

Exhibit 4

OFFICE OF THE GENERAL COUNSEL
COUNCIL OF THE DISTRICT OF COLUMBIA

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MEMORANDUM

To: Councilmember Jack Evans
From: Ellen A. Efros, General Counsel *EAE*
Date: April 13, 2016
Re: Outside employment and recusal obligations

You requested guidance with respect to when and on what matters you must recuse yourself in order to avoid any potential conflicts of interests due to your employment at the law firm of Manatt, Phelps & Phillips, LLP.

Rule I of the Council's Code of Official Conduct, modeled on D.C. Official Code § 1-1162.23 and 18 U.S.C. § 208, provides that:

No employee shall use his or her official position or title, or personally and substantially participate, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter, or attempt to influence the outcome of a particular matter, in a manner that the employee knows is likely to have a direct and predictable effect on the employee's financial interests or the financial interests of a person closely affiliated with the employee.

Rule I's definition of "person closely affiliated with the employee" includes an organization in which a person serves as an employee. Rule I(e)(1) and (5). Thus, if a Council employee has outside employment with an organization, the financial interests of the organization are imputed to the employee as if the interests were his

own. Accordingly, an employee may not personally and substantially participate¹ in a particular matter before the Council that is likely to have a direct and predictable effect² on the financial interests of the employee's outside employer.

If the Council employee knows that the employee's outside employer is providing services for a client or otherwise representing a client in a particular matter – even if the Council employee is not working in a capacity relating to the client – the Council employee cannot participate in the particular matter.

In addition, even if the firm is providing services to a client in a matter before the Council, it is important to note that the standard requires there to be a “particular matter.” Rule I(e)(4) provides that the term “[p]articular matter” is limited to meaning a deliberation, a decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons.” Whether a matter before the Council is a particular matter must be determined on a case-by-case basis.

If you find yourself presented with a conflict of interest, you must make full disclosure of the financial interest by preparing a written statement describing the matter and the nature of the conflict, and deliver the statement to the

¹ To participate “personally” means to participate directly. 5 C.F.R. § 2640.103(a)(2). To participate “substantially” means that the employee's involvement is of significance to the matter. *Id.*

² “Direct and predictable effect” means there is:

- (A) A close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest; and
- (B) A real, as opposed to a speculative possibility, that the matter will affect the financial interest.

Rule I(e)(2).

Council Chairman. Rule I(c)(1). During a proceeding in which you would be required to take action in any matter that would present a conflict of interest, the Chairman must read the statement into the record of proceedings and excuse you from votes, deliberations, and other actions on the matter. Rule I(c)(3). If you are excused from a vote, deliberation, or other actions on a matter, you must not participate in or attempt to influence the outcome of the particular matter. Rule I(e)(3)(C).

I am available if you have any questions.