DENVER BOARD OF ETHICS
2017 ANNUAL REPORT
Submitted: February 15, 2018

I. INTRODUCTION

The Denver Board of Ethics hereby submits its seventeenth 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 current members of the Denver Board of Ethics (all unpaid volunteers) are below in Appendix A.

The Board expresses appreciation to all City elected officials, employees, board and commission members and citizens who requested ethics advice or help in 2017. In addition, the Board thanks the Ethics Working Group and the Denver City Council for their efforts at several meetings to update and improve the Denver Code of Ethics and also the Financial Disclosure Ordinance, which work was concluded in March 2017.

The Board held twelve monthly meetings in 2017. This report is a summary of the work accomplished by the Board during that time.

II. ADVISORY OPINIONS, WAIVERS, COMPLAINTS

In 2017 the Board received a total of 38 written formal cases - as compared with:

- 27 cases in 2016
- 44 cases in 2015
- 35 cases in 2014
Twenty-four of the formal cases received in 2017 were requests for advisory opinions, while fourteen were complaints. In two of the requests for an advisory opinion, the Board granted waivers to the requesters.

A digest of the Board’s 2017 opinions is printed below as Appendix B and is posted on the Board of Ethics website at www.denvergov.org/ethics.

Between the passage of the new Denver Code of Ethics in January 2001 and December 31, 2017, the Board of Ethics has received a total of 810 written formal cases, consisting of 457 requests for advisory opinions and/or waivers and 353 complaints alleging possible violations of the Code of Ethics. In 2017 the Board dismissed all of the complaints that it resolved 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 and/or the minor nature of any violation. Six 2017 complaints were held over to 2018 for further investigation.
Since 2001, 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 and complaints decided during the entire 2001-2017 period break down as follows, with the 2017 cases in parentheses:

- conflicts of interest – 154 (8)
- gifts – 118 (5)
- travel expenses and lodging – 53 (1)
- outside employment or outside business activity – 123 (8)
- hiring of relatives – 9 (1)
- supervision of relatives – 24 (0)
- subsequent employment – 82 (6)
- use of public office for private gain – 20 (2)
- prior employment – 4 (0)
- use of confidential information or records – 9 (0)
- other or no jurisdiction – 269 (6)

(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 2017 received approximately 237 telephone, e-mail or in-person requests for unofficial, informal consultation about the Code of Ethics or other ethics issues, as compared with:

- 271 in 2016
- 225 in 2015
- 249 in 2014
- 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 4,349 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 for advice or complaints.

**III. ETHICS HANDBOOK**

The recently updated 2018 ethics handbook can be found at [www.denvergov.org/ethics](http://www.denvergov.org/ethics). In addition, the Board of Ethics has many hard copies of the 2018 ethics handbook available for city personnel or citizens who request them.

**IV. ETHICS TRAINING**

The Board of Ethics believes 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.

In 2006, with support from the Board of Ethics, the Career Service Authority Board amended Career Service Rule 6 (now included in Rule 5) to require that new CSA employees, including Deputy Sheriffs, must receive ethics training before they can pass their probationary period, which significantly increased compliance with the ethics training requirement of section 2-65 of the Code of Ethics.
From 2002 through the end of November 2015 all new city employees and officers subject to the Code of Ethics received 3 hours of ethics training either in a classroom or one-on-one with the Board’s Executive Director. In December 2015 most classroom ethics training was changed to online ethics training through the City University course in Ethics and Public Accountability, developed by the Board of Ethics and the Training and Organizational Development Practice of the Office of Human Resources.

In 2017, ethics training was given to approximately 1214 new city employees (compared to 1427 in 2016). Of those, 959 successfully completed the training online and 255 new recruits in the Police, Fire and Sheriff Department Academies received classroom training from the Board’s Executive Director. In addition, in 2017 the Executive Director gave individual ethics training to several new Mayoral appointees and other high-level new hires. In 2018 and future years, online training will be the primary method of ethics training for new Career Service Authority employees and the Board’s Executive Director will continue to give in-person ethics training to new recruits in the Police, Fire and Sheriff Department Academies.

In 2014 the Board of Ethics 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. Refresher ethics training is provided or required at a large percentage of private and governmental organizations. In the Denver city government, there are many employees of 30 or more years who have not had ethics training more than once at the beginning of their city careers. The Board’s current plan is to develop refresher ethics training for all employees at 3-year intervals, beginning in early 2018.

V. OTHER MATTERS

BUDGET

The adopted 2018 budget for the Board of Ethics is $148,143 as compared to $138,857 for 2017.

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 2017 ACTIVITIES

In early 2017 the Board continued to work with a special Ethics Working Group and City Council to develop and pass several amendments to the Denver Code of Ethics, which were adopted by City Council on March 6, 2017. The last amendments to the Code were made in 2012. These are the major 2017 changes:

1. The definition of “direct official action” has been expanded to include approving business loans.
2. The definition of “immediate family” (used in determining how to apply the Code sections relating to nepotism, gifts and conflicts of interest) has been expanded to include “father or mother in-law, son or daughter in-law, brother or sister in-law, aunt, uncle, nephew, niece.”
3. A Board of Ethics Nominating Committee is established to recommend candidates for the 5-person Board of Ethics to the Mayor and City Council, who, as before, make the appointments.

4. Board of Ethics members must disqualify themselves from participating in a case before the Board if the member made or solicited campaign contributions or endorsements or provided volunteer services to a person coming before the Board.

5. The Code is clarified that waivers may only be requested from the Board in advance of the action which is a subject of a waiver request and that waiver decisions must be available on the Board’s website.

6. An upper limit of $300 is placed on the exception which allows donation to a city person of meals or tickets to events from the same donor in any calendar year even if the city person is in a position to take direct official action regarding the donor and the city has a contract, business or regulatory relationship with the donor. However, regardless of the annual $300 limit, exceptions are allowed for “working lunches” or charitable events if the ticket is offered by the charitable entity hosting the event.

7. The exception which allows all city personnel to accept “unsolicited items of trivial value” ($25 or less) is clarified to indicate that this does not include cash or gift cards.

8. Any city person who solicits a donation to a charitable entity from someone that the city person has direct official action power over and is aware that such a donation has been made must disclose that donation pursuant to the Financial Disclosure Ordinance.

9. A substantial conflict of interest is established if a city decision-maker or a member of the immediate family participated personally in “other professional services” regarding the matter in question (in addition to legal services or lobbying).

10. If the Board of Ethics has given an advisory opinion regarding outside employment or business activity and the Board has reason to believe that the city person in question has not complied with the advisory opinion, the Board shall notify the appointing authority, who shall report to the Board in executive session regarding the action, if any, taken with respect to the person.

The changes to the gift sections of the Code of Ethics must be read in conjunction with major changes that were made by City Council in early 2017 to the Financial Disclosure Ordinance (Denver Revised Municipal Code 2-70 through 2-75), which require more frequent and more detailed disclosure of gifts to city personnel and provide that disclosures by city officers will be placed on the Clerk and Recorder’s website.

As a result of one of the new provisions in the Code of Ethics, a Board of Ethics Nomination Committee was appointed to screen applications to serve on the Board of Ethics. The committee consists of Brian Spano (appointed by the Mayor), Michael Lopez (appointed by City Council) and Michelle Stermer (appointed by the Presiding Judge of the County Court). The committee reviewed applications of three incumbent members of the Board of Ethics and recommended their re-appointment by the Mayor and City Council.
VI. 2018 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 will in 2018 continue to pursue this goal by encouraging accuracy, consistency and high quality of the ethics training with cooperation from OHR and city departments. The Board will monitor the evaluations from new city employees who have taken the online ethics training through City University and make continuous improvements. The Board will continue to encourage city departments and agencies to devote time at staff meetings to ethics discussions. The Board will also work with OHR to implement refresher ethics training for city personnel every 3 years, to begin in early 2018. In addition, the Board will work to improve the content and format of online ethics training.

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

The Board will study its process for giving quick, unofficial ethics advice and determine if any improvements are necessary.

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 bulletins or newsletters.

   b) Organize and publicize at least one city-wide and/or departmental informational lunchtime or after-work discussion of ethics issues per year. Seek public comments at the meetings and otherwise about ethics concerns of citizens.

   c) 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. **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 of Ethics minimizes use of paper communications, especially with the transition to online ethics training.
- 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 and help 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 and the great majority of managers and employees of the City and County of Denver, it made continued progress in 2017 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,

Patrick D. Tooley
Chair
APPENDIX A

DENVER BOARD OF ETHICS – Board Members as of December 2017

Patrick D. Tooley obtained his J.D. from the University of Colorado School of Law and his B.A from the University of Colorado. He served as a Chief Deputy District Attorney in Arapahoe County, Colorado until 1993, when he joined Dill Dill Carr Stonbraker and Hutchings, P.C., as a partner. His law practice focuses on complex civil litigation, criminal law, appeals, and administrative law. His volunteer activities include service as mediator and as inventory counsel for the Office of Attorney Regulation, and service as a hearing board member, appointed by the Colorado Supreme Court, to hear attorney disciplinary matters. Appointed by City Council to a term which will expire on May 1, 2019. He was elected Chair of the Board in November 2016.

Julia C. Yeckes earned her B.A. in Music from Lewis and Clark College and her J.D. from the S.J. Quinney College of Law with a Certificate in Environmental and Natural Resource Law. She became an active member of the Colorado Bar in May 2016. Upon graduation, she ran the Pre-Award Grants and Contracts Program for the University of Colorado Denver’s Renal Division, where she worked on research proposal submissions and regulatory compliance. Ms. Yeckes now serves as a Staff Attorney for Energy Fuels Resources Corporation at its Lakewood, CO corporate headquarters. While at Lewis and Clark College, she chaired the College Honor Board, which heard academic integrity violations, and the College Review Board, which heard on-campus felony cases. Appointed by City Council, her term will end on April 20, 2021. She was elected Vice-Chair of the Board in July 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 projects and 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 currently serves as a Commissioner for the Denver Asian American Pacific Islander Commission. Appointed by the Mayor and City Council to 2 terms, ending June 24, 2021. She served as Vice-Chair of the Board in 2015 - 2017.

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 appointed him as a member of the first Colorado Independent Ethics Commission and he completed that term in June 2011. He taught classes at D.U. in communications ethics and dialogue. Appointed by the Mayor to 2 terms, expiring April 30, 2019. He served as Vice-Chair of the Board of Ethics in 2012 - 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 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 2 terms, ending April 30, 2021.
Case 16-27 (use of public office for private gain)
A former seasonal city employee filed a complaint concerning her former supervisor, alleging that the supervisor had failed to submit to the city, as required, payments that the supervisor had received from members of the public for golf lessons given at city golf courses as part of her duties. Had the supervisor done so, she would have received 84% of the payments after processing by the city.

The section of the Denver Code of Ethics implicated by this complaint is:

Sec. 2-67. Use of public office for private gain.
No officer, official or employee shall use his or her public office or position… in order to obtain private gain for himself or herself…

The Board of Ethics learned that her department has disciplined the supervisor for violating Section 2-67 of the Code of Ethics and other violations of the Career Service Rules. The Board dismissed this complaint pursuant to Section 2-56(6) (g) of the Code of Ethics because “the appointing authority has already taken action as a result of finding a violation and the Board believes the action was appropriate.”

The Board of Ethics also communicated about this issue to the Denver Auditor’s Office so that the Auditor’s Office can determine whether to review the current process for handling fees received by employees for golf lessons.

Cases 17-1 and 17-2 (no jurisdiction)
A citizen filed complaints concerning an Assistant City Attorney and an employee of the Clerk and Recorder’s Office alleging that a foreclosure of her home in 1998 had been mishandled and that she was owed surplus funds. The Board of Ethics concluded that there was no evidence of any violation of the Code of Ethics by either city employee and dismissed both complaints.

Case 17-3 (gifts – travel expenses – waiver granted)
A department head requested an advisory opinion. He and 2 other city officials were invited to meet with a potential investor to discuss and inspect projects in 2 West Coast cities. The discussion could lead to related projects in Denver for that investor. The department head believes that significant social benefits would result from such possible developments. The Denver personnel would have their travel expenses between Denver and the West Coast paid for by their departmental budgets. However, the investor offered to fly the Denver delegation on a private plane from one West Coast city to the other, because the very tight time schedules of the Denver persons and the investor could not be coordinated and discussion time would be minimized if a regular airline were used.

Acceptance of gifts, including travel expenses, is governed by Section 2-60(a) 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:

6. Travel expenses and lodging;

The Board of Ethics decided that if any development/investment by the investor were to take place in Denver in the foreseeable future, the department head would be “in a position to take direct official action,” regarding the investor as a result of any requests for permits or other actions that would be processed by his department. As a result, the department head would violate Section 2-60(a) if he accepted free travel on the private plane unless he obtained a waiver from the Board of Ethics.

The Board of Ethics is authorized to grant waivers by Section 2-54(f) of the Code of Ethics:

Sec. 2-54. Advisory opinions and waivers. 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…

The Board decided to grant the department head a waiver to accept free travel on the private plane, because it will be in the best interests of the city to allow additional discussion among the key parties about beneficial possible development(s) in Denver during the time on the private plane flight. Such discussion would not be able to occur otherwise due to the tight schedules and timing issues.

Case 17 – 4 (conflict of interest)

A newly-appointed member of the Denver Housing Advisory Committee (HAC) asked for an advisory opinion. He is the Deputy Director of Denver Programs for a national nonprofit focused on supporting affordable housing.

The HAC is given staff support by the Office of Economic Development (OED). In late 2016, OED issued a Request for Proposals (RFP) to various entities for consultant services to help develop a Comprehensive Housing Plan for Denver.

There were 2 firms under consideration for the consulting contract. The HAC member advised the Board of Ethics that “My colleagues from the separate public-sector consulting and technical assistance arm of my company, responded to the RFP and have subsequently been invited to interview for the contract.”

OED will convene a selection committee of staff from different city departments (not including any HAC members) in the near future to make the final selection of the consultant.

If his employer is selected, the HAC member stated to the Board that he will not participate in the consulting work.

When the Comprehensive Housing Plan has been completed in approximately September of 2017, the HAC will review it and vote whether to submit it to City Council for its approval or modification. The HAC member advised the Board that he will abstain from voting on the Plan.

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

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

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

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

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

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

The Board concluded that the HAC member would violate Section 2-61(a) of the Code if he were to take direct official action by being involved in the selection process for the consultant; however, neither he nor any other members of the HAC will be involved in the selection process.

If the HAC member’s employer is selected to be the consultant, it might have the appearance of impropriety if he were to vote as a member of the HAC to submit the Comprehensive Housing Plan developed by the consultant to City Council. However, he agreed “to recuse myself/abstain from any direct actions that the HAC may be asked to take with respect to the Comprehensive Plan and/or my employer.”

The Board of Ethics decided that the committee member would not violate Section 2-61 of the Denver Code of Ethics so long as:

- He is not involved in any way in the selection process for the consultant to help develop the Comprehensive Housing Plan and
- He abstains from voting to send the Comprehensive Housing Plan to City Council if the consultant arm of his employer is selected to be the consultant.

Case 17 – 5 (use of public office for private gain)

A citizen filed a complaint against a city employee who is her estranged half-sister, alleging that she had forged their deceased father’s will and obtained a false witness and false notarization of the will. The city employee denied the allegations.

The Board of Ethics determined that, even if the alleged forgery, false notarization and false witness ing could be proven, although reprehensible, it would not violate any section of the Denver Code of Ethics. In particular, there was no evidence that the city employee used any aspect of her “public office or position” to violate Section 2-67:

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

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

The Board did not express an opinion as to whether the alleged conduct occurred or not. The Board advised the complaining party that she may wish to consult an attorney or to present her information to the Denver District Attorney’s Office and/or the Notary Division of the Colorado Secretary of State’s Office.
The Board of Ethics dismissed the complaint pursuant to Sections 2-56(a) and (b) of the Denver Code of Ethics because the Board has no jurisdiction over matters such as this and because the alleged violation, if true, would not constitute a violation of the Code of Ethics.

**Case 17 – 6 (outside employment, conflict of interest)**
A city employee who works for Denver International Airport (DEN) requested an advisory opinion regarding her desire to be a candidate for the Aurora City Council. If elected, she would be paid for her service on the Council. The employee says that her DEN job responsibilities have nothing to do with transportation planning or land use.

The Board advised the employee as follows:

- The Denver Code of Ethics does not prohibit her from being a candidate for or serving as an elected official.
- Since Aurora City Council members are paid, she must comply with Section 2-63 by obtaining her appointing authority’s written permission.
- She cannot use any city resources, including time, computers or paper on her campaign or in work for Aurora.
- She should recuse herself from involvement in any DEN issues that might conflict with her responsibility to Aurora.
- She should maintain detailed records and documentation regarding any expense or time related to work for Aurora for which she might receive reimbursement from DEN.
- She may not disclose any information or records that are not available to the public, which were acquired in the course of official DEN duties in connection with her service as an Aurora City Council member. Such disclosure would violate Section 2-68 of the Denver Code of Ethics.

**Case 17 – 7 (subsequent employment) waiver granted**
An airfield planner at Denver International Airport (DEN) worked with United Airlines concerning possible expansion of Concourse B and oversaw the paint program for the entire airport. He left city employment in March 2017 and was hired by United Airlines as Manager of Aviation Planning at the United headquarters in Chicago, Illinois. He requested an advisory opinion. He advised the Board of Ethics that:

> My job was not a role in decision making but more in providing recommended solutions and alternatives. United has gate layouts at DEN that are inefficient and United is changing their aircraft fleet. So the apron needs to be realigned to better accommodate the existing and future aircraft fleet mix. The project is still ongoing and United and Denver are still discussing alternatives.

He also signed a Confidentiality and Non-Disclosure Agreement in which he agreed not to disclose information from DEN or other airlines to United.

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. (emphasis added)

The Board concluded that, if the former employee did not take any “direct official action” during his work at DEN, he would not violate section 2-64(a) and, therefore a waiver would not be needed. However, the Board was uncertain whether his actions at DEN amounted to any “direct official action” such that he would violate Section 2-64(a) if he worked for United on any projects at DEN without waiting for 6 months. However, the Board concluded that, in any event, it will be in the best interests of the City and County of Denver and DEN to allow him to work for United now on any DEN-related projects and, therefore, the Board granted him a waiver to allow him to do so.

**Case 17 – 8 (conflict of interest)**

The executive director of the North Denver Cornerstone Collaborative (NDCC) requested an advisory opinion. The NDCC was established in 2013 in the Denver city government to coordinate planning and building activities in North Denver. She advised the Board of Ethics:

As the Executive Director of the North Denver Cornerstone Collaborative (NDCC), one of my roles is to develop partnerships with stakeholders throughout the Globeville, Elyria, and Swansea neighborhoods and the RiNo District in North Denver. The NDCC is an initiative of Mayor Hancock to coordinate the many projects being planned in North Denver, including the National Western Center, Central 70, Brighton Corridor and neighborhood improvements.

She was invited to serve on the board of directors of Laradon Hall, a Denver nonprofit founded in 1948 with its main facility now within the sphere of influence of NDCC. Laradon Hall provides services to approximately 600 children and adults with intellectual, developmental and other disabilities, supporting their independence in daily life.

The relevant section of the Denver Code of Ethics is:

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

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

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

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

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

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

The Board of Ethics concluded that nothing in the Denver Code of Ethics would prohibit the executive director from serving on the board of Laradon Hall. However, she should be watchful about any situations that may pose a conflict of interest and then, if such a situation occurs, recuse herself from voting or
making other decisions as Executive Director of NDCC or as a board member of Laradon Hall. Possible examples would be if Laradon Hall wishes to expand or rezone its location in a way that might interfere with the city’s plans for the area or seeks city grants or other funding for its programs or if another matter or vote arises where the interests of the City and Laradon Hall may not be aligned. In addition, the Denver Code of Ethics does not prohibit her from serving as a board member of any other non-profit organization that is compatible with her duties as Executive Director of NDCC and does not adversely affect the interests of the City.

Case 17 – 9 (gifts)

A City Councilmember requested an advisory opinion as to how the new provisions of the Denver Code of Ethics (adopted by City Council on March 6, 2017) would apply to free tickets that all Councilmembers received from the Denver Zoological Foundation to attend the VIP reception at its annual fundraising gala on June 15, 2017. Tickets to the VIP reception cost $500 for the general public.

Acceptance of event tickets is regulated by the following sections 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;…

(5) Any ticket to a sporting, recreational, or cultural event except as provided for in subsection (b)(4) of this section;..

(9) Meals except as provided for in subsection (b)(4) of this section.

(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:

(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. The value of any meals, tickets, or free or reduced price admissions accepted from the same donor in any calendar year shall not exceed three hundred dollars ($300) and shall be subject to the reporting requirements set forth in Article V of this Chapter 2;

b. Attendance must be reasonably related to the official or ceremonial duties of the officer, official, or employee;…

c. Officers, officials and employees may accept the following donations of tickets or free admissions to events, regardless of the annual cap on the value of such donations set forth in paragraph a of this subsection: tickets or free admission to a charitable event, as long as the ticket or free admission is offered directly by and at the expense of the charitable or
other non-profit entity hosting the event and not directly or indirectly offered by any sponsor of the event or other donor to which the gift restriction set forth in subsection (a) of this section applies. Any ticket or free admission to an event accepted under this paragraph (g) shall be subject to reporting requirements set forth in Article V of this Chapter 2 (emphasis added).

An amendment to the Financial Disclosure Ordinance in March 2017 requires that the semi-annual report for officers “shall include the identification, estimated value and source of any gifts which may be accepted under Sections 2-60(b)(4), (7) and (10)...”

In summary, under new Section 2-60(b)(4)(g), donations of tickets or free admission to a charitable event given directly by the charitable or other non-profit entity hosting the event are not subject to the annual cap of $300 per donor, but must be disclosed under the Financial Disclosure Ordinance.

The Board of Ethics advised the Councilperson as follows:

- City Council members are in a position to take direct official action concerning the Denver Zoological Foundation, the sponsor of the annual charitable fundraising event.
- Since the tickets to the VIP reception charitable event were given directly to members of Council by the Zoological Foundation, the value of the ticket does not count against the $300 per calendar year cap set by Section 2-60(b)(4).
- What should be disclosed in the semi-annual disclosures by officers under the Financial Disclosure Ordinance is the face value of the ticket to the charitable event, in this case $500 for the ticket for the VIP reception.

**Case 17 – 10 (outside employment)**

An employee with the Denver Purchasing Division (part of the General Services Department) requested an advisory opinion. She was considering setting up a corporation by which she could conduct an outside consulting business. She told the Board that she understands that she must not try to develop clients for her company from contacts made in her city job.

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

**Sec. 2-63 Outside employment or business activity.**

The purpose of this section is to avoid possible conflicts of interest and time conflicts between city jobs and outside employment or business activity.

(a) All officers other than elective officers and all employees shall report existing or proposed outside employment (excluding unpaid volunteer activity) or other outside business activity annually in writing to their appointing authorities and obtain his or her appointing authority's approval thereof prior to accepting initial employment or outside business activity. All officials shall immediately report any change in employment status to their appointing authorities which could give rise to a conflict of interest.

(b) If the appointing authority or the officer, official or employee believes that there is a potential conflict of interest between the person's public responsibility and his or her possible outside employment or outside business activity, he, she or they are encouraged to consult the board of ethics.

(c) An officer or employee who has received the written permission of the appointing authority may engage in outside employment or other outside business activity. If, however, the board has rendered an advisory opinion to an officer, employee or official and/or an appointing authority and the board has reason to believe that the officer, employee or official has not complied
with the opinion, the board shall notify the appointing authority and the appointing authority shall report to the board in executive session regarding the action, if any, taken with respect to the person.

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

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

The Board of Ethics advised the employee that the Denver Code of Ethics does not prohibit outside business activity such as she described, so long as she:

• Obtains written approval on an annual basis from her appointing authority, as required by Section 2-63.
• Does not use any city time or other city resources for her outside business activity.
• Does not use any city files or contacts that she made in her city job to develop prospective clients for her business.
• Does not advertise that she works for the Denver Purchasing Division.
• The Board also recommended that she record the time she works for her company to document that she is not devoting any city time to her business.

Case 17 – 11 (no jurisdiction)

Two Denver citizens filed a complaint against a Chief Inspector for the Neighborhood Inspections Services Division of the Community Planning and Development Department (NIS). They had many complaints about the property and the behavior of their next-door neighbors and submitted several complaints to NIS and other city departments. Those departments and the Chief NIS Inspector, all investigated the complaints, but did not issue any citations. The complaint to the Board of Ethics was that the Chief Inspector was not interpreting the Municipal Code or doing this job correctly because he did not take any enforcement actions. The Board of Ethics, however, does not have the authority to decide when Denver city personnel are or are not performing their jobs correctly or to substitute its judgment in matters for which other departments are responsible. The Board of Ethics decided that, even if there was evidence that the Chief Inspector failed to enforce any municipal codes that NIS is responsible for enforcing, that would not be a violation of the Denver Code of Ethics and dismissed the complaint.

Case 17 – 12 (conflict of interest, outside employment)

A civilian employee of the Denver Police Department requested an advisory opinion. He wished to apply for an appointment by the Governor to a position on the Colorado Justice Assistance Grant (JAG) Board and wished to know if there would be an impermissible conflict of interest. JAG Board members are not paid for their service. The JAG Board advises the Colorado Division of Criminal Justice on issues related to federal block grant monies designated to improve the criminal justice system and reduce drug abuse and violent crimes. The Board advised him that there is nothing in the Denver Code of Ethics that would prohibit his service on the JAG board. However, if appointed he must:

• Abstain from voting on the JAG board on any grant application from the Denver Police, Sheriff or Safety Departments.
• Not attempt to influence any other members of the JAG Board regarding any grant applications from the Denver Police, Sheriff or Safety Departments.
• In his city job, not write grant proposals to the JAG Board nor administer any JAG grants.

Case 17 – 13 (outside employment)
A newly-hired Associate City Planner with the Denver Landmark Preservation Division of the Community Planning and Development Department requested an advisory opinion. Her responsibilities include reviewing applications for landmark designation of historic structures and districts and applications for design review of proposed changes for landmark buildings.

Recently she had authored a number of freelance articles about Denver history and/or architecture that were published in the monthly neighborhood newspapers Washington Park Profile and Life on Capitol Hill and received payment for those articles. She would like to continue to write and be paid for similar articles.

The Board of Ethics advised her that she must comply with Section 2-63 of the Code of Ethics, including:
• She must obtain written approval of the outside employment from her appointing authority on an annual basis.
• She cannot use any city resources, including time, computers or paper related to writing articles for publication for which she will be paid.
• She should be alert to any potential conflict between the interests of the Denver Landmark Preservation Division and any interests or opinions in her paid articles that may be “incompatible with her duties or that adversely affect the interests of the city,” which would be prohibited by Section 2-61(g) of the Code of Ethics. An example would be if an article by her would express her personal opinion regarding a property which she or others in the Landmark Preservation Commission staff may be called upon to research and recommend for landmark designation or for design review.

Case 17 – 14 (outside employment, conflict of interest)
An Associate Budget Analyst in the Denver Budget and Management Office (BMO) requested an advisory opinion. He was contacted by the Governor’s office and asked if he would apply to be appointed to the Colorado Electrical Board. Electrical Board members are paid $50 per meeting. The Board oversees the licensing and regulating of electricians in Colorado. In his work for BMO, the analyst assists the General Services Department and the Community Planning and Development Department. No city department is involved in licensing or regulating electricians.

Since there is payment for service on the Electrical Board, the analyst requested approval of outside employment from his appointing authority, pursuant to Section 2-63 of the Denver Code of Ethics and she has approved.

The Board of Ethics advised him that, so long as he has obtained written approval of his appointing authority, there is nothing in the Denver Code of Ethics that would prohibit him from serving on the Colorado Electrical Board. The Board of Ethics also advised him that:
• He cannot use any city resources, including time, computers or paper on work related to the Electrical Board.
He should be alert to any potential conflict between the interests of BMO or the City and County of Denver and the Colorado Electrical Board and, if a conflict arises, he should recuse himself from involvement in any such decision either by BMO or the Electrical Board.

**Case 17 – 15 (gifts)**

An Assistant City Attorney request an advisory opinion regarding 1) whether small beverage or food items (such as a cup of coffee, a bottle of water, a lemonade, a doughnut or a piece of fruit) should be defined as a “meal” in Section 2-60 of the Code of Ethics and 2) do such items need to be disclosed on officers’ or employees’ Financial Disclosure forms.

City personnel are offered such small food or beverage items in different circumstances. For example:

- A zoning or building or liquor or marijuana inspector may be offered such an item during or after the inspection.
- A police officer or firefighter may be offered such an item after a call.
- Any city person may be offered such an item during a meeting or discussion which does not include a full meal.
- Vendors or applicants for permits or licenses or their attorneys or other representatives may bring a box of doughnuts or fruit for an entire city office to share.

Nowhere in the Code of Ethics is the word “meal” defined, although that word occurs in Section 2-60 several times as highlighted below, which includes several amendments made by City Council on March 6, 2017:

**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;…

(9) Meals except as provided for in subsection (b)(4) of this section.

This prohibition shall also apply to gifts from a lobbyist or representative of a client if (1) the officer, official, or employee is in a position to take direct official action with regard to the client and (2) the city has an existing, ongoing, or pending contract, business, or regulatory relationship with the client.

(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. The value of any meals, tickets, or free or reduced price admissions accepted from the same donor in any calendar year shall not exceed three hundred dollars ($300) and shall be subject to the reporting requirements set forth in Article V of this Chapter 2 (Financial Disclosure Ordinance);...
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;…

e. Attendance must be reasonably related to the official or ceremonial duties of the officer, official, or employee;

f. The donation of parking for the meal or event shall be allowed on the same terms and conditions;

g. Officers, officials and employees may accept the following donations of meals regardless of the annual cap of the value of such meals set forth in paragraph a of this subsection and without the need to report the donation under Article V of this Chapter 2: meals provided to all attendees at a public meeting and consumed while the meeting is in progress, including, by way of example “working lunches,” and meals provided to all members of any governmental, civic or non-profit board of which the officer, official or employee is a member and consumed in connection with any meeting of the board…

(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 and does not mean cash or gift cards;…

The Board of Ethics decided that the dictionary definition or the common understanding of “meal” does not apply to such small or minimal beverage or food items and the gift section of the Code of Ethics should be interpreted accordingly. Although Section 2-60(b)(5) above does not include any food or beverage examples in “items of trivial value,” it does express the intent that gifts of very small value are minimal and fall below the threshold of what should be regulated. The Board also believes that it would be unnecessarily burdensome to require disclosure of such gifts.

The Board of Ethics advised that:

- When used in Section 2-60 of the Denver Code of Ethics, the word “meal” does not include beverages or snacks alone, such as coffee, tea, water, soft drinks, lemonade, doughnuts or fruit offered to and/or accepted by city officers or employees.

- Provided that the donor is providing the beverage or snack on an infrequent and isolated basis, and provided further that the item is of modest value, a city employee or officer may accept the item, even if they are in a position to take direct official action with regard to the donor.

- The item does not count against the annual $300 limit per donor in Section 2-60(b)(4)

- The item need not be disclosed by employees or officers on their Financial Disclosure forms.

The opinions expressed above assume the beverage or snack is being provided on an infrequent and isolated basis. The Board’s position would not necessarily be the same if a donor regularly provided beverages or snacks to an employee or to a group of employees on an a regular or even semi-regular basis.

**Case 17 – 16 (subsequent employment)**

A Financial Specialist at Denver International Airport (DEN) requested an advisory opinion. She was recently hired by United Airlines (UAL) and left city government and would soon move to the UAL headquarters in Chicago, Illinois and will work as a “Manager of Project Controls on the Corporate Real Estate team.”
She advised the Board that “In my current role as a Financial Specialist at DEN, I do not make decisions relating to financial matters and am not even remotely engaged in any contracts, let alone any that may hold interest for United Airlines.”

Subsequent employment is regulated in the Denver Code of Ethics by:

**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 Board of Ethics advised her that, because she had not taken any direct official action regarding United Airlines, she will not violate the Denver Code of Ethics if she goes to work for UAL without waiting six months after she left city government. In addition, the Board reminded her that she is obligated by Section 2-68 of the Code of Ethics not to disclose any information or records from her work at DEN that are not available to the public which were acquired in the course of her official duties.

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**Case 17 – 17 (conflicts of interest)**

A City Council member requested an advisory opinion. After her election, both she and her husband, the Deputy Director for Parks and Planning of the Denver Parks and Recreation Department, requested an advisory opinion regarding potential conflicts of interest. That opinion, in Cases 15-18 and 15-21, was issued by the Board of Ethics on July 28, 2015.

In July 2016, the City Council member was appointed by the City Council President to be the chair of the City Council Business, Arts, Workforce and Aeronautical Services (BIZ) Committee and she was re-appointed in July 2017.

In 2016 and 2017, the BIZ Committee had major discussions about a very large contract regarding Denver International Airport. The contract was approved by City Council on August 14, 2017, after the Councilperson had recused herself from voting. A company owned by the Council member’s brother-in-law will be a sub-contractor to the primary construction contractor on the contract.

On August 16, 2016 and on July 26, 2017, when there were major discussions at the BIZ Committee about the contract, the Council member announced that she would recuse herself from voting on the pre-development agreement (2016) and the contract (2017) because her brother-in-law’s company was a subcontractor. On both occasions, she also stepped down as chair of the committee and asked the Council President to preside in 2016 and another Council member to preside in 2017.

The Board of Ethics advised the Council member as follows:

- Nothing in the Denver Code of Ethics requires a City Council committee chair or President of City Council or a chair of another city body to step down from chairing a meeting of the committee or body, even though she or he will recuse herself or himself from voting on a particular matter in which she or he has a substantial conflict of interest as defined in Section 2-61 of the Code of Ethics. Presiding at a committee meeting is a “ministerial act,” which is specifically not included in the definition of “direct official action” in Section 2-52(b) of the Code of Ethics.

- She must continue to disclose her conflict of interest at the outset of the discussion and recuse herself from voting on any contract in which an immediate family member, such as her brother-in-law, has a financial interest.
• She should not be present or take part in any executive session at which a matter in which she will have a substantial conflict of interest will be discussed.
• At meetings of a Council Committee or of City Council, she should not make any comments or answer any questions about a matter in which she a substantial conflict of interest.
• Whether she chooses to step down temporarily from chairing the committee or to leave the room during the discussion and voting on the matter in which she has a substantial conflict of interest is up to her sound discretion.
• City Council amended the definition of “immediate family” in March 2017 to include “brother-in-law.” Therefore, recusal from voting is now required rather than optional on matters in which her brother-in-law’s company will benefit.
• With that exception, the rest of the advisory opinion to her dated July 28, 2015 is still applicable.

**Case 17 – 18 (subsequent employment)**
The former Executive Director of the North Denver Cornerstone Collaborative (NDCC) resigned from that position in early July 2017. She requested an advisory opinion.

The NDCC was established in 2013 in the Denver city government to coordinate planning and building activities in the Globeville, Elyria, and Swansea neighborhoods and the RiNo (RiverNorth) District in North Denver to coordinate the many projects being planned in North Denver including the National Western Center, changes to Interstate 70, Brighton Corridor and neighborhood improvements.

A property-owner in the RiNo neighborhood, wished to hire her as a consultant/advisor. Prior to her work at NDCC, the former Executive Director worked for many years as a private professional urban planner. The former Executive Director advised the Board of Ethics that the property-owner would like to hire her on a contract basis to help him:

• Articulate his vision with regard to his pending mixed-use development.
• Identify a team to help him achieve his vision.
• Provide some research and other miscellaneous tasks as needed.

She also told the Board that the RiNo District falls within the NDCC geographic area. She was not involved in any contracting, zoning, or other decisions that would have benefited the property-owner while she was at the city, nor did she engage in any transaction that she would benefit from directly as an advisor to the property-owner subsequent to her working at the city.

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

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

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

The Board of Ethics advised the former Executive Director that, since she did not take any direct official action during her time with NDCC regarding the property-owner or any of his plans or projects, she may obtain employment with him without waiting for 6 months after she left city government. In addition, the Board reminded her that she is obligated by Section 2-68 of the Code of Ethics not to disclose any information or records from her work at NDCC that are not available to the public which were acquired in the course of her official duties.
Case 17 – 19 (outside employment)

An employee of the Denver Agency for Human Rights & Community Partnerships requested an advisory opinion. She wishes to pursue outside consulting/contacting work as an Education Consultant/Project Coordinator up to approximately 16 hours per month. She obtained written approval from her appointing authority.

The Board advised her that, since she obtained written approval from her appointing authority, she may engage in paid outside employment in consulting or contracting work so long as she:

- Does not use any city resources, such as time, paper or computers in the outside work.
- Does not advertise her services to persons or groups that she works with in her city work.
- Complies with her appointing authority’s condition that she appropriately monitor her hours on the city’s timekeeping system.

Case 17 – 20 (subsequent employment)

A License Technician in the Department of Excise and Licenses asked for an advisory opinion. She had worked in that position for four years before she resigned. She went to work for a Denver-headquartered company that provides “professional cannabis cultivation management services.” Her task at the company would be to “work with license applications to ensure paperwork is in compliance with local and state requirements.” She advised the Board of Ethics that, at Excise and Licenses, she made no final decisions on any Denver license types, including marijuana-related licenses, and had only done data-entry of state applications related to Denver marijuana license applications.

The Executive Director of the Excise and Licenses Department decided that “we will not meet with her or discuss any licensing issues with regard to her current employer that were pending when she was still here, whether or not assigned to her.”

The Board of Ethics advised the former employee that she would not violate Section 2-64(a) of the Code of Ethics regarding subsequent employment by going to work immediately for the company, since, in the Board’s opinion, she had not had any direct official action power regarding marijuana, including licensing or inspections. The Board indicated that it was within the Executive Director’s discretion to limit discussions with her as the Director saw fit.

Case 17 – 21 (conflict of interest)

A citizen filed a complaint alleging that a City Councilwoman violated the conflict of interest section (Section 2-61) of the Denver Code of Ethics by not disclosing a conflict of interest and by voting in favor of three resolutions at a City Council meeting. The resolutions gave final approval to three separate contracts with two construction companies and one program management company concerning the interrelated Platte to Park Hill storm-water drainage control project and the reconstruction of the City Park Golf Course as a storm-water retention area.

The complaining citizen alleged that the Councilwoman had a substantial conflict of interest because her husband, the Deputy Director of the Parks and Recreation Department for Parks and Planning, had “personal, public and professional participation regarding the decision matters associated with the Platte to Park Hill storm-water project and the City Park Golf Course…” Therefore, the citizen claimed, the Councilmember “must recuse herself as a decisionmaker” in those matters.

The Board of Ethics gave an advisory opinion to the Councilwoman and her husband on July 28, 2015 regarding conflicts of interest (Cases 15-18 and 15-21). In addition, on August 23, 2016 the Board reviewed and dismissed a complaint against the Councilwoman which alleged a similar conflict of interest.
regarding the Platte-to-Park Hill project and increased storm-water charges for taxpayers (Case 16-15). The Board of Ethics concluded that:

- There is no indication that the Deputy Director has or will have any substantial employment, contractual, financial or other personal interest in the Platte to Park Hill storm-water project.
- As an employee of the City and County of Denver, the Deputy Director does not present the type of conflict of interest that is prohibited by Section 2-61, which is intended to regulate conflicts with persons or entities outside of city government.
- The Board should not substitute its opinion on public policy matters which have been the subject of extensive public discussion and debate.

Even though the complainant argued that the Councilwoman’s votes on the resolutions in question amounted to an appearance of impropriety, that does not amount to a prohibited violation of the Code of Ethics. Similar to the Board’s advice to the Councilwoman on August 18, 2017 in response to her request for an advisory opinion regarding presiding at a City Council committee meeting, whether to recuse or not on a matter that is not prohibited by the Code “is up to her sound discretion” (Case 17-17).

The Board of Ethics dismissed the complaint because it concluded that the Councilwoman did not violate Section 2-61 of the Code of Ethics and that she complied with the advisory opinion that she received from the Board of Ethics on July 28, 2015.

Cases 17 – 22 and 17-23 (no jurisdiction)

A citizen filed a complaint alleging that the Denver District Attorney failed or refused to investigate and prosecute the citizen’s former employer for allegedly committing perjury in a hearing related to an employment dispute and also that the information officer for the District Attorney’s office assisted the District Attorney by failing to answer numerous questions from the complaining citizen.

An Assistant City Attorney advised the Board of Ethics that the Denver District Attorney, like all other DAs, is “an executive officer of the state” and that “the Denver Code of Ethics is not applicable to employees in the office of the Denver District Attorney.” Nonetheless, the Denver District Attorney submitted a response to the complaints. She stated that:

Rather than seek a judicial resolution of the (jurisdictional) issue, I choose to embrace the code’s ethical standards. I therefore agree that, during my term as Denver District Attorney, my entire office (including me, my deputies and my classified staff) will be governed by the Denver Code of Ethics and will be subject to the Denver Board of Ethics.

The Board of Ethics accepted the District Attorney’s offer to be governed by the Denver Code of Ethics and to be subject to the jurisdiction of the Denver Board of Ethics during her term in office.

The Board of Ethics also concluded that nothing that the complainant alleged in these complaints would violate the Denver Code of Ethics. The Colorado Supreme Court has repeatedly held that District Attorneys have wide discretion to determine whom to investigate or prosecute for criminal activity. The Board of Ethics cannot and will not find a violation of the Denver Code of Ethics for a District Attorney’s exercise of that discretion or for how the District Attorney’s Office communicates with citizens.

Therefore, the Board dismissed the complaints concerning pursuant to Sections 2-56(6)(a) and (b) of the Denver Code of Ethics because, even assuming that the District Attorney’s position as to the applicability of the Denver Code of Ethics confers on the Board jurisdiction over issues such as the complainant raised, the alleged violations, if true, would not constitute a violation of the Code of Ethics.
Case 17 – 24 (no jurisdiction)
A citizen of Denver filed a complaint against an employee in the Public Works Department. He alleged that the employee gave him false and misleading information about why five utility boxes in his front yard could not be removed. However, the City has no legal authority to make them move.

The Board of Ethics stated that Denver permitting processes for installation of any type of utility facility in the public right-of-way are very complicated. Federal and state statutes and regulations, as well as Denver ordinances and regulations, are involved and frequently change and sometimes conflict with each other. Although the employee’s answers to the complaining citizen may not have been terribly clear and were not what he wanted to hear, there is no indication that her answers were dishonest. Even if they were, that would not be a violation of any section of the Denver Code of Ethics. The Board of Ethics dismissed the 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.

Case 17 – 25 (employment of family members)
A department executive director requested an advisory opinion. His son had told him that he had applied for an entry-level on-call position in a division of his father’s department. The director did not encourage his son, who does not live in the father’s household, to apply for that position. He told the Board of Ethics that:

I … do not know if he will be offered an interview and have had no conversations regarding his interest with the hiring manager or the Office of Human Resources. Generally, hiring is done by the supervisor of the candidates depending on the positions. In this case, I assume it would be a couple of supervisors and maybe a program manager, but I am not sure who is all involved in the hiring of the position. I do not engage in any hiring decisions outside of those that report to me in my section, i.e. the deputy of the department, my executive assistant, etc.

The Board of Ethics decided that:

Based on the facts as we understand them, there would be no violation of Section 2-59 if your son is hired because you are not involved in the hiring or appointment process for the position for which your son has applied, nor would your son be in your direct line of supervision. However, you must not be involved in any way in the hiring decision regarding your son. Further, you must not attempt to influence the decisions of others regarding the possible hiring of your son and must not provide any non-public information about the position or department personnel to your son. In addition, if your son is hired to a position in the department, you must ensure that there are at least two levels of supervision between yourself and your son.

Case 17 – 26
This case has not yet been resolved by the Board of Ethics.

Case 17 – 27 (gifts)
An aide to a City Councilmember requested an advisory opinion. One of her functions is to help the Councilmember prepare his twice-yearly gift disclosure forms. She requested an advisory opinion regarding three questions about the amendments made by City Council in March 2017 to the gift section
In summary, she asked:

- May City Council members accept small gift items from city departments and must they be reported on their gift-disclosure forms? Examples are scarves, poinsettia plants, geraniums, socks, baseball caps and coats. Some departments give such items once per year and some several times per year.
- What about items such as Elitch Gardens tickets that are donated by Elitch Gardens through the Councilmember to a nonprofit neighborhood organization to sell for the benefit of the neighborhood high school and must they be reported?
- What about free meeting space donated by a city department for meetings sponsored by the Councilmember in city venues such as libraries or police stations and must that be reported?

Acceptance of gifts 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;

(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:

(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 and does not mean cash or gift cards;

(c) It shall not be a violation of this article for an officer, official, or employee to solicit or accept donations to the city or to solicit, accept or redirect donations for charitable purposes to a 501(c) or other charitable organization or to provide assistance to individuals affected by illness, crime or disaster or who have educational or other charitable needs, provided, however, that

1) If an officer or employee soliciting such a donation is in a position to take direct official action with regard to the donor; and the city has an existing, ongoing or pending contract, business or regulatory relationship with the donor, any donation that is actually made as a result of the officer or employee’s solicitation is reported by the officer or employee as required by Article V of this Chapter 2...
during the reporting period…The report shall also include the identification, the estimated value and the source of any charitable donation personally solicited by the officer during the reporting period as permitted by Section 2-60(c), to the extent the officer is aware that the donation was actually made…Officers are required to report gifts and the solicitation of charitable donations from persons with whom the city has an existing, ongoing or pending contract, business or regulatory relationship and over whom the officer may take direct official action as defined in Section 2-52(b).

The Board of Ethics advised as follows:

1. Regarding gift items from city departments or agencies, there are two important points. First, City Council members are in a position to take direct official action regarding many city agencies, such as if they have contracts over $500,000 that Council must vote upon. In addition, “the city has an existing, ongoing, or pending contract, business, or regulatory relationship with the donor” (the individual city departments or agencies that offer gift items to City Council members). Therefore, Council members are prohibited by Section 2-60(a) from accepting gifts from city departments or agencies. Second, City Council is a separate and independent branch of city government from the executive branch departments and agencies and the restrictions in the gift section of the Code of Ethics apply with equal force, whether gifts are from entities or persons inside or outside of city government. Thus, the Board of Ethics rejects the interpretation of the gift section of the Code that City Council members or other city personnel may accept gifts from city agencies because they are all part of the same city government.

2. However, under the exception in Section 2-60(b)(5) City Council members and other city personnel may accept unsolicited items of trivial value worth $25 or less. While such items are not required to be disclosed by Section 2-72(c) of the Financial Disclosure Ordinance, they may be reported at the discretion of the reporting person, especially to avoid the appearance of impropriety.

3. The Board also notes that the exception in Section 2-60(b)(5) does not apply where a gift or gifts worth more than $25 are divided or distributed over time to circumvent the $25 limit.

4. Regarding the pass-through of items such as Elitch Gardens tickets to a non-profit neighborhood group to benefit a school, this would be permitted by Section 2-60(c), since it amounts to accepting and/or redirecting donations for a charitable purpose to a charitable organization. Regarding disclosure of such items, both Section 2-60(c) of the Code of Ethics and Section 2-72(c) of the Financial Disclosure ordinance and the City Council Rules of Procedure require that if a city officer has solicited such a donation and he or she is aware that a donation has actually been made, then the officer must disclose the “estimated value” on the gift disclosure form. If the officer did not solicit the donation, disclosure is not required.

5. As for provision of free meeting space in a city building for public (not private) business, the Board of Ethics does not interpret this to be a gift. A City Council member, therefore, may use such space for public business and would not be required to report the use of such space as a donation on the Financial Disclosure form.
In summary:

- City Council members may accept items of $25 or less in value from city departments and agencies and do not need to report such items on their gift disclosure forms.
- City Council members are required to disclose donations for a charitable purpose which they solicited if they are in a position to take direct official action with regard to the donor and the city has an existing, ongoing or pending contract, business or regulatory relationship with the donor that they are aware are actually made as a result of their solicitation.
- Free meeting space in a city venue is not a gift and does not need to be disclosed.

**Follow-Up to Case 17 – 27 (gifts)**

The City Attorney’s Office requested that the Board of Ethics reconsider its advisory opinion in Case 17-27 (above), as it pertained to gifts from City departments or agencies. The Board did discuss that request at two subsequent meetings and issued the following response on January 22, 2018 (quoted in full):

Thank you for attending the Denver Board of Ethics meetings on December 20, 2017 and January 18, 2018 to discuss your request, on behalf of the City Attorney’s Office, that the Board reconsider its November 17, 2017 official advisory opinion in Case 17-27.

The Denver Code of Ethics restricts when gifts may be accepted by a City decision-maker (i.e., a City officer, official, or employee who is in a position to take direct official action with regard to the donor). The Code’s restrictions about when a decision-maker may accept a gift are based on a number of concerns, including the following: (a) the gift may tend to or will improperly influence the actions of the decision-maker; (b) the donor may, as a result of having made the gift, expect favorable decisions or treatment; and (c) the acceptance of gifts by a decision-maker creates, or may create, an appearance of impropriety and appearance of improper influence.

Similarly, the Code restricts when a City decision-maker may solicit gifts based on similar concerns, namely that (a) the “donor” will fear his or her refusal will result in an unwanted decision or action by the decision-maker; (b) given the decision-maker’s position of power, the donor will feel pressured to comply with the request when he or she doesn’t wish to do so; (c) if a gift is made, the donor may feel entitled to more favorable treatment; and (d) the solicitation of gifts by the decision-maker creates, or may create, an appearance of impropriety and appearance of improper use of official power and authority.

As regards City agencies, City agencies act through their department heads and other personnel, each of whom, as a City employee, has a business or contractual relationship with the City. Under the City Attorney’s view, assuming the conditions of Section 2-60 are otherwise met, a city councilperson could, for example, accept or solicit substantial gifts from heads of City agencies and would not violate the Code of Ethics by doing so, so long as the gifts come from the agency itself rather than the agency heads personally. The Board sees no principled basis for such an artificial distinction. The harms the Code is intended to address—improper influence, using official office for personal gain, and the appearance of impropriety—are equally present when a City decision-maker solicits or accepts gifts from an agency’s head or other authorized agency
personnel. Put simply, The Board believes the City Attorney’s interpretation of Section 2-60 is unduly restrictive and inconsistent with both the intent and text of the Code.

Further, the Board believes any concerns the City Attorney may have about the application of Section 2-60 are similarly unfounded. Section 2-60’s prohibition against soliciting or accepting gifts is not absolute. Section 2-60(b) contains no less than 12 exceptions to Section 2-60(a)’s prohibition against soliciting or accepting gifts. Under Section 2-60(b)(5), for example, a decision-maker can accept unsolicited items worth less than $25.00, such as mugs, scarves, water bottles, plants, tee shirts, or a myriad of other items. Such gifts are not required to be disclosed under the City’s Financial Disclosure Ordinance. Under Section 2-60(b)’s other exceptions, decision-makers may accept campaign contributions, meals, tickets, reasonable expenses paid by non-profit organizations or other governments for conventions and fact-finding missions, gifts to commemorate public events, and memberships and passes from the Denver Art Museum, Denver Botanic Gardens, Denver Museum of Nature and Science, and the Denver Zoo. Thus, only a small (but important) category of gifts falls within the ambit of Section 2-60’s prohibitions.

In light of the foregoing, and in recognition of Section 2-60’s broadly stated purpose of avoiding special influence, the Board respectfully declines your reconsideration request.

**Case 17 – 28 (gifts)**

An employee in the Sheriff Department requested an advisory opinion. He received a $10 Starbuck’s gift card from the Arapahoe County District Attorney’s Office and a note of appreciation for his assistance in arranging to transport a prisoner from the Downtown Denver Detention Facility to Arapahoe County for a sentencing hearing. He wished to know whether he can accept the gift card.

Acceptance of gifts is regulated by Section 2-60 of the Denver Code of Ethics. The Board of Ethics concluded that he was not prohibited by Section 2-60 from accepting the gift card, since he has no direct official action power regarding the Arapahoe County District Attorney’s Office and since Denver does not have an existing, ongoing or pending contract, business or regulatory relationship with the Arapahoe County District Attorney’s Office. The Board further stated:

> Although the Denver Code of Ethics does not prohibit you from accepting the gift card for the reasons stated above, the Board notes that Section 1.2.12 of the Denver City Charter provides as follows:
> No official or employee shall solicit or receive any pay, commission, money or anything of value…for the performance of official duties except lawful compensation or salary as such officer or employee…

You may wish to seek guidance from the City Attorney’s Office about whether Section 1.2.12 applies to your circumstances here. Since Section 1.2.12 is not part of the Denver Code of Ethics, given the facts and circumstances of this case, the Board of Ethics expresses no opinion as to whether the small unsolicited gift certificate you received would or would not be prohibited by the Charter section.

**Case 17 – 29 (outside employment and conflict of interest)**

The Deputy Director for Policy and Administration of the Department of Excise and Licenses requested an advisory opinion. There was a vacant Policy Analyst position and the Department had screened and
interviewed candidates. The preferred candidate was a member of the City Council of a neighboring city. City Council members in that city are paid approximately $800 per month. The question is whether there would be any violation of the Code of Ethics if the Department would hire the new employee, in light of the fact that she is an elected Council member in another jurisdiction.

The Board of Ethics advised that:

1. There is nothing in the Denver Code of Ethics or the Denver Charter that would prohibit an elected City Council Member from another city from serving as a Denver employee.
2. Since the City Council members in the neighboring city are paid, she must comply with Section 2-63 of the Code of Ethics by obtaining written approval for this outside employment from her appointing authority, the Executive Director of the Department of Excise and Licenses.
3. The employee must not use any Denver city resources, such as computers, telephones, paper or her city time for any of her work regarding her City Council matters.
4. The employee should recuse herself from any votes or actions in any City Council issues that might conflict with her responsibility to Denver.
5. The Board recommended that the employee should maintain detailed records and documentation regarding any expense or time related to work for the other city for which she might receive reimbursement from Denver.
6. The employee may not disclose any information or records that are not available to the public, which were acquired in the course of official Denver duties in connection with her service as a City Council member. Such disclosure would violate Section 2-68 of the Denver Code of Ethics.

**Cases 17–30 through 17-35**

These cases have not yet been resolved by the Board of Ethics.

**Case 17 – 36 (subsequent employment)**

A Senior Financial Analyst at Denver International Airport (DEN) requested an advisory opinion. His role included, but was not limited to, routine review and approval of transactional activity for capital improvement costs at DEN. He was exploring an opportunity to leave DEN and to work for a company which currently has a contract with DEN to provide support for the implementation of the Workday Enterprise Resource Planning system recently launched by Denver. He advised the Board that he was never involved with direct official action or any other decision-making regarding the 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.

The Board advised him that he will not violate Section 2-64(a) of the Code if he goes to work for the company and that he does not need to wait six months to do so, because he has never taken any direct official action regarding the company.
Case 17 – 37 (subsequent employment)
An employee at Denver International Airport (DEN) requested an advisory opinion. He was leaving DEN and planned to work for a national consulting company in Dallas, where many members of his family live. The consultant has had a consulting contract with DEN since 2009. The employee started his work at DEN in 2014. He advised the Board of Ethics that he was a team member on one project with the consultant and was in other large airport meetings with the consultant, but that he took no direct official action concerning the consultant company.
The Board of Ethics advised the employee, similarly to its opinion in Case 17-36 above, that he will not violate Section 2-64(a) of the Code if he works for the consultant company and that he does not need to wait six months to do so because he did not take any direct official action regarding the consultant company.

Case 17 – 38 (outside employment)
An Associate City Inspector in the Public Works Department asked for an advisory opinion. He inspects sidewalks, handicap curb ramps and driveways. He and a business partner (not a city employee) wish to “start a concrete company.” He advised the Board of Ethics that he will invest 50% in the company, but his partner will “run the company.” He said that he expects that the company will build patios on private land (which, if they are inside the city of Denver, do not need permits from Public Works) and sidewalks or portions of sidewalks (which, if they are inside the city of Denver, must be inspected by Public Works).

The Board advised the employee that he will not violate Section 2-63 (outside employment) or any other section of the Denver Code of Ethics if:

- He obtains written permission for the outside business activity from his appointing authority.
- He does not use any city time, computers, paper or other resources for the company.
- He will not do any inspections of his company’s projects.
- He will not attempt to influence any Denver inspectors who would inspect any of his company’s work inside the Denver city limits.
- He will not attempt to sub-contract any concrete work from contractors whose work he has inspected in his city job.
- He will not advertise the company’s services to his co-workers in Public Works and will not refer any citizens that he deals with in his official position to his company and will not request his co-workers to do so.

The Board also recommended that his company should not mention in any of its advertising that he is a Denver city employee. The Board also strongly recommended that, if he is promoted to a position in the Public Works Department where he would be supervising other concrete inspectors, he should request the Board of Ethics to review this advisory opinion in light of the changed circumstances.