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Advisory Opinion #2021-16
Issued: November 3, 2021

Advisory Opinion #2021-12: It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4) in response to the Request for Advisory Opinion 2021-16. Accepting outside employment as a [REDACTED] with [REDACTED] would not violate the Ethics Ordinance so long as Requestor submits a Disclosure of Interest Form disclosing all interests in his outside businesses. Similarly, Requestor would not be in violation of the Standards of Conduct with continued utilization of the safeguards put in place by [REDACTED] and the Requestor.

I. Procedural Background

Request for Advisory Opinion 2021-16 (the “Request”) was sent to the Board of Ethics (the “Board”) by electronic communication and received on August 19, 2021. In accordance with Sec. 2-106.1, the Request was submitted by a current public servant as defined by Section 2-5-3 of the Detroit Ethics Ordinance (the “Ordinance”). The Public Servant maintains confidentiality in this matter.

Pursuant to Section 2-5-124(a) of the 2019 Detroit City Code (“Code”), the 91-day period for review of this request will conclude on November 18, 2021. Section 2-5-124(a) also provides that the Board may, under extraordinary circumstances, extend its time to respond to a specific request by not more than 91 additional days and notify the requestor, in writing, of the specific reasons for such extension. The 91-day extension period concludes on February 17, 2021.

At its meeting on October 20, 2021, the Board determined that the Request met the basic requirements for a Request for Advisory Opinion under Section 2-5-121 of the Ordinance. The Board reviewed a Preliminary Analysis and a Supplemental Preliminary Analysis from legal counsel on the same day, and after consideration and discussion of the issues presented, the Board decided to issue this advisory opinion pursuant to Section 2-5-124(b)(4).

II. Information from the Request

Requestor is a [REDACTED] in the [REDACTED]. According to the [REDACTED] website, “[t]he [REDACTED] is responsible for performing inspections of construction activities in order to ensure construction projects meet approved plans and are in compliance with building codes and standards.” This includes inspections for private demolition work, the installation of signs and awnings, and processing insurance escrow accounts for fire repair. Moreover, the [REDACTED] also investigates complaints related to construction permit activities and issues certificates of acceptance and certificates of occupancy on new construction projects and developments.

The Requestor wants to begin conducting [REDACTED] inspections in the City of Detroit. The Requestor would perform life safety and property maintenance inspections for properties that receive [REDACTED] funding assistance, i.e., public housing, multi-family housing. The Requestor described his job duties as approximately 80% office-based reviewing staff reports and mentoring new hires. He added that when he is in the field, he conducts inspections of residential and commercial buildings for fire alarms and other specialized matters. The Requestor also indicated that he would only perform [REDACTED] inspections on days and hours that he is not scheduled to work for the City.

Additional fact finding established that, as a [REDACTED], the Respondent’s duties include, amongst other things: Instructing, directing and training staff on requirements, policies, procedures and best practices for provision of departmental services; coordinating inspection activities with city departments, utility companies, contractors and property owner; preparing reports on inspection activities; and reviewing, verify, approve and issue building code clearances and violation notices. [REDACTED] reviews all staff reports and assists in specialized inspections. However, this position does not approve reports or contracts, including [REDACTED] contacts.

A review of a database listing [REDACTED] identified Respondent as only one of four in the State of Michigan, with only about 100 [REDACTED] in the United States. Requestor stated that he has been performing [REDACTED] work outside the City of Detroit, including such inspection, about 13 years. Respondent uses his own time through his own businesses as a [REDACTED] subcontractor, and more recently as an [REDACTED] with a company named [REDACTED], in [REDACTED]. The Requestor provided his most recent Outside Employment Form dated August 27, 2021, in accordance with [REDACTED] policy.

[REDACTED] has enacted its own policies and procedures that closely mirror the Disclosure Requirements and Standards of Conduct of the Ethics Ordinance. In relevant part, [REDACTED] policy directs employees to recuse themselves from the inspection of investment properties they, or an immediate family member, own in the City of Detroit. Moreover, [REDACTED] staff must disclose all outside employment/business ownership to a department representative and the type of work that they perform for the outside employer; as well as, whether that employer is doing business with the City of Detroit or is seeking to do business with the City of Detroit. Lastly, [REDACTED] policy prohibits staff from using what they know to provide an undue competitive advantage to themselves, their family, or a third party.

III. Applicable Charter Sections

The 2012 Detroit City Charter (“Charter”) provides at Section 2-106.1, *Ethical Standards of Conduct*, 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 2-5-62, 63, 64, 65, 66, and 67 of the 2019 Detroit City Code, as well as Sections 2-5-31 and 2-5-34 pertaining to disclosure requirements. The relevant applicable provisions of the Code state as follows:

Disclosure Requirements

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.

Standards of Conduct

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.

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.

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.

IV. Application of the Charter and Code to the Information Presented

The Requestor serves as a [REDACTED] for [REDACTED], therefore, he is a public servant as defined in Section 2-105 of the Charter and Section 2-5-3 of the Ethics Ordinance. The Requestor seeks an advisory opinion regarding the application of the disclosure requirements and standards of conduct related to the Requestor accepting outside employment as a [REDACTED]. The Request was properly submitted; accordingly, the Requestor's conduct is regulated by the Ethics Ordinance.

According to Section 2-5-1 of the Ethics Ordinance, the standards of conduct and disclosure requirements apply to public servants "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." The following provisions are implicated in this Request.

A. Section 2-5-34. Disclosure of Interests by Contractors/Vendors

A review of information available date indicates that the Requestor may have significant authority in his role as a [REDACTED] in that he reviews reports from staff and is the "right hand" of the [REDACTED] Supervisor. Further, the Requestor reported that he would like to perform REAC HUD inspections in the City of Detroit – a highly specialized role with very few competitors in Michigan – which he has not performed in the past due to [REDACTED]'s policy.

As noted above, however, [REDACTED] Ethics Policy presents a plan for staff in these matters, which includes recusal and disclosure. There is substantial documentation that the City of Detroit does business with [REDACTED], and [REDACTED] plays an important role in this interaction. Accordingly, the Board may consider requiring the Requestor to disclose instances when he conducts business as a subcontractor or a direct business owner vendor performing [REDACTED] work in the City. Further, [REDACTED] should resubmit his Outside Employment form noting such work within the City, if and when it occurs.

B. Section 2-5-62. Improper Use or Disclosure of Confidential Information Prohibited

Section 2-5-62 of the Code prohibits public servants from knowingly using confidential information outside the scope of the public servant's official duties or disclosing confidential information to third parties. The Ethics Ordinance provides the following definition for the phrase "confidential information":

[I]nformation that has been obtained by a public servant in the course of acting as a public servant, that is not available to members of the public pursuant to the Michigan Freedom of Information Act, . . . or pursuant to other law, regulation, policy or procedure recognized by law, and that the public servant is unauthorized to disclose.

The Requestor may have access to confidential information in the course of performing his duties for the City. However, the confidential information that the Requestor may have access to would not present a conflict of interest as it relates to performing outside inspections for [REDACTED] and would not lead to be any financial gain.

Nevertheless, any information that the Requestor has obtained in the course of acting as a public servant, that is not available to members of the public and that he has not been authorized to disclose, is confidential information. As such, he is prohibited from using or disclosing such information to third parties, including for purposes of the potential documents that he referenced in the Request.

C. Section 2-5-63. Improper use of City property prohibited

As provided by Section 2-5-63 of the Code, the Requestor is prohibited from "us[ing] City property in violation of City policies and procedures." There is nothing to suggest the Requestor will use City of Detroit resources while performing [REDACTED] inspections and he has noted that he will not perform these services during City hours instead using his own time. Regardless, the Requestor should be warned not to use any City property for purposes of the rehabilitation project or the documentary in order to avoid a potential violation of Section 2-5-63.

D. Sec. 2-5-67. Improper Use of Official Position Prohibited

Both the Requestor and his supervisor indicated that he does not have the ability to influence decisions that come before the City of Detroit because his position does not approve reports or contracts. While Requestor may play a significant role in the permits of ██████ developers. Yet, there is no indication that he, nor any family member, performs any work for, personally represents, or has influenced any decision on behalf of ██████ in matters before the City.

Regardless, if, for any reason, the Requestor finds himself in a situation where he is asked to handle an assignment on behalf of ██████ in relation to his work with ██████, including decisions of whether or not to approve any relevant permit requests, he must recuse himself in accordance with ██████ established procedures. Furthermore, the Requestor may not receive compensation from any business or organization, including his own, unless he first receives approval from the ██████ Director and submits a Request for Approval of Outside Employment Form, pursuant to the City's Outside Employment Policy.

V. Conclusion

It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4) in response to Request for Advisory Opinion 2021-16. As set forth above, if the Requestor follows the advice that is recommended and remains in compliance with ██████ existing policies and procedures relating to outside employment, the Requestor will not be in violation of the disclosure requirements or standards of conduct set forth by the Ethics Ordinance and is encouraged to continue using the voluntary safeguards that the Requestor has put in place.

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