

*City of Detroit Board of Ethics*

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**Advisory Opinion #2019-11**  
**Issued: May 21, 2019**

**Advisory Opinion #2019-11:** The Board of Ethics concludes the Request for Advisory Opinion 2019-08 by following Sec. 2-6-104(b)(4) and issues this advisory opinion. The Requestor would be in violation Section 2-106.1 of the 2012 Detroit City Charter codified at Sections 2-6-31, -62, -65, -66, and -67 of the Ethics Ordinance. She may not accept part-time employment with outside entities.

**I. Procedural Background**

Kara Green (Requestor) filed Request for Advisory Opinion 2019-11 (“Request”) on April 25, 2019. As defined by Section 2-6-3 of the Detroit Ethics Ordinance (“Ordinance”), only a public servant may submit a Request *about their activity*. In this Request, the Public Servant has waived confidentiality concerning identity. As required by the Ethics Ordinance, the Public Servant signed and submitted the Request in writing

At its meeting on May 21, 2019, the Board determined that the Request met the basic requirements for a Request for Advisory Opinion under Section 2-6-101 of the Ordinance. The Board also reviewed a privileged and confidential Preliminary Analysis of the Request. The 91-day deadline was June 21, 2019. At this meeting, the Board of Ethics allowed an extension of the investigation for an additional 91 days, making the new deadline on September 20, 2019. 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**

The Requestor states:

I am currently an environmental health specialist with the Detroit Health Department and in that role I am responsible for conducting inspections and plan reviews of food establishments throughout the City. Through this role I have made many connections with business owners and

operators. I recently received a job offer from one of these operators, Delaware North, for a part time position to come in and be a food safety coordinator for their facilities which include Comerica Park, Little Caesars Arena, and Hockeytown Cafe. If I were to take on this new position I understand that I would not be able to partake in inspections or plan reviews for the previously mentioned facilities. This would not be an issue as all of these facilities are located in districts that are inspected by staff other than myself. Additionally, this new position would not affect my work hours with the Health Department as it will be only night and weekend shifts that I will schedule around my current job hours and responsibilities. I also believe that this position will help me grow in my current position with the health department as it will allow me to gain unique experiences from the industry side of the food service business which will allow me to more effectively communicate and work with customers throughout the city.

Requestor seeks to know whether a conflict of interests exist for her if she accepts a job offer for a food safety coordinator position with a Detroit business where she performs inspections even though she will perform the work in her free time yet maintain her duties as an environmental specialist with the City's Health Department. We look to the 2012 Detroit City Charter and the 1984 Detroit City Code

### **III. Applicable Charter Sections**

The 2012 Detroit City Charter provides in 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 of the 2012 Detroit City Charter codified at Sections 2-6-31, -62, -65, -66, -67, and -68 of the Ethics Ordinance.

#### **Sec. 2-6-31. Disclosure of interests by public servants.**

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

- (1) Any financial interest, direct or indirect, that he or she or an immediate family member has in any contract or matter pending before city council;
- (2) Any financial interest, direct or indirect, that he or she 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 he or she, 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.

**Sec. 2-6-62. 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 his or her official duties, concerns the property, government or affairs of the city or any office, department or agency thereof, and is not available to members of the public.

**Sec. 2-6-65. - 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 his or her official duties for the city.

(Ord. No. 22-00, § 1, 8-2-00; Ord. No. 18-12, § 1, 7-31-12)

**Sec. 2-6-66. 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**; or
- (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 he or she 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 he or she serves as an appointee or as an employee, or under a personal services contract, as long as he or she does so:
  - a. Without compensation; and

- b. On his or her leave time ; and
- c. For appointees, in accordance with Chapter 13 , Article V, of this Code; or
- d. For non-union employees, in accordance with Chapter 13, Article V, of this Code and the City's Civil Service Rules; or
- e. For union employees , in accordance with his or her respective union contract and the city's civil service rules; or
- f. For individuals who provide services to the City of Detroit pursuant to a personal services contract, in accordance with the applicable provisions of the contract.

**Sec. 2-6-67. Self-interested regulation 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 he or she or an immediate family member has a financial interest.

**\*Commentary—** This provision prohibits a public servant from using his or her 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 15.310 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 prohibiting a government official from soliciting or knowingly accepting anything of value or benefit from a casino licensee in return for influencing official action (see MCL 432.218(2)(c) and (d)).

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 his or her views to another City public servant or before a City agency in a non-official capacity.

**Sec. 2-6-72. - One year post-employment prohibition.**

(a) Subject to state law, and except for personal service contracts, for one (1) 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 he or she was directly concerned, personally participated, actively considered or acquired knowledge while working for the city.

(b) Subject to state law, for one (1) 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.

(Ord. No. 18-12, § 1, 7-31-12)

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

**Under Section 2-6-31, Disclosure of interests by public servants,** the Requestor appropriately complied with the disclosure requirement, Disclosure of interests by public servants. She filed an RAO with the Board of Ethics alerting the City that she is a Health Department employee. She reported that she received a job offer from an entity in the City, and she reported that she is interested in accepting their offer while continuing to work for the City of Detroit. She is required to disclose this offer because it is potential, direct, financial gain for a public servant who exercises significant authority over a pending matter.

**Under Section 2-6-62, Improper use or disclosure of confidential information,** the Requestor would be in violation should she accept a position with the operator. As a City of Detroit environmental health specialist, Requestor has extensive knowledge of the City's practices and policies that may be sensitive or confidential. If Requestor also works for a Detroit business as a food safety coordinator, she may have to share City information to further business operations and would give that facility details of City operations that would normally be private and unavailable. The use of Requestor's knowledge for the benefit of a private business entity would be a violation of Section 2-6-62.

**Under Section 2-6-65, Incompatible employment or rendering services,** if the Requestor accepts a job with the operator, she would be in violation. The Requestor stated that in her role as an environmental health specialist, she conducts inspections and plan reviews for food establishments. Requestor further mentions the job offer is as a food safety coordinator for Little Caesars Arena, Hockeytown Café, and Comerica Park. It appears the duties of an environmental health specialist and a food safety coordinator are similar or the same and overlap, which directly violates Section 2-6-65.

Although Requestor mentions in her request that the positions would not conflict because she would be this work in the evenings and on the weekend, a violation of this Section would still be present. It is the work that raises a conflict (Requestor is correct that a conflict would exist if she performed both jobs during the same time). If Requestor is performing duties similar or the same tasks on behalf of businesses located in the City of Detroit on her free time, she may not inspect those same businesses in her capacity as an environmental health specialist with the City during her normal workday.

Requestor indicates in her request that these particular establishments would not pose an issue because other staff in other districts provide the inspections. Although it may be true that Requestor currently does not have these facilities within her jurisdiction, her jurisdiction may change. In the future, she may be responsible for conducting inspections

at these facilities on behalf of the Health Department. Therefore, Requestor would violate Section 2-6-65 by accepting the position as a food safety coordinator.

**Section 2-6-66, Representation of private person, business or organization prohibited; exceptions.** Under Section 2-6-66, Representation of private person, business or organization prohibited, Requestor would violate the Ethics Ordinance. This section prohibits public servants employed with the City of Detroit from representing a private person, business or organization, except under specific circumstances. The exception requires that the public servant receive no compensation for the representation. Also, the public servant cannot represent the entity before a department or agency where she works.

**Section 2-6-67, Self-interested regulation,** prohibits a public servant from taking any action with a contract or any other type of transaction in which they have a financial interest. This provision will apply if Requestor is acting as a food safety coordinator with a Detroit business and is engaging in corrective action plans to that business issued by the City. Should the City of Detroit issue a corrective plan to a business that Requestor works for in her spare time, she would be acting in her capacity as a food safety coordinator for the business to address the City's issues and assist the business with its corrective action plan.

While the Requestor states that she will maintain both positions and not leave City of Detroit employment, it is relevant to insert **Section 2-6-72, the One-year post-employment prohibition.**

According to subsection (a), a Public Servant must wait one year before she can 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 she was directly concerned, personally participated, actively considered or acquired knowledge while working for the city.

If Requestor left City employment without waiting a year and began lobbying for, appearing for, or receiving compensation from Comerica Park, Little Caesars Arena, or Hockeytown Café before a lapse of one year she would be in violation of the Ethics Ordinance. She would be in violation for not waiting one year and because while working for the City she was directly concerned, personally participated, actively considered or acquired knowledge about the City's strategy about these corporations.

According to subsection (b), a Public Servant must wait one year after employment with the City before accepting employment with an entity that does business with the City. This applies to entities 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. If Requestor works for any of these entities without waiting one year (Comerica Park, Little Caesars Arena, or Hockeytown Café) she would in violation because she may be required to share confidential information.

The Board of Ethics thanks the Requestor for being transparent while seeking this opinion. It is grateful for public servants that use this process to deter participation in conflict of interest.

## **V. Conclusion**

The Board of Ethics concludes the Request for Advisory Opinion 2019-08 in accordance with Sec. 2-6-104(b)(4) and issues this advisory opinion. The Requestor would be in violation Section 2-106.1 of the 2012 Detroit City Charter codified at Sections 2-6-31, -62, -65, -66, and -67 of the Ethics Ordinance.

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Dated: September 13, 2019