

ORDINANCE NO. 2005-14

AN ORDINANCE OF THE CITY OF AVENTURA, FLORIDA; AMENDING THE CITY CODE BY AMENDING ARTICLE VII "CODE OF ETHICS" OF CHAPTER 2 "ADMINISTRATION", BY AMENDING SECTION 2-396 "FURTHER ETHICS STANDARDS; PROHIBITIONS AND RESTRICTIONS" AT PARAGRAPH (C) "FURTHER RESTRICTIONS ON TRANSACTIONS" BY RENUMBERING AND REVISING EXISTING SUBPARAGRAPH (iii) TO BE SUBPARAGRAPH (iv) AND BY CREATING A NEW SUBPARAGRAPH (iii) TO PROHIBIT INVOLVEMENT OF CITY PUBLIC OFFICERS AND EMPLOYEES IN CERTAIN INVESTMENTS AND IN CERTAIN REAL ESTATE TRANSACTIONS; AND BY CREATING ARTICLE IX "CAMPAIGN FINANCE RESTRICTIONS" OF CHAPTER 2 "ADMINISTRATION" OF THE CITY CODE, BY CREATING SECTION 2-420 "PROHIBITED CAMPAIGN CONTRIBUTIONS FROM VENDORS", TO CREATE RESTRICTIONS UPON THE MAKING OR RECEIPT OF POLITICAL CAMPAIGN CONTRIBUTIONS FROM OR WHICH ARE DELIVERED, SOLICITED OR PROVIDED BY VENDORS OF THE CITY; PROVIDING FOR DEFINITIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR PENALTY; PROVIDING FOR INCLUSION IN CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Aventura desires to adopt additional supplementary ethics code provisions which expressly relate to investments and to real estate transactions, and to further promote the ethical standards of the City by adopting campaign finance reform provisions prohibiting political campaign contributions which are made, solicited, delivered or provided by City vendors; and

WHEREAS, the City Commission finds that the additional regulations and restrictions, as provided herein, are in the best interest of the City.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE CITY COMMISSION OF THE CITY OF AVENTURA, FLORIDA, AS FOLLOWS:¹

Section 1. Recitals Adopted. That each of the above stated recitals is hereby adopted and confirmed.

Section 2. City Code Amended. That Article VII "Code of Ethics" of Chapter 2 "Administration" of the City Code of the City of Aventura is hereby amended by amending Section 2-396 "Further Ethics Standards; Prohibitions and Restrictions", to read as follows:

Section 2-396 - Further Ethics Standards; Prohibitions and Restrictions

....

(c) **Further Restriction on Transactions.**

- (i) In the event that during the term of office of a member of the City Commission, the City Commission grants an application (the "City Approval") for a rezoning, variance, conditional use, or zoning code or comprehensive plan amendment, upon the application of a person or entity (the "Zoning Applicant"), no person then serving as a member of the City Commission at the time of the City Approval shall then and for a period of two years after the issuance of the City Approval, regardless of whether still serving on the City Commission, perform any services for or directly or indirectly accept any financial remuneration, any financial interest in or any special private gain from the Zoning Applicant or from any successor or assignee of the Zoning Applicant, as a result of or in relation to any development which is enabled to occur as a direct consequence of such City Approval. Notwithstanding any provision of this paragraph (c)(i), the restrictions and prohibitions of this paragraph (c)(i) shall not apply to a member of the City Commission who has recused himself or herself from participating in or voting upon the item of City Approval and has absented himself or herself from the Commission meeting pertaining to such item.
- (ii) This paragraph (c) shall not preclude the provision of services or the sale or lease of goods by a member of the City Commission to persons who subsequently, independently enter into a transaction with the developer, owner or operator of the property developed as a result of the City

^{1/} Proposed additions to existing City Code text are indicated by underline; proposed deletions from existing City Code text are indicated by ~~strikethrough~~; presently existing text is indicated by the absence of any underlining or ~~strikethroughs~~.

Approval solely by such person's purchasing or obtaining a lease for a unit in a building which was enabled to be built or redeveloped as a result of a City Approval.

(iii) Pursuant to Section 2-11.1(o) of the Miami-Dade County Code and as further specified herein:

(a) No member of the City Commission or any City officer or employee shall acquire a financial interest in a project, business entity or property at a time when he or she believes or has reason to believe that the said financial interest will be directly affected by his or her official actions or by the official actions by the City or City agency of which he is an official, officer or employee.

(b) Any member of the City Commission or any City officer or employee who participated in the City development approval process concerning a residential development, shall be barred for a period of two (2) years following such participation from purchasing directly or indirectly any dwelling unit at a price which he or she knows or should know is less than that which is then being offered to the general public or from purchasing any such dwelling at a discounted price which he or she knows or should know would constitute a gift requiring disclosure by him or her pursuant to Section 112.3148, Florida Statutes. In addition, at the time of the closing of the purchase transaction, he or she shall file with the City Clerk a disclosure affidavit confirming that any purchase made complies with this paragraph (iii)(b). The disclosure shall be made on an official City form which has been prepared by the City Attorney for the purpose of disclosing any such purchases.

~~(iii)~~ (iv) The prohibitions of this paragraph (c), exclusive of subparagraph (iii)(a), may be waived for a specific transaction by Resolution of the City Commission which is adopted following a public hearing by a five-seventh (5/7) (five member affirmative vote) of the City Commission, if not contrary to other applicable ethics provisions, upon a finding that:

- (1) The proposed transaction is consistent with the purposes of Article VII of Chapter 2 of the City Code; and
- (2) The transaction will not create or tend to create even the appearance of any impropriety.

(d) **Applicability to Firms, Business Entities, Business Associates.**

The restrictions and prohibitions which are imposed by paragraphs (a), (b) and (c) of this section upon any person, by virtue of that person's service (or former service) as a member of the City Commission, shall also be applicable to any firm or business entity in which such member of the City Commission has an employment, independent contractor or material interest and to any business associate of such member of the City Commission. The terms "material interest" and "business associate" have the meaning indicated by Section 112.312, Florida Statutes.

(e) **Definitions.**

Except as otherwise indicated herein or required by the context used herein, the terms utilized herein which are defined in Section 112.312, Florida Statutes, or in Section 2-11.1 of the Miami-Dade County Code, shall have the meanings provided in such state statute and county code provisions.

(f) **Stricter provisions prevail.**

Nothing in this section shall be construed to impair or diminish any stricter ethical standards which are provided by Section 112.313, et. seq. of the Florida Statutes, Section 2-11.1 of the Miami-Dade County Code or by the provisions of the Charter and Ordinances of the City or by any applicable federal law.

Section 3. That the City Code of the City of Aventura, Florida, is hereby amended by creating Article IX "Campaign Finance Reform", consisting of Section 2-420 "Prohibited Campaign Contributions by Vendors", of Chapter 2 "Administration" to read as follows:

Sec. 2-420. Prohibited Campaign Contributions by Vendors.

A. General, Prohibition, Disqualification, Definitions.

(1) (a) No vendor shall give, solicit for, deliver or provide 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, as well as requests for proposals (RFP), requests for qualifications (RFQ),

requests for letters of interest (RFLI), or solicitations of bids issued by the city, shall incorporate notice of this section so as to notify potential vendors of the proscription embodied herein.

(b) No candidate or campaign committee of a candidate for the offices of mayor or commissioner, shall deposit into such candidate's campaign account any campaign contribution which is received directly or indirectly from a vendor or which such candidate or campaign committee knows or should know was solicited by or for a Vendor or delivered or provided by a Vendor. Candidates (or those acting on their behalf) shall ensure compliance with this code section by confirming through examination of the official vendor list which is posted on the City of Aventura website to verify the vendor status of any potential contributor. A candidate or the campaign committee of a candidate shall not be in violation of this paragraph (b) if the vendor was not listed as a vendor in the City website at the time that the contribution was received or deposited so long as the candidate or the campaign committee of a candidate did not know that the person or entity was a vendor of the City.

(2) Each prohibited act of giving, soliciting for, delivering or providing a campaign contribution or depositing a campaign contribution in violation of this section shall constitute a separate violation. All contributions deposited into a candidate's campaign account in violation of this section shall be forfeited to the city's general revenue fund.

(3) (a) A person or entity, other than a then existing vendor, who directly or indirectly makes a campaign contribution to a candidate who is elected to the office of mayor or commissioner shall be disqualified for a period of 12 months following the swearing in of the subject elected official from serving as a vendor with the city. A then existing vendor who directly or indirectly makes a contribution to a candidate who is elected to the Office of Mayor or Commissioner, shall be disqualified from serving as a vendor with the City for a period of twelve (12) months from a final finding of a violation of this section, or from the time of action on a waiver request by the City Commission pursuant to paragraph (B) below, in the event that a

waiver is sought by the vendor. In the event that such waiver request for a particular transaction is granted, the affected vendor shall nonetheless be disqualified from serving as a vendor with the City as to any other goods, equipment or services to be provided by the vendor to the City, beyond the vendor goods, equipment or services which are the subject matter of any waiver which is granted. In the event such waiver request is denied for a particular transaction, the twelve (12) month disqualification period shall continue to apply to both the particular transaction for which the waiver was sought, as well as all other vendor activities for the provision of goods, equipment or services to the City during that twelve (12) month period.

(b) For purposes of this section, the term "disqualified" shall be defined to include:

(i) Termination of a contributor/vendor's existing contracts with the city, subject to the applicable waiver provisions of paragraph B herein; and

(ii) Disqualification of a contributor's response to solicitation requests for prospective vendor contracts with the city, subject to the applicable waiver provisions of paragraph B herein.

(4) As used in this section:

(a) Vendor. (i) A "vendor" is a person and/or entity who has been selected by the City as the successful bidder on a present or pending bid to provide to the City goods, equipment or services, or has been approved by the City on a present or pending award to provide to the City goods, equipment or services, prior to, upon or following execution of a contract, or purchase order.

(ii) "Vendor" shall include natural persons and/or entities who hold a controlling financial interest in a vendor entity. The term "controlling financial interest" shall mean the ownership, directly or indirectly, of ten percent or more of the outstanding capital stock in any corporation or a direct or

indirect interest of ten percent or more in a firm. The term "firm" shall mean a corporation, partnership, business trust or any legal entity other than a natural person.

(iii) "Vendor" shall not include City officers or employees.

(iv) For purposes of this section, "vendor" status shall terminate upon completion of performance of the agreement for the provision of goods, equipment or services.

(b) *Services.* For purposes of this section, the term "services" shall mean the rendering by a vendor through competitive bidding or otherwise, of labor, professional and/or consulting services to the City, including, but not limited to, the provision of lobbying services to the City.

(c) *Campaign Contributions.*

The term "campaign contribution" shall have the meaning which is ascribed to the term "Contributions" pursuant to Section 106.011, Florida Statutes, as amended.

B. *Waiver of prohibition.*

(1) *Criteria for Waiver.*

The requirements of this section may be waived by the affirmative vote of five members of the City Commission for a particular transaction after a public hearing, upon finding that:

(a) The goods, equipment or services to be involved in the proposed transaction are unique and the City cannot avail itself of such goods, equipment or services without entering into a transaction which would violate this section but for waiver of its requirements; or

(b) The business entity involved in the proposed transaction is the sole source of supply as determined by the City Manager in accordance with procedures established by the City Manager; or

(c) An emergency contract (as authorized by Section 2-253(5) of this Code) must be made in order to protect the health, safety or welfare of the citizens of the City; or

(d) A contract for the provision of goods, equipment or services exists which, if terminated by the City, would be substantially adverse to the best economic interests of the City.

(2) Limited Waiver.

Notwithstanding the denial of the City Commission of a waiver request regarding the provision of goods, equipment or services under an existing contract pursuant to paragraph B(a) above, the City Commission, may by the affirmative vote of five (5) members of the City Commission after a public hearing, grant a limited waiver concerning an existing contract for the provision of goods, equipment or services between a vendor and the City upon finding that in order to protect the health, safety and welfare of the citizens of the City, it is necessary that the affected contract be continued for a limited duration (not to exceed a period of six (6) months) in order for the City to obtain a replacement vendor.

(3) Full Disclosure.

Any grant of a waiver or limited waiver by the City Commission must first be supported with a full disclosure of the subject campaign contribution.

C. Implementation.

The City Manager is authorized to adopt additional procurement procedures for goods, equipment or services to implement this section. These procedures shall provide for the assembly, maintenance and posting of an official City vendor list as referenced herein.

D. Penalty.

The Ethics Commission created pursuant to Miami-Dade County Ordinance 97-105, shall have primary jurisdiction for enforcement of this Section 2-420 of the City Code. A finding by the Ethics Commission that a person violated this section, shall subject such person to an admonition or public reprimand and/or a fine of \$250.00 for the first such violation, and \$500.00 for each subsequent violation.

E. Applicability.

This section shall be applied only prospectively to campaign contributions which are made after the date of adoption of this section.

Section 4. 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 5. Penalty. That Section 2 of the Ordinance shall be subject to enforcement pursuant to City Code Section 2-394; and Section 3 of this Ordinance shall be subject to enforcement as provided in new Section 2-420(D) as provided therein above.

Section 6. Inclusion in the Code. That it is the intention of the City Commission, 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 Aventura; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 7. Effective Date. That upon adoption on second reading this Ordinance

shall be effective immediately and shall be applied prospectively only.

The foregoing Ordinance was offered by Commissioner Weinberg, who moved its adoption on first reading. This motion was seconded by Vice Mayor Auerbach, and upon being put to a vote, the vote was as follows:

Commissioner Bob Diamond	yes
Commissioner Harry Holzberg	yes
Commissioner Billy Joel	yes
Commissioner Michael Stern	yes
Commissioner Luz Urbàez Weinberg	yes
Vice Mayor Zev Auerbach	yes
Mayor Susan Gottlieb	yes

The foregoing Ordinance was offered by Commissioner Diamond, who moved its adoption on second reading. This motion was seconded by Commissioner Auerbach, and upon being put to a vote, the vote was as follows:

Commissioner Zev Auerbach	yes
Commissioner Bob Diamond	yes
Commissioner Harry Holzberg	yes
Commissioner Michael Stern	yes
Commissioner Luz Urbàez Weinberg	yes
Vice Mayor Billy Joel	yes
Mayor Susan Gottlieb	yes

PASSED AND ADOPTED on first reading this 6th day of September, 2005.

PASSED AND ADOPTED on second reading this 11th day of October, 2005.

Susan Gottlieb, Mayor

ATTEST:

Teresa M. Soroka, MMC
City Clerk

Approved as to Form and Legal Sufficiency:

City Attorney