


LTC No. 241-2023

LETTER TO COMMISSION

TO: Mayor Dan Gelber and Members of the City Commission

FROM: Rafael A. Paz, City Attorney 

DATE: May 24, 2023

SUBJECT: **Updated Overview of City of Miami Beach Campaign Finance Laws – Restrictions on City Commission Members and Candidates for City Elected Office and Related Filing Requirements.**

This LTC has been prepared in order to update the prior guidance the City Attorney's Office has provided concerning the City's Campaign Finance laws¹, in view of recent amendments approved by the Mayor and City Commission.

Specifically, the Mayor and City Commission amended Chapter 2 of the City Code to strengthen the City's Campaign Finance laws, effective May 27, 2023, by:

- Prohibiting incumbent members of the City Commission and candidates for such offices from soliciting "vendors," "real estate developers,"² and their lobbyists for contributions to an Electioneering Communication Organization that makes expenditures for electioneering communications relating to candidates for City elected office or accepts contributions for the purpose of making such electioneering communications; and
- Establishing certain filing requirements for incumbent Commission members and candidates for such office, requiring disclosure of their upcoming solicitation of contributions for Political Committees or Electioneering Communications Organizations, as well as disclosure of any letter of instruction or other findings of a violation of the City's Campaign Finance laws or related County disclosure laws (and corresponding requirements, as set forth below).

I. SUMMARY OF CAMPAIGN FINANCE RESTRICTIONS:

The following chart sets forth the Code's prohibited actions relating to the solicitation or acceptance of campaign-related contributions, as well actions not otherwise prohibited, as applicable to members of the City Commission, candidates for the City Commission, and their campaign committees:

¹ See City Code Chapter 2, Article VII, Division 5, at Sections 2-487 through and including 2-490, at: https://library.municode.com/fl/miami_beach/codes/code_of_ordinances?nodeId=SPAGEOR_CH2A_D_ARTVIISTCO_DIV5CAFIRE

² See City Code section 2-487 defining "Vendor", and City Code section 2-489 defining "Real Estate Developer."

PROHIBITED ACTIONS	ACTIONS NOT PROHIBITED
<p>May not “directly” (i.e., the incumbent, candidate or candidate’s committee) solicit, accept or deposit into that candidate’s campaign account a campaign contribution from a vendor, real estate developer, or lobbyist of a vendor or real estate developer.</p>	<p>May directly solicit, accept or deposit into a candidate’s campaign account a campaign contribution from a donor, so long as the donor is not a vendor, real estate developer, or lobbyist of a vendor or real estate developer.</p> <p>NOTE: Incumbents, candidates and their campaign committees are directed to make reasonable efforts to ensure that potential donors solicited on a wide-scale basis (such as open invitations to a particular class of invitees, or solicitations via e-mail blasts) do not include City vendors, real estate developers, or their lobbyists³.</p>
<p>May not “indirectly” (i.e. through a third party, where the incumbent, candidate or candidate’s committee has coordinated with, or directed another person/entity to act) solicit, accept or deposit into that candidate’s campaign account a campaign contribution from a vendor, real estate developer, or lobbyist of a vendor or real estate developer.</p>	<p>May indirectly solicit, accept or deposit a campaign contribution into a candidate’s campaign account from a donor, so long as the donor is not a vendor, real estate developer, or lobbyist of a vendor or real estate developer.</p> <p>NOTE: Incumbents, candidates and their campaign committees are directed to make reasonable efforts to ensure that those potential donors solicited on a wide-scale basis (such as open invitations to a particular class of invitees, or solicitations via e-mail blasts) do not include City vendors, real estate developers or their lobbyists.</p>

³ Were an incumbent or candidate, in the midst of a wide-scale solicitation, to inadvertently solicit a vendor, real estate developer, or their lobbyist, such action would constitute a per se violation of the City’s Code, subject to review by the Miami-Dade County Ethics Commission. In such a situation, the Ethics Commission would presumably consider all reasonable efforts made by the incumbent/candidate to pre-determine whether such prohibited donors would be within the class of persons targeted for solicitation, as well as all efforts made by the incumbent/candidate to mitigate the prohibited solicitation (such as timely correspondence withdrawing requests for contributions and/or returning such contributions).

PROHIBITED ACTIONS	ACTIONS NOT PROHIBITED
<p>May not directly or indirectly solicit a vendor, real estate developer, or lobbyist of a vendor or real estate developer for a campaign contribution to a Political Committee (PC)⁴ that supports or opposes candidates for City elected office; and/or to an Electioneering Communication Organization (ECO) that makes expenditures for electioneering communications relating to candidates for City elected office or accepts contributions for the purpose of making such electioneering communications.</p>	<p>May directly or indirectly solicit a vendor, real estate developer, or lobbyist of a vendor or real estate developer, for a campaign contribution to a PC that does not support or oppose candidates for City elected office; to an ECO that does not make expenditures for electioneering communications relating to candidates for City elected office or accept contributions for the purpose of making such electioneering communications; or to a candidate for office other than City Mayor or Commissioner.</p> <p>May directly or indirectly solicit persons other than a vendor, real estate developer, or lobbyist of a vendor or real estate developer for a campaign contribution to a PC (regardless of whether it supports or opposes candidates for City elected office), and/or to an ECO (regardless of whether it makes expenditures for electioneering communications relating to candidates for City elected office or whether it accepts contributions for the purpose of making such electioneering communications).</p> <p>NOTE: Notwithstanding the foregoing City Code restrictions, incumbents and candidates for City office are not prohibited from otherwise associating with or serving as an officer of a PC (regardless of whether it does or does not support/oppose candidates for City elected office), or as an officer of an ECO (regardless of whether it does or does not make expenditures for electioneering communications relating to candidates for City elected office or accepts contributions for the purpose of making such electioneering communications).</p>

⁴ The City Code defines the terms “Political Committee” and “Electioneering Communications Organization” in accordance with Chapter 106, Florida Statutes, and the term "candidate" in accordance with Section 97.021(5), Florida Statutes.

PROHIBITED ACTIONS	ACTIONS NOT PROHIBITED
<p>May not solicit, accept, or deposit into a candidate's campaign account a campaign contribution from a potential donor without first checking the City's website, as well as verifying with the City's Procurement Division, the "vendor" status of any potential donor, verifying with the City Clerk's records the "real estate developer" status of any potential donor, and verifying with the City Clerk's records whether a potential donor is a "lobbyist" for a vendor or real estate developer.</p> <p>Visit: https://www.miamibeachfl.gov/city-hall/city-clerk/election-information/campaign-finance/</p>	<p>Once this verification process has occurred and the incumbent, candidate, and/or the candidate's campaign committee has confirmed that a potential donor is not a vendor, real estate developer, or a lobbyist for a vendor or real estate developer, then the incumbent, candidate, and/or the candidate's campaign committee may solicit, accept, or deposit into the candidate's campaign account a campaign contribution from the subject potential donor.</p>

II. RELATED CITY FILING REQUIREMENTS:

In addition to the above, the following City filing requirements are applicable to incumbent City Commission members and candidates for such Offices:

PRE-SOLICITATION FILING	POST-SOLICITATION FILING
<p>Must file prior to solicitation (not otherwise prohibited by City's Campaign Finance laws) the attached Reporting of Solicitation of Contributions Form, disclosing any direct or indirect solicitation on behalf of a PC that supports or opposes candidates for City elected office, and/or ECO which makes expenditures for electioneering communications relating to candidates for City elected office or accepts contributions for the</p>	<p>Any candidate or incumbent member of the City Commission who was issued a letter of instruction or other finding of violation of the City's Campaign Finance laws or sections 12-14.2.1 or 12-14.2.2 of Miami-Dade County Code,⁵ must provide the City Clerk with a copy of such letter of instruction or other finding of violation within ten (10) days of receipt thereof, to be posted by City Clerk on the City's website.</p>

⁵ These sections of the County Code establish County requirements for disclosure by incumbent County or municipal Commission members and candidates for such offices, of solicitation activities undertaken on behalf of, *inter alia*, any Political Committee and/or Electioneering Communications Organization, to be filed within five (5) days of commencing solicitation activities. **NOTE:** Considering the subject City restrictions on solicitation, County disclosure law is to be interpreted as the disclosure of solicitation activities *not otherwise prohibited by City law*--see above column entitled "Actions Not Prohibited."

PRE-SOLICITATION FILING	POST-SOLICITATION FILING
<p>purpose of making such electioneering communications.</p> <p>NOTE: This filing requirement is a one-time report, to be filed with the City Clerk indicating that the candidate or member of the City Commission is undertaking solicitation activities on behalf of a particular PC and/or ECO (form available on City Clerk’s website at: https://www.miamibeachfl.gov/city-hall/city-clerk/election-information/campaign-finance/</p>	<p>NOTE: If the letter of instruction or other finding of violation involves failure to comply with the requirements of County Code Sections 12-14.2.1 or 12-14.2.2, the candidate or City Commission member shall notify the City Clerk in writing, at the time of submission to the City Clerk of the letter of instruction or other finding of violation, whether the contribution or proceeds associated with such letter of instruction or other violation has been returned to the donor.</p>

The above is intended as an overview of the City’s Campaign Finance Laws’ applicability to members of the City Commission and candidates for City office. Should you have any specific questions pertaining to this matter or otherwise wish to discuss the above issues in greater detail, please do not hesitate to contact me.

RAP/REG/ag
 Attachment: MBCC1 – Reporting of Solicitation of Contributions Form

CITY OF MIAMI BEACH REPORTING OF SOLICITATION OF CONTRIBUTIONS FOR POLITICAL COMMITTEES AND ELECTIONEERING COMMUNICATIONS ORGANIZATIONS

In accordance with City of Miami Beach Ordinance 2023-4557, codified in Sections 2-487 through and including 2-490 of the Miami Beach City Code, a candidate for the offices of Mayor or Commissioner or a member of the City Commission must file, prior to engaging in solicitation activities (not otherwise prohibited by the aforementioned City Code sections), this Form to publicly disclose their solicitation fundraising activities for Political Committees or Electioneering Communications Organizations. Upon completion, this Form must be filed with the City Clerk (see filing instructions below), to be filed on a one-time basis disclosing solicitation for a particular Political Committee or Electioneering Communications Organization.

OFFICE USE ONLY

Elected Official's or Candidate's Name

Address (number and street)

City, State, Zip Code

Prior to commencing solicitation activities (not otherwise prohibited by Article VII, Division 5, Sections 2-487 through and including 2-490 of the Miami Beach City Code), either directly or indirectly, on behalf of a Political Committee which supports or opposes candidates for City elected office, or Electioneering Communications Organization which makes expenditures for electioneering communications relating to candidates for City elected office or accepts contributions for the purpose of making such electioneering communications, a candidate for the offices of Mayor or Commissioner, or a member of the City Commission shall file this one-time Report with the City Clerk indicating that the candidate or member of the City Commission is undertaking solicitation activities on behalf of such Political Committee or Electioneering Communications Organization.

Filing as :

Candidate for the offices of Miami Beach Mayor or Commissioner

Office: _____

Member of the Miami Beach City Commission

Office: _____

I will be commencing solicitation activities on behalf of a :

Political Committee

Electioneering Communications Organization

- Full Name of the Political Committee or Electioneering Communications Organization:

- Address of the Political Committee or Electioneering Communications Organization:

- Telephone number of the Political Committee or Electioneering Communications Organization:

- Name of the Registered Agent for the Political Committee or Electioneering Communications Organization:

- Name of the Chairperson or Treasurer for the Political Committee or Electioneering Communications Organization:

- Name of the jurisdiction where the Political Committee or Electioneering Communications Organization filed its statement of organization (e.g., either the City of Miami Beach, Miami-Dade County, or the State of Florida):

- Describe the relationship between the Candidate or member of the City Commission (as applicable) and the Political Committee or Electioneering Communications Organization:

CERTIFICATION

It is a first-degree misdemeanor for any person to falsify a public record (sec. 839.13, Fla. Stat.)

I hereby acknowledge that it is my responsibility to read, understand, and follow the campaign finance requirements described in this Article VII, Division 5 of the Miami Beach City Code.

I certify that I have examined this report and it is true, correct, and complete.

X _____
Signature

Type or Print Name

Date

Elected Official Candidate

Form # MBCC 1 Created On May 17, 2023

Ordinance 2023-4557

Once the form is completed, print it, sign it, and submit an electronic copy to the Office of the City Clerk at CityClerk@miamibeachfl.gov. You may also mail or hand deliver the form to the Office of the City Clerk, Miami Beach City Hall, 1700 Convention Center Drive, Miami Beach, FL 33139.

For more information, please contact the Office of the City Clerk at 305.673.7411 or via email at CityClerk@miamibeachfl.gov.