

**BEFORE THE CITY OF ATLANTA
BOARD OF ETHICS**

In the matter of:)	
)	
Cynthia Burch)	Case No. CO-14-013
)	
Respondent)	
)	

FINAL OPINION AND ORDER

This matter came before the City of Atlanta Board of Ethics on March 19, 2015, for a public enforcement hearing to determine whether former City of Atlanta employee, Cynthia Burch, Respondent, had violated Sections 2-817, 2-818, and 2-811 of the City of Atlanta Code of Ethics. Respondent received notice by regular mail but failed to appear at the hearing.

The following Exhibits¹ were admitted into the record by the Board of Ethics:

Exhibits

1. Complainant's Exhibits 1 – 12 related to all notices sent to Respondent. Exhibits 13 – 16 related to Respondent's city employment and separation from the city. Exhibits 17 – 21 related to Respondent's acceptance of a gratuity from local developer, Kianoush Tehrani. Exhibits 22 – 27 related to Respondent's soliciting and obtaining free meals from Manuel's Tavern. Exhibit 28 related to city GPS records showing Respondent's misuse of her city vehicle and city time.
2. The following Findings of Fact and Conclusions of Law were adopted by the Board:

Findings of Fact

3. The Respondent, Cynthia Burch, is a former Environmental Compliance Officer who worked in the Office of Watershed Protection for the Department of Watershed Management. Ms. Burch's duties included: conducting residential and light commercial inspections; maintaining records on files; preparing erosion and sedimentation reports; writing stop work orders; investigating problems and complaints; inspecting infrastructure construction including but not limited to sewer systems, paving and drainage facilities; and performing additional tasks as needed. Ms. Burch worked for the City from October 1997 to June 2014. Complainant's Exhibits 13 – 16.
4. On August 15, 2013, the Department of Law's Compliance Unit initiated an investigation into allegations that Department of Watershed Management employees, Cynthia Burch and Martina Miller visited Manuel's Tavern, located at 602 North Highland Avenue, Atlanta, Georgia 30307; and solicited and obtained meals and food services free of

¹ See Index of Exhibits at pp. 8-9

charge by threatening to utilize their power as city inspectors to retaliate against the restaurant for non-compliance. Additionally, the Compliance Unit investigated an allegation that Ms. Burch accepted a \$100 gratuity from a local developer, Kianoush Tehrani. CI 2013-0017 Investigative Report at 1 (June 11, 2014).

5. Manuel's Tavern is subject to regulation under the City of Atlanta's Grease Management Ordinance. Exhibits 22 – 23.
6. Mr. Tehrani's properties include a development located at 1119 Barnes Street NW, Atlanta, GA 30318 and city records indicate that Ms. Burch was assigned to perform inspections at that location. Exhibit 17.
7. During his interview with Compliance Unit Investigators, Mr. Tehrani identified Ms. Burch in a photograph provided by the Investigators as the inspector he gave \$100 to after she conducted an inspection at his property. Mr. Tehrani signed the photograph to acknowledge his identification of Ms. Burch. Exhibits 19, 21.
8. Ms. Burch admitted to Compliance Unit Investigators that she accepted free food from Manuel's Tavern and brought in food to the restaurant to be prepared by the restaurant's kitchen staff. CI 2013-0017 Investigative Report at 6 – 7.
9. During his interview with the Compliance Unit, Stanley Barnes, kitchen manager at Manuel's Tavern, identified Ms. Burch with 100% certainty in a photograph provided by Compliance Investigators as the individual who posed as a health inspector and received free food and cooking services from Manuel's Tavern. Mr. Barnes signed the photograph to acknowledge his identification of Ms. Burch. CI 2013-0017 Investigative Report at 5; Exhibit 26.
10. During his interview with the Compliance Unit, Brian Maloof, owner of Manuel's Tavern, identified Ms. Burch with 90% certainty in a photograph provided by Compliance Investigators as the woman who had been coming into his restaurant for free food. Mr. Maloof signed the photograph to acknowledge his positive identification of Ms. Burch. CI 2013-0017 Investigative Report at 4; Exhibit 25.
11. The Compliance Unit's investigation found sufficient testimonial and documentary evidence to establish that Ms. Burch visited Manuel's Tavern and solicited and obtained meal and food services free of charge while threatening to use her power as a city inspector to retaliate against the restaurant for non-compliance. The Unit's investigation also found that Ms. Burch accepted a \$100 gratuity from developer Kianoush Tehrani for an inspection she conducted at 1119 Barnes Street NW. CI 2013-0017 Investigative Report at 8.
12. On June 13, 2014, the Ethics Office initiated an ethics complaint against Ms. Burch alleging that she solicited and obtained meals and food services free of charge from Manuel's Tavern while threatening to use her power as a city inspector to retaliate against the restaurant if it did not comply with her request. The complaint further alleged that Ms. Burch accepted a \$100 gratuity from Kianoush Tehrani. Formal notice of the complaint was sent by certified mail to Ms. Burch's address on file with the City. The regular and certified mailings were returned to the Ethics Office as undeliverable. Exhibits 1 – 2.

13. Ms. Burch was terminated from employment with the City of Atlanta on June 23, 2014. Exhibits 15 – 16.
14. The Ethics Office interviewed Mr. Tehrani on July 8, 2014. During the interview, Mr. Tehrani again identified Ms. Burch from the same picture provided by the Compliance Unit and signed the picture to acknowledge his positive identification of Ms. Burch. Exhibits 20 – 21.
15. Mr. Tehrani stated that following an inspection at his property, he took an envelope, “put \$100 in there” and gave it to Ms. Burch to show his appreciation to her, and that “she didn’t turn it down.” Exhibit 20.
16. On September 22, 2014, the Ethics Office obtained current information for Ms. Burch and sent a second notice of the complaint to Ms. Burch by certified mail. Ms. Burch signed the return receipt on September 23, 2014. However, Ms. Burch did not provide a written response to the complaint. Exhibits 3 – 4.
17. On October 29, 2014, Ethics Office staff attended Ms. Miller’s hearing appealing her termination before the Civil Service Board. Civil Service Board Hearing Transcript: In the Matter of Martina Miller. 2:19 (October 29, 2014).
18. During the Civil Service Board hearing, Stanley Barnes, kitchen manager at Manuel’s Tavern, testified under oath that Ms. Burch had been coming to Manuel’s Tavern for “a little over three years” and “never paid for a meal” during that time. Exhibit 27.
19. Mr. Barnes testified that at one point, Ms. Burch and her co-worker, Ms. Miller, “ate at Manuel’s Tavern without paying for meals up to two or three days a week, sometimes twice a day in the morning and afternoon on at least four occasions.” Mr. Barnes further testified that Ms. Miller and Ms. Burch received free food to go from Manuel’s Tavern on at least four occasions. Exhibit 27.
20. According to Mr. Barnes, Ms. Burch and Ms. Miller requested an order of wings to take home after they received free lunch at the restaurant on at least three occasions. Mr. Barnes indicated that Ms. Burch and Ms. Miller would enter through the back kitchen door of Manuel’s Tavern, ask who was on the grill that day, and have whoever was on the grill prepare them pork chop or chicken grill sandwiches. Exhibit 27.
21. Mr. Barnes testified that Ms. Burch and Ms. Miller always entered Manuel’s Tavern through the back kitchen door of the restaurant. Further, they received free meals from him because he believed that they were health inspectors with the City and could shut the restaurant down if he did not comply with their requests. Exhibit 27.
22. According to Mr. Barnes, on one occasion Ms. Burch told a member of the kitchen staff of Hispanic origin that if he didn’t fix her food right now she could “get your green card” and have him “out of here at any time.” Mr. Barnes also indicated that, against the restaurant’s wishes, Ms. Burch asked for and received free dessert from the same kitchen staff member. Exhibit 27.
23. During the hearing, Brian Maloof, owner of Manuel’s Tavern, testified under oath that he believed that Ms. Burch was a grease trap inspector and only discovered that she was not once he contacted the City to report his concerns. Mr. Maloof believed that Ms.

Burch was a grease trap inspector because she was “doing everything that the previous grease trap inspector had done.” Exhibit 24.

24. Mr. Maloof stated that he had “no doubt” in his mind that both Ms. Burch and Ms. Miller were representatives from the City because “they came in with their badges hanging off their necks on those little hangers,” “driving city vehicles, wearing shirts with city logos,” and “occasionally carrying clip boards and paperwork.” Further, Mr. Maloof stated that providing free meals became “a cost of doing business with the City of Atlanta,” that he “definitely felt intimidated,” and that if the restaurant didn’t give the food for free, he could potentially be asked to do additional things with his grease traps that could “cost me several thousand dollars in a year.” Exhibit 24.
25. According to Mr. Maloof, the average menu item at Manuel’s Tavern is “eight dollars per person and with a drink becomes ten dollars.” Mr. Maloof estimated that the cost per week for the six months that Ms. Miller accompanied Ms. Burch was approximately \$16 per person. Exhibit 24.
26. Mr. Maloof testified that Ms. Burch and Ms. Miller would arrive at Manuel’s Tavern in “credentialed” City of Atlanta vehicles that were “out there in my parking lot.” Exhibit 24.
27. City records indicate that Ms. Burch was granted the use of a City of Atlanta vehicle between March 1, 2013 and September 7, 2013. Exhibit 28.
28. During the Civil Service Board hearing, Margaret Tanner, Deputy Commissioner with the Department of Watershed Management, Office of Watershed Protection, testified under oath that she received photographs taken by Mr. Maloof of the City of Atlanta vehicles spotted at Manuel’s Tavern. She then used the photos and city vehicle GPS logs to identify Ms. Burch and Ms. Miller as the individuals assigned to the vehicles in question. Civil Service Board Hearing Transcript: In the Matter of Martina Miller. 54:17-23, 55:19-22.
29. City vehicle GPS logs show that Ms. Burch used her city vehicle to travel to Manuel’s Tavern on 24 occasions between March 1, 2013 and September 7, 2013. Exhibit 28.
30. During the Civil Service Board hearing, Ms. Miller testified under oath that “Ms. Burch always drove her city vehicle to Manuel’s Tavern and they would meet up at the restaurant.” Civil Service Board Hearing Transcript: In the Matter of Martina Miller. 79:11-15, 80:12-13.
31. City vehicle GPS logs show that all of Ms. Burch’s travel in her city vehicle between March 1, 2013 and September 7, 2013 took place between the hours of 8 AM and 4:30 PM. Exhibit 28.
32. City vehicle GPS logs show that between March 1, 2013 and September 7, 2013 Ms. Burch used her city vehicle to travel to Publix grocery store on 22 occasions; Kroger grocery store on four occasions; Walgreens on two occasions; and Fulton County Juvenile Court on one occasion. Exhibit 28.
33. On November 20, 2014, the Ethics Office amended the ethics complaint alleging that on several occasions, Ms. Burch used her city assigned vehicle for her private advantage and not official business, and misused city time by conducting personal business during

her city work hours. Formal notice of the amended complaint was sent to Ms. Burch by regular and certified mail. However, Ms. Burch did not provide a written response to the amended complaint. Exhibit 5.

34. On December 19, 2014 and December 30, 2014, the Ethics Office sent formal notice of a probable cause hearing to Ms. Burch by regular and certified mail. However, Ms. Burch did not provide a written response. Exhibits 6 – 7.
35. On January 15, 2015, a probable cause hearing was conducted and the Ethics Board found that sufficient probable cause existed to set the matter down for an enforcement hearing. Ms. Burch was not present at the probable cause hearing. Probable Cause Hearing Transcript: In the Matter of Cynthia Burch. 11:1 – 12:17 (January 15, 2015).
36. On January 23, 2015, the Ethics Office sent a formal request for a pre-trial conference to Ms. Burch by regular and certified mail. However, Ms. Burch did not respond to the request for a pre-trial conference. Exhibit 9.
37. On February 10, 2015, the Ethics Office sent formal notice of the enforcement hearing to Ms. Burch by regular and certified mail. Exhibit 11.
38. On March 10, 2015, the Ethics Office sent formal notice of the Complainant's Submission for Pre-Enforcement Hearing Order by regular mail. Exhibit 12.
39. Under the Code of Ethics, Kianoush Tehrani is a prohibited source because as a developer, he seeks official action from the City in the form of inspections and construction-related permits. Exhibit 17.
40. Ms. Burch accepted a gratuity from a prohibited source when she accepted \$100 from Mr. Tehrani. Exhibits 17 – 21.
41. Under the Code of Ethics, Manuel's Tavern is a prohibited source because it routinely seeks official action from the City as a result of grease trap and other inspections required by the Department of Watershed Management. Exhibit 23.
42. Ms. Burch accepted a gratuity from a prohibited source when she obtained meals and food services free of charge from Manuel's Tavern. Exhibits 22 – 27.
43. Ms. Burch solicited free meals and food services from Manuel's Tavern for her private advantage while using her apparent authority as a health inspector or grease trap inspector with the City of Atlanta to coerce Manuel's Tavern employees into preparing food for her and to coerce the restaurant into giving her free meals. Exhibits 22 – 27.
44. Ms. Burch misused a city vehicle for her private advantage by traveling to Manuel's Tavern to solicit and obtain free meals and food services and by traveling to other private establishments during her assigned city work hours. Exhibits 22 – 28.
45. Ms. Burch misused city time for her private advantage by using her assigned city work hours to solicit and obtain free meals and food services and to travel to other private establishments for her personal benefit. Exhibits 22 – 28.

Conclusions of Law

46. The Code of Ethics is found in the Standards of Conduct of the City of Atlanta's Code of Ordinances. See Atlanta, Ga., Code §§ 2-801 to 2-825 (part II, art. VII, div. 2).
47. Section 2-817 states that "no official or employee shall accept any gratuity as defined in section 2-801(g)." Section 2-801 (g) defines a gratuity as "anything of value given by or received from a prohibited source", where a prohibited source "means any person, business or entity that an official or employee knows or should know: (1) is seeking official action from the city."
48. Section 2-818 states that "no official or employee shall solicit or accept anything of value, in any form whatsoever, calculated to influence a vote, decision, or the exercise of official authority in any manner involving the city."
49. Section 2-811 states that "no official or employee shall request, use or permit the use of any publicly owned or publicly supported property, vehicle, equipment, labor or service for the private advantage of such official or employee or any other person or private entity."
50. Section 2-807 provides that the Board of Ethics may assess an administrative sanction of \$1,000 for any intentional violation of the ethical standards, as well as issue a public reprimand against the violator.
51. The Board finds that Respondent accepted a gratuity from Kianoush Tehrani, a prohibited source, in violation of Section 2-817, when she accepted \$100 from him.
52. The Board finds that Respondent accepted a gratuity from Manuel's Tavern, a prohibited source, in violation of Section 2-817 when she obtained meals and food services free of charge.
53. The Board finds that Respondent violated Section 2-818 when she solicited free meals and food services from Manuel's Tavern for her private advantage while using her apparent authority as a health inspector or grease trap inspector with the City of Atlanta to coerce Manuel's Tavern employees into preparing food for her and to coerce the restaurant into giving her free meals.
54. The Board finds that Respondent misused a city vehicle for her private advantage in violation of Section 2-811 by traveling to Manuel's Tavern to solicit and obtain free meals and food services and by traveling to other private establishments during her assigned city work hours.
55. The Board finds that Respondent misused city time for her private advantage in violation of Section 2-811 by using her assigned city work hours to solicit and obtain free meals and food services and to travel to other private establishments for her personal benefit.

Sanctions

56. The Board issues a public reprimand for Respondent which should be forwarded to the Department of Human Resources for inclusion in her employment file and payment of the fine imposed by the Ethics Board must be paid prior to Ms. Burch's re-employment

by the City, should she ever be considered for such.

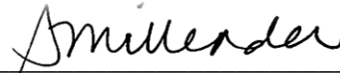
57. The Board imposes an administrative sanction of \$1,000 against Respondent for each of the five counts for a total of \$5,000.

58. The Board orders that this matter be referred to the City Solicitor's Office for prosecution if Respondent fails to pay the imposed fine within 30 days of this Order.

The Respondent has the right to appeal this opinion and order by seeking review by writ of certiorari to the superior court of the county. See Atlanta, Ga., Code §2-807(d).

So ordered this 31st day of March, 2015.

For the City of Atlanta Board of Ethics



Shukura Ingram Millender
Chair

Index of Exhibits

Exhibit	Description
1	Notice of Ethics Complaint No. CO-14-013
2	Regular Mail – Return to sender from address of record for Ethics Complaint No. CO-14-013
3	Second notice of Ethics Complaint No. CO-14-013
4	Certified mail – return receipt for Second Notice of Ethics Complaint No. CO-14-013, signed by Ms. Burch
5	Notice of Amended Ethics Complaint No. CO-14-013
6	Notice of Probable Cause Hearing
7	Second Notice of Probable Cause Hearing
8	Certified mail – return to sender, unclaimed, for Amended Ethics Complaint No. CO-14-013
9	Complainant’s Request for Pre-Trial Conference
10	Certified mail – return to sender, unclaimed, for Notice of Probable Cause Hearing
11	Notice of Enforcement Hearing
12	Notice of Complainant’s Submission for Pre-Enforcement Hearing Order
13	Document showing job title for Cynthia Burch
14	Job description for Environmental Compliance Officer position
15	Separation Notice from State of Georgia Department of Labor

Exhibit	Description
16	Department of Human Resources turn around document showing date and reason for dismissal
17	Department of Law's Compliance Unit Investigative Report, Exhibit #8 – Ms. Burch inspection log
18	Google Map showing location of 1199 Barnes Street NW
19	Department of Law's Compliance Unit Investigative Report, pp. 5-6
20	Transcript of Ethics Office Interview with Kianoush Tehrani, pp. 2-3
21	Department of Law's Compliance Unit Investigative Report, Exhibit #9 – Photograph of Ms. Burch signed by Kianoush Tehrani
22	Google Map showing location of Manuel's Tavern
23	City of Atlanta Grease Management Ordinance, Sec. 154-297
24	Civil Service Board Hearing Transcript of Proceedings – In the Matter of Martina Miller – Sworn Testimony of Brian Maloof, pp. 32-51
25	Department of Law's Compliance Unit Investigative Report, Exhibit #3 – Photograph of Ms. Burch signed by Brian Maloof
26	Department of Law's Compliance Unit Investigative Report, Exhibit #6 – Photograph of Ms. Burch signed by Stanley Barnes
27	Civil Service Board Hearing Transcript of Proceedings – In the Matter of Martina Miller – Sworn Testimony of Stanley Barnes, pp. 17-32
28	Department of Law's Compliance Unit Investigative Report, Exhibit #1 – Ms. Burch city vehicle GPS log and landmarks