

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] 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.

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 2-5-124(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 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, 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 City Planner for the [REDACTED] and the [REDACTED]. The [REDACTED] as stated on its website, [REDACTED]”⁴ According to the [REDACTED] page on the City’s website, the [REDACTED]

As for the [REDACTED], per the Charter, it advises the City Council on the physical, social, and economic development of the City, and [REDACTED] 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, Design Core Detroit is a division of the College for Creative Studies, which is an educational institution that is located in Detroit and offers educational programs that emphasize the studies of art and design. According to Design Core Detroit’s website, multiple City departments have partnered with Design Core Detroit on several projects. In the message that was included in the Request, the Project Manager asks the Requestor to join the Design Guide Advisory Board, which will assist in the creation of a publication that is referred to as a “Design Guide for Real Estate.” As stated in the message by the Project Manager, the Design Guide for Real Estate “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 Design Guide, and provide input on the creation of the Design Guide until the end of May 2020, which is when the Design Guide was expected to be completed. The message also asked that Advisory Board members provide advice for the distribution and use of the Design Guide 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 recommendations to the City Council and the ██████ regarding subjects such as zoning requests, physical and economic development, and Community Development Block Grant programs. 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 City Planner position, 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 City Planner, the Requestor has access to confidential information.

The additional information also revealed that the Requestor had joined the Design Guide Advisory Board 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 Design Core Detroit'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 Design Core Detroit. Furthermore, the additional information no direct interactions between Design Core Detroit'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 a City Planner 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 Design Guide Advisory Board 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 making recommendations to the [REDACTED] and the City Council, 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 Design Core Detroit’s Design Guide Advisory 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 Design Guide Advisory Board. 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 a City Planner. The Requestor must not use or disclose such confidential information in the course of his involvement with Design Core Detroit's Design Guide 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 Design Core Detroit'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 Design Core Detroit 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 Design Core Detroit'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 Design Core Detroit’s Design Guide Advisory Board. 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 Design Core Detroit’s Design Guide Advisory Board. 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 Design Core Detroit.

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 Design Guide 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.

Detroit Board of Ethics
7737 Kercheval, Suite 213
Detroit, MI 48214
(313) 224-9521 (office)
(313) 775-0138 (alternate during COVID-19)
ethics@detroitethics.org

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