



## MONTGOMERY COUNTY ETHICS COMMISSION

June 27, 2022  
Advisory Opinion 22-06-012

The Ethics Commission received a request for a waiver from an employee in the Asset Management Section of the Finance and Administration Division at Montgomery County Department of Housing and Community Affairs (DHCA). For the reasons stated below, the Commission denies the request.

The employee previously was granted outside employment approval in connection with his real estate business. The outside employment approval was granted with a condition that the employee seek a waiver from the Ethics Commission if the employee's business "seeks to do business with or conducts activities that are regulated by the DHCA or subject to DHCA jurisdiction."

The employee would like to purchase one or more condominiums as investment properties in Montgomery County to be used as rental units. Purchasing and operating rental properties in Montgomery County implicates the jurisdiction of the DHCA.

### I. Applicable Standard

The Montgomery County Public Ethics Law Section 19A-12(b)(1)(A) provides that, unless waived by the Ethics Commission, a County employee is prohibited from being employed by or owning more than one percent of a business that "is regulated by the County agency with which the public employee is affiliated." Further, Section 19A-12(b)(2) prohibits a public employee from "hold[ing] any employment relationship that could reasonably be expected to impair the impartiality and independence of judgment of the public employee." Section 19A-8(b)(3) states that the Ethics Commission may grant a waiver of these prohibitions if the Commission concludes that the outside employment will not be likely to create an actual conflict of interest. Without a waiver from the Ethics Commission under Section 19A-8(b)(3), the proposed property purchase and rental is barred pursuant to 19A-12(b)(1)(A) and 19A-12(b)(2).

### II. Representations of Fact

At DHCA, the employee's job is to monitor rental agreements and payments in lieu of taxes (PILOT) agreements with landlords. These agreements are negotiated by a separate division which is the Multi-family Section at DHCA. Under the rental agreements or PILOT agreements,

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the landlords receive subsidies or property tax abatements because the landlords provide some specific affordable housing units.

The employee seeks the waiver to be able to purchase condominiums in Montgomery Village, Maryland, located within Montgomery County. The employee would purchase the unit(s) as investment properties that would be rented at full market price to tenants. (As the employee would be charging full market price rent and not seeking any subsidy assistance or affordable housing designation for tenancy, the employee would not be obtaining County funds through rental subsidies or any other payment arrangements.)

The employee submits that DCHA issues rental licenses to all who apply as the County's objective is to identify and monitor rental units in the County. The fees obtained from these rental licenses pay for code enforcement and compliance in rental units, which are other functions managed by DHCA. The employee, in performing his County duties, has no interaction with tenants but instead, the employee's County activities involve interaction with landlords who provide affordable housing units for rent to low-income County residents. Furthermore, direct rental assistance is generally managed through the Housing Opportunities Commission of Montgomery County, a wholly separate, quasi-governmental entity. The employee submits that the employee will not receive any subsidies or tax incentives from Montgomery County related to affordable housing or government-subsidized rental vouchers from tenants while the employee works for DHCA.

Based on these facts, the employee suggests that the proposed outside employment is not likely to create an actual conflict of interest.

### III. Position of the Employee's Agency on the Request

Requests for waivers are required to be accompanied by a statement from the employee's agency head indicating whether the agency head supports the waiver request. With respect to the waiver request here, the agency head does not support the request.

In the agency head's view:

DHCA regulates rental properties in the County under the Office of Landlord Tenant Affairs, the Commission on Common Ownership Communities, Licensing and Registration and Code Compliance. Every employee in DHCA, irrespective of specific current job responsibilities, has an employment [sic] relationship which could have an impact on the regulatory activities of the Department and creates issues related to impartiality and independence of judgement of the employee.

### IV. Decision

Upon review of the employee's request and the agency head's non-concurrence in the waiver request, the Ethics Commission denies the request for a waiver. In the view of the Commission, the nature of the proposed activity for which the waiver is sought is too close to DCHA's responsibilities for oversight and regulation of rental properties. The original approval of the

outside employment of the employee was subject to the condition that the outside business would not be engaged in activities subject to the jurisdiction of DCHA. The Commission believes that this is the appropriate path to ensure the impartiality and independence of the employee in doing his County job. The prohibitions of the ethics law help provide assurance that public office is not being utilized for private gain by the employee. Moreover, as a result of denying the waiver request, a likelihood of there being a circumstance where the employee's colleagues at the DHCA will be called upon to make determinations about the employee's business interests will be negligible.

For the Commission:

A handwritten signature in cursive script that reads "Susan Beard".

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Susan Beard, Chair