

## Code of Conduct, Boulder, CO

### 2-7-1 Purpose, Legislative Intent and Findings

(a) Purpose: The purpose of this chapter is to protect the integrity of city government by:

(1) Defining and forbidding certain conflicts of interest that if left unchecked tend to compromise the ability of elected and appointed public officials and public employees to perform their duties without improper financial influence.

(2) Defining and discouraging certain actions that may create an appearance of impropriety that undermines public trust in the accountability and loyalty of elected and appointed public officials and employees.

(3) Protecting the integrity of city government by providing standards of conduct and guidelines for elected and appointed public officials and public employees to follow when their private interests as residents conflict with their public duties.

(4) Fostering public trust by defining standards of honest government and prohibiting the use of public office for private gain.

(b) Legislative Intent: It is the intent of the city council to:

(1) Prohibit public officials and public employees from acting on any matter in which he or she may have a conflict of interest.

(2) Establish aspirational guidelines to encourage public officials and public employees to avoid any appearance of impropriety.

(3) Require adherence to any provision of state or federal law that imposes a higher standard of conduct than this chapter.

(c) Findings: The city council finds and determines that this chapter is necessary to protect the public health, safety, and welfare of the residents of Boulder. Page |

### **2-7-2 Conflicts of Interest Prohibited**

(a) Conflicts Prohibited: No public official or public employee shall make or participate in the making of any official action in which he or she knows or should have known that he or she would have a conflict of interest.

(b) Disclosure Required: Each public official or public employee shall disclose any conflict of interest and disqualify him or herself from participating in the relevant action as provided in section 2-7-10, "Disclosure and Recusal Procedure," B.R.C. 1981.

### **2-7-3 Use of Public Office or Confidential Information for Financial Gain**

(a) Use Of Position For Gain Prohibited: No city council member, employee, or appointee to a city board, commission, task force or similar body shall use his or her public office or position for financial gain.

(b) Use Of Confidential Information For Financial Gain Prohibited: No city council member, employee, or appointee to a city board, commission, task force or similar body shall use or disclose confidential information obtained as a result of holding his or her public office or position, to obtain financial gain, whether for personal gain; gain for his or her relative; gain of any property or entity in which the official or employee has a substantial interest; or gain for any person or for any entity with whom the official or employee is negotiating for or has any arrangement concerning prospective employment.

### **2-7-4 Duty to Maintain the Confidentiality of Privileged Information**

(a) Duty Of A Member Of City Council, Board, Commission, Task Force Or Similar Body: No city council member or appointee to a city board, commission, task force or similar body shall disclose privileged or confidential information without a public majority vote granting the permission of the council or similar body that holds the privilege. The sanction for a member of the city council, board, commission, task force or similar body shall be censure of the body, reached by a majority vote of the body, not including the member charged with disclosing such confidential information. Page | 62

(b) Duty Of A City Employee: No city employee shall disclose privileged or confidential information, obtained as a result of holding his or her public office or position, unless the employee has first received approval by the city manager acting upon the advice of the city attorney.

#### **2-7-5 Gifts to Officials and Employees**

(a) Gifts Prohibited: No city council member or appointee to a city board, commission, task force or similar body, or city employee, or relative of such employee or official shall accept anything of value including, without limitation, a gift, a favor, or a promise of future employment if:

(1) The official or employee is in a position to take official action with regard to the donor; or

(2) The city has or is known to be likely to have a transactional, business, or regulatory relationship with the donor.

(b) Exceptions And Items Not Considered Gifts: The following shall not be considered gifts for purposes of this section, and it shall not be a violation of this chapter for a person to accept the same:

(1) Campaign contributions as permitted by law;

(2) An unsolicited, occasional non-pecuniary gift of a maximum amount of \$50.00 or less in value. The maximum amount will be adjusted on January 1, 2006, and annually thereafter to reflect changes in the United States Bureau of Labor Statistics Consumer Price Index for the Denver-Boulder Consolidated Metropolitan Statistical Area for all Urban Consumers, All Goods, or its successor index;

(3) A gift from a relative;

(4) An award, publicly presented, in recognition of public service;

(5) Reasonable expenses paid by other governments or governmentally related organizations 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 in a panel, or represent the city;

(6) Items which are similarly available to all employees of the city or to the general public on the same terms and conditions; and

(7) A single unsolicited ticket given to a city council member and valued at not in excess of \$150.00 to attend events open to the public on behalf of the city, such as awards dinners, nonprofit organization banquets and seminars, provided that:

(A) The ticket is offered only to the council member and has no resale value; and

(B) The ticket is not offered by a commercial vendor who sells or wishes to sell services or products to the city; and

(C) The ticket is not for a sporting event.

#### **2-7-6 Prior Employment, Outside Employment, and Subsequent Employment**

(a) Prior Employment: No person shall be disqualified from service with the city as an official or employee solely because of his or her prior employment. Officials and employees shall not take official action with respect to their former employers for a period of six months from the date of termination of the prior employment.

(b) Disclosure Of Employment And Other Business Activities: All officials and employees, other than elected officials, shall report existing or proposed outside employment or other outside business interests that may affect their responsibilities to the city in writing to their appointing authorities prior to being appointed or hired. After being appointed or hired, all such people shall report any changes of employment or changes to outside business interests that may affect the person's responsibilities to the city, within thirty days after accepting the same. An employee that has received permission from the city manager may engage in outside employment or outside business interests. Page | 64

(c) Disclosure By City Council Members: Members of the city council shall report any change in their employment status that could give rise to a conflict of interest under this chapter.

(d) Activities That Occur After Termination Of Employment Or Office: No former official or employee shall seek or obtain employment concerning matters upon which he or she took official action during his or her service with the city for six months following termination of office or employment. This provision may be waived by the city council or the city manager.

(e) Participation Of Former Officials Or Employees: No former official or employee shall appear before, or participate in, a city board, commission, task force or similar body on which he or she was a member or served directly as an employee concerning any matter or on which he or she took official action during his or her service with the city for twelve months following termination of office or employment. This prohibition may be waived by the city council by appointment or vote. This prohibition shall not apply to persons who appear before the city in their capacity as an elected official following termination of their office or employment with the city.

(f) Participation In Litigation After Termination: No former official shall engage in any action or litigation in which the city is involved on behalf of any other person or entity, if the action or litigation involves a matter upon which the person took official action during his or her service with the city for twelve months following termination of service with the city.

#### **2-7-7 Employment of Relatives**

(a) No official or employee shall appoint, hire, or advocate the appointment or hiring by the city any person who is his or her relative. In the event that an employee is concerned that the employee's decision to appoint, hire or advocate the appointment or hiring by the city a person who is the employee's relative may cause an appearance of violating this section, the employee may request that the city manager make such decision on the employee's behalf. Council-appointed officers Page | 65

may request the city council to make such an appointment or hiring decision on their behalf.

(b) The city may enter into transactions with companies, corporations or other business organizations that employ a relative of a city official or employee, provided that:

(1) The official or employee does not participate in the decision making that leads to hiring the company, corporation, or other business organization that employs his or her relative; or

(2) The business organization is a publicly-traded corporation that provides its services or products to the city on nondiscriminatory terms justified by the market facts and circumstances of each transaction; or

(3) The company, corporation, or business organization has been doing business with the city for at least one year prior to the date the city official's or employee's relative became employed by the company, corporation or other business organization, and the city official's or employee's relative is not directly employed upon matters involving the city and does not have his or her compensation tied in any manner to the success of the company, corporation, or other business organization, or its ability to obtain business or earn compensation from the city.

#### **2-7-8 Representing Others Before the City Prohibited**

(a) City Council Members Barred From Representing Others: No city council member shall appear on behalf of himself or herself, or another person, before the city council or any city board, commission, task force or similar body. A city council member may be affiliated with a firm appearing on behalf of or employed by another person concerning any transaction with the city before such a body if the council member discloses the situation and recuses himself or herself pursuant to section 2-7-10, "Disclosure and Recusal Procedure," B.R.C. 1981.

(b) Board, Commission Or Task Force Members Barred From Representing Others: An appointee to a city board, commission, task force or similar body may appear

or be Page | 66

affiliated with a firm appearing concerning any transaction with the city under the following circumstances:

- (1) An appointee may appear on his or her own behalf before the body of which he or she is a member to represent his or her personal interests, if the appointee discloses the situation and recuses himself or herself pursuant to section 2-7-10, "Disclosure and Recusal Procedure," B.R.C. 1981, or before the city council;
- (2) An appointee may appear on behalf of another person before any city body except the city council or the body of which the appointee is a member;
- (3) A firm with which an appointee is affiliated may not appear on behalf of or be employed by another person concerning any transaction before the body of which the appointee is a member unless the appointee discloses the situation and recuses himself or herself pursuant to Section 2-7-10, "Disclosure and Recusal Procedure," B.R.C. 1981.

(c) City Employees Barred From Representing Others: No city employee shall appear on behalf of or be employed by another person concerning any transaction with the city or before the city council or any city board, commission, task force or similar body. An employee may appear before such a body on his or her own behalf or on behalf of such employee's spouse, parent, or child. Nothing in this chapter shall be deemed to prohibit the city manager from establishing additional policies and regulations to prevent conflicts of interest between city employees and the city.

(d) City Council Members And Municipal Court: No city council member who is an attorney shall appear on behalf of or be employed by another person or be affiliated with a firm appearing on behalf of or employed by another person concerning any matter before the municipal court.

(e) City Employees And Municipal Court: No city employee who is an attorney shall appear on behalf of or be employed by another person or be affiliated with a firm that appears on behalf of or is employed by another person concerning any matter before the municipal court. A non-attorney employee may appear before the Page | 67

municipal court on his or her own behalf, and an employee other than a municipal court judge may appear on behalf of such employee's spouse, parent, or child to the extent otherwise allowed by law. This authority is intended to allow employees to assist family members in matters before the municipal court to the extent permitted by law but not to promote the unauthorized practice of law.

(f) Board, Commission, Or Task Force Member And Municipal Court: An appointee to a city board, commission, task force or similar body may appear before the municipal court and may be affiliated with a firm appearing before the municipal court.

(g) Consent To Sue: No city council member or appointee to any city board, commission, task force or similar body shall be a party or by himself or herself or as an affiliate of a firm appear on behalf of a party in a civil law suit in which the city is an adverse party, unless the member or appointee first obtains the consent of the city council.

#### **2-7-9 Appearance of Impropriety Discouraged**

(a) These guidelines are intended to establish ethical goals and principles to help city council members, employees, and appointees to a city board, commission, task force or similar body to determine if their actions may cause an appearance of impropriety that will undermine the public's trust in local government.

(b) Violations of this section shall not constitute a violation of this chapter. Compliance with this section will not constitute a defense for violation of another subsection or section of this chapter.

(c) A city council member, employee, or appointee to a city board, commission, task force or similar body who determines that his or her actions may cause an appearance of impropriety should consider, but is not required to, disclose and recuse as prescribed by [section 2-7-10](#), "Disclosure and Recusal Procedure," B.R.C. 1981, in the following circumstances:

(1) If the person is an employee of a state or federal government entity with a substantial interest in any transaction with the city; Page | 68



- (2) If the person has a close friend with a substantial interest in any transaction with the city, and the council member, appointee, or employee believes that the friendship would prevent such person from acting impartially with regard to the particular transaction;
- (3) If the person has an interest in any transaction with the city that is personal or private in nature that would cause a reasonable person in the community to question the objectivity of the city council member, employee, or appointee to a city board, or commission;
- (4) If the person is called upon to act in a quasi-judicial capacity in a decision regarding any of the situations described in paragraphs (c)(1), (c)(2), and (c)(3) of this section; or
- (5) If the person owns or leases real property within six hundred feet from a parcel of property that is the subject of a transaction with the City upon which he or she must make a decision, and is not required to receive official notice of a quasi-judicial action of the City.

#### **2-7-10 Disclosure and Recusal Procedure**

(a) Disclosure And Recusal: No person with a conflict of interest pursuant to subsection 2-7-2(a), B.R.C. 1981, and no person described in subsection 2-7-8(a) or (b), B.R.C. 1981, shall fail to give written notice of the interest described in such subsection to the city council or the city board, commission, task force or similar body of which the person is a member and the city manager as soon as reasonably possible after the interest has arisen. However, no written notice is required if such person discloses the conflict of interest on the record of a public meeting of the city council or the city board, commission, task force or similar body of which the person is a member. The interested council member, employee, or appointee shall thereafter:

- (1) Refrain from voting upon or otherwise acting in an official capacity in such transaction;

(2) Physically absent himself or herself from the room in which a matter related to such transaction is being considered; and

(3) Not discuss any matter related to such transaction with any other member of the council, board, commission, task force, or similar body of which the person is a member.

(b) Recusal by the Council, Board, Commission, Task Force or Similar Body: The city council and any city board, commission, task force or similar body may order recusal of one of its members if that member has an obligation to do so under this chapter and has failed to do so. Such an order is valid if reached after majority vote of the members of the body, not including the member whose recusal is sought, based on competent evidence.

#### **2-7-11 Enforcement**

(a) Violations Prohibited: No person shall violate the requirements of this chapter.

(b) Complaints: A complaint alleging a violation of this chapter may be initiated by any of the following:

(1) Complaints Initiated by the City Manager or City Attorney: The city manager or city attorney may initiate an investigation of any city employee, other than those directly reporting to the city council, if facts are alleged to the city manager in any form that, if true, would constitute a violation of the provisions of this chapter.

(2) Complaints Initiated by a Resident or City Employee: A resident of the City or any city employee may initiate an investigation of any city council member, employee, or appointee to a city board, commission, task force or similar body by filing a sworn statement with the city clerk setting forth facts which, if true, would constitute a violation of a provision of this chapter.

(3) Complaints Initiated by the City Council: The city council may initiate an investigation of any of its employees, and of any city council member or appointee

to a city board, commission, task force or similar body if facts are alleged to the council that, if true, would constitute a violation of the provisions of this chapter.

(c) Investigation of a Complaint: The city manager (for city employees) or the city council (for all others) shall request the city attorney to conduct an investigation regarding a violation of this chapter. The city attorney may request that the city council appoint special counsel to investigate and prosecute any case that may cause the city attorney to have a conflict of interest or may cause an appearance of impropriety under the provisions of this chapter, or may violate any rule regarding professional responsibility.

(d) Response to All Complaints Required: A public official, or body or appointee thereof, conducting an investigation pursuant to subsection (b) of this section shall prepare written findings of fact and conclusions of law in response to all complaints that shall be made available to the public upon completion of the investigation. The response may include a finding that the complaint has no merit, is frivolous, is groundless, or is brought for purposes of harassment.

(e) Limitations: No action may be taken on any complaint that is filed later than twelve months after discovery of the facts supporting an allegation that a violation of this chapter occurred.

#### **2-7-12 Sanctions and Remedies for Violation**

(a) Transactions Voidable: If a transaction including but not limited to a contract or sale is consummated contrary to the provisions of subsection 2-7-2(a), B.R.C. 1981, the city council may void the transaction.

(b) Removal by City Council: The city council may remove any of its employees and any member of a city board, commission, task force or similar body that it finds has willfully violated any provision of this chapter.

(c) Sanction Recommendations: If the party conducting an investigation pursuant to section 2-7-11, "Enforcement," B.R.C. 1981, finds that a city council member or an appointee to a city board, commission, task force or similar body, or employee

violated any provision of this chapter, the investigator shall provide its findings and recommendations to the city manager or city council, as appropriate, who or which in turn may take any of the following actions:

- (1) In the case of a city council member, a motion of censure;
  - (2) In the case of a city employee, a motion for censure or a recommendation that the employee's appointing authority consider disciplining or discharging the employee;
  - (3) Removal as provided in subsection (b) of this section; or
  - (4) As an alternative or in addition to the sanctions imposed herein, the city council may resolve that any person or entity causing, inducing, or soliciting a public official or public employee to violate this chapter may not be involved in any transaction with the City, including but not limited to the award of any city contract, grant, loan or any other thing of value for a period of twelve months or that any such contract, grant, loan or thing of value be terminated, repaid or forfeited.
- (d) Civil Remedies: Any person affected by a city transaction may commence a civil action in the District Court in and for the County of Boulder for equitable relief to enforce the provisions of this chapter upon a showing of willful violation of any provision of this chapter. Before filing such an action, the person shall present the claim to the city attorney to investigate in accordance with subsection 2-7-11(c), B.R.C. 1981. The city attorney or appointed special council shall have sixty days to act thereon. No civil action in district court pursuant to this subsection may be commenced later than twelve months after a violation of this chapter is alleged to have occurred.
- (e) Criminal Sanctions: The city attorney, or special counsel authorized to act on behalf of the city attorney, acting on behalf of the people of the City, may prosecute any violation of this chapter in municipal court in the same manner that other municipal offenses are prosecuted. Page | 72

(f) Defense: It shall be a defense to any charge of a violation of this chapter if the city council member, employee, or appointee to a city board, commission, task force or similar body obtained an advisory opinion pursuant to section 2-7-13, "Advisory Opinions and Outside Counsel Appointment," B.R.C. 1981, and was acting in accordance with the advice provided thereby.

#### **2-7-13 Advisory Opinions and Outside Counsel Appointment**

Nothing in this chapter shall be deemed to apply to a city employee or appointee to a city board, commission, task force or similar body who appears before any such body to urge action on a policy or issue of a general civic nature or to the relationship between the city council, the City, and a general improvement district. Participation in an improvement district shall not, in and of itself, constitute a conflict of interest for a city council or improvement district advisory committee decision concerning the district.

#### **2-7-14 Exemptions From Chapter**

Nothing in this chapter shall be deemed to apply to a city employee or appointee to a city board, commission, task force or similar body who appears before any such body to urge action on a policy or issue of a general civic nature or to the relationship between the city council, the City, and a general improvement district. Participation in an improvement district shall not, in and of itself, constitute a conflict of interest for a city council or improvement district advisory committee decision concerning the district.

#### **2-7-15 Definitions**

"Affiliated with" means an employee, partner, agent, stockholder, joint venturer, or corporate director of any business organization or a person who shares office space with such organization.

"Appear on behalf of" means to act as a witness, advocate, or expert or otherwise to support or oppose the position of another person.

"Conflict of interest" shall mean any situation in which a city council member, an appointee to a city board, commission, task force or similar body, or a city employee:

(a) Has a substantial interest in any transaction with the City; Page | 73

- (b) Has a relative with a substantial interest in any transaction with the City;
- (c) Has a substantial interest as an affiliate of a firm with a substantial interest in any transaction with the City;
- (d) Has a substantial interest as an affiliate of a firm appearing on behalf of or employed by a person with a substantial interest in any transaction with the City;
- (e) Is an officer of an organization that has taken an official position on any transaction with the City, unless service on the board of the organization is required by city code, rule or contract;
- (f) Is on the board of directors of an organization that is substantially affected by a transaction with the City, unless service on the board of the organization is required by city code, rule or contract;
- (g) Is affiliated with a law, accounting, planning, or other professional firm that has substantial interest in any transaction with the City; or
- (h) Is required to receive official notice of a quasi-judicial action from the City.

"Employment" means providing personal services as an employee or an independent contractor, with or without consideration.

"Gift" means any payment, entertainment, subscription, forbearance, service, or any other thing of value, rendering or deposit of money, which is transferred to a donee directly or in trust for his or her benefit. "Gift" shall not include campaign contributions as permitted by law.

"Official action" means any legislative, administrative, or quasi-judicial act of any public official or employee including, without limitation, participation in, or influence of, the decision-making process leading up to a vote or final determination. Page | 74

"Public employee" or "employee" means any person holding any paid position of employment with the City, but shall not include consultants or contractors who have independent control over their work product.

"Public official" or "official" means any person holding a position with the City by election and any person holding a position as an appointee of the city council or the city manager serving on any city board, commission, task force or similar body.

"Relative" means any person related to a public official or an employee by blood, marriage or adoption, through the second degree of consanguinity, including, without limitation, the following: spouse, parents, parents-in-law, children, children-in-law, brothers and sisters, brothers and sisters-in-law, grandparents, grandchildren, aunts, uncles, cousins, nephews, and nieces. A separation between spouses shall not be deemed to terminate relationships described above which exist only because of marriage.

"Substantial interest" means a situation, including, without limitation, a financial stake in the outcome of a decision in which, considering all of the circumstances, would tend to influence the decision of a reasonable person faced with making the same decision.

"Transaction" means a contract of any kind; any sale or lease of any interest in land, material, supplies, or services; or any granting of a development right, any planning, zoning or land use or review process that may precede granting of a development right, license, permit, or application. A transaction does not include any decision which is legislative in nature that affects the entire membership of a class or a significant segment of the community in the same manner as the affected official or employee. (b) Has a relative with a substantial interest in any transaction with the City;

(c) Has a substantial interest as an affiliate of a firm with a substantial interest in any transaction with the City;

(d) Has a substantial interest as an affiliate of a firm appearing on behalf of or employed by a person with a substantial interest in any transaction with the City;

(e) Is an officer of an organization that has taken an official position on any transaction with the City, unless service on the board of the organization is required by city code, rule or contract;

(f) Is on the board of directors of an organization that is substantially affected by a transaction with the City, unless service on the board of the organization is required by city code, rule or contract;

(g) Is affiliated with a law, accounting, planning, or other professional firm that has substantial interest in any transaction with the City; or

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"Relative" means any person related to a public official or an employee by blood, marriage or adoption, through the second degree of consanguinity, including, without limitation, the following: spouse, parents, parents-in-law, children, children-in-law, brothers and sisters, brothers and sisters-in-law, grandparents, grandchildren, aunts, uncles, cousins, nephews, and nieces. A separation between spouses shall not be deemed to terminate relationships described above which exist only because of marriage.

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