



ETHICS COMMISSION
c/o CITY OF ANNAPOLIS OFFICE OF LAW
160 DUKE OF GLOUCESTER STREET
ANNAPOLIS, MARYLAND 21401

CITY LIAISON:
City Attorney

Telephone (410) 263-7954
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February 12, 2020

Memorandum to: Alderwoman Elly Tierney
City of Annapolis

Re: Advisory Opinion Regarding Actions of Peter Fillat

Your emailed concerns and request for an advisory opinion were provided by the City Attorney to the Ethics Commission on January 27, 2020. Of concern was Mr. Peter Fillat's email requests to meet with City Council members regarding his expressed need for legislative action to facilitate a hotel development adjacent to City Dock. You asked if it is appropriate for Mr. Fillat to request meetings with City Council members regarding private City Dock development opportunities while he and his team are preparing bids on RFP 20-03 for the Redevelopment of City Parking Facilities and Resilience Infrastructure.

The Commission verified that Peter Fillat is the President and CEO of FILLAT+ Architecture and that he is listed as a supplemental architect on one of the two teams bidding on RFP 20-03 for the Redevelopment of Parking Facilities and Resilience Infrastructure, i.e., the Hillman Garage and City Dock. Bids in response to the RFP are currently due on March 11th and award is tentatively planned for April 3rd.

We also obtained copies of emails from Mr. Fillat to Alderman Savidge which requested a meeting with him to "walk you through our city project [for a City Dock] hotel." and to Alderwoman Tierney to "set up a meeting [with her] the week of February 3rd to show you our plans and to gain your input on our proposal [to develop a luxury boutique hotel on the site of Latitude 38 on City Dock]." We believe similar correspondence has been sent by Mr. Fillat to other City Council members.

The controlling Ethics Code provision to determine the propriety of Mr. Fillat's hotel advocacy is City Code 2.08.040.A which details circumstances where participation in a matter would be prohibited. The Ethics Code and that section applies only to City officials and employees, not to persons such as Mr. Fillat.

The Commission finds that reliance on Ethics Code 2.08.010.B.3 would not be appropriate for addressing this inquiry. That section generically provides that "Officials and employees shall

not engage in any activity or participate in any transaction which would create, or appear to create, a conflict of interest in the exercise of their public or official duties.” It is included in a listing detailing the policy of the City Council “in enacting these provisions” (Section 2.08.010.B) of the Ethics Code. These referenced provisions provide the specific criteria for implementing the stated policy. Hence, it is only to these specific provisions of the Ethics Code, such as City Code 2.08.040.A, that reference is to be made in adjudicating suggested conflicts of interest. This conclusion is consistent with case law noting that recitals of policy “...form no part of the Act itself,” which in this instance is the City’s Ethics Code. *Hammond v. Frankfeld*, 194 Md. 487, 491 (1950).

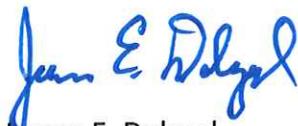
It is noteworthy that precluding Mr. Fillat from pursuing his hotel agenda with the City Council would raise First Amendment issues. Specifically, such a prohibition could be viewed as infringing on Mr. Fillat’s rights to freedom of speech and to petition the government for a redress of grievances.

Accordingly, the Ethics Commission finds that the Ethics Law does not prohibit the hotel advocacy about which you are concerned. While the Commission did not consider any specific impact provisions of the City’s Procurement Law might have on this issue, we did recognize that City Council members are not decision makers for the award of RFP 20-03.

Please note that City Code 2.08.030.C.2 requires the Ethics Commission to file advisory opinions with the City Attorney’s Office. Section 2.08.030.C.2 also provides that advisory opinions may be made public at the discretion of the Ethics Commission. The Commission has determined that this opinion will be publicly posted to the City’s web site because of its usefulness to the public and City officials.

The Commission appreciates your diligence in seeking our advice.

With best regards,



James E. Dolezal
Chairman

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cc: Mayor and City Council Members
D. Michael Lyles, City Attorney
Kerry Berger, Assistant City Attorney
Brian Snyder, Procurement Officer
Peter Fillat, FILLAT+ Architecture