

SERVING AS BOARD OR STAFF OF OUTSIDE NON-PROFITS: A PLAIN ENGLISH GUIDE



Many City employees and officials serve or wish to serve as staff or Board members of non-profit social service or neighborhood organizations, religious organizations, or other "501(c)(3)" entities. The number of inquiries the Board has received about these activities has increased dramatically over the years. This is a good thing--City personnel are involved in their communities, and are more alert to potential ethics issues. But there are "do's and don'ts." To assist you in ensuring you don't do something inappropriate, we've prepared this brief guide. It addresses the restrictions in the City's Governmental Ethics Ordinance applying to outside volunteer activity. Remember: this guide

is only a general summary of the law. For authoritative, confidential advice, please call or email the Board of Ethics.

The Ethics Ordinance does not **per se** prohibit us, as City employees or officials, from having volunteer positions or working with non-profit, charitable or religious organizations. Rather, it imposes restrictions on our actions, both in our City service and in our outside service. It is like a tightrope on which we need to balance. How thin that tightrope is depends on how closely related our outside volunteer service is to our City responsibilities.

Fiduciary Duty §2-156-020

We all owe a fiduciary duty to the City. If we serve as a Board or staff member of an outside organization, we would also owe a fiduciary duty to that organization. However, our fiduciary duty to the City duty must come first. We must give our undivided loyalty to the City, free from any possibly conflicting duties owed to other persons or organizations.

Representation of Other Persons §2-156-090(a)

The Ordinance prohibits us from "representing" or receiving any compensation or income for representing any person other than the City (such as a social service non-profit) in any "non-ministerial" transaction or proceeding before a City agency. "Representing" includes:

- Acting as a spokesperson or advocate to a City agency or other City employees on behalf of another; or
- Communicating or promoting the interests of another to a City agency, even informally; or
- Signing documents to be submitted to a City agency on behalf of another.

This prohibition applies to any matter in which the City's action or non-action is "nonministerial," that is, to any matter involving judgment or discretion on the part of City government personnel. The prohibition applies regardless whether we are paid for our representation or are volunteers. That's because it's designed to prohibit actual favoritism and even the appearance of favoritism between City employees and officials. Either could result even where a City employee is doing an unpaid favor for another.

But note: this doesn't prohibit our outside organizations from dealing with the City—rather, it prohibits us from personally doing the "walking" or the "talking" for them.

Also note: this provision does not prohibit us from performing the duties of our City employment or office, or from representing ourselves as City residents or homeowners.

Solicitation or Acceptance of Gifts §2-156-142

The Ordinance prohibits us from soliciting or accepting money or anything else of value from anyone (like friends, neighbors, or non-profit organizations) in return for giving advice or assistance on City business. That is, we cannot receive payment or anything of value from a source other than the City for doing the same thing the City already pays us to do, or for offering advice or assistance on matters that are related to our official City duties and responsibilities.



Confidential Information § 2-156-070

City-Owned Property § 2-156-060



Penalties: Invalid Actions, §2-156-510; Sanctions, §2-156-465

However, we may solicit donations on behalf of non-profit organizations, as long as neither we nor our families benefit from those donations, and the persons or entities we solicit have no City matters before us.

And, we may receive gifts or other benefits (such as food or refreshments) from our outside business or volunteer activities, as long as these gifts or benefits are not given to us because of our City position, and are customarily provided to others in similar circumstances.

The Ordinance's "Use or Disclosure of Confidential Information" provision prohibits us from using or disclosing (other than in the performance of our official duties, or as required by law) information not publicly available, if that information was acquired in the course of City service.

The Ordinance's "City-Owned Property" provision prohibits us from using or permitting the use of any City property or resource for anything other than its authorized purpose.

City property or resources include, but are not limited to:

- Office equipment, computers, phones, letterhead or other supplies; or
- Work vehicles or tools; or
- Our official City title; or
- City work time; or
- City funds.

Violations of the Ordinance's fiduciary duty, gift or representation provisions can result in severe penalties: the City can cancel any City contract or grant negotiated, entered into, or performed in violation of the Ordinance. Permits, licenses, rulings, determinations or other official actions of a City agency applied for or sought, obtained or begun in violation of the Ordinance are invalid. City employees are subject to investigation, loss of employment, and fines up to \$20,000 per violation as well.

PRACTICAL ADVICE: KNOW YOUR OWN DEPARTMENT'S RULES

City departments may adopt or have rules stricter than those in the Ethics Ordinance. For example, City departments may prohibit their employees from engaging in certain non-City activities. To help ensure that we, and any outside non-profit organization for which we volunteer, avoid even the appearance of impropriety or favoritism, the Board advises that all City employees **report to their department heads all of their outside volunteer service with any organization that has or will be applying for City transactions.**

And note: City personnel who file annual Statements of Financial Interests with the Board must disclose their outside board service on these forms.

MORE PRACTICAL ADVICE: GET ADVICE FROM THE BOARD OF ETHICS!!!

These restrictions can be subtle. City employees interested in serving for non-profit organizations that have or wish to have business transactions with the City are advised to **consult with the Board of Ethics for a confidential advisory opinion**, and always to consider the appearance of impropriety or favoritism that may result from their activity.

BOARD OF ETHICS

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