



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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### MEMORANDUM

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**TO:** Elon Metoyer, Board Member  
City of Miami Planning, Zoning and Appeals Board

**FROM:** Nolen Andrew Bunker, Staff Attorney  
Commission on Ethics

**SUBJECT:** INQ 2023-115; Section 2-11.1(v), Voting conflicts; Section 2-11.1(m), Certain appearances and payment prohibited; Section 2-11.1(j), Conflicting employment prohibited; City of Miami Code Section 2-612, Transacting business with city; appearances before city boards; post-employment restrictions; participation in the award of certain contracts under the procurement ordinance; penalties, etc.

**DATE:** September 6, 2023

**CC:** All COE Legal Staff

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Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust (“Ethics Commission”) and requesting our guidance regarding possible conflicts of interest between your service on the City of Miami Planning, Zoning and Appeals Board and your employment with the Housing Trust Group, LLC.

#### Facts

You advised that you have been appointed to serve as a Board Member on the City of Miami Planning, Zoning and Appeals Board (“PZAB”). Specifically, on January 12, 2023, the City of Miami City Commission adopted a resolution ratifying your appointment to the City of Miami PZAB. *See* City of Miami Resolution No. R-23-0035. The City of Miami PZAB was established to enable the City of Miami to meet, in part, its responsibilities under the continuous comprehensive planning program required by state law and the City Charter.<sup>1</sup> *See* City of Miami Code § 62-4. The City of Miami PZAB gives advice and recommendations to the City of Miami

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<sup>1</sup> The comprehensive planning program is intended to guide future development in the City of Miami “in order to preserve and enhance the present advantages of the city, to overcome present handicaps, and to prevent or minimize future problems.” City of Miami Charter § 38(a).

City Commission regarding the City's comprehensive planning program. *See* City of Miami Code § 62-15(a).

In fulfilling its function as described above, the City of Miami PZAB has the following powers: (1) acquiring information about the amount, direction, and kind of development and growth planned for the City of Miami; (2) reviewing and recommending to the City Commission revisions and amendments to the comprehensive planning program; (3) establishing principles and policies to guide future City development; (4) preparing and recommending to the City Commission ordinances and regulations promoting City development; (5) conducting public hearings to gather information and public reaction to the comprehensive planning program and establishing public committees or task forces to collect such information; (6) making special studies on the location, adequacy, and conditions of public facilities, recreation, public and private utilities, roads, public transportation, and parking; (7) when authorized, determining whether specific proposed developments conform to the comprehensive planning program; (8) informing the City Commission and other City Departments of the status of the comprehensive planning program; (9) performing other duties as may be assigned to it related to the comprehensive planning program; (10) reviewing and making recommendations to the City Commission concerning all developments of regional impact; and (11) acting as the local planning agency and serving as the local land development regulation commission pursuant to Florida law. *See* City of Miami Code § 62-15(a)(1)-(11). In addition to the above enumerated powers, the City of Miami PZAB has three further powers: (a) to grant or deny exceptions to the City's zoning ordinance; (b) to authorize variances from the City's zoning ordinance where literal enforcement would result in unnecessary and undue hardship; and (c) to rescind, modify, or change any resolution granting a special permit, exception, or variance if there has been a violation of any conditions, restrictions, or limitations of said special permit, exception, or variance. *See* City of Miami Code § 62-18.

You advised that you are employed by a Florida limited liability company named Housing Trust Group, LLC ("HTG"). HTG is a full-service developer of multifamily residential communities.<sup>2</sup> You advised that you are a Senior Vice President for HTG and your job responsibilities primarily concern site acquisition and the negotiation of agreements for affordable housing with local municipalities, including the City of Miami. You advised that, in the past your job responsibilities included negotiating with the City of Miami Housing Director regarding financing of affordable housing developments and that you have also appeared before the City of Miami PZAB on behalf of HTG. You advised that you are a registered lobbyist with the City of Miami as a lobbyist for HTG, with the specific issue for which you are lobbying being "[e]ntitlements in connection in connection with [d]evelopment [p]roperty at 2000 NW 3rd Ave."<sup>3</sup> With regard to that property, you advised that it is currently being developed by HTG, that zoning matters related to the property have come before the City of Miami PZAB in the past, and a request by your employer to upzone the property will likely come before the City of Miami PZAB in the future. You advised that there

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<sup>2</sup> *See About Us*, ABOUT, <https://htgf.com/about/> (last visited June 20, 2023).

<sup>3</sup> City of Miami records reflect that you were last registered as a lobbyist for HTG in 2021. However, you have advised that you are in the process of renewing your lobbyist registration. *See 2021, ACTIVE REGISTRATIONS AND ISSUES*, [http://archive.miamigov.com/City\\_Clerk/pages/lobbyist/lobbyist.asp](http://archive.miamigov.com/City_Clerk/pages/lobbyist/lobbyist.asp) (last visited June 20, 2023).

is no other property currently being developed by HTG that is or will likely come before the City of Miami PZAB. With regard to your involvement in the past concerning the City of Miami PZAB, you advised that you previously appeared before the City of Miami PZAB on behalf of HTG regarding the 2000 NW 3rd Ave property, and that it would likely be your responsibility to review the presentation for the upzoning request for that property that will come before the City of Miami PZAB in the future.

### Issue

Whether any prohibited conflict of interest may exist between your service on the City of Miami Planning, Zoning and Appeals Board and your employment with the Housing Trust Group, LLC.

### Analysis

As a preliminary matter, the Ethics Commission has jurisdiction over the City of Miami PZAB. *See* City of Miami Code § 62-16(d) (stating that both the City of Miami Conflicts of Interest Ordinance (“Miami Ethics Code”) and the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (“County Ethics Code”) applies to all members and alternate members of the City of Miami PZAB); *see also* Miami-Dade County Code § 2-1068; County Ethics Code § 2-11.1(a).

This inquiry involves several sections of the County Ethics Code and the Miami Ethics Code, each of which is analyzed below:

#### A. Section 2-11.1(v) – Voting Conflicts

The County Ethics Code provides that no person who is considered City quasi-judicial personnel:<sup>4</sup>

shall vote on any mater presented to . . . [a] quasi-judicial board on which the person sits if the board member will be directly affected by the action of the board on which the member serves, and the board member has any of the following relationships with any of the persons or entities appearing before the board: (i) officer, director, partner, of counsel, consultant, employee, fiduciary, or beneficiary; or (ii) stockholder, bondholder, debtor or creditor.

County Ethics Code § 2-11.1(v). Accordingly, for a voting conflict to exist under Section 2-11.1(v) of the County Ethics Code, both prongs must be met. *See* RQO 07-49; INQ 20-73. Furthermore,

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<sup>4</sup> City quasi-judicial personnel are “the members of the Community Zoning Appeals Board and such other boards and agencies of the County as perform quasi-judicial functions.” County Ethics Code § 2-11.1(b)(4). The Ethics Code further provides that “[t]his section shall . . . constitute a minimum standard of ethical conduct and behavior for all municipal officials and officers [and] . . . quasi-judicial personnel . . . . References in the section to County personnel shall therefor be applicable to municipal personnel who serve in comparable capacities to the County personnel referred to.” County Ethics Code § 2-11.1(a).

even where no explicit voting conflict exists, officials should consider the possibility of an appearance of impropriety in determining whether a vote is appropriate. *See* INQ 13-148 (the Mayor of the City of North Miami should consider recusal based on an appearance of impropriety due to a recent consulting relationship with a developer with business in the City).

In practice, a member of the City of Miami’s Urban Design Review Board (“UDRB”) who was employed by a developer who had a matter before the UDRB had a voting conflict because there was a “reasonable prospect” that the UDRB board member would be personally affected by a vote impacting his employer. *See* INQ 14-65. Furthermore, a member of a City of Miami PZAB who also served on the Board of Directors of the Miami Roads Association (“MRA”) – a neighborhood association – could have a voting conflict on matters the MRA may have before the City of Miami PZAB if she were also to be personally affected by the issue before the City of Miami PZAB. *See* INQ 16-58; INQ 16-29. Finally, a member of the Fisher Island Community Zoning Appeals Board (“FI-CZAB”) who also holds a position on her Fisher Island condominium association may not vote or participate on any action before the FI-CZAB involving her condominium association or the developer representing her condominium association. *See* INQ 19-114.

Here, as a Senior Vice President for HTG, you would have a voting conflict regarding any matter presented before the PZAB related to HTG, including the 2000 NW 3rd Ave property that HTG is currently developing, because you have a designated relationship with HTG – officer – and there is a reasonable prospect that you would be personally affected by a vote impacting your employer.<sup>5</sup> *See* INQ 19-114; INQ 16-58; INQ 14-65. Accordingly, in light of the voting conflict, when any matter where HTG appears before the PZAB, you are required to publicly announce that you have a conflict of interest and the nature of your conflict of interest, then absent yourself from the PZAB meeting while the matter is being discussed and voted upon. *See* Fla. Stat. § 112.3143(3(a); *see also* INQ 23-96 (describing proper procedure for voting recusal). Furthermore, you must file a written disclosure regarding the nature of the conflict with the City of Miami City Clerk within fifteen (15) days after the vote. *See id.*

**B. Section 2-11.1(m) – Certain Appearances and Payment Prohibited**

The County Ethics Code provides that no City quasi-judicial personnel, “shall appear before the [City] board or agency on which he or she serves, either directly or through an associate, and make a presentation on behalf of a third person with respect to any . . . benefit sought by the third person.” County Ethics Code § 2-11.1(m)(2); *see also* INQ 21-13 (Citizen’s Independent Transportation Trust (“CITT”) Board Member may not appear before CITT on behalf of the non-profit for which she concurrently served as Vice-President). The Miami Ethics Code similarly provides that no member of any City board, “shall appear in representation of any third party before any board, commission or agency of which such person is a member.” Miami Ethics Code §§ 2-611 & 2-612(a); *see* INQ 19-54 (noting similarity of the City ordinance to Section 2.11-1(m) of the County Ethics Code). Additionally, the County Ethics Code provides that no City advisory

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<sup>5</sup> Because a prohibited voting conflict of interest has been found pursuant to the County Ethics Code, no further analysis is required of a similar provision in the Miami Ethics Code. *See* Miami Ethics Code § 14-62.

personnel shall, “receive compensation, directly or indirectly or in any form, for services rendered to a third party, who has applied for or is seeking some benefit from the [City] board or agency on which such person serves, in connection with the particular benefit by the third party.” County Ethics Code § 2-11.1(m)(2).

In practice, a voting member of the Naranja Community Redevelopment Agency (“CRA”) may not appear before the Naranja CRA on behalf of the Economic Development Council, a non-profit entity of which he was Chairman of the Board, nor should he be involved in the making of any such presentation. *See* INQ 17-69. Members of the Youth Crime Task Force (“YCTF”) and the Dade-Miami Criminal Justice Council (“DMCJC”) who are employed by non-profit organizations may not appear before the YCTF or the DMCJC *either directly or through an associate* on behalf of their non-profit employers. *See* INQ 13-224.

Here, as a member of the City of Miami PZAB, you may not appear before the City of Miami PZAB on behalf of yourself or on behalf of HTG or any of its clients. *See* INQ 21-13; INQ 17-69; INQ 13-224. Furthermore, you may not help prepare or review any presentation to be made to the City of Miami PZAB on behalf of HTG or any of its clients because you may not present to the City of Miami PZAB through an associate. *See* INQ 17-69. Finally, you may not accept any compensation, either directly or indirectly, from HTG for any work done in connection with any particular benefit sought from the City of Miami PZAB by HTG. *See* County Ethics Code § 2-11.1(m)(1). In short, as a member of the City of Miami PZAB, you may not work on or review any presentation regarding a matter to come before the City of Miami PZAB, including the anticipated upzoning request for the 2000 NW 3rd Ave property that you indicated will likely come before the City of Miami PZAB in the future.

#### C. Section 2-11.1(j) – Conflicting Employment Prohibited

The Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (“County Ethics Code”) provides that no person who is considered City quasi-judicial personnel “shall accept other employment which would impair his or her independence of judgment in the performance of his or her public duties.” *See* County Ethics Code § 2-11.1(j).<sup>6</sup> Outside employment is considered “any non-County employment or business relationship in which the County employee (or quasi-judicial or advisory board member) provides a personal service to the non-County employer that is compensated or customarily compensated.” RQO 17-03.

Several factors are considered to determine whether a potential conflict of interest exists between an individual’s City position and his or her outside employment, including: the nexus between the public duties and the outside employment; whether the individual has decision-making authority over the same subject matter that the outside employment concerns; whether the individual solicits business or customers in the same area over which he or she has jurisdiction; whether the individual will come into contact with the same or similar people or entities in both his or her public position

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<sup>6</sup> Similarly, the enacting ordinance of the City of Miami’s PZAB provides that anyone appointed to said board, “shall be [a] person[] in a position to represent the public interest, and no person shall be appointed having personal or private interests likely to conflict with the public interest.” City of Miami Code § 62-16(d).

and outside employment; and whether the public entity with which the individual serves either funds or has a contract with his or her outside employer. *See* RQO 17-01; INQ 21-66. Additionally, the Ethics Commission has interpreted the prohibition against conflicting outside employment to prohibit covered individuals from engaging in employment that will create a substantial or frequently recurring conflict between his or her private employment interests and the performance of his or her public duties “such that this would impede the full and faithful execution of his or her public duties.” INQ 22-15 (citing INQ 12-221; INQ 02-59).

In practice, a member of the FI-CZAB who worked as a Commercial Real Estate Broker for a Fisher Island developer did not have a recurring conflict of interest and could continue his public service concurrent to his outside employment *so long as he recused himself from voting on or participating in any matter presented to the FI-CZAB involving his developer employer and development on the island.* *See* RQO 99-05. In a similar vein, officers and board members of Fisher Island condominium associations could not serve on the FI-CZAB because “as a practical matter, most matters that come before the community council would directly or indirectly affect any condominium association, due to the size and nature of the community,” resulting in a recurring conflict of interest that would prevent effective service on the FI-CZAB. RQO 01-46. Additionally, the Mayor of North Miami Beach may have had a recurring conflict of interest between his public service and his outside employment as a Real Estate Broker to the extent that his retainers as a Real Estate Broker were contingent on subsequent municipal action, and to the extent that his official actions impacted his business relationship with a developer. *See* INQ 22-15; *see also* INQ 11-174 (a member of the Black Affairs Advisory Board (“BAAB”) who simultaneously served as the Executive Director of a non-profit with regular business before the BAAB may have found it difficult to avoid frequently recurring conflicts that would impede his ability to full and faithfully execute his public duties).

Furthermore, while the Ethics Commission does not have jurisdiction to interpret the Florida Code of Ethics, opinions rendered by the Florida Commission on Ethics interpreting the Florida Code of Ethics can be instructive.<sup>7</sup> In Florida Commission on Ethics Opinion 11-6, a member of the Planning and Zoning Board of the City of Vero Beach (“Vero PZB”) inquired whether his outside employment as a planner and licensed landscape architect for a multi-discipline firm providing services to developers created a prohibited conflict of interest. The Florida Commission on Ethics found that a prohibited conflict of interest would exist were the requester’s employing firm to work on a matter for a client after that matter becomes a matter before the Vero PZB, even if a firm unrelated to his firm represents the client before the Vero PZB. *See id.* The Florida Ethics Commission elaborated that it has found a substantial conflict that would impede the performance of public duty, “when a public officer, or other members of his professional firm, represented clients before the officer’s public board.” *Id.* (citing Fla. Comm’n Ethics Op. 96-1; 88-40; 78-86; 77-126).

Here, based on all of the facts presented and the precedent discussed above, your employment with HTG would give rise to a prohibited conflict of interest due to a substantial conflict that would impede the full and faithful execution of your public duties. *See* RQO 01-46; INQ 22-15;

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<sup>7</sup> *See, e.g.,* INQ 23-97 (discussing Fla. Comm’n Ethics Op. 88-46); INQ 17-212 (referencing Fla. Comm’n Ethics Op. 98-22); INQ 16-38 (discussing Fla. Comm’n Ethics Ops. 91-38; 90-71; 89-45).

INQ 11-174; Fla. Comm'n Ethics Op. 11-6. First, you advised that HTG is developing a property in the City of Miami that required HTG, in the past, to make presentations requesting action to be taken by the City of Miami PZAB, and that will require HTG to make at least one more presentation before the City of Miami PZAB regarding the upzoning of said property. Second, you advised that, in your position as a Senior Vice President of HTG, your job responsibilities included the negotiation of affordable housing agreements with local municipalities, including the City of Miami, as well as appearing and presenting matters to the City of Miami PZAB on behalf of HTG. You further advised that you would be expected to review and approve the presentation of future matters regarding the 2000 NW 3rd Ave property that may be presented before the City of Miami PZAB. Finally, because HTG is developing at least one property in the City of Miami that will require future action by the City of Miami PZAB to complete its development and your pay as a senior executive depends on the success or failure of HTG, a substantial conflict of interest arises independent of any voting conflict that may arise. *See* INQ 22-15; Fla. Comm'n Ethics Op. 11-6. Accordingly, a substantial conflict of interest arises between your service on the City of Miami PZAB and your employment with HTG.

### Opinion

Based on the facts presented here and discussed above, you are prohibited from concurrently serving as a Board Member of the City of Miami PZAB and engaging in outside employment as a Senior Vice President of HTG because of a substantial conflict of interest that would impede your ability to execute your public duties fully and faithfully. *See* County Ethics Code § 2-11.1(j); RQO 01-46; Fla. Comm'n Ethics Op. 11-6. Accordingly, you must either resign your position on the City of Miami PZAB or seek other outside employment that would not give rise to a substantial conflict of interest.

This opinion is based on the facts presented. If these facts change, or if there are any further questions, please contact the above-named Staff Attorney.

Other conflicts may apply based on directives from the City Commission or under state law. Questions regarding possible conflicts based on City Commission directives should be directed to the City Attorney's Office. For an opinion regarding Florida ethics law, please contact the Florida Commission on Ethics, P.O. Drawer 15709, Tallahassee, FL 32317, phone number (850) 488-7864, <http://www.ethics.state.fl.us/>.

INQs are informal ethics opinions provided by the legal staff after being reviewed and approved by the Executive Director. INQs deal with opinions previously addressed in public session by the Commission on Ethics or within the plain meaning of the County Ethics Code. RQOs are opinions provided by the Miami-Dade Commission on Ethics and Public Trust when the subject matter is of great public importance or where there is insufficient precedent. While these are informal opinions, covered parties that act contrary to the opinion may be referred to the Advocate for preliminary review or investigation and may be subject to a formal Complaint filed with the Commission on Ethics and Public Trust.