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**City and County of Denver**

**DENVER BOARD OF ETHICS**  
**2020 ANNUAL REPORT**

**Submitted: February 15, 2021**



**2020**

## Introduction

The Denver Board of Ethics hereby submits its twentieth annual report to the Mayor and City Council, as required by Section 2-66 of the Denver Code of Ethics.

The mission of the Board of Ethics is:

*To encourage and guide city officers, officials and employees to adhere to high levels of ethical conduct so that the public will have confidence that persons in positions of public responsibility are acting for the benefit of the public.*

Brief biographies of the current members of the Denver Board of Ethics (all unpaid volunteers) are below in Appendix A. In 2020, there were no changes to the composition of the Board.

The Board expresses appreciation to all City elected officials, employees, board and commission members, and citizens who requested ethics advice, guidance, or help in 2020.

The Board and its Executive Director continued to receive and respond to a variety of requests. City personnel who need formal guidance about whether a specific action could violate the Code of Ethics file requests for an advisory opinion from the Board. Alternately, if Denver residents or City employees believe that any city personnel may have violated the ethics code, they can submit a written complaint or inquiry to the Board.

The Board held monthly meetings to discuss and decide advisory questions and to screen or consider evidence related to pending complaints concerning violations of the Denver Code of Ethics. In February of 2020, the Board held its first public hearing in many years. The Board was unable to hold a meeting in April of 2020 due to conflicting advice with respect to meeting virtually. The Board transitioned to virtual meetings beginning in May, with the ability of interested persons to join in the public portion of the meeting via virtual platform. While some difficulties have arisen, this medium generally has been effective, particularly given the circumstances.

Since 2001, the Board has authorized its Executive Director to provide unofficial advice to residents or city personnel who have ethics-related questions. In 2020, the Executive Director continued to provide immediate feedback if a question was easily answered. If an inquiry was more complicated, the Executive Director recommended the matter be submitted to the Board for an official advisory opinion

## Advisory Opinions, Waivers, Complaints

In 2020, the Board received a total of 31 formal cases, as compared with:

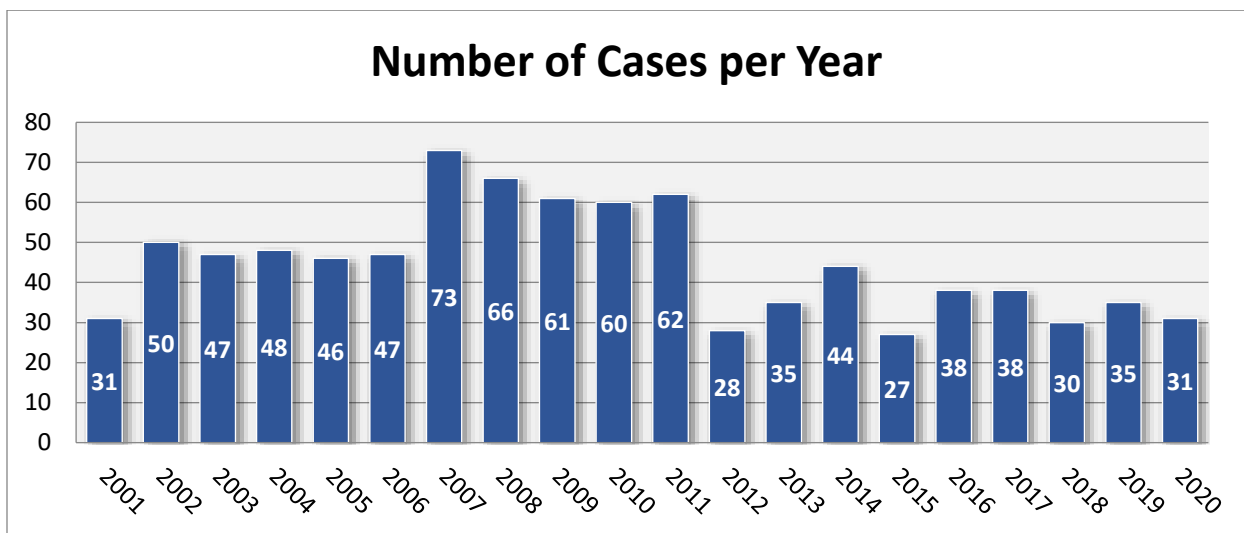
- 35 cases in 2019
- 30 cases in 2018
- 38 cases in 2017
- 27 cases in 2016
- 44 cases in 2015
- 35 cases in 2014
- 28 cases in 2013
- 62 cases in 2012
- 60 cases in 2011
- 61 cases in 2010
- 66 cases in 2009
- 73 cases in 2008

- 47 cases in 2007
- 46 cases in 2006
- 46 cases in 2005
- 48 cases in 2004
- 47 cases in 2003
- 50 cases in 2002
- 31 cases in 2001

Twenty of the formal cases received in 2020 were requests for advisory opinions and or waivers, while eleven were complaints.

The City’s ethics code requires the Board to provide an advisory opinion within six weeks of the time it received a written request unless the Board provides written notice explaining the reason for delay. The ethics code also empowers the Board to grant a waiver to an individual who requests an advisory opinion, if the Board finds the proposed action would violate the Code of Ethics but is nevertheless in the best interests of the City.

The ethics code describes the process for filing an inquiry or complaint with the Board of Ethics. Within 31 days of receiving the complaint, the Board screens the information provided. This occurs during executive session of its monthly meeting, as necessary.



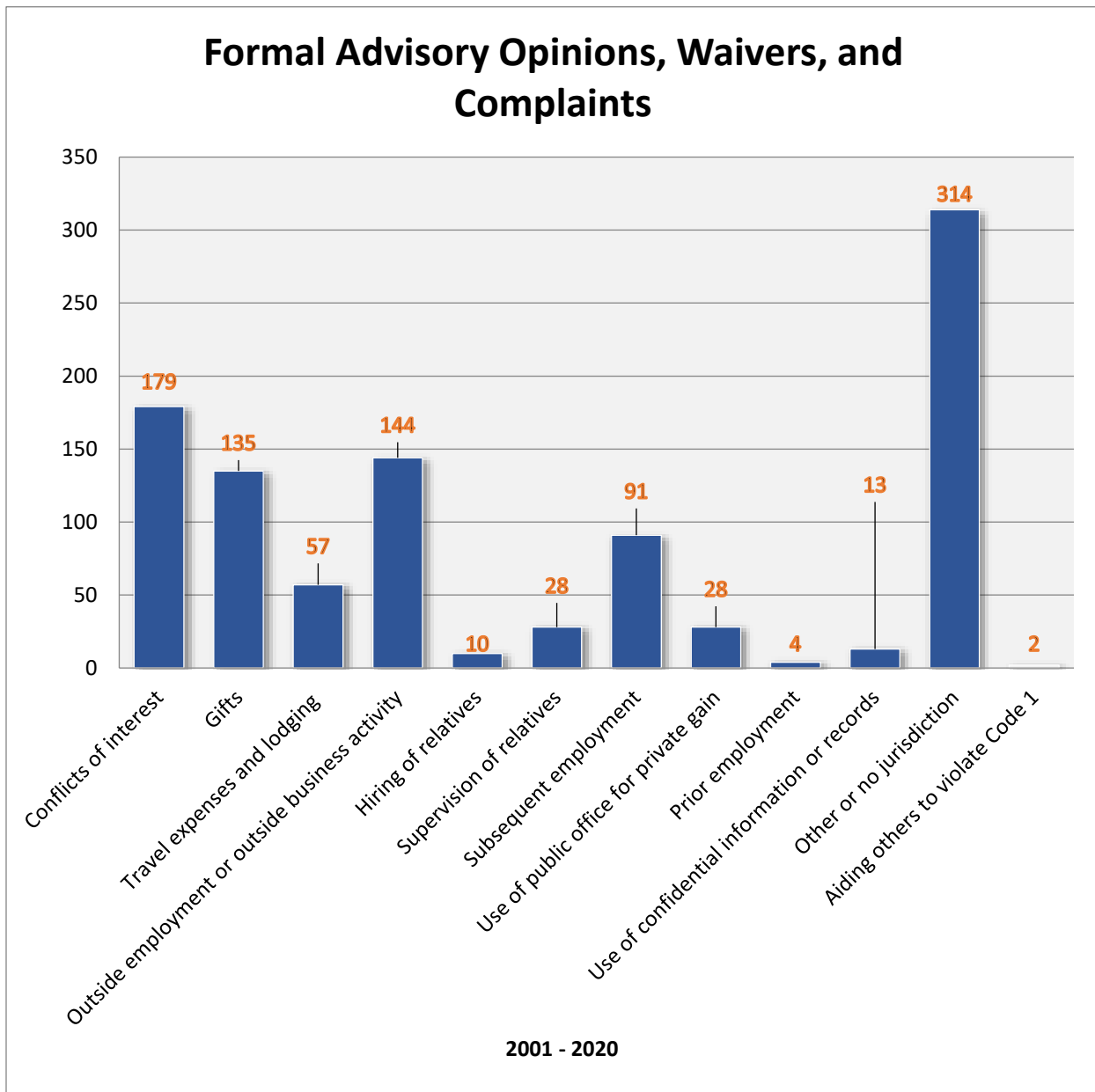
A digest of the Board's 2020 opinions is presented below as Appendix B and is posted on the Board of Ethics website at <http://www.denvergov.org/ethics>. The Board will seek to post full opinions on the website in 2021.

Between the passage of the new Denver Code of Ethics in January 2001 and December 31, 2020, the Board of Ethics has received a total of 1,004 written formal cases.

The subjects of the requests for formal advisory opinions or waivers and complaints decided during the entire 2001 - 2020 period break down as follows, with the number of 2020 cases in parentheses:

- conflicts of interest – 179 (8)
- gifts – 135 (3)
- travel expenses and lodging – 57 (1)
- outside employment or outside business activity– 144 (3)
- hiring of relatives – 10 (1)
- supervision of relatives – 28 (1)
- subsequent employment – 91 (2)
- use of public office for private gain – 28 (1)
- prior employment – 4 (0)
- use of confidential information or records - 13 (3)
- other or no jurisdiction – 314 (10)
- aiding others to violate Code - 2 (1)

*(Some requests involved more than one subject.)*



In addition to the written official complaints and requests for advisory opinions and waivers, the Board’s Executive Director in 2020 received approximately 277 telephone, e-mail, or in-person requests for unofficial, informal consultation about either the Code of Ethics or other ethics issues, as compared with:

- 281 in 2019
- 212 in 2018

- 237 in 2017
- 271 in 2016
- 225 in 2015
- 249 in 2014
- 223 in 2013
- 275 in 2012
- 309 in 2011
- 249 in 2010
- 260 in 2009
- 277 in 2008
- 277 in 2007
- 254 in 2006
- 266 in 2005
- 249 in 2004
- 192 in 2003
- 130 in 2002
- 50 in 2001

The Board and its Executive Director strive for and take pride in responding promptly and thoroughly.

### III. Ethics Handbook

As there were no amendments to the Code of Ethics in 2020, the Board did not revise the ethics handbook, however; the 2018 ethics handbook can be found at [www.denvergov.org/ethics](http://www.denvergov.org/ethics). In addition, the Board of Ethics has many hard copies of the 2018 ethics handbook available for city personnel or citizens who request them through the Board's Executive Director: [lori.weiser@denvergov.org](mailto:lori.weiser@denvergov.org).

### IV. Ethics Training

Consistent, comprehensive ethics training is critical to the successful implementation of the citywide ethics program. All city employees, officers, and officials should be trained both to recognize ethical issues and to take appropriate steps to avoid unethical conduct.

In 2006, with support from the Board of Ethics, the Career Service Authority Board amended Career Service Rule 6 (now included in Rule 5) to require that new CSA employees, including Deputy Sheriffs, receive ethics training before they can pass their probationary period.

From 2002 through the end of November 2015, all new city employees and officers subject to the Code of Ethics received three hours of ethics training either in a classroom or one-on-one with the Board's Executive Director. In December 2015, most classroom ethics training was changed to online ethics training through the Ethics and Public Accountability course, developed by the Board of Ethics and the Training and Organizational Development Practice of the Office of Human Resources.



In 2020, online ethics training was given to 1,184 city employees. Additionally, approximately 150 new recruits in the Police and Fire Department Academies received virtual or in-person classroom training from the Board's Executive Director. In 2020 the Executive Director also gave individual ethics training to new Mayoral appointees and new upper-level hires. In 2021 and future years, online training will be the primary method of ethics training for new Career Service Authority employees, and the Board's Executive Director will continue to give in-person ethics training to Mayoral appointees and new recruits in the Police and Fire and Department Academies.

In-person ethics training to new mayoral appointees and City Council members is vital.

## V. Other Matters

### COVID-19 Global Pandemic

Alongside the rest of the world, the Denver Board of Ethics was affected by the global COVID-19 pandemic. COVID-19 impacted the way the Board functions as a body, the Executive Director's ability to conduct in-person ethics training, and financial planning.

The adopted 2020 budget for the Board of Ethics was \$181,233 as compared to \$219,233 in 2019. The 2019 budget was larger due to the need to hire and onboard a new Executive Director following the retirement of the Board's long-time Executive Director, Michael Henry.

The Board and the Executive Director realize the importance in sharing responsibility for the addressing the financial effects of the pandemic by participating in budget reductions for 2020 and 2021. The Board achieved \$4,849 in mid-year budget reductions with the Executive Director taking eight unpaid furlough days.

## Audit

In February of 2020, after months of diligent work by the Denver Auditor’s Office, an Audit Report was publicly released documenting findings and recommendations for the Board of Ethics. The Board and its Executive Director thereafter worked tirelessly to implement the recommendations that stemmed from this audit. The full Report can be found here: <https://www.denverauditor.org/project/board-of-ethics-and-clerk-and-recorders-office/>.

## Staff

The Executive Director is the sole employee of the Board and 2020 was the first full year of service by Lori Weiser, who stepped into the role after the retirement of Michael Henry, in September of 2019. The Board encourages citizens and city employees, officers and officials to contact her at 720-865-8412 or at [lori.weiser@denvergov.org](mailto:lori.weiser@denvergov.org).

## Recommendations for amending the code of ethics

The Board strongly believes that gifts by City agencies to employees, officers or officials, should be regulated by Section 2-60 of the Code of Ethics as these gifts are often made to seek special influence. Thus, the Board would support a change to Section 2-52(f) to include any City agency in the term “donor.”

The Board also supports an amending the Code of Ethics to allow for the acceptance and investigation of anonymous complaints concerning violations of the Code. To further this objective, the Board presented a draft of proposed language for amending the Code to a number of stakeholders in December of 2020. At the same time, the Board proposed language to amend the Code to explicitly authorize Board-initiated investigations.

In 2020, the Board worked cooperatively with the Office of the Clerk and Recorder to review and update the financial and gift disclosure processes.

## Nomination committee

As a result of the 2017 amendments to the Code of Ethics, a Board of Ethics Nomination Committee was appointed to screen applications to serve on the Board of Ethics. The committee consists of Brian Spano (appointed by the Mayor), Michael Lopez (appointed by City Council) and Michelle Stermer (appointed by the Presiding Judge of the County Court).

## VI. 2021 Goals for Board of Ethics

- A. Continue to pursue amendments to the Code of Ethics pursuant to the audit recommendations.
- B. Continue to implement and improve ethics training  
The Board of Ethics, in cooperation with the Office of Human Resources (OHR), oversees the delivery of ethics training for all Denver officers, officials and employees. The Board will in 2021 continue to pursue this goal by encouraging accuracy, consistency and high-quality ethics training with cooperation from OHR and city departments. The Board will monitor the evaluations from new city employees who have taken the online ethics training and make continuous improvements. The Board will emphasize the importance of, and need for ongoing, ethics training.
- C. Continue to receive, review, and promptly decide requests for advisory opinions, requests for waivers, and complaints alleging misconduct
- D. Improve public information about Code of Ethics
  - a) Review, update, and improve the Board's website.
  - b) Provide information about the Code and the Board of Ethics to submit to city departmental newsletters and the city employee bulletins or newsletters.

- c) Organize and publicize at least one citywide and/or departmental informational lunchtime or after-work discussion of ethics issues per year. Seek public comments at the meetings and otherwise about ethics concerns of city employees and citizens. Work to implement recommendations stemming from the audit of the citywide ethics program

**E. Improve communications about ethics issues with City Council, the Mayor’s Office and City departments**

## VII. Conclusion

The Board of Ethics, with help from the Mayor, City Council, the City Attorney’s Office, the Office of Human Resources, and the majority of managers and employees of the City and County of Denver, it continued its progress in 2020 to establish ethics as a recognized core value and to cultivate public confidence in Denver City government. The Board looks forward to continuing this mission in 2021.

Respectfully submitted on behalf of the Denver Board of Ethics,



Joseph G. Michaels

Chair

# APPENDIX A

## DENVER BOARD OF ETHICS

### Board Members as of December 2020

**Chair, Joseph G. Michaels** is a Senior Assistant Attorney General for the Colorado Attorney General, where his practice focuses on appellate and criminal law. He received his J.D. from the University of Iowa College of Law. After law school, he clerked for the Hon. Arthur P. Roy at the Colorado Court of Appeals. He also is an adjunct instructor for the Community College of Denver's paralegal program and a member of the Colorado Bar Association's Ethics Committee. He was appointed by City Council to a term that expires on June 19, 2023. He serves in an individual capacity, and his views do not reflect those of the Colorado Attorney General.

**Vice-Chair, Dianne Criswell** is General Counsel to the Colorado Special District Risk Pool, Firefighter Benefit Trust, and the Colorado Special District Association. She graduated from the University of Washington Law School and is licensed in Colorado and Washington State (inactive). Previously, she served as Revenue Counsel to the Washington State Senate and as Legislative Counsel at the Colorado Municipal League. Appointed by the Mayor, her term will expire May 1, 2023.

**Employee representative, Sylvia S. Smith** has been employed with the City and County of Denver in a variety of capacities - from Director of Policy and Research in the Auditor's Office to her current position as a Neighborhood Manager with the Denver Office of Economic Development where she oversees the Neighborhood team charged with program services and facility improvement project investments. She holds a B. A. in Political Science from the University of Colorado at Denver. She has been active in many organizations including the Colorado Black Women for Political Action, Single Mothers of Color, Inc., National Council of Negro Women, Inc., Denver Section and Colorado Common Cause. She currently serves as a Commissioner for the Denver Asian American Pacific Islander Commission. Appointed by the Mayor and City Council to two terms, ending June 24, 2021. She served as Vice-Chair of the Board from 2015 to 2017.

**Former judicial officer, Andrew S. Armatas** earned his B. A. at the University of Colorado at Boulder and his J. D. from the University of Denver. He served as a Denver Assistant City Attorney, a partner in a Denver law firm, City Attorney for Broomfield and a Denver County Court Judge, before retiring in January 2013 after 23 years of service on the bench. During seven of those years, he served as Presiding Judge of the Denver County Court. He was appointed by the Mayor to two terms, ending April 30, 2021.

**Member, Jane T. Feldman** was the Executive Director of the Colorado Independent Ethics Commission for nearly six years. Prior to that, she was a First Assistant Attorney General in the Natural Resources Section of the Colorado Attorney General's Office, and an Assistant Attorney General in the Criminal Enforcement Section. She began her legal career in the New York County District Attorney's Office in New York City. She is a magna cum laude graduate of the Benjamin N. Cardozo School of Law. She served on the Steering Committee and as President of the Council on Government Ethics Laws (COGEL). She previously served on the Denver Board of Ethics in 2015, but resigned in December of 2015, because she moved to New York State to serve as the Executive Director of the Office of Ethics and Compliance for the New York State Assembly. She served for a year and a half in that position before returning to Colorado in 2017. She currently is the Principal of Rocky Mountain Ethics Consulting, which advises local governments on ethics issues, and she has acted as pro bono counsel in several immigration cases. She was appointed by City Council to a term that will expire on April 20, 2021.

The Board recognizes and thanks Jordan Humphreys, Senior Assistant City Attorney, for his counsel and guidance throughout the year.

# APPENDIX B

## DENVER BOARD OF ETHICS

### DIGEST OF OPINIONS

#### JANUARY 1– DECEMBER 31, 2020

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*PLEASE NOTE: This is a set of summarized opinions given by the Denver Board of Ethics between January 1 and December 31, 2020 in response to fact-specific requests for advisory opinions or complaints.*

*These opinions should not be used as conclusive guidance for situations where the facts may differ. Please contact the Board of Ethics to discuss any specific issues you may have.*

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## **Cases 19-25, 19-27 & 19-28 (complaint, conflict of interest while employed, outside employment or business activity, use of public office for private gain)**

Case 19-25 involved a complaint filed by an Associate Inspector for the Department of Community Planning and Development (“CPD”), concerning the Chief Building Official for CPD. Case 19-27 involved a complaint filed by an Electrical Inspector from CPD concerning the same Chief Building Official. Case 19-28 involved a complaint filed by an Associate City Inspector, also against the Chief Building Official. All three complainants alleged a violation of Section 2-61, Conflict of Interest while Employed. The Board of Ethics found as follows:

Denver Board of Ethics Case Nos. 19-25, 19-27, and 19-28

Complaints Concerning Chief Building Official, Department of Community Planning and Development

### **DECISION**

On January 8, 2020, pursuant to Section 2-56(7) of the Denver Code of Ethics, the Denver Board of Ethics deliberated on the written materials received in cases 19-25, 19-26, and 19-28—complaints concerning the Chief Building Official for the City and County of Denver.

The Board members in attendance were Joseph G. Michaels, presiding, Andrew S. Armatas, and Jane T. Feldman. Participating by telephone were Board members Dianne Criswell and Sylvia S. Smith.

In case number 19-25, a complaint was filed by an Associate City Inspector in the Department of Community Planning and Development (“CPD”), on September 20, 2019, alleging that the Chief Building Official engaged in activity which violated the Denver Code of Ethics and was inconsistent with the advice given to him by the Board in case number 18-23. Thereafter, in case number 19-27, an Electrical Inspector with CPD filed a complaint on October 1, 2019, citing similar allegations. On October 2, 2019, an Associate City Inspector with CPD filed a complaint in case number 19-28, relying on the facts that form the basis of the allegations in case 19-25 and further alleging disparity in treatment by CPD.

On October 16, 2019, the Board screened the complaints as required by Section 2-56(6) of the Code of Ethics and determined that the complaints could not be dismissed; on the contrary, further investigation was necessary to determine if a hearing was warranted, pursuant to Article VII, Rule 7 of the Board’s Rules of Procedure.

On November 20, 2019, the Board considered the additional information gathered through further investigation, and it decided that a Notice of Hearing would be issued pursuant to Article VII, Rule 8 of the Rules of Procedure.

The Board issued the Notice of Hearing on November 22, 2019, requiring an Answer from the Chief Building Official within 20 days. That Answer was received on December 10, 2019. In his Answer, the Chief Building Official expressly stated he did not wish to exercise his right to a public hearing on the complaints.

The following documents were before the Board on January 8, 2020:

- Advisory Opinion in case 18-23, issued by the Denver Board of Ethics
- Complaint in case number 19-25
- Response to complaint 19-25, received on September 23, 2019
- Complaint in case number 19-27
- Complaint in case number 19-28
- Response to complaints 19-27 and 19-28, received on October 7, 2019
- Answer to Notice of Hearing, received on December 10, 2019

- Letter from Executive Director of CPD, to the Board of Ethics, dated January 3, 2020
- Letter from Chief Building Official to Executive Director of CPD, dated January 3, 2020
- Email chain between Chief Building Official and CPD employees dated May 16, 2019, requesting assistance with logging in documents
- A Tweet sent by the Chief Building Official on October 11, 2019, from his personal Twitter account, advertising an Open House for his private business

The Board, having reviewed this documentation, hereby enters the following findings and unanimous decision:

- 1) In the fall of 2018, the Chief Building Official for the City of Denver’s Department of Community Planning and Development, requested an advisory opinion from the Denver Board of Ethics as to whether he would violate the Denver Code of Ethics if he were to act as the Chief Executive Officer of Hip Homes, LLC, a company whose primary purpose was stated to be to the manufacture of modular homes. In that request, he stated that his role would “be focused on a national level and will not target Denver developers or other local entities.”
- 2) In the Advisory Opinion, the Board of Ethics determined that the Chief Building Official would violate the Denver Code of Ethics if he were to:
  - (a) have any involvement as Denver’s Chief Building Official, in the permitting, development, construction or problem-resolution of any Hip Homes project in the City and County of Denver;
  - (b) supervise anyone else in CPD who does so; or
  - (c) assist any purchasers of Hip Homes manufactured modular homes to obtain permits, licenses, or other approvals from the City of Denver.
- 3) The guidance given by the Board to ensure the Chief Building Official did not violate any provision of the Code was that he:

- Obtain written approval from his appointing authority for the outside business on an annual basis.
  - Use no city resources, such as city time, computers, paper, telephone, etc., for his outside business.
  - Have nothing whatsoever to do in his city position with permitting, inspections, construction or arranging for utilities for the company's customers.
  - Have nothing whatsoever to do in his city position with permitting, inspections, construction or arranging for utilities for any Hip Homes fabrication plant inside the City and County of Denver.
  - Recuse himself from any attempt at problem-resolution if any problems occur on any projects of Hip Homes' Denver customers.
  - Not mention in any advertising for Hip Homes his employment by the City and County of Denver.
- 4) On September 12, 2019, an Associate City Inspector in the Department of Community Planning and Development (CPD) went to 2650 W. Asbury Avenue in Denver to conduct an inspection. Upon his arrival, he learned that the plans for the development did not have a stamp of approval or cover sheet conveying that the plans had been previously approved. In other words, the Inspector identified a problem with the plans that needed to be remedied before an inspection would have been proper.
- 5) A site representative was also at the home at the time and, when he noticed the Inspector leaving the premises, he questioned whether the inspection had been completed. The Inspector explained what he needed to go forward and asked the site representative if he could call the general contractor.

- 6) The site representative placed the call, told the Inspector that the person's name was Scott, and gave the phone to the Inspector. The Inspector was thereafter questioned about whether the job can be completed using the Inspector's iPad to retrieve the necessary information. A conversation ensued, ultimately ending with the Inspector's offer to come back once the necessary paperwork was obtained. The Inspector reports that upon handing the phone back to the site representative he noticed the contact information on the device showed that it was the Chief Building Official who had been called.
- 7) The Inspector confirmed with the site representative that it was the Chief Building Official on the phone. The Inspector then made the decision to go forward with the inspection and had the site representative call the Chief Building Official and inform him of that.
- 8) The Chief Building Official agreed that the Inspector reported to the project at 2650 W. Asbury Avenue in Denver and that the site representative placed a call to him to clarify what was needed. The Chief Building Official stated that he did not identify himself because he did not want to "interfere or create any uneasiness with the inspector".
- 9) The Chief Building Official acknowledged that he asked the Inspector to rely on his iPad to complete the inspection, stating that this is standard protocol for inspectors.
- 10) The Chief Building Official stated in his response that "in retrospect, I should not have taken the call, however, I knew it was going to a process related item and not a technical item since this property does not have any bulk plane concerns."
- 11) An Electrical Inspector in the Department of Community Planning and Development, in addition to believing that by engaging in a telephone conversation with the Inspector the Chief Building Official did not follow the guidance of the Board in case 18-23, believes that the Chief Building Official acted "to use city time and resources for his outside business" by holding a meeting with the inspection team on September 19, 2019.

- 12) In responding to these allegations, the Chief Building Official agrees that he held an “impromptu meeting” during business hours with the primary purpose of telling the inspectors that they were to give no preferential treatment to projects they are inspecting if they become aware that Hip Homes, LLC is involved in the development.
- 13) An Associate City Inspector in the Department of Community Planning and Development left the city shortly after filing her complaint. She became aware of the telephone conversation between the Inspector and the Chief Building Official. She is also the co-owner of a small roofing company and she was given approval from her appointing authority to conduct this outside business activity so long as she did not operate within the City and County of Denver. She believes that she has been treated unfairly because she was limited in this way when the Chief Building Official was not.
- 14) Conflicts of interest are regulated by Section 2-61 of the Denver Code of Ethics:

**Sec. 2-61. Conflict of interest while employed.**

The purpose of this section is to avoid influence on the official actions of city officers, employees, or officials by their private or family interests,

(a) Except when advised by the city attorney that the rule of necessity applies, an officer, official, or employee shall not take direct official action on a matter before the city if he or she or a member of the immediate family, a business associate or an employer other than the city of the officer, official or employee has any substantial employment, contractual, or financial interest in that matter. A substantial interest shall be deemed to exist if:

- (1) He or she or a member of the immediate family, a business associate or an employer other than the city is the other party in the matter; . . .

- 15) The Chief Building Official's wife is listed with the Secretary of State as the owner of Hip Homes, LLC. Hip Homes, LLC is a pre-manufactured home building company that designs and builds homes as a kit of parts, where some work is completed in a factory and some work is completed in the field.
- 16) The property located at 2650 W. Asbury Avenue in Denver, Colorado, is the site of the first project for Hip Homes, LLC. The property was initially owned by Altamont Investments, LLC, until November 15, 2019, when the Chief Building Official and his wife personally purchased the property as they had an agreement to buy the property if it did not sell.
- 17) As his spouse, the wife is a member of the Chief Building Official's immediate family pursuant to Section 2-52(c) of the Code of Ethics, which provides: "Immediate family means husband, *wife*, son, daughter," etc. (Emphasis added.)
- 18) The Code of Ethics provides the following definition of direct official action in Section 2-52:
- (b) *Direct official action* means any action which involves: ...
- (2) Enforcing laws or regulations or issuing, enforcing, or regulating permits, licenses, benefits, or payments; ...
- 19) By engaging in a discussion over the phone with the Inspector to further an inspection of 2650 W. Asbury Avenue, particularly in the roles of problem-solving an inspection deficiency and in urging the Inspector to forego normal inspection protocol and complete an inspection for the Chief Building Official's property without the necessary approved plans on hand, as well as by sending emails requesting that CPD employees act on documents submitted with respect to the development of 2650 W. Asbury Avenue, the Chief Building Official took direct official action on the Hip Homes, LLC project, thereby violating Section 2-61 of the Denver Code of Ethics. As will be discussed below, this also violated the precise caution this Board issued to the Chief Building Official in advisory opinion 18-23, when it directed him to recuse from any problem-solving responsibilities related to Hip Homes, LLC.

- 20) The Code of Ethics also regulates outside employment or business activity. It provides, in part:

**Sec. 2-63 Outside employment or business activity.**

The purpose of this section is to avoid possible conflicts of interest and time conflicts between city jobs and outside employment or business activity...

(e) City resources may not be used for any outside employment or outside business activity.

- 21) The Board of Ethics counseled the Chief Building Official not to use any city resources, including but not limited to city time, computers, paper and telephone.
- 22) The Chief Building Official held a meeting during business hours to communicate the mission of Hip Homes, LLC to the inspection teams, and to tell the teams not to give preferential treatment to any Hip Homes, LLC project, in violation of Section 2-63 of the Code of Ethics. In this respect, the Chief Building Official violated not only this Board's prior directive, but also the Code of Ethics itself.
- 23) Further, contrary to the cautions this Board issued in advisory opinion 18-23, investigation revealed that the Chief Building Official also used his Twitter account to promote an open house for Hip Homes, LLC, under the guise of his official city title. Specifically, his Twitter account promoted his official title and role with the City of Denver, and his Twitter feed encouraged the above-referenced Hip Homes, LLC event. This action violated Section 2-67 of the Code of Ethics. That section provides:

**Sec. 2-67. Use of public office for private gain.**



No officer, official or employee shall use his or her public office or position or disclose or use confidential information in order to obtain private gain for himself or herself, for his or her immediate family, for any business entity with which he or she is affiliated or for any person or entity with whom the officer, official or employee is negotiating or has any arrangement concerning prospective employment.

- 24) The Chief Building Official's conduct fundamentally undermines the public's trust and confidence in city employees. He never should have been the point of contact for Hip Homes, LLC and should not have communicated with his supervisees with respect to his outside business activity.
- 25) The Board's prior advisory opinion, 18-23, provides the following, and the Chief Building Official violated each of the following:
- Use no city resources, such as city time, computers, paper, telephone, etc., for his outside business. The Chief Building Official's calling of the meeting, answering the Inspector's phone call, and responding to the inspection issues each violated this limitation.
  - Have nothing whatsoever to do in his city position with permitting, inspections, construction or arranging for utilities for the company's customers. The Chief Building Official's conversation with the Inspector directly implicated the inspection of a Hip Homes, LLC property. The Chief Building Official should have recused from this process, as well as from involvement of any Hip Homes, LLC developments in the City and County of Denver, which would have avoided this situation from the outset.

- Have nothing whatsoever to do in his city position with permitting, inspections, construction or arranging for utilities for any Hip Homes fabrication plant inside the City and County of Denver. As above, this directive was clear. The Chief Building Official should never have been the contact person for the West Asbury property. Being involved put the Inspector in an untenable position, in addition to the Chief Building Official misusing his role and authority as an officer of the City.
- Recuse himself from any attempt at problem-resolution if any problems occur on any projects of Hip Homes' Denver customers. The Chief Building Official directly involved himself in problem resolution of the West Asbury home. While he attempted, subsequently, to tell his team not to engage him in problem solving, that prophylactic should have been in place long before Hip Homes, LLC was engaged in a Denver project. His impromptu meeting to tell his team not to provide special consideration to Hip Homes, LLC instead of creating a bright line rule, simply muddled the problem further.
- Not mention in any advertising for Hip Homes his employment by the City and County of Denver. The Chief Building Official's Twitter announcement directly, impermissible, and shockingly violated this seemingly straightforward prohibition.

26) The Board notes that the Chief Building Official's appointing authority has recently set forth measures that will be taken to avoid future violations of the Code. While this is laudatory, it does not change the fact that the violations occurred. More to the point, however, is that these protections should have been in place earlier. They were, in fact, explicitly called for in the Board's 2018 advisory opinion. The Chief Building Official's conduct flagrantly disregarded that advisory opinion's directives, which would have prevented the impropriety and the appearance of impropriety, and the City's image is the worse for it.

- 27) The Board wishes to underscore the expectation that no outside business activity will be conducted in city facilities or on city time. There should be no phone calls taken or emails sent having to do with outside employment while serving in an official capacity.
- 28) The Board thanks and commends the three employees for filing complaints with the Board of Ethics.
- 29) Under the Code of Ethics, the Board does not have the authority to independently sanction the Chief Building Official. That responsibility belongs to his appointing authority. It is the Board's hope that the Chief Building Official's appointing authority will take this public censure seriously and will discipline him accordingly.
- 30) Consistent with the Code of Ethics and the Board's Rules of Procedure, the matter is referred to the appointing authority, the Executive Director of the Department of Community Planning and Development, for appropriate action. The Board expects the appointing authority to respond to this decision, implement procedures to prevent any recurrence, and for the Chief Building Official to abstain in any involvement with Hip Homes in the City and County of Denver while he is employed by the City.

### **Case 19-32 (complaint, use of public office for private gain)**

A Project Inspector in the Division of Human Rights & Community Partnerships submitted a complaint concerning the Director of Disability Rights in the Division of Human Rights & Community Partnerships ("the Director"), with regards to a particular hiring process when the Division extended a request for proposals for an Independent Licensed Contractor to perform and continue work consistent with a Department of Justice settlement agreement.

The Project Inspector alleged irregularities in the scoring process that, in her view, were attributable to the Director having a different preferred candidate than the ultimately successful one. It was further alleged that the Director leveraged her role as the Project Inspector's supervisor to alter scores.

The Board of Ethics held a hearing to receive evidence and testimony concerning whether Section 2-67 of the Denver Code of Ethics had been violated. That Section provides:

**Sec. 2-67. Use of public office for private gain.**

No officer, official or employee shall use his or her public office or position or disclose or use confidential information in order to obtain private gain for himself or herself, for his or her immediate family, for any business entity with which he or she is affiliated or for any person or entity with whom the officer, official or employee is negotiating or has any arrangement concerning prospective employment.

At the conclusion of the hearing, the Board of Ethics issued a Decision finding that no evidence was presented during the hearing to establish the Director had a personal or financial interest in the outcome of the hiring process, or that the Director impermissibly interfered with the hiring process in violation of the Code of Ethics. Thus, the complaint was dismissed.

**Case 19-34 (gifts, travel expenses, waiver granted)**

A Senior Electrical Engineer in the Life Safety Group at Denver International Airport (DEN) who was responsible for system administration and maintenance of the airport's Emergency Communication System (ECS), was invited to participate in a focus group at a Summit in Dallas/Fort Worth International Airport. AtlasIED offered to pay for the cost of the travel and lodging expenses and the purposes of the convening were for AtlasIED to gather information from the user airports to help support the development of relevant and profitable products, to discuss emerging trends in the industry and to directly connect with the airport communities.

The Senior Electrical Engineer indicated that her attendance would be in the city's best interests because it would allow for participation in the development of audio and video products for emergency communications and for input into AtlasIED's research and development such that they could best meet DEN's needs. She also believed there would be value in building peer relationships for collaboration with other airports.

Acceptance of travel expenses is regulated by the following sections of the Denver Code of Ethics:

**Sec. 2-60. Gifts to officers, officials, and employees.**

The purpose of this section is to avoid special influence by donors who give gifts to city officers, employees, or officials.

(a) Except when acceptance is permitted by paragraph (b) below, it shall be a violation of this code of ethics for any officers, officials, or employees, any member of their immediate families to solicit or to accept any of the following items if (1) the officer, official, or employee is in a position to take direct official action with regard to the donor; and (2) the city has an existing, ongoing, or pending contract, business, or regulatory relationship with the donor. . . .

(6) Travel expenses and lodging; . . .

**Sec. 2-52. Definitions.**

(b) *Direct official action* means any action which involves:

(1) Negotiating, approving, disapproving, administering, enforcing, or recommending for or against a contract, purchase order, lease, concession, franchise, grant, business loan or other similar instrument in which the city is a party. With regard to "recommending," direct official action occurs only if the person making the recommendation is in the formal line of decision making. . .

- (3) Selecting or recommending vendors, concessionaires, or other types of entities to do business with the city; ...

The Board concluded that it would violate Section 2-60 of the Code of Ethics for her to accept payment for the expenses offered by AlasIED because her influence over the purchasing decisions regarding AtlasIED products would amount to “direct official action.”

However, although the Board deemed it a close call as to whether her presence at the conference would be a benefit to the city (in which a waiver is appropriate) versus whether her presence at the conference is a greater benefit to the donor or to her personally (in which case, a waiver is not), the Board has decided to grant a conditional waiver pursuant to Section 2-54(f) of the Code of Ethics to allow her to accept the travel, lodging and food expenses from AtlasIED because it would be in the city’s best interests for her to participate in the Summit for the following reasons:

1. She would have the opportunity to have input into as to how AtlasIED can improve products and services which will allow for the reduction in costs and increase in productivity for the airport; and
2. She would have the opportunity to network and build relationships with other trade experts and peers and this will expand her knowledge which will benefit the airport and city as a whole.

The conditions of this waiver were:

- That she have no role in the selection process when the contract with AtlasIED expires in March of 2022;
- That her department consider budgeting for travel expenses in the future; and
- That she provide to the Board within 30 days of the conclusion of her trip a written summary setting forth the benefits she believed the city received as a result of her attendance at the Summit.

## Case 20-1 (gifts)

A lieutenant in the Office of the Deputy Chief of the Denver Police Department (DPD) requested an advisory opinion with respect to several questions involving officer safety and the partnership between DPD and the non-profit company, Shield616.

In reviewing the information provided, the Denver Board of Ethics determined the following:

- Currently, body armor issued by the Denver Police Department is only rated to stop handgun rounds, and not rifle rounds. Obtaining kits that include ballistic helmets and rifle rated vests costs approximately \$2200 per officer. Because of budget cuts, DPD is only able to provide each officer with \$750 to use toward this expense. This amount is provided to new officers, and then again, every five years as the life of the armor expires.
- To address this critical need, Shield616, a non-profit company based out of Colorado Springs, Colorado, seeks to raise money to provide officers with gear that gives “all-day rifle protection” with the goal of not only providing initial armor, but replacing the gear every five years, at no cost to the officer, first responder, or department. Shield616 gets the body armor kits from Angel Armor.
- Angel Armor is a company whose stated goal is “to serve law enforcement by offering market-leading proactive solutions that protect officers in every situation, all day.” Angel Armor puts together kits that consist of soft body armor (tailor-fit to specific officers), two rifle related ballistic panels, the carrier, and a Kevlar Helmet.
- A donor giving funds to Shield616 can specify the officer they would like the gift to go toward or can donate generally and the armor will be given to officers on a wait list generated by DPD. Over 200 kits have been issued to DPD officers, and that 1,400 additional kits are needed.

The lieutenant provided the following two scenarios and five follow-up questions below.

**Scenario 1:** A donor (or donors) donates funds through Shield616 in the name of a specific officer to provide a kit to that officer. Can the officer accept this gift?

**Scenario 2:** A donor (or donors) gives money to the general Shield616 fund. The kits are then purchased and provided to officers based on a wait list DPD has created. Does acceptance of these kits by the officers violate the Code of Ethics?

### Follow-Up Questions:

- In either of the above scenarios, does the receiving officer need to report the gift?
- DPD's position is that regardless of where the money came from, the equipment remains the property of DPD and must be returned upon demand. Is this position consistent with the Code?
- Is there an issue with officers or the department soliciting funds for this program by word of mouth, flyers, social media, radio commercials or at events such as concerts or sporting events?
- Can the officers or the department fundraise at concerts held at Red Rocks Amphitheater?
- Would it be acceptable to place Shield616 decals or stickers on city vehicles?

Gifts are regulated by Section 2-60 of the Denver Code of Ethics:

#### **Sec. 2-60. Gifts to officers, officials, and employees.**

The purpose of this section is to avoid special influence by donors who give gifts to city officers, employees or officials.

(a) Except when acceptance is permitted by paragraph (b) below, it shall be a violation of this code of ethics for any officers, officials, or employees, any member of their immediate families to solicit or to accept any of the following items if (1) the officer, official, or employee is in a position to take direct official action with regard to the donor; and (2) the city has an



existing, ongoing, or pending contract, business, or regulatory relationship with the donor:

(1) Any money, property, service, or thing of value that is given to a person without adequate and lawful compensation; . . .

(c) **It shall not be a violation of this article for an officer, official, or employee to solicit or accept donations to the city or to solicit, accept or redirect donations for charitable purposes to a 501(c) or other charitable organization** or to provide assistance to individuals affected by illness, crime or disaster or who have educational or other charitable needs, provided, however, that

- 1) If an officer or employee soliciting such a donation is in a position to take direct official action with regard to the donor; and the city has an existing, ongoing or pending contract, business or regulatory relationship with the donor, any donation that is actually made as a result of the officer or employee's solicitation is reported by the officer or employee as required by Article V of this Chapter 2; and
- 2) The soliciting person, or a member of the soliciting person's immediate family does not keep or use the gift or receive any monetary benefit therefrom.

The Board of Ethics opined that that the partnership between DPD and Shield616 plays an important and necessary role in providing for officer safety. The Board stated that it unanimously supports allowing for donations toward a general fund whereby officers are given the armor based on a wait list created and maintained by DPD, as contemplated in scenario number two. In addition to being less problematic under the Code of Ethics, this practice would have benefits from an operational and risk management standpoint and would work toward avoiding even the appearance of impropriety.

With respect to scenario number one, while the Board understood the purpose of allowing for donations toward specific officers, the Board finds that this creates the appearance of a direct gift which would necessitate an examination of each donor and recipient separately under the Code of Ethics to determine whether acceptance would be permissible. The practice could also be problematic operationally and the process could be experienced and viewed as unfair. For these reasons, the Board discouraged this framework for partnering with Shield616. The Board advised that should the department pursue this approach, each officer receiving a vest gifted to him or her under these conditions would need to apply to the Board of Ethics to address whether it would violate the Code to accept the vest under the specific factual background unique to each officer and donor(s).

By adopting the practice set forth in scenario number two, the Board found that DPD also simplifies the question with respect to solicitation for donations to Shield616. Under Section 2-60(c) of the Code of Ethics, officers may ask for donations to Shield616 generally, so long as the soliciting officer or a member of the soliciting officer's family does not keep or use the gift or receive any monetary benefit therefrom. However, the Board strongly cautioned officers not to individually solicit charitable contributions from persons or businesses within the City and County of Denver as this could create the perception that the soliciting officer might look more favorably on a person or a business who had contributed or less favorably upon a person or business that failed to contribute.

The Code of Ethics does not otherwise speak to where or how solicitation can take place. The Board, in a prior case, found that solicitation for charitable purposes was not prohibited in city facilities. Thus, distributing flyers or having a booth at Red Rocks Amphitheater would not be prohibited. Advertising through social media and radio programs would also be acceptable means of solicitation. With respect to placing Shield616 decals on police vehicles, there is no policy or code provision preventing this, rather, doing so is left to the discretion of the Chief.

The Board stated that under Section 2-60(c), armor given to officers based upon a wait list would be considered gifts to the city and not the individual officers, and as such, the officers would not be required to include the information on the annual gift disclosure. However, DPD should be mindful of Executive Order 134 which requires that gifts to the city of over \$2500 be reported. Because the armor would be the property of DPD, the question of whether it should be returned upon separation is also simplified.

In summary, the Board believed that the work being done by Shield616 is valuable and worthy of commendation, and the Board stated that it would support a continuing partnership with DPD under the condition that donations are made to a general fund and officers receive the gear based on a wait list created by DPD.

### **Case 20-2 (gifts, travel expenses)**

The Chief Procurement Officer in the Purchasing Division of the General Services Department for the City of Denver requested an advisory opinion and waiver concerning a national conference/trade show he had been invited to attend in Orlando, Florida. The organizer of the conference was Grainger, which is a very large manufacturer and supplier of products, primarily in North America, Europe, and Asia. There would be a large number of seminars and trade show talks offered, in addition to a long list of independent companies exhibiting their products in the trade show.

Grainger offered to pay for lodging, some meals, and registration, and required that each attendee who wished to accept these items submit a form approved by the organization's "Ethics Officer" indicating that acceptance will not violate the organization's "ethics and business conduct policies, guidelines and regulations." The Chief Procurement Officer indicated that his department had appropriately budgeted, and would pay, for the cost of the flights, transportation, and any meals that are not part of the conference.

Acceptance of travel and conference expenses is regulated by the following sections of the Code of Ethics:

**Sec. 2-60. Gifts to officers, officials, and employees.**

The purpose of this section is to avoid special influence by donors who give gifts to city officers, employees or officials.

(a) Except when acceptance is permitted by paragraph (b) below, it shall be a violation of this code of ethics for any officers, officials, or employees, any member of their immediate families to solicit or to accept any of the following items if (1) the officer, official, or employee is in a position to take direct official action with regard to the donor; and (2) the city has an existing, ongoing, or pending contract, business, or regulatory relationship with the donor:

- (1) Any money, property, service, or thing of value that is given to a person without adequate and lawful compensation; ...
- (6) Travel expenses and lodging; ...
- (9) Meals except as provided for in subsection (b)(4) of this section...

Direct official action is defined as:

**Sec. 2-52. Definitions**

(b) *Direct official action* means any action which involves:

(1) Negotiating, approving, disapproving, administering, enforcing, or recommending for or against a contract, **purchase order**, lease, concession, franchise, grant, business loan or other similar instrument in which the city is a party. **With regard to "recommending," direct official action occurs only if the person making the recommendation is in the formal line of decision making...**

(3) Selecting or recommending vendors, concessionaires, or other types of entities to do business with the city;

(5) Doing research for, representing, or scheduling appointments for an officer, official, or employee, provided that these activities are provided in connection with that officer's, official's, or employee's performance of (1) through (4) above.

In issuing the advisory opinion, the Board of Ethics stated:

- You have acknowledged that although you supervise employees in the Purchasing Division, you do have the ability to take direct official action as defined by the Code of Ethics above. Purchasing agents recommend purchases based upon criteria established by the departments or agencies. You would have the ultimate decision-making authority based upon recommendations from the buyer agencies to continue or discontinue a contract.
- As it did in 2019, based on the above, the Board agrees that your ability to influence purchasing decisions regarding Grainger products amounts to “direct official action,” such that acceptance of the expenses offered would violate the Code of Ethics.
- After careful consideration, with the stipulation that you will include these expenses in your department’s budget in the future, the Board decided to grant you a waiver again this year, pursuant to Section 2-54(f) of the Code of Ethics, to allow you to accept the lodging, food, and registration expenses from Grainger because it would be in the city’s best interest for you to attend the conference for the following reasons:
  1. Purchasing will have alignment with both safety and risk management when it comes to sourcing the correct products which will assist in mitigating risk issues and ultimately costs to the city;
  2. It will enable you to better serve the agencies in their procurement needs, as you will be able to provide options to not only better serve their need but also potentially provide alternatives that are more cost effective for the city;
  3. You will have the opportunity to attend industry specific seminars and accredited sessions targeted to Denver as a city and to your business needs;

4. You will have the ability to network with key suppliers, trade experts and peers to build relationships and expand your knowledge which in the end will benefit the city as a whole; and,
5. You will have the opportunity to attend the trade show floor to discover new strategies and powerful workplace solutions which will have approx. 3900 exhibitors, which will allow you to learn about services and resources to reduce costs and increase productivity for the city.

### **Case 20 – 3 (outside employment or business activity, conflict of interest, waiver granted)**

The Air Quality Program Manager in the Department of Public Health & Environment requested an advisory opinion and waiver concerning his wish to conduct outside business activity. His job responsibilities included the following:

- Design and implement programs for schools which provide education, reduce pollution sources, and engage school communities.
- Manage performance and create metrics to track long-term environmental goals.
- Lead continued refinement of the “Menu of Options” that will be provided to schools for programmatic options.
- Ensure programs operate in compliance with departmental objectives, pertinent laws, rules and regulations.
- Oversee the school engagement and ongoing outreach which will support programing for 40 public schools in Denver.
- Participate in continuing the partnership built with Denver Public School administration and continue to build relationships with individual schools allowing for meaningful program adoption.
- Ensure that internal school leads have programmatic support for their selected suite of options.
- Participate in new, and refine existing, programs and education for understanding air quality data for use in public schools in Denver.

- Participate in documentation of the school programs, projects, metrics, and methodologies used in AQ-CAN allowing for replication of the project by other interested entities.
- Perform other related duties as assigned or requested.

He wished to engage in a singularly owned consulting business looking at servicing private industries developing strategies and methodologies for integrating systems for managing communicating and relaying real time IoT device data. He provided the following as examples of projects that he would consider in his private business.

- 1) An air quality sensor manufacturer contracts with me to provide the following services:
  - a. Advice in the design, testing, QA/QC, and implementation of capabilities of air sensors and air sampling/measurement instrumentation.
  - b. Participate in the design of a leasing model to customers based on rules and regulations to allow for hands-on testing at a reasonable cost
  - c. General air quality consulting on an as needed basis on air quality/sensor projects outside of the City and County of Denver.
  - d. Time: Regular weekly one-hour conference calls. Potential for additional hours as projects arise, with a limit of 5 hours per week.
- 2) An air quality data platform company wants to contract with me for the following service:
  - a. Provide insights and perspectives based on work with the city of Denver and knowledge about other cities' needs for air quality sensors, data management, and applications. Help answer questions to enable the private sector to more effectively deliver products and services to cities and other government agencies. Example questions include: what are the air quality applications/needs? Would cities rather buy a bundled package, buy hardware, or build it themselves?
  - b. Pay may be linked on the adoption of the technology in other municipalities.
  - c. Time estimate: Up to 10 hours per month.

- 3) An air quality consulting firm won a project with a neighboring municipality to design an air monitoring network. The company now wants to contract with me to help design the network and give advice and feedback on their methodology and use of air quality sensors and sensor triggered sample capture. Additionally, provide insights into data management and data displays.
  - a. Time: Up to 10 hours per month.
- 4) A consulting firm was awarded funding to pilot a mobile sensor network in Denver. As part of the application there was funding included to support me working additional hours on the project, helping to advise and streamline the project.
  - a. Time estimate: 5 hours per week for 6 months.
- 5) A systems integration company is approached by a health care service provider to develop a system that would allow their patients to access real time information from an IoT device that provides information on their environment that could potentially impact their health.
  - a. My role would be to help think through potential IoT devices and systems that could be developed or sourced to meet the needs of the health care provider.
  - b. I would also participate in the design of the system once identified and selected.
  - c. I would provide feedback as the process moved along through delivery to the health care provider.
  - d. As these solutions are custom built, and therefore subject to errors/omissions pre/post deployment, I would participate in communications providing feedback and guidance on addressing these issues.
  - e. Time estimate: up to 10 hours per month.



He indicated that if he can move forward with his private business, he would select projects so as to maintain a manageable workload that will not interfere with his full-time work with the city. He also stated that he will not use any city resources or conduct private business during regular city hours, and that he was willing to submit monthly tracking reports to his direct manager to document his time.

Outside employment is regulated by Section 2-63 of the Denver Code of Ethics:

**Sec. 2-63 Outside employment or business activity.**

The purpose of this section is to avoid possible conflicts of interest and time conflicts between city jobs and outside employment or business activity.

- (a) All officers other than elective officers and all employees shall report existing or proposed outside employment (excluding unpaid volunteer activity) or other outside business activity annually in writing to their appointing authorities and obtain his or her appointing authority's approval thereof prior to accepting initial employment or outside business activity. All officials shall immediately report any change in employment status to their appointing authorities which could give rise to a conflict of interest.
- (b) If the appointing authority or the officer, official or employee believes that there is a potential conflict of interest between the person's public responsibility and his or her possible outside employment or outside business activity, he, she or they are encouraged to consult the board of ethics.

- (c) An officer or employee who has received the written permission of the appointing authority may engage in outside employment or other outside business activity. If, however, the board has rendered an advisory opinion to an officer, employee or official and/or an appointing authority and the board has reason to believe that the officer, employee or official has not complied with the opinion, the board shall notify the appointing authority and the appointing authority shall report to the board in executive session regarding the action, if any, taken with respect to the person.
- (d) Copies of documents arising from this section shall be placed in each officer's or employee's departmental personnel file.
- (e) City resources may not be used for any outside employment or outside business activity.

The Board of Ethics found that the first issue, as he would be compensated for the outside employment he was proposing, is that he would need to obtain the written approval from his appointing authority prior to beginning work for any outside entities. He indicated that he had done this and that he had the support of his supervisor, and his appointing authority.

The Board stated that the second issue involves an examination of potential conflicts of interest. The Code of Ethics provides the following guidance:

**Sec. 2-61. Conflict of interest while employed.**

The purpose of this section is to avoid influence on the official actions of city officers, employees, or officials by their private or family interests,

- (a) Except when advised by the city attorney that the rule of necessity applies, an officer, official, or employee shall not take direct official action on a matter before the city if he or she or a member of the immediate family, a business associate or an employer other than the city of the officer, official or employee has any substantial employment, contractual, or financial interest in that matter. A substantial interest shall be deemed to exist if:

- (1) He or she or a member of the immediate family, a business associate **or an employer other than the city is the other party in the matter;**

Direct Official Action is defined by the Code as:

**Sec. 2-52. Definitions.**

(b) *Direct official action* means any action which involves:

- (1) Negotiating, approving, disapproving, **administering, enforcing,** or recommending for or against **a contract,** purchase order, lease, concession, franchise, grant, business loan or other similar instrument **in which the city is a party.** With regard to "recommending," direct official action occurs only if the person making the recommendation is in the formal line of decision making.
- (2) Enforcing laws or regulations or issuing, enforcing, or regulating permits, licenses, benefits or payments;
- (3) Selecting or recommending vendors, concessionaires, or other types of entities to do business with the city;
- (4) Appointing and terminating employees, temporary workers, and independent contractors.
- (5) Doing research for, representing, or scheduling appointments for an officer, official, or employee, provided that these activities are provided in connection with that officer's, official's, or employee's performance of (1) through (4) above.

The Board of Ethics found that with respect to the first two projects proposed, as he recognized, if he were to be employed by companies that have contracts with the city, and he were responsible for overseeing those contracts, there would be a violation of Section 2-61 of the Code of Ethics. Therefore, the Board concluded that these opportunities would not be permissible unless the Board were to grant waivers.

The Code of Ethics provides, in Section 2-54(f), that the Board is empowered to issue a waiver if it finds that a waiver will serve the best interests of the city. The employee indicated that air quality is a regional concern, and that if he could help these companies replicate the products and services currently being provided to the city, and if he could assist other jurisdictions to piggyback on innovative projects, the benefit with respect to air quality will cross boundaries.

The Board recognized that this is a unique situation given the nature of this employee's expertise. Therefore, the Board stated that it believes that it is appropriate to grant a limited waiver for purposes of his engagement with these companies, so long as oversight for any contracts that the companies have with the city is reassigned, so long as he accounts for his work, and so long as he takes care not to use city resources in conducting his private business.

The Board found that with respect to the remaining three proposals, the job duties of each do not raise the same "substantial conflict of interest" with his responsibilities as the city's Air Quality Program Manager. Thus, there would be no violation of the Code of Ethics should he decide to consult privately on these projects. The Board cautioned, however, that he should follow the same practice with respect to obtaining the approval of his appointing authority, accounting for his time, and not using any city resources when conducting private business activities.

The Board asked that he return in six months to report back with respect to the projects he had undertaken, the logistical impact of each, and the benefit he believed the city experienced as a result of his private business activities. The Board also asked that his supervisor attend to report back as to whether his outside employment has had any impact on his work for the city.

In conclusion, the Board of Ethics stated that it provided this advisory opinion and limited waiver in good faith recognizing that he had exciting, innovative, and unique opportunities available to him as his role in designing and implementing Denver’s program has given him a distinct insight into project implementation. The Board told the employee that he is an asset to the city and the city has an interest in your ability to fulfill his potential. Finally, the Board stated that it expects that, to the extent possible, he would seek to minimize conflicts of interest in selecting outside projects, and that he would favor the city as his primary responsibility should conflicts arise.

### **Case 20 – 4 (complaint withdrawn)**

A former employee of the Division of Small Business Opportunity filed a complaint concerning the Acting Director of this Division. He thereafter withdrew the complaint, and it was not considered by the Board of Ethics.

### **Case 20-5 (gifts)**

A lieutenant with the Operations Support Unit of the Denver Police Department (“DPD”) requested an advisory opinion concerning the possibility of accepting donated office chairs. The lieutenant stated that the function of his unit is to keep all DPD facilities repaired and functional, and that one of his main responsibilities is to purchase equipment for DPD. He was recently made aware of a program offered by Husky Office where lightly used office chairs are donated to law enforcement agencies.

The Board of Ethics determined that Husky Office initiated this project to “give back” to law enforcement, and that essentially, Husky Office offers customers a 30-day guarantee with their purchase, and any chairs “returned” to Husky Office under this guarantee are donated to local law enforcement agencies who participate in the program. The chairs sold by Husky Office range in price from several hundred dollars to several thousand dollars.

The lieutenant indicated that DPD has only purchased one chair from Husky Office in the past and that he did not believe there is a current contract or an on-going business relationship with the company.

Gifts are regulated by Section 2-60 of the Denver Code of Ethics:

**Sec. 2-60. Gifts to officers, officials, and employees.**

The purpose of this section is to avoid special influence by donors who give gifts to city officers, employees or officials.

In particular, Section 2-60(c) provides:

**(c) It shall not be a violation of this article for an officer, official, or employee to solicit or accept donations to the city** or to solicit, accept or redirect donations for charitable purposes to a 501(c) or other charitable organization or to provide assistance to individuals affected by illness, crime or disaster or who have educational or other charitable needs, provided, however, that:

- 1) If an officer or employee soliciting such a donation is in a position to take direct official action with regard to the donor; and the city has an existing, ongoing or pending contract, business or regulatory relationship with the donor, any donation that is actually made as a result of the officer or employee's solicitation is reported by the officer or employee as required by Article V of this Chapter 2; and
- 2) The soliciting person, or a member of the soliciting person's immediate family does not keep or use the gift or receive any monetary benefit therefrom.

The Board determined that under these circumstances, it would not be a violation of the Denver Code of Ethics for the lieutenant to solicit or accept the gift of a chair from Husky Office, even though he was in a position to take direct official action, so long as he did not keep or use the chair himself.

The Board noted that if DPD participates in this program, reporting requirements could be triggered as noted in sub-paragraph 2-60(c)(1) above; and that Executive Order 134 requires the disclosure of gifts to the city valued over \$2500.

### **Case 20-6 (no violation for department to donate used bicycles for charitable purposes)**

A Captain in the Denver Police Department (“DPD”) requested an advisory opinion as DPD was looking at the possibility of donating used police bicycles to the non-profit organization, Bikes Together. The Caption stated that over the past several years, the DPD Bike Unit removed 24 broken bicycles from inventory and new replacements were received. These bicycles had reached the end of their useful police service life as the cost to make needed repairs exceeded the cost to replace. Many of these bicycles were used as “parts bikes” for several years before they were eventually replaced.

The Captain further stated that for the past two years, the used bicycles have been stored as DPD searched for a method to repurpose them. He had since learned of Bikes Together. As mentioned above, Bikes Together is non-profit organization that “seeks to transform our communities through bicycle access and education.” Bikes Together is based in Denver and has two bike shops, one in Park Hill, and one in Mariposa. The company accepts donated bicycles, completes the necessary repairs and then distributes them through their partnerships with community organizations.

The Captain confirmed with the city’s finance department that donation of the bicycles is acceptable, and that due to the age of the bikes and the lack of information about their original funding sources, the finance department does not have any reporting or permissive concerns. He indicated that DPD would stipulate that the reconditioned bikes will not be sold, rather they will be given away to others by the community partners.

The Board of Ethics stated that it believes that giving the police bicycles to Bikes Together is a commendable solution which serves a charitable public purpose. The Board continued by saying that doing so will not violate any section of the Denver Code of Ethics, rather, donation of the bikes is consistent with Section 2-51 of the Code, which provides that city personnel should “adhere to high levels of ethical conduct, honesty, integrity and accountability, so that the public will have confidence that persons in positions of public responsibility are acting for the benefit of the public.” The Board did caution that if donating bicycles in this manner becomes a continuing practice, DPD should look to other distribution partners to alleviate the potential perception of favoritism toward any one non-profit organization.

### **Case 20 – 7 (complaint, no jurisdiction)**

A concerned citizen who lived and worked near the intersection of 32<sup>nd</sup> and Shoshone in Denver, Colorado, filed a complaint against an Engineering Supervisor with the Transportation Design Team in the City of Denver’s Department of Public Works alleging that this Supervisor unethically presented false information regarding potential options for infrastructure modifications to the intersection.

The Board of Ethics concluded that nothing in the complaint would violate any section of the Denver Code of Ethics. The Board dismissed this complaint pursuant to Sections 2-56(6)(a) and (b) of the Code of Ethics because (a) the Board has no jurisdiction over allegations of this nature and (b) the alleged violations, if true, would not constitute violations of the Code of Ethics.

### **Case 20-8 (complaint, no jurisdiction)**

A concerned citizen became aware of activity by a member of City Council on social media and filed a complaint alleging that the conduct was “dangerous, irresponsible, and not befitting of an elected official.”



The Board of Ethics noted that while Section 2-51 of the Denver Code of Ethics states that “it is the intent of the city that its officers, officials, and employees adhere to high levels of ethical conduct, honesty, integrity and accountability,” this Section was aspirational and not actionable.

The Board therefore dismissed the complaint pursuant to Section 2-56(b) of the Code of Ethics, because the alleged violation, if true, would not constitute a violation of the Denver Code of Ethics.

### **Case 20-9 (complaint, no jurisdiction)**

A concerned citizen became aware of activity by a member of City Council on social media and filed a complaint alleging that because of the statements made by the City Councilmember, she did not have confidence that the Councilmember was acting for the benefit of the public.

The Board of Ethics noted that while Section 2-51 of the Denver Code of Ethics states that “it is the intent of the city that its officers, officials, and employees adhere to high levels of ethical conduct, honesty, integrity and accountability,” this Section was aspirational and not actionable. The Board therefore dismissed the complaint pursuant to Section 2-56(b) of the Code of Ethics, because the alleged violation, if true, would not constitute a violation of the Denver Code of Ethics.

### **Case 20-10 (employment and supervision of family members)**

The Treasurer for the City and County of Denver’s Department of Finance requested an advisory opinion after a candidate was selected to fill the director level position in the Motor Vehicle Section of the Treasury Division and the candidate realized that his brother in-law was a Motor Vehicle Technician II.

Hiring and supervision of family members is regulated by Section 2-59 of the Denver Code of Ethics.

**Sec. 2-59. Employment and supervision of family members.**

The purpose of this section is to avoid favoritism by city officers, employees or officials to their immediate family members.

- (a) Unless he or she obtains a waiver pursuant to section 2-54, no officer, official, or employee shall appoint or hire a member of his or her immediate family for any type of employment, including, but not limited to, full time employment, part time employment, permanent employment, temporary employment, and contract employment.
- (b) No officer, official, or employee shall supervise or be in a direct line of supervision over a member of his or her immediate family. If an officer, official, or employee comes into a direct line of supervision of a member of his or her immediate family, he or she shall have six (6) months to come into compliance or to obtain a waiver pursuant to section 2-54.
- (c) When waivers from this section are sought so that a member of the immediate family may be hired or may be in the direct line of supervision, it is the intent of the council that the board of ethics not unreasonably withhold waivers. Examples of circumstances which might result in a waiver include, but are not limited to:
  - (1) The family member who is proposed to be hired was certified through a competitive process conducted pursuant to law and the officer, official, or employee who would make the appointment did not influence or affect the certification.
  - (2) The officer, official, or employee who would officially make the appointment is acting ministerially and did not select the family member or attempt to influence the person who did.
  - (3) The family member who would be in the line of supervision was already working in the agency before the officer, official, or employee came into the line of supervision, and the officer, official, or employee can and will abstain from participating in any personnel actions involving the family member.

- (d) The phrase "direct line of supervision" shall mean the supervisor of an employee and the supervisor of an employee's supervisor.

The definition of "immediate family," as set forth in Section 2-52(c) of the Denver Code of Ethics, is as follows:

*Immediate family* means husband, wife, son, daughter, mother, father, step-son, step-daughter, step-mother, step-father, father or mother-in-law, son or daughter in-law, brother or sister in-law, aunt, uncle, nephew, niece, grandmother, grandfather, grandchildren, brother, sister, domestic partner, any person with whom he or she is cohabiting and any person to whom he or she is engaged to be married. The term includes any minor children for whom the person or his or her domestic partner provides day-to-day care and financial support. A "domestic partner" is an unmarried adult, unrelated by blood, with whom an unmarried officer, official, or employee has an exclusive committed relationship, maintains a mutual residence, and shares basic living expenses.

The Board determined that because brother in-law is included in the definition of "immediate family," Section 2-59(b) would prohibit the candidate from being in the "direct line of supervision" over his brother in-law. The Board then looked at Section 2-59(d), which provides that "direct line of supervision" means the supervisor of an employee and the supervisor of an employee's supervisor and concluded that if there are two levels of supervision between family members, the family members are not within the "direct line of supervision."

Here, there were three levels of supervision between the position of Director and Motor Vehicle Technician II. Accordingly, the Board found that there would be no violation of the Code of Ethics for the candidate to be employed as Director even though his brother in-law is also employed by the Motor Vehicle Section of the Treasury Division.

### **Case 20-11 (complaint – no jurisdiction)**

A citizen filed a complaint against a Denver City Council member after becoming aware of statements posted on social media by the Councilperson encouraging individuals affected by COVID-19 to attend Make America Great rallies to spread the virus. The Board of Ethics determined that while the heart of this complaint concerns the aspiration intent of the Code of Ethics, Section 2-51 is not, in and of itself, a basis for a Code violation. Thus, the complaint was dismissed.

### **Case 20-12 (no violation of Code of Ethics)**

A Lieutenant in the Denver Police Department's Office of the Deputy Chief of Police requested an advisory opinion from the Board about whether it would violate the Denver Code of Ethics for the Denver Police Department to allow a non-profit organization to use the Police Academy gym, the parking area, and track for a fundraising activity. A sergeant in the Denver Police Department is the CEO and board president for this non-profit organization. The Denver Police Department's practice at the time was to charge for-profit organizations \$300-\$500 for use of the facilities, and not to charge non-profit companies.

The Board of Ethics determined that the Code of Ethics does not prohibit the Denver Police Department from allowing the sergeant and the non-profit to use the Academy for the fundraising event, however, the Board advised the Denver Police Department to put written policies in procedures in place to document who is able to use the facility, under what circumstances, and what the process is for vetting requests by outside organizations.

## Case 20-13 (use of confidential information)

An Assistant City Attorney working for the legal team at Denver International Airport requested an advisory opinion as to whether statements made by an elected official, an appointed official, or an employee, whether written or oral, through public announcements, press releases, interviews with media representatives, disclosures to media or discussions with constituents, lobbyists, or the general public, that would violate the Anti-Fraud Provisions of the Securities Exchange Act of 1934 would also violate the Denver Code of Ethics.

Section 2-68 of the Denver Code of Ethics provides the following:

### **Sec. 2-68. Use of confidential records**

No officer, official or employee may disclose any information or records that are not available to the public, which were acquired in the course of official duties, except in the performance of official duties or as required by law or court order.

Board of Ethics first noted that ethical considerations provide the standards of accountability that can be used to scrutinize the work of city officers, officials, and employees. Sound public administration involves public trust. Citizens expect public servants to serve the public interest, to manage public resources properly on a daily bases, and to make individual decisions fairly. Fair and reliable public services and predictable decision-making inspire public trust. The integrity, transparency, and accountability of administrations are prerequisites for, and underpin, public trust, as a keystone of governance.

The Board further concluded that understanding that city officers, officials, and employees are entrusted with confidential information in many different contexts as they execute their professional responsibilities, the importance of respecting the confidence in which the information was given is imperative. Failure to do so, whether intentionally or through honest mistake, would constitute an unethical breach of the employee's public responsibility.

## Case 20-13 (outside employment or business activity, conflict of interest)

The Forestry Operations Superintendent in the Office of the City Forrester requested an advisory opinion about whether an employee that he oversaw who owned a private tree maintenance company could work for a developer within the City and County of Denver. The employee held the position of Crew Lead and his duties included performing regularly assigned lead work over a crew in the field that is involved in the construction, repair, and maintenance of city facilities, infrastructure, or equipment including city streets, sewer and storm drains, golf courses, parks, airport structures, or traffic devices.

The Board of Ethics noted that in 2016, in case 16-9, an advisory opinion was issued to the City Forrester recommending that there be a policy prohibiting Forestry Inspectors from engaging in any outside employment with tree-trimming companies that do business inside the City and County of Denver, and that in response to this recommendation, the City Forrester issued a memorandum that stated, in part:

Based on the conclusions of the Board [of Ethics], the City Forrester has directed the Forestry Inspection Supervisor to deny all staff requests to approve outside employment with tree service contractors providing services within the City and County of Denver.

With respect to the Crew Lead, the Superintendent was concerned that because the Crew Lead had relationships with the city employees that issue permits for tree removal and/or city employees that do development review work where their direct responsibility is tree preservation, there could be the perception or actuality of the Crew Lead's influence impacting the decision to allow for removal of trees.

Outside employment or business activity is regulated by Section 2-63 of the Denver Code of Ethics:

### **Sec. 2-63 Outside employment or business activity.**

The purpose of this section is to avoid possible conflicts of interest and time conflicts between city jobs and outside employment or business activity.

- (a) All officers other than elective officers and all employees shall report existing or proposed outside employment (excluding unpaid volunteer activity) or other outside business activity annually in writing to their appointing authorities and obtain his or her appointing authority's approval thereof prior to accepting initial employment or outside business activity. All officials shall immediately report any change in employment status to their appointing authorities which could give rise to a conflict of interest.
- (b) If the appointing authority or the officer, official or employee believes that there is a potential conflict of interest between the person's public responsibility and his or her possible outside employment or outside business activity, he, she or they are encouraged to consult the board of ethics.
- (c) An officer or employee who has received the written permission of the appointing authority may engage in outside employment or other outside business activity. If, however, the board has rendered an advisory opinion to an officer, employee or official and/or an appointing authority and the board has reason to believe that the officer, employee or official has not complied with the opinion, the board shall notify the appointing authority and the appointing authority shall report to the board in executive session regarding the action, if any, taken with respect to the person.
- (d) Copies of documents arising from this section shall be placed in each officer's or employee's departmental personnel file.
- (e) City resources may not be used for any outside employment or outside business activity.

Conflict of interest while employed is regulated by Section 2-61 of the Code of Ethics. That Section provides, in part:

**Sec. 2-61. Conflict of interest while employed.**

The purpose of this section is to avoid influence on the official actions of city officers, employees, or officials by their private or family interests.

(a) Except when advised by the city attorney that the rule of necessity applies, an officer, official, or employee shall not take direct official action on a matter before the city if he or she or a member of the immediate family, a business associate or an employer other than the city of the officer, official or employee has any substantial employment, contractual, or financial interest in that matter. A substantial interest shall be deemed to exist if:

(1) He or she or a member of the immediate family, a business associate or an employer other than the city is the other party in the matter;

(f) No officer, employee or official may have any other employment or position which is incompatible with his or her duties or that adversely affect the interests of the city.

After discussion with the Superintendent and review of the applicable sections of the Code of Ethics, the Board found that the possibility of a conflict of interest and/or the perception of the appearance of impropriety exists if the Crew Lead were to be allowed to work as a subcontractor for a developer within the City and County of Denver. For this reason, and because it is the stated intent of the Code of Ethics that city employees, officers, and officials comply with both the letter and the spirit of the Code and strive to avoid situations that create impropriety, or the appearance of impropriety, the Board cautioned the Superintendent to discourage this outside employment activity.



## Case 20-14 (conflict of interest, outside employment or business activity)

A Forestry Operations Superintendent in the Office of the City Forester under the Department of Parks and Recreation who is responsible for Inspections, Operations, and Commercial and Residential Plan Review, asked for an advisory opinion regarding whether a Forestry Operations employee whom he oversees, and who owns a tree maintenance business would be eligible to do private work for a developer in the City and County of Denver.

The employee held the position of Crew Lead and his duties included performing regularly assigned lead work over a crew in the field that is involved in the construction, repair, and maintenance of city facilities, infrastructure, or equipment including city streets, sewer and storm drains, golf courses, parks, airport structures, or traffic devices.

The developer recently won and negotiated bids for projects within the City and County of Denver. The employee previously completed work for this particular developer outside of Denver and had established a good business rapport. The developer asked this employee to be a subcontractor in completing tree removal with respect to the new projects within the City and County of Denver.

In 2016, the Forestry Operations Supervisor approached the Board concerning two employees who had recently been promoted to be Forestry Inspectors under his supervision. These employees asked to continue their previously approved outside employment as tree trimmers for two different private licensed tree-trimming and removal companies, both of which conducted some of their operations in the City and County of Denver.

One of the primary concerns identified with respect to that case was that the Forestry Inspectors would have first-hand knowledge of projects and would therefore have a business advantage over other tree trimming and removal companies. The Board of Ethics concluded that there were significant ethical concerns that would arise from the private employment of Forestry Inspectors by private tree trimming and removal companies, particularly if such outside employment was with a private tree trimming company that did business inside the City and County of Denver.

Accordingly, the Board of Ethics issued an advisory opinion in case 16-9 which recommended to the City Forester that there be a policy prohibiting Forestry Inspectors from engaging in any outside employment with tree-trimming companies that do business inside the City and County of Denver. On March 1, 2017, the Denver City Forester issued a Memorandum which stated, in part:

Based on the conclusions of the Board [of Ethics], the City Forester has directed the Forestry Inspection Supervisor to deny all staff requests to approve outside employment with tree service contractors providing services within the City and County of Denver.

In considering the circumstances involving the Crew Lead, The Forestry Supervisor articulated the concern that because the Crew Lead had relationships with the city employees that issue permits for tree removal and/or city employees that do development review work where their direct responsibility is tree preservation, there could be the perception or actuality of the Crew Lead's influence impacting the decision to allow for removal of trees.

The Supervisor had the utmost respect for the Crew Lead's work and did not believe that he would act unethical; rather, the Supervisor stated that this employee was held in high esteem by co-workers and he was a very qualified arborist who recognized and exceeded industry standards. The Supervisor further indicated that this employee often assisted others with properly performing their tree work duties. In these ways, having the Crew Lead sub-contract with the developer could be of benefit to the City and County of Denver.

The Supervisor was, however, concerned about the possible perception of special advantage by this city employee and thus asked for the Board's guidance to assist in making the ultimate decision of whether to approve outside employment under these circumstances.

Outside employment is regulated by Section 2-63 of the Code of Ethics:

**Sec. 2-63 Outside employment or business activity.**

The purpose of this section is to avoid possible conflicts of interest and time conflicts between city jobs and outside employment or business activity.

- (a) All officers other than elective officers and all employees shall report existing or proposed outside employment (excluding unpaid volunteer activity) or other outside business activity annually in writing to their appointing authorities and obtain his or her appointing authority's approval thereof prior to accepting initial employment or outside business activity. All officials shall immediately report any change in employment status to their appointing authorities which could give rise to a conflict of interest.
- (b) If the appointing authority or the officer, official or employee believes that there is a potential conflict of interest between the person's public responsibility and his or her possible outside employment or outside business activity, he, she or they are encouraged to consult the board of ethics.
- (c) An officer or employee who has received the written permission of the appointing authority may engage in outside employment or other outside business activity. If, however, the board has rendered an advisory opinion to an officer, employee or official and/or an appointing authority and the board has reason to believe that the officer, employee or official has not complied with the opinion, the board shall notify the appointing authority and the appointing authority shall report to the board in executive session regarding the action, if any, taken with respect to the person.

- (d) Copies of documents arising from this section shall be placed in each officer's or employee's departmental personnel file.
- (e) City resources may not be used for any outside employment or outside business activity.

Conflict of interest while employed is regulated by Section 2-61 of the Code of Ethics. That Section provides, in part:

**Sec. 2-61. Conflict of interest while employed.**

The purpose of this section is to avoid influence on the official actions of city officers, employees or officials by their private or family interests.

- (a) Except when advised by the city attorney that the rule of necessity applies, an officer, official, or employee shall not take direct official action on a matter before the city if he or she or a member of the immediate family, a business associate or an employer other than the city of the officer, official or employee has any substantial employment, contractual, or financial interest in that matter. A substantial interest shall be deemed to exist if:
  - (1) He or she or a member of the immediate family, a business associate or an employer other than the city is the other party in the matter;
- (f) No officer, employee or official may have any other employment or position which is incompatible with his or her duties or that adversely affect the interests of the city.

The Board concluded that the possibility of a conflict of interest and/or the perception of the appearance of impropriety exists if the Crew Lead were to be allowed to work as a subcontractor for this developer within the City and County of Denver.

For this reason, and because it is the stated intent of the Code of Ethics that city employees, officers, and officials comply with both the letter and the spirit of the Code and strive to avoid situations that create impropriety or the appearance of impropriety, the Board cautioned the Supervisor to discourage this outside employment activity.

### **Case 20-15 (complaint, use of confidential information)**

A Deputy Sheriff in the Department of Public Safety for the City and County of Denver alleged that an Administrative Investigator with the Department of Public Safety violated her duty of confidentiality by revealing details of her interview with the Deputy Sheriff and of the investigation she conducted concerning an allegation of excessive force.

The use of confidential information is regulated by Section 2-68 of the Denver Code of Ethics:

#### **Sec. 2-68. Use of confidential records**

No officer, official or employee may disclose any information or records that are not available to the public, which were acquired in the course of official duties, except in the performance of official duties or as required by law or court order.

The Board was in receipt of a Contemplation of Discipline Determination Letter addressed to the Administrative Investigator indicating that the Administrative Investigator's employment with the City and County of Denver was terminated for violation of the Career Service Rules and Section 2-68 of the Denver Code of Ethics.

The Board determined that while this was a serious allegation, the Department of Safety had taken appropriate action. For this reason, and because the Administrative Investigator was no longer an employee of the City and County of Denver, the Board dismissed the complaint pursuant to Sections 2-56(6)(e) and (g) of the Denver Code of Ethics.

## Case 20-16 (complaint, use of confidential information)

A prior social worker with the Department of Human Services for the City and County of Denver alleged that a current social worker for the Department of Human Services violated Section 2-68 of the Denver Code of Ethics by sharing confidential information with the family member that was serving as a caretaker for the children involved and with the mother of the children.

Section 2-68 of the Denver Code of Ethics provides the following guidance:

### **Sec. 2-68. Use of confidential records**

No officer, official or employee may disclose any information or records that are not available to the public, which were acquired in the course of official duties, except in the performance of official duties or as required by law or court order.

The Board of Ethics received responses and written statements from the parties, and the current social worker waived her right to a public hearing. Consequently, pursuant to Article VII, Rule 14 of the Board's Rules of Procedure, the Board made a decision solely on the basis of the written statements.

The Board found that both parties were credible and that they provided thoughtful, detailed responses concerning the allegation at issue. It also found that each had participated in the process in good faith. After reviewing the facts and circumstances, the Board did not find clear and convincing evidence that a violation occurred. On the contrary, the facts and information revealed numerous potential instances where the information could have been disclosed independent of any actions by the current social worker.

Moreover, the Board found that it was possible that a person could have a serious concern about information that seemed like it could have been inappropriately obtained, yet the social worker would have followed all the requirements of her employer and the law. The Board also noted that the Privacy Officer at the Denver Department of Human Services reviewed the case and found that there was no evidence of any disclosure that would amount to a violation of the Health Insurance Portability and Accountability Act (HIPAA).

Therefore, for these reasons, the Board found that there had been no violation of the Denver Code of Ethics and the complaint was dismissed.

### **Case 20-17 (gifts)**

The Executive Director for the Office of Climate Action, Sustainability, and Resiliency (“CASR” or the “Office”) asked for an advisory opinion concerning whether it would be permissible under the Denver Code of Ethics to use a small amount of CASR’s budget to offer \$25 gift cards to a yet-to-be determined number of employees to incentivize completion of a survey. The goal of the survey would be to gauge awareness of sustainability-related issues and quantify climate-related policies and programs and city departments. The recipients would be selected randomly after the survey closed from among those who voluntarily provide their email addresses at the end of the survey.

Gifts are regulated by Section 2-60 of the Denver Code of Ethics. The stated purpose of this Section is to “avoid special influence by donors who give gifts to city officers, employees or officials.” Under this Section, the analysis begins with the general rule that, unless specifically excepted, according to Section 2-60(a), it shall be a violation of the Code for an employee to solicit or accept a gift, “if (1) the officer, official or employee is in a position to take direct official action with regard to the donor; and (2) the city has an existing, ongoing, or pending contract, business or regulatory relationship with the donor.”

The Board noted that specifically listed as an exception to this rule, in Section 2-60(b)(5), are unsolicited items of trivial value, defined as items or services with a value of \$25.00 or less; however, this exception does not include cash or gift cards.

That being said, in 2018, City Council amended the definition of “donor” in the Code of Ethics. Section 2-52(f) provides:

(f) *Donor* means an individual or entity that has an existing, ongoing, or pending contract, business, or regulatory relationship with city, or a lobbyist or other representative for any such individual or entity. **The term “donor” does not include the city itself including any department, agency or other unit of the city and county, or any officer, official or employee of the city, when the gift or donation is paid for by funds appropriated by the city.**

Thus, the Board of Ethics concluded that gifts given to officials, employees, and officers by city agencies are not subject to the restrictions set forth in Section 2-60 of the Code, and if the Office were to go forward with its plan to conduct the incentivized surveys, there would be no violation of the Code of Ethics.

### **Case 20 – 18 (subsequent employment business activity, waiver granted)**

The Executive Vice President and Chief Financial Officer to Denver International Airport (“DEN”) and her husband decided to spend more time on the east coast where they have family, and after serving in this capacity for over six years, she left the city. She planned to continue working and prior to leaving DEN, she received several offers from aviation-related employers. One of these firms offered her a position in a consulting capacity in the area of general management for the aviation industry, and she accepted this opportunity.



The new firm acts as Financial Advisor to the City and County of Denver (“the City”), for bond issuance and debt related matters, when the City issues bonds on behalf of DEN. The contract is held by the City and procured through the Department of Finance. Neither DEN, nor the prior Vice President and Chief Financial Officer had any role in the selection or administration of this contract. When this firm supports bond issuances and debt-related transactions for DEN, it is approved by the City’s Chief Financial Officer and supervised by the Department of Finance.

While DEN searched for an appropriate replacement to fill the role of Chief Financial Officer, it was anticipated that there would be the need to engage the prior Vice President and Chief Financial Officer through the new firm to provide advice to DEN during the transition. The onboarding of a new Chief Financial Officer was expected to take more than a year. Given her experience, the prior Vice President and Chief Financial Officer was in a unique position to provide this key financial advice and consistency to the airport until her replacement was selected.

Subsequent employment is regulated by Section 2-64 of the Code of Ethics:

**Sec. 2-64. Subsequent employment.**

The purpose of this section is to avoid the actuality or appearance that employers who hire former city officers or employees may get special treatment.

- (a) During six (6) months following termination of office or employment, no former officer, official, or employee shall obtain employment outside of the city government in which he or she will take direct advantage, unavailable to others, of matters with which he or she took direct official action during his or her service with the city.
- (b) For one (1) year following termination of service with the city, no former officer, official, or employee shall engage in any action or litigation in which the city is involved, on behalf of any other person or entity, when the action or litigation involves an issue on which the person took direct official action while in the service of the city.

It is also helpful to look at the Code's definition of "direct official action." This is found in Section 2-52(b):

- (b) *Direct official action* means any action which involves:
- (1) Negotiating, approving, disapproving, administering, enforcing, or recommending for or against a contract, purchase order, lease, concession, franchise, grant, business loan or other similar instrument in which the city is a party. With regard to "recommending," direct official action occurs only if the person making the recommendation is in the formal line of decision making.
  - (2) Enforcing laws or regulations or issuing, enforcing, or regulating permits, licenses, benefits or payments;
  - (3) Selecting or recommending vendors, concessionaires, or other types of entities to do business with the city;
  - (4) Appointing and terminating employees, temporary workers, and independent contractors.
  - (5) Doing research for, representing, or scheduling appointments for an officer, official, or employee, provided that these activities are provided in connection with that officer's, official's, or employee's performance of (1) through (4) above.

Direct official action does not include acts that are purely ministerial (that is, acts which do not affect the disposition or decision with respect to the matter). With regard to the approval of contracts, direct official action does not include the signing by the mayor, the auditor, the manager of finance or the clerk, as required by Charter, unless the mayor, auditor, manager of finance or clerk initiated the contract or is involved in selecting the contractor or negotiating or administering the contract. A person who abstains from a vote is not exercising direct official action.

With respect to employment with the new firm, prior cases before the Board of Ethics have identified the key question as whether the employee took direct official action with respect to the person's new employer while working for the City. This has been referred to as the "revolving door" provision, and it seeks to avoid the appearance or actuality of a City employee selling to an employer or client his or her confidential information and special relationships with colleagues and subordinates. Because the prior Vice President and Chief Financial Officer did not take direct official action with respect to the new firm during her time with DEN, the Board determined that Ms. Shanahan's immediate employment by the new firm did not violate Denver's Code of Ethics.

The Board found the second question to be more nuanced. That is, whether the past Vice President and Chief Financial Officer consulting for DEN will constitute her taking direct advantage, unavailable to others, of matters of which she took direct official action during her service with DEN, in violation of Section 2-64 of the Denver Code of Ethics.

The Board has decided a number of prior cases where an officer, official, or employee retired from or left the City and then came back on a contract basis to complete projects or assist with transitional periods. In case 15-28, the Board determined that:

. . . the principal problem which 2-64(a) appears intended to prevent is a conflict between the city employee's loyalty to the city and his or her loyalty to the person's next employer. If the next employer is also the city, that problem is alleviated.

The phrase "outside of the city government" was specifically added to Section 2-64(a) by City Council in 2007, at the request of the Board of Ethics, to clarify situations such as this. The prior conclusions reached by the Board are that consulting is not prohibited, because it is not outside of the city government. These opinions, however, are factually distinct because the prior employees privately contracted directly with the City for additional services post-separation.

In this case, because the contract for her services would be with the new firm, and not directly with her, the Board believed that it was proper to consider granting a waiver pursuant to Section 2-54(f) of the Denver Code of Ethics, which states:

(f) **Waivers.** Any current, former, or prospective officer, official, or employee may submit a written request for a waiver of any provision of the code of ethics in advance of taking any action that is subject to the waiver request. The board of ethics is empowered to grant a waiver if it finds that the waiver will serve the best interests of the city. The board shall issue appropriate notice of its meeting on the waiver and its meeting shall be open to the public. The board shall either issue or deny the waiver in writing including a statement of reasons released to the public within six (6) weeks of receiving the request. All waiver decisions shall remain available on the board's public website.

The Chief of Staff for DEN was candid when she stated that the prior Vice President and Chief Financial Officer's knowledge and expertise concerning DEN was unmatched and that the challenges of the global pandemic made it even more critical that the airport have a trusted and experienced advisor during this period of uncertainty. The Chief of Staff stated that there were no other candidates of the same caliber.

With the benefit of this discussion, the Board of Ethics agreed that it is in the best interest of DEN, and therefore, the City and County of Denver, for the prior Vice President and Chief Financial Officer to be able to consult with DEN during this transition period and until another Chief Financial Advisor could be onboarded. The Board noted that this was an unprecedented time and that the aviation industry had been dramatically impacted by the effects of the COVID-19 pandemic. The Board thus decided to grant a waiver, pursuant to Section 2-54(f) of Code of Ethics, to allow DEN to contract with the new firm for her services.

### **Case 20-19 (complaint, no jurisdiction)**

A resident of Denver filed a complaint against a Senior Civil-Criminal Investigator with the Denver Department of Human Services because she was unhappy with the way the Investigator spoke to her and with the interactions the Investigator had with her daughter and ex-husband. The resident stated that she felt scared due to the way the Investigator treated her.

The Board found that while it expects all city officers, officials, and employees adhere to high levels of conduct and integrity, the Board determined that the complaint did not allege any action by the Investigator that would violate any section of the Denver Code of Ethics. Therefore, the complaint was dismissed pursuant to Sections 2-56(a) and (b) of the Code, because the Board had no jurisdiction over matters such as this and the alleged violations, if true, would not constitute a violation of the Code.

### **Case 20-20 (complaint, no jurisdiction)**

The daughter of the citizen in case 20-19 filed a complaint against the same Senior Civil-Criminal Investigator with the Denver Department of Human Services because she was unhappy about how the Investigator treated her. She alleged that the investigator was raising her voice, “catching an attitude,” and being really rude when speaking to her. She also questioned the Investigator’s authority to contact her without her mother’s consent.

The Board found that while it expects all city officers, officials, and employees adhere to high levels of conduct and integrity, the Board determined that the complaint did not allege any action by the Investigator that would violate any section of the Denver Code of Ethics. Therefore, the complaint was dismissed pursuant to Sections 2-56(a) and (b) of the Code, because the Board had no jurisdiction over matters such as this and the alleged violations, if true, would not constitute a violation of the Code.

## Case 20-21 (conflict of interest while employed)

An Air Quality Program Manager in the Denver Department of Public Health & Environment (“DDPHE”) requested an advisory opinion as to whether it would be a conflict of interest for him to serve on the Colorado Air Quality Control Commission. The Commission is a rulemaking body within the Colorado State Department of Public Health & Environment. The Commission is appointed by the Governor and authorized by the General Assembly to oversee Colorado’s air quality program pursuant to the Colorado Air Pollution Prevention and Control Act. Members of the Commission receive no pay for service, but expenses may be reimbursed.

The Board of Ethics determined that when acting as a member of the Commission, a Commissioner hears testimony and makes decisions aimed at promoting clean and healthy air in a cost-effective and efficient manner. The City of Denver (the “City”) regularly participates as a party to a larger Local Government Coalition (“LGC”) in the rulemakings before the Commission. The LGC typically advocates for increased air quality controls on the basis that doing so will improve air quality and therefore public health and climate-related impacts.

A colleague of the Air Quality Program Manager regularly attends the hearings as part of the LGC with an assigned Assistant City Attorney. The Air Quality Program Manager had not been part of the policy conversations for DDPHE, nor had he participated in the drafting of pre-hearing statements. The Air Quality Program Manager and his supervisor believed that it would be possible to separate his work responsibilities for DDPHE from the policy activities.

The Denver Code of Ethics regulates conflicts of interest in Section 2-61.

### **Sec. 2-61. Conflict of interest while employed.**

The purpose of this section is to avoid influence on the official actions of city officers, employees or officials by their private or family interests,

(a) Except when advised by the city attorney that the rule of necessity applies, **an officer, official, or employee shall not take direct official action on a matter before the city if he or she or a member of the immediate family, a business associate, or an employer other than the city of the officer, official or employee has any substantial employment, contractual, or financial interest in that matter. A substantial interest shall be deemed to exist if:**

(1) He or she or a member of the immediate family, a business associate or an employer other than the city is the other party in the matter;

(2) He, she, a spouse, a domestic partner or minor children solely or aggregated together, a business associate or an employer owns or own one (1) percent or more, or a member of the immediate family other than a spouse, domestic partner or minor children own or owns five (5) percent or more, of another party in the matter;

(3) **He or she**, a member of the immediate family, a business associate or an employer is a board member or an officer in another party in the matter; ...

(f) **Officers, employees or officials who are prohibited from taking direct official action due to a substantial conflict of interest shall disclose such interest to his or her colleagues on a board or commission or to his or her supervisor or appointing authority, shall not act or vote thereon, shall refrain from attempting to influence the decisions of others in acting or voting on the matter and shall work with his or her supervisor or appointing authority to ensure that the matter is assigned to someone without conflicting interests.**

(g) **No officer, employee or official may have any other employment or position which is incompatible with his or her duties or that adversely affect the interests of the city.**

Direct Official Action is defined by the Code as:

**Sec. 2-52. Definitions.**

(b) *Direct official action* means any action which involves:

(1) Negotiating, approving, disapproving, administering, enforcing, or recommending for or against a contract, purchase order, lease, concession, franchise, grant, business loan or other similar instrument in which the city is a party. With regard to "recommending," direct official action occurs only if the person making the recommendation is in the formal line of decision making.

(2) Enforcing laws or regulations or issuing, enforcing, or regulating permits, licenses, benefits or payments;

(3) Selecting or recommending vendors, concessionaires, or other types of entities to do business with the city;

(4) Appointing and terminating employees, temporary workers, and independent contractors.

(5) Doing research for, representing, or scheduling appointments for an officer, official, or employee, provided that these activities are provided in connection with that officer's, official's, or employee's performance of (1) through (4) above.



Ultimately the Board of Ethics recognized that this was a unique opportunity, and that given the nature of his expertise, his service would benefit not only the Commission, but the people of the State of Colorado as a whole, not to mention the people of the City and County of Denver. The Board noted its belief that City employees serving on boards and commissions promotes civic engagement and benefits the City. For these reasons, while it was not possible to envision every permutation that would come before the Commission, and therefore every potential conflict of interest under Section 2-61(a)(3) of the Denver Code of Ethics, the Board decided that he should be allowed to serve on the Commission with the following conditions:

- He must remain cognizant of conflicts of interest, discuss any potential conflicts with the relevant attorneys for the City and the Commission, and recuse himself as necessary;
- DDPHE must wall him off from any policy making activity;
- He must make it clear that he is serving on the Commission in an individual capacity; and
- He must return in six months to update the Board on whether his service on the Commission has impacted his position at DDPHE, and speak to what benefit, if any, the City has received as a result of his appointment to the Commission.

## **Case 20 –22 (subsequent employment)**

The Executive Director of the Department of Excise and Licenses (“EXL”) for the City and County of Denver (the “City”) approached the Board seeking an advisory opinion with respect to an employee of EXL who had been offered and accepted a position with a private company (“the Company”). She explained in her request that this employee, while working for the City, focused her time on researching and developing marijuana policy. The Company is a firm that specializes in government affairs work, including with respect to marijuana policy advocacy.

The Executive Director provided the following information related to the employee's duties while working for the City:

During her time at with the City and County of Denver (the "City"), the employee has worked almost exclusively on marijuana, including marijuana community outreach, communications, and policy. She has represented the City well in her role, navigating relationships with industry members, law firms, other government agencies, and stakeholders. She represented the City on a number of marijuana work groups with external stakeholders, led a national quarterly check in with other jurisdictions, and oversaw the yearly Denver Marijuana Management Symposium. The employee was also tasked with answering marijuana policy and operational questions and advising external stakeholders of the City's rules and regulations. In addition, the employee has engaged in significant policy work, including: conducting research, analyzing policy direction, and development of policy.

This employee has led our City's work around three potential new marijuana license types. This project has been ongoing for over a year. It has involved significant stakeholder outreach, meetings, work groups, research, brainstorming and decision-making. It has also required managing multiple competing interests related to these new licenses from current industry members, potential future market entrants, marijuana advocates, social justice activists, law firms, lobbyists, as well as significant interest from the media and City Council. The Department is in the process of finalizing our recommendations on these new license types, and then proceeding through the legislative process.

The Company describes itself on its website as a "National cannabis law firm providing legal and policy services to marijuana and hemp businesses, ancillary companies, investors, and governmental bodies." Similarly, on its website, VSS makes clear that its focus is cannabis policy and public affairs.

It was anticipated that the employee’s job duties at the Company would include working with state and local policy makers to help promote responsible and thoughtful cannabis regulation. She would also assist with research and analysis of cannabis policy issues, as well as drafting summaries, regulatory proposals, and even statutes, ordinances, and regulations.

Additionally, the employee would participate in work groups, meetings and public feedback sessions, representing clients and the company's general goals of creating responsible, equitable cannabis policies. The Denver Code of Ethics regulates subsequent employment in Section 2-64:

**Sec. 2-64. Subsequent employment.**

The purpose of this section is to avoid the actuality or appearance that employers who hire former city officers or employees may get special treatment.

(a) During six (6) months following termination of office or employment, no former officer, official, or employee shall obtain employment outside of the city government in which he or she will take direct advantage, unavailable to others, of matters with which he or she took direct official action during his or her service with the city.

(c) For one (1) year following termination of service with the city, no former officer, official, or employee shall engage in any action or litigation in which the city is involved, on behalf of any other person or entity, when the action or litigation involves an issue on which the person took direct official action while in the service of the city.

It is also helpful to look at the Code’s definition of “direct official action.” This is found in Section 2-52(b):

(b) *Direct official action* means any action which involves:

- (1) Negotiating, approving, disapproving, administering, enforcing, or recommending for or against a contract, purchase order, lease, concession, franchise, grant, business loan or other similar instrument in which the city is a party. With regard to "recommending," direct official action occurs only if the person making the recommendation is in the formal line of decision making.
- (2) Enforcing laws or regulations or issuing, enforcing, or regulating permits, licenses, benefits or payments;
- (3) Selecting or recommending vendors, concessionaires, or other types of entities to do business with the city;
- (4) Appointing and terminating employees, temporary workers, and independent contractors.
- (5) Doing research for, representing, or scheduling appointments for an officer, official, or employee, provided that these activities are provided in connection with that officer's, official's, or employee's performance of (1) through (4) above.

Direct official action does not include acts that are purely ministerial (that is, acts which do not affect the disposition or decision with respect to the matter). With regard to the approval of contracts, direct official action does not include the signing by the mayor, the auditor, the manager of finance or the clerk, as required by Charter, unless the mayor, auditor, manager of finance or clerk initiated the contract or is involved in selecting the contractor or negotiating or administering the contract. A person who abstains from a vote is not exercising direct official action.

In a prior case, number 16-1, the Board of Ethics recognized the importance of regulating subsequent employment by government personnel and quoted the author, Robert Wechsler, in *Local Government Ethics in a Nutshell*:

Post-Employment Restrictions. Also known as a “revolving door” provision, this provision applies certain ethics provisions to officials and employees usually for a limited period of time after they have left their government positions (the “cooling off” period). The provisions applied are usually the representation and appearance provisions, the confidential information provision, and the basic conflict provision. These provisions continue to be applied because (1) leaving government office to do work for a company that does business with one’s board or agency makes it look as if the official had been misusing his or her office to help the company, and was being rewarded for the favor; and (2) representing a company before one’s own agency makes it look as if the official was effectively selling to an employer or client his confidential information and special relationships with colleagues and subordinates.

The Board of Ethics agreed with the conclusion that this employee has taken direct official action with respect to marijuana policies while working for the Department. Because of this, she was prevented from taking direct advantage, unavailable to others, of these matters for six-months after taking leave from the City. The Board noted that this was particularly true with respect to the new license types that EXL anticipated advancing through the legislative process in the near future.

The Board therefore found that the circumstances of this case fit squarely within the post-employment restrictions of Section 2-64 and advised that the employee should abstain from working on issues related to the City and County of Denver for a period of six months. The Board requested that the Company send a written acknowledgement of these restrictions to the Board and to EXL.

The Board found that it was also critical that this employee guard any confidential information she received while employed at EXL. The Denver Code of Ethics addresses this in Section 2-68, as copied below.

**Sec. 2-68. Use of confidential records**

No officer, official or employee may disclose any information or records that are not available to the public, which were acquired in the course of official duties, except in the performance of official duties or as required by law or court order.

Because this employee had been involved in high-level conversations that have shaped the deliberative process of arriving at policy recommendations, the Board believed she was provided with information that was not publicly available. Disclosure of this type of information would constitute a clear violation of the Denver Code of Ethics.

By issuing this advisory opinion, the Board did not intend to throw a shadow on the employee's opportunity or fault her for leaving the City; rather, the Board wished to thank the team for being transparent and for bringing this important matter forward.

**Case 20-23 (conflict of interest while employed)**

A member of the Denver Planning Board wished to know if serving on the Denver Planning Board while holding the consulting contracts through her private company created a conflict of interest under the Denver Code of Ethics.

The Denver Planning Board members serve as unpaid volunteers, meeting two times per month. The purpose of this eleven-member Board is to advise the Mayor and City Council on land use matters. Five members make a quorum and passage of any motion requires five votes, or the majority of those present, whichever is the greater number.

The Denver Planning Board reviews a variety of plans, including comprehensive, neighborhood, small area, and corridor plans. The Planning Board holds public hearings to receive testimony on proposed plans and amendments and it votes whether to approve a proposed plan. Each plan and the Planning Board's recommendation then go before City Council for another public hearing before it can be adopted.

The Denver Planning Board also hears requests for rezoning when a development does not “fit in” with a particular parcel. The Planning Board considers the requests and applies specified criteria to arrive at a recommendation for or against approval to City Council. Again, City Council then holds a public hearing and makes a final decision.

The Denver Planning Board, however, reviews urban design for new development only in the following areas: Denver Union Station, Arapahoe Square, the Commons and Highland Gardens Village.

The Planning Board is also responsible for hearing “one-off” sign code placements for large developments; as well as considering legislative matters to change text amendments or change planning board ordinance. With respect to the legislative matters, the Planning Board makes recommendations to City Council regarding whether to approve the changes. Again, City Council makes the final decision.

The Planning Board member’s private company is “a community planning and housing research firm, providing custom, creative, and high-value analysis and strategy.” The member conveyed that the firm does not have private sector clients. Rather, cities, counties and states comprise the firm’s client base.

In 2017, when the member originally applied to serve on the Denver Planning Board, her practice with her firm did not have any active projects for the City and County of Denver (“the City”). Other practices in that firm may have active contracts, but she did not have access to those records. Still, she noted in her application that she was a public policy consultant and that in the past she had held contracts with the City.

At the time of her request for her advisory opinion, her private firm was fulfilling two contracts with the City: one was a joint contract with the Department of Community Planning and Development (“CPD”) and the Department of Housing Stability (“HOST”), and the second was solely with HOST.

While the member indicated that there would not be a situation where she or her firm would appear before the Denver Planning Board, she stated that, in theory, a consultant could be asked questions with respect to technical aspects of a plan. However, CPD staff have the primary responsibility to present text amendments or information about community plans to the Planning Board.

The Board was also told by the member that all information received by the Denver Planning Board is made public, all deliberations are public, and that the Denver Planning Board has not held executive sessions during her service. Like her, other members of the Denver Planning Board have relevant professional experience. The Planning Board's membership includes architects, other planning consultants, realtors, developers, and community members, among others. It is the practice of the members of the Planning Board to recuse themselves should conflicts of interest arise.

Under Section 2-52(e) of the Denver Code of Ethics, as a member of the Denver Planning Board, she was considered an official and she was subject to the guidance of the Ethics Code.

Section 2-61 of the Denver Code of Ethics regulates conflicts of interest.

**Sec. 2-61. Conflict of interest while employed.**

The purpose of this section is to avoid influence on the official actions of city officers, employees or officials by their private or family interests,

(a) Except when advised by the city attorney that the rule of necessity applies, an officer, official, or employee shall not take direct official action on a matter before the city if he or she or a member of the immediate family, a business associate or an employer other than the city of the officer, official or employee has any substantial employment, contractual, or financial interest in that matter. A substantial interest shall be deemed to exist if:

(1) He or she or a member of the immediate family, a business associate or an employer other than the city is the other party in the matter;



(2) He, she, a spouse, a domestic partner or minor children solely or aggregated together, a business associate or an employer owns or own one (1) percent or more, or a member of the immediate family other than a spouse, domestic partner or minor children own or owns five (5) percent or more, of another party in the matter;

(3) He or she, a member of the immediate family, a business associate or an employer is a board member or an officer in another party in the matter;

(4) He or she, a member of the immediate family, a business associate or an employer is directly involved in obtaining the city's business for another party in the matter;

(5) He or she, a member of the immediate family, a business associate or an employer is directly involved in negotiating the contract or preparing the bid, proposal, response to a request for qualifications, or similar document for another party in the matter, other than in a purely clerical capacity; or

(6) A member of his or her immediate family performs more than a nominal portion of the work in the matter or supervises or manages more than a nominal portion of the work.

(7) He or she or a member of his or her immediate family participated personally in providing legal representation, lobbying or other professional services for another party in the matter or owns five (5) percent or more of a law firm, lobbying firm or other professional services firm representing another party in the matter.

(b) For purposes of this section, business associate means a person or entity with whom an officer, official or employee or a member of his or her immediate family is a partner or a co-owner of a business in which the business associate and the officer, official or employee or a member of his or her immediate family each own at least one percent of the business.

(c) An officer, official, or employee may represent himself or herself before a city board or commission in accord with such board's procedures, provided that the officer, official, or employee does not also participate in the board's decision in his or her official capacity.

(d) An officer, official, or employee may acquire an interest in bonds or other evidence of indebtedness issued by the city or the board of water commissioners so long as they are acquired on the same terms available to the general public.

(e) It shall not be a violation of this code of ethics for an officer, official, or employee to take direct official action on the following matters even if the person or a relative employed by a city agency would benefit:

(1) The city's annual budget or an amendment to the annual budget; or

(2) Establishing the pay or fringe benefit plans of city officers, officials, or employees

(f) Officers, employees or officials who are prohibited from taking direct official action due to a substantial conflict of interest shall disclose such interest to his or her colleagues on a board or commission or to his or her supervisor or appointing authority, shall not act or vote thereon, shall refrain from attempting to influence the decisions of others in acting or voting on the matter and shall work with his or her supervisor or appointing authority to ensure that the matter is assigned to someone without conflicting interests.

(g) No officer, employee or official may have any other employment or position which is incompatible with his or her duties or that adversely affect the interests of the city.

The Board of Ethics found that the member’s private company completes research services such as housing market analysis, data models, and surveys for the purpose of supporting public sector staff, and that there is no representation of private clients. For this reason, the Board understood that this company would not come before the Denver Planning Board as “another party in the matter,” as contemplated by Sections 2-61(a)(1)-(5) and (7) of the Denver Code of Ethics.

Additionally, given the unique nature of the Denver Planning Board, in that it does not receive confidential information or currently hold executive sessions, the Board of Ethics concluded that serving on the Denver Planning Board while holding two contracts with the City is not a per se conflict of interest or violation of the Denver Code of Ethics.

The Board of Ethics was gratified to learn that there is a practice of recusal for members of the Denver Planning Board. To that end, the Board of Ethics cautioned the member that if she is substantially involved in a project that comes before the Denver Planning Board she should not participate in the discussion or the voting, unless the rule of necessity applies, and authorization has been provided as per Section 2-61(a). Further, because it is the intent of the Code that officers, officials and employees comply with both the letter and the spirit of the Code of Ethics, and strive to avoid situations that create even the appearance of impropriety, it is the Board's view that during her service on the Planning Board she should consider possible conflicts as they would be seen through the public's eyes--i.e., in the context of the public's perception of violations of the Code. See Section 2-51.

### **Case 20-24 (complaint, no jurisdiction)**

A prior supervisor in the Traffic Division of Denver County Court filed a complaint against the Presiding Judge of Denver County Court due to the policies and practices that were put in place to address cases during the COVID-19 pandemic, and because the prior supervisor believed she was targeted in violation of the Denver Whistleblower Ordinance.

The Board noted that the Whistleblower Protection Ordinance was adopted by City Council in 2007, and that it allows an employee to file a complaint with the Career Service Board within 30 days of any adverse action.

The Board of Ethics determined that it was without jurisdiction to hear this complaint because under the Colorado Constitution, county court judges are part of the judicial branch of government, and under the Denver City Charter, county court judges are subject to the authority of the Judicial Performance Commission with respect to their conduct.

Therefore, pursuant to Section 2-56(6)(a) of the Denver Code of Ethics, this complaint was dismissed.

### **Case 20-25 (complaint, no jurisdiction)**

A police officer for the City and County of Denver filed a complaint against a Denver City Councilperson.

While serving as a police officer, the officer responded to a reported disturbance in Denver, Colorado. In securing the perimeter of the location, with her body camera activated, she observed the Councilperson approach and ask to speak to a supervisor. She explained that the Councilperson engaged her and another officer, who is Black, and said to this other officer, “you should be ashamed.” According to the police officer, the Councilperson then said, “you, I would expect this from you,” and that the Councilperson then said, “look up the laws pertaining to slavery.” The police officer understood the Councilperson’s sentiments directed at her to express racial overtones, specifically insinuating that the officer was racist because she was Caucasian.

The police officer further alleged that the Councilperson, while still standing in front of her, said, “they” – meaning you and the other officers – “don’t fucking know they don’t know how to read.” And the Councilperson stated, “This is some coward ass shit right here; they don’t know this shit they do what they’re told,” and “they are fucking guard dogs; they’re just like animals, like pit bulls, they’re fucking guard dogs.” The police officer further said that, while referencing Mayor Hancock, the Councilperson said, “the dumbass mayor, sic[c]ing his dogs on his own fucking people.”

The police officer believed, given the context and ensuing events, that the Councilperson made the racially antagonistic and derogatory remarks to incite others against the police officers; and to belittle police officers. Two officers were assaulted: one officer was kicked in the face, which resulted in four fractured teeth, and one officer had his body-worn camera stolen off his person. The police officer had information indicating that at some point the Councilperson was in possession of the stolen equipment, and that the camera was not returned for 51 hours.

In addition to these events being captured by officer body worn cameras, the police officer stated that the Councilperson tweeted a picture of her with an explicit anti-police sentiment, and that the Councilperson posted a video on their Facebook account and said, “let them hit you, there is a higher liability now. Sue these fucking cops.”

The Board of Ethics was troubled by the allegations in this complaint. The Board expects all public employees and elected officials to live up to the highest standard of ethical behavior, as stated in Section 2-51 of the Denver Code of Ethics (“the Code”):

**Sec. 2-51. Legislative intent.**

It is the intent of the city that its officers, officials, and employees adhere to high levels of ethical conduct, honesty, integrity and accountability, so that the public will have confidence that persons in positions of public responsibility are acting for the benefit of the public. Officers, officials, and employees should comply with both the letter and spirit of this ethics code and strive to avoid situations that create impropriety or the appearance of impropriety.

The Board determined that the heart of the complaint concerns this aspirational intent of the Code; however, Section 2-51 is not, in and of itself, a basis for a violation. Consequently, the Board of Ethics dismissed this complaint pursuant to Section 2-56(a) of the Code, because it has no jurisdiction. The Board stated that it does not believe that the complaint was frivolous, groundless, or brought for the purposes of harassment; rather, it simply did not allege a violation of any actionable section of the Denver Code of Ethics.

The Board of Ethics is limited to considering complaints that allege violations of the Denver Code of Ethics. When the Board determines it does not have jurisdiction, it is not making a decision on whether the underlying behavior is right, wrong, or ethical or unethical. Rather, the question is solely whether the alleged conduct, if true, would violate the limited provisions of the Code. As the Code stands, here it does not.

The Code regulates gifts, conflicts of interest, the use of public office for private gain, employment and supervision of family members, prior employment, outside employment, subsequent employment, and improper use of confidential information or records. If the conduct alleged doesn't fit within one of these sections of the Code, the Board is not empowered to hear the complaint.

According to City Council's Manual for Legislative Services, there is, however, a Code of Conduct for members of City Council, which states that: "the citizens of the City and County of Denver ("City") expect their elected officials to behave in a manner befitting the honor and privilege they hold as representatives of the City."

City Council’s Code of Conduct also prohibits violence or the threat of violence, by or against Council members or employees. It defines violence as “actual or attempted threatening behavior, verbal abuse, intimidation, harassment, obscene telephone calls or communications through a computer system, swearing at or shouting at, or stalking.”

Ultimately, the Board of Ethics recognized that while the Councilperson may not be accountable under Denver’s Code of Ethics, they were accountable to their constituents and to members of City Council.

### **Case 20-26 (outside employment, conflict of interest)**

The Civilian Review Administrator for the Department of Safety, who is also a licensed attorney in the State of Colorado, requested an advisory opinion about whether he could continue his work for a civil defense law firm in Denver on a part-time basis after accepting employment with the City and County of Denver (“the City”).

The duties of the Civilian Review Administrator include the following:

- Review administrative investigative case files, analyze and prepare findings and make disciplinary determinations in cases involving sworn members of the Denver Sheriff Department
- Prepare for disciplinary appeal hearings when required and testify as a witness or act in an advisory capacity in other legal proceedings
- Examine policies and procedures and recommend changes to ensure that they align with organizational goals and in compliance with regulatory requirements
- Collaborate with partner stakeholders, including agency command staff, Public Integrity Division staff, and the Office of the City Attorney to ensure timely, consistent and fair discipline
- Draft internal memoranda and work on other projects as assigned

- Provide support and guidance in processing and analyzing Colorado Open Records Act (CORA) and Colorado Criminal Justice Records Act (CCJRA) requests
- Act as a representative of the Department of Public Safety

From the City's website, the Denver Department of Public safety:

provides management, discipline, human resources, administrative support and policy direction for the Police, Fire and Sheriff Departments, the 911 Emergency Communications Center and oversees Youth Programs, Community Corrections, the Gang Reduction Initiative and the Public Safety Cadet Program.

Outside employment is regulated by Section 2-63 of the Denver Code of Ethics:

**Sec. 2-63. Outside employment or business activity.**

The purpose of this section is to avoid possible conflicts of interest and time conflicts between city jobs and outside employment or business activity.

(a) All officers other than elective officers and all employees shall report existing or proposed outside employment (excluding unpaid volunteer activity) or other outside business activity annually in writing to their appointing authorities and obtain his or her appointing authority's approval thereof prior to accepting initial employment or outside business activity. All officials shall immediately report any change in employment status to their appointing authorities which could give rise to a conflict of interest.

(b) If the appointing authority or the officer, official or employee believes that there is a potential conflict of interest between the person's public responsibility and his or her possible outside employment or outside business activity, he, she or they are encouraged to consult the board of ethics.



(d) An officer or employee who has received the written permission of the appointing authority may engage in outside employment or other outside business activity. If, however, the board has rendered an advisory opinion to an officer, employee or official and/or an appointing authority and the board has reason to believe that the officer, employee or official has not complied with the opinion, the board shall notify the appointing authority and the appointing authority shall report to the board in executive session regarding the action, if any, taken with respect to the person.

(e) Copies of documents arising from this section shall be placed in each officer's or employee's departmental personnel file.

(f) City resources may not be used for any outside employment or outside business activity.

The Board determined that the first issue, as the Civilian Review Administrator would be compensated for the outside employment, is that the Civilian Review Administrator would need to obtain the written approval from his appointing authority prior to beginning work for the law firm.

The Board found that the second issue involves an examination of potential conflicts of interest. The Code of Ethics provides the following guidance:

**Sec. 2-61. Conflict of interest while employed:**

The purpose of this section is to avoid influence on the official actions of city officers, employees or officials by their private or family interests,

(a) Except when advised by the city attorney that the rule of necessity applies, an officer, official, or employee shall not take direct official action on a matter before the city if he or she or a member of the immediate family, a business associate or an employer other than the city of the officer, official or employee has any substantial employment, contractual, or financial interest in that matter. A substantial interest shall be deemed to exist if:

(2) He or she or a member of the immediate family, a business associate or an employer other than the city is the other party in the matter; . . .

(7) He or she or a member of his or her immediate family participated personally in providing legal representation, lobbying or other professional services for another party in the matter or owns five (5) percent or more of a law firm, lobbying firm or other professional services firm representing another party in the matter . . .

(g) No officer, employee or official may have any other employment or position which is incompatible with his or her duties or that adversely affect the interests of the city.

Direct Official Action is defined by the Code as:

**Sec. 2-52. Definitions.**

(b) *Direct official action* means any action which involves:

- (1) Negotiating, approving, disapproving, administering, enforcing, or recommending for or against a contract, purchase order, lease, concession, franchise, grant, business loan or other similar instrument in which the city is a party. With regard to "recommending," direct official action occurs only if the person making the recommendation is in the formal line of decision making.
- (2) Enforcing laws or regulations or issuing, enforcing, or regulating permits, licenses, benefits or payments;
- (3) Selecting or recommending vendors, concessionaires, or other types of entities to do business with the city;
- (4) Appointing and terminating employees, temporary workers, and independent contractors.

- (5) Doing research for, representing, or scheduling appointments for an officer, official, or employee, provided that these activities are provided in connection with that officer's, official's, or employee's performance of (1) through (4) above.

The Civilian Review Administrator was supported by both the law firm and his appointing authority in perusing this request. The appointing authority believed that the outside employment with the law firm would help the Civilian Review Administrator maintain the legal research and analytical skills that benefitted the Department of Safety. A member of the law firm stated that the firm was willing to build conflict walls such that he did not have access either to the Public Entity Team at the firm, as well as any to Title 1983 defense work. The member of the firm also agreed that the firm would not accept any cases on behalf of the City and County of Denver or any cases that involved employees of the Denver Sheriff's Department or Denver Police Department.

The Board of Ethics found that these safeguards were fundamental to the understanding that there would be no actual conflict of interest by the Civilian Review Administrator working for the firm while also working for the Department of Safety.

The Board, however, stated that it takes seriously the responsibility to ensure that employees, officers, and officials not only comply with the letter of the Code of Ethics, but also the spirit of the Code. Section 2-51 of the Code provides the following:

It is the intent of the city that its officers, officials, and employees adhere to high levels of ethical conduct, honesty, integrity, and accountability, so that the public will have confidence that persons in positions of public responsibility are acting for the benefit of the public. Officers, officials, and employees should comply with both the letter and spirit of this ethics code and strive to avoid situations that create impropriety or the appearance of impropriety.

The Board was concerned with the appearance of impropriety inherent in this request and in conjunction with the considerations provided under 2-61 of the Code to guard against conflicts of interest. As the Civilian Review Administrator’s primary duty with the Department of Safety was to review and evaluate disciplinary matters he had broad responsibility over disciplinary matters, including those in the same vein as the firm. The Board found that working for a law firm that represents persons appealing disciplinary matters while acting in the role of Civilian Review Administrator for the City, from the public’s point of view, could reasonably call into question the integrity of the process – particularly for a citizen alleging a disciplinary violation.

The Board of Ethics concluded that while the question of whether to approve outside employment or business activity is ultimately a decision to be made by the appointing authority, the Board believed that the appearance of impropriety was too great to support approval.

### **Case 20-27 (outside employment, conflict of interest)**

A Program Coordinator with the Department of Housing Stability (“HOST”) for the City and County of Denver (“the City”) requested an advisory opinion about her outside employment.

On the City’s website, HOST describes its work as follows:

The Department of Housing Stability builds a healthy, housed, and connected Denver. We invest resources, create policy, and partner with organizations to keep people in the homes they already live in, to quickly resolve an experience of homelessness, and to connect people to affordable housing opportunities. We do this by:

1. Stabilizing people at risk of involuntary displacement and connecting them to housing resources
2. Supporting people experiencing a crisis and connecting them to shelter services and short-term and permanent housing

3. Creating and preserving existing affordable housing
4. Connecting residents at any income level to new housing opportunities

As a Program Coordinator, her duties at HOST included:

- Providing support such as data clean up, document development and other process initiatives for the regional coordinated entry system, OneHome (50% of her time);
- Acting in a leadership role for HOST’s equity, diversity and inclusion (“EDI”) efforts, including the integration of EDI into procurement and contracting processes;
- Supporting HOST’s data needs, including support to organize the department’s data-related workstreams, development of training materials for contractors in the use of data systems;
- Supporting other departmental needs as arise, such as development of application materials for procurement and support for annual events.

Prior to working as a full-time employee for HOST, she began working for the Volunteers of America (“VOA”), in August of 2017. At that time, she worked 10 hours per week at the Irving Street Women’s Shelter. In September of 2019, she transitioned to the position of relief staff with VOA. As a relief staff member, her hours varied and were not guaranteed, however, she had the flexibility of serving at various VOA locations. She reported that more than 75% of her shifts were done at the Irving Street Women’s Shelter. Due to the impacts of the COVID-19 pandemic, there was an increased need for staff to take on shifts at other VOA programs, including the VOA Family Motel; the Family Voucher Writer Program; and Sinton Sanctuary Women’s Shelter.

VOA is a nonprofit, faith-based organization that provides services that include housing and emergency shelters and other community support programs. Many VOA programs receive HOST funding, and some of your VOA shifts are at HOST-funded programs. Currently VOA has eleven contracts with HOST totaling \$3 million dollars annually to support shelter and rehousing for Denver residents experiencing homelessness.

The Program Coordinator did not believe her duties with HOST fell within the definition of “direct official action,” as set forth in the Code of Ethics. She also stated that she had no oversight over the funding of VOA programs, nor had she participated in the review of the proposals received in response to the department’s procurement process.

She posed three questions for the Board’s consideration:

1. Is her employment with VOA a conflict of interest relative to her employment with HOST?
2. If it is a conflict, what duties would she be precluded from performing within her role at HOST?
3. If her outside employment with VOA was limited to VOA programs that do not receive HOST funds, does this resolve the conflict of interest?

Outside employment is regulated by Section 2-63 of the Denver Code of Ethics:

**Sec. 2-63. Outside employment or business activity.**

The purpose of this section is to avoid possible conflicts of interest and time conflicts between city jobs and outside employment or business activity.

(a) All officers other than elective officers and all employees shall report existing or proposed outside employment (excluding unpaid volunteer activity) or other outside business activity annually in writing to their appointing authorities and obtain his or her appointing authority's approval thereof prior to accepting initial employment or outside business activity. All officials shall immediately report any change in employment status to their appointing authorities which could give rise to a conflict of interest.

(b) If the appointing authority or the officer, official or employee believes that there is a potential conflict of interest between the person's public responsibility and his or her possible outside employment or outside business activity, he, she or they are encouraged to consult the board of ethics.

(c) An officer or employee who has received the written permission of the appointing authority may engage in outside employment or other outside business activity. If, however, the board has rendered an advisory opinion to an officer, employee or official and/or an appointing authority and the board has reason to believe that the officer, employee or official has not complied with the opinion, the board shall notify the appointing authority and the appointing authority shall report to the board in executive session regarding the action, if any, taken with respect to the person.

(d) Copies of documents arising from this section shall be placed in each officer's or

employee's departmental personnel file.

(e) City resources may not be used for any outside employment or outside business activity.

The Board of Ethics found that the first issue, as she was compensated for the outside employment, is that she would need to obtain the written approval from your appointing authority. The Board understood that she had been working diligently with her supervisor, and that her supervisor was supportive of her opportunities with VOA.

The second issue identified by the Board involved an examination of potential conflicts of interest. The Code of Ethics provides the following guidance:

**Sec. 2-61. Conflict of interest while employed.**

The purpose of this section is to avoid influence on the official actions of city officers, employees or officials by their private or family interests,

(a) Except when advised by the city attorney that the rule of necessity applies, an officer, official, or employee shall not take direct official action on a matter before the city if he or she or a member of the immediate family, a business associate or an employer other than the city of the officer, official or employee has any substantial employment, contractual, or financial interest in that matter. A substantial interest shall be deemed to exist if:

(3) He or she or a member of the immediate family, a business associate or an employer other than the city is the other party in the matter; ...

(h) Officers, employees or officials who are prohibited from taking direct official action due to a substantial conflict of interest shall disclose such interest to his or her colleagues on a board or commission or to his or her supervisor or appointing authority, shall not act or vote thereon, shall refrain from attempting to influence the decision of others in acting or voting on the matter and shall work with his or her supervisor or appointing authority to ensure that the matter is assigned to someone without conflicting interests.

(i) No officer, employee or official may have any other employment or position which is incompatible with his or her duties or that adversely affect the interests of the city.

Direct Official Action is defined by the Code as:

**Sec. 2-52. Definitions.**

(b) *Direct official action* means any action which involves:

(1) Negotiating, approving, disapproving, administering, enforcing, or recommending for or against a contract, purchase order, lease, concession, franchise, grant, business loan or other similar instrument in which the city is a party. With regard to "recommending," direct official action occurs only if the person making the recommendation is in the formal line of decision making.



- (2) Enforcing laws or regulations or issuing, enforcing, or regulating permits, licenses, benefits or payments;
- (3) Selecting or recommending vendors, concessionaires, or other types of entities to do business with the city;
- (4) Appointing and terminating employees, temporary workers, and independent contractors.
- (5) Doing research for, representing, or scheduling appointments for an officer, official, or employee, provided that these activities are provided in connection with that officer's, official's, or employee's performance of (1) through (4) above.

The Board of Ethics found that she clearly had a “substantial interest” in VOA, as defined by Section 2-61(a)(1) of the Code of Ethics, however the Board also found that she had put into place procedures to make sure she was not involved in any decision-making, or direct official action responsibility with respect to VOA. Additionally, her supervisor told the Board that she believes that the Program Coordinator had carefully considered her schedule, and that her time spent at VOA did not interfere with her position at HOST. Because she had taken these measures, the Board did not find that there was any actual conflict of interest in her working for VOA while employed by HOST.

The supervisor also stated that she had confidence in the Program Coordinator’s demonstrated ability to keep any information that she obtained through her employment at HOST confidential. The Board of Ethics cautioned her to continue to protect confidential information as she balanced her roles with VOA and with HOST.

The Board believed that by having her “feet on the ground” at VOA programs while working for HOST, she benefitted both the agency and the City as a whole because this gave her the opportunity to have a broader spectrum of involvement in addressing issues surrounding homelessness for the citizens of Denver.

## Case 20-28 (subsequent employment, request withdrawn)

An employee of the City and County of Denver (the “City”) requested an advisory opinion about the application of Section 2-64 of the Denver Code of Ethics with respect to an opportunity the employee was considering. However, the employee decided to stay with the City and not pursue this opportunity. As such, the request was withdrawn.

## Case 20-29 (conflict of interest while employed)

A Compliance Certification Officer with Denver Economic Development and Opportunity for the City and County of Denver (“the City”) asked for an advisory opinion from the Board of Ethics concerning whether it would be a conflict of interest to serve on the Brighton Urban Renewal Authority while working in her position at the City.

In her job with the City, her goal was seeking to ensure that minority-owned businesses, women-owned businesses, and small businesses have the opportunity to engage with the City on their contracts. In this role, her responsibilities included:

- Conducting site visits, interviewing key company personnel, analyzing certification applications, including tax documents and balance sheets and third-party agreements, to determine business entity control and making recommendations on whether a firm meets all requirements for certification.
- Conducting site visits on a regular basis for non-certified firms and making the initial determination as to whether an organization is eligible.
- Uploading documents into B2G as a support to decisions made and to maintain an audit trail.
- Keeping an organized schedule of tasks to be performed.
- Working on outreach to certified firms to identify issues and areas of potential assistance by DSBO.

- Conducting research and analysis from various sources on specific operational and/or administrative issues and confers with manager(s), supervisor(s), and/or operating personnel on scope of work, purpose, time frames, and resources requirements.
- Developing and presenting recommendations for new, revised, and/or improved work processes, policies, procedures, practices, methods and/or other tools to implement changes/improvements and evaluating the effectiveness of proposed changes/recommendations.
- Planning and assisting in the installation of new methods, policies, processes, and/or procedures, provides instruction and technical assistance to operating personnel, and performing follow up to ensure defined outcomes are achieved.
- Cultivating, fostering, and maintaining positive working relationships with managers, supervisors, employees, and other stakeholders to gain their cooperation and support.
- Preparing written reports that summarize research, analysis, recommendations, and implementation strategies.
- Attending outreach events in the community, other city agencies, and other governmental agencies.
- Participating as a voting member on the Certification Committee.

The Compliance Certification Officer was also a resident of Brighton, Colorado, and she was considering a position with the Brighton Urban Renewal Authority (“BURA”) as an opportunity to give back to the community.

BURA is a Board of Commissioners with the mission to encourage investment and reinvestment in targeted areas while strengthening the tax base of the city of Brighton. BURA may assist the Brighton City Council in development approval, development financing, property acquisition, and public improvements with respect to urban renewal plans selected to serve, the term of appointment is five years, and she would be required to attend monthly meetings. This is a volunteer (uncompensated) position.

The Board first determined that because this is an unpaid opportunity, she would not need to obtain the written approval from her appointing authority prior to accepting a position as a commissioner. She had chosen, however, to communicate with her supervisor and proactively reach out to the Board of Ethics to ensure that serving on BURA while working as a Compliance Certification Officer for the City would not be prohibited by the Denver Code of Ethics.

Section 2-61 of the Ethics Code provides the following guidance:

**Sec. 2-61. Conflict of interest while employed.**

The purpose of this section is to avoid influence on the official actions of city officers, employees or officials by their private or family interests.

(a) Except when advised by the city attorney that the rule of necessity applies, an officer, official, or employee shall not take direct official action on a matter before the city if he or she or a member of the immediate family, a business associate or an employer other than the city of the officer, official or employee has any substantial employment, contractual, or financial interest in that matter. A substantial interest shall be deemed to exist if: . . .

(3) He or she, a member of the immediate family, a business associate or an employer is a board member or an officer in another party in the matter; . . .

(f) Officers, employees or officials who are prohibited from taking direct official action due to a substantial conflict of interest shall disclose such interest to his or her colleagues on a board or commission or to his or her supervisor or appointing authority, shall not act or vote thereon, shall refrain from attempting to influence the decisions of others in acting or voting on the matter and shall work with his or her supervisor or appointing authority to ensure that the matter is assigned to someone without conflicting interests.

(g) No officer, employee or official may have any other employment or position which is incompatible with his or her duties or that adversely affect the interests of the city.

Direct Official Action is defined by the Code as:

**Sec. 2-52. Definitions.**

(b) *Direct official action* means any action which involves:

- (1) Negotiating, approving, disapproving, administering, enforcing, or recommending for or against a contract, purchase order, lease, concession, franchise, grant, business loan or other similar instrument in which the city is a party. With regard to "recommending," direct official action occurs only if the person making the recommendation is in the formal line of decision making.
- (2) Enforcing laws or regulations or issuing, enforcing, or regulating permits, licenses, benefits or payments;
- (3) Selecting or recommending vendors, concessionaires, or other types of entities to do business with the city;
- (4) Appointing and terminating employees, temporary workers, and independent contractors.
- (5) Doing research for, representing, or scheduling appointments for an officer, official, or employee, provided that these activities are provided in connection with that officer's, official's, or employee's performance of (1) through (4) above.

The Board of Ethics determined that while it was not possible to envision every potential scenario that might arise for her in this role, the Board agreed with her that it is unlikely that there would be any significant intersection between her work for the City and her responsibilities for BURA. The Board did state that if such circumstance were to come into being where she was conflicted, the Board expected that she would disclose her relationship and recuse herself from taking direct official action in the matter.

The Board of Ethics also cautioned her to ensure that the opportunity did not interfere with her full-time position with the City, to be mindful not to use any City resources, and to participate in BURA meetings outside of her regularly scheduled hours.

### **Case 20-30 (conflict of interest)**

Two members of the Denver Planning Board who were both employed by the Urban Land Conservancy (“ULC”), requested an advisory opinion as to whether they were required to recuse themselves from deliberating and voting on whether to approve and recommend approval of the East Area Plan by City Council when the matter had come before the Denver Planning Board. At that time, as is the practice of the Denver Planning Board members, each disclosed relevant employment interest – specifically, they disclosed that their employer was ULC. They then spoke to ULC’s general interest in investing in property in East Colfax and in working with local residents and business owners there to increase affordable housing options in that area. They both felt that they could remain impartial with respect to hearing testimony, deliberating, and voting on the East Area Plan based on their lack of a direct role with ULC’s efforts and considering, further, that ULC owned no property interest subject to the East Area Plan.

#### ***The East Area Plan***

A Senior City Planner with the Department of Community Planning and Development summarized the East Area Plan as follows:

The East Area Plan, a supplement to Denver’s citywide Comprehensive Plan 2040, is the result of a multi-year public process led by the Department of Community Planning and Development and informed by input from residents, local business and property owners, neighborhood groups and other stakeholders. It is intended to help guide city decision-making in the Hale, Montclair, East Colfax, and South Park Hill neighborhoods over the next 20 years. As a policy document, the East Area Plan is not regulatory and does not allocate or designate budget funds, but rather it would inform future regulatory and budget decisions. Distinct from quasi-judicial processes that Planning Board also considers (e.g. site-specific re-zonings), the East Area Plan is a city-led legislative process and its recommendations apply broadly across the plan area to many properties and public land.

The Revised Municipal Code states that the comprehensive plan and any supplements shall be considered by Planning Board for approval and then accepted by City Council. Both Planning Board and City Council must consider the following criteria in their review of supplements, as stated in Comprehensive Plan 2040: 1. An inclusive community process was used to develop the plan; 2. The plan is consistent with the vision, goals and strategies of Comprehensive Plan 2040; and 3. The plan demonstrates a long-term view.

### **Urban Land Conservancy**

The Planning Board members provided this information about Urban Land Conservancy.

ULC's mission is to preserve, develop, steward, and manage permanently affordable real estate to positively impact lives and communities in Colorado. We do this through strategic property acquisitions, with a focus on transit-rich environments, developing community benefit uses on vacant land (e.g., affordable housing, schools, libraries, recreation centers, health clinics, etc.), and also providing below-market rate office space rental opportunities to other non-profit organizations. Accordingly, ULC is heavily involved in the Denver community as a land bank, residential and nonresidential community land trust, and commercial landlord. Because of ULC's mission and the expertise of our staff, we also regularly serve as conveners of community conversations and policy discussions regarding urban growth patterns, funding of affordable housing, and ways for community voices to become more involved in land use and real estate development processes.

The Planning Board members described ULC's role on East Colfax as follows:

As an entity interested in supporting innovative solutions to our region's affordable housing crisis, ULC's Real Estate Department, led by Vice President of Real Estate, Mark Marshall, has been engaged in ongoing conversations with The Fax Partnership and Brothers Redevelopment, among others, regarding redevelopment opportunities along the East Colfax corridor, both in Denver and Aurora. The primary focus has been on the potential to invest in existing motel buildings that provide short-term housing options such as day laborers, into longer term, in order to convert them to higher quality affordable housing options. Accordingly, ULC is actively engaged in coalition building and community engagement activities with East Colfax stakeholders, for which the organization recently received a grant from the Colorado Health Foundation. With that being said, ULC does not currently own any property within any of the East Area Plan's neighborhoods and its current and future activities are not dependent on the Plan's adoption.

The first Planning Board member provided this description of her role with ULC:



As Vice President of Master Site Development, the member manages ULC's Master Site Department and oversees a portion of the organization's property portfolio comprising vacant land sized between 3-30 acres throughout Denver, Aurora, Westminster, and Fort Collins. None of the properties to be developed by the Master Site Department are within any of the East Area Plan neighborhoods. Her role does require her, however, to engage with numerous community groups within the neighborhoods where ULC holds property slated for future development, and also to work with officials of local jurisdictions on entitlements and construction financing. She also speaks and publishes about issues related to affordable housing, land trusts, transit-oriented development, and the intersections between racial equity and land use policies.

Similarly, the other Planning Board member included this description of her role at ULC:

As Director of Communications, the member manages ULC's Communications Department and oversees the organization's internal and external messaging. This includes implementation of media relations, events, direct marketing, social media, and digital platforms in congruence with ULC's strategic plan and goals. Specific duties include publishing ULC's monthly e-newsletter, maintaining ULC's website, drafting and distributing press releases regarding major milestones in our developments with our partners, and coordinating responses to major policy matters that impact ULC's work. In this role, she is not directly involved in ULC's decision making with respect to where new property acquisitions will occur or how such properties will be developed.

Finally, the Planning Board members confirmed that ULC staff has not had any formal involvement with the East Area Plan community engagement efforts.

The Board of Ethics first stated that under Section 2-52(e) of the Denver Code of Ethics, as members of a city board, both of the Denver Planning Board members were considered officials and were subject to the provisions of the Ethics Code.

Section 2-61 of the Denver Code of Ethics regulates conflicts of interest.

Sec. 2-61. Conflict of interest while employed.

The purpose of this section is to avoid influence on the official actions of city officers, employees or officials by their private or family interests,

(a) Except when advised by the city attorney that the rule of necessity applies, an officer, official, or employee shall not take direct official action on a matter before the city if he or she or a member of the immediate family, a business associate or an employer other than the city of the officer, official or employee has any substantial employment, contractual, or financial interest in that matter. A substantial interest shall be deemed to exist if:

(1) He or she or a member of the immediate family, a business associate or an employer other than the city is the other party in the matter;

(2) He, she, a spouse, a domestic partner or minor children solely or aggregated together, a business associate or an employer owns or own one (1) percent or more, or a member of the immediate family other than a spouse, domestic partner or minor children own or owns five (5) percent or more, of another party in the matter;

(3) He or she, a member of the immediate family, a business associate or an employer is a board member or an officer in another party in the matter;

(4) He or she, a member of the immediate family, a business associate or an employer is directly involved in obtaining the city's business for another party in the matter;

(5) He or she, a member of the immediate family, a business associate or an employer is directly involved in negotiating the contract or preparing the bid, proposal, response to a request for qualifications, or similar document for another party in the matter, other than in a purely clerical capacity; or

(6) A member of his or her immediate family performs more than a nominal portion of

the work in the matter or supervises or manages more than a nominal portion of the work.

(7) He or she or a member of his or her immediate family participated personally in providing legal representation, lobbying or other professional services for another party in the matter or owns five (5) percent or more of a law firm, lobbying firm or other professional services firm representing another party in the matter.

(b) For purposes of this section, business associate means a person or entity with whom an officer, official or employee or a member of his or her immediate family is a partner or a co-owner of a business in which the business associate and the officer, official or employee or a member of his or her immediate family each own at least one percent of the business.

(c) An officer, official, or employee may represent himself or herself before a city board or commission in accord with such board's procedures, provided that the officer, official, or employee does not also participate in the board's decision in his or her official capacity.

(d) An officer, official, or employee may acquire an interest in bonds or other evidence of indebtedness issued by the city or the board of water commissioners so long as they are acquired on the same terms available to the general public.

(e) It shall not be a violation of this code of ethics for an officer, official, or employee to take direct official action on the following matters even if the person or a relative employed by a city agency would benefit:

- (1) The city's annual budget or an amendment to the annual budget; or
- (2) Establishing the pay or fringe benefit plans of city officers, officials, or employees

(f) Officers, employees or officials who are prohibited from taking direct official action due to a substantial conflict of interest shall disclose such interest to his or her colleagues on a board or commission or to his or her supervisor or appointing authority, shall not act or vote thereon, shall refrain from attempting to influence the decisions of others in acting or voting on the matter and shall work with his or her supervisor or appointing authority to ensure that the matter is assigned to someone without conflicting interests.

(g) No officer, employee or official may have any other employment or position which is incompatible with his or her duties or that adversely affect the interests of the city.

The Board of Ethics agreed with the conclusion reached by the Denver Planning Board members that there was no conflict of interest for which recusal would have been necessary. Further, the Board stated that it was impressed with the Planning Board Members knowledge of the Code of Ethics and their demonstrated diligence in terms of identifying circumstances where they might need to recuse themselves from hearing testimony, deliberating, or voting on a matter that is before the Denver Planning Board.

The Board of Ethics reiterated its appreciation for persons who choose to serve as members of city boards and commissions and thanked them, noting that the request was brought forward out of an abundance of caution and motivated by a desire to be transparent.