



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Carl Harrison
Former Principal Planner, Development Services Division
Department of Regulatory and Economic Resources (RER)

FROM: Loressa Felix, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2022-96, Section 2-11.1(q), County Ethics Code, Two-Year Rule

DATE: June 6, 2022

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding limitations on employment by former County employees within two years of separation from Miami-Dade County.

Facts:

You were previously employed as the Principal Planner for the Development Services Division of the Miami-Dade Department of Regulatory and Economic Resources (RER). Your duties included providing verbal and written information to members of the public seeking information on all zoning and land use matters, conducting site plan reviews and provided feedback to applicants filing for zoning relief for residential, commercial, agricultural or other uses in Miami-Dade County, writing recommendations for zoning hearings before Community Zoning Appeals Boards (CZAB) and the Board of County Commissioners (BCC), assisting in the review of zoning ordinances prior to their approval by the BCC, and reviewing and preparing administrative reviews for single-family residences. You also served as Workforce Housing Coordinator, where you conducted monthly workshops for the public on the Workforce Housing Ordinance for the County and coordinated the reviews of applications for Workforce Housing between the Public Housing and Community Development Department (PHCD) and RER. Lastly, you acted as a Shoreline Development Review Coordinator, where you coordinated the review of applications that required review before the Shoreline Development Review Committee (SDRC).

You separated from RER on April 18th, 2022. You started a new professional endeavor as a compensated consultant through your privately-owned company, C.A. Harrison, Landuse

Consulting, LLC. You are planning to utilize your experience to provide guidance on the County's Zoning Code as well as the Comprehensive Development Master Plan (CDMP) to assist in the development or re-development of properties within Miami-Dade County. In your new position, you will use documents on the RER department website such as the forms, code book, and Land Use Element and the Geographical Information System (GIS), which are all publicly available. Your consulting services will include providing entities or individuals with guidance in their applications for administrative adjustment and development plan reviews, the zoning hearing process, Workforce Housing implementation and plan reviews, SMART Corridor and Rapid Transit Zone application and plan reviews, and Urban Center applications and plan reviews.

You inquire about your ability, as a consultant recently separated from the County, to file applications on behalf the individuals or entities and to assist them in the plan review process including the use of your name and address on the applications as a point of contact.

Analysis and Opinion:

Section 2-11.1(q) of the Miami-Dade County Ethics Code (Ethics Code) or the “Two-Year Rule”, prohibits former County employees from “lobbying” the County for a period of two years following separation.

Specifically, this section prohibits a County employee, for a period of two years after his or her County service has ceased, from:

...lobby[ing] any county officer, department personnel or employee in connection with any judicial or other proceeding, application, RFP, RFQ, bid request for ruling, or other determination, contract, claim, controversy, charge accusation, arrest or other particular subject matter in which Miami-Dade Count or one of its agencies or instrumentalities is a part or has any interest whatever, direct or indirect.

The post-employment lobbying activity prohibitions contained in subsection (q) of the Ethics Code are more expansive than those found under the general lobbying ordinance. *See* INQ 21-05, INQ 21-123, and INQ 22-61. The Two-Year Rule includes advocating for actions or decisions that may be made at the sole discretion of *any* County personnel. *See* RQO 12-09; RQO 13-07.

Accordingly, former County employees may not attempt to persuade County staff, whether in person or by written communication, to take a particular course of action. These actions are considered lobbying and are prohibited. *See* RQO 02-139 and INQ 21-05.

Former County employees are however allowed under subsection (q) of the Ethics Code to share institutional knowledge regarding their former employer’s procedures with their new clients, and to provide guidance to their clients or employers regarding interactions with the County. *See* INQ 19-75, INQ 20-63 and INQ 21-02.

Additionally, a former County employee may engage in interactions with County staff which are ministerial in nature, such as *filing/submitting permit applications, confirming receipt of permit applications, obtaining documents, asking a procedural question or requesting information about a permit*. *See* INQ 16-46 citing RQO 04-33. However, any attempt to persuade County staff,

whether in person or by written communication, to take a particular course of action or to make a determination, are considered lobbying. *See id* citing RQO 02-139.

In RQO 12-09, the Miami-Dade Commission on Ethics further explained the parameters of the prohibition with respect to allowable meetings with County staff as follows:

These meetings must be held for informational purposes only and not for the purpose of influencing any recommendations or other actions on the project. You are prohibited from arranging and/or *participating in meetings* with City [County] officers and staff... if the meetings are convened for the purpose of influencing elected officers and/or City [County] employees to take an official action or make an official decision. (Emphasis added.)

Consequently, former County employees must refrain from meeting with County staff in order to persuade the expedited review or approval of permits, or discuss reviews or modifications related to the permits as these discussions may be considered lobbying. *See* INQ 16-46 and INQ 21-123.

Former employees are also prohibited from making presentations before County selection committees, boards and agencies, the Board of County Commissioners and its and committees and subcommittees. This prohibition is broad and covers any activity where you would be publicly identified as part of a lobbying team. *See* INQ 21-02 and INQ 21-123; *see also* RQO 04-34 (citing RQO 01-38, where the Ethics Commission opined that a former County employee could not engage in such activities but was not prohibited from attending quasi-judicial hearings and County Commission meetings and from providing administrative support as long as he was not publicly identified as a member of the lobbying team).

Lastly, it is worth noting that former employees are prohibited from disclosing and/or using any confidential and/or proprietary information acquired as a result of his former County position to derive a personal benefit either to himself or his client. *See* County Ethics Code § 2-11.1(h); INQ 17-181 and INQ 16-46.

Based on the information you provided, it appears that you will only be conducting ministerial acts and imparting institutional knowledge to your clients. Therefore, there is no prohibition of your post-employment position as a consultant for your privately-owned company. With regard to the use of your name and address as point of contact on a permit application, you are not prohibited from doing so. You are however cautioned against **engaging in any action or communication that might be perceived as advocating or seeking to influence County personnel would be a violation of the County's Two-Year Rule.** *See* INQ 21-123 and INQ 19-75.

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.

We appreciate your consulting with the Commission in order to avoid possible prohibited conflicts of interest. If the facts associated with your inquiry change, please contact us for additional guidance.

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.