



Ethics Policy

Special Meeting, February 24, 2020

Study Session Purpose

- New ethics code recommended:
 - To clarify and supplement existing Charter, Code, and policy standards
 - Council requested penalty standards
- Review key concepts & obtain feedback for refinement
- Council could review in stages



Why have of an Ethics Policy?

- Ethics standards already exist – by [state law](#) & City [charter](#), [code](#), & [policies](#)
 - Can assert local standards
- Promotes public confidence and ensures integrity in government
- Provides guidance for officials and limits conflict or confusion
- [General principles](#)



Key Concepts

- Broad application to “city officials” - elected & appointed officials, employees
- Process would be more formal and resource intensive than current policy, while retaining flexibility and local control
 - Complaints/investigation and decisions/penalties
 - Advisory opinions
 - No criminal or civil penalties
- Establishes specific standards and addresses disclosures, nepotism
- *Is Council generally supportive?*



Key Definitions

- Relative
- Conflict of Interest
 - Interest
 - Ownership interest
- Matters pending before the City
- Thing of value



Process – Complaints/Investigations

- Complaints may be initiated by any person (but council/board cannot initiate about employees other than council employees)
 - Submitted to the City Clerk or, for complaints about employees, City Manager
 - Requires written statement under penalty of perjury providing factual basis to avoid speculative or fraudulent claims
 - 12 month limit
- Review or investigation for apparent violations of conduct standards is discretionary and a complaint is not needed
 - City Council ([majority vote](#)) for violation by councilmember, board member, or council employee
 - Use of special counsel, if recommended
 - May provide counsel for subject of complaint
 - City Manager or City Attorney for [their employees](#)
- Alternative: separate body; mandatory review

Process - Decision/Consequences (1)

- Council/Boardmember violation and penalty determined by [majority vote](#) of Council in office
- Potential actions are discretionary:
 - Official caution, reprimand, or censure;
 - Termination, restriction, or suspension of any privileges or support provided to councilmembers relating to any of the following: use of city facilities; travel and attendance at events and conferences; use of discretionary funds; and staff support and contact;
 - Termination of any appointment to any subcommittee, board, or external body (*not removal of councilmember*);
 - Any other penalty otherwise deemed appropriate by the city council;
 - Plus, restriction from receiving confidential information, including participating in executive sessions, concerning the same or similar subject or of the same or similar type if the member disclosed or used confidential information in violation of the code

Process - Decision/Consequences (2)

- Employee = official reprimand or disciplinary action ([decided by City Manager or City Attorney](#))
- Council employees = official reprimand or disciplinary action (decided by majority of Council in office)
- Violations should not automatically affect actions

Advisory Opinions

- Establishes a roster of impartial municipal attorneys; funding needed
- Purpose:
 - Provide a “safe harbor” and clarity/consistency
 - Removes council employees from process, potential influence
 - Not intended to replace decision-making
- Process:
 - Can be requested by City Manager, City Attorney, or by majority vote of Council or a board
 - Limiting will reduce cost and avoid misuse
 - City Manager or City Attorney can use discretion to obtain if needed for any employee or individual
 - Council and board can only request opinion regarding their own members
- May be confidential, but must be shared with City Manager and City Attorney, and the body or employee

Standards

- Confidential information
- Conduct
- Contracts
- Gifts & exceptions

*These are the only standards that would result in a violation & consequences under this code.

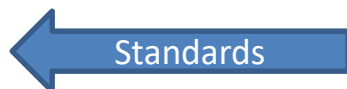
Confidential Information

- Cannot knowingly *use* “CI” to further an interest of the official or relative or a business in which the official has an ownership interest
- Cannot *disclose* any “CI” to unauthorized persons
- Cannot *receive* any “CI” if connected to matter where official as a conflict of interest



Conduct (1)

- Prohibits acting or participating or influencing where the official has a *conflict of interest*
 - Supplemental to Charter Section 4.27(c)
 - Requires removal from chambers, but may vote if necessary for quorum to continue
- Prohibits *use of city resources* for personal gain (except as public could)
- Prohibits compelling or inducing employees regarding *political contributions and statements*



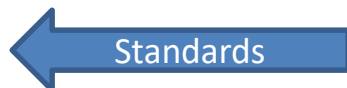
Conduct (2)

- Limits *representations as councilmember* on certain matters without authorization:
 - Prohibits councilmembers from representing or giving perception that he or she represents the council or city
 - Prohibits use of channels of communication or privileges if speaking on a topic subject to this limitation
 - Requires affirmative disclosure of personal nature of statements
- Sets standards for councilmembers *appointed to external bodies*
 - Requires represent city's interests and voting consistent with Council's adopted positions
 - Requires efforts to seek delay to learn or obtain position, abstaining, or – if absolutely necessary – voting how the member “reasonably anticipates would best reflect” Council's position



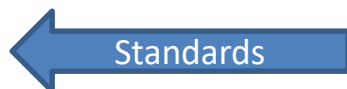
Conduct (3)

- Prohibits voting on *own conduct*
- Prohibits *appearing on behalf of another person* unless it is their own application (official cannot then participate)
- Prohibits during term from representing or assisting a person in *litigation* in which the city is involved if the official took official action or had confidential information about the subject matter
 - Excludes official's own litigation, employee organizations, under subpoena, or with consent of Council



Conduct (4)

- Requires *resignation from appointment* if a board member becomes employed (except if appointment is part of duties)
- Prohibits taking official action regarding a *former employer* for 6 months from the termination of the prior employment



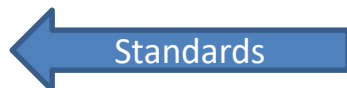
Contracts

- Prohibits City from knowingly entering contract that would cause a violation of the [Charter Section 4.19](#)
- Other standards would address contracts in which city official has a conflict of interest



Gifts & Exceptions

- Prohibits *soliciting or accepting* - *directly or indirectly, through spouse/dependent child*
 - Any thing of value that the official knows – or a reasonable person in the official's position should know:
 - Would tend to improperly influence that official to depart from the faithful and impartial discharge of his or her public duties; or
 - Is for the primary purpose of rewarding the official for an official action that he or she has taken,
 - Establishes a rebuttable presumption that a violation occurs if the thing was provided by or for someone who as an interest in any matter pending before the official
- Exceptions from a gift violation, but could cause a conflict of interest or disqualify the official



Disclosures

- Council/board members must disclose to the body any “real or known possible conflict of interest” before body
 - Body may determine a conflict exists or obtain an advisory opinion
 - Will excuse person from voting
- Employee must disclose or City Manager/City Attorney may determine
 - Will prevent employee from acting in matter

Anti-nepotism

- Prohibits hiring or appointment of
 - a [relative](#)
 - of a councilmember, [council employee](#), or department head
- Official cannot participate in decisions relating to relative
- Exclusions:
 - Seasonal employment
 - Current employees and board appointees
- See [Charter Section 4.20](#); will be addressed in existing code section

Conclusion

- *Does council support this structure?*
 - *Process?*
 - *Advisory Opinions?*
 - *Standards?*
- *Does Council want to explore any items in more detail?*





Conclusion

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Amendment 41

- Constitutional amendment establishing conduct standards and penalties and creating a 5-member Independent Ethics Commission to investigate and determine ethics complaints and violations
 - See also Colorado Revised Statutes 24-18-101 et seq.
- Home rule entities with “charters, ordinances, or resolutions that *address the matters* covered by” Amendment 41 are exempt



Charter Provisions

- **Section 4.19** addresses “Conflicts of Interest” with respect to councilmember’s interests in contracts and defines both an exception and the minimum standards for establishing an interest when based on ownership in a business.
- **Section 4.20** prohibits employment of any “elective officer” by the City during that person’s time in office.
- **Section 4.26** requires attendance at meetings and orderly conduct at meetings, subject to a finding of being “guilty of misconduct in office.”
- **Section 4.27(c)** prohibits a councilmember from voting on “any question in which he has a financial interest, other than the common public interest, or on any question concerning his own conduct.”
- **Section 7.6** prohibits councilmembers from interference in personnel matters or “giving orders to” city employees.



Commerce
CITY

City Code Provisions

- [2-4301](#) addresses employment of “immediate family” of elected official, with exceptions (to be modified)
- [2-4302](#) addresses disqualification based on prior employment and limits ability to act with respect to former employers (6 months) (to be retained)
- [2-4303](#) addresses post-service employment (6 months) and litigation (1 year) relating to matters acted on during service (to be retained)

Current Policies



Existing Ethics Policies

- [CP-14:](#)
 - General principles; limited process & penalties (reprimand/removal for elected/appointed officials); advisory opinions from City Manager
 - Addresses “prohibited interests” and interests in contracts; confidential information; gifts & exceptions; employment; nepotism
- Employee Policy 6.20
- Lexipol (Police)



Draft – Principles of Conduct

To maintain confidence in government, each city official shall, in the performance of his or her duties for the city:

- (a) Seek to avoid the appearance that a conflict of interest exists or that a city office or employment is being used for personal interest;
- (b) Conduct themselves in a manner so as not to bring disrespect or disrepute to their public office or to the city;
- (c) Treat councilmembers, board members, employees, and the public with common courtesy and respect; and
- (d) Act with honesty, care, diligence, professionalism, impartiality, and integrity.

The principles in this section are intended as guides to conduct and a failure of a city official to abide by these principles shall not be a violations of the public trust or of this article.



Draft – Elected/Appointed Officials

Board means any appointive board or commission or other appointive body, district, or authority of the city created pursuant to Chapters 10 and 11 of the charter or pursuant to state law. Board shall not include any city council subcommittee, the Quality Community Foundation, the Commerce City Cultural Council, and any advisory ad hoc committees.

Board member means a regular or alternate member of a board appointed by the city council or any position held by a councilmember on a board

Councilmember means the mayor and any member of the city council.



Draft – Employees

Council employee means the municipal judge, the city manager, and the city attorney.

Employee means any person holding a paid position of employment with the city, whether full-time, part-time, regular, temporary, or by contract. Employee includes the municipal judge, the city manager, and the city attorney, except where the context provides otherwise.



Draft – “Relative”

A husband, wife, domestic partner, partner in a civil union, daughter, son, father, mother, brother, sister, father-in-law, mother-in-law, brother-in-law, sister-in-law, grandparent, grandparent-in-law, step-parent, step-child, son-in-law, daughter-in-law, grandchild and all relationships listed above as they relate to domestic partners or partners in a civil union.



Draft – “Conflict of Interest”

An **interest** held by a city official or a city official’s relative, which interest *interferes with or influences or may interfere with or influence or which may reasonably be perceived by the public as interfering with or influencing* the conduct of the duties or the exercise of the powers of the councilmember, board member, or employee on behalf of the city.

← Key Definitions

← Confidential Information

← Conduct

← Disclosure

Interest →



Draft – “Interest”

Interest means a *pecuniary, property, or commercial interest* or any other interest in any matter, including an **ownership interest**, the *primary significance* of which is economic gain or the avoidance of economic loss.

A city official shall be deemed to have an interest in a *contract* if the city official or any city official’s relative is the contracting person, has an ownership interest in the contracting person, or is an employee, partner, officer, director or sales representative, attorney, consultant, or agent of the contracting person.

A city official shall be deemed to have an interest in a *quasi-judicial matter* if the city official or any city official’s relative is an the applicant or is has an ownership interest in or is an employee, partner, officer, director or sales representative, attorney, agent, or consultant of the applicant or any of the applicant’s representatives in such quasi-judicial matter.

(continued)



Draft – “Interest” (cont.)

Interest does not include, without more:

- an interest to the city or any affiliated entity
- a city official’s employment or involvement in a particular industry or subject matter
- an investment or deposit in a financial institution that is in the business of loaning or receiving money
- a benefit as a result of the common public good or necessity (including benefit to election to or retention of public office)
- Where a similar benefit is conferred to all persons or property similarly situated.

Confidential Information

Ownership Interest



***Draft* – “Ownership Interest”**

The ownership of any part of a business entity by a city official, by a city official’s relative, or by any of their ownership in a fiduciary capacity of any securities or of any beneficial interest in securities of a corporation, where aggregate amount of ownership by the city official and any of the city official’s relatives, in any capacity, amounts to ten percent or more of any class of the securities of the corporation then outstanding or constitutes a controlling interest in the business entity. This definition is intended to be consistent with section 4.19(b) of the charter as it applies to councilmembers.



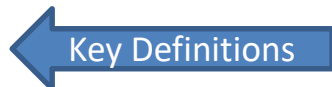
Draft – “Matters pending...”

Any official action of the city, including without limitation a contract, gift, sale of property, legislation, inspections, permitting, land use matter, licensing, administrative approval, and any related, processing, review, approval, appeal, deliberation, solicitation, and implementation, revocation, suspension, or similar action relating thereto

***Draft* – “Thing of Value”**

Any tangible or intangible benefit, including without limitation a gift, favor, compensation, payment of expense, reward, discount, gratuity, loan, reduced interest rate, or forbearance of a loan.

*Exceptions (next pages)



Draft – “Thing of Value Exceptions”

- Unsolicited gifts with less than \$53 value
- Gift/bequest from a relative
- Unsolicited perishable/non-permanent gift (meals, food, flowers, tickets, etc.) *if* in connection with expressed duties
- Items that are similarly available to all employees/general public/event attendees on same terms
- Gifts from other jurisdictions while visiting/hosting
- Gifts or other items from the City
- Reported campaign contributions

(Continued)



Draft – “Thing of Value Exceptions”

(cont.)

- City reimbursement for events/travel
- Social function/meeting that is “not extraordinary when viewed in light of the position held”
- Payment for speeches, debates, or events as honorariums
- Non-pecuniary awards from non-profits to recognize public service
- Salary/normal compensation or incentives for employment
- Discounts/rebates/incentives available to government officials
- Tips for golf course/restaurant employees
- Soliciting donations to the City or for charitable organizations or for assistance to individuals with needs, with record keeping requirements and prohibition on retaining funds

