

City of Detroit Board of Ethics

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Advisory Opinion #2019-09

Issued: May 21, 2019

Advisory Opinion #2019-09: The Ethics Ordinance does not require the Requestor to make a disclosure in accordance with Sec. 2-6-31. The Requestor shall use this Opinion as a guide and should exercise caution that his judgment and actions on behalf of the City remain independent, that he refrain from sharing any confidential information with any outside entity.

I. Procedural Background

A Public Servant filed Request for Advisory Opinion 2019-09 (the “Request”) filed on April 2, 2019, and sent it to the Board of Ethics (the “Board”) by electronic communication. As defined by Section 2-6-3 of the Detroit Ethics Ordinance (the “Ordinance”), a public servant submitted the Request. The Public Servant maintains confidentiality with respect to identity.

At its meeting on April 22, 2019, the Board determined that the Request met the basic requirements for a Request for Advisory Opinion under Section 2-6-101 of the Ordinance. At this meeting, the Board reviewed a Preliminary Analysis of the Request. On May 21 2019, after consideration and discussion of the issues presented, the Board voted to issue this Advisory Opinion pursuant Section 2-6-104(b)(4) of the Ethics Ordinance.

II. Facts Alleged In the Request

The Requestor states:

Is a [REDACTED] required to disclose a personal relationship with a vendor with matters before city council?

While this Request is sparse, it points to the Disclosure requirements.

III. Applicable Charter Sections

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

This Request involves Section 2-106.1 of the 2012 Detroit City Charter codified at Sections 2-6-31, -62, -67, and -68 of the Ethics Ordinance. It states as follows:

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

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

- (1) Any financial interest, direct or indirect, that he or she or an immediate family member has in any contract or matter pending before city council;
- (2) Any financial interest, direct or indirect, that he or she or an immediate family member has in any contract or matter pending before or within any office, department or agency of the city; and
- (3) Any interest that he or she, or an immediate family member has in real or personal property that is subject to a decision by the city regarding purchase, sale, lease, zoning, improvement, special designation tax assessment or abatement or a development agreement.

(b) All disclosures that are required under subsection (a) of this section shall be made, in writing, on a form that is created by the law department and sworn to in the presence of a notary public. After completion, the form shall be filed with the Board of Ethics, which shall forward a complete copy of the form to the applicable department director or agency head.

(Ord. No. 18-12, § 1, 7-31-12)

*Commentary— This provision implements the directive of section 2-106.2 of the 2012 Detroit City Charter that this article shall provide for the disclosure of any financial interest, which a public servant, or his or her immediate family member, has in any contract or in any real or personal property, that is the subject of a governmental decision by the city or any agency of the city over which the public servant exercises significant authority in the performance of his or her duties. This section is not intended to conflict with the Michigan Contracts of Public Servants with Public Entities Act, being MCL 15.310 et seq.

(Ord. No. 18-12, § 1, 7-31-12)

Other Sections Impacted

Sec. 2-6-62. - Improper use or disclosure of confidential information prohibited.

Except as otherwise provided for by applicable law, a public servant shall not knowingly use or disclose to third parties confidential information, which is gained by reason of his or her official duties, concerns the property, government or affairs of the

city or any office, department or agency thereof, and is not available to members of the public.

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

Sec. 2-6-67. Self-interested regulation prohibited.

Except as otherwise provided for by applicable law, a public servant shall not knowingly vote, or knowingly participate in the negotiation or making of any City contract, or any other type of transaction with any business entity in which he or she or an immediate family member has a financial interest.

Sec. 2-6-68. - Improper use of official position prohibited.*

Except as otherwise provided for by applicable law, a public servant shall not knowingly use his or her 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.

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

**Commentary* - This provision prohibits a public servant from using his or her official position in violation of federal or state law, such as the state law prohibiting bribery, being MCL 750.118, the state law regulating conflicts of interest pertaining to public contracts involving public servants under the Michigan Contracts of Public Servants with Public Entities Act, being MCL 15.310 et seq, the state law regulating political campaign organizations under the Michigan Campaign Finance Act, being MCL 169.201 et seq, and the provisions of the Michigan Gaming Control and Revenue Act prohibiting a government official from soliciting or knowingly accepting anything of value or benefit from a casino licensee in return for influencing official action (see MCL 432.218(2)(c) and (d)).

The prohibition in the article is not intended to prevent a public servant from giving advice or seeking information as a necessary part of the public servant's duties, or from communicating with a city agency in the ordinary course of the city's business. Nor is this prohibition intended to chill a public servant's free speech rights under the First Amendment to the United States Constitution or under Article I, Section 5, of the 1963 Michigan Constitution where the public servant is expressing his or her views to another City public servant or before a City agency in a non-official capacity.

IV. Application of the Charter to the Facts Presented

To trigger disclosure of this relationship, there must be a public servant exercising significant authority, a financial interest, or the public servant's immediate family member. The definitions of these terms are important and come from Section 2-6-3:

- A public servant *who exercises significant authority or their immediate family member*; and
- A *financial* interest, direct or indirect, to the public servant or their immediate family member; or

Sec. 2-6-3 defines immediate family member as:

o *Immediate family* member means:

- (1) A public servant's spouse; or
- (2) A public servant's domestic partner;

Domestic partner means one of two adults who:

- (a) Have a common residence; and
- (b) Agree to have joint responsibility for each other's basic living expenses incurred during the domestic partnership; and
- (c) Are not married or are not a member of another domestic partnership; and
- (d) Are not related by blood in a way that would prevent them from being married to each other in this state; and
- (e) Are at least eighteen (18) years of age; and
- (f) Have chosen to share one another's lives in an intimate and committed relationship of mutual caring; and
- (g) Are capable of consenting to the domestic partnership.

or

- (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.

The Requestor exercises significant authority however without additional details about the relationship, no we can provide no further specific analysis.

Under Sec. 2-6-31. - Disclosure of interests by public servants, unless the definitions of immediate family member or domestic partner are met, Requestor is not required to file any formal disclosure with the Board of Ethics. Such disclosure would only be required in the future if the personal relationship with the vendor progresses to meet the aforementioned definitions and/or the contractor/vendor has a matter before Council in which Requestor (or an immediate family member) has a direct or indirect financial interest.

Secs. 2-6-62 and 2-6-68 may activate based on Requestor's actions. If the personal relationship builds and requires formal disclosure, Requestor should practice greater awareness of all three Code sections cited above. Requestor should be sensitive to the Standards of Conduct provisions of the Charter and City Code, particularly information sharing or improper usage of information. Requestor should be keenly aware of the recusal process so no self-interest activity occurs, such as advocacy for the contractor. Requestor should also be sure to use its official position properly so personal activities do not cross over into business activities. Requestor should also use Council's Rules, which prohibit participation in a vote where a conflict of interest exists.

The recommendation for Request for Advisory Opinion 2019-09 in accordance with Sec. 2-6-104(b)(4) is to issue an advisory opinion in response to the request that directs the Requestor to take complete a checklist of the relationship based on this Opinion or have Requestor provide more detail.

V. Conclusion

The Board of Ethics concludes the Request for Advisory Opinion 2019-01 in accordance with Sec. 2-6-104(b)(4) and issues this advisory opinion in response to the request. The Requestor shall use this Opinion as a The Requestor should exercise caution that his judgment and actions on behalf of the City remain independent, that he refrain from sharing any confidential information with any outside entity.

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Dated: June 28, 2019