



Finance Department

David P. Schmiedicke, Finance Director

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October 12, 2016

Michael P. May
City Attorney
City of Madison
210 Martin Luther King Jr. Blvd, Room 401
Madison WI 53703

Mr. May:

I have reviewed the ethics complaint in regards to the City of Madison Purchasing Policies, Procedures and Ordinances as per your email dated 10/4/2016. The following is my response:

Alleged Violation 1 – Hiebing

Monona Terrace staff submitted a 2015 requisition and was informed by purchasing staff that they would need to seek council approval given the services were not competitively bid and were over \$25,000. The 2015 requisition remained held by purchasing staff pending council approval. A resolution was subsequently drafted and submitted to Common Council by Monona Terrace staff. Council approved awarding the services contract to Hiebing effective 11/5/2015. The paper contract was routed for required signatures. A paper copy of the executed contract was mailed to Hiebing. Following council award approval, purchasing staff approved the 2015 requisition and converted it to a 2015 purchase order within MUNIS.

City Purchasing guidelines and policies were followed with regards to this procurement given agency staff determined the services were to be sole sourced.

Alleged Violation 2 – Studio Gear

Purchasing staff was not involved with this transaction as the method of procurement was made via a City Purchasing Card.

The City Purchasing Card is a method of payment for micro/small goods and services generally under a \$5,000 threshold as defined within the program's guidelines and policies.

Alleged Violation 4 – Tai Ping Carpet

This procurement was competitively bid and subsequently awarded through RFP #8247-0-2012/MM. The selected vendor did not list any exception/objection to the City's Affirmative

Action requirement in their submitted proposal.
City Purchasing guidelines and policies were followed.

Madison General Ordinance (MGO) 4.25 – Procurement of Items of Apparel – does not apply to carpet purchases.

There is no violation of this ordinance with regards to this procurement.

Sincerely,



Kathryn Schwenn, CPA
Accountant 3, Purchasing Supervisor
City of Madison Purchasing
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kschwenn@cityofmadison.com

Cc: David Schmiedicke, Finance Director
Patricia A. McDermott, CPA, Accounting Services Manager
Randy Whitehead, CPA, Principal Accountant

TO: Mike May, City Attorney
FROM: Norman D. Davis, Civil Rights Director
DATE: October 13, 2016
SUBJECT: McManners Ethics Inquiry

Alleged Violation 2 Studio Gear

Failure to follow Section 39.02 (9) (e) (2) and 39.02 (9)(a) (2)(d) of Madison General Ordinance

Issue:1: Whether or not Studio Gear's contract is exempt from the requirements of an Affirmative Action Plan under MGO Section 39.02 (9)(a) (2)(d) ?

Facts

The Studio Gear contract is Purchase Order contract for goods and not a net cash contract.

Conclusion

This contract is not exempt from the Affirmative Action requirements because it is not a net cash contract which would fall under the exemption provisions contained in Section 39.02(9)(2)(d).

Issue 2:

Did Greg McManners violate MGO Section 39.02(9)(e) (2) by allowing payments of \$25,760.00 to be made to Studio Gear despite the fact that Studio Gear had no approved Affirmative Action Plan on file with the City as required by MGO 39.02 (9) (e) (2)?

Facts

Studio Gear had been used as an equipment rental vendor by Monona Terrace for a couple of years. On March 6, 2015 Lara Mainella, Assistant City Attorney, emailed Hurtgen and Eric Veum regarding Studio Gear's rental terms and stated that once Studio Gear reaches \$25,000 in invoiced services for the year, the City will need an Affirmative Action Plan. This is in accordance with MGO 39.02(9)(e)(2) which states:

“Within 30 days from the effective date of a contract with the City or effective date of a purchase order and prior to release of payment by the City all nonexempt contractors are required to have on file an approved affirmative action plan...”

Typically, Studio Gear was paid using a City credit card (called within the department's purchasing card or “P” card). By April of 2015, Studio Gear's invoice totaled \$25,760

which pushed it over the \$25,000 limit. Studio Gear did not submit an Affirmative Action Plan as required. In April/May 2015, Studio Gear requested payment in the form of a check instead of the City credit card. McManners was informed by Hurtgen that Munis will not issue a check once the vendor hits over \$25,000 in any given year and if no approved affirmative action plan is on file. Since Studio Gear lacked an Affirmative Plan no payment could be made without an approved Plan on file.

It appears that no further payments were processed for Studio Gear after the \$25,760.00 threshold was reached. Monona Terrace did not use this vendor for future services after these payments totaling \$25,760.00 were made.

Conclusion

From the evidence stated above, it can be concluded that Greg McManners terminated the services of Studio Gear after they had gone over the \$25,000 threshold. It is unclear whether or not he violated MGO 39.02(9)(e)(2) because the record does not show that any further payments were made after McManners was informed that an Affirmative Action Plan was required to be filed with the City.

Alleged Violation 4: Tai Ping Carpet Failure to follow Section 39.02 of Madison Ordinances

Issue

Did Greg McManners violate provisions of MGO Section 39.02(9)(e) (2) by allowing Tai Pen Carpets America Inc. to provide services for Monona Terrace without filing an Affirmative Action Plan with the City as required by MGO 39.02 (9) (e) (2)?

Facts

McManners, with the assistance of Zeinemann and one of his direct reports, procured the contract with Tai Ping Carpet to provide carpet for Monona Terrace in 2013 and 2014.

This was a purchase of goods contract which was procured through a purchase order and unlike other types of contracts, is not routed to the Department of Civil Rights (“DCR”) for approval.

This purchase order also predates the implementation of the Munis System which has checks and balances in place to ensure that no payment over \$25,000 is made to any contractor, vendor or supplier if there is no approved Affirmative Action Plan on file with the City. Munis also enables DCR to flag contractors, vendors and suppliers who are non-compliant. DCR is then in a position to inform Department Procurement Managers of the delinquent status of noncompliant contractors who lack Affirmative Action Plan.

Since the Tai Peng purchase order was never routed to DCR, there was no mechanism in place to inform Procurement Managers about the noncompliant status of Tai Peng. It was

only after the City migrated to Munis that the vendor's non-compliant status came to light in August 2015 during a routine audit by Contract Compliance Specialist Dana Hanaman ("Hanaman").

Hanaman sent an email to Hurtgen and to Tai Peng others stating that Tai Ping was not in compliance with the Affirmative Action requirements. Tai Ping's Market Development Manager, Kristy Jones, explained in an email on August 11, 2015 to Hanaman, that Tai Ping has advised, on October 26, 2012 that they would not submit an affirmative action plan.

It is unclear from the evidence who Kristy Jones spoke to regarding this exemption. A review of the bid documents submitted by Tai Peng shows that in the Exceptions Section of the bid documents, no mention is made of their desire to seek an exemption. In the Contractor Profile of the Bid Documents, under "Name of Affirmative Action Contact", Tai Peng entered N/A. This in no way constitutes a request for an exemption.

MGO 39.02(9)(e)(2) requires that

"Within 30 days from the effective date of a contract with the City or effective date of a purchase order and prior to release of payment by the City all nonexempt contractors are required to have on file an approved affirmative action plan..."

There is no evidence in the record which shows that McManners had reason to doubt that the vendor would not comply with the Affirmative Action Plan requirements within the 30-day limit.

Conclusion

From the above facts there is no clear and convincing evidence that McManners violated Section 39.02(9)(e)(2) by authorizing payments to Tai Peng, despite the absence of an Affirmative Action Plan since he had no way of knowing about the non-compliant status of Tai Peng prior to the implementation of the Munis System.

October 11, 2016

MADISON PUBLIC LIBRARY

RE: Relationship with Affiliated Organizations

The Madison Public Library (MPL) has a relationship with 10 affiliated organizations. The largest and primary relationship is with the Madison Public Library Foundation (MPLF), which is the principal for the majority of private fundraising solely for MPL. In addition to the Foundation, each of our libraries has a Friends group that primarily does local fundraising for the benefit of the library they represent. There is some cross over support between the Friend groups for certain projects among other MPL libraries.

The MPLF is a completely separate organization from the library. They maintain their own 501c3 status, their staff are hired and paid through the MPLF and none of them are city employees. They maintain all of their own accounting and do not use the Library or any Library staff in any way to accommodate their bookkeeping needs. The MPLF does maintain an office in our Central Library but they do pay rent to cover the expenses associated with that space. We will make allowances for them for usage of our facilities when they are doing fundraising for MPL. The MPLF acts as the fiscal agent for two of our Friends' groups, Friends of Lakeview Library and Monroe St. Library League. Those two groups have agreed to have MPLF assist in the administration of their funds and this allows them to be under MPLF's 501c3 umbrella. All funds collected by the MPLF are held in accounts with local banks or within the Madison Community Foundation. Any distribution of funds to the Library is via checks directly to the Library. MPLF does hire an outside accounting agency to perform an annual audit of their finances independent from the Library. MPLF is governed by a Board which directs the work of their Executive Director. The Library is represented on the MPLF Board by an assigned representative from the Library Board and the Library Director. Both the Library Board and Library Director are ex officio members.

The remaining seven Friends' groups that do not utilize the MPLF for administration also operate independently of the Library, and maintain their own accounting and banking functions. The Library has no direct access to their funds and any distribution of funds by the Friends is delivered via check to the MPL. The Library does not perform any bookkeeping functions for the Friends' groups. The Library does provide space in its facilities at no charge for storage of materials that may be used by the Friends' for book sales, etc. The Library will assist with the delivery of materials to storage facilities as donations of materials are received at our various locations. In addition at Central Library where the Friends maintain a book store we do permit them to store their cash in our safe when the store is not open. Library staff do not handle the cash or perform any counting of Friend's monies. That responsibility is solely with the Friends group.

All of the Friends' groups operate with a volunteer staff and maintain a small board to administer the operations of their membership and fundraising efforts. Some Friends' groups do have a Library representative, usually from their respective library, and they meet with their Board as an ex officio member.

Sec. 3.35(5)(c) Outside Employment. No incumbent shall engage in or accept employment or render service whether compensated or uncompensated when such employment or service would impair or reasonably appear to impair her or his independence of judgment or action in the performance of official duties.

I would find the claim unsustainable in regards to the described interaction between Ms. Hurtgen and the Friends of Monona Terrace that it "would impair or reasonably appear to impair her or his independence of judgment or actions in the performance of official duties". MPL does have many interactions with our Friends and Foundation in a variety of ways and we have not experienced any type of impairment resulting from that exchange. We do keep any fiscal exchanges as independent as possible to avoid any real or perceived improprieties. Any of the very limited fiscal exchanges we do have has not caused any type of impairment of judgment by Library staff.

Gregory Mickells
Library Director
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Department of Planning & Community & Economic Development

Madison Senior Center

Christine Beatty, Director

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Date: October 10, 2016.

To: Michael May, City Attorney

From: Christine Beatty, Senior Center and Services Director

RE: Relationship of the Madison Senior Center to the Madison Senior Center Foundation, Inc.

The Madison Senior Center (MSC) is a municipal senior center, built by the City of Madison. The City provides staff and administrative expenses and building repair/maintenance services to operate the facility for Madison's 55+ population.

It is the responsibility of the MSC to raise funds for programs, events and activities held at this facility, primarily through program fees, participant contributions, corporate sponsorships, grants and other community gifts and in-kind (non-cash) gifts.

This shared responsibility for the financial means to operate a municipal senior center has been understood by the City Council and MSC Board (now the Committee on Aging), since the facility first opened in 1983. The City originally held these program and activity funds in a designated trust account. However, as the funds grew and a large bequest was received, the City could not invest the funds to receive a maximum return nor could it retain the funds for more than a year.

The MSC Board of Directors investigated several options to steward these funds. One option was to establish a 501(c)(3) Foundation to invest these monies; this option also allowed the Foundation to seek out additional grants, not available to municipal governments. Another option was to place the funds with the Madison Community Foundation, which would annually return approximately 3-5% of the funds for MSC programs. Eventually both options were utilized.

An April 28, 2005 resolution was passed by the Madison City Council which granted permission "for the establishment of a not-for-profit Foundation for the express purpose of supporting Madison Senior Center activities and programs." On June 1, 2005 the Madison Senior Center Foundation, Inc. (the Foundation) submitted its Articles of Incorporation to the WI Department of Financial Institutions. On August 4, 2005, the Internal Revenue Service declared the tax exempt status of the Foundation. In addition, a fund was established with the Madison Community Foundation.

Members of the MSC Board Financial Committee became the Foundation Board. This Board has directed the Foundation since its establishment by creating investment policies and procedures, recruiting additional members, selecting banks and investment advisors, meeting regularly, electing officers, advising MSC staff on fund raising strategies and assuming its fiduciary responsibilities. A member of the Foundation also serves as a member liaison to the Committee on Aging, the City of Madison committee which monitors the operation of the MSC.

October 14, 2016

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The Foundation now holds approximately \$500,000. in First Business Bank and another \$65,000 in the Madison Community Foundation. These funds are held expressly "...for the benefit of the Madison Senior Center, as agency of the City of Madison, WI, with respect to its activities to improve the recreational, intellectual, social, physical and mental well being of older adults..." (Articles of Incorporation).

Christine Beatty, MSC Director, John Weichelt, MSC Volunteer Coordinator, and Karen Cator, MSC Office Manager, are City staff members who have responsibilities with Foundation operations. Beatty and Weichelt organize and staff Foundation meetings 6 times annually. Weichelt develops fund raising campaigns and produces a donor newsletter 2 times annually. Cator and Beatty receive, record and deposit donor gifts to a cash account with First Business Bank, and Beatty approves Foundation expenditures executed by Cator. All may prepare requested reports for the Foundation Board.

Quarterly financial reports are presented to the Foundation Board by their Treasurer. The Foundation has a pro bono accountant who prepares the required IRS 990 annual report. Investment advice is provided to the Foundation periodically by First Business Bank, Madison, WI, who handles Foundation investments with Board approved policies. For example, the cash account automatically transfers funds to the investment account at a prescribed threshold.

Cash handling and control and purchasing conform to City of Madison procedures and policies and are accounted for in the City's MUNIS system in an account monitored through the Community Development Division. The Foundation reimburses its expenditures annually to the City of Madison, using a checking account requiring 2 signatures or through a fund transfer between Foundation and City accounts.

Conclusion: From the materials provided me by the City Attorney's Office, I believe that the operations at Monona Terrace and the Madison Senior Center may be very similar. The collaboration of a private foundation managed by community citizens to enhance the financial capacity of a public entity is a new construct of our present day financial reality; it is one that is modeled successfully in municipal senior centers across the country. To the best of my ability and knowledge, I do not believe that Mr. McManners violated any city requirements related to affiliated organizations.



Madison Parks Division

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play
**MADISON
PARKS**

RE: Madison Parks Relationship with Affiliated Organizations

At the request of the City Attorney, I am writing this letter documenting the City of Madison Parks Division's relationship with affiliated organizations. The City of Madison Parks Division (Madison Parks) has a relationship with two Affiliated Organizations as defined under MGO 4.29. The two organizations are the Madison Parks Foundation and the Olbrich Botanical Society. Both organizations have a significant relationship with Madison Parks in fundraising and programming in the park system. Both organizations have 501(c)3 status and have an independent Board of Directors that governs their activities. The Parks Superintendent serves ex-officio on both Boards. There is a Park Commissioner on both Boards, and OBS includes two Alders on the Board as well.

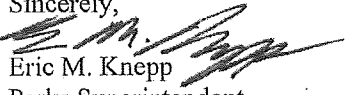
The Madison Parks Foundation (MPF) has been designated as the official fundraising partner of Madison Parks since 2012 when a resolution was adopted enabling the current contract between the City and the MPF. The MPF has an Executive Director who is a City employee supervised by the Parks Superintendent, but paid from MPF resources. The Executive Director is responsible for managing all aspects of the MPF's activities, including all aspects of financial administration. The financial system is completely separate from the City's and the MPF is audited annually by external auditors, with a copy of the audit provided to the City. The contract places specific requirements on the MPF for financial reporting to the City, but the actual control of the funds is with the MPF Board who establishes policies and procedures for the Executive Director to administer. The MPF does utilize City office space and corresponding utilities (phone, internet, electricity) at the Goodman Maintenance Facility at no cost to the Foundation, as well as receiving access to Park Facilities for fundraising events at a reduced fee rate (similar to other non-profit neighborhood groups under the Board of Park Commissioners Adopted Fee Schedule). Parks staff periodically assists the MPF in the performance of their work to ensure a productive relationship that improves the public park system. It would be uncommon for City staff (outside of the ED) to handle MPF financial resources, but in unique circumstances it has occurred.

The Olbrich Botanical Society (OBS) has been working jointly with Madison Parks in the operations and development of Olbrich Botanical Gardens since 1979. OBS has numerous employees who are involved in fundraising, membership, education, and horticulture at Olbrich Gardens. OBS has an Executive Director who is a City employee supervised by an Assistant Parks Superintendent and paid by the City of Madison. The Executive Director is responsible for managing all aspects of the OBS's activities, including all aspects of financial administration and personnel management. The financial system is mostly separate from the City's and the MPF is audited annually by external auditors, with a copy of the audit provided to the City. However, OBS does collect some revenue for the City and the City does collect some revenue for OBS. There is an established process for a monthly reconciliation by staff for both organizations to ensure this is tracked accurately. A new contract is currently being adopted through the City process that will update the relationship. The contract places specific requirements on the MPF for financial reporting to the City, but the actual control of the funds is with the OBS Board who establishes policies and procedures for the Executive Director to administer. OBS does utilize City office space and corresponding utilities (phone, internet, electricity) at Olbrich Gardens at no cost to OBS. OBS also uses space at the Gardens for fundraising and membership events. Parks staff routinely assists OBS in the performance of their work to ensure a productive relationship that improves the public gardens.

In regard to the ethics complaint related to Mr. McManners and the relationship to the Friends of Monona Terrace, I do not think it is reasonable to assert that the work performed on behalf of the Friends group could be reasonably construed as such that it would impair an employee's independence of judgment. It appears to me from the facts presented that the work performed by Ms. Hurtgen included very little control over the funds of the Friends group and that she was assigned to assist them in basic administration given their lack of staff. Should Madison General Ordinances be interpreted in a manner that the work performed by Ms. Hurtgen at the direction of Mr. McManners was a violation of the "Outside Employment" (MGO 3.35(5)(c)), the Parks Division would need to reevaluate its relationship with two significant partner organizations.

Having staff that works routinely with Affiliated Organizations (AO), including supervising two full time City employees with significant responsibility for these AOs, I am confident in stating that there has been no issue brought to my attention regarding their ability to do work on behalf of an AO and maintain their duties to the City as employees.

Sincerely,


Eric M. Knepp

Parks Superintendent

eknepp@cityofmadison.com



Human Resources Department

Bradley Wirtz, Human Resources Director

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Phone: (608) 266-4001

Date: October 10, 2016 .
To: Ethics Board
From: Brad Wirtz, City of Madison HR Director ^B
RE: Allegations of time card fraud

The allegations made in the ethics complaint are very vague, but it appears to allege that Mr. McManners violated the Ethic Code, Fair Labor Standards Act, and Wisconsin Wage and Collections Act by failing to require employees to sign a timecard policy and potentially overpaying employees that failed to punch in appropriately.

The Fair Labor Standards act and the Wisconsin Wage and Collections act establish minimum wages that employees must be paid. They do not prescribe rules related to time clock use nor prohibit employers from overpaying employees. I do not see how the actions described in the complaint could violate either of these two laws.

As for the ethics code, the allegations do not provide any evidence indicating that Mr. McManners knowing allowed the overpayment of employees. Following the departure of Mr. Griffith, Mr. McManners first assigned the work to Ms Hurtgen and then worked with Employee and Labor relations staff from my office to resolve several issues that had surfaced upon Mr. Griffith's departure, including issues with timecards. It also appears that issues with timecards have since been resolved in cooperation with HR Staff as would be the expectation of any City Manager.

The complaint also alludes to a 2 hour minimum payment for overtime work. I don't have all of the details regarding this issue, but our City policies do require a two hour minimum for call in pay.

