



City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

**OFFICE OF THE CITY ATTORNEY
RAUL J. AGUILA, CITY ATTORNEY**

COMMISSION MEMORANDUM

**TO: MAYOR PHILIP LEVINE
MEMBERS OF THE CITY COMMISSION
CITY MANAGER JIMMY MORALES**

FROM: RAUL J. AGUILA *RJA*
CITY ATTORNEY

DATE: SEPTEMBER 30, 2015

SUBJECT: INCREASING STRINGENCY OF CITY OF MIAMI BEACH ETHICS LAWS BY AMENDING CITY CODE CHAPTER 2, ARTICLE VII "STANDARDS OF CONDUCT", DIVISIONS 5 THEREOF, TO PROHIBIT AS OF JANUARY 1, 2016 MEMBERS OF THE CITY COMMISSION AND CANDIDATES SEEKING SUCH OFFICE FROM DIRECTLY OR INDIRECTLY SOLICITING, ACCEPTING OR DEPOSITING CAMPAIGN CONTRIBUTIONS FROM A VENDOR, LOBBYIST ON A PROCUREMENT ISSUE, REAL ESTATE DEVELOPER OR LOBBYIST ON A REAL ESTATE DEVELOPMENT ISSUE.

Pursuant to the request of City Commissioner Jonah Wolfson, the attached ordinance has been drafted for the purpose of strengthening the City of Miami Beach's Code of Conduct's ethical standards for the City's elected officials and candidates seeking said Offices.

Specifically, the attached Ordinance amends City Code Chapter 2, Article VII, Division 5 entitled "Campaign Finance Reform" by codifying substantive changes which will establish stricter ethics laws than currently exist under State or County ethics codes by providing that commencing January 1, 2016, members of the City Commission and any candidate seeking such Office shall be prohibited from directly or indirectly soliciting, accepting or depositing a campaign contribution, from a "vendor", "lobbyist on a procurement issue", "real estate developer" or "lobbyist on a real estate development issue", as said terms are defined in Chapter 2, Article VII, Division 5 of the Miami Beach City Code.

This amendment to the City's ethics laws serves to augment the City's intent of good government, and will once more place the City of Miami Beach at the forefront of local ethics legislation.

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING MIAMI BEACH CITY CODE CHAPTER 2 "ADMINISTRATION", ARTICLE VII "STANDARDS OF CONDUCT", DIVISION 5 "CAMPAIGN FINANCE REFORM", ENCOMPASSING CITY CODE SECTIONS 2-487 "PROHIBITED CAMPAIGN CONTRIBUTIONS BY VENDORS", CITY CODE SECTION 2-488 "PROHIBITED CAMPAIGN CONTRIBUTIONS BY LOBBYISTS ON PROCUREMENT ISSUES", CITY CODE SECTION 2-489 "PROHIBITED CAMPAIGN CONTRIBUTIONS BY REAL ESTATE DEVELOPERS", AND CITY CODE SECTION 2-490 "PROHIBITED CAMPAIGN CONTRIBUTIONS BY LOBBYISTS ON REAL ESTATE DEVELOPMENT ISSUES", BY PROVIDING THAT COMMENCING JANUARY 1, 2016 MEMBERS OF THE CITY COMMISSION OR CANDIDATES FOR SAID OFFICES SHALL BE PROHIBITED FROM EITHER DIRECTLY OR INDIRECTLY SOLICITING, ACCEPTING OR DEPOSITING ANY CAMPAIGN CONTRIBUTION REGARDING CITY ELECTED OFFICE FROM A VENDOR, LOBBYIST ON A PROCUREMENT ISSUE, REAL ESTATE DEVELOPER, OR LOBBYIST ON A REAL ESTATE DEVELOPMENT ISSUE; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, as reflected by its prior adoption of legislation on the issue of Campaign Finance Reform, the Miami Beach City Commission has found and determined that legislation is necessary for the preservation of the integrity of representative democracy in the City of Miami Beach in order to prevent the appearance of undue influence and access to candidates and elected officials by contributors, and to address the potential for abuse associated with certain campaign contributions which unfairly influence elections and create the perception that public officials may be influenced by special interests; and

WHEREAS, pursuant to concerns expressed at recent meetings of the Miami Beach City Commission and among City residents and other members of the public questioning the ability of City Commission members to solicit City vendors under existing laws, the City Commission has determined that the potential (and certainly the perception) for undue influence and granting of *quid pro quo* favors exists arising from the donation of a political contribution and that the present ability of our elected officials and candidates to solicit and accept all such donations, whether directly or indirectly, creates an unacceptable appearance of conflict which undermines the confidence of the public in our municipal system of representative democracy; and

WHEREAS, the below legislation is thus presented as an amendment to the City's Code of Conduct in order to provide for stricter ethics laws than currently exist under State or County ethics codes, by prohibiting members of the City Commission or any candidate seeking such Office from directly or indirectly soliciting, accepting or depositing a campaign contribution from those donors found to be most involved in creating the appearance of corruption; said donors being "vendors," "lobbyists on a procurement issue," "real estate developers" or "lobbyists on a real estate development issue," as said terms are defined in Chapter 2, Article VII, Division 5, Sections 2-487 through 2-490 of the Miami Beach City Code; and

WHEREAS, by narrowly tailoring this legislation as stated above, the City Commission is pursuing its goal of re-instilling public faith and trust in the government, while accomplishing its legitimate, compelling government interest of maintaining public confidence in its elected officials and in avoiding appearances of public corruption stemming from the potentially improper influence and related potential unlawful quid pro occasioned by the solicitation and acceptance of the subject campaign contributions at issue hereinbelow from the subject class of prohibited donors.

NOW, THEREFORE, BE IT DULY ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH AS FOLLOWS:

SECTION 1. That Miami Beach City Code Chapter 2 entitled "Administration," Article VII entitled "Standards of Conduct," Division 5 thereof entitled "Campaign Finance Reform," encompassing City Code Section 2-487 "Prohibited campaign contributions by vendors", City Code Section 2-488 "Prohibited campaign contributions by lobbyists on procurement issues", City Code Section 2-489 "Prohibited campaign contributions by real estate developers", and City Code Section 2-490 "Prohibited campaign contributions by lobbyists on real estate development issues", are all hereby amended in the following manner effective January 1, 2016, to read as follows:

Sec. 2-487. Prohibited campaign contributions by vendors.

A. General.

- (1) (a) No vendor shall give a campaign contribution directly or indirectly to a candidate, or to the campaign committee of a candidate, for the offices of mayor or commissioner. Commencing on the effective date of this ordinance, all proposed city contracts, purchase orders, standing orders, direct payments, as well as requests for proposals (RFP), requests for qualifications (RFQ), requests for letters of interest (RFLI), or bids issued by the city, shall incorporate this section so as to notify potential vendors of the proscription embodied herein.

(b) i No candidate or campaign committee of a candidate for the offices of mayor or commissioner, or member of the City Commission, shall directly or indirectly solicit, accept¹ or deposit into such candidate's campaign account any campaign contribution otherwise prohibited in Section A(1)(a) above ~~directly or indirectly~~ from a vendor. Candidates (or those acting on their behalf), as well as members of the City Commission, shall ensure compliance with this code section by confirming with the procurement division's city records (including City of Miami Beach website) to verify the vendor status of any potential donor.

ii For purposes of Subsection A(1)(b)i hereinabove, the term "indirectly solicit" shall include, but not be limited to, those instances in which a candidate for the offices of Mayor or Commissioner, or a member of the City Commission, solicits campaign contributions for a political committee, regardless of whether said contribution is earmarked by the donor for a particular candidate for City elected office.

(2) A fine of up to \$500.00 shall be imposed on every person who violates this section. Each act of soliciting, giving, accepting or depositing a contribution in violation of this section shall constitute a separate violation. All contributions deposited by a candidate in violation of this section shall be forfeited to the city's general revenue fund.

* * *

(4) As used in this section:

* * *

(d) The term "political committee" shall have the meaning ascribed to such term in Florida Statutes Ch. 106, as amended and supplemented.

Sec. 2-488. Prohibited campaign contributions by lobbyists on procurement issues.

(1) No lobbyist on a present or pending solicitation for goods, equipment or services or on a present or pending award for goods, equipment or services prior to or upon execution of a contract, purchase order, standing order, direct payment, or purchasing card payment shall solicit for or give a campaign contribution directly or indirectly to a candidate, or to the campaign committee of a candidate, for the offices of mayor or commissioner. The term "lobbyist" shall not include those individuals who lobby on behalf of persons and/or entities in connection with their

¹ This portion of the City's Campaign Finance Laws prohibiting direct or indirect solicitation or acceptance of certain campaign contributions, applicable to Code Sections 2-487 through and including 2-490, shall be effective as of January 1, 2016 in order to obviate issues of unlawful retroactive legislation.

provision of goods, equipments or services not exceeding \$1000,000 in a City of Miami Beach fiscal year wherein city commission action is not required.

* * *

(b) i. No candidate, or campaign committee of a candidate for the offices of mayor or commissioner, or member of the City Commission, shall directly or indirectly solicit, accept or deposit into such candidate's campaign account any campaign contribution otherwise prohibited in Section (1) above directly or indirectly from a lobbyist subject to the provisions of this ordinance. Candidates (or those acting on their behalf), as well as members of the City Commission, shall ensure compliance with this code section by confirming with the city clerk's records to verify the lobbyist status of any potential donor.

ii. For purposes of Subsection (1)(b)i hereinabove, the term "indirectly solicit" shall include, but not be limited to, those instances in which a candidate for the offices of Mayor and Commissioner, or a member of the City Commission, solicits campaign contributions for a political committee, regardless of whether said contribution is earmarked by the donor for a particular candidate for City elected office.

* * *

(3) A fine of up to \$500.00 shall be imposed on every person who violates this section. Each act of soliciting, giving, accepting or depositing a contribution in violation of this section shall constitute a separate violation. All contributions deposited received by a candidate in violation of this section shall be forfeited to the city's general revenue fund.

* * *

(5) The term "political committee" shall have the meaning ascribed to such term in Florida Statutes Ch. 106, as amended and supplemented.

Sec. 2-489. Prohibited campaign contributions by real estate developers.

A. General.

(1) (a) No real estate developer shall give a campaign contribution directly or indirectly to a candidate, or to the campaign committee of a candidate, for the offices of mayor or commissioner. Commencing on the February 15, 2003, all applications for development agreements and for changes

in zoning map designation as well as future land use map changes shall incorporate this section so as to notify potential real estate developers of the proscription embodied herein

(b) i. No candidate, or campaign committee of a candidate for the offices of mayor or commissioner, or member of the City Commission, shall directly or indirectly solicit, accept or deposit into such candidate's campaign account any campaign contribution otherwise prohibited in Section A(1)(a) above directly or indirectly from a real estate developer. Candidates (or those acting on their behalf), as well as members of the City Commission, shall ensure compliance with this code section by confirming with the city planning department's records (including City of Miami Beach website) to verify the real estate developer status of any potential donor.

ii. For purposes of Subsection A(1)(b)i hereinabove, the term "indirectly solicit" shall include, but not be limited to, those instances in which a candidate for the offices of Mayor or Commissioner, or a member of the City Commission, solicits campaign contributions for a political committee, regardless of whether said contribution is earmarked by the donor for a particular candidate for City elected office.

(2) A fine of up to \$500.00 shall be imposed on every person who violates this section. Each act of soliciting, giving, accepting or depositing a contribution in violation of this section shall constitute a separate violation. All contributions deposited by a candidate in violation of this section shall be forfeited to the city's general revenue fund.

* * *

(4) As used in this section:

* * *

(d) The term "political committee" shall have the meaning ascribed to such term in Florida Statutes Ch. 106, as amended and supplemented.

Sec. 2-490. Prohibited campaign contributions by lobbyists on real estate development issues.

(1) No lobbyist on a pending application for a development agreement with the city, or application for change of zoning map designation or change to the city's future land use map shall solicit for or give a campaign contribution directly or indirectly to a candidate, or to the campaign committee of a candidate, for the offices of mayor or commissioner.

* * *

(b) i. No candidate, or campaign committee of a candidate for the offices of mayor or commissioner, or member of the City Commission, shall directly or indirectly solicit, accept or deposit into such candidate's campaign account any campaign contribution otherwise prohibited in Section (1) above ~~directly or indirectly~~ from a lobbyist subject to the provisions of this section. Candidates (or those acting on their behalf), as well as members of the City Commission, shall ensure compliance with this code section by confirming with the city clerk's and planning department's records to verify the lobbyist status of any potential donor.

ii. For purposes of Subsection (1)(b)i hereinabove, the term "indirectly solicit" shall include, but not be limited to, those instances in which a candidate for the offices of Mayor or Commissioner, or a member of the City Commission, solicits campaign contributions for a political committee, regardless of whether said contribution is earmarked by the donor for a particular candidate for City elected office.

* * *

(3) A fine of up to \$500.00 shall be imposed on every person who violates this section. Each act of soliciting, giving, accepting or depositing a contribution in violation of this section shall constitute a separate violation. All contributions deposited received by a candidate in violation of this section shall be forfeited to the city's general revenue fund.

* * *

(7) The term "political committee" shall have the meaning ascribed to such term in Florida Statutes Ch. 106, as amended and supplemented.

SECTION 2. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 3. SEVERABILITY.

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

SECTION 4. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made a part

of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect on January 1, 2016.

PASSED and ADOPTED this _____ day of _____, 2015.

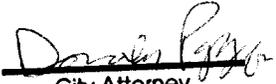
ATTEST:

PHILIP LEVINE
MAYOR

RAFAEL E. GRANADO
CITY CLERK

(Requested by City Commissioner Jonah Wolfson)

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

9/28/15

Date