

## **RULES OF PROCEDURE**

by the Denver Board of Ethics

(adopted June 15, 2001, with amendments through November 20, 2013)

### **Article I - Intent**

It is the intention of the Denver Board of Ethics in these Rules of Procedure to establish procedures that are timely and that are fair to officers, officials and employees of the City and County of Denver and also to citizens who wish to report possible violations of the Code of Ethics. These Rules of Procedure are intended to set forth the procedures to implement the requirements of Chapter 2, Article IV of the Denver Revised Municipal Code (Code of Ethics) enacted by the Denver City Council on January 29, 2001, signed by the Mayor of Denver on January 31, 2001 and effective upon February 2, 2001, and any amendments thereto.

### **Article II – Definitions**

Board of Ethics (or Board) – The Board appointed by the Mayor and the City Council of the City and County of Denver, State of Colorado, pursuant to Article IV of Chapter 2 of the Denver Revised Municipal Code.

Code of Ethics (or code) – Article IV of Chapter 2 of the Denver Revised Municipal Code, as it may be amended from time to time.

Employee – any person in the employ of the city or of any of its agencies or departments.

Officer – any of the following: the Mayor, the Auditor, the members of City Council, the Clerk and Recorder, the Manager of Public Works, the Manager of Parks and Recreation, the Manager of Finance, the Manager of Environmental Health, the Manager of General Services, the Manager of Safety, the City Attorney, the Manager of Human Services, the Manager of Aviation and the Manager of Community Planning and Development.

Official – a member of a City board or commission.

### **Article III – The Board**

1. There shall be a Chair and a Vice-Chair elected by the Board each year at the last meeting prior to June 1 or at a meeting as close to that date as practicable.

2. The Chair, and in the absence of the Chair, the Vice Chair, shall:

- a) Preside at all meetings.
- b) Administer oaths to or accept affirmations from all persons who wish to testify at hearings.
- c) Decide all points of order, procedure and evidence unless overruled by a majority vote of the board.
- d) Issue subpoenas, if authorized by the Board.

3. In the absence of both the Chair and the Vice-Chair, a Chair Pro Tem shall be elected by a majority of the members present.

### **Article IV – Meetings**

1. All meetings shall be open to the public except for: a) deliberations on inquiries; b) deliberations on requests for advisory opinions if a motion has been passed to deliberate in executive session and c) those exceptions set forth in the Open Meetings ordinance of the City and County of Denver (2-31, et seq. DRMC). Board meetings shall be scheduled as needed either by a ruling of the Chair or by a majority vote of the Board. (amended on November 20, 2013)

2. Written minutes of Board meetings which are open to the public shall be taken either by a designated Board member or a designated staff member.
3. A quorum shall consist of three (3) members.
4. If any member of the Board desires to abstain from participating in a particular case, he/she shall announce that fact on the record, stating the reason for such abstention.
5. At least five days' written notice of all meetings shall be given to all Board members, except that a quorum may waive the five day requirement provided any applicable notice requirements of Denver's open meetings law (DRMC Sec. 2-35) are met.

#### **Article V - Requests for Advisory Opinions**

1. Any current or former or prospective officer, official or employee or the appointing authority of a non-elected officer, official or employee may submit a written request to the Board for an advisory opinion on whether any conduct by the officer, official or employee would constitute a violation of the Code of Ethics.
2. The Board or its designee may request any additional information deemed necessary to render an advisory opinion.
3. The Board shall render an advisory opinion in writing to the person who requested the opinion no later than six weeks from the time it received the request, unless the person who requested the opinion has withdrawn the request in writing, or unless requested additional information has not been received by the Board, or unless the Board has given written notice to the person requesting the opinion explaining the reason for the delay and stating an expected issuance date.
4. The Board may publish advisory opinions with such deletions as may be lawful and necessary to prevent disclosure of the identity of the individual involved. The Board may also publish guidelines based on an advisory opinion if the subject of the opinion may be of general interest and guidance.
5. If the Board has a belief, based in fact, that an advisory opinion has not been complied with it shall inform the person, the person's appointing authority and the City Attorney in writing and shall request the appointing authority to take appropriate action after consulting with the City Attorney.

#### **Article VI – Requests for Waivers**

1. 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 to the Board.
2. The Board or its designee may request any additional information deemed necessary to determine whether a waiver should be granted.
3. The Board shall place all requests for waivers on its agenda and shall conduct its consideration of any requested waiver at a meeting open to the public.
4. The Board shall render a decision in writing to the person who requested the waiver no later than six weeks from the time it received the request, unless the person who requested the waiver has withdrawn the request in writing, or unless requested additional information has not been received by the Board, or unless the Board has given written notice to the person requesting the waiver explaining the reason for the delay and stating an expected issuance date.
5. The Board may grant a waiver for conduct that constitutes or may constitute a literal violation of the Code of Ethics, but where the Board determines that a waiver will serve the best interests of the City.

## **Article VII – Inquiries or Complaints from Citizens**

1. Any person may file an inquiry or complaint with the Board asking whether a current officer, official, or employee has failed to comply with the Code of Ethics.

2. An inquiry or complaint (hereinafter “inquiry”) must be in writing on a form approved by the Board, be signed, and show the home address of the person who submitted it. The form shall contain a statement that must be signed and which states that, to the best of the person’s knowledge, information, and belief formed after reasonable reflection, the information in the inquiry is true. The inquiry must describe the facts that constitute the violation of the Code of Ethics in sufficient detail so that the Board and the person who is the subject of the inquiry can reasonably be expected to understand the nature of any offense that is being alleged. The Board or its designee may request any additional information deemed necessary to screen the inquiry or to render a decision.

3. No inquiries shall be accepted or considered which relate to actions that took place more than two years prior to the date of filing.

4. The Board or its designee must notify the person who is the subject of the inquiry that an inquiry has been filed no more than five days from the day the inquiry was filed, provided that the Board shall notify the person who is the subject of the inquiry immediately if he or she so requests. The notice shall include a copy of the full inquiry; a copy of any portion of the Code of Ethics that is alleged to have been or that may be violated; and the Board’s Rules of Procedure.

5. The Board shall provide the subject of the inquiry with a copy of the inquiry before it provides copies to any other parties. The Board recognizes that distribution to the public of an inquiry prior to screening by the Board as required below could harm the reputation of an innocent person and is contrary to the public interest; therefore, the public release of the inquiry is prohibited until the screening process below has been completed.

6. The Board or a committee of the Board shall consult in confidence to screen the inquiry within fourteen days of receiving an inquiry. The Board may immediately dismiss an inquiry if:

a) It has no jurisdiction; or

b) The alleged violation, if true, would not constitute a violation of the Code of Ethics; or

c) The alleged violation is a minor or de minimis violation; or

d) The inquiry is, on its face, frivolous, groundless, or brought for purposes of harassment; or

e) The matter has become moot because the person who is the subject of the Inquiry is no longer an officer, official or employee; or

f) The person who is the subject of the inquiry had obtained a waiver or an advisory opinion under Section 2-54, DRMC permitting the conduct; or

g) The appointing authority of the person who is the subject of the inquiry has already taken action as a result of finding a violation and the Board believes the action was appropriate.

7. If the inquiry is not dismissed pursuant to paragraph (6), the Board may direct a staff member to investigate the inquiry in order to determine if a hearing is warranted. The investigation typically should not exceed 30 days. The investigation may include obtaining further detail or clarification from the complainant consistent with DRMC Section 2-56(2) or obtaining additional information from the person who is the subject of the inquiry, that person’s supervisor if any, public records, or other reasonable and readily available sources. The Board shall review the additional information and determine whether the

investigation is complete or whether additional information is needed. Once the Board finds that the investigation is complete, the Board shall either: (1) dismiss the inquiry, (2) request written arguments and make a finding pursuant to DRMC Sec. 2-56(7), or (3) proceed under paragraph 8 below. If information received is confidential or privileged, the Board shall maintain the confidentiality or privilege.

8. If the inquiry is not dismissed or otherwise resolved pursuant to paragraphs (6) or (7) above, the Board shall issue a Notice of Hearing, which shall set forth in reasonable detail the alleged violations of the Code of Ethics and the facts supporting the allegations. The Notice of Hearing shall be mailed to the person filing the inquiry (hereinafter the complainant) and to the subject of the inquiry within 10 days of its adoption. The notice shall inform the parties that they may consult with or be represented by an attorney or other representative of their own choosing. The Notice shall require an Answer to the Notice of Hearing to be filed by the subject of the inquiry within 20 days, unless an extension is granted for good cause. When received by the Board, the Answer shall be mailed promptly to the complainant.

9. Within fourteen days of the receipt of the Answer, the Board shall issue to the parties a notice to set a date and place for the hearing, which shall be open to the public. The Board will attempt to accommodate the parties in selecting a date that is mutually agreeable. If no Answer is received, the hearing shall proceed nonetheless.

10. The Board shall assign one of its members to act as a Hearing Officer, with the responsibility to determine pre-hearing matters and to act as chair at the hearing.

11. At least 20 days before the hearing, the parties or their representatives, or in appropriate cases, the Board's staff director, shall exchange and submit to the Hearing Officer a proposed list of witnesses and possible documentary evidence to be introduced at the hearing, and an estimate of the length of time needed to present the testimony and evidence. The Hearing Officer may choose to set a pre-hearing conference, at which time a schedule and hearing order may be adopted. Such order shall include the exchange of proposed exhibits and witness lists. The Hearing Officer may determine any outstanding procedural or evidentiary issues at the pre-hearing conference.

12. The Hearing Officer may authorize the issuance of subpoenas for documents and witnesses, but only after a written request to appear or provide records has not been complied with and after consultation with the City Attorney. Persons who are subpoenaed or whose records are subpoenaed may object to testimony or the production of documents on the grounds that such information is privileged under Colorado law.

13. After the inquiry has been filed, none of the parties or their representatives may communicate on an ex parte basis with the Hearing Officer or any other Board member on any manner pertaining to the inquiry. All communications pertaining to the inquiry shall be sent to the staff director of the Board.

14. Any time after the issuance of the Notice of Hearing, the Board, at its discretion, may make a finding solely on the basis of written arguments without holding a public hearing if it determines that there is no significant discrepancy in the facts. However, the subject of the inquiry shall have the right to request a hearing, which shall be open to the public.

15. At any time after the issuance of the Notice of Hearing, the Board may dismiss an inquiry without a finding for or against the subject of the inquiry if it finds that the person committed the violation due to oversight and the person comes into voluntary compliance.

16. The Board may dismiss an inquiry if the complainant does not appear at the hearing and if, in the opinion of the Board, it would be unfair to the subject of the inquiry not to have the opportunity to examine the complainant.

17. At the hearing, the complainant, or the complainant's representative, may make an opening statement and present the evidence in support of the allegations set forth in the Notice of Hearing. In the alternative, at the request of the Board, the staff director may summarize the allegations and other documents for

consideration. The subject of the inquiry, or the representative of the subject of the inquiry, shall be entitled to cross-examine witnesses and make objections to any documents offered for consideration.

18. At the conclusion of the evidence offered by the complainant or pursuant to paragraph 18, the subject of the inquiry, or his or her representative, shall have the opportunity to make an opening statement and present evidence. The complainant, or his or her representative, shall have the opportunity to cross-examine witnesses called by the subject of the inquiry. At the conclusion of the evidence, the parties may make closing statements or, with the consent of the Board, submit briefs or written summaries of their respective positions.

19. Either party shall be allowed sufficient time to examine and respond to any evidence not presented to them in advance of the hearing. The Hearing Officer or the Board may continue or recess the hearing to allow sufficient time for response, or may exclude or strike the evidence if unfairness would result that cannot be remedied.

20. The Hearing Officer shall preside at the hearing, administer oaths or accept affirmations from witnesses and decide all points of order, procedure and evidence unless overruled by the majority vote of the Board. The hearing need not be conducted according to technical rules of evidence, and the Hearing Officer may admit any relevant evidence of probative value, including hearsay. The Hearing Officer may exclude or strike incompetent, immaterial or unduly repetitious evidence.

21. An electronic or stenographic record of the hearing shall be made and kept in the Board office for two years after the case is concluded.

22. Within 20 days of the conclusion of the hearing, the Board shall meet in executive session to review the evidence and determine if the allegations in the Notice of Hearing have been proven by clear and convincing evidence. Only members who have been present for the hearing may participate in the deliberations, and any findings and recommendations must be adopted by a majority of the Board. The Board may consider, when making findings and recommendations, the severity of the offense, the presence or absence of any intention to conceal, deceive, or mislead, whether the violation was deliberate, negligent or inadvertent, and whether the incident was isolated or part of a pattern.

23. Within 45 days of the conclusion of deliberations, the Board shall issue an Order setting forth its findings and recommendations. In the alternative, the Board where it deems it appropriate, may issue an advisory opinion in lieu of making findings and recommendations.

24. If the subject of the inquiry is an employee, non-elected officer or appointed official, the Board may, if it determines corrective action is necessary, notify the person's' appointing authority and recommend that the appointing authority take action, including discipline. If the subject of the inquiry is an elected officer, the Board may propose actions appropriate to the finding, ranging from a recommendation that the person abstain from further action in the matter or seek a waiver, to adopting a resolution reprimanding the person.

25. The Board or its designee shall send a written copy of the Board's findings and recommendations to the subject of the inquiry and the person who submitted the inquiry and, unless provided otherwise in these Rules or in the Code of Ethics, shall make the findings and recommendations public.

26. Time. In computing any deadline required by these rules, calendar days shall be used, unless the period of time is less than seven days, in which case business days shall be used.

### **Article VIII – Case Numbers**

Case numbers shall be assigned chronologically for each written request for advisory opinion, request for waiver and inquiry, with a new sequence to commence on the first day of each calendar year. The calendar year shall be the first two digits of the case number followed by a hyphen (for example, 01-1 designates the first case filed in 2001).

### **Article IX – Posting of Agenda**

A copy of the Board's meeting agenda shall be posted at the location of the meeting and at any other appropriate locations and on the Board's website.

### **Article X – Parliamentary Authority**

The parliamentary rules contained in Robert's Rules of Order, latest revision, shall govern in all cases to which they are applicable, except as modified by these Rules of Procedure.

### **Article XI – Disqualification**

Any member or employee of the board of ethics shall disqualify himself or herself from participating in any matter before the board in which his or her impartiality might reasonably be questioned, including, but not limited to, instances where he or she has a personal bias or prejudice concerning a party or personal knowledge of or involvement in disputed evidentiary facts concerning the matter. In the event that an employee of the board of ethics receives a request for an advisory opinion, a request for a waiver or an inquiry from which the employee is disqualified, and the employee has recused himself or herself, the board shall request a designee of the city attorney or a member of the board to perform all functions the employee would otherwise perform.

### **Article XII - Reimbursement of Reasonable Legal Expenses**

A person who is the subject of an inquiry who is subsequently exonerated may apply to the City Attorney for reimbursement of reasonable legal expenses from the "Liability Claims" appropriations. The City Attorney shall promptly provide reimbursement subject to the limitations of this section. As used in this section, the term "legal expenses" shall include reasonable attorney fees, witness fees, stenographer fees, investigator fees, and other direct costs in connection with the answer to an inquiry. The person applying for reimbursement shall submit his or her application for reimbursement to the City Attorney within fourteen days of the Board's decision. The City Attorney, or in the case of a conflict, a designee of the City Attorney, shall determine, in his or her sole discretion, the reasonableness of the legal expenses. The exonerated person may not appeal or challenge the City Attorney's determination with the Board or any other entity. The maximum reimbursement from the City shall not exceed the sum of seven thousand five hundred dollars (\$7500.00).