DENVER BOARD OF ETHICS
DIGEST OF OPINIONS
Jan 1– June 30, 2020

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

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

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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;
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> (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 accounted 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 considers 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 founds 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.

Finally, the Board stated that it recognized that participation in this conference resulted in savings for the city last year, therefore, the Board believed that the Department should fully fund participation in this conference in the future.

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 asks 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 32nd 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 form 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 thought 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.

The 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;
>
> (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.

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.