

CITY OF DETROIT BOARD OF ETHICS 2022 ANNUAL REPORT



BOARD OF ETHICS
DETROIT

A GUIDING LIGHT FOR THE CITY OF DETROIT

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INTRODUCTION



The Board of Ethics is pleased to issue its Annual Report for 2022 to the Mayor, City Council, City of Detroit employees, and Detroit citizens.

As an independent entity established by the 1997 City Charter and enacted in 2000 by City Council, the core mission of the Board of Ethics is to promote an ethical environment in city government and ensure the ethical behavior of public servants.

Good governance can only be achieved with public trust and accountability. City of Detroit employees and residents deserve to participate fully in a government that is impartial, transparent, and accessible to all rather than to a privileged few. To achieve these goals, the Board of Ethics promotes compliance with the standards of conduct under the Ethics Ordinance through training, guidance, and the resolution of complaints regarding alleged ethics violations.

This is vital work that cannot be underestimated or undervalued. To that end, the year covered by this report was marked by unprecedented growth and accomplishments. The Board of Ethics continued its work to educate public servants on the ethics ordinance to ensure adherence and avoid potential ethical dilemmas. The success of our efforts can be measured by the increase in public servants who took their annual mandatory ethics training, from 757 in 2021 to 4,836 in 2022.

On the reform front, a working group was formed to improve and strengthen the Ethics Ordinance. To increase visibility and awareness, a new logo was introduced that better reflected our mission and values. Outreach involved participation in Constituent Services Hour prior to City Council Evening Community Meetings and collaboration with local universities and regional Ethics Boards to host interns and develop educational events for our Board members and the public in 2023.

Enforcement matters included six Complaints and sixteen Requests for Advisory Opinions received, with the Board of Ethics issuing nine advisory opinions and providing six letters of guidance. Complaints and Requests for Advisory Opinions are summarized on pages 13-17 and 21-22.

On behalf of the Board of Ethics, I thank you for allowing us to be a guiding light for the City of Detroit. I look forward to another year of collaboration and productivity and welcome your feedback on this Annual Report.

Sincerely

Christal Phillips
Executive Director
City of Detroit Board of Ethics

Letter to the Mayor and City Council

DATE: April 1, 2023

TO: Hon. Michael E. Duggan, Mayor
Hon. Mary Sheffield, City Council President
Hon. James Tate, City Council President Pro Tem
Hon. Angela Whitfield-Calloway, City Council Member
Hon. Scott Benson, City Council Member
Hon. Latisha Johnson, City Council Member
Hon. Gabriela Santiago-Romero, City Council Member
Hon. Fred Durhal, III, City Council Member
Hon. Mary Waters, City Council Member
Hon. Coleman A. Young, II, City Council Member

FROM: Detroit Board of Ethics

SUBJECT: Annual Report of the Board of Ethics for 2022

The Detroit Board Ethics Annual Report includes its activities beginning January 1, 2022 to December 31, 2022. 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 with each 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: Hon. Janice M. Winfrey, Detroit City Clerk
Department Directors
Agency Leaders

ABOUT THE BOARD



Section 2-5-103 of the Ethics Ordinance governs the Board of Ethics' members, terms, and filling of vacancies. The seven-member Board of Ethics consists of three members appointed by the Mayor, three members appointed by the City Council, and one jointly appointed by the Mayor and City Council. All members of the Board of Ethics are restricted to a maximum of two consecutive terms or to ten years.

Members must be residents of the City of Detroit. They must not be an elected officer, appointee, or employee of the City of Detroit at any time during their Board membership.

The Board typically meets on the third Wednesday of each month at the Butzel Family Center to discuss complaints, investigations, requests for advisory opinions, and office matters. The Board in 2022 was composed of six members with a City Council appointed vacancy left by Freda G. Sampson on April 16, 2021. Byron Osbern, a mayoral appointee, vacated his seat on December 15, 2022.

- Kristin A. Lusn, Esq., Chair (Mayoral appointee-term ending July 13, 2025)
- David W. Jones, Esq., Vice-Chair (Mayoral appointee-term ending December 12, 2023)
- Byron Osbern (**Mayoral appointee**, seat vacated on December 15, 2022-term ending April 30, 2023)
- Michael S. Rafferty (Joint appointee-term ending June 30, 2024)
- Mario L. Morrow, Sr. (City Council appointee-term ending June 30, 2025)
- Robert Watt (City Council appointee-term ending June 30, 2025)
- **Vacancy (City Council appointee for term ending June 30, 2024)**

BOARD STAFF

After the review of thirty-four applications, the Board of Ethics appointed Christal Phillips as the Executive Director in July 2022. The position was previously filled by Alicia Skillman who resigned in April 2021. The Executive Director leads a staff of three consisting of an Investigator, Dawn Widman, Training Specialist, Michael O'Connell, and Ethics Coordinator, Vanessa L. Johnson.

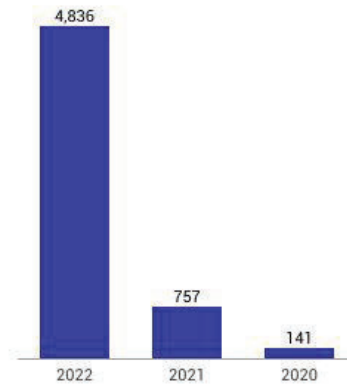
Board of Ethics: Quick Glance

16

Number of Requests for Advisory
Opinions Received

8

Number of Board Meetings in 2022



Training growth over the past 3 years

539%

Total Percentage Increase of Trained Public
Servants from 2021 to 2022

6

Complaints
Received

4

Full Time Staff
Positions Filled

2

Board Vacancies as
of December 31,
2022

<https://www.detroitethics.org/>

ABOUT THE ETHICS ORDINANCE

[The City of Detroit Ethics Ordinance](#) is contained in the 2019 Detroit City Code that establishes disclosure requirements and standards of conduct applicable to all City of Detroit public servants and for those who work on behalf of the City, such as vendors or contractors.

The Ethics Ordinance was enacted by City Council in 2000 and amended in 2006, 2010, 2012, and 2019. In addition, the 2012 amendments to the Ordinance require all contractors and vendors to make certain disclosures on a form available from the Board of Ethics.

The purpose of the Ethics Ordinance is to promote public confidence in public servants and to preserve the integrity of city government. The Ethics Ordinance is intended to establish clear standards of conduct for all public servants, and clear disclosure requirements for all public servants, contractors, and vendors of the City of Detroit.

The purpose is further defined as intending 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. Even the appearance of impropriety is to be avoided.

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.

City of Detroit Ethics Ordinance

DEPARTMENTAL OPERATIONS

ANNUAL BUDGET

The 2022 Budget of the Board of Ethics was \$610,001.00. The bulk of the expenditures were used for its operating budget, which include salaries and benefits for the Board of Ethics staff members. The budget included funding for the rebranding and marketing efforts for the [Board of Ethics](#), beginning the redevelopment process for the [online training program](#), the purchase of WingSwept, an investigative case management system, and presentation software licenses used in the development of outreach presentations and in person training.

BOARD MEETINGS

The Board of Ethics was scheduled for twelve in-person monthly meetings in 2022. Out of those scheduled, eight general meetings and two special meetings were held. The remaining meetings were canceled due to a lack of quorum in accordance with Michigan's Open Meetings Act, 1976 PA 267. Monthly meetings were held at Kemeny Recreation Center and returned to Butzel Family Center after the completion of building construction projects in October 2022.

ETHICS ORDINANCE REVISION WORKING GROUP

The Board of Ethics established an Ethics Ordinance Revision Working Group in November 2022 devoted to improving the Ethics Ordinance through organizational deliberation and consensus. The working group meets monthly and is represented by Board of Ethics staff, board members, legal counsel, and City Council chief of staff. The goal of the working group is to submit approved revisions to City Council and create long term recommendations for the next creation of a Charter Revision Commission.

OFFICE RENOVATIONS & UPGRADES

The Board of Ethics office underwent minor renovations in November 2022 to accommodate growing staff and provide a healthier working environment. A Detroit-based contractor was hired for a cost of \$3,350 to patch holes and paint wall repairs in the conference room and the offices of the Executive Director and Training Specialist. Additionally, old carpet was removed and replaced with new carpet tiles in the Training Specialist's office. Air purifiers were acquired for each room of the main office to help reduce the spread of airborne viruses and improve air quality for Board staff and visitors as meetings and services return to in-person operation.

RETURN TO IN-PERSON SERVICES

During the pandemic and the construction projects at Butzel Family Center, the Board of Ethics followed a hybrid work model to continue its regular business while its office was closed to the public. The Board of Ethics physical office is now open to the public with the reopening of Butzel Family Center.

OUTREACH & ACTIVITIES

ETHICS TRAINING

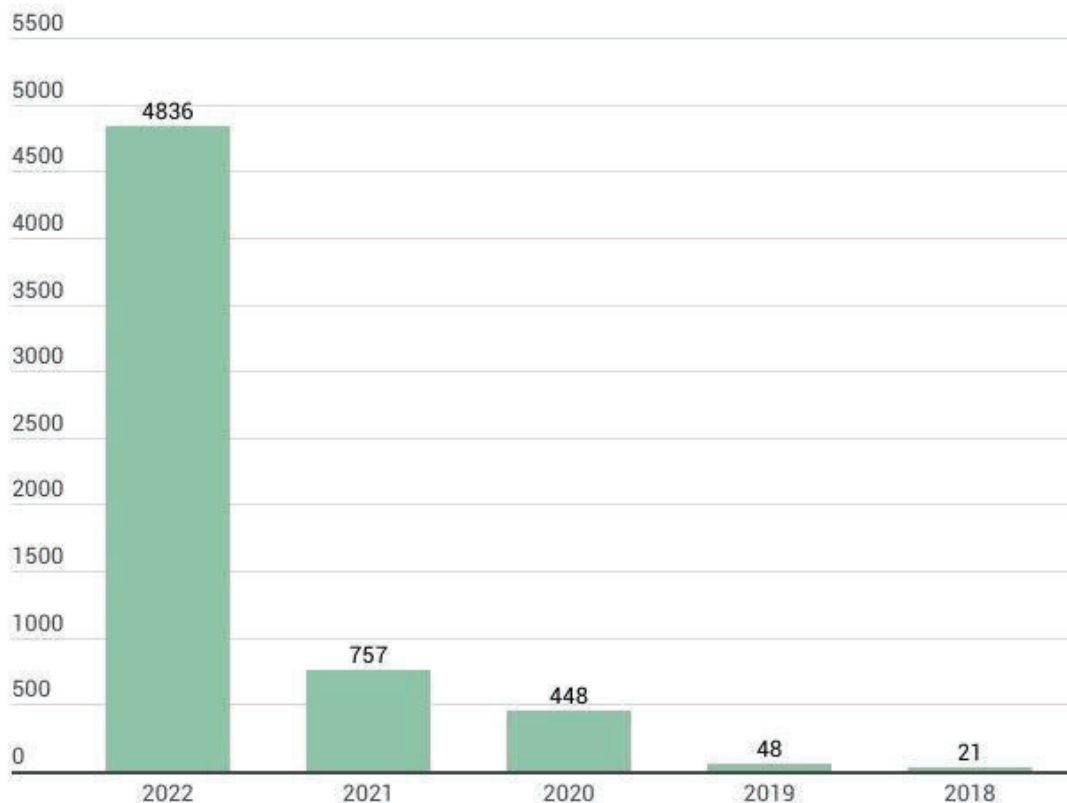
In 2022, the Board of Ethics implemented a new training schedule, aimed at developing a greater participation rate in training across all City Departments. The schedule was divided into Calendar Year Quarters, with each Department assigned to a Quarter to complete training. Training is also available in person and via virtual meeting platforms for clarification and ease of access to Board of Ethics policies and information.

The Board of Ethics has also partnered with the Human Resources Office of Talent Development and Performance Management to deliver Ethics Training included in their LEAP and Supervisor Training programs.

The Detroit City Charter and the Ethics Ordinance requires the Board of Ethics provide training to all City appointees and employees. In 2022, the Board of Ethics trained **4,836** public servants. This is an increase from **757** public servants who took ethics training in 2021.

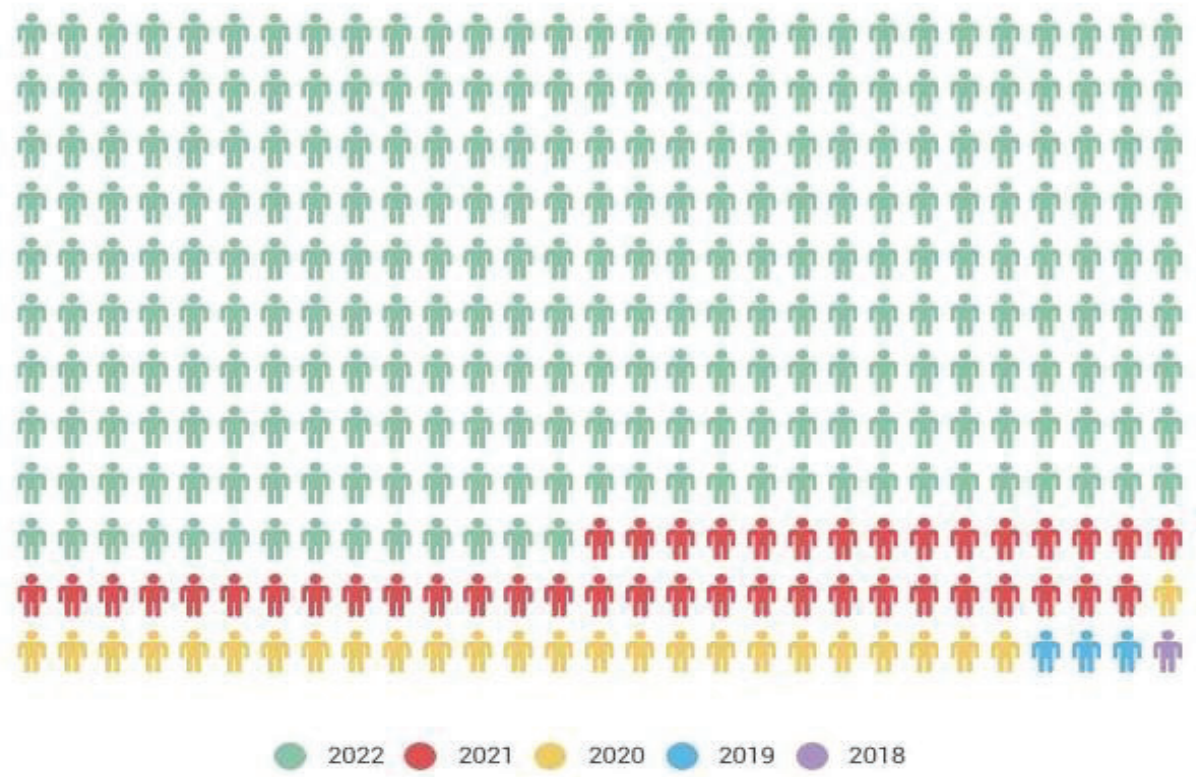
Data collected on training efforts has been included below to show training growth progression for the Board of Ethics.

Training Over Time



Or in an alternative view,

Training Growth by Year



COGEL CONFERENCE

Board of Ethics members and staff attended the Council on Governmental Ethics and Laws (COGEL) conference in Montreal, Canada in December 2022. The annual conference provides the Board of Ethics to meet other ethics offices and learn updates in the fields of freedom of information, governmental ethics, lobbying, investigations and audits, web analytics, and disclosures.

Board of Ethics staff participate in virtual COGEL educational events throughout the year and plan to attend the next COGEL conference scheduled for December 2023 in Kansas City, Missouri.

REBRANDING

The Board of Ethics completed rebranding efforts in 2022 that reflects its values and the community it serves. The logo was chosen to differentiate the Board of Ethics from other City departments and provide a sense of separation to ease the minds of those who come to the Board of Ethics for assistance. The Board of Ethics follows in the footsteps of other oversight agencies that have developed and implemented alternative logos to emphasize this independence.



The lighthouse in the center represents the Board of Ethics as a guiding light for all public servants. The color shift from dark at the bottom to light at the top represents bringing the City of Detroit and any subject matter the Board of Ethics has jurisdiction over from the darkness into the light. The iconic Renaissance Center in the background represents the City of Detroit. The logo will represent the Board of Ethics as it continues to increase its visibility and presence in the City of Detroit.

The Board of Ethics continues its efforts to expand departmental marketing, and will continue to do so in years to come. Currently the department is working toward full market penetration through the use of Public Service Announcements, Posters hung in City Departments and various other forms of media in order to educate Public Servants and Constituents on the purpose and services of the Board of Ethics.

OUTREACH TO REGIONAL ETHICS BOARDS

The Board of Ethics collaborates with ethics boards around Metro Detroit and the State of Michigan to increase awareness and advocate for the establishment of strong ethics boards in city government. Ethics boards and cities from around Metro Detroit have expressed their interest in participating in the City of Detroit Board of Ethics' planned first regional ethics conference.

The one-day conference, open to the public, will host keynote speakers in the field of ethics and panel sessions on topics applicable to the effective operation of ethics boards, whether in a large city or a small town. More details and registration information will be provided in Spring 2023.

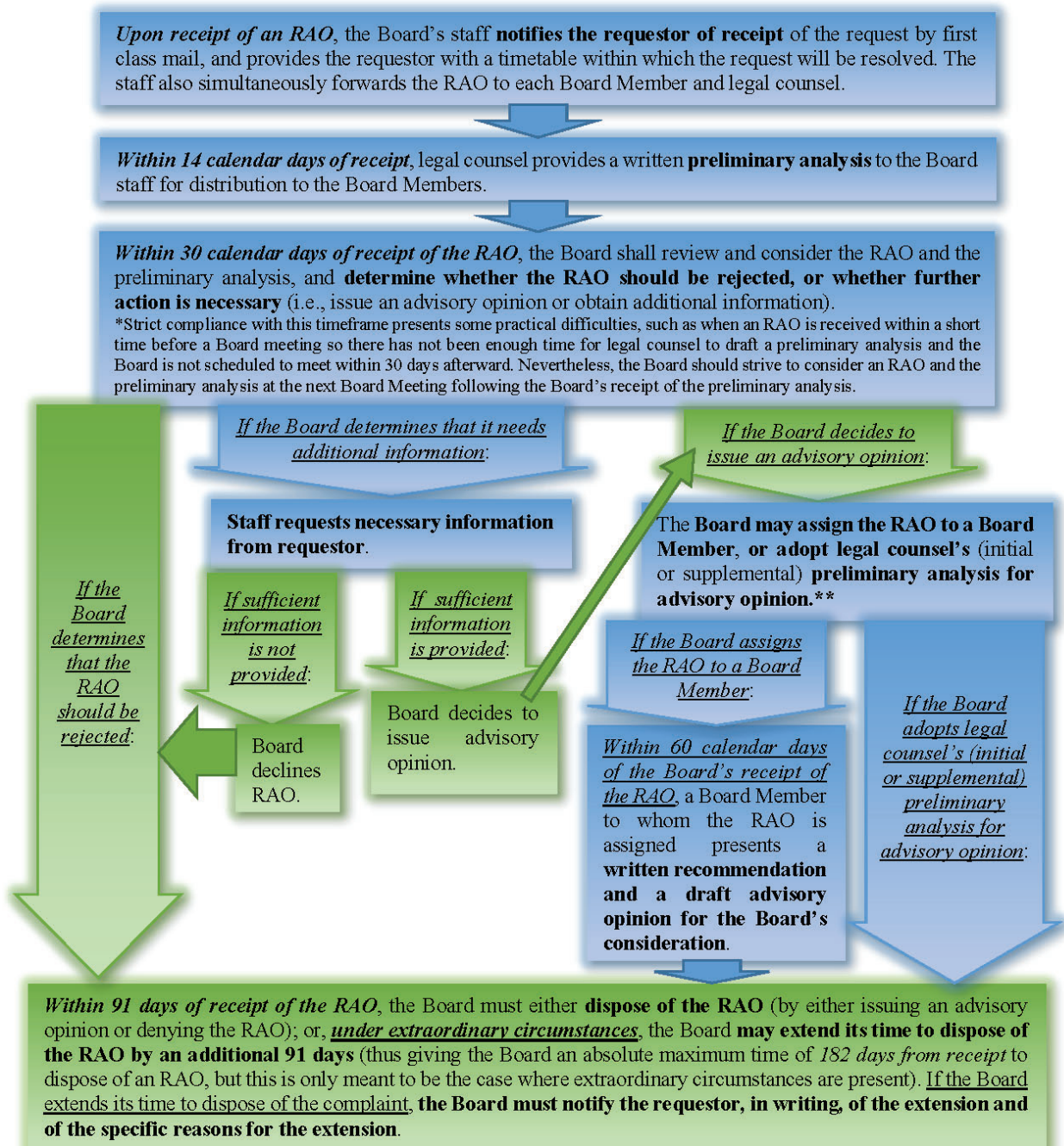
INTERNSHIPS & EDUCATIONAL OUTREACH

The Board of Ethics is dedicated to developing young local leaders with a passion for ethics and public service. For the fourth year, the Board of Ethics partnered with [Grow Detroit's Young Talent](#) program to host college interns from Detroit for six weeks in the summer.

The Board of Ethics collaborated with colleges and universities, including the Ford School of Public Policy at the University of Michigan - Ann Arbor, and participated in efforts to reach constituents as a regular attendee at the Constituent Services Hour hosted prior to City Council Evening Community Meetings.

REQUEST FOR ADVISORY OPINIONS

REQUEST FOR ADVISORY OPINION PROCESS



Green = Established by Ethics Ordinance

Blue = Established by Board's Procedural Rules

**The Board's Rules permit an RAO be assigned to a Board Member, but do not require it for issuing an advisory opinion. Thus, the Board has discretion to also adopt legal counsel's preliminary analysis for an advisory opinion, despite not explicitly stated in the rules.

OPINION SUMMARIES

Division 4, Subdivision B of the Ethics Ordinance outlines the requirements for filing an advisory opinion. 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 public servant's own conduct.

In 2022, the Board of Ethics issued nine opinions. Additionally, the Board provided six letters of guidance, and has one matter pending.

OPINION 2022-01. DISCLOSURE REQUIREMENTS

Advisory Opinion 2022-01, submitted January 4, 2022, sought an opinion on Disclosure Requirements. The Board of Ethics decided to issue an opinion pursuant to Section 2-5-124(b)(4). The Requestor's mother is not considered to be an immediate family member for purposes of disclosure requirements mandated by the Charter and the Code. Thus, the Requestor was under no duty to disclose the parent-child relationship between the Requestor and the Requestor's mother. In order to eliminate any appearance of impropriety, the Board of Ethics advised the department to address such concern by assigning the task of reviewing and completing the Requestor's time and attendance to a different, unrelated person within the division.

OPINION 2022-02. DISCLOSURE REQUIREMENTS & STANDARDS OF CONDUCT

Advisory Opinion 2022-02, submitted January 28, 2022, sought an opinion on Disclosure Requirements and Standards of Conduct to the Requestor's participation as a volunteer with a nonprofit program. The Board of Ethics issued an opinion pursuant to Section 2-5-124(b)(4) and determined that the Requestor had a potential indirect financial interest in the success of the nonprofit, therefore, is required to disclose their affiliation with the nonprofit program.

The Board of Ethics prohibited the Requestor from using or disclosing confidential information obtained in the course of their role at the City of Detroit to the nonprofit program and other third parties. It was advised that the Requestor recuse themselves from the consideration of any permit application for the nonprofit program, and any other matter involving the nonprofit that comes before the City department for which the Requestor is employed. The Requestor should obtain permission to engage in the volunteer services with the nonprofit program by way of the Outside Employment Form pursuant to Human Resources Directive 2015-1. The Requestor should also ensure that they do not provide volunteer services to the nonprofit program during scheduled City of Detroit work hours.

The Requestor must not advocate on behalf of the nonprofit program regarding any matters that come before the City of Detroit unless done within the confines of the applicable exception. The Requestor is precluded from participating in any City of Detroit transactions with or regarding the nonprofit program, including consideration of licensing or permit applications, inspections and other transactions related to the Requestor's job with the City of Detroit. Lastly, the Requestor was reminded not to violate any state or federal laws in an effort to improperly influence a member of any City authority board, commission, committee or City agency.

OPINION 2022-03. STANDARDS OF CONDUCT

Advisory Opinion 2022-03, submitted February 1, 2022, sought an opinion regarding the Standards of Conduct pertaining to application for unlimited licenses under the Adult-Use Marijuana Licensing Ordinance. Pursuant to Section 2-5-124(b)(2), the Board of Ethics decided not to issue an opinion because it did not merit review by the Board of Ethics. Consideration of the issue presented required analysis under the Adult-Use Marijuana Ordinance. There is currently no Adult-Use Marijuana Ordinance in effect in the City of Detroit. Though such an ordinance was considered by City Council, it had not been enacted. Thus, the issue was not ripe for consideration. The Board of Ethics recommended that the Requestor resubmit the request following the enactment of the Adult-Use Marijuana Ordinance.

OPINION 2022-04. DISCLOSURE REQUIREMENTS & STANDARDS OF CONDUCT

Advisory Opinion 2022-04, submitted February 8, 2022, sought an opinion regarding the application of the Disclosure Requirements and Standards of Conduct. The Board decided not to issue an opinion and the matter was closed.

OPINION 2022-05. STANDARDS OF CONDUCT

Advisory Opinion 2022-05, submitted February 15, 2022, sought an opinion regarding the application of the Standards of Conduct. Pursuant to Section 2-154(b)(4), the Board of Ethics issued an advisory opinion determining that the Detroit City Code does not prohibit the Requestor from launching a nonprofit organization that aims to provide accessible construction improvements to small business and residences. However, to avoid violating the Detroit City Code, the Board of Ethics recommended that the Requestor should adhere to the following guidelines in the launch and operation of the prospective nonprofit:

1. Refrain from using confidential information gained in the course of performing official City duties to the benefit of the prospective nonprofit, or to any other third parties;
2. Refrain from using City property to benefit the prospective nonprofit;
3. Refrain from performing work on behalf of the prospective nonprofit during City work hours;
4. Notify and obtain permission from the Board prior to beginning employment with an outside employer by submitting a Request for Approval of Outside Employment form;
5. Should Requestor ever contemplate appearing before a City board, body, commission, or department on behalf of the prospective nonprofit, seek the advice of the Board of Ethics by submission of a Request for Advisory Opinion;
6. Requestor is advised to seek guidance from the Board of Ethics by submission of a supplemental Request for Advisory Opinion if the prospective nonprofit contemplates entering into a contract with the City of Detroit, or if the prospective nonprofit is presented with the opportunity to accept funds from the City of Detroit.

OPINION 2022-06. DISCLOSURE REQUIREMENTS

Advisory Opinion 2022-06 submitted February 21, 2022, sought an opinion regarding the application of the Disclosure Requirements. The Board of Ethics decided to issue an opinion, pursuant to Section 2-154(b)(4), prohibiting the Requestor from accepting an honorarium and requiring the Requestor to file a disclosure. Furthermore, the Requestor was advised to follow an internal workflow plan provided to the Requestor's supervisor, and refrain from divulging confidential information, utilizing City of Detroit property or other resources, or acting as an agent or representative before the City of Detroit. The Request should seek the Board of Ethics' opinion regarding circumstances that may fall under the Detroit City Code's exceptions.

OPINION 2022-07. STANDARDS OF CONDUCT

Advisory Opinion 2022-07, submitted February 23, 2022, sought an opinion regarding the application of the Standards of Conduct. The Requestor was offered prospective employment with a 501(c)(3) entity that does business with the City of Detroit. The Board of Ethics decided to issue an opinion pursuant to Section 2-154(b)(4), and opined that Section 2-5-71 of the Ethics Ordinance precluded the Requestor from accepting employment with the 501(c)(3) entity for a period of one year following the Requestor's date of separation from the City of Detroit.

OPINION 2022-08. DISCLOSURE REQUIREMENTS & STANDARDS OF CONDUCT

Advisory Opinion 2022-08, submitted March 2, 2022, sought an opinion regarding the application of the Disclosure Requirements and Standards of Conduct. The Board of Ethics voted to issue an advisory opinion pursuant to Section 2-154(b)(4) of the Code and decided that Section 2-5-70 of the Detroit City Code precludes the Requestor from serving as a paid consultant for, or accepting employment with, developers and/or development teams with whom the Requestor worked, or who are subject to development agreements awarded or managed by the Requestor while employed by the City of Detroit for one year following the Requestor's separation from the City of Detroit.

OPINION 2022-09. DISCLOSURE REQUIREMENTS

Advisory Opinion 2022-09, submitted March 24, 2022, sought an opinion regarding the application of the Disclosure Requirements. The Board of Ethics voted to issue an advisory opinion pursuant to Section 2-154(b)(4) of the Code and advised that the 2012 Detroit City Charter and Ethics Ordinance does not prohibit the Requestor from utilizing the purchasing discount offered by a friend who is an employee of an automobile company, to acquire a vehicle from said company.

OPINION 2022-10. DISCLOSURE REQUIREMENTS & STANDARDS OF CONDUCT

Advisory Opinion 2022-10, submitted March 24, 2022, sought an opinion regarding the application of the Standards of Conduct to the Requestor's acceptance of a personal medal gifted to the Requestor by a foreign investor who has rental compliance matters before a City of Detroit department where the Requestor is employed. The Board of Ethics issued an advisory opinion pursuant to Section 2-154(b)(4) of the Ethics Ordinance, prohibiting the Requestor to accept the medal because the foreign investor has

interests that can be substantially affected by performance of the Requestor's duties in violation of Section 2-5-70, Prohibition on Gifts and Gratuities.

OPINION 2022-11. STANDARDS OF CONDUCT

Advisory Opinion 2022-11 is still under review with the Law Department.

OPINION 2022-12. STANDARDS OF CONDUCT

Request for Advisory Opinion 2022-12, submitted May 5, 2022, sought an opinion regarding the application of the Standards of Conduct. The Board of Ethics issued an advisory opinion pursuant to Section 2-154(b)(4) of the Ethics Ordinance. The Requestor was advised that Section 2-106.5, One Year Post Employment Prohibition, of the 2012 Detroit City Charter and Section 2-5-71 of the Ethics Ordinance permitted the Requestor to accept a position with a local company.

The Requestor was reminded that Section 2-5-71(a) of the Ethics Ordinance precludes a former public servant from lobbying or appearing before the City Council or any City of Detroit department, agency, board, commission or body. Furthermore, the Requestor is precluded from receiving compensation for any services in connection with any matter in which the Requestor was directly concerned, personally participated, actively considered or acquired knowledge while working for the City for one year following the public servant's separation from the City. Thus, should Requestor accept the position, for one year following separation from the City of Detroit, the Requestor should refrain from lobbying or appearing before the City, or working on any matter involving the City of Detroit if the Requestor was directly concerned, personally participated in, actively considered, or acquired knowledge of the matter while employed with the City of Detroit.

Finally, the Requestor was advised that Section 2-5-71(b) of the Ethics Ordinance prohibits a public servant from accepting employment with any person who, or entity which, did business with the City of Detroit 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. As the Requestor represented that they had no involvement with the award or management of any contracts between the City of Detroit and their new employer, and had no confidential information that is germane to the prospective position, the Ethics Ordinance does not preclude the Requestor from accepting the position.

OPINION 2022-13. STANDARDS OF CONDUCT

Advisory Opinion 2022-13 submitted May 13, 2022, sought an advisory opinion regarding the application of Standards of Conduct. The Board of Ethics declined to issue an advisory opinion pursuant to Section 2-5-124(b)(2).

OPINION 2022-14. STANDARDS OF CONDUCT

Advisory Opinion 2022-14, submitted June 30, 2022, sought an advisory opinion regarding the application of the Standards of Conduct. The Board of Ethics declined to issue an advisory opinion pursuant to Section 2-5-124(b)(2).

OPINION 2022-15. DISCLOSURE REQUIREMENTS & STANDARDS OF CONDUCT

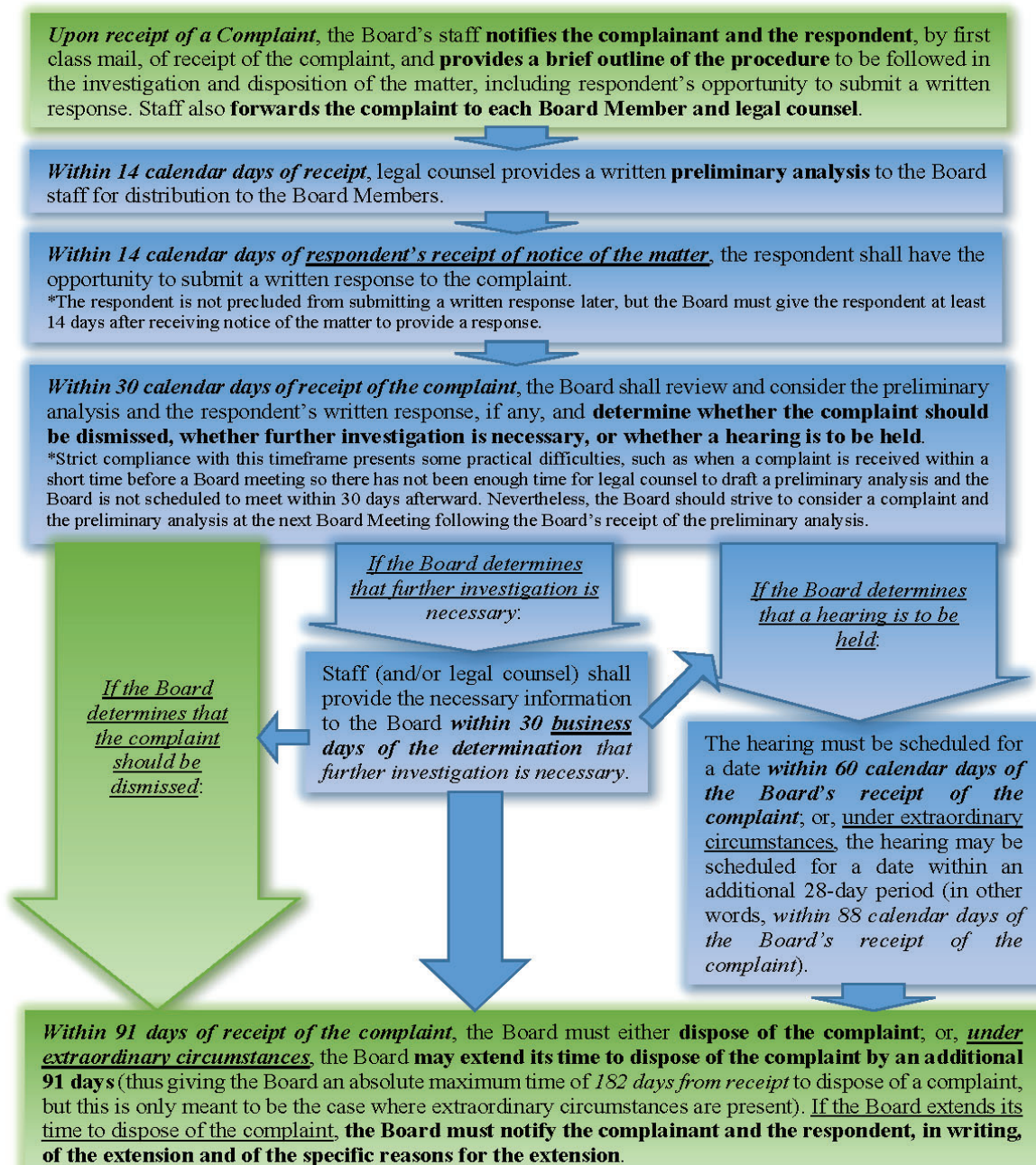
Request for Advisory Opinion 2022-15, submitted August 10, 2022, sought an advisory opinion regarding the application of the Standards of Conduct and Disclosure Requirements. The Board of Ethics voted to issue an advisory opinion pursuant to Section 2-5-124(b)(4). The Requestor, an employee with the City of Detroit, was advised to disclose the acceptance of a 0% Home Repair Loan, and the Requestor's management should take special care to ensure that the Requestor is not able to manipulate the payment system in their favor in any way.

OPINION 2022-16. STANDARDS OF CONDUCT

Request for Advisory Opinion 2022-16, submitted on December 9, 2022, sought an advisory opinion regarding the application of the Standards of Conduct and Disclosure Requirements. This matter is still pending.

COMPLAINTS

COMPLAINT PROCESS



Green = Established by Ethics Ordinance
Blue = Established by Board's Procedural Rules

COMPLAINT SUMMARIES

Anyone can file a notarized Complaint against a public servant who they believe has violated a standard of conduct or disclosure requirement. In 2022, the Board of Ethics addressed six complaints, which are summarized below.

COMPLAINT 2022-01 - SECTIONS 2-5-31 & 2-5-67

Complaint 2022-01 alleged violation of Sections 2-5-31 - Disclosure of interests by public servants and 2-5-67 - Improper use of official position prohibited, in connection to a City of Detroit employee's alleged communication with a contractor to inquire about work to be performed on a home repair project that fell outside the scope of her duties. Pursuant to Section 2-5-145(b)(1)(b), the Board of Ethics determined that Complaint 2022-01 did not allege facts sufficient to constitute a violation of the Ethics Ordinance, and dismissed the matter.

COMPLAINT 2022-02 - SECTIONS 2-5-31; 2-5-62; 2-5-66; & 2-5-67

Complaint 2022-02 was filed in connection to a civil lawsuit filed by the Respondent, on behalf of the City of Detroit, against the Complainant. The civil lawsuit was ongoing as of April 20, 2022. The Complainant claimed that they were denied due process in the lawsuit and had not been allowed a jury trial, change of venue, mediation or a dismissal with prejudice in over three years.

The Complainant alleged that the Respondent's conduct violated the following Disclosure Requirements and Standards of Conduct: 1) Sections 2-5-31 - Disclosure of interests by public servants; 2) 2-5-62 - Improper use or disclosure of confidential information prohibited; 3) 2-5-66 - Self-interested regulation and participation prohibited; and 4) 2-5-67 - Improper use of official position prohibited.

Pursuant to Section 2-5-145(b)(1)(a) and (e), the Board of Ethics determined that Complaint 2022-02 was untimely and did not meet the relevant legal standards for consideration by the Board of Ethics, that another proceeding that arose out of the same transaction or occurrence was still ongoing, and dismissed the matter.

COMPLAINT 2022-03 - SECTION 2-5-67

Complaint 2022-03 alleged violation of Section 2-5-67 - Improper use of official position prohibited - in connection to a disciplinary reprimand administered to the Complainant. Review of the Complaint and accompanying documents revealed that the incident leading to the complainant's discipline occurred in December 2020, and management administered corrective action in January 2021. It was found that the Complainant filed the complaint more than 182 days after they knew or should have known about the Respondents' alleged violative conduct. Pursuant to Section 2-5-145(b)(1)(a), the Board of Ethics determined it had no jurisdiction due to the lack of timeliness to file a claim, and dismissed the matter.

COMPLAINT 2022-04 - SECTIONS 2-5-31; 2-5-61; & 2-5-67

Complaint 2022-04 alleged violation of Sections 2-5-31 - Disclosure of interests by public servants; 2-5-61 - Willful neglect of public duty prohibited; and 2-5-67 - Improper use of official position prohibited. The Board of Ethics determined that Complaint 2022-04 did not allege facts sufficient to constitute a violation of the Ethics Ordinance, and dismissed the matter. Pursuant to Section 2-5-145(b)(1)(b), the Board of Ethics referred the complaint to the Office of the Inspector General for investigation into alleged defamatory and/or fraudulent statements made by the Respondent.

COMPLAINT 2022-05 - SECTIONS 2-5-32 & 2-5-67

Complaint 2022-05 alleged violation of Sections 2-5-32 - Disclosure of immediate family member's employment or application and 2-5-67 - Improper use of official position prohibited of the 2019 Detroit City Code in connection with the Respondent's issuance of corrective discipline against the Complainant. It was indicated that the Complainant filed complaints that arose out of the same circumstances with CRIO, MDOC, and the EEOC. Pursuant to Section 2-5-145(b)(1)(e) of the Ethics Ordinance, the Board determined that the allegations would not be analyzed because there were other pending proceedings that arose out of the same transactions or occurrences, and dismissed the matter.

COMPLAINT 2022-06 - SECTIONS 2-5-61 & 2-5-67

Complaint 2022-06 arose out of a disciplinary action administered by the Respondents. The Complainant alleged that the Respondents violated Sections 2-5-61 - Willful neglect of duty prohibited and 2-5-67 - Improper use of position to influence decisions prohibited. Pursuant to Section 2-5-145(b)(1)(e), the Board determined that there were other pending proceedings that arose out of the same transactions or occurrences, and dismissed the matter.



BOARD OF ETHICS STAFF

Christal Phillips

Executive Director

Dawn M. Widman

Investigator

Michael J. O'Connell

Training Specialist

Vanessa L. Johnson

Ethics Coordinator

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Mario Morrow, Sr.
Byron Osbern
Michael Rafferty
Robert Watt

Advisory Opinion #2022-01
Issued: February 16, 2022

Advisory Opinion #2022-01: In response to Request for Advisory Opinion 2022-01, 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. While Requestor is a public servant, Requestor's mother is not considered to be an immediate family member for purposes of disclosure requirements mandated by the Ethics Ordinance. Thus, Requestor is under no duty to disclose the parent-child relationship between Requestor and Requestor's mother. However, the fact that Requestor's mother is responsible for completing Requestor's UltiPro time and attendance gives cause for concern. In order to alleviate any perception of impropriety, the Board recommends that the department allocate the responsibility of completing Requestor's Ulti Pro time and attendance to a different person within the division.

I. Procedural Background

The Board of Ethics ("the Board") received this matter on January 4, 2022, by email communication. In accordance with Section 2-5-121(a) of the Detroit Ethics Ordinance ("the Ordinance"), the Request was submitted by a current public servant. In accordance with Section 2-5-122, Requestor's identity shall remain confidential.

Pursuant to Section 2-5-124(a) of the 2019 Detroit City Code ("Code"), the 91-day period for review of this request concludes on April 6, 2022. 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 6, 2022.

At its meeting on February 16, 2022, the Board determined that the Request met the basic requirements of a Request for Advisory Opinion under Section 2-5-12(b) of the Ordinance because the Requestor was a public servant, the Request addresses the Requestor's behavior as applied to the Disclosure Requirements, and the Request is in writing. 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 issue this Advisory Opinion pursuant to Section 2-5-124(b)(4) of the Ethics Ordinance.

II. Information from the Request

Requestor is a public servant who, at the time of the Request for Advisory Opinion, was employed as a [REDACTED] within the [REDACTED] (" [REDACTED] "). At the time of the request, Requestor had served as a [REDACTED] since August 2021, when she was promoted from the position of [REDACTED] in the [REDACTED], which is a different division of the [REDACTED]. In her current position, the Requestor reports to the [REDACTED]. Requestor resides at [REDACTED] in [REDACTED], Michigan.

Requestor's promotion placed her in the same division as her mother, who is also employed in [REDACTED] as a [REDACTED]. Requestor's mother has served in her current position since 2020. In her duties as [REDACTED], Requestor's mother reports to and assists [REDACTED] (" [REDACTED] "). Requestor's mother also has a team of staff under her supervision. Notably, while [REDACTED] approves all of Requestor's requests for time off, Requestor's mother is responsible for completing all Ulti Pro time and attendance. Requestor's mother resides at [REDACTED] in [REDACTED], Michigan.

Requestor submitted the appropriate form, and it states:

I applied for a [REDACTED] position within the [REDACTED] department, and my mother works in this department. My mother works in this department as a [REDACTED] and she reports to the [REDACTED]; [REDACTED]. My mother is also the assistant to the [REDACTED], and she has her own staff that reports to her. The position that I applied for was posted in July 2021. I report to the [REDACTED]. In this role I am responsible for completing [REDACTED] department reports, completing [REDACTED]; and making sure [REDACTED] department.

My job duties are completely different. Although, I do not report directly to my mother, is there an issue with us working within the same department?

As an attachment to the Request, Requestor submitted the Job Bulletin for [REDACTED] ([REDACTED]), which listed the salary range, job description, opening and closing dates, and examples of duties associated with the position held by Requestor at the time that she submitted the Request. Requestor also submitted the following information contained in a separate attachment to the Request:

My Mother's address is:

[REDACTED], MI [REDACTED]

My address is

[REDACTED], MI [REDACTED]

My Mother began working with the City of Detroit on [REDACTED]. Her work history is:

CITY OF DETROIT

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

- [REDACTED]

I began working with the City of Detroit on [REDACTED]. My work history is:

CITY OF DETROIT

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]

Prior to receiving the [REDACTED] promotion within the [REDACTED] department, I worked within the [REDACTED] office. I worked in the [REDACTED] office from [REDACTED] as an [REDACTED]. Also, my mother

is responsible for completing the entire staff's UltiPro time and attendance. But my supervisor approves all time off requests. Are there any concerns that should be addressed in this matter?

Additionally, Requestor indicated in a supplemental email communication to the Board that she does not claim her mother as a dependent under the United States Revenue Code. Nor does Requestor's mother claim Requestor as a dependent under the United States Revenue Code.

The question presented to the Board is whether the Requestor, who is a public servant, is under a duty to disclose the nature of her relationship with her mother, who works in the same division of the OCFO.

III. Applicable Charter and Ordinance Sections

Section 2-106.1, *Ethical Standards of Conduct*, of the 2012 Detroit City Charter provides that the purpose of applying and enforcing its requirements and standards is to ensure that governmental decisions are made in the public's best interests. One way to execute this purpose is to prohibit public servants from participating in matters that affect their personal or financial interests. The instant Request involves Section 2.106.2(e), *Disclosures*, of the 2012 Detroit City Charter, codified at Section 2-5-32 of the 2019 Detroit City Code. The Code states the following:

Sec. 2-5-32 – Disclosure of immediate family member's employment or application.

- (a) Except as otherwise provided for by applicable law, a public servant who exercises significant authority shall disclose the identity of any immediate family member employed by the City or who is making application to the City for employment.
- (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.

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

The terms "exercise significant authority" and "immediate family member" are both germane to the application of disclosure requirements under Section 2-5-32. However, consideration of whether the instant circumstances dictate disclosure turns on the definition of

“immediate family member,” as set forth by the Code and the Charter. Similar to the Charter, the Section 2-5-3 of the Code defines “immediate family member” as follows:

- (1) A public servant’s spouse;
- (2) A public servant’s domestic partner;
- (3) An individual claimed by a public servant or a public servant’s spouse as a dependent under the United States Internal Revenue Code, being 26 USC 1 et seq.; or
- (4) An individual who lives in the household of a public servant.

By nature of the parent-child relationship, Requestor is neither the spouse, nor the domestic partner of her mother.¹ Furthermore, per information submitted to the Board via supplemental communication, Requestor does not claim her mother as a dependent under the United States Internal Revenue Code.² Finally, the Requestor and her mother live at separate residences. Thus, neither is an individual who lives in the household of the other. For purposes of consideration of disclosure requirements under the Code, Requestor and her mother are not immediate family members. Thus, this Board need not consider whether Requestor “exercises significant control” in her role. Because Requestor’s mother does not qualify as an “immediate family member,” the Code does not impose a duty to disclose upon Requestor.

Notwithstanding the lack of duty to disclose the parent-child relationship, that Requestor’s mother is responsible for completing Requestor’s Ulti Pro time is concerning, as it appears to present an opportunity to exploit the payroll system. In order to remediate any appearance of impropriety, whether misconstrued or not, the task of approving Requestor’s time should be assigned to someone other than Requestor’s mother.

V. Conclusion

It is the decision of the Board to issue an advisory opinion, pursuant to Section 2-5-124(b)(4) in response to Request for Advisory Opinion 2022-01.

Requestor’s mother is not considered to be an immediate family member for purposes of disclosure requirements mandated by the Charter and the Code. Thus, Requestor is under no duty to disclose the parent-child relationship between Requestor and Requestor’s mother. However, the fact that Requestor’s mother is responsible for completing Requestor’s UltiPro time and attendance gives cause for concern. In order to eliminate any appearance of impropriety, the Board

¹ The Ethics Ordinance defines “domestic partner” as “one of two adults who: (1) Have a common residence; (2) Agree to have joint responsibility for each other’s basic living expenses incurred during the domestic partnership; (3) Are not married or are not a member of another domestic partnership; (4) Are not related by blood in a way that would prevent them from being married to each other in this state; (5) Are at least 18 years of age; (6) Have chosen to share one another’s lives in an intimate and committed relationship of mutual caring; and (7) Are capable of consenting to the domestic partnership”. DETROIT, MICH. CODE § 2-5-3.

² Nor does Requestor’s mother claim Requestor as a dependent under the United States Revenue Code, as reported by Requestor in a supplemental communication.

advises that [REDACTED] address such concern by assigning the task of reviewing and completing Requestor's Ulti Pro time and attendance to a different, unrelated person within the division.

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Dated: February 28, 2022



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Advisory Opinion #2022-05
Issued: March 16, 2022

Advisory Opinion #2022-05: In response to Request for Advisory Opinion 2022-05, 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 Board does not believe that the Code prohibits Requestor from launching a nonprofit focused on providing accessible construction improvements to local small business and residences, as there is no inherent conflict of interest between Requestor's official duties as a Board of Ethics Training Specialist and the intended purpose of the prospective nonprofit. To avoid violating the Code, Requestor should adhere to the guidelines provided herein.

I. Procedural Background

The Board of Ethics ("the Board") received Request for Advisory Opinion 2022-05 ("the Request"), on February 15, 2022, via email communication. In accordance with the Ethics Ordinance ("the Ordinance"), as codified in Section 2-5-121(a) of the 2019 Detroit City Code ("the Code"), the Request was submitted by a current public servant. Pursuant to Section 2-5-122(b), Requestor has waived confidentiality.

Pursuant to Section 2-5-124(a) of the Code, the 91-day period for review of this request will conclude on May 17, 2022. 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 16, 2022.

At its March 16, 2022 meeting, the Board determined that the Request met the basic requirements of a Request for Advisory Opinion under Section 2-5-121 of the Code because Requestor is a public servant, the Request addresses Requestor's behavior as applied to the Standards of Conduct, and the Request is in writing. The Board heard a Preliminary Analysis from legal counsel on the same day. After consideration and discussion of the issues presented, pursuant to Section 2-5-124(b)(4) of the Code, the Board voted to issue this Advisory Opinion.

II. Information from the Request

Requestor is currently employed by the City of Detroit (“the City”) as a Training Specialist for the Board of Ethics, which is an appointed position. Requestor seeks an advisory opinion regarding application of the Code’s Standards of Conduct regarding his intention to establish a nonprofit organization.

The Request states the following:

I am planning to found a nonprofit organization with a focus on accessible construction improvements to local small businesses and residences. All work will be completed outside my regularly scheduled hours with the BOE and without using any of my City issued work equipment (i.e. laptop, printer, phone, etc.) Funding will be obtained through private individual donations and grants from entities not under contract or in process of contracting with the City of Detroit.

The question presented is whether Requestor’s undertaking to launch and run a nonprofit organization that aims to provide accessible construction improvements to small business and residences presents an ethical conflict with his service as a Board of Ethics Training Specialist.

III. Applicable Charter and Ordinance Sections

Section 2-106.1, *Ethical Standards of Conduct*, of the 2012 Detroit City Charter provides that the purpose of applying and enforcing its requirements and standards is to ensure that governmental decisions are made in the public’s best interests. One way to execute this purpose is to prohibit public servants from participating in matters that affect their personal or financial interests. This Request involves Sections 2.106.1(2)(b)-(e), *Ethical Standards of Conduct*, of the 2012 Detroit City Charter, as codified at Sections 2-62, 2-5-63, 2-5-64, and 2-5-65 of the 2019 Detroit City Code. The Code states the following:

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)

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

As it applies to **Section 2-5-62 - Improper use or disclosure of confidential information prohibited**, the Code precludes Requestor from knowingly using or disclosing to third parties, confidential information about City property, government or affairs gained in the course of performance of the public servant's official duties. As Training Specialist for the Board, Requestor is privy to confidential information. To avoid violating the Code, Requestor should not use or disclose confidential information gained in the course of performing his official City duties to the benefit of the prospective nonprofit or to any other third party.

As it applies to **Section 2-5-63 - Improper use of City property prohibited**, the Code prohibits a public servant from utilizing City property in violation of City policies and procedures. Requestor indicated that his nonprofit work "will be completed . . . without using any of [his] City issued work equipment (i.e. laptop, printer, phone, etc.)." To avoid violating the Code and the City's Universal Work Rules,¹ Requestor should continue in such a commitment, and refrain from using City property to benefit the prospective nonprofit.

As it applies to **Section 2-5-64 - Incompatible employment or rendering services prohibited**, the Code precludes Requestor from engaging in employment or knowingly rendering services for private or public interest, when such service conflicts with Requestor's duties as an Ethics Training Specialist, or when such service would impair Requestor's independence of judgment or action in performing his duties as a Training Specialist. Requestor plans to launch a nonprofit organization but has not done so. Nor has Requestor detailed the tasks involved with launching and running the nonprofit. The Request indicates that the focus of the nonprofit is to "provide accessible construction improvements to local small businesses and residences." Requestor has indicated that all nonprofit work will be completed outside of regularly scheduled City work hours. The Request does not provide any information to suggest that the prospective nonprofit's intended purpose conflicts with performance of Requestor's official duties. It should be noted that the City's Outside Employment Policy requires Requestor to notify and obtain permission from the Board prior to beginning employment with an outside employer by submitting a Request for Approval of Outside Employment form.²

As it applies to **Section 2-5-65 - Representation of private person, business, organization prohibited; exceptions**, the Code prohibits Requestor from appearing before a City board, commission or body on behalf of his nonprofit, so as to avoid violating Section 2-5-65. A possible exception to said prohibition could occur if Requestor appeared before a City Board, body or commission other than the Board of Ethics, without compensation, while taking leave, and in accordance with the Vacation, Sick, Departmental, Funeral and Jury Leave Ordinance. However, the issue of whether Requestor could appear "without compensation" on behalf of his nonprofit is one that is beyond the scope of consideration because the nonprofit is not in existence, and compensation structure has not yet been determined. To avoid violating the Ethics Ordinance, if Requestor ever contemplates appearing before a City board, body or commission on behalf of his prospective nonprofit, he should submit a subsequent Request for Advisory Opinion.

¹ Per the City's Universal Work Rules, "improper use of City property" is a Group I offense, subject to progressive discipline. *City of Detroit Human Resources*, Corrective Disciplinary Action Guidelines and Attendance Policy - Universal Work Rules, available at <https://detroitmi.gov/departments/human-resources-department/workplace-policies>, March 1, 2022.

² Pursuant to the City of Detroit Human Resources Directive #2015-1, "City employees must notify and obtain permission from their department or agency head to begin or continue employment with an outside employer. This would include self-employment where the person solicits work for profit, or if the individual has any ownership or managerial interest in any business.... 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." *City of Detroit Human Resources*, Outside Employment Policy – Human Resources Directive #2015-1, available at <https://detroitmi.gov/departments/human-resources-department/workplace-policies>, March 1, 2022.

Finally, the Request indicates that Requestor will obtain funding for the prospective nonprofit through "private individual donations and grants from entities not under contract or in process of contracting with the City of Detroit." Because Requestor intends to obtain funding from sources that are not in privity of contract with the City of Detroit, Requestor's involvement with the prospective nonprofit does not trigger the Code's disclosure requirements. To avoid violating the Code, if Requestor's nonprofit should ever up contemplate accepting funding from, or come into privity of contract with the City, then Requestor should seek this Board's guidance as to what disclosure requirements are implicated.

V. Conclusion

In response to Request for Advisory Opinion 2022-05, it is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-154(b)(4). In line with the foregoing analysis, Requestor is advised as follows:

The Code does not prohibit Requestor from launching a nonprofit organization that aims to provide accessible construction improvements to small business and residences. However, to avoid violating the Code, Requestor should adhere to the following guidelines in the launch/operation of his prospective nonprofit:

1. Refrain from using confidential information gained in the course of performing official City duties to the benefit of the prospective nonprofit, or to any other third parties;
2. Refrain from using City property to benefit the prospective nonprofit;
3. Refrain from performing work on behalf of the prospective nonprofit during City work hours;
4. Notify and obtain permission from the Board prior to beginning employment with an outside employer by submitting a Request for Approval of Outside Employment form;
5. Should Requestor ever contemplate appearing before a City board, body, commission or department on behalf of the prospective nonprofit, seek the advice of this Board by submission of a Request for Advisory Opinion;
6. Requestor is advised to seek guidance from this Board by submission of a supplemental Request for Advisory Opinion if the prospective nonprofit contemplates entering into a contract with the City, or if the prospective nonprofit is presented with the opportunity to accept funds from the City.

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Dated: March 28, 2022



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Advisory Opinion #2022-06
Issued: March 16, 2022

Advisory Opinion #2022-06: In response to Request for Advisory Opinion 2022-02, it is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4) of the Ethics Ordinance. Requestor, a [REDACTED] in the [REDACTED] division of the [REDACTED], is a public servant who exercises significant authority and is subject to the disclosure requirements and standards of conduct mandated by the 2012 Detroit City Charter and the Ethics Ordinance, in relation to his appointment to the [REDACTED]. The prohibition on acceptance of gifts and gratuities mandated by the 2012 Detroit City Charter and the Ethics Ordinance, as codified in the 2019 Detroit City Code, precludes Requestor from accepting the \$20,000 honorarium offered by [REDACTED].

I. Procedural Background

The Board of Ethics ("the Board") received Request for Advisory Opinion No. 2022-06 ("the Request") on February 21, 2022, via email communication. In accordance with Section 2-5-121(a) of the 2019 Detroit City Code ("the Code"), the Request was submitted by a current public servant. In accordance with Section 2-5-122, Requestor's identity shall remain confidential.

Pursuant to Section 2-5-124(a) of the Code, the 91-day period for review of this request concludes on April 29, 2022. 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 29, 2022. Requestor did not waive confidentiality.

At its March 16, 2022 meeting, the Board determined that the Request met the basic requirements of a Request for Advisory Opinion under Section 2-5-121 of the Code because the Requestor is a public servant, the Request addresses the Requestor's behavior as applied to the Disclosure Requirements and Standards of Conduct, and the Request is in writing. The Board heard a Preliminary Analysis from legal counsel on the same day. After consideration and discussion of the issues presented, pursuant to Section 2-5-124(b)(4) of the Code, the Board voted to issue this Advisory Opinion.

II. Information from the Request

Requestor is currently employed by the City of Detroit ("the City") as a [REDACTED] in the [REDACTED], which is a division of the [REDACTED]. The [REDACTED] is charged with the task of aligning the City's coordination and support of existing and potential funding partner relationships with grant management support for City departments. Requestor's current duties as a [REDACTED] include the following:

- Provides advisory services to the [REDACTED] and [REDACTED];
- Supports the goals, objectives, strategies, and policies of the [REDACTED];
- Sources and conducts due diligence on development projects, including [REDACTED];
- Evaluates and communicates the risk/reward potential for [REDACTED];
- Writes and manages successful [REDACTED];
- Manages special projects and provides oversight and guidance to projects of high importance;
- Promotes, structures and negotiates innovative public and private partnerships with [REDACTED] to support City of Detroit initiatives;
- Coordinates with City Executives, City Agencies, nonprofit partners, foundations, state and federal agencies around [REDACTED];
- Tracks public and private [REDACTED];
- Researches develops and requests [REDACTED];
- Coordinates complex [REDACTED] between City Agencies, external partners and stakeholders;
- Works with City Agencies to find innovative solutions to [REDACTED];
- Evaluates and recommends changes to City Agencies to ensure effective cooperation in the development of successful [REDACTED];
- Develops processes for best practices informed by successful and unsuccessful [REDACTED].

In 2021, Requestor served a one-year term on the [REDACTED]. Requestor has an opportunity to renew his service on the [REDACTED] with a second one-year term. Requestor seeks an advisory opinion regarding the opportunity to serve as a national member on what is now the [REDACTED].

The Request states the following:

The intent is to serve as a National Board Member for [REDACTED]. This will be my second term (I was previously approved by the Board of Ethics in 2021.) The activities involved will not interfere with my role and responsibilities on my day job. I will not use City property or materials to conduct Business related to the Board. Additionally, I plan to recuse myself from any matter related to City business

(if any should arise). My manager is aware of this role. Furthermore, I have planned a workflow plan with my Supervisor if any matters related to [REDACTED] arise in my day to day activity.

Along with the Request, Requestor provided a copy of the City of Detroit Request for Approval for Outside Employment Form ("Outside Employment Form"),¹ which Requestor signed and submitted to his supervisor, [REDACTED], on February 17, 2022. The Outside Employment Form indicates that the outside employment duties to be performed consist of "[s]erv[ing] as an [REDACTED] Member," with board meetings to take place outside of work hours. In addition to the Outside Employment Form, Requestor submitted an email addressed to [REDACTED] and dated February 17, 2022, which states that Requestor and [REDACTED] reviewed Requestor's internal workflow plan. Further, the email indicated Requestor's intentions to recuse himself from any fundraising efforts that should arise relating to [REDACTED].

Per Requestor, circumstances surrounding his work duties and service of the 2022 term are nearly identical to his 2021 service on the [REDACTED], with two exceptions: (1) [REDACTED] and [REDACTED] have completed a previously contemplated merger and have become [REDACTED]; and (2) the honorarium offered to Requestor has increased from \$10,000 to \$20,000. [REDACTED] is an entity that does business with the City and has committed monies to numerous City programs including neighborhood revitalization programs and vaccination transportation.

The questions presented for consideration is whether the Ethics Ordinance precludes Requestor, a [REDACTED] who exercises significant authority in the [REDACTED], from accepting a one-year appointment to the [REDACTED], when the City does business with [REDACTED] and [REDACTED] has offered Requestor a \$20,000 honorarium.

III. Applicable Charter and Ordinance Sections

Section 2-106.1, *Ethical Standards of Conduct*, of the 2012 Detroit City Charter provides that the purpose of applying and enforcing its requirements and standards is to ensure that governmental decisions are made in the public's best interests. One way to execute this purpose is to prohibit public servants from participating in matters that affect their personal or financial interests. This Request involves Sections 2.106.1(2)(b)-(g), *Ethical Standards of Conduct*, 2.106.2(1)(b), *Disclosures*, and 2.106.4, *Gifts and Gratuities*, of the 2012 Detroit City Charter, as codified at Sections 2-5-31, 2-5-62, 2-5-63, 2-5-64, 2-5-65, 2-5-66, 2-5-67, and 2-5-70 of the 2019 Detroit City Code. The Code states the following:

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;

¹ Pursuant to the City of Detroit Human Resources Directive #2015-1, "City employees must notify and obtain permission from their department or agency head to begin or continue employment with an outside employer. This would include self-employment where the person solicits work for profit, or if the individual has any ownership or managerial interest in any business.... 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." *City of Detroit Human Resources*, <https://detroitmi.gov/departments/human-resources-department/workplace-policies> (March 8, 2022).

- (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)

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)

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

As it applies to **Section 2-5-31 – Disclosure of interests by public servants**, the Code requires a public servant who exercises significant authority and has either a direct or an indirect financial interest in a matter pending before the City to disclose said interest. The Codes defines the term “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.” Per the Report, Requestor exercises significant authority over matters in the [REDACTED]. Requestor has also been offered a \$20,000 honorarium to participate on the [REDACTED]. Therefore, Requestor is required to file a disclosure of interest form, as he has a prospective direct financial interest,² and indirect financial interests in the success of [REDACTED]’s business endeavors with the City. Requestor should also recuse himself from all matters coming before the City that involve [REDACTED], as indicated in the Request.

² The Code prohibits Requestor from accepting the proposed honorarium, as discussed herein.

As it applies to **Section 2-5-62 – Improper use or disclosure of confidential information prohibited**, the Code generally prohibits a public servant from knowingly using confidential information outside the scope of the public servant's official duties or disclosing confidential information to third parties. The Code provides the following definition for the phrase "confidential information":

[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.

As a [REDACTED], Requestor is privy to confidential information. Therefore, to avoid violating the Code, Requestor should not divulge confidential information gained in the course of performing his official City duties to the [REDACTED], or to any third parties.

As it applies to **Section 2-5-63 – Improper use of City property prohibited**, the Code prohibits public servants from knowingly using City property in violation of City policies and procedures. Requestor has indicated that he will not use City property to conduct business related to [REDACTED]. To ensure that he does not violate the Code, and the City's Universal Work Rules,³ Requestor should continue in his plan to refrain from utilizing City property or resources in performing his [REDACTED] duties.

As it applies to **Section 2-5-64 – Incompatible employment or rendering services prohibited**, the Code generally prohibits public servants from rendering services for a public or private interest where such service would conflict with the rendering of that public servant's duties or impede the public servant's independence of judgment or action in carrying out official duties. Requestor is a City of Detroit [REDACTED] who seeks to renew a one-year term as a [REDACTED] board member. [REDACTED] does business with the City and has committed numerous funds to City programs. The circumstances have potential to pose a conflict with the proper discharge of Requestor's official City duties. However, Requestor has taken precautions to maintain compliance with the Code, as indicated by the internal workflow plan communicated to Requestor's supervisor. Additionally, Requestor has submitted the Outside Approval Form to his supervisor, who has indicated her approval. Requestor should follow the internal workflow plan to ensure that he does not violate the Code in the performance of his duties as an [REDACTED] board member. Further, Requestor should refrain from performing [REDACTED]-related duties during scheduled City work hours.

As it applies to **Section 2-5-65 – Representation of private person, business, or organization prohibited; exceptions**, the Code precludes a public servant from acting as a representative for another person, business or organization in matters before a City agency, with three exceptions. As a [REDACTED], Requestor is prohibited from acting as an agent or representative for the [REDACTED] in any matters pending before any City agency. If Requestor were to accept the \$20,000 honorarium offered by [REDACTED], then none of the exceptions would apply, and Requestor would be precluded from serving as an [REDACTED] representative or agent in matters coming before the City in every situation. However, for reasons described below, Requestor is precluded from accepting the \$20,000 honorarium. Therefore, the exception provided in Section 2-5-65(3) could possibly apply and allow Requestor to appear before a City agency as an agent or representative of the [REDACTED]. Requestor would likely not violate the Code if he appeared before a City Board, body or commission other than one that falls under the [REDACTED], if he did so without compensation from the nonprofit, while taking leave in accordance with Chapter 35, Article III, Division 2 of this Code, Vacation, Sick, Departmental, Funeral and Jury Leave if a non-union employee.

³ Per the City's Universal Work Rules, "improper use of City property" is a Group I offense, subject to progressive discipline. *City of Detroit Human Resources*, Corrective Disciplinary Action Guidelines and Attendance Policy - Universal Work Rules, available at <https://detroitmi.gov/departments/human-resources-department/workplace-policies>, March 1, 2022.

or in accordance with Requestor's union contract and the City's Civil Service Rules Ordinance, if Requestor is a union member.

As it applies to **Section 2-5-66 – Self-interested regulation and participation prohibited**, the Code proscribes public servants from knowingly voting on or knowingly participating in the negotiation or making of a City contract, or any other type of transaction with any business entity that the public servant has either a direct or indirect financial interest. As a [REDACTED] in the [REDACTED] serving on [REDACTED], there are potential direct and indirect financial interests at stake. However, Requestor can cure potential conflicts by recusing himself from matters involving the City and [REDACTED].

As it applies to **Section 2-5-67 – Improper use of official position prohibited**, the Code prohibits a public servant from knowingly using his or her official position in violation of applicable law, to improperly influence a decision of the Mayor, City Council, the City Clerk, or a member of any City authority, board, commission, committee, council or City agency. The Code's commentary provides insight into this section, by stating that the intent is to prohibit "a public servant from using [his or her] official position in violation of federal or state law, such as state law prohibiting bribery" and other federal and state laws. Thus, if Requestor violates any state or federal law in an effort to improperly influence a member of any City authority board, commission, committee or City agency on behalf of the [REDACTED], his actions would also constitute a violation of the Code.

As it applies to **Section 2-5-70 – Prohibition on gifts and gratuities; exception**, the Code prohibits public servants from accepting gifts, gratuities, honoraria, or other thing of value from individuals or entities doing business with, or seeking to do business with the City, subject to four exceptions. The Code's exceptions allow a public servant to accept gifts and gratuities from individuals doing business or seeking to business with the City in the following circumstances: if the gift is given in connection with an award bestowed in recognition of public service; if the gift consists of complimentary copies of informational materials (such as books, pamphlets, calendars, etc.); if a family member or close relative not acting as an intermediary in an effort to circumvent the prohibition bestows the gift; or if the gift consists of admission fees, travel expenses, parking, food or entertainment expenses in exchange for a service that the public servant provides, so long as the City does not compensate the public servant for the same service.

Requestor is a public servant and [REDACTED] does business with the City. Requestor has not provided any information to indicate that the proposed honorarium falls under any of the Code's four exceptions to its prohibition on acceptance of gifts, gratuities, honoraria and other things of value. Therefore, Requestor is prohibited from accepting the \$20,000 honorarium offered by [REDACTED].

V. Conclusion

In response to Request for Advisory Opinion 2022-07, it is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-154(b)(4) of the Code. In line with the foregoing opinion, Requestor is advised as follows:

1. In his service as a [REDACTED] member, Requestor is required to file a disclosure of interest form, as he has a potential direct and indirect financial interests in the success of [REDACTED]'s business endeavors with the City. Requestor should also recuse himself in all matters before the City that involve [REDACTED].
2. Requestor is prohibited from divulging confidential information gained in the course of performing his official City duties to the [REDACTED], or to any third parties.
3. Requestor should refrain from utilizing City property or resources in the performance of duties associated with service on the [REDACTED].
4. Requestor must follow the internal workflow plan provided to his supervisor, to ensure that he does not violate the Code in the performance of his duties as an [REDACTED] board member. Further, Requestor should refrain from performing [REDACTED]-related duties during scheduled City work hours.
5. Requestor is prohibited from acting as an agent or representative for the [REDACTED] in any matters pending before any City agency, subject to any applicable exception provided by the Code. Requestor is advised to seek this Board's opinion regarding specific circumstances that may fall under the Code's exceptions.
6. Requestor is prohibited from knowingly voting on or knowingly participating in the negotiation or making of a City contract, or any other type of transaction with any business [REDACTED]. To cure potential conflicts of interest posed by Requestor's service on the [REDACTED], Requestor must recuse himself from all matters that involve the City and [REDACTED].
7. Requestor is advised that violation of any state or federal law in an effort to improperly influence a member of any City authority board, commission, committee or City agency on behalf of the [REDACTED], would also constitute a violation of the Code.
8. Requestor is prohibited from accepting the \$20,000 honorarium offered by [REDACTED].

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Dated: March 28, 2022



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Advisory Opinion #2022-07
Issued: April 20, 2022

Advisory Opinion #2022-07: In response to Request for Advisory Opinion 2022-07, 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. Requestor, who serves as Deputy Director of the City of Detroit's Planning and Development Department and sat on the Eastern Market Partnership Board of Directors in a seat designated for City employees, is a public servant who is subject to the standards of conduct mandated by the 2012 Detroit City Charter and the Ethics Ordinance. Requestor has been offered prospective employment with the Eastern Market Partnership, which is a 501(c)(3) entity that does business with the City of Detroit. As detailed below, Section 2-5-71 precludes Requestor from accepting employment with the Eastern Market Partnership for a period of one year following Requestor's date of separation from the City.

I. Procedural Background

The Board of Ethics ("the Board") received this Request for Advisory Opinion ("the Request") on February 23, 2022, via email communication. In accordance with the Ethics Ordinance ("the Ordinance"), as codified at Section 2-5-121(a) of the 2019 Detroit City Code ("the Code"), the Request was submitted by a current public servant. As permitted by Section 2-5-122(b), Requestor has waived confidentiality.

Pursuant to Section 2-5-124(a) of the Code, the 91-day period for review of this request concludes on May 25, 2022. 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 24, 2022.

The Board met on March 16, 2022 and considered the Request. Following legal counsel's delivery of a Preliminary Analysis, the Board requested that further fact-finding be conducted to enable a well-informed decision. At its April 20, 2022 meeting, the Board determined that the Request met the basic requirements of a Request for Advisory Opinion under Section 2-5-121 of the Code because the Requestor is a public servant, the Request addresses the Requestor's behavior as applied to the Standards of Conduct set forth by the Ordinance, and the Request is in writing. The Board heard a Supplemental Preliminary Analysis from legal counsel on the same day. After consideration and discussion of the issues presented, the Board voted to issue this Advisory Opinion, pursuant to Section 2-5-124(b)(4) of the Code.

II. Information from the Request

Requestor currently serves the City of Detroit (“the City”) as Deputy Director of the Planning and Development Department (“Planning & Development”). As detailed in the Request, Requestor has accepted a position with the Eastern Market Partnership (“EMP”), a nonprofit organization that manages the operations of the City-owned Eastern Market (“the Eastern Market”). Requestor seeks an advisory opinion regarding application of the Standards of Conduct to Requestor’s acceptance of her prospective position with the EMP.

The Request states the following:

I have recently accepted a job as President of the Eastern Market Partnership (EMP), a 501(c)3 organization responsible for operations of the City of Detroit’s Eastern Market farmer’s market. EMP also conducts other activities in the Eastern Market neighborhood real estate and community development, fundraising advocacy for vendors and farmers, and overall maintenance and operations of the market and its surrounding neighborhoods. The Eastern Market property is a City of Detroit asset and the EMP’s legal responsibility over the City asset is maintained via an operations agreement held by the General Services Department. During my tenure with the City of Detroit (since March 2016), I have maintained the following working relationships with EMP: 1) I hold one of four City of Detroit seats on the EMP Board of Directors (since 2018)c, and 2) my Department, P&DD, has conducted a planning study and proposed rezoning of the neighborhood in partnership with the EMP. The rezoning effort has not yet been approved by City Council. I have planned with the current CEO of EMP, that upon my date of hire, I would not appear in front of City Council on issues related to this rezoning, or others, should they arise. I also would not be called to appear in front of City Departments or other public bodies on matters with which I was directly concerned during my tenure with City of Detroit. Nor will my new employment require any sharing of any confidential information I gained as a public servant.

As indicated above, Requestor has accepted a position as President of EMP. The nonprofit entity manages the Eastern Market’s operations by way of the Management and Operating Agreement Between City of Detroit, Michigan and Eastern Market Corporation - Contract No. 2864641 (“the Operating Agreement”), which the City’s General Services Department (“GSD”) brokered, and City Council approved in 2012.¹ Requestor’s prospective position entails working with EMP’s CEO to accomplish the following goals: lead market development under the sheds; revitalize the Eastern Market District in an equitable manner; grow the food sector in the region; and refine food programs to improve public health.²

Per the City’s website, Planning & Development, the department in which Requestor currently serves, “aims to build a city secure in its future, grounded in its roots and hopeful in its present state.” In a supplemental communication with the Board, Requestor indicated that the Planning & Development’s mission is to “provide professional advice and technical expertise that promotes well-designed physical, social, economic, and environmentally healthy development within the City that enhances the quality of life for its residents, businesses and visitors.” Additionally, Requestor provided a job description, which summarized the duties associated with her role as Deputy Director of Planning & Development as follows:

¹ The Operating Agreement’s Scope of Services indicate that the EMP is to execute operations, management, promotion, improvement and maintenance of the Eastern Market.

² <https://thejobplugs.com/jobs/president/#::~text=Lead%20market%20development%20under%20the,programs%20to%20improve%20public%20health>. (March 11, 2022)

The Deputy Director reports to the Director and serves as second-in-command of the Department. They are responsible for managing and overseeing staff with multiple assignments including small area or neighborhood plans, managing multiple programs/services and design consultant teams, formulating policy positions, maintaining intergovernmental partnerships, managing operating budgets and ensuring deadlines are met.

Requestor's duties are further enumerated below:

- Assist in hiring to accommodate Department mission and increased demand for urban planning and land use services.
- Help shape the physical development of the city by developing policies, implementation of urban design guidelines and neighborhood physical plans, recommending zoning amendments and overseeing compliance with the city's Master Plan.
- Maintain and improve quality of city/neighborhoods by reviewing project/land use applications and building permits for zoning compliance.
- Work with public, architects, engineers, contractors and department personnel to interpret zoning ordinances and department policies/ procedures.
- Analyze trends in population, land use, transportation, zoning and other areas of significance to the department's success.
- Exercise considerable initiative and judgment in the completion of assignments and interacts in the broad interests of the community. Act on behalf of Director in his absence.

Requestor's involvement with EMP as relates to her duties as Deputy Director of Planning & Development, center around the department's partnership with EMP and the Detroit Economic Growth Corporation to administer a planning study and proposed neighborhood rezoning project.³ Requestor reported that the majority of the work associated with the project occurred prior to August 2019, when Requestor began her tenure with Planning & Development. However, the final document, which makes suggestions around land use, zoning, historic preservation and other new developments happening in the neighborhood, and most notably, recommends a complete rezoning of multiple parcels in and around Eastern Market,⁴ was published in November 2019, after Requestor began as Deputy Director of Planning & Development.

Requestor was also involved with EMP by virtue of her service on its Board of Directors ("the EMP Board"), in one of four seats designated for City employees.⁵ The duties associated with Requestor's service on the EMP Board included attending monthly meetings to receive reports on financial matters, programs, new hires, the Saturday farmers market and its vendors, etc. During the EMP Board meetings, Requestor also rendered her opinion and advice on matters, and provided updates from the City. Requestor also assisted with nominations and selection of new EMP Board members, as well as hiring decisions. Requestor noted that in 2021, she attended one meeting regarding renewal of the Operating Agreement,

³ <https://detroitmi.gov/departments/planning-and-development-department/neighborhood-plans/central-design-region/eastern-market>.

⁴ Per Requestor, this work started at the end of 2019 and has been led by members of the City Planning Commission and Planning & Development, with support from Eastern Market. The rezoning was approved by the City Planning Commission last year and has been in front of City Council for approval for the past few months. A separate project manager (who reports to Requestor) in Planning & Development has led this effort, but Requestor has not appeared at Council in support of this initiative.

⁵ Per Requestor, she was appointed to the EMP Board in the Fall of 2018 and resigned in February 2022.

which expires on June 30, 2022. In her more recent role of Vice Chair, Requestor led the EMB Board meetings in the Chair's absence. Per Requestor, her overall duties on the EMP Board have been "to listen and support the organization as caretaker of the Eastern Market."

A review of the EMP Board's meeting minutes from April, June, August and December 2021 and February 2022, reveal that the nonprofit's mission is to "manage operations, develop programs, build facilities, provide critical infrastructure, and collaborate with community partner[.]" Further review of meeting minutes reveals that Requestor considered and voted upon approval of such items as the EMP Board's Finance Committee reports, EMP's Proposed 2022 Budget, staff authorization to apply for liquor licenses, and authorization for the entity to enter into a property land contract.

The issue presented to the Board is whether Requestor, who serves as Deputy Director of the City's Planning and Development Department, may accept an offer of employment as President of the Eastern Market Project, which is a nonprofit entity that is in contract with the City to maintain operations of the Eastern Market, when the Eastern Market Project has partnered with the Planning and Development Department to conduct a planning study and proposed rezoning of the Eastern Market, and Requestor served in a City-designated seat on the Eastern Market Project Board of Directors.

III. Applicable Charter and Ordinance Sections

Section 2-106.1, *Ethical Standards of Conduct*, of the 2012 Detroit City Charter provides that the purpose of applying and enforcing its requirements and standards is to ensure that governmental decisions are made in the public's best interests. One way to execute this purpose is to prohibit public servants from participating in matters that affect their personal or financial interests. This Request involves Section 2-106.5, *One Year Post-Employment Prohibition*, of the 2012 Detroit City Charter, as codified at Section 2-5-71 of the 2019 Detroit City Code. The Code states the following:

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

As it applies to **Section 2-5-71 – One-year post-employment prohibition**, the Code prohibits recently separated public servants from lobbying or appearing before the City Council or any City board, department, agency, board, commission or body for one year following the public servant's employment with the City. Thus, Requestor is precluded from appearing before City Council or any City board, department, agency, board, commission or body for one year after her date of separation from the City. Requestor indicated that she has informed the current CEO EMP that she would not be able to appear before City Council or any other City board, commission, agency, or department regarding the planning study and proposed rezoning project for one year following her date of separation from the City. To be clear, the Code precludes Requestor from appearing before City Council or any City board, commission, agency or department on any matter, including the planning study and proposed rezoning project, for one year following separation from the City.

Further, the Code prohibits recently separated public servants from receiving compensation for services in connection with any matter with which the public servant was directly concerned, personally participated, actively considered or acquired knowledge of while working for the City. During Requestor's tenure as Deputy Director of Planning & Development, the department published a planning study and proposed rezoning project for the Eastern Market, in partnership with the EMP. While the majority of the work associated with the planning study occurred prior to Requestor's employment with Planning & Development, the planning study was published after Requestor began her service as Deputy Director. The Deputy Director is second-in-command, and thus, responsible for managing and overseeing all Planning & Development staff. In fact, Requestor acknowledged that one of her direct reports led efforts to get City Council to approve the resulting proposed rezoning. Therefore, the planning study and rezoning project are matters that Requestor actively considered or acquired knowledge of in her capacity as Deputy Director of Planning and Development. Consequently, Section 2-5-71(a) of the Code prohibits Requestor from receiving compensation in connection with the planning study and proposed rezoning project.

Section 2-5-71(b) of the Code prohibits public servants who have left the City from accepting employment with a person or entity that conducted business with the City for one year after the public servant's date of separation, if the public servant had any involvement with the award or management of the City's contract with the prospective employer. Requestor is the Deputy Director of Planning & Development and intends to accept employment with EMP, an entity that is under contract with the City to manage operations of the Eastern Market. GSD, a department for which Requestor has never worked, brokered the Operating Agreement between the City and EMP in 2012, well before Requestor's tenure with the City began. Thus, it is clear that Requestor had no involvement with the award of the contract to the EMP.

While it is clear that neither Requestor, nor the department over which she currently serves was involved with awarding the Operating Agreement to EMP, the pivotal issue for consideration is whether Requestor's position on the EMP Board constitutes her having taken part in *management* of the contract. As detailed above, during her tenure on the EMP Board, Requestor voted on many items that fall within the Operating Agreement's Scope of Services. The Ordinance is clear that a public servant cannot accept employment with an entity that conducted business with the City during the public servant's tenure, when that person was in any way involved in the award or management of the contract.

Consequently, consideration of the Request requires the Board to determine whether Requestor's service on EMP's Board of Directors and consequential voting on items such as the EMP's Proposed 2022 Budget, staff authorization to apply for liquor licenses, and bestowing authority to enter into a property land contract, as well as attendance at a meeting regarding renewal of the Operating Agreement, constitutes management of the contract. The Board opines that voting as a member of the EMP Board on the aforementioned matters, running the EMP Board meetings in absence of the Chair, and attendance at a meeting regarding renewal of the Operating Agreement constitutes management of the Operating Agreement. The Ordinance precludes a public servant from accepting employment with a City contractor for one year past the public servant's date of separation from the City if the public servant was "in any way involved with the ...management of the contract." Thus, because Requestor served on the EMP's Board of Directors and actively considered and voted upon matters that fall within the category of management of the Operating Agreement, she is precluded from accepting employment with EMP for one year past the date of her separation from the City.

V. Conclusion

In response to Request for Advisory Opinion 2022-07, it is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-154(b)(4) of the Ethics Ordinance. In line with the foregoing analysis, Requestor is advised that Section 2-106.5, *One Year Post Employment Prohibition*, of the 2012 Detroit City Charter and Section 2-5-71 of the Ethics Ordinance precludes her from lobbying or appearing before City Council or any City department, agency, board, commission or body for one year following the date of separation from the City. Further, for one year following her date of separation from the City, Requestor is prohibited from receiving compensation for any services in connection with any matter in which she was directly concerned, personally participated, actively considered or acquired knowledge of while working for the City. Finally, Section 2-5-71 of the Code precludes Requestor from accepting employment with the Eastern Market Partnership for one year following her date of separation from the City of Detroit.

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Dated: May 5, 2022



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Advisory Opinion #2022-08
Issued: March 16, 2022

Advisory Opinion # 2022-08: In response to Request for Advisory Opinion 2022-08, 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. Section 2-5-70 of the Code precludes Requestor, a former Development Specialist for the Housing and Revitalization Department, from serving as a paid consultant for, or accepting employment with, developers and/or development teams with whom Requestor worked, or who are subject to development agreements awarded or managed by Requestor while employed by the City for one year following Requestor's separation from the City.

I. Procedural Background

The Board of Ethics ("the Board") received Request for Advisory Opinion 2022-08 ("the Request"), on March 2, 2022, via email communication. In accordance with the Detroit Ethics Ordinance ("the Ordinance"), as codified at Section 2-5-121(a) of the 2019 Detroit City Code ("the Code"), the Request was submitted by a public servant. In accordance with Section 2-5-122, Requestor's identity shall remain confidential.

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 June 1, 2022. 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 31, 2022.

At its March 16, 2022 meeting, the Board determined that the Request met the basic requirements of a Request for Advisory Opinion under Section 2-5-121 of the Ordinance because Requestor is a former public servant, the Request addresses Requestor's behavior as applied to the Standards of Conduct, and the Request is in writing. The Board heard a Preliminary Analysis from legal counsel on the same day. After consideration and discussion of the issues presented, pursuant to Section 2-5-124(b)(4) of the Ethics Ordinance, the Board voted to issue this Advisory Opinion.

II. Information from the Request

Prior to submission of the Request, Requestor resigned from the City of Detroit (“the City”), where he served as a Development Specialist in the Housing and Revitalization Department (“HRD”). Requestor’s last date of service with the City was March 4, 2022. Requestor seeks this Board’s guidance regarding his plans to serve as a consultant to developers and development teams for which he was involved in the award process and management of development agreements with the City.

The Request states the following:

In my resignation as Development Specialist, I have been approached by some development teams to assist with strategizing and consulting on their projects. Specifically, teams are looking for me to advise on how to engage the City with projects in the planning and predevelopment stage. I will not be asked to be an owner or partner in their projects, to represent the team in any lobbying efforts, or represent the team publicly. I would focus my consulting efforts on guidance for the overall project and economic modeling. While in the Development Specialist Role, I managed the process for selecting development teams in some areas, but the ultimate decision making was made by the Director of Public-Private Partnership and the Director of Housing and Revitalization.

The City of Detroit’s website indicates the following about HRD:

The Housing and Revitalization Department sustains and grows neighborhoods that are inclusive of quality affordable housing opportunities for all, and economic opportunity through management of federal housing, economic, and community development funding, steering local housing policy, and maintaining and creating mixed-income and mixed-use housing opportunities through transformational developments by leveraging public and private partnerships.¹

In a subsequent communication with the Board Investigator, Requestor described his job duties, which are detailed below, with emphasis:

I am a Development Specialist. My job is **to obtain affordable housing units by leveraging public resources for private/non-profit developers**. More clearly, I **identify vacant land and structures and propose development opportunities**. If they are approved by my leadership, I will **create a request for proposal or request for qualification and hold a process of selecting a developer/development team**. This process is guided by a selection committee of residents and members of other city agencies. Proposals are reviewed and scored according to a scoring criteria, the highest scoring project is then presented to my leadership (director of public private partnership and the director of HRD). **If approved, I inform the development team that the City would like to work with them on realizing their development plan. Once selected, I monitor and assist the developer/development team in completing the project by assisting with connecting with other city agencies to assist or making connections**. In this process, I serve more as a project manager who monitors the development of the project and identifies when the project is off

¹ City of Detroit - Housing and Revitalization Website, <https://detroitmi.gov/departments/housing-and-revitalization-department> (March 11, 2022).

track and try to either get the project on track or find another developer to take on the project.

Also note to the above, there are times when I have not identified property but the property is an opportunity site in the City's strategic neighborhoods in which case the structure or property is already identified and **my job is to organize a selection committee, identify a developer/development team, and monitor their progress in completing the project.**

I also sit in on planning study meetings and provide my perspective/expertise on the likeliness of successful housing projects, I give my perspective on the likely success of real estate transactions and if they are aligned with HRD policies and objectives.

Requestor's supplemental communication clarified his intentions to "consult in a self-employed fashion with small developers/development teams," with the goal of assisting "emerging and inexperienced developers." Once such development team is Sadza Space, which approached Requestor about assisting with completion of its project. Requestor envisions providing consulting services in the following manner:

I would review the development teams idea and their project, I would construct a timeline of how long it would take with milestones, I would review their financial models to see if they are realistic, I would identify sources of funding they should go after (if I have contracts, I may suggest they reach out to specific people), I will review their deliverables to the particular entities that they meet with and I will give my advice on how to make it more attractive. If the team needs to meet with residents of the community, I may come with them to the meeting to help them communicate their ideas and to understand the feedback from the community. At this time I will want to play a much more "quiet" role and so I will not be looking to go to any meetings with City Council, PED, or any other standing meeting with significant public recognition. I would however prep them for explaining the merits of their project.

Requestor asserts that the developers are not contracted to work for the City as in providing a good or service.² According to Requestor, "[t]he only agreement is a development agreement to complete the development as communicated to the City." Furthermore, "the development agreement also comes with a reverter for which if the development team does not complete the project, the project (the land and/or structure) can be taken by the City."

The question presented is whether Requestor, a former Development Specialist for HRD, may serve as a paid consultant to developers and development teams for which he was involved in the award process and management of development agreements while working as a Development Specialist for the City's Housing and Revitalization Department.

III. Applicable Charter and Ordinance Sections

Section 2-106.1, *Ethical Standards of Conduct*, of the 2012 Detroit City Charter provides that the purpose

² Requestor defines "developer" as a "person who seeks to build a building or development project. This can be a person looking to rehab a building, build a new building, or use land for some other non-building use." Accordingly, a "development team" is "a team of people seeking to do the above."

of applying and enforcing its requirements and standards is to ensure that governmental decisions are made in the public's best interests. One way to execute this purpose is to prohibit public servants from participating in matters that affect their personal or financial interests. This Request involves Section 2.106.5, *One Year Post-Employment Prohibition*, of the 2012 Detroit City Charter, as codified at Section 2-5-71 of the 2019 Detroit City Code. The Code states the following:

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

As it applies to **Section 2-5-71 – One year post-employment prohibition**, the Code prohibits public servants recently separated from the City from lobbying or appearing before the City Council or any City board, department, agency, commission or body for one year following the public servant's date of separation. Further, public servants are prohibited from receiving compensation for services in connection with any matter that the public servant was directly concerned, personally participated, actively considered or acquired knowledge while working for the City. Requestor has acknowledged that in his role as Development Specialist for HRD, he was involved in the process of selecting developers and development teams who would benefit from a development agreement with the City. Requestor is also clear that once the development teams were awarded development agreements, he provided integral assistance by monitoring the development project, connecting the developers with other city agencies, etc. Therefore, in his role as Development Specialist, Requestor was directly concerned with, personally participated in, actively considered and acquired knowledge of the development agreements for development teams for which he now wishes to serve as consultant.

Requestor indicates that he does not intend to lobby or appear before City Council for one year past his date of separation, which is proscribed the Ethics Ordinance. However, the Ordinance goes further to ensure that governmental decisions are made in the public best interest, by prohibiting Requestor from receiving compensation for prospective consulting projects with development teams with which he worked while serving as a Development Specialist. Thus, to avoid violating Section 2-5-71(a) of the Code, for one year following his date of separation, Requestor must not serve as a paid consultant to any developer or development team with which he worked, actively considered, acquired knowledge of or personally participated in, in conjunction with the application, award or management of a development agreement.

Section 2-5-71(b) of the Code prohibits public servants who have left the City from accepting employment with a person or entity that did business with the City for one year after date of separation, if the public servant had any involvement with the award or management of the City's contract with the prospective employer. Black's Law Dictionary defines "contract" as "an agreement between two or more persons which creates an obligation to do or not to do a particular thing." It is unrefuted that the development teams received City assistance with acquisition of land and/or structures and public financing in exchange for the developer's promise to develop the land and/or structure, which constitutes a contract. In his role as Development Specialist, Requestor was inextricably involved with the award and management of development agreements to developers and development teams. While Requestor has not sought the Board's opinion regarding employment with any development teams, it should be noted that acceptance of employment from any developer or development team that benefited from Requestor's actions in leveraging public resources by the award and/or management of a development agreement frustrates the purpose of the City Charter and Ethics Ordinance, which is to ensure that governmental decisions are made in the public's best interests.

V. Conclusion

In response to Request for Advisory Opinion 2022-08, it is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-154(b)(4) of the Code. In line with the foregoing analysis, Requestor is advised as follows:

Section 2-5-71 of the Code precludes Requestor, a former Development Specialist for the Housing and Revitalization Department, from serving as a paid consultant to developers or development teams who are subject to development agreements with the City of Detroit for one year following date of separation from the City, if Requestor had any involvement with the consideration, award or management of the development agreement or if Requestor acquired knowledge of the subject of intended consulting services while working as an HRD Development Specialist. Section 2-5-71(a) specifically proscribes such activity, with its prohibition of receiving compensation for services in connection with "any matter in which the public servant was directly concerned, personally participated, actively considered or acquired knowledge." Such prohibition shall continue for one year past Requestor's date of separation. The Code also precludes Requestor from accepting employment from any developer/development team that operates under a development agreement with the City, if Requestor was in any way involved with the award or management of the development agreement or said employment would require the sharing of confidential information. Requestor indicated that his last day of work with the City was March 4, 2022. Therefore, the prohibition against Requestor serving as a paid consultant or accepting employment as described above is effective until March 4, 2023.

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Dated: March 31, 2022



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Advisory Opinion #2022-09
Issued: April 20, 2022

Advisory Opinion #2022-09: Pursuant to Section 2-5-124(b)(4) of the Ethics Ordinance, it is the decision of the Board of Ethics to issue an advisory opinion in response to Request for Advisory Opinion 2022-09. Requestor is a public servant who is subject to the Standards of Conduct mandated by the 2012 Detroit City Charter and the Ethics Ordinance. The 2012 Detroit City Charter and Ethics Ordinance do not prohibit Requestor from utilizing the purchase discount offered by his friend, a [REDACTED] employee, to acquire a [REDACTED] vehicle.

I. Procedural Background

The Board of Ethics (“the Board”) received Request for Advisory Opinion No. 2022-09 (“the Request”) on March 24, 2022, via email communication. In accordance with the Ethics Ordinance (“the Ordinance”), as codified at Section 2-5-121(a) of the 2019 Detroit City Code (“the Code”), the Request was submitted by a current public servant. In accordance with Section 2-5-122, Requestor’s identity shall remain confidential.

Pursuant to Section 2-5-124(a) of the Code, the 91-day period for review of this request will conclude on June 23, 2022. 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 September 22, 2022.

At its April 20, 2022, meeting, the Board determined that the Request met the basic requirements of a Request for Advisory Opinion under Section 2-5-121 of the Code because Requestor is a public servant, the Request addresses Requestor’s behavior as applied to the Standards of Conduct, and the Request is in writing. The Board heard a Preliminary Analysis from legal counsel on the same day. After consideration and discussion of the issues presented, pursuant to Section 2-5-124(b)(4) of the Code, the Board voted to issue this Advisory Opinion.

II. Information from the Request

Requestor currently works for the City of Detroit ("the City") as a [REDACTED] for the [REDACTED], where he has been employed since June 2019. Requestor seeks the Board's opinion regarding prospective use of his friend's [REDACTED] discount to lease or purchase a vehicle.

The Request states the following:

I am looking to lease a [REDACTED] vehicle. I would like to use the Friends discount on the vehicle. My friend is an employee of [REDACTED].

In order for me to receive the discount from [REDACTED] I need the Ethics Board to approve.

In a supplemental communication, Requestor provided [REDACTED]'s description of the [REDACTED] position. The position is summarized as follows:

The [REDACTED] provides [REDACTED] support to all employee levels or organization; [REDACTED], makes recommendations on [REDACTED]; instructs on best [REDACTED] practices; collaborates on organizational projects, develops and monitors policies and staff compliance. Work is performed under the direction of the [REDACTED] or team members performing in a lead role.

Essential job functions associated with the position are detailed below:

- Track progress of [REDACTED] activities including but not limited to [REDACTED]
- Coordinate and manage the [REDACTED] process through needs analysis, projections, recommendations and close communication with management.
- Conduct [REDACTED] sessions
- Ensure compliance with [REDACTED]
- Instruct and train staff on including but not limited to policies, procedures and best practices for provision of [REDACTED].
- Prepare comprehensive reports; provide input and correspondence for the department's [REDACTED].
- Follow security and safety policies and procedures in carrying out work duties.
- A valid Michigan Driver's License and the ability to drive a motor vehicle.
- Provide on the job training as needed.

Requestor is currently considering the purchase or lease of several different [REDACTED] vehicles while utilizing a discount offered by his friend and [REDACTED] employee, [REDACTED]. [REDACTED] offers the following about employee discounts:

When you're part of the [REDACTED] family, you always have savings to share. Families can turn any shared experience into something special. [REDACTED] does the same with the [REDACTED] Employee Discount, allowing employees and eligible family members to purchase or lease an eligible, new [REDACTED] or [REDACTED] vehicle at a special discounted price below MSRP. Combine it with most current offers to get even more.¹

[REDACTED] allows their employees to sponsor vehicle discounts in accordance with the following hierarchy:

Active and Retired [REDACTED] and [REDACTED] Financial Employees are eligible for the discount and can sponsor the following purchasers: their spouse, children, stepchildren, grandchildren, step grandchildren, grandparents (including in-law and step), parents, stepparents, siblings (including full, half and step), mother-/father-in-law, sons-/daughters-in-law, brothers-/sisters-in-law, aunts, uncles, nieces and nephews.

Former hourly or salaried [REDACTED] employees with 5-20 cumulative years of service are eligible for the discount and can sponsor their spouse and dependent children.

Former hourly or salaried [REDACTED] employees with 20+ cumulative years of service are eligible for the discount and can sponsor their spouses, children, stepchildren, grandchildren, step grandchildren, grandparents (including in-law and step), parents, stepparents, siblings (including full, half and step), mother-/father-in-law, sons-/daughters-in-law, brothers-/sisters-in-law, aunts, uncles, nieces and nephews.²

Additionally, [REDACTED] offers a [REDACTED] Supplier Discount For Friends ("Friends Discount"), which "allows eligible employees to extend the same discount that [REDACTED] suppliers receive to cousins, friends or neighbors."³ Eligible employees and retirees can request one Friends Discount per month. [REDACTED]'s website notes that individuals employed by a government organization *may* not be eligible to participate in the Friends Discount due to relevant government rules.

[REDACTED] serves as the [REDACTED] at [REDACTED]. In Mr. [REDACTED]'s current role, he [REDACTED].⁴ Per the Board Investigator, a search of the City's relevant databases did not reveal any contracts between the City and [REDACTED]. Nothing in the Request or otherwise indicates that [REDACTED] is doing business with the City or seeking to do business with the City.

The question presented for consideration is whether Requestor, a [REDACTED], may utilize the Friends Discount provided by his friend, [REDACTED], to acquire a [REDACTED] vehicle.

¹ [REDACTED] (April 7, 2022).

² [REDACTED] (April 7, 2022).

³ *Id.*

⁴ [REDACTED] (April 7, 2022).

III. Applicable Charter and Ordinance Sections

Section 2-106.1, *Ethical Standards of Conduct*, of the 2012 Detroit City Charter (“the Charter”) provides that the purpose of applying and enforcing its requirements and standards is to ensure that governmental decisions are made in the public’s best interests. One way to execute this purpose is to prohibit public servants from participating in matters that affect their personal or financial interests. This Request involves Section 2-106.4, *Gifts and Gratuities*, of the Charter, as codified at Section 2-5-70 of the 2019 Detroit City Code. The Code states the following:

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.

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

As it applies to Section 2-5-70 – Prohibition on gifts and gratuities; exception, subject to four exceptions that do not apply to facts set forth by the Request, the Code prohibits public servants from accepting gifts, gratuities and things of value from individuals or entities that are doing or seeking to business with the City, 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. Requestor is a public servant who works as a [REDACTED]. Requestor seeks to benefit from [REDACTED]'s Friends Discount to purchase or lease an automobile. [REDACTED] discount plans are tangible benefits earned by [REDACTED] employees by virtue of their employment with the company. Thus, through his employment with [REDACTED], Mr. Bernard has earned the ability to allocate discount plans as he chooses, so long as the allocations are in line with [REDACTED] policy. In turn, Mr. Bernard is prospectively bestowing the benefit of a purchase discount upon Requestor. Thus, in utilizing the Friends Discount, Requestor would be accepting a thing of value from his friend, [REDACTED].

Though [REDACTED] is employed by [REDACTED], a company known to have business dealings with the City, his job duties as [REDACTED], which involve [REDACTED], do not coincide with Requestor's duties, which entail supporting the [REDACTED] group. Nothing in the Request suggests that by performing his [REDACTED] duties, Requestor could substantially affect [REDACTED]'s interests as a [REDACTED] employee. Furthermore, the Board is not aware of any information that suggests that [REDACTED], as an individual, is doing business with the City, seeking to do business with the City, has interests that could be substantially affected by performance of Requestor's DWSD duties, or is registered as a lobbyist under applicable law and Section 2-5-35 of this Code. The Ordinance prohibits public servants from accepting gifts, gratuities, honoraria and things of value from such individuals and entities. Because [REDACTED] does not fall into any of the aforementioned categories, Requestor's utilization of [REDACTED]'s Friends Discount to acquire a GM vehicle would not violate Section 2-5-70 of the Code.

V. Conclusion

In response to Request for Advisory Opinion 2022-09, it is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-154(b)(4) of the Charter. In line with the foregoing opinion, Requestor is advised that Section 2-106.4 of the Charter and Section 2-5-70 of the Code do not prohibit Requestor from utilizing the Friends Discount prospectively bestowed by his friend, [REDACTED], to purchase or lease a vehicle from [REDACTED].

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Advisory Opinion #2022-10
Issued: April 20, 2022

Advisory Opinion #2022-10: Pursuant to Section 2-5-124(b)(4) of the Ethics Ordinance, it is the decision of the Board of Ethics to issue an advisory opinion in response to Request for Advisory Opinion 2022-10. Requestor is a public servant who is subject to the Standards of Conduct mandated by the 2012 Detroit City Charter and the Ethics Ordinance. The 2012 Detroit City Charter and Ethics Ordinance prohibit Requestor from accepting a French aviation medal from a foreign investor to whom Requestor has issued numerous property compliance tickets because the foreign investor has interests that could be substantially affected by the performance of Requestor's duties as a BSEED Property Compliance Building Inspector.

I. Procedural Background

The Board of Ethics ("the Board") received Request for Advisory Opinion No. 2022-10 ("the Request") on March 25, 2022, via email communication. In accordance with the Ethics Ordinance ("the Ordinance"), as codified in Section 2-5-121(a) of the 2019 Detroit City Code ("the Code"), the Request was submitted by a current public servant. In accordance with Section 2-5-122(b), Requestor waived confidentiality of the Request.

Pursuant to Section 2-5-124(a) of the Code, the 91-day period for review of this request will conclude on June 24, 2022. 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 September 23, 2022.

At its April 20, 2022 meeting, the Board determined that the Request met the basic requirements of a Request for Advisory Opinion under Section 2-5-121 of the Code because Requestor is a public servant, the Request addresses Requestor's behavior as applied to the Standards of Conduct promulgated by the Ordinance, and the Request is in writing. The Board heard a Preliminary Analysis from legal counsel on the same day. After consideration and discussion of the issues presented, pursuant to Section 2-5-124(b)(4) of the Code, the Board voted to issue this Advisory Opinion.

II. Information from the Request

Requestor works for the City of Detroit (“the City”) as a Building Inspector in the Property Maintenance Division (“Property Maintenance”) of the Buildings Safety Engineering and Environmental Department (“BSEED”). The City’s website provides the following regarding BSEED’s mission and responsibilities:

The BSEED mission is to provide for the safety, health and welfare of the general public as it pertains to buildings and their environs in an efficient, cost effective, user friendly and professional manner.

BSEED enforces construction, property maintenance, environmental compliance and zoning codes, which preserve and enhance property values and promote a quality of life to make Detroit a preferred place to reside and conduct business.

The Property Maintenance division “[e]nsures compliance for commercial & residential properties and enforces the rental ordinance, property maintenance, and dangerous building codes.” The general description of a BSEED Building Inspector position follows:

Under general supervision, inspects new and existing buildings, structures, and signs to ensure compliance with regulatory codes and city ordinances, approved plans, specifications, and accepted standards and methods of work; examines plans for compliance with regulatory codes, laws, and ordinances for the approval of applications for permits.¹

A foreign property owner (“the foreign investor”) to whom property compliance tickets have been issued sent Respondent a French aviation medal in the mail. Respondent informed his supervisors of the gift. Consequently, BSEED Director Dave Bell took temporary possession of the medal, which Respondent would like to keep.

The Request states the following:

Inspector Potenga has been working closely with a **foreign investor from France** on Rental Compliance. The gentleman has previously **been taken advantage of** by a former property management firm and their contractors, to what he says in excess of \$100,000. Potenga was able to make direct contact with him through phone and email correspondence. He has been issued tickets and appeared in court in which Potenga set up an interpreter through CRIO. Potenga has been in contact with the new property management company informing them of the proper process for rental compliance. Many email transmissions and phone calls have transpired and he feels much better about his position and professional relationship with the new property management team. During one such email, he made mention that he was a former military member, as he is very proud of his service. Unbeknownst to Potenga, he sent in standard mail a personal medal that he was awarded by the French Aviation community for his service to his nation.

¹ *City of Detroit Careers – Building Inspector – Buildings, Safety, Engineering & Environmental Department*, <https://www.governmentjobs.com/careers/detroit/jobs/3139295/building-inspector-buildings-safety-engineering-environmental-department>, February 11, 2022

The Request further explains the circumstances surrounding Requestor's receipt of the medal, and proposes an alternative method by which Requestor can accept the foreign investor's gift:

Potenga received a cardboard box in the mail, addressed to myself at 2 Woodward on 23MARCH2022. I opened the package at roughly 11 am and immediately took it to my Supervisor Arthur Rushin. He immediately called Director Dave Bell who was intrigued by the situation. Potenga had a face-to-face meeting with Mr. Bell minutes later. Mr. Bell thought it would be wise to consult the Board of Ethics, to get an official ruling, simply to follow proper procedures so as not to compromise anyone's integrity. Mr. Bell has taken possession of the medal until an official ruling can be made.

Please take special notice to the letter that came in the mail with the medal. It will reveal the gentleman's true intention.

He has stated that he is very proud of his service to the nation, and in partnership with other military forces, his service on a global front. The "gift" is one of sentimentality from "a Brother in Arms" to another.

I would like to be able to accept the "gift" based on these conditions.

Depending on the ruling of the Ethics Board, if a negative (to my circumstance) response is applied, I would like the opportunity to apply Sec. 2-5-70 (b) 1 and hopefully render the help of the French American Chamber of Commerce, or other organization, have Mr. Bell hand over the medal to them and have them hand it directly to me, so I can retain ownership as originally intended.

Please advise on the process going forward. Please be in touch if you need anything further, street addresses, court cases, property management names/contact information or email communications.

In a subsequent communication with the Board, Requestor provided more details surrounding his contact with the foreign investor. Requestor indicated that following an exterior and interior inspection of the investor's property, he issued a 30-day correction order. The correction order went unfulfilled, resulting in the issuance of citations, which the foreign investor paid. Subsequently, Requestor issued a second round of tickets, which had not been adjudicated at the time of the Request. Following issuance of the second set of citations, the foreign investor initiated contact with Requestor, which began communication between the individuals. At the foreign investor's request, Requestor contacted the foreign investor's newly retained property management company to explain the steps required to bring a residential home into rental compliance. Following communication amongst Requestor, the foreign investor and his new property management company, Requestor received the French aviation medal in the mail.

The question presented for consideration is whether Requestor, a BSEED Property Maintenance Building Inspector, may accept a French aviation medal as a gift from a foreign investor who has been before BSEED with property compliance issues in which Requestor has had involvement. The Request also poses the issue of whether Requestor may seek an outside organization to take possession of the medal and then "present" it to Requestor.

III. Applicable Charter and Ordinance Sections

Section 2-106.1, *Ethical Standards of Conduct*, of the 2012 Detroit City Charter (“the Charter”) provides that the purpose of applying and enforcing its requirements and standards is to ensure that governmental decisions are made in the public’s best interests. One way to execute this purpose is to prohibit public servants from participating in matters that affect their personal or financial interests. This Request involves Section 2-106.4, *Gifts and Gratuities*, of the Charter, as codified at Section 2-5-70 of the 2019 Detroit City Code. The Code states the following:

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.

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

As it applies to **Section 2-5-70 – Prohibition on gifts and gratuities; exception**, subject to four exceptions, the Code prohibits public servants from accepting gifts, gratuities, honoraria and other things of value from individuals or entities that are doing business with the City, seeking to do business with the City, seeking official action from the City, who has interests that could be substantially affected by the performance of the public servant's official duties, or is registered as a lobbyist. Requestor is a BSEED Property Maintenance Building Inspector whose duties are to ensure compliance with regulatory codes and city ordinances. Requestor has worked closely with the foreign investor – a person who, at the time of the Request, had open matters before BSEED. Requestor inspected the foreign investor's property, which ultimately resulted in the issuance of property compliance citations. Requestor has had substantial involvement with resolution of the tickets, even going so far as to inform the foreign investor's new property management team about steps necessary to bring the property into rental compliance. Further, as the Building Inspector responsible for issuing citations to the foreign investor, Requestor would have significant input into how the citations are resolved. The matters were not resolved when Requestor received the medal in the mail or when he submitted the Request. Therefore, the foreign investor has interests that could substantially be affected by the performance of Requestor's duties.² Thus, it is improper for Requestor to accept the French aviation medal from the foreign investor.

Requestor invokes Section 2-5-70(b)(1) in seeking this Board's approval of his proposed plan to involve the French American Chamber of Commerce ("FACC") or another unnamed organization, by requesting that the organization take possession of the medal from Director Bell and then give the medal to Requestor. Section 2-5-70(b)(1) provides an exception to the Ordinance's prohibition on gifts and gratuities by allowing an individual, governmental body or non-governmental entity or agency to publicly present an award to a public servant, in recognition of that public servant's public service. Involvement of the FACC or another organization does not negate the fact that the medal was originally gifted to Requestor by a foreign investor who has interests that could be substantially affected by the performance of Requestor's duties as a BSEED Building Inspector. Thus, in the suggested scenario, the FACC would serve as a "straw man," as the gift would take place at the behest of the foreign investor, not the organization.³

Requestor's proposal amounts to an attempt to circumvent Section 2-5-70 of the Code. The Code contemplates and rejects attempts to evade its prohibition on impermissible gifts and gratuities,⁴ which suggests that individuals should not use the Code's exceptions to manipulate circumstances surrounding gifts to public servants in an attempt to make them acceptable under the Ordinance. Acceptance of the French aviation medal under any circumstances contemplated by the Request would result in Requestor participating in matters that affect his personal interests, which is exactly what the Ordinance seeks to prevent.

² It should be noted that resolution of the current open citations would not trigger circumstances by which Requestor's permissible acceptance of the French aviation medal would be acceptable under the Ordinance. The foreign investor's retention of a new property management company and the need for "countless emails and phone calls" between the parties suggest that he could face more property maintenance issues that come before BSEED in the future. Such circumstances further demonstrate that the foreign investor's interests can be substantially affected by the performance of Requestor's duties.

³ See *Black's Law Dictionary* (7th ed) (defining "straw man" as "[a] third party used in some transactions as a temporary transferee to allow the principal parties to accomplish something that is otherwise impermissible.").

⁴ See DETROIT, MICH., CODE § 2-5-70(b)(3) (allowing a public servant's family member to make an otherwise impermissible gift to the public servant *if* the family member is not being used as an intermediary to circumvent the Code's prohibition.)

V. Conclusion

The Board commends Requestor and Director Bell for astutely recognizing that the aforementioned circumstances present an ethical quandary. In response to Request for Advisory Opinion 2022-10, it is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-154(b)(4) of the Charter. In line with the foregoing analysis, Requestor is advised of the following:

- 1) Section 2-106.4 of the Charter and Section 2-5-70 of the Code prohibit Requestor from accepting the French aviation medal sent by the foreign investor, as the foreign investor has interests that could be substantially affected by Requestor's performance of his official duties;
- 2) Section 2-106.4 of the Charter and Section 2-5-70 of the Code prohibit Requestor from involving the FACC or another organization to take possession of the French aviation medal from Director Bell and then bestow it upon Requestor, as such action is an attempt to circumvent the Ordinance prohibitions, and would not negate the fact that the foreign investor is the party bestowing the medal upon Requestor.

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Dated: May 11, 2022



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Advisory Opinion #2022-12
Issued: July 5, 2022

Advisory Opinion #2022-12: In response to Request for Advisory Opinion 2022-12, 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. Requestor currently serves as [REDACTED] in the [REDACTED]. Requestor applied for the position of [REDACTED] with [REDACTED]. As detailed below, Section 2-5-71 permits Requestor to accept such a position, provided that Requestor abstain from appearing before the City for one year following the date of his separation.

I. Procedural Background

The Board of Ethics ("the Board") received Request for Advisory Opinion No. 2022-12 ("the Request") on May 5, 2022, via email communication. In accordance with the Ethics Ordinance ("the Ordinance"), as codified at Section 2-5-121(a) of the 2019 Detroit City Code ("the Code"), the Request was submitted by a public servant. In accordance with Section 2-5-122, Requestor's identity shall remain confidential.

Pursuant to Section 2-5-124(a) of the Code, the 91-day period for review of this request concludes on August 4, 2022. 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. Should the Board utilize the additional 91-day extension, said period will conclude on November 3, 2022.

On May 18, 2022, the Board considered the Request in closed session. Following legal counsel's delivery of a privileged and confidential Preliminary Analysis, the Board requested that further fact-finding be conducted to enable a well-informed decision. At a special meeting held on July 5, 2022, the Board determined that the Request met the basic requirements of a

Request for Advisory Opinion under Section 2-5-121 of the Code because the Requestor is a public servant, the Request addresses Requestor's behavior as applied to the Standards of Conduct set forth by the Ordinance, and the Request is in writing. The Board heard legal counsel's Supplemental Preliminary Analysis in closed session on the same day. After consideration and discussion of the issues presented, the Board voted to issue this Advisory Opinion, pursuant to Section 2-5-124(b)(4) of the Code.

II. Information from the Request

Requestor serves the City of Detroit ("the City") as [REDACTED] in the [REDACTED] ("[REDACTED]"). Requestor applied for and participated in the first round of interviews for the position of [REDACTED] with [REDACTED], a [REDACTED] company with operations in Detroit, Michigan and Cleveland, Ohio. Requestor seeks this Board's opinion regarding application of the one-year prohibition to his acceptance of the position, in the event that [REDACTED] makes an offer of employment.

The Request states the following:

I have applied for a [REDACTED] position with [REDACTED], and their recruiter has conducted a Round 1 interview with me. This position is responsible for [REDACTED] ing for [REDACTED]'s [REDACTED] in Detroit and Cleveland. I am requesting an advisory opinion to determine if any of the "one year post-employment prohibition" limitations under Sec. 2-5-71 would apply to me for this position if offered it. In my current position with the City, I am an appointee leading the [REDACTED], which is the division responsible for the City's annual budget and four-year financial plan, under the direction of the [REDACTED]. The division's work includes [REDACTED]

My previous positions with the City dating back to September 2016 included [REDACTED]. In both cases, I performed similar functions to my current role but under direction of the previous [REDACTED] and the [REDACTED]. In my roles at the City, I have not worked directly on [REDACTED]'s [REDACTED] or their related [REDACTED] approved by the City. Any subject-matter knowledge I have on these topics is general in nature and based on publicly available information. I have not been involved in the award or management of any City contracts with [REDACTED] or the [REDACTED]. To my knowledge, I do not possess any confidential information that would be applicable to the position.

Although the Request does not make reference, [REDACTED] is an entity known to do business with the City.

III. Supplemental Information Obtained During Fact-Finding

To allow the Board to render a well-informed decision, the Board Investigator conducted fact-finding and presented follow-up questions to Requestor. In response to inquiry about his work history with the City, Requestor provided the following:

- [REDACTED] (2016-2019), reporting initially to the [REDACTED] and later to the [REDACTED]. I was responsible for various special projects related to [REDACTED] matters. I later led a new team focused on [REDACTED] analysis of [REDACTED] and other proposed City policies/ordinances
- [REDACTED] (2019-2021), reporting to the [REDACTED]. I continued my previous responsibilities but also took on more helping the [REDACTED] lead the entire [REDACTED] and its work processes. See attached job description for the [REDACTED] for more detail on the Office's functions.
- [REDACTED] (2021-present), reporting to the [REDACTED]. See attached job description for the [REDACTED].¹

In his current appointed role of [REDACTED], Requestor leads the [REDACTED]. Requestor acknowledged that [REDACTED] maintains a long working relationship with the City, but indicated that he has had no direct or indirect interaction with the entity in the course of performing his duties as a public servant. Requestor further indicated that he has not presented matters involving [REDACTED] to City Council, to any City departments, or in executive meetings where matters involving the entity were discussed, evaluated, considered or approved.

Per Requestor, his first interview with [REDACTED] took place on April 15, 2022. Requestor expects the second round of interviews to occur over the summer of 2022. The successful candidate will lead a team that prepares [REDACTED], and other documents that support the organization in requesting, receiving, and complying with the terms of local, state, and federal government [REDACTED] that supports [REDACTED]. The [REDACTED] website describes the prospective position as follows:

The [REDACTED] will work alongside key internal and external stakeholders to develop, prepare, and manage [REDACTED] related activities and/or special projects. This role will play a key role in developing and managing complex [REDACTED] models. They will also serve as an internal resource for [REDACTED] related efforts and will initiate [REDACTED] and forecasting to inform external public [REDACTED] efforts. An ideal candidate is responsive, thoughtful, self-directed, positive, and seeking a challenging role. This position will require initiative, judgment and independent decision making. Work alongside key internal and external stakeholders to prepare [REDACTED] related reports and/or special projects, including daily data collection and analysis, project coordination, final copy preparation, distribution, etc.

¹ For brevity, this opinion omits the [REDACTED] job description provided by Requestor.

Responsibilities

- Structure [REDACTED] for [REDACTED]'s development project in Detroit and Cleveland, including identifying and securing
- Local, state, and federal government grants
- [REDACTED]
- [REDACTED]
- Unique public-private partnership [REDACTED]
- Manage [REDACTED]'s public funding portfolio, including, but not limited to, tracking annual certificates, annual disclosure reporting, restructuring opportunities and maintenance of debt documents
- Execute and manage complex [REDACTED] transactions, including [REDACTED]
- [REDACTED]
- Formulate and recommend policies to ensure prudent administration of public funds
- Support the team with report and project preparation and distribution and drafting correspondences and responses for stakeholders
- Structure, execute and manage state revolving [REDACTED] and other state and federal [REDACTED] programs
- Analyze [REDACTED] information and convey articulately documented recommendations and decisions
- Oversee management of [REDACTED] data on external and other investor websites
- Collaborate with the [REDACTED] teams responsible for the areas of [REDACTED] and the related documentation requirements
- Make recommendations and act diligently to ensure compliance with all relevant regulations
- Develop and maintain positive and constructive relationships with internal and external stakeholders, including city government and [REDACTED] team, etc.
- Develop metrics and reports required to track [REDACTED]
- Support development of the annual [REDACTED] report and the completion of the annual [REDACTED] for related areas of responsibility
- Support other teams in developing and executing projects and analyses related to [REDACTED], and other areas as requested
- Manage the [REDACTED] function to meet the company's established goals
- Participate in identifying organizational goals, as well as strategic and business planning and evaluation
- Participate in the implementation of new initiatives
- Coordination of consultants
- Other duties as assigned²

² [REDACTED]
(June 11, 2022)

Requestor emphasized that the [REDACTED] will be internally focused on [REDACTED] and compliance related to local, state, and [REDACTED] under the direction of executive leadership and in coordination with various units within [REDACTED]. The prospective position will lead a unit that supports executive leadership on such matters. Per Requestor, the [REDACTED] will not be responsible for presenting such matters to city government. Requestor indicated that he is unaware of any potential conflicts of interest posed by his prospective acceptance of the position since he has not worked on such matters for the City. Requestor also indicated that he informed his prospective employer that City regulations prohibit him from lobbying or appearing before the City government for one year following his separation.

The question presented to the Board is whether Requestor, who currently serves as the [REDACTED] in the [REDACTED], may accept a position as [REDACTED] with [REDACTED], a company that does business with the City, and if so, under what conditions?

IV. Applicable Charter and Ordinance Sections

Section 2-106.1, *Ethical Standards of Conduct*, of the 2012 Detroit City Charter ("the Charter") provides that the purpose of applying and enforcing its requirements and standards is to ensure that governmental decisions are made in the public's best interests. One way to execute this purpose is to prohibit public servants from participating in matters that affect their personal or financial interests. The Request involves Section 2-106.5, *One Year Post-Employment Prohibition*, of the Charter, as codified at Section 2-5-71 of the 2019 Detroit City Code. The Code states the following:

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 Code to the Information Presented

Section 2-5-71 - One-year post-employment prohibition, precludes public servants who recently separated from the City from “lobby[ing] or appear[ing] before the City Council or any City department, agency, board, commission or body, or receiv[ing] 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.” In his current position, Requestor leads the [REDACTED], which is responsible for the City’s [REDACTED], under the direction of the [REDACTED]. Per the Request, Requestor currently oversees the following areas: [REDACTED]

Requestor indicated that he has not had direct or indirect interaction with [REDACTED] in the course of performing his duties for the City. Requestor further indicated that he has not presented to City Council regarding any [REDACTED] matters. As [REDACTED], Requestor would be responsible for developing and managing [REDACTED]’s public financing for the City and Cleveland. More specifically, Requestor would work alongside key internal and external stakeholders to develop, prepare, and manage public finance related activities and/or special projects. Additionally, in the prospective role, Requestor would play a key role in developing and managing complex [REDACTED]. As presented by Requestor, the nature of the prospective position does not seem to be one that requires him to lobby or appear before the City or receive compensation for services in connection with any matter that he was directly concerned, personally participated, actively considered, or acquired knowledge of while working for the City. Further, Requestor indicated that he has informed his prospective employer of his plans to refrain from interfacing with anyone from the City or present before any City departments for one year following his separation from the City. Therefore, based on the information provided to the Board, Requestor’s acceptance of the [REDACTED] position at [REDACTED] would not violate Section 2-5-71(a) of the Code.

Section 2-5-71(b) of the Ethics Ordinance prohibits public servants who have left the City from accepting employment with a person or entity that did business with the City for one year after date of separation, if the public servant had any involvement with the award or management of the City’s contract with the prospective employer or the employment would require the sharing of confidential information. The Request indicates that Requestor has not been involved in the award or management of any City contracts with [REDACTED] or the [REDACTED]. Additionally, Requestor indicated that to his knowledge, he does not possess any confidential information that would be applicable to the prospective position. Based on Requestor’s representations, Section 2-5-71(b) does not prevent him from accepting the [REDACTED] position with [REDACTED].

VI. Conclusion

In response to Request for Advisory Opinion 2022-12, it is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-154(b)(4) of the Ethics Ordinance. In line with the foregoing opinion, Requestor is advised that Section 2-106.5, *One Year Post Employment Prohibition*, of the 2012 Detroit City Charter and Section 2-5-71 of the Ethics Ordinance permit Requestor to accept the position of [REDACTED] with [REDACTED].

Requestor is reminded that Section 2-5-71(a) of the Ethics Ordinance precludes a former public servant from lobbying or appearing 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 for one year following the public servant's separation from the City. Thus, should Requestor accept the [REDACTED] with [REDACTED], for one year following separation from the City, Requestor should refrain from lobbying or appearing before the City, or work on any matter involving the City if Requestor was directly concerned, personally participated in, actively considered, or acquired knowledge of the matter while employed with the City.

Finally, Requestor is advised that Section 2-5-71(b) of the Ethics Ordinance prohibits a public servant from accepting 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. As Requestor has represented that he has had no involvement with the award or management of any contracts between the City and [REDACTED], and has no confidential information that is germane to the prospective position, the Ethics Ordinance does not preclude Requestor from accepting the [REDACTED]ance with [REDACTED].

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Advisory Opinion #2022-15
Issued: September 8, 2022

Advisory Opinion #2022-15: 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 the Request for Advisory Opinion 2022-15. Acceptance of a 0% Home Repair Loan would not violate the Ethics Ordinance so long as Requestor submits a Disclosure of Interest Form to the [REDACTED] management and the [REDACTED] management takes special care to ensure that Requestor is not able to manipulate the payment system in her favor in any way.

I. Procedural Background

Request for Advisory Opinion 2022-15 (the “Request”) was sent to the Board of Ethics (the “Board”) by electronic communication and received on August 10, 2022. 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 November 9, 2022. 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.

At its meeting on September 8, 2022, 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 reviewed a Preliminary Analysis from legal counsel on the same day. 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

Requestor is a [REDACTED] in the [REDACTED], which is a division of the [REDACTED]. Requestor has been approved to receive a 0% Home Repair Loan. The Request states the following:

I have currently been approved to receive 0% Home Repair Loan. I currently work in [REDACTED] as a [REDACTED]. One of my responsibilities include recording and storing HUD related documents for grant reimbursements. When I requested the loan I was told because I don't have authority to approve anything that it was okay for me to apply and receive the loan. I would like to confirm with the board to make sure that there is no conflict of interest and that I have fully completed all required City of Detroit procedural steps before accepting the 0% Home Repair Loan.

Background Info: 50 YR-Resident of the City of Detroit, City of Detroit Homeowner

The 0% Home Repair Loan Program offers 10-year interest-free loans that range between \$5,000 and \$25,000. In Requestor's loan application, Requestor checked "yes" under the section inquiring about a potential conflict of interest. According to Requestor, [REDACTED] of [REDACTED] processed Requestor's loan application and spoke to Requestor's supervisor, who indicated that Requestor has no significant authority. Thus, there was no conflict of interest.

Per the City's Human Resources position description, the [REDACTED] class is a "non-supervisory role responsible for general office or support duties such as preparing, receiving, reviewing, and verifying documents." The position is also responsible for processing transactions, maintaining office records, and locating and compiling data or information from files and other data sources. In supplemental communication with the Board Investigator, Requestor's duties were described as recording payment requests with supporting documentation and receipt of incoming reimbursements for grant accounts, except [REDACTED], with the [REDACTED] performing the receipting and Requestor uploading supporting documents into the [REDACTED].

Requestor emphasized that the [REDACTED] Spreadsheet is a payment tracking system, and she is only allowed to assign matters to an accountant and attach required paperwork. If Requestor gives a matter to the wrong accountant or attaches the paperwork to the wrong matter, Requestor does not have access or permission to make corrections or deletions. Requestor noted that if they made a concerted effort to search for their payment, they would be able to find it. However, Requestor indicated they would not be able to manipulate any information on the spreadsheet. As noted in the Request, Requestor has no decision-making authority with regard to the award of the loans.

III. Applicable Charter Sections

The 2012 Detroit City Charter (“Charter”) provides in Section 2-106.1, *Ethical Standards of Conduct*, 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 Sections 2-5-31 and 2-5-68 of the Ethics Ordinance pertaining to disclosure requirements and standards of conduct. The relevant applicable provisions of the Code state as follows:

Disclosure Requirements

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.

Standards of Conduct

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.

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

The Requestor serves as a [REDACTED] in the [REDACTED], a section of the City's [REDACTED]. Therefore, Requestor is a public servant as defined in Section 2-105 of the Charter and Section 2-5-3 of the Ethics Ordinance. The Requestor seeks an advisory opinion regarding accepting a 0% Home Repair Loan. The Request was properly submitted; the Ethics Ordinance regulates the Requestor's conduct.

According to Section 2-5-1 of the Ethics Ordinance, the standards of conduct and disclosure requirements apply to public servants "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 following provisions are implicated in this Request.

A. Section 2-5-31. Disclosure of interests by public servants.

Section 2-5-31 of the Code requires a public servant who exercises significant authority over a pending matter to disclose any financial interest in matters that the public servant or an immediate family member has in any contract or matter pending before City Council or any City office, department, or agency. The Code further requires a public servant who exercises significant authority to disclose any interest that the public servant or their 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. The Code defines "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."

Requestor is a [REDACTED] whose duties include recording payments and storing and filing documents. Requestor does not have the ability to influence the outcome of a decision on behalf of the [REDACTED] or [REDACTED]. Requestor does not exercise significant authority. Thus, the circumstances surrounding this Request do not trigger the duty to disclose under Section 2-5-31 of the Code. However, in applying for the loan, Requestor already opted to disclose their position within [REDACTED] and a potential conflict of interest. While the fact that Requestor would have the ability to find their prospective loan payments in the payment system is a cause for concern, the manner in which Requestor describes their duties suggests that they are unable to manipulate the payment information transmitted to them for processing. Thus, while Section 2-5-31 does not impose a duty to disclose upon Requestor because they do not exercise significant authority, Requestor should disclose that they are a loan recipient to [REDACTED] management. [REDACTED] management should take special care to ensure that Requestor is not able to manipulate the payment system in their favor in any way.

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

Section 2-5-68 of the Code prohibits public servants who exercise significant authority in the course of their duties from soliciting or accepting a loan or payment from an individual or entity that is providing service to or receiving tax abatements, credits, or exemptions from the City. As described herein, Requestor, in the course of performing their duties as an [REDACTED], does not exercise significant authority. Therefore, Requestor's prospective acceptance of the 0% loan offered through the Loan Program does not trigger Section 2-5-68 of the Code.

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 2022-15. As set forth above, if the Requestor discloses that she is a loan recipient to [REDACTED] management, the Requestor will not be in violation of the disclosure requirements or standards of conduct set forth by the Ethics Ordinance. [REDACTED] management should take special care to ensure that Requestor is not able to manipulate the payment system in Requestor's favor in any way.

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Dated: October 14, 2022

