RULES OF PROCEDURE
for the Denver Board of Ethics
(adopted June 15, 2001, with amendments through February 17, 2021)

Article I - Intent

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

Article II – Definitions

Board of Ethics (or Board) – The Board appointed by the Mayor and the City Council of the City and County of Denver, State of Colorado, pursuant to Article IV of Chapter 2 of the Denver Revised Municipal Code. For purposes of these Rules of Procedure, Board members are not officials.

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

Employee – any person in the employ of the city or of any of its agencies or departments and any person employed without compensation.

Direct official action –

(1) Negotiating, approving, disapproving, administering, enforcing, or recommending for or against a contract, purchase order, lease, concession, franchise, grant, business loan or other similar instrument in which the city is a party. With regard to “recommending,” direct official action occurs only if the person making the recommendation is in the formal line of decision making.

(2) Enforcing laws or regulations or issuing, enforcing, or regulating permits, licenses, benefits or payments;

(3) Selecting or recommending vendors, concessionaires, or other types of entities to do business with the city;

(4) Appointing and terminating employees, temporary workers, and independent contractors.
(5) Doing research for, representing, or scheduling appointments for an officer, official, or employee, provided that these activities are provided in connection with that officer's, official's, or employee's performance of (1) through (4) above.

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

**Immediate family** - means husband, wife, son, daughter, mother, father, step-son, step-daughter, step-mother, step-father, father or mother-in-law, son or daughter in-law, brother or sister in-law, aunt, uncle, nephew, niece, grandmother, grandfather, grandchildren, brother, sister, domestic partner, any person with whom he or she is cohabiting and any person to whom he or she is engaged to be married. The term includes any minor children for whom the person or his or her domestic partner provides day-to-day care and financial support. A “domestic partner” is an unmarried adult, unrelated by blood, with whom an unmarried officer, official, or employee has an exclusive committed relationship, maintains a mutual residence, and shares basic living expenses.

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

**Official** – a member of a City board or commission.

**Article III – The Board**

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

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

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

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

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

2. Written minutes of Board meetings that are open to the public shall be taken either by a designated Board member or a designated staff member.

3. A quorum to conduct a meeting of the Board shall consist of three (3) members.

4. If any member of the Board desires to abstain from participating in a particular case, he/she shall announce that fact on the record, stating the reason for such abstention.

5. Any motion shall be deemed passed if a majority of those present vote in favor of the motion. If a vote is tied, it shall not constitute a majority.

6. If a vote on a motion is tied, no Board member present may abstain from voting on the motion. Absent a legal exception or absolute necessity, for purposes of this Paragraph, a Board member who has been recused from a matter is not present and may not be required to vote on a motion.

7. At least five (5) days’ written notice of all meetings shall be given to all Board members, except that a quorum may waive the five-day requirement provided any applicable notice requirements of Denver’s open meetings law (DRMC Sec. 2-35) are met.

8. Board members shall disclose potential conflicts of interest on an item before the Board, and may request to be recused from discussion and decision on the item, or may state their belief that there is no conflict. The Chair shall solicit from all parties appearing on that item whether they have any concerns about the Board member’s ability to be impartial on the issue. After Board discussion, the Chair will determine whether the potential conflict requires recusal of the Board member from discussion and decision on the item.

Article V - Requests for Advisory Opinions

1. Any current or former or prospective officer, official, or employee, or the appointing authority of a non-elected officer, official, or employee may submit a written request to the Board for an advisory opinion on whether any conduct by the officer, official, or employee would constitute a violation of the Code of Ethics.

2. A request for advisory opinion must be received at least seven (7) days prior to the Board’s monthly meeting, unless there is a request for expedited consideration. If there is a request for expedited consideration, the Chair and the Executive Director shall consult and determine if appropriate based on the requester’s articulation of need for expediency.
3. The Board or its designee may request any additional information deemed necessary to render an advisory opinion.

4. The Board shall render an advisory opinion in writing to the person who requested the opinion no later than fifty-six (56) days from the time it received the request, unless the person who requested the opinion has withdrawn the request in writing, or unless requested additional information has not been received by the Board or has yet to be considered by the Board, or unless the Board has given written notice to the person requesting the opinion explaining the reason for the delay and stating an expected issuance date.

5. The Board may publish advisory opinions with such deletions as may be lawful and necessary to prevent disclosure of the identity of the individual involved. The Board may also publish abstracts or guidelines based on an advisory opinion if the subject of the opinion may be of general interest and guidance.

6. When the Board of Ethics has reason to believe that the advisory opinion has not been complied with, it shall inform the person, the person’s appointing authority, and the City Attorney. The appointing authority, after consulting with the City Attorney, shall take appropriate action to ensure compliance.

Article VI – Requests for Waivers

1. Any current, former, or prospective officer, official, or employee may submit a written request for a waiver of any provision of the Code of Ethics to the Board.

2. The Board or its designee may request any additional information deemed necessary to determine whether a waiver should be granted.

3. The Board shall place all requests for waivers on its agenda and shall conduct its consideration of any requested waiver at a meeting open to the public.

4. The Board shall render a decision in writing to the person who requested the waiver no later than fifty-six (56) days from the time it received the request, unless the person who requested the waiver has withdrawn the request in writing, or unless requested additional information has not been received by the Board or has yet to be considered by the Board, or unless the Board has given written notice to the person requesting the waiver explaining the reason for the delay and stating an expected issuance date.

5. The Board may grant a waiver for conduct that constitutes or may constitute a violation of the Code of Ethics, but where the Board determines that a waiver will serve the best interests of the City. A waiver may be granted for a limited time period, requiring the person for whom the waiver has been granted to return to the Board to extend the waiver, or to consider granting a subsequent waiver. A waiver may require that the person for whom the waiver has been granted return to report on the progress of the activities for which the waiver has been granted, and, further, such conditional waiver may expire if such reporting is not provided. A waiver may
require that the appointing authority (for a person for whom a waiver has been granted who is an employee), if appropriate, take actions to ensure the employee’s actions conform to a waiver as a condition of granting the waiver.

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

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

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

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

4. The Board or its designee must notify the person who is the subject of the inquiry that an inquiry has been filed no more than five (5) days from the day the inquiry was filed, except that the Board shall notify the person who is the subject of the inquiry immediately if he or she so requests. The notice shall include a copy of the full inquiry; a copy of any portion of the Code of Ethics that is alleged to have been or that may be violated; and the Board’s Rules of Procedure.

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

6. The Board or a committee of the Board shall consult in confidence to screen the inquiry within thirty-one (31) days of receiving an inquiry. The Board may immediately dismiss an inquiry if:

   a) It has no jurisdiction; or

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

   c) The alleged violation is a minor or de minimis violation; or
d) The inquiry is, on its face, frivolous, groundless, or brought for purposes of harassment; or

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

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

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

7. If the inquiry is not dismissed pursuant to Paragraph (6), the Board may direct a staff member to investigate the inquiry in order to determine if a hearing is warranted. The investigation should not exceed thirty-five (35) days, absent circumstances requiring additional investigation or pending the result of an appointing authority’s investigation. The investigation may include obtaining further detail or clarification from the complainant consistent with DRMC Section 2-56(2) or obtaining additional information from: the person who is the subject of the inquiry; that person’s supervisor, if any; public records; or other reasonable and readily available sources. The Board shall review the additional information and determine whether the investigation is complete or whether additional information is needed. If additional information is necessary, the investigation may continue irrespective of whether it exceeds thirty-five (35) days. Once the Board finds that the investigation is complete, the Board shall either: (1) dismiss the inquiry; (2) request written arguments and make a finding pursuant to DRMC Sec. 2-56(7), albeit with notice to the respondent of his or her right to a public hearing; or (3) proceed under Paragraph 8 below. If information received is confidential or privileged, the Board shall maintain the confidentiality or privilege.

8. If the inquiry is not dismissed or otherwise resolved pursuant to Paragraphs (6) or (7) above, the Board shall issue a Notice of Hearing, which shall set forth in reasonable detail the alleged violations of the Code of Ethics and the facts supporting the allegations. The Notice of Hearing shall be mailed to the person filing the inquiry (hereinafter the complainant) and to the subject of the inquiry within fourteen (14) days of adopting the notice and requesting a hearing. The notice shall inform the parties that they may consult with or be represented by an attorney or other representative of their own choosing. The Notice shall require an Answer to the Notice of Hearing to be filed by the subject of the inquiry within twenty-one (21) days, unless an extension is granted for good cause. When received by the Board, the Answer shall be mailed promptly to the complainant.

9. Within fourteen (14) days of the receipt of the Answer, the Board shall issue to the parties a notice to set a date and place for the hearing, which shall be open to the public. The Board will attempt to accommodate the parties in selecting a date that is mutually agreeable. If no Answer is received, the hearing shall proceed nonetheless, without any Answer from the subject of the inquiry.
10. The Board shall assign one of its members to act as a Hearing Officer, with the responsibility to determine pre-hearing matters and to act as chair at the hearing.

11. At least twenty-one (21) days before the hearing, the parties or their representatives, or in appropriate cases, the Board’s staff director, shall exchange and submit to the Hearing Officer a proposed list of witnesses and possible documentary evidence to be introduced at the hearing, as well as an estimate of the length of time needed to present the testimony and evidence. The Hearing Officer may choose to set a pre-hearing conference, at which time a schedule and hearing order may be adopted. Such order shall include the exchange of proposed exhibits and witness lists. The Hearing Officer may determine any outstanding procedural or evidentiary issues at the pre-hearing conference.

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

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

14. Any time after the issuance of the Notice of Hearing, the Board, at its discretion, may make a finding solely on the basis of written arguments without holding a public hearing if it determines that there is no significant discrepancy in the facts. The subject of the inquiry shall have the right to request a hearing, which shall be open to the public. However, if the inquiry raises issues relating to third-party information that is protected under federal, state, or local law, the Board may deny a request for a hearing and base its decision on written arguments only.

15. At any time after the issuance of the Notice of Hearing, the Board may dismiss an inquiry without a finding for or against the subject of the inquiry if it finds that the person committed the violation due to oversight and the person comes into voluntary compliance. In such a case, there shall be no requirement for a public hearing regardless of the request of the subject of the inquiry.

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

17. At the hearing, the complainant, or the complainant’s representative, may make an opening statement and present the evidence in support of the allegations set forth in the Notice of Hearing. In the alternative, at the request of the Board, the staff director may summarize the allegations and other documents for consideration. The subject of the inquiry, or the representative of the subject of the inquiry, shall be entitled to cross-examine witnesses and
make objections to any documents offered for consideration.

18. At the conclusion of the evidence offered by the complainant or pursuant to Paragraph 17 of this Article, the subject of the inquiry, or his or her representative, shall have the opportunity to make an opening statement and present evidence. The complainant, or his or her representative, shall have the opportunity to cross-examine witnesses called by the subject of the inquiry. At the conclusion of the evidence, the parties may make closing statements or, with the consent of the Board, submit briefs or written summaries of their respective positions.

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

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

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

22. Within twenty-one (21) days of the conclusion of the hearing, the Board shall meet in executive session to review the evidence and determine if the allegations in the Notice of Hearing have been proven by clear and convincing evidence. Any findings and recommendations must be adopted by a majority of the Board, but only members who have been present for the hearing may participate in the deliberations and decision. The Board may consider, when making findings and recommendations, the severity of the offense, the presence or absence of any intention to conceal, deceive, or mislead, whether the violation was deliberate, negligent or inadvertent, and whether the incident was isolated or part of a pattern.

23. Within forty-nine (49) days of the conclusion of the executive session deliberations, the Board shall issue a Decision setting forth its findings and recommendations. In the alternative, the Board, where it deems it appropriate, may issue an advisory opinion in lieu of making findings and recommendations.

24. The Board may, if it determines corrective action is necessary, notify the person’s appointing authority and recommend that the appointing authority take action, including discipline. The Board shall request that it be informed of the outcome of any disciplinary action by the appointing authority. The Board may propose actions appropriate to the finding, ranging from a recommendation that the person abstain from further action in the matter or seek a waiver, to adopting a resolution reprimanding the person, to dismissing the inquiry.
25. The Board or its designee shall send a written copy of the Board’s findings and recommendations to the subject of the inquiry and the person who submitted the inquiry and, unless provided otherwise in these Rules or in the Code of Ethics, shall make the findings and recommendations public.

26. Time. In computing any deadline required by these rules, calendar days shall be used. If a deadline falls on a weekend or on a city holiday, the deadline is moved to the next city business day.

27. City supervisors, investigators, or human resources representatives may contact the Board to discuss whether past conduct by another city officer, official, or employee, if proven, would violate a section of the Code of Ethics.

   a) Upon receiving such a contact, the Board’s staff may give unofficial advice regarding the Code of Ethics and whether the described conduct, if proven, could violate any section of the Code. Such unofficial advice may include advising the supervisor, investigator, or human resources representative to file an official complaint with the Board concerning the employee in question.

   b) The unofficial advice should be in writing with a copy to the officer, official or employee involved, absent a compelling reason otherwise.

   c) Any unofficial advice by the Board’s staff may not be relied upon during any departmental disciplinary process. Only an official decision, advisory opinion, or waiver from the Board may be used in a disciplinary process or in response to a complaint.

   d) The staff may also suggest that the investigator, supervisor, or human resources representative may invite the employee in question to request an advisory opinion from the Board about his/her own conduct.

   e) The Board will not accept any requests for official advisory opinions about conduct by someone else unless that person is made aware of the request and has the opportunity to present his/her position to the Board in person or in writing.

Article VIII – Case Numbers

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

Article IX – Posting of Agenda

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

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

**Article XI – Disqualification**

Any member or employee of the Board shall disqualify himself or herself from participating in any matter before the board in which his or her impartiality might reasonably be questioned, including, but not limited to, instances where he or she has a personal bias or prejudice concerning a party or personal knowledge of or involvement in disputed evidentiary facts concerning the matter. Per Article IV, Paragraph 7 of these Rules of Procedures, any potential conflict of a Board members shall be disclosed on items brought before the Board and a determination made by the Chair on the issue of conflict.

In the event that an employee of the Board receives a request for an advisory opinion, a request for a waiver or an inquiry from which the employee is disqualified, and the employee has recused himself or herself, the Board shall request a designee the city attorney or a member of the Board to perform all functions the employee would otherwise perform.

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

A person who is the subject of an inquiry and who is subsequently exonerated may apply to the City Attorney for reimbursement of reasonable legal expenses from the “Liability Claims” appropriations. The City Attorney shall promptly provide reimbursement subject to the limitations of this Article. As used in this Article, the term “legal expenses” shall include reasonable attorney fees, witness fees, stenographer fees, investigator fees, and other direct costs in connection with the answer to an inquiry. The person applying for reimbursement shall submit his or her application for reimbursement to the City Attorney within fourteen days of the Board’s decision. The City Attorney, or in the case of a conflict, a designee of the City Attorney, shall determine, in his or her sole discretion, the reasonableness of the legal expenses. The exonerated person may not appeal or challenge the City Attorney’s determination with the Board or any other entity. The maximum reimbursement from the City shall not exceed the sum of seven thousand five hundred dollars ($7,500.00).