I. INTRODUCTION

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

The mission of the Board of Ethics is:

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

Appendix A gives brief biographies of the members of the Board of Ethics. In 2007 Carolyn Lievers and Leonard Plank retired from the Board after the completion of their terms and Samuel Williams and Edgar Neel were appointed to replace them. Unfortunately, Board Member Samuel Williams died in November 2007. The Mayor will be appointing a new member soon. The Board expresses great appreciation for the service of Carolyn Lievers and Leonard Plank, welcomes Edgar Neel and sends its condolences to the family of Samuel Williams.

The Board also expresses its appreciation for the advice and representation given to the Board of Ethics in 2007 by Assistant City Attorney Helen Raabe.

The Board held twelve monthly meetings during 2007. This report is a summary of the work accomplished by the Board during that time.

II. ADVISORY OPINIONS, WAIVERS AND COMPLAINTS

In 2007 the Board received and handled a total of 47 written formal cases - as compared with:

- 46 cases in 2006
- 46 in 2005
- 48 in 2004
- 47 in 2003
- 50 in 2002
• 31 in 2001.

Twenty-four of the 2007 formal cases were requests for advisory opinions and/or waivers, while 23 were complaints. A digest of the Board’s significant 2007 opinions is attached as Appendix B and is posted on the Board of Ethics website at www.denvergov.org/ethics. The Board dismissed all but one of the complaints that it decided in 2007 after preliminary screening, although it found that there were minor and inadvertent violations in two of those cases. One of the complaints resulted in a public hearing.

Between the passage of the new Denver Code of Ethics in January 2001 and December 31, 2007, the Board of Ethics has received a total of 314 written formal cases, consisting of 200 requests for advisory opinions or waivers and 114 complaints about possible violations of the Code of Ethics. Most of the complaints received have been dismissed because the allegations relate to persons and/or subjects not covered by the Denver Code of Ethics.

The subjects of the requests for formal advisory opinions or waivers during this entire 2001-2007 period break down as follows, with the 2007 cases enumerated in parentheses:

- conflicts of interest – 61 (10)
- gifts – 56 (1)
- travel expenses and lodging – 23 (3)
- outside employment – 50 (6)
- hiring of relatives – 4
- supervision of relatives – 12 (2)
- subsequent employment – 15 (5)
- use of public office for private gain – 6 (2)
- other – 53

(Some requests involved more than one subject.)

In addition to the written formal complaints and requests for advisory opinions and waivers, the Board’s staff director in 2007 received approximately 277 telephone, e-mail or in-person requests for unofficial, informal consultation about the Code of Ethics or other ethics issues, as compared with:

- 254 in 2006
- 266 in 2005
- 249 in 2004
- 192 in 2003
- 130 in 2002
III. ETHICS HANDBOOK

A revised and updated Ethics Handbook will be distributed to all city officers and employees in early 2008.

IV. ETHICS TRAINING

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

From 2002 through the end of 2007, 99% of all city employees and officers subject to the Code of Ethics have received at least 3 hours of ethics training. The Board’s Staff Director gave ethics briefings in 2007 to several new Mayoral appointees and the Career Service Authority continued to give three-hour ethics training at least once a month to new city employees. In 2006, with support from the Board of Ethics, the Career Service Authority Board amended CSA Rule 6 to require that new CSA employees must receive ethics training before they can pass their probationary period, which significantly increased compliance with the ethics training requirement.

The Board expresses its continued appreciation to the Training and Organizational Development Division of the Career Service Authority, agency heads and many trainers in individual agencies who have made this ethics training effort successful.

V. OTHER MATTERS

BUDGET

The adopted 2008 budget for the Board of Ethics is $94,600 compared to:

- $97,600 for 2007
- $86,700 for 2006
- $86,000 for 2005
- $82,600 for 2004
- $96,000 for 2003
- $87,300 for 2002.

STAFF

Michael Henry, the Staff 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.
VI. OTHER 2007 ACCOMPLISHMENTS

AMENDMENTS TO CODE OF ETHICS: After working for more than a year, the Board and the City Attorney’s Office presented to City Council and the Mayor a set of recommendations to improve the Code of Ethics, in light of the Board’s experience in administering the Code. The City Council passed these recommended changes on July 30, 2007. These changes are as follows:

1. to specify that, if a city agency or department wishes to adopt a stricter code of ethics for its employees (which is currently allowed by the Code of Ethics and the Denver Charter), the agency must do so through published rules or policies, is encouraged to consult with the Board of Ethics, shall provide information and training to employees of the agency and shall provide a copy to the Board of Ethics.
2. to add to the definition of “immediate family,” for the purpose of expanding the list of persons that city personnel should not make decisions regarding due to conflict of interest “any person with whom he or she is cohabiting and any person to whom he or she is engaged to be married.”
3. to substitute “complaint or inquiry” for “inquiry” wherever used in the Code of Ethics. This is to clarify in plain English that the word “inquiry” primarily means “complaint.”
4. to specify what a city person should do if he or she should not take “direct official action” due to a substantial conflict of interest. The Code now says that a city person a) shall disclose such conflict of interest to his or her colleagues on a board or commission or to his or her supervisor or appointing authority; b) shall not act or vote on the matter; c) shall not attempt to influence the decisions of others in acting or voting on the matter; and d) shall work with his or her supervisor or appointing authority to ensure that the matter is assigned to someone without conflicting interests.
5. to clarify that city personnel may not have any other employment or position which is incompatible with his or her city duties or that adversely affect the interests of the city.”
6. to provide that “unpaid volunteer activity” does not need to be disclosed as part of the annual disclosure and permission requirement for outside employment or outside business activity.
7. to provide that copies of documentation relating to the annual disclosure and permission requirements for outside employment or outside business activities shall be placed in each city person’s departmental personnel file.
8. to clarify that city persons who leave the city government may obtain new employment or contract work inside the city government even if they will take direct advantage of matters with which they took direct official action with the city, without waiting for six months.

EXECUTIVE ORDER REGARDING GIFTS TO THE CITY: After discussing, researching and working with the Mayor’s Office and the City Attorney’s Office for
more than two years, the Board was very pleased that the Mayor and his Cabinet signed new Executive Order 134 on December 20, 2007. In summary, the executive order requires that city departments and agencies shall report to the Clerk and Recorder once per year all gifts given directly to the department or agency worth $2500 or more and the Clerk and Recorder shall post the reports on-line to the public. If a gift is given anonymously, the department or agency shall inform the Board of Ethics, which may issue a non-binding advisory opinion regarding the proposed gift. NOTE that this is different from Section 2-60 of the Denver Code of Ethics, which already regulates gifts to individual city officers, employees or officials and continues in full force and effect.

INFORMATION SESSION FOR DENVER REGISTERED LOBBYISTS: In conjunction with the City Attorney’s Office and the Clerk and Recorder’s Office, the Board of Ethics provided an information session for Denver registered lobbyists about the ordinances and procedures regulating Denver lobbyists, including the gift section of the Denver Code of Ethics.

VII. 2008 GOALS FOR BOARD OF ETHICS
(Adopted January 24, 2008)

A. Continue To Implement and Improve Ethics Training for all City Officers, Officials and Employees

The Board of Ethics, in cooperation with Career Service Authority, has overseen the delivery of ethics training for all Denver officers, officials and employees. The Board should in 2008 and subsequent years continue to pursue this goal by developing and overseeing delivery of at least a one-hour refresher course of ethics training, with cooperation from Career Service Authority, city departments and the Ethics Training Oversight Committee.

B. Continue Expeditious Fulfillment of the Board’s Obligation to Receive, Review and Decide Requests for Advisory Opinions, Requests for Waivers and Complaints regarding alleged misconduct

C. Improve Public Information about Code of Ethics

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

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

5
c) Seek public comments at that meeting about ethics concerns of citizens.

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

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

D. **Develop and Implement Policy for Review of Proposed Anonymous Gifts to the City and County of Denver**

Develop and implement a process for reviewing and commenting on proposed anonymous gifts to the City and County of Denver, pursuant to Executive Order 134, issued by the Mayor on December 20, 2007.

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

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

F. **Work with Career Service Authority, Mayor’s Office, City Council and Other Agencies to Assure that City Employees are Aware of the Whistle-Blower Protection Ordinance (passed in August 2007).**

G. **Revise the Rules of Procedure for the Board of Ethics (last revised in 2003).**

H. **Analyze Ethics-Related Responses to 2007 Employee Attitude Survey and Work with Career Service Authority**
Training Division to Assist Departments and Agencies if Survey Indicates Need for Improvement of Ethical Culture.

VIII. CITY GOALS

The Board of Ethics believes that its work during 2007 and its goals for 2008 support the following of the City and County of Denver’s goals:

✓ Denver city government will achieve the highest customer service rating in the country – by encouraging confidence in Denver city government among its citizens and customers
✓ People will say Denver was an even better place than it was in 2003 – by encouraging an ethical culture in Denver city government
✓ People who work for Denver city government will say it is an even better place to work than it was in 2003 – by encouraging high ethical standards throughout city government
✓ Denver city government will live within its means – by thriving as the city’s smallest agency with the smallest budget

VIII. CONCLUSION

The Board of Ethics believes that, with help from the Mayor, City Council, the City Attorney’s Office, Career Service Authority, the ethics trainers in city agencies and the great majority of managers and employees of the City and County of Denver, it made continued good progress in 2007 to establish ethics as a recognized core value and to cultivate public confidence in Denver city government.

Respectfully submitted on behalf of the Denver Board of Ethics,

__________________________________________
LORI MACK
Chair
DENVER BOARD OF ETHICS

Board Members (as of June 2007)

Lori Mack earned a B.A. in Communication from the University of Colorado. She was one of the first fellows for the Denver Fellowship in Urban Government in the Denver Office of Accountability and Reform. During her 19 years with the City and County of Denver, she worked at Art, Culture and Film; Aviation; Excise & Licenses and is currently a Human Resources Specialist for the Career Service Authority. She is a graduate of State Senator Gloria Tanner’s Leadership Institute and has served on various private and public committees. Appointed by the Mayor and City Council. Term expires 4-30-2009. In May 2006 she was elected Vice-Chair of the Board of Ethics and in May 2007 was elected Chair.

Leslie M. Lawson earned a B.A and J.D. from the University of Wyoming. She has served as an attorney for the Equal Employment Opportunity Commission, as an in-house attorney for a major oil corporation, as an attorney in a small law firm, as a Denver district judge and as a member of the Judicial Arbiter Group. She is a past president of the Colorado Women’s Bar Association. Currently she is a mediator and arbitrator and a partner in Dispute Management, Inc. Appointed by City Council. Term expires 4-20-2009. She served as Chair of the Board of Ethics from May 2005 through May 2006. In May 2007, she was elected Vice-Chair.

Ann A. Terry earned a B.A. in Sociology from the University of Iowa and a J.D. from Drake University Law School. She was a prosecutor in Iowa and then worked in Colorado with the Jefferson County District Attorney’s Office and the Colorado District Attorneys’ Council. Currently she is employed as a legislative liaison and public policy analyst for the Colorado Department of Public Safety. She has served on a number of non-profit boards and committees and has taught several law school courses. Appointed by the Mayor. Term expires 4-30-2009. In May 2006 she was elected Chair of the Board of Ethics and served through May 2007.

Samuel Williams earned a B.S. from Central State College of Ohio and an M.S. from Cornell University. He served for twenty years in the U.S. Army, retiring at the rank of Lt. Colonel. He served for eight years in the Colorado House of Representatives. Currently, he is an Assistant Professor of Ethics at Johnson and Wales University and serves as President of the Denver Civil Service Commission. Appointed by the Mayor. (Mr. Williams died in November, 2007.)

Edgar L. Neel earned a B.A. from Amherst College and a J.D. from Cornell University Law School. He has practiced law in Denver for over twenty five years. His focus is on commercial and construction matters, representing contractors, insurers and surety companies in complex claims and litigation. He is a director and currently the president of the Denver law firm of Pendleton, Friedberg, Wilson and Hennessey, P.C. He was the District Director for Congresswoman Diana DeGette in 1997. Appointed by City Council. Term expires 4-20-2011.

APPENDIX A
DENVER BOARD OF ETHICS
DIGEST OF SELECTED OPINIONS
January 1–December 31, 2007

PLEASE NOTE: This is a selected set of summarized opinions given by the Denver Board of Ethics between January 1 and December 31, 2007 in response to fact-specific requests for advisory opinions or inquiries/complaints. They should not be used as conclusive guidance for situations where the facts may differ.

Case 07-1 (conflict of interest)

The Board of Ethics reviewed a request for an advisory opinion concerning whether a program director for the Commission to End Homelessness (within the Denver Department of Human Services) had a conflict of interest prohibited by the Denver Code of Ethics. The director serves and has served for many years as the unpaid volunteer president of the board of directors of a non-profit housing development corporation. The non-profit has received numerous loans from Denver’s Division of Housing and Neighborhood Development, which is within the Office of Economic Development (a city entity separate from the Department of Human Services). The director and the director’s supervisor and other city officials advised the Board of Ethics that the director is not and has not been involved in negotiating or approving or handling any loans or other transactions between the City and County of Denver and the non-profit corporation in the director’s city capacity.

After reviewing Section 2-61 of the Code of Ethics, regarding conflicts of interest, the

APPENDIX B
Board of Ethics determined that the director has not violated the Code of Ethics and that appropriate safeguards have been put in place and should continue in order to ensure that conflicts do not arise. The Board also recommended that the director should also abstain from taking part in any city loan matters at the non-profit, in order to avoid the appearance of impropriety.

Case 07–2 (subsequent employment – waiver granted)

An employee of the Mayor’s Office requested an advisory opinion and/or waiver from the Board of Ethics concerning whether he could leave city government and be hired as the executive director of a new non-profit community development financial institution, in light of the fact that he had been active in facilitating the creation of the non-profit and had served on a committee to select a company that would serve as the managing member of the non-profit.

Since very few people, if any, had such heavy involvement in launching the non-profit as the employee had, the Board of Ethics determined that, if hired as executive director of the non-profit, he would “take direct advantage, unavailable to others of matters with which” he ‘took direct official action during” his “service with the city.” Therefore, he would violate Section 2-64(a) of the Code of Ethics if he became executive director of the non-profit without waiting for six months after he left his employment with the City and County of Denver.

However, the Board of Ethics has the ability, pursuant to Section 2-54(f) of the Code of Ethics, to grant a waiver if it would “serve the best interests of the city.” The Board of Ethics determined that the mission and goals of the City and County of Denver and the non-profit entity are very similar – revitalization of under-served Denver neighborhoods. The city and the non-profit are not competitors in this effort, but will work closely together. In addition, the Board of Ethics determined that it would be in the best interests of the city if the non-profit would not have to spend considerable time to train a new executive director who was not familiar with the City and County of Denver and under-served neighborhoods in Denver. Therefore, the Board of Ethics granted the employee a waiver to authorize him, if selected, to serve as executive director or in any other position with the non-profit without waiting for six months from the termination of employment with the City and County of Denver.

Case 07-3 (subsequent employment)

An employee of the Technology Services Division requested an advisory opinion from the Board of Ethics. The employee had a role in a contract renewal in 2006 between the City and County of Denver and a private vendor regarding purchase and maintenance of certain items of communications technology and wished advice from the Board whether she could work for that vendor after leaving employment with Denver.

The Board concluded that the employee was not prohibited by the Code of Ethics from being employed by the vendor (a national company) immediately after she left employment with the City and County of Denver. However, her involvement in approving the 2006
contract renewal with the vendor amounted to “direct official action,” by “negotiating, approving, disapproving, administering, enforcing, or recommending for or against a contract.” Therefore, the Board concluded that if she became employed by the vendor within six months of leaving her job with the City and County of Denver, she should abstain from dealing with the City and County of Denver for at least six months regarding vendor sales after leaving city government in order to avoid a violation of Section 2-64(a) of the Denver Code of Ethics.

**Case 07-4 (conflict of interest)**

The Director of the Division of Housing and Neighborhood Development (DHND) requested an advisory opinion regarding potential conflicts of interest by DHND employees with respect to ascertaining eligibility for participation in Denver’s affordable housing program. The Board determined that the certification of eligibility to purchase an affordable home under the city’s affordable-housing program does not technically amount to “direct official action,” in Section 2-61 of the Denver Code of Ethics pertaining to conflicts of interest because the city is not a “party” to the “contract” between the buyer and the seller of the home and the city does not “grant” any funds to the purchaser. Therefore, if a DHND employee certified eligibility of himself or herself or a co-worker in DHND or an immediate family member or a business associate, the employee would not violate 2-61. However, the appearance of impropriety in such a situation is glaring, because certification of eligibility is potentially a large financial benefit.

The Board of Ethics strongly recommended the following in order to avoid the appearance of impropriety. No employee of DHND should have any role in reviewing, approving or disapproving eligibility for the Denver affordable housing program for 1) him or herself or 2) any other DHND employee or 3) an immediate family member of him or herself or of any other DHND employee or 4) an outside employer or a business associate of him or herself or of any other DHND employee. If such a person applies for certification of eligibility, the entire review and certification process shall be handled by an outside contractor with no DHND employee attempting to influence the decision.

The Board noted that any city employee, including an employee of DHND, should be able to be certified for participation in the affordable housing program so long as he or she complies with the certification criteria.

**Case 07-5 (conflict of interest; use of public office for private gain)**

A citizen filed a complaint alleging that a member of the Denver Landmark Preservation Commission (LPC) acted unethically by making an offer to purchase real property which was being considered by the LPC for recommendation to the Denver City Council for designation as a landmark district. The price offered (which was not accepted) was substantially less than the owners (who opposed the landmark designation) had listed the property for. After a public hearing, the Board of Ethics decided that the LPC member had not violated the conflict of interest section of the Code of ethics (2-61) because she abstained from voting on the recommendation that the property should be designated a
landmark district. The Board of Ethics also decided that there was not clear and convincing evidence that she had violated Section 2-67 of the Code of Ethics, which prohibits the use of public office for private gain, because there was no evidence that she would gain financially if she had purchased the property. The Board found, however, that the LPC member had violated the legislative intent of the Code of Ethics (Section 2-51) by creating an appearance of impropriety, stating that “to become personally involved after the petition for designation had been filed was an error in judgment which does not comply with the spirit of the Denver Code of Ethics.”

**Case 07-7 (gifts – waiver granted)**

An employee in the Career Service Authority requested an advisory opinion and/or a waiver regarding whether acceptance of travel and lodging expenses from a for-profit corporation for participation on a panel at an out-of-state conference violated the Code of Ethics. The company has a contract with the City and County of Denver to provide an online training system, which the employee helps to administer. The contract will be up for renewal in 2008. The employee was not involved in the negotiation of the 2003 contract.

The Board of Ethics determined that it would violate Section 2-60(a) of the Code of Ethics for the employee to accept the travel and lodging expenses, because he will likely be in a position to recommend for or against a contract renewal with the company, which is part of the definition of “direct official action.” The Board, however, granted the employee a waiver because it would be “in the best interests of the city” for the employee to attend the conference, participate in the panel and bring back and apply information about “organizational learning” to the city.

**Case 07-8 (no jurisdiction)**

A citizen filed an inquiry (complaint) concerning his City Council representative. The citizen alleged that the Councilperson misrepresented to him that the Councilperson had made efforts, at the citizen’s request, to resolve a dispute that the citizen’s company had with a city department.

The Board of Ethics dismissed the inquiry at the screening stage, stating that “there is no provision of the Denver Code of Ethics that such conduct would violate,” even assuming the truth of the complaining party’s allegations. The Board noted that the citizen “hinted at a possible conflict of interest…but provided no information that such a conflict actually exists.”

**Cases 07 – 9 and 07 – 10 (outside employment)**

A citizen filed inquiries (complaints) concerning the Auditor and a staff member in his office. In summary, the citizen complained that the Auditor’s re-election campaign (he was running for re-election in the May 1, 2007 city election) paid fees to a communication
company operated by the employee in 2007 at the same time that the employee was drawing a city salary for his work in the city office.

The complaining citizen suggested that the employee may have used city resources or city time in his work on the re-election campaign. If so, this might violate Section 2-67 of the Code of Ethics – use of public office for private gain and/or Section 15-31(E) of the Career Service Authority Code of Conduct regarding political activities. However, the citizen did not provide any facts to substantiate the suggestion and the Board stated that “the Board has to be provided with more than a suggestion or an assumption to proceed with a hearing.

Both the Auditor and the employee indicate that they are conscious of and comply with the Code of Ethics and the city rules prohibiting use of city time or resources for private or political purposes.

They both acknowledged that the employee failed to submit an annual renewal of his outside employment form for his communication company that he had originally submitted in 2003. In September 2004 City Council amended Section 2-63 to require an annual renewal; however, the employee said that his failure to comply with the annual renewal was an “inadvertent and unintentional oversight.” The Auditor indicated that he has now taken measures to remind everyone in his office that the outside-employment permission form must be renewed annually and also that public resources must not be used for private or political business.

The Board of Ethics concluded that the failure of the employee to obtain annual renewal of permission for outside employment and the Auditor’s failure to request or require such annual renewal violated Section 2-63 of the Denver Code of Ethics; however, they were minor, inadvertent violations which have been corrected and which do not warrant a public hearing or any further action. The Board, therefore, dismissed these inquiries.

**Case 07 – 11 (gifts – waiver granted)**

The Mayor requested an advisory opinion and/or a waiver regarding fundraising for the 2008 Democratic National Convention, which will take place in Denver. The Mayor is a member of the Democratic Party’s host committee for the convention, which has an application pending with the Internal Revenue Service for 501(c)(3) tax-exempt status.

He requested the Board of Ethics to grant him a waiver from Section 2-60(a) of the Code of Ethics, so that he may solicit and/or accept travel to relevant cities on private planes from individuals or entities during trips to raise contributions to cover many expenses of the convention that the Democratic National Committee expects the host committee to raise. The Denver host committee will need to raise several million dollars to assist in various convention expenses.

The solicitation or acceptance of gifts is governed by Section 2-60(a) of the Code of Ethics:
Sec. 2-60. Gifts to officers, officials, and employees.

(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 or 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;

(2) Any honoraria or payment for participation in an event…

(6) Travel expenses and lodging;

Presumably many of the targets of the Mayor’s fundraising efforts would be persons or entities to which both of the key elements of 2-60(a) do not apply – in other words, the Mayor would not be “in a position to take direct official action” concerning the prospective donor and/or the City and County of Denver would not have an existing, ongoing or pending contract, business or regulatory relationship with the prospective donor. If that is the case, Section 2-60(a) would not prohibit the Mayor from accepting travel from such a person or entity. However, it is likely that both of those conditions would apply regarding some potential donors.

Section 2-54(f) of the Code of Ethics permits the Board of Ethics to grant a waiver if “the waiver will serve the best interests of the city.”

The Board of Ethics granted a waiver to the Mayor to allow him to solicit and/or accept travel and/or lodging expenses even if both of the two criteria in Section 2-60(a) apply, because his efforts will be important to raising adequate funds from private sources to put on a successful convention, which will be in the best interests of the city. The convention is expected to bring at least 35,000 visitors to Denver and to generate $150 million to $200 million in revenue to the city and will generate significant exposure from television, newprint and websites that will focus national attention on Denver.

In order to avoid the appearance of impropriety, however, the Board encouraged the Mayor to:

- Minimize the number of persons or entities that he attempts to raise funds from that 1) he has direct official action power over and that 2) do business with the City and County of Denver. As mentioned above, many targets probably would not have those two connections with the City and County of Denver.
- Minimize the number of persons or entities that the Mayor solicits that he was directly and personally involved with in such aspects of direct official action (as defined in Section 2-52(b) of the Code of Ethics) as negotiating a contract or selecting a vendor or enforcing laws
- Minimize the solicitations that he does of persons or entities that he had directly dealt with or will deal with in a direct official action capacity a short time before or after the time of the solicitation
- Encourage the host committee and/or the Democratic National Committee to disclose to the public the sources and amounts of donations.

The Board noted that the reason for these cautionary recommendations is so that, even though the Board of Ethics has granted a waiver, neither the public nor the potential donors should perceive that potential donors may be treated more favorably by the City and County of Denver if they contribute or less favorably if they fail to contribute.

The Board determined that this waiver shall expire thirty days before the commencement of the 2008 Democratic National Convention.

**Case 07 – 12 (supervision of family member – waiver granted)**

A sergeant in the Sheriff’s Department was recently assigned to work at the Pre-Arraignment Detention Facility (PADF), where his brother also works. The brothers work in different units and on different shifts, although the shifts largely overlap two days per week. The sergeant requested an advisory opinion and/or a waiver regarding Section 2-59 of the Code of Ethics, which prohibits city employees from hiring or supervising members of their immediate families (including brothers).

Although the sergeant said that he does not have any supervisory authority over his brother or his brother’s supervisor, the Board of Ethics granted a waiver to the sergeant in case he might need to supervise his brother for a short time due to an emergency at PADF or due to changes in work schedules due to vacation or sick leave. The Board, however, advised the sergeant that, if such a situation occurred, he should not take any “personnel actions” regarding his brother, such as recommending a raise, changing working hours or performing a personnel evaluation.

**Case 07 – 14 (no jurisdiction)**

A city employee filed an inquiry (complaint) concerning his supervisor, alleging that the supervisor had unfairly reprimanded him, punished him by reneging on a salary promise and treated the employee in an indignant, arbitrary, capricious and biased manner. The employee attempted to get relief through his department and the Career Service Authority appeal process, but was unsuccessful.

The Board of Ethics concluded that the allegations and issues raised by the employee are not addressed by the Denver Code of Ethics and that the Board of Ethics does not have the ability to hear appeals from departmental personnel actions, which can only be dealt with through the Career Service or Civil Service appeals processes.
Case 07 – 15 (outside employment)

A restaurant inspector filed a request for an advisory opinion concerning outside employment. He wished to know if he would violate the Code of Ethics if he held a part-time outside job doing private “third-party audits” of restaurants outside of the City and County of Denver for a company which is hired by restaurant chains. The audits are simply educational for the restaurant management and have no governmental enforcement function.

The Board of Ethics concluded that such outside employment would be allowed, so long as it is approved in writing on an annual basis by his appointing authority, pursuant to section 2-63 of the Code of Ethics and, so long as he does not negotiate any contracts or approve any purchase orders or take any other direct official action as a city employee with his private employer, as required by Section 2-61.

In order to avoid the appearance of impropriety, the Board also recommended that the employee:

- should not audit any restaurant facilities for the private employer in the City and County of Denver.
- should request his supervisor to re-assign another inspector if any restaurant in Denver to which he is assigned is operated by a chain company which he has privately audited or is auditing
- should inform his supervisor in writing of which facilities he is auditing for the private company
- should not use any city resources or city time for his outside employment

Case 07 – 16

The Director of the Junior Golf Program in the Parks and Recreation Department requested an advisory opinion as to whether there would be a violation of the Denver Code of Ethics or any other ethical problem if the employee would give a “testimonial” to a for-profit media company that the company could use on its website to promote its services.

The company publishes, under a contract with Denver Golf which the employee helped to negotiate, yardage books for Denver’s Municipal Golf Courses, which are booklets showing the locations of tees, distances to greens, instructions and tips for each hole on the golf course. Under the contract, the company receives its remuneration from selling advertising in the yardage books.

The Code of Ethics does not directly address a situation such as this; however, the Board of Ethics concluded that, so long as the employee does not personally receive any type of gift in return from the company, it would not violate the Denver Code of Ethics or be otherwise improper for the employee to give a factual testimonial to the company describing the quality of its work for Junior Golf Program. The Board indicated, however, that there may
be an internal policy within the Department of Parks and Recreation concerning this issue with which the Board of Ethics is not familiar.

**Case 07 – 17 (gifts)**

A citizen of Denver who has been interested in helping disadvantaged Denver children to go skiing and/or obtain ski lessons at Winter Park Ski Resort filed a complaint concerning the Manager of the Department of Parks and Recreation.

Winter Park Ski Resort is owned by the City and County of Denver and has, since 2002, been operated and is being redeveloped by a private company. The Manager is a member of the board of the Winter Park Recreation Area, appointed by the Mayor. The function of the board is to oversee the administration, operation and maintenance of the Winter Park Recreation Area.

The citizen said that he understands that the Manager “received 500 ski passes to Winter Park Resort last season.” and said that the Parks and Recreation Department has refused to provide free Winter Park passes to children. The citizen did not provide any evidence that the Manager personally used any ski passes. The Manager’s response outlined a program in which the Department of Parks and Recreation “partners” with the private operator of the Winter Park Ski Resort for a youth ski program (which served 980 participants in 2006-2007) and another program of discounted ski passes for City employees (which served 258 participants in 2006-2007). The Manager indicated that she did not use any free passes for her personal use.

The possible violations of the Denver Code of Ethics that are implicated by the inquiry are whether the Manager may have violated Section 2-60(a) (improper acceptance of a gift by a person in a position to take direct official action concerning the Winter Park Recreation Area) and/or Section 2-67 (use of public office for private gain).

Without any information that the Manager used any donated ski passes for personal use, there is no evidence of a violation of either of these sections of the Code of Ethics. Therefore, the Board decided to dismiss this inquiry.

The Board of Ethics, however, encouraged the Manager, if she and/or the Department of Parks and Recreation receive any type of allocation of free or reduced-price ski passes for Winter Park, to make available to the public an accounting of the distribution of all such passes. This is, in the words of Section 2-51 of the Code of Ethics, “so that the public will have confidence that persons in positions of public responsibility are acting for the benefit of the public.”

**Case 07 – 18 (subsequent employment)**

An employee of the Public Works Department requested an advisory opinion concerning possible subsequent employment. The employee received an offer of employment from a large international company. The employee would re-locate to a company office on the
East Coast. The employee had a role in negotiating one Denver contract with the company in 2005, but has not negotiated or approved any other contract with the company.

The employee agreed that, if he goes to work for the company, he would not do any work pertaining to the City and County of Denver until at least six months have elapsed from his retirement from his city job.

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

Sec. 2-64. Subsequent employment.

(a) During six (6) months following termination of office or employment, no former officer, official, or employee shall obtain employment 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.

(b) For one (1) year following termination of service with the city, no former officer, official, or employee shall engage in any action or litigation in which the city is involved, on behalf of any other person or entity, when the action or litigation involves an issue on which the person took direct official action while in the service of the city.

The purpose of this section is to avoid the actuality or appearance that employers who hire former city personnel may get special treatment.

The Board of Ethics concluded that the Denver Code of Ethics does not prohibit the employee from going to work for the company, but that, if he does so, he must not do any work relating to the contract which he helped to negotiate between the company and Denver until at least six months have expired from the date of his termination of employment with the City and County of Denver. In order to avoid the appearance of impropriety, the Board further recommended that, as he agreed, he not do any work pertaining to the City and County of Denver until at least six months have elapsed after his retirement from his city job.

Case 07 – 20 (conflict of interest)

A City Councilmember requested an advisory opinion concerning a possible vote on a rezoning matter. The Councilmember has decided to move her district office to a new location in a mixed-use development. The leasing negotiations are being conducted by the Asset Management Office of the City and County of Denver. The Councilwoman has not been personally involved in the lease negotiations. The agreed-upon lease payments will be at market rate. Payments for the lease will be from the City Council budget and will not impact the Councilmember’s personal finances.

The owner of the proposed district Council office has applied to rezone a parcel of land immediately adjacent to the proposed office space. The rezoning will likely increase the
value of the landlord’s land and probably will increase the attractiveness of the new district Council office. The Councilmember wishes to know if the Code of Ethics would require her to abstain from voting on the rezoning.

Under Colorado law, rezoning is deemed to be a quasi-judicial action.

The conflict of interest section of the Code of Ethics, Section 2-61, does not directly deal with a situation such as this. The section provides:

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

(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…

The definition of “substantial interest” does not include an arms-length landlord-tenant relationship such as that between the landlord and the Councilmember in question.

In addition, the definition of “direct official action” in Section 2-52(b) does not include voting on quasi-judicial matters such as rezonings.

The Board of Ethics concluded that the Denver Code of Ethics does not prohibit the Councilwoman from voting on a rezoning for property owned by the landlord of her city office and which is immediately adjacent to her city office. However, the Board recommended (not required) that the Councilmember should, in order to avoid the appearance of impropriety, consider abstaining from voting on the rezoning and also from taking part in the discussion at the City Council meeting or attempting to influence other City Council members regarding this rezoning application. This is due to the specific facts of this case that the applicant for the rezoning will be the landlord of the Councilwoman’s city office and her city office will be immediately adjacent to the land being considered by City Council for rezoning.

The Board also encouraged the Councilmember to consult with the City Attorney’s Office because there are a number of other factors which a Councilmember may need to consider in a quasi-judicial rezoning matter which are beyond the purview of the Board of Ethics.

**Cases 07–19, 07–21, 07–22, 07–25, 07–26, 07-45 and 07-46 (no jurisdiction)**

The Board of Ethics dismissed all of these complaints against employees of the District Attorney’s Office because the allegations of misconduct relating to the handling of criminal charges filed against the complaining individuals are not subjects covered by the Denver Code of Ethics.
Cases 07-23 and 07-24 (no jurisdiction)

These complaints by a city employee against two co-workers in the Denver County Court, which alleged various improper conduct and poor business practices such as mishandling of records and computers were dismissed by the Board of Ethics which found that none of the allegations, even if they could be proven, would be violations of the Denver Code of Ethics. The Board, however, with the complaining party’s permission, forwarded the complaints to the agency heads for review.

Cases 07-27 and 07-28 (no jurisdiction)

These complaints by two inmates of the Denver County Jail against employees of the Denver Sheriff’s Department were dismissed by the Board of Ethics. The complaints alleged that the employees unfairly and/or incompetently “wrote up” the inmates in the Community Corrections programs. The Board of Ethics decided that such issues are not regulated by the Denver Code of Ethics.

Cases 07-29 and 07-30 (no jurisdiction)

The Board of Ethics dismissed these complaints against police officers because allegations that persons have been improperly arrested or criminally charged are not subjects covered by the Denver Code of Ethics. The Board informed the complaining party of his right to file a complaint with the Office of Independent Monitor.

Case 07-31 (outside employment)

An employee at Denver International Airport requested an advisory opinion regarding the decision by the Contractor Licensing Division to deny his application to renew his HVAC supervisor certificate, which he would have needed to continue his outside employment with a private contractor, which had been approved by his city appointing authority. The Board of Ethics concluded that there would not be a conflict of interest or any other violation of the Denver Code of Ethics for him to work for that outside contractor, so long as he has written annual permission of his appointing authority. The Board, however, decided that it does not have authority to override a decision by the Contractor Licensing Division or any other city agency or to interpret or apply sections of the Denver Building Code. The Board suggested the employee might wish to ask the Contractor Licensing Division to reconsider the denial of the certificate.

Case 07-32 (outside employment; incompatibility)

An employee in the Office of the Denver Medical Examiner requested an advisory opinion. He was considering running for the elected office of coroner in a large adjoining county. If
he were to be elected, he wished to continue to work in his present full-time city job for a few more years until retirement. The Board of Ethics advised the employee that:

- He may not serve as the paid coroner in another county unless he receives written annual permission from his appointing authority pursuant to Section 2-63 of the Code of Ethics.
- The Board concluded that his current city job was incompatible with being the elected coroner in a large adjoining county in violation of Section 2-61(g) of the Code of Ethics because “one person could not do justice to the demands of the two jobs” and because Denver and the other county share a long border, “there is a risk of many conflicts of interest or issues between the two county offices when the exact place of a death, and therefore jurisdiction, may be uncertain.

Case 07-33 (conflict of interest)

A city employee who has applied for a promotion to a management position requested an advisory opinion. The employee is serving as an unpaid president of a labor union local which represents a number of employees, supervisors and managers of the City and County of Denver. He wished to know whether membership in a labor union and/or holding unpaid office in a labor union precludes acceptance of a managerial position with the city. The Board of Ethics analyzed Section 2-61 of the Denver Code of Ethics and determined that the Code of Ethics does not prohibit a city employee who is a union member or a union officer from being considered for or being promoted to a management position. The Board, however, encouraged the employee to analyze with his appointing authority: 1) whether there would be any specific situations in which the union membership or officership might become “incompatible with his duties or that adversely affect the interests of the City,” which is prohibited by Section 2-61(g) of the Code of Ethics; 2) whether the time commitments as a union officer would compromise the time commitments of the management job and 3) what should be done if the union were to initiate an effort to obtain collective bargaining rights for employees in the employee’s department (in which case, the Board suggested that he should probably resign his union officership).

Case 07-34 (conflict of interest)

An employee in the Public Works Department who is in a position to negotiate contracts and select vendors requested an advisory opinion regarding a potential conflict of interest. Her spouse is the owner of a small engineering firm, which does not have any current or pending contracts with the City and County of Denver. The Board of Ethics determined that, if she were to take any direct official action regarding her husband’s engineering company, she would be in violation of Section 2-61 of the Code of Ethics. The Board advised that, if a transaction came to her attention in which her husband’s company is involved as a contractor or subcontractor or in which she has reason to believe that his company is likely to be involved, she must abstain from any involvement in the transaction by following section 2-61(f) by:

- Disclosing the conflict to her supervisor or appointing authority
- Not taking any action regarding the transaction, including reviewing bids or other documents related to the transaction, interviewing bidders, signing any documents,
overseeing the project, etc.

• Not attempting to influence others in dealing with the transaction
• Working with her supervisor or appointing authority to ensure that the transaction is assigned to someone without conflicting interests

The Board also advised that if the engineering firm were to be hired by a contractor to be a subcontractor after a bid has already been awarded or a purchase order issued, she should also follow the steps above.

**Case 07-36 (no jurisdiction)**

The Board dismissed this complaint by a city employee against the office manager in her agency in the Department of Safety, alleging “unfair and punitive” decisions regarding compensation and leave decisions. The Board determined that these types of personnel issues are not regulated by the Denver Code of Ethics.

**Case 07-38 (subsequent employment)**

A member of the board of directors of the newly-established Denver Preschool Program (DPP), a private non-profit organization, requested an advisory opinion regarding DPP’s search for an executive director. DPP resulted from a Denver ballot issue imposing an additional sales tax to assist preschool families and programs. The two finalists for the position were both city employees and the question was whether Section 2-64(a) of the Denver Code of Ethics applied to these employees. That section provides:

**Sec. 2-64. Subsequent employment.**

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

The Board of Ethics determined that one of the finalists had no involvement in setting up the ballot issue or the programs for DPP and, therefore, would not violate Section 2-64(a) if he were to be hired as the executive director of DPP. The Board found that the other finalist had been involved as a city employee in a number of DPP activities, including staffing a DPP subcommittee which developed the job description for the executive director. The Board of Ethics concluded that these activities amounted to “direct official action” and created the potential for a violation of Section 2-64(a) if that employee were to be hired as executive director of DPP without waiting six months. The Board, however, granted the second finalist a waiver, pursuant to Section 2-54(f) of the Code of Ethics. The Board found that a waiver was in the best interests of the city for several reasons which included:

• The mission and goals of the City and County of Denver and DPP are very similar – encouragement of the young children of Denver to have high quality learning experiences. The city and DPP are not competitors in this effort, but their efforts will be complementary.
• A waiver would also enable the DPP board to be able to choose from two finalists
in the very near future, instead of being limited to one or re-opening the search process, which would likely delay the process at least for several weeks.

Case 07-39 (gifts)

An employee of the lost and found department at Denver International Airport and the DIA human resources director requested an advisory opinion concerning a gift given to the employee. The employee had assisted an airline passenger by finding and arranging to send to the passenger’s home a misplaced piece of luggage which contained medication for the passenger’s son and other valuable items. The passenger sent the employee a monogrammed heart keychain from Tiffany and Company, which the employee determined was worth approximately $95.00.

Acceptance of gifts by city employees, officers or officials is regulated by Section 2-60 of the Code of Ethics:

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

(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;

The Board of Ethics found that the employee was not in a decision-making position to take direct official action with regard to the airline passenger; nor did the passenger have “an existing, ongoing, or pending contract, business, or regulatory relationship” with the City and County of Denver.” In addition, the gift from the grateful airline passenger was unsolicited and modest in value. Therefore, the Board found that the employee would not violate Section 2-60 by accepting the gift. In addition, the gift would not be very useful to anyone else except the employee, or someone with the same initials, because the passenger had the gift monogrammed.
The Board also determined that, if DIA has a stricter ethics policy discouraging or prohibiting acceptance of any gifts by employees, an advisory opinion or a waiver from the Board of Ethics does not overrule a stricter departmental ethics policy, pursuant to Section 2-51 of the Code of Ethics. However, the Board urged individual city departments to consider the specific facts and circumstances of each case and also any findings and recommendations from the Board of Ethics.

**Case 07-40 (prior employment)**

A labor union trustee filed a complaint, on behalf of a union member, against a division manager in the General Services Department concerning issues about hiring personnel to maintain the Webb Municipal Office Building. The complaint alleged that the division manager 1) violated Section 2-62 of the Code of Ethics by hiring employees of the private management/maintenance company to take over the maintenance work on behalf of the city, since the division manager had earlier been employed by the same company and 2) unfairly denied city employees an opportunity to compete for the Webb Building jobs.

Section 2-62 provides:

**Sec. 2-62. Prior employment.**

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

The Board found that the division manager left his employment with the private company approximately one year before he hired the private company employees to become city employees. In addition, he hired individual (former) employees of the company, not the company itself.

The complaint also alleged that the division manager acted in his city job to hire many employees of his former employer to maintain the Webb Building without allowing other city employees to compete for the jobs pursuant to Career Service Authority hiring rules. However, no specific details of such unfairness were given. In addition, the Board of Ethics, in most situations, does not have jurisdiction to hear complaints or appeals regarding the Career Service Authority hiring process.

The Board of Ethics dismissed the complaint because the Board has no jurisdiction over personnel or hiring issues of this type and because there was no evidence presented of a violation of the Code of Ethics.

**Case 07-42 (gifts)**

An employee of Technology Services requested an advisory opinion. She had been invited to a conference to be conducted by a major computer software company. The City and
County of Denver uses a significant amount of software from the company and the employee is responsible for dealing with many of the applications. The employee indicated that she is not the person in Technology Services who signed or approved any contracts with company; however she will likely have a role in reviewing or recommending in favor of or against any potential renewals of contracts with the company. The company asked the employee to speak on a panel at the conference regarding Denver’s 311 program and offered to waive her conference fee, as it does for all speakers. For a non-speaker, the conference fee would be approximately $1600. A person with a pass to the conference is able to attend all conference sessions, attend exhibits and network with fellow attendees. Technology Services would pay for the employee’s hotel lodging and air-fare from its budget. The employee and also the company wished to know if acceptance of the waiver of the conference fee would comply with the Denver Code of Ethics.

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

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

(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;

(2) Any honoraria or payment for participation in an event;

The Board of Ethics determined that the employee is “in a position to take direct official action” with respect to the company by virtue of her likely role in recommending for or against renewal of a contract with the company and that “the city has an existing, ongoing, or pending contract, business, or regulatory relationship with” the company. Therefore, the employee must comply with section 2-60 of the Code of Ethics. However, the Board finds that the waiver of the conference fee does not amount to a gift as defined in Section 2-60(a), because it is “adequately compensated” for by the employee’s preparation for and participation on the panel. The Board, however, urged the employee to comply with Section 2-60 by using the conference pass for activities that would benefit the city and not for any events which involve recreation or personal gift items.

Case 07-43 (supervision of family member – waiver granted)

An employee and the human resources and operations manager in the Community Planning and Development Department (CPD) asked for an advisory opinion and/or a waiver regarding supervision of an immediate family member. The employee has worked at CPD in various capacities for several years. Her daughter was recently hired as an administrative
support assistant in CPD. CPD has asked the employee to step in temporarily to supervise/monitor the work group in which her daughter is working because the former supervisor did not pass the promotional probationary period. This would only be until a permanent supervisor is hired. Supervision of immediate family members (including daughters) is prohibited by Section 2-59(b) of the Denver Code of Ethics; however subsection (c) provides that the Board of Ethics should “not unreasonably withhold waivers:”

Section 2-59. Employment and supervision of family members

(b) No officer, official, or employee shall supervise or be in a direct line of supervision over a member of his or her immediate family. If an officer, official, or employee comes into a direct line of supervision of a member of his or her immediate family, he or she shall have six (6) months to come into compliance or to obtain a waiver pursuant to section 2-54.

The Board of Ethics found that the facts that the supervision will be temporary, the mother is familiar with the supervisory position since she held that position a year ago, the supervisory arrangement was neither arranged nor motivated by the mother or the daughter and the mother will not take any direct personnel actions regarding her daughter all indicate that a waiver (authorized by Section 2-54(f) of the Code of Ethics) would be in the “best interests” of the city. The Board, therefore, granted a waiver from Section 2-59(b) of the Code of Ethics to the employee to allow her to supervise her daughter for a period of approximately ninety days, on condition that she not take any direct personnel actions regarding her daughter.

Case 07-44 (conflict of interest – waiver granted)

Two city employees assigned to the Denver Urban Area Security Initiative (UASI) requested an advisory opinion. UASI coordinates federal homeland security programs and funds for the City and County of Denver and the Denver metropolitan area.

The employees indicated that they had ethical concerns about their continued involvement with a new non-profit program, the mission of which is to carry out citizen preparedness educational and informational activities.

One of the city employees is acting as Project Manager and Director of Training for the nonprofit and devotes approximately one-half of her city time to the nonprofit. The governing body and decision-maker for the nonprofit is a working group, comprised of representatives of member jurisdictions in the Denver region. The City and County of Denver will need to contract with the nonprofit to carry out citizen preparedness educational and informational activities. Neither of the city employees is a member of the working group and neither will be officers or board members of the nonprofit, but will serve in advisory capacities.
The ethics issue is whether or not there might be a conflict of interest between their work as city employees and their work as advisory board members or in any other role with the nonprofit. Conflicts of interest are regulated by Section 2-61 of the Code of Ethics.

The Board of Ethics concluded that their important roles in establishing the nonprofit and in obtaining federal funding for the nonprofit’s programs amount to “direct official action” as defined in Section 2-52(b) of the Code of Ethics, particularly “recommending for or against a contract.” This would normally prohibit them from taking any further “direct official action” on the city’s behalf with respect to the nonprofit, pursuant to Section 2-61(a)(5) since their work in negotiating the contract or preparing a bid, proposal, response to a request for qualifications, or similar document for another party in the matter” was more significant than a purely clerical capacity.

However, the Board determined that it was in the best interests of the city for both employees to continue to be involved in the nonprofit’s important work and therefore, the Board granted both a waiver pursuant to Section 2-54(f) of the Code of Ethics.

The Board also reminded the employees that they should not take payment from the nonprofit for any outside employment services without complying with Section 2-63 of the Code of Ethics and should not consider subsequent employment with the nonprofit without complying with Section 2-64(a) of the Code of Ethics.

**Case 07-47 (no jurisdiction)**

The Board of Ethics dismissed this complaint against an attorney in the Public Defender’s Office because Public Defenders are not subject to the Denver Code of Ethics and because the allegations of improper sentencing and/or inadequate legal representation are not subjects covered by the Denver Code of Ethics.