**Denver Board Of Ethics**

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# DENVER BOARD OF ETHICS
# DIGEST OF SELECTED OPINIONS
# January 1– June 30, 2016

**PLEASE NOTE**: This is a selected set of summarized opinions given by the Denver Board of Ethics between January 1 and June 30, 2016 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.

## Cases 15-38, 15-39, 15-40, 15-41, 15-43 and 15-44(no jurisdiction)

A Denver resident filed complaints concerning 5 city employees, alleging that they improperly dealt with arrearages in his court-ordered child support obligations over a period of years. In particular, he asserted that the employees did not appropriately credit certain child support payments, were disrespectful to him and that the notices of amounts of support arrearages kept changing with no clear accounting being provided.

The Board of Ethics determined that there are no provisions of the Denver Code of Ethics that address the issues that he raised. To the extent that there were any improper procedures or discrepancies in the collection of child support obligations, such concerns can only be addressed by the Denver District Court or the Colorado Court of Appeals. The Board dismissed the complaints pursuant to Sections 2-56(6)(a) and (b) of the Code of Ethics because the Board has no jurisdiction over the issues raised and because the alleged errors, if true, would not constitute violations of the Denver Code of Ethics.

## Case 15-42 (subsequent employment)

A city employee filed a complaint concerning her recently-retired former supervisor, alleging that the former supervisor violated Section 2-64(a) of the Code of Ethics regarding subsequent employment. The employee alleged that the former supervisor, soon after her retirement 1) became employed by a company that the supervisor was engaged in contracting with for the city and 2) entered into a contract with city to perform certain work. The Board of Ethics could find no evidence that the former supervisor was employed by the company in question. The Board did confirm that the former supervisor was on contract to perform certain work for her former department, but could not find that the contract violated any section of the Code of Ethics. Therefore, the Board dismissed the complaint.

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## Case 16-1 (subsequent employment)

A recently-resigned Mayoral appointee requested an advisory opinion concerning his subsequent business. In his role as Director of Development Services within the Community Planning and Development Department, he was responsible for the oversight and delivery of services including Zoning, Plan Review, Site Engineering, Fire Protection Engineering and Inspections (Construction, Electrical, Mechanical/Plumbing and Neighborhood/Zoning). Following his resignation, he issued a press release concerning his new venture – "a real estate consulting firm, which focuses on steering developers through the web of city approvals and other tangles that might otherwise slow a development project." The Board understands that the new real estate-related consulting firm will focus on mid- to large- scale development projects that need assistance at the conceptual stage through the permitting process.

In his request for an advisory opinion, he represented:

> My new role is to advise/assist landowners, in and out of Denver, on their land development potential and effective development planning/management processes. I make it clear to all actual and potential clients who have existing projects in the City of Denver that I cannot represent them at the City for a period of 6 months from my departure date.

The Board of Ethics concluded that in his role as Director of Development Services, he and/or his subordinate employees were involved in significant "direct official action" regarding development projects in various parts of the City. The term "direct official action" is defined in Section 2-52(b) of the Code of Ethics as follows:

> (1) Negotiating, approving, disapproving, administering, enforcing, or recommending for or against a contract, purchase order, lease, concession, franchise, grant, 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;.. (emphasis added)

Under the Code of Ethics, subsequent employment by City officers, officials and employees is addressed in Section 2-64, which provides:

> **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. (emphasis added)**

The Board recognized that the importance of regulating subsequent employment by government personnel is summarized by 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.

In addition, Section 2-68 of the Denver Code of Ethics prohibits the disclosure of confidential information gained during the course of employment by the City, as follows:

**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 low or court order.

The Board of Ethics advised him that:

1. Section 2-64 of the Code of Ethics does not prohibit subsequent employment by City officers, officials and employees, and you are, therefore, not prohibited by the Code of Ethics from returning to the private sector and engaging in work as a consultant through your new real estate-related consulting firm, so long as you do not take direct advantage, unavailable to others, of matters with which you took direct official action during your service with the city.
2. You should refrain from being retained for any consulting work for, or on behalf of, any individual, business or other entity that is conducting or seeking to do business with the City and County of Denver for a period of at least six (6) months following your resignation from the City. This prohibition would include lobbying or seeking to influence, directly or indirectly, any City personnel on behalf of any such individual, business or entity.
3. Pursuant to Section 2-68 of the Code of Ethics, you should refrain from the disclosure of any information or records to any of your private clients that are not available to the public that you gained during the course of your employment with the City.
4. Because the Board cannot foresee the potential clients or nature of any future work that you may wish to pursue, the Board encourages you to be guided by the legislative intent of the Code of Ethics in Section 2-51, which encourages the avoidance of situations that "create impropriety or the appearance of impropriety."

## Case 16-2 (no jurisdiction)

A citizen filed a complaint alleging improper procedures by a drug-treatment center, which has no relationship to the Denver city government. The Board of Ethics dismissed the complaint.

## Case 16-3 (subsequent employment)

The City's Chief Financial Officer requested an advisory opinion after deciding that she would resign her position. She indicated that she intended to enter into a consulting contract with the City and County of Denver to provide analysis and strategic advice regarding issues that she had worked on when employed by the City and any other items agreed upon.

Subsequent employment is regulated by Section 2-64(a) 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. (emphasis added)

The Board of Ethics advised her that:

- She is not prohibited by the Code of Ethics from entering into a consulting contract with the City and County of Denver regarding projects that she worked on or any new or additional items as the City may request, because such work is not "outside of the city government."
- She should refrain from any consulting work for or on behalf of any individual, business or other entity that is conducting or seeking to do business with the City and County of Denver for a period of at least six (6) months following her resignation from the City. This prohibition would include lobbying or seeking to influence, directly or indirectly, any City personnel on behalf of any such individual, business or entity.
- Because the Board cannot foresee the potential clients or nature of any future work that she may wish to pursue, the Board encouraged her to be guided by the legislative intent of the Code of Ethics in Section 2-51, which encourages the avoidance of situations that "create impropriety or the appearance of impropriety."

## Case 16 -4 (gifts; travel expenses)

The City Attorney requested an advisory opinion on behalf of the Mayor regarding travel and lodging expenses for Super Bowl 50 in Santa Clara, California, in which the Denver Broncos were competing on February 7, 2016. These travel and lodging expenses (as differentiated from the expenses for Super Bowl 48, dealt with by the Board of Ethics in Case 14-3) involve payment by the Denver Broncos Football Club for three tickets to the game; payment by the City's General Fund for the cost of the Mayor's hotel room, airfare and food costs; and payment for airfare for his wife and daughter to be paid by personal funds.

As the Denver Board of Ethics previously observed in connection with Case No. 14-3, there are appropriate and important reasons for the Mayor to represent the City of Denver at the Super Bowl. The Board recognized that Super Bowl 50 provides an important opportunity to highlight the City and County of Denver and for the Mayor to represent and promote the interests of the City before a national audience.

The Mayor's use of General Fund monies to provide for his travel and attendance at Super Bowl 50 does not violate any of the provisions of the Denver Code of Ethics. The budgetary decisions of the City and the propriety of the expenditure of monies from the General Fund fall within the jurisdiction and sound discretion of the Mayor, City Council and the Auditor's Office.

The Board understands that there may be differences of opinion among citizens of Denver about the appropriateness of the use of public funds for travel expenses for public officials. However, that is a proper subject for discussion by policymakers and civic debate, and cannot be decided by the Board of Ethics unless there is an issue specifically regulated by the Denver Code of Ethics. The Board is charged with only enforcement of the existing terms and conditions of the Code.

The Mayor's use of personal funds to provide for the travel and attendance of his wife and daughter at Super Bowl 50 does not implicate any of the provisions of the Code of Ethics.

Further, the receipt by the Mayor of three tickets to the Super Bowl from the Denver Broncos Football Club does not violate any of the provisions of the Denver Code of Ethics. The Mayor is not in a position to exercise "direct official action" with respect to the Broncos, as that term is defined by the Code. Based on the information available to the Board, the Mayor is not now, nor is he expected to be, involved in the "negotiating, approving, disapproving, administering, enforcing, or recommending for or against a contract, purchase order, lease, concession, franchise, grant, or other similar instrument" with respect to the Denver Broncos. *See* DRMC Sec. 2-52(b)(1).

In addition, the Board notes that Mile High Stadium, the venue at which the Denver Broncos play, is supervised and managed by an independent entity, the Metropolitan Football Stadium District (the "District") and not by the City and County of Denver. The District is a political subdivision of the State of Colorado, which was established by the Metropolitan Football Stadium District Act, Article 15, Title 32 of the Colorado Revised Statutes. The District is a separate legal entity responsible for its own financial operations and obligations, and is governed by a nine-member Board of Directors.

## Case16-5 (outside employment)

An Assistant City Attorney requested an advisory opinion. He is considering becoming a candidate in the November 2016 election for the Regional Transportation District (RTD) Board of Directors from a district, no portion of which lies within the City and County of Denver. The Board members for RTD are compensated at a rate of $12,000 per year, plus reimbursement for Board-related expenses.

The following sections of the Denver Code of Ethics may apply to this request:

**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 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 or lobbying for another party in the matter or owns five (5) percent or more of a law firm or lobbying firm representing 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. (emphasis added)

**Sec. 2-63. Contemporaneous or outside employment.**

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.

(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.

**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 advised him as follows:

- His potential candidacy and service as a member of the Board of Directors of the RTD is not prohibited by the Denver Code of Ethics, provided he complies with the above provisions including providing advance disclosure to, and obtaining written consent from his appointing authority or supervisor for service as a RTD Board member in accordance with Section 2-63.
- In addition, Section 2-63(e) would prohibit the use of any City resources in connection with his service as an RTD Board member. That would include engaging in any RTD business during his work for the City, or the use of any City tangible property, such as computers and staff, in connection with his service as a Board member.
- In order to avoid any conflict of interest, he should carefully consider the application of Section 2-61 if he is elected to the RTD Board. It is possible that issues may arise in connection with his work on behalf of the City that concern the RTD or its interests. If such circumstances arise, he should consider the extent to which he should disclose any such conflict, abstain and/or recuse himself from any such matters. Section 2-61 of the Code would preclude him from exercising any "direct official action" with respect to any matter concerning RTD that comes before him in his role as Assistant City Attorney. Full disclosure, abstention and/or recusal may be appropriate depending on the particular facts and circumstances.

- In addition, Section 2-68 of the Code of Ethics would prohibit his use of information or records that are not available to the public and which were acquired in the course of his service as an Assistant City Attorney, except in the performance of his duties as such or as required by law or court order. This provision would preclude the use of such information or records in connection with his service as a RTD Board member.
- The Board encouraged him to maintain detailed records and backup documentation reflecting his time and expenses related to any work for RTD. This will establish a level of transparency that avoids any misunderstandings and help to ensure that a separate accounting is maintained for those RTD-related expenses for which he receives reimbursement.

## Case16-6 (subsequent employment)

A senior executive related to security for Denver International Airport requested an advisory opinion. He had announced his intention to retire from DIA. One week later, he would begin employment with a private security company (the company) as a Senior Director in its Aviation and Government Services Division. The company represents itself as being "the nation's leading security partner" providing security services in healthcare and aviation. The national headquarters of the company is in Denver.

The company is currently under contract with the City and County of Denver to provide security services at City-owned facilities, including the Webb Building and DIA. The company provides security services for airports in several other cities besides Denver.

He represented to the Board of Ethics that he was not directly involved in any contractual negotiations with the company, but his job duties and responsibilities included, in part, the administration of the contract with the company.

Subsequent employment by City officers, officials and employees is regulated in the Denver Code of Ethics by the following:

> **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.

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The definition of "direct official action" is as follows:

> 2-52(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, 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 determined that he exercised "direct official action" regarding his proposed new employer because his role included, in part, administering or enforcing the company contract with the City. Therefore, the Board determined that he should comply with Section 2-64(a) of the Code of Ethics upon his retirement from the City, including the six-month "cooling off" period following his retirement from the City. During this period of time, he should avoid any circumstances in which he would be taking "direct advantage, unavailable to others," of matters connected with the company, which can best be achieved by refraining during the six-month period from any work on behalf of the company pertaining to the City and County of Denver.

## Case 16–7 (outside employment; use of public office for private gain)

A deputy administrator of a city office requested an advisory opinion to serve as guidance in establishing office procedures and protocols. One of the functions of the office is to issue marriage licenses to the public. Within the office is an area open to the public and used principally to conduct marriage ceremonies (the "marriage corner"). The public may use the marriage corner, without charge, to hold marriage ceremonies, which may be officiated by judges or other authorized persons.

Questions have arisen regarding whether an office employee may solicit the public to perform marriage ceremonies, accept payment from the public for performing a marriage ceremony, and/or utilize the marriage corner to officiate with respect to marriage ceremonies.

In this case, the Board only received general information, not specific to any individual and, therefore, can only provide a general advisory opinion, which is not tailored to or based on the particular facts of any individual case. An investigation of the facts and circumstances of a particular case would only occur upon receipt of a complaint by the Board against a specific employee.

Two sections of the Denver Code of Ethics may pertain to the issues presented by the advisory opinion requested:

**Sec. 2-63. Contemporaneous or outside employment.**

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.

(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.** (emphasis added)

**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. (emphasis added)

The Board concluded that the Code prohibits certain conduct by employees of the office. Section 2-67 of the Code of Ethics generally prohibits any City employee from using "his or her public office or position . . . in order to obtain private gain for himself or herself, for his or her immediate family," any affiliated business entity or prospective employer. This broad prohibition is necessary in order to ensure the public's continued faith and confidence that City employees will serve the public's interests and will not utilize their public position for private gain. The Board determined that an employee of the office is prohibited by Section 2-67 from soliciting the public to perform any marriage ceremony, in exchange for any form of compensation during the course and scope of the employee's work for the City. This prohibition would extend to the solicitation of the public based on any records of the City, such as marriage rolls, as well as any in-person solicitation during work in the office. Moreover, this prohibition would preclude an employee from soliciting the public during City time or based on City records, whether such marriage ceremonies were solicited to occur on or off City time, *e.g.*, during lunch hours or after hours.

With respect to any outside employment proposed by any City employee, Section 2-63 of the Code of Ethics requires that every employee report his or her proposed outside employment (excluding unpaid volunteer activity) to his or her appointing authority and obtain the approval of the appointing authority prior to engaging in any such outside employment. This would not, however, prohibit an office employee

from performing a marriage ceremony gratis or, for example, as an uncompensated favor for friends or relatives. In addition, Section 2-63(e) of the Code would prohibit the employee from using any City resources in connection with any outside employment, regardless of whether such employment was approved by his or her appointing authority.

The Board of Ethics recognized that the marriage corner is open to the public during normal business hours for the conduct of marriage ceremonies. Whether those in charge of the supervision and orderly operation of the office may wish to permit or restrict the use of the marriage corner by office employees during lunch hours, paid time off or after normal business hours falls within the discretion of the office administrators. These circumstances may raise human resources and employment-related issues that are best balanced and resolved by the supervisors of the office.

This advisory opinion is based, in large part, on hypothetical facts and circumstances. The resolution of any particular ethical issues would depend upon the unique facts and circumstances of a particular case.

## Case 16–8 (outside employment)

A Technician for the Denver Fire Department requested an advisory opinion. He is assigned to the Special Response Team at Denver International Airport. The duties of the Special Response Team include preparation and training for emergency response at DIA, including those potentially resulting from terrorism, airline crashes, fire, hazardous materials, floods, and other disasters.

He wished to serve as an instructor to conduct trainings for City personnel regarding appropriate emergency care for canines, including police K9s. He obtained written approval from his appointing authority to engage in this outside business activity, as required by Section 2-63(a) of the Denver Code of Ethics. He advised the Board of Ethics that he had created a small company that provides specific training to improve the survivability rate of rescue and police K9s. He and his wife own the company and he serves as an officer of the company. The Denver Police Department at DIA is interested in paying to receive this training from the company, with him as the instructor.

There are approximately 23 trained dogs working for different government agencies at DIA, in addition to many service animals that assist individual passengers every day. In addition to the Denver Police Department, other metropolitan safety departments are interested in obtaining the training he provides in order to render emergency medical care for their own K9s and other animals that may become injured in floods or fires.

The following provisions of the Denver Code of Ethics are implicated by the request for an advisory opinion:

**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 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;…

(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.

**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.

As used in the Denver Code of Ethics and, in particular, Section 2-61 defining prohibited conflicts of interest, the definition of "direct official action" is as follows:

**Sec. 2-52(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, 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 ultimate decision to approve proposed outside employment rests with an employee's appointing authority pursuant to Section 2-63(a) of the Denver Code of Ethics. The Technician satisfied this requirement of the Code by obtaining the written approval of his appointing authority. In addition to such approval, however, his proposed outside employment and the business of his company raises other ethical issues.

First, Section 2-61(a) would prohibit him from exercising "direct official action" with respect to any matter involving his company. This means that he should not participate in negotiating, approving, disapproving, administering, enforcing or recommending any contract, purchase order or other similar instrument for the training by his company of any Denver employees, including Denver police officers. Further, he should not participate, directly or indirectly, in any lobbying of the City to conduct business with his company. It is permissible for the company to make its services known and to be engaged by a City department or agency to conduct training(s), but he should have no role in the City's decision-making process.

Second, Section 2-63(e) of the Code of Ethics precludes him from using any City resources in connection with his outside business activity. Accordingly, he should scrupulously avoid using any City resources, such as time, computers, telephones, paper or other material for his outside business activity. He may, however, conduct training(s) at a City facility if he is offered such accommodation by a City department or agency.

Finally, the Board recommended that he keep detailed accounting records of his activities associated with the outside business activity, including the receipt of any and all payments or other consideration from the City for any work that the company provides. Detailed accounting records will help ensure transparency with respect to the scope of any work that he or the company performs for the City.

Subject to the above conditions, the Board concludes that his participation in the outside business activity will not violate the Code of Ethics.

## Case16-9 (outside employment; conflicts of interest)

The Forestry Inspections Supervisor in the Forestry Division of the Denver Department of Parks and Recreation requested an advisory opinion. He is responsible for the supervision of Forestry Inspectors, whose principal responsibilities include the inspection of trees in the City and County of Denver. Forestry Inspectors are responsible for code enforcement of tree violations (including disease, blockage of sidewalks or other dangerous conditions) in Denver. They notify property owners of code violations and ensure that orders are complied with by the property owner or by a City-licensed tree-trimming and removal contractors.

He requested advice in connection with two Forestry employees, one who was previously employed as a tree trimmer and the other in the tree inventory group. They both were recently promoted to be Forestry Inspectors and, as a result, are now under his supervision. They both requested permission to continue their previously approved outside employment as tree trimmers for two different private licensed tree-trimming and removal companies, both of which conduct some of their operations in the City and County of Denver.

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;..

(3) He or she, a member of the immediate family, a business associate or an employer is 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;..

(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.** (emphasis added)

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

**Sec. 2-63. Contemporaneous or outside employment.**

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…

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

Use of confidential records is regulated by Section 2-68 of the 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 ultimate decision to approve outside employment or not rests with the appointing authority, according to Section 2-63 of the Denver Code of Ethics. Nonetheless, the supervisor requested advice from the Board of Ethics concerning the ethical implications of the potential continued outside employment of the Forestry Inspectors by private tree-trimming and removal companies within the City and County of Denver. His request for an advisory opinion indicated that he had reservations about outside employment for Forestry Inspectors as employees of private tree-trimming companies:

> The potential conflict that I see, is that these employees would have knowledge of properties with tree violations that would receive an order to complete tree work and access to any records of violations anywhere within the City and County of Denver of properties on notice to have required tree work completed. The database system used to track violations is shared amongst the entire inspection staff, so every violation is viewable by any inspector… Both employees would be in the position of being able to provide their respective company with this information without proper requests being submitted or authorized. This secondary employment could also put pressure on these employees to provide information prior to issuance of a notice of violation or becoming public record. I don't believe these employees would be involved in these scenarios, but I do not want to put the City or the employee in a compromising situation…They would have knowledge of properties that have tree issues, should receive violation notices, and those notices could be withheld with intent for private work, and not necessarily to uphold the safety of the public. They could provide an unfair advantage for the inspector as he/she could gain knowledge not available to other companies

The Board concluded that there are significant ethical concerns arising from the private employment of Forestry Inspectors by private tree trimming and removal companies, including potential conflicts of interest. The Board determined that the concerns the supervisor expressed are valid, particularly if such

outside employment is with a private tree-trimming company that does any of its business inside the City and County of Denver. In such circumstances, there could be actual or perceived conflicts of interest.

The Board noted that Section 2-61(g) of the Code of Ethics provides that "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."

Although it is ultimately the decision of the supervisor, the Board recommended that the City Forester establish a policy prohibiting Forestry Inspectors from engaging in any outside employment with tree-trimming companies that do any business inside the City and County of Denver.

## Case16-10 (gifts - honoraria)

The City's Chief Sustainability Officer requested an advisory opinion. He directs the work of the Office of Sustainability in helping City agencies plan, finance and implement initiatives that will allow the City to achieve its 2020 Sustainability Goals. He also serves as the principal spokesperson for the Office of Sustainability and does numerous presentations each year about Denver's sustainability efforts for groups inside and outside of Denver.

He recently received an honorarium from a marketing research company which was representing a college in order to evaluate the viability of a campaign to position the college as a leading academic institution in sustainability. He does not have direct official action power over the marketing firm or its client. The interview by the marketing research firm was on his own time. He did not solicit a contribution or honorarium, but the research firm issued him a check in the amount of $300. His practice has been to sign any such payments over to the Mayor's Office Donation Fund and he has never retained any such payments. His office has an internal policy that no one in the Office of Sustainability may request an honorarium, and, if an unsolicited honorarium is provided to any representative of the Office, it may not be accepted personally, but may be signed over to the Mayor's Office Donation Fund.

The Denver Code of Ethics includes the word "honoraria" in the definition of gifts in Section 2-60(a):

> **Sec. 2-60. Gifts to officers, officials, and employees.**
>
> The purpose of this section is to avoid special influence by those 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;

(2) Any **honoraria** or payment for participation in an event;…

(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 that solicitation and financial records are maintained and provided that 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.(emphasis added)

The Board of Ethics also noted that Section 1.2.12 of the Denver Charter provides: "No official or employee shall solicit or receive any pay, commission, money or anything of value…for the performance of official duties except lawful compensation or salary…"

The definition of "honorarium" in the Merriam Webster Collegiate Dictionary, Tenth Edition is "a payment for a service (as in making a speech) on which custom or propriety forbids a price to be set."

The Mayor's Office Donation Fund has existed for many years and a number of appointees and others have contributed to the Fund. Distributions from the Fund are made for City-related objectives, such as for the Denver Education Compact or City employee recognition programs. The Fund is classified as a "special revenue fund," which is a special fund intended to receive donations for certain purposes.

As noted above, Section 2-60(a) of the Code of Ethics prohibits City personnel from accepting honoraria 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, unless acceptance is permitted by one or more of the exceptions in Section 2-60(b).

Neither the Chief Sustainability Officer nor the Office of Sustainability are in a position to take direct official action concerning the research firm or any of the other organizations from which he or the office has received honoraria. Accordingly, in the absence of "direct official action" power, the receipt of honoraria from such organizations is not prohibited by Section 2-60(a).

The Board also recognized that Section 2-60(c) of the Code provides that an officer, official or employee may solicit or accept donations to the City or solicit, accept or redirect donations for charitable purposes.

Although he was not required to do so by the Code of Ethics, the Board commended him for redirecting the honoraria that he received to the Mayor's Office Donation Fund. The Board believes that this practice ensures that the Office of Sustainability avoids even the appearance of impropriety. Any agency is empowered to "adopt a stricter code of ethics" pursuant to Section 2-51 of the Denver Code of Ethics.

The Board also indicated that the practice of donating honoraria to the Mayor's Office Donation Fund ensures that the office avoids any potential application of Section 1.2.12 of the Denver Charter. The Board recognized that the interview with the marketing research company was conducted on his own time and can, therefore, be viewed as not having been conducted during the performance of his "official duties:"

but the Board also recognized that much of the mission of the office is to educate and inform the public and interested third parties about sustainability through speeches and interviews. The Board concluded, therefore, that the donation of honoraria by the office avoids any debate about the potential application of Section 1.2.12 of the Denver Charter and the scope of "official duties" under these or similar circumstances.

## Case16-11 (subsequent employment)

A senior executive at Denver International Airport (DEN) requested an advisory opinion. She had decided to resign her position with the City and had agreed to begin a new senior job for a major global airline company. She indicated to the Board of Ethics that "if required, I can recuse myself from DEN business affairs during my first six months of employment with the airline.

Subsequent employment by City officers, officials and employees is regulated by Section 2-64(a) of the Denver Code of Ethics which provides:

> **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.

The definition of "direct official action" is provided in Section 2-52(b) of the Code:

2-52(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, 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.

In addition, the use of confidential records or information gained during employment by the City is governed by the following provision of the 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.

She advised the Board of Ethics that she had not exercised any direct official action over the airline that she intended to work for or regarding whether or not to allow new gates or other facilities for any airlines, concessionaires or other entities at the airport. Her role had been to provide technical support to evaluate any such requests.

Accordingly, the Board concluded that she will not violate Section 2-64(a) of the Code of Ethics if she goes to work for the airline. However, in the spirit of the Code and to avoid even the appearance of impropriety, the Board encouraged her to recuse herself from attempting to lobby or negotiate with any City and County of Denver officials, officers, or employees until six months have expired from her last day of City employment. The Board did not perceive any prohibition, however, to her work in a technical problem-solving capacity with DEN on behalf of the airline before that time has expired.

In addition, as noted above, pursuant to Section 2-68 of the Code of Ethics, she should not disclose any information or records to the airline that are not available to the public and that she gained during the course of her employment with the City.

## Case16-12 (subsequent employment)

A Mayoral appointee who resigned from City employment requested an advisory opinion. He had not yet discussed potential work with any new employer. The key section of the Code of Ethics relating to subsequent employment is:

**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.

The definition of "direct official action" is provided in Section 2-52(b) of the Code:

2-52(b) *Direct official action* means any action which involves:

(6) Negotiating, approving, disapproving, administering, enforcing, or recommending for or against a contract, purchase order, lease, concession, franchise, grant, 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.

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

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

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

(10) 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.

After a lengthy discussion with him, the Board of Ethics voted to table the matter, thank him for requesting the Board's advice and encouraged him to return if he has questions about specific employment opportunities.

## Case16 - 13 (no jurisdiction)

A citizen who lives in northeast Denver filed a complaint concerning the Mayor. She was very opposed to a project proposed by the Denver Public Works Department to construct an open channel near to her home to carry runoff stormwater.

During the last year, the Public Works Department studied and refined a proposal to convey runoff stormwater from several neighborhoods in northeast Denver to the South Platte River (the Project). A stormwater rate increase, which will enable construction of the Project along with many other items, was approved by Denver City Council after a public hearing on June 13, 2016.

In the complaint, the citizen alleged:

- Risks from the Project have been diverted to her neighborhood from projects favored by the Mayor in the area, such as the revitalization of National Western Stock Show facilities and nearby properties acquired by "allies of the Mayor," who will make "generous profits."

- There have been "closed-door" meetings about the Project.
- Community comment about the Project has been ignored or avoided.
- The Project will disturb contaminated soil and carry it into her neighborhood.
- Citywide rate-payers will pay for the Project through increased stormwater rates, instead of the major nearby property owners, many of whom are "allies of the Mayor."
- She submitted a separate follow-up allegation: "Looks like (a law firm and lobbyists) just paid for City Council's vacation right before the vote (on the stormwater rate increase on June 13)." This referred to a Denver Post article on June 6, 2016 which described an annual "Urban Exploration" trip sponsored by the Downtown Denver Partnership, a non-profit organization. The trip was attended by 123 individuals, including 10 City Council members to explore new urban planning and transportation efforts in Brooklyn, New York. The article said that "Several sponsors help pay for the trip, including some that do business with or lobby the city…, including "host sponsors" (lawyers and lobbyists)…Sponsors augment the costs, but attendees each pay a fee to join, while the partnership offers scholarships to enable some city employees to attend." The Mayor attended a few workshops during only one day of the 3-day trip. He had been on the East Coast for other events. All attendees pay their own costs of travel and lodging although some "sponsors" reportedly paid for the costs of some luncheons or dinners for the group.

After careful review of the information and documents submitted, the Board of Ethics concluded that none of the items in the complaint allege any violation of the Denver Code of Ethics. The Board recognized that underlying the complaint is a concern about the Project and that the citizen opposes the stormwater project and the proposed expansion of Interstate 70 and has strong policy disagreements with the Mayor, the Public Works Department and members of City Council. However, public policy disagreements, standing alone, do not give rise to any violation of the Denver Code of Ethics.

In several previous cases, the Board of Ethics has concluded that the Board has no jurisdiction to rule on policy matters and are authorized to address only those matters circumscribed by the Denver Code of Ethics. For example, in Cases 05-29 through 05-43, the Board considered complaints filed by a City employee against Mayor John Hickenlooper and all members of City Council alleging that they improperly approved a particular budget item. In that decision, the Board of Ethics concluded:

> Nothing in the Code of Ethics or the charter empowers the Board of Ethics to serve as an appeal avenue regarding policy determinations by city government. In this case, the City Council and the Mayor, in addition to the voters and the Career Service Authority, spent a great deal of time deliberating on these policy decisions.

In the case of the Project, the Mayor's Office, City Council, the Public Works Department and other City departments studied, planned and refined the Project for almost a year, including conducting numerous community meetings. Some changes to the Project were made based on community comments and input. There is no allegation or evidence whatsoever that the Mayor or anyone else in Denver City government or their immediate family members will personally profit or benefit from the Project, or that anyone shared or used confidential information gained during their work for the City for their personal benefit or gain.

The citizen also alleged improper conduct by Colorado Department of Transportation personnel, several lobbyists, attorneys and developers; however, none of those individuals are regulated by the Denver Code of Ethics.

Regarding the sponsorship of one or more meals on the Brooklyn trip which the Mayor attended for one day, there is no evidence that the law firm or the lobbyists paid for a "vacation" for any City Council members or the Mayor. However, assuming that the law firm or the lobbyists represent clients over whom the Mayor exercises direct official action, the Mayor would be entitled to accept up to four (4) meals per calendar year from each entity regardless of value, pursuant to Section 2-60(b)(4) of the Denver Code of Ethics. According to the Downtown Denver Partnership, neither the law firm nor the lobbyists paid for any travel, lodging or registration for any participants in connection with the Brooklyn trip. Section 2-60(b)(4) of the Denver Code of Ethics provides as follows:

> **Sec. 2-60. Gifts to officers, officials, and employees.**
>
> The purpose of this section is to avoid special influence by those who give gifts to city officers, employees or officials…
>
> (b) **Officers, officials, and employees and the members of their immediate family may accept the following even if the officer, official, or employee is in a position to take direct official action with regard to the donor, or, if the donor is a lobbyist or representative, the donor's client:…**
>
> **(4) The donation of meals, tickets to events for which admission is charged, or free or reduced price admission to events for which a fee is charged, but only under the following conditions:**
>
> **a. No more than a total of four meals, tickets, or free or reduced price admissions may be accepted from the same donor in any calendar year, regardless of the value;…**
>
> c. The individual or entity which pays for the meal, ticket, or admission shall be considered the donor for purposes of this subsection regardless of whether that individual or entity is reimbursed for the cost;
>
> d. Attendance must be reasonably related to the official or ceremonial duties of the officer, official, or employee;

The Board of Ethics concluded that the issues raised in this complaint do not constitute potential violations of the Denver Code of Ethics. Accordingly, the Board dismissed the complaint pursuant to Sections 2-56(6)(a) and (b) of the Denver Code of Ethics because the Board has no jurisdiction over these types of issues and because the alleged violations, even if proven to be true, would not constitute violations of the Denver Code of Ethics.