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**Redacted Version**

**Advisory Opinion #2019-13  
Issued: April 21, 2020**

**Advisory Opinion #2019-13:** The Board of Ethics concludes the Request for Advisory Opinion 2019-13 in accordance with Sec. 2-6-104(b)(4) and issues this advisory opinion in response to the request. Because Requestor can approve minor classes of work, she *exercises significant authority* and has indirect financial interest in her spouse's compensation, which comes from an entity who is before the **HDC** regularly, the agency of her assignment. She and her *immediate family* must disclose according to Sec. 2-5-31 of the Detroit City Code. Requestor's spouse has employment with an entity that is regularly before the **[REDACTED]**. However, that employer is not a city contractor and has no requirement to file a disclosure. Additionally, the Board of Ethics recommends that Requestor's department draft a formal policy and submit it to the Board of Ethics upon completion.

**I. Procedural Background**

Request for Advisory Opinion 2019-13 (the "Request") is dated July 24, 2019, and was sent to the Board of Ethics (the "Board") by electronic communication and received on the same date. In accordance with Sec. 2-6.101, the Request was submitted by a current public servant as defined by Section 2-6-3 of the Detroit Ethics Ordinance (the "Ordinance"). The Public Servant did not select a confidentiality option and as such, this public servant's identity is deemed confidential.

At its meeting on February 17, 2019, the Board determined that the Request met the basic requirements for a Request for Advisory Opinion under Section 2-6-101 of the Ordinance and heard a Preliminary Analysis from legal council. On October 15, 2019, the Board determined it needed additional information and opened an inquiry. The Board received additional information from staff on January 21, 2020. On that day, the Board requested a supplemental preliminary analysis. On April 21, 2020, the Board heard a supplemental preliminary analysis. On the same day, after consideration and discussion of the issues presented, the Board voted to issue this Advisory Opinion pursuant Section 2-6-104(b)(4) of the Ethics Ordinance.

## II. Facts Alleged In the Request

In the Request, Requestor states as follows:

My spouse recently was hired by a local [redacted] contractor. This contractor has work that comes before the [redacted] on a fairly regular basis. As part of my position with the [redacted] department, I serve as staff support for the [redacted]. Is there a conflict in this situation? As in does my position as [redacted] & his employment with a contractor who works who works primarily within Detroit's local [redacted] an issue? Thanks for your help!

By this request, the Requestor seeks an advisory opinion as to the applicability of the 2012 Detroit City Charter.

## III. Applicable Charter Sections

The 2012 Detroit City Charter provides at Section 2-106.1 that the purpose of applying and enforcing these requirements and standards is to ensure that governmental decisions are made in the public's best interest by prohibiting public servants from participating in matters that affect their personal or financial interests. This Request involves Section 2-106.4 of the 2012 Detroit City Charter codified at Sections 2-5- 31, -34, -62, -63, -64, -65, -66, and -67 of the 2019 Detroit City Code.

It states as follows:

### Sec. 2-5-31. - Disclosure of interests by public servants.

(a) Except as otherwise provided for by applicable law, a public servant who exercises significant authority over a pending matter shall disclose:

- (1) Any financial interest, direct or indirect, that the public servant or an immediate family member has in any contract or matter pending before City Council;
- (2) Any financial interest, direct or indirect, that the public servant or an immediate family member has in any contract or matter pending before or within any office, department, or agency of the City; and
- (3) Any interest that the public servant, or an immediate family member has in real or personal property that is subject to a decision by the City regarding purchase, sale, lease, zoning, improvement, special designation tax assessment or abatement, or a development agreement.

(b) All disclosures that are required under Subsection (a) of this section shall be made, in writing, on a form that is created by the Law Department and sworn to in the presence of a notary public. After completion, the form shall be filed with the Board of Ethics, which shall forward a complete copy of the form to the applicable department director or agency head.

(Code 1984, § 2-6-31; Ord. No. 18-12, § 1(2-6-31), eff. 8-31-2012)

### Sec. 2-5-34. - Disclosure of interests by contractors and vendors.

(a) Except as otherwise provided for by applicable law, all contractors and vendors doing business with the City shall disclose the following:

- (1) Any financial interest, direct or indirect, that the contractor or vendor or an immediate family member has in any contract or matter pending before City Council;

(2) Any financial interest, direct or indirect, that the contractor or vendor or an immediate family member has in any contract or matter pending before or within any office, department or agency of the City;

(3) Any interest that the contractor or vendor, or an immediate family member, has in real or personal property that is subject to a decision by the City regarding purchase, sale, lease, zoning, improvement, special designation tax assessment or abatement, or a development agreement;

(4) Campaign contributions and expenditures in accordance with applicable law;

(5) The identity of any immediate family member employed by the City or who is making application to the City;

(6) The identity of all entities and persons with any financial interest, direct or indirect, in any contract or matter that the contractor or vendor has pending before City Council; and

(7) The identity of all entities and persons with any financial interest, direct or indirect, in any contract or matter that the contractor or vendor has pending before or within any office, department, or agency of the City.

(b) All disclosures that are required under Subsection (a) of this section shall be made, in writing, on a form that is created by the Law Department and sworn to in the presence of a notary public. After completion, the form shall be filed with the Board of Ethics, which shall forward a complete copy of the form to the applicable department director or agency head.

(Code 1984, § 2-6-34; Ord. No. 18-12, § 1(2-6-34), eff. 8-31-2012)

**Sec. 2-5-62. - Improper use or disclosure of confidential information prohibited.**

Except as otherwise provided for by applicable law, a public servant shall not knowingly use or disclose to third parties confidential information, which is gained by reason of the public servant's official duties, concerns the property, government or affairs of the City, or any office, department or agency thereof, and is not available to members of the public.

(Code 1984, § 2-6-62; Ord. No. 18-12, § 1(2-6-62), eff. 8-31-2012)

**Sec. 2-5-63. - Improper use of City property prohibited.**

Except as otherwise provided for by applicable law, a public servant shall not knowingly use City property in violation of City policies and procedures.

(Code 1984, § 2-6-63; Ord. No. 18-12, § 1(2-6-63), eff. 8-31-2012)

**Sec. 2-5-64. - Incompatible employment or rendering services prohibited.**

Except as otherwise provided for by applicable law, a public servant shall not knowingly engage in or accept employment, or knowingly render services, for a private or public interest where such employment or service is in conflict or incompatible with the proper discharge of the public servant's official duties for the City, or where such employment or service is reasonably expected to impair the public servant's independence of judgment or action in the performance of the public servant's official duties for the City.

(Code 1984, § 2-6-65; Ord. No. 22-00, § 1(2-6-65), eff. 8-11-2000; Ord. No. 18-12, § 1(2-6-65), eff. 8-31-2012)

**Sec. 2-5-65. - Representation of private person, business, or organization prohibited; exceptions.**

A public servant shall not act as an agent, attorney, or representative for another person, business, or organization in any matter that is pending before a City agency, except that:

- (1) A public servant may represent another person, business, or organization before a City agency where such representation is a required part of the public servant's official duties;
- (2) A public servant who is an uncompensated member of a City board, commission, or other voting body may act as an agent, attorney, or representative for another person, business, or organization in a manner that is pending before a City agency, other than the board, commission, or other voting body on which the public servant is a member; or
- (3) A public servant who is compensated by the City may act as an agent, attorney, or representative for another person, business, or organization in a matter that is pending before a City board, commission or other voting body, other than the board, commission or other voting body on which the public servant serves as an appointee or as an employee, or under a personal services contract, as long as the public servant does so:
  - a. Without compensation; and
  - b. On the public servant's leave time; and
  - c. For appointees, in accordance with Chapter 35, Article III, Division 2, of this Code, Vacation, Sick, Departmental, Funeral, and Jury Leave ; or
  - d. For non-union employees, in accordance with Chapter 35, Article III, Division 2, of this Code, Vacation, Sick, Departmental, Funeral, and Jury Leave , and the City's Civil Service Rules; or
  - e. For union employees, in accordance with the employee's respective union contract and the City's Civil Service Rules; or

f. For individuals who provide services to the City pursuant to a personal services contract, in accordance with the applicable provisions of the contract.

(Code 1984, § 2-6-66; Ord. No. 22-00, § 1(2-6-66), eff. 8-11-2000; Ord. No. 43-06, § 1(2-6-66), eff. 12-15-2006)

**Sec. 2-5-66. - Self-interested regulation and participation prohibited.**

Except as otherwise provided for by applicable law, a public servant shall not knowingly vote, or knowingly participate in the negotiation or making of any City contract, or any other type of transaction with any business entity in which the public servant or an immediate family member has a financial interest.

(Code 1984, § 2-6-67; Ord. No. 22-00, § 1(2-6-67), eff. 8-11-2000; Ord. No. 18-12, § 1(2-6-67), eff. 8-31-2012)

**Sec. 2-5-67. - Improper use of official position prohibited.**

Except as otherwise provided for by applicable law, a public servant shall not knowingly use the public servant's official position in violation of applicable law, to improperly influence a decision of the Mayor, of the City Council, of the City Clerk, or of a member of a City authority, board, commission, committee, council or group, or other City agency.

(Code 1984, § 2-6-68; Ord. No. 22-00, § 1(2-6-68), eff. 8-11-2000; Ord. No. 18-12, § 1(2-6-68), eff. 8-31-2012)

**Sec. 2-5-3. - Definitions.** Definitions used in the analysis of this Request include:

*Exercises significant authority* means having the ability to influence the outcome of a decision on behalf of the City government in the course of the performance of a public servant's duties and responsibilities.

*Immediate family member* means:

- (1) A public servant's spouse;
- (2) A public servant's domestic partner;
- (3) An individual claimed by a public servant or a public servant's spouse as a dependent under the United States Internal Revenue Code, being 26 USC 1 et seq. ; or
- (4) An individual who lives in the household of a public servant.

**IV. Application of the Charter and Code to the Facts Presented**

As a public servant, the Requestor is subject to the relevant sections of the Ethics Ordinance cited above.

**Sec. 2-5-31. - Disclosure of interests by public servants.**

As part of her duties with [REDACTED], the Requestor serves as support staff for [REDACTED]. Her spouse works for an entity who is before the [REDACTED] regularly with applicants who seek a Certificate [REDACTED] districts. Therefore, Requestor must file a disclosure under Sec. 2-5-31(a)(2) and (3) because an immediate family member has an interest in a contract, pending matter, and decision by the City for the improvement of real property.

**Sec. 2-5-34. - Disclosure of interests by contractors and vendors.**

Requestor's spouse is employed by an entity that appears regularly before [REDACTED] with their clients, [REDACTED] property owners seeking approval of home improvements within [REDACTED]. The entity does not contract directly with the City in these transactions; therefore, that employer is not a city contractor or vendor, and Requestor's spouse is not required to file a disclosure under this Section.

**Sec. 2-5-62. - Improper use or disclosure of confidential information prohibited.**

According to the inquiry, Requestor's [REDACTED] supervisor indicated that [REDACTED] staff have no access to inside or confidential information that a [REDACTED] (such as the spouse's employer) would not know.

**Sec. 2-5-63. - Improper use of City property prohibited.**

According to the inquiry, there is no indication that Requestor has used City property in violation of City policies and procedures.

**Sec. 2-5-64. - Incompatible employment or rendering services prohibited.**

According to the inquiry, there is no indication that Requestor is working on behalf of her spouse's employer or rendering services for that outside entity.

**Sec. 2-5-65. - Representation of private person, business, or organization prohibited; exceptions.**

According to the inquiry, there is no indication that Requestor represents her spouse's employer before the [REDACTED].

**Sec. 2-5-66. - Self-interested regulation and participation prohibited.**

This Section prohibits public servants from the knowing participation in the negotiation or making of "any other type of transaction with any business entity in which the public servant or an immediate family member has a financial interest." There is no indication that Requestor violated this section. The Requestor uses the federal standards to perform evaluations. Additionally, Requestor's department/agency has an informal policy to keep Requestor from assignments that involve her spouse's employer. Even the employer of Requestor's spouse has an informal process that keeps him from working on Detroit projects. While they have these partitions in place, the Board may advise that the department create a formal policy.

**Sec. 2-5-67. - Improper use of official position prohibited.**

There is no information from the inquiry that Requestor represents her spouse's employer before the [REDACTED]. It is recommended that the Board find no violation under this Section of the Code.

**V. Conclusion**

The Board of Ethics concludes the Request for Advisory Opinion 2019-13 in accordance with Sec. 2-6-104(b)(4) and issues this advisory opinion in response to the request. Because Requestor can approve [REDACTED], she exercises significant authority and has indirect financial interest in her spouse's compensation, which comes from an entity who is before the [REDACTED] regularly, the [REDACTED] her assignment. She and her immediate family must disclose according to Sec. 2-5-31 of the Detroit City Code.

Requestor's spouse has employment with an entity that is regularly before the [REDACTED]. However, that employer is not a city contractor and has no requirement to file a disclosure.

Additionally, the Board of Ethics recommends that Requestor's department/agency draft a formal policy and submit it to the Board of Ethics upon completion.

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