
Meeting of 1/18/23**ORDINANCE 2023-15029**

AN ORDINANCE AMENDING THE CITY OF NAPLES CODE OF ETHICS CONTAINED IN ARTICLE IX OF CHAPTER 2 ENTITLED "ADMINISTRATION" IN THE CITY OF NAPLES CODE OF ORDINANCES; AMENDING SECTIONS 2-975(f) "POST-EMPLOYMENT RESTRICTIONS AND 2-975(H) "BIDS AND CONTRACTS" AND CREATING A NEW SECTION 2-975(K) "CONE OF SILENCE" IN ARTICLE IX OF CHAPTER 2; ADOPTING AMENDMENTS PRESENTED TO THE CITY COUNCIL BY THE COMMISSION ON ETHICS AND GOVERNMENTAL INTEGRITY; PROVIDING FOR RENUMBERING OF APPLICABLE SECTIONS AS NEEDED, SEVERABILITY, CONFLICTS AND AN EFFECTIVE DATE.

WHEREAS, the Commission on Ethics and Governmental Integrity ("Ethics Commission") presented amendments to the City of Naples existing Ethics Code in Article IX of Chapter 2 of the City of Naples Code of Ordinances, to the City Council on December 7, 2022, in accordance with Section 17.2 of the City of Naples Charter; and

WHEREAS, during its December 7, 2022 regular meeting, the City Council reviewed the Ethics Commission's proposed changes to the Ethics Code, and in accordance with Section 17.2 of the City of Naples Charter, agreed to the amendments; and

WHEREAS, the City Council thereafter directed incorporation of the amendments into this ordinance during first reading on December 7, 2022 and scheduled a second reading of the ordinance title for January 18, 2023; and

WHEREAS, the amendments proposed by the Ethics Commission, as incorporated into this ordinance, become law as of December 7, 2022, pursuant to Section 17.2.(2) of the City Charter, but there must be a reading on 2 separate days of the title of an ordinance and notice once by publication, which would allow for codification of the Ethics Commission's amendments in accordance with Section 166.041, Florida Statutes; and

WHEREAS, an advertisement of the public hearing for adoption of the proposed ordinance was published in the Naples Daily News on the 8th day of January, 2023 as required by Section 166.041, Florida Statutes and City of Naples Code of Ordinances; and

WHEREAS, the City Council further finds the adoption of the amendments to the existing Code of Ethics is in the best interest of the residents of the City of Naples and provides for greater accountability of elected officials, appointed members of City committees, agencies and boards, staff, lobbyists and others doing business with the City of Naples;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NAPLES, FLORIDA:

Section 1. That the above "Whereas" clauses are adopted into this ordinance they were fully set forth herein and the content of such clauses sends the legislative intent of this ordinance.

Section 2. That Section 2-975(f) in Article IX of Chapter 2 is hereby amended to read as follows (with underlining indicating additions and ~~strikethrough~~ indicating deletions):

Sec. 2-975. – Conflicts of interest.

* * * * *

(f) Post-employment restrictions.

(1) No elected officer or city managerial employee shall personally represent, for compensation, another person, group, or business entity before the governmental body for a period of two years following vacation of office, resignation of employment, or termination of employment, as applicable, except for the purposes of collective bargaining.

(2) An elected officer or city managerial employee is prohibited from engaging in or having an employment or contractual relationship with any person or business entity, or their representative, if such elected officer or city managerial employee, within two years immediately preceding the vacancy from elected office or termination/resignation from employment, personally or substantially participated in a recommendation or decision relating to any contracting or zoning approvals sought or received by any such person or business entity. Such prohibition on an employment or contractual relationship shall be for a period of two years after the vacancy from elected office or termination/resignation from employment, as applicable, of such elected officer or city managerial employee.

(3) By majority vote of city council, the post employment restrictions may be waived. Request for waiver must be made by the specific city managerial employee involved, appear on an advertised regular agenda of city council, and be approved by majority vote of council.

(f) Post- City Service restrictions.

(1) Definitions.

(a) Bid/Invitation for Bid. Includes a Request for Proposal (RFP), Request for Qualifications (RFQ) and any document that solicits a proposal, often made through a bidding process, by a City department, agency, authority, board, commission or committee interested in procurement of a commodity, service, or valuable asset, to potential suppliers to submit business proposals.

- (b) Proceeding. Any quasi-judicial matter or any procurement process relating to a Bid/Invitation for Bid or other competitive procurement, a request for a ruling or other determination involving a contract, claim, controversy or other matter in which the City or one of its departments, agencies, authorities, boards, commissions or committees is a party or has any interest whether direct or indirect.
- (c) Lobby. Any attempt to influence legislative action or non-action, the passage, defeat or modification of any ordinance or resolution, or to influence the action, decision or recommendation or obtain the goodwill of a Covered Person through either written or oral communication.

(2) Restrictions.

- (a) A Mayor or member of City Council shall not, for a period of six (6) years following vacation of office, lobby or represent, whether for compensation or in an uncompensated capacity, any other Person before the City Council, any City officer, department, agency, authority, board, commission, committee or employee in connection with any Proceeding or on issues of policy, appropriations or procurement.
- (b) Except for a Mayor or member of City Council, all other compensated Public Officials and City employees shall not, for a period of two (2) years following vacation of office or termination of employment, lobby or represent whether for compensation or in an uncompensated capacity, any other Person before the City Council, any City officer, department, agency, authority, board, commission, committee or employee in connection with any Proceeding or on issues of policy, appropriations or procurement.
- (c) No person who has served in an uncompensated position on the Code Enforcement Board, Design Review Board, or Planning Advisory Board shall, for a period of one (1) year after his or her vacation of office, lobby or represent whether for compensation, or in an uncompensated capacity, any other Person before the agency, authority, board, commission, or committee that the person previously served on or before any employees of the department that routinely appeared before the board that the person previously served on.
- (d) Nothing contained in subsection (f) shall prohibit any individual included within the provisions thereof from submitting a routine administrative request or application to a City department, agency, authority, board, commission or committee during either the applicable one-year, two-year or six-year period after his or her City service has ceased.
- (e) The provisions of subsection (f)(2)(a)(b) and (c) herein shall not be construed to prohibit any former Mayor or member of City Council, or former compensated or

uncompensated Public Official or employee from appearing in his or her official capacity, to represent a governmental entity.

- (f) Nothing contained in this section shall be construed to prohibit any former Mayor or member of City Council, or any former compensated or uncompensated Public Official or employee from representing, in an uncompensated capacity, any association created pursuant to Chapters 718, 719 or 720, Florida Statutes, or to voluntary community associations serving similar purposes of which they are a member or any non-profit, 501 (c)(3) organization for which the person receives no compensation.
- (g) The provisions of subsection (f) shall apply to all Public Officials, whether elected or appointed, and all employees, who commence employment or are elected or appointed to office at any time after the effective date of this ordinance.
- (h) Except for a Mayor or member of City Council, the provisions of subsection (f) shall apply to all compensated and uncompensated Public Officials and employees currently holding office or employment with the City, six months after the effective date of this ordinance.
- (i) Except for a Mayor or member of City Council, any compensated or uncompensated Public Official or employee who vacates office or terminates employment prior to the effective date of this paragraph shall comply with section 2-974(f) of the Naples Ethics Code as it existed prior to the effective date of this ordinance.
- (j) Any former Mayor or member of City Council, compensated or uncompensated Public Official or employee who has left the City within (2) years prior to the effective date of this ordinance shall, for a period of two (2) years after his or her City service or employment has ceased, comply with section 2-974 (f) of the Naples Ethics Code as it existed prior to the effective date of this ordinance.

Section 3. That Section 2-975(h) in Article IX of Chapter 2 is hereby amended to read as follows (with underlining indicating additions and ~~strikethrough~~ indicating deletions):

Sec. 2-975. – Conflicts of interest.

* * * * * (h)

Bids and contracts.

(1) Required contract language. Except as otherwise prohibited by law, all contracts with persons or business entities providing construction or professional services to the city shall contain one or more contractual provisions, unless specifically waived by the city council, which:

a. Provide assurances to the city that the contracting person or entity will not employ or offer to employ any elected officer or city managerial employee who in any way deals with, coordinates on, or assists with the construction or professional services provided, for a period of two years after termination of all provisions of the construction or professional services contract;

b. Provide restrictions on the ability of the person or business entity contracting with the city to also provide services for compensation to another party other than the city on the same subject matter, same project, or scope of services without city council approval; and

c. Provide covenants that the contracting person or other entity will not disclose or use information not available to members of the general public and gained by reason of such person or business entity's contractual relationship with the city for the special gain or benefit of the contracting person or entity, or for the special gain or benefit of any other person or business entity, except as specifically contemplated or authorized by the contract.

(2) Damage provision. In addition to the penalty provided for in section 1-15, a contract with a person or business entity providing construction or professional services to the city shall, except as otherwise prohibited by law or specifically waived by the city council, contain a damages provision which shall require a payment of damages for violation of subsection (a)(1) of this section in an amount equal to any and all compensation which is received by the former elected officer or city managerial employee from the contracting person or entity, or an amount equal to the former employee's last two years of gross compensation from the city, whichever is greater.

(1) *Compensated Public Officials and City Employees.*

(a) No compensated Public Official or City employee, individually or through a Business Entity, shall enter into any contract or transact any business with the City or any Person, entity or agency acting for the City, in which the compensated Public Official or City employee or a Relative or Business Associate of the compensated Public Official or City employee has a Financial Interest.

(b) In addition to subjecting the compensated Public Official or City employee to the penalties provided for in Section 2-981 of this Code, any contract or transaction in violation of this subsection shall be voidable by City Council.

(c) The prohibitions in this section shall not apply to contracts or transactions entered into as part of the compensated Public Official's or City employee's duties with the City.

(d) The prohibitions in this section shall not apply to contracts or transactions entered into by compensated Public Officials or City employees or a Relative or

Business Associate of the Public Official or City employee who purchase goods or services or are issued licenses from the City on the same general terms available to members of the public.

(e) The prohibition in this section shall not apply to any emergency purchase or contract made in order to protect the health, safety or welfare of the citizens of the City.

(f) The prohibition in this section shall not apply when the business entity involved is the only source of supply within the City and the compensated Public Official or employee fully discloses his or her interest in the Business Entity to the governing board of the City prior to the transaction.

(2) *Uncompensated Public Officials.*

(a) Except as provided in paragraph (2)(b), an uncompensated Public Official, individually or through a Business Entity, may enter into a contract or transact any business with the City or any Person, entity or agency acting for the City, in which the uncompensated Public Official, or a Relative or Business Associate of the uncompensated Public Official has a Financial Interest.

(b) Any uncompensated Public Official or a Relative or Business Associate of an uncompensated Public Official shall not enter into any contract or transact any business with any department, agency, authority, board, commission or committee of the City subject to the regulation, oversight, management, policy-setting or quasi-judicial authority of the agency, authority, board, commission or committee of which the uncompensated Public Official is a member.

(c) Any person subject to this subsection shall request a formal advisory opinion from the Ethics Commission prior to submittal of a bid, response, or application which would lead to a contract or other transaction of business with the City or any Person, entity or agency acting for the City.

(3) *Required Contract Language.* Except as otherwise prohibited by law, all contracts between the City and any Business Entity shall:

(a) contain a provision prohibiting the Business Entity from employing, or offering to employ any compensated Public Official or City employee who is substantially involved with the regulation, oversight or management of the contract or the transaction of business during the term, and for a period of two years after termination, of the contract; and

(b) provide for liquidated damages in favor of the City for violation of this subsection in the amount equal to the greater of (i) the compensation received by the compensated Public Official or City employee from the Business Entity

and (ii) the amount equal to the total of the compensated Public Official's or City employee's last two years of gross compensation from the City.

(4) Applications for an opinion regarding paragraph (3)(a) preceding may be submitted to the Ethics Commission for consideration at a public meeting. This application may include a waiver request.

Section 4. That Section 2-975 in Article IX of Chapter 2 is hereby amended to create a new subsection (k) to read as follows (with underlining indicating additions and ~~strikethrough~~ indicating deletions):

Sec. 2-975. – Conflicts of interest.

* * * * *

(k) Cone of Silence.

Definitions:

- (1) Professional Staff: The City manager and his or her staff, the purchasing division staff and the department director and employees of the requesting department for a particular solicitation.
- (2) Service Provider Representative: An employee, partner, director, or officer of a Vendor, or a potential vendor, a service provider, bidder or consultant, or lobbyist, or actual or potential sub-contractor or sub-contractor of a Vendor, a potential vendor, a service provider, bidder or any other Person acting through or on behalf of any person or Business entity seeking an award.
- (3) "Cone of Silence" means a prohibition on communication regarding a particular Request for Proposals (RFP), Request for Qualifications (RFQ), or Invitation to Bid (ITB) or other competitive solicitations between:
 - a. a Vendor, Service Provider Representative or their lobbyist, or consultant and the City's professional staff.
 - b. a Vendor, Service Provider Representative, or their lobbyist, or consultant and the Mayor, City Council or their respective staffs.
 - c. a Vendor, Service Provider Representative, or their lobbyist, or consultant and any member of the selection committee therefor.
 - d. the Mayor, City Council or their respective staffs and any member of the City's professional staff.

e. the Mayor, City Council or their respective staffs and any member of the selection committee therefor.

f. any member of the City's professional staff and any member of the selection committee therefor.

(4) Exceptions. Unless specifically provided otherwise in the applicable RFP, RFQ or bid documents, the Cone of Silence does not apply to the following:

- a. Communications with Office of the City Attorney and his or her staff.
- b. Communications regarding a particular RFP, RFQ or bid between any Vendor, potential vendor, bidder, Service Provider Representative or their lobbyist, or consultant and the City's procurement agent or contracting officer responsible for administering the procurement process for such RFP, RFQ to obtain clarification or information concerning the subject solicitation, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation documents.
- c. Duly noticed site visits during the period between issuance of the bid number and issuance of a declaration of intent to award.
- d. Any emergency procurement of goods and services under a declaration of emergency or as otherwise provided for in City Code or procurement procedures.
- e. Oral communications at pre-bid conferences.
- f. Oral presentations before publicly noticed selection committee meetings.
- g. Contract negotiations during any duly noticed public meeting.
- h. Public presentations before the City Council during any duly noticed public meeting.
- i. Communications in writing, including but not limited to electronic communications, at any time with any member of the City's Professional Staff, employee, or member of the City Council unless specifically prohibited in the applicable RFP, RFQ or bid documents and provided that the written communication is copied to the purchasing division by the sender, contemporaneously with its sending.

(5) Commencement and Termination of Cone.

- a. The Cone of Silence shall commence upon the issuance of a Bid number by the Purchasing Division. At the time of issuing the Bid number, the Purchasing

Division shall post on its website and provide written notice via e-mail to the Directors of the affected departments, the City Manager, and the City Clerk. The City Manager shall provide notice of the commencement and the termination of the Cone of Silence to the Mayor and City Council. The Directors of the affected departments shall communicate the commencement of the Cone of Silence to their employees. The Purchasing Division shall include in any public solicitation for goods and services a statement disclosing the requirements of the Cone of Silence.

- b. The Cone of Silence terminates at the time the City Council approves the contract or the City Manager signs the agreement when the award is within the City Manager's delegated authority to approve without City Council approval.
- c. In the event a bid protest is filed pursuant to Section 2-668 of the Code, the Cone of Silence shall be lifted to permit communication between the protesting party and the City's professional staff to the extent necessary to adjudicate the bid protest.

(6) Penalty.

A violation of this Section by any Covered Person, Vendor, potential vendor, bidder, Service Provider Representative or their lobbyist, or consultant, will subject them to the penalties provided for in Section 2-981 of this Code. A violation of this subsection by a Vendor, potential vendor, bidder, Service Provider Representative or their lobbyist or consultant, may be considered grounds for disqualification from the subject competitive solicitation.

Section 5. That if any word, phrase, clause, subsection, or section of this ordinance is for any reason held unconstitutional, invalid, or ineffective, the same will not affect the validity of any remaining portions of this ordinance. In such event, the pre-existing word, phrase, clause, subsection, or section, will be revived.

Section 6. That all sections or parts of sections of the Code of Ordinances, City of Naples, 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 7. This ordinance containing amendments to the Ethics Code will take effect immediately after two readings on separate days and noticed once by publication.

APPROVED AT FIRST READING THIS 7TH DAY OF DECEMBER, 2022.

PASSED AND ADOPTED AT SECOND READING AND PUBLIC HEARING IN OPEN AND REGULAR SESSION OF THE CITY COUNCIL OF THE CITY OF NAPLES, FLORIDA THIS 18TH DAY OF JANUARY, 2023.

Attest:

 ON THE 18th DAY OF JANUARY, 2023
Patricia G. Bambosk, City Clerk


Teresa Lee Heitmann, Mayor

Approved as to form and legality:


Vose Law Firm, City Attorney

Date filed with City Clerk: 1-26-23