

1 **BY AUTHORITY**

2 ORDINANCE NO. \_\_\_\_\_  
3 SERIES OF 2012

COUNCIL BILL NO. CB11-0744  
COMMITTEE OF REFERENCE:  
GOVERNMENT AND FINANCE

6 **A B I L L**

7 **For an ordinance amending various subsections of the Code of Ethics, Chapter 2,**  
8 **Sections 2-51 through 2-65 of the Revised Municipal Code, to allow the Board of Ethics to**  
9 **accept anonymous complaints meeting certain defined criteria and contact agencies for**  
10 **information on discipline related to ethical violations, and to clarify certain other**  
11 **provisions.**

12  
13  
14 **NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF**  
15 **DENVER:**

16 **Section 1.** Section 2-51 of Chapter 2, Article VII of the Revised Municipal Code, is hereby  
17 amended by adding the language underlined, as follows:

18  
19 **Sec. 2-51. Legislative Intent.**

20  
21 It is the intent of the city that its officers, officials, and employees adhere to high levels of  
22 ethical conduct so that the public will have confidence that persons in positions of public  
23 responsibility are acting for the benefit of the public. Officers, officials, and employees should  
24 comply with both the letter and spirit of this ethics code and strive to avoid situations, which  
25 create impropriety or the appearance of impropriety.

26  
27 The council and mayor recognize that ethical issues will arise in the course of public  
28 service. It is the intent of the code of ethics:

- 29  
30 (1) To clarify which actions are allowed and which constitute a breach of the public  
31 trust and specifically relating to the use of public office for private gain, employment  
32 and supervision of family members, gifts, conflicts of interest, prior employment,  
33 outside employment, subsequent employment, improper use of confidential  
34 information or records, and other ethics matters not inconsistent with the Charter;  
35  
36 (2) To establish a board of ethics empowered to issue advisory opinions so that  
37 officers, officials, and employees may seek guidance about ethical issues  
38 connected with their service; and  
39  
40 (3) To establish a system that enables citizens to report possible wrongdoing and seek  
41 enforcement so that any breach of the public trust may be discovered and dealt  
42 with appropriately.  
43

44 The City Charter addresses the ethical conduct of officers, employees, and officials. It is

1 the intent of this article that it shall serve to enhance and clarify the Charter and to provide  
2 practical guidance.

3  
4 Agencies may adopt a stricter code of ethics for their own use through published rules or  
5 policies. Those agencies which wish to adopt a stricter code of ethics are encouraged to consult  
6 with the board of ethics, shall provide information and training to employees of the agency and  
7 shall provide a copy to the board of ethics.  
8

9 **Section 2.** Section 2-53 of Chapter 2, Article VII of the Revised Municipal Code, is hereby  
10 amended by adding the language underlined, as follows:

11 **Sec. 2-53. Board of Ethics.**

12  
13 (a) *Creation and appointment.* There is hereby created a board of ethics to  
14 consist of five members. The purpose of the board shall be to issue advisory opinions and  
15 waivers on ethical issues arising under this article and to hear inquiries or complaints and issue  
16 findings and recommendations regarding alleged violations of this article.

17  
18 (b) *Qualifications.*

19  
20 (1) One and only one member of the board of ethics shall be an officer or  
21 employee of the city.

22  
23 (2) At least one member of the board of ethics shall be a former judicial  
24 officer.

25  
26 (3) At least one member of the board of ethics shall have expertise in ethics  
27 acquired through education or experience.

28  
29 (c) *Method of appointment.*

30  
31 (1) The member of the board of ethics who is an officer or employee of the  
32 city shall be nominated by the mayor and appointed by council acting by ordinance.

33  
34 (2) The mayor shall appoint two of the remaining members.

35  
36 (3) The council shall appoint the other two members by ordinance.

37  
38 (d) *Terms of appointment.*

39  
40 (1) Members shall be appointed to terms of four years; however, the first  
41 member appointed by the mayor and the first member appointed by the council  
42 shall initially serve two year terms to achieve staggered ending dates.

43  
44 (2) If a member is appointed to fill an unexpired term, that member's term  
45 shall end at the same time as the term of the person being replaced.

46  
47 (3) Each member shall continue to serve until a successor has been  
48 appointed, unless the member is removed or resigns.

1  
2 (e) *Removal.*  
3

4 (1) The unexcused absence of any member of the board from three (3)  
5 consecutive meetings, unless the board has excused the absence for good and  
6 sufficient reasons as determined by the board, shall constitute a resignation from  
7 the board.  
8

9 (2) The appointing authority may remove a member for inappropriate conduct  
10 before the expiration of the member's term. Before removing a member, the  
11 appointing authority shall specify the cause for removal and shall give the member  
12 the opportunity to make a personal explanation. Before removing the member who  
13 is jointly appointed, either the mayor or the council shall specify the cause for  
14 removal and the mayor and council shall give the member the opportunity to make  
15 a personal explanation. Members appointed by the council and the member who is  
16 nominated by the mayor and appointed by council may only be removed by  
17 ordinance.  
18

19 (f) *Compensation.* Members of the board of ethics shall serve without  
20 compensation. The member who is an officer or employee of the city shall not receive any  
21 additional compensation for serving on the board of ethics. Members may be reimbursed for  
22 reasonable expenses pursuant to the rules of the city.  
23

24 (g) *Consultation with city attorney.* The board of ethics may consult with the city  
25 attorney or a designee of the city attorney regarding legal issues which may arise in connection  
26 with this article and may request advisory assistance from the city attorney in conducting  
27 hearings on inquiries during any stage of the process.  
28

29 (h) *Disqualification.* Any member or employee of the board of ethics shall  
30 disqualify himself or herself from participating in any matter before the board in which his or her  
31 impartiality might reasonably be questioned, including, but not limited to, instances where he or  
32 she has a personal bias or prejudice concerning a party or personal knowledge of or involvement  
33 in disputed evidentiary facts concerning the matter. In the event that an employee of the board of  
34 ethics receives a request for an advisory opinion, a request for a waiver or an inquiry from which  
35 the employee is disqualified, and the employee has recused himself or herself, the board shall  
36 request a designee of the city attorney or a member of the board to perform all functions the  
37 employee would otherwise perform.  
38

39 **Section 3**, Section 2-56 of Chapter 2, Article VII of the Revised Municipal Code, is hereby  
40 amended by adding the language underlined, as follows:  
41

42 **Sec. 2-56. Procedures for complaints or inquiries.**  
43

44 (a) The board of ethics shall adopt written rules for complaints or inquiries that create a  
45 process that is fair both to the person who submitted the complaint or inquiry and the  
46 person who is the subject of the complaint or inquiry. In addition to rules which the  
47 board may in its discretion adopt, the rules shall:  
48

49 (1) Establish time lines for all aspects of its handling of complaints or inquiries. The

1 time lines shall be sufficiently long to enable a person who is the subject of a  
2 complaint or inquiry to have adequate time to understand the complaint or inquiry  
3 and prepare a response. The rules shall allow the board to alter the time lines upon  
4 a request of the subject of a complaint or inquiry for more time to prepare;  
5

- 6 (2) Except as provided in Section 2-56(b), require the complaint or inquiry to be in  
7 writing on a form approved by the board, to be signed, and to show the home or  
8 business address and telephone number of the person who submitted it. The form  
9 shall contain a statement that must be signed and which states that, to the best of  
10 the person's knowledge, information, and belief formed after reasonable reflection,  
11 the information in the complaint or inquiry is true. The rules shall require the  
12 complaint or inquiry to describe the facts that constitute the violation of this code of  
13 ethics in sufficient detail so that the board and the person who is the subject of the  
14 complaint or inquiry can reasonably be expected to understand the nature of any  
15 offense that is being alleged;  
16
- 17 (3) Prohibit the board from accepting complaints or inquiries about actions that took  
18 place more than two years prior to the date of filing;  
19
- 20 (4) Require the board to notify the person who is the subject of the complaint or inquiry  
21 that a complaint or inquiry has been filed. The rules shall require the board to  
22 provide the notification in a timely manner, but no more than five (5) days from the  
23 day the complaint or inquiry was filed, provided that they shall require the board to  
24 notify the person who is the subject of the complaint or inquiry immediately if he or  
25 she so requests. The rules shall require the notification to include a copy of the full  
26 complaint or inquiry; a copy of any portion of this article that is alleged to have  
27 been or that may be violated; and the board's rules for dealing with complaints or  
28 inquiries.  
29
- 30 (5) Require the board to provide the subject of the complaint or inquiry with a copy of  
31 the complaint or inquiry before it provides copies to any other parties. The rules  
32 shall recognize that distribution to the public of a complaint or inquiry prior to  
33 screening by the board as required in (6) below could harm the reputation of an  
34 innocent person and is contrary to the public interest; therefore, the rules shall  
35 prohibit the public release of the complaint or inquiry until the screening process in  
36 (6) below has been completed.  
37
- 38 (6) Require the board or a committee of the board to consult in confidence within thirty-  
39 one (31) days of receiving a complaint or inquiry to screen the complaint or inquiry.  
40 The rules shall allow the board to immediately dismiss a complaint or inquiry if:  
41
- 42 a. It has no jurisdiction;
  - 43
  - 44 b. The alleged violation, if true, would not constitute a violation of this article;
  - 45
  - 46 c. The alleged violation is a minor or de minimis violation;
  - 47
  - 48 d. The complaint or inquiry is, on its face, frivolous, groundless, or brought for  
49 purposes of harassment;

- 1  
2 e. The matter has become moot because the person who is the subject of the  
3 complaint or inquiry is no longer an officer, official, or employee;  
4  
5 f. The person who is the subject of the complaint or inquiry had obtained a  
6 waiver or an advisory opinion under section 2-54 permitting the conduct; or  
7  
8 g. The appointing authority has already taken action as a result of finding a  
9 violation and the board believes the action was appropriate.

10  
11 The rules shall require the dismissal and the reason for dismissal to be in writing  
12 and available to the public.  
13

- 14 (7) Allow the board, at its discretion, to make a finding solely on the basis of written  
15 arguments without holding a public hearing, if it determines that there is no  
16 significant discrepancy in the facts as presented by the person filing the complaint  
17 or inquiry and the person who is the subject of the complaint or inquiry; and the  
18 board determines that it doesn't need any additional information. However, the  
19 person charged retains the right to request a hearing, which shall be open to the  
20 public.  
21  
22 (8) Require the board to have hearings at meetings, which are open to the public on  
23 complaints or inquiries, which have not been dismissed pursuant to paragraph (6)  
24 of section 2-56 or resolved under paragraph (7) of this section.  
25  
26 (9) Allow any person who is the subject of a complaint or inquiry to designate a  
27 representative if he or she wishes to be represented by someone else, to present  
28 evidence, and to cross-examine witnesses. The rules shall allow the person who  
29 submitted the complaint or inquiry and the subject of the complaint or inquiry  
30 sufficient time to examine and respond to any evidence not presented to them in  
31 advance of the hearing;  
32  
33 (10) Require deliberations on complaints or inquiries to be conducted in closed session;  
34  
35 (11) Allow the board to dismiss a complaint or inquiry without a finding for or against the  
36 subject of the complaint or inquiry if the person committed the violation due to  
37 oversight and comes into voluntary compliance;  
38  
39 (12) Allow the board to dismiss a complaint or inquiry if the person who submitted it  
40 does not appear at hearing and if, in the opinion of the board, it would be unfair to  
41 the subject of the complaint or inquiry not to have the opportunity to examine the  
42 person. The rules shall, however, require the board to schedule the hearing at a  
43 time that is reasonably convenient to both the person who submitted the complaint  
44 or inquiry and the subject of the complaint or inquiry;  
45  
46 (13) Require the board to base a finding of a violation upon clear and convincing  
47 evidence;  
48  
49 (14) Require the board to inform the person who submitted the complaint or inquiry and

1 the subject of the complaint or inquiry in writing if it believes a complaint or inquiry  
2 is frivolous, groundless, or brought for purposes of harassment;

- 3
- 4 (15) Prohibit members who have not been present for the hearing from participating in a  
5 recommendation;
- 6
- 7 (16) Require that findings and recommendations be made only by a majority of the  
8 board;
- 9
- 10 (17) Allow the board to consider, when it makes findings and recommendations, the  
11 severity of offense; the presence or absence of any intention to conceal, deceive,  
12 or mislead; whether the violation was deliberate, negligent, or inadvertent; and  
13 whether the incident was isolated or part of a pattern;
- 14
- 15 (18) Allow the board to issue an advisory opinion in response to a complaint or inquiry,  
16 in lieu of making findings and recommendations, where deemed appropriate by the  
17 board.

18

19 (b) Anonymous complaints. Upon request of a complainant, a complaint or inquiry in  
20 which the identity of the complainant is kept confidential may be accepted by the board  
21 under the following circumstances:

- 22
- 23 (1) The complaint is based upon reliable and credible evidence establishing a prima  
24 facie violation of the code of ethics that is not subject to dismissal under Section 2-  
25 56(a)(6);
- 26 (2) The issue raised in the complaint is not pending in another forum or more  
27 appropriately referred to another City agency for investigation;
- 28 (3) The complainant is a City officer, official or employee or a person or entity that has  
29 or is seeking a contract with the City or is doing business with or being regulated by  
30 the City; and
- 31 (4) The complainant has a reasonable basis for requesting anonymity.
- 32

33 The board is not required to process or respond to anonymous complaints and is not  
34 precluded from disclosing the identity of the complainant to the extent necessary to conduct  
35 an initial investigation or refer the matter to another agency for further action.

36

37 The board shall include in its annual report, as required in Section 2-66, the number and  
38 status of any anonymous complaints received during the preceding year.

39

40

1 **Section 4.** Section 2-60 of Chapter 2, Article VII of the Revised Municipal Code, is hereby  
2 amended by adding the language underlined, as follows:

3  
4 **Sec. 2-60. Gifts to officers, officials, and employees.**  
5

6 The purpose of this section is to avoid special influence by those who give gifts to city officers,  
7 employees or officials.  
8

9 (a) Except when acceptance is permitted by paragraph (b) below, it shall be a violation  
10 of this code of ethics for any officers, officials, or employees, any member of their immediate  
11 families to solicit or to accept any of the following items if (1) the officer, official, or employee is in  
12 a position to take direct official action with regard to the donor; and (2) the city has an existing,  
13 ongoing, or pending contract, business, or regulatory relationship with the donor:  
14

- 15 (1) Any money, property, service, or thing of value that is given to a person without  
16 adequate and lawful compensation;  
17
- 18 (2) Any honoraria or payment for participation in an event;  
19
- 20 (3) Any loan of goods, equipment, or other items that is not available to the general  
21 public on the same terms and conditions;  
22
- 23 (4) Any loan of money that is not available to the general public at the same interest  
24 rate and the same conditions;  
25
- 26 (5) Any meal at or ticket to a sporting, recreational, or cultural event except as  
27 provided for in subsection (b)(4) of this section;  
28
- 29 (6) Travel expenses and lodging;  
30
- 31 (7) Any reduction in price or any discount that is not similarly available to all city  
32 officers, officials, and employees on the same terms; and  
33
- 34 (8) Parking passes except as provided for in subsection (b)(4) of this section.  
35

36 This prohibition shall also apply to gifts from a lobbyist or representative of a client if (1) the  
37 officer, official, or employee is in a position to take direct official action with regard to the client  
38 and (2) the city has an existing, ongoing, or pending contract, business, or regulatory relationship  
39 with the client.  
40

41 (b) Officers, officials, and employees and the members of their immediate family may  
42 accept the following even if the officer, official, or employee is in a position to take direct official  
43 action with regard to the donor, or, if the donor is a lobbyist or representative, the donor's client:  
44

- 45 (1) Gifts from other officers, officials, or employees and their family members on  
46 appropriate occasions;  
47
- 48 (2) Campaign contributions as permitted by law;

- 1  
2 (3) Nonpecuniary awards that are publicly presented by an organization in recognition  
3 of public service if the award is not extraordinary when viewed in light of the  
4 position held by the recipient;  
5
- 6 (4) The donation of meals, tickets to events for which admission is charged, or free or  
7 reduced price admission to events for which a fee is charged, but only under the  
8 following conditions:  
9
- 10 a. No more than a total of four meals, tickets, or free or reduced price  
11 admissions may be accepted from the same donor in any calendar year,  
12 regardless of the value;
  - 13 b. A donation from an employee of a business or entity shall be counted as a  
14 gift from the business or entity;
  - 15 c. The individual or entity which pays for the meal, ticket, or admission shall be  
16 considered the donor for purposes of this subsection regardless of whether  
17 that individual or entity is reimbursed for the cost;
  - 18 d. Attendance must be reasonably related to the official or ceremonial duties of  
19 the officer, official, or employee;
  - 20 e. The donation of parking for the meal or event shall be allowed on the same  
21 terms and conditions;
- 22
- 23 (5) Unsolicited items of trivial value. "Items of trivial value" means items or services  
24 with a value of twenty-five dollars (\$25.00) or less, such as inexpensive tee shirts,  
25 pens, calendars, books, flowers, or other similar items;  
26
- 27 (6) Gifts while visiting other cities, counties, states, or countries or hosting visitors from  
28 other cities, counties, states, or countries when it would be a breach of protocol to  
29 refuse the gift;  
30
- 31 (7) Reasonable expenses paid by non-profit organizations or other governments for  
32 attendance at a convention, fact finding mission or trip, or other meeting if the  
33 person is scheduled to deliver a speech, make a presentation, participate on a  
34 panel, or represent the city;
- 35 (8) Gifts on special and infrequent occasions if the gift is appropriate to the occasion.  
36 These occasions include weddings, funerals, and illnesses;  
37
- 38 (9) Gifts to commemorate a public event in which the officer, official, or employee  
39 participated in an official capacity, provided that the gift is appropriate to the  
40 occasion. Such occasions include ground breaking ceremonies and grand  
41 openings;  
42
- 43 (10) Memberships and passes from the Denver Art Museum, Denver Botanic Gardens,  
44 Denver Museum of Nature and Science, and Denver Zoo.  
45  
46  
47  
48  
49



1  
2 (11) Gifts from family members;

3  
4 (12) Items which are similarly available to all employees of the city or the general public  
5 on the same terms and conditions.

6  
7 (c) It shall not be a violation of this article for an officer, official, or employee to solicit  
8 or accept donations to the city or to solicit, accept, or redirect donations for charitable purposes  
9 to a 501(c) or other charitable organization or to provide assistance to individuals affected by  
10 illness, crime or disaster or who have educational or other charitable needs, provided that  
11 solicitation and financial records are maintained and provided that the soliciting person, or a  
12 member of the soliciting person's immediate family, does not keep or use the gift or receive any  
13 monetary benefit therefrom.

14  
15 (d) It shall not be a violation of this article for a member of an officer's, official's or  
16 employee's immediate family to accept a gift which arises from an independent relationship of an  
17 adult member, if:

18  
19 (1) The officer, official or employee does not use the gift; and

20  
21 (2) It cannot reasonably be inferred that the gift was intended to influence the officer,  
22 official, or employee in the performance of his or her duties.  
23

24 **Section 5.** Section 2-65 of Chapter 2, Article VII of the Revised Municipal Code, is hereby  
25 amended by adding the language underlined, as follows:

26  
27 **Sec. 2-65. Employee training.**

28  
29 (a) The board of ethics shall prepare, distribute and periodically update an employee  
30 handbook on this code of ethics, after obtaining the city attorney's review. In addition to the  
31 updates, the board may disseminate any change in policy that results from a finding of the board  
32 if it applies to other city employees.

33  
34 (b) Every appointing authority shall give a copy or electronic version of the handbook  
35 and any updates to each employee and shall provide training to employees regarding the code  
36 of ethics.

37  
38 **Section 6.** Section 2-66 of Chapter 2, Article VII of the Revised Municipal Code, is hereby  
39 amended by adding the language underlined, as follows:

40 **Sec. 2-66. Annual reporting.**

41  
42 (a) By February 15 of each year, the board of ethics shall submit an annual report to  
43 the mayor and council summarizing its activities during the previous calendar year. The report  
44 shall include any recommendations for modifying the code of ethics.

45  
46  
47 (b) In order to prepare its annual report and develop training, the board of ethics may

1 contact other City departments and officials to obtain follow up information on any discipline  
2 imposed as a result of ethics violations, including discipline imposed as a result of opinions or  
3 recommendations issued by the board of ethics. Disciplinary actions which are not a matter of  
4 public record shall be kept confidential and shall be used only for internal purposes, such as for  
5 education and training of city personnel.

6  
7 (c) Other City departments and officials shall cooperate with and provide necessary  
8 information to the board of ethics in the preparation of its annual report.

9  
10  
11 COMMITTEE APPROVAL DATE: \_\_\_\_\_, 2012

12 MAYOR-COUNCIL DATE: \_\_\_\_\_, 2012

13 PASSED BY THE COUNCIL \_\_\_\_\_ 2012

14 \_\_\_\_\_ - PRESIDENT

15 APPROVED: \_\_\_\_\_ - MAYOR \_\_\_\_\_ 2012

16 ATTEST: \_\_\_\_\_ - CLERK AND RECORDER,  
17 EX-OFFICIO CLERK OF THE  
18 CITY AND COUNTY OF DENVER

19 NOTICE PUBLISHED IN THE DAILY JOURNAL \_\_\_\_\_ 2012 \_\_\_\_\_ 2012

20 PREPARED BY: Helen Eckardt Berkman, Assistant City Attorney, \_\_\_\_\_, 2012

21 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of  
22 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed  
23 ordinance.

24  
25 Douglas J. Friednash, City Attorney

26  
27 BY: \_\_\_\_\_, Assistant City Attorney DATE: \_\_\_\_\_, 2012