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CITY OF LAUREL ETHICS COMMISSION

8103 Sandy Spring Road
Laurel, Maryland 20707-2502

March 26, 2008

[REDACTED]
[REDACTED]
City of Laurel, Maryland
8103 Sandy Springs Road
Laurel, MD 20707

RE: Request for Advisory Opinion

[REDACTED]

On behalf of the [REDACTED] you have requested an opinion from the Ethics Commission concerning a situation regarding the City's program for elected and senior City officials to use City owned exercise facilities, and whether a current situation involving the manner in which an elected official is currently using this program may or may not create a potential for a future violation of one or more parts of the City Ethics Ordinance.

FACTS:

The facts of the situation as they have been described to us by you, the elected official involved, the Mayor, and written evidence submitted are as follows:

The Mayor, as part of a fitness program for City employees, provided in writing that senior City staff and elected officials are allowed to use the fitness equipment at the City Armory after hours. This was in recognition of the long and erratic hours senior staff are requested to commit to the City, and in recognition that elected officials who are fully employed elsewhere would not be able to participate in the fitness program if not allowed to do so after normal working hours which is when most could have time for such exercise.

The program was instituted and no problems were encountered. It is clear from the Mayor's written policy that the program was created to solely utilize the fitness equipment in the Armory.

In December, 2007, an elected official requested the Mayor to allow use of the Community Center rather than the Armory in this program since the elected official resided in the district in which the Community Center is located, and the Mayor agreed. It appears to the Commission that the use was never clearly defined by the elected official, but it is also clear that the Mayor and City Administrator assumed the proposed use was to be the same as the existing use of the Armory, i.e., use of the fitness equipment, but that this was not clearly defined in writing either. As a result there seems to have been a misunderstanding between the parties as to what was approved.

The elected official began his after hours use of the Community Center facility, but instead of using the fitness equipment in the fitness room, he invited a group of friends to join him playing basketball in the gymnasium. When the City Administrator became aware of this alternative use, she wrote the elected official stating that this was not the purpose that had been approved by the Mayor's policy. Several additional pieces of correspondence passed between the Administrator and the elected official which merely added to the disagreement.

The Ethics Commission has heard from the elected official, the Mayor and the City Administrator and agreed to give this Advisory Opinion regarding any potential for a future ethics violation.

FINDINGS AND ADVISORY OPINION

Section 2-66 of the Ethics Codes states that no City official "shall permit, facilitate, or engage in, the unauthorized use of city-owned facilities, property or personnel for private purposes or profit". It also goes on to say that the City Administrator may establish rules and regulations to authorize the use of city-owned facilities.

The only policy the City has at this time is the Mayor's letter/memorandum concerning the use of the fitness equipment at the Armory and the request and permission to do the same at the Community Center. It is our opinion that no policy exists at this time that would allow use of the basketball court and that it would be an overly broad interpretation to say the basketball court and the gymnasium constitutes part of the fitness equipment.

The Commission has reviewed the agreement (requested by the Mayor in his policy) that was to be executed by all persons taking advantage of the use of the Armory. Clearly, the agreement

executed by the public official for use of the Community Center was not the correct document in that it is only an agreement for being given a key to the building and was given to him in error by the Community Center worker at the time. At a minimum, the elected official needs to be given a copy of the Liability Release Form and be asked to sign it before continuing to take advantage of this program.

In the Liability Release Form there is a clear statement that a user may have a guest – not plural guests. Also this form makes clear that the agreement is limited to the use of the fitness equipment in the fitness room – not other parts of the Community Center that are not related to the use of the exercise equipment. It is the Ethics Commission's opinion that in light of the current written policy and Liability Release Form that any person who takes advantage of this program could be in violation of Section 2-66 should they invite more than one guest and/or expand their use of either the Armory or the Community Center beyond the exercise equipment in the fitness room and directly related areas of these buildings in the course of their using the fitness equipment.

Though it is not at issue in this particular case, should there be uses of these City buildings by anyone that stray even further from the City's approved after hours exercise for senior officials purpose, there could also be violations of other sections of the Ethics Code.

The Commission believes that the misunderstanding that has given rise to this request for an Advisory Opinion is based in large part on the lack of specificity in the Liability Release Form combined with a situation where there does not seem to be a general Agreement signed by a user and a designated City official laying out the rules and procedures that must be followed by anyone taking advantage of this program, and combined with the incorrect form being given to the elected official in this case and that elected official's liberal interpretation of the program. For example we heard testimony that the intent was for the guest who accompanies the user to be another authorized user rather than just a personal friend of the user but this is not specified in writing. One consequence in addition to misunderstandings is that if such a guest is not another authorized user, they will not have signed a Liability Waiver and the City would be exposed unnecessarily to risk should some harm befall the guest in their use of the equipment after hours. While the Ethics Commission does not have the authority to require that the City take action to create such clarity, we recommend that the Mayor and City Administrator develop and issue a new policy and procedures with full details concerning who may be authorized to be a user, which City buildings are included, what precise use is allowed including what equipment and what rooms or areas of the building(s), what hours of are permitted, who can be a guest, who must sign a Liability Release Form, whether a user must have a guest with them at all times (in case of medical need),. Further, the policy should provide that if a person does not follow the policy the Administrator would cancel the right of the person to utilize the facilities until such time as the person is willing to assure that they would follow

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Request for Advisory Opinion

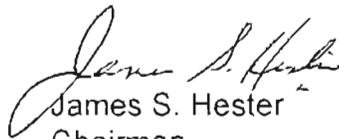
March 26, 2008

Page 4

the policy so that the person's actions do not rise to the level of becoming violations of the Ethics Ordinance.

Thank you for requesting this Advisory Opinion. This is an issue that if left without guidance, could create a problem for all parties involved. Any questions you, the Mayor, or anyone who participates in this program may have, may be directed to the Ethics -Commission.

Sincerely,



James S. Hester
Chairman
City of Laurel Ethics Commission

cc: Mayor Craig A. Moe
Mr. Robert A. Manzi, City Solicitor