



Board of Ethics

2020 ANNUAL REPORT



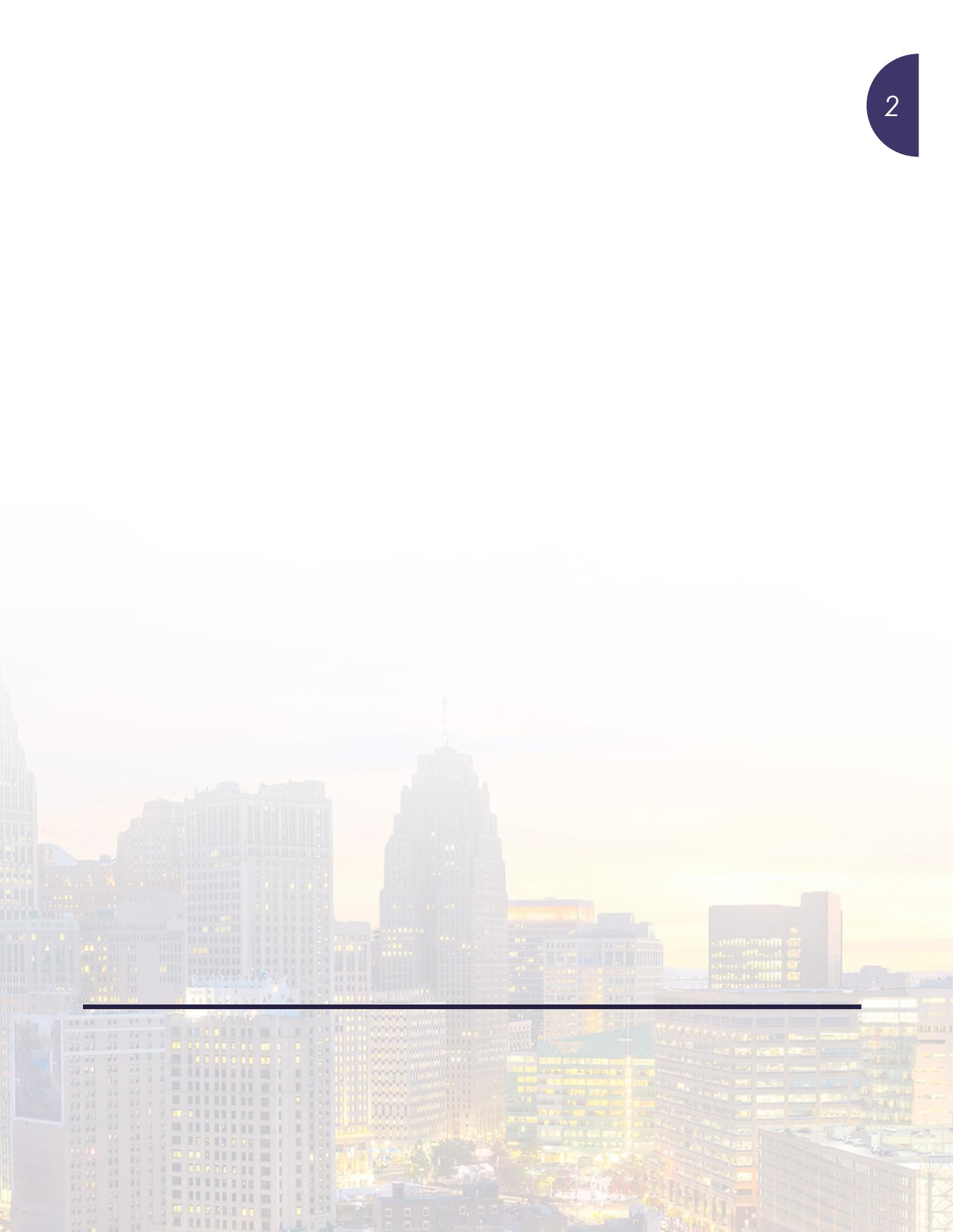


TABLE OF CONTENTS

Board Members	4
Letter to the Mayor and City Council	6
Statement of Purpose	7
Annual Report Requirements	8
Annual Budget	9
Complaints	10
Advisory Opinions	13
Board Composition	16
Ethics Training	17
Additional Information	18
Recommendations	18
Appendix A - Draft Ordinance	19
Appendix B - Advisory Opinions of 2020	38



Board of Ethics

Atty. Kristin Lusn, Chairperson
Freda G. Sampson, Vice-Chairperson
Atty. David W. Jones
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Board of Ethics

Letter to the Mayor and City Council

DATE: March 16, 2021

TO: Hon. Michael E. Duggan, Mayor

Hon. Brenda Jones, City Council President
Hon. Mary Sheffield, City Council President Pro Tempore
Hon. Janeé L. Ayers, City Council Member
Hon. James Tate, City Council Member
Hon. Roy McCalister, Jr. City Council Member
Hon. Scott Benson, City Council Member
Hon. Andre L. Spivey, City Council Member
Hon. Raquel Castañeda-Lopez, City Council Member
Hon. Gabe Leland, City Council Member

FROM: Detroit Board of Ethics

SUBJECT: Annual Report of the Board of Ethics for 2020

The Detroit Board of Ethics Annual Report includes its activities beginning January 1, 2020, to December 31, 2020. In accordance with Section 2-5-108 of the Ethics Ordinance this Report contains:

1. An analysis of Board activities, including Advisory Opinions, requested and issued; Complaints filed and their disposition; and Investigations opened and their disposition.
2. A compilation of Advisory Opinions issued; and,
3. Recommendations for improvement of the Disclosure Requirements, Standards of Conduct, and the administration and enforcement of the Ordinance.

Additionally, this Report includes training activity updates, which is included in the City of Detroit Charter at Sec. 2-106.9 – Powers and Duties subsections 4 and 5.

cc: Honorable Janice M. Winfrey, Detroit City Clerk
Department Directors
Agency Leaders

STATEMENT OF PURPOSE.

Detroit City Code 2020 Sec. 2-5-1.

The disclosure requirements and standards of conduct apply to public servants including the Mayor, City Council Members, the City Clerk, elected members of the Board of Police Commissioners, appointive officers, appointees, employees, and contractors as defined in Section 2-5-3 of this Code.

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.

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

Commentary— This article is adopted in compliance with the provisions of Section 2-106.1 of the Charter, entitled "Ethical Standards of Conduct," that the City Council may enact an ordinance necessary to effectuate the operation of Sections 2-106.1 through 2.106.14 of the Charter. Furthermore, a review of the best practices of the federal, state and municipal governments reveal that most jurisdictions have enacted codes governing the standards of conduct for elected and appointed public officials as well as employees.

The integrity of City government and public trust and confidence in elective officers and employees require that public servants be independent, impartial and responsible to the People; that government decisions and policy be made within the proper channels of the governmental system; and that public servants be prohibited from participating in matters that affect their personal or financial interests. The purpose of this article is to establish guidelines for ethical standards of conduct for all City government officials and employees by defining those acts or actions that are incompatible with the best interests of the City and by mandating disclosure by public servants of private financial or other interests in matters affecting the City.

Although the article addresses the subject matters set forth in Sections 2-206.1 through 2-106.14 of the Charter, it cannot by its terms and provisions specifically address every conceivable circumstance, situation or question that may raise an ethical consideration in the course of City government. Of course, every situation or issue arising under the article must be evaluated based on its individual merits. However, the article is intended to declare integrity in governmental decision making, operations and processes as a fundamental value and policy of City government to which all public servants in City government should strive to adhere at all times. To underscore the paramount importance of this policy, the article should be liberally construed so as to fully protect the public interest, and to effectuate the provisions of Sections 2-106.1 through 2.106.14 of the Charter that the article shall prohibit actions by elective officers, appointive officers, appointees, employees, or contractors.



REQUIREMENTS.

Sec. 2-5-108. - Annual report.

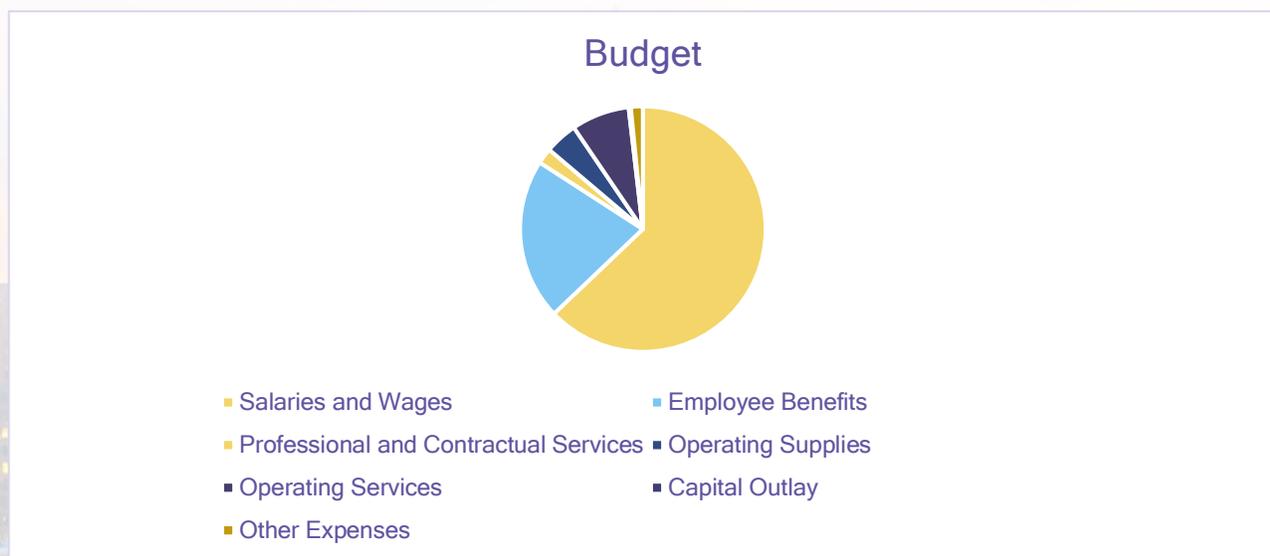
- (a) On or before April 1st of each year, the Board of Ethics shall issue simultaneously to the Mayor and to each member of the City Council a report that contains:
 - (1) An analysis of all activities of the Board of Ethics, including the number of advisory opinions requested and the number issued, and the number of complaints filed and the disposition thereof during the preceding calendar year;
 - (2) A compilation of opinions that have been issued during the preceding calendar year; and
 - (3) The recommendations of the Board of Ethics, if any:
 - a. For improvement of the disclosure requirements that are found in Division 2 of this article, and of the standards of conduct that are found in Division 3 of this article; and
 - b. For improvement of the administration and enforcement thereof.
- (b) In addition, a copy of the annual report shall be submitted to the City Clerk, each department director, each agency head, and the Detroit Public Library Main Branch.

(Code 1984, § 2-6-98; Ord. No. 43-06, § 1(2-6-98), eff. 12-15-2006)

ANNUAL BUDGET

The 2020-21 Budget of the Board of Ethics was \$483,710.00¹. The bulk of the expenditures is for Salary and Wages as well as Employee Benefits. The Other Expenses line-item was used to develop a new website, social media presence, and other strategies to partner and connect with our customers including elected officials, employees, public servants, and the residents of City of Detroit. The Budget also reflects the ongoing effects of COVID-19.

	Budget		% of Budget
Salaries and Wages	304,168		63%
Employee Benefits	102,782		21%
Professional and Contractual Services	10,000		2%
Operating Supplies	20,850		4%
Operating Services	36,923		8%
Capital Outlay	1,390		0%
Other Expenses	7,597		2%
Total Expenditures	483,710		



¹ The Annual Report reflects activities of the calendar year. The annual budget is reported by fiscal year.

Complaints

Anyone can file a notarized Complaint against a public servant who they believe has violated a standard of conduct or disclosure requirement.

Complaint 2020-01. This matter is dismissed under Sec. 2-5-145(b)(1)(b) because it does not allege facts sufficient to constitute a violation of the Ethics Ordinance.

Complaint 2020-02.

This matter is dismissed under Sec. 2-5-145(b)(1)(b) because it does not allege facts sufficient to constitute a violation of the Ethics Ordinance.

Complaint 2020-03

This matter is dismissed under Sec. 2-5-145(b)(1)(b) because it does not allege facts sufficient to constitute a violation of the Ethics Ordinance.

Complaint 2020-04.

This matter is dismissed under Sec. 2-5-145(b)(1)(b) because it does not allege facts sufficient to constitute a violation of the Ethics Ordinance.

Complaint 2020-05.

This matter is dismissed under Sec. 2-5-145(b)(1)(b) because it does not allege facts sufficient to constitute a violation of the Ethics Ordinance.

Complaint 2020-06

This matter is dismissed under Sec. 2-5-145(b)(1)(b) because it does not allege facts sufficient to constitute a violation of the Ethics Ordinance.

Complaint 2020-07.

This matter is dismissed under Sec. 2-5-145(b)(1)(b) because it does not allege facts sufficient to constitute a violation of the Ethics Ordinance.

Complaint 2020-08. This matter is dismissed under Sec. 2-5-145(b)(1)(b), that the Complaint does not allege facts sufficient to constitute a violation of the Ethics Ordinance.

Complaint 2020-09.

This matter is dismissed under Sec. 2-5-145(b)(1)(b) because it does not allege facts sufficient to constitute a violation of the Ethics Ordinance.

Complaint 2020-10.

This matter is dismissed under Sec. 2-5-145(b)(1)(b) because it does not allege facts sufficient to constitute a violation of the Ethics Ordinance.

Complaint 2020-11. This matter is dismissed under Sec. 2-5-144(a) because no action may be taken by the Board on any complaint which is filed later than 182 days from the date that the complainant knew or should have known of the action that is an alleged violation of this article, and in no event shall the Board consider a complaint which has been filed more than 2 years after a violation of this article is alleged to have occurred.

Complaint 2020-12. This matter is dismissed under Sec. 2-5-145(b)(1)(b) because it does not allege facts sufficient to constitute a violation of the Ethics Ordinance.

Complaint 2020-13. This matter is dismissed under Sec. 2-5-145(b)(1)(b) because it does not allege facts sufficient to constitute a violation of the Ethics Ordinance.

Complaint 2020-14. The Board determined that its independence of judgment regarding this matter may be affected, or appear to be affected by the working relationships that the Board of Ethics had or has with the Complainant and Respondent. To address this matter, the Board of Ethics referred this matter to the City of Detroit Office of Inspector General.

Complaint 2020-15. The Board determined that its independence of judgment regarding this matter may be affected, or appear to be affected by the working relationships that the Board of Ethics had or has with the Complainant and Respondent. To address this matter the Board of Ethics referred this matter to the City of Detroit Office of Inspector General.

Complaint 2020-16. This matter is dismissed under Sec. 2-5-145(b)(1)(b) because it does not allege facts sufficient to constitute a violation of the Ethics Ordinance.

Complaint 2020-17. This matter is dismissed under Sec. 2-5-145(b)(1)(b) because it does not allege facts sufficient to constitute a violation of the Ethics Ordinance.

Complaint 2020-18. This matter is held in abeyance.

Complaint 2020-19. This matter is held in abeyance.

Complaint 2020-20. This matter is held in abeyance.

Complaint 2020-21. This matter is held in abeyance.

Complaint 2020-22. This matter is held in abeyance.

Complaint 2020-23. This matter is held in abeyance.

Complaint 2020-24. This matter is held in abeyance.

Complaint 2020-25. This matter is held in abeyance.

Complaint 2020-26. This matter is held in abeyance.

Complaint 2020-27. This matter is held in abeyance.

Complaint 2020-28. This matter is dismissed under Sec. 2-5-145(b)(1)(b) because it does not allege facts sufficient to constitute a violation of the Ethics Ordinance. Also, the Board of Ethics determined that the Complaint may have provided evidence of a criminal action and referred this matter to the Wayne County Prosecutor's Office.

Complaint 2020-29. This matter is pending before the Board of Ethics.

Complaint 2020-30. This matter is held in abeyance.

Complaint 2020-31. This matter is held in abeyance.

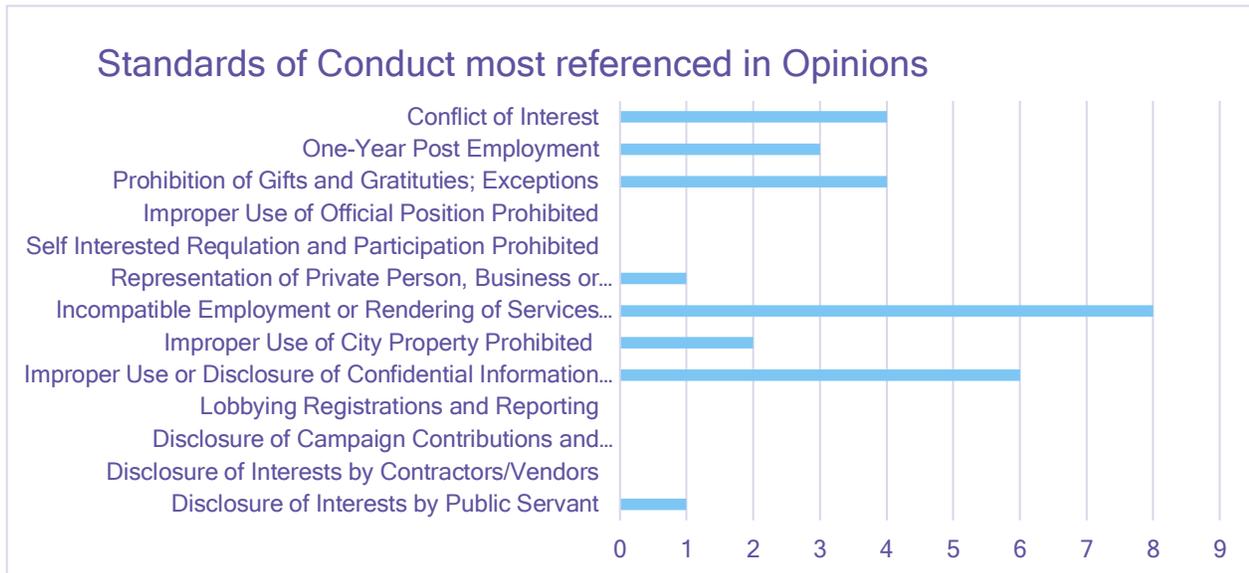
Complaint 2020-32. This matter is held in abeyance.

Complaint 2020-33. This matter is held in abeyance.



Advisory Opinions

Requests for Advisory Opinions can only be filed by public servants seeking advice about their own conduct. Below is a chart that includes the most requested categories.



Advisory Opinion 2020-01. Filed: January 14, 2020. Public servant request: May I participate on an advisory board that makes recommendations to the City? The Board released an Opinion pursuant to Section 2-5-124(b)(4) that the Requestor is not prohibited by the Ethics Ordinance from serving as a member of the Advisory Board, but the Requestor should take care to ensure that his activities related to the Advisory Board do not result in a violation of the Ethics Ordinance. The Requestor is prohibited from using or disclosing confidential information in the course of his involvement with the Advisory Board. The Requestor should also refrain from using any City property to perform activities.

Advisory Opinion 2020-02. Filed: January 21, 2020. Former public servant request: May I work for a nonprofit organization that has a contract with the City if I have been involved with the project to which the contract pertains? The Board released an Opinion pursuant to Section 2-5-124(b)(4) that the Ethics Ordinance prohibits the Requestor from accepting employment with the non-profit organization until a period of one year has passed from the date her employment ended with the City and because it involves sharing confidential information. Also, the Ethics Ordinance prohibits Requestor from receiving compensation for any work or any other matter that she worked on or acquired knowledge about while working for the City. And finally, the Ethics Ordinance prohibits Requestor from accepting work with contractor because the Requestor was involved in the award or management of the contract while she was a public servant.

Advisory Opinion 2020-03. Filed: January 11, 2020. Public servant request: May I host and attend a department sponsored event that honors employees, partners, supporters, volunteers and community? Pursuant to Section 2-5-124(b)(2) the Board declined to release an opinion because the request did not merit review due to a lack of information as well as timeliness.

Advisory Opinion 2020-04. Filed: February 4, 2020. Public servant request: May I work for a local private school system during Spring Break? The Board released an Opinion pursuant to Section 2-5-124(b)(4) that the Requestor should file a Request for Outside Employment with HR, refrain from the use of City property when working for the school system, obtain permission from the Requestor's Department Head, and use vacation time if there is no conflict with work priorities.

Advisory Opinion 2020-05. Filed: February 5, 2020. Public servant request: May I attend an event hosted by a City vendor? Pursuant to Section 2-5-124(b)(4) the Board declined to release an opinion pursuant to Section 2-5-124(b)(3) because the request addresses past conduct.

Advisory Opinion 2020-06. Filed: February 11, 2020. Public servant request: May I become a member of an advisory board of an organization that does business with the City? The Board released an Opinion pursuant to Section 2-5-124(b)(4) that the public servant may serve as a member of the advisory board only if uncompensated, and should refrain from accepting gifts or other things of value, refrain from acting as a representative of the organization on matters pending before a City entity, and refrain from using or disclosing confidential information in the course of serving as an advisory board member.

Advisory Opinion 2020-07. Filed: February 18, 2020. Public Servant request: May I perform pro bono services for an organization? The Board released an Opinion pursuant to Section 2-5-124(b)(4) that the Requestor may provide pro bono services with certain restrictions: Requestor can only provide services on personal time, must recuse them self from any organization matters in connection with the City; file a disclosure of interest regarding the organization; refrain from acting as an organization representative before a City entity; and refrain from using or disclosing confidential information to the organization.

Advisory Opinion 2020-08. Filed: February 18, 2020. Public Servant request: May I work as an instructor for a summer camp in a city park? The Board released an Opinion pursuant to Section 2-5-124(b)(4) that the Requestor may participate as a paid instructor, if it is not on City time, proper approval is received from the Requestor's department head, and a Request for Approval of Outside Employment is filed with HR. The Requestor must follow applicable policies and procedures and avoid ethics violations that include the improper use of City property. In addition, the public servant must file a disclosure of interest regarding the organization, refrain from acting as a representative of the organization before a City agency, and refrain from using or disclosing confidential information to the organization.

Advisory Opinion 2020-09. Filed: February 25, 2020. Public Servant request: How may I leave employment with the City and go into private practice? The Board released an Opinion pursuant to Section 2-5-124(b)(4) that the public servant may leave employment with the City to begin private practice, however there are several restrictions.²

Advisory Opinion 2020-10. Filed: May 12, 2020. Public servant request: May I continue my outside employment? Pursuant to Section 2-5-124(b)(2) the Board determined that the Request does not merit review by the Board of Ethics.

² Advisory Opinion 2020-09 is lengthy and can be found in the RAO Appendix.

Advisory Opinion 2020-11. Filed: June 17, 2020. A Public Servant, who is employed under a Personal Service Contract. May I seek employment with a City of Detroit contractor, a third party vendor who supplies services to the City? The Board released an Opinion pursuant to Section 2-5-124(b)(4) that the Requestor may not accept employment from a contractor if the Requestor was involved in any way with the Contractor during the Requestor's tenure as a public servant. The Requestor must wait until a year has passed from the date of being laid off from City of Detroit employment.

Advisory Opinion 2020-12. Filed: August 10, 2020. Public servant request: May I accept gift cards through the department's partnership with a local university that would be handling the registration and the giveaway? The Board released an Opinion pursuant to Section 2-5-124(b)(4) that the Requestor would be in violation of the gift and gratuities prohibition and an authorized person should notify the university of this prohibition. In addition, the Requestor should notify other public servants of the potential violation that could occur if they register for the university's giveaway.

Advisory Opinion 2020-13. Filed: August 26, 2020. Public servant request: May I serve as the project manager for a rehabilitation project of my own property? The Board released an Opinion pursuant to Section 2-5-124(b)(4).³

Advisory Opinion 2020-14. Filed: October 19, 2020. Public servant request: May I accept work with a non-profit organization, that has no business dealings with the City of Detroit, after working hours have been reduced with the City? Pursuant to Section 2-5-124(b)(2) the Board determined that the Request does not merit review at this time.

Advisory Opinion 2020-15. Filed: October 29, 2020. Public servant request: May I accept employment from a City contractor with whom I've had no contact since 2014? The Board released an Opinion pursuant to Section 2-5-124(b)(4) that the Requestor is prohibited by the Ethics Ordinance from accepting employment until one year after the employee retires from the City of Detroit.

³ Advisory Opinion 2020-13 is lengthy and can be found in the RAO Appendix.

Board Composition

From January 2020 to November 2020, the members of the Board of Ethics included:

Atty. Kristin A. Lusn, Chairperson
Freda G. Sampson, Vice Chairperson
Atty. David W. Jones
Mario Morrow, Sr.
Byron Osbern
Robert Watt
Vacancy

During this year, the Mayor and City Council filled a vacancy in November 2020.
The current members are:

Atty. Kristin A. Lusn, Chairperson
Freda G. Sampson, Vice Chairperson
Atty. David W. Jones
Mario Morrow, Sr.
Byron Osbern
Michael Rafferty
Robert Watt



Ethics Training

The Charter and the Ethics Ordinance provide ethics training mandates for public servants.

In the month of March 2020, staff transitioned to remote work due to COVID-19 and on-line ethics learning began in April. Even in a pandemic, the Board strives to partner with public servants and meet their training requirements.

	2018	2019	2020
Departments/Offices/Boards/Commissions			
All departments open training	0	4	1
BSEED	1	2	
Board of Tax Review	1	1	
Board of Water Commissioners		1	
Charter Revision Commission		1	
City Clerk's Office		2	
City Planning Commission		1	
Councilman Leland's Office Staff			1
Councilman McCalister's Office Staff		1	
CRIO			1
DDOT Executive Staff	1		
DDOT Staff			
Depart of Neighborhoods		2	
Department of Elections		1	
Dept of Hearings & Appeals	1		
Department of DPW Engineers			1
DoIT	2		
DPSH		1	
Entertainment Commission		1	
GSD		1	
Health Department		3	1
Historic Designation Advisory Board		1	
Historic Preservation Committee		1	
Homeland Security	1		
Legislative Policy Division		1	
Mayor's Cabinet		1	
Mayor's Internship Program		1	
Mayor's Office Staff		2	
New Employee Orientations (Multiple Depts)	10	10	6
OCFO/Treasury		3	
Office of Contracts & Procurement	1		
Supervisory Trainings		4	1
Public Presentations			
International Visitor Leadership Program - U.S. Department of State	2	1	
Local Organizations	1	1	
Total Trainings Per Year	21	48	12

In November 2020, the Board launched its website, www.detroitethics.org. The site is the focal point for ethics information. From the website, you can access web-based ethics training. We are one of a handful of ethics organizations in the country whose public servants can access ethics training from any device with internet access. We also launched an online campaign to encourage public servants to take the training.

We also created an online archive of Advisory Opinions that continues to see expanded growth. This give public servants and the public the ability to have immediate access to Advisory Opinions. The Board appreciates public servants who use the process to gain clarity for their questions about the standards of conflicts and disclosure requirements. This year, the Board created and implemented a website that hosts digital training and by the end of December nearly 500 employees logged in for training.

Additional Activities

The Board has three (3) FTEs who began working remotely on March 23, 2020 due to COVID-19. The administration issued a hiring freeze due to the pandemic and we have yet to hire personnel to lead our internet and training innovation.

For training, networking, and strategy building, Board Members and staff participated, free of charge, in the 42nd Annual Council on Government Ethics Laws (COGEL), held remotely in December 2020.

Also, the Board received requests to participate with Global Ties Detroit (sponsored by the Department State of the United States) and host delegations from other countries including Croatia, Brazil and South Africa. Global Ties leads transparency and accountability projects by bringing together international groups such as prosecutors, ethics commissions, and other governmental agencies. However, due to COVID-19, the Board canceled in person participation until further notice.

Recommendations to the Ethics Ordinance

On October 20, 2020, the Board approved an amended Ethics Ordinance and is seeking approval of this change. The Ordinance addresses jurisdictional changes, specifically, from public servant to current or former public servants, contractors, vendors, lobbyists. Other changes continue to address grammatical issues. The draft Ordinance is included in Appendix B.

Appendix A

Draft Ethics Ordinance

Approved by the Board of Ethics on October 20, 2020



SUMMARY

This ordinance amends Chapter 2 of the 2019 Detroit City Code, *Administration*, Article V, *Ethics*, Division 1, *Generally*, by amending Section 2-5-4, *Police Department authorized to issue misdemeanors for enforcement of disclosure requirements and standards of conduct; Board of Ethics may recommend issuance*; Section 2-5-5, *Misdemeanor penalties*; and Division 4, *Board of Ethics*, by amending Section 2-5-141, *Complaint; contents thereof; limitation of action*; Section 2-5-142, *Retaliation and harassment prohibited*; Section 2-5-144, *Running of limitations of action; processing complaints*; Section 2-5-145, *Disposition of complaints*; Section 2-5-146, *Violations of article; Board of Ethics permitted to make public admonition and to refer findings; cumulative effect*; Section 2-5-147, *Reimbursement of reasonable attorney fees to a public servant*; Section 2-5-161, *Authority; contents thereof; procedure; notice to public servant, contractor, or vendor*; Section 2-5-163, *Harassment prohibited; removal from Board of Ethics*; Section 2-5-164, *Communications with the Board of Ethics regarding an investigation prohibited; exceptions; reporting substance of prohibited communication*; Section 2-5-165, *Conducting investigations; preliminary written legal analysis; notice of charges; scheduling hearing*; Section 2-5-166, *Dispose of notices of charges*; Section 2-5-168, *Violations of article; Board of Ethics permitted to make public admonition and to refer findings; cumulative effect*; Section 2-5-169, *Reimbursement of reasonable attorney fees to a public servant*; to allow the Board of Ethics to recommend the Police Department issue misdemeanor violations against those who the Board determines to have violated the Ethics Ordinance; to establish penalties applicable to any person who is found guilty of misdemeanor violations under the Ethics Ordinance; to expand the applicability of the Ethics Ordinance provisions pertaining to complaints or Board-initiated investigations in order to cover former public servants, contractors, and vendors, and current or former lobbyists; to provide public admonishment as a potential penalty that may be issued against any person who the Board determines to have violated the Ethics Ordinance; to allow former public servants who successfully defend against a complaint or investigation to be eligible for reimbursement of reasonable attorney fees; and to update the language of the amended sections for consistency with the language used throughout the article.

1 **BY COUNCIL MEMBER _____** :

2 **AN ORDINANCE** to amend Chapter 2 of the 2019 Detroit City Code, *Administration*,
3 Article V, *Ethics*, Division 1, *Generally*, by amending Section 2-5-4, *Police Department*
4 *authorized to issue misdemeanors for enforcement of disclosure requirements and standards of*
5 *conduct; Board of Ethics may recommend issuance*; Section 2-5-5, *Misdemeanor penalties*; and
6 Division 4, *Board of Ethics*, by amending Section 2-5-141, *Complaint; contents thereof; limitation*
7 *of action*; Section 2-5-142, *Retaliation and harassment prohibited*; Section 2-5-144, *Running of*
8 *limitations of action; processing complaints*; Section 2-5-145, *Disposition of complaints*; Section
9 2-5-146, *Violations of article; Board of Ethics permitted to make public admonition and to refer*
10 *findings; cumulative effect*; Section 2-5-147, *Reimbursement of reasonable attorney fees to a*
11 *public servant*; Section 2-5-161, *Authority; contents thereof; procedure; notice to public servant,*
12 *contractor, or vendor*; Section 2-5-163, *Harassment prohibited; removal from Board of Ethics*;
13 Section 2-5-164, *Communications with the Board of Ethics regarding an investigation prohibited*;
14 *exceptions; reporting substance of prohibited communication*; Section 2-5-165, *Conducting*
15 *investigations; preliminary written legal analysis; notice of charges; scheduling hearing*; Section
16 2-5-166, *Dispose of notices of charges*; Section 2-5-168, *Violations of article; Board of Ethics*
17 *permitted to make public admonition and to refer findings; cumulative effect*; Section 2-5-169,
18 *Reimbursement of reasonable attorney fees to a public servant*; to allow the Board of Ethics to
19 recommend the Police Department issue misdemeanor violations against a person who the Board
20 determines to have violated the Ethics Ordinance; to establish penalties applicable to any person
21 who is found guilty of misdemeanor violations under the Ethics Ordinance; to expand the
22 applicability of the Ethics Ordinance provisions pertaining to complaints or Board-initiated
23 investigations in order to cover former public servants, contractors, and vendors, and current or

1 former lobbyists; to provide public admonishment as a potential penalty that may be issued against
2 any person who the Board determines to have violated the Ethics Ordinance; to allow former public
3 servants who successfully defend against a complaint or investigation to be eligible for
4 reimbursement of reasonable attorney fees; and to update the language of the amended sections
5 for consistency with the language used throughout the article.

6 **IT IS HEREBY ORDAINED BY THE PEOPLE OF THE CITY OF DETROIT**
7 **THAT:**

8 **Section 1.** Chapter 2 of the 2019 Detroit City Code, *Administration*, Article V, *Ethics*,
9 Division 1, *Generally*, and Division 4, *Board of Ethics*, be amended by amending Section 2-5-4,
10 Section 2-5-5, Section 2-5-141, Section 2-5-142, Section 2-5-144, Section 2-5-145, Section 2-5-
11 146, Section 2-5-147, Section 2-5-161, Section 2-5-163, Section 2-5-164, Section 2-5-165, Section
12 2-5-166, Section 2-5-168, and Section 2-5-169 to read as follows:

13 **CHAPTER 2. ADMINISTRATION.**

14 **ARTICLE V. ETHICS.**

15 **DIVISION 1. GENERALLY.**

16 **Sec. 2-5-4. Police Department authorized to issue misdemeanors for enforcement of**
17 **disclosure requirements and standard of conduct; Board of Ethics may recommend issuance.**

18 (a) In accordance with Section 2-106.11(1)(e) and (2)(d) of the Charter, the Police
19 Department is authorized to enforce disclosure requirements, which are contained in Division 2 of
20 this article, and standards of conduct, which are contained in Division 3 of this article, through the
21 issuance of misdemeanor violations.

22 (b) In accordance with Section 2-106.11(1)(e) and (2)(d) of the Charter, and Sections
23 2-5-145(b)(~~6~~)(7) and 2-5-166(6) of this Code, the Board of Ethics may recommend that the Police

1 Department issue ~~a misdemeanor-violations~~ violation against ~~public servants, contractors, vendors,~~
2 ~~and lobbyists~~ any person who is determined by the Board to have violated this article, provided;
3 that the City police officers may issue such ~~violations~~ violation on their own volition.

4 **Sec. 2-5-5. Misdemeanor penalties.**

5 Any ~~public servant, contractor, vendor, or lobbyist~~ person who is found guilty of violating
6 any provision of this-section article shall be convicted of a misdemeanor for each ~~ordinance~~
7 ~~violation-that is issued~~, and, in the discretion of the court, may be fined up to \$500.00 ~~and or~~
8 sentenced to up to 90 days in jail, or both, for each ~~ordinance violation-that is issued~~.

9 **DIVISION 4. BOARD OF ETHICS**

10 **Subdivision C. Complaints.**

11 **Sec. 2-5-141. Complaint; contents thereof; limitation of action.**

12 (a) Except for members of the Board of Ethics, any person may file a complaint with
13 the Board of Ethics where the person believes that a current or former public servant, contractor,
14 ~~or~~ vendor, or lobbyist may have violated this article.

15 (b) A complaint shall be made in writing on a form that is created by the Law
16 Department and prescribed by the Board of Ethics, shall specify the provisions of this article
17 alleged to have been violated and the facts alleged to constitute the violation, and shall be signed
18 by the person who is making the complaint and sworn to in the presence of a notary public.

19 (c) Such a complaint shall be filed within 182 days from the date that the complainant
20 knew or should have known of the action that is alleged to be a violation of this article, and in no
21 event shall the Board of Ethics consider a complaint ~~which~~ that has been filed more than two years
22 after a violation of this article is alleged to have occurred.

1 (d) A complaint that has been filed within the time period contained in Subsection (c)
2 of this section and, ~~where~~ dismissed by the Board of Ethics due to other investigations of pending
3 proceedings; shall be deemed dismissed without prejudice, and may be reinstated and reconsidered
4 by the Board at the conclusion of the other proceedings.

5 **Sec. 2-5-142. Retaliation and harassment prohibited.**

6 (a) It shall be a violation of this article for any public servant, contractor, ~~or~~ vendor, or
7 lobbyist to retaliate against any individual who files a complaint with the Board of Ethics on the
8 basis that the individual has filed the complaint.

9 (b) It shall be a violation of this article for an individual to use this article to harass a
10 current or former public servant, contractor, ~~or~~ vendor, or lobbyist by filing a complaint with
11 knowledge of its falsity or with reckless disregard for its truth or falsity.

12 **Sec. 2-5-144. Running of limitations of action; processing complaints.**

13 (a) No action may be taken by the Board of Ethics on any complaint ~~which~~ that is filed
14 later than 182 days from the date that the complainant knew or should have known of the action
15 that is alleged to be a violation of this article, and in no event shall the Board consider a complaint
16 ~~which~~ that has been filed more than two years after a violation of this article is alleged to have
17 occurred.

18 (b) In accordance with administrative rules that are promulgated pursuant to Section 2-
19 5-101 of this Code:

20 (1) The staff of the Board of Ethics shall acknowledge its receipt of a complaint to the
21 complainant, and forward the complaint simultaneously to each member of the
22 Board, the ~~public servant, contractor, or vendor who is complained~~ party against

1 whom the complaint was filed, and the City Attorney from the Law Department
2 who represents the Board;

3 (2) The City Attorney from the Law Department, or outside counsel, who represents
4 the Board of Ethics shall provide the Board with a preliminary written legal analysis
5 of the complaint;

6 (3) ~~The public servant, contractor, or vendor who is complained~~ party against whom
7 the complaint was filed shall have the opportunity to submit a written response to
8 the complaint prior to the Board of Ethics deciding whether to hold a hearing; and

9 (4) After receipt of the ~~City Attorney's legal analysis from the City Attorney, or outside~~
10 counsel, who represents the Board of Ethics, the Board of Ethics shall review and
11 consider the complaint and the ~~City Attorney's legal analysis, and, if a hearing is~~
12 to be held, shall set a date certain for the hearing to take place dispose of the
13 complaint in accordance with Section 2-5-145 of this Code.

14 **Sec. 2-5-145. Disposition of complaints.**

15 (a) The Board of Ethics shall dispose of a complaint within 91 calendar days after its
16 receipt. However, under extraordinary circumstances, as defined in Section 2-5-3 of this Code, the
17 Board of Ethics may extend its time to respond to a specific complaint by not more than 91
18 additional days. In the event the Board of Ethics extends its time to respond to a complaint, the
19 Board shall notify, in writing, the complainant, ~~the public servant, and, if applicable, the contractor,~~
20 ~~or vendor~~ and the party against whom the complaint was filed of the extension and of the specific
21 reasons therefor.

22 (b) After giving due consideration to a complaint in accordance with the time lines
23 delineated in Subsection (a) of this section, the Board of Ethics shall take any action or

1 combination of actions, upon majority vote, ~~which~~ that the Board deems appropriate in order to
2 dispose of ~~a~~ the complaint, including, but not limited to, one or more of the following:

- 3 (1) Dismiss the complaint based on any of the following grounds:
- 4 a. The Board of Ethics has no jurisdiction over the matter;
 - 5 b. The complaint does not allege facts sufficient to constitute a violation of
6 this article;
 - 7 c. The complainant has failed to cooperate in the Board of Ethics' review and
8 consideration of the complaint;
 - 9 d. The complaint is defective in a manner ~~which~~ that results in the Board of
10 Ethics being unable to make any sound determination; or
 - 11 e. There are other pending proceedings arising out of the same transaction or
12 occurrence, or the same transactions or occurrences, to which the complaint
13 pertains, including, but not limited to, local, state, or federal law
14 enforcement investigations or criminal cases, ~~which~~ and, in accordance with
15 Section 2-5-141 of this Code, the complaint may be reinstated and
16 reconsidered at the conclusion of the other proceedings;
- 17 (2) Determine that no violation of this article has occurred; ~~or~~
- 18 (3) Determine that further information must be obtained in order for the Board of Ethics
19 to determine whether the complaint alleges facts sufficient to constitute a violation
20 of the article or whether a violation of this article has occurred, and either:
- 21 a. Conduct its own investigation with respect to any alleged violation; or
 - 22 b. Request the City Attorney to investigate the complaint and report all
23 findings back to the Board of Ethics; ~~or~~

1 (4) Determine that a violation of state or federal law may have occurred, and refer the
2 matter to the appropriate governmental authorities for review;~~or~~

3 (5) Determine that the complaint alleges facts sufficient to constitute a possible
4 violation of this article, ~~and that the Board of Ethics will conduct~~ schedule a
5 hearing, with proper notice, to determine whether a violation of this article has
6 occurred;~~or~~

7 (6) Determine, on its own motion or upon request of the party against whom the
8 complaint was filed, whether the complaint was filed with knowledge of its falsity
9 or with reckless disregard for its truth or falsity; or

10 (7) Refer the complaint to the Police Department for review and possible issuance of a
11 misdemeanor violation in accordance with Section 2-5-4 of this Code, ~~and, where~~
12 if a misdemeanor violation is issued, for prosecution by the Law Department.

13 (c) ~~Where~~ If a hearing is held, the Board of Ethics shall issue written findings of fact
14 and conclusions of law as to whether a violation of this article has occurred. In its decision, the
15 Board ~~of Ethics~~ may recommend the appropriate determinations that are delineated in Section 2-
16 5-146 of this Code.

17 **Sec. 2-5-146. Violations of article; Board of Ethics permitted to make public admonition and**
18 **to refer findings; cumulative effect.**

19 (a) ~~In the event~~ If the Board of Ethics determines that a violation of this article has
20 occurred, the Board may adopt a resolution of public admonition against ~~an~~ a current or former
21 elective officer, ~~or an~~ appointee, regarding the violation. In addition, ~~where~~ if, based upon an
22 investigation arising from a complaint, the Board ~~of Ethics~~ determines that there may be grounds
23 for further investigation for possible forfeiture of office or removal ~~from office~~ under Section 2-

1 107(B) or (C) of the Charter and applicable law, the matter may be referred by the Board to the
2 City Council for consideration of forfeiture or removal proceedings in accordance with Section 2-
3 107(B) or (C) of the Charter.

4 (b) ~~In the event~~ If the Board of Ethics determines that a violation of this article has
5 occurred, the Board may adopt a resolution of public admonition against a ~~public servant person~~
6 other than an elective officer, ~~or an~~ appointee, regarding the violation. In addition, ~~where~~ if the
7 Board ~~of Ethics~~ determines that a violation of this article by ~~such a~~ current public servant may
8 present grounds for disciplinary action, the matter may be referred by the Board to such public
9 servant's supervisor, with a recommendation that the public servant's conduct be reviewed for
10 disciplinary action. Any such disciplinary action must be carried out in accordance with the
11 provisions of the Charter and other laws, policies, and procedures that are applicable to the position
12 of the public servant, and with consideration for the gravity of the offense.

13 (c) ~~Where~~ If the Board of Ethics finds that a decision of the Mayor, the City Council,
14 the City Clerk, an appointee, a voting body, or other public servant was made in violation of this
15 article, the Board may recommend to the Mayor, the City Council, the City Clerk, the appointee,
16 the voting body, or other public servant that such decision be reviewed in accordance with the
17 applicable provisions of the Charter and this Code. Upon such recommendation, the decision may
18 be reviewed by the Mayor, the City Council, the City Clerk, the appointee, the voting body, or
19 other public servant in accordance with the applicable provisions of the Charter, this Code, and
20 any other applicable laws.

21 (d) ~~Where~~ If the Board of Ethics determines that an existing City contract has been
22 entered into in violation of the provisions of this article, after such determination and
23 recommendation from the Board, the City may:

- 1 (1) Suspend the contractor or vendor, ~~where~~ if legally permissible; and
- 2 (2) Disqualify or debar the contractor or vendor from contracting or subcontracting
- 3 with the City, ~~where~~ if legally permissible.
- 4 (e) The invocation of one subsection of this section does not preclude the application
- 5 of any other subsection of this section, or of any other applicable laws or policies.

6 **Sec. 2-5-147. Reimbursement of reasonable attorney fees to a public servant.**

7 (a) In accordance with Michigan common law and within the ~~structures~~ strictures of

8 Subsections (b), (c), and (d) of this section, the Board of Ethics shall reimburse a current or former

9 public servant from the City's general fund for reasonable attorney fees ~~which that~~ that are incurred ~~in~~

10 ~~the defense of~~ defending against a complaint filed against the current or former public servant

11 under Section 2-5-141 of this Code ~~where~~ if the Board determines that, based upon all factual

12 findings from ~~the~~ a hearing, the public servant:

- 13 (1) Acted in ~~the~~ the good faith in the performance of the public servant's duties; and
- 14 (2) Did not violate this article.

15 (b) The maximum reimbursement for such attorney fees shall not be greater than 150

16 percent of the hourly rate that is established, pursuant to 18 USC 3006A(d), for the payment of

17 appointed counsel for matters arising in the United States District Court for the Eastern District of

18 Michigan.

19 (c) When determining the hourly rate of attorney fees to be reimbursed to a current or

20 former public servant under Subsection (a) of this section, the Board shall consider the following

21 factors:

- 22 (1) The professional standing and experience of the attorney;
- 23 (2) The skill, time, and labor involved in defending against the ~~ethics~~ complaint; and

1 (3) The complexity of the complaint.

2 (d) ~~Where~~If the Board of Ethics determines that a current or former public servant is
3 entitled to reimbursement of attorney fees under Subsection (a) of this section, the administrative
4 rules that are promulgated pursuant to Section 2-5-101 of this Code shall control the procedure for
5 submission and review of relevant documentation.

6 **Subdivision D. Investigations and Notices of Charges**

7 **Sec. 2-5-161. Authority; contents thereof; procedure; notice to public servant, contractor, or**
8 **vendor.**

9 (a) The Board of Ethics is authorized to conduct investigations, on its own initiative,
10 regarding a ~~Board member's~~ perceived violation of the disclosure requirements that are found in
11 Division 2 of this article, or the standards of conduct that are found in Division 3 of this article.

12 (b) An investigation may be initiated by a member of the Board of Ethics who raises
13 the matter at a Board meeting, but, in order for the investigation to proceed, the Board must
14 approve the investigation at the same or subsequent Board meeting, by a three-fourths vote of
15 Board members serving.

16 (c) ~~Where~~If the Board of Ethics initiates an investigation, the ~~public servant,~~
17 ~~contractor, or vendor~~ person who is the subject of the investigation shall be sent, via first class and
18 certified mail, a written notice that:

19 (1) ~~That an~~Indicates the investigation has been authorized and is taking place; and

20 (2) ~~Which~~Contains a summary of the basis for the possible violation.

21 **Sec. 2-5-163. Harassment prohibited; removal from Board of Ethics.**

22 (a) It shall be a violation of this article for a member of the Board of Ethics to harass,
23 ~~through the initiation of an investigation against any public servant, contractor, or vendor~~ person

1 by ~~conducting~~ initiating an investigation with knowledge of its falsity, or with reckless disregard
2 for its truth or falsity.

3 (b) ~~In the event that~~ If a member of the Board of Ethics violates Subsection (a) of this
4 section, the member is subject to removal, in accordance with Section 2-107(C) of the Charter, by
5 the authority who appointed the member, whether the Mayor, the City Council, or the Mayor and
6 City Council jointly.

7 **Sec. 2-5-164. Communications with the Board of Ethics regarding an investigation**
8 **prohibited; exceptions; reporting substance of prohibited communication.**

9 (a) After an investigation has been initiated and during its pendency ~~before~~ with the
10 Board of Ethics, no member of the Board may communicate regarding the investigation directly
11 or indirectly with the ~~public servant, contractor, or vendor~~ person who is the subject of the
12 investigation, or the ~~public servant's, contractor's, or vendor's~~ person's ~~respective~~ counsel, except
13 that:

- 14 (1) The members of the Board of Ethics may discuss the investigation with their staff,
15 and may obtain legal advice from the Law Department or from outside counsel;
- 16 (2) The members of the Board of Ethics may discuss the investigation at a lawfully
17 conducted meeting; and
- 18 (3) When directed to do so by the Board of Ethics, its staff may engage in
19 communications necessary to conduct the investigation.

20 (b) ~~Where~~ If any ~~public servant, contractor, or vendor~~ person who is the subject of a
21 pending investigation, or the ~~public servant's, contractor's or vendor's~~ person's ~~respective~~ counsel,
22 attempts to communicate with a member of the Board of Ethics regarding ~~a pending~~ the

1 investigation, the member shall report the substance of the communication to the Board, on the
2 public record, at the next regular meeting of the Board.

3 **Sec. 2-5-165. Conducting investigations; preliminary written legal analysis; notice of**
4 **charges; scheduling hearing.**

5 (a) The Board of Ethics shall dispose of an investigation initiated by the Board and, if
6 ~~any,~~ a notice of charges, if any, within 91 calendar days after ~~its~~ the initiation of the investigation.
7 However, under extraordinary circumstances, as defined in Section 2-5-3 of this Code, the Board
8 ~~of Ethics~~ may extend its time to conduct an investigation and issue notice of charges by not more
9 than 91 additional days. ~~In the event that~~ If the Board ~~of Ethics~~ extends its time to conduct an
10 investigation, the Board shall notify, in writing, the ~~public servant, contractor, or vendor~~ person
11 who is the subject of the investigation initiated by the Board of the extension and the specific
12 reasons therefor.

13 (b) In accordance with administrative rules that are promulgated pursuant to Section 2-
14 5-101 of this Code:

15 (1) Within 14 calendar days of the initiation of an investigation by the Board of Ethics,
16 the City Attorney from the Law Department, or outside counsel, who represents the
17 Board shall provide the Board with a preliminary written legal analysis for the
18 Board's review;

19 (2) ~~Where~~ If the Board of Ethics determines that the issuance of a notice of charges is
20 unwarranted, the investigation that was initiated by the Board shall be closed, and
21 the ~~public servant, contractor, or vendor~~ person who is the subject of ~~an~~ the
22 investigation ~~that is initiated by the Board~~ shall be notified, in writing, via first class
23 and certified mail, that the investigation has been closed;

- 1 (3) ~~Where~~If the Board of Ethics determines that the issuance of a notice of charges is
2 warranted, the ~~public servant, contractor, or vendor~~ person who is the subject of ~~an~~
3 the investigation initiated by the Board shall be sent, via certified and first class
4 mail, a notice of charges, and be given the opportunity to submit a written response
5 to the notice of charges prior to the Board deciding whether to hold a hearing;
- 6 (4) The ~~public servant, contractor, or vendor~~ person who is the subject of ~~an~~ the
7 investigation initiated by the Board of Ethics shall have the opportunity to submit
8 to the Board a written response within 14 calendar days of receipt of a notice of
9 charges. ~~Where~~If the ~~public servant, contractor, or vendor~~ person who is the subject
10 of the investigation does not submit a written response within 14 days, the ~~public~~
11 ~~servant, contractor, or vendor~~ person shall not be precluded either from submitting
12 a written response later during the investigation, or from participating in any
13 hearing ~~which~~ that may be conducted regarding the notice of charges; and
- 14 (5) After receipt of the legal analysis from the City Attorney, or outside counsel's, ~~legal~~
15 ~~analysis~~ who represents the Board of Ethics, and the response, if any, from the
16 ~~public servant, contractor, or vendor~~ who is the subject of an investigation initiated
17 ~~by the Board of Ethics,~~ the Board shall review and consider the legal analysis and
18 the response, if any, from the ~~public servant, contractor, or vendor~~ person who is
19 the subject of the investigation, and dispose of the investigation in accordance with
20 Section 2-5-166 of this Code.

21 **Sec. 2-5-166. Dispose of notices of charges.**

22 After giving due consideration to an investigation in accordance with the time lines
23 delineated in Section 2-5-165 of this Code, the Board of Ethics shall take any action, or

1 combination of actions, upon majority vote, ~~which~~ that the Board deems appropriate in order to
2 dispose of the notice of charges, if any, including, but not limited to, one or more of the following:

- 3 (1) Close the investigation based on any of the following grounds:
- 4 a. The Board of Ethics has no jurisdiction over the matter; or
 - 5 b. The investigation did not compile facts sufficient to constitute a violation
6 of this article; ~~or~~
- 7 (2) Determine that no violation of this article has occurred; ~~or~~
- 8 (3) Determine that a violation of state or federal law may have occurred, and refer the
9 matter to the appropriate governmental authorities for review; ~~or~~
- 10 (4) Determine that the investigation has compiled facts sufficient to constitute a
11 possible violation of this article, and schedule a hearing, with proper notice, to
12 determine whether a violation of this article has occurred; ~~or~~
- 13 (5) Determine, on its own motion or upon request of the ~~public servant against whom~~
14 ~~the investigation has been made~~ person who is the subject of the investigation,
15 whether the investigation was initiated by a member of the Board of Ethics with
16 knowledge of its falsity or with reckless disregard for its truth or falsity, and, if so,
17 schedule a hearing in accordance with Section 2-5-169 of this Code to determine
18 the reimbursement of reasonable attorney fees; or
- 19 (6) Refer the investigation to the Police Department for review and possible issuance
20 of a misdemeanor violation in accordance with Section 2-5-4 of this Code, and,
21 ~~where~~ if a misdemeanor violation is issued, for prosecution by the Law Department.

1 **Sec. 2-5-168. Violations of article; Board of Ethics permitted to make public admonition and**
2 **to refer findings; cumulative effect.**

3 (a) ~~In the event~~ If the Board of Ethics determines that a violation of this article has
4 occurred, the Board may adopt a resolution of public admonition against ~~an~~ a current or former
5 elective officer, or an appointee, regarding the violation. In addition, ~~where~~ if, based upon an
6 investigation initiated by the Board, the Board of Ethics determines that there may be grounds for
7 further investigation for possible forfeiture of office or removal under Section 2-107(B) or ~~2-~~
8 ~~107(C)~~ of the Charter and applicable law, the matter may be referred by the Board to the City
9 Council for consideration of forfeiture or removal proceedings in accordance with Section 2-
10 107(B) or ~~2-107(C)~~ of the Charter.

11 (b) ~~In the event~~ If the Board of Ethics determines that a violation of this article has
12 occurred, the Board may adopt a resolution of public admonition against a ~~public servant person~~
13 other than an elective officer or an appointee, regarding the violation. In addition, ~~where~~ if the
14 Board of Ethics determines that a violation of this article by ~~such a current~~ such a current public servant may
15 present grounds for disciplinary action, the matter may be referred by the Board to such public
16 servant's supervisor, with a recommendation that the public servant's conduct be reviewed for
17 disciplinary action. Any such disciplinary action must be carried out in accordance with the
18 provisions of the Charter and other laws, policies, and procedures that are applicable to the position
19 of the public servant, and with consideration for the gravity of the offense.

20 (c) ~~Where~~ If the Board of Ethics finds that a decision of the Mayor, the City Council,
21 the City Clerk, an appointee, a voting body, or other public servant was made in violation of this
22 article, the Board may recommend to the Mayor, the City Council, the City Clerk, the appointee,
23 the voting body, or other public servant that such decision be reviewed in accordance with the

1 applicable provisions of the Charter and this Code. Upon such recommendation, the decision may
2 be reviewed by the Mayor, the City Council, the City Clerk, the appointee, the voting body, or
3 other public servant in accordance with the applicable provisions of the Charter, this Code, and
4 any other applicable laws.

5 (d) ~~Where~~If the Board of Ethics determines that an existing City contract has been
6 entered into in violation of the provisions of this article, after such determination and
7 recommendation from the Board, the City may:

- 8 (1) Suspend the contractor or vendor, ~~where~~if legally permissible; and
- 9 (2) Disqualify or debar the contractor or vendor from contracting or subcontracting
10 with the City, ~~where~~if legally permissible.

11 (e) The invocation of one subsection of this section does not preclude the application
12 of any other subsection of this section or of any other applicable laws or policies.

13 **Sec. 2-5-169. Reimbursement of reasonable attorney fees to a public servant.**

14 (a) In accordance with Michigan common law and within the strictures of Subsections
15 (b), (c), and (d) of this section, the Board of Ethics shall reimburse a current or former public
16 servant from the City's general fund for reasonable attorney fees ~~which~~ that are incurred ~~in the~~
17 ~~defense of an investigation conducted~~ defending against a notice of charges issued against the
18 current or former public servant under Section ~~2-5-161~~ 2-5-165 of this Code ~~where~~if the Board
19 determines that, based upon all factual findings from ~~the~~ a hearing, the public servant:

- 20 (1) Acted in good faith in the performance of the public servant's duties; and
- 21 (2) Did not violate this article.

22 (b) The maximum reimbursement for such attorney fees shall not be greater than 150
23 percent of the hourly rate that is established, pursuant to 18 USC ~~3006a(d)~~ 3006A(d), for the

1 payment of appointed counsel for matters arising in the United States District Court for the Eastern
2 District of Michigan.

3 (c) When determining the hourly rate of attorney fees to be reimbursed to a current or
4 former public servant under Subsection (a) of this section, the Board of Ethics shall consider the
5 following factors:

- 6 (1) The professional standing and experience of the attorney;
7 (2) The skill, time, and labor involved in defending against the ~~ethics~~ notice of charges;
8 and
9 (3) The complexity of the notice of charges.

10 (d) ~~Where~~ If the Board of Ethics determines that a current or former public servant is
11 entitled to reimbursement of attorney fees under Subsection (a) of this section, the administrative
12 rules that are promulgated pursuant to Section 2-5-101 of this Code shall control the procedure for
13 submission and review of relevant documentation.

14 **Section 2.** All ordinances, or parts of ordinances, that conflict with this ordinance are
15 repealed.

16 **Section 3.** This ordinance is declared necessary for the preservation of the public peace,
17 health, safety, and welfare of the People of the City of Detroit.

18 **Section 4.** Where this ordinance is passed by a two-thirds (2/3) majority of City Council
19 Members serving, it shall be given immediate effect and shall become effective upon publication
20 in accordance with Section 4-118(1) of the 2012 Detroit City Charter. Where this ordinance is
21 passed by less than two-thirds (2/3) majority of City Council Members serving, it shall become

- 1 effective thirty (30) days after publication in accordance with Section 4-118(2) of the 2012
- 2 Detroit City Charter.

Approved as to form:

**Has not yet been reviewed by
Corporation Counsel**

Lawrence T. García
Corporation Counsel

DRAFT

Appendix B

Advisory Opinions decided in 2020



City of Detroit Board of Ethics

Kristin Lusn, Esq., Chairperson
Freda G. Sampson, Vice Chairperson
David W. Jones, Esq.
Mario Morrow, Sr.
Byron Osbern
Robert Watt

Advisory Opinion #2020-01

Issued: July 14, 2020

Advisory Opinion #2020-01: 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 2020-01. The Requestor is not prohibited by the Ethics Ordinance from serving as a member of the [REDACTED], but the Requestor should take care to ensure that his activities related to the Advisory Board do not result in a violation of the Ethics Ordinance. The Requestor is prohibited from using or disclosing confidential information in the course of his involvement with the Advisory Board. The Requestor should also refrain from using any City property to perform activities.

I. Procedural Background

Request for Advisory Opinion 2020-01 (the “Request”) was sent to the Board of Ethics (the “Board”) by electronic communication and received on January 14, 2020. 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 maintains confidentiality in this matter.

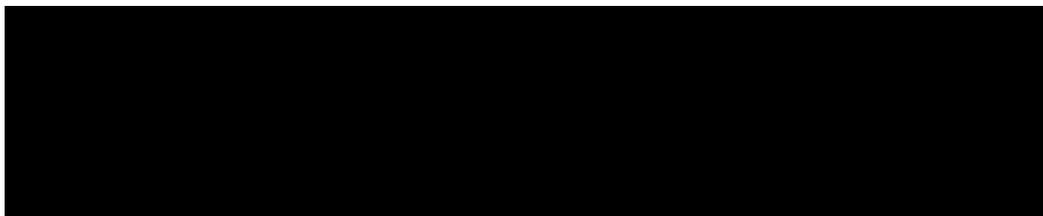
Pursuant to Section 2-5-124(a) of the 2019 Detroit City Code (Code), the 91-day period for review of this request will conclude on April 14, 2020. Section 2-5-1 24(a) also provides that the Board may, under extraordinary circumstances, extend its time to respond to a specific request by not more than 91 additional days and notify the requestor, in writing, of the specific reasons for such extension. The 91-day extension period concludes on July 14, 2020.

At its meeting on May 13, 2020, the Board determined that the Request met the basic requirements for a Request for Advisory Opinion under Section 2-6-101 of the Ordinance. The Board heard a Preliminary Analysis from legal counsel on the same day, and after consideration and discussion of the issues presented, the Board voted to direct staff to perform more fact finding. On June 9, 2020, the Board’s staff provided the relevant additional information that it gathered. On July 14, 2020, the Board heard a Supplemental Preliminary Analysis from legal

counsel. 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

The Requestor is a [REDACTED] for the [REDACTED] and the [REDACTED]. The [REDACTED], as stated on its website, “provides research, policy analysis, and general legislative support to the Detroit City Council.”⁴ According to the [REDACTED]’s page on the City’s website, the [REDACTED]’s



As for the [REDACTED], per the Charter, it advises the [REDACTED] on the physical, social, and economic development of the City, and “performs other functions as directed by the City Council,” based on its webpage.

Included with the Request is a printed message that was sent to the Requestor from a Project Manager for Design Core Detroit, which is a nonprofit organization that promotes the importance of design in Detroit and assists businesses that provide design services. Based upon its website, [REDACTED] is a division of the [REDACTED], which is an educational institution that is located in Detroit and offers educational programs that emphasize the studies of art and design. According to [REDACTED]’s website, multiple City departments have partnered with [REDACTED] on several projects. In the message that was included in the Request, the Project Manager asks the Requestor to join the [REDACTED], which will assist in the creation of a publication that is referred to as a “[REDACTED].” As stated in the message by the Project Manager, the [REDACTED] “shall serve as a useful tool in educating property owners/developers on the value of design while also helping designers to advocate for themselves on projects.” According to the message, the Advisory Board is composed of several experts in real estate or design. The prospective members of the Advisory Board were asked to review prospective content for the [REDACTED], and provide input on the creation of the Design Guide until the end of May 2020, which is when the [REDACTED] was expected to be completed. The message also asked that Advisory Board members provide advice for the distribution and use of the [REDACTED] after it is published.

The Requestor would like to know if his participation on this advisory board will create a conflict of interest with his employment activities with the City. By this request, the Requestor seeks an advisory opinion as to the applicability of the 2012 Detroit City Charter and 2019 Detroit City Code.

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 2-5-70 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)

Commentary— This provision implements the directive of [Section 2-106.2](#) of the Charter that this article shall provide for the disclosure of any financial interest, which a public servant, or the public servant's immediate family member, has in any contract or in any real or personal property, that is the subject of a governmental decision by the City or any agency of the City over which the public servant exercises significant authority in the performance of the public servant's duties. This section is not intended to conflict with the Michigan Contracts of Public Servants with Public Entities Act, being MCL 15.301 *et seq.*

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)

Commentary— This provision prohibits a public servant from using the public servant's official position in violation of federal or state law, such as the state law prohibiting bribery, being MCL 750.118, the state law regulating conflicts of interest pertaining to public contracts involving public servants under the Michigan Contracts of Public Servants with Public Entities Act, being MCL 15.301 *et seq.*, the state law regulating political campaign organizations under the Michigan Campaign Finance Act, being MCL 169.201 *et seq.*, and the provisions of the Michigan Gaming Control and Revenue Act, being MCL 432.218(2)(c) and (d), prohibiting a government official from soliciting or knowingly accepting anything of value or benefit from a casino licensee in return for influencing official action.

The prohibition in the article is not intended to prevent a public servant from giving advice or seeking information as a necessary part of the public servant's duties, or from communicating with a City agency in the ordinary course of the City's business. Nor is this prohibition intended to chill a public servant's free speech rights under the First Amendment to the United States Constitution or under Article I, Section 5, of the 1963 Michigan Constitution where the public servant is expressing the public servant's views to another City public servant or before a City agency in a non-official capacity.

Sec. 2-5-68. - Solicitation or acceptance of loan or payment prohibited.

A public servant who, in the course of the public servant's duties, exercises significant authority shall not solicit or accept a loan or payment from an individual who, or entity which, is providing service to, or receiving tax abatements, credits, or exemptions from the City.

(Code 1984, § 2-6-69; Ord. No. 18-12, § 1(2-6-69), eff. 8-31-2012)

IV. Additional Information

According to the additional information acquired by Board staff, the Requestor's job duties include making [REDACTED]

[REDACTED]. The Requestor's job also involves giving presentations on behalf of the City to other governmental agencies, community groups, developers, and the general public. Due to community engagement and other events that are integral to the [REDACTED], the Requestor has an irregular work schedule that sometimes involves work in the evenings and on weekends, but the Requestor is generally required to work forty hours per week. Furthermore, as a [REDACTED], the Requestor has access to confidential information.

The additional information also revealed that the Requestor had joined the [REDACTED] without waiting to receive an advisory opinion due to the limited time available to engage in the opportunity. However, the Requestor's supervisors had given the Requestor their approval for him to participate on the Advisory Board after reviewing the details of the opportunity and consulting with attorneys within the LPD and the Law Department. One of the Requestor's supervisors described [REDACTED]'s activities as being "in line with expressed desires of the City." The information obtained by the Board's staff did not reveal any past, current, or proposed contracts between the City and [REDACTED]. Furthermore, the additional information no direct interactions between [REDACTED]'s Advisory Board and the City. Also, the Requestor and his supervisor indicated that there are plans in place for the Requestor to recuse himself from any matters where such interaction may occur.

According to the additional information obtained by the Board's staff, the Requestor's membership on the Advisory Board has been extended due to the ongoing coronavirus pandemic.

The additional information indicates that the Requestor's participation on the Advisory Board is as a non-paid volunteer. The Requestor estimates that his activities for the Advisory Board take about 10 hours per week. Although the Requestor indicated that some of his activities for the Advisory Board have occurred during traditional working hours (i.e., between 9 a.m. and 5 p.m.), he stated—and his supervisor confirmed—that his work hours as [REDACTED] are very flexible, and that his activities for the Advisory Board do not interfere with the performance of his duties. At the time the Requestor provided the additional information requested, his participation with the [REDACTED] has only been conducted through email. The Requestor acknowledged having used both his personal and work computers, as well as his work email, for those activities. Furthermore, the Requestor indicated that he has not shared any confidential information with the Advisory Board.

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

Beginning with disclosure requirements, Section 2-5-3 of the Ethics Ordinance defines the phrase “exercises significant authority” as “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.” Examples of a public servant who exercises significant authority, as defined by Section 2-5-3, include public servants who make decisions on behalf of the City, such as City Council Members, as well as public servants who make recommendations to such decision-makers in the course of the performance of the public servant's official duties. Because the Requestor's job involves [REDACTED], the Requestor exercises significant authority as that phrase is defined in the Ethics Ordinance.

However, Section 2-5-31 of the Ethics Ordinance only requires disclosures of financial or property interests. The additional information obtained by the Board's staff indicates that the Requestor's involvement with [REDACTED] Board is as a non-paid volunteer. Accordingly, the Requestor's membership with the Advisory Board does not create a financial interest. Furthermore, none of the information obtained regarding the Request provides reason to believe that the Requestor has a property interest related to his involvement with the Advisory Board. Therefore, the Requestor is not required by Section 2-5-31 to file a disclosure regarding his membership with the [REDACTED]. Nevertheless, the Requestor may still file a disclosure of his membership on the Advisory Board for the sake of transparency.

We follow the analysis of disclosure requirements with an analysis of the standards of conduct. In regard to Section 2-5-62 of the Ethics Ordinance, public servants are generally prohibited from using or disclosing confidential information for personal or private gain. The Ethics Ordinance defines “confidential information” as:

information 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, being MCL 15.231 et seq., or pursuant to other law, regulation, policy or procedure recognized by law, and that the public servant is unauthorized to disclose.

According to the information obtained by the Board's staff, the Requestor has access to confidential information as [REDACTED]. The Requestor must not use or disclose such confidential information in the course of his involvement with [REDACTED]'s [REDACTED] Advisory Board.

As to Section 2-5-63 of the Ethics Ordinance, public servants are generally prohibited from using City resources in violation of the City's policies and procedures. The Board's staff reported that the Requestor acknowledged he had used his work computer and work email address in relation to his activities with [REDACTED]'s Advisory Board, and that the Requestor expressed understanding the potential concerns and implications. In order to avoid any potential violation of Section 2-5-63 in the future, the Requestor should not use any City property, including his work computer and work email, to conduct activities for the Advisory Board without having first checked the applicable policies and procedures governing the use of such property, and ensuring that the desired use of City property is permitted by the applicable policies and procedures before engaging in such use. The Requestor should make sure to obtain approval for any exceptions to the relevant policies and procedures.

Section 2-5-64 of the Ethics Ordinance generally prohibits public servants from engaging in employment or rendering services for entities other than the City when doing so would be "in conflict or incompatible with the proper discharge of the public servant's official duties for the City," or when doing so would be "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."

According to the information obtained by the Board's staff, the Requestor's supervisor confirmed that the Requestor's activities for the Design Guide Advisory Board are not in conflict with his duties as a City Planner, and that those activities have not interfered with the Requestor's ability to perform his duties for the City. The Requestor should continue to ensure that his activities for the Advisory Board do not interfere with his duties as a City Planner.

If a matter concerning [REDACTED] is subject to a decision by the City, then Section 2-5-65 of the Ethics Ordinance prohibits the Requestor from representing the organization in that matter unless the circumstances of the situation satisfy one of the available exceptions to that prohibition. The information obtained by the Board's staff indicates that [REDACTED]'s Design Guide Advisory Board does not directly interact with the City in any matter, but that the Requestor and his supervisor have a plan in place for the Requestor to recuse himself from involvement in any matter where such interaction would occur. The Requestor should avoid any potential violation of Section 2-5-65 by adhering to the plan to recuse himself in any matters involving direct interaction between the Advisory Board and the City.

In regard to Section 2-5-66 of the Ethics Ordinance, the Requestor is generally prohibited from participating in the negotiation or making of any contract or transaction between the City and a business entity in which he has a financial interest. Because the Requestor's participation as a member of the Design Guide Advisory Board does not implicate a financial interest, Section 2-5-66 is not relevant to the Request.

As to Section 2-5-67 of the Ethics Ordinance, the Requestor is prohibited from using his position to improperly influence the decisions 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.” The Requestor’s position involves providing recommendations to the CPC and the City Council. However, the information obtained from the Board’s staff indicates that the Requestor and his supervisor have taken a proactive approach to address any potential conflicts of interest that may arise pertaining to the Requestor’s membership with [REDACTED]. In order to avoid any potential violation of Section 2-5-67, the Requestor should recuse himself from any matters involving the Advisory Board that come before the CPC or the City Council.

Section 2-5-68 of the Ethics Ordinance prohibits public servants who “exercise significant authority,” as that phrase is defined in Section 2-5-3 of the Ethics Ordinance, from accepting payment from an entity that provides services to the City, or that receives tax abatements, credits, or exemptions from the City. Although the information obtained by the Board’s staff indicates that the Requestor exercises significant authority, the information also indicates that the Requestor is not being paid for his participation as a member of [REDACTED]. The Requestor will not be in violation of Section 2-5-68 as long as he does not solicit or receive any payment or loan from [REDACTED].

VI. 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 2020-01. The Requestor is not prohibited by the Ethics Ordinance from serving as a member of the [REDACTED], but the Requestor should take care to ensure that his activities related to the Advisory Board do not result in a violation of the Ethics Ordinance. The Requestor is prohibited from using or disclosing confidential information in the course of his involvement with the Advisory Board. The Requestor should also refrain from using any City property to perform activities.

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Dated: August 26, 2020

City of Detroit Board of Ethics

Kristin Lusn, Esq., Chairperson
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David W. Jones, Esq.
Mario Morrow, Sr.
Byron Osbern
Robert Watt

REDACTED

Advisory Opinion #2020-02

Issued: April 21, 2020

Advisory Opinion #2020-02: The Board of Ethics concludes the Request for Advisory Opinion 2020-02 in accordance with Sec. 2-6-104(b)(4) and issues this advisory opinion in response to the Request. The Ethics Ordinance prohibits Requestor from accepting employment with [REDACTED] until a period of one year has passed from the date her employment ended with the City. The Ethics Ordinance prohibits the Requestor from accepting the job because it involves the sharing of confidential information. Also, the Ethics Ordinance prohibits Requestor from receiving compensation for any work or any other matter that she worked on or acquired knowledge about while working for the City. And finally, the Ethics Ordinance prohibits Requestor from accepting work with [REDACTED] because the Requestor was involved in the award or management of the contract while she was a public servant.

I. Procedural Background

Request for Advisory Opinion 2020-02 (the “Request”) is dated January 17, 2020, and was sent to the Board of Ethics (the “Board”) by electronic communication and received on January 21, 2020. 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 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 April 21, 2020. 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 July 21, 2020.

At its meeting on April 21, 2020, the Board determined that after the Requestor’s signature is placed on the initiating document, the Request will meet the basic requirements for a Request for

Advisory Opinion under Section 2-6-101 of the Ordinance. The Requestor's signature was confirmed on the Request on the same day. The Board heard a Preliminary Analysis from legal council on the same day, and 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 summation, the question presented to the Board is whether the Requestor, who is a former public servant, may work for a nonprofit organization that has a contract with the City if the Requestor has been involved with the project to which the contract pertains. By this request, the Requestor seeks an advisory opinion as to the applicability of the 2012 Detroit City Charter and 2019 Detroit City Code.

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 2-5-71 of the 2019 Detroit City Code. It states as follows:

Sec. 2-5-71. - One year post-employment prohibition.

(a) Subject to state law, for one year after employment with the City, a public servant shall not lobby or appear before the City Council or any City department, agency, board, commission or body, or receive compensation for any services in connection with any matter in which the public servant was directly concerned, personally participated, actively considered or acquired knowledge while working for the City.

(b) Subject to state law, for one year after employment with the City, a public servant shall not accept employment with any person who, or entity which, did business with the City during the former public servant's tenure where the public servant was in any way involved in the award or management of the contract, or the employment would require the sharing of confidential information.

(Code 1984, § 2-6-72; Ord. No. 18-12, § 1(2-6-72), eff. 8-31-2012)

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

The Requestor formerly worked as a [REDACTED] for the City's [REDACTED]. Therefore, the Requestor is a former public servant as that term is defined in Section 2-105 of the 2012 Detroit City Charter (Charter) and the Ethics Ordinance at Section 2-5-3 of the Code. Accordingly, the Requestor's conduct is regulated by the Ethics Ordinance. The analysis is as follows.

According to the Request, while the Requestor worked for the City, she led the early design and development of a project, and was significantly involved prior to the contract's execution. Engaging in those activities demonstrates that the Requestor was directly concerned with, personally participated in, and acquired knowledge regarding the project. As such, Section 2-5-71 (a) generally prohibits the public servants from "receiv[ing] compensation for any services in connection with" the project for a year following the end of the Requestor's employment with the City.

The Request states that Requestor has a pending job offer and not a volunteer opportunity. Therefore, it is presumed that she will receive compensation from the entity offering the job. Because the Requestor's employment with the City ended on [REDACTED], 2019, the prohibition against receiving compensation for providing services in connection with the project remains in effect until [REDACTED] 2020. Therefore, Section 2-5-71(a) of the Code prohibits the Requestor from receiving compensation from [REDACTED] for any work related to the project until one year from the date that her employment with the City ends.

Furthermore, in regard to Section 2-5-71(b) of the Code, for one year after the Requestor's employment with the City ended, she is prohibited from accepting employment with an organization that did business with the City during the [Requestor's] tenure where [she was in any way involved in the award or management of the contract or the employment would require the sharing of confidential information." As provided for by the information in the Request, [REDACTED] collaborated as a partner with the City's [REDACTED], and has a contract with the City. The details of the Request state that Requestor was involved with work on the project, and that she was tasked with [REDACTED] prior to the contract being finalized. By conducting that review, the Requestor was involved, in some way, with the award of the contract, [REDACTED] to the contract. Therefore, because the Requestor was involved in some way with the award of the contract while she was a public servant, she is prohibited from accepting employment with [REDACTED] until one year from the date that her employment with the City ended.

Also, considering that [REDACTED] receives information related to the project from the City pursuant to a contract, [REDACTED]'s work on the project likely involves confidential information. It should be noted that Section 2-5-71(b) of the Code establishes a prohibition against former public servants accepting employment that "would require the sharing of confidential information" for one year after the public servant's employment with the City ends. The Request states that the job being offered to the Requestor would involve management of the project. In order to effectively manage the project, the Requestor will probably need to share information concerning the project. Requestor would likely have to share confidential information. Therefore, until one year has passed from the date that the Requestor's employment with the City ended, she is prohibited from accepting employment with [REDACTED] that would involve the sharing of confidential information.

V. Conclusion

The Board of Ethics concludes the Request for Advisory Opinion 2020-02 in accordance with Sec. 2-6-104(b)(4) and issues this advisory opinion in response to the Request. The Ethics Ordinance prohibits Requestor from accepting employment with [REDACTED] until a period of one year has passed from the date her employment ended with the City. The Ethics Ordinance prohibits the Requestor from accepting the job because it involves the sharing of confidential information. Also, the Ethics Ordinance prohibits Requestor from receiving compensation for any work or any other matter that she worked on or acquired knowledge about while working for the City. And finally, the Ethics Ordinance prohibits Requestor from accepting work with [REDACTED] because the Requestor was involved in the award or management of the contract while she was a public servant.

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Dated: May 15, 2020

City of Detroit Board of Ethics

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Advisory Opinion #2020-04

Issued: May 13, 2020

Advisory Opinion #2020-04 It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4) of the Code. The Requestor should refrain from using any City property for her service as a Wilderness Trip Leader. If she wishes to use any City property while on the Cranbrook Schools trip, then she should check the City's policies and procedures applicable to the DPRD and obtain approval from her supervisor to ensure that any such use of City property is permitted. Additionally, the Requestor's service as a Wilderness Trip Leader for the Cranbrook Schools trip is appropriate if she uses vacation to participate and the trip timing has no conflict with any of her work priorities for DPRD.

If the Requestor expects to receive compensation for her service as a Wilderness Trip Leader for Cranbrook Schools, she should complete a *Request for Approval of Outside Employment* form, which may be obtained from the DPRD's Human Resources Office, and submit the completed form to the head of the DPRD. The Requestor must receive permission from the head of the DPRD before she provides services for which she expects to be compensated by a non-City entity.

I. Procedural Background

Request for Advisory Opinion 2020-04 (the "Request") was sent to the Board of Ethics (the "Board") by electronic communication and received on February 04, 2020. 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 waives 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 May 05, 2020. 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 August 04, 2020.

At its meeting on May 13, 2020, the Board determined that the Request met the basic requirements for a Request for Advisory Opinion under Section 2-6-101 of the Ordinance. The Board heard a Preliminary Analysis from legal council on the same day and 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. Information from the Request

The Requestor is a Naturalist for the DPRD. The Request asks for an advisory opinion regarding the Requestor's prospective service as a "Wilderness Trip Leader" for Cranbrook Schools on a trip with students of Cranbrook Schools during their Spring Break. Cranbrook Schools is a private school system with a campus in Bloomfield Hills where its schools are located. The Request indicates that the Requestor's prospective service as a Wilderness Trip Leader would be pursuant to a short-term contract.

The Requestor states that the Spring Break trip would be the only trip for which she would be a Wilderness Trip Leader this year. The Requestor also states that she will use vacation time for the days that she will be absent from her job with the City due to the trip. She also indicates that the trip will not conflict with any of her work duties for the DPRD, as there are no scheduled programs during the time when the trip will occur. According to the Requestor, "DPRD Nature Programs and Cranbrook Wilderness do not currently partner or contract with each other for nature programming."

The question presented to the Board is whether the Requestor may serve as a Wilderness Trip Leader for an event that is organized by Cranbrook Schools if the Requestor uses vacation days for that time. By this request, the Requestor seeks an advisory opinion as to the applicability of the 2012 Detroit City Charter and 2019 Detroit City Code.

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 2-5-62,-63 of the 2019 Detroit City Code. It states as follows:

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)

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

In regard to Section 2-5-63 of the Ethics Ordinance, public servants are generally prohibited from using City property, which would violate the City's policies and procedures. The Requestor has not indicated whether she is considering using any City property during the trip or in relation to her service as a Wilderness Trip Leader for Cranbrook Schools. For the purpose of avoiding any potential violation of Section 2-5-63, the Requestor should either refrain from using any City property for her service as a Wilderness Trip Leader for Cranbrook Schools, or, if the Requestor does wish to use any City property for her service with Cranbrook Schools, the Requestor should check the City's policies and procedures applicable to the DPRD and obtain approval from her supervisor to ensure that the use of City property is permitted.

Section 2-5-64 of the Ethics Ordinance generally prohibits public servants from engaging in employment or rendering services for entities other than the City when doing so would be "in conflict or incompatible with the proper discharge of the public servant's official duties for the City," or when doing so would be "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." The Requestor indicated that she will be using vacation days to participate in the trip with the Cranbrook Schools students. The Requestor also stated that the timing of the trip does not conflict with any of her work priorities for the DPRD, and that the DPRD does not have any scheduled programs during the time that the trip will occur. Accordingly, the Requestor's prospective service for the Cranbrook Schools trip does not seem to present any potential conflict or incompatibility with the Requestor's job duties for the DPRD. Furthermore, there does not seem to be any reason to believe that serving as a Wilderness Trip Leader for the Cranbrook Schools will affect the Requestor's independence of judgment or action in the performance of her official duties for the City.

Additionally, if the Requestor receives compensation for her service as a Wilderness Trip Leader for Cranbrook Schools, then she must ensure that she complies with the City's Outside Employment Policy. That policy requires City employees to notify and obtain approval from the head of their department or agency if they expect to begin or continue employment with an outside entity while a City employee.

According to the policy, "[a] *Request for Approval of outside Employment* form must be completed by the employee to notify his/her department or agency management of any current or future expected outside employment." The Requestor may obtain a *Request for Approval of outside Employment* form from the DPRD's Human Resources Office. If the Requestor expects to receive compensation for her service as a Wilderness Trip Leader, then she should submit a completed form to the head of the DPRD, and not begin work as a Wilderness Trip Leader for Cranbrook Schools until she receives approval from the head of the DPRD to do so.

V. Conclusion

It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b) (4) of the Code. The Requestor should refrain from using any City property for her service as a Wilderness Trip Leader. If she wishes to use any City property while on the Cranbrook Schools trip, then she should check the City's policies and procedures applicable to the DPRD and obtain approval from her supervisor to ensure that any such use of City property is permitted. Additionally, the Requestor's service as a Wilderness Trip Leader for the Cranbrook Schools trip is appropriate if she uses vacation to participate and the trip timing has no conflict with any of her work priorities for DPRD.

If the Requestor expects to receive compensation for her service as a Wilderness Trip Leader for Cranbrook Schools, she should complete a *Request for Approval of Outside Employment* form, which may be obtained from the DPRD's Human Resources Office, and submit the completed form to the head of the DPRD. The Requestor must receive permission from the head of the DPRD before she provides services for which she expects to be compensated by a non-City entity.

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Dated: June 12, 2020

City of Detroit Board of Ethics

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Advisory Opinion #2020-06

Issued: May 13, 2020

Advisory Opinion #2020-06:—It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4) of the Code. The Requestor may only serve as a member of Ford's advisory board only if he is uncompensated. The Ethics Ordinance prohibits public servants from soliciting or accepting any payment from Ford because it receives tax abatements from the City. Serving as an uncompensated member of Ford 's advisory board, in and of itself, presents no issue of incompatibility with the Requestor's official duties as the Director of Public Safety and Cyber Security.

Nevertheless, the Requestor should take note of several other requirements imposed by the Ethics Ordinance that may be implicated by serving as a member of Ford's advisory board. The Ethics Ordinance generally prohibits Requestor from accepting any gift, or other thing of value provided without remuneration, from Ford. However, the Requestor, due to one of the exceptions, may accept complimentary copies of informational materials. Requestor is also permitted to accept admission or registration fees, travel expenses, entertainment, meals, or refreshments that are provided in relation to his provision of assistance to Ford, but only if the City does not compensate the Requestor for admission or registration fees, travel expenses, entertainment, meals, or refreshments for the same activity. Additionally, any item the Requestor is permitted to accept from Ford without remuneration must not be provided in the form of a direct monetary payment, as acceptance of payment from Ford would constitute a violation of Section 2-5-68 of the Code.

Furthermore, the Ethics Ordinance prohibits the Requestor from acting as a representative of Ford in regard to matters that are pending before a City agency, unless either the representation is required by the Requestor's official duties to the City; or a) the representation pertains to a matter that is not pending a decision by a voting body on which the Requestor does not serve, b) the Requestor is not compensated by a n y party for the representation, and c) the representation occurs only during the Requestor's vacation or departmental leave time.

Additionally, the Requestor is prohibited from using or disclosing confidential information in the course of serving Ford's advisory board. If the Requestor believes that circumstances necessitate or warrant the use or disclosure of confidential information, then the Requestor must obtain authorization from the appropriate City officials before using or disclosing the

relevant information. Additionally, the Requestor is encouraged to avoid using any City property to perform activities within the scope of his service to Ford's advisory board.

Also, because the Ethics Ordinance does not directly prohibit the use of City property for activities that are outside the scope of a public servant's job duties, if the Requestor believes pertinent circumstances warrant the use of City property for purposes related to his service on Ford's advisory board, he must check the applicable policies and procedures governing the use of that property before using it and ensure that the desired use of City property would not violate the applicable policies or procedures.

I. Procedural Background

Request for Advisory Opinion 2020-06 (the "Request") was sent to the Board of Ethics (the "Board") by electronic communication and received on February 11, 2020. 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 waives 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 12, 2020. Section 2-5-1 24(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 August 11, 2020.

At its meeting on May 13, 2020, the Board determined that the Request met the basic requirements for a Request for Advisory Opinion under Section 2-6-101 of the Ordinance. The Board heard a Preliminary Analysis from legal council on the same day and 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. Information from the Request

The Requestor is the Director of Public Safety and Cyber Security for the City's Department of Innovation and Technology (DoIT). The Request seeks an advisory opinion regarding the application of the Standards of Conduct as to the Requestor prospectively serving as a member of a Ford Motor Company (Ford) advisory board. Ford manufactures motor vehicles that are purchased by the City from local automobile dealerships. Ford is also a party to an agreement with the City to provide benefits to the community in the area impacted by Ford's renovation of Michigan Central Station.

The advisory board provides insight to Ford regarding police and first responder vehicles and reviews those types of vehicles made by Ford. Less than 30 people currently serve on the board. According to the Request, the advisory board meets three times per year and members may serve on the advisory board for no longer than three years. The Requestor states that he was invited to join the advisory board due to his experience and knowledge of vehicles.

The question presented to the Board is whether the Requestor may serve as a member of Ford's advisory board that provides insight to Ford regarding police and first responder vehicles and performs reviews of those types of vehicles made by Ford. By this request, the Requestor seeks an advisory opinion as to the applicability of the 2012 Detroit City Charter and 2019 Detroit City Code.

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 2-5-62,-63, -64, -65, -68, and -70 of the 2019 Detroit City Code. It states as follows:

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. 2-5-68. - Solicitation or acceptance of loan or payment prohibited.

A public servant who, in the course of the public servant's duties, exercises significant authority shall not solicit or accept a loan or payment from an individual who, or entity which, is providing service to, or receiving tax abatements, credits, or exemptions from the City.

(Code 1984, § 2-6-69; Ord. No. 18-12, § 1(2-6-69), eff. 8-31-2012)

Sec. 2-5-70. - Prohibition on gifts and gratuities; exceptions.

(a) A public servant shall not accept gifts, gratuities, honoraria, or other thing of value from any person or entity doing business or seeking to do business with the City, is seeking official action from the City, has interests that could be substantially affected by the performance of the public servant's official duties, or is registered as a lobbyist under applicable law and [Section 2-5-35](#) of this Code.

(b) The prohibition in Subsection (a) of this section shall not apply:

- (1) To an award publicly presented to a public servant by an individual, governmental body, or non-governmental entity or organization in recognition of public service;
- (2) To complimentary copies of trade publications, books, reports, pamphlets, calendars, periodicals or other informational materials;

(3) To a gift received from a public servant's immediate family member or relative, provided, that the immediate family member or relative is not acting as a third party's intermediary or an agent in an attempt to circumvent this prohibition;

(4) To an admission or registration fee, travel expenses, entertainment, meals or refreshments that are furnished to the public servant:

a. By the sponsor of an event, appearance or ceremony, which is related to official City business in connection with such an event, appearance or ceremony and to which one or more members of the public are invited; or

b. In connection with teaching, a speaking engagement, or the provision of assistance to an organization or another governmental entity as long as the City does not compensate the public servant for admission or registration fees, travel expenses, entertainment, meals or refreshment for the same activity.

(Code 1984, § 2-6-71; Ord. No. 18-12, § 1(2-6-71), eff. 8-31-2012)

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

Section 2-5-68 of the Code is the first relevant section of the Ethics Ordinance analyzed in this Preliminary Analysis because its application to the facts and circumstances of the Request is the most pivotal to the question of whether the Requestor may serve as a member of Ford's advisory board, and it provides implications that affect the analyses of other relevant sections of the Ethics Ordinance. Section 2-5-68 provides, in relevant part, that "[a] public servant who, in the course of the public servant's duties, exercises significant authority shall not solicit or accept. . . payment from an ... entity which [] is... receiving tax abatements. . . from the City." The phrase "exercises significant authority" is defined in Section 2-5-3 of the Code as "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."

As the Director of Public Safety and Cyber Security, the Requestor exercises significant authority because his authority over matters pertaining to public safety and cybersecurity provides him the ability to direct actions related to those matters, and also because his experience with public safety and cybersecurity allows him to influence decisions made by other City officials regarding matters related to public safety and cybersecurity by providing recommendations that are based on his experience with those subjects. Ford is receiving tax abatements from the City that are related to Ford's renovation and development project for Michigan Central Station.

The Request does not state whether or not the Requestor expects to be compensated for his prospective service on Ford's advisory board. However, because the Requestor exercises significant authority and because Ford receives tax abatements from the City, the Requestor is prohibited by Section 2-5-68 of the Code from accepting or soliciting payment from Ford, including compensation for service on Ford's advisory board.

Section 2-5-64 of the Code generally prohibits public servants from knowingly rendering service for a non-City entity if the service is "in conflict or incompatible with the proper discharge of the public servant's official duties for the City," or if the services 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." Because Ford 's advisory board meets only three times per year and the activities of Ford's advisory board members do not negatively affect the City 's public safety or cybersecurity, Ford's advisory board membership is not in conflict or incompatible with the discharge of the Requestor's duties for the City if the Requestor receives no payment for his service as an advisory board member and does not engage in any activities for the advisory board, including the attendance of meetings, during times when he is expected to be performing work for the City. The Requestor may use vacation time to attend meetings or engage in other activities for the advisory board during normal business hours for the City.

Furthermore, because the Requestor is prohibited from accepting payment from Ford, his prospective service as a member of Ford's advisory board would be uncompensated, and thus it would not be reasonably expected to impair the Requestor's independence of judgment or action in the performance of his duties as Director of Public Safety and Cyber Security for the City. Therefore, the Requestor serving as an uncompensated member of Ford's advisory board would not violate Section 2-5-64 of the Code because that service would not be in conflict or incompatible with the discharge of the Requestor's duties to the City, and it would not be reasonably expected to impair the Requestor's independence of judgment or action in the performance of his duties to the City.

Section 2-5-70 of the Code generally prohibits public servants from accepting any gifts, or anything of value that is provided without requital, from an entity that is "doing business or seeking to do business with the City, is seeking official action from the City, has interests that could be substantially affected by the performance of the public servant's official duties, or is registered as a lobbyist under applicable law and Section 2-5-35 of this Code..." Ford is "doing business" with the City because Ford, pursuant to an agreement with the City, provides benefits to the community in the area impacted by Ford 's renovation of Michigan Central Station, and, in return, Ford receives tax abatements from the City. Therefore, because Ford is doing business with the City, it fits the description of an entity from which public servants are generally prohibited from accepting things of value.

However, Section 2-5-70 of the Code does provide several exceptions to the prohibition. Two exceptions to the prohibition could be potentially implicated by the Requestor serving as a member of Ford's advisory board. One of those exceptions would allow the Requestor to accept "... complimentary copies of trade publications, books, reports, pamphlets, calendars, periodicals or other informational materials" from Ford. The other exception would allow the Requestor to accept "an admission or registration fee, travel expenses, entertainment, meals or refreshments that are furnished to" the Requestor. If any of those items are provided in connection with the Requestor's "provision of assistance" to Ford, then "the City does not compensate the Requestor for admission or registration fees, travel expenses, entertainment, meals or refreshment for the same activity."

Therefore, in accordance with Section 2-5-70 of the Code, the only things of value that the Requestor may accept from Ford without being required to provide remuneration are complimentary copies of information materials, and the Requestor may accept an admission or registration fee, travel expenses, entertainment, meals, or refreshments from Ford in connection with his service as an advisory board member but not if the City compensates the Requestor for

any of those items in relation to the same activity." Furthermore, because the Requestor is prohibited from accepting payment from Ford pursuant to Section 2-5-68 of the Code, any of those items that the Requestor is permitted to accept from Ford must not be provided in the form of payment. For example, if Ford offers to cover travel expenses for the Requestor to attend one of the advisory board's meetings, Ford may only provide for the travel expenses in a form other than a monetary payment, such as plane tickets.

In regard to Section 2-5-65, the Requestor would be prohibited from acting as an agent, attorney, or representative of Ford in any matter that is pending a decision by a City agency unless one of the provided exceptions applies. Because the Requestor is compensated for his work as the Director of Public Safety and Cyber Security, only two of the three exceptions could potentially apply to the Requestor. One of the exceptions would allow the Requestor to represent Ford in a matter that is pending a decision by a City agency if "such representation is a required part of the public servant's official duties." Although the Requestor has not mentioned whether his job duties involve the representation of businesses, it seems unlikely that his job duties would require that.

The other exception that may apply to the Requestor would allow him to represent Ford in a matter that is pending a decision by a City agency if the matter is pending before a voting body on which the Requestor does not serve, the Requestor is not compensated by either the City or Section 2-5-62 of the Code generally 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":

Information 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.

Accordingly, any information that the Requestor has obtained in the course or acting as a public servant, that is not available to members of the public pursuant, and that the Requestor has not been authorized to disclose, is confidential information, which the Requestor is prohibited from using for purposes of Ford's advisory board, or from disclosing to Ford or its advisory board. If the Requestor believes the use or disclosure of confidential information in relation to the purposes of Ford's advisory board is warranted, then he must seek approval to use or disclose that information from the appropriate City officials that are permitted to authorize that use or disclosure.

As to Section 2-5-63 of the Code, the public servant is prohibited from us[ing] City property in violation of City policies and procedures." Accordingly, the Requestor should avoid using any City property to perform activities for Ford's advisory board. However, if the Requestor believes that the use of City property to perform an activity for Ford's advisory board is warranted, the Requestor must check the applicable policies and procedures governing the use of that property to ensure that the desired use of City property would not violate those policies or procedures.

V. Conclusion

It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4) of the Code. The Requestor may only serve as a member of Ford's advisory board only if he is uncompensated. The Ethics Ordinance prohibits public servants from soliciting or accepting any payment from Ford because it receives tax abatements from the City. Serving as an uncompensated member of Ford's advisory board, in and of itself, presents no issue of incompatibility with the Requestor's official duties as the Director of Public Safety and Cyber Security. Nevertheless, the Requestor should take note of several other requirements imposed by the Ethics Ordinance that may be implicated by serving as a member of Ford's advisory board.

The Ethics Ordinance generally prohibits Requestor from accepting any gift, or other thing of value provided without remuneration, from Ford. However, the Requestor, due to one of the exceptions, may accept complimentary copies of informational materials. Requestor is also permitted to accept admission or registration fees, travel expenses, entertainment, meals, or refreshments that are provided in relation to his provision of assistance to Ford, but only if the City does not compensate the Requestor for admission or registration fees, travel expenses, entertainment, meals, or refreshments for the same activity. Additionally, any item the Requestor is permitted to accept from Ford without remuneration must not be provided in the form of a direct monetary payment, as acceptance of payment from Ford would constitute a violation of Section 2-5-68 of the Code.

Furthermore, the Ethics Ordinance prohibits the Requestor from acting as a representative of Ford in regard to matters that are pending before a City agency, unless either the representation is required by the Requestor's official duties to the City; or a) the representation pertains to a matter that is not pending a decision by a voting body on which the Requestor does not serve, b) the Requestor is not compensated by a n y party for the representation, and c) the representation occurs only during the Requestor's vacation or departmental leave time.

Additionally, the Requestor is prohibited from using or disclosing confidential information in the course of serving Ford's advisory board. If the Requestor believes that circumstances necessitate or warrant the use or disclosure of confidential information, then the Requestor must obtain authorization from the appropriate City officials before using or disclosing the relevant information. Additionally, the Requestor is encouraged to avoid using any City property to perform activities within the scope of his service to Ford's advisory board.

Also, because the Ethics Ordinance does not directly prohibit the use of City property for activities that are outside the scope of a public servant's job duties, if the Requestor believes pertinent circumstances warrant the use of City property for purposes related to his service on Ford's advisory board, he must check the applicable policies and procedures governing the use of that property before using it and ensure that the desired use of City property would not violate the applicable policies or procedures.

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Dated: June 12, 2020

City of Detroit Board of Ethics

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Advisory Opinion #2020-07

Issued: July 21, 2020

Advisory Opinion #2020-07: 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 2020-07. The Requestor may provide pro bono services to Jimena Companies, however, the Ethics Ordinance imposes certain requirements and restrictions. Requestor may provide services for [REDACTED] without compensation. Additionally, she must do so during time when she is not working for the City of Detroit. However, if the [REDACTED] engages in a matter of which [REDACTED] has an interest, the Requestor must recuse herself from participation in that matter so she can maintain independent judgment or action in her work for the City. In the Conclusion below, this Opinion provides detailed guidance to the Requestor on moving forward. The Requestor is strongly encouraged to contact the Detroit Board of Ethics if the circumstances change.

I. Procedural Background

Request for Advisory Opinion 2020-07 (the “Request”) was sent to the Board of Ethics (the “Board”) by electronic communication and received on February 18, 2020. In accordance with Sec. 2-6.101, 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 May 19, 2020. 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 August 18, 2020.

At its meeting on July 21, 2020, 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 heard a

privileged and confidential 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

The Requestor is a [REDACTED] Requestor provided a scope of work for his City of Detroit position. Requestor also provided a scope of work for the Jimena Companies as well as an organizational overview for said company. Requestor also states that she sought approval and received authorization from his director to participate. Requestor provided no written authorization.

According to the information provided in the Request, Jimena Companies has plans for a project in the City's greater downtown area. The Request describes the planned development project as being for "100 percent retail and commercial space." The Requestor states that financing for the project will consist of private lenders and tax incentives. As for the City's potential involvement in relation to the project, the Requestor states that the development team for the project "does not anticipate requests for City of Detroit HOME or CDBG funds," but that it "does anticipate pursuing tax incentives in the near future in partnership with DEGC."

According to the Requestor, she is not involved with tax abatement or land sale processes in the performance of her duties for the City, but that the [REDACTED] approvals process is managed by the [REDACTED], and the [REDACTED] process is managed by the [REDACTED]

The question presented to the Board is whether the Requestor may provide pro bono services for [REDACTED] by conducting research on various tax incentives and financing opportunities; conducting research and preparing presentations for local and global small business brands; collaborating in the creation or a small business grant competition; supporting project underwriting, financing efforts, and various development activities; and supporting various organizational operations.

By this request, the Requestor seeks an advisory opinion as to the applicability of the 2012 Detroit City Charter and 2019 Detroit City Code, specifically the Disclosure Requirements and the Standards of Conduct.

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 2-106.1 and 2-106.2 of the 2012 Detroit City Charter codified at Sections 2-5-31 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)

Commentary— This provision implements the directive of [Section 2-106.2](#) of the Charter that this article shall provide for the disclosure of any financial interest, which a public servant, or the public servant's immediate family member, has in any contract or in any real or personal property, that is the subject of a governmental decision by the City or any agency of the City over which the public servant exercises significant authority in the performance of the public servant's duties. This section is not intended to conflict with the Michigan Contracts of Public Servants with Public Entities Act, being MCL 15.301 *et seq.*

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. 2-5-68. - Solicitation or acceptance of loan or payment prohibited.

A public servant who, in the course of the public servant's duties, exercises significant authority shall not solicit or accept a loan or payment from an individual who, or entity which, is providing service to, or receiving tax abatements, credits, or exemptions from the City.

(Code 1984, § 2-6-69; Ord. No. 18-12, § 1(2-6-69), eff. 8-31-2012)

Sec. 2-5-70. - Prohibition on gifts and gratuities; exceptions.

(a) A public servant shall not accept gifts, gratuities, honoraria, or other thing of value from any person or entity doing business or seeking to do business with the City, is seeking official action from

the City, has interests that could be substantially affected by the performance of the public servant's official duties, or is registered as a lobbyist under applicable law and Section 2-5-35 of this Code.

(b) The prohibition in Subsection (a) of this section shall not apply:

- (1) To an award publicly presented to a public servant by an individual, governmental body, or non-governmental entity or organization in recognition of public service;
 - (2) To complimentary copies of trade publications, books, reports, pamphlets, calendars, periodicals or other informational materials;
 - (3) To a gift received from a public servant's immediate family member or relative, provided, that the immediate family member or relative is not acting as a third party's intermediary or an agent in an attempt to circumvent this prohibition;
 - (4) To an admission or registration fee, travel expenses, entertainment, meals or refreshments that are furnished to the public servant:
 - a. By the sponsor of an event, appearance or ceremony, which is related to official City business in connection with such an event, appearance or ceremony and to which one or more members of the public are invited; or
 - b. In connection with teaching, a speaking engagement, or the provision of assistance to an organization or another governmental entity as long as the City does not compensate the public servant for admission or registration fees, travel expenses, entertainment, meals or refreshment for the same activity.
- (Code 1984, § 2-6-71; Ord. No. 18-12, § 1(2-6-71), eff. 8-31-2012)

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

We must first consider whether the Requestor "exercises significant authority. Used for disclosure requirements, the phrase is in Sec. 2-5-3, and 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." According to the Requestor's description of her job duties, she [REDACTED]. She provides memoranda to an internal body [REDACTED] that makes decisions regarding [REDACTED]. By providing guidance to an internal body of the [REDACTED], the Requestor does exercise significant authority over pending matters regarding [REDACTED].

Section 2-5-31

Because the Requestor exercises significant authority over pending matters, Section 2-5-31 of the Code requires her to disclose her interests or the interests of her "immediate family member's." According to the Ethics Ordinance, the definition of immediate family member includes the Requestor's spouse or domestic partner, any individual claimed by the Requestor or her spouse as a dependent on either of their federal tax filings, or any individual who lives in the same household as the Requestor.

Although the Requestor indicated that [REDACTED] does not anticipate asking for [REDACTED], which concerns [REDACTED], if it seeks any decision or action from the City, the Requestor must disclose any financial interest that she or her immediate family members has in [REDACTED]. The Requestor's pro bono services, alone, is not a financial interest in [REDACTED] because she will not be compensated. However, a financial interest can be manifest in [REDACTED].

other ways. For example, owning stock in a company can create a financial interest. The Requestor has not indicated whether any of her immediate family members have a financial interest in Jimena Companies. If they do, Requestor and immediate family members must disclose to the Board of Ethics.

Additionally, if Jimena Companies seeks a decision from the City that involves real or personal property and pertains to purchasing, selling, leasing, zoning, improvement, special designation tax assessment or abatement, or a development agreement, it creates a financial interest. Again, if this situation occurs, the Requestor, and her immediate family, must disclose any interest they have in Jimena Companies. The Requestor indicates that Jimena Companies intends to pursue tax incentives from the City in the near future regarding a development project. Thus, the Requestor should anticipate disclosing all financial interests that she or any of her immediate family members have in Jimena Companies.

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

As to Section 2-5-62, any information that the Requestor:

- a. has obtained in the course or acting as a public servant;
- b. that is not available to members of the public, and
- c. that the Requestor has not been authorized to disclose, is confidential information.

The Requestor is prohibited from disclosing or using any of this confidential information while providing pro bono services to Jimena Companies.

Sec. 2-5-63. Improper Use of City Property Prohibited.

As to Section 2-5-63, the Requestor must avoid using any City property to perform pro bono activities. However, if the Requestor believes that the use of City property is required, the Requestor must seek out the required policies and procedures and receive proper authorization to use the property.

Sec. 2-5-64. Incompatible Employment or Rendering of Services Prohibited.

There appears to be no relation between pro bono services that the Requestor wants to provide and [REDACTED]. The Requestor explicitly states that [REDACTED] does not anticipate requesting [REDACTED], which are related to the Requestor's job duties. The Requestor also states she received approval from the [REDACTED] director regarding the pro bono services. As such, the pro bono services cause no conflict or nor are they incompatible with Requestor's discharge of duties. Even so, the activities do not involve any interaction with [REDACTED].

Moreover, there is no violation of Section 2-5-64 of the Code if Requestor participates on her own time and without compensation. If a change occurs and the [REDACTED] becomes involved with [REDACTED], the Requestor should recuse herself from being involved in that work (with the City or [REDACTED]) in order to follow the Ethics Ordinance and maintain integrity; she must operate with independent judgment and action as she performs her official duties for the City.

Sec. 2-5-65. Representation of Private Person, Business, or Organization Prohibited: Exceptions.

The Requestor is prohibited from acting as an agent, attorney, or representative of [REDACTED] under any circumstances for a City agency unless an exception is met. However, since the Requestor is compensated by the City, only two exceptions are applicable.

The Requestor supplied her job description and none of it required that she represent [REDACTED]. It is not a part of her City of Detroit duties.

The other exception fits none of the information the Requestor provided in her submission. The Requestor serves with a City entity making the decision, the Requestor is compensated by the City or Jimena Companies for the representation, and the representation occurs only during the Requestor's vacation or departmental leave time. The facts provided are appropriate for no exception.

Sec. 2-5-66. Self-Interested Regulation and Participation Prohibited.

Because she is providing pro bono services, the Requestor appears to have no financial interests. However, if she or any or her immediate family members have some financial interest in [REDACTED], then the Requestor must not participate, in any manner, in the negotiation or making of any type of transaction between the City and [REDACTED].

Sec. 2-5-68. Solicitation or Acceptance of Loan or Payment Prohibited.

To analyze Sec. 2-5-68, it is important to recall that the Requestor exercises significant authority in the course of her duties as a public servant.

The Requestor states that [REDACTED] anticipates pursuing [REDACTED] in the near future. The Requestor states that she will provide "pro bono" services; she will receive no compensation. However, Section 2-5-68 prohibits public servants who exercise significant authority from accepting any type of payment from entities that receive tax abatements, credits, or exemptions from the City, or that provide service to the City. As such, if [REDACTED] receives any of these subsidies from the City, then Requestor may not accept any payments from [REDACTED].

Sec. 2-5-70. Prohibition on Gifts and Gratuities; Exceptions.

To make a determination about gifts, we must consider the phrase "doing business." It is not defined in the Ethics Ordinance, however, the Code does define it in Chapter 44. Taxation. The Code's taxation chapter defines doing business as "any conduct or any activity with the object of gain or benefit."

Using that definition, Jimena Companies will be "doing business" with the City if it receives tax abatements, credits, or exemptions from the City; it will be accepting the tax incentives from the City for its benefit. Also, a transactional relationship is derived if an entity receives tax incentives. Jimena Companies will be "seeking official action from the City" if it requests tax incentives from

the City, because approving and providing tax incentives is an official action. As such, if Jimena Companies requests or receives tax incentives from the City, Requestor, generally, will be prohibited from receiving anything of value from Jimena, unless an exception applies.

Because of the pro bono services, two exceptions to the prohibition may apply. In reviewing the first exception, the Requestor could accept "complimentary copies of trade publications, books, reports, pamphlets, calendars, periodicals or other informational materials." The other exception would allow the Requestor to accept "an admission or registration fee, travel expenses, entertainment, meals or refreshments ..." if any of these items are provided in connection with the Requestor's pro bono services. The Requestor may accept these items only if "the City does not compensate" her for any of these items.

Therefore, if Jimena Companies receives, or seeks to receive, tax incentives from the City, the only things of value that the Requestor may accept from Jimena Companies are complimentary information materials; the Requestor may also accept an admission or registration fee, travel expenses, entertainment, meals, or refreshments from Jimena Companies in connection with her pro bono services, but not if the City compensates the Requestor for any of those items.

Furthermore, because the Requestor will be prohibited from accepting payment from Jimena Companies pursuant to Section 2-5-68 of the Code, if it receives tax abatements, credits, or exemptions from the City, any of those items that the Requestor is permitted to accept from Jimena Companies *must not be provided* in the form of money payment. So, for example, if Jimena Companies receives tax abatements from the City and offers to cover hotel expenses for the Requestor to attend a meeting in Muskegon, it may only provide for the travel expenses in a form other than a monetary payment, such as direct payment to the hotel.

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 2020-07. The Requestor may provide pro bono services to Jimena Companies, however, the Ethics Ordinance imposes certain requirements and restrictions. Requestor may provide services for Jimena Companies without compensation. Additionally, she must do so during time when she is not working for the City of Detroit. However, if the Housing Underwriting Division of the HRD engages in a matter of which Jimena Companies has an interest, the Requestor must recuse herself from participation in that matter so she can maintain independent judgment or action in her work for the City.

Additionally, if Jimena Companies seeks a decision from the City that involves real or personal property and pertains to purchasing, selling, leasing, zoning, improvement, special designation tax assessment or abatement, or a development agreement, Requestor, and any of her immediate family member, must disclose any interest they have in Jimena Companies.

If Requestor, or an immediate family member, has any financial interest in Jimena Companies, she is prohibited from any participation in any type of transaction between the City and Jimena Companies, including participation in any proposal or request for tax incentives or financing from the City for Jimena Companies.

Furthermore, the Ethics Ordinance prohibits Requestor from acting as a representative of Jimena Companies in a matters that needs a decision by a City agency, unless she is not part of the voting body, she is not compensated for the representation, and the representation occurs only during Requester's time off.

Additionally, Requestor is prohibited from using or disclosing confidential information in the course of providing pro bono services for Jimena Companies.

Additionally, Requestor should avoid using any City property to perform activities for Jimena Companies. However, because the Ethics Ordinance does not directly prohibit the use of City property for activities that are outside the scope or a public servant's job duties, Requestor that, if she believes she must use City property for purposes related to her pro bono service, she must check the applicable policies and procedures governing the use of that property, gain authorization, and ensure the use of City property would not violate City policies or procedures.

Although the Requestor has indicated that she intends to provide services to Jimena Companies pro bono, she will be strictly prohibited by Section 2-5-68 of the Code from receiving any payment from Jimena Companies if it receives tax abatements, credits, or exemptions from the City. Accordingly, the Requestor should also be made aware that any of the items that the Requestor is permitted to accept from Jimena Companies without remuneration, pursuant to Section 2-5-70(b), must not be a direct monetary payment if Jimena Companies receives tax abatements, credits, or exemptions from the City, as acceptance of payment from an entity that receives tax abatements, credits, or exemptions from the City would constitute a violation of Section 2-5-68 of the Code.

Also, Section 2-5-70 generally prohibits the Requestor from accepting any gift, or other thing of value provided without remuneration, from Jimena Companies if it seeks action from, or does business with, the City, including if it requests or receives tax incentives from the City. However, the exceptions, as provided in Section 2-5-70(b), allow her to accept complimentary copies of informational materials from Jimena Companies; and she is also permitted to accept admission or registration fees, travel expenses, entertainment, meals, or refreshments that are provided in relation to her services to Jimena Companies, but she must receive no compensation from the City for these same items.

(Final page follows)

So long as she does not engage in conflicting activities and adheres to the City's policies and procedures. The Requestor may use vacation time or departmental leave if she ever wishes to engage in these pro bono activities during normal business hours for the City. The Requestor is

strongly encouraged to contact the Board of Ethics if her circumstances change and if she has any questions regarding this Opinion.

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Dated: August 26, 2020

City of Detroit Board of Ethics

Kristin Lusn, Esq., Chairperson
Freda G. Sampson, Vice Chairperson
David W. Jones, Esq.
Mario Morrow, Sr.
Byron Osbern
Robert Watt

Advisory Opinion #2020-08
Issued: July 21, 2020

Advisory Opinion #2020-08: 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 2020-08. The Requestor may participate as a paid archery instructor for a Palmer Park summer camp that is hosted by his archery team if he only engages in archery instruction for the summer camp during times when he is not required to be performing work for the City, and he receives the proper approval from the head of the DPRD on his "Request for Approval of Outside Employment" form.

I. Procedural Background

Request for Advisory Opinion 2020-08 (the "Request") was sent to the Board of Ethics (the "Board") by electronic communication and received on February 18, 2020. In accordance with Sec. 2-6.101, 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 waives 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 May 19, 2020. 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 August 18, 2020.

At its meeting on May 19, 2020, 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 allowed extension. The Board heard a Preliminary Analysis from legal counsel on July 21, 2020, and after consideration and discussion of the issues presented, the Board voted, decided to issue this Advisory Opinion pursuant to Section 2-5-124(b)(4).

II. Information from the Request

The Requestor works for Detroit Parks and Recreation Department as an Environmental Educator, part time. He states that he is also a certified archery instructor. His archery team wants to host a summer camp at Palmer Park and he seeks an advisory opinion to avoid a conflict of interest. “How do I avoid a conflict of interest when off the clock - to be an instructor (paid Instructor) for the summer camp?” By this request, the Requestor seeks an advisory opinion as to the applicability of the 2012 Detroit City Charter and 2019 Detroit City Code.

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 2-5-62, -63, -64, -65, and -66 of the 2019 Detroit City Code. It states as follows:

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)

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

Beginning with disclosure requirements, Section 2-5-62, nothing presented in the Request states or assumes that Requestor receives confidential information. However, he needs to be aware that in the course of his summer camp activities, he may not share City information with the public or to any third party who he has not been authorized to give confidential information.

Regarding Section 2-5-63, generally, the Requestor is prohibited from "us[ing] City property in violation of City policies and procedures. The Request stated that he and his team sought to use Palmer Park for the summer camp. Potentially, this may include the use of City equipment and/or inventory, etc. The Requestor must review the relevant policies and procedures for gaining the use of the park as well as any City owned equipment or inventory and gain the proper authorization.

Section 2-5-64 is the most important section for this Request. This section determines whether the Requestor may be paid as an archery instructor at a summer camp hosted at Palmer Park by his archery team even though he works part-time for the City of Detroit.

It generally prohibits public servants from knowingly engaging in employment or rendering service for a third party entity if the employment or service is "in conflict or incompatible with the proper discharge of the public servant's official duties for the City," or if the 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."

To avoid any conflict with the proper discharge of the Requestor's official duties for the City, the Requestor can only engage in his work as an archery instructor during times when he is not expected to be performing work for the City. The Requestor appears to understand this because he states that he will work when he is "off the clock."

The Requestor said he will be compensated and as such must comply with the City of Detroit's Outside Employment Policy, which requires an employee to notify and gain approval from their department/agency head for any current or future outside employment. The Human Resources department has the applicable form and Requestor needs authorization before beginning the outside employment.

With regard to Section 2-5-65, the Requestor would be prohibited from acting as an agent, attorney, or representative of his archery team in any matter that is pending a decision by a City agency unless any of the three provided exceptions applies. Because the Requestor is not an uncompensated member of a City board, commission, or other voting body, only two of the three exceptions could potentially apply to the Requestor. One of the exceptions would allow the Requestor to represent his archery team in a matter that is awaiting a decision by a City agency if "such representation is a required part of the public servant's official duties." However, the Requestor has presented no facts that suggest he could be required to represent any other businesses or organizations as part of his official duties for the City, especially his archery team.

The other exception that may apply to the Requestor would require him to be uncompensated by the City or his archery team for the representation and the representation would only occur during

Requestor's vacation or departmental leave time. As such, if the archery team's ability to host the archery summer camp at Palmer Park is subject to a decision by a City board, commission, or other voting body, the Requestor shall not act as the archery team's agent or representative in that matter unless he is permitted to do so by an exception to Section 2-5-65 of the Code. And he meets no exception.

Section 2-5-66 generally prohibits public servants from any participation in the negotiation or making of any type of transaction between the City and a business entity in which the public servant or an immediate family member of the public servant has a financial interest.

Because the Requestor expects to be paid for providing archery instructions at the summer camp, he has a financial interest in his archery team hosting the summer camp at Palmer Park. Also, because the archery team will require payment to provide services related to the summer camp, including archery instruction, it is considered a "business entity" for purposes of the Ethics Ordinance. Therefore, because the Requestor has a financial interest in his archery team, he should avoid any participation in any type of transaction or negotiation between the City and his archery team. Another member of the team must conduct the transaction or negotiation and the Requestor must have no participation in it.

Additionally, none of the facts or circumstances described in the Request provide any reason to expect that Requestor's work as an archery instructor for a Palmer Park summer camp will impair his independence of judgment or action in the performance of his duties as an Environmental Educator. However, the Requestor should review the Ethics Ordinance and take other precautions described in this Preliminary Analysis in order to avoid possible violations of other sections of the Ethics Ordinance.

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 2020-08. The Requestor may participate as a paid archery instructor for a Palmer Park summer camp that is hosted by his archery team if he only engages in archery instruction for the summer camp during times when he is not required to be performing work for the City, and he receives the proper approval from the head of the DPRD on his "Request for Approval of Outside Employment" form. Additionally, the Requestor must follow applicable policies and procedures governing the use of Palmer Park and any equipment or other City property to avoid potential ethics violations that include the improper use of City property.

Furthermore, the Requestor is prohibited from acting as a representative of his archery team in transaction with the City that is pending a decision by a City agency, unless the matter is pending a decision by a voting body on which the Requestor does not serve, the Requestor is not compensated by any party for the representation, and the representation occurs only during the Requestor's vacation or departmental leave time. The Requestor is also prohibited from disclosing or using any confidential information during his summer camp instruction.

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Dated: August 26, 2020

City of Detroit Board of Ethics

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Byron Osbern
Robert Watt

Advisory Opinion #2020-09
Issued: July 21, 2020

Advisory Opinion #2020-09: 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 2020-09. 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 2020-09. If the Requestor has no personal services contract with the City, she must not lobby, or appear before, the City Council or any department, agency, board, commission, or other body of the City in relation to any matter that she was directly concerned with, personally participated in, actively considered, or acquired knowledge about, while she was in the course of performing her duties for the City. Also, the Requestor must not receive compensation for performing any services in relation to any matter that she was directly concerned with, personally participated in, actively considered, or acquired knowledge about, while she was in the course of performing her duties for the City. This restriction includes real estate projects that Requestor worked on while with the City. These restrictions do not apply if the Requestor was employed under a personal services contract.

Additionally, for a period of one year after the end of the Requestor's employment with the City, the Requestor must not accept employment with any person who, or entity that, provided goods or services to the City pursuant to a contract other than a personal services contract while the Requestor was a public servant, if the Requestor was in any way involved in the award or management of the contract or the employment would require the Requestor to share confidential information. Confidential information is information that is obtained by a public servant in the course of acting as a public servant, and is not available to the public, and the public servant is not authorized to disclose the information. However, if the Requestor owns a private practice and is self-employed as a private practitioner, then Section 2-5-71 (b) is not be applicable to the Requestor's private practice.

I. Procedural Background

Request for Advisory Opinion 2020-09 (the “Request”) was sent to the Board of Ethics (the “Board”) by electronic communication and received on February 25, 2020. In accordance with Sec. 2-6.101, 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 May 26, 2020. 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 August 25, 2020.

At its meeting on July 21, 2020, the Board determined that the Request met the basic requirements for a Request for Advisory Opinion under Section 2-6-101 of the Ordinance. The Board heard a 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

The Requestor is a [REDACTED] for the City's [REDACTED]. The Requestor seeks an advisory opinion about how the Standards of Conduct apply to her if she leaves her City position and goes into private practice.

I currently work for the City of Detroit [REDACTED], and am in charge of [REDACTED]. I am contemplating leaving my current place of employment and going into private practice. Can you clarify with regard to Sec. 2-6-72(a), what my work restrictions would be after my separation from the City of Detroit?

The Requestor would like to know under what conditions may she work in private practice after leaving her position with the City. The Ethics Ordinance was updated in 2019, during the recodification of the Detroit City Code. The section under consideration is Section -2-5-71 rather than 2-6-72. By this request, the Requestor seeks an advisory opinion as to the applicability of the 2012 Detroit City Charter and 2019 Detroit City Code.

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 2-5-71 of the 2019 Detroit City Code. It states as follows:

Sec. 2-5-71. - One year post-employment prohibition.

(a) Subject to state law, for one year after employment with the City, a public servant shall not lobby or appear before the City Council or any City department, agency, board, commission or body, or receive compensation for any services in connection with any matter in which the public servant was directly concerned, personally participated, actively considered or acquired knowledge while working for the City.

(b) Subject to state law, for one year after employment with the City, a public servant shall not accept employment with any person who, or entity which, did business with the City during the former public servant's tenure where the public servant was in any way involved in the award or management of the contract, or the employment would require the sharing of confidential information.

(Code 1984, § 2-6-72; Ord. No. 18-12, § 1(2-6-72), eff. 8-31-2012)

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

The Requestor did not divulge whether she is employed under a personal services contract with the City. Even so, Section 2-5-71(a) of the Ethics Ordinance addresses two related areas of prohibition. If the Requestor has no personal services contract with the City, she must not lobby, or appear before, the City Council or any department, agency, board, commission, or other body of the City in relation to any matter that she was directly concerned with, personally participated in, actively considered, or acquired knowledge about, while she was in the course of performing her duties for the City.

Also, the Requestor must not receive compensation for performing any services in relation to any of those matter that she was directly concerned with, personally participated in, actively considered, or acquired knowledge about, while she was in the course of performing her duties for the City. This restriction includes real estate projects that Requestor worked on while with the City. These restrictions do not apply if the Requestor was employed under a personal services contract.

Additionally, for a period of one year after the end of the Requestor's employment with the City, the Requestor must not accept employment with any person who, or entity that, provided goods or services to the City pursuant to a contract (other than a personal services contract) while the Requestor was a public servant, if the Requestor was in any way involved in the award or management of the contract or the employment would require the Requestor to share confidential information.

Confidential information is information that is obtained by a public servant in the course of acting as a public servant, and is not available to the public, and the public servant is not authorized to disclose the information. However, if the Requestor owns a private practice and is self-employed as a private practitioner, then Section 2-5-71 (b) is not be applicable to the Requestor's private practice.

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 2020-09. If the Requestor has no personal services contract with the City, she must not lobby, or appear before, the City Council or any department, agency, board, commission, or other body of the City in relation to any matter that she was directly concerned with, personally participated in, actively considered, or acquired knowledge about, while she was in the course of performing her duties for the City. Also, the Requestor must not receive compensation for performing any services in relation to any matter that she was directly concerned with, personally participated in, actively considered, or acquired knowledge about, while she was in the course of performing her duties for the City. This restriction includes [REDACTED] that Requestor worked on while with the City. These restrictions do not apply if the Requestor was employed under a personal services contract.

Additionally, for a period of one year after the end of the Requestor's employment with the City, the Requestor must not accept employment with any person who, or entity that, provided goods or services to the City pursuant to a contract other than a personal services contract while the Requestor was a public servant, if the Requestor was in any way involved in the award or management of the contract or the employment would require the Requestor to share confidential information. Confidential information is information that is obtained by a public servant in the course of acting as a public servant, and is not available to the public, and the public servant is not authorized to disclose the information. However, if the Requestor owns a private practice and is self-employed as a private practitioner, then Section 2-5-71 (b) is not be applicable to the Requestor's private practice.

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Dated: September 7, 2020

City of Detroit Board of Ethics

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Mario Morrow, Sr.
Byron Osbern
Robert Watt

Advisory Opinion #2020-11

Issued: July 21, 2020

Advisory Opinion #2020-11: 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 2020-11. The Requestor may not accept employment from a contractor if the Requestor was involved, in any way, with the award or management of a contract pursuant to which the contractor provided services to the City during the Requestor's tenure as a public servant. The Requestor must wait until a year has passed from the date that he was laid off from his job working for the City pursuant to a personal services contract.

Additionally, during that same time period, the Requestor may not accept employment from a contractor that did business with the City while the Requestor was a public servant if the Requestor's prospective employment with the contractor would require the Requestor to share information that was gained by Requestor's official duties as a public servant, i.e. information that is unavailable to members of the public, and that he has not been authorized to disclose. The Requestor is welcome to file another Request for Advisory Opinion when he has more details such as a specific contractor for whom he like to be employed.

I. Procedural Background

Request for Advisory Opinion 2020-11 (the "Request") was sent to the Board of Ethics (the "Board") by electronic communication and received on June 17, 2020. In accordance with Sec. 2-5-121, the Request was submitted by a former 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 September 17, 2020. 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 December 16, 2020.

At its meeting on July 21, 2020, 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 heard a Preliminary Analysis from legal counsel on the same day, and after consideration and discussion of the issues presented, the Board decided to issue the Advisory Opinion pursuant to Section 2-5-124(b)(4).

II. Information from the Request

The Requestor is a former public servant who was employed under a personal services contract. The Requestor is considering potential employment with a City of Detroit contractor, a third party vendor who supplies services to the City. The Requestor was laid off due to the economic impact of the COVID-19 pandemic. The Requestor does not mention his former title or department. Although wanting to return to City employment, the Requestor asked whether a conflict of interest would result if he began working for a contractor that provided services to the City. The question presented to the Board is whether a former public servant who provided services on behalf of the city pursuant to a personal services contract may work for a contractor that provided services to the City. By this request, the Requestor seeks an advisory opinion as to the applicability of the 2012 Detroit City Charter and 2019 Detroit City Code.

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 2-5-71 of the 2019 Detroit City Code. It states as follows:

IV. Sec. 2-5-71. - One year post-employment prohibition.

(a) Subject to state law, for one year after employment with the City, a public servant shall not lobby or appear before the City Council or any City department, agency, board, commission or body, or receive compensation for any services in connection with any matter in which the public servant was directly concerned, personally participated, actively considered or acquired knowledge while working for the City.

(b) Subject to state law, for one year after employment with the City, a public servant shall not accept employment with any person who, or entity which, did business with the City during the former public servant's tenure where the public servant was in any way involved in the award or management of the contract, or the employment would require the sharing of confidential information.

(Code 1984, § 2-6-72; Ord. No. 18-12, § 1(2-6-72), eff. 8-31-2012)

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

There are two part to Section 2-5-71 of the Ethics Ordinance. One part applies to persons under personal services contracts while the other does not. In November 2012, the Detroit City Charter was amended to provide an exception to the prohibitions described in Section 2-5-71(a) of the Code for individuals who perform services for the City pursuant to a personal services contracts. Because the Requestor worked for the City under a personal services contract, and was not an employee or appointee of the City, Section 2-5-71(a) does not apply to the Requestor.

However, the Charter does not provide an exception from the prohibition described in Section 2-5-71(b) of the Code, like it does in respect to Section 2-5-71(a), for individuals who perform services for the City pursuant to a personal services contract. As such, the Requestor is subject to the restrictions provided in Section 2-5-71(b).

Section 2-5-71(b) of the Code provides that:

for a period of one year following the end of a public servant's employment with the City, the public servant is generally prohibited from accepting employment with any person who, or entity that, did business with the City pursuant to a contract (other than a personal services contract) while the public servant worked for the City if the public servant was involved in any way with the award or management of the contract, or if the employment with the person or entity would require sharing confidential information.

The Ethics Ordinance defines "confidential information" as the following:

[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.

Accordingly, for a period of one year starting from the date that Requestor's layoff began, the Requestor must not accept employment with any contractor that did business with the City pursuant to a contract (other than a personal services contract) while the Requestor was a public servant *if the Requestor was in any way involved in either the award or management of the contract*, or if the employment *would require the Requestor to share information* that was obtained by the Requestor in the course of acting as a public servant, that is unavailable to members of the public, and that the Requestor has not been authorized to disclose.

Requestor could accept employment from a contractor who he was not involved with in either the award or management of the contract or where he is not required to share confidential information. The Requestor should be careful in determining what contractor he may pursue for employment.

VI. 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 2020-11. The Requestor may not accept employment from a contractor if the Requestor was involved, in any way, with the award or management of a contract pursuant to which the contractor provided services to the City during the Requestor's tenure as a public servant. The Requestor must wait until a year has passed from the date that he was laid off from his job working for the City pursuant to a personal services contract.

Additionally, during that same time period, the Requestor may not accept employment from a contractor that did business with the City while the Requestor was a public servant if the Requestor's prospective employment with the contractor would require the Requestor to share information that was gained by Requestor's official duties as a public servant, i.e. information that is unavailable to members of the public, and that he has not been authorized to disclose.

The Requestor is welcome to file another Request for Advisory Opinion when he has more details such as a specific contractor for whom he like to be employed.

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Dated: August 26, 2020

City of Detroit Board of Ethics

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Advisory Opinion #2020-12

Issued: September 15, 2020

Advisory Opinion #2020-12: 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 Request for Advisory Opinion 2020-12. The Ethics Ordinance prohibits the Requestor from accepting gifts from [REDACTED]. If a public servant accepts a free [REDACTED] from [REDACTED], it would violate Section 2-5-70 of the Code, which prohibits public servants from accepting gifts from entities that do business with the City. An authorized City official or the Requestor should notify [REDACTED] about the prohibition. The Requestor should also warn other public servants of the potential Ethics Ordinance violation that could occur if they register for [REDACTED]'s giveaway and win a gift card.

I. Procedural Background

Request for Advisory Opinion 2020-12 (the “Request”) was sent to the Board of Ethics (the “Board”) by electronic communication and received on August 10, 2020. In accordance with Sec. 2-5-121, the Request was submitted by a 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 9, 2020. 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 08, 2021.

At its meeting on September 15, 2020, 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 heard a Preliminary Analysis from legal counsel on the same day, and after consideration and discussion of the issues presented, the Board decided to issue the Advisory Opinion pursuant to Section 2-5-124(b)(4).

II. Information from the Request

The Requestor is a public servant who is employed by the City a Talent Development and Performance Management Specialist for the HR Department.

The Requestor states that they have an education partner:

████████████████████ (██████████). We have recently obtained an education partnership them and they would like to giveaway two \$25 ██████████ as part of the partnership announcement. Would this conflict with the City's Ethics Policy? The giveaway will strictly be handled by ██████████ and employees will register on ██████████ site for a chance to win one of the gift cards.

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 2-5-71 of the 2019 Detroit City Code. It states as follows:

Sec. 2-5-70. - Prohibition on gifts and gratuities; exceptions.

- (a) A public servant shall not accept gifts, gratuities, honoraria, or other thing of value from any person or entity doing business or seeking to do business with the City, is seeking official action from the City, has interests that could be substantially affected by the performance of the public servant's official duties, or is registered as a lobbyist under applicable law and Section 2-5-35 of this Code.
- (b) The prohibition in Subsection (a) of this section shall not apply:
 - (1) To an award publicly presented to a public servant by an individual, governmental body, or non-governmental entity or organization in recognition of public service;
 - (2) To complimentary copies of trade publications, books, reports, pamphlets, calendars, periodicals or other informational materials;
 - (3) To a gift received from a public servant's immediate family member or relative, provided, that the immediate family member or relative is not acting as a third party's intermediary or an agent in an attempt to circumvent this prohibition;
 - (4) To an admission or registration fee, travel expenses, entertainment, meals or refreshments that are furnished to the public servant:
 - a. By the sponsor of an event, appearance or ceremony, which is related to official City business in connection with such an event, appearance or ceremony and to which one or more members of the public are invited; or
 - b. In connection with teaching, a speaking engagement, or the provision of assistance to an organization or another governmental entity as long as the City does not compensate the public servant for admission or registration fees, travel expenses, entertainment, meals or refreshment for the same activity.

(Code 1984, § 2-6-71; Ord. No. 18-12, § 1(2-6-71), eff. 8-31-2012)

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

Section 2-5-70(a) of the Code generally prohibits public servants from accepting any gifts, or anything of value that is provided without remuneration, from an entity that is “doing business or seeking to do business with the City.” Section 2-5-70(b) includes four exceptions to the prohibition, however, none fit the fact pattern in this scenario. The City and [REDACTED] are in partnership and this means [REDACTED] is “doing business” with the City. Therefore, a public servant accepting a free [REDACTED] [REDACTED] would be in violation the gifts and gratuities prohibition.

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 2020-12. The Requestor would be in violation of the gifts and gratuities prohibition. The Ethics Ordinance prohibits the Requestor from accepting gifts from [REDACTED]. If a public servant accepts a free [REDACTED] from [REDACTED], it would violate Section 2-5-70 of the Code, which prohibits public servants from accepting gifts from entities that do business with the City. An authorized City official or the Requestor should notify [REDACTED] about the prohibition. The Requestor should also warn other public servants of the potential Ethics Ordinance violation that could occur if they register for [REDACTED]’s giveaway and win a gift card.

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Dated: November 17, 2020

City of Detroit Board of Ethics

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Byron Osbern
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Advisory Opinion #2020-13

Issued: September 15, 2020

Advisory Opinion #2020-13: 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 2020-13. The Requestor should either disclose her interest in the house according to Section 2-5-31(b) the Code, or, if she disagrees with this disclosing, she should file another request for an advisory opinion with more details about her job duties and responsibilities. The Requestor should not use any City property for the rehabilitation project, including any computer she uses for her City position, unless she first reviews and follows the policies or procedures for use. The Requestor must not engage in the rehabilitation project activities during working hours, and must recuse herself from participating in City decision making related to the project, including decisions relevant to permits. Regarding the documentary production, the Requestor must not use or disclose any confidential information in her projects. Additionally, the Requestor must not engage in activities related to the rehabilitation or the documentary during working hours. By following this advice, the Requestor may conduct the rehabilitation project as a project manager and allow the documentary production of a documentary with no violation.

I. Procedural Background

Request for Advisory Opinion 2020-13 (the “Request”) was sent to the Board of Ethics (the “Board”) by electronic communication and received on August 26, 2020. In accordance with Sec. 2-5-121, the Request was submitted by a 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 25, 2020. 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 24, 2021.

At its meeting on September 15, 2020, 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 heard a Preliminary Analysis from legal counsel on the same day, and after consideration and discussion request that the staff perform additional fact finding. At its meeting on October 20, 2020, the Board heard a Supplemental Preliminary Analysis from legal counsel, 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

The Requestor is a public servant who is employed by the City as a [REDACTED]

[REDACTED] employee in [REDACTED]

[REDACTED]. The Requestor states:

I just recently purchased a home in Detroit that needs a total rehab for personal use. I am a licensed contractor.

Would there be a conflict of interest if I personally served as a project manager for this rehabilitation project? I would of course only work on it during non-working hours. All electrical, plumbing & mechanical building permits would be obtained by the respective licensed professional. Also, there is interest in producing a documentary of this process (female contractor renovating houses in Detroit) would that be a problem?

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, -62, -63, and -64 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)

Commentary— This provision implements the directive of [Section 2-106.2](#) of the Charter that this article shall provide for the disclosure of any financial interest, which a public servant, or the public servant's immediate family member, has in any contract or in any real or personal property, that is the subject of a governmental decision by the City or any agency of the City over which the public servant exercises significant authority in the performance of the public servant's duties. This section is not intended to conflict with the Michigan Contracts of Public Servants with Public Entities Act, being MCL 15.301 *et seq.*

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)

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

In the Ethics Ordinance, disclosure requirements are based on “exercising significant authority.” Section 2-5-3 of the Ethics Ordinance defines the phrase “exercises significant authority” as “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.” Sec. 2-5-31 tells us if the Requestor exercises significant authority, then she must disclose her interest in her house if it is subject to a decision by any department or agency of the City, including any decision for permits needed for her rehabilitation project. No information about Requestor’s duties or responsibilities as [REDACTED] were in the Request. Without information about Requestor’s job duties or responsibilities, no determination can be made about whether she exercises significant authority. Yet, the Requestor may still disclose her interest in the property, even if she doesn’t exercise significant authority. If the Requestor discloses, she will avoid a potential violation of Section 2-5-31 for her rehabilitation project. And she is prohibited from using or disclosing such information to third parties, including for purposes of the potential documentary.

Section 2-5-62 generally 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 defines confidential information as

information 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 provided no information about her job duties and responsibilities [REDACTED]. Without it, we are unable to ascertain whether she receives confidential information in the course of her work. Any information that the Requestor has obtained in the course of acting as a public servant, that is not available to the public, and that she has not been authorized to disclose, is confidential information. The Requestor is prohibited from using or disclosing confidential information to third party entities, including for a potential documentary.

When considering Sec. 2-5-63, the Requestor shall not “use City property in violation of City policies and procedures.” The Requestor provides no detail about whether she will use City property during her rehabilitation project or the documentary production. However, if she does, the Requestor must check the City’s policies and procedures that are applicable to that City property and receive proper authorizations.

Finally, Section 2-5-64 of the Code generally prohibits public servants from knowingly rendering service for a private interest if such service “is in conflict or incompatible with the proper discharge of the public servant’s official duties for the City,” or if the 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.” The Requestor stated that she

would participate in the rehabilitation project during non-working hours. Because the Requestor provided no job duties or responsibilities, we are unable to determine whether any of the Requestor's rehabilitation project activities or documentary production may impair her independence of judgment or action in the course of performing her official duties for the City. However, the Requestor can avoid violating Section 2-5-64 if she discloses her interest in the house to her supervisor and head of her department (which would happen if she discloses to the Board of Ethics) and recuses herself from making any decision [REDACTED] regarding the rehabilitation project or the documentary production, including decisions of whether or not to approve any [REDACTED].

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 2020-13. The Requestor should either disclose her interest in the house according to Section 2-5-31(b) the Code, or, if she disagrees with this disclosing, she should file another request for an advisory opinion with more details about her job duties and responsibilities.

The Requestor should not use any City property for the rehabilitation project, including any computer she uses for her City position, unless she first reviews and follows the policies or procedures for use. The Requestor must not engage in the rehabilitation project activities during working hours, and must recuse herself from participating in City decision making related to the project, including decisions relevant to permits. Regarding the documentary production, the Requestor must not use or disclose any confidential information in her projects. Additionally, the Requestor must not engage in activities related to the rehabilitation or the documentary during working hours. By following this advice, the Requestor may conduct the rehabilitation project as a project manager and allow the documentary production of a documentary with no violation.

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Dated: November 20, 2020

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Advisory Opinion #2020-15
Issued: November 17, 2020

Advisory Opinion #2020-01: 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 2020-15. The Requestor is prohibited by the Ethics Ordinance from accepting employment with the [REDACTED] for one year after his retirement with the City of Detroit.

I. Procedural Background

Request for Advisory Opinion 2020-15 (the “Request”) was sent to the Board of Ethics (the “Board”) by electronic communication and received on October 29, 2020. 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, January 29, 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 April 29, 2021.

At its meeting on November 17, 2020, 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 heard a 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

The Requestor is a [REDACTED] for the Detroit [REDACTED]. He states:

I am considering early retirement (25 years of service) due to the negative impact on my pension caused by a [REDACTED] furlough and a [REDACTED] pay cut. I would like to seek & accept employment with a [REDACTED] immediately after retirement. I have not had any direct involvement in the management of the contract since 2014. (Sec 2-5-71). Am I able to seek & accept an offer of employment at retirement?

The Requestor would like to know if he can accept employment with a [REDACTED] [REDACTED] who did business with the City of Detroit and whom he was involved with in 2014. By this request, the Requestor seeks an advisory opinion as to the applicability of the 2012 Detroit City Charter and 2019 Detroit City Code.

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 2-106.5 of the 2012 Detroit City Charter codified at Sections 2-5-71 of the 2019 Detroit City Code. It states as follows:

Sec. 2-5-71. - One year post-employment prohibition.

(a) Subject to state law, for one year after employment with the City, a public servant shall not lobby or appear before the City Council or any City department, agency, board, commission or body, or receive compensation for any services in connection with any matter in which the public servant was directly concerned, personally participated, actively considered or acquired knowledge while working for the City.

(b) Subject to state law, for one year after employment with the City, a public servant shall not accept employment with any person who, or entity which, did business with the City during the former public servant's tenure where the public servant was in any way involved in the award or management of the contract, or the employment would require the sharing of confidential information.

(Code 1984, § 2-6-72; Ord. No. 18-12, § 1(2-6-72), eff. 8-31-2012)

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

For a period of one year following the end of a public servant's employment with the City, a public servant is generally prohibited from accepting employment with an entity that had a contract with the City at any time during the public servant's employment with the City if the public servant was in any way involved with the award, according to Section 2-5-71(b) of the Detroit City Code. The Requestor revealed that he was involved with the entity, at least, in 2014. This means he *was in any way involved in the award or management of the contract* during his tenure with the City of Detroit.

He is prohibited from accepting employment with the entity for a period of one year after he retires from the City of Detroit.

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 2020-15. The Requestor is prohibited by the Ethics Ordinance from accepting employment with the [REDACTED] for one year after his retirement with the City of Detroit.

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Board of Ethics

