

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 2 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "ADMINISTRATION" BY AMENDING ARTICLE VII, ENTITLED "STANDARDS OF CONDUCT," BY AMENDING 2-486 THEREOF, ENTITLED "CONE OF SILENCE," TO STRENGTHEN THE ROLE OF THE OFFICE OF INSPECTOR GENERAL IN PROCUREMENT-RELATED MATTERS, BY PROVIDING AN EXCEPTION FOR COMMUNICATIONS BETWEEN THE INSPECTOR GENERAL AND THEIR STAFF; BY AMENDING ARTICLE IX, ENTITLED "PROTECTION OF EMPLOYEES DISCLOSING SPECIFIED INFORMATION," BY AMENDING SECTIONS 2-518, 2-519, AND 2-520 THEREOF, TO ESTABLISH THE INSPECTOR GENERAL AS AN APPROPRIATE PARTY TO DISCLOSE INFORMATION WHICH WOULD BE PROTECTED UNDER ARTICLE IX (CITY'S WHISTLEBLOWER ORDINANCE); AND, PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

**WHEREAS**, on November 6, 2018, the City's voters approved an amendment to the City Charter, creating Article IX, which creates the City of Miami Beach Office of Inspector General; establishes the functions of the office; provides the Inspector General with the power to subpoena witnesses, administer oaths, and require production of records, in order to conduct its investigations; and provides that the Inspector General's appointment, term, functions, authority, and powers shall be further established by Ordinance; and

**WHEREAS**, on February 23, 2019, the Mayor and City Commission adopted Ordinance No. 2019- 4239, to implement the provisions of the newly created Article IX of the City Charter; and

**WHEREAS**, on September 18, 2019, the Ad Hoc Inspector General Selection Committee unanimously recommended the appointment of Mr. Joseph M. Centorino as the City's Inspector General; and

**WHEREAS**, on October 16, 2019, pursuant to Section 2- 256(b)(2) of the City Code, the Mayor and Commission appointed Joseph M. Centorino as Inspector General of the City of Miami Beach, and authorized the negotiation of an employment agreement with Mr. Centorino; and

**WHEREAS**, the proposed amendments to the City's Cone of Silence Ordinance (Section 2-486 of the City Code), and City's Whistleblower Ordinance (Sections 2-518 through 2-520 of the City Code) would strengthen the role of the Office of Inspector General by encouraging communication with the Office of the Inspector General with respect to procurement-related matters, as well as matters which would be protected under the City's Whistleblower Ordinance.

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

**SECTION 1.** That Section 2-486 of Article VII, Chapter 2 of the Code of the City of Miami Beach is hereby amended as follows:

**CHAPTER 2**

**ADMINISTRATION**

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**ARTICLE VII. STANDARDS OF CONDUCT**

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**DIVISION 4. PROCUREMENT**

**Sec. 2-486. Cone of silence.**

\* \* \*

- (3) *Exceptions.* The cone of silence shall not apply to:
- a. Competitive processes for the award of CDBG, HOME, SHIP and Surtax Funds administered by the city office of community development; and
  - b. Communications with the city attorney and his or her staff.
  - c. Communications with the inspector general and his or her staff.
  - d e. Oral communications at pre-bid conferences;
  - e d. Oral presentations before evaluation and/or selection committees;
  - f e. Contract discussions during any duly noticed public meeting;
  - g f. Public presentations made to the city commissioners during any duly noticed public meeting;
  - h g. Contract negotiations with city staff following the award of an RFP, RFQ or bid by the city commission; or
  - i h. Communications in writing at any time with any city employee, official or member of the city commission, unless specifically prohibited by the applicable RFP, RFQ or bid documents;
  - j i. City commission meeting agenda review meetings between the city manager and the mayor and individual city commissioners where such matters are scheduled for consideration at the next commission meeting.
  - k j. Communications regarding a particular RFP, RFQ, or bid between the procurement director, or his/her administrative staff responsible for administering the procurement process for such RFP, RFQ or bid and a



member of the evaluation/selection committee therefore, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document;

l.k. Duly noticed site visits to determine the competency of bidders regarding a particular bid during the time period between the opening of bids and the time the city manager makes his or her written recommendation;

l.l. Any emergency procurement of goods or services;

l.m. Communications regarding a particular RFP, RFQ or bid between any person, and the procurement director, or his/her administrative staff responsible for administering the procurement process for such RFP, RFQ or bid, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document.

l.n. The bidder, proposer, vendor, service provider, lobbyist, or consultant shall file a copy of any written communications with the city clerk. The city clerk shall make copies available to any person upon request.

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**SECTION 2.** Sections 2-518 through 2-520 of Article XI, Chapter 2 of the Code of the City of Miami Beach are hereby amended as follows:

## CHAPTER 2

### ADMINISTRATION

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#### ARTICLE XI. Protection of Employees Disclosing Specified Information

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##### **Sec. 2-518. To whom information disclosed.**

- (a) The information disclosed under this article must be disclosed to the city manager or inspector general, and to such official or officials as the city manager may designate to receive such information on his/her behalf.
- (b) To facilitate the disclosure of information under this article, information may be submitted to the city manager (or the city manager's designee), or inspector general:
  - (1) Through a telephone hotline established by the city manager (or the city manager's designee), or inspector general;
  - (2) By email;
  - (3) By written and signed correspondence;
  - (4) Through a website established by the city manager (or the city manager's designee), or inspector general; or

(5) In person to the city manager (or the city manager's designee), or inspector general.

(c) Any information that complies with section 2-517, that is disclosed to the city manager (or the city manager's designee), or inspector general, may, at the discretion of the city manager (or the city manager's designee), or inspector general, be forwarded to the city's human resources director for investigation. The human resources director shall make a determination whether an investigation is necessary.

**Sec. 2-519. Employees and persons protected.**

(a) This article protects employees who disclose information on their own initiative in a written and signed complaint; who are requested to participate in an investigation, hearing, or other inquiry conducted by the city, any state agency or federal government entity having the authority to investigate, police, manage, or otherwise remedy the violation or act; who refuse to participate in any adverse action prohibited by this division; who disclose information to the city manager (or the city manager's designee), or inspector general in accordance with the provisions of section 2-518; or who are otherwise protected by the Florida Whistle-blower's Act. The provisions of this article may not be used by employees while they are under the care, custody, or control of the state or county correctional system, or after their release from the care, custody or control of the state or county correctional system, with respect to circumstances that occurred during any period of incarceration.

(b) No remedy or other protection under this article applies to any person who has committed or intentionally participated in committing a violation or suspected violation for which protection under this article is being sought.

(c) An employee who provides false information pursuant to this article may be investigated and prosecuted pursuant to Florida law, including, but not limited to, F.S. §§ 837.06 (false official statements); 838.022 (official misconduct); and 837.05 (false reports), as such statutory provisions may be amended from time to time.

(d) It shall be an affirmative defense to any complaint brought pursuant to this article that the adverse action was predicated upon grounds other than, and would have been taken absent, the employee's exercise of rights protected by this article.

**Sec. 2-520. Remedies.**

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(c) (1) For those employees that the city manager has the authority under the Charter to appoint and remove the hearing officer shall transmit his/her findings of facts, conclusions of law, and any recommendations, together with a transcript of all evidence taken before him/her and all exhibits received by him/her, to the city manager or the city manager's designee for a final decision. The city manager or the city manager's designee may sustain, reverse, or modify the adverse personnel action. In any case in which the hearing examiner finds that the employee filed a frivolous complaint in bad faith, the hearing examiner may recommend and the city manager or the city manager's designee may direct the employee to pay the costs of the hearing, including the city's attorney's fees.



- (2) For those employees that the city attorney has the authority under the Charter to appoint and remove the hearing officer shall transmit his/her findings of fact, conclusions of law, and any recommendations, together with a transcript of all evidence taken before him/her and all exhibits received by him/her, to the city attorney or the city attorney's designee for a final decision. The city attorney or the city attorney's designee may sustain, reverse, or modify the adverse personnel action. In any case in which the hearing examiner finds that the employee filed a frivolous complaint in bad faith, the hearing examiner may recommend and the city attorney or the city attorney's designee may direct the employee to pay the costs of the hearing, including the city's attorney's fees.
- (3) For those employees that the city clerk has the authority under the Charter to appoint and remove, the hearing officer shall transmit his/her findings of fact, conclusions of law, and any recommendations, together with a transcript of all evidence taken before him/her and all exhibits received by him/her, to the city clerk or the city clerk's designee for a final decision. The city clerk or the city clerk's designee may sustain, reverse, or modify the adverse personnel action. In any case in which the hearing examiner finds that the employee filed a frivolous complaint in bad faith, the hearing examiner may recommend and the city clerk or the city clerk's designee may direct the employee to pay the costs of the hearing, including the city's attorney's fees.
- (4) For those employees that the inspector general has the authority under the Charter to appoint and remove, the hearing officer shall transmit his/her findings of fact, conclusions of law, and any recommendations, together with a transcript of all evidence taken before him/her and all exhibits received by him/her, to the inspector general or the inspector general's designee for a final decision. The inspector general or the inspector general's designee may sustain, reverse, or modify the adverse personnel action. In any case in which the hearing examiner finds that the employee filed a frivolous complaint in bad faith, the hearing examiner may recommend and the inspector general or the inspector general's designee may direct the employee to pay the costs of the hearing, including the city's attorney's fees.

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### **SECTION 3. REPEALER.**

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

### **SECTION 4. SEVERABILITY.**

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

### **SECTION 5. 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 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 6. EFFECTIVE DATE.**

This Ordinance shall take effect on the \_\_\_\_ day of \_\_\_\_\_, 2021.

**PASSED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2021.

**ATTEST:**


\_\_\_\_\_  
Dan Gelber, Mayor

\_\_\_\_\_  
Rafael E. Granado, City Clerk

Underline denotes additions  
~~Strikethrough~~ denotes deletions

(Sponsored by Commissioner Mark Samuelian)

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

  
\_\_\_\_\_  
City Attorney *FA*

3-9-21  
Date