Denver Board Of Ethics
Webb Municipal Building
201 West Colfax, 2nd Floor - (2.H-13)
Department 703 (for U.S. Mail)
Denver, CO 80202-5330
p: 720.865.8412
f: 720.865.8419
Email: michael.henry@denvergov.org
www.denvergov.org/ethics

DENVER BOARD OF ETHICS
DIGEST OF SELECTED OPINIONS
July 1– December 31, 2015

PLEASE NOTE: This is a selected set of summarized opinions given by the Denver Board of Ethics between July 1 and December 31, 2015 in response to fact-specific requests for advisory opinions or complaints.
These opinions should not be used as conclusive guidance for situations where the facts may differ. Please contact the Board of Ethics to discuss any specific issues you may have.

Cases 15-7, 15-8, 15-18 and 15-21(conflicts of interest)

A citizen filed 2 complaints concerning a candidate for the Denver City Council and her spouse, who is a high-level City manager in a major city department ("department"), alleging that there would be conflicts of interest if the candidate were elected. The Board dismissed those complaints as premature. After the candidate was elected to City Council, she and her spouse both requested advisory opinions on the subject of conflicts of interest.

Conflicts of interest are regulated by the following sections of the Denver Code of Ethics:

> Sec. 2-61. Conflict of interest while employed.
>
> The purpose of this section is to avoid influence on the official actions of city officers, employees or officials by their private or family interests.
>
> - Except when advised by the city attorney that the rule of necessity applies, an officer, official, or employee shall not take direct official action on a matter before the city if he or she or a member of the immediate family, a business associate or an employer other than the city of the officer, official or employee has any substantial employment, contractual, or financial interest in that matter. A substantial interest shall be deemed to exist if:
>
> (1) He or she or a member of the immediate family, a business associate or an employer other than the city is the other party in the matter;…
>
> (3) He or she, a member of the immediate family, a business associate or an employer is an officer in another party in the matter;..

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

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

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

(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. (emphasis added)

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

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, 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; (emphasis added)

The Board advised both the Councilwoman and her spouse as follows:

Nothing in the Denver Code of Ethics prohibits one spouse from serving in the legislative branch of City

Council and the other spouse from serving as a high-level appointee in the executive branch of city government. However, because the Councilwoman's spouse has significant responsibility for some department issues that are routinely addressed and resolved by members of City Council, there is a significant potential that situations will arise which represent a substantial conflict of interest for either or both of them. Section 2-61 generally prohibits them both from exercising any "direct official action" on any matter before the city if either of them or any immediate family has any substantial employment, contractual or financial interest in the matter. While it may be impossible to foresee all of the future circumstances under which this Code provision may be implicated, in the event of any doubt, the Board encouraged both of them to be guided by the Legislative Intent of the Code set forth in Section 2-51, which includes serving the letter and spirit of the Code by striving to avoid situations that create even the appearance of impropriety.

The Legislative Intent confirms the overriding goal of the Code is to ensure that the public maintains confidence in city elected officials and employees and that "persons in positions of public responsibility are acting for the benefit of the public." This goal can best be served by avoiding any circumstances in which it might appear that the acts or decisions of city representatives, were motivated by anything other than the best interests of the public.

The Board supported the Councilwoman's decision not to serve on or participate in discussions of the City Council committee or any successor committee that might possess jurisdiction over the operations of the department.

Section 2-61 of the Code prohibits each from exercising "direct official action" in connection with matters involving a substantial conflict of interest. Under the circumstances presented here, the Board believed that "substantial" would encompass, at a minimum: (1) any situations or matters involving the spouse's current or future appointment(s), working conditions or compensation, whether such issues are directly implicated in a matter before the Council or otherwise arising informally in the conduct of Council business; and (2) any situations or matters in which the spouse, either directly or indirectly, is implicated in the business of any third party over which the Councilwoman might exercise direct official action (see Section 2-61 (a) 1-6); and (3) any situations or matters in which the Councilwoman, her spouse or their immediate family stand to receive any personal gain or benefit from the exercise by either of them of any "direct official action."

When circumstances arise, the Board encouraged the Councilwoman to disclose all possible conflicts of interest. Transparency best ensures that each of them remains above reproach. The Board is mindful that the residents of her Council District should not be adversely impacted and that their interests are entitled to full Council representation alongside those of all other Districts. If, on the other hand, the Councilwoman believes a conflict is substantial, or others credibly advise that it is, it would be preferable for her to refrain from acting or voting on such matters, or seeking to influence others, and recusal from all discussions and/or deliberations would be appropriate.

The Councilwoman and her staff may represent her constituents and communicate with department staff regarding specific department-related issues in her District, such as complaints or problems relating to maintenance or improvements or safety in department facilities. Such constituent work does not amount to "direct official action," and it is important that the interests of the District are represented.

The Councilwoman and her staff may attend events related to the department, because attendance at events does not amount to "direct official action."

The Councilwoman may vote on the city's annual budget, including the annual appropriation for the department, which is specifically permitted by Section 2-61(e)(1) of the Code and on "establishing the pay or fringe benefit plans of city officers, officials, or employees" of the department, as specifically permitted by Section 2-61(e)(2).

Case 15-16 (conflicts of interest)

An executive director of a city department requested an advisory opinion. The department has responsibility for making many decisions regarding planning and land development. He and a former business partner still own water rights at a property in Denver. He indicated that they are investigating an approach that has been used elsewhere in the city where pumped well water is delivered to the South Platte River via Denver storm sewers during times when the sewers are not filled with rain water. He indicated that Denver Wastewater generally likes this approach, which keeps their sewers clean with moving water and less algae growth occurs in the sewer. Also, they would be paid an annual rental fee for the part time use of the sewer. This allows the water owner to sell to anyone who has a water need along the South Platte River.

The executive director proposed that his former partner or their consultant solely negotiate with Denver Wastewater. He also indicated that he is not a member of the Metro Wastewater Reclamation Board (which coordinates wastewater systems in 20 different municipalities) and that the Denver Wastewater Division would be the entity that would review this request to deliver well water to the South Platte River via Denver storm sewers. The Wastewater Division is housed within the Denver Public Works Department, which is separate from the executive director's department. Therefore, no one that the director supervises would be in a position to make any decisions affecting the outcome of the process.

The Board of Ethics concluded that the proposal will not violate Section 2-61, the conflicts of interest section of the Code of Ethics, because neither the executive director nor anyone under his supervision will be taking any direct official action on the matter.

Case 15 - 19 (subsequent employment)

An employee at Denver International Airport requested an advisory opinion. She intended to retire from city government in late June 2015. She later planned to establish her own consulting business "to work with small businesses as an independent contractor primarily with construction-related firms; most of whom I have interacted with in some capacity during my work tenure for the City & County of Denver… to advise and educate construction and construction-related firms on how to do business within the State of Colorado, which would include the City & County of Denver."

She advised the Board of Ethics that "I was never involved in matters in which I was capable of taking any official action with businesses during my employment with the City & County of Denver."

She wished to know whether her planned consulting job would violate the Denver Code of Ethics, particularly Section 2-64(a) regarding subsequent employment, which provides:

> **Sec. 2-64. Subsequent employment.**
>
> The purpose of this section is to avoid the actuality or appearance that employers who hire former city officers or employees may get special treatment.

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

The Board of determined that the employee never possessed or exercised any "direct official action" power (as defined in Section 2-52(b) of the Code of Ethics) with respect to any of the businesses that she intends to engage as clients in connection with her consulting business. The Board concluded that the business will not violate Section 2-64(a) of the Code. The Board also advised her to exercise care not to share with or disclose to any third parties any confidential information or documents that she may have acquired during her tenure with the city.

Case 15-20 (gifts -rewards)

A supervisor of vehicle control agents (who deal with parking enforcement and other problems in public rights-of-way) requested an advisory opinion. The supervisor stated:

> One of our on-call employees located a vehicle wanted by the police. She was out on regular patrol when she found the vehicle. She had seen a news story on TV that morning and was aware of the description of the vehicle and put two and two together. The driver of the vehicle was also wanted by the police (and was passed out in the driver's seat when she contacted him). Quick recognition and action by our employee resulted in her calling DPD through 911, and the police apprehended a murder suspect without additional harm to anyone.
>
> Crimestoppers now wants to acknowledge our employee's action. They may want to offer her the reward of $1000. Are there existing rules in place that preclude her from receiving this award and acknowledgement?

Crimestoppers is a Denver-based non-profit organization which gives rewards and/or commendations to persons throughout the Denver metropolitan area who report information to 911 and/or Crimestoppers leading to the arrest of crime suspects. The Crimestoppers board decided to give a monetary award to the employee.

The Board of Ethics determined that a reward from Crimestoppers could be defined as a gift under Section 2-60(a)(1) of the Denver Code of Ethics: "any money, property, service, or thing of value that is given to a person without adequate and lawful compensation." However, Section 2-60(a) would not prohibit the employee from accepting a reward or gift from Crimestoppers for reporting information resulting in the arrest of a crime suspect, because the employee in question is not in a position to take any direct official action regarding Crimestoppers (the donor of the reward) or the Police Department.

However, Section 1.2.12 of the Denver Charter provides that "No…employee shall…receive…anything of value…directly or indirectly…for the performance of official duties except lawful compensation or salary," which leads to the question of whether it is an "official duty" of vehicle control agents to contact the police or Crimestoppers to report something suspicious or dangerous that they encounter on the job. The Class Specifications for Vehicle Control Agent I do not specify that agents have any responsibility for crime prevention or looking for or reporting stolen cars, murder suspects or other crime-related matters.

The Board of Ethics determined that there is no prohibition in the Code of Ethics for a city employee to accept a reward for preventing and/or reporting a crime so long as she or he has no direct official action power regarding the donor of the reward. In addition, although the Board of Ethics is not the sole interpreter of the City Charter, it is the Board's opinion that an employee would not be prohibited from accepting such a reward by the Charter, so long as that is not an official duty of that employee.

The Board of Ethics indicated that this is a unique situation, and strongly cautioned city personnel that this advisory opinion is based on the unusual facts presented in this request, and that different facts could result in a different opinion. This opinion should not be taken as permitting city officials and employees generally to accept rewards for actions taken while on city time. The Board therefore encourages individuals with particular questions to request more fact-specific advice through requests for advisory opinions.

Case 15-22 (no jurisdiction)

A citizen filed a complaint concerning a magistrate of the Denver District Court. The Board dismissed the complaint because such magistrates are employees of the state government and, therefore, are not subject to the Denver Code of Ethics or the jurisdiction of the Denver Board of Ethics.

Case 15 - 23 (outside business activity)

A newly-promoted supervisor in the Community Planning and Development Department (CPD) requested an advisory opinion. He had earlier, before his recent promotion, received an advisory opinion from the Board of Ethics in Case 14-2, which generally approved outside business activity for the employee and his spouse regarding preparing a piece of Denver property for redevelopment, in which the Board had stated:

> The Board of Ethics believes that the circumstances of this case could present an appearance of impropriety. However, the Board determined that, so long as you obtain advance written approval from your appointing authority (to be renewed annually)… you will not violate Section 2-63 or section 2-61 of the Code of Ethics through this outside business activity and the appearance of impropriety will be mitigated…

After extensive discussion, the Board of Ethics concluded that, despite the employee's plan to remove himself from involvement in the rezoning process for some or all of the property, it would amount to, or at least be perceived as, a violation of Section 2-67 of the Code of Ethics for him or his Limited Liability Corporation to re-zone any portion of the property to a higher or more intense zone district. This could be perceived as the use of public office or position to obtain private gain, which is prohibited by Section 2-67 of the Code of Ethics:

> **Sec. 2-67. Use of public office for private gain.**
>
> No officer, official or employee shall use his or her public office or position or disclose or use confidential information in order to obtain private gain for himself or herself, for his or her immediate family, for any business entity with which he or she is affiliated or for any person or entity with whom the officer, official or employee is negotiating or has any arrangement concerning prospective employment. (emphasis added)

The Board also concluded that such a rezoning effort would be perceived as violating the purpose of Section 2-63 (outside employment) – "to avoid possible conflicts of interest …between city jobs and outside employment or business activity."

The Board's conclusion was based on two factors:

- The supervisor's recent promotion expanded his influence in CPD and it would be very likely that employees in CPD dealing with a rezoning request for a higher density zone would know that the property was under the ownership of the supervisor and his wife and they would feel unspoken pressure to approve the request due to his influence in CPD.
- A successful rezoning to a higher density zone category would significantly increase the value of the property. This would be perceived by the public as land speculation by a public official with particular knowledge and experience in the highly specialized area of zoning.

The Board recognized that he relied on its earlier opinion and thanked him for returning to the Board for additional guidance. The Board stated, however, that the changed circumstances present a more problematic scenario and, therefore, advised him that the increased rezoning plan for the property by the LLC would violate the Code of Ethics.

Case15-24 (gifts)

A sergeant in the Training Bureau of the Denver Police Department (DPD) requested an advisory opinion. He had been approached by representatives of a non-profit educational organization, which proposed to offer 20-40% discounts or scholarships to all DPD employees for online courses regarding law enforcement, under a program of the organization.

The sergeant indicated that he believed that the organization is legitimate and "this program may be a valuable resource to interested personnel." The organization does not have any physical presence in the City and County of Denver.

The organization proposed to have an informal agreement with DPD that, in return for the scholarships/discounts to DPD personnel for law enforcement courses, DPD would allow the organization to have a representative make presentations once per year at roll calls in district headquarters and DPD would send e-mails twice per year to DPD personnel mentioning the program. The program would not be "exclusive" to the organization and the organization would not be "preferred" by DPD.

The sergeant requested an advisory opinion as to whether this would violate the Denver Code of Ethics before he presented the idea to his chain of command for consideration.

Acceptance of gifts (which term includes discounts) by city personnel is regulated in the Denver Code of Ethics by:

> **Sec. 2-60. Gifts to officers, officials, and employees.**
>
> The purpose of this section is to avoid special influence by those who give gifts to city officers, employees or officials.
>
> (a) Except when acceptance is permitted by paragraph (b) below, it shall be a violation

of this code of ethics for any officers, officials, or employees, any member of their immediate families to solicit or to accept any of the following items if (1) the officer, official, or employee is in a position to take direct official action with regard to the donor; and (2) the city has an existing, ongoing, or pending contract, business, or regulatory relationship with the donor**:** (emphasis added)

> (7) Any reduction in price or any discount that is not similarly available to all city officers, officials, and employees on the same terms; …

In this situation, neither DPD nor individual police personnel would be in a position to take direct official action (particularly by "enforcing laws") regarding the organization, because the organization has no presence inside Denver. This would be in contrast, for example, with the situation in Board of Ethics Case 14-1 (regarding a gift by a Denver motel owner of hoodies for all police officers in Police District 6), in which the Board of Ethics stated:

> The definition of "direct official action" in Section 2-52(b) of the Code of Ethics includes "enforcing laws." Therefore, all police officers are in a position to take direct official action regarding all citizens and businesses and should not accept gifts from citizens or businesses, at least from those located in the districts where they are assigned, unless permitted by an exception in Section 2-60(b). (emphasis added)

Therefore, the Board of Ethics concluded that acceptance by DPD or individual DPD personnel of discounts or scholarships from the organization would not violate the Code of Ethics and that the Code would not prohibit DPD from permitting representatives to make presentations once per year at roll calls in district headquarters and sending e-mails twice per year to DPD personnel mentioning the program.

However, the Board also advised the sergeant that:

- Neither he nor any DPD personnel should accept any individual gifts from the organization, except for a discount or scholarship;
- No decision-making regarding the organization should be made by any DPD personnel who have any personal relationship with the organization;
- Neither he nor any DPD personnel should endorse or otherwise participate in any advertising for the organization;
- If any other similar legitimate educational program wishes to have a similar opportunity for access to DPD personnel, DPD should give fair consideration to such an opportunity and have objective criteria to be considered. The Board spoke to such "sponsorship" relationships in Board of Ethics Cases 10-18 and 11-11. In other words, the program should not be considered exclusive or preferred.
- While presentations by organization representatives at DPD roll calls and/or emails to DPD members notifying them of the program may not be prohibited by the Denver Code of Ethics, the degree to which DPD wishes to promote or endorse the program raises legitimate business and administrative issues that are within the sound discretion of DPD to evaluate and resolve. The Board of Ethics recognizes that its jurisdiction does not extend to determining whether the promotion of this program is in the best interests of DPD and its personnel, and therefore leaves the resolution of such issues to DPD.

Case15-25 (subsequent employment)

A Deputy Director of the Office of Economic Development (OED) who wished to return to the private sector requested an advisory opinion regarding subsequent employment. After leaving city government, he wished to work as a consultant and also to have an ownership interest in a new local financing firm. He indicated that:

> Both of these roles will likely include direct relationships with the city and with city partner agencies. The goal for each of these endeavors is to participate in achieving city priorities that are called out in public planning documents and strategic plans such as JumpStart Denver, Housing Denver and the National Western Center - North Denver Cornerstone Collaborative.

The Deputy Director advised the Board of Ethics that "we will likely seek Minority/Women's Business Enterprise certification from the OED Division of Small Business Opportunity and will be required to go through the normal application and monitoring processes for designation." He never had supervision or control over that Division of OED.

The relevant section of the Code of Ethics is:

> **Sec. 2-64. Subsequent employment.**
>
> The purpose of this section is to avoid the actuality or appearance that employers who hire former city officers or employees may get special treatment.
>
> (a) During six (6) months following termination of office or employment, no former officer, official, or employee shall obtain employment outside of the city government in which he or she will take direct advantage, unavailable to others, of matters with which he or she took direct official action during his or her service with the city.

According to **Section 2-52(b),** direct official action means any action which involves:

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

The Deputy Director had a considerable role in developing the policies set forth in the policy documents

mentioned above. However, involvement in developing policies is not included in the definition of "direct official action." In addition, he did not make the decisions to approve these documents. The Housing Denver Plan was approved by the Mayor, the Jumpstart Denver 2015 document was approved by the Director of OED and the various National Western Center - North Denver Cornerstone Collaborative documents were approved by City Council and other city agencies.

As Deputy Director of OED, he served on the OED loan review committee. If any loan(s) to his new firm or to any of his consulting clients need to be approved by OED after his retirement from city government, he will no longer be on the committee and the loan applications must undergo the standard OED formal application and underwriting process.

The goals and interests of the former Deputy Director and the new financing firm will not be adverse to those of the City and County of Denver; rather, they will be congruent with and intended to implement the policies of the city.

In other cases of subsequent employment considered by the Board of Ethics, the key question was whether the City person took direct official action regarding the person's new employer. In this case, there was no such direct official action.

The Board of Ethics advised him that:

1. He is not prohibited by section 2-64(a) of the Code of Ethics from returning to the private sector and beginning immediately to work as a consultant and/or to have an ownership interest in a new local financing firm and/or submitting proposals to the city.
2. This is based on his representation that he did not have any role in preparing any Requests for Proposals to which he or his new firm or any of his clients will be responding and that any proposals or bid documents will be reviewed through all of the normal city processes.
3. If he and/or his new firm seek Minority/Women Business Enterprise certification from the OED Division of Small Business Opportunity, he or it must go through the normal application and monitoring processes.
4. If he, his firm or any of their clients seek OED financing, they must go through the normal formal application and underwriting processes. He will no longer be a member of the OED Loan Review Committee as soon as he resigns from the City and should not attempt to influence his former colleagues on the OED Loan Review Committee.
5. He may not work or consult for any person or entity regarding whom he took "direct official action" during his employment with the city, including OED loan approval, without waiting 6 months from the date of leaving city government.
6. He may not attempt to lobby or persuade any city officers, employees or officials on behalf of his firm or consulting clients, without waiting 6 months from the date of leaving city government.
7. Until his resignation from OED is effective, he may not use any city time or other city resources on his new business ventures.

Case 15–26 (outside business)

A deputy sheriff requested an advisory opinion outside business activity. He and his wife have an outside business in which "we sell uniforms and equipment to many agencies in the metro area." He advised the Board of Ethics that:

> Our business sells Police and Sheriff…uniforms, leather gear, body armor, restraints, footwear, outerwear, and other accessories used by law enforcement nationwide. We do business with several agencies in the Denver metro area, other agencies throughout Colorado, Wyoming, Montana and other agencies throughout the United States.

They are now considering selling products to the Denver Sheriff and Police Departments. He advised the Board that "I have no authority to make or influence purchasing decisions within the Sheriff Department" and that "I have been in communication with my supervisors and they are aware of my business." He indicated that the business will not respond to any Requests for Proposals or bid requests from the Denver Sheriff Department of the Denver Police Department; however, it intends to request to be placed on an approved list of vendors from which Denver deputy sheriffs or Denver police officers may individually purchase body armor.

Outside business activity is regulated by:

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

Conflicts of interest are regulated by:

> **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;…

(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….

(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 concluded that:

1. Before the company can engage in sales of law enforcement products or any other products to any purchasers, including law enforcement agencies, including the City and County of Denver, he must obtain written approval from his appointing authority on an annual basis, in order to comply with section 2-63 of the Denver Code of Ethics.
2. If he obtains written approval, he may engage in the specified outside employment or other outside business activity.
3. He should specifically disclose in his request for approval if he wishes to sell products to the Denver Sheriff Department.
4. He must not use any city resources, including city time, for his outside business.
5. He should not advertise the business in any way that would indicate that he is a Denver Deputy Sheriff.
6. He can only sell products to the Denver Sheriff or Police Departments through the customary Denver purchasing policies and procedures that would apply to any other vendors.
7. He may sell products to the Denver Sheriff Department if he has no direct official action power regarding the purchases by the Denver Sheriff Department. If he were to be involved in the purchasing decisions by the Sheriff Department, as defined in the definition of direct official action in Section 2-52(b) of the Code of Ethics, that would be a prohibited conflict of interest.

Case15-27 (conflict of interest)

The City Attorney's Office requested an advisory opinion regarding a possible conflict of interest concerning a potential contract between a department and the spouse of the department's newly-appointed Chief Financial Officer. Following discussion with the Board of Ethics, the City Attorney's Office and the department withdrew their request for an advisory opinion and re-structured the transaction so that it would be administered through a different department.

Case15-28 (subsequent employment)

An administrator at the Child Welfare Division of the Department of Human Services (DHS) requested an advisory opinion. She is responsible for awarding contracts to outside counseling professionals to provide therapeutic child welfare services. She inquired whether it is permissible under the Denver Code of Ethics for a contract to be awarded to a former DHS child welfare supervisor who now operates a private therapeutic practice.

The former DHS supervisor left her DHS job in May 2015. She was not involved in any contracting decisions while at DHS, but served as a supervisor of case handlers. The administrator advised the Board that:

> To be in compliance with City Purchasing and/or Contracting rules, we are required to select providers through a competitive solicitation. The process is similar to other bid processes in that an interested vendor submits an application; Contracting Services determines if they meet the technical requirements of a contract; the program area determines if they want Contracting Services to pursue a contract with that provider…At its most basic level, the charge of the Child Welfare Division of DHS is to keep children safe and families healthy. In a large jurisdiction like Denver, it simply would not be possible to provide the depth and breadth of therapeutic services for the families in our system without relying on external resources.

The administrator informed the Board that:

- She never supervised the former employee in question.
- There are approximately 1000 families in need of therapeutic services from DHS or outside therapists and approximately 68 contracts between DHS and private professionals for child welfare services, which establish a geographic network of providers to render therapeutic services to DHS families.
- DHS-contracted therapists receive less compensation from DHS than if they were fulltime DHS employees, and the extent of their compensation is based on families assigned to the therapist by DHS.

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

> **Sec. 2-64. Subsequent employment.**
>
> The purpose of this section is to avoid the actuality or appearance that employers who hire former city officers or employees may get special treatment.
>
> (a) During six (6) months following termination of office or employment, no former officer, official, or employee shall obtain employment outside of the city government in which he or she will take direct advantage, unavailable to others, of matters with which he or she took direct official action during his or her service with the city.

Since the DHS supervisor in question exercised no direct official action over the contracting process when she worked for DHS, the Code of Ethics does not restrict her employment under Section 2-64(a).

In addition, in a few similar cases, including Case 06-26, the Board of Ethics observed:

> The Board believes that the principal problem which 2-64(a) appears intended to prevent is a conflict between a 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.

Following the issuance of the opinion in Case 06-26, Denver City Council added the phrase "outside of the city government" to 2-64(a) in 2007. Since the employment of a former DHS employee by DHS would

not be "outside of the city government," she would not violate Section 2-64(a), even if 6 months since her departure from DHS have not elapsed.

The Board of Ethics concluded:

- There is no violation of the Denver Code of Ethics that arises if a former DHS employee is subsequently contracted by DHS to provide clinical services to Child Welfare families.

- The 6-month waiting period set forth in Section 2-64(a) of the Code of Ethics does not apply because contracted employment by DHS is not "outside of the city government" within the meaning of the Code Section.

- The Board presumes that the former DHS supervisor is not an immediate family member, a business associate or an outside employer of those DHS employees who will negotiate, approve, administer or enforce the contract for services. If there is such a relationship, that would constitute a violation of Section 2-61(a) of the Code of Ethics.

- This Board also presumes that the selection process and the qualifications of the former supervisor conform to the standard city selection process and qualifications required for such services.

- In order to avoid an appearance of impropriety, the Board recommends that the former DHS supervisor be advised that in connection with any contract with DHS, she should refrain from contacting any Child Welfare families with whom she dealt and/or administered services during the twelve (12) months prior to her departure from DHS. This should avoid any appearance that the former DHS supervisor has inappropriately sought to solicit business through contacts with families that she communicated with while she was employed by DHS.

Case15-29 (outside employment – candidate for public office)

A City Council staff employee requested an advisory opinion as to his desire to be a candidate for Regent of the University of Colorado in the November 2016 election. Regents are not paid for their service, but are reimbursed for reasonable expenses incurred in connection with their work.

Since there is no compensation paid to Regents, Section 2-63 of the Code of Ethics does not require that he obtain the approval of his appointing authority to serve as a Regent. Nevertheless, in the interest of full and fair disclosure, the Board of Ethics recommended that he advise his appointing authority about his intention to seek election and to serve as a Regent, if he has not already done so.

In addition, the Board advised that the Code of Ethics, Section 2-63(e), prohibits the use of any city resources, including time and office space, in connection with his candidacy and, if elected, service as a Regent and that he should maintain strict boundaries between the time and resources he utilizes in his primary occupation as a city employee and his service, if elected, as a Regent for the University.

If he is elected to serve as a Regent, if any issues arise in connection with his service as Regent that appear to implicate in any way the interests of the City and County of Denver and/or his duties and responsibilities as a City Council employee, he should evaluate the extent to which such circumstances give rise to any conflict of interest or appearance of impropriety. In such event, he should fully disclose such

circumstances, including to his supervisor, and evaluate the appropriateness of recusing himself from participating in such matters and refraining from the exercise of any direct official action with respect to such matters, as defined in Section 2-52(b) of the Code of Ethics. He may also wish to refer to the conflict of interest provisions of the Code of Ethics found in Section 2-61.

Lastly, if elected as a Regent, the Board encouraged him to maintain detailed records and documentation of his time and expenses incurred as a Regent. This should help ensure that he is not compensated or reimbursed by the City and County of Denver for any Regent-related activities and should help maintain strict boundaries between his service as a Regent and his principal occupation as a City Council employee.

Case15-30 (outside employment)

A Chief Business License Inspector of the Department of Excise and Licenses requested an advisory opinion. He and 5 other inspectors in the department conduct inspections of approximately 200 marijuana facilities operating in the City and County of Denver. He advised the Board of Ethics that:

> Our inspectors have been approached on several occasions to do consulting for the marijuana industry. As you are aware, the Excise and License Inspectors conduct inspections, maintain compliance, and enforce rules and regulations for marijuana licenses for the City of Denver. We understand that there would possibly be a conflict of interest consulting in Denver, so we would not be working with anyone with interest in operating in Denver. The consulting would be done with people interested in starting a marijuana business and possibly other government agencies outside of Denver and most likely outside of Colorado. The inspectors would work outside of their regular work schedule and on weekends.

He represented that no particular amount of compensation has been discussed, that he will "not do anything until we have been approved," and that he does not have any particular potential clients in mind.

In the City and County of Denver, the Department of Excise & Licenses is charged with principal regulatory authority concerning the issuance of Retail Marijuana Licenses, as well as the enforcement of the rules and regulations pertaining to such licenses and the operation of businesses holding such licenses. The scope of the department's authority includes the licensing of retail marijuana stores, retail marijuana optional premises cultivation licenses, retail marijuana infused products manufacturing licenses and the licensing of retail marijuana testing facilities.

Outside employment by city employees is regulated, in part, by Section 2-63 of the Denver Code of Ethics, which requires that an employee obtain the prior written approval of the employee's appointing authority for any paid or compensated employment that an employee is considering. This Section also requires that "city resources may not be used for any outside employment or outside business activity."

Further, the Code's conflict of interest provision, Section 2-61, provides that no city employee may take direct official action, which includes "enforcing laws or regulations or issuing, enforcing or regulating permits, licenses…" if the other party to such transaction is "an employer other than the city."

The Board is guided by the legislative intent in Section 2-51 of the Denver Code of Ethics that includes safeguarding the interests of the public and ensuring that the "public will have confidence that persons in positions of public responsibility are acting for the benefit of the public." Further, it is the goal of the Code, in part, to help ensure that city employees avoid situations that "create impropriety or the appearance of impropriety."

The Board of Ethics concluded that the proposed engagement of employees of the Department of Excise & Licenses to serve as paid outside consultants to the marijuana industry, which they are charged with authority to regulate, creates a conflict of interest and an appearance of impropriety. While the Board recognized that the request proposed that Excise and Licenses employees would only consult with businesses or individuals that do not currently conduct marijuana-related operations within the City and County of Denver, it is highly unlikely that this distinction could be maintained or enforced in the future. The businesses or individuals to whom the proposed consulting services would be provided could not be prohibited from beginning or acquiring marijuana-related operations within the City and County of Denver or applying for Retail Marijuana Licenses.

To advance the goals of the Code and help ensure the public's continued faith and confidence in the objectivity of the enforcement of marijuana-related rules and regulations by the Department of Excise & Licenses, the Board determined that the proposed outside consulting by Department employees must be avoided under the Code of Ethics. The Board recognized that the proactive education role of the department can continue to be provided by department-sponsored events, seminars and Web-based information which can educate the public and businesses about the rules and regulations applicable to the marijuana-related industry in Denver without giving rise to the concerns created by the proposed outside consulting arrangement.

Case15-31 (conflict of interest)

The newly-appointed Executive Director of the Department of Parks and Recreation (DPR) asked for an advisory opinion concerning "whether there is any required action I must take under the Code of Ethics once I am sworn in as the Executive Director of Parks and Recreation as it relates to my School Board service."

The Executive Director was completing a 4-year term as an elected member of the Denver Board of Education (DBE) as an at-large member (and President for the past year). In connection with the upcoming election on November 3, 2015, she was seeking re-election to the DBE and she was re-elected for an additional 4-year term. DBE members serve as volunteers and do not receive any compensation for their service.

The Board of Ethics understands that there are a number of contracts or other cooperative agreements between the Denver Public Schools (DPS) and DPR related to the joint use of school property, city parks and recreational facilities. The Board understands that these agreements constitute a small percentage of the contracts entered into by DPR.

The Board recognizes that Section 1.2.8 of the Denver Charter provides: "No employee or appointed Charter officer shall have other employment or hold any public office that is incompatible with his or her duties…"

The Board is guided by the legislative intent of the Denver Code of Ethics that includes safeguarding the interests of the public and ensuring that the "public will have confidence that persons in positions of public responsibility are acting for the benefit of the public." Further, it is the goal of the Code, in part, to help ensure that City employees avoid situations that "create impropriety or the appearance of impropriety." *See* Section 2-51.

The following provisions of the Denver Code of Ethics govern potential 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;…**

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

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

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

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

The Board endeavors to follow existing precedent, absent a significant change of circumstance. The Board previously addressed many of the issues raised in this request in a 2001opinion in Case 01-18, in which an advisory opinion was requested by the then-Mayor, who had appointed a Manager of DPR, who was also serving as a member of the DBE. In addition, in 2008 a former Mayor appointed a Manager of DPR during which time he also served as a member of the DBE. At that time, the Board of Ethics advised the Mayor's office that the opinion of the Board in the 2001 decision remained applicable.

The Board decided to follow its existing precedent and advised the current Director that her service as Executive Director of DPR and as a member of the DBE is not prohibited by the Denver Code of Ethics.

Nevertheless, the potential exists for conflicts of interest to arise and, therefore, the Board advised and recommended as follows:

1. Section 2-61 of the Code of Ethics prohibits the Executive Director from exercising any "direct official action" in which she has a "substantial employment, contractual or financial interest in that matter." The phrase "direct official action" is defined in Section 2-52(b) of the Code. In order to avoid a conflict of interest and any appearance of impropriety, she should avoid any circumstances in which she could be placed in a position of exercising any "direct official action" with respect to any matters involving the DBE or DPS. This would include, but not be limited to: (a) negotiating, approving, disapproving, administering, enforcing or making recommendations with respect to any contracts by and between DPR and the DBE or DPS; or (b) issuing, enforcing or regulating any permits, licenses, benefits or payments between DPR and the DBE or DPS.
2. In order to avoid a possible conflict of interest or appearance of impropriety, the Board believes that it would be prudent to implement the safeguards that were adopted in the 2001 case. Specifically, in that matter, it was agreed that the power and authority to exercise direct official action regarding matters related to the DBE and DPS would be delegated to a permanent (Career
3. Service) member of the DPR staff. The Board believes that the adoption of a similar safeguard in this case is warranted and prudent. The Board of Ethics encourages the formal designation of such a person with independent authority to serve that function.
4. The Board recognizes that the Executive Director's volunteer position as a member of the DBE provides a valuable community service, which will require her time and resources in addition to her principal duties as the Executive Director of DPR. However, Section 2-63(e) of the Code of Ethics prohibits the use of any city resources in connection with her service as a member of the DBE. Further, the Board recommends that she consider abstaining from future service as an officer of the DBE after her current term as President of the DBE expires. The demands on her time and energies in her dual roles, and her principal duties and obligations to the city as Executive Director of DPR, would appear to make this a prudent choice that she is in the best position to evaluate.
5. In order to avoid any appearance of impropriety and ensure an appropriate level of transparency, the Board encourages her to maintain detailed records and appropriate documentation reflecting her time and expenses in connection with her services as a member of the DBE. This should help ensure that she is not compensated or reimbursed by the City and County of Denver for any DBE-related activities and will also serve as a safeguard against allegations of impropriety. Maintenance of such records should also help her maintain strict boundaries between her service on the DBE and her principal occupation as Executive Director of DPR.
6. The Board recognizes that it cannot foresee all of the future circumstances under which potential issues or possible conflicts of interest may arise. There may be circumstances that arise in which the interests of the city and DPR, on the one hand, and the DBE or DPS, on the other, may differ. The Board encourages the Executive Director to remain alert to such potential issues and actively seek guidance from the City Attorney and/or the Board of Ethics if such matters arise.

Case15-32 (no jurisdiction)

A citizen filed a complaint against the Denver District Attorney. The Executive Director of the Board of Ethics dismissed the case because an opinion from the Denver City Attorney's Office in 2001 indicated that the District Attorney and attorneys on his staff are state employees and are not employees of the City

and County of Denver within the meaning of the Code of Ethics. Following arguments from the complaining person, the Board of Ethics requested an updated opinion from the City Attorney's Office on that subject.

Case15-33 (conflict of interest)

A recently-elected City Councilmember requested an advisory opinion regarding a potential conflict of interest. He had assumed office on July 20, 2015. On May 28, 2015, after he had been elected, but before he took office, he had signed an application for landmark designation of a home in his Council District, which had been constructed in approximately 1886.

The structure had recently been optioned to a development company which wished to demolish the home and redevelop it and some adjacent properties. Both the owner and the developer opposed landmark designation of the property.

In April, 2015, the developer applied to the city to obtain a certificate of non-historic status for the structure, which triggered a review by the Denver Landmark Preservation Commission (LPC) staff. This, in turn, caused notification to be provided to certain historic preservation groups and neighborhood organizations, which is the practice required under the LPC ordinance if it appears to LPC staff that a structure might have the potential for landmark designation. The notices provided that if at least 3 persons filed an actual application and paid an $875 filing fee, no later than May 28, 2015, the LPC would conduct a hearing to determine whether the structure merited landmark designation.

Historic Denver, Inc., then researched the history and architecture of the structure and prepared an application for landmark designation of the property to be filed with the LPC. Three neighbors signed the application. On May 28, 2015, after one neighbor who had originally signed the landmark application decided to withdraw his signature and after several neighbors requested his help, the Councilmember-elect agreed to become an applicant and signed the application and paid the $875 filing fee to the LPC.

On October 6, 2015, the LPC conducted a hearing and voted to find that the structure had historical and architectural merit and recommended to City Council that the structure be designated as a landmark.

At the meeting of the Board of Ethics on October 21, 2015, the Councilmember advised the Board that he lives 4 blocks away from the property and that he has no ownership or other financial interest in the property and that he does not stand to receive any consideration or financial benefit if the structure would receive landmark designation. He reported that his support for the landmark designation is based on his independent professional assessment and determination that the structure warrants such designation.

The City Council Neighborhoods and Planning Committee (of which the Councilmember was the Vice-Chair) was scheduled to meet on October 28, 2015 to consider the application and determine whether to send the application to the full City Council, which would render the final decision on the landmark designation of the structure after a public hearing, which would occur a few weeks later.

Conflicts of interest are regulated by Section 2-61 of the Denver Code of Ethics:

> **Sec. 2-61. Conflict of interest while employed.**
>
> **The purpose of this section is to avoid influence on the official actions of city officers, employees or officials by their private or family interests,**

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

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

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

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

Section 2-67 of the Code of Ethics prohibits the use of public office for private gain:

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

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

The Board of Ethics advised the Councilmember as follows:

1. Section 2-61 of the Code of Ethics prohibits him from exercising any "direct official action" in connection with any matter in which he holds a "substantial employment, contractual or financial interest." An impermissible conflict of interest would exist if he held a "substantial employment, contractual, or financial interest" in the proposed landmark designation of the structure. Based on the information provided, it does not appear that he or any member of his immediate family holds any "substantial employment, contractual, or financial interest" in the outcome of the landmark application for the structure. Accordingly, it does not appear that there exists a prohibited conflict of interest within the meaning of the Denver Code of Ethics.

2. The legislative intent in Section 2-51 of the Code of Ethics provides that officials and employees of Denver should "comply with both the letter and the spirit" of the Code, and "strive to avoid situations, which create impropriety or the appearance of impropriety." In the event that he was to vote at City Council for the landmark designation, he would appear to be exercising "direct official action." *See* Section 2-52(b)(A person who abstains from a vote is not exercising direct official action).

3. In an effort to honor the spirit of the Code and avoid any appearance of impropriety, the Board recommended that he provide a full and complete disclosure of his role in the landmark application and designation efforts to his fellow Council members and the public. The Board believes that complete transparency in this regard is vital to upholding the public trust and the spirit of the Code.

4. In addition, the Board encouraged him to give careful consideration to recusing himself from any Council vote on the landmark designation of the structure in question. While not mandated by the Code of Ethics, he must carefully weigh the interests of the constituents and public he represents, as well as his vested interest in maintaining personal and professional integrity under the present circumstances. The Board recognized that members of the legislative branch routinely campaign for, draft and sponsor legislation, and often commit to represent the interests of their constituents with respect to particular matters. On the other hand, the role of Council at a meeting with respect to a landmark designation functions much like a quasi-judicial proceeding, at which one would reasonably expect fair and impartial decision-makers. Although he has no apparent personal or financial interest in the subject property and may be reflecting the desires of his constituents, the unique circumstances of this matter and his personal involvement in the landmark application suggest that the ultimate interests of his constituents and the public-at-large may best be served by his abstention from any vote on landmark designation. In the final analysis, this is a matter of personal conscience and ethos upon which he must ultimately rest his decision.

Case15-34 (improper use of confidential information)

The Denver Police Protective Association filed a complaint concerning the Executive Director of the Department of Safety, which includes the Police, Fire and Sheriff Departments.
The complaint concerned a text-message that the Director sent to a Fire Department Captain in October 2014, which had been reported in various media accounts:

> "Hey..fyi, some in the station are complaining to (the Fire Chief) about you. Watch your back and be guarded with your tone-comments."

As a result of the email, the complaint alleged:
…The Director impugned the integrity of the discipline process in her office by evidencing preferential treatment for some employees. Moreover the Director created a potentially chilling effect on future complainants, showing that a complaint or concern brought to the Department of Safety in confidence may be shared with the subject of the complaint.

The Board of Ethics determined that an Assistant Fire Chief met with a Division Chief to discuss personnel issues concerning the Captain. The Division Chief informed the Fire Chief about the conversation with the Assistant Fire Chief, who, in turn, notified the Director, who then sent the Captain the text-message quoted above on the same day.

The Fire Chief, as well as members of the Fire Department Internal Affairs Bureau, customarily notifies the Director about pending disciplinary issues or cases.

The Fire Department Division of Internal Affairs did not open an investigation file regarding the Captain until March 2015.

The Director recused herself from participation in the Captain's disciplinary investigation due to her acquaintance with him through a number of professional interactions. The Board of Ethics confirmed that the Director did not attempt in any way to influence or intervene in his disciplinary case or the ultimate discipline that was imposed.

The Denver Code of Ethics does not contain any express prohibition against the type of email communication sent by the Director, in her supervisory capacity, to the Captain, a subordinate within the Fire Department. However, the Denver Code of Ethics contains the following prohibition:

> **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.

Section 2-68 prohibits the disclosure of non-public information acquired by a City employee or official during the course of his/her employment. This Code section does not, however, specify to whom disclosure is prohibited. One possible interpretation is that Section 2-68 prohibits the disclosure of confidential information to third parties or the public at large, but does not preclude the sharing of information within and among City employees. If Section 2-68 is intended to apply more broadly and prohibit the dissemination of confidential information to City employees, as well as the public, then the personnel-related information conveyed by the Fire Chief to the Director about the Captain, which she alluded to in her text to the Captain, was "not available to the public" and was "acquired in the course of official duties."

The Board recognized the following mitigating factors:

- The Director's text message was approximately five months before a disciplinary file regarding the Captain was opened by Internal Affairs.
- The Director recused herself from any involvement whatsoever in the disciplinary case against the Captain and did not seek to intervene in the investigation or discipline imposed.
- The Director has acknowledged that sending the text to the Captain "was not the best use of judgment and I will be more cautious in the future."

The Board of Ethics dismissed the complaint pursuant to Section 2-56(6)(c) of the Denver Code of Ethics based on its determination that "the alleged violation is a minor or de minimis violation." Nevertheless, the Board agreed that the text message represented a modest lapse of judgment and encouraged the Director to avoid any potential appearance of impropriety by safeguarding personnel-related information and maintaining the confidentiality of such information for use only through City-established disciplinary channels and procedures.

Case15-35 (no jurisdiction)

A citizen who had been convicted of a misdemeanor in the Denver County Court filed a complaint concerning the investigating detective from the Denver Police Department, who had recently resigned from the Police Department for unrelated reasons. The complaint alleged that the detective had issued a

void summons and had violated his constitutional rights. The Board dismissed the complaint because the Board has no jurisdiction over such issues and because the detective was no longer an employee of the City and County of Denver.

Case15-36 (no jurisdiction)

A citizen filed a complaint against a branch of the Division of Motor Vehicles, alleging disrespectful service. The Executive Director of the Board of Ethics dismissed the complaint because it did not name any city employees and, in addition, did not allege any conduct that would violate the Denver Code of Ethics. The Executive Director, however, with the complaining person's consent, referred the matter to be mediated by the mediation service on contract with the city government.

Case 15-37 (outside employment, conflict of interest)

An administrator in the Mayor's Office requested an advisory opinion regarding outside employment. As part of her city job duties, she manages the staff and the budget in the Mayor's Office and organizes such city events as the annual City Spirit Picnic.

She and her husband operate a small outside business which provides and sets up chair and table coverings for weddings, formal dinners or luncheons, fundraising events, etc.

She has been approached by a number of customers, including some people in city government, to help with private events, which she has done. However, in most cases, she has declined to provide such services for city-sponsored events. She requested advice from the Board of Ethics as to whether she can provide paid services through the business for city-sponsored events.

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

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

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

She has already received written permission for the outside employment from her supervisor. In her request for an advisory opinion, she stated, "I understand that advertising or soliciting services on city time is absolutely unacceptable. I also understand that all business conducted relative to my personal business must occur outside of business hours."

In addition, conflicts of interest are regulated by 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;…**

The definition of "direct official action (Section 2-52(b)(3) includes "selecting or recommending vendors, concessionaires or other types of entities to do business with the city."

Therefore, the Board decided that her business cannot be selected by herself to be a vendor or concessionaire for any city event.

However, the Board strongly discouraged her, in order to avoid the appearance of impropriety, from providing her business's services for pay for any event paid for by City and County of Denver funds. Such payments could be perceived to constitute the use of her public office in the Mayor's Office for private gain and/or could appear to give the event sponsor special influence with her or the Mayor's Office.