

FILE 2816 – March 7, 2025

CONFLICT OF INTEREST

CITY COMMISSIONER SERVING AS PRESIDENT OF THE EAST SUNRISE RESIDENTS ASSOCIATION, INC.

To: *Name withheld at person's request (City of Sunrise)*

SUMMARY:

Where a City Commissioner simultaneously serves as the President of a non-profit organization, but where she is neither a member of the non-profit organization, nor is she employed by the non-profit organization, the Commissioner has no conflict of interest pursuant to Section 112.313(7)(a), Florida Statutes. Further, where the City does not buy, rent, or lease anything from the non-profit organization, no conflict of interest is created pursuant to Section 112.313(3), Florida Statutes. Referenced are CEO 23-2, CEO 19-1, CEO 18-13, CEO 14-2, CEO 10-2, CEO 00-23.

QUESTION 1:

Will a City Commissioner have a prohibited conflict of interest under the Ethics Code if, while serving as a City Commissioner, she also maintains her position as President of the East Sunrise Residents Association, Inc., a nonprofit entity?

This question is answered in the negative.

You are a City Attorney who has requested an ethics opinion on behalf of a City Commissioner ("Commissioner"). According to your inquiry, the Commissioner was sworn into office on November 20, 2024.

Since 2019, the Commissioner has also served as the uncompensated President of the East Sunrise Residents Association, Inc. ("ESRA"). ESRA is a non-profit organization whose stated goals are: "(a) to identify means of beautifying our community; (b) to keep the community informed through meetings and forums; [and] (c) to work together with government officials and community-based municipalities and organizations to improve the conditions of our neighborhood."

You state that ESRA neither has a formal structure, nor does it offer formal membership. You also advise that, as the President of ESRA, the Commissioner's duties include coordinating and conducting meetings and community events as well as signing documents on the non-profit's behalf. You additionally note ESRA is not a party to any contracts or agreements with the City, does not own real property within the City, and is not subject to regulation by the City. Further, ESRA does not rent, lease, or sell any realty, goods, or services to the City. However, ESRA and the City do interact in the following ways:

- (1) ESRA meets monthly in a civic center owned by the City. The City does not charge ESRA for its use of the civic center, and no contract or agreement between the City and ESRA formalizes this arrangement. Many organizations in addition to ESRA are also allowed to use this space.
- (2) The City lists ESRA as one of a number of nonprofit organizations on its website.
- (3) City employees such as representatives of the Sunrise Police Department and Code Compliance Division regularly attend ESRA meetings.
- (4) ESRA holds community events throughout the year, and representatives of the City's Police Department regularly attend these events, sometimes bringing food and/or City-branded items like pens, magnets, and stickers for the residents.

- (5) ESRA also holds an annual Christmas event where the Police Department typically delivers gifts for children that are donated to the Police Department by Diamond Wishes Children's Charity. You specifically note that neither ESRA nor the Commissioner solicits these Christmas gifts, and that there has been no increase in gift donations since the Commissioner was sworn into office.
- (6) Occasionally, representatives from ESRA attend Commission meetings to support, oppose, or offer public comments on matters that affect its residents. Developers have also asked ESRA to support proposed development projects in the City, and ESRA has supported such projects. Prior to being elected as a commissioner, the Commissioner signed a letter of support addressed to the Mayor and commissioners for a proposed hospital project.

With this background, you ask whether the Commissioner would create a prohibited conflict of interest were she to continue serving as the President of ESRA while simultaneously serving as a commissioner.

To answer this question, analysis under Section 112.313(7)(a), Florida Statutes, is needed.

Section 112.313(7)(a) states:

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, an 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.

There are two prohibitions in Section 112.313(7)(a). The first part prohibits a public officer from having any contractual relationship or employment with a business entity or an agency that

is regulated by or is doing business with his or her agency. The second part prohibits a public officer from having a contractual relationship or employment that will create a continuing or frequently recurring conflict of interest or would create an impediment to the full and faithful discharge of his or her public duties. This requires an examination of the public officer's duties and a review of his or her private employment or contractual relationship "to determine whether the two are compatible, separate and distinct or whether they coincide to create a situation which tempts dishonor." Zerweck v. State Commission on Ethics, 409 So. 2d 57, 61 (Fla. 4th DCA 1982) (internal quotations omitted).

For there to be a conflict under either prohibition of Section 112.313(7)(a), the public employee must be employed by, or have a contractual relationship with, a business entity or agency. The threshold question, then, is whether the Commissioner has a contractual relationship or employment with the non-profit ESRA.

As to whether the Commissioner has a contractual relationship with ESRA, "we have opined in the past that a public officer's rank-and-file membership in a nonprofit corporation creates a contractual relationship between the public officer and the nonprofit corporation." CEO 23-2. See also CEO 19-1, CEO 14-2, and CEO 10-2. In the current case, though, you inform us that ESRA has neither a formal structure nor a defined membership. You note meetings are open to anyone in the community, and there are no fees, dues, or charges for attendance. You further note that, though the Commissioner acts as President of ESRA, there is no formal agreement or contract between the Commissioner and ESRA establishing her presidency. Based upon your facts, there does not appear to be a contractual relationship between the Commissioner and ESRA.

Regarding whether the Commissioner is employed by ESRA, "[a] necessary element of 'employment' is compensation or some form of consideration." CEO 19-1. See also CEO 18-13,

CEO 00-23. Here, you note the Commissioner is unpaid in her role as President of ESRA. Thus, she is not compensated, and is not employed. See CEO 19-1. ("In the past, we have found an uncompensated director or officer of a nonprofit corporation, who is not a member, does not have a 'contractual relationship' with the corporation.").

Pursuant to the facts you have presented, which indicate the Commissioner is neither employed by, nor does she have a contractual relationship with, ESRA, her simultaneous service as City Commissioner and as President of ESRA does not create a prohibited conflict pursuant to either provision of Section 112.313(7)(a).

Another statute pertinent to your inquiry regarding whether the Commissioner would violate any portion of the Ethics Code is Section 112.313(3), which provides:

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.

Section 112.313(3), like Section 112.313(7)(a), is a statutory provision with two separate prohibitions. The first prohibition concerns a public officer or employee who is purchasing, renting, or leasing realty, goods, or services for his or her own agency from a business entity of which he or she, or his or her spouse or child, is an officer, partner, director, proprietor, or the owner of a more than 5% interest in the business entity. The second prohibition concerns a public

officer or employee who is acting on behalf of a business entity to sell, rent, or lease realty, goods, or services to his or her own agency or any agency of his or her political subdivision.

Here, the Commissioner, acting as the President of ESRA, is an officer of ESRA. The first part of Section 112.313(3) prohibits her from, on behalf of the City, purchasing, renting, or leasing realty, goods, or services from ESRA. And the second part of Section 112.313(3) prohibits her from, on behalf of ESRA, selling, renting, or leasing realty, goods, or services to the City. In this case, neither prohibition outlined in Section 112.313(3) applies because the facts presented do not indicate any purchasing, renting, leasing, or selling of realty, goods, or services between the City and ESRA.

Thus, it appears the Commissioner's simultaneous service as both a City Commissioner and as the President of ESRA presents no current prohibited conflict of interest pursuant to the Ethics Code. Although no prohibited conflict currently appears to exist, and although the facts in this opinion do not appear to implicate them, we caution the Commissioner, as we caution all public officers, that other prohibitions could apply were the Commissioner to misuse her public position in order to benefit ESRA. In particular, Section 112.313(6), Florida Statutes, and Article II, Section 8(h)(2) of the Florida Constitution prohibit her from misusing or abusing her public position or public resources in any way to assist or offer preferential treatment to ESRA. Additionally, Section 112.313(8), Florida Statutes, prohibits her from disclosing information that is obtained by her in her official capacity and that is not yet available to the general public to ESRA.

Your question is answered accordingly.

LF/sen/ks



Office of the City Attorney
Thomas P. Moss
City Attorney
Navin A. Ramnath
Deputy City Attorney
Robert M. Ruiz
Assistant City Attorney

Phone: (954) 746-3300
Fax: (954) 746-3307

FLORIDA
COMMISSION ON ETHICS

JAN 30 2025

RECEIVED

January 27, 2025

Kerrie Stillman
Executive Director
The Florida Commission on Ethics
P. O. Drawer 15709
Tallahassee, FL 32317-5709

RE: Sunrise City Commissioner Latoya Clarke

Dear Ms. Stillman:

As City Attorney for the City of Sunrise ("City"), I am requesting a formal opinion on behalf of City Commissioner Latoya Clarke ("Commissioner Clarke"), one of five elected officials of the City. I am requesting that Commissioner Clarke's name be withheld.

The City is governed by a five-member City Commission. The members are "public officers" subject to Part III, Chapter 112, F.S. Commissioner Clarke was sworn into office on November 20, 2024. Since 2019, Commissioner Clarke has also served as the President of the East Sunrise Residents Association, Inc. ("ESRA"). Commissioner Clarke serves as ESRA's President in an unpaid capacity. ESRA is a Florida nonprofit community organization founded in 2007. ESRA is intended to benefit all residents, does not require membership, and is open to anyone's participation. Accordingly, residents from anywhere can attend meetings, community events, and otherwise participate in ESRA. ESRA's stated goals are: "(a) to identify means of beautifying our community; (b) to keep the community informed through meetings and forums; (c) to work together with government officials and community-based municipalities and organizations to improve the conditions of our neighborhood."

Because ESRA is an active community organization, the City and ESRA have enjoyed a long-standing relationship which predates Commissioner Clarke's recent election to the City Commission. The City maintains a similar relationship with the Central Sunrise Residents Association ("CSRA"), a comparable nonprofit community organization.

ESRA meets once a month at a City-owned civic center. The City does not charge ESRA anything for the use of the civic center and there is no contract or agreement relating to ESRA's use of the civic center. The City has allowed, and continues to allow, numerous other nonprofit, charitable, fraternal, and governmental organizations to use City facilities at no cost. Some examples are: CSRA, the American Legion, Girl Scouts and Boy Scouts, the Kiwanis, Broward Legal Aid, the Broward League of Cities, and Toastmasters. The City has allowed ESRA to use the civic center for its meetings for many years, dating back long before Commissioner Clarke became ESRA's President.

On the City's official website, ESRA is listed as one of numerous nonprofit organizations under the "Community Information" section, which includes the monthly meeting location and dates. City employees, including representatives of the Sunrise Police Department and Code Compliance division, regularly attend ESRA meetings to interact with residents, provide information such as crime trends and code enforcement updates, answer questions regarding City services, and provide solutions to community issues. The Police Department's attendance at these meetings is part of its Community Policing Program, which is an ongoing collaboration between the Police Department and community organizations, groups and individual residents. City employees often hand out City-branded items such as pens, magnets and stickers to residents at the meetings.

In addition to attending ESRA's regular monthly meetings, representatives of the Police Department regularly attend ESRA's annual Christmas event, as well as several other community events. At some of these community events, the Police Department brings food for residents as part of its Community Policing efforts. At the annual ESRA Christmas event, the Police Department typically delivers gifts for children. These gifts are donated to the Police Department by Diamond Wishes Childrens Charity.¹ In addition to the ESRA Christmas event, the Police Department delivers donated gifts to children throughout the City as part of its Community Policing Program.

Neither ESRA nor Commissioner Clarke solicits Christmas gifts, or any other gifts or donations from Diamond Wishes Childrens Charity, or from the City or the Police Department. There has not been any increase in gift donations to children at ESRA's Christmas event or other community events since Commissioner Clarke was sworn into office on November 20, 2024. Likewise, there has not been any change in the relationship between the City and ESRA since Commissioner Clarke took office.

¹ According to its Facebook page, Diamond Wishes Childrens Charity "is a charity that assists Special Needs or Terminally Ill Children and their families." A November 28, 2024 Facebook post states that "We [Diamond Wishes Childrens Charity] were a part of the Cabela's Christmas Parade and have donated over 200,000 toys so far. We sponsored 39 police departments and 17 fire departments in the past 2 months with toys, coats, shoes, food and gift cards. We have donated over 100 space heaters to the elderly, fire departments, and families in crisis. We donated a semi full of toys to the police departments in South Florida with the incredible support of Lone Star Transportation, they provided Roy, the driver, the truck, truck fuel and time to grant this wish to bring the Christmas spirit to thousands of kids and hundreds of families."

On occasion, one or more representatives of ESRA attend City Commission meetings to support, oppose, or offer public comments on matters that affect residents and the eastern area of the City. Additionally, developers have asked ESRA to support proposed development projects in the City and, on several occasions, ESRA has supported such projects. Prior to her being elected as City Commissioner, in her capacity as President of ESRA, Commissioner Clarke signed a letter of support addressed to the Mayor and City Commissioners for a proposed hospital project.

ESRA is not a party to any contracts or agreements with the City. ESRA does not own real property within the City and is not subject to regulation by the City. Neither ESRA nor Commissioner Clarke rents, leases, or sells any realty, goods, or services to the City. Although Commissioner Clarke is an officer of ESRA, it does not appear that she is "doing business with" the City within the meaning of Section 112.313(3), Florida Statutes. Likewise, unless serving as an officer of ESRA in itself creates a conflict, it does not appear that Commissioner Clarke serving as the President of ESRA creates, or will create, a conflict between her private interests and the performance of her public duties, or impedes the discharge of her public duties, as outlined in Section 112.313(7), Florida Statutes.

This view is based on a review of several Commission of Ethics opinions, including but not limited to the following: COE 11-17 (no prohibited conflict of interest is created under Section 112.313(3) or 112.313(7), Florida Statutes, where a member of a Hospital District Board is employed by a nonprofit organization, when the Hospital District sponsors events and other activities that result in contributions to the nonprofit organization); COE 04-5 (no prohibited conflict of interest would be created for a city commissioner under either Section 112.313(3) or Section 112.313(7)(a), Florida Statutes, regarding various interactions between the city and a nonprofit corporation employing the commissioner as its executive director. The interactions either do not constitute the provision of something to the city, are "grandfathered," are donative and thus do not constitute "doing business," or do not constitute a continuing or frequently recurring conflict or impediment to the full and faithful discharge of public duty. However, should entry of the city and the corporation into a business (as opposed to a donative/gratuitous) relationship in relation to a former school site be concretely proposed, one or both of the statutes will be at issue and the councilman should contact the Commission for further advice).

According to COE 23-2, which analyzed membership in a homeowners' association, "while membership in an unincorporated association or political action committee creates a contractual relationship with that entity, that membership is not enough to create a continuing or frequently recurring conflict under the second part of Section 112.313(7)(a). However, when the membership is coupled with an additional incentive to compromise one's public duties, such as serving as an officer or director of the organization, or serving as its designated corporate representative in litigation, the prohibition in the second part of the statute will apply."

Based upon the foregoing facts, I respectfully request your opinion as to whether a prohibited conflict of interest or other impediment to the full and faithful discharge of

Commissioner Clarke's duties as a City Commissioner exists if she were to continue to serve as President of the East Sunrise Residents Association, Inc. while also serving as a City Commissioner. Further, does Section 112.316, Florida Statutes, apply to the facts presented to negate any prohibition that would exist under a literal application of Section 112.313, Florida Statutes, or other state laws?

Please feel free to contact me at (954) 746-3300 or tmoss@sunrisefl.gov should you require further information concerning this matter.

Sincerely,

CITY OF SUNRISE

A handwritten signature in black ink, appearing to read 'T. Moss', written over the printed name.

Thomas P. Moss
City Attorney