

City of Detroit Board of Ethics

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TO: Hon. Kwame M. Kilpatrick, Mayor

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Hon. Janice M. Winfrey, City Clerk

Department Directors, Heads of All Boards and Commissions

FROM: Reginald M. Turner, Jr.
Chairperson, Board of Ethics

SUBJECT: 5th Annual Report of the Board of Ethics

DATE: April 25, 2006

The Fourth Annual Report of the Board of Ethics (the "Board") was submitted on May 18, 2005 and reported on activities of the Board from May 31, 2005 to April 30, 2005. This Fifth Annual Report covers Board activities from May 1, 2005 to March 31, 2006. In accordance with Section 2-6-97 of the Ethics Ordinance, this Report contains:

- 1) An analysis of Board activities, including the number of Advisory Opinions requested and issued, and the number of Complaints filed and their disposition;

- 2) A compilation of Advisory Opinions issued; and
- 3) Recommendations, if any, for improvement of the disclosure requirements and standards of conduct found in the Ethics Ordinance, and for improvement of the administration and enforcement of the Ordinance.

Board Activities

A. Meetings

During the period of this Report, the Board met nearly every month and disposed of all matters presented, including one Request for Advisory Opinion and eight Complaints.

B. Advisory Opinions

In response to the Request for Advisory Opinion # 2005-01, the Board issued an Advisory Opinion interpreting the application of Section 2-6-61 of the Ethics Ordinance, titled “Engaging in Official Duties for Private Gain Prohibited.” A synopsis appears below.

C. Complaints

Complaint # 2005-15 alleged that a public servant improperly used his public office for private gain by failing to pay a water bill for two years and later entering into a payment agreement at less than the required amount. The Complaint was based upon an alleged violation of the Disclosure Requirements Section 2-6-31 “Disclosure of Interest in Real or Personal Property.” The Standards of Conduct regarding Section 2-6-61 “Engaging in Official Duties for Private Gain,” Section 2-6-64 “Use of City Resources for Commercial Gain,” Section 2-6-67 “Self-Interested Regulation,” and Section 2-6-68 “Improper Use of Official Position” were also alleged to have been violated. After investigation, the Board conducted a hearing and by majority vote determined that the public servant had violated Sections 2-6-61 and 2-6-67 of the Ordinance and a public admonishment was issued. One member of the Board disagreed with the majority Opinion and filed a dissenting statement.

Complaint # 2006-16 alleged that a public servant improperly influenced the decision of an arbitrator regarding a labor dispute. The complaint alleged a violation of the Standards of Conduct with respect to Section 2-6-68 “Improper Use of Official Position.” A review and investigation revealed that the named public servant was no longer employed by the City of Detroit, accordingly, the Board concluded that, pursuant to Section 2-6-115 (b)(1)(i) of the Ethics Ordinance this matter should be dismissed because it did not have jurisdiction.

Complaint # 2005-17 alleged that a public servant improperly mailed unsolicited absentee ballot applications which included the name of a public servant. The complaint was based upon an

alleged violation of the Standards of Conduct contained in the Ethics Ordinance at Section 2-6-61 “Engaging In Official Duties for Private Gain.” After review and consideration, the Board concluded that the public servant had not violated the Ethics Ordinance and the complaint was dismissed pursuant to Section 2-6-115 (b)(1)(ii).

Complaint # 2005-18 alleged that a public servant was incompetent and had acted improperly concerning a court injunction regarding the mailing of unsolicited absentee ballot applications. The complaint was based upon an alleged violation of the Standards of Conduct contained in the Ethics Ordinance at Section 2-6-65 “ Incompatible Employment and or Rendering of Services.” After review and consideration, the Board concluded that the public servant had not violated the Ethics Ordinance and the complaint was dismissed pursuant to Section 2-6-115 (b)(1)(ii).

Complaint # 2005-19 alleged that a public servant was responsible for improper procedures regarding absentee ballots which were discovered during a recount process. The complaint was based upon an alleged violation of the Standards of Conduct contained in the Ethics Ordinance at Section 2-6-65 “Incompatible Employment and or Rendering of Services.” After review and consideration, the Board concluded that the public servant had not violated the Ethics Ordinance and the complaint was dismissed pursuant to Section 2-6-115 (b)(1)(ii).

Complaint # 2005-20 alleged that a public servant violated a court injunction regarding the mailing of unsolicited absentee ballot applications. The complaint was based upon an alleged violation of the Standards of Conduct contained in the Ethics Ordinance in Section 2-6-68 “Improper Use of Official Position.” After review and consideration, the Board concluded that the public servant had not violated the Ethics Ordinance and the complaint was dismissed pursuant to Section 2-6-115 (b)(1)(ii).

Complaint # 2005-21 alleged that a public servant improperly permitted another public servant to bid on a Request for Proposal, failed to enforce conflict of interest rules and allowed undeserved credit to be applied to the Proposal. The complaint was based upon an alleged violation of the Standards of Conduct contained in the Ethics Ordinance at Section 2-6-65 “Incompatible Employment and or Rendering of Services,” and Section 2-6-68 “ Improper Use of Official Position.” After review and consideration, the Board concluded that the public servant had not violated the Ethics Ordinance and the complaint was dismissed pursuant to Section 2-6-115 (b)(1)(ii).

Complaint # 2006-01 alleged that property maintenance violation notices were improperly issued by a City Department and that the public servant was responsible for the Notices having been issued. It was also claimed that the violation notices were issued as retaliation. The complaint was

based upon an alleged violation of the Standards of Conduct contained in the Ethics Ordinance at Section 2-6-68 “ Improper Use of Official Position.” After review and consideration, the Board concluded that the public servant had not violated the Ethics Ordinance and the complaint was dismissed pursuant to Section 2-6-115 (b)(1)(ii).

The Board conducted its first formal hearing where the Administrative Rules were used in the implementation of the Ordinance. Staff meets with and assists members of the public or city employees who request information regarding the Board or the completion of forms. The Board’s web page is being reviewed for upgrading and the posting of additional information. Copies of the Ethics Ordinance and Board approved forms are accessible on line.

The Executive Director made presentations to various City Departments as requested. Such presentations were made in an effort to increase employee awareness of the Ordinance and its requirements. The new employee orientation program that is conducted by the Human Resources Department includes information developed by the Director regarding the Charter Provision and the Ethics Ordinance. The Director participates in the orientation and provides an overview of the Ordinance and the Standards of Conduct. Plans for the development of a brochure and other informational material are still under consideration. The Board received periodic informal inquiries to which the Executive Director responded with the approval of the Board. The Board also received and responded to media inquiries. In the upcoming year, the Board hopes to increase public awareness of the Ordinance by presentations to community groups and organizations when requested. The possibility of developing a video presentation is also under consideration.

In it’s Second, Third and Fourth Annual Reports, the Board proposed three (3) Amendments to the Ethics Ordinance. As a part of the review process, a committee was created by the City Council under the direction of the Law Department. The Executive Director participated in approximately 30 meetings regarding the proposed amendments as an ad hoc member of the group. As a result of the Committee’s work, in November extensive revisions to the Ordinance were submitted to the City Council. The submission represented a significant expansion beyond the three (3) amendments proposed by the Board. Included as attachments to this Report are the Board’s original submission (Exhibit 1, pages 6-9) and a Summary of the proposed Amendments currently being considered by the City Council (Exhibit 2, pages 10-12.)

Compilation of Advisory Opinions

Advisory Opinion # 2005-01 held that there is no *per se* violation of Section 2-6-61 of the Ethics Ordinance which prohibits engaging in official duties for private gain when a public servant accepts an offer for lunch provided by a contractor. Private gain is defined in Section 2-6-3 and also included are 20 specific examples of benefits, monetary gifts or reimbursements, gifts, awards or emoluments, which are permissible to be received unless received for an improper purpose. Example 12 exempts meals or beverages provided to the public servant by an individual or by a non-governmental organization during a meeting related to official City business; Example 19 exempts

hospitality that is extended to a public servant by an individual, or by an organization, for a purpose unrelated to the official business of the City, including a gift of food, beverage, or lodging. These exceptions are applicable to the facts submitted and acceptance of the lunch would not violate the Ethics Ordinance.

Recommendations for Improvements in the Ethics Ordinance

The Board is recommending that Section 2-6-104 and 2-6-115 be amended to extend the time for disposition of Opinion Requests and Complaints to 180 days upon a showing of extraordinary circumstances as defined at Section 2-6-3 of the Ordinance. This recommendation is submitted in order to assure disposition within the time proscribed by the Ordinance. Regarding complaints in the event that a hearing is needed for resolution, if investigation is required, there may not be adequate time within the current extension period (28 days) to meet the deadline. The recommendation is made regarding Advisory Opinions to assure consistency in the time periods. The Board is willing to provide clarification and/or additional information regarding these proposed amendments in order to further assist the City Council with its review.

Included as Exhibit 3, (page 13) is the Membership Roster for the Board which lists the appointing authority and their term expiration dates. There currently exists two vacancies on the Board and it is respectfully requested that the vacancies be filled as soon as possible.

The Board will be pleased to provide any further information and to respond to any questions about its fifth year of operation. Thank you.

cc: Municipal Reference Library

PROPOSED AMENDMENT TO SECTION 2-6-66

Amend Subsection (A) of Section 2-6-66, “Representation of private entity prohibited,” to limit the prohibition to persons who are public servants only by virtue of service in a position in which they receive compensation from the City. A person who is a public servant only because of service as an unpaid member of a board, agency, commission or other entity would not be prohibited from receiving compensation for representing another person or entity in any matter that is pending before a City agency, but would remain subject to other provisions of the Ordinance.

Sec. 2-6-66. Representation of private entity prohibited.

(a) A public servant who receives compensation from the City in his or her capacity as a public servant shall not act, for compensation by any person other than the city, as an agent, attorney, or representative for another person, business or organization in any matter that is pending before a city agency.

(b) 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.

PROPOSED AMENDMENT TO SECTION 2-6-101

Currently a public servant may request an advisory opinion about his or her own conduct, or about the conduct of another public servant, which has occurred or which may occur. The Board is concerned that, where the request concerns the conduct of another public servant which has occurred, the advisory opinion will impact upon the other public servant with no opportunity for that person to participate in the process. Rather than incorporate the due process opportunities from the complaint process into the advisory opinion process, the Board recommends limiting a request for an advisory opinion to a public servant's own conduct, past, continuing, or prospective. Concerns about the conduct of another public servant may be addressed through the complaint process in which the public servant whose conduct is questioned may participate.

Sec. 2-6-101. Opinion request.

(a) A public servant, a former public servant, or an applicant or candidate to be a public servant may request an advisory opinion from the board of ethics regarding the following:

(1) The application a) of the disclosure requirements that are found in Division II of this article, or b) of the standards of conduct that are found in Division III or this article, to particular facts and circumstances; and

(2) Where a public servant, a former public servant, or an applicant or candidate to be a public servant believes that he or she, ~~or another public servant, former public servant, or applicant or candidate to be a public servant~~ may have violated, may currently be violating, or may violate this article, whether an actual violation may have occurred, a violation may be continuing, or a potential violation may occur.

(b) A request for an advisory opinion shall be addressed to the board of ethics, shall be submitted in writing, shall set forth the facts and circumstances upon which the opinion is sought, and shall be signed by the person who is making the request.

**PROPOSED AMENDMENT TO CONFORM ETHICS
ORDINANCE TO 1997 DETROIT CITY CHARTER**

Section 2-106 of the 1997 Detroit City Charter, in pertinent part, provides that: AThe Board of Ethics shall be authorized by ordinance to conduct investigations on its own initiative . . .@ The only investigations that the Board may undertake are with respect to the Complaint process under Subdivision C of the Ethics Ordinance. In its current form, Subdivision C makes no provision for the Board to conduct investigations on its own initiative, but limits the Board to investigating Complaints filed by any person except for members of the Board. The proposed amendments to Sections 2-6-91 and 2-6-111 would conform the Ethics Ordinance to Section 2-106 of the Charter.

Sec. 2-6-91. Charter independence; duties; promulgation of rules.

(a) The City of Detroit Board of Ethics is an independent body that was created by section 2-106 (2) of the 1997 Detroit City Charter for the following purposes:

(1) To render advisory opinions regarding the meaning and application of provisions of the 1997 Detroit City Charter, this article, and other laws or regulations which pertain to disclosure requirements and standards of conduct for public servants;

(2) To conduct investigations on its own initiative, or based upon a complaint, in order to ensure the integrity of city government, through the subpoenaing of witnesses, the administering of oaths, the taking of testimony, compulsion of the production of relevant evidence, and, when necessary, the appointment of independent counsel; and

(3) To recommend a) improvements in the disclosure requirements that are found in Division II of this article, and the standards of conduct that are found in Division III of this article, and b) improvements in the administration and enforcement thereof, in order to promote an ethical environment within city government, and to ensure the ethical behavior of public servants.

(b) In accordance with section 2-111 of the 1997 Detroit City Charter, the board of ethics shall promulgate administrative rules to perform its duties as set forth in the 1997 Detroit City Charter and this article.

Sec. 2-6-111. Complaint; contents thereof; limitation of action.

(a) Except for members of the board of ethics, any person may file a complaint with the board of ethics where the person believes that a public servant may have violated this article.

(b) A complaint shall be made in writing on a form that is prepared by the law department and prescribed by the board of ethics, shall specify the provision(s) of this article alleged to have been violated and the facts alleged to constitute the violation, and shall be signed by the

person who is making the complaint and sworn to in the presence of a notary public. Where, as a result of an investigation conducted on the Board=s own initiative, there is reasonable cause to believe that a violation of this Article may have occurred, the Board may direct that a complaint be filed in the name of the Board.

- (c) Such a complaint shall be filed within six (6) months from the date that the complainant(s) knew or should have known of the action that is alleged to be a violation of this article, and in no event shall the board of ethics consider a complaint which has been filed more than two (2) years after a violation of this article is alleged to have occurred.

SUMMARY

This proposed ordinance amends Chapter 2, Article VI, of the Detroit City Code, *Ethics*, by amending Sections 2-6-3, 2-6-66, 2-6-91, 2-6-101, 2-6-104, 2-6-111, 2-6-113 and 2-6-114, by repealing Sections 2-6-94, 2-6-95, 2-6-96, 2-6-97, and 2-6-103 and adding substitute Sections 2-6-94, 2-6-95, 2-6-96, 2-6-97 and 2-6-103, by adding Sections 2-6-34, 2-6-69, 2-6-70, 2-6-98, and by adding Subdivision D, *Investigations and Notices of Charges* to Division 4, *Board of Ethics*, which shall consist of Sections 2-6-121, 2-6-122, 2-6-123, 2-6-124, 2-6-125, 2-6-126, 2-6-127, 2-6-128 and 2-6-129:

- 1) To add definitions for the terms ‘appointive office’, ‘contractor’, ‘developer’ and ‘in-kind’;
- 2) To add a disclosure requirement for public servants who are either an immediate family member or a relative of the Mayor, a City Council Member, or the City Clerk to disclose the relationship;
- 3) To add two exceptions to the standard of conduct which prohibits a public servant to act as an agent, attorney, or representative in any matter that is pending before a City department or agency a) for uncompensated members of a City board, commission, or other voting body on which he or she is a member within certain conditions, and b) for those who are compensated other than the board, commission, or other voting body on which he or she serves as an appointee, an employee, or under a personal services contract, under certain conditions;
- 4) To add a standard of conduct which, with exceptions, prohibits a public servant who exercises significant authority from soliciting or accepting a promissory note, written loan agreement or monetary payment:
 - a) From a contractor or a subcontractor of a contractor, an individual who is an agent of a contractor or of a subcontractor of a contractor, or an immediate family member of a contractor or of a subcontractor of a contractor; or
 - b) From a bidder or a subcontractor of a bidder that was not selected to perform services for the City under a contract, from an individual who is an agent of a bidder or a subcontractor of a bidder that was not selected to perform services for the City under a contract, or from an immediate family member of a bidder or a subcontractor of a bidder that

- was not selected to perform services for the City under a contract; or
- c) From a developer, an individual who is an agent of a developer, or an immediate family member of a developer; or
 - d) From a bidder or a solicitor of a proposal for the development of real property that was not selected by the City, from an individual who is an agent of a bidder or a solicitor of a proposal for the development of real property that was not selected by the City, or from an immediate family member of a bidder or a solicitor of a proposal for the development of real property that was not selected by the City;
- 5) To add a standard of conduct to prohibit the Mayor, City Council Members, and the City Clerk from influencing decisions to fill any civil service position with immediate family members or relatives;
 - 6) To clarify that the Board of Ethics has authority to conduct investigations in accordance with Section 2-106(2) of the 1997 Detroit City Charter;
 - 7) To clarify that the Board of Ethics must promulgate necessary administrative rules where an amendment of the Chapter 2, Article VI, of the 1984 Detroit City code requires such action;
 - 8) To limit partisan political activity by members of the Board of Ethics regarding the office of Mayor, City Council, and the City Clerk;
 - 9) To clarify that a public servant may only make a request for an advisory opinion regarding his or her own conduct;
 - 10) To delete provisions which prohibit a public servant from retaliating and harassing another public servant for the latter's request of an advisory opinion as public servants are limited to requesting an advisory opinion regarding their own conduct;
 - 11) To clarify that the Board of Ethics is precluded from taking action where a public servant's request for an advisory opinion is made in good faith, concerns past or current conduct, and the public servant has conformed his or her conduct to the advisory opinion;
 - 12) To clarify that the Board of Ethics may dispose of an advisory opinion where the Board determines that the request concerns past or current conduct, which is more appropriately addressed by the filing of a complaint or by the conducting of an investigation;

- 13) To change the time for the filing of a complaint from six (6) months to one hundred eighty-two (182) days;



Membership Roster 2006

Reginald M. Turner, Jr. Esq. – Chairperson
Joint Appointee
Term Expiration – June 30th 2006

Honorable Charles L. Levin, Member
Mayoral Appointee
Term Expiration – April 30th 2004

Byron H. Pitts, Esq. Member
Council Appointee
Term Expiration – June 30th 2005

Jenice C. Mitchell, Esq. Member
Mayoral Appointee
Term Expiration – April 30th 2008

Council Vacancy
Term to Expire – June 30th 2008

Reuben A. Munday, Esq. Member
Mayoral Appointee
Term Expiration – April 30th 2005

Council Vacancy
Term to Expire – June 30th 2009