

services of any lawyer or law firm, architect or architectural firm, public relations firm, or any other person or firm, professional or otherwise, to assist in any transaction involving the city or any of its agencies, provided that a recommendation may properly be made when required to be made by the duties of office and in advance at a public meeting attended by other city officials, officers or employees.

(Ord. No. 02-27, § 1, 11-12-02)

**§ 38.16 Continuing application after city service.**

(A) No person included in the terms defined in section 38.02(A), (E) and (F) shall, for a period of two years after his or her city service or employment has ceased, lobby any city official [as defined in section 38.02(A) through (F)] in connection with any judicial, quasi-judicial or other proceeding, application, RFP, RFQ, bid, request for ruling or other determination, contract, claim, controversy, charge, accusation, arrest or other particular subject matter in which the City of North Bay Village or one of its agencies is a party or has any interest whatever, whether direct or indirect. Additionally, no person who has served on the Planning and Zoning Board shall, for a period of two years after his or her service has ceased, lobby any city official on behalf of an applicant for a development permit or appear in any judicial proceeding on behalf of any party other than the city. Nothing contained in this section shall prohibit any individual from submitting a routine administrative request or application to a city department or agency during the two-year period after his or her service has ceased.

(B) The provisions of the section shall not apply to persons who become employed by governmental entities, section 501(c)(3) non-profit entities or educational institutions or entities, and who lobby on behalf of those entities in their official capacities.

(Ord. No. 02-27, § 1, 11-12-02)

**§ 38.17 Lobbying.**

(A) As used in this section "city personnel" means those city officers and employees specified in section 38.02(A) through (F). "Lobbyist" means

all employees, persons, firms, or corporations employed or retained by a principal who seeks to encourage the passage, defeat, or modifications of (1) any ordinance, resolution, action or decision of the City Commission; (2) any action, decision, recommendation of any city board or committee; or (3) any action, decision or recommendation of city personnel during the time period of the entire decision-making process on the action, decision or recommendation which foreseeably will be heard or reviewed by the City Commission, or a city board or committee. "Lobbyist" specifically includes the principal, as well as any agent, officer or employee of a principal, regardless of whether the lobbying activities fall within the normal scope of employment of the agent, officer or employee. The term "lobbyist" specifically excludes the following persons: lobbyists hired by the city who are communication with city personnel in the course of performing under their contracts; attorneys or other representatives retained to represent individuals and corporate entities in quasi-judicial proceedings where the law prohibits ex-parte communications; expert witnesses who only provide scientific, technical or other specialized information or testimony at public meetings; employees of the principal who do not engage in lobbying activities and representatives of non-profit organizations who only appear at publicly noticed meetings, without special compensation or reimbursement for the appearance, whether direct, indirect or contingent, to express support or opposition to any item.

(B) All lobbyists shall, before engaging in any lobbying activities, register with the City Clerk. Every person required to register shall:

- (1) Register on forms prepared by the City Clerk;
- (2) Pay an initial registration fee of \$125.00;
- (3) State under oath his or her name and business address and the name and business address of each person or entity which has employed the registrant to lobby. If the lobbyist represents a corporation, it shall also be identified. Without limiting the foregoing, the lobbyist shall also identify all persons holding, directly or indirectly, a five percent or more ownership

interest in the corporation, partnership, or trust. Annual registration of all lobbyists shall be required prior to January 15 of year and each person who withdraws as a lobbyist for a particular client shall file an appropriate notice of withdrawal. The fee for annual registration shall be \$300.00. In addition, every registrant shall be required to state the extent of any business or professional relationship with any current person described in subsection 38.02(A). The registration fees required by this section shall be deposited by the City Clerk into a separate account and shall be expended for the purpose of recording, transcribing, administration and other costs incurred in maintaining these records for availability to the public. Unexpended funds may be transferred to general revenue at the end of the fiscal year. There shall be no fee required for filing a notice of withdrawal and the City Commission may, in its discretion, waive the registration fee upon a finding of financial hardship.

- (4) Prior to conducting any lobbying, all principals must file a form with the City Clerk, signed by the principal or the principal's representative, stating that the lobbyist is authorized to represent the principal. Failure of a principal to file the form required by the preceding sentence may be considered in the evaluation of a bid or proposal as evidence that a proposer or bidder is not a responsible contractor. Each principal shall file a form with the City Clerk at the point in time at which a lobbyist is no longer authorized to represent the principal.
- (5) Every lobbyist and principal of a local business shall sign-in with the City Clerk each time he or she meets with city personnel at a city facility, or shall deliver a memorandum of meeting to the City Clerk within 24 hours of meeting with city personnel at another location, and shall inform the City Clerk, in writing, of the: (1) name of the lobbyist or the principal of the local business; (2) the city personnel; (3)

the time and place of the meeting; and (4) the issue to be discussed. The issue shall be described with as much detail as is practical, including but not limited to a specific description where applicable to a pending request for a proposal, invitation to bid, or public hearing item.

- (C) (1) Any public officer, employee or appointee who only appears in his or her official capacity shall not be required to register as a lobbyist.
- (2) Any person who only appears in his or her individual capacity for the purpose of self-representation and any principal of a local business who appears without compensation or reimbursement, whether direct, indirect or contingent, to express support of or opposition to any item, shall not be required to register as a lobbyist.

(D) Any person who appears as a representative for an individual or firm for an oral presentation before a city certification, evaluation, selection, technical review or similar committee, shall list on an affidavit provided by the city all individuals who may make a presentation. The affidavit shall be filed by staff with the City Clerk's office at the time the proposal is submitted. For the purpose of this section only, the listed members of the presentation team shall not be required to pay any registration fees. No person shall appear before any committee on behalf of an individual or firm unless he or she has been listed as part of the firm's presentation team pursuant to this paragraph or unless he or she is registered with the City Clerk's office and has paid all applicable fees.

- (E) (1) Between January 2 and 15 of each year, the lobbyist shall submit to the City Clerk a signed statement under oath listing all lobbying expenditures in excess of \$25.00 for the preceding calendar year. A statement shall be filed even if there have been no expenditures during the reporting period. The statement shall list in detail each expenditure by category, including food and beverage, entertain-

ment, research, communication, media advertising, publications, travel, lodging and special events.

- (2) The City Clerk shall notify any lobbyist who fails to timely file an expenditure report. In addition to any other penalties which may be imposed, a fine of \$50.00 per day shall be assessed for reports filed after the due date. Where a fine of \$50.00 per day is assessed, the Ethics Commission shall not impose an additional fine as provided in section 2-11.1(u) of the county code. Any lobbyist who fails to file the required expenditure report by July 1 shall be automatically suspended from lobbying until all fines are paid unless the fine has been appealed to the Ethics Commission.
- (3) The City Clerk shall notify the Ethics Commission of the failure of a lobbyist or principal to file a report and, or, pay the assessed fines after notification.
- (4) A lobbyist or principal may appeal a fine and may request a hearing before the Ethics Commission. A request for a hearing on the fine must be filed with the Ethics Commission within 15 calendar days of receipt of the notification of the failure to file the required disclosure form. The Ethics Commission shall have the authority to waive the fine, in whole or part, based on good cause shown.

(F) The City Clerk shall publish logs on a quarterly and an annual basis reflecting the lobbyist registrations which have been filed in accordance with this subsection 38.17. The City Clerk shall publish logs for the current quarter of the fiscal year as soon as practicable after the effective date of this ordinance. All logs required by this ordinance shall be prepared in a manner substantially similar to the logs prepared for the Florida Legislature pursuant to Section 11.045, Florida Statutes.

(G) The Ethics Commission shall investigate any person engaged in lobbying activities who may be in violation of this subsection 38.17. In the event that a violation is found to have been committed, the person shall be prohibited from

lobbying before the City Commission or any committee, board or personnel of the city on the subject that resulted in a finding of a violation. Additionally, every lobbyist who is found to be in violation of this section shall be prohibited from registering as a lobbyist or lobbying in accordance with the following schedule:

- First violation for a period of 90 days from the date of determination of violation;
- Second violation for a period of one year from the date of determination of violation;
- Third violation for a period of five years from the date of determination of violation.

A bidder or proposer shall be subject to the debarment provisions of Section 10-38 of the Code of Miami-Dade County as if the bidder or proposer were a contractor where the bidder or proposer has violated this section, either directly or indirectly or any combination thereof, on three or more occasions. As used herein, a "direct violation" shall mean a violation committed by the bidder or proposer and an "indirect violation" shall mean a violation committed by a lobbyist representing the bidder or proposer. A contract entered into in violation of this section shall also render the contract voidable. The City Manager shall include the provisions of this section in all city bid documents, RFP, RFQ, CBO and CDBG applications; provided, however, the failure to do so shall not render any contract entered into as the result of the failure illegal *per se*.

(H) All members of the City Commission, and all city personnel, shall be diligent to ascertain whether persons required to register pursuant to this section have complied. City Commissioners or city personnel may not knowingly permit a person who is not registered pursuant to this section to lobby the City Commissioners, or committee, board or city personnel.

(I) Except as otherwise provided in subsection 38.17(G) the validity of any action or determination of the City Commissioners or city personnel,

board or committee shall not be affected by the failure of any person to comply with the provisions of this subsection 38.17.

(J) Commencing on the effective date of this ordinance, and between January 2 and 15 of every year thereafter, each lobbyist shall disclose the terms and amount of compensation paid by each principal to the lobbyist. The principal shall also disclose the terms and amount of compensation paid to every lobbyist retained or employed by the principal. No person may, in whole or in part, pay, give or agree to pay or give a contingency fee to a lobbyist. No lobbyist may, in whole or in part, receive or agree to receive a contingency fee. As used herein, "contingency fee" means a fee, bonus, commission, or non-monetary benefit paid or promised as compensation which is dependent on or in any way contingent on the passage, defeat, or modification of: (1) any ordinance, resolution, action or decision of the City Commission; (2) any action, decision or recommendation of any city board or committee; or (3) any action, decision or recommendation of city personnel during the time period of the entire decision-making process regarding the action, decision or recommendation which foreseeably will be heard or reviewed by the City Commission, or a city board or committee.

(Ord. No. 02-27, § 1, 11-12-02)

**§ 38.18 Cone of Silence.**

(A) Contracts for the provision of goods and services.

- (1) "Cone of Silence" is hereby defined to mean a prohibition on:
  - a. any communication regarding a particular RFP, RFQ, or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and the city's professional staff including, but not limited to, the City Manager and his or her staff;
  - b. any communication regarding a particular RFP, RFQ, or bid between the Mayor or City Commissioners and any member of the city's profes-

sional staff including, but not limited to, the City Manager and his or her staff;

- c. any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and any member of the selection committee therefor;
- d. any communication regarding a particular RFP, RFQ or bid between the Mayor, City Commissioners and any member of the selection committee;
- e. any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and the Mayor or City Commissioners; and
- f. any communication regarding a particular RFP, RFQ or bid between any member of the city's professional staff and any member of the selection committee. The City Manager and the Chairperson of the selection committee may communicate about a particular selection committee recommendation, but only after the committee has submitted an award recommendation to the City Manager and provided that should any change occur in the committee recommendation, the content of the communication and of the corresponding change shall be described in writing and filed by the City Manager with the City Clerk and be included in any recommendation memorandum submitted by the City Manager to the City Commission.

Notwithstanding the foregoing, the Cone of Silence shall not apply to:

- a. communications with the City Attorney and his or her staff;
- b. duly noticed site visits to determine the competency of bidders regarding a particular bid during the time period between the