



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

Overtown Transit Village North  
701 Northwest 1<sup>st</sup> Court · 8<sup>th</sup> Floor · Miami, Florida 33136  
Phone: (305) 579-2594 · Facsimile: (305) 579-0273  
Website: [ethics.miamidade.gov](http://ethics.miamidade.gov)

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### MEMORANDUM

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TO: Anthony Escarrá  
Deputy Chief of Staff, DIST 7

FROM: Martha D. Perez, General Counsel  
Commission on Ethics & Public Trust

SUBJECT: INQ 2020-137 [Conflict of interest, prospective service on County board,  
Sections 2-11.1(v), (m)(2)]

DATE: December 28, 2020

CC: COE Staff

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Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible voting conflict of interest in the appointment of Ms. Margaret Daly, President/CEO of Friends of the Underline, to the Citizen's Independent Transportation Trust (CITT).

#### Background:

Ms. Daly is the Founder and President of Friends of the Underline (The Underline), a 501(c)(3) non-profit organization committed to transforming the underutilized land below Miami's Metrorail (from the Miami River to Dadeland South Station), into a 10-mile linear park, urban trail, and public art destination. <sup>1</sup> Funding for this public-private project derives from federal (i.e., US DOT), state (i.e., State of Florida, FDOT), County, local (i.e., City of Miami, City of Coral Gables, and other municipalities) and private contributions (i.e., individuals, corporations, and foundations). Operations for the facility will be led by the Underline Management Organization (Underline Conservancy), also chaired by Ms. Daly. <sup>2</sup>

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<sup>1</sup> [www.theunderline.org](http://www.theunderline.org)

<sup>2</sup> In 2020, The Underline Management Organization dba The Underline Conservancy was created to manage, maintain and operate The Underline. The public/private organization has its own board with representatives from Friends of The Underline and Miami-Dade County. [www.theunderline.org](http://www.theunderline.org)

CITT is a semi-autonomous County board responsible for the management of the half-penny County transportation surtax and the implementation and oversight of the County projects in the People's Transportation Plan (PTP). The board reviews contracts requesting PTP funding and monitors all surtax-funded projects. CITT works closely with members of the Board of County Commissioners (BCC), the County administration, staff at Miami-Dade Department of Transportation and Public Works (DTPW) and municipal officials to insure proper expenditure of PTP funds.

According to Ms. Daly, “[t]o date, the project has not received CITT funds but the DTPW from time to time needs review/approval from CITT.”

In CITT's 2018-2019 First Quarter Report (“Moving Forward”), CITT Executive Director joined Ms. Daly and The Underline for the groundbreaking ceremony for The Underline. The report also mentioned that *CITT had approved surtax funding for a contract between Miami-Dade County and Central Pedrail Joint Venture to construct Phase 1 of The Underline “The Brickell Back Yard” project which extends from the Miami River to SE 13th Street.*<sup>3</sup>

#### Discussion:

This office may consider and opine on whether a prospective CITT board member has a conflict of interest, pursuant to the County Ethics Code, affecting his or her service on the board. Section 2-1421(h), Miami-Dade County Code

There is nothing in the County Ethics Code which prohibits an officer or director of a non-profit entity from serving on a County board.

We must also consider Section 2-1421 of the Miami-Dade County Code (CITT enabling ordinance) which prohibits membership to a person with any *interest*, direct or indirect, in a contract with the County or in an entity which contracts with the County. Pursuant to Section 2-1421 (a), Miami-Dade County Code (CITT), members of the Trust shall be residents of Miami-Dade County who possess outstanding reputations for civic involvement, integrity, responsibility, and business and/or professional ability and experience or interest in the fields of transportation mobility improvements or operations, or land use planning. *No person shall be eligible to serve as a member of the Trust who has any interest, direct or indirect, in a contract with the County or in any corporation, partnership or other entity that has a contract with the County.*

It is noted that Ms. Daly serves The Underline as an unpaid volunteer who does not derive any financial interest from the non-profit entity. *See* INQ 17-271(the word “interest,” in Section 2-1421(i) of the CITT ordinance, is interpreted as a financial or ownership interest). Hence, her service is not precluded by this section of the ordinance.<sup>4</sup>

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<sup>3</sup> <https://www.miamidade.gov/citt/library/reports/2018-2019-quarter-1.pdf>

<sup>4</sup> Similarly, the County Ethics Code at Section 2-11.1(c) (Transacting with the County) prohibits board members who hold a controlling *financial interest*, from contracting with any County department or agency that is subject to the regulation, oversight, management, policy-setting, or quasi-judicial authority of the board of which the person is a

While Ms. Daly is not prohibited from serving in the CITT, the following provisions of the County Ethics Code may be implicated in her prospective service:

Under Section 2-11.1(v) of the Ethics Code (Voting Conflict), a board member is prohibited from participating and/or voting on a matter if the board member has an enumerated relationship (officer, *director*, partner, of counsel, consultant, employee, fiduciary, etc.) with any entity affected by the vote *and* the board member might, directly or indirectly, profit or be enhanced by the board action.<sup>5</sup> In order for a voting conflict to exist, both prongs of section (v) must be met. *See* RQO 07-49, INQ 20-73.

Here, there are no facts indicating that Ms. Daly would be directly affected or that she would personally benefit from any action of the CITT related to a vote concerning The Underline. Nevertheless, it is recommended that she avoid participating and/or voting on any matters directly or indirectly concerning The Underline where she is the President to avoid creating an appearance of impropriety and possible erosion of the public's trust. *See* RQO 06-52, INQ 12-53 and INQ 18-202

Under Section 2-11.1(m)(2) of the Ethics Code (Appearances prohibited), a board member may not appear before his or her board on behalf of a third party. Consequently, Ms. Daly would be prohibited from appearing before CITT (i.e., lobby CITT) or another County board or department on behalf of The Underline or any other entity for projects to be funded with surtax proceeds. *See* INQ 13-224 (a board member must not lobby or try to influence his board for the benefit of his nonprofit employer), INQ 13-239 (an associate of the board member cannot address the board to seek a benefit on behalf of the entity), INQ17-69 (in the event a matter comes before the CRA in which the nonprofit where the member serves as chairman has an interest, he should not be involved in making a presentation on behalf of the nonprofit); *See also* Section 2-1421(h), MDC Code (*Trust members shall not lobby, directly or indirectly, the Mayor, any member of the County Commission or any member of County staff regarding a project funded in whole or in part by surtax proceeds, or regarding any person or business bidding for or under contract for a project funded in whole or in part with surtax proceeds*).

Finally, under Section 2-11.1(g) of the County Ethics Code (Exploitation of official position), a board member may not use his or her official position to gain special privileges or exemptions for a third party.<sup>6</sup> In other words, a board member may not use his or her County board position to gain any special competitive advantage in any funding application or other County decision-

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member. *See* INQ 12-53 (the vice-president of a nonprofit organization who is responsible for its management, is not precluded from transacting with the County because he is not a principal for purposes of financial interests).

<sup>5</sup> Since Ms. Daly is an unpaid President of The Underline and any matter that comes before her board will not affect her as an individual, it seems unlikely that she would have a voting conflict on such a matter. *See* INQ 12-53 and INQ 17-69

<sup>6</sup> An act which may be considered exploitation includes the disclosure of confidential information gained through the member's service in a County board or the use of that information for his or her personal gain or benefit. Section 2-11.1(h), County Ethics Code

making situation that might benefit the non-profit third-party entity as such activity could be considered exploitation of official position. *See* INQ 15-82

Opinion:

Under the facts provided herein, while Ms. Daly is not prohibited from serving on the CITT, caution should be exercised if The Underline, the non-profit entity she heads, has benefitted in the past from surtax funding approved by CITT and may continue to benefit from the County's surtax funding received by the entity's partners and affiliates directly or indirectly.

Also, Ms. Daly, as a prospective member, should evaluate and consider whether, due to her relationship to The Underline and the projects currently being promoted, overseen, and administered by that entity in conjunction with the County, she will have recurring conflicts of interest preventing her from serving the board in the manner intended by the enabling ordinance and in compliance with the County Ethics Code. *See* INQ 11-174 (board member may find it difficult to avoid frequently recurring conflicts caused by his simultaneous service to a nonprofit entity and the public duties he owes to the County board).

This opinion is limited to the facts as you presented them to the Commission on Ethics and is limited to an interpretation of the County Ethics Code only and is not intended to interpret state laws. Questions regarding state ethics laws should be addressed to the Florida Commission on Ethics.

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 Ethics Commission 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.