



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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### MEMORANDUM

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TO: Jorge Ubieta  
Supervisor, Development Services Division, RER

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

SUBJECT: INQ 2022-36, Section 2-11.1(s) [Lobbying], County Ethics Code

DATE: March 10, 2022

CC: COE Legal Staff

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Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding transactions which may implicate the lobbyist registration requirements under Section 2-11.1(s) of the County Ethics Code. You were advised to seek clarification on whether certain action by developers or representatives of developers meets the definition of lobbying, requiring registration.

#### Background:

You are a Supervisor with the Development Services Division (DSD), the current planning branch of the County's Regulatory and Economic Resources Department (RER). In addition to planning, the Development Services Division also reviews and evaluates zoning and land *platting* applications in its Platting Section.<sup>1</sup> In essence, you have indicated that your department administers platting approvals for Miami-Dade County.

Florida law provides that the declaration of a state of emergency issued by the Governor for a natural emergency tolls the period remaining to exercise the rights under a permit or other authorization. *See* § 252.363(1)(a), Florida Statutes Accordingly, the Governor has issued

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<sup>1</sup> Applicants submit new land development to the Plat Committee to be reviewed for compliance with the Subdivision Code of Miami-Dade County and all other State and County legislation. An online submission of platting documents is available for Tentative Plats, Waiver of Plats, Entrance Features and Deco Walls to include new applications, corrections, revisions and/or extensions of time.

Executive Orders 22-27 and 22-28 declaring a state of emergency for Miami-Dade County (among other counties), delegating to the State Coordinating Officer the authority to exercise the powers delineated in Florida Statute 252.36(6-12). *This translates to an automatic toll implemented on the extension of time for fees of tentative plat approvals.*

Routinely, RER will receive a request/ application for extension of time of tentative plat approvals from a developer and/or representative. Upon receipt of the request, RER automatically grants the toll. You inquire whether a request/application submitted by an applicant or his or her representative requesting tolling, by itself, constitutes lobbying activity requiring lobbyist registration, where an automatic toll is granted upon receipt of the request by RER.

### Analysis and Opinion

The definitional term of “lobbying activities” in the County Ethics Code includes any attempt to *influence or encourage* the passage, defeat, or modification to governmental actions of the County Commission, Mayor, board or committee or County personnel. (See Section 2-11.1(s)(1)(d), County Ethics Code) Demonstrably, the lobbying activity requires some form of advocacy from the lobbyist where he or she is attempting to persuade the County official to take official action which will inure to the lobbyist’s or principal’s benefit.

Regarding the permit holder, any person who appears (communicates) in his or her official capacity for the purpose of *self-representation* is not subject to the lobbyist registration requirements under Section 2-11.1(s)(2)(g). See INQ 04-40 With regard to the permit holder’s representative, the issue turns on whether the representative is engaged in a lobbying activity, regardless of employment, designation, retention, or compensation.

Individuals who are simply gathering information or performing routine administrative activities for a client are not lobbying. See RQO 04-33 (engaging in interactions with staff which are ministerial in nature, such as filing permit applications, obtaining documents, or requesting information about a permit do not require lobbyist registration; INQ 13-192 (interactions with County staff that are ministerial in nature, such as filing permit applications, obtaining documents, or requesting information about a permit are not considered lobbying); INQ 16-247 (if the only thing that is done is to make an inquiry for information and not to influence any such decision, then it would not be necessary to register as a lobbyist); INQ 16-253 (representative may speak with County personnel in RER to obtain general application information and procedures on a property, including, zoning history, platting, applicable environmental requirements and differences regarding a property if he will not be persuading any County employee “to support any application to modify the zoning of the property or to encourage the approval of any permit.”)

Consequently, the act of submitting a request/application which is *automatically granted* by the government entity and not subject to review, negotiation, or further discussion between the applicant and County personnel, describes activity akin to a ministerial act rather than lobbying, thereby dispensing with registration.

However, if you anticipate that during the process, a permit holder's representative is engaged in an attempt to influence or persuade County personnel to take a particular course of action or make some determination related to the subject property, then the individual may have to register as a lobbyist. *See* §2-11.1(s)(2) of the Ethics Code *See also* RQO 04-33 (Interactions with staff, which may include written or verbal communications, in order to obtain permits for clients, may be considered lobbying, dependent upon the circumstances)

Please note, we do not opine or comment on the statutory authority of a permit holder's representative to make the above-described requests/applications to RER in the first place.

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.