

***City of Detroit Board of Ethics***

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**Advisory Opinion #2017-07  
Issued: November 14, 2017**

**Advisory Opinion #2017-07:** The Ethics Ordinance has no authority governing the Requestor's conduct prior to becoming a city employee including the Requestor's [REDACTED] Award.

**I. Procedural Background**

Request for Advisory Opinion #2017-07 (the "Request"), is dated August 21, 2017, and was sent to the Board of Ethics (the "Board") by electronic communication and received August 22, 2017. The Request was submitted by a current public servant as defined by Section 2-6-3 of the Detroit Ethics Ordinance (the "Ordinance"), who did not waive confidentiality with respect to identity.

At its meeting on September 21, 2017, the Board determined that the Request met the basic requirements for a Request for Advisory Opinion under Section 2-6-101 of the Ordinance. At this meeting, the Board reviewed a Preliminary Analysis of the Request. After consideration and discussion of the issues presented, the Board voted to issue this Advisory Opinion pursuant to Section 2-6-104(b)(4) of the Ordinance.

## II. Facts Alleged In the Request

In the Request, the Requestor states in summary as follows:

My business, [REDACTED]\*, was awarded a Cycle [X]\* [REDACTED] award that includes a technical assistance package valued at \$[1234.56]\* to be used on services only (i.e. marketing, branding, legal, etc.). This was awarded to me in [Season]\* 2017, months before I became a City employee, so my questions regards whether I am ethically able to keep the award or am I required to forfeit it. I have not used any of the award package to date.

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

## III. Applicable Charter Sections

The 2012 Detroit City Charter provides at Section 2-106.1 that the purpose of applying and enforcing these requirements and standards is to ensure that governmental decisions are made in the public's best interest by prohibiting public servants from participating in matters that affect their personal or financial interests.

The 2012 Detroit City Charter, at Section 2-105.A provides the following relevant definition:

27. *Public Servant* means the mayor, members of the city council, the city clerk, any member of any city agency, board, commission, or other voting body that is established by the 1997 Detroit City Charter or by this Code, and any appointee, any employee, or any individual who provides services to the City of Detroit within or outside of its offices or facilities pursuant to a personal services contract.

[REDACTED] Program began in 2015 and was designed to encourage and assist in the development of local businesses that might not otherwise survive. At its website, the program describes its mission as follows:

[REDACTED] connects new and expanding businesses with Detroit's quality real estate opportunities, providing them with funds and tools to fuel the City's entrepreneurial revolution.

The program is primarily administered by Economic Development Corporation of the City of Detroit (EDC). This corporation was formed pursuant to the provisions of the Economic Development Corporations Act of 1978, MCL 125.1601 et seq. This statute authorizes counties and municipalities to create economic development corporations to "assist and retain local industrial and commercial enterprises . . ." MCL 125.1602. The statute grants broad authority to these corporations. They are empowered to acquire land, make loans, borrow money, issue revenue bonds or notes, enter into leases, mortgage property, sell property, and

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<sup>1</sup> Language has been change to protect the identity of the Requestor.

“lend, grant, transfer, or convey funds.” MCL 125.1608(1). These corporations may also sue and be sued in their own name. MCL 125.1632.

Economic development corporations must be approved by the legislative body governing the municipality following application by three or more persons to incorporate. MCL 125.1604. The Detroit City Council enacted an ordinance approving and establishing the Economic Development Corporation of the City of Detroit. Section

14-3-1, 1984 Detroit City Code. The Michigan Planning Association describes the role of an Economic Development Corporation as follows:

An Economic Development Corporation (EDC) is a tax- exempt, semi-autonomous, locally chartered public corporation whose purpose is to encourage development in a community. In general, EDC’s are self-supporting non-profit organizations that help potential developers obtain financing to expand or build new businesses. An EDC utilizes revenue bonds to help developers secure necessary funds. Because these bonds have tax-exempt status, and thus lower interest rates, the EDC is better able to attract targeted development projects that support the economic development goals of the community. A municipality, either a county, city, village, or township, may organize an EDC. The EDC is formed by the governing body of the municipality by resolution and incorporated as a nonprofit corporation.

On October 28, 2014, the Detroit City Council approved Contract No. 2899173, which awarded \$4.25 million dollars to the EDC for small business development. This money came from HUD’s Community Development Block Grants (CDBG) award to the City. The EDC’s contract to administer the [REDACTED] with these funds will expire on December 31, 2017.

While the EDC has primary responsibility for the administration of the [REDACTED] program, there is significant involvement by other entities. In a report to City Council dated January 11, 2015, the EDC described the administration of the [REDACTED] as follows:

The EDC entered into a subrecipient agreement with the City (Contract #2899173) for Four Million Two Hundred Fifty Thousand and 00/100 Dollars (\$4,250,000.00) in CDBG funding to manage administer and implement this initiative for a term ending December 31, 2015. The subrecipient agreement was approved by the EDC Board approval on October 14, 2014 (Resolution #14-10-91-01) and City Council on October 28, 2014.

The Economic Development Corporation (EDC) of the City of Detroit is staffed and managed by the Detroit Economic Growth Corporation (DEGC). The EDC is the primary citywide public redevelopment authority and will allow for transparency over public funds and process. The EDC has a history of managing

publicly funded programs and is the entity managing the CDBG sub-recipient agreement.

In addition to the EDC, the DEGC's sister entity, the Detroit Economic Growth Association is soliciting and receiving philanthropic contributions to support the [REDACTED]. Together these combinations of entities are the right vehicle for a complex program such as this. (Economic Development Corporation of Detroit, *Report to City Council*, January 11, 2015, p 3.)

The Detroit Economic Growth Corporation is a private non-profit entity. It is not a part of city government and describes itself in its literature "as not part of the city of Detroit's government, but rather a long-time partner." Detroit Economic Growth Corporation, Online Brochure, p 14.

The EDC's [REDACTED] Business Owner Guidelines expressly provides as follows:

The following **individuals are not eligible to apply** – building owners who are: **(1) employees, elected officials or appointed officials or officers of the City of Detroit government (the City)**, (2) employees or board members of the Detroit Economic Growth Corporation (DEGC); (3) employees or board members of the Economic Development Corporation of the City of Detroit (EDC); (4) contractors affiliated with the [REDACTED] program; (5) [REDACTED] Jurors; **(6) spouses and dependents of (a) employees and board members of the City, DEGC, and EDC;** (b) contractors affiliated with the Motor City Match program; and (c) [REDACTED] Jurors. ([REDACTED] Business Owner Guidelines, July 2016, p 8.)

The program does not restrict applicants for city employment from seeking or receiving grants. In addition, there are no provisions in the Ethics Ordinance governing the Requestor's conduct prior to becoming a city employee.

#### **IV. Application of the Charter to the Facts Presented**

Under the terms of the [REDACTED] the Requestor would now be ineligible to apply for an award. She was not however, barred at the time of her application and the actual award. There is no language in the Ethics Ordinance barring her use of the award. The key decision was made prior to her employment with the City.

The Requestor should be cautioned regarding provisions of the Ethics Ordinance that address divided loyalties. She should be certain not to engage in conduct that might violate the provisions of:

- Section 2-6-61, 1984 Detroit City Code, neglect of duty;
- Section 2-6-62, 1984 Detroit City Code, improper use of confidential information;
- Section 2-6-65, 1984 Detroit City Code, incompatible employment or rendering of service;
- Section 2-6-66, 1984 Detroit City Code, representation of private business;
- Section 2-6-67, 1984 Detroit City Code, self-interested regulation.

In addition, she should make certain her outside interests will not violate any applicable department rules or practices. Some city departments require management approval or notice of outside business activities or employment even if they raise no issues of conflict.

#### **V. Conclusion**

The Board of Ethics concludes that the Ethics Ordinance has no authority governing the Requestor's conduct prior to becoming a city employee including the Requestor's [REDACTED] award.

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