

City of Detroit Board of Ethics

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Hon. Janice M. Winfrey, City Clerk

Department Directors, Heads of All Boards and Commissions

FROM: Board of Ethics

SUBJECT: 11th Annual Report of the Board of Ethics

DATE: August 25, 2012

The Tenth Annual Report of the Board of Ethics (the “Board”) was submitted on August 25, 2010, and reported on activities of the Board from June 1, 2010 to June 30, 2011. This Eleventh Annual Report covers Board activities from July 1, 2011 to June 30, 2012. In accordance with Section 2-6-97 of the Ethics Ordinance (the “Ordinance”), this Report contains:

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

- 3) Recommendations, if any, for improvement of the disclosure requirements and standards of conduct found in the Ordinance, and for improvement of the administration and enforcement of the Ordinance.

Board Activities

A. Meetings

During the period of this Report, the Board met nearly every month and disposed of all matters presented, including eleven (11) Requests for Advisory Opinion and ten (10) Complaints.

B. Advisory Opinions

Request for Advisory Opinion # 2011-04, requested that the Board interpret the application of Section 2-6-3 of the Ethics Ordinance titled, “Definitions, Public Servant.” and Section 2-6-65 of the Ethics Ordinance, titled “Incompatible employment or rendering services prohibited.” The Request was closed due to insufficient information.

In response to the Request for Advisory Opinion # 2011-05, the Board issued an Advisory Opinion interpreting the application of Section 2-6-61 of the Ethics Ordinance, titled “Engaging in official duties for private gain prohibited.” and Section 2-6-69 of the Ethics Ordinance, titled “Solicitation or acceptance of promissory note, written loan agreement, or monetary payment, from an individual or an entity that is providing service to, or receiving tax abatements, credits or exemptions from the city prohibited; exceptions.*” A synopsis appears below.

In response to the Request for Advisory Opinion # 2012-01, the Board issued an Advisory Opinion interpreting the application of the 2012 Detroit City Charter Section 2-106.4.titled , “Gifts and Gratuities.” A synopsis appears below.

In response to the Request for Advisory Opinion # 2012-02, the Board issued an Advisory Opinion interpreting the application of the 2012 Detroit City Charter Section 2-106.2 titled, “Disclosures,” Section 2-6-31 of the Ethics Ordinance, titled “Disclosure of interest in real and personal property.*” and Section 2-6-32 of the Ethics Ordinance, titled “Disclosure of interest in city contracts.*” A synopsis appears below.

In response to the Request for Advisory Opinion # 2012-03, the Board issued an Advisory Opinion interpreting the application of the 2012 Detroit City Charter Section 2-106.4 titled, “Gifts and Gratuities.” Section 2-106.1 titled “Ethical Standards of Conduct” which prohibits the use of property of the City except in accordance with policies and procedures of the City; and prohibits the solicitation or acceptance of loans or payment from certain individuals. A synopsis appears below.

In response to the Request for Advisory Opinion # 2012-04, the Board issued an Advisory Opinion interpreting the application of the 2012 Detroit City Charter Section 2-106. titled, “One Year Post-Employment Prohibition.” A synopsis appears below.

In response to the Request for Advisory Opinion # 2012-05, the Board issued an Advisory Opinion interpreting the application of the 2012 Detroit City Charter Section 2-106.4.titled , “Gifts and Gratuities.” A synopsis appears below.

Request for Advisory Opinion # 2012-06, requested that the Board interpret the application of the 2012 Detroit City Charter Section 2-106.4.titled “Gifts and Gratuities.” The Request was closed due to insufficient information.

In response to the Request for Advisory Opinion # 2012-07, the Board issued an Advisory Opinion interpreting the application of the 2012 Detroit City Charter Section 2-106.4.titled , “Gifts and Gratuities.” A synopsis appears below.

In response to the Request for Advisory Opinion # 2012-08, the Board issued an Advisory Opinion interpreting the application of the 2012 Detroit City Charter Section 2-106.2 1.d, titled, “Disclosures, (campaign contributions and expenditures), Section 2-106.4.titled, “Gifts and Gratuities.” and Section 2-106.7 titled, “Campaign Activities Using City Property or During Working Hours.” A synopsis appears below.

In response to the Request for Advisory Opinion # 2012-09, the Board issued an Advisory Opinion interpreting the application of the 2012 Detroit City Charter Section 2-106.titled, “Definitions” and the application of the Ethics provisions of the 2012 Charter to members of the Financial Advisory Board. A synopsis appears below.

C. Complaints

Complaint # 2011-02 alleged that a public servant wrongly returned a probationary subordinate employee to a prior position. The complaint alleged a violation of the Standards of Conduct found in the Ethics Ordinance with respect to Section 2-6-68. “Improper use of official position prohibited.*” After review and consideration, the Board concluded that the public servant had not violated the Ethics Ordinance and the complaint was dismissed pursuant to Section 2-6-115(b)(1)(2).

Complaint # 2011-03 alleged that a public servant harassed and threatened an individual using mental telepathy. The complaint alleged a violation of the Standards of Conduct found in the Ethics Ordinance with respect to Section 2-6-68. “Improper use of official position prohibited.*” After

review and consideration, the Board concluded that the public servant had not violated the Ethics Ordinance and the complaint was dismissed pursuant to Section 2-6-115 (b)(1)(2).

Complaint # 2011-04 alleged that a public servant used improper influence to cause the dismissal of a blight violation ticket regarding private property owned by the public servant. The complaint alleged a violation of the Standards of Conduct found in the Ethics Ordinance with respect to Section 2-6-61. Engaging in official duties for private gain prohibited. After review and consideration, the Board concluded that although the complaint was not timely filed, the public servant had not violated the Ethics Ordinance and the complaint was dismissed pursuant to Section 2-6-114(a).

Complaint # 2011-05 alleged that a public servant used threatening behavior during a neighborhood dispute. The complaint alleged a violation of the Standards of Conduct found in the Ethics Ordinance with respect to Section 2-6-61. “Engaging in official duties for private gain prohibited.” After review and consideration, the Board concluded that the public servant had not violated the Ethics Ordinance and the complaint was dismissed pursuant to Section 2-6-115 (b)(1)(2).

Complaint # 2012-01 alleged that a public servant engaged in improper activities regarding the bidding process concerning the issuance of a City contract for transportation services. The complaint alleged a violation of the Standards of Conduct found in the Ethics Ordinance with respect to Section 2-6-68. “Improper use of official position prohibited.*” and a violation of the Disclosure Requirements as found in Section 2-6-32 (a). After review and consideration, the Board concluded that the public servant had not violated the Ethics Ordinance and the complaint was dismissed pursuant to Section 2-6-115 (b)(1)(2).

Complaint # 2012-02 alleged that a public servant engaged in improper activities regarding the bidding process concerning the issuance of a City contract for transportation services. The complaint alleged a violation of the Standards of Conduct found in the Ethics Ordinance with respect to Section 2-6-68. “Improper use of official position prohibited.*” and a violation of the Disclosure Requirements as found in Section 2-6-32 (a). After review and consideration, the Board concluded that the public servant had not violated the Ethics Ordinance and the complaint was dismissed pursuant to Section 2-6-115 (b)(1)(2).

Complaint # 2012-03 alleged that a public servant engaged in improper activities regarding the bidding process concerning the issuance of a City contract for transportation services. The complaint alleged a violation of the Standards of Conduct found in the Ethics Ordinance with respect to Section 2-6-68. “Improper use of official position prohibited.*” and a violation of the Disclosure Requirements as found in Section 2-6-32 (a). After review and consideration, the Board concluded that the public servant had not violated the Ethics Ordinance and the complaint was dismissed

pursuant to Section 2-6-115 (b)(1)(2).

Complaint # 2012-04 alleged that a public servant engaged in improper activities regarding the bidding process concerning the issuance of a City contract for transportation services. The complaint alleged a violation of the Standards of Conduct found in the Ethics Ordinance with respect to Section 2-6-68. “Improper use of official position prohibited.*” and a violation of the Disclosure Requirements as found in Section 2-6-32 (a). After review and consideration, the Board concluded that the public servant had not violated the Ethics Ordinance and the complaint was dismissed pursuant to Section 2-6-115 (b)(1)(2).

Complaint # 2012-05 alleged that a public servant failed to properly perform the duties of office. The complaint alleged a violation of the 2012 Detroit City Charter Standards of Conduct Section 2-106.1, 2. “Willfully or grossly neglect the discharge of his or her duties.” After review and consideration, the Board concluded that the public servant had not violated the 2012 Charter or the Ethics Ordinance and the complaint was dismissed pursuant to Section 2-6-115 (b)(1)(2).

Complaint # 2012-06 alleged that a public servant failed provide requested information regarding a job classification and service credit to an individual. The complaint alleged a violation of the 2012 Detroit City Charter Standards of Conduct Section 2-106.1, 2. “Willfully or grossly neglect the discharge of his or her duties.” After review and consideration, the Board concluded that the public servant had not violated the 2012 Charter or the Ethics Ordinance and the complaint was dismissed pursuant to Section 2-6-115 (b)(1)(i).

D. Other Activities.

During the period of the Report attention was directed to the work of the Charter Commission regarding the proposed change to the Ethics rules. The Board had previously responded to a request for input concerning suggested changes to the current Ordinance primarily focusing on the elimination of the “appearance of impropriety language. The interim and final drafts of the proposed revisions to the Charter were again examined in addition to the commentary by the Attorney General and the Governor’s Office. Once approved by the voters the Board reviewed the changes that would be required to current operations and information as a result of the 2012 Charter changes. The Charter changes expand the work of the Board in numerous areas including mandatory training for public servants and significant changes to the Standards of Conduct and Disclosure Requirements. The impact of contractors now being within the authority of the Board and Ethics rules is also a major change the Board considered in examining new areas that must be addressed. All Board forms and publication were reviewed by staff in order to address the new requirements. Beginning January 2012 the Requests for Advisory opinions were submitted seeking guidance as to the interpretation of the new Standards of Conduct in addition to the Gift Prohibition. The Board was informed that the current

Charter would be amended in order to codify the Charter mandated changes. A draft Ordinance was submitted to Council by the law department. The Board reviewed the draft submission and made suggestions for changes. The Executive Director appeared before City Council during numerous sessions where the changes were being considered. The Board continued to review revised drafts and the Executive Director attended meetings with the law department in order to communicate the Board's position concerning the changes necessary to the Ordinance in order to comply with the Charter mandated changes.

Ethics Board Staff ("Staff") continues to meet with and assist members of the public or City employees who request information regarding the 2012 Charter Ethics changes and the current Ordinance. A city wide email was also issued in January in order to alert all public servants of the vast changes adopted by the 2012 Charter.

Due to the City financial crisis the Administrative Secretary position was eliminated in February. The Executive Director performs all essential task previously assigned to the Administrative Secretary in addition to the duties of her position. Limited contract funds have been made available for the 2012 - 2013 budget year to obtain contract support services.

The Board's Executive Director ("Executive Director") made presentations to various City departments and public servants as requested explaining the 2012 Charter changes in addition to inquiries regarding the existing ordinance. Regarding ethics education the Executive Director reviewed a computer based product under consideration by the Human Resources Department which although not specific to the City of Detroit ethics rules provided general information concerning basic ethics do's and don'ts. All new hires are provided information compiled by the Executive Director which includes the Standards of Conduct and Disclosure Requirements in addition to a copy of the Ethics ordinance. The Board continued to receive periodic informal inquiries to which the Executive Director responded with the approval of the Board. The Board also received and responded to media inquiries.

Compilation of Advisory Opinions

Advisory Opinion #2011-05 held a public servant is not prohibited by the Ethics Ordinance from soliciting promotional items of nominal value from other City departments and in-kind donations from other public servants to support a social event for members of the public servant's department. The solicitation of outside entities who do not have contractual or vendor relationships with the department or the public servant while not per se prohibited should be approached with caution and recognition that the Ethics Ordinance mandates that even the appearance of impropriety is to be avoided. Finally activities such as "raffles" are beyond the scope and authority of the Ethics Ordinance and the public

servant should seek guidance from other sources in order to assure that other City icies, ordinances or state regulations are not violated.

Advisory Opinion #2012-01 held the 2012 Detroit City Charter Section 2-106.4., prohibits public servants from accepting gifts, gratuities, honoraria, or other things of value from any person or company doing business or seeking to do business with the City, is seeking official action from the City, has an interest that could be substantially affected by the performance of the public servant's official duties, or is registered as a lobbyist under applicable laws unless there is an exception allowed by Section 2-106.4(1-4). There is no requirement that the gift/gratuity or thing of value be received in exchange for some form of improper official action by the public servant. Further, there is no exemption for things considered of nominal value or generally permitted under the Ordinance unless exempt under one of the four exceptions provided in the Charter.

Advisory Opinion #2012-02 held a public servant who is a senior advisor and is assigned to participate in the preparation of an agreement regarding certain entities, exercises significant authority, as defined in the 2012 Detroit City Charter and the Detroit Ethics Ordinance. The public servant is therefore required to disclose his/her interest in property that may possibly be affected by the agreement.

Advisory Opinion #2012-03: held the 2012 Detroit City Charter Section 2-106.4., prohibits public servants from accepting gifts, gratuities, honoraria, or other things of value from any person or company doing business or seeking to do business with the City, is seeking official action from the City, has an interest that could be substantially affected by the performance of the public servant's official duties, or is registered as a lobbyist under applicable laws unless there is an exception allowed by Section 2-106.4(1-4). A public servant is not prohibited from soliciting items from a prohibited source as long as it is not received by the public servant but another entity (non public servant) in order to carry out a charitable purpose. The use of City resources (letterhead) to solicit donations and or extend invitations to laudable events is not prohibited if approved by the executive authority.

Advisory Opinion #2012-04 held the 2012 Detroit City Charter Section 2-106.5. *provides* subject to state law, for one (1) year after employment with the City, a Public Servant shall not lobby or appear before the City Council or any City department, agency, board, commission or body or receive compensation for any services in connection with any matter in which he or she was directly concerned, personally participated, actively considered or acquired knowledge while working for the City. A public servant who has retired from city employment is prohibited from serving as a contractor and or receiving compensation from the City department where previously assigned for a period of one (1) year if the assignment and or contract scope of services involves any matter in which they were directly concerned, personally participated, actively considered or acquired knowledge while previously a public servant

Advisory Opinion #2012-05 held the 2012 Detroit City Charter Section 2-106.4, does not prohibit a public servant who is married to an individual whose company is a contractor for the City of Detroit from accepting gifts from their spouse. Exception (3) of Section 2-106.4 of the Charter allows the public servant to accept gifts from their spouse, also including but not limited to tickets paid for and provided by the company to events and travel and related expenses paid for by the company while participating as a guest of their spouse. The public servant is required to disclose the financial interest of the spouse in the company and is prohibited from participating in matters related to the company.

Advisory Opinion #2012-07 held the 2012 Detroit City Charter prohibits a public servant from receiving “things of value” from a prohibited source unless there is an exception allowed by Section 2-106.4(1-4). A contract with a private entity, which provides a city services and compensates a City department with tickets to events as remuneration / consideration for the contract for distribution to other public servants is in violation of Section 2-106.4 and is not permitted.

Advisory Opinion #2012-08 held the 2012 Detroit City Charter Section 2-106.4, does not prohibit public servants (elected officials) from receiving campaign donations from fundraisers and supporters as long as the donations are made and accepted in compliance with applicable state laws regarding elections.

Advisory Opinion #2012-09 held that the Members of the Financial Advisory Board appointed pursuant to the Fiscal Stability Agreement entered into between the City of Detroit and the State of Michigan are not subject to the 2012 Detroit City Charter Ethics Provisions and are specifically excluded from being considered a City board or commission.

Recommendations for Improvements in the Ethics Ordinance

In view of the changes mandated by the 2012 Charter Detroit the Board has no recommendations at this time for improvements to the Ethics Ordinance.

It should be noted that there currently exists two vacancies on the Board and it is respectfully requested that they be filled as soon as possible.

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

Thank you.

cc: Municipal Reference Library

