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**Baltimore City Board of Ethics  
Ethics Opinion 20-001  
(December 16, 2020)**

A City official (“official”) requested an opinion from the Ethics Board pertaining to the official’s opportunity to establish a governmental office at a property whose owner was offering a rental price below market rate. Before making the offer, the property’s owner had asked for the official’s help in having the property rezoned for commercial use and the official had provided substantial assistance in their official capacity throughout the rezoning process. At some point, the official and the property’s owner discussed the possibility of renting part of the property to the official for use as a governmental office at a price below market rate. The official asked for the Ethics Board’s opinion on three questions arising under this scenario, which we have rephrased and answer in turn, below.

*Would accepting the rental space at a price below market rate violate the Ethics Law’s gift provisions?*

The Baltimore City Public Ethics Law, contained in Article 8 of the City Code (“Ethics Law”), defines “gift” as “the transfer of any thing or any service of economic value, regardless of the form, without adequate, identifiable, and lawful consideration.” § 2-17(a).<sup>1</sup> The receipt of rental space for a price below market rate clearly falls within this definition; it constitutes the transfer of an economically valuable thing—rental space—without *adequate* consideration, *i.e.*, without payment or other exchange equal to its value. *See* Ethics Opinion 11-001 (May 10, 2011) (explaining that although “[d]etermining the adequacy of consideration in any transaction is a notoriously difficult undertaking,” the Ethics Board “relies on market forces to dictate” value).<sup>2</sup>

Of course, not every “gift” would violate the Ethics Law. Instead, the Ethics Law prohibits only the solicitation and/or acceptance of gifts from certain classes of persons. Most relevant to the situation here, a public servant may not solicit or accept any gift—on their own or another person’s behalf—from a person that the public servant knows or has reason to know “has a financial interest that might be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the public servant’s official duties.” §§ 6-26(a)(4) and 6-27(4).<sup>3</sup> In a previous Opinion, the Ethics Board discussed this particular prohibition:

<sup>1</sup> All citations are to the Ethics Law, contained in Article 8 of the City Code.

<sup>2</sup> Available at: <https://ethics.baltimorecity.gov/sites/default/files/Op%2011-001.pdf>

<sup>3</sup> Unless an exception applies, a public servant may not solicit or accept a gift from any person the public servant knows or has reason to know:

- (1) does or seeks to do business of any kind, regardless of amount, with the public servant’s agency;

This language [in §§ 6-26(a)(4) and 6-27(4)] is not designed to prevent gifts from any member of the public who could be touched in some remote manner by a public servant's duties. For example, a Councilperson is not prohibited from accepting gifts from all Baltimore property owners merely because the City Council votes on the property tax applicable to everyone . . . *Instead, it focuses on individuals who could be impacted in a particularly identifiable way by the public servant's official decisions or actions.* . . . [I]f a public servant knows that a person could be specifically impacted—for good or for ill—by the disposition of a matter that the public servant is involved in . . . then gifts may not ordinarily be solicited or accepted from that person.

Ethics Opinion 16-001 (February 12, 2016) (emphasis added).<sup>4</sup>

Here, the property's owner has a direct financial interest in the rezoning classification. Presumably, the property's owner requested the official's assistance in the rezoning process precisely because they believed the rezoning was financially beneficial. And the official's duties throughout the rezoning process substantially and materially affected that financial interest. Accordingly, the official may not solicit or accept the gift of below-market-rate rent from the property's owner or from any other party who may have a similar financial interest in the property.

*If accepting the below-market-rate rent constitutes an impermissible gift under the Ethics Law, is there any way for the official to request an exception, given that the rental space would be used in an official capacity for governmental purposes?*

The Ethics Law's restrictions on soliciting and accepting gifts are explicitly broad and are not limited to gifts that are for the personal benefit of the public servant. A public servant may not solicit a gift from a restricted person "whether on the public servant's own behalf or on behalf of another person"

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- (2) does or seeks to do business of any kind, regardless of amount, with another person in connection with or in furtherance of that other person's contract or contract negotiation with the public servant's agency (*e.g.*, a subcontractor for someone who has a contract with the public servant's agency);
  - (3) engages or seeks to engage in an activity that is regulated or controlled by the public servant's agency;
  - (4) is or, within the preceding 12 months, has been a lobbyist with respect to matters within the jurisdiction of the public servant;
  - (5) has a financial interest that might be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the public servant's official duties; or
  - (6) is an owner, partner, officer, director, trustee, employee, or agent of any person described above.

§ 6-26(a) and § 6-27.

<sup>4</sup> Available at: <https://ethics.baltimorecity.gov/sites/default/files/Op%2016-001.pdf>

and they may not accept a gift from a restricted person “directly or indirectly.” §§ 6-26 and 6-27. This language means that the gift’s intended use is immaterial, “whether received directly by a public servant, sent to a third party or donated to a charity at a public servant’s request, *or given directly to the City for official purposes*. The Ethics [Law] is not concerned with how a gift is ultimately used, just from whom it is solicited or accepted.” Ethics Opinion 16-001 (emphasis added).

However, the Ethics Law does contain an exception to the general prohibition on soliciting gifts from a restricted person if: 1) the solicitation “is for the benefit of an official governmental program or activity or a City-endorsed charitable function or activity”; and 2) the solicitation is either expressly allowed by a rule or regulation of the Ethics Board or it has otherwise been approved in advance by the Board. § 6-26(b). The Board has adopted Ethics Regulation R 06.26.1 to govern applications for charitable and governmental solicitations under this exception.

Among other requirements for Ethics Board approval, an applicant for a charitable/governmental solicitation must certify that “the solicitation is directed at a broad range of potential donors *and does not specially target controlled donors*.” R 06.26.1(B)(3) (emphasis added). The term “controlled donor” here simply refers to the classes of persons from whom the Ethics Law prohibits gift solicitations, including those in § 6-26(a)(4). *See* R 06.26.1(A)(2) (defining “controlled donor” to mean any person described in § 6-26(a)(1), (2), (3), or (4) of the Ethics Law). Because the potential gift of below-market-rate rent in this situation would be given directly by the property’s owner—who qualifies as a “controlled donor” under § 6-26(a)(4), as discussed above—there is no way an application for solicitation approval could certify that the solicitation “does not specially target controlled donors.” Put another way, the gift here would be given to the official by a controlled donor, so the Ethics Law’s relevant solicitation exemption does not apply, notwithstanding that the gift would be used for official governmental purposes.

The Ethics Law also contains exceptions to the general prohibition on accepting gifts from controlled donors. *See* §§ 6-28 through 6-31. However, the gift of below-market-rate rent here does not qualify for any of these exceptions. Accordingly, there is no exception in the Ethics Law that would allow the official to solicit or accept the gift of below-market-rate rent under the circumstances presented.

*Could the official accept the gift of below-market-rate rent if they publicly disclose the gift and recuse themselves from any further official action pertaining to the property’s rezoning process?*

There is no exception in the Ethics Law’s gift restrictions that would allow the official to accept the gift of below-market-rate rent so long as they publicly disclose the gift or promise to refrain from official participation in a matter involving the gift giver. In other words, if the giver is in one of the categories of persons from whom a public servant must not solicit or accept a gift, then gifts must not be solicited or accepted from that giver, regardless whether the public servant intends to publicly disclose the gift or recuse themselves from future matters involving the gift giver. *See* Ethics Opinion 16-001 (explaining that the Ethics Law’s gift restrictions in §§ 6-26 and 6-27 “create violations . . . at the moment that certain gifts are solicited or accepted. Subsequent actions, or inactions, do not change the existence of the initial violation”).

Moreover, even though recusal will not allow the official to accept the gift of below-market-rate rent, the official may nonetheless wish to recuse themselves from future actions involving the property’s rezoning process in order to avoid a strong appearance of a conflict of interest. That appearance arises because the official has already been in discussions with the property’s owner about the possibility of

renting space for a governmental office. To a member of the public, the official's efforts to assist in the property's rezoning process might be seen as motivated by the official's desire for a governmental office at the property. This appearance exists even if the office does not materialize.

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