



Denver Board Of Ethics
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DENVER BOARD OF ETHICS

2014 ANNUAL REPORT

Submitted: February 13, 2015

I. INTRODUCTION

The Denver Board of Ethics hereby submits its fourteenth 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.

Brief biographies of the five current members of the Denver Board of Ethics are given below in **Appendix A**.

The Board expresses appreciation to all City elected officials, employees, board and commission members and citizens who requested ethical advice or help in 2014.

The Board held twelve monthly meetings in 2014. This report is a summary of the work accomplished by the Board during that time.

II. ADVISORY OPINIONS, WAIVERS, COMPLAINTS

In 2014 the Board received and handled a total of 35 written formal cases - as compared with:

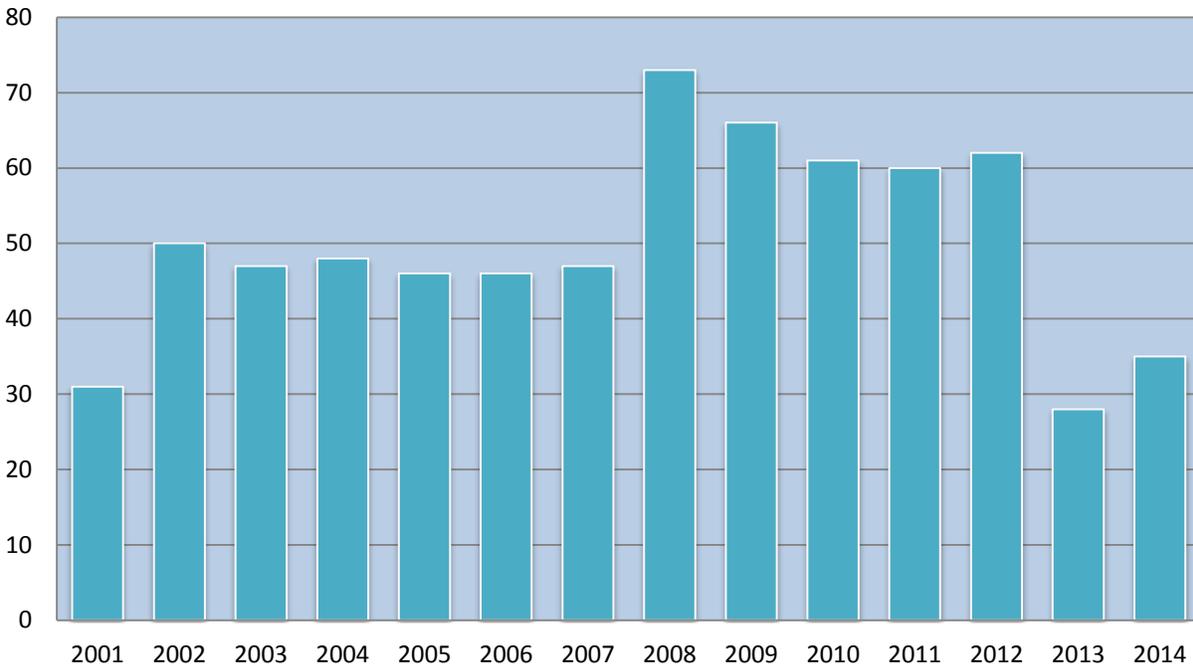
- 28 cases in 2013
- 62 in 2012
- 60 in 2011
- 61 in 2010
- 66 in 2009
- 73 in 2008
- 47 in 2007
- 46 in 2006
- 46 in 2005

Executive Director
L. Michael Henry

Board Members
Edgar L. Neel – Chair
Brian J. Spano – Vice Chair
Roy V. Wood
Andrew S. Armatas
Sylvia Smith

- 48 in 2004
- 47 in 2003
- 50 in 2002
- 31 in 2001

of Cases per Year



Twenty of the 2014 formal cases were requests for advisory opinions and/or waivers, while fifteen were complaints.

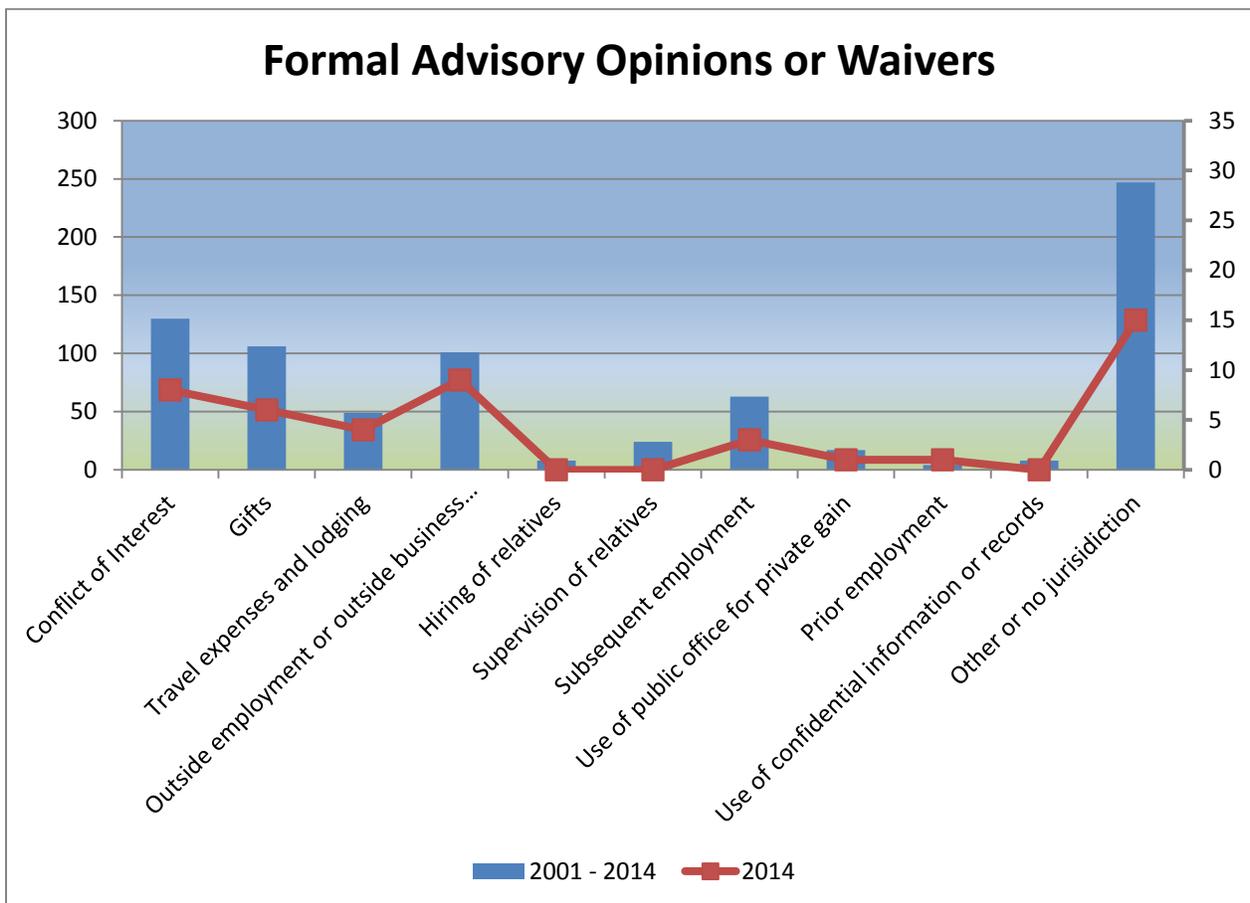
A digest of the Board’s 2014 opinions is printed below as **Appendix B** and is posted on the Board of Ethics website at www.denvergov.org/ethics. The Board dismissed all of the complaints that it considered in 2014 after preliminary screening, due to lack of jurisdiction over the subject matters and/or lack of evidence of any violations of the Code of Ethics.

Between the passage of the new Denver Code of Ethics in January 2001 and December 31, 2014, the Board of Ethics has received a total of 701 written formal cases, consisting of 390 requests for advisory opinions and/or waivers and 311 complaints alleging possible violations of the Code of Ethics. Most of the complaints were dismissed because the allegations related to subjects and/or persons not covered by the Code of Ethics. Examples of such dismissed complaints alleged that police officers made improper arrests or searches or that deputy sheriffs used excessive force. In such cases, the Board encourages the complaining parties to submit their complaints to the Internal Affairs Bureaus of the Police or Sheriff Departments and/or the Office of Independent Monitor. Other dismissed complaints dealt with non-city personnel or rude behavior by city personnel (not covered by the Denver Code of Ethics). Other dismissed complaints did not present sufficient evidence of unethical conduct.

The subjects of the requests for formal advisory opinions or waivers during the entire 2001-2014 period break down as follows, with the 2014 cases in parentheses:

- conflicts of interest – 130 (8)
- gifts – 106 (6)
- travel expenses and lodging – 49 (4)
- outside employment or outside business activity– 101 (9)
- hiring of relatives – 8 (0)
- supervision of relatives – 24 (0)
- subsequent employment – 63 (3)
- use of public office for private gain – 17 (1)
- prior employment – 4 (1)
- use of confidential information or records - 8 (0)
- other or no jurisdiction – 247 (15)

(Some requests involved more than one subject.)



In addition to the written formal complaints and requests for advisory opinions and waivers, the Board's Executive Director in 2014 received approximately 249 telephone, e-mail or in-person requests for unofficial, informal consultation about the Code of Ethics or other ethics issues, as compared with:

- 223 in 2013
- 275 in 2012
- 309 in 2011
- 249 in 2010
- 260 in 2009
- 277 in 2008
- 277 in 2007
- 254 in 2006
- 266 in 2005
- 249 in 2004
- 192 in 2003
- 130 in 2002
- 50 in 2001

For a total of 3,256 since January 2001.

The Board and its Executive Director take pride in responding to all requests or complaints as promptly as possible, usually within one day for unofficial requests and within one month for official requests or complaints.

III. ETHICS HANDBOOK

The 2008 edition of the Ethics Handbook was distributed to all city officers and employees and, for the first time, to all on-call city employees. In 2010, 2011 and 2012, the Ethics Handbook was distributed to all new city employees. In 2013 budget funding was obtained to print an updated handbook for new employees, which includes new significant Board of Ethics decisions and amendments to the Code of Ethics made by City Council since 2008. The handbook can be found at www.denvergov.org/ethics. Permanent funding is now available since 2014 to print updated ethics handbooks for all new city employees.

IV. ETHICS TRAINING

The Board of Ethics continues to believe that excellent, consistent ethics training is critically important to the successful implementation of the citywide ethics program. 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 2014 all city employees and officers subject to the Code of Ethics have received at least 3 hours of ethics training. 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, which has significantly increased compliance with the ethics training requirement of section 2-65 of the Code of Ethics. In addition, new recruits in the Fire Department and the Police Department receive ethics training.

The Board's Executive Director gave ethics training in 2014 to several new Mayoral appointees and several Fire Department, Sheriff Department and Police Department recruits and also gave refresher ethics training to staff at some departments, agencies and boards. The Office of Human Resources continued to manage three-hour ethics training for new CSA employees, in which the Board's Executive Director took part. In 2012 this was changed from one to two or three times per month due to the increasing number of new hires. In 2014, ethics training was given to approximately 1270 (compared to 800 in 2013) new city employees.

In 2014 the Board and the Office of Human Resources began to consider whether and how refresher ethics training can be provided to some or all city personnel at regular intervals. This discussion will continue in 2015. Refresher ethics training is provided or required at a large percentage of private and governmental organizations.

The Board continues to express great appreciation to Janice Cornell of the Community Planning and Development Department, who has been the primary instructor for most of the CSA/OHR ethics training classes for new employees for the last several years. In addition, the Board expresses its continued appreciation to the Training and Organizational Development Practice of the Office of Human Resources and agency heads who have made this ethics training effort successful.

V. OTHER MATTERS

BUDGET

The adopted 2015 budget for the Board of Ethics is \$125,300 as compared to:

- \$120,900 for 2014
- \$111,700 for 2013
- \$105,600 for 2012
- \$104,100 for 2011
- \$102,500 for 2010
- \$105,800 for 2009
- \$94,600 for 2008
- \$97,600 for 2007
- \$86,700 for 2006
- \$86,000 for 2005
- \$82,600 for 2004
- \$96,000 for 2003
- \$87,300 for 2002.

STAFF

Michael Henry, the Executive Director of the Board of Ethics, is the sole employee of the Board. The Board encourages citizens and city employees, officers and officials to contact him at 720-865-8412 or michael.henry@denvergov.org.

OTHER 2014 ACTIVITIES

In 2014 the Board also began to consider recommending improvements to the Denver Code of Ethics to recommend to City Council. The last amendments to the Code were made in 2012. This consideration will continue in 2015.

The Board's Executive Director has quarterly meetings with the Mayor's Chief of Staff, the City Attorney and the Executive Director of the Office of Human Resources in order to maintain regular communication with city leadership.

The Board has had a number of reports about the progress of the Financial Fraud Hotline, which was implemented by the Budget and Management Office on July 1, 2014.

The Board's Executive Director participated in a meeting about Transparency and Accountability in Government with representatives of several Latin American countries through the International Visitor Leadership Program.

VI. 2015 GOALS FOR BOARD OF ETHICS

A. Continue to implement and improve ethics training

The Board of Ethics, in cooperation with the Office of Human Resources, oversees the delivery of ethics training for all Denver officers, officials and employees. The Board should in 2015 continue to pursue this goal by working with city ethics trainers to encourage accuracy, consistency and high quality of the ethics training with cooperation from OHR and city departments. The Board will continue to encourage city departments and agencies to devote time at staff meetings for refresher ethics discussions and to provide ethics training to new Mayoral appointees. The Board will also work with OHR to consider how to implement refresher ethics training.

B. Continue to receive, review and promptly decide requests for advisory opinions, requests for waivers and complaints regarding alleged misconduct

C. Improve public information about Code of Ethics

- a) Develop 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 lunchtime or after-work discussions of ethics issues – twice per year. Seek public comments at the meetings and otherwise about ethics concerns of citizens.
- c) Study improved public information through social media (Facebook, Twitter, etc.) and through other ethics-related organizations.
- d) Make online digests of Board of Ethics opinions searchable by users.

D. Improve implementation of Executive Order 134 regarding gifts to the city

- a) Work with City Clerk’s and Mayor’s Offices to ensure that gifts to the city over \$2500 are reported by agencies and departments and are posted on a website by the City Clerk pursuant to Executive Order 134.
- b) Work with City Clerk’s and Mayor’s offices to develop a uniform reporting form for Executive Order 134.

E. Analyze ethics-related responses to the 2015 Denver Employee Survey and work with Office of Human Resources to assist departments and agencies if survey indicates need to improve ethical culture

F. Study Code of Ethics in light of the Board’s experience, research Codes of Ethics from other jurisdictions and propose improvements to City Council, following collaboration with other stakeholders

G. Improve communications about ethics issues with City Council, the Mayor’s Office and City departments

VII. HOW THE BOARD OF ETHICS HELPS TO ACCOMPLISH THE CITY’S GOALS

The Mayor’s Vision:

- We will deliver a world-class City where everyone matters. The Board of Ethics works to develop an ethical culture at all levels of Denver government for the benefit of City personnel and citizens.

The Hancock Administration’s City Goals are:

- Driving private-sector economic growth and job creation.
- Improving education and opportunities for *all* kids.
- Strengthening our safety net and public confidence in the police department.

The goal of the Board of Ethics is to establish public confidence in all city departments and agencies.

The Administration’s two core values to achieve these goals are:

- Improving sustainability. The Board minimizes use of paper communications.
- Improving customer service. The Board of Ethics and its Executive Director respond promptly to all questions and complaints from the public and City personnel and encourage all departments and City personnel to act ethically for the benefit of the public.

VIII. CONCLUSION

The Board of Ethics believes that, with help from the Mayor, City Council, the City Attorney's Office, the Office of Human Resources, ethics trainers and the great majority of managers and employees of the City and County of Denver, it made continued progress in 2014 to establish ethics as a recognized core value and to cultivate public confidence in city government.

Respectfully submitted on behalf of the Denver Board of Ethics,

A handwritten signature in black ink, appearing to read "Edgar L. Neel". The signature is written in a cursive, flowing style with a large initial "E".

Edgar L. Neel, Chair

APPENDIX A

DENVER BOARD OF ETHICS

Board Members (as of December 2014)

Edgar L. Neel earned a B.A. from Amherst College and a J.D. from Cornell University Law School. He has practiced law in Denver for over thirty years. His focus is on commercial and construction matters, representing contractors, insurers and surety companies in complex claims and litigation. He is a past president and current director of the Denver law firm of Pendleton, Wilson, Hennessey and Crow, P.C. He was the District Director for Congresswoman Diana DeGette in 1997. Reappointed by City Council. Term expires 4-20-2015. He was elected Chair of the Board of Ethics in May 2008 and served for two years and was elected again as Chair in 2013 and 2014.

Roy V. Wood earned his B.A, M.A. and Ph.D. from the University of Denver. He was a Professor and Dean of the School of Communications at Northwestern University from 1972 to 1988. In 1989 he became the first Provost of the University of Denver. In 2006 he chaired a blue-ribbon panel on ethics for the Colorado House of Representatives. The Speaker of the Colorado House of Representatives appointed him as a member of the first Colorado Independent Ethics Commission and he completed that term in June 2011. He teaches classes at D.U. in communications ethics and dialogue and directs dissertations, most of which center around ethics in organizations and public service. Appointed by the Mayor. Term expires 4-30-2015. He served as Vice-Chair of the Board of Ethics in 2012-13.

Brian J. Spano earned his B.A. from the University of Michigan and his J.D. from the University of Illinois College of Law. Since 1987 he has been with the law firm of Rothgerber, Johnson and Lyons (merged in 2013 to become Lewis Roca Rothgerber) since 1987 and is currently a partner and specializes in insurance and commercial litigation matters. He also serves as counsel to the American Academy of Forensic Sciences and advises the Academy on matters related to ethics complaints against Academy members. He was appointed by City Council to a term ending April 20, 2017. He was elected Vice-Chair of the Board of Ethics in May 2013 and re-elected in 2014.

Andrew S. Armatas earned his B. A. at the University of Colorado at Boulder and his J. D. from the University of Denver. He has served as a Denver Assistant City Attorney, a partner in a Denver law firm, City Attorney for Broomfield and a Denver County Court Judge, retiring in January 2013 after 23 years of service on the bench. During 7 of those years, he served as Presiding Judge of the Denver County Court. He was appointed by the Mayor to a term ending April 30, 2017.

Sylvia S. Smith has been employed with the City and County of Denver in a variety of capacities - from Director of Policy and Research in the Auditor's Office to her current position as a Program Specialist for the Denver Office of Economic Development where she manages neighborhood service and facility improvement contracts. She holds a B. A. in Political Science from the University of Colorado at Denver. She has been active in many organizations including the Colorado Black Women for Political Action, Single Mothers of Color, Inc., National Council of Negro Women, Inc., Denver Section and Colorado Common Cause. She was appointed by the Mayor and City Council to a term ending June 24, 2017.

APPENDIX B

DENVER BOARD OF ETHICS DIGEST OF SELECTED OPINIONS January 1– December 31, 2014

PLEASE NOTE: This is a selected set of summarized opinions given by the Denver Board of Ethics between January 1 and December 31, 2014 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 13 – 26 through 13 - 28 (conflict of interest)

A terminated city employee filed complaints concerning his former supervisor and 2 other co-workers. He raised a number of issues over which the Board of Ethics has no jurisdiction, including failure to make reasonable ADA accommodations, workplace bullying, unjustified termination and improper or dishonest interference with a company's contract.

He also alleged that one of the co-workers is a domestic partner of a top executive with a company, which has a contract with the city department and that co-worker has direct official action authority over that company by approving and administering its contract with the department. The Board of Ethics concluded that none of the documents or allegations submitted by the complaining party provided evidence that the co-worker exercised any direct official action that would benefit the domestic partner or the company. In addition, it was common knowledge at the department that the co-worker and the domestic partner lived and continue to live together and, for that reason, the co-worker and the department took care to make sure that the co-worker did not make any decisions that would affect the company.

In addition, Section 2-56(3) of the Code of Ethics prohibits the Board “from accepting complaints or inquiries about actions that took place more than two years prior to the date of filing.” The primary focus of the allegations concerning the co-worker and the company concerned the award of a contract in 2009 and is therefore earlier than two years prior to the date of filing of these complaints.

The Board of Ethics dismissed all three complaints pursuant to Sections 2-56(6)(a) and (d) of the Code of Ethics, because the Board has no jurisdiction over these issues and the complaints are, on their face, groundless.

Case 14-1 (gifts)

A Police Department lieutenant requested an advisory opinion regarding a gift of 165 hoodies that the owner of a hotel/motel left at the district headquarters for each of the police officers in the district. The lieutenant tried to refuse any gifts, but the business owner insisted. The business owner told the lieutenant that he supports and appreciates the Denver Police Department—especially the officers assigned to that district, where his business is located. The value of each hoodie is probably between \$10 and \$12.

Gifts are regulated by Section 2-60 of the Code of Ethics:

Sec. 2-60. Gifts to officers, officials, and employees.

The purpose of this section is to avoid special influence by 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:**

(1) Any money, property, service, or thing of value that is given to a person without adequate and lawful compensation...

(b) Officers, officials, and employees and the members of their immediate family may accept the following even if the officer, official, or employee is in a position to take direct official action with regard to the donor...:

(5) **Unsolicited items of trivial value. "Items of trivial value" means items or services with a value of twenty-five dollars (\$25.00) or less, such as inexpensive tee shirts, pens, calendars, books, flowers, or other similar items;** (emphasis added)

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).

Acceptance of the hoodies by all of the police officers in District 6 could arguably be permitted by the exception in Section 2-60(b)(5) because the value of each item is less than \$25. However, since the aggregate value of the items would be approximately \$1800, the Board of Ethics determined that acceptance would violate Section 2-60(a) of the Code of Ethics.

The Board advised the lieutenant that the district should either return all of the hoodies to the business owner, while expressing gratitude to him for the gift, or, with the business owner’s permission, donate them to a crime victims’ assistance center, homeless shelter or other appropriate non-profit organization. Even if acceptance were allowed by the Code of Ethics, acceptance could cause an appearance of impropriety. If the gift is accepted, some citizens or other businesses may have the impression, even if not intended or warranted, that police officers in the district might be inclined to give better service and protection to businesses who give gifts to police officers or the Police Department. No one should believe that gifts have any influence whatsoever on the quality of service given to citizens or businesses by city employees.

Case 14-2 (outside employment, conflict of interest)

A Senior City Planner in the Community Planning and Development Department (CPD) requested an advisory opinion. He works on neighborhood planning in certain neighborhoods and also as a case manager for specific rezoning requests.

He saw a real estate listing for a single-family home in Denver and placed an offer on the property, which was accepted. He hopes to form and manage a limited liability company, hire a demolition company to demolish the house, acquire some adjacent city-owned land through a land-exchange process, vacate some city right-of-way and dedicate a portion of the parcel as right-of-way to the city, apply for rezoning of a small portion of the assembled property to the same zone district as the surrounding neighborhood and sell the assembled and ready-to-develop parcel to someone else to develop, presumably at a profit to the city employee. He was not responsible for recent neighborhood planning efforts in that neighborhood. He indicated that everything about his proposal is public information and that he has not and will not use any insider confidential information.

He conferred with the Director and the Deputy Director of CPD. They were supportive, but they encouraged him to obtain an advisory opinion from the Board of Ethics about the proposed outside business activity. He advised the Board of Ethics that:

- He will recuse himself from any review or recommendations within CPD of the demolition, right-of-way vacation and dedication, land exchange, rezoning or any other issues with this property and make sure that any request for a rezoning should be assigned to a different team in CPD to review the request;
- He anticipates working on the project from 2 to 5 hours per week. Any work on the project will be done on his personal time or, if he needs to do something with a city office during work time, he will take vacation time.
- He will not use any city resources on the project.

Outside business activity 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...

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

In addition, Section 2-61 (conflict of interest) prohibits a city employee from taking direct official action (the definition of which includes “issuing, enforcing or regulating permits”) if he or she has a substantial interest in a matter or if the outside business activity “is incompatible with his or her duties or that adversely affect the interests of the city.”

The Board of Ethics believed that the circumstances of this case could present an appearance of impropriety. However, the Board determined that, so long as the employee obtains advance written approval from his appointing authority (to be renewed annually) and strictly complies with all of his representations in the bullet-points above, he 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. The Board requested, however, that if he wishes to be involved in the development of any other real estate in the City and County of Denver, he should return to the Board for additional advice regarding the specific details of the business venture.

Case 14 - 3 (gifts, travel expenses)

A Denver citizen filed an inquiry concerning donated tickets, travel and other expenses associated with the Mayor’s attendance at the Super Bowl on February 2, 2014.

For the reasons set forth below, the Board of Ethics determined that the alleged violation, if true, would not constitute a violation of the Code of Ethics. Although the Board determined that the inquiry must be dismissed, due to the importance of the issues raised, it wished to outline its concerns and recommendations.

FACTUAL BACKGROUND

On January 30, 2014, an article appeared in the *Denver Post*, a few days in advance of the Super Bowl on February 2, in which the Denver Broncos played the Seattle Seahawks. The news article indicated that the Mayor would be attending the Super Bowl in East Rutherford, New Jersey, together with his mother and two employees of the Mayor’s Office. The article further reported that the “trip expenses” were to be paid by “private funds.”

In response to the *Denver Post* article, the citizen emailed the Mayor’s Office requesting information about the source of the private funds. On February 11, 2014, the citizen received a response from the Mayor’s Deputy Communications Director/Press Secretary that read, in part:

...We indicated to the Denver Post that private funds would pay for the trip. Not one individual...The Denver Post article reported: *Private funds are paying for the trip for Hancock and his immediate family, including his mother, “who rivals her son for Broncos fervor,” the Mayor’s Press Secretary said. The Press Secretary and Hancock’s scheduler also are going, and their expenses are being paid through private funds.*

The Mayor’s trip was paid for with private funds raised through the Metro Denver Sports Commission (Commission), a 501(c)(6) organization. CH2MHill and Comcast were among the private donors supporting this trip. The city worked to ensure that no taxpayer dollars were used.

Going to the Super Bowl presents cities, like Denver, a unique opportunity to promote the city through free media exposure and to increase tourism, convention interest and

economic development. While in New York, the Mayor spent his time promoting the city as a great place to live, work and play and potentially even to host a future Super Bowl.

Following receipt of the e-mail, the citizen submitted an inquiry to the Board of Ethics, indicating, in part:

Comcast is currently renegotiating its franchise with the city. CH2MHill just completed negotiating a \$2.5 million contract with the city for planning related to Airport City (Council Bill 13-0932). I believe accepting these expenses may have violated Section 2-60(a)(5), (a)(6) of the Denver Code of Ethics. Certainly accepting such expenses for the Mayor's mother seems to violate the Code, and to indicate that the purpose of the trip was more related to the family enjoying the Super Bowl than to promoting the City of Denver.

The Board of Ethics received information from the City Attorney and from the President/CEO of Visit Denver, the Convention and Visitors Bureau, which is closely associated with the Metro Denver Sports Commission ("Commission" or "MDSC") and serves the Commission in an administrative capacity. Visit Denver's President/CEO provided the following information to the Board:

We wanted the Mayor to be part of our Super Bowl Bid delegation in the hopes of Denver's being selected as one of 3 cities to be considered for the 2019/2020 Super Bowl. An application to the NFL was put forth in 2012. It was important to be in New York since it was a cold city destination being played outdoors and we knew there would be a great opportunity with the media. In fact most every city that is hosting, bidding or submitted an application to bid was attending and promoting with a delegation....

The Commission has its own private funds to accomplish the mission MDSC which was founded in 2001 to help bring high-profile sporting events to Denver. We typically fundraise year round for efforts like a Super Bowl bid, Olympic bids, World Cup, etc.During the run up to the Super Bowl, the Commission solicited donors for the promotion of Denver and its Super Bowl Bid effort. The Mayor was part of our delegation and the MDSC paid the Broncos organization a total of \$41,600 to have the Mayor, immediate family, and press staff available to promote Denver and promote our family-friendly Super Bowl bid. Two Sheriffs also accompanied the Mayor and the Department of Safety is reimbursing expenses related to the Mayor's safety.

The Broncos organization offered MDSC the same Super Bowl Trip and festivities package & price that was sold to VIPs on TV and in the newspapers. Each package cost \$5,300 (\$2,650 per person) and included airfare, double occupancy hotel accommodations, and ground transportation. To the best of our knowledge, game tickets cost \$2,500 per person and tailgate tickets cost \$750 each.

Typically we would not disclose our fundraising efforts, but in an effort to help with your transparency concerns, outside of our ongoing fundraising efforts, we were able to secure Super Bowl bid promotional dollars for our efforts from Oakwood Homes \$10,000, Brownstein Farber \$5,000, Donna Lynne \$1,000, Stanton Dodge \$1,000. We had small, pledged commitments totaling \$5,500 from CH2MHill and Comcast... Comcast is

represented on the VISIT DENVER board and CH2MHill is a past board member, and regularly helps sponsor a variety of our efforts....I can tell you that there was never any coordinated effort to target entities that had contracts with the City. We make every effort to avoid even the appearance of impropriety as our reputation as a world class organization is also at stake.

On behalf of the Mayor, the City Attorney also provided supplemental information to the Board that read, in part:

The Ethics Commission also asked for additional detail regarding the donors to MDSC. The information MDSC provided to you allows us to inquire into what relationship, if any, these donors have with the City of Denver. Notably, none of the donors made a gift to the Mayor, his family or Mayoral staff.

Three pledged donors that are reflected in the MDSC letter engage in some form of business with the City. CH2MHill has responded to Requests for Proposals for City projects and currently has a contract with Denver International Airport regarding general airport development planning. Comcast has a Franchise Agreement with the City for cable services. Brownstein Hyatt Farber and Schreck is a law firm in a qualified pool of authorized outside counsel, however the law firm does not currently have any active contract with the City, nor did it at the time of the Super Bowl. The Mayor does not take direct official action over any of the three entities listed above. While the Mayor signed these contracts, his role is considered ministerial under Sec. 2-52(b) of the Ethics Code and is not considered direct official action within the meaning of the Code.

The Board of Ethics has now considered all of the information submitted in connection with the Inquiry. Some underlying details requested by the Board were not provided, such as an itemization of the exact expenses incurred, as well as the timing and manner in which the offer of payment of the expenses was conveyed to the Mayor by the Commission. As relevant here, however, there is no dispute that the Commission was the source of the funds, and the identity of the contributors to the Commission was known to the Mayor, as reflected in Ms. Miller's February 11, 2014 email.

GOVERNING PROVISIONS OF THE DENVER CODE OF ETHICS

The solicitation, receipt and acceptance of gifts by Denver City officers, officials, employees and members of their immediate families is regulated by the Denver Code of Ethics, which provides:

Sec. 2-51. Legislative Intent.

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

As used in the Code, the phrase, "direct official action" is specifically defined 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;
 - (4) Appointing and terminating employees, temporary workers, and independent contractors.

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

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:
- (1) Any money, property, service, or thing of value that is given to a person without adequate and lawful compensation;
 - (5) Any ticket to a sporting, recreational, or cultural event except as provided for in subsection (b)(4) of this section;
 - (6) Travel expenses and lodging;...
- (b) Officers, officials, and employees and the members of their immediate family may accept the following even if the officer, official, or employee is in a position to take direct official action with regard to the donor, or, if the donor is a lobbyist or representative, the donor's client;...

- (4) The donation of meals, tickets to events for which admission is charged, or free or reduced price admission to events for which a fee is charged, but only under the following conditions:
 - a. No more than a total of four meals, tickets, or free or reduced price admissions may be accepted from the same donor in any calendar year, regardless of the value;
 - c. The individual or entity which pays for the meal, ticket, or admission shall be considered the donor for purposes of this subsection regardless of whether that individual or entity is reimbursed for the cost;
 - d. Attendance must be reasonably related to the official or ceremonial duties of the officer, official, or employee;
- (7) Reasonable expenses paid by non-profit organizations or other governments for attendance at a convention, fact finding mission or trip, or other meeting if the person is scheduled to deliver a speech, make a presentation, participate on a panel, or represent the city;

ANALYSIS AND BOARD DECISION

The authority of the Board of Ethics is circumscribed by the express terms and conditions of the Denver Code of Ethics. In its operation, the Board is guided by the legislative intent of the Code, as set forth in Code § 2-51. The underlying intent of the Code underscores the need for our elected officials to maintain a high level of ethical conduct and transparency in order to maintain the public's trust and confidence. As the Code observes, such high level of ethical conduct is necessary "so that the public will have confidence that persons in positions of public responsibility are acting for the benefit of the public." *Id.*

Most significantly, the Code exhorts our City officials, officers and employees to comply with both the letter and the spirit of the Code, and to "strive to avoid situations, which create impropriety, **or the appearance of impropriety.**" (emphasis added). *Id.* It is this guiding principle, the avoidance of even an appearance of impropriety, that the Board believes is essential to maintaining the public's trust and confidence in its elected officials. Countering public cynicism and distrust of government cannot be achieved without a high level of transparency and a firm commitment by our elected officials to avoiding any appearance of impropriety.

The Board of Ethics decides as follows:

- A. The Board agrees that it was appropriate and important for the Mayor to represent the City of Denver at the 2014 Super Bowl and related events. It was also appropriate for the Mayor to be accompanied by a limited number of key staff members and a security detail. The Board recognizes that the Super Bowl provided an important opportunity for the Mayor to represent and promote the City, as well as to advance the City's specific interest in seeking to have Denver be selected as a future Super Bowl site.
- B. The Commission itself does not have any current contract, business or regulatory relationship with the City. In addition, as defined by the Code, the Mayor does not exercise any "direct

official action” with respect to the Commission. Therefore, any gifts from the Commission to the Mayor, his immediate family, or other City employees are not expressly prohibited by Code § 2-60(a).

- C. Code § 2-60(b)(7) permits City officers, officials, employees and their immediate family members to accept “reasonable expenses paid by non-profit organizations” under certain circumstances. By its terms, this exception permits receipt of a gift of “reasonable expenses” related to a trip “if the person is scheduled to deliver a speech, make a presentation, participate on a panel, or represent the city.” Accordingly, the acceptance by the Mayor and his mother of reasonable expenses associated with the trip to represent the City of Denver at the Super Bowl falls within this stated exception to the general prohibition against receipt of such gifts.
- D. Notwithstanding the language of Code § 2-60(b)(7), the Board does not construe this exception to permit a donor who is the subject of “direct official action” to utilize a non-profit organization as a conduit for giving gifts that the Code otherwise prohibits. Such an interpretation would negate the intent of the general prohibition found in Code § 2-60 and eviscerate an important protection enshrined in the Code.
- E. In a similar case, the Board previously determined that, even though it was proposed that a gift of airlines tickets would be made by a non-profit organization, the gift was nevertheless prohibited where the Mayor possessed direct official action authority over the airline. *See Case No. 3-30 – Request for an advisory opinion by then-Mayor John Hickenlooper.* Accordingly, the Board finds that if the Code bars a gift because of the status of the donor, filtering the gift through another entity, such as a non-profit organization, does not alleviate the violation.
- F. With respect to this Inquiry, the Board concluded that it does not appear that the Mayor has exercised any “direct official action” with respect to the Commission’s donors, Comcast or CH2MHill, as that phrase is defined under the Code. Moreover, although the City has an existing contract with Visit Denver, with which the Commission is affiliated, the Mayor’s signature on that contract is a purely ministerial act within the meaning of Code § 2-52(b).
- G. Even if the Board were to assume the existence of “direct official action” by the Mayor with respect to Comcast and CH2MHill, such as would trigger the application of Code § 2-60(a), the receipt of four Super Bowl tickets and reasonable related travel expenses are exceptions permitted by the express terms of the Code. *See Code § 2-60(b)(4) and § 2-60(b)(7).*
- H. As acknowledged by the City Attorney, the Mayor must disclose the gifts pursuant to the Financial Disclosure Ordinance.

Thus, for the reasons outlined above, the Board of Ethics has unanimously decided that the inquiry must be dismissed because the facts, if proven, would not constitute a violation of the Code of Ethics. *See Code § 2-56 (6)(b).*

However, the Board’s decision should not be read to constitute an endorsement of the practice of accepting gifts by elected officials under circumstances akin to those at issue here. While particular conduct may be permitted by certain narrow exceptions to the Code and, therefore, be permissible

within the “letter” of the Code of Ethics, the prevailing “spirit” of the Code counsels our elected officials to avoid any appearance of impropriety. *See* Code § 2-51. This can best be achieved by interpreting the Code as establishing minimum standards for ethical conduct, and by encouraging our elected officials and City employees to exercise transparency and prudent judgment in order to avoid those circumstances when they should refrain from conduct that may otherwise be permitted by the terms of the Code. The Code aspires to this heightened sense of ethics, which is essential to maintaining the faith and confidence of the public in its elected officials.

As noted above, a major purpose of the Code of Ethics is to help City personnel avoid the appearance of impropriety; this includes avoiding the appearance that special influence is being exercised by corporate donors who give gifts to City personnel. Even though the Board has determined that the facts of this Inquiry, if proven, would not constitute a violation of the Code, the magnitude of the cost of the tickets, travel and related expenses does tend to create an appearance of impropriety.

The Board also wishes to encourage City officers, officials and employees to exercise a proactive approach to ethical issues. Code § 2-54 explicitly authorizes the Board to render advisory opinions and waivers, which the Board welcomes. In order to avoid the appearance of impropriety, it is preferable for officers, officials and employees of the City to seek advance guidance from the Board when ethical issues or questions arise.

Finally, the Board wishes to point out that:

- In cases that present unique time constraints, the Board will make every effort to schedule a special meeting, in order to address pending requests swiftly.
- The Mayor should consider reporting major gifts earlier than the deadline in the Financial Disclosure Act, which, in this case, does not require disclosure until August 1, 2015 (18 months after the gift was received). The Board believes that prompt disclosure of gifts, particularly significant ones, promotes transparency while minimizing the potential for any appearance of impropriety.

Case 14 – 4 (use of public office for private gain)

The Finance Director of the Police Department requested an advisory opinion as to whether it would violate any section of the Denver Code of Ethics if a police officer who was issued a credit card by the city (known as a PCard) to purchase items for the Police Department “earned” reward points for some or all of those purchases and then redeemed the reward points for personal use.

Eight trusted police officers have been issued PCards by the Police Department, as well as many city employees in other departments. The Finance Director stated to the Board of Ethics that one police officer accumulated reward points from purchases made for Department purposes with a PCard at Best Buy and then redeemed some or all of those reward points for items such as a television set and/or computer for personal use valued at over \$1000. The Board of Ethics did not ask for or obtain any specific facts of this situation, on the assumption that the Department will thoroughly investigate the facts and, if appropriate, may recommend discipline for the officer.

Section 2-67 of the Code of Ethics prohibits “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...(emphasis added)

The Board advised that, if it can be proven that any city officer or employee redeemed reward points from a city credit card given to him or her to make purchases for the city and used the items from the redeemed reward points for his or her personal use or that of his or her family or affiliated business entities, that would violate Section 2-67 of the Denver Code of Ethics.

The Board also recommended to the Denver Controller, who promulgates the Fiscal Accountability Rules, that she might want to clarify Rule 8.1(Procurement) and other documents relating to PCards to prohibit clearly for all city departments and agencies the personal use of reward points from the City's PCard program and that such should be mentioned in the training for PCard users. The Board specifically decided not to give advice at this time about travel rewards, such as frequent-flyer miles, which involve other issues to be considered.

Case 14-5 (no jurisdiction)

An elected official from another county filed a complaint regarding a Denver employee who lives in that county. The elected official quoted a Facebook posting by the Denver employee, in which he endorsed a candidate to succeed the elected official, stated that the elected official's office "(needs) a big change of direction..." and made a factual assertion that the elected official said was "categorically false" and "libelous" and requested an investigation about whether the Denver employee "used City and County of Denver computers and/or other equipment to post this libelous statement."

The Facebook posting in question was dated March 5, 2014 at 8:54 pm. The Denver employee indicated that the posting was made from his home on his home computer. Even if the Facebook statement was untrue, no section of the Denver Code of Ethics prohibits untrue statements. In addition, given that the posting was at 8:54pm, it is unlikely that the Denver employee used a city computer. The posting also had nothing to do with any City and County of Denver business.

The Board of Ethics dismissed the complaint pursuant to Sections 2-56(6)(a) and (b) of the Code of Ethics, because the Board has no jurisdiction over this type of issue and because the alleged violation, if true, would not constitute a violation of the Code of Ethics.

Case 14-6 (subsequent employment - waiver granted)

The recently-retired Senior Manager of Rates and Charges at Denver International Airport and her former supervisor requested an advisory opinion and/or waiver. One of her major duties for several years at DIA was to work on the "year-end settlement process—a process with major impacts on DIA's airline partners... which is currently underway and approaching some key milestones."

The supervisor described the importance of the settlement process as follows:

The Rates & Charges portfolio is unique to airports, is highly specialized, and governs how DIA annually recovers hundreds of millions of dollars in airport costs—much of which comes from our airline partners who operate in a highly cost-competitive industry... DIA's Rates & Charges structure is one of the most highly complex in the Airport sector... Successfully completing the

work requires detailed knowledge of DIA's Rates & Charges construct and can be worth several million dollars to an individual airline. Given the dollars at stake and impacts to DIA's competitive position, the process requires precision, transparency, and an ability to manage adversarial interactions with our airline partners

The supervisor indicated that no current employee of DIA has the expertise to close the settlement process for 2013 and it will take quite some time to hire and train a replacement for the former employee.

Following her retirement from DIA, the former employee wishes to work for a subcontractor at DIA in order to complete the settlement for 2013. Ms. The former employee, however, was involved in the Request for Proposals process which resulted in the hiring in 2012 of the contractor that has hired the subcontractor by DIA and she also reviewed and approved invoices to DIA from the contractor and subcontractor. The former employee indicates that if she is hired by the subcontractor, she will do part-time consulting for them on a project-by-project basis.

Subsequent employment is governed 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.

Direct official action regarding contracts is defined in Section 2-52(b) of the Code of Ethics as follows:

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. (emphasis added)

Because the former employee was involved in the RFP process which selected the contractor with DIA and she also approved invoices for the subcontractor and the contractor, she "took direct official action" regarding the subcontractor during her employment with the city. Therefore, the Board of Ethics concluded that she would violate Section 2-64(b) if she did not wait at least 6 months before being employed by the subcontractor.

However, Section 2-54(f) of the Code of Ethics empowers the Board of Ethics to grant a waiver "if it finds that the waiver will serve the best interests of the city." The Board of Ethics decided that it will be in the "best interests of the city" to grant a waiver to allow the former employee to work immediately as an employee of the subcontractor so that she can help complete the work of the year-end settlement process for DIA for 2013 as quickly as possible. If the process is delayed, DIA and the airlines that use DIA will have major financial uncertainties, if not losses, during the period of delay.

Case14-7 (conflict of interest; former employment)

The recently-appointed Executive Director of the Community Planning and Development Department (CPD) requested an advisory opinion. CPD is in charge of managing planning and building within Denver, including designing and implementing citywide and neighborhood plans, establishing construction and design standards, coordinating revitalization efforts, managing historic preservation, issuing zoning and building permits, processing rezoning applications (for City Council action) and performing code inspections and enforcement.

He is an architect and was a principal in a major Denver architectural firm and was with a smaller architectural firm for many years before that. The major firm purchased the smaller firm in 2011. He has no ownership interest in the major firm. The smaller firm is no longer in business and is being wound down. He wished to know if there are any ethics issues with his outside business interests which he described in detail in his request for advisory opinion.

The following sections of the Code of Ethics govern conflicts of interest regarding business interests and also former employment.

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

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

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

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

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

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

Sec. 2-62. Prior employment.

The purpose of this section is to indicate that persons are not disqualified from a city job because of prior employment, to avoid special advantage being given to former employers of city

officers, employees or officials and to avoid special advantage being given to a city officer, employee or official by a former employer.

...**Officers, officials, and employees shall not take any direct official action with respect to their former employers for a period of six (6) months from the date of termination of the prior employment.**

The definition of direct official action is in Section 2-52(b) of the Code of Ethics:

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...

The Board of Ethics determined that the Director has a wide scope of "direct official action" power regarding planning, zoning and development everywhere in the City and County of Denver. The Code of Ethics requires that he should never involve himself in any direct official action in which he or an immediate family member or a current business associate have a substantial interest. The Board concluded that:

- The Director's interests in his family's home in another county do not pose any ethics issues.
- He must not to take any direct official action on any matter in which the major architectural firm or any of his former clients there are involved during the first six months from the date of his termination of employment at the firm (February 13, 2014).

The Board also recommended that, in order to avoid the appearance of favoritism to the major architectural firm or any of his clients there, especially on major projects, he might wish to consider recusing himself from direct official action on such matters for a longer period of time than six months. The Board also encouraged him to return to the Board for additional advisory opinions when specific issues arise that may require any action or recommendation from CPD regarding any Denver property in which he might have any interest. Finally, the Board recommended that he develop and document a way to communicate with former clients or business associates or colleagues regarding requests that they bring to him to ensure that they are not treated differently than any other citizens.

Case14-8 (outside employment)

An architect in the Public Works Department submitted a request for approval for outside employment, pursuant to Section 2-63 of the Denver Code of Ethics, to his supervisor, who encouraged him to obtain an advisory opinion from the Board of Ethics.

He indicated to the Board of Ethics that "potential clients have consistently asked if I would be their architect for either a residential or commercial construction project." The goal of his company will be to

provide architectural design for small projects which will be private, state or federal funded projects specifically not associated with the City and County of Denver. He agreed not to have any role in selecting contractors to build any of the outside projects that he may design.

In his City work, he must deal with many private construction contractors, sub-contractors, on-call architects and consultants and must review, monitor, approve or disapprove and administer their work. Some of those duties would be included in the definition of “direct official action,” in Section 2-52(b) of the Code of Ethics. Most City projects that he designs are built by on-call private contractors on contract with the City.

Outside employment or business activity is regulated by Section 2-63 of the Denver 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) City resources may not be used for any outside employment or outside business activity.

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;...

(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 of Ethics advised the architect that, in order to engage in outside business activity, he must first obtain written approval from his appointing authority, pursuant to section 2-63 of the Code of Ethics. If approved, he must take great care not to be employed by any outside clients who are or could

be involved in any City and County of Denver projects which he is involved in managing or reviewing. If he did not do so, he could violate Section 2-61 by approving and/or administering a contract with one of his outside client/employers. As one example, he should not be hired by any person or entity that he deals with in his city job. As another example, he should not have any role in selecting contractors to build any of the private projects that he designs. The Board also recommended that he not work on any outside projects that may lead to a need for a variance from the Denver Board of Adjustment for Zoning Appeals or the Denver Board of Building Appeals. Finally, he must not use any city time or other resources for outside employment.

Case14-9 (no jurisdiction)

A Denver citizen filed a complaint alleging that a police officer signed a “falsified affidavit” as part of an arrest warrant for the citizen dated January 30, 2012. She was convicted after a trial.

The Board of Ethics dismissed this complaint pursuant to Sections 2-56(6)(a) and (b) of the Denver Code of Ethics, because the Board has no jurisdiction over this type of issue and because the alleged violation, if true, would not constitute a violation of the Code of Ethics. In addition, the citizen had a trial and was convicted. The Board of Ethics has no jurisdiction to serve as an appellate body to review court decisions.

In addition, the acts of the police officer occurred on January 30, 2012 and may not be considered by the Board of Ethics because Section 2-56(3) of the Code of Ethics prohibits “the board from accepting complaints or inquiries about actions that took place more than two years prior to the date of filing.” (This complaint was filed on May 5, 2014.)

Case 14-10 (no jurisdiction)

A Police Department commander requested an advisory opinion. Some judges of the Denver County Court and assistant city attorneys encourage individuals who have been convicted of solicitation for prostitution to attend an 8-hour class known as “John School,” provided by a private company. The company provides six 8-hour such classes per year and charges each participant \$400 for the class. The company has requested that one on-duty detective attend each class and spend about an hour to train about “the negative consequences of prostitution,” addressing potential criminal and civil consequences and awareness of prostitution victimization issues.

The officers are not paid by the company for their time. The commander asked whether on-duty police officers should help a for-profit entity deliver these classes and thereby take time away from their official duties.

The Board decided that, because there is no section of the Code of Ethics or other city ordinance that addresses this issue, the Police Department should use managerial judgment as to whether it is a wise allocation of city resources to require on-duty detectives to assist in training at John Schools. The Board suggested that the commander might wish to request the company to pay off-duty detectives for their time, if such secondary employment is approved by the Police Department.

Case14-11 (no jurisdiction)

An attorney/judge in the Career Service Hearing Office requested an advisory opinion. He conducts hearings and issues opinions on appeals from disciplinary actions and grievances filed by Career Service employees. The 900 employees of the Denver Sheriff Department (DSD) are Career Service employees.

The Denver Sheriff recently asked him to attend meetings of the DSD Disciplinary Task Force. He attended one such meeting. After attending that meeting, he wondered about any potential ethical impropriety in attending that meeting or future meetings. He is subject to the Denver Code of Ethics and also the Colorado Code of Judicial Conduct (CJC) enacted by the Colorado Supreme Court.

The membership of the Task Force includes a Deputy Manager of Safety, senior DSD administrative staff, an Assistant City Attorney, representatives of the union for Deputy Sheriffs and citizen's groups. The purpose of the Task Force is to review the DSD disciplinary process and consider possible amendments or modifications.

The Board of Ethics advised him that no section of the Denver Code of Ethics prohibits him from further participation in the Disciplinary Task Force; nor is his attendance at meetings precluded by any provision of the Code of Ethics. The Board also recognized that he should be guided by the Colorado Code of Judicial Conduct, which likely governs the propriety of his participation on the Task Force in light of his role as a judicial officer who adjudicates appeals by DSD employees, as well as other Denver employees.

Case14-12 (gifts; travel expenses)

The Director of the Forensics and Evidence Division of the Denver Police Department, also known as the Crime Lab, requested an advisory opinion regarding travel, lodging and meal expenses for a Forensic Scientist in the DNA/Biology Unit of the Crime Lab to enable her to attend a focus group meeting.

The United States Department of Homeland Security (DHS) provides funds for a System Assessment and Validation for Emergency Responders Program (SAVER), which provides federal, state and local responders with "information they can use to make knowledgeable equipment purchase decisions" by testing and evaluating various kinds of equipment. DHS has contracted with the private national consulting company Booz Allen Hamilton to organize focus groups to test and evaluate Forensic Light Sources, which, according to the Forensic Scientist "highlight sources of biological material invisible to the naked eye," as well as other focus groups for other types of forensic equipment or instruments.

Booz Allen Hamilton invited the Forensic Scientist to a focus group for Forensic Light Source equipment in North Carolina on June 16-20, 2014 and indicated that it would pay for her travel and lodging expenses. She submitted a request for travel approval through the Police Department chain of command and the approval was denied on June 9, 2014 by a Deputy Director of Safety who "was not comfortable approving this travel without having a FORMAL ethics opinion." Therefore the Forensic Scientist did not travel to that focus group.

However, the Director believed that it would be useful to have an official advisory opinion that would allow the Forensic Scientist or other Crime Lab employees to travel to similar SAVER focus groups in the future. He expects that there be will other focus groups for other types of forensic instruments that the Forensic scientist or other Crime Lab employees might be invited to attend.

SAVER focus groups test and evaluate several instruments from different vendors or manufacturers. They are not marketing efforts. The funding for the focus groups or the travel expenses does not come from any of the vendors or manufacturers. The Forensic Scientist says that she does not have direct official action authority regarding purchases of equipment for the Crime Lab, although she acknowledges that she may be asked to recommend which equipment purchases would be best for the

Crime Lab. Neither she nor any other Crime Lab employee has any direct official action authority regarding the donor of the SAVER travel expenses, DHS and/or Booz Allen Hamilton.

Gifts, including travel and lodging expenses, are regulated by Section 2-60 of the Denver Code of Ethics, the pertinent part of which is:

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:...**

(6) **Travel expenses and lodging...(emphasis added)**

Since the Forensic Scientist does not have any direct official action power regarding DHS and/or Booz Allen Hamilton, the Board determined that the Code of Ethics would not prohibit her from accepting travel and lodging expenses from them for travel to any SAVER focus group in the future.

Since other Crime Lab employees may also be invited to future SAVER focus groups, the Board also advised that other Crime Lab employees would not be prohibited by the Code of Ethics from accepting travel and lodging expenses to attend future SAVER focus groups so long as the circumstances outlined here remain unchanged and the conditions set forth here are satisfied. This opinion is limited to SAVER focus groups, because they are not funded by any vendor(s) that might wish to sell products to the Crime Lab.

Case14-13 (outside employment)

A current full-time restaurant inspector in the Department of Environmental Health (DEH) requested an advisory opinion. He wishes to retire from full-time city employment so that he can own and operate a brewery in Denver. He also wishes to be hired back by DEH as an on-call part-time restaurant inspector. Section 2-63 of the Code of Ethics requires that “all city employees” must obtain written approval for any outside employment. The Code of Ethics does not specifically mention and the Board of Ethics has never specifically decided whether Section 2-63 applies to on-call employees or not. The definition of employee is:

Sec. 2-52. Definitions.

(a) *Employee* means any person in the employ of the city or of any of its agencies or departments and any person employed without compensation under the terms and provisions of chapter 18, article II, division 19 of this Code.

The Board of Ethics decided that the Denver Code of Ethics does apply to on-call employees.

The Board of Ethics advised the employee that:

- If he is hired back as an on-call employee, he will be required to comply with Section 2-63 of the Code of Ethics by obtaining written approval for his brewery employment from his appointing authority.
- In order to avoid a conflict of interest or the appearance of a conflict, he should not be assigned to inspect any other liquor-serving establishment, including breweries, in the City and County of Denver. In addition, he should exercise discretion and sound judgment by avoiding any

inspection of premises or businesses that would tend to create any appearance of impropriety or conflict in light of his ownership of a brewery in Denver.

- He should not solicit or attempt to sell any of his brewery products to any operators of establishments that he inspects, which could violate Section 2-67 of the Code of Ethics – use of public office for private gain.

Cases 14-14 through 14-16 and 14-19 through 14-22 (no jurisdiction)

A recently-terminated city employee filed complaints concerning a Career Service Authority hearing officer, several employees of her former department and an assistant city attorney for their involvement in the hearing that affirmed her termination.

The employee alleged:

- The hearing officer failed to subpoena witnesses requested by the employee and was biased at the hearing.
- One employee submitted a false affidavit about the events in question.
- Another employee was untruthful in testimony at the hearing.
- The Assistant City Attorney was unfair because she did not interview all of the witnesses and did not attempt to review surveillance tape from the incident in question.
- A supervisor improperly and unfairly promoted employees when other employees were more qualified.
- Another employee perjured herself at the hearing.
- Another employee lied and also defamed the employee in an e-mail.

The Board of Ethics concluded that none of these allegations pertain to any issues governed by the Denver Code of Ethics and, in addition, the employee had the opportunity to defend herself at the hearing. The Board of Ethics is not an appellate body to re-try or review personnel hearings. The Board dismissed all of these complaints pursuant to Sections 2-56(6)(a) and (b) of the Code of Ethics because the Board has no jurisdiction over this type of issue and because the alleged violations, if true, would not constitute a violation of the Code.

Case 14-17 (gifts; travel expenses – waiver denied)

An Engineering Supervisor of the Public Works Department requested an advisory opinion. He was invited to participate in an annual users' conference in Canada by a company whose website says that the company:

develops and markets Infrastructure Asset Management solutions used by agencies and private organizations of all sizes. Our software is widely used to manage pavements, roads, bridges, underground utilities, rail as well as many other types of infrastructure assets.

The company has had a contract for 17 years with Denver, which has been renewed several times. The Engineering Supervisor expects that the contract will be put out for bid sometime in the next few years, but he is not sure when. He advised the Board that “I am in a position to make contract decisions related to the consultant and the use of their software.”

Initially, he determined that, in light of available budget resources, he would not attend the user's conference. He indicated that the company recently asked him:

to present a case study of the use and development of the software for the City of Denver. They have stated that they will comp the registration fees and travel costs associated with attendance. The combined costs for conference registration, travel and lodging are approximately \$3,000.

He advised the Board that:

The conference provides the opportunity for users to do an extensive amount of networking and have discussions on how they tackle the science and philosophy of asset management. As our budget, along with every other government entity, has less buying power, asset management beyond simply repaving streets as a worst first strategy becomes increasingly important. We balance needs of many infrastructure elements, pavements, curbs, ADA accessibility, and other ancillary infrastructure elements that all compete for finite resources. The ability to discuss these issues and learn from other experts in the field from around the world...and see how different approaches can be made, can help Denver make sound decisions on the prioritization and expenditure of existing funds.

He also advised the Board that he or his staff have attended or will attend a number of other professional conferences this year where he can learn about and exchange ideas about pavement and infrastructure maintenance.

Receipt of gifts, including travel and lodging expenses, is governed by Section 2-60 of the Denver Code of Ethics:

Sec. 2-60. Gifts to officers, officials, and employees.

The purpose of this section is to avoid special influence by 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:**

- (1) **Any money, property, service, or thing of value that is given to a person without adequate and lawful compensation;..**
- (6) **Travel expenses and lodging;..** (emphasis added)

Because he is expected to exercise direct official action in connection with the decision to renew the contract with the company and because the City currently has a contract with the company, acceptance of the travel, lodging and registration costs would constitute a violation of section 2-60(a). Waivers for violations are permitted pursuant to Section 2-54(f), which provides:

2-54 (f) Waivers. Any current, former, or prospective officer, official, or employee may submit a written request for a waiver of any provision of the code of ethics. The board of ethics is empowered to grant a waiver **if it finds that the waiver will serve the best interests of the city.** (emphasis added)

After discussion and deliberation, however, the Board declined to grant a waiver in this case because it does not find that a waiver is appropriate under the particular facts of this case or compelled by the best interests of the City.

Case14-18 (gifts; travel expenses)

The Department of Excise and Licenses, licenses, among many other things, fire and security alarm systems in Denver. The Director of Excise and Licenses requested an advisory opinion and/or waiver to allow the Deputy Director to accept travel and lodging expenses from an outside contractor for a one or two-day trip so that she can fully understand how the contractor is operating the alarm program at its headquarters in Texas and, in particular, how all of the records and applications of the contractor can be converted and maintained in Accela, a new software program acquired by the City which will become operational in Excise and Licenses soon. The Deputy Director is not the administrator of the contract, which is administered by another employee in the Department.

On March 27, 2013, the Board of Ethics issued a related advisory opinion in Case 13-4 to the previous Director of Excise and Licenses, regarding similar travel expenses to the company's headquarters by a different employee. In summary, that opinion decided that:

...the contract between the City and the contractor, PMAM, dated March 23, 2010, states in the Scope of Work: "Contractor shall provide training for City employees...as requested by the City." The Board concluded that this clause obligates the contractor to pay for the training and, if appropriate, transportation to and from the location where the training can be done best and, therefore, the payment of travel expenses...will not be a gift. The travel expenses are not a "thing of value that is given to a person without adequate and lawful compensation." As a result, acceptance of the travel expenses...will not violate the Code of Ethics.

Acceptance of travel and lodging expenses is regulated 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:**

- (1) **Any money, property, service, or thing of value that is given to a person without adequate and lawful compensation;...**
- (6) **Travel expenses and lodging;...**

The Board advised the Director that, following the logic of the 2013 Board of Ethics opinion on a closely-related issue, acceptance of transportation and lodging expenses for the Deputy Director for such training at the company's Texas headquarters will not violate the Code of Ethics, because training is a requirement of the contract with the company and, therefore, is not a gift. In addition, the Deputy Director does not have direct official action regarding the company. The Board also repeated its recommendation from Case 13 - 4 that, in order to avoid the appearance of impropriety, the Deputy Director only accept travel or lodging expenses that are reasonable and not extravagant.

Case 14-23 (no jurisdiction)

A complaint was filed concerning the Director of the Downtown Denver Business Improvement District by vendors about their experiences with vendors' permits and entertainers' permits on the 16th Street Mall. Since the Denver Board of Ethics only has jurisdiction to investigate complaints concerning City of Denver elected officials, employees and board and commission members and, since the Downtown Denver Business Improvement District is not a City government agency and the Director is not a City employee, the complaint was dismissed.

Case 14 - 24 (gifts)

A city employee requested an advisory opinion. Her husband is the president of a teachers' union outside of Denver and, as such, he gets invited to dinners or hosts functions for his teachers. The city employee wished to know whether she may attend such dinners or functions and also what the reporting requirements under the City's Financial Disclosure Ordinance.

Acceptance of gifts of meals is regulated by Section 2-60 of the Code of Ethics:

Sec. 2-60. Gifts to officers, officials, and employees.

The purpose of this section is to avoid special influence by 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:**

(1) Any money, property, service, or thing of value that is given to a person without adequate and lawful compensation...

The Board of Ethics concluded that neither the City department nor the employee have any direct official action power regarding the teacher's union or any decisions regarding that school district. In addition, the union is not doing any business with the City and County of Denver. Therefore, the Board of Ethics advised the employee that acceptance of meals provided by or in connection with the teachers' union are not prohibited by Section 2-60(a).

Regarding disclosure of acceptance of the meal invitations pursuant to the Financial Disclosure Ordinance, Section 2-72 of the Denver Revised Municipal Code provides:

Annual employee report required. Every employee shall file an employee report with his or her appointing authority no later than August 1 of each year. The report shall cover the period from January 1 to December 31 of the prior year and **shall list the names of sources of any gifts in excess of twenty-five dollars (\$25.00) either individually or in the aggregate, as a result of employment with the city, from anyone pursuing business with the city, except gifts from a member of the employee's immediate family.** The report shall also list tickets to sporting, recreational, educational, or cultural events, lodging, parking privileges, and travel expenses received from any public entity during the preceding calendar year. (emphasis added)

The Board of Ethics concluded that the employee does not need to disclose any of these meals, because they are given to her as the union president's spouse (not "as a result of her employment with the city") and also they are not "from anyone pursuing business with the city."

Case 14 - 25 (conflict of interest)

An employee of the Office of Children's Affairs/Head Start requested an advisory opinion. He told the Board of Ethics that:

In my current role..., I manage a contract with Sewall Child Development Center (Sewall) for supplemental disabilities services for Head Start children (age 3-5).

Sewall's mission is to assist all children (birth to age 6) and their families to achieve their highest potential and enhancing opportunities for young children, including those with special needs due to disabilities, developmental delays, and economic disadvantages.

The employee was asked by Sewall staff and a community board member of REACH Charter School to serve on the board of REACH Charter School, which will begin operations on January 1, 2015. Sewall was the sponsor of REACH, which was approved as a charter school by Denver Public Schools in April 2014. REACH and Sewall will be two separate entities. REACH will obtain its funds from Denver Public Schools and not the Denver Office of Children's Affairs/Head Start. The employee advised the Board that he will not be paid for his service on the REACH board and that he will not devote any of his city time to his work for REACH. The employee wished to know if he would violate the Code of Ethics if he serves on the REACH board. The employee advised the Board:

REACH will be a separate legal entity as of January 2015. After it separates, the connection between the two organizations will be that Sewall has the right to appoint one Board member onto the REACH Board at all times and the two organizations will have an annual MOU outlining the relationship. We will be renting the building from Sewall and may contract with them for some specialist services.

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

is an officer in another party in the matter..

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

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

The Board of Ethics concluded that none of the subsections above prohibit the employee from serving on the REACH board. In addition, the only section that would prohibit him from taking direct official action as a city employee regarding REACH is Section 2-61(a)(3) if he were to be elected as an *officer* of REACH. However, there would be the appearance of impropriety or special favoritism to REACH if he: 1) were to take any direct official action as a city employee regarding the REACH charter school; or 2) were to vote on the REACH board on any matter regarding the Denver Office of Children's Affairs/Head Start; or 3) were to vote regarding any possible dispute, such as a landlord-tenant dispute, between Sewall and REACH. The Board strongly recommended that he should abstain from involvement or voting in such situations and should be sure that such abstentions are documented.

Case 14-26 (no jurisdiction)

A terminated employee filed a complaint with the Board of Ethics concerning her former supervisor. The employee had an injury in the past and suffers from post-traumatic stress disorder. The employee alleged that the supervisor's actions violated the Americans with Disabilities Act. The employee also filed a complaint with the federal Equal Employment Opportunity Commission, alleging a violation of the ADA.

The Board concluded that no section of the Code of Ethics addresses the alleged conduct by the supervisor. The EEOC may have jurisdiction over this type of complaint, but the Board of Ethics does not. The Board dismissed this complaint pursuant to Sections 2-56(6)(a) and (b) of the Code of Ethics, because the Board has no jurisdiction over this type of issue and because the alleged violation, if true, would not constitute a violation of the Code of Ethics.

Case 14-27 (no jurisdiction)

An employee requested an advisory opinion. She indicated that she found a wad of \$20 bills, totaling \$320, on the floor near the building entrance of her City workplace. She picked up the wad and brought it to her office. She put a sign at the front desk and the security station, requesting anyone inquiring about the money to be directed to her. She gave the money to her supervisor for safekeeping and placed a listing on craigslist. She also called Denver police headquarters and was told that no one had inquired there about the lost cash. She also asked the Office of Human Resources, which recommended that she contact the Board of Ethics.

The employee wished to know if she can ethically keep the money after a reasonable time expires if no one legitimately claims the lost money.

The Board of Ethics advised the employee that there is no section of the Code of Ethics or other city rule or policy that directly addresses this question or that would prohibit her from retaining the funds after a reasonable period of time, such as 30 days, expires and after taking the reasonable measures that she did to find the rightful owner. The Board indicated that it believes that the employee took every reasonable measure (and more, such as using craigslist) to try to find the rightful owner of the funds.

Case14-28 (outside employment, conflict of interest)

An employee in the Environmental Planning Review Section of the Contracts and Performance Management Division of the Office of Economic Development (OED) requested an advisory opinion. She had submitted her resignation, with the intention of setting up her own consulting firm “for historic and environmental compliance services.” She was working on-call part-time for OED, which was in the process of hiring her replacement.

The employee wished to know if she can begin to work on her own consulting firm and seek clients before she leaves OED completely.

Section 2-63 of the Code of Ethics provides:

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. (emphasis added)

(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.

(e) An officer or employee who has received the written permission of the appointing authority may engage in outside employment or other outside business activity.

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

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

Therefore, the Board of Ethics advised her that, since she was still an employee of the City, she must obtain her appointing authority's written approval for her proposed outside employment or business activity and must not use city time or resources for her outside work.

Section 2-61 provides the following regarding 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. (emphasis added) 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...(emphasis added)

(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)

Therefore, the Board advised the employee that, if she obtains any private clients before she leaves OED completely, she may not take direct official action regarding any of those clients. Since her work at OED included recommending for or against contracts with or grants to applicants for funds from the U.S. Department of Housing and Urban Development through OED, such work would fit within the definition of direct official action in Section 2-52(b).

Section 2-64(a) regulates subsequent employment:

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.

Therefore, the Board advised that the employee must wait at least 6 months from the date she completely retired from OED before obtaining employment with any person or entity whose application for a grant or loan through OED she reviewed and made a recommendation about.

Case14-29 (case withdrawn by requester before opinion issued)

Case 14-30 (subsequent employment)

A former employee requested an advisory opinion concerning subsequent employment. He was employed by Denver International Airport and resigned from the position of Chief Financial Officer for DIA in September, 2014 and began work beginning October 1, 2014 as CFO for a major company which owns, develops and/or operates real estate in the Denver metropolitan area (“the company”).

The employee asked the Board of Ethics for advice on three issues regarding his future work at the company:

1. The company will be the developer of the former University of Colorado Hospital and Health Sciences Center site at 9th Avenue and Colorado Blvd. and is working with the Denver Urban Renewal Authority (DURA) on agreements for the financing of infrastructure on the site. In his role as CFO at DIA, he did not have any interaction with DURA nor did he make any decisions for private businesses seeking agreements with DURA.
2. As CFO, he had oversight of DIA's financial functions, including collections of revenues from concessionaires and oversight of the procurement process for revenue and expenditure contracts. Since January 2014 he also had oversight of all aspects of the concessions program at DIA. The company is a partial owner (80%) of the Retail Merchandising Unit in a joint venture and is active in managing that operation. As CFO at DIA and with oversight of concessions, the employee had the ability to take direct official action in relation to that contract, although he did not take any actions specific to that contract. He advised the Board that he did not have anything to do with preparing an RFP/Q or approving the contract with the company or the other entity in the Retail Merchandising Unit regarding the concession program at DIA. It was handled entirely by the concessions team that did not report to him when this was done in 2011. The group that manages the program for the company will report to him.
3. The company may be interested in responding to an upcoming RFQ/P document from DIA that would potentially reconfigure the Jeppesen Terminal building. If the company is successful, it will likely contract with an outside group to help with the reconfiguration. The RFP/Q will likely be released in November 2014. The employee said that he was aware of the project in his role as CFO at DIA and had some discussions regarding how to structure the RFP/Q when it is released, but he advised the Board of Ethics that he did not take any direct official action on that request. He said that briefings that he saw on the project were publicly shared with DIA's concessionaires. DIA's process is led by another DIA employee, who is reporting to DIA's Executive Director on the reconfiguration project.

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

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 (emphasis added)

The definition of "direct official action" in the Code of Ethics includes:

2-52(b) 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...

The Board of Ethics concluded as follows:

1. Regarding the redevelopment of the 9th and Colorado Blvd. site, since the employee had no involvement whatsoever and did not exercise any direct official action regarding that site or with the Denver Urban Renewal Authority, the Code of Ethics does not prohibit or limit him from working on this project with the company, beginning immediately.
2. Regarding working on the company's involvement in the DIA concession program, as CFO, the employee "oversaw" all aspects of the concession program, although he said that he did not take any specific direct official action regarding the contract. The Board decided that general oversight power should be equated with the term "administer" in the definition of "direct official action" and, therefore, he should not be involved with the company's interest in the DIA concession program until 6 months after his retirement date from DIA. This would include, but not be limited to, any discussions or negotiations between the Retail Merchandising Unit, in which the company holds an 80% stake, and DIA regarding any issues surrounding concessions at DIA. In the interest of avoiding any impropriety, it would be advisable for him to screen himself from any internal discussions at the company regarding DIA concessions, as well as any external discussions with the RMU, the 20% owner or DIA for six months following his retirement.
3. Regarding the company's possible decision to submit a proposal in response to DIA's wish to reconfigure the terminal, since he was aware of the proposed reconfiguration and discussed how to structure DIA's RFP/Q, the Board of Ethics concluded that he must wait until 6 months after his retirement before he can do any work on this project with the company, including helping to respond to DIA's RFP/Q.

Case14-31 (outside employment)

The Internal Affairs Bureau of the Police Department requested an advisory opinion regarding whether certain conduct regarding outside employment is permitted or prohibited by the Denver Code of Ethics, with the main purpose being to obtain guidance that can be used for future similar situations and not to determine any violation or punishment concerning any particular situation.

Section 2-63 of the Code of Ethics provides:

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.

(h) An officer or employee who has received the written permission of the appointing authority may engage in outside employment or other outside business activity.

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

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

In addition, Section 2-67 provides:

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

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

As an additional consideration, even though the Board of Ethics does not enforce departmental rules and regulations, DPD Rule and Regulation 206 provides:

Soliciting Business

Members shall not solicit subscriptions, sell books, papers, tickets, merchandise or other things, or collect or receive money or other things of value from the public for any purpose whatsoever while on duty or in uniform or representing oneself as a member of the Department, except as authorized by the Chief of Police.

In addition, DPD Rule and Regulation 114.01(e) provides:

114.01 Secondary Employment

(e.) Supervisors and command officers are prohibited from working any Secondary Employment that is scheduled by a subordinate officer in their chain of command.

Such scheduling of secondary employment by a subordinate City employee could also be a conflict of interest prohibited by Section 2-61 (a) of the Code of Ethics.

After reviewing the information and documents submitted, the Board of Ethics concluded that:

- Any outside employment or outside business activity by any City employee must be approved in writing pursuant to Rule 2-63 of the Denver Code of Ethics and any stricter departmental rules
- A City employee must not earn or attempt to earn or solicit any income or compensation during his or her City work time, aside from City salary
- A City employee should discuss with his or her supervisor how to separate City work time from time during which the City employee may earn money from outside employment or business activity
- A City employee must not use City resources for outside employment or business activity
- A City employee must not wear a City uniform during time devoted to outside employment or business activity or in any material advertising the outside employment or business activity
- A City employee must not use confidential City information for outside employment or business activity
- A City employee must not hire or schedule any outside or secondary employment for a City employee who is above him or her in the supervisory chain (which would include both police and non-police secondary employment for police officers) in order to avoid conflicts of interest and the appearance of impropriety
- If it were the case that any City employee was being paid by the City to attend a conference or other event and earned or attempted to earn additional income during that same time to do training or solicit training business or sell products, that would violate both Sections 2-63(e) and

2-67 of the Code of Ethics.

Case14-32 (outside employment)

The Executive Director of the Department of Community Planning and Development (CPD) requested an advisory opinion regarding outside employment. He proposed to work as a paid consultant/advisor to the University of Denver Sturm College of Law's Rocky Mountain Land Use Institute (RMLUI). He believes that this would be accomplished in a few meetings per month.

RMLUI's website indicates:

The Rocky Mountain Land Use Institute seeks to elevate the law, policy and practice of sustainable development in the West to promote nature-friendly, prosperous, and equitable communities.

The 24th Annual Land Use Conference, Western Places/Western Spaces: Building Fair & Resilient Communities, will be held Thursday, March 12 and Friday, March 13, 2015.

[RMLUI's academic mission](#) focuses on increasing educational opportunities for students and the practice community through the course offerings and symposia. We have also developed relationships with other academic programs and professional firms to promote research opportunities.

The focus of [RMLUI's practice program](#) is the Sustainable Development Community Code Framework, a tool for municipalities interested in implementing sustainable initiatives, and the annual conference, one of the premier gatherings of sustainable development professionals.

The proposed work plan details numerous tasks that the Executive Director would be asked to perform, including:

- Identify issues of concern in the broader community that may be appropriate subjects for academic research, student field work, or other university engagement.
- Advise RMLUI regarding possible opportunities for DU and the City and County of Denver to partner on specific planning projects.

Section 2-63 of the Code of Ethics requires written approval of any outside employment or business activity by the appointing authority of a city employee or non-elected officer:

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....

- (k) An officer or employee who has received the written permission of the appointing authority may engage in outside employment or other outside business activity.
- (l) Copies of documents arising from this section shall be placed in each officer's or employee's departmental personnel file.
- (m) City resources may not be used for any outside employment or outside business activity.

This proposal also raises a question about conflicts of interest, which 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...**(emphasis added)...

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

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

The Board of Ethics concluded that the proposed outside employment of the Executive Director by RMLUI and/or DU would benefit the City and County of Denver and that the policy goals of RMLUI are consistent with the goals of the City and County of Denver. The Board advised the Executive Director that:

- He must obtain his appointing authority's (the Mayor's) written approval of this outside employment on an annual basis, as required by Section 2-63 of the Code of Ethics
- He must comply with all of the requirements of Section 2-61(f) if any type of contract between DU and/or RMLUI and CPD or the City and County of Denver or any land use or other type of decision or action by CPD regarding DU and/or RMLUI is under consideration, in order to mitigate the conflict of interest with his outside employer
- If any opportunities for planning students to work with CPD or for local educational institutions to "partner" with CPD arise, he should make opportunities to compete for such available to all similar institutions, and not just to his outside employer, DU or RMLUI
- A City employee must not earn or attempt to earn or solicit any income or compensation during his or her City work time, aside from City salary

- A City employee must not use City resources for outside employment or business activity
- A City employee must not use confidential City information for outside employment or business activity.

Case14-33 (no jurisdiction)

A Denver citizen filed a complaint concerning an officer in the Internal Affairs Bureau of the Police Department. The citizen indicated that went to a bank branch and attempted to withdraw \$9000 in cash from his account. He had a balance in the account of more than \$10,000.

As described in the complaint, a bank teller, the assistant branch manager, the manager and an off-duty uniformed Denver police officer working as a security guard all indicated that he would only be allowed to withdraw \$2000 on one day, because that was a bank policy and/or they did not have a supply of cash that would allow a withdrawal of more than that at one time. Following several discussions between the parties, he said that the off-duty police officer said to him: “Do you want to close your account?... We’re going to close your account right now...I am getting a cashier’s check to close your account!”

Eventually, the off-duty officer, with the help of two on-duty police officers that she called for assistance, wrote, signed and gave to the citizen a City and County of Denver Unified Summons and Complaint for disturbing the peace, which ordered him to appear in County Court. He indicated that he did appear in court on the appointed day; however, he found that the summons and complaint had not been filed with the court and nothing ever came of it.

Sometime thereafter, he filed a complaint with the Internal Affairs Bureau concerning the off-duty officer’s conduct at the bank. The IAB officer sent him a letter which “declined the complaint for further disciplinary review.” According to the letter, “the complaint...was investigated thoroughly by the command staff of the Operational Support Bureau and then reviewed by the Internal Affairs Bureau.”

Apparently someone interviewed the off-duty officer and some bank employees. On the same day, he received a letter from a Deputy Monitor of the Office of Independent Monitor, stating “the evidence determined the officer did nothing outside of department policy.” Apparently the IAB letter was the only contact between the citizen and the IAB officer.

The citizen cited a section of the DPD Operations Manual that he believed the off-duty officer violated:

114.00 - EMPLOYMENT OUTSIDE THE POLICE DEPARTMENT

114.01 Secondary Employment

(1) SECONDARY EMPLOYMENT, as used in this section, is defined as any work, including self-employment, performed by any officer apart from official assigned duties and required duty times.

Secondary Employment is not permitted under certain circumstances as identified in this policy. Secondary Employment Police Work can be denied or limited in hours at any time by the Chief of Police or an officer’s commander. Violations of this section may result in a suspension of the off-duty work privilege in addition to formal disciplinary action...

b. Officers employed to perform Secondary Employment Police Work will be bound by their police authority for the enforcement of the ordinances and laws of the City, State, and United States.

Officers may act to prevent a breach of the peace or to enforce the law, but officers shall not enforce rules made in the interest of the secondary employer. (emphasis added)

The Board of Ethics concluded that nothing in the Denver Code of Ethics would prohibit the IAB officer's decision or anything else that he did regarding the citizen and/or the off-duty officer. In addition, the citizen did not suffer any real harm. He presumably withdrew the full amount from his bank account soon after the date in question, he was not jailed and he was not convicted of any offense relating to the bank situation.

Case14-34 (outside business activity)

In 2012 in Case 12-25 a person seeking to be hired by DIA requested and the Board of Ethics gave him an advisory opinion regarding outside business activity. In summary, the Board indicated that, if he was to be hired, the continuation of his pre-existing outside business activity with a small company that he owned ("the company") would not violate the Denver Code of Ethics, subject to the recommendations in the opinion.

However, he was not hired at that time, but has now recently been hired by DIA. He and his supervisor wish to have the Board consider whether to reaffirm its earlier opinion.

The Board concluded that the facts have not changed in any way that would change the opinion given by the Board in Case 12-25. The Board reaffirmed that:

- The Board does not find any inherent conflict of interest between his job with DIA and his work with the company;
- However, as required by Section 2-63, he cannot engage in any outside business activity with the company unless he obtains written approval from his appointing authority on an annual basis;
- If that is approved, he must not use any City resources or time for his outside work;
- In addition, the company should not work on any project or for a client that would conflict with the employee's loyalty to the City and County of Denver and DIA.
- In addition, the employee should note that Section 1.2.9B of the Denver Charter provides that "no...employee shall have a direct interest in a contract or similar instrument with the city if he or she participated in approving or establishing the contract or instrument..."

In addition, the Board concluded that, since the employee has no ownership interest in a similarly-named company which has a contract with DIA that the employee will manage, the employee will not be required by Section 2-61 of the Code of Ethics to abstain from managing the contract with that separate company.

Case14-35 (subsequent employment)

A former Public Works employee requested an advisory opinion. He resigned from his job as a Project Manager in the Traffic Engineering Division. He began to work for a private consulting company which specializes in traffic engineering.

The consulting company has had an on-call contract for services as needed with the City and County of Denver for some time and also has had a few individual specific contracts. The former employee advised the Board of Ethics that “I did not approve or negotiate those contracts. I was also not involved in direct review of their work and approval of the invoices related to these projects.” There was and will be some connection between the former employee’s work at Public Works and what he will do at the consulting company.

Subsequent employment is regulated by Section 2-64(a) of the Denver 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 former employee did not negotiate or approve or administer or recommend any of the contracts between the City and the consulting company, (exercise direct official action as defined in Code Section 2-52(b)), the Board concluded that he is not required to wait 6 months before he works for the consulting company and he may now work on all of the projects mentioned in the matrix that he presented to the Board of Ethics that interface with Denver Public Works. In addition, the Board concluded that the interests of Denver and the consulting company are not in conflict in studying or implementing any of these projects.