DENVER BOARD OF ETHICS
DIGEST OF OPINIONS
July 1– Dec 31, 2020

PLEASE NOTE: This is a set of summarized opinions given by the Denver Board of Ethics between July 1 and December 31, 2020 in response to fact-specific requests for advisory opinions or complaints.
These opinions should not be used as conclusive guidance for situations where the facts may differ. Please contact the Board of Ethics to discuss any specific issues you may have.

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

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

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

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

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

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

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

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

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

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

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

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

> **Sec. 2-63 Outside employment or business activity.**
>
> The purpose of this section is to avoid possible conflicts of interest and time conflicts between city jobs and outside employment or business activity.
>
> (a) All officers other than elective officers and all employees shall report existing or proposed outside employment (excluding unpaid volunteer activity) or other outside business activity annually in writing to their appointing authorities and obtain his or her appointing authority's approval thereof prior to accepting initial employment or outside business activity. All officials shall immediately report any change in employment status to their appointing authorities which could give rise to a conflict of interest.
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> (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.

(c) 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.

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

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

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

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

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

> **Sec. 2-68. Use of confidential records**
>
> No officer, official or employee may disclose any information or records that are not available to the public, which were acquired in the course of official duties, except in the performance of official duties or as required by law or court order.

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

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

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

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

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

> **Sec. 2-68. Use of confidential records**
>
> No officer, official or employee may disclose any information or records that are not available to the public, which were acquired in the course of official duties, except in the performance of official duties or as required by law or court order.

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

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

Moreover, the Board found that it was possible that a person could have a serious concern about

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

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

Case 20-17 (gifts)

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

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

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

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

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

Thus, the Board of Ethics concluded that gifts given to officials, employees, and officers by city agencies are not subject to the restrictions set forth in Section 2-60 of the Code, and if the Office

were to go forward with its plan to conduct the incentivized surveys, there would be no violation of the Code of Ethics.

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

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

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

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

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

> **Sec. 2-64. Subsequent employment.**
>
> The purpose of this section is to avoid the actuality or appearance that employers who hire former city officers or employees may get special treatment.
>
> (a) During six (6) months following termination of office or employment, no former officer, official, or employee shall obtain employment outside of the city government in which he or she will take direct advantage, unavailable to others, of matters with which he or she took direct official action during his or her service with the city.
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> (b) For one (1) year following termination of service with the city, no former officer, official, or employee shall engage in any action or litigation in which the city is involved, on behalf of any other person or entity, when the action or litigation involves an issue on which the person took direct official action while in the service of the city.

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

> (b) *Direct official action* means any action which involves:
>
> (1) Negotiating, approving, disapproving, administering, enforcing, or recommending for or against a contract, purchase order, lease, concession, franchise, grant, business loan or other similar instrument in which the city is a party. With regard to "recommending," direct official action occurs only if the person making the recommendation is in the formal line of decision making.
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> (2) Enforcing laws or regulations or issuing, enforcing, or regulating permits, licenses, benefits or payments;
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> (3) Selecting or recommending vendors, concessionaires, or other types of entities to do business with the city;
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> (4) Appointing and terminating employees, temporary workers, and independent contractors.
>
> (5) Doing research for, representing, or scheduling appointments for an officer, official, or employee, provided that these activities are provided in connection with that officer's, official's, or employee's performance of (1) through (4) above.
>
> Direct official action does not include acts that are purely ministerial (that is, acts which do not affect the disposition or decision with respect to the matter). With regard to the approval of contracts, direct official action does not include the signing by the mayor, the auditor, the manager of finance or the clerk, as required by Charter, unless the mayor, auditor, manager of finance or clerk initiated the contract or is involved in selecting the contractor or negotiating or administering the contract. A person who abstains from a vote is not exercising direct official action.

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

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

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

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

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

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

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

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

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

Case 20-19 (complaint – no jurisdiction)

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

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

Case 20-20 (complaint – no jurisdiction)

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

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

Case 20-21 (conflict of interest while employed)

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

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

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

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

> **Sec. 2-61. Conflict of interest while employed.**
>
> The purpose of this section is to avoid influence on the official actions of city officers, employees or officials by their private or family interests,
>
> (a) Except when advised by the city attorney that the rule of necessity applies, **an officer, official, or employee shall not take direct official action on a matter before the city if he or she or a member of the immediate family, a business associate or an employer other than the city of the officer, official or employee has any substantial employment, contractual, or financial interest in that matter. A substantial interest shall be deemed to exist if:**
>
> (1) He or she or a member of the immediate family, a business associate or an employer other than the city is the other party in the matter;
>
> (2) He, she, a spouse, a domestic partner or minor children solely or aggregated together, a business associate or an employer owns or own one (1) percent or more, or a member of the immediate family other than a spouse, domestic partner or minor children own or owns five (5) percent or more, of another party in the matter;
>
> (3) **He or she**, a member of the immediate family, a business associate or an employer **is a board member or an officer in another party in the matter; . . . .**
>
> (f) **Officers, employees or officials who are prohibited from taking direct official action due to a substantial conflict of interest shall disclose such interest to his or her colleagues on a board or commission or to his or her supervisor or appointing authority, shall not act or vote thereon, shall refrain from attempting to influence the decisions of others in acting or voting on the matter and shall work with his or her supervisor or appointing authority to ensure that the matter is assigned to someone without conflicting interests.**
>
> (g) **No officer, employee or official may have any other employment or position which is incompatible with his or her duties or that adversely affect the interests of the city.**

Direct Official Action is defined by the Code as:

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

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

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

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

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

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

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

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

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

Case 20 –22 (subsequent employment)

The Executive Director of the Department of Excise and Licenses ("EXL") for the City and County of Denver (the "City") approached the Board seeking an advisory opinion with respect to an employee of EXL who had been offered and accepted a position with a private company ("the Company"). She explained in her request that this employee, while working for the City, focused

her time on researching and developing marijuana policy. The Company is a firm that specializes in government affairs work, including with respect to marijuana policy advocacy.

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

> During her time at with the City and County of Denver (the "City"), the employee has worked almost exclusively on marijuana, including marijuana community outreach, communications, and policy. She has represented the City well in her role, navigating relationships with industry members, law firms, other government agencies, and stakeholders. She represented the City on a number of marijuana work groups with external stakeholders, led a national quarterly check in with other jurisdictions, and oversaw the yearly Denver Marijuana Management Symposium. The employee was also tasked with answering marijuana policy and operational questions and advising external stakeholders of the City's rules and regulations. In addition, the employee has engaged in significant policy work, including: conducting research, analyzing policy direction, and development of policy.
>
> This employee has led our City's work around three potential new marijuana license types. This project has been ongoing for over a year. It has involved significant stakeholder outreach, meetings, work groups, research, brainstorming and decision-making. It has also required managing multiple competing interests related to these new licenses from current industry members, potential future market entrants, marijuana advocates, social justice activists, law firms, lobbyists, as well as significant interest from the media and City Council. The Department is in the process of finalizing our recommendations on these new license types, and then proceeding through the legislative process.

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

It was anticipated that the employee's job duties at the Company would include working with state and local policy makers to help promote responsible and thoughtful cannabis regulation. She would also assist with research and analysis of cannabis policy issues, as well as drafting summaries, regulatory proposals, and even statutes, ordinances and regulations. Additionally, the employee would participate in work groups, meetings and public feedback sessions, representing clients and the company's general goals of creating responsible, equitable cannabis policies.

The Denver Code of Ethics regulates subsequent employment in Section 2-64:

> **Sec. 2-64. Subsequent employment.**
>
> The purpose of this section is to avoid the actuality or appearance that employers who hire former city officers or employees may get special treatment.
>
> (a) During six (6) months following termination of office or employment, no former

officer, official, or employee shall obtain employment outside of the city government in which he or she will take direct advantage, unavailable to others, of matters with which he or she took direct official action during his or her service with the city.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> **Sec. 2-68. Use of confidential records**
>
> No officer, official or employee may disclose any information or records that are not available to the public, which were acquired in the course of official duties, except in the performance of official duties or as required by law or court order.

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

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

Case 20-23 (conflict of interest while employed)

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

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

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

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

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

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

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

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

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

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

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

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

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

> **Sec. 2-61. Conflict of interest while employed.**
>
> The purpose of this section is to avoid influence on the official actions of city officers, employees or officials by their private or family interests,
>
> (a) Except when advised by the city attorney that the rule of necessity applies, an officer, official, or employee shall not take direct official action on a matter before the city if he or she or a member of the immediate family, a business associate or an employer other than the city of the officer, official or employee has any substantial employment, contractual, or financial interest in that matter. A substantial interest shall be deemed to exist if:
>
> (1) He or she or a member of the immediate family, a business associate or an employer other than the city is the other party in the matter;
>
> (2) He, she, a spouse, a domestic partner or minor children solely or aggregated together, a business associate or an employer owns or own one (1) percent or more, or a member of the immediate family other than a spouse, domestic partner or minor children own or owns five (5) percent or more, of another party in the matter;
>
> (3) He or she, a member of the immediate family, a business associate or an employer is a board member or an officer in another party in the matter;
>
> (4) He or she, a member of the immediate family, a business associate or an employer is directly involved in obtaining the city's business for another party in the matter;
>
> (5) He or she, a member of the immediate family, a business associate or an employer is directly involved in negotiating the contract or preparing the bid, proposal,

response to a request for qualifications, or similar document for another party in the matter, other than in a purely clerical capacity; or

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

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

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

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

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

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

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

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

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

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

The Board of Ethics found that the member’s private company completes research services such

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

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

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

Case 20-24 (complaint, no jurisdiction)

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

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

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

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

Case 20-25 (complaint – no jurisdiction)

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

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

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

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

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

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

> **Sec. 2-51. Legislative intent.**
>
> It is the intent of the city that its officers, officials, and employees adhere to high levels of ethical conduct, honesty, integrity and accountability, so that the public will have confidence that persons in positions of public responsibility are acting for the benefit of the public. Officers, officials, and employees should comply with both the letter and spirit of this ethics code and strive to avoid situations that create impropriety or the appearance of impropriety.

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

or brought for the purposes of harassment; rather, it simply did not allege a violation of any actionable section of the Denver Code of Ethics.

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

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

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

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

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

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

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

The duties of the Civilian Review Administrator include the following:

- Review administrative investigative case files, analyze and prepare findings and make disciplinary determinations in cases involving sworn members of the Denver Sheriff Department
- Prepare for disciplinary appeal hearings when required and testify as a witness or act in an advisory capacity in other legal proceedings
- Examine policies and procedures and recommend changes to ensure that they align with organizational goals and in compliance with regulatory requirements

- Collaborate with partner stakeholders, including agency command staff, Public Integrity Division staff, and the Office of the City Attorney to ensure timely, consistent and fair discipline
- Draft internal memoranda and work on other projects as assigned
- Provide support and guidance in processing and analyzing Colorado Open Records Act (CORA) and Colorado Criminal Justice Records Act (CCJRA) requests
- Act as a representative of the Department of Public Safety

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

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

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

> **Sec. 2-63. Outside employment or business activity.**
>
> The purpose of this section is to avoid possible conflicts of interest and time conflicts between city jobs and outside employment or business activity.
>
> (a) All officers other than elective officers and all employees shall report existing or proposed outside employment (excluding unpaid volunteer activity) or other outside business activity annually in writing to their appointing authorities and obtain his or her appointing authority's approval thereof prior to accepting initial employment or outside business activity. All officials shall immediately report any change in employment status to their appointing authorities which could give rise to a conflict of interest.
>
> (b) If the appointing authority or the officer, official or employee believes that there is a potential conflict of interest between the person's public responsibility and his or her possible outside employment or outside business activity, he, she or they are encouraged to consult the board of ethics.
>
> (d) An officer or employee who has received the written permission of the appointing authority may engage in outside employment or other outside business activity. If, however, the board has rendered an advisory opinion to an officer, employee or official and/or an appointing authority and the board has reason to believe that the officer, employee or official has not complied with the opinion, the board shall notify the appointing authority and the appointing authority shall report to the board in executive session regarding the action, if any, taken with respect to the person.
>
> (e) Copies of documents arising from this section shall be placed in each officer's or employee's departmental personnel file.
>
> (f) City resources may not be used for any outside employment or outside business

activity.

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

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

> **Sec. 2-61. Conflict of interest while employed.**
>
> The purpose of this section is to avoid influence on the official actions of city officers, employees or officials by their private or family interests,
>
> (a) Except when advised by the city attorney that the rule of necessity applies, an officer, official, or employee shall not take direct official action on a matter before the city if he or she or a member of the immediate family, a business associate or an employer other than the city of the officer, official or employee has any substantial employment, contractual, or financial interest in that matter. A substantial interest shall be deemed to exist if:
>
> (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; . . .
>
> (7) He or she or a member of his or her immediate family participated personally in providing legal representation, lobbying or other professional services for another party in the matter or owns five (5) percent or more of a law firm, lobbying firm or other professional services firm representing another party in the matter. . . .
>
> (g) No officer, employee or official may have any other employment or position which is incompatible with his or her duties or that adversely affect the interests of the city.

Direct Official Action is defined by the Code as:

> **Sec. 2-52. Definitions.**
>
> (b) *Direct official action* means any action which involves:
>
> (1) Negotiating, approving, disapproving, administering, enforcing, or recommending for or against a contract, purchase order, lease, concession, franchise, grant, business loan or other similar instrument in which the city is a party. With regard to "recommending," direct official action occurs only if the person making the recommendation is in the formal line of decision making.

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

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

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

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

The Board of Ethics understands and appreciates that both the law firm and your appointing authority, Ms. Mary Dulacki, support you in your request to pursue this opportunity. Ms. Dulacki expressed that she believes that your outside employment with the law firm would help you maintain the legal research and analytical skills that benefit the Department of Public Safety. Additionally, Ms. Cathy Greer, a member in the law firm stated that the firm is willing to build conflict walls such that you do not have access either to the Public Entity Team at the Firm as well as any to Title 1983 defense work. Ms. Greer also stated that the firm would agree not to accept any cases on behalf of the City and County of Denver or any cases that involved employees of the Denver Sheriff's Department or Denver Police Department.

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

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

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

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

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

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

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

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

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

> The Department of Housing Stability builds a healthy, housed, and connected Denver. We invest resources, create policy, and partner with organizations to keep people in the homes they already live in, to quickly resolve an experience of homelessness, and to connect people to affordable housing opportunities. We do this by:
>
> 1. Stabilizing people at risk of involuntary displacement and connecting them to housing resources
> 2. Supporting people experiencing a crisis and connecting them to shelter services and short-term and permanent housing
> 3. Creating and preserving existing affordable housing
> 4. Connecting residents at any income level to new housing opportunities

As a Program Coordinator, her duties at HOST included:

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

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

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

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

She posed three questions for the Board's consideration:

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

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

> **Sec. 2-63. Outside employment or business activity.**
>
> The purpose of this section is to avoid possible conflicts of interest and time conflicts between city jobs and outside employment or business activity.
>
> (a) All officers other than elective officers and all employees shall report existing or proposed outside employment (excluding unpaid volunteer activity) or other outside business activity annually in writing to their appointing authorities and obtain his or her appointing authority's approval thereof prior to accepting initial employment or outside business activity. All officials shall immediately report any change in employment status to their appointing authorities which could give rise to a conflict of interest.
>
> (b) If the appointing authority or the officer, official or employee believes that there is a potential conflict of interest between the person's public responsibility and his or her possible outside employment or outside business activity, he, she or they are encouraged to consult the board of ethics.

(h) 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.

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

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

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

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

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

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

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

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

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

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

Direct Official Action is defined by the Code as:

Sec. 2-52. Definitions.

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

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

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

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

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

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

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

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

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

citizens of Denver.

Case 20-28 (subsequent employment, request withdrawn)

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

Case 20-29 (conflict of interest while employed)

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

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

- Conducting site visits, interviewing key company personnel, analyzing certification applications, including tax documents and balance sheets and third-party agreements, to determine business entity control and making recommendations on whether a firm meets all requirements for certification.
- Conducting site visits on a regular basis for non-certified firms and making the initial determination as to whether an organization is eligible.
- Uploading documents into B2G as a support to decisions made and to maintain an audit trail.
- Keeping an organized schedule of tasks to be performed.
- Working on outreach to certified firms to identify issues and areas of potential assistance by DSBO.
- Conducting research and analysis from various sources on specific operational and/or administrative issues and confers with manager(s), supervisor(s), and/or operating personnel on scope of work, purpose, time frames, and resources requirements.
- Developing and presenting recommendations for new, revised, and/or improved work processes, policies, procedures, practices, methods and/or other tools to implement changes/improvements and evaluating the effectiveness of proposed changes/recommendations.
- Planning and assisting in the installation of new methods, policies, processes, and/or procedures, provides instruction and technical assistance to operating personnel, and performing follow up to ensure defined outcomes are achieved.
- Cultivating, fostering, and maintaining positive working relationships with managers, supervisors, employees, and other stakeholders to gain their cooperation and support.
- Preparing written reports that summarize research, analysis, recommendations, and implementation strategies.

- Attending outreach events in the community, other city agencies, and other governmental agencies.
- Participating as a voting member on the Certification Committee.

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

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

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

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

> **Sec. 2-61. Conflict of interest while employed.**
>
> The purpose of this section is to avoid influence on the official actions of city officers, employees or officials by their private or family interests,
>
> (a) Except when advised by the city attorney that the rule of necessity applies, an officer, official, or employee shall not take direct official action on a matter before the city if he or she or a member of the immediate family, a business associate or an employer other than the city of the officer, official or employee has any substantial employment, contractual, or financial interest in that matter. A substantial interest shall be deemed to exist if: . . .
>
> (3) He or she, a member of the immediate family, a business associate or an employer is a board member or an officer in another party in the matter; . . .
>
> (f) Officers, employees or officials who are prohibited from taking direct official action due to a substantial conflict of interest shall disclose such interest to his or her colleagues on a board or commission or to his or her supervisor or appointing authority, shall not act or vote thereon, shall refrain from attempting to influence the decisions of others in acting or voting on the matter and shall work with his or her supervisor or appointing authority to ensure that the matter is assigned to someone without conflicting interests.
>
> (g) No officer, employee or official may have any other employment or position which is incompatible with his or her duties or that adversely affect the interests of the city.

Direct Official Action is defined by the Code as:

Sec. 2-52. Definitions.

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

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

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

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

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

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

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

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

Case 20-30 (conflict of interest)

Two members of the Denver Planning Board who were both employed by the Urban Land Conservancy ("ULC"), requested an advisory opinion as to whether they were required to recuse themselves from deliberating and voting on whether to approve and recommend approval of the East Area Plan by City Council when the matter had come before the Denver Planning Board. At that time, as is the practice of the Denver Planning Board members, each disclosed relevant employment interest – specifically, they disclosed that their employer was ULC. They then spoke to ULC's general interest in investing in property in East Colfax and in working with local residents and business owners there to increase affordable housing options in that area. They both

felt that they could remain impartial with respect to hearing testimony, deliberating, and voting on the East Area Plan based on their lack of a direct role with ULC's efforts and considering, further, that ULC owned no property interest subject to the East Area Plan.

The East Area Plan

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

> The East Area Plan, a supplement to Denver's citywide Comprehensive Plan 2040, is the result of a multi-year public process led by the Department of Community Planning and Development and informed by input from residents, local business and property owners, neighborhood groups and other stakeholders. It is intended to help guide city decision-making in the Hale, Montclair, East Colfax, and South Park Hill neighborhoods over the next 20 years. As a policy document, the East Area Plan is not regulatory and does not allocate or designate budget funds, but rather it would inform future regulatory and budget decisions. Distinct from quasi-judicial processes that Planning Board also considers (e.g. site-specific re-zonings), the East Area Plan is a city-led legislative process and its recommendations apply broadly across the plan area to many properties and public land.
>
> The Revised Municipal Code states that the comprehensive plan and any supplements shall be considered by Planning Board for approval and then accepted by City Council. Both Planning Board and City Council must consider the following criteria in their review of supplements, as stated in Comprehensive Plan 2040: 1. An inclusive community process was used to develop the plan; 2. The plan is consistent with the vision, goals and strategies of Comprehensive Plan 2040; and 3. The plan demonstrates a long-term view.

Urban Land Conservancy

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) 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.

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

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

the business.

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

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

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

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

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

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

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

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

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