



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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### MEMORANDUM

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**TO:** Eli Gutierrez, Chief of Customer Service  
Miami-Dade Water and Sewer Department

Mariela Alvarez, Deputy Director  
Miami-Dade Water and Sewer Department

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

**SUBJECT:** INQ 2024-33, Section 2-11.1(j), Outside employment.

**DATE:** February 20, 2024

**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 in Mr. Gutierrez’s proposed outside employment.

#### Facts

Mr. Eli Gutierrez is currently employed as the Chief of Customer Service for the Miami-Dade Water and Sewer Department (“WASD”). He advised that his job duties primarily include overseeing a WASD division that includes four distinct sections. He explained each of the sections as follows: (1) the call center section fields calls and complaints from members of the public, assisting callers and addressing their issues; (2) the back-end operations section conducts investigations in response to complaints from the public; (3) the field services section handles meter reading; and (4) the quality control section oversees the division’s quality of performance. He advised that each of these sections has a manager who reports directly to him and that he meets with his management team weekly. Finally, he advised that he sometimes manages special projects as requested by his supervisor.

Mr. Gutierrez would like to engage in outside employment as the Manager of City Code Solutions LLC (“City Code”), a Florida limited liability company he founded in 2018. He was listed as a registered agent of the company until removing himself as an officer and registered agent in 2021, around the time he started working for Miami-Dade County. Records from the Florida Division of

Corporations indicate that Ms. Rosanna Martinelli is listed as the registered agent and sole corporate officer of City Code as of the writing of this memorandum. Mr. Gutierrez advised that Ms. Martinelli is his spouse.

As Manager of City Code, Mr. Gutierrez anticipates that he will advise clients regarding how to obtain building permits and licenses to open businesses, as well as how to comply with County and municipal codes. He stated that he will also provide clients with recommendations about hiring contractors. He explained that he is qualified to provide these services because he has a background in code enforcement with the City of Miami. He advised that he expects his primary customer base to be people who want to do construction projects on their residences and who have little-to-no experience obtaining the permits they need to comply with municipal ordinances. In addition to these services, he stated that City Code offers mitigation services for certain fines for violations of the municipal codes in Miami-Dade County. However, he stated that the mitigation aspect of his business will not require him to appear before any County board on behalf of City Code's clients. He further explained that this is because he would only be appearing before code enforcement boards of local municipalities to mitigate violations, such as fines and liens. He stated that his work for City Code will primarily focus on clients in Miami-Dade County and Broward County. Finally, he advised that he will be compensated via a flat fee structure and that he will not employ a commission-based system of payment.

Mr. Gutierrez affirmed that he does not have any authority or oversight over City Code in his role with WASD as Chief of Customer Service. He also stated that his outside employment will only occur outside of the hours that he works for WASD. He provided that he will not use the same or similar resources or come in contact with the same or similar people in his potential outside employment as he does in his County job. He also provided that he does not have access to non-public information that is, or could be, relevant to his outside employment. He stated that his WASD position does not involve the recruitment or management of vendors, contractors, bidders, or members of the public who could also be involved in his proposed outside employment. Lastly, a records search indicated that City Code is not a County vendor, and he also stated that City Code is not a County vendor.

### Issue

Whether WASD's Chief of Customer Service may engage in outside employment as the manager of a private company owned by his spouse and, through that company, provide advice to clients about how to navigate the processes of obtaining building permits, recommending contractors, complying with municipal building codes, and mitigating violations.

### Analysis

The Miami-Dade County Conflict of Interest and Code of Ethics ("County Ethics Code") prohibits County employees from accepting outside employment, "which would impair his or her independence of judgment in the performance of his or her public duties." County Ethics Code § 2-11.1(j); *see also* County Ethics Code § 2-11.1(k). Additionally, Miami-Dade County

Administrative Order (“AO”) 7-1 provides that, “[u]nder no circumstances shall a County employee accept outside employment . . . where a real or apparent conflict of interest with one’s official or public duties is possible.”

County employees are required to obtain approval from their department director prior to engaging in outside employment. *See* AO 7-1. Departmental directors and their subordinate supervisors may request an opinion from the Ethics Commission regarding any potential conflict of interest concerning the proposed outside employment. *See* INQ 21-111; INQ 19-101. Department directors and their subordinate supervisors have the discretion to deny a request for outside employment if they determine that, at any time, the proposed outside employment would be contrary, detrimental, or adverse to the interests of the County or the employee’s department. *See* RQO 16-02; RQO 00-10; INQ 13-28.

Multiple factors are considered when evaluating whether outside employment is conflicting, including similarity of duties with the employee’s County duties, contact with the same or similar entities (e.g., similar personnel, clients, suppliers, or subcontractors) in both the employee’s County position and proposed outside employment, overlapping work hours, use of County resources in the outside employment, and the management of County vendors who are also involved in the proposed outside employment. *See* RQO 17-01. The similarity between an employee’s County duties and his or her outside employment duties does not indicate, by itself, the existence of a conflict of interest. *See* INQ 18-54 (citing RQO 12-07; RQO 04-168; RQO 00-10) (noting that a County employee can engage in outside employment with similar duties and functions so long as he or she abides by certain limitations). Furthermore, the use of an acquired knowledge base in outside employment for a privately owned company also does not, in and of itself, create a conflict of interest. *See* INQ 20-43 (a firefighter/emergency medical technician working for the Miami-Dade Fire Rescue Department could engage in outside employment as the Chief of the Tavernier Volunteer Fire Department).

In practice, a prohibited conflict of interest did not exist for the Chief of the then-extant Miami-Dade General Services Administration, Real Estate Development Division, when he sought to operate a consulting business for real estate developers so long as he did not take on any clients who were involved in any real estate transactions with the County (including leases, purchases, financing, joint developments or construction), or appear before any County committee or conduct any meeting with County staff on behalf of private clients. *See* RQO 05-15. Similarly, no prohibited conflict of interest existed for a WASD Assistant Director when he engaged in outside employment as the principal of a private company that provided government relations consulting services, including advising clients on local governance matters such as policy, legislation, and procurement. *See* INQ 23-06.

Here, based on the facts presented and discussed above, it does not appear that the type of outside employment in which Mr. Gutierrez seeks to engage would impair his independence of judgment in the performance of his County duties as Chief of Customer Service for WASD, because he is not going to take on any clients who are seeking permits from the County or who require any

representation before any County board or entity.<sup>1</sup> As such, there is no prohibited conflict of interest between his public duties and his proposed outside employment because there is no overlap between the two: his proposed outside employment will be performed outside of County hours; he will not come into contact with the same persons or entities involved in his County work; he will not use the same resources in his outside employment that he uses in his County work; and, he will not have access to non-public information as part of his County employment that is, or could be, relevant to his outside employment. *See* RQO 17-01; RQO 05-15; INQ 23-06. Insofar as he uses an acquired knowledge base from his past experiences in code enforcement in both his County work and his proposed outside employment, this would not create a prohibited conflict of interest. *See* INQ 20-43. Furthermore, Mr. Gutierrez advised that he would receive payment for his services as a Manager for City Code based on a flat rate fee structure and that he would not use a contingency fee system; as such, his method of payment will not give rise to any prohibited conflict of interest.

### Opinion

Based on the facts presented here and discussed above, Mr. Gutierrez would not have a conflict of interest in his proposed outside employment as the Manager of City Code as he has described it.

Furthermore, the Ethics Commission strongly recommends that the following limitations be imposed on Mr. Gutierrez's permission to engage in his proposed outside employment with City Code:

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<sup>1</sup> However, **if Mr. Gutierrez and/or City Code were to consider engaging any clients seeking permits from the County or who would require Mr. Gutierrez to make an appearance before any County board, he must seek another opinion from the Ethics Commission prior to engaging said clients** because such activity implicates another provision of the County Ethics Code. Specifically, County Ethics Code Section 2-11.1(m)(1) reads:

No [County employee] . . . shall appear before any County Board or agency and make a presentation on behalf of a third person with respect to any license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, or other benefit sought by the third person. Nor shall such person receive compensation, directly or indirectly or in any form, for services rendered to a third person, who has applied for or is seeking some benefit from the County or a County agency, in connection with the particular benefit sought by the third person.

This means that Mr. Gutierrez would be prohibited from lobbying any County official or employee anywhere in County government. *See* RQO 16-03. Lobbying activity is defined broadly and has been interpreted to mean that a County employee may not contact any County official or employee to influence his or her decision. *See* INQ 16-215; INQ 12-13; INQ 11-01.

- He may not engage in activities that relate in any way to his outside employment during his scheduled work hours (including phone calls, text messages, e-mails, or other communications) and he may not use County resources (including, but not limited to, phones, copiers, computers, fax machines, and County vehicles) in connection with his outside employment, even after work. *See* County Ethics Code § 2-11.1(g); AO 5-5, AO 7-1; INQ 20-43; INQ 19-123; INQ 15-240.
- He may not exploit his County position to secure special privileges or exemptions for himself and/or for City Code or its clients. *See* County Ethics Code § 2-11.1(g). Specifically, he may not offer his or City Code’s services to anyone during County working hours, including co-workers, subordinates, and other County employees. *See* INQ 19-101. Mr. Gutierrez should also exercise caution when informing his potential clients of his significant local government experience to avoid any suggestion that his current position will afford City Code or its clients of any special benefit or access that is ordinarily not available to other consultants not publicly employed. He should also avoid any use of County or municipal seals or other insignia. *See* INQ 23-06.
- He may not disclose and/or use any confidential and/or proprietary information acquired because of his County employment to derive a personal benefit, or for the benefit of City Code or its clients. *See* County Ethics Code § 2-11.1(h); INQ 21-60.
- He may not represent City Code or any of its clients before any County board or agency. *See* County Ethics Code § 2-11.1(m)(1); RQO 04-173. While it does appear that some lobbying activities are a part of his potential activities as a Manager for City Code – specifically insofar as he is involved in mitigating fines and liens for City Code’s clients – he advised that this service will only be provided for those fines and liens issued by municipal entities *other than* Miami-Dade County. It is important to note that he would be prohibited from engaging in any such activities on behalf of City Code or its clients before any Miami-Dade County board or agency.<sup>2</sup> *Id.*
- Insofar as his outside employment as a Manager for City Code will require him to represent third parties before municipal boards or agencies in Miami-Dade County, Mr. Gutierrez should be mindful that a number of municipalities have lobbyist registration requirements.

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<sup>2</sup> According to the Miami-Dade Regulatory and Economic Resources Department, “[a]ll new construction, addition, renovation or changes in use resulting in an increase in water consumption need a Water Supply Certification letter” from the County. *See* *Water Supply*, PERMITS, <https://www.miamidade.gov/permits/water-supply.asp> (last visited Feb. 13, 2024). Mr. Gutierrez has advised that City Code will not perform any work involving applications to any County Departments. Accordingly, Mr. Gutierrez is reminded that if he is going to accept any client who will need services related to obtaining permits from the County, he **must** request another opinion prior to engaging said client because said activity could implicate County Ethics Code Section 2-11.1(m)(1).

*See e.g.*, City of Miami Code § 2-654 (requiring persons who lobby city officials, city board members, or city staff to register with the City Clerk); City of Miami Code § 2-653 (adopting the definition of lobbying contained in the County Ethics Code); County Ethics Code § 2-11.1(s)(1)(d) (defining lobbying activity as “any attempt to influence or encourage the passage or defeat of, or modification to, governmental actions, including, but not limited to, ordinances, resolutions, rules, regulations, executive orders, and procurement actions or decisions . . .”).

- Mr. Gutierrez must obtain permission to engage in outside employment on an annual basis by filing a Request for Outside Employment with his department director, and **he must file an Outside Employment Statement<sup>3</sup> with the County’s Elections Department by noon on July 1st of each year regardless of whether he made a profit or not in his outside employment.** *See* County Ethics Code § 2-11.1(k)(2).

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 WASD or under state law. Questions regarding possible conflicts based on WASD directives should be directed to WASD or the Mayor’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.

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<sup>3</sup> Mr. Gutierrez can find the required form online at: <https://www.miamidade.gov/elections/library/forms/outside-employment-statement.pdf>.