



Miami-Dade Commission on Ethics & Public Trust

Investigative Report

Investigator: Karl Ross

Case No. K14-084	Case Name: Sweetwater Mayor Jose M. Diaz/ SUV paint job	Date Open:	CASE CLOSED Date: <u>12/4/14</u>
	Subject(s): Sweetwater Mayor Jose M. Diaz	July 3, 2014	

Allegation(s):

Based on information from sources, it came to the attention of COE that Sweetwater Mayor Jose M. Diaz allegedly solicited and received a free paint job and possibly other work on his personal vehicle, a white Chevrolet Suburban, from a local auto body shop doing work for the City as a city vendor. The value of the work was thought to be worth roughly \$2,000.

Relevant Ordinances:

The Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (Sec. 2-11.1):

Subsection (g) *“Prohibition on exploitation of official position.* No person included in the terms defined in subsection (b)(1) through (6) and (b)(13) shall use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself or others ...”

Subsection (e)(3) *“Gifts and Prohibitions.* “A person described in subsection (b)(1) through (6) shall neither solicit nor demand any gift ... because of an official action taken or to be taken, or which could be taken ...” The subsection further requires that any gift in excess of \$100 be disclosed to the public in the manner described in subsection (e)(4).

Florida Statutes governing unlawful compensation, F.S. 838.016(1), also state in relevant part that: “It is unlawful for any person corruptly to give, offer, or promise to any public servant, or, if a public servant, corruptly to request, solicit, accept, or agree to accept, any pecuniary or other benefit not authorized by law, for the past, present, or future performance, nonperformance, or violation of any act or omission which the person believes to have been, or the public servant represents as having been, either within the official discretion of the public

servant, in violation of a public duty, or in performance of a public duty.”

Investigation:

Interviews

Guillermo Chez, former Fleet Manager

City of Sweetwater, FL

Phone: (305) 720-4501 (maybe 4507)

August 11, 2014

Guillermo Chez (Chez) appeared for an interview at the office of his attorney, Gerald Tobin, at 2701 S. Bayshore Drive. He was accompanied by his wife, Annie Chez (A. Chez), the City's former Finance Director. Both were terminated by Diaz earlier this year shortly after they said they attended a party hosted by Diaz' political rival, Vice Mayor Orlando Lopez (Lopez).

Chez said Diaz owns a white Chevrolet Suburban SUV with a light-colored interior, and estimated the year to be 2009 to 2011. He said Diaz also drives a black 2013 Chevrolet Suburban SUV, and that this is his official City vehicle.

Chez said that late last year or early this year, Diaz asked him to arrange meetings with two of the city's auto body vendors: (1) Euro Body Collision, near NW 62nd Street and NW 32nd Avenue and (2) Imperio Paint & Body, located at NW 23rd Street between NW 111th and 112th avenues. He said Diaz stated he wanted to get to know the City's vendors.

He said the initial meeting was canceled at Diaz' request, and that a subsequent meeting was arranged with both vendors. He said they only attended the first meeting, with Imperio, and canceled the second, with Euro. He said he called Euro to cancel the meeting. Chez said he made the call at about 3:30 p.m., and that he spoke with the owner, "Ricardo."

Chez stated that when he went with Diaz to the meeting with Imperio he was surprised to see him driving his personal vehicle rather than his City vehicle. He said Diaz was received enthusiastically by the owner of Imperio (Rene Alvarez) and his wife (Debora). He said Diaz was given a tour and introduced to many of the shop's employees.

Chez said that toward the end of the tour, Diaz told Alvarez he was thinking about getting some work done on his personal vehicle and wanted to know what it might cost. He described the nature of the work. He said the owner told him not to worry about it and stated, "I'll take care of it," suggesting to Alvarez, that he would not charge Diaz for the job.

Chez said Diaz told Alvarez that he would at least want to pay for the parts, and told Alvarez he could purchase them at a Chevrolet dealer on NW 87th Avenue in Doral.

Chez said that in addition to a paint job, Diaz wanted the following work done on his vehicle: remove a scratch on his front bumper due to a minor accident while his wife was driving; remove scratches on the rear bumper; remove minor dents on doors (barely noticeable);

change windshield wiper arms; replace luggage rack on top of the car; and buff the car. Chez said Diaz indicated he wanted his car to look like new.

Chez stated he felt Diaz canceled the second meeting because “he had already gotten what he wanted” from the owner of Imperio Body Shop. He said he could not recall the precise time the meeting took place. (His wife said it happened December 5 or 6, according to her records, but Chez said it might not have occurred until March or April of 2014.)

Chez said the best way to verify would be to find out when Imperio did work on a police patrol car (Crown Victoria) used by Officer Carlos Sordo (Sordo). He said Sordo is “very picky” about his cars and was given the vehicle following a re-assignment. He said the previous driver of the vehicle had gotten into a minor accident, and that Sordo wanted it fixed.

Chez further noted that about two weeks following the meeting at Imperio, Diaz asked him to stop by his office and get his car keys so that he could pick up his personal vehicle at his home and take it to Imperio, presumably to have the work done. Chez said he felt that what Sordo was asking him to do was wrong and that he told him he could not do it. He said Diaz called him a second time a few days to a week later and asked him to do the same. He said he again rebuffed the Diaz’, telling him he was busy.

Chez said he grew concerned that Diaz might become unhappy with him, and so after waiting a week or more called Diaz back and asked him if he still needed him to take the car over to Imperio. He said Diaz told him that a police officer had taken it for him. He said he never saw Diaz’ vehicle afterward, and doesn’t know if the work was performed.

Chez also noted that Imperio had provided paint jobs to the two city helicopters free of charge, and that following this he was instructed by Diaz “to give them more business.” He said that Imperio was recognized for assisting the City at a City Commission meeting.

At or about 1:45 p.m. on August 28, 2014, a subpoena for records was served at Imperio Auto Body & Collision at 10750 NW 23rd Street.

On or about September 10, 2014, this investigator received a call from Alvarez regarding the subpoena items. He was advised to submit them as email attachments. The documents were reviewed on September 11, 2014, and a follow-up request for additional invoices was made that same day in order to compare the labor rates charged Diaz to the rates charged other customers for similar work. (The next 10 invoices were requested in order.)

On September 11, 2014, COE contacted a local auto body and paint specialist, seeking input on the appropriateness of the charges reflected on the invoice from Imperio for work done on the personal vehicle of Diaz. COE was advised that the number of labor hours and refinish hours appeared to be appropriate and were “system generated.” COE was advised that some of the hours were based on judgment, such as repairs to the lift gate and other items.

The source did say that the price charged for labor was well-below the industry average, perhaps less than half. The \$20 labor charge represents the approximate cost to the owner of Imperio for employee wages and withholdings, and is about half the lowest rate of \$40 per

hour. The source advised that the insurance rate for Miami-Dade County is \$42 per hour. The source further advised that the fleet rate for servicing large customers such as a police department or rental car agency could be slightly less than \$40 per hour, but would far exceed the \$20 per hour rate charged to Diaz for work done on his family vehicle. The source described the rate charged to Diaz as “ridiculously low” and less than arms’ length.

Based on the countywide insurance rate of \$42 per hour, it can be estimated that Diaz received a benefit of approximately \$22 per labor hour – or $\$22 \times 35.1 \text{ hours} = \772.20 . Using a more conservative rate of \$40 per hour, the benefit to the mayor would still exceed \$700.

On September 12, Alvarez called COE in response to an email requesting additional information. He stated that he does not have a formal contract with the City of Sweetwater and advised he has only worked on four City vehicles since January 2012. He said he would provide copies of those invoices, as requested. He said that he has to bid on all repair work he does for the City and that the City selects the winning bidder.

With respect to the labor rate he charged on Diaz’ vehicle, Alvarez acknowledged that this was below the standard rate of \$42 per hour paid by insurance companies. He said he occasionally reduces his labor rate for “friends and family” and that he views this as a “favor,” stating he did not feel it was inappropriate for him to extend this rate to anybody he wants to help. He said he did not feel that it was improper for him to give the mayor a break in this respect and that he further did not feel that the mayor did anything wrong. He was advised that Diaz, as a public official, is subject to the County’s ethics ordinance and that, based on the inquiry, a determination would be made as to whether the mayor acted properly.

Alvarez further stated that he did not tell Diaz he was going to give him a discounted rate on labor and that the mayor did not request any favorable treatment. He said Diaz did not thank him for the reduced rate, only “for the good work we did.” He indicated he was a busy man and that his cooperation with this matter was taking up a lot of time. He was thanked again for his assistance and advised that he would be contacted again, if needed.

Rene Alvarez, President
Imperio Auto Body Collision
10750 NW 23rd Street, Miami, FL (Sweetwater)
Phone: (305) 513-4833
Oct. 21, 2014

Alvarez appeared at the offices of COE and provided a tape-recorded statement pursuant to a subpoena regarding the work his company performed on the personal vehicle of Mayor Diaz. He advised that his company was founded in 1984, and that his major customers are insurance companies such as AAA, USAA and State Farm. He said the standard insurance rate for labor in Miami-Dade County is \$42 per hour, but ranges from \$36 to \$42. He said he does not find it profitable to do work for less than the amount paid by major insurance carriers.

He advised he has done limited amounts of work for the City of Sweetwater consisting of

about 15 to 20 quotes and four repair jobs dating back to about April 2013 (per invoices). He said he did those jobs because the drivers of the other vehicles involved in the collision were at fault, and the repairs were covered by their insurance, not by the City or its insurance carrier. He said he is not interested in doing work for the City because the City does not pay the standard rate, and it is not worthwhile for him. He said the City is willing to accept “inferior work.”

Alvarez stated that he did provide free work to the city when he learned about the two helicopters the City was receiving for its police department. He said he got the paint suppliers to contribute free materials because he wanted to do something nice as a civic gesture. He said he did not do it for marketing purposes or to ingratiate himself with City officials. He said he normally dealt with the City’s fleet manager known to him only as “Guillermo.”

He further advised that sometime late last year he received a call from “Guillermo” about having Diaz visit his repair shop. Alvarez stated that he was thinking, at the time, that Diaz just wanted to get to meet City vendors or prospective vendors, but said that no one actually told him that was the purpose of the visit. He said he felt “proud” that Diaz was visiting his business and that he introduced him to employees and showed him around.

He said Guillermo (Chez) was present during the visit, but could not say if Chez was with him and Diaz during the entire visit. He said Diaz came in his personal vehicle and that he suggested to Diaz that he allow him to “take care of” his vehicle and perform minor repairs and body work. He said it was his suggestion and not Diaz’, that he prepared an estimate for work to be done on the vehicle. He said Diaz took the estimate home, and sometime later dropped off his car for service. He said he did not discuss the terms of the proposal –including a discounted rate of \$20 an hour for labor—but said Diaz must have liked the estimate because he brought in his car. He said he told Diaz that by the time he was done making the repairs his car “would look like new.”

Alvarez insisted that he was doing “nothing special,” saying he might offer a reduced rate or deductible to an elderly woman who clearly would not be able to afford the full price. He said Diaz did not look poor or needy and that he decided to give him a discount on his own volition because he was very excited about doing something for Diaz. He said he did not have a chance to discuss the work being done when Diaz picked up his vehicle. Alvarez said he later spoke to Chez about servicing more City vehicles, but maintains that he told him he had no interest in doing business with the City. He said Chez told him, “I’m going to start sending you cars,” but that he replied, “ I’m not interested ...”

He said he later attended a City Commission meeting and exchanged greetings with Diaz at that time, but that he has had no further encounters with him since. Alvarez further insisted that Diaz at no time asked for special treatment, and further stated that he could not be sure whether Diaz was even aware that he received a discounted rate. He did acknowledge Diaz saved \$22 per hour of labor or roughly \$700 in savings.

Document/Audio/Video Review:

Records were retrieved from the website of Imperio Auto Body & Collision on August 11, 2014, at the following link: <http://www.imperibodyshop.com/>

On September 11, 2014, this investigator reviewed a copy of the invoice from Imperio for work done on Diaz's personal vehicle and a copy of a check submitted as payment on said invoice, No. 33041 in the amount of \$1,656.60 and signed by Diaz's wife, Beatriz. A copy of the invoice and payment were added to the file.

On September 12, 2014, COE received confirmation from JP Morgan Chase that the above-referenced check for \$1,656.60 was negotiated on or about January 14, 2014.

Also on September 12, 2014, COE received copies of 10 additional invoices from Imperio Auto Body for work done on the vehicles of subsequent customers. A review of these invoices reflects that all customers were charged between \$40 and \$42 per labor hour.

On September 12, 2014, COE made a public records request to the Sweetwater City Clerk's Office for a copy of any contract or agreement between the city and Imperio Auto Repair. Also requested, was a summary of any payments for the past two years.

These records were received on September 25, 2014, and reflect that the City was charged between \$40 and \$43 per labor hour for work performed on four City vehicles.

Conclusion(s):

On November 20, 2014, Diaz appeared for a voluntary statement with his attorney, JC Planas, to discuss the issues outlined above regarding work performed on his personal vehicle. Diaz advised that he visited Imperio sometime after becoming mayor and did so in order to inspect work being performed on City vehicles. He acknowledged that he drove his personal vehicle to the meeting because he did want to have some body and touch up work done on his vehicle, and asked Guillermo Chez to meet him there in case he decided to leave his car. He said that following his tour of the facility he did ask the owner, Rene Alvarez, to provide an estimate for repair work on his personal vehicle and that he was given a quote. He said he was interested in having Imperio do the work because they were reputed to do high quality work, though he added that they also had a reputation for being pricey.

Diaz said he thought the estimate was on the high side, but that he decided to bring in his vehicle anyway. He said he was not aware of any discount or freebies, and that at no time during his conversation with Alvarez did Alvarez suggest he would be given a reduced or favorable rate. Diaz said that, in fact, he felt the cost of the final invoice was "high" and did not realize he had been given a reduction in labor costs.

He said he paid the invoice without discussing the matter further with Alvarez. He disputed

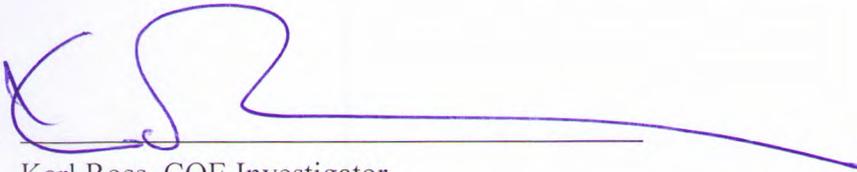
Chez's assertion that he had requested and/or received a benefit from the owner at the time of the initial visit. He said he did consider Imperio to be a City vendor, though he said the City does not use them very much because it can find cheaper services from other repair shops.

In light of the foregoing and in consultation with the Ethics Advocate, no further action will be taken and the investigation will be closed at this time. The investigation did find Diaz received a benefit of roughly \$700 in the form of reduced labor rates, but it did not produce evidence that Diaz was aware that he was receiving any improper benefit. Diaz said he felt the cost of the repair job was "high" but paid the invoice anyway.

COE did confirm with JP Morgan Chase that Diaz' payment of \$1,656.60 was cashed on January 14, 2014 – four days after the date on the check from Diaz and his wife.

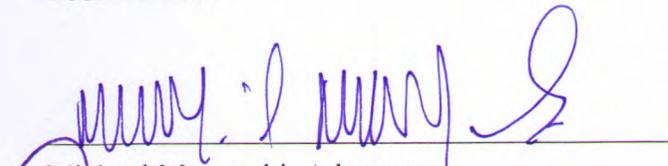
There is no evidence Diaz received "free" work on his personal vehicle, as originally alleged. Had Diaz been made aware at the time that he was receiving a benefit in excess of \$100 as a result of the discounted labor rates, he would have been required to report this in a quarterly gift disclosure statement. But since the evidence uncovered by the investigation was insufficient to support such an assertion, no formal complaint appears warranted.

Accordingly, the investigation has been ordered closed at this time.

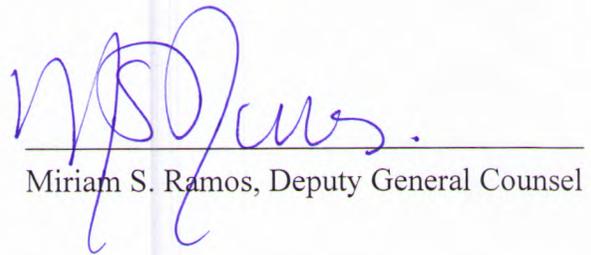


Karl Ross, COE Investigator

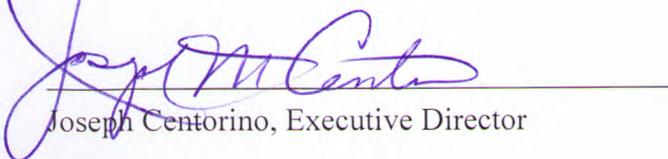
Approved by:



Michael Murawski, Advocate



Miriam S. Ramos, Deputy General Counsel



Joseph Centorino, Executive Director

12/4/14
Date