

Analysis of Proposed Amendments to Denver Code of Ethics

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 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>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>Requires the mayor and council to only appoint members to the board of ethics whose names are submitted by an independent nominating committee.</p> <ul style="list-style-type: none"> • Requires the Presiding Judge of the Denver County Court to select the three-person nomination committee. • Detailed recruitment and screening procedures for filling vacancies on the board of ethics. • Screening process applies to both appointments and reappointments to the board. • 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. <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>Although the proposed role for the presiding judge in selecting the nominating committee for board of ethics members has no precedent in other city laws, Charter §4.2.2 allows council to assign additional duties to the Denver County Court by ordinance.</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>

TOPIC	CURRENT LAW	PROPOSED AMENDMENT	COMMENTS
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.

TOPIC	CURRENT LAW	PROPOSED AMENDMENT	COMMENTS
Gift ban—cap on tickets or admissions	Cap of four (4) meals, event tickets, or free or reduced price event admissions per annum (regardless of dollar value), received by any officer or employee who is “in a position to take direct official action with regard to the donor.”	Changes the limitation on event tickets/admissions from up to four (4) per year to an aggregate dollar amount of \$300 per annum. Sec. 2-60 (b)(4)b. Retains the cap on meals at four (4) per year.	The proposed \$300 cap applies <i>only</i> to the value of tickets or admissions received under 2-60 (b)(4)b. The dollar value of gifts received from restricted sources under most of the other exceptions in 2-60 (b) remains uncapped.
Gift ban—additional exceptions for certain types of meals, tickets, or admissions to events	<p>The only <i>explicit</i> exception for meals, 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 meals and 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, meals and 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 additional exceptions for certain meals and admissions that may be received from a restricted source and will not count against the four (4) per year or \$300 caps:</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 members of any governmental, civic or non-profit board and consumed during a board meeting • 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>Sec. 2-60(b)(4)f</p>	

TOPIC	CURRENT LAW	PROPOSED AMENDMENT	COMMENTS
<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>	<p>The \$25 cap in this particular exception to the gift ban has, until now, been consistent with the gift reporting threshold in the city’s financial disclosure law. A pending change to the separate disclosure ordinance would raise the reporting threshold to \$50, prompting the question of whether or not a conforming amendment should be made to the definition of “items of trivial value”</p>

TOPIC	CURRENT LAW	PROPOSED AMENDMENT	COMMENTS
<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>The amendment prohibits solicitation of such donations if the person or entity being solicited holds “or reasonably could be anticipated to apply for a contractual relationship to the city” and if the person asking for the donation exercises “official action” over the person or entity being solicited. This is to avoid the appearance of “quid pro quo” for making charitable donations. Sec. 2-60(c)</p>	<p>The new language is intended to be a prohibition in a subsection that has previously been a safe-harbor. This subsection has essentially provided until now that the gift ban has no applicability whatsoever to charitable donations solicited on behalf of third-parties.</p> <p>The proposed change imposes a tougher standard of banning solicitation of charitable donations than the standard that governs gifts offered directly to officers and employees. The new language would prohibit solicitation of donations given by persons and entities that “reasonably could be anticipated” to do business with the city. The basic gift ban applies only to sources who have actual or “pending” business with the city.</p> <p>City Council Rule 11(g) specifically addresses council authority to solicit donations on behalf of the city. If this restriction is added to the code of ethics, the council may consider a clarifying amendment to the rule.</p>
TOPIC	CURRENT LAW	PROPOSED AMENDMENT	COMMENTS

<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>	
------------------------------------	---	--	--