I. INTRODUCTION

The Denver Board of Ethics hereby submits its ninth 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 below gives brief biographies of the five members of the Denver Board of Ethics.

Three of the Board members were re-appointed in 2009 for additional 4-year terms – Leslie M. Lawson, Lori Mack and Ann A Terry.

The Board expresses its appreciation to all of the city elected officials, employees and board and commission members who have requested ethical advice or help in 2009 and for the advice and representation given to the Board by Assistant City Attorney Helen Raabe.

The Board held twelve monthly meetings during 2009. This report is a summary of the work accomplished by the Board during that time.
II. ADVISORY OPINIONS, WAIVERS AND COMPLAINTS

In 2009 the Board received and handled a total of 66 written formal cases - as compared with:

- 73 cases in 2008
- 47 cases in 2007
- 46 cases in 2006
- 46 in 2005
- 48 in 2004
- 47 in 2003
- 50 in 2002

Thirty-three of the 2009 formal cases were requests for advisory opinions and/or waivers, while 33 were complaints.

A digest of the Board’s significant 2009 opinions is attached below 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 considered in 2009 after preliminary screening and conducted a public hearing in October, 2009 on that one complaint.

Between the passage of the new Denver Code of Ethics in January 2001 and December 31, 2009, the Board of Ethics has received a total of 453 written formal cases, consisting of 263 requests for advisory opinions or waivers and 190 complaints about possible violations of the Code of Ethics. Most of the complaints received have been dismissed because the allegations relate to subjects and/or persons not covered by the Denver Code of Ethics. Examples of such dismissed cases contain allegations of police officers making improper arrests or searches or deputy sheriffs using excessive force. In such cases, the Board of Ethics encourages the complaining parties to submit their complaints to the Internal Affairs Bureaus of the Police Department or Sheriff Department.

The subjects of the requests for formal advisory opinions or waivers during this entire 2001-2009 period break down as follows, with the 2009 cases enumerated in parentheses:

- conflicts of interest – 85 (including 13 in 2009)
- gifts – 65 (4)
- travel expenses and lodging – 25
- outside employment or outside business activity – 71 (11)
- hiring of relatives – 4
- supervision of relatives – 14 (2)
• subsequent employment – 53 (3)
• use of public office for private gain – 8 (1)
• prior employment – 1 (1)
• other or no jurisdiction – 115 (35)
(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 2009 received approximately 260 telephone, e-mail or in-person requests for unofficial, informal consultation about the Code of Ethics or other ethics issues, as compared with:
• 277 in 2008
• 277 in 2007
• 254 in 2006
• 266 in 2005
• 249 in 2004
• 192 in 2003
• 130 in 2002

III. ETHICS HANDBOOK

In 2009 the 2008 edition of the Ethics Handbook was distributed to all new city officers and employees and, for the first time, to all on-call city employees.

IV. ETHICS TRAINING

The Board of Ethics continues to believe that excellent, consistent ethics training is critically important to the successful implementation of the 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 2009, 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 training in 2009 to several new Mayoral appointees and the Career Service Authority continued to give three-hour ethics training 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 trainers in individual agencies who have made this ethics training effort successful.

V. OTHER MATTERS

BUDGET

The adopted 2010 budget for the Board of Ethics is $102,500, compared to:

- $105,800 for 2009
- $94,600 for 2008
- $97,600 for 2007
- $86,700 for 2006
- $86,000 for 2005
- $82,600 for 2004
- $96,000 for 2003
- $87,300 for 2002.

STAFF

Michael Henry, the 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 2009 ACCOMPLISHMENTS

The Board devoted significant effort to:

- Reviewing the Denver Code of Ethics and making several recommendations for improvement to City Council. Most of those changes were adopted by City Council on November 30, 2009. The changes are summarized in an article published in the January 2010 Insight, reprinted as Appendix C.
- Conducting a day-long hearing on an alleged violation of the Code of Ethics and extensive preparation and deliberation

VII. 2010 GOALS FOR BOARD OF ETHICS

A. Continue To Implement and Improve Ethics Training

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 2010 continue to pursue this goal by working with all city ethics trainers to
encourage accuracy and consistency and high quality of the ethics training with cooperation from CSA and city departments.

B. **Continue to Receive, Review and Decide Expeditiously 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. Seek public comments at the meetings about ethics concerns of citizens.

c) Continue to publish digests of recent opinions of the Board of Ethics

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

D. **Work On Implementation of Executive Order 134 Regarding Gifts to the City**

a) Continue to 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.

b) Work with City Clerk’s and Mayor’s Offices to ensure that gifts to the city over $2500 are posted on a website by the City Clerk pursuant to Executive Order 134.

c) Work with City Clerk’s and Mayor’s offices to develop a uniform reporting form for Executive Order 134.

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 Complaints**

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 complaints. 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 aware of Whistle-Blower Protection Ordinance.

G. Analyze ethics-related responses to 2008 and 2010 Employee Surveys and work with Career Service Authority Training Division to assist departments and agencies if survey indicates need for improvement of ethical culture.

H. Study Code of Ethics in light of the Board’s experience and research Codes of Ethics from other jurisdictions and recommend any improvements to City Council for approval, including the recommendations from 2009 for which City Council requested further consideration.

I. Develop and implement a method to survey customer satisfaction with the Board of Ethics.

J. When the next city election takes place, sponsor or co-sponsor a forum for candidates to address ethics issues. (The Board of Ethics co-sponsored such a forum in 2003 with the city’s Diversity Committee for approximately 10 mayoral candidates. All city employees were invited and approximately 150 attended.)

K. Work with City Attorney’s Office and Career Service Authority to review City’s disciplinary process and outcomes and relationship with the Code of Ethics and Board of Ethics.

VIII. CITY GOALS

The Board of Ethics believes that its work during 2009 and its goals for 2010 support the following of the City and County of Denver’s goals:

✓ Better place to live and create jobs – by encouraging an ethical culture in Denver city government and by encouraging confidence in Denver city government among its citizens and customers
✓ Better place to work – by encouraging high ethical standards throughout city government
✓ Denver city government will live within its means – by continuing to thrive as the city’s smallest agency with the smallest budget

IX. 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 2009 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,

__________________________________
Edgar L. Neel
Chair
APPENDIX A
DENVER BOARD OF ETHICS MEMBERS

Board Members (as of January 2010)

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. He was elected chair of the Board of Ethics in May 2008.

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 and served 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. She developed an ethics curriculum for prosecutors, law enforcement and victims’ advocates. She is currently the executive director of the Special District Association for Colorado. Re-appointed by the Mayor. Term expires 4-30-2013. In May 2006 she was elected Chair of the Board of Ethics and served through May 2007. She currently serves as Vice-Chair, having been elected in May 2008.

Lori Mack earned a B.A. in Communication from the University of Colorado. She is currently the Economic Development Administrator for the City and County of Denver’s Office of Economic Development – Youth Programs. She was a fellow for the Denver Fellowship in Urban Government in the Denver Office of Accountability and Reform in 2004. During her 22 years with the City and County of Denver, she worked at Art, Culture and Film; Aviation; Excise & Licenses, and Career Service Authority. She was recently appointed to serve on the Denver Public Schools Bond and Mill Levy Committee and continues to serve on various private and public committees. Reappointed by the Mayor and City Council, her term expires 4-30-2013. In May 2006 she was elected Vice-Chair of the Board of Ethics and in May 2007 was elected Chair and served for one year.

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. Re-appointed by City Council. Term expires 4-20-2013. She served as Chair of the Board of Ethics from May 2005 through May 2006 and as Vice-Chair from May 2007 to May 2008. Due to her experience as a judge, she serves as presiding officer at hearings on complaints conducted by the Board.

Syl Morgan-Smith. Originally trained as a graduate nurse, she has past careers as a Denver television news anchor, radio producer/announcer, managing newspaper editor and Director of Communications for Rockwell International at the Rocky Flats Facility. She is now Manager of Diversity & Community Relations at the National Renewable Energy Laboratory in Golden. She is the founder and president of the Colorado Gospel Music Academy and Hall of Fame. She received the Martin Luther King, Jr., Trailblazer Award and was inducted into the Colorado Black Hall of Fame for outstanding community service. She previously served as the first civilian member of the Denver Police and Firemen’s Pension Fund board, chair of the Denver Commission on Community Relations, Board member for Denver Children’s and Spaulding Rehabilitation Hospitals, the Denver Zoo, and First National and First Interstate Banks in Jefferson County. In 1997, she founded a tutorial program at Denver Public Schools to help children with English as a second language learn to read, and is the recipient of two honorary doctorate degrees. Appointed by the Mayor. Term expires 4-30-2011
APPENDIX B
DENVER BOARD OF ETHICS
DIGEST OF SELECTED OPINIONS
January 1–December 31, 2009

PLEASE NOTE: This is a selected set of summarized opinions decided by the Denver Board of Ethics between January 1 and December 31, 2009 in response to fact-specific requests for advisory opinions or complaints. They should not be used as conclusive guidance for situations where the facts may differ. Please contact the Board of Ethics to discuss specific situations.

Cases 08–70, 08-71 and 08-72 (no jurisdiction)

A recently-retired city employee filed complaints alleging that a co-worker sexually harassed her in the workplace, that the co-worker’s supervisor did nothing regarding the allegation and that the human resources director for the agency also did nothing. The Board of Ethics dismissed these cases because: 1) the Board was not permitted to obtain access to the underlying investigations by the agency and by the Career Service Authority; 2) the alleged sexual harassment occurred more than two years earlier; and 3) the Board of Ethics has no authority to deal with allegations of sexual harassment.

Case 09 – 1 (conflict of interest)

An employee of the Department of Human Services requested an advisory opinion regarding her relationship with a non-profit organization that provides clothing to needy children, of which she was one of the founders. Many of the children were clients of DHS, such as foster children. The employee had agreed to write grant applications for the non-profit in her off-duty time. The non-profit had not received any money from DHS in the past and did not expect to do so in the future. The employee was also considering whether she could join the board of directors of the non-profit. The employee was not a decision-maker (did not have “direct official action” power) regarding any DHS grants or funds. The Board of Ethics concluded that the employee would not be prohibited by Section 2-61 of the Code of Ethics from grant-writing or board membership for the non-profit and also commended her for her volunteer service for children.

Case 09 – 2 (no jurisdiction)

A citizen filed a complaint against a city inspector who had issued him a warning notice about failure to remove snow and ice from sidewalks within 24 hours of a snowfall. The citizen said that the notice was erroneous and harassing. The Board of Ethics dismissed
the case for lack of jurisdiction and suggested that the citizen speak to the inspector’s supervisor.

**Cases 09-3 through 09-11 (no jurisdiction)**

Two former employees of Denver Water, who had recently been terminated from their employment, filed complaints against the Mayor, some members of City Council, a member of the Auditor’s staff and the members of the Board of Water Commissioners, alleging that they failed and refused to investigate and prevent corruption, waste and fraud in the nature of over-payment by Denver Water to two contractors on three major construction projects. The former employees also complained that they were wrongfully terminated by Denver Water in retaliation for “blowing the whistle.” The Board of Ethics dismissed all of the complaints because the Denver Code of Ethics does not deal with issues such as these and also because an external audit was underway by an audit firm which has the expertise, resources and jurisdiction to conduct such an audit. The Board encouraged Denver Water and the complaining parties to provide information regarding the allegations to the external auditor.

**Case 09-12 (subsequent employment)**

An employee of the Department of Environmental Health and his supervisor requested an advisory opinion and/or a waiver. The employee intended to leave city government and set up a private consulting business to provide information technology training and consulting for the federal government and local governments, including Denver, regarding a federally-designed specialized software system that the employee had used and overseen at DEH. He had not had any role in selecting or approving the software for DEH. Both the employee and the supervisor requested a waiver, if necessary, from the Board of Ethics from Section 2-64(a) of the Code of Ethics, which 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, since the employee had no “direct official action” role regarding the software during his service with the city, he would not violate the Code of Ethics by establishing a consulting business regarding the software or contracting with DEH to administer the software, without waiting six months; and, therefore, no waiver was necessary.
Case 09-13 (no jurisdiction)

A citizen filed a complaint alleging that a police officer had used unnecessary force in arresting her. The Board of Ethics dismissed the complaint because the Denver Code of Ethics does not give jurisdiction to the Board over such matters. The Board recommended that the citizen contact the Police Department’s Internal Affairs Bureau and/or the Office of Independent Monitor.

Case 09-14 (outside employment)

An employee at Denver International Airport requested an advisory opinion as to whether he could sell decorated apparel and promotional items as an outside job to employees and departments at DIA on his off-duty time. The employee had already obtained his supervisor’s approval, as required by Section 2-63 of the Code of Ethics. The employee did not have any employees under his supervision, and, therefore, would not be attempting to sell to any subordinate employees. The Board of Ethics decided that the employee would not violate the Code of Ethics by such outside employment; however, the Board recommended that the employee:

- Should not pressure any city employees to purchase from him;
- Should not use any city time or city resources for his outside business;
- Should renew his supervisor’s approval on an annual basis in the future, as required by Section 2-63 of the Code of Ethics;
- In attempting to sell to agencies at DIA or any other city agencies, he should comply with all city purchasing regulations, if any.

Case 09-15 (conflict of interest)

A division director at Denver International Airport requested an advisory opinion. Part of his job responsibility was to oversee preparation of a policy and procedure manual for the division. Before the division director began to work at DIA, the Deputy Manager of Aviation had retained an outside consulting company to draft the manuals for several DIA divisions. The division director had no role in selecting or approving the company. The company was an independently operating, wholly-owned subsidiary of a large multi-national corporation. The division director’s spouse was a vice president and general manager of the western division of the multi-national corporation, but had no connection with the subsidiary consulting company. The division director said that it was his responsibility to define and sign a statement of work for the contract and to ensure that the work is completed satisfactorily and that the company is paid. He advised the Board of Ethics that he could not delegate this responsibility to anyone else at DIA. He wished to know if this responsibility will pose a conflict of interest prohibited by the Code of Ethics, in light of his wife’s position with the parent company. The Board reviewed section 2-61 of the Code of Ethics and determined that, since the division director’s wife’s company was entirely independent of the consulting company, the Code of Ethics will not prohibit him from administering the contract.
Case 09-16 (conflict of interest)

An employee of the Office of Economic Development was on temporary assignment to work on loan to the Metro Denver Economic Development Corporation (MDEDC), part of the Denver Metro Chamber of Commerce, where she administered the Workforce Innovation in Regional Economic Development (WIRED) Initiative. WIRED is funded through a grant that the City and County of Denver received from the U.S. Department of Labor, on behalf of a nine-county region in metro Denver. The City is the fiscal agent (recipient and administrator) for the grant. The employee requested an advisory opinion on five separate questions relating to possible conflicts of interest.

The first issue was that one sub-grantee (out of 26 WIRED sub-grantees) was a client of the Denver law firm in which the employee’s husband was a partner. Her husband did some pro bono legal work for a non-profit arm of Client 1 and the firm did paid work for the for-profit arm of Client 1. The employee said that:

…Client 1 is a non-profit, but has a for-profit subsidiary. My husband does pro bono work for the non-profit arm but is supposed to be paid for the work that he does for the for-profit. Client 1, the parent, paid my husband’s law firm no monies in 2007 and 2008. My husband has assured me that he did not learn that Client 1 had sought or received WIRED funds before the fact and that he has never done any work for Client 1 associated with the WIRED grant.

The second issue was that the employee’s husband also performed pro bono legal work for another of the 26 grantees, Client 2, a non-profit associated with the University of Colorado.

In both cases, the employee advised the Board of Ethics that she recently learned from representatives of the two sub-grantee clients that her husband had represented the clients but she had not known so before. Her husband does not discuss his clients with his wife, because, as an attorney, he is bound by the confidentiality rules of the legal profession.

The third issue was that the Governor appointed the employee to the board of the community college system about a year ago. Community colleges are both WIRED sub-grantees and partners of sub-grantees in at least 11 instances.

The fourth issue was that the School of Public Affairs at the University of Colorado in Denver (SPA), which has been one of the WIRED partners from the beginning of the grant, had requested the employee to serve on the advisory board of SPA.

The fifth issue was that the employee had learned that her husband’s law firm “has recently done paid work for Metro Denver EDC and for the Chamber of Commerce, but my husband has not been the attorney in these relationships.”

The employee advised the Board of Ethics that she did “not get involved in the funding decisions” for any of the sub-grantees, with the initial funding decisions being made by
others. However, she indicated that “I approve contract modifications that do not involve granting of additional funds.” A number of her responsibilities involve administering the various grant contracts.

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

**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. A substantial interest shall be deemed to exist if:

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

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

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

(4) He or she, a member of the immediate family, a business associate or an employer is directly involved in obtaining the city's business for another party in the matter;

(5) He or she, a member of the immediate family, a business associate or an employer is directly involved in negotiating the contract or preparing the bid, proposal, response to a request for qualifications, or similar document for another party in the matter, other than in a purely clerical capacity; or

(6) A member of his or her immediate family performs more than a nominal portion of the work in the matter, or supervises or manages more than a nominal portion of the work….

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

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

The Board of Ethics concluded that the employee did take “direct official action” regarding contracts with WIRED sub-grantees because she “administers” the contracts, which is part of the definition of “direct official action” in Section 2-52(b) of the Denver Code of Ethics. However, neither her husband’s legal representation of Client 1 or Client 2 nor her husband’s law firm’s representation of the Chamber of Commerce, nor her membership on the Community Colleges Board (assuming she is not an officer of the board), nor her possible membership on the advisory board of the School of Public Administration amounted to a “substantial employment, contractual or financial interest” as defined in 2-61(a). Neither the employee’s husband nor his law firm did any of the work for any of the clients regarding applying for or negotiating the WIRED grants, therefore, the Board concluded there was no violation of 2-61 (a) (5) or (6). The Board also recognized that neither the employee nor her husband financially profited from the free legal work that he did for his clients.

The Board of Ethics found that the employee had not violated Section 2-61 and that she should be commended for disclosing these issues and requesting this advisory opinion and that her husband and his law firm should be commended for performing pro bono work for non-profit organizations.

The Board, however, recommended that the employee should consider declining membership on the advisory board of the School of Public Affairs (or any other board relating to partners or grantees of WIRED), in order to minimize any additional overlapping and inter-connected responsibilities that might give the appearance of a conflict of interest. The Board also advised that she should not allow herself to be elected an officer of the Community Colleges Board, because that would cause a violation of 2-61(a)(3) as long as she administers the WIRED grants. The Board also recommended that, if Client 1 or Client 2 substantially increases its role with WIRED in the future, she should request further advice from the Board of Ethics and/or consider abstaining from administering any transactions with that entity and/or ask her husband to decline further representation of that entity.

**Case 09-17 (outside employment)**

A police officer requested an advisory opinion as to whether he could establish an outside business in which he would provide security services outside the City and County of Denver. The Board determined that, so long as the officer’s appointing authority approves the outside business activity and renews the approval on an annual basis, as
required by section 2-63 of the Code of Ethics, such outside business activity would be permitted by the Code of Ethics. The Board also recommended that:

- He should not engage in outside security activity within the City and County of Denver (which might have the appearance of a conflict of interest)
- He should not use his city workplace or city equipment or his police uniform for his outside business, including performing security work or meeting with prospective clients

**Case 09-18 (gifts)**

A police captain, on behalf of the Chief of Police, requested an advisory opinion. The Chief wished to request donations from the public (particularly businesses) to pay for the production of medallions by a private vendor to commemorate the service of law enforcement officers from Denver and 57 other governmental jurisdictions in Colorado who worked in various capacities during the Democratic National Convention in Denver in August 2008. The Chief proposed sending a letter to potential donors to request donations to the Denver Police Department, which would be placed in a city fund designated to receive gifts to the Police Department.

The Board of Ethics analyzed whether the Chief (or any other city employee or officer) may solicit donations to the Denver Police Department to cover the production of the medallions. Solicitation of gifts 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;...

c) **It shall not be a violation of this article for an officer, official, or employee to solicit donations to the city** or to solicit or redirect donations for charitable purposes to a 501(c) or other charitable organization or to provide assistance to individuals affected by illness, crime or disaster or who have educational or other charitable needs, provided that solicitation and financial records are maintained and provided that the soliciting person, or a member of the soliciting person's immediate family does not keep or use the gift or receive any monetary benefit therefrom… (emphasis added).
Since Section 2-60(c) specifically allows city personnel to “solicit donations to the city,” the Board of Ethics determined that the Chief of Police (or any other city employee or officer) is not prohibited by the Code of Ethics from soliciting donations to the Denver Police Department to pay for the commemorative medallions.

Nevertheless, the Board of Ethics suggested that the Police Department should consider whether it might be preferable for the private Police Foundation to solicit and receive the donations for the production of the medallions, which would avoid the appearance that public city funds are being used to benefit a partisan political event (the Democratic National Convention).

The Board also recommended that any solicitation (including any follow-up solicitation by police personnel) should not be done by officers who have direct-official action power over the potential donor. The definition of “direct official action” in Section 2-52(b) of the Code of Ethics includes “enforcing laws.” The Board of Ethics encourages any representatives of the Police Department to avoid the appearance of impropriety by not soliciting from any persons or entities over which they may have direct official action authority, such as individuals or businesses in police districts over whom they would have power to enforce the law, or vendors over whom they might have authority to approve or recommend or negotiate a contract or purchase order. The Board also encouraged them not to solicit contributions from anyone in person while they are in uniform.

The reasoning for these suggestions is so that the individuals or entities and the public should not have any belief that the individuals or entities may receive favorable treatment from the police if they make a donation or may receive unfavorable treatment if they do not. The Board also urged the Police Department to note that Section 2-60(c) requires that “solicitation and financial records are maintained and provided that the soliciting person, or a member of the soliciting person’s immediate family does not keep or use the gift or receive any monetary benefit therefrom....” The Board also reminded the Department that, if the donations are made to the Police Department, the Department must comply with Executive Order 134, which requires disclosure to the Clerk and Recorder of gifts to the city over $2500.

Case 09 – 19 (conflict of interest)

A sergeant in the Police Department, who is considering being a candidate for sheriff of a Colorado county approximately 100 miles from Denver in the November 2010 election, requested an advisory opinion as to whether being a candidate for sheriff would violate the Code of Ethics. He said that, if elected, he will retire from the Denver Police Department.

Section 2-62(g) of the Denver Code of Ethics says that “no officer, employee or official may have any other employment or position which is incompatible with his or her duties or that adversely affect the interests of the city.”
The Board of Ethics determined that there is nothing incompatible between being a candidate for sheriff of another county some distance from Denver and being a Denver police officer. Further, the Board decided that such a campaign would not adversely affect the interests of the City and County of Denver, as long as he would be able to take leave or vacation or off-duty time to campaign and as long as he retires if he is elected. The Board also recommended that he should not campaign in his Denver police uniform or use city time or resources to campaign.

**Case 09-20 (no jurisdiction)**

A recently-terminated project employee in the internal audit department of Denver Water filed a complaint against her supervisor, claiming that he wrongfully terminated her for insubordination after she requested him to remove her name from reports related to a major construction project that she disagreed with. The Staff Director of the Board of Ethics dismissed the complaint because the Denver Code of Ethics does not give jurisdiction to the Board of Ethics to review or act upon complaints against persons who are not elected officials or city employees or board or commission members of the City and County of Denver. Denver Water, which is not a part of the City and County of Denver government, is an entirely separate and independent entity which is not subject to the Denver Code of Ethics. The Staff Director, however, forwarded a copy of the complaint to Denver Water and to Denver Water’s external auditor.

**Case 09-21 (outside employment, conflicts of interest)**

An aide to a City Councilmember requested the Board of Ethics to consider if outside employment by the aide would violate the Code of Ethics. The aide wished to work on a one-month consulting contract for a public relations firm that represents a national company intending to open a new charter school in Denver. Under her contract, the aide would formulate a plan to recruit students and recruit campaign staff and plan for their contact with students and families and media communications.

Neither the public relations company nor the national firm has any contracts with the City and County of Denver or are pursuing any such contracts. Any contracts that the national firm has or would be pursuing in Denver would be with Denver Public Schools, which is an entirely separate entity from the City and County of Denver.

Section 2-63 of the Denver Code of Ethics requires that any city employee wishing to engage in outside employment or outside business activity must obtain written approval from her or his appointing authority.

In addition, Section 2-61 of the Code of Ethics prohibits a city employee from “taking direct official action” (the definition of which in Section 2-52(b) includes recommending or doing research for the approval or disapproval of contracts) if an outside employer is the other party in the matter. City Council must approve major contracts (over $500,000). As noted, however, neither the public relations company nor the national firm is pursuing a contract with the City.
Based upon the understanding that neither the public relations company nor the national firm has any contracts with the City and County of Denver or are pursuing any such contracts and if the Councilmember approves the aide’s outside employment on this project, the Board of Ethics determined that the aide will not violate the Code of Ethics by taking this outside consulting job.

The Board also recommended that:
1. if the aide wishes to engage in any other consulting work, she should present a new and specific request for approval by the Councilmember and should feel free to bring another request to the Board of Ethics, since each consulting contract may have different implications;
2. she should not do any consulting work on her city time or with any city resources.

Case 09 -22 (gifts)

A Division Chief in the Police Department was assigned to coordinate the security needs for Sportaccord, an event held in Denver in March 2009 called Sportaccord, a 5-day gathering of 1,500 leading representatives from international sport. The convention is held in a different country each year and encompasses over 100 international sports federations and their related associations.

The Division Chief says that he “identified the off-duty coordinators for the identified venues and coordinated their efforts. My involvement consisted of staying in contact with the off-duty supervisors daily and to ensure the security needs were being met.” He indicated that, about a week after the event, he received a gift-wrapped box which contained a pair of cuff-links bearing the insignia of the International Olympic Committee from a staff member of a high official of the IOC, who had returned to France.

The Division Chief requested an advisory opinion from the Board of Ethics about whether he could keep or use the cuff-links.

The acceptance of gifts by Denver city personnel is regulated by Section 2-60 of the Code of Ethics, the pertinent parts of which are:

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:

(3) Nonpecuniary awards that are publicly presented by an organization in recognition of public service if the award is not extraordinary when viewed in light of the position held by the recipient;...

(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;...

(6) Gifts while visiting other cities, counties, states, or countries or hosting visitors from other cities, counties, states, or countries when it would be a breach of protocol to refuse the gift...

The Board of Ethics determined that the Division Chief’s role in “coordinating security” did not amount to “direct official action,” as defined in Section 2-52(b) of the Code of Ethics, because the city was not “a party” to the contracts for security between the event organizers and the individual off-duty Denver police officers, who received their pay directly from the event organizer. However, even if he was involved in “direct official action,” this situation would qualify as an exception under Sections 2-60(b)(3) (unsolicited non-pecuniary gift in recognition of public service) or (2-60(b)(6) (gift while hosting visitors from other countries, where it would be a breach of protocol to refuse the gift).

The cufflinks were unsolicited, were apparently of modest value (although probably worth more than $25.00) and were given in appreciation after the event had already occurred, with no motivation to curry special treatment or favor by the Division Chief. The Board of Ethics determined that, under the specific circumstances of this case, it would not violate the Denver Code of Ethics for the Division Chief to accept this gift of cufflinks and to use them as he sees fit.

Case 09-23 (outside employment, conflict of interest, prior employment)

The Project Coordinator of Denver’s Road to Work in the Denver Department of Human Services (DHS) requested an advisory opinion. She has been employed by DHS since January 2009. Before she joined DHS, she had been employed for three years by a Massachusetts and New York-based consulting company. Before coming to work for DHS, she had planned and been scheduled to work on 2 separate consulting projects for
the consulting company: The employee wished to finish out these 2 projects for the consulting company during her personal time.

The same consulting company has a 6-month $35,000 contract with the City and County of Denver through DHS, executed on March 10, 2009, to evaluate a federal grant program called Projects With Industry (which is associated with the program that the employee works with – Denver’s Road to Work). She indicated that she will not sign off on the evaluation of that contract between the consulting company and DHS; however, as Project Coordinator of Denver’s Road to Work, she will review all of the data generated by the project, will make recommendations to her supervisor about the evaluation and will prepare reports from DHS to the .federal government about Projects With Industry.

The first issue involved outside employment. The Board of Ethics advised the employee that she would need to obtain written approval of any outside employment projects from her appointing authority, pursuant to Section 2-63 of the Denver Code of Ethics.

The second issue involved conflicts of interest. Conflicts of interest are regulated by section 2-61 of the Code of Ethics:

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

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

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

The Board of Ethics determined that, if the employee had no role in taking “direct official action” in her DHS job regarding the DHS contract with the consulting company, she would not be involved in a conflict of interest prohibited by section 2-61. However, the Board, concluded that she currently does “take direct official action” concerning the DHS contract with the consulting company. The definition of “direct official action” in section 2-52(b) of the Code of Ethics includes the following:

(b) **Direct official action** means any action which involves:

(1) Negotiating, approving, disapproving, administering, enforcing, or recommending for or against a contract... grant, or other similar instrument in which the city is a party. With regard to "recommending," direct official action occurs only if the person making the recommendation is in the formal line of decision making...
(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. (emphasis added)

Therefore, the Board concluded that the employee’s administration and/or recommendation for approval or disapproval of the continuation of the DHS contract with the consulting company would cause her to be engaged in a conflict of interest prohibited by Section 2-61(a)(1).

The third issue concerns prior employment. Section 2-62 of the Code of Ethics which relates to former employers (the consulting company, in this case):

**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 concluded that the employee would violate Section 2-62 if she were to take direct official action through administering the DHS contract with the consulting company until at least six months have expired from the date of the termination of her contract with the consulting company.

**Case 09-24 (subsequent employment)**

A program administrator was hired by the Department of Environmental Health in April 2006 after a federal grant was funded for a health-related program. The 3-year grant expired in February 2009; however, one additional year of funding was approved. The employee tendered her resignation from DEH, which will be effective May 15, 2009. Her supervisor, was considering hiring her on a part-time contract basis through January 2010 “to provide continuity and advance DEH’s ability to meet the grant obligations…” The employee requested an advisory opinion to determine whether such contract employment by DEH would violate Section 2-64(a) of the Code of Ethics, which 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 (emphasis added).

In a number of earlier cases, the Board of Ethics has advised that a contract with a city department by a former city employee does not violate 2-64(a), for example, Case 06-26.
The Board of Ethics determined that since her post-city-employment contract would be with a city department, it would not violate either the letter or the spirit of Section 2-64(a) of the Denver Code of Ethics.

**Case 09-25 (conflict of interest)**

An employee of the Office of Internal Monitor (OIM) was considering applying to be a member of the 19-member Colorado Peace Officers Standards and Training (POST) board, appointed by the governor. She would apply for the one “citizen” position on the POST board. All of the board positions are unpaid and the board meets on a quarterly basis. The purpose of the board is to establish and maintain standards for peace officers’ training and certification.

The mission of OIM is to:

provide fair and objective oversight of the Denver Police and Sheriff’s Departments. The Monitor’s mission is directed at transparency and accountability in order to ensure public confidence in Denver’s sworn Safety personnel and the policies which govern them.

The OIM is responsible for:

1. Actively monitoring and participating in investigations of sworn personnel in the City and County of Denver’s Police and Sheriff Departments;
2. Making recommendations to the Manager of Safety, Chief of Police and Director of Corrections (who are responsible for discipline within the departments) regarding administrative action, including possible discipline for such uniformed personnel; and
3. Making recommendations regarding broader policy issues.

Since positions on the POST board are unpaid, the employee would not be required to obtain written permission for “outside employment or business activity” by Section 2-63 of the Code of Ethics, although she indicated that she has consulted with her appointing authority about this.

The Board of Ethics determined that, in her position at OIM, she does not have any “direct official action” power as defined in Section 2-52(b) of the Code of Ethics; therefore, she would not be prohibited from serving on the POST board by the conflict of interest section of the Code of Ethics, 2-61, the key provision of which is:

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

(a) …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…
In addition, subsection 2-61(g) provides:

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

The Board of Ethics determined that it would not violate the Code of Ethics for the employee to serve on the POST board. Further, the Board concluded that there would not be any incompatibility with her city duties or that it would adversely affect the interests of the city. Finally, the Board urged the employee, if appointed to the POST board, to recuse herself from any votes to certify a Denver police academy class or to de-certify any Denver police officer (which she had agreed to do), which could pose a conflict of interest.

Case 09-26 (no jurisdiction)

A citizen filed a complaint concerning an investigator for the Denver District Attorney’s Office for communicating to the citizen the decision by a Chief Deputy District Attorney that the office would not investigate or prosecute a case of what the citizen believed was criminal mortgage fraud. The complaint was dismissed by the Staff Director of the Board of Ethics because employees of the District Attorney’s Office (who are state employees) are not subject to the jurisdiction of the Denver Board of Ethics and because the Board of Ethics has no authority to second-guess decisions whether or not to investigate or prosecute. The Staff Director also encouraged the citizen to communicate with the Colorado Division of Real Estate and the Colorado Department of Public Safety.

Cases 09-27 and 09-28 (no jurisdiction)

A city employee filed complaints against her immediate supervisor and a division manager in the Denver County Court for issuing her a written disciplinary reprimand. The Board of Ethics dismissed the complaint because it was a personnel issue, over which the Board has no jurisdiction. The Board advised the employee that personnel issues of this sort can more appropriately be dealt with through the Career Service Authority grievance/appeal process or mediation process.

Case 09-29 (no jurisdiction)

A citizen who had his automobile impounded in the Denver Vehicle Impound Lot filed a complaint concerning the investigating detective, saying that that the affidavit filed by the detective was “inaccurate” because it misspelled the citizen’s last name and because it wrongly indicated the name of a co-owner of the vehicle. The Board of Ethics dismissed the complaint because the Denver Code of Ethics does not prohibit “inaccuracy” and advised the citizen that he can raise these issues with an attorney and/or a court and/or the Manager of Safety.
Case 09-30 (no jurisdiction)

A citizen filed a complaint concerning the Denver Photo Speed Enforcement Program, after having received two tickets in the vicinity of schools during school hours. She stated that the program is “a badly-run revenue device having nothing to do with children’s safety…an abomination and a very serious ethical problem.” The Staff Director of the Board of Ethics dismissed the complaint because the Denver Board of Ethics only has authority to review complaints which 1) concern specifically-identified City and County of Denver employees, elected officials or board or commission members and 2) relate to the specific subjects contained in the Denver Code of Ethics. He also advised the complaining citizen that she has the right to appear in court and present her facts and arguments about the cases to an Assistant City Attorney and/or a County Court judge or magistrate and to present her ideas to the police captain who supervises the program.

Case 09-31 (conflict of interest)

The Staff Director of the Denver City Council requested an advisory opinion, on behalf of City Council, to determine if there is a conflict of interest or other Code of Ethics provision that prohibits City Council members from individually purchasing city bonds from the Better Denver bond issue, which was approved by the voters in November 2007. She indicated that “the purchase would be made at the same time and under the same conditions that all other retail bond purchasers would be purchasing them” and also indicated that the bond dealers selling the Better Denver bonds were selected through a request for proposals issued by the Treasury Department and were not selected by City Council.

Section 2-61(d), part of the conflict of interest section of the Code of Ethics, provides:

(d) An officer, official, or employee may acquire an interest in bonds or other evidences of indebtedness issued by the city or the board of water commissioners so long as they are acquired on the same terms available to the general public.

Therefore, the Board of Ethics concluded that the Code of Ethics specifically allows City Council members to purchase the Better Denver bonds or any other General Obligation bonds as long as they are acquired on the same terms available to the general public.

Cases 09-32 and 09-33 (no jurisdiction)

A Denver citizen filed complaints concerning a case-worker and the case-worker’s supervisor at the Department of Human Services (DHS). The complaining citizen said that she had been receiving food stamps from DHS for herself and her children. In her written complaint, filed on May 26, 2009, she said:
I realized that I had no food stamp benefits on my…card. I called on May 8 to request my caseworker…to return my call. I was informed by the customer service rep that my caseworker had 4 business days to call me back. On May 15th, my caseworker still had not returned my call…I then requested to have her supervisor, to return my call. I was told by the rep that she had 2 days to call me back. On May 19, no one had still returned my call. I called the call center on this date and I explained what was going on and that I was homeless and my kids had no food to eat. The call center transferred me to the supervisor. I left a message personally on her voice-mail. Still no return call from either…

The Staff Director of the Board of Ethics tried several times to telephone the supervisor on May 26, 2009, following receipt of the complaints, but the recorded announcement said “all circuits are busy. Please try again later.” The complaining citizen advised the Board’s Staff Director that she then made 2 trips to DHS to leave requested documents; however, the documents were lost at least once by the DHS.

The Board of Ethics determined that, although the situation is very regrettable, the very poor communication by DHS did not violate the Denver Code of Ethics. The Board dismissed both of the complaints because a) the Board lacked jurisdiction and 2) the allegations, if true, would not violate the Code of Ethics.

The Staff Director of the Board of Ethics, however, had discussions with the Deputy Manager of DHS, who apologized for the poor communications that the citizen had with the Department concerning her food-stamp benefits and assisted in putting her in direct contact with the supervisor in order to expedite the decisions regarding her food-stamp benefits. The Board of Ethics advised the citizen that it believes and hopes that DHS will be able to use her situation as an educational example of how the Department can improve its communications.

**Case 09 – 34 (no jurisdiction)**

An employee of the Department of Human Services filed a complaint concerning his supervisor, alleging that she had harassed him over trivial issues in retaliation for his complaining about what he considered unethical conduct. The Board dismissed this complaint because harassment and retaliation are personnel issues that are not covered by the Code of Ethics.

**Case 09 – 35 (use of public office for private gain)**

An employee of the Department of Human Services filed a complaint concerning a supervisor (although not his direct supervisor) who had borrowed $967 to pay some of her personal bills and had failed to repay any of the debt to him after seven months had elapsed.

After a public hearing, the Board determined that the person’s borrowing of a substantial amount of money from an employee at a subordinate level and, in particular, the failure
to repay the amount over a lengthy period of time, despite a request from the employee, violated Section 2-67 of the Code of Ethics:

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

No officer, official or employee shall use his or her public office or position or disclose or use confidential information in order to obtain private gain for himself or herself…

The Board recommended that the appointing authority determine appropriate discipline and a corrective plan.

**Case 09 – 36 (outside employment, conflict of interest)**

A service maintenance electrician at Denver International Airport requested an advisory opinion. A company which has a contract with the city to install runway guard lights and fiber-optic improvements at DIA or one of its sub-contractors had offered to hire the employee to work approximately 20 hours per week as one of its three inspectors for this work, which will last approximately 200 days. The employee would also train workers on the job and enforce safety procedures.

The employee advised the Board of Ethics that:
- He had no role whatsoever in selecting or approving the contractor or the sub-contractor for the contract or sub-contract;
- He understands that he would have to do any outside work on his own time and not use any city resources;
- It is not part of his regular city job duties to inspect any construction or electrical work at DIA; and
- His DIA supervisor had approved this outside employment.

Any outside employment must be approved by an employee’s appointing authority, pursuant to Section 2-63 of the Code of Ethics. Assuming that the appointing authority has approved, the only other issue is whether there is any conflict of interest or incompatibility between the employee’s DIA job and his proposed outside employment. The Board of Ethics determined that the employee will not violate Section 2-61 of the Code of Ethics regarding conflict of interests under the conditions described above.

The Board, however, encouraged the employee to have a discussion with the outside employer to clarify that he will be able to report any problems that he may find with the electrical work to DIA and/or the Federal Aviation Administration, if any such problems are not adequately remedied by the contractor or sub-contractor.
Cases 09–37, 09–38, 09–39, 09–46, 09–51, 09-53, 09–60 and 09-61 (no jurisdiction)

Citizens filed complaints against various police officers or deputy sheriffs or Animal Control officers, alleging excessive force and/or other unprofessional misconduct. The Board dismissed all of these cases because the Denver Code of Ethics does not govern such issues and recommended that the complaining parties direct their complaints to the appropriate appointing authorities or to the Internal Affairs Bureaus for the Police Department or Sheriff Department or the Office of the Independent Monitor.

Case 09-40 (outside employment)

A technician in the Police Department who has been a Police Department firearms and tactical instructor requested an advisory opinion regarding his proposal to engage in outside/secondary employment to teach private firearms classes. He agreed that he would conduct the classes and all class-related work in his off-duty time and that he would not wear his police uniform in class or in soliciting business for the classes and that he would not use any logo or other information identifying him as a member of the Denver Police Department.

The Board decided that, so long as he obtains his appointing authority’s permission, pursuant to Section 2-63 of the Code of Ethics and so long as he does not use any city time or resources or reference his DPD job, he will not violate the Code of Ethics by engaging in this outside employment. The Board has also determined that, so long as he complies with these conditions, this proposed outside job will not violate Section 2-61 of the Code of Ethics or Section 1.2.8 of the City Charter related to conflicts of interest.

Case 09-41 (conflicts of interest)

The Director of Risk Management requested an advisory opinion. This case arose when the Board of Ethics received a communication from a member of the Sheriff Department who was involved in selecting and purchasing furniture and equipment for the Sheriff Department for the new Justice Center. The Sheriff Department requested a review by Risk Management of chairs for possible purchase to ensure that the chairs meet the ergonomic needs of the city. A Risk Management employee brought a private ergonomic consultant that works with Risk Management to review some of the chairs. The consultant advised the Sheriff’s representative that he did not think the chairs under consideration fit the city’s ergonomic needs. The Sheriff’s representative asked if the consultant could recommend a chair. The consultant did recommend a chair and brought a sample. When the Sheriff’s representative asked who to work with to purchase the chairs, the consultant said that he was the representative for the distributor of the chair that he recommended. That chair was not selected for purchase.

Risk Management uses the consultant’s services in two areas:
➢ As a consultant, when injuries to City employees occur and the potential cause may be ergonomic, physicians request an ergonomic review from the consultant, who makes recommendations which may include a variety of products, which are purchased by the agency. The consultant does not provide products in this situation.

➢ When a Risk Management staff person performs a preventive ergonomic evaluation and recommends specific products to the city agency, one of which products happens to be provided through the consultant. She recommends this product, a keyboard holder, because in her professional opinion it is the best available. The consultant does not participate in these ergonomic evaluations.

The Risk Management staff person indicated that the consultant “did not have his consulting hat on” when he looked at the chairs that the Sheriff Department was considering and that he was helping her only as a professional courtesy to her.

The Board of Ethics does not have jurisdiction to regulate city consultants or vendors. However, in this case, Risk Management and the Sheriff’s representative appropriately recognized that there might be a conflict of interest or an appearance of a conflict by the consultant and requested an advisory opinion to help minimize such problems in the future. The Board of Ethics recommended that:

- Risk Management might consider negotiating a written agreement or contract with the consultant, so that the parties can more clearly understand the relationship between the city and the consultant;
- Risk Management should not allow this consultant or any other consultant to play two roles in the same transaction by, on one hand, consulting about the suitability of any furniture or equipment and, on the other hand, recommending a product on which it would earn a commission or other compensation, which would be a conflict of interest.

**Case 09 – 42 (conflict of interest)**

An elevator inspector in the Community Planning and Development Department (CPD) requested an advisory opinion. In 2007 the Colorado legislature decided that the state government would take jurisdiction over the regulation and inspection of elevators, escalators, moving-sidewalks and other “conveyances” in both publicly-owned and privately-owned facilities. As a result, the City and County of Denver discontinued its city-operated conveyance inspection program effective December 31, 2009.

As of January 1, 2010, the inspector was to be transferred to an electrical inspector position within CPD. The inspector learned that the Purchasing Division, which issues many requests for proposals (RFPs) or bid requests on behalf of many city departments, issued an RFP for “conveyance inspection services” for city-owned conveyances.
The inspector and his wife formed a private inspection company and submitted a response to the RFP. They planned to employ two sub-contractor inspectors. The inspector would only do this outside work in his off-duty time.

Any outside employment by a city employee must be approved in writing by his or her appointing authority, pursuant to Section 2-63 of the Code of Ethics. One of the major considerations by the appointing authority would presumably be whether the inspector can adequately perform the city’s 40-hour-per-week work as well as the outside job.

Assuming that the appointing authority will approve, the next question is whether there is an impermissible conflict of interest or incompatibility with the inspector’s city job that would violate Section 2-61 of the Code of Ethics or Section 1.2.8 of the City Charter.

The Board of Ethics noted that House Bill 1151 of 2007, which regulates conveyance inspectors and inspections, provides the following definition:

**Colorado Revised Statutes 9-5.5-103 (20) “Third-party conveyance inspector”**

means a disinterested conveyance inspector who is retained to inspect a conveyance but is not employed by or affiliated with the owner of the conveyance …(emphasis added).

Therefore, the Board of Ethics determined that the inspector’s or his company’s work as a third-party conveyance inspector for city-owned elevators would appear to violate the statutory definition of that term. As a result, the Board found that such an outside job would be incompatible with his city duties, which would be in violation of section 1.2.8 of the City Charter and also Section 2-61(g) of the Code of Ethics.

**Case 09-43 (outside employment)**

A police officer requested an advisory opinion. He proposed to sell new and used firearms from his home in a suburban town. He indicated that he has a federal firearms dealer license and also a local home occupation license. He also said that there are no zoning regulations in the town that would prevent him from selling firearms from home.

Section 2-63 of the Denver Code of Ethics requires that a city employee must obtain written approval for any outside employment or outside business activity. The Board advised the officer that “if you obtain such approval, the Board of Ethics does not find any conflict of interest or incompatibility between your city job and your proposed outside business activity. However, please understand that the Board of Ethics is not in any position to investigate or opine as to whether this proposal complies with federal, state or city legislation or regulations pertaining to firearms sales.”

The Board advised the officer that, so long as he obtains written permission, renewed annually, from his appointing authority, he is not prohibited from engaging in this outside business activity. However, the Board recommended that, in order to avoid any appearance of impropriety, he should:
• Not identify himself in any way as a police officer in advertising or conducting his outside business;
• Not use any city resources, such as city time, city computers or copiers, in the outside business;
• Ensure that the business will comply with all federal, state and local legislation and regulations regarding firearms sales;
• Take great care to minimize risk of theft or accidental discharge or other dangers that may be related to the sale of firearms or the storage or transportation of firearms.

Case 09 – 44 (outside employment, conflict of interest)

A planner in the Office of Economic Development (OED) requested an advisory opinion. As part of her city job, she prepares environmental and/or historical reviews for projects in Denver in which funds have been awarded by the federal Department of Housing and Urban Development. She wished to set up an outside business in which she would use her expertise to consult with and provide similar reviews for non-Denver jurisdictions or developers on weekends or evenings.

She indicated that her role in Denver is and for any other entity would be only as a researcher, not a decision-maker and that she would research projects, if requested by a government entity or a private developer, only after federal funds have been tentatively awarded. In other words, her clients would not be competing with the City and County of Denver for the same funds.

The Board of Ethics determined that the first issue is that Section 2-63 of the Denver Code of Ethics requires than any city employee wishing to engage in outside business activity must first obtain written approval from her or his appointing authority and renew that approval on an annual basis. The second issue is whether any conflict of interest or incompatibility exists between her city job and her possible outside business. In light of the fact that Denver would not be in competition for the same funds as the outside clients, the Board concluded that there is not a conflict of interest or incompatibility that would violate Section 2-61 of the Code of Ethics or Section 1.2.8 of the City Charter. The Board also recommended that the employee not use any city resources in her outside business activity.

Case 09 – 45 (outside employment, conflict of interest)

An employee in the Office of Economic Development (OED) requested an advisory opinion. She said that “I am front-line staff in the Business Assistance Center, where I communicate the regulatory requirements for starting and running a business…” The employee indicated that she recently applied for a position and has been accepted as the “small business examiner” for a local private website. She said that the website “hosts articles about hundreds of topics in any given city” and that:
As the Small Business Examiner, I would like to write brief articles about common subjects that come up in my capacity in the OED Business Assistance Center. For example, how to market your business online, why artists should write business plans for their projects, how to find the right trade and networking organizations for your business, et cetera—the subjects I plan to write about are outside of the scope of what OED addresses.

The Board of Ethics reminded the employee that Section 2-63 of the Denver Code of Ethics requires that any city employee wishing to engage in paid outside business activity must first obtain written approval from her or his appointing authority. The Board then reviewed Section 2-61 of the Code and concluded that, if the employee limits herself to topics of general interest to businesses or prospective businesses, there would not be any conflict or incompatibility between her city job and her outside business activity.

The Board also reviewed Section 1.2.12 of the Denver City Charter, which provides:

> No official or employee shall solicit or receive any pay, commission, money or anything of value or derive any benefit, profit or advantage, directly or indirectly, for the performance of official duties except lawful compensation or salary as such officer or employee.

The Board advised the employee that, if she were to publish and be paid for items that she or someone else at OED had already written to assist businesses as part of city work, that would probably violate the above charter provision. However, if she used her own time to prepare the items, it would not.

The Board of Ethics determined that the employee’s proposed business activity will not violate the Code of Ethics or the charter, so long as:

- She obtains written permission from her appointing authority, which must be renewed annually, if she is to receive any payment;
- Her website writings do not negatively impact a business that OED is trying to assist;
- She writes the material that she publish on her own time if she is to receive any payment;
- She will not publish on the website any material prepared for OED purposes.

In addition, in order to avoid the appearance of impropriety, the Board recommended that she should not use any city resources, such as computers, paper, etc., in the outside business activity.

**Case 09 – 48 (subsequent employment)**

The Director of one division in the Office of Economic Development (OED) requested an advisory opinion. She had been offered a job as Vice President and General Manager of a Denver company to commence in the near future (before six months had expired).
The City and County of Denver had entered into three contracts, beginning in 2007, to pay approximately $3 million to the company, initiated by OED. The Director, however, had no role whatsoever in negotiating, approving, recommending or administering any of those contracts. Those contracts were negotiated and approved and administered by and any potential renewals or new contracts with the company will be negotiated and approved and administered by other executives in OED. The contracts with the company in question “reside” in an entirely separate division from her division of OED.

Subsequent employment for city employees or officers is governed by Section 2-64(a) of the Code of Ethics:

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. (emphasis added)

The definition of “direct official action” is as follows:

Section 2-52 (b)  Direct official action means any action which involves:

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

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

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

The Board of Ethics determined that, because the Director did not have any direct official action involvement with the company in question, she would not violate Section 2-64(a) of the Code of Ethics if she begins to work for the company without waiting for six months after the end of her employment with OED.

Case 09 – 49 (conflict of interest)

The Mayor appoints and the City Council confirms the members of the board of the Denver Housing Authority (DHA), which is responsible for development, management
and the maintenance of low-rent housing projects for families of low and moderate income. The Mayor wished to appoint a candidate to the DHA board who is a senior vice president of a major investment banking company in Denver. That company has been periodically hired in the past by the City and County of Denver, for various investment banking projects, including bond projects; however, the company has never been hired by DHA, which is a separate entity from the City and County of Denver, and has no current intention of doing any work for DHA.

Even though DHA is not an agency or department of the City and the Code of Ethics does not apply to its employees or officials, the Board of Ethics has adopted a goal to offer to independent agencies, such as DHA, assistance in training and/or dealing with requests for advisory opinions and complaints in order to foster ethical consistency between the city and the several independent agencies.

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

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. A substantial interest shall be deemed to exist if:

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

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

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

The Board of Ethics advised the candidate and the Mayor’s Office that DHA board members are not subject to the Denver Code of Ethics. However, if DHA board members were subject to the Denver Code of Ethics and the candidate were appointed and confirmed as a DHA board member, he would be able to serve, but he would be required
to abstain from taking any direct official action regarding the investment banking company which is his employer, if the company were to seek or obtain any type of contract with DHA and he should follow the other requirements of 2-61(f) of the Denver Code of Ethics. The definition of “direct official action” in Section 2-52(b) of the Denver Code of Ethics includes “negotiating, approving, disapproving or administering or recommending for or against a contract…”

**Case 09 – 50 (conflict of interest)**

A Mayoral appointee who is the Executive Director of a city agency announced her candidacy for a seat in the Colorado legislature. She requested an advisory opinion to determine if the Denver Code of Ethics will allow her, if elected, to serve in the legislature. She wants to continue to serve as a city employee, if elected. The legislature is generally in session each year from the beginning of January through the first week in May. Some legislators serve on committees that meet periodically through the rest of the year. Occasionally, the Governor calls a special session, in which case the legislature would be in session for some additional weeks.

The Board of Ethics determined that a City and County of Denver employee or officer could serve in the legislature, so long as he or she complied with Section 1.2.8 of the Denver Charter, which says:

> No (city) employee or appointed Charter officer shall hold other employment or hold any public office that is incompatible with his or her duties. Every employee and appointed officer shall notify his or her appointing authority in writing before accepting any other employment or public office…(emphasis added)

In addition, the Board of Ethics determined that a city employee would need to:

- comply with section 2-63 of the Code of Ethics, which requires any employee to obtain written permission from his or her appointing authority before beginning any paid outside employment (a seat in the state legislature is a paid position) and
- comply with Section 2-61 of the Code of Ethics relating to conflicts of interest.

Any city employee or officer and the appointing authority would need to analyze whether 1) it is possible to do justice to both jobs time-wise; 2) there is a significant conflict of interest between the two jobs and 3) is it possible to work out the issues of vacation time, leave without pay, etc. under city personnel and payroll rules.

In this case, the Board of Ethics indicated to the Executive Director that it was concerned whether the agency could be adequately managed in the absence of its Executive Director for four months or more out of every year. In addition, even though the Denver Code of Ethics would not regulate her voting as a state legislator, the Board is concerned about possible conflicts of interest that might arise on certain legislative issues between her position as a high-level City employee and her responsibility as a state legislator to represent her constituents.
For these reasons, the Board advised that it would be incompatible for her to serve both in the state legislature and also as Executive Director of the agency at the same time and that such service would violate both section 1.2.8 of the Charter and Section 2-61(g) of the Code of Ethics.

In addition, the Board reminded her that she should not use any city time or resources on behalf of her election campaign and also that, if she serves in the legislature and wishes to continue to serve as a city employee in any capacity, she must comply with city payroll and personnel rules regarding her pay and employee status.

**Case 09 – 54 (outside employment)**

An Assistant Director in the Public Works Department was promoted to that position in 2007. She indicated that she has had an outside consulting business since 2001 and had approval for the outside employment from her previous supervisors and that the outside work she plans to do in the upcoming year is no different from the outside work that she did before. The employee advised the Board that:

> The work typically involves small general civil engineering designs for developers, contractors or other consultants. The majority of this work is on private property and usually single family residences. I do this work on my own time at home and do not use City resources. I do not work on projects within the City and County of Denver.

Her current (new) supervisor denied her recent request for annual re-approval of her outside employment until she would obtain approval from the Board of Ethics. This was probably due to her promotion in 2007 to a supervisory position.

According to Section 2-63 of the Code of Ethics, no city employee may engage in outside employment or outside business activity without first obtaining written approval on an annual basis from the employee’s appointing authority.

Section 2-61 of the Code of Ethics governs conflicts of interest. Section 2-61(a)(2) says that a city officer, employee or official may not take direct official action, which includes enforcing laws or regulations, issuing, enforcing or regulating permits …selecting or recommending vendors or other types of entities to do business with the city..., if he, she…or an employer other than the city… is the other party in the matter. Thus, the Board of Ethics decided that the employee would be prohibited from taking direct official action on a city project where any of her outside employers was involved.

The Board also recommended, in order to avoid the appearance of impropriety, that she not accept any outside work relating to property inside the city of Denver and that she not use any city resources or time in her outside jobs.
Cases 09 – 55 through 09 -59 (travel expenses, other issues)

A citizen from another state filed complaints concerning four members of the Auditor’s Office and the Purchasing Director. The citizen has requested various jurisdictions around the country to investigate what he describes as “kickbacks” and “fraud” by a major company (his former employer) in its contract dealings with many state and city governments. The City and County of Denver has a contract for discounted products with that company.

After hearing about some of these allegations concerning the company, the Purchasing Director appropriately requested the Auditor’s Office to review Denver’s dealings with the company in question and, in response to that request, the Auditor’s Office issued a Special Advisory Report (SAR) or review of the city’s procurement program with the company. The SAR indicated that it was a “limited review” and a “non-audit service.” It concluded that “it appears that the City is being charged correctly for items ordered from the company through this program.”

The SAR also indicated:

- The City participates in a purchasing cooperative with U. S. Communities. “The U. S. Communities Government Purchasing Alliance …is a nationwide purchasing cooperative designed to be a procurement resource for local and state government agencies,… school districts (K-12), higher education and nonprofits. As a registered participant of the program,…(agencies) can access a broad line of competitively solicited contracts which provide quality products, services and solutions.”

The citizen complained that the SAR is a “cover-up of fraud by staff of the City and County of Denver in conspiratorial concert with” the company and U. S. Communities …which is injurious to the taxpayers of Colorado…by stifling free market competition…”

The citizen also indicated, correctly, that the Denver Purchasing Director is an advisory board member of U. S. Communities (along with representatives of several other cities and other government jurisdictions) and alleged that his relationship with U. S. Communities is “unhealthy and close.” The Purchasing Director has been a member of the advisory board (not the governing board) of U. S. Communities for a few years. The advisory board has a teleconference approximately once per quarter in which the Purchasing Director participates and he attends a U.S. Communities advisory board meeting in California once per year and is reimbursed by U. S. Communities for air-fare, lodging, meals and some entertainment. He has received no other gifts or compensation from U.S. Communities (except for a few promotional gifts such as shirts, bags or wind-breakers) and none whatsoever from the company in question.
The Board of Ethics concluded that the complaining citizen did not present any facts that would support his conclusions of kickbacks, fraud, corruption, incompetent auditing or any other unethical conduct by any Denver city personnel.

In addition, the Board concluded that nothing in the Denver Code of Ethics regulates how city auditors should perform their audits (the SAR was not an audit), reviews or other professional work.

The Board of Ethics also concluded that the reimbursement of the Purchasing Director for travel and lodging and entertainment expenses by U. S. Communities once a year does not violate the gift section of the Code of Ethics (Section 2-60(a)), which provides:

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...

The reasons for this conclusion are:

1. The Purchasing Director is not in a position to take direct official action regarding U. S. Communities (the donor of the travel reimbursement and minor gifts) and, therefore, would not violate 2-60(a);
2. As Purchasing Director, he is in a position to take direct official action regarding the company in question, but he has received no gifts whatsoever from the company;
3. The acceptance of reasonable travel expenses paid by a non-profit organization (U.S. Communities) would be an allowable exception under Section 2-60(b)(7), which specifically allows: “Reasonable expenses paid by non-profit organizations or other governments for attendance at a convention, fact finding mission or trip, or other meeting if the person is scheduled to deliver a speech, make a presentation, participate on a panel, or represent the city.”

The Board of Ethics dismissed all of these complaints pursuant to Sections 2-56(6)(a) and (b) of the Code of Ethics, because the Board has no jurisdiction over this type of issue and because the alleged violation, if true, would not constitute a violation of the Code of Ethics. Absent any evidence of unethical conduct by Denver city personnel, the Denver Board of Ethics is not the proper entity nor does it have the expertise or capacity to sift through the financial accusations that the complaining citizen made against the company and U.S. Communities. The Board forwarded a copy of the citizen’s complaints and associated documents to the City and County of Denver’s outside auditor for their independent review.
Case 09 – 62 (gifts).

A citizen who is a Ph.D. candidate at a local university filed a request for an advisory opinion. He is working on a research project to study an ongoing process being conducted by the Parks and Recreation Department to generate policy recommendations on a proposed new park policy. He observed several meetings of the committee and wishes to conduct one-hour interviews of some of the citizen-members and some city employees about the process. He proposed to offer as an “incentive” to those who agree to be interviewed a chance at a $50 gift certificate. He indicated that incentives such as this are customary in many research projects. He and his faculty advisors wished to know if this would violate the Denver Code of Ethics. He believes that the participation rate in the interviews would be better with the offer of such an incentive. He would pay for the gift certificates from his own funds.

Section 2-60(a) of the Code of Ethics provides:

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.

The Board of Ethics determined that Section 2-60(a) of the Code of Ethics does not prohibit city employees or citizen committee members from accepting this type of incentive. Neither the city employees dealing with the policy issue nor the citizen members of the committee are in a position to take direct official action regarding the requestor of the advisory opinion, who is an independent researcher and is not doing or trying to do any business with the City and County of Denver.
APPENDIX C
DENVER BOARD OF ETHICS
CITY COUNCIL PASSES
CHANGES TO CODE OF ETHICS

On November 30, 2009, City Council passed a number of changes to the Denver Code of Ethics, which governs all Denver elected officials, city employees and board and commission members. The last major revision to the Code of Ethics was made in 2001 and a number of smaller changes were passed in 2004 and 2007. The current changes were recommended by the Denver Board of Ethics, after several months of analysis, based on its experience in interpreting and administering the Code for the purpose of clarification and filling in gaps.

The more significant changes are as follows:

1. The Board of Ethics is given 31 days to complete its screening process after it receives a written complaint (expanded from 14 days).
2. A purpose statement in plain English is added to each substantive section of the Code so that the reader can clearly understand the reason for each section. As one example, for the gift section, “The purpose of this section is to avoid special influence by those who give gifts to city officers, employees or officials.”
3. Adds a new item to the conflict of interest section (Section 2-61(a)(7)) to provide that a substantial interest exists if a city person “or a member of his or her immediate family participated personally in providing legal representation or lobbying for another party in the matter or owns 5% or more of the law firm or lobbying firm representing another party in the matter.”
4. Adds to Section 2-63 concerning permission for outside employment or outside business activity “City resources may not be used for any outside employment or outside business activity.”
5. Adds a new section as follows: “Sec. 2-68. Use of confidential records: No officer, official or employee may disclose any information or records that are not available to the public, which were acquired in the course of official duties, except in the performance of official duties or as required by law or court order.”
6. Adds a new section as follows: “Sec. 2-69. Aiding others: No officer, official or employee may knowingly aid or assist any officer, official or employee in the violation of any provision of this code of ethics.”

Please contact the Board of Ethics if you have questions about these changes or any other concerns about the Code of Ethics – 720-865-8412 or michael.henry@denvergov.org. The entire updated Denver Code of Ethics, with the 2009 revisions underlined, is available at www.denvergov.org/ethics. For those new to city government, the Board of Ethics is available to provide advisory opinions to city personnel on ethics-related issues and to deal with complaints from any citizens. 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.”