

*City of Detroit Board of Ethics*

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**Advisory Opinion #2020-07**

**Issued: July 21, 2020**

**Advisory Opinion #2020-07:** It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4) in response to Request for Advisory Opinion 2020-07. The Requestor may provide pro bono services to Jimena Companies, however, the Ethics Ordinance imposes certain requirements and restrictions. Requestor may provide services for [REDACTED] without compensation. Additionally, she must do so during time when she is not working for the City of Detroit. However, if the [REDACTED] engages in a matter of which [REDACTED] has an interest, the Requestor must recuse herself from participation in that matter so she can maintain independent judgment or action in her work for the City. In the Conclusion below, this Opinion provides detailed guidance to the Requestor on moving forward. The Requestor is strongly encouraged to contact the Detroit Board of Ethics if the circumstances change.

**I. Procedural Background**

Request for Advisory Opinion 2020-07 (the “Request”) was sent to the Board of Ethics (the “Board”) by electronic communication and received on February 18, 2020. In accordance with Sec. 2-6.101, 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 May 19, 2020. Section 2-5-124(a) also provides that the Board may, under extraordinary circumstances, extend its time to respond to a specific request by not more than 91 additional days and notify the requestor, in writing, of the specific reasons for such extension. The 91-day extension period concludes on August 18, 2020.

At its meeting on July 21, 2020, 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 heard a

privileged and confidential Preliminary Analysis from legal counsel on the same day, and after consideration and discussion of the issues presented, the Board decided to issue this advisory opinion pursuant to Section 2-5-124(b)(4).

## II. Information from the Request

The Requestor is a [REDACTED] Requestor provided a scope of work for his City of Detroit position. Requestor also provided a scope of work for the Jimena Companies as well as an organizational overview for said company. Requestor also states that she sought approval and received authorization from his director to participate. Requestor provided no written authorization.

According to the information provided in the Request, Jimena Companies has plans for a project in the City's greater downtown area. The Request describes the planned development project as being for "100 percent retail and commercial space." The Requestor states that financing for the project will consist of private lenders and tax incentives. As for the City's potential involvement in relation to the project, the Requestor states that the development team for the project "does not anticipate requests for City of Detroit HOME or CDBG funds," but that it "does anticipate pursuing tax incentives in the near future in partnership with DEGC."

According to the Requestor, she is not involved with tax abatement or land sale processes in the performance of her duties for the City, but that the [REDACTED] approvals process is managed by the [REDACTED], and the [REDACTED] process is managed by the [REDACTED]

The question presented to the Board is whether the Requestor may provide pro bono services for [REDACTED] by conducting research on various tax incentives and financing opportunities; conducting research and preparing presentations for local and global small business brands; collaborating in the creation or a small business grant competition; supporting project underwriting, financing efforts, and various development activities; and supporting various organizational operations.

By this request, the Requestor seeks an advisory opinion as to the applicability of the 2012 Detroit City Charter and 2019 Detroit City Code, specifically the Disclosure Requirements and the Standards of Conduct.

## 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 and 2-106.2 of the 2012 Detroit City Charter codified at Sections 2-5-31 of the 2019 Detroit City Code. It states as follows:

**Sec. 2-5-31. - Disclosure of interests by public servants.**

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

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

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

(Code 1984, § 2-6-31; Ord. No. 18-12, § 1(2-6-31), eff. 8-31-2012)

**Commentary**— This provision implements the directive of [Section 2-106.2](#) of the Charter that this article shall provide for the disclosure of any financial interest, which a public servant, or the public servant's immediate family member, has in any contract or in any real or personal property, that is the subject of a governmental decision by the City or any agency of the City over which the public servant exercises significant authority in the performance of the public servant's duties. This section is not intended to conflict with the Michigan Contracts of Public Servants with Public Entities Act, being MCL 15.301 *et seq.*

**Sec. 2-5-62. - Improper use or disclosure of confidential information prohibited.**

Except as otherwise provided for by applicable law, a public servant shall not knowingly use or disclose to third parties confidential information, which is gained by reason of the public servant's official duties, concerns the property, government or affairs of the City, or any office, department or agency thereof, and is not available to members of the public.

(Code 1984, § 2-6-62; Ord. No. 18-12, § 1(2-6-62), eff. 8-31-2012)

**Sec. 2-5-63. - Improper use of City property prohibited.**

Except as otherwise provided for by applicable law, a public servant shall not knowingly use City property in violation of City policies and procedures.

(Code 1984, § 2-6-63; Ord. No. 18-12, § 1(2-6-63), eff. 8-31-2012)

**Sec. 2-5-64. - Incompatible employment or rendering services prohibited.**

Except as otherwise provided for by applicable law, a public servant shall not knowingly engage in or accept employment, or knowingly render services, for a private or public interest where such employment or service is in conflict or incompatible with the proper discharge of the public servant's official duties for the City, or where such employment or service is reasonably expected to impair the public servant's independence of judgment or action in the performance of the public servant's official duties for the City.

(Code 1984, § 2-6-65; Ord. No. 22-00, § 1(2-6-65), eff. 8-11-2000; Ord. No. 18-12, § 1(2-6-65), eff. 8-31-2012)

**Sec. 2-5-65. - Representation of private person, business, or organization prohibited; exceptions.**

A public servant shall not act as an agent, attorney, or representative for another person, business, or organization in any matter that is pending before a City agency, except that:

(1) A public servant may represent another person, business, or organization before a City agency where such representation is a required part of the public servant's official duties;

(2) A public servant who is an uncompensated member of a City board, commission, or other voting body may act as an agent, attorney, or representative for another person, business, or organization in a manner that is pending before a City agency, other than the board, commission, or other voting body on which the public servant is a member; or

(3) A public servant who is compensated by the City may act as an agent, attorney, or representative for another person, business, or organization in a matter that is pending before a City board, commission or other voting body, other than the board, commission or other voting body on which the public servant serves as an appointee or as an employee, or under a personal services contract, as long as the public servant does so:

a. Without compensation; and

b. On the public servant's leave time; and

c. For appointees, in accordance with Chapter 35, Article III, Division 2, of this Code, *Vacation, Sick, Departmental, Funeral, and Jury Leave* ; or

d. For non-union employees, in accordance with Chapter 35, Article III, Division 2, of this Code, *Vacation, Sick, Departmental, Funeral, and Jury Leave* , and the City's Civil Service Rules; or

e. For union employees, in accordance with the employee's respective union contract and the City's Civil Service Rules; or

f. For individuals who provide services to the City pursuant to a personal services contract, in accordance with the applicable provisions of the contract.

(Code 1984, § 2-6-66; Ord. No. 22-00, § 1(2-6-66), eff. 8-11-2000; Ord. No. 43-06, § 1(2-6-66), eff. 12-15-2006)

**Sec. 2-5-66. - Self-interested regulation and participation prohibited.**

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

(Code 1984, § 2-6-67; Ord. No. 22-00, § 1(2-6-67), eff. 8-11-2000; Ord. No. 18-12, § 1(2-6-67), eff. 8-31-2012)

**Sec. 2-5-68. - Solicitation or acceptance of loan or payment prohibited.**

A public servant who, in the course of the public servant's duties, exercises significant authority shall not solicit or accept a loan or payment from an individual who, or entity which, is providing service to, or receiving tax abatements, credits, or exemptions from the City.

(Code 1984, § 2-6-69; Ord. No. 18-12, § 1(2-6-69), eff. 8-31-2012)

**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

We must first consider whether the Requestor "exercises significant authority. Used for disclosure requirements, the phrase is in Sec. 2-5-3, and means "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." According to the Requestor's description of her job duties, she [REDACTED]. She provides memoranda to an internal body [REDACTED] that makes decisions regarding [REDACTED]. By providing guidance to an internal body of the [REDACTED], the Requestor does exercise significant authority over pending matters regarding [REDACTED].

##### Section 2-5-31

Because the Requestor exercises significant authority over pending matters, Section 2-5-31 of the Code requires her to disclose her interests or the interests of her "immediate family member's." According to the Ethics Ordinance, the definition of immediate family member includes the Requestor's spouse or domestic partner, any individual claimed by the Requestor or her spouse as a dependent on either of their federal tax filings, or any individual who lives in the same household as the Requestor.

Although the Requestor indicated that [REDACTED] does not anticipate asking for [REDACTED], which concerns [REDACTED], if it seeks any decision or action from the City, the Requestor must disclose any financial interest that she or her immediate family members has in [REDACTED]. The Requestor's pro bono services, alone, is not a financial interest in [REDACTED] because she will not be compensated. However, a financial interest can be manifest in [REDACTED].

other ways. For example, owning stock in a company can create a financial interest. The Requestor has not indicated whether any of her immediate family members have a financial interest in Jimena Companies. If they do, Requestor and immediate family members must disclose to the Board of Ethics.

Additionally, if Jimena Companies seeks a decision from the City that involves real or personal property and pertains to purchasing, selling, leasing, zoning, improvement, special designation tax assessment or abatement, or a development agreement, it creates a financial interest. Again, if this situation occurs, the Requestor, and her immediate family, must disclose any interest they have in Jimena Companies. The Requestor indicates that Jimena Companies intends to pursue tax incentives from the City in the near future regarding a development project. Thus, the Requestor should anticipate disclosing all financial interests that she or any of her immediate family members have in Jimena Companies.

**Sec. 2-5-62. Improper Use or Disclosure of Confidential Information Prohibited.**

As to Section 2-5-62, any information that the Requestor:

- a. has obtained in the course or acting as a public servant;
- b. that is not available to members of the public, and
- c. that the Requestor has not been authorized to disclose, is confidential information.

The Requestor is prohibited from disclosing or using any of this confidential information while providing pro bono services to Jimena Companies.

**Sec. 2-5-63. Improper Use of City Property Prohibited.**

As to Section 2-5-63, the Requestor must avoid using any City property to perform pro bono activities. However, if the Requestor believes that the use of City property is required, the Requestor must seek out the required policies and procedures and receive proper authorization to use the property.

**Sec. 2-5-64. Incompatible Employment or Rendering of Services Prohibited.**

There appears to be no relation between pro bono services that the Requestor wants to provide and [REDACTED]. The Requestor explicitly states that [REDACTED] does not anticipate requesting [REDACTED], which are related to the Requestor's job duties. The Requestor also states she received approval from the [REDACTED] director regarding the pro bono services. As such, the pro bono services cause no conflict or nor are they incompatible with Requestor's discharge of duties. Even so, the activities do not involve any interaction with [REDACTED].

Moreover, there is no violation of Section 2-5-64 of the Code if Requestor participates on her own time and without compensation. If a change occurs and the [REDACTED] becomes involved with [REDACTED], the Requestor should recuse herself from being involved in that work (with the City or [REDACTED]) in order to follow the Ethics Ordinance and maintain integrity; she must operate with independent judgment and action as she performs her official duties for the City.

**Sec. 2-5-65. Representation of Private Person, Business, or Organization Prohibited: Exceptions.**

The Requestor is prohibited from acting as an agent, attorney, or representative of [REDACTED] under any circumstances for a City agency unless an exception is met. However, since the Requestor is compensated by the City, only two exceptions are applicable.

The Requestor supplied her job description and none of it required that she represent [REDACTED]. It is not a part of her City of Detroit duties.

The other exception fits none of the information the Requestor provided in her submission. The Requestor serves with a City entity making the decision, the Requestor is compensated by the City or Jimena Companies for the representation, and the representation occurs only during the Requestor's vacation or departmental leave time. The facts provided are appropriate for no exception.

**Sec. 2-5-66. Self-Interested Regulation and Participation Prohibited.**

Because she is providing pro bono services, the Requestor appears to have no financial interests. However, if she or any or her immediate family members have some financial interest in [REDACTED], then the Requestor must not participate, in any manner, in the negotiation or making of any type of transaction between the City and [REDACTED].

**Sec. 2-5-68. Solicitation or Acceptance of Loan or Payment Prohibited.**

To analyze Sec. 2-5-68, it is important to recall that the Requestor exercises significant authority in the course of her duties as a public servant.

The Requestor states that [REDACTED] anticipates pursuing [REDACTED] in the near future. The Requestor states that she will provide "pro bono" services; she will receive no compensation. However, Section 2-5-68 prohibits public servants who exercise significant authority from accepting any type of payment from entities that receive tax abatements, credits, or exemptions from the City, or that provide service to the City. As such, if [REDACTED] receives any of these subsidies from the City, then Requestor may not accept any payments from [REDACTED].

**Sec. 2-5-70. Prohibition on Gifts and Gratuities; Exceptions.**

To make a determination about gifts, we must consider the phrase "doing business." It is not defined in the Ethics Ordinance, however, the Code does define it in Chapter 44. Taxation. The Code's taxation chapter defines doing business as "any conduct or any activity with the object of gain or benefit."

Using that definition, Jimena Companies will be "doing business" with the City if it receives tax abatements, credits, or exemptions from the City; it will be accepting the tax incentives from the City for its benefit. Also, a transactional relationship is derived if an entity receives tax incentives. Jimena Companies will be "seeking official action from the City" if it requests tax incentives from

the City, because approving and providing tax incentives is an official action. As such, if Jimena Companies requests or receives tax incentives from the City, Requestor, generally, will be prohibited from receiving anything of value from Jimena, unless an exception applies.

Because of the pro bono services, two exceptions to the prohibition may apply. In reviewing the first exception, the Requestor could accept "complimentary copies of trade publications, books, reports, pamphlets, calendars, periodicals or other informational materials." The other exception would allow the Requestor to accept "an admission or registration fee, travel expenses, entertainment, meals or refreshments ..." if any of these items are provided in connection with the Requestor's pro bono services. The Requestor may accept these items only if "the City does not compensate" her for any of these items.

Therefore, if Jimena Companies receives, or seeks to receive, tax incentives from the City, the only things of value that the Requestor may accept from Jimena Companies are complimentary information materials; the Requestor may also accept an admission or registration fee, travel expenses, entertainment, meals, or refreshments from Jimena Companies in connection with her pro bono services, but not if the City compensates the Requestor for any of those items.

Furthermore, because the Requestor will be prohibited from accepting payment from Jimena Companies pursuant to Section 2-5-68 of the Code, if it receives tax abatements, credits, or exemptions from the City, any of those items that the Requestor is permitted to accept from Jimena Companies *must not be provided* in the form of money payment. So, for example, if Jimena Companies receives tax abatements from the City and offers to cover hotel expenses for the Requestor to attend a meeting in Muskegon, it may only provide for the travel expenses in a form other than a monetary payment, such as direct payment to the hotel.

## **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 2020-07. The Requestor may provide pro bono services to Jimena Companies, however, the Ethics Ordinance imposes certain requirements and restrictions. Requestor may provide services for Jimena Companies without compensation. Additionally, she must do so during time when she is not working for the City of Detroit. However, if the Housing Underwriting Division of the HRD engages in a matter of which Jimena Companies has an interest, the Requestor must recuse herself from participation in that matter so she can maintain independent judgment or action in her work for the City.

Additionally, if Jimena Companies seeks a decision from the City that involves real or personal property and pertains to purchasing, selling, leasing, zoning, improvement, special designation tax assessment or abatement, or a development agreement, Requestor, and any of her immediate family member, must disclose any interest they have in Jimena Companies.

If Requestor, or an immediate family member, has any financial interest in Jimena Companies, she is prohibited from any participation in any type of transaction between the City and Jimena Companies, including participation in any proposal or request for tax incentives or financing from the City for Jimena Companies.

Furthermore, the Ethics Ordinance prohibits Requestor from acting as a representative of Jimena Companies in a matters that needs a decision by a City agency, unless she is not part of the voting body, she is not compensated for the representation, and the representation occurs only during Requestor's time off.

Additionally, Requestor is prohibited from using or disclosing confidential information in the course of providing pro bono services for Jimena Companies.

Additionally, Requestor should avoid using any City property to perform activities for Jimena Companies. However, because the Ethics Ordinance does not directly prohibit the use of City property for activities that are outside the scope or a public servant's job duties, Requestor that, if she believes she must use City property for purposes related to her pro bono service, she must check the applicable policies and procedures governing the use of that property, gain authorization, and ensure the use of City property would not violate City policies or procedures.

Although the Requestor has indicated that she intends to provide services to Jimena Companies pro bono, she will be strictly prohibited by Section 2-5-68 of the Code from receiving any payment from Jimena Companies if it receives tax abatements, credits, or exemptions from the City. Accordingly, the Requestor should also be made aware that any of the items that the Requestor is permitted to accept from Jimena Companies without remuneration, pursuant to Section 2-5-70(b), must not be a direct monetary payment if Jimena Companies receives tax abatements, credits, or exemptions from the City, as acceptance of payment from an entity that receives tax abatements, credits, or exemptions from the City would constitute a violation of Section 2-5-68 of the Code.

Also, Section 2-5-70 generally prohibits the Requestor from accepting any gift, or other thing of value provided without remuneration, from Jimena Companies if it seeks action from, or does business with, the City, including if it requests or receives tax incentives from the City. However, the exceptions, as provided in Section 2-5-70(b), allow her to accept complimentary copies of informational materials from Jimena Companies; and she is also permitted to accept admission or registration fees, travel expenses, entertainment, meals, or refreshments that are provided in relation to her services to Jimena Companies, but she must receive no compensation from the City for these same items.

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So long as she does not engage in conflicting activities and adheres to the City's policies and procedures. The Requestor may use vacation time or departmental leave if she ever wishes to engage in these pro bono activities during normal business hours for the City. The Requestor is

strongly encouraged to contact the Board of Ethics if her circumstances change and if she has any questions regarding this Opinion.

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