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July 15, 2020

Via U.S. & Electronic Mail

Victoria Mendez, Esq.
City Attorney
Miami Riverside Center
444 Southwest Second Avenue
Miami, Florida 33130

Re: Ethics Inquiry Request, INQ 20-75, Miami 21 Ad Hoc Task Force, Section 2-11.1 (b) (4),
County Ethics Code

Dear Ms. Mendez:

Thank you for engaging with the Miami-Dade Commission on Ethics and Public Trust and seeking ethics guidance regarding the application of the Miami-Dade County Code of Ethics and Conflict of Interest Ordinance ("Ethics Code") to members of the Miami 21 Ad Hoc Task Force. We respond as follows:

Issue:

Whether members of the Miami 21 Ad Hoc Task Force are advisory board members as defined in Section 2-11.1 (b) (4) of the County Ethics Code and thus, subject to the voting conflict of interest restrictions contained in Section 2-11.1 (v) of the County Ethics Code and the financial interest restrictions contained in Section 2-11.1 (n) of the County Ethics Code.

Facts:

The Miami 21 (Miami 21) Code was adopted by the City of Miami Commission (Commission) in 2009 as a form-based zoning code designed to regulate development to achieve specific urban forms. Miami 21 replaced older more traditional zoning ordinances that regulated land uses based on residential, commercial, institutional, and industrial districts.

In late 2019, a decade after the adoption of Miami 21, the City of Miami decided that a comprehensive review of the zoning code was appropriate. Therefore, on December 12, 2019, the Commission adopted Resolution R-19-0523, directing City Administration to report to the Commission on the viability of the Miami 21 Code by issuing a Miami 21 Code Report. City Administration was given one hundred eighty (180) days from the passage of the Resolution to make any recommendations, changes, or actions that should be taken.

Thereafter, on January 9, 2020, the Commission adopted Resolution R-20-0015, establishing the Miami 21 Ad Hoc Task Force (“Task Force”), charged with working in conjunction with City Administration and providing its perspective and recommendations to the City Commission, Mayor, and City Manager on possible changes or measures to be taken relative to the Miami 21 Code.

Together the two resolutions afforded the Task Force one hundred eighty days (180) days to complete their work and make their recommendations to the Commission, Mayor and City Manager. Resolution R-20-0015 provides that, at the conclusion of the Commission’s consideration of the Task Force’s recommendations, the Task Force would automatically sunset. Therefore, by Resolution, the Task Force was intended to be in existence approximately six (6) months and should have sunsetted by mid-2020.

However, on March 12, 2020, the Mayor of the City of Miami declared a local state of emergency as a result of the current COVID 19 pandemic. Thereafter, Ordinance No. 13902, passed by the City Commission, specifically tolled “all applicable deadlines and time periods related to the Miami 21 Report Ad Hoc Taskforce established by Resolution No. R-20-0015 for the duration of the Emergency originally declared by Mayor Suarez on March 12, 2020.” Therefore, as of the date of this informal opinion, the Task Force has not sunsetted and it is undetermined how long it will be in existence.

Discussion:

The Miami Dade Conflict of Interest and Code of Ethics Code is applicable to County and municipal officials, officers, autonomous personnel, advisory personnel, and employees as defined therein.¹ For purposes of this informal opinion, the Ethics Code goes on to define advisory personnel as follows:

Section 2-11.1 (b) (4) - The term “advisory personnel” shall refer to those members of County [City] advisory boards and agencies whose sole or primary responsibility is to recommend legislation or give advice to the Board of County Commissioners [City Commission].

Resolution R-20-0015 establishing the “Task Force” charged it with working in conjunction with City Administration and providing its perspective and recommendations to the City Commission, Mayor, and City Manager on possible changes or measures to be taken relative to the Miami 21

¹ See Section 2-11.1 (a), of the County Ethics Code.

Code. Thus, it would appear that the Task Force members are advisory personnel as defined in Section 2-11.1 (b) (4) and subject to the restrictions contained in the Ethics Code.

However, in RQO 09-42, the Ethics Commission considered whether the board member financial disclosure provisions contained in Section 2-11.1 (i) of the Ethics Code applied to all County boards. In that case, the Ethics Commission opined that task forces or ad hoc committees whose enabling resolutions provide that the boards will sunset in less than one calendar year are not subject to the Ethics Code's financial disclosure provisions. From that formal ethics opinion, it can be inferred that boards that are intended by resolution to be in existence for less than a calendar year are not advisory boards as defined by the Ethics Code and its members are not subject to the restrictions contained in the Code.

Likewise, in INQ 11-63, the Ethics Commission advised the Town of Surfside that there were no Ethics Code prohibitions on the hiring of an Town ad hoc committee member because the committee was due to sunset within six (6) months and consequently, it was not an advisory board.

Again, in INQ 17-292, the Ethics Commission advised County staff that the financial disclosure provisions contained in subsection (i) of the Ethics Code would only apply to those Miami-Dade Economic Advocacy Trust (MDEAT) boards that operate for a year or longer.

Finally, in INQ 18-01, the Ethics Commission considered whether the board voting conflict and financial interest restrictions contained in Sections 2-11.1 (v) and (n), respectively, applied to the members of the Mayor's Urban Expansion Area Task Force (UEATF). That board was primarily tasked with making recommendations to the Board of County Commissioners regarding changes to the boundaries of the County's urban expansion area. As such, it would at first glance, constitute an advisory board as defined in the County Ethics Code.

However, the UEATF was intended to sunset after seven months, therefore, that board's staff coordinator was advised that the Ethics Code's voting conflict and financial interest restrictions did not apply to its members.

Applying the reasoning underlying these prior ethics opinions regarding the applicability of the County Ethics Code to ad hoc committees or other limited duration boards or task forces that are intended to exist for less than one (1) calendar year, we conclude that the Task Force established by Resolution R-20-0015 is not an advisory board as defined in the County Ethics Code. As such, the Ethics Code's voting conflict and financial interest restrictions do not apply to its members.

It is clear that Ordinance No. 13902, that tolled applicable deadlines and time periods related to the Task Force for the duration of an emergency declared by the City Mayor will extend the duration of the board beyond six (6) months. However, it is unclear how long beyond the six (6) month period the board will be in existence. It would be inappropriate to speculate how long the Task Force will be in existence or if it will continue its work beyond one year from establishment. At this point, it is clear that it was intended by resolution to sunset after approximately six (6) months and this must be the principal consideration as regards the application of the Ethics Code to the Task Force members.


This does not mean that the Task Force members are not subject to any ethical limitations regarding their professional activities vis-à-vis their board membership. While the County Ethics Commission is not authorized to interpret the State Ethics Code, Task Force members are public officers as defined in Section 112.313, Florida Statutes. Thus, their membership and conduct as Task Force members will be restrained by the some of the provisions of the State Ethics Code.²

Conclusion:

Because the Miami 21 Ad Hoc Task Force was intended by Resolution to be in existence for approximately six (6) months, then its members are not advisory board members as defined in Section 2-11.1 (b) (4) of the County Ethics Code. Therefore, the Task Force members are not subject to the voting conflict of interest restrictions contained in Section 2-11.1 (v) of the County Ethics Code or the financial interest restrictions contained in Section 2-11.1 (n) of the County Ethics Code.

We hope that this opinion is of assistance and we remain available to discuss any matters addressed in this letter, if necessary, at your convenience.

Sincerely,



Jose J. Arrojo
Executive Director

cc: George Wysong, Esq., Assistant City Attorney
All Commission on Ethics Attorneys

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.

² See Proposed conflict of interest advisory opinion regarding land use and real estate development attorneys appointed to the Miami 21 Ad Hoc Task Force. Not adopted and due to be presented to the State Ethics Commission on July 24, 2020.