

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~~

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

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

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

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

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

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

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

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

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66 (1) Oral communications at pre-bid conferences;

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68 (2) Oral presentations before selection or evaluation committees;

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

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

75 respondent, bidder or proposer shall file a copy of any written communication with the
76 Town Clerk. The Town Clerk shall make copies available to any person upon request;
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78 (5) Written communications regarding a particular ~~RFP, RFQ and bid~~ Solicitation
79 between a potential respondent, vendor, service provider, proposer, bidder, lobbyist or
80 consultant and the Town's purchasing agent or Town employee designated responsible
81 for administering the procurement process for such ~~RFP, RFQ and bid~~ Solicitation,
82 provided the communication is limited strictly to matters of process or procedure
83 already contained in the corresponding solicitation document;
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85 (6) Communications with the Town attorney and his or her staff;
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87 (7) Duly noticed site visits to determine the competency of respondents regarding a
88 particular solicitation during the time period between the opening of solicitations and
89 the time the Town Manager makes his or her written recommendation;
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91 (8) ~~Any emergency procurement of goods or services pursuant to the Town Code~~ Any
92 solicitation or procurement which is exempt from the competitive bidding procedures as set
93 forth in Sections 3-12 and 3-13 of this chapter;
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95 (9) Responses to the Town's request for clarification or additional information;
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97 (10) Contract negotiations during any duly noticed public meeting;
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99 (11) Written communications to enable Town staff to seek and obtain industry comment
100 or perform market research, provided all communications related thereto between a
101 potential respondent, vendor, service provider, proposer, bidder, lobbyist, or
102 consultant and any member of the Town's professional staff including, but not limited
103 to, the Town Manager and his or her staff are in writing or are made at a duly noticed
104 public meeting;
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106 (12) Unsolicited proposals or solicited proposals pursuant to a public-private partnership
107 with the Town in accordance with F.S. § 255.065, as amended from time to time,
108 including, but not limited to, contract negotiations between the Town staff,
109 consultants, and individuals or representatives of entities proposing a public-private
110 partnership.
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112 (e) Penalties. Violation of this section by a particular respondent, bidder or proposer shall
113 render any ~~RFP, RFQ and bid~~ Solicitation award to said respondent, bidder or proposer
114 voidable by the Town commission or Town Manager. Any person who violates a
115 provision of this section may be prohibited from serving on a Town selection or
116 evaluation committee. In addition to any other penalty provided herein, violation of any

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

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

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

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

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

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

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140 **PASSED** on first reading on the 8th day of May, 2018.

141 **PASSED AND ADOPTED** on second reading on 27nd day of May 2018.

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

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

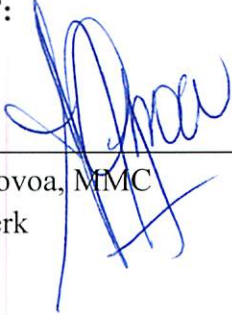
144 **FINAL VOTE ON ADOPTION**

145 Commissioner Barry Cohen Absent
146 Commissioner Michael Karukin yes
147 Commissioner Tina Paul yes
148 Vice Mayor Daniel Gielchinsky yes
149 Mayor Daniel Dietch yes

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153 Daniel Dietch
154 Mayor

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ATTEST:



Sandra Novoa, MMC
Town Clerk

**APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:**



Weiss Serota Helfman Cole & Bierman, P.L.
Town Attorney