

**DENVER BOARD OF ETHICS
2006 ANNUAL REPORT**

February 15, 2007

I. INTRODUCTION

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

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

Appendix A gives brief biographies of the five volunteer members of the Board of Ethics.

The Board held twelve monthly meetings during 2006. This report is a summary of the work accomplished by the Board during that time.

II. ADVISORY OPINIONS, WAIVERS AND INQUIRIES

In 2006, the Board received and decided a total of 46 written formal cases - as compared with 46 cases for 2005, 48 in 2004, 47 in 2003, 50 in 2002 and 31 in 2001. Nineteen of the 2006 formal cases were requests for advisory opinions, while 27 were inquiries (complaints). A digest of the Board's significant 2006 opinions is attached as Appendix B and is posted on the Board of Ethics website at www.denvergov.org/ethics. The Board dismissed all of the inquiries (complaints) that it decided in 2006 after preliminary screening.

Between the passage of the new Denver Code of Ethics in January 2001 and December 31, 2006, the Board of Ethics has received a total of 267 written formal cases, consisting of 176 requests for advisory opinions or waivers and 91 inquiries (complaints) about possible violations of the Code of Ethics.

The subjects of the requests for formal advisory opinions or waivers during this entire 2001-2006 period break down as follows:

- conflicts of interest – 51
- gifts – 55
- travel expenses and lodging – 20
- outside employment – 44
- hiring of relatives – 4
- supervision of relatives – 10
- subsequent employment – 10
- use of public office for private gain – 4

- other – 53 (Some requests involved more than one subject.)

In addition to the written formal complaints and requests for advisory opinions and waivers, the Board's staff director in 2006 received approximately 254 telephone, e-mail or in-person requests for unofficial, informal consultation about the Code of Ethics or other ethics issues, as compared with 266 in 2005, 249 in 2004, 192 in 2003, 130 in 2002 and 50 in 2001 – for a total of 1141 since January 2001.

III. ETHICS HANDBOOK

The Board of Ethics has exhausted the entire supply of 13,000 ethics handbooks printed in 2002 and 2003. The Board obtained a supplemental appropriation in late 2005 to allow printing of a revised and updated Ethics Handbook, which will be distributed to all city employees in early 2007.

IV. ETHICS TRAINING

The Board of Ethics continues to believe that excellent, consistent ethics training is critically important to the successful implementation of the Denver Code of Ethics. All city employees, officers and officials should be trained to recognize ethical issues and to take appropriate steps to avoid unethical conduct.

From 2002 through the end of 2006, 99% of all city employees and officers subject to the Code of Ethics have received at least 3 hours of ethics training. The Board's Staff Director gave ethics briefings in 2006 to several new Mayoral appointees and to senior staff in several agencies and the Career Service Authority continued to give three-hour ethics training at least once a month to new city employees. In 2006, with support from the Board of Ethics, the Career Service Authority Board amended CSA Rule 6 to require that new CSA employees must receive ethics training before they can pass their probationary period.

The Board expresses its continued appreciation to the Training and Organizational Development Division of the Career Service Authority, agency heads and the many trainers in individual agencies who have made this ethics training effort successful. The Board also looks forward to continued assistance from the members of the Ethics Training Oversight Committee, which provides guidance for the ethics training program.

The Board and the Ethics Training Advisory Committee intend to work during 2007 to develop an updated curriculum to refresh ethics training for all city employees and officers and to develop an implementation plan in collaboration with the Mayor's Office and the Career Service Authority. The Board believes that ethics training should not be one-time-only training and should be periodically renewed.

V. OTHER MATTERS

BUDGET

Along with the rest of the Denver city government, the Board of Ethics is gradually recovering from the budget shortfalls of recent years. The adopted 2007 budget is \$97,600, compared to \$86,700 for 2006, \$86,000 for 2005, \$82,600 for 2004, \$96,000 for 2003 and \$87,300 for 2002. The 2007 budget includes a one-time only expansion of \$5000 to develop a curriculum for refresher ethics training for city officers, employees and officials.

STAFF

Michael Henry, the Staff Director of the Board of Ethics, is the sole employee of the Board. The Board encourages citizens, city employees, officers and officials to contact him at 720-865-8412 or ormichael.henry@ci.denver.co.us.

VI. 2007 GOALS FOR DENVER BOARD OF ETHICS

(Adopted February 1, 2007)

A. Continue Development and Implementation of Ethics Training for all City Officers, Officials and Employees

The Board of Ethics, in cooperation with Career Service Authority, has overseen the delivery of ethics training of Denver officers, officials and employees.

The Board should in 2007 and subsequent years continue to pursue this goal by:

a) Developing and overseeing delivery of at least a one-hour refresher course of ethics training, with cooperation from Career Service Authority, city departments and the Ethics Training Oversight Committee.

B. Continue Expedient Fulfillment of the Board's Obligation to Receive, Review and Decide Requests for Advisory Opinions, Requests for Waivers and Inquiries regarding alleged misconduct

Between the passage of the new Denver Code of Ethics in January 2001 and December 31, 2006, the five-member Board of Ethics has received and decided 267 written formal complaints, requests for advisory opinions or requests for waivers. The Board's staff director has also responded unofficially to more than 1150 telephone, e-mail or in-person requests for informal advice.

C. Continue to Suggest Improvements to the Denver Code of Ethics

D. Improve Public Information about Code of Ethics

a) Develop regular articles about Code/Board of Ethics to submit to City departmental newsletters and the city employee newsletter, Insight ;

b) Organize and publicize City-wide and/or departmental informational lunch-time or after -work discussions of ethical issues – twice per year.

c) Seek public comments at that meeting about ethics concerns of citizens.

d) Continue to update and publish digests of the opinions of the Board of Ethics

e) Work with city departments to inform city employees about which departments have stricter codes of ethics than the citywide Denver Code of Ethics

E. Improve Board of Ethics Website

Work with City staff to identify resources to improve the Board of Ethics website. Primary issues should be to make the website more easily accessible, attractive, and easy to read.

F. Develop and Implement Policy for Disclosure of Gifts to the City and County of Denver

Work with the Mayor's Office, City Council and the City Attorney's Office to develop and implement a process for disclosure and/or regulation of gifts to the City and County of Denver. Gifts to individual city employees, officers or officials are already regulated by Section 2-60 of the Code of Ethics; however, there is not a systematic policy, consistent for all city agencies and departments, for criteria or public disclosure of all gifts to the city or to city departments or agencies.

G. Continue to Explore with Independent Agencies whether they wish to adopt the Denver Code of Ethics and Utilize the Denver Board of Ethics for Advisory Opinions, Waivers and Inquiries

Continue to explore with independent agencies, such as the Denver Public Library, Denver Housing Authority, Denver Water, Denver Urban Renewal, the Denver Museum of Nature and Science, the Denver Art Museum, the District Attorney's Office, etc. whether they would voluntarily wish to adopt the Denver Code of Ethics and utilize the Denver Board of Ethics to assist them in training and/or dealing with requests for advisory opinions, waivers and inquiries. This would foster ethical consistency among the independent agencies.

H. Work with Clerk and Recorder's Office to Provide a Training Class for Registered Lobbyists concerning Lobbyist Ordinance (training provided by Clerk and Recorder) and Gift section of Code of Ethics (provided by Board of Ethics), including a comparison with Constitutional Amendment 41

I. Work with City Council, the Mayor's Office, the City Attorney's Office, the Auditor's Office and the Career Service Authority to Explore a Whistle-Blower Protection Ordinance or Executive Order for City Employees

VII. SUGGESTED IMPROVEMENTS FOR CODE OF ETHICS

Section 2-66 of the Code of Ethics, which requires the Board of Ethics to submit an annual report to the Mayor and City Council by February 15 of each year, specifies that the report “shall include any recommendations for modifying the Code of Ethics.” The Board of Ethics suggests that the following amendments would improve the Code of Ethics, based on its experience in administering the Code. (The Code of Ethics was last amended by City Council in September 2004.)

1. Add the following after “Agencies may adopt a stricter code of ethics for their own use” in Section 2-51: “through rules or regulations. Those agencies which wish to adopt a stricter code of ethics are encouraged to consult with the Board of Ethics, shall provide information and training on such stricter code provisions to employees of the agency and shall provide a copy to the Board of Ethics.” The reason for this is to improve awareness of the “stricter” provisions that some agencies have among city employees, to inform the Board of Ethics of such rules and, hopefully, to encourage consistency in format and reasoning for such stricter code sections.
2. Substitute “complaint or inquiry” for the word “inquiry” wherever it appears in the Code of Ethics (primarily in Sections 2-55 and 2-56). Almost all city employees and citizens are confused about the word “inquiry” in the Code, believing that it is the same as “request for advisory opinion.” Some employees even send their requests for advisory opinions on the “inquiry form” on the website. The city charter uses the word “complaint” and not “inquiry” in the section pertaining to the Board of Ethics – 1.2.9(C).
3. Add “or person with whom he or she is co-habiting with or to whom he or she is engaged to be married” to “member of his or her immediate family” wherever it occurs in the Code. Someone who is engaged to be married to or cohabiting with a city employee or officer should not be allowed to be hired or supervised by that employee or officer or to have his or her company have a contract or purchase order approved by that employee or officer, even if the relationship does not quite meet the definition in 2-52(c) of “domestic partner.” The Board of Ethics has recently considered a case where this was an issue.
4. Add to Section 2-63, regarding outside employment or outside business activity, a new subsection: “Copies of documents arising from this section shall be placed in each officer’s and employee’s personnel file.” The reason for this is that there is no uniform practice among agencies as to what to do with the paperwork. A number of city employees and record managers have asked about this.
5. Add a new sub-section to Section 2-61 entitled “Abstention from Participation.” Although the Code prohibits city officers or employees from hiring or supervising relatives (2-59) or taking direct official action if they have a substantial conflict of interest (2-61), it gives no guidance about how to effectuate that prohibition. Section 1.2.9 of the city charter gives a little more guidance. It provides: “No officer or employee shall have any interest arising by contract or other relationship that creates a substantial conflict of interest with respect to his or her duties, unless the conflict can be avoided by abstention or disqualification from participating in a transaction without adversely affecting the interests of the city.” Nothing in the Code of Ethics, however, mentions abstention or disqualification. Many city employees, officers and officials do not understand how to accomplish such an abstention or disqualification. Using Colorado state legislation as a

model, specifically, CRS 24-18-107 and 24-18-109, as well as some advisory opinions from the Board of Ethics, the Board proposes: "Officers, employees or officials who are prohibited from taking direct official action due to a substantial conflict of interest should disclose such interest, shall not act or vote thereon and shall refrain from attempting to influence the decisions of others in acting or voting on the matter."

6. Add the following underlined words to Section 2-64, Subsequent Employment:

(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 Ethics has issued advisory opinions in a few cases approving contract employment with a city agency after an employee has officially retired from city government. The reasoning of the Board has been 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. An example is a case where a firefighter retired from the Fire Department and wished to be employed on a contract basis as a fire inspector at Denver International Airport.

7. Add the following underlined words to Section 2-63: Contemporaneous or outside employment.

(a) All officers other than elective officers and all employees shall report existing or proposed outside employment or other outside business activity (not including unpaid volunteer 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.

The Board of Ethics has advised city employees and officers that unpaid volunteer activity does not need to be reported and approved under Section 2-63.

VII. CITY GOALS

The Board of Ethics believes that its work during 2006 and its goals for 2007 support the following of the City and County of Denver's goals:

- Denver city government will achieve the highest customer service rating in the country – by encouraging confidence in Denver city government among its citizens and customers
- People will say Denver was an even better place than it was in 2003 – by encouraging an ethical culture in Denver city government
- People who work for Denver city government will say it is an even better place to work than it was in 2003 – by encouraging high ethical standards throughout city government

- Denver city government will live within its means – by thriving as the city’s smallest agency with the smallest budget

VIII. CONCLUSION

The Board of Ethics believes that, with help from the Mayor, City Council, the City Attorney’s Office, Career Service Authority, the ethics trainers in city agencies and the great majority of managers and employees of the City and County of Denver, it made continued good progress in 2006 to establish ethics as a recognized core value and to cultivate public confidence in Denver city government.

Respectfully submitted on behalf of the Board of Ethics,

ANN TERRY
Chair