MEMORANDUM

Agenda Item No. 5(F)

(Public Hearing: 10-9-25)

TO: Honorable Chairman Anthony Rodriguez
and Members, Board of County Commissioners

DATE: September 3, 2025

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Ordinance relating to Conflict of Interest and Code of Ethics Ordinance; amending section 2-11.1 of the Code; revising provision relating to prohibition on transacting business with the County; providing exception to voting conflict provision for certain circumstances where there is a unity of interest between the County and a County owned entity

Ordinance No. 25-100

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Eileen Higgins.

Geri Bonzon-Keenan
County Attorney

GBK/gh

Memorandum

Date: October 9, 2025

To: Honorable Chairman Anthony Rodriguez
and Members, Board of County Commissioners

From: Daniella Levine Cava Daniella Levine Cava
Mayor

Subject: Social Equity and Fiscal Impact Statements for Ordinance relating to Conflict of Interest and Code of Ethics Revising Provision Relating to Prohibition on Transacting Business with the County

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The proposed Ordinance Amends Section 2-11.1 of the Code of Miami Dade County (Code) relating to Conflict of Interest and Code of Ethics to provide a limited exception and allowance for the Board of County Commissioners (Board) to serve as the board of directors of a special-purpose entity that is created, owned and staffed by the County to assist the County with the selective purpose for which the entity is to be created.

In particular, the Ethics Ordinance prohibits County Commissioners from voting on or taking part in any matter presented to the Board that relates to any entity, private or public, for which such Commissioners serve as officers, directors, or consultants, and which may be affected by action taken by the Board. The Ordinance would allow the County to create a special-purpose, nonprofit entity and the County Commission to serve as the board of directors of the said entity that is created, owned and staffed by the County.

Social Equity Statement

The proposed Miami-Dade County Ordinance amends ethical rules to allow commissioners to serve on the boards of certain special-purpose entities with the goal of advancing the County's affordable housing strategy. The social equity statement outlines how the ordinance may facilitate the County's efforts to create and preserve affordable housing.

The creation of a County nonprofit entity, such as the one contemplated in Legistar No. 251845, could allow the county greater control over the development and preservation of housing units, such as the four assets in the Miami Beach Community Development Corporation (MBCDC) portfolio. The nonprofit structure allows for the regulation of the cost and timing of developing new or rehabilitating existing affordable homes. This could potentially be useful for smaller properties that may not be attractive to private developers. The Ordinance enables the nonprofit entity to engage in profit-sharing, with revenue generated reinvested into additional affordable housing initiatives. It also secures the County's eligibility to receive non-governmental funding, providing a more sustainable and diverse revenue stream for housing programs.

This is designed to make housing readily available to residents who are otherwise priced out of the current market. By removing these smaller, often less profitable properties from the conventional market, the county can ensure they remain affordable options.

Fiscal Impact Statement

The establishment of a single nonprofit corporation under this ordinance will not have a fiscal impact to Miami-Dade County. There are no general funds involved. The ordinance aims to increase affordable housing projects throughout Miami-Dade County, including providing a path to homeownership for more residents.

Jimmy Morales
Chief Operating Officer

MEMORANDUM
(Revised)

TO: Honorable Chairman Anthony Rodriguez and Members, Board of County Commissioners

DATE: October 9, 2025

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 5(F)

Please note any items checked.

_______ **"3-Day Rule" for committees applicable if raised**

_______ **6 weeks required between first reading and public hearing**

_______ **4 weeks notification to municipal officials required prior to public hearing**

_______ **Decreases revenues or increases expenditures without balancing budget**

_______ **Budget required**

_______ **Statement of fiscal impact required**

_______ **Statement of social equity required**

_______ **Ordinance creating a new board requires detailed County Mayor's report for public hearing**

✓ **No committee review**

_______ **Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, majority plus one ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3) (h) or (4)(c) ____, CDMP 9 vote requirement per 2-116.1(4)(c) (2) ____) to approve**

_______ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved ______________________ Mayor

Veto __________

Override __________

Agenda Item No. 5(F)
10-9-25

ORDINANCE NO. 25-100

ORDINANCE RELATING TO CONFLICT OF INTEREST AND CODE OF ETHICS ORDINANCE; AMENDING SECTION 2-11.1 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; REVISING PROVISION RELATING TO PROHIBITION ON TRANSACTING BUSINESS WITH THE COUNTY; PROVIDING EXCEPTION TO VOTING CONFLICT PROVISION FOR CERTAIN CIRCUMSTANCES WHERE THERE IS A UNITY OF INTEREST BETWEEN THE COUNTY AND A COUNTY OWNED ENTITY; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, since 1968, the County has been a "public housing agency" (also known as a housing authority) as that term is defined in the United States Housing Act of 1937, as amended ("Housing Act"), after the City of Miami conveyed its properties and projects to the County; and

WHEREAS, unlike other public housing agencies in Florida, the board of commissioners of the County's public housing agency is this Board, and the day-to-day operations of the County's public housing agency is managed by the County's housing department, the Department of Housing and Community Development, or its successor department as designated by the County Mayor; and

WHEREAS, HUD regulations state that a public housing agency may create and operate a wholly owned or controlled subsidiary or other affiliate; may enter into joint ventures, partnerships, or other business arrangements with individuals, organizations, entities, or governmental units, which such entity or entities may be a nonprofit corporation, and that such entity or entities may be an organization controlled by the same persons who serve on the governing board of the public housing agency or who are employees of the public housing agency; and

WHEREAS, the County's desire to both comply with United States Department of Housing and Urban Development ("HUD") regulations and redevelop County-owned property necessitates the creation of a single not-for-profit corporation to accomplish both, thereby avoiding the creation and operation of multiple new entities with outsider control that would be complicated, unwieldy, and expensive to operate; and

WHEREAS, the need to create such an entity recently came to light with respect to the County's efforts to preserve and maintain vital affordable housing formerly owned by Miami Beach Community Development Corporation, Inc. ("MBCDC"); and

WHEREAS, MBCDC owned and maintained certain residential projects scattered from Miami Beach to Little Havana, including 16 residential projects representing a total of 357 units of affordable housing for low-income and elderly residents (the "MBCDC Portfolio"); and

WHEREAS, despite continuous efforts to operate the MBCDC Portfolio, MBCDC was no longer financially able to maintain the assets due to rising insurance and utility costs, the age of the assets, and the lack of ongoing government subsidy to support its operations and assets; and

WHEREAS, on July 19, 2022, with MBCDC facing bankruptcy and the future of its 357 units of affordable housing in peril, the County intervened by delegating authority to and directing the County Mayor or County Mayor's designee to take actions necessary to preserve the MBCDC Portfolio, and prevent a default by MBCDC on all loans of all properties in the MBCDC Portfolio; and

WHEREAS, on April 4, 2023, this Board also adopted Resolution No. R-329-23, which (1) approved the terms of and authorized the County Mayor or County Mayor's designee to execute a Memorandum of Agreement with MBCDC, which provided, among other things, for the County to take over ownership, control, and all managerial responsibilities of the MBCDC Portfolio; (2) approved the terms of and authorized the County Mayor or County Mayor's designee to execute contracts for sale and purchase of two of the MBCDC properties, the Fernwood Apartments and The Shelbourne House; and (3) authorized the County Mayor or County Mayor's designee to negotiate with HUD to obtain HUD's consent to the transfer of properties within the MBCDC portfolio which have HUD financing, and execute all necessary and standard agreements with HUD required for HUD's consent to the transfer of all properties with HUD financing in the MBCDC Portfolio; and

WHEREAS, subsequently, on April 6, 2024, the County was informed by HUD's General Counsel in an email that with regard to four of the properties in the MBCDC Portfolio, which are secured by a capital advance mortgage, the County would not be able to own these properties under the regulations promulgated by HUD unless the County incorporated a 501(c)(3) nonprofit corporation to act as the controlling entity; and

WHEREAS, specifically, the regulations define the word "owner" as a single-asset private nonprofit organization, which includes an instrumentality of a public body; and

WHEREAS, in addition to the MBCDC properties, the County is the owner of certain public housing and other affordable housing developments; and

WHEREAS, in light of HUD's directive concerning the MBCDC Portfolio, this Board wishes to create a not-for-profit corporation with its own project-specific subsidiaries and affiliates, and whereby the County, through this Board, would hold an ownership interest in such entity or entities for the purpose of the entity or entities developing, acquiring, leasing, constructing, rehabilitating, applying for certain types of financing, and managing or operating multifamily or single-family residential projects, including, but not limited to, the redevelopment of the County's public housing developments through the Rental Assistance Demonstration (RAD) program, and ownership of the four properties in the MBCDC Portfolio; and

WHEREAS, further, this Board wishes to participate in governance of the entity or entities by serving as the board of directors, without compensation, to maintain control of such entity or entities; and

WHEREAS, the creation of the entity or entities described herein will allow the County to own the four properties in the MBCDC Portfolio, be eligible to receive funding not available directly to the County as a government entity, allow the County to control the cost and timing of development, and also allow the County to participate in the profits of such development ensuring more cost effective and timely affordable housing development; and

WHEREAS, the District 5 Commissioner, through the Miami-Dade County Attorney's Office, requested an opinion from the Florida Commission on Ethics to determine if this Board, serving as the board of directors, or the County staff providing services to the entity, would be allowable under Florida's ethics laws; and

WHEREAS, on April 25, 2025, the Florida Commission on Ethics issued advisory opinion CEO 25-2, a copy of which is attached hereto; and

WHEREAS, in such opinion, the Florida Commission on Ethics addressed a question raised by the County regarding whether, under state ethics law, a prohibited conflict of interest would exist if this Board created a for-profit or not-for-profit corporation, limited liability company, or other similar business entity, in which the County holds an ownership interest, and in which this Board participates in its governance by serving as its board of directors, for the purpose of developing, acquiring, leasing, constructing, rehabilitating, managing, and/or operating affordable multifamily or single-family residential housing projects; and

WHEREAS, in CEO 25-2, the Florida Commission on Ethics found that no conflict would arise because the public entity created and owned by the County would have organizational alignment with the County such that a unity of interest would exist with the County, thereby negating any potential conflict of interest under applicable provisions of state law; and

WHEREAS, the Florida Commission on Ethics explained that such a unity of interest would exist in the circumstances presented because the public entity would be created, owned, and staffed by the County, the board of directors made up of County Commissioners would serve without compensation, and the entity's sole purpose would be to assist the County in managing its public and affordable housing developments; and

WHEREAS, the Florida Commission on Ethics went on to analyze other questions relating to whether the creation and operation of this public entity would lead to any other prohibited conflicts, and concluded that it would not; and

WHEREAS, in addition to state ethics law, it is also necessary to consider the County's local ethics rules, which are primarily set forth in the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (the "Ethics Ordinance"), codified in section 2-11.1 of the County Code; and

WHEREAS the Ethics Ordinance prohibits, under certain circumstances, County Commissioners, departmental personnel, and employees from transacting business with the County where such Commissioners, departmental personnel, and employees have or might have a financial interest, gain, or benefit; and

WHEREAS, in particular, the Ethics Ordinance prohibits County Commissioners from voting on or participating in any matter presented to the Board that relates to any entity, private or public, for which such Commissioners serve as officers, directors, or consultants, and which may be affected by action taken by the Board; and

WHEREAS, under the Ethics Ordinance, in such circumstance there is a per se voting conflict for County Commissioners irrespective of whether any personal benefits inure to such Commissioners for matters regarding the private or public entity; and

WHEREAS, in light of CEO 25-2, this Board wishes to amend the Ethics Ordinance to provide a limited exception and allowance for the County Commission to serve as the board of directors of a special-purpose entity that is created, owned, and staffed by the County in order to assist the County with the particular special purpose for which the entity is created,

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. The foregoing recitals are hereby approved and incorporated herein.

Section 2. Section 2-11.1 of the Code of Miami-Dade County is hereby amended to read as follows:[1]

Sec. 2-11.1 Conflict of Interest and Code of Ethics Ordinance.

* * *

(d) *Further prohibition on transacting business with the County.*

>>(1)<< No person included in the terms defined in subsections (b)(1)through (6) and in subsection (b)(9) shall enter into any contract or transact any business through a firm, corporation, partnership or business entity in which he or any member of

[1] Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

his immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, and any such contract, agreement or business engagement entered in violation of this subsection shall render the transaction voidable. The remaining provisions of subsection (c) will also be applicable to this subsection as though incorporated herein by recitation.

>>(2)<< Additionally, no person included in the term defined in subsection (b)(1) shall vote on or participate in any way in any matter presented to the Board of County Commissioners if said person has any of the following relationships with any of the persons or entities which would be or might be directly or indirectly affected by any action of the Board of County Commissioners: (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; or (ii) stockholder, bondholder, debtor, or creditor, if in any instance the transaction or matter would affect the person defined in subsection (b)(1) in a manner distinct from the manner in which it would affect the public generally. Any person included in the term defined in subsection (b)(1) who has any of the above relationships or who would or might, directly or indirectly, profit or be enhanced by the action of the Board of County Commissioners shall: (1) announce publicly at the meeting the nature of the conflict before the matter is heard; (2) absent himself or herself from the Commission chambers during that portion of the meeting when the matter is considered; and (3) file a written disclosure of the nature of the conflict with the Clerk of the Board within 15 days after the vote. The filing of the State of Florida form prescribed for written disclosure of a voting conflict shall constitute compliance with this subsection.

>>(3) It is provided, however, that subparagraph (2) above shall not apply to prevent a person included in the term defined in subsection (b)(1) from serving on the board of directors of a special-purpose entity created by the County to serve a public purpose where there is a unity of interest between the County and such special-purpose entity. For purposes of this subsection, a unity of interest shall exist where the special-purpose entity is created, owned, and staffed by the County and the entity's sole purpose is to assist the County in carrying out the special purpose for which the entity was created.<<

* * *

Section 3. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 4. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 5. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED: October 9, 2025

Approved by County Attorney as
to form and legal sufficiency: MAG for GBK

Prepared by:

Tricia-Gaye Cotterell
James Eddie Kirtley

Prime Sponsor: Commissioner Eileen Higgins

CONFLICT OF INTEREST

COUNTY OFFICERS AND EMPLOYEES SERVING AS DIRECTORS AND PERFORMING TASKS FOR A BUSINESS ENTITY CREATED BY THE COUNTY TO ASSIST IN PUBLIC AND AFFORDABLE HOUSING MATTERS

To: Terrence A. Smith, Esq., Assistant County Attorney (Miami-Dade County)

SUMMARY:

A prohibited conflict of interest would not be created were county commissioners to serve as uncompensated members of the board of directors of a business entity created by the county to assist in public and affordable housing matters. Considering that the official duties of the county commissioners will include serving on the board of directors, and that the business entity will function exclusively for the support of the county, there will be a unity of interest between the county and the entity such that Section 112.316, Florida Statutes, will operate to negate any conflict of interest under Section 112.313(3). And without compensation, the county commissioners will not have an employment or contractual relationship with the business entity, as would be needed to violate Section 112.313(7)(a). Similarly, if the job responsibilities of county employees were expanded to include performing duties for the business entity, but the business entity does not compensate them and they have no personal contractual relationship with it, they would not have a conflict of interest under Section 112.313(7)(a). See CEO 21-7, CEO 20-13, CEO 20-3, CEO 19-25, CEO 18-13, CEO 18-12, CEO 14-12, CEO 09-1, CEO 06-26, CEO 99-13, CEO 96-30, CEO 95-28, CEO 95-16, CEO 95-13, CEO 90-70, and CEO 85-59.

QUESTION 1:

Would a prohibited conflict of interest be created were members of a county commission to serve as uncompensated directors of a business entity created by the county to assist in public and affordable housing matters?

Under the circumstances presented, Question 1 is answered in the negative.

In your letter of inquiry and additional information provided to our staff, you indicate you are asking, on behalf of a County Commissioner, whether any County Commissioner or County employee will have a prohibited conflict of interest were the County to create—in the specific manner described in your inquiry—a business entity to assist in public and affordable housing matters. Your inquiry is proactive in that that the County has not yet created the business entity. However, the County Commissioner may sponsor legislation creating the business entity, and she wonders what ethics issues, if any, would be created were it established in the manner that you describe.[1]

The following comments are provided as background concerning the County's public and affordable housing responsibilities. You indicate that, since 1968, the County has served as a public housing agency, allowing it to own public housing properties and oversee public housing projects. The County's authority to serve as a public housing agency is found in the County's Home Rule Amendment and Charter and certain federal laws, such as the United States Housing Act of 1937. As a public housing agency, the County also is subject to requirements promulgated by the United States Department of Housing and Urban Development (HUD).[2] You state that, in all regards concerning the County's service as a public housing agency, the Board of County Commissioners serves as its governing body and a County agency—the Miami-Dade Housing and Community Development Department (MDHCD)—manages the County's day-to-day public and affordable housing operations.

You relate that, in the past, the County has relied on outside assistance in its development efforts regarding public and affordable housing. In particular, the County has partnered with private-sector developers who, unlike the County, are eligible to apply for funding, including low-income housing tax credits. However, you indicate the County Commissioner who asked you to bring this inquiry is interested in exploring more cost-effective means to develop the County's remaining public and affordable housing, possibly without the need to partner with the private sector. This brings us to the subject of your inquiry, which is the County Commissioner's desire to sponsor legislation creating a business entity to act as a general partner with the County in public and affordable housing efforts. You state that, if created, the purpose of this business entity—and any project-specific subsidiaries that it creates—"would be to develop, acquire, lease, construct, rehabilitate, apply for certain types of financing, and manage or operate multifamily or single-family residential projects, including, but not limited to, the redevelopment of the County's public housing developments through the [Rental Assistance Demonstration] programs."

Key to the analysis herein is how you indicate the business entity would be structured and staffed. In terms of its governance, you state the entity would be owned by the County, and that the Board of County Commissioners would serve without compensation as its board of directors. You emphasize that service on the entity's board would be considered "an integral part of [the] official duties" of County Commissioners, although you state that—if the entity is created—the Commissioners' additional duties as board members would not affect or increase their public salaries.

And in terms of its staffing, you indicate the County would enter into a shared services agreement with the business entity whereby it would provide County staff, likely from the MDHCD, to perform the work required. In other words, the business entity would have no employees and its work would be completely performed by County staff pursuant to the shared services agreement. You relate the shared services agreement would be between the County and the business entity—not between any individual County employee—and that its terms would expand the public duties of certain County employees to include conducting work for the business entity. However, you emphasize the business entity would not be compensating these County employees, and they would remain salaried employees of the County alone, collecting their W-2 Federal tax form from only the County.

Given this context, you ask whether County Commissioners may serve on the board of the business entity, and whether County employees may perform duties for the business entity, without having a prohibited conflict of interest under any prohibition over which the Commission has jurisdiction.[3] The following provisions are relevant to your inquiry:

> DOING BUSINESS WITH ONE'S AGENCY.--No employee of an agency acting in his or her official capacity as a purchasing agent, or public officer acting in his or her official capacity, shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for his or her own agency from any business entity of which the officer or employee or the officer's or employee's spouse or child is an officer, partner, director, or proprietor or in which such officer or employee or the officer's or employee's spouse or child, or any combination of them, has a material interest. Nor shall a public officer or employee, acting in a private capacity, rent, lease, or sell any realty, goods, or services to the officer's or employee's own agency, if he or she is a state officer or employee, or to any political subdivision or any agency thereof, if he or she is serving as an officer or employee of that political subdivision . . . This subsection shall not affect or be construed to prohibit contracts entered into prior to:
> (a) October 1, 1975.
> (b) Qualification for elective office.
> (c) Appointment to public office.
> (d) Beginning public employment.
> [Section 112.313(3), Florida Statutes]

> CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.--No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, any agency of which he or she is an officer or employee . . . ; nor shall an officer or employee of

> an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties. [Section 112.313(7)(a), Florida Statutes]

Turning first to whether County Commissioners will have a conflict, Section 112.313(3), Florida Statutes, has two parts. The first part prohibits any County Commissioner from acting in his or her official capacity as a public officer to purchase realty, goods or services for the County from a business entity where he or she is an officer, partner, director, or proprietor, or holds a material interest.[4] This can occur, for example, if the County Commission purchases goods or services from a business entity where a Commissioner serves on the board of directors. See CEO 99-13, Question 1, and CEO 95-13. The second part of Section 112.313(3) prohibits a County Commissioner, acting in a private capacity, from selling any realty, goods, or services to his or her "agency" or "political subdivision," which for County officers and employees would be the County itself. See Â§ 1.01(8), Fla. Stat. (defining a "political subdivision" to include one's county). In the past, the Commission has found that a violation of the second part of the statute would occur when a private business entity where a public officer serves as a director is selling realty, goods, or services to his or her political subdivision. See CEO 09-1.

At first blush, it appears that the County Commissioners would be in violation of both parts of Section 112.313(3) were they to simultaneously serve as directors of the business entity. If the business entity is formed, you indicate the County will cover its costs. In particular, the County budget will include extra funds for MDHCD to be used as a loan or a payment for services from MDHCD to the business entity. Because the County Commissioners presumably will be involved in reviewing and approving the County's budget, they essentially will be authorizing the purchase of the business entity's services, which would place them in violation of the first part of Section 112.313(3). Similarly, due to their status as directors of the business entity, they will be overseeing an entity selling services to the County, which would place them in violation of the second part of Section 112.313(3). In essence, the business entity will be filling the role of the private sector developers who partner with the County and who are able to secure certain affordable housing funds and incentives that the County may not be eligible to receive.

That being said, we find there would be a unity of interest between the County and the business entity that would negate any conflict for the County Commissioners under Section 112.313(3). In the past, we have applied Section 112.316, Florida Statutes,[5] to negate the strict application of Section 112.313(3) when an agency and an outside entity have a unity of interest. See CEO 85-59 (finding a unity of interest would negate any conflict under Section 112.313(3) were trustees and staff of a municipal preservation board to serve as unpaid directors of a nonprofit direct support organization operating for the preservation board's benefit). The unity of interest consideration has been used when there is organizational alignment—such as a seat on the board of directors of a private entity being reserved for a public agency to appoint a member (See CEO 14-12 and CEO 96-30)—coupled with actual alignment of interests.

A clear example of this occurred in CEO 19-25. In that opinion, we found a unity of interest under Section 112.316 to negate a violation of Section 112.313(3) where a county commissioner was seeking to serve as an uncompensated director of a nonprofit organization providing financial and managerial support for a county park. An agreement between the county and the nonprofit required the county to provide funding and gave the county the right to designate a county commissioner or another person to serve on the nonprofit's board of directors.[6] We found the fact that the County could appoint a member to a reserved seat on the nonprofit's board demonstrated an organizational alignment. We also found the interests of the county and the nonprofit were actually aligned, as both entities were invested in the proper stewardship and care of the county park. Accordingly, we found any conflict under Section 112.313(3) presented by a county commissioner serving on the nonprofit's board would be negated, given the unity of interest between the entities.

Similarly, if the business entity here is created in the manner that you describe, it appears there would be organizational alignment with the County, given the fact that the County Commission would constitute the entity's entire board of directors, the County would own the business entity, and any work for the entity would be performed by County employees through a shared use agreement. Also, given that the business entity's sole purpose would be to assist the County in managing its public and affordable housing developments, it appears their interests would be practically aligned as well. For this reason, if County Commissioners serve as directors for the business entity, we find a unity of interest would exist under Section 112.316 to negate any conflicts for them under Section 112.313(3).

The other conflict of interest statute noted above—Section 112.313(7)(a)—also has two parts. First, it prohibits a County Commissioner from having an employment or contractual relationship with any business entity or agency that is subject to the regulation of, or is doing business with, the County Commission. Second, it prohibits a County Commissioner from holding employment or a contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties. See CEO 18-12.

Of note, both parts of the statute require a public officer or employee of an agency to hold an employment or contractual relationship in addition to their primary public office or public employment. See CEO 18-13. We have consistently found that uncompensated service (without compensation or consideration) on a corporate board of directors, including uncompensated service on the board of directors for a nonprofit organization, will not constitute the type of employment or contractual relationship contemplated by the statute. See CEO 21-7, Question 1, CEO 20-13, and CEO 06-26, n.5. Here, you indicate the County Commissioners will not be compensated for their service as directors of the business entity. Indeed, you relate that serving on the board will not even affect their public salaries as County Commissioners. Because it does not appear the County Commissioners will have an employment or contractual relationship with the business entity, we find no prohibited conflict will be created under Section 112.313(7)(a).

We also note that, without compensation, it does not appear that votes before the County Commission concerning the business entity will create a voting conflict for any County Commissioner, even if they are serving on its board of directors. The portion of the voting conflict law applicable to County Commissioners is found in Section 112.3143(3), Florida Statutes. It states:

> No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer.

The provision prohibits a County Commissioner from voting on a measure that will result in "special private gain or loss" (defined in Section 112.3143(1)(d), Florida Statutes, as an "economic benefit or harm") to himself or herself, or that he or she knows will bring "special private gain or loss" to a principal who retains them, a relative, or a business associate.

Here, there is no indication that any votes affecting the business entity will financially affect the County Commissioners, even if they are serving on its board. Nor will the business entity be considered the Commissioners' "principal" as they will have no equitable interest in it, will have no employment relationship with it, and will not be accepting compensation from it. See CEO 20-3, Question 3; see also CEO 21-7, Question 3 (finding uncompensated service on the board of directors of a nonprofit does not constitute a "principal" relationship). Moreover, while the Commissioners will be serving together on the board of directors, it does not appear they will be considered "business associates" for purpose of Section 112.3143(3), considering that the business entity does not appear to fall within any category enumerated in the statutory definition for that term.[7] And even if their service on the board of directors does qualify them as "business associates," the voting conflict statute still will not apply, given that their service is unpaid, because any votes taken by the County Commission concerning the business entity will have no financial effect on them.

In short, assuming the business entity is established in the manner that you have described, it does not appear the County Commissioners will have a prohibited conflict of interest under any prohibition discussed herein, even considering they will be serving on its board of directors.[8]

Question 1 is answered accordingly.

QUESTION 2:

> Would a prohibited conflict of interest be created were county employees to perform duties for a nonprofit entity created by the county for the purpose of assisting in public and affordable housing matters?

Under the circumstances presented, Question 2 is answered in the negative.

Turning to County employees who will be assigned to perform tasks for the business entity, we find the unique way the entity will be formed will alleviate any conflicts of interest. You indicate the County will enter into a shared services agreement with the entity by which the job responsibilities of certain County employees will be expanded to include performing work for the entity. However, they will not be accepting any compensation from the entity and will only be considered salaried employee of the County.

Given this context, it does not appear that Section 112.313(3) will apply. The County employees will not be performing work for the business entity in their private capacities, but, rather, their responsibilities regarding the entity will be considered part of their public duties. Nor will Section 112.313(7)(a) apply, as there would be no "employment or contractual relationship" between the business entity and the County employees. The business entity will not be providing the employees with compensation or any form of consideration, as is needed to constitute "employment" under Section 112.313(7)(a). See CEO 95-28 and CEO 95-16. And because you indicate the County employees are not parties to the shared services agreement between the County and the business entity, there will be no "contractual relationship" on which to base the statute's application.

There is a parallel between this situation and the facts in CEO 18-13, which involved an employee with Florida State University (FSU) performing duties as the Deputy Secretary for the Department of Health. The University and the Department had entered into an interagency agreement—to which the employee was not a party—by which he was to perform additional responsibilities for the Department. However, the University remained his sole employer and he did not receive any payment or W-2 Federal tax from the Department. We wrote:

> Essentially, the interagency agreement simply expanded the scope of [the employee's] duties as an FSU employee to include the responsibilities typically performed by the Deputy Director for Health. Assuming the facts you describe remain materially unchanged, [the employee is] not prohibited by Section 112.313(7)(a) from serving as Deputy Director for Health while maintaining [his] employment at FSU.

See also CEO 90-70 (finding no prohibited conflict of interest was created by a county adding the responsibility of serving as jail contract monitors to the duties of two sheriff's office employees). The same situation would occur here, as the shared services agreement will simply expand the public duties of certain County employees to encompass performing work for the business entity, although their employment will remain solely with the County. Considering this dynamic, and assuming the business entity is formed in the manner that you describe, it does not appear the County employees will have a prohibited conflict of interest if they perform additional tasks for the business entity.

Question 2 is answered accordingly.

ORDERED by the State of Florida Commission on Ethics meeting in public session on April 25, 2025, and **RENDERED** this 30th day of April 2025.

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Luis M. Fusté, *Chair*

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[1] You indicate in your inquiry that it is not clear yet whether the business entity will be set up as a nonprofit corporation, a limited liability company, or another type of business organization. The business organization used will not affect the analysis herein, assuming the entity is structured in the manner that you describe.

[2] You clarify that the concept of a public housing agency is distinct from a public housing authority. Public housing authorities are created under Chapter 421, Florida Statutes, and are subject to its requirements. However, the County's status as a public housing agency was not created under Chapter 421 and, for this reason, it is not subject to the requirements of that statutory chapter.

[3] We note you also inquire whether the Board of County Commissioners even has legal authority to create this business entity and whether the entity would be considered a separate legal entity from the County under Florida law. These questions are beyond the jurisdiction of the Commission on Ethics. The Commission only has authority to issue opinions concerning the applicability and interpretation of the laws in the Code of Ethics (Part III, Chapter 112, Florida Statutes) and certain other prohibitions, such as those found in Article II, Section 8 of the Florida Constitution. See Â§ 112.322(3)(a), Fla. Stat. Questions concerning the extent of the County's authority regarding public housing, and the legal identity of any business entity that it creates, are not addressed in Florida's ethics laws and this opinion should not be interpreted as taking a position regarding them.

[4] A "material interest" is defined in Section 112.312(15), Florida Statutes, to mean direct or indirect ownership of more than 5 percent of the total assets or capital stock of a business entity.

[5] Section 112.316, Florida Statutes, states:

> CONSTRUCTION.--It is not the intent of this part, nor shall it be construed, to prevent any officer or employee of a state agency or county, city, or other political subdivision of the state or any legislator or legislative employee from accepting other employment or following any pursuit which does not interfere with the full and faithful discharge by such officer, employee, legislator, or legislative employee of his or her duties to the state or the county, city, or other political subdivision of the state involved.

[6] While the county's designee technically had to be elected by the other members of the nonprofit's board, the agreement between the two entities provided that the nonprofit would be in breach if it did not approve the county's designee.

[7] Section 112.312(4), Florida Statutes, defines the term "business associate" to mean "any person or entity engaged in or carrying on a business enterprise with a public officer, public employee, or candidate as a partner, joint venturer, corporate shareholder where the shares of such corporation are not listed on any national or regional stock exchange, or co-owners of property." (emphasis added).

[8] We recognize the prohibition in Article II, Section 8(f)(2) of the State Constitution restricts enumerated public officers, including county commissioners, from "lobbying for compensation" on certain matters during their terms of office. We do not view this prohibition as being applicable here, given that the business entity will not be compensating the County Commissioners for serving on its board of directors or acting on its behalf. Moreover, even if serving on the board was paid, it still does not appear the Constitutional prohibition would be applicable. Section 112.3121(12)(b)1., Florida Statutes, states "lobbying for compensation" will not occur if a public officer is simply "carrying the duties of his or her public office[,]" which would seem applicable here, as you indicate serving on the entity's board will be considered an "integral part" of a County Commissioner's official duties. And Section 112.3121(12)(b)2., Florida Statutes, states "lobbying for compensation" does not include an officer of a private business or nonprofit entity "acting in the normal course of his or her duties, unless he or she is principally employed for governmental affairs." Finally, we note the Constitutional prohibition will not apply to any County Commissioner currently receiving injunctive relief in Garcia et al. v. Stillman et al. USCA Case No. 23-12663 (11th Circuit Court of Appeals).