



MONTGOMERY COUNTY ETHICS COMMISSION

Waiver 23-04-008

April 17, 2023

Heather Bruskin became the first Director of the Montgomery County Office of Food Systems Resilience (OFSR) on February 13, 2023. From July 2014 to January 2023, Ms. Bruskin worked for the Montgomery County Food Council (MCFC), initially as a contractor until 2018 and then as an employee, serving as its Executive Director. The MCFC is a 501(c)(3) non-profit organization that was founded in 2011 and incorporated in 2016, serves as the primary connection point for County businesses, non-profits, government agencies, and residents around food system issues.

The County Code at 19A-11(I) and (J) provide that unless permitted by a waiver, a public employee must not participate in any matter if the public employee knows or reasonably should know that any party to the matter is: any business or individual that in the previous 12 months employed the employee or an immediate family member of the employee; or any business in which the employee or an immediate family member of the employee was an officer, director, trustee, or partner in the previous 12 months. The prohibitions of 19A-11(I) and (J) are intended to prevent the lack of impartiality that is presumed to occur when County employees are called up to work on a matter in which their immediate past employer (somebody that compensated them in the prior 12 months) is a party to the matter. Because of the significant role of MCFC in the administration of County food programs, Ms. Bruskin would not be able to fulfill the duties of her position without a waiver of the prohibition in 19A-11(I) and (J) from the Ethics Commission pursuant to 19A-8(a) of the ethics law.

Background

The County realized in the context of the pandemic response that government capacity for policymaking, investments and resource management, and interagency strategic coordination specific to food was insufficient. The OFSR was created by the County Council, with the support of the County Executive, in July 2022 pursuant to Bill 20-22 and based on the recommendation of the Montgomery County COVID-19 Food Security Task Force.

OFSR is intended to streamline and coordinate the County's efforts to address local food system challenges, in collaboration with community partner organizations, including the MCFC.

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The enabling legislation for the OFSR (County Code 2-64Q) provides:

The Office of Food Systems Resilience must:

- (a) in coordination with the Maryland Food Council, serve as a liaison between government and food systems stakeholders, including residents, businesses, farms, food assistance providers, charities, and educational institutions;
- (b) in coordination with the Department of Environmental Protection, the Office of Agriculture, the Department of Planning, the Department of Health and Human Services, and the Office of Community Partnerships, serve as a central liaison and coordinator for County government food systems initiatives and projects;
- (c) develop and maintain a strategy for improving the efficiency, equity, sustainability, and resilience of the food systems in Montgomery County;
- (d) advise the County Executive and County Council on food systems related policy issues, as well as deliver a report on the state of the local food systems with recommended policy, budgetary, and regulatory changes to the County Executive and County Council no less than annually;
- (e) develop and maintain a system to collect and process local food systems data to support accurate and timely monitoring of the state of the local food systems, and analyze such data to support decision making and strategic planning;
- (f) in coordination with the Office of Grants Management and the Office of Procurement, set policies and procedures for grants impacting the local food systems that are consistent with the aforementioned food systems strategy and work to leverage County resources to pursue state, federal, and private sector resources to support local food system initiatives;
- (g) in coordination with the Office of Emergency Management and Homeland Security, the Department of Health and Human Services, and local food assistance providers, support disaster response feeding planning and operations;
- (h) in coordination with the Office of Racial Equity, work to address racial inequities and develop practices to ensure social justice and address disparities in the local food systems; and
- (i) represent the interests of Montgomery County in regional, national, and international food systems coordination efforts.

Achieving the mission of the OFSR, a more resilient local food system, necessitates active partnership with nonprofits, businesses, and residents engaged in increasing local food production, expanding food distribution and processing infrastructure, implementing best

practices in community food distributions, and reducing the impact of the food system on the County's natural resources. There are over 2,000 active local and regional partners engaged in food systems initiatives in Montgomery County, including more than 120 food assistance providers and over 100 farms and food and beverage businesses. The MCFC has received funding from the County government since 2012 to serve as a convener, network manager and communicator, and capacity-building entity for this broad collective of people and organizations engaged in food systems work.

The submission of the Chief Administrative Officer (CAO) in support of the waiver lists the FY23 county contracts with MCFC and the connection the OFSR has with each. (The County has in excess of \$12 million in contracts relating to food systems initiatives overall, of which the contracts with MCFC are a subset.)

- Create County Strategy to End Childhood Hunger, Contract 1142414: \$100,000, Contract is held by and funded through DHHS, Public Health. Ends May 3 and is marked not to renew. OFSR is a partner in the creation and implementation of the plan, including co-presentation with the MCFC, subcontractors, and DHHS to County Council. The OFSR is not engaged in contract procurement, management, or monitoring.
- Food Systems (General Programs), Contract 1094548: \$266,744. The contract is held by DHHS, Public Health. \$66,744 is funded by DHHS budget and \$200,000 is funded through OFSR budget. OFSR is not engaged in contract procurement, management, or monitoring. In alignment with its legislative mandate, OFSR informs scope development and partners in program implementation. Renews on October 2nd for FY24 (level funding amount proposed in CE budget). (The expansion of \$200,000 in County funding for MCFC in FY23 was included in the OFSR budget, before Ms. Bruskin was hired, to increase partnership capacity in support of the new Office's initiatives and broader COVID-recovery efforts.)
- Food Security Plan Implementation, Contract 1093049: \$92,349.22. Contract is held by DHHS, the full amount is funded by DHHS budget. OFSR is not engaged in contract procurement, management, or monitoring. In alignment with its legislative mandate, OFSR informs scope development and partners in program implementation. Renews on August 14th for FY24. The MCFC is not expected to apply for any grants/contracts directly under the OFSR in the next 12 months.

In support of Ms. Bruskin's request for a waiver, the CAO states:

I strongly believe [a waiver] is in the best interest of Montgomery County Government as Ms. Bruskin's knowledge and experience is a tremendous asset to the newly established OFSR, and to the overall mission of building a more resilient food system in Montgomery County. . . . As the Executive Director of the Montgomery County Food Council, she led the County's primary food system advocacy nonprofit organization through significant expansion. Ms. Bruskin is a trusted leader in the region, having in-

depth knowledge of the County's local food system landscape, [which] made her the best candidate to lead OFSR in its duties to develop and maintain a strategy for improving the efficiency, equity, sustainability, and resilience of the food system in Montgomery County. Ms. Bruskin's former employer plays a parallel role with the Office of Food Systems Resilience. . . .

Ms. Bruskin was recruited for her deep knowledge base of issues related to food security and successful implementation of services for persons experiencing food insecurity in Montgomery County. She is the best person for this role, and therefore I whole-heartedly support Ms. Bruskin's request for a waiver of ethics law to fully carry out the work of OFSR as its new Director.

The CAO also indicated that as an additional safeguard to limit the perception of conflicts of interest, all contract and or grant administration actions (including monitoring, oversight, or selection) related to the Montgomery County Food Council will remain in the Department of Health and Human Services (DHHS) for a period of 12 months from her date of hire (February 13, 2023).

Grant of Waiver

Section 19A-8 of the Montgomery County Code states that the Commission may grant to a public employee a waiver of the prohibitions of Sections 19A-11(1)(2)(I) and (J) if it finds that: 1. the best interests of the County would be served by granting the waiver; 2. the importance to the County of a public employee or class of employees performing official duties outweighs the actual or potential harm of any conflict of interest; and 3. granting the waiver will not give a public employee or class of employees an unfair economic advantage over other public employees or members of the public.

With respect to Ms. Bruskin's request, the Commission makes all three findings based on the support for the waiver from the CAO. The Ethics Commission finds that the best interests of the County would be served by granting the waiver. Ms. Bruskin's value as the leader of OFSR has been attested to by the CAO as the representative of the County Executive. The CAO has expressed that the appointment is in the best interest of the County, notwithstanding the prohibition in 19A-11. The second necessary finding is that the importance to the County of Ms. Bruskin performing official duties outweighs the actual or potential harm of any conflict of interest; Ms. Bruskin's intimate familiarity with the challenges faced by the County in addressing the food needs of its citizens, particularly those who are most vulnerable to food-related issues, is well demonstrated by her experience. Quantifying the risks of the conflict is challenging as there is no pecuniary interest of Ms. Bruskin involved. The risk is theoretical and concerns a presumption of a public employee's lack of impartiality in matters involving a former employer the employee terminated service with in the prior year. Based on the representations of the CAO, the Commission concludes that these risks are outweighed by the benefit the County will receive from Ms. Bruskin's knowledge and familiarity with the important issues she will be addressing at OFSR. Because Ms. Bruskin would no longer be affiliated with

the MCFC while serving Montgomery County, there is also little risk granting the waiver will result in Ms. Bruskin having an unfair economic advantage over other public employees or members of the public.

Subject to the conditions explained further below, the Ethics Commission grants a waiver of 19A-11(I) and (J) pursuant to 19A-8(a) to Ms. Bruskin so that she may execute the responsibilities of her position as Director of OFSR.

In reaching the conclusion that Ms. Bruskin merits a waiver under the standard in 19A-8(a), the Commission conditions the waiver on Ms. Bruskin recusing herself from all contract actions and decisions in which MCFC is a party for the period of one year from the date of her termination from employment with MCFC. Ms. Bruskin has also committed to delegating decisions about funding for the MCFC contract in the OFSR to another member of the County Executive's team or to OFSR staff. Consequently, the waiver of the one-year prohibition does not apply to Ms. Bruskin's involvement in funding of MCFC contracts or to procurement decisions or contract administration where MCFC is a party to the matter; such matters are still covered by the one-year prohibition of 19A-11.

The Commission notes that after one year has expired from her termination of service with MCFC, Ms. Bruskin will still have a disclosure requirement in the event she is involved in a procurement matter involving MCFC. 19A-11(d) states:

Procurement disclosure. A public employee who participates in a procurement process with an individual or organization seeking to do business with the County that compensated the public employee for services performed more than 12 months before the participation began must disclose the prior relationship to the Procurement Director. The Procurement Director must include a statement of this disclosure in the procurement file.

This additional obligation of the ethics law is not waived and continues after the prohibitions of 19A-11(I) and (J) expire (whether the prohibitions have been waived or not.)

The Commission has relied on the facts provided to it by Ms. Bruskin in issuing this waiver.

The Commission notes that while a majority of Commissioners determined that a waiver should issue under the circumstances, a minority of the Commission did not support the issuance of a waiver. At the core of the concern of the minority is that the waiver application occurred after the employee was in the position as Director of OFSR for six weeks before the conflict of interest issue was identified to the Ethics Commission. A minority of Commissioners was unwilling to grant the waiver given the awkwardness of the Commission being put in the position of having to decide either to agree to the issuance of a waiver or cause the unwinding of an appointment that has already been made with all of the concomitant disruption. The Commission does not believe Ms. Bruskin is responsible for this circumstance and believes that improved appointment processes can minimize such circumstances from reoccurring.

For the Commission:

A handwritten signature in cursive script that reads "Bruce Romer".

Bruce Romer, Chair