

ORDINANCE NO. 2004-31

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, AMENDING SECTION 1-266, REGARDING LOBBYING DURING AN ACTIVE PROCUREMENT; AMENDING SECTION 8 1/2-16, TO PROVIDE CIVIL PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE BROWARD COUNTY CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

(Sponsored by the Board of County Commissioners)

WHEREAS, the Board of County Commissioners has requested this revision to the Cone of Silence Ordinance; NOW THEREFORE,

BE IT ORDAINED BY THE BROWARD COUNTY BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA.

Section 1. Section 1-266 of the Broward County Code of Ordinances, Board of County Commissioners, is hereby amended as follows:

Sec. 1-266. Cone of Silence.

(a) "Cone of Silence" means a prohibition on any communication regarding particular Request for Proposals (RFP), Request for Letters of Interest (RLI), bid, or other competitive solicitation between:

- (1) Any person who seeks an award therefrom, including a potential vendor or vendor's representative, and
- (2) Any County Commissioner or the Commissioner's staff, the County Administrator, Deputy and Assistants to the County Administrator, and their respective support staff, or any person appointed by the County

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1 Commission to evaluate or recommend selection in such procurement
2 process.

3 Notwithstanding the foregoing, the Cone of Silence shall not apply to
4 communications with the County Attorney and his or her staff, or with designated
5 County staff who are not serving on the particular Selection ~~and Negotiation~~ Committee,
6 to obtain clarification or information concerning the subject solicitation. Further, nothing
7 herein shall prohibit a County Commissioner, the County Commissioner's staff, and
8 other County employees from communicating with each other. For purposes of this
9 section, "vendor's representative" means an employee, partner, officer, or director of a
10 potential vendor, or consultant, lobbyist, or actual or potential subcontractor or sub-
11 consultant of a vendor.

12 (b) A Cone of Silence shall be applicable to each RFP, RLI, bid, or other
13 competitive solicitation upon short listing. At the time of imposition of the Cone of
14 Silence, the County Administrator or the Administrator's designee shall provide public
15 notice of the Cone of Silence. The County Administrator shall include in any
16 advertisement and public solicitation for goods and services a statement disclosing the
17 requirements of this section.

18 (c) The Cone of Silence shall terminate at the time the Board of County
19 Commissioners votes to award or approve a contract, to reject all bids or responses, or
20 otherwise takes action which ends the solicitation.

21 (d) Nothing contained herein shall prohibit any potential vendor or vendor's
22 representative:

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1 (1) From making public presentations at duly noticed pre-bid
2 conferences or before duly noticed ~~selection and negotiation~~
3 ~~committee~~ Selection Committee meetings;

4 (2) From engaging in contract negotiations during any duly noticed
5 public meeting;

6 (3) From making a public presentation to the County Commission
7 during any duly noticed public meeting; or

8 (4) From communicating in writing with any County employee or official
9 for purposes of seeking clarification or additional information,
10 subject to the provisions of the applicable RFP, RLI, or bid
11 documents.

12 The potential vendor or vendor's representative shall file a copy of
13 any written communication with the County Administrator who shall
14 make copies available to the public upon request.

15 (e) Nothing contained herein shall prohibit a County Commissioner or his
16 other respective staff from initiating contact with a potential vendor or vendor's
17 representative and subsequent communication related thereto for the purpose of
18 obtaining further information regarding the RFP, RLI, bid, or competitive solicitation.
19 For purposes of this section and when not otherwise precluded by the operation of this
20 section from doing so, the Director of Purchasing or designee shall accept
21 communications from potential vendors or vendor's representatives when a Cone of
22 Silence has been applied to a RFP, RLI, bid, or other competitive solicitation. Such

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1 contact shall be in writing and shall be provided to the members of the applicable
2 ~~Selection and Negotiation Committee~~, including any response thereto and attached to
3 the Board agenda item for the award under the applicable competitive solicitation.

4 (f) The County Attorney or County Administrator, or a designee of the County
5 Attorney or County Administrator, shall be informed of any person who is alleged to
6 have violated the requirements of this section. In each such instance, an investigation
7 shall be performed and the results of each investigation including a determination of
8 violation, if any, shall be compiled in a report.

9 (g) If there is a determination of violation, there shall be a fine imposed for
10 each violation or each subsequent violation as provided for in section 8 ½ -16(f)(21),
11 Code of Ordinances.

12 (h) A copy of the report, including a determination of violation, if any, and
13 notice of the imposition of a fine as provided for in this section, if any, shall be
14 immediately furnished or mailed to the person who has been investigated.

15 (i) A person who is determined to have violated this section may appeal such
16 determination in the manner provided in Section 21.120, Broward County Administrative
17 Code.

18 (j) Once the time for appeal has expired, a copy of the report, including a
19 determination of violation, notice of the imposition of a fine as provided for in section 8
20 ½ -16(f)(21), Code of Ordinances, if any, and the opinion of the hearing officer, if any,
21 shall be furnished to the Board and to the person who has been investigated.

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1 ~~(f)(j)~~ In addition to the penalties provided in Section 1-265, any violation of this
2 section by a potential vendor or vendor's representative or County staff, as defined in
3 section ~~(a)(2)~~; a determination of violation shall render any RFP award, RLI award, or
4 bid award to said potential vendor voidable, at the sole discretion of the Board of County
5 Commissioners.

6 ~~(1)~~ Shall render any RFP award, RLI award, or bid award to said potential
7 vendor or vendor's representative voidable, at the sole discretion of the
8 Board of County Commissioners; and,

9 ~~(2)~~ May subject the potential vendor or vendor's representative to debarment
10 in accordance with Chapter 21, Part IX, of the Broward County
11 Administrative Code.

12 ~~(k)~~ Upon a vendor having been found to have violated the provisions of this
13 section a third time, the Purchasing Director shall initiate debarment proceedings
14 pursuant to section 21-119, Broward County Administrative Code.

15 Section 2. Section 8 ½ -16(f) of the Broward County Code Of Ordinances, Code
16 Enforcement, Schedule of Civil Penalties, Board of County Commissioners, is hereby
17 amended as follows: . . .

18
19 (f) *Miscellaneous provisions:*

		Fine	
Violation		First	Repeat

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21
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		Violation	Violation
1			
2	(1)	Violation of convenience store security ordinance (sec. 21-156 et seq.)	\$2,500.00
3			\$5,000.00
4	(2)	Violation of water emergency restrictions (sec. 36-52, 36-53, 36-54, 36-55, 36-56)	125.00
5			250.00
6			
7	(3)	Failure to provide descriptive lettering on business vehicles (sec. 9-23)	175.00
8			350.00
9			
10	(4)	Illegal disposal of solid waste (sec. 14-17)	250.00
11			500.00
12	(5)	Obstruction of public right-of-way (sec. 21-18)	100.00
13			200.00
14	(6)	Failure to remove graffiti from property(sec. 21-44)	100.00
15			200.00
16	(7)	Throwing or depositing of litter upon a public place, park or body of water (sec. 21-62, 21-68 or 21-69)	100.00
17			200.00
18			
19			
20	(8)	Sweeping litter into gutters, streets or public places (sec. 21-64 or 21-65)	100.00
21			200.00
22			
23	(9)	Posting notice upon	150.00
24			300.00

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1		a structure, building or public utility pole		
2	(10)	Permitting an animal to commit a nuisance (sec. 4-8)	125.00	200.00
3				
4	(11)	Operating a business, profession or occupation without an occupational license (sec. 20-15)	125.00	250.00
5				
6				
7	(12)	Violation of 0.50 inches per second limit on blast (sec. 12-37)	250.00	500.00
8				
9				
10	(13)	Violation of 80% rule (0.40 inches per second limit on blast) (sec. 12-37)	250.00	500.00
11				
12				
13	(14)	Failure to post and/or maintain signage related to blasting operations	125.00	250.00
14				
15	(15)	Unlicensed persons handling explosives (sec. 12-27)	250.00	500.00
16				
17	(16)	Failure to notify of cancellation prior to shot window (sec. 12-39)	125.00	250.00
18				
19				
20	(17)	Failure to meet time frame on damage claims (sec. 12-42)	125.00	250.00
21				
22	(18)	Violation of vibration or air blast limits on	250.00	500.00
23				

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1		compaction (sec. 12-45)		
2	(19)	Failure to post and/or maintain signage related to compaction operations (sec. 12-46)	125.00	250.00
3				
4				
5				
6	(20)	Building/structure not properly maintained	100.00	300.00
7				
8	<u>(21)</u>	<u>Violation of Cone of Silence Ordinance (sec. 1-266)</u>	<u>250.00</u>	<u>500.00</u>
9				

10 Section 3. SEVERABILITY.

11 If any section, sentence, clause, or phrase of this Ordinance is held to be invalid
12 or unconstitutional by any court of competent jurisdiction, then said holding shall in no
13 way affect the validity of the remaining portions of this Ordinance.

14 Section 4. INCLUSION IN CODE.

15 It is the intention of the Board of County Commissioners that the provisions of
16 this Ordinance shall become and be made a part of the Broward County Code; and that
17 the sections of this Ordinance may be renumbered or relettered and the word
18 "ordinance" may be changed to "paragraph," "section," "article," or such other
19 appropriate word or phrase in order to accomplish such intentions.

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24 underscoring type are additions.

1 Section 5. EFFECTIVE DATE.

2 This Ordinance shall become effective as provided by law.

3 ENACTED August 24, 2004

4 FILED WITH DEPARTMENT OF STATE September 3, 2004

5 EFFECTIVE September 3, 2004

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