

Analysis of Proposed Amendments to Denver Code of Ethics (Revised 2-17-17)

TOPIC	CURRENT LAW	PROPOSED AMENDMENT	COMMENTS
<p>Definition of “immediate family”</p>	<p>Defined to include only first-degree blood relations, first-degree step- relations, domestic partners, co-habitants, and engaged persons.</p>	<p>Expand definition to include certain second-degree relations (aunt, uncle, niece, nephew) and first-degree in-laws (parents, siblings, and children in-law). Sec. 2-52(c)</p>	<p>The definition affects the applicability of the prohibitions in the following provisions of the Ethics Code:</p> <ul style="list-style-type: none"> • Conflicts of interest • Gift law • Supervision of family member • Using public office for private gain <p>The definition “immediate family” in the Ethics Code is also now incorporated by reference in the city’s disclosure ordinance, and the revised definition will expand the range of financial disclosure that “officers” must provide on the financial dealings of their “family” members.</p>
<p>Board of Ethics Nomination Committee</p>	<p>No current provision. Law is silent as to how the mayor and council recruit and screen persons to be appointed to the Board</p>	<p>Establishes a three-member independent nomination committee that submits names from which the mayor or council appoint members to the board of ethics.</p> <ul style="list-style-type: none"> • Committee composed of members named by the Presiding Judge of the Denver County Court, the mayor and the council. • Detailed procedures for filling vacancies on the board of ethics. • Mayor or council must select from among a list of three names submitted by the nominating committee. • Council or mayor allowed to reject list and ask for new list. • Simplified screening requirement applies to reappointment of incumbent members of board. <p>Sec. 2-53 (c)(4)</p>	<p>Charter §1.2.9 (C) vests ultimate authority for appointment of members to the board of ethics in the mayor and council, in equal measure. Ordinance cannot impair this ultimate authority.</p> <p>The proposal has the presiding judge of the Denver County Court, the mayor and the council each appointing one member of the nominating committee.</p> <p>The current Ethics Code imposes special qualification on three of the five seats on the board of ethics—one seat for a city employee, one for an ethics expert, one for a former judicial officer. These requirements will not change.</p>

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Disqualification of ethics board members from voting due to political activity	No current provision precisely on point, but see comment.	Expressly prohibits board members from voting on a matter involving a person to whom the member made campaign contributions or participated in a political campaign, and makes violation of this prohibition an express ground for removal from the board. Sec. 2-53(e)(2) and (h)	Current law already generally prohibits ethics board members from voting on any matter “in which his or her impartiality may be reasonably questioned.” The existing disqualification standard for board members is already much broader than the “conflict of interest” standard governing other officers and employees elsewhere in the code.
Requirement for “appointing authorities” to report back to the board of ethics	The code currently contains several requirements for the board of ethics to communicate information about its advisory opinions and decisions <u>to</u> the appointing authority for the employee or appointee in question, but no counterpart requirements for the board to receive follow-up information <u>from</u> appointing authorities.	Would require appointing authorities to report back to the board in executive session on any “action” taken in regard to an officer or employee who has defied an advisory opinion of the board in regard to permissible secondary employment. Sec. 2-63 (c)	Purpose of the proposed reporting requirement is solely informational; board will still not exercise any formal role in imposing or second-guessing employee discipline. Particularly in regard to employees in either of the city merit systems (career service or civil service), the appointing authority may take the position that aspects of the confidential deliberative processes associated with a disciplinary decision cannot be shared with the board.
Waivers	The ethics code allows an officer, employee or official to seek a waiver from the code, essentially allowing the person to do something that would otherwise be prohibited.	Proposed amendments are designed to give more transparency to the waiver process, particularly a clarification that a waiver must be sought and <u>granted before</u> the behavior or action occurs, not after the fact. Sec. 2-54(f)	The proposed amendment to the waiver section may require a conforming amendment to 2-55 (4), which implies that an elected official may seek a waiver after-the-fact if an ethics complaint is sustained.

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<p>Gift ban—cap on number of meals and free or reduced price event tickets or admissions from restricted source</p>	<p>Cap of four (4) meals, event tickets, or free or reduced price event admissions (regardless of dollar value), received per annum from a particular donor by any officer or employee who is “in a position to take direct official action with regard to the donor.”</p>	<p>Three hundred-dollar (\$300) cap on the value of any and all meals, event tickets, or free or reduced price event admissions received per annum from a particular donor by any officer or employee who is “in a position to take direct official action with regard to the donor.” Sec. 2-60 (b)(4)a</p>	<p>All meals event tickets, or free or reduced price event admissions (regardless of dollar value), will be subject to reporting under the city’s financial disclosure ordinance, except as noted below.</p>
<p>Gift ban—additional exceptions for certain types of meals</p>	<p>The only <i>explicit</i> exception for meals received from restricted sources is the annual cap of four (4) described above.</p> <p>However, an exception for free meals received from restricted sources may be <i>implicit</i> in several other exceptions in 2-60 (b) that are not subject to the cap of four. For example, meals may be included in the exception for “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 . . . represent the city.”</p>	<p>Explicitly provides additional exceptions for certain meals that may be received from a restricted source and will not count against the \$300 cap:</p> <ul style="list-style-type: none"> • Meals provided to all attendees at a public meeting and consumed while the meeting is in progress (e.g. “working lunches”) • Meals provide to all member of any governmental, civic or non-profit board and consumed during a board meeting <p>Clarifies that meals received under either of these exceptions need not be included in gift reporting under the city’s financial disclosure ordinance. Sec. 2-60 (b)(4)f</p>	

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<p>Gift ban—additional exception for certain tickets, or admissions to events</p>	<p>The only <i>explicit</i> exception for, event tickets and free or reduced price admissions received from restricted sources is the annual cap of four (4) described above.</p> <p>However, an exception for free admissions received from restricted sources may be <i>implicit</i> in several other exceptions in 2-60 (b) that are not subject to the cap of four. For example, registration fees may be included in the exception for “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. . . represent the city.”</p>	<p>Explicitly provides an additional exception for certain tickets or admissions that may be received from a restricted source without counting against the \$300 cap:</p> <ul style="list-style-type: none"> • Free admissions to a charitable event, as long as the admission is directly offered by the non-profit entity hosting the event, and not offered by a sponsor who is a restricted source. <p>Even if an event ticket may be accepted under this provision without counting against the dollar cap, the recipient is still required to report the gift under the city’s financial disclosure ordinance. Sec. 2-60 (b)(4)g</p>	
<p>Gift ban—Unsolicited items of trivial value</p>	<p>Provides an exception for “items of trivial value,” defined to mean “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.”</p>	<p>Clarifies that cash and gift cards cannot be received from a restricted source under this exception. Sec. 2-60(b)(5)</p>	

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<p>Gift ban—solicitation of donations “to the city” or to charitable organizations</p>	<p>Freely allows solicitation of donations to the city itself or to charitable organizations, even if the person or entity being solicited does business with the city.</p>	<p>Continue to allow such solicitations, but henceforth require any solicitation of a donation from a restricted source to be included in an officer or employee’s financial disclosure statements if the officer any employee is aware that donation was actually made as a result of his or her solicitation. Sec. 2-60(c)</p>	<p>City Council Rule 11 (g) was adopted in 2012 to specifically address council authority to solicit donations on behalf of the city. If the Code of Ethics is amended to restrict such solicitation, council should consider a conforming amendment to its own rules. The rule already includes an annual reporting requirement with a February 1 due date. If the Ethics Code is amended as proposed, the reporting requirement in the rule should be reconciled with the code change, and reference both a January 31 and July 31 reporting date.</p>
<p>Conflict of interest</p>	<p>Current law defines the circumstances under which an officer, employee or official must refrain from taking “direct official action” due to certain relationships with “another party in the matter”</p>	<p>Slightly expands the range of relationships which are deemed to constitute a conflict of interest to include:</p> <ul style="list-style-type: none"> • “He or she, a member of the immediate family, a business associate or an employer is a <u>board member</u>. . . in another party in the matter.” • He or she or a family member provided any sort of <u>professional services</u> or owns a 5% interest in any firm that provides professional service on behalf of another party in the matter. <p>Sec. 2-61(a)(3) and (7)</p>	