

City of Detroit Board of Ethics

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TO: Hon. Dave Bing, Mayor

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Hon. Janice M. Winfrey, City Clerk

Department Directors, Heads of All Boards and Commissions

FROM: Board of Ethics

SUBJECT: 12th Annual Report of the Board of Ethics

DATE: October 15, 2013

The 11th Annual Report of the Board of Ethics (the “Board”) was submitted on August 25, 2012, and reported on activities of the Board from July 1, 2011 to June 30, 2012. This 12th Annual Report covers Board activities from July 1, 2012 to September 30, 2013. 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 eight (8) Requests for Advisory Opinion and six hundred forty seven (647) Complaints.

B. Advisory Opinions

In response to the Request for Advisory Opinion # 2012-10, 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 # 2012-11, the Board issued an Advisory Opinion interpreting the application of the 2012 Detroit City Charter, Section 2-106.5, titled, “One Year Post Employment Prohibition.” A synopsis appears below.

In response to the Request for Advisory Opinion # 2012-12, the Board issued an Advisory Opinion interpreting the application of the 2012 Detroit City Charter Section 2-106.1(2)(d) which prohibits “private employment . . . when the such employment or service is in conflict or incompatible with the proper discharge of his or her official duties or would tend to impair his or her independence of judgment or action in the performance of official duties;” and Section 2-106.1(2)(f) which prohibits the participation “in the negotiation or the making of any city contract, or any other type of transaction, with any business entity in which . . . he/she . . . has a financial interest.” A synopsis appears below.

In response to the Request for Advisory Opinion # 2012-13, the Board issued an Advisory Opinion interpreting the application of the 2012 Detroit City Charter, Section 2-106.5 titled, “One Year Post Employment Prohibition” A synopsis appears below.

In response to the Request for Advisory Opinion # 2012-14, the Board issued an Advisory Opinion interpreting the application of the 2012 Detroit City Charter, Section 2-106.5 titled, “One Year Post Employment Prohibition” A synopsis appears below.

Request for Advisory Opinion #2013-01, requested that the Board interpret conduct and circumstances that did not fall within the scope of the Boards authority. The Board declined to issue an opinion and concluded the questions did not relate to the application of the Disclosure Requirements or the Standards of Conduct.

In response to the Request for Advisory Opinion # 2013-02, the Board issued an Advisory Opinion interpreting the application of the Ethics Ordinance Section 2-6-73 titled, “Prohibition on Campaign Activities or Using City Property During Working Hours.” and Section 2-6-62. Improper use or disclosure of confidential information prohibited. A synopsis appears below.

Request for Advisory Opinion # 2013-03, requested that the Board interpret the application of the Ethics Ordinance Section 2-6-73 titled, “Prohibition on Campaign Activities or Using City Property During Working Hours.” and Section 2-6-62. Improper use or disclosure of confidential information prohibited. The Request was closed due to the issue having been addressed in Opinion 2013-02.

Request for Advisory Opinion # 2013-04 was submitted September 3, 2013 and requested that the Board interpret the application of the Detroit City Charter, Section 2-106.5 titled, “One Year Post Employment Prohibition.” The matter is currently pending.

Request for Advisory Opinion # 2013-05 was submitted September 17, 2013 and requested that the Board interpret the application of the Detroit City Charter, Section 2-106.5 titled, “One Year Post Employment Prohibition.” and Section 2-6-65 of the Ethics Ordinance, titled “Incompatible employment or rendering services prohibited.” The matter is currently pending.

C. Complaints

Complaints # 2012-07 through 12 alleged that public servants (elected officials) violated the 2012 Detroit City Charter Standards of Conduct and Disclosure Requirements by entering into the Consent Agreement with the State of Michigan on behalf of the City of Detroit. After review and consideration, the Board concluded that the public servants had not violated the 2012 Charter or the Ethics Ordinance and the complaints were dismissed pursuant to Section 2-6-115 (b)(1)(i).

Complaints # 2012-07 through 12 alleged that public servants (elected officials) violated the 2012 Detroit City Charter Standards of Conduct and Disclosure Requirements by entering into the Consent Agreement on behalf of the City of Detroit. After review and consideration, the Board concluded that the public servants had not violated the 2012 Charter or the Ethics Ordinance and the complaints were dismissed pursuant to Section 2-6-115 (b)(1)(i).

Complaints # 2012-013 through 17 alleged that public servants (elected officials) violated the 2012 Detroit City Charter Standards of Conduct and Disclosure Requirements by entering into the Consent Agreement with the State of Michigan on behalf of the City of Detroit. After review and consideration, the Board concluded that the public servants had not violated the 2012 Charter or the Ethics Ordinance and the complaints were dismissed pursuant to Section 2-6-115 (b)(1)(i).

Complaints # 2012-18 through 22 alleged that public servants (elected officials) violated the 2012 Detroit City Charter Standards of Conduct and Disclosure Requirements by entering into the Consent Agreement with the State of Michigan on behalf of the City of Detroit. After review and consideration, the Board concluded that the public servants had not violated the 2012 Charter or the Ethics Ordinance and the complaints were dismissed pursuant to Section 2-6-115 (b)(1)(i).

Complaints # 2012-23 through 27 alleged that public servants (elected officials) violated the 2012 Detroit City Charter Standards of Conduct and Disclosure Requirements by entering into the Consent Agreement with the State of Michigan on behalf of the City of Detroit. After review and consideration, the Board concluded that the public servants had not violated the 2012 Charter or the Ethics Ordinance and the complaints were dismissed pursuant to Section 2-6-115 (b)(1)(i).

Complaints # 2012-28 through 35 alleged that public servants (elected officials and mayoral appointees) violated the 2012 Detroit City Charter Standards of Conduct and Disclosure Requirements by entering into the Consent Agreement with the State of Michigan on behalf of the City of Detroit. After review and consideration, the Board concluded that the public servants had not violated the 2012 Charter or the Ethics Ordinance and the complaints were dismissed pursuant to Section 2-6-115 (b)(1)(i).

Complaints # 2012-36 through 43 alleged that public servants (elected officials and mayoral appointees) violated the 2012 Detroit City Charter Standards of Conduct and Disclosure Requirements by entering into the Consent Agreement with the State of Michigan on behalf of the City of Detroit. After review and consideration, the Board concluded that the public servants had not violated the 2012 Charter or the Ethics Ordinance and the complaints were dismissed pursuant to Section 2-6-115 (b)(1)(i).

Complaints # 2012-44 through 52 alleged that public servants (elected officials and mayoral appointees) violated the 2012 Detroit City Charter Standards of Conduct and Disclosure Requirements by entering into the Consent Agreement with the State of Michigan on behalf of the City of Detroit. Also challenged was the conduct of approving the budget which was asserted to be based on the improper approval of the Consent Agreement. After review and consideration, the Board concluded that the public servants had not violated the 2012 Charter or the Ethics Ordinance and the complaints were dismissed pursuant to Section 2-6-115 (b)(1)(i).

Complaint # 2012-53 alleged that a public servant failed to properly accommodate members of the public during public comment and in the selection of meeting locations. The complaint alleged a violation of the 2012 Detroit City Charter Standards of Conduct Section 2-106.1(2)(g). “Improper use of official position.” 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).

Complaints # 2012-54 through 62 alleged that public servants (elected officials and mayoral appointees) violated the 2012 Detroit City Charter Standards of Conduct and Disclosure Requirements by entering into the Consent Agreement with the State of Michigan on behalf of the City of Detroit. Also challenged was the conduct of approving the budget which was asserted to be based on the improper approval of the Consent Agreement. After review and consideration, the Board concluded that the public servants had not violated the 2012 Charter or the Ethics Ordinance and the complaints were dismissed pursuant to Section 2-6-115 (b)(1)(i.).

Complaints # 2012-63 through 71 alleged that public servants (elected officials and mayoral appointees) violated the 2012 Detroit City Charter Standards of Conduct and Disclosure Requirements by entering into the Consent Agreement with the State of Michigan on behalf of the City of Detroit. Also challenged was the conduct of approving the budget which was asserted to be based on the improper approval of the Consent Agreement. After review and consideration, the Board concluded that the public servants had not violated the 2012 Charter or the Ethics Ordinance and the complaints were dismissed pursuant to Section 2-6-115 (b)(1)(i.).

Complaints # 2012-72 through 80 alleged that public servants (elected officials and mayoral appointees) violated the 2012 Detroit City Charter Standards of Conduct and Disclosure Requirements by entering into the Consent Agreement with the State of Michigan on behalf of the City of Detroit. Also challenged was the conduct of approving the budget which was asserted to be based on the improper approval of the Consent Agreement. After review and consideration, the Board concluded that the public servants had not violated the 2012 Charter or the Ethics Ordinance and the complaints were dismissed pursuant to Section 2-6-115 (b)(1)(i.).

Complaints # 2012-81 through 89 alleged that public servants (elected officials and mayoral appointees) violated the 2012 Detroit City Charter Standards of Conduct and Disclosure Requirements by entering into the Consent Agreement with the State of Michigan on behalf of the City of Detroit. Also challenged was the conduct of approving the budget which was asserted to be based on the improper approval of the Consent Agreement. After review and consideration, the Board concluded that the public servants had not violated the 2012 Charter or the Ethics Ordinance and the complaints were dismissed pursuant to Section 2-6-115 (b)(1)(i.).

Complaints # 2012-90 through 98 alleged that public servants (elected officials and mayoral appointees) violated the 2012 Detroit City Charter Standards of Conduct and Disclosure Requirements by entering into the Consent Agreement with the State of Michigan on behalf of the City of Detroit. Also challenged was the conduct of approving the budget which was asserted to be based on the improper approval of the Consent Agreement. After review and consideration, the Board concluded that the public servants had not violated the 2012 Charter or the Ethics Ordinance and the complaints were dismissed pursuant to Section 2-6-115 (b)(1)(i.).

Complaints # 2012-99 through 107 alleged that public servants (elected officials and mayoral appointees) violated the 2012 Detroit City Charter Standards of Conduct and Disclosure Requirements by entering into the Consent Agreement with the State of Michigan on behalf of the City of Detroit. Also challenged was the conduct of approving the budget which was asserted to be based on the improper approval of the Consent Agreement. After review and consideration, the Board concluded that the public servants had not violated the 2012 Charter or the Ethics Ordinance and the complaints were dismissed pursuant to Section 2-6-115 (b)(1)(i.).

Complaints # 2012-108 through 116 alleged that public servants (elected officials and mayoral appointees) violated the 2012 Detroit City Charter Standards of Conduct and Disclosure Requirements by entering into the Consent Agreement with the State of Michigan on behalf of the City of Detroit. Also challenged was the conduct of approving the budget which was asserted to be based on the improper approval of the Consent Agreement. After review and consideration, the Board concluded that the public servants had not violated the 2012 Charter or the Ethics Ordinance and the complaints were dismissed pursuant to Section 2-6-115 (b)(1)(i.).

Complaints # 2012-117 through 125 alleged that public servants (elected officials and mayoral appointees) violated the 2012 Detroit City Charter Standards of Conduct and Disclosure Requirements by entering into the Consent Agreement with the State of Michigan on behalf of the City of Detroit. Also challenged was the conduct of approving the budget which was asserted to be based on the improper approval of the Consent Agreement. After review and consideration, the Board concluded that the public servants had not violated the 2012 Charter or the Ethics Ordinance and the complaints were dismissed pursuant to Section 2-6-115 (b)(1)(i.).

Complaints # 2012-126 through 134 alleged that public servants (elected officials and mayoral appointees) violated the 2012 Detroit City Charter Standards of Conduct and Disclosure Requirements by entering into the Consent Agreement with the State of Michigan on behalf of the City of Detroit. Also challenged was the conduct of approving the budget which was asserted to be based on the improper approval of the Consent Agreement. After review and consideration, the Board concluded that the public servants had not violated the 2012 Charter or the Ethics Ordinance and the complaints were dismissed pursuant to Section 2-6-115 (b)(1)(i.).

Complaints # 2012-136 through 306 and 316 through 639 alleged that public servants (elected officials and mayoral appointees) violated the 2012 Detroit City Charter Standards of Conduct and Disclosure Requirements by entering into the Consent Agreement with the State of Michigan on behalf of the City of Detroit. Also challenged as to one elected official was the failure to obtain prior approval of the corporation counsel as required by the 2012 City Charter regarding the retaining of outside counsel. After review and consideration, the Board concluded that the public servants other than the elected official who failed to seek prior approval, had not violated the 2012 Charter or the Ethics Ordinance and the complaints were dismissed pursuant to Section 2-6-115 (b)(1)(i.). Regarding the elected official who failed to obtain prior approval for outside counsel the Board concluded the Charter had been violated and issued a Resolution of Public Admonishment pursuant

to Section 2-6-115 (3).

Complaints # 2012-640 through 643 alleged that a public servants engaged in improper conduct regarding their actions in the selection of a candidate to fill a city position . The complaint alleged a violation of the Standards of Conduct found in the Ethics Ordinance with respect to Section 2-6.72 titled, “One year post employment prohibition.” After review and consideration, the Board concluded that the public servants had violated the Ethics Ordinance and issued a Resolution of Public Admonishment as to each public servant pursuant to Section 2-6-115 (3).

Complaints # 2012-644 through 652 alleged that public servants (an elected official and a mayoral appointee) violated the 2012 Detroit City Charter Standards of Conduct by approving to improper transfer of City funds. After review and consideration, the Board concluded that the public servant(the elected official) had not violated the 2012 Charter or the Ethics Ordinance and the complaints were dismissed pursuant to Section 2-6-115 (b)(1)(ii). Regarding the appointee the complaint was dismissed due to his no longer being a public servant.

Complaint # 2013-01 alleged that a public servant failed to properly perform the duties of office and disclosed confidential information. The complaint alleged violations 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.” and Section 2-106.2.b “ Use or disclosure of confidential information” 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)(2).

D. Other Activities.

During the period of the Report the Board received an unprecedented number of complaints primarily directed at the conduct of elected officials who supported the Consent Agreement. There was also significant citizen presence at Board meetings providing remarks during the public comment segment. In evaluating priorities for the future the Board decided that greater community outreach would be undertaken with community education and input being goals. After the amendment of the Ordinance in order to comply with the 2012 Charter the Board approved the revision of all its forms and publications. All Advisory Opinion are now available on the Board’s website and complaint decisions will also be posted. Regarding the Board’s training mandate consideration was given to the use of web based training which public servants could access from work computers. Additional products will be reviewed during the coming year. The November 2012 election resulted in the approval of two amendments to the Ethics section of the Charter. The Gift prohibition was amended to allow Council the discretion to determine what gifts and in what amounts will be permitted . The one year post employment prohibition was amended to allow retirees to be rehired as personal services contractors with out the 1 year lapse in service. The Ordinance has not been codified as of this writing however in view of the Charter amendment the enforcement of the Gift prohibition in the current Ordinance is being held in abeyance.

The Board's 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. The Director also continues to meet with and assist members of the public or City employees who request information. 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.

Lastly, in May the Board was informed of the Executive Director's retirement plans. Ms. Gaskin has completed 10 years of service and will leave in October. The Board reviewed and considered a process regarding selecting a replacement. In view of the Emergency Manager being in charge of City operations permission was requested to fill the vacancy however as of this writing approval has not been granted. It appears that upon the commencement of the Directors retirement, which is anticipated to be in October, the Board will be without staff.

Compilation of Advisory Opinions

Advisory Opinion #2012-10 held the 2012 Detroit City Charter Section 2-106.5. prohibits a public servant who has retired from city employment 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. Additionally, a public servant who is discharged from city employment due to a reduction in force or elimination of their position is also prohibited from becoming a personal services contractor for the City department where previously assigned if the contract involves any matter in which they were directly concerned, personally participated, actively considered or acquired knowledge while previously a public servant.

Advisory Opinion #2012-11 held a City contract is not subject to being voided exclusively because a Contractor /Consultant offers employment to a former public servant if the public servant did not have an undisclosed interest in the contract. However, a public servant who has been involved in any way in the management of a City contract may not accept employment with the Contractor/Consultant connected with the contract for a period of one year following City employment even if hired to perform services unrelated to the City contract.

Advisory Opinion #2012-12 held a City Director may not serve in a dual capacity as Department Director and Chief Executive Officer of a Non Profit Corporation whose subject matter and work authority is identical to that of the City Department.

Advisory Opinion #2012-13 held the 2012 Detroit City Charter, Section 2-106.5. which prohibits the City from contracting with retired public servants for a period of one year after employment with the City is not in conflict with state law which establishes the

requirements/qualifications for a Michigan Master (Level 4) Assessor. There is no authority created by the Charter allowing the Board to waive or grant an exception to the mandates of the standards of conduct or disclosure requirements. As established in Advisory Opinion 2012-04 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 #2012-14 reviewed a Request for Reconsideration of Advisory Opinion #2012-04 issued June 1, 2012. After consideration of the issues presented the Board reaffirmed its Opinion as stated in 2012-04. 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 #2013-02 held the Ethics Ordinance does not prohibit a current public servant from seeking elective office however Section 2-6-73 prohibits campaign activities during working hours. Additionally Section 2-6-62 restricts the use of confidential information obtained in the course of the performance of a public servants official duties.

Recommendations for Improvements in the Ethics Ordinance

The Board has no recommendations at this time for improvements to the Ethics Ordinance.

It should be noted that there currently exist three 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 12th year of operation.

Thank you.

cc: Municipal Reference Library