

# City Code of Ethics Training

City Planning Commission

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# Origin of City Code of Ethics

- Colorado Constitution requires cities to adopt either
  - State ethics code legislation or
  - Similar municipal ordinance
- City adopted its own Code of Ethics
  - Chapter 1, Article 3 of City Code
- City modified its Code of Ethics in 2016
  - Ordinance 16-122

# Purpose of City Code of Ethics

- Honesty, integrity, fair dealing and ethical behavior
- Independent, objective judgment in performance of duties
- Transparency
- Ensure public confidence

# Why Should You Care?

- Applies to:
  - Elected officials, administrative officers, employees, independent contractors, volunteers of the City, members of boards, committees and commissions appointed by the Mayor and/or City Council
    - In your role as a Downtown Review Board member you are a "covered person" subject to the City's Code of Ethics

# Why do you have to sit through this training?

- All covered persons are required to receive ethics education using the City Ethics Code on an annual basis
- When the Code of Ethics change, it's important to update you on what has changed.

# Primary Areas of Concern

- Gifts
- Conflicts of Interest
- Independent Ethics Commission

# Gifts

- **General Rule:**

No covered person or immediate family member shall solicit, accept, or give a gift related to the covered person's duties and responsibilities on behalf of the City
- **What Is a Gift?**

A payment, subscription, advance, forbearance, acceptance, rendering or deposit of money, services, or anything of value given, to include **food, lodging, transportation, golf** or other **recreation or entertainment**, and reimbursement for other than necessary expenses for official business on behalf of the City, unless consideration of equal or greater value is received. (Examples in **red**)

# Gifts

- Immediate Family Members
  - Broad definition of immediate family member
  - Includes “greats”, cousins, step relatives, and in-laws

# Gifts

- Exceptions to the Ban on Gifts
  - If gift could not be considered a bribe or means of improper influence ... the following are permitted:
    - Campaign contributions
    - **Under \$65.00 per year from vendor or third party (this amount tracks the Colorado Legislature)**
    - Unsolicited awards—like plaques and prof. awards
    - Compensation in normal course of employment, appointment, volunteer service, or business
    - Scholarship, grant, financial aid for education
    - Charity event benefiting City or affiliated org.
    - Gift solicitation for a charitable purpose
    - Gift to benefit public safety or community purpose

# Gifts

- Exceptions to the Ban on Gifts (cont'd)
  - Award at competition open to public
  - Reasonable cost/frequency of conferences, seminars, events, meetings if documented and if participating, vendor contract, or cost paid by govt or 501(c)(3) org.
  - Reasonable cost/frequency of City-sponsored educational events or business meals if documented
  - Perishable or consumable gifts given to City dept. or group
  - Gifts accepted in official capacity that will become property of City

# Gifts

- Exceptions to the Ban on Gifts (cont'd)
  - Non-pecuniary award publicly presented by 501(c)(3) org. in recognition of public service
  - Discounts available to all City employees or offered to public in general (or large segment of public)
  - Exemptions granted/recognized by federal or state law
  - Any exemption approved by IEC through inquiry

# Gifts

- Inappropriate hospitality or gifts
  - Involve offering or receiving accommodations, tours, event tickets, recreation, entertainment, meals or other similar personal benefits when a substantial interest exists that could influence or be perceived to influence objectivity when interacting with, representing, or conducting business for or on behalf of the City.
  - Substantial interest = a situation in which a reasonable person faced with making a decision, after considering the relevant circumstances, would tend to have their decision influenced by a personal or financial stake or consideration

# Conflicts of Interest

- 1.3.101: Public service is a public trust.
- 1.3.106: Every covered person owes a duty of loyalty to the City.
  - Including Downtown Review Board members
- General Rule
  - Covered persons are prohibited from engaging in any behavior that constitutes a conflict of interest

# What Is a Conflict of Interest?

- May not directly or indirectly participate in any matter involving the City where the covered person or immediate family member has substantial interest
  - Substantial interest= a situation in which a reasonable person faced with making a decision, after considering the relevant circumstances, would tend to have their decision influenced by a personal or financial stake or consideration
- May not engage in activities that conflict with official duties or fiduciary duty to City

# What Is a Conflict of Interest?

- Confidential Information
  - May not knowingly use confidential information gained in capacity with City or allow use of such information to further the financial /personal interest of the covered person or immediate family member
  - May not disclose confidential information to people not authorized to receive the confidential information
- May not knowingly make unauthorized commitments or promises purporting to bind City
- In official capacity, may not
  - Endorse any private org./individual,
  - Request/grant any private org./individual special consideration, treatment, or advantage
- May not misappropriate services/resources of City for personal benefit

# Conflicts of Interest

- Examples:
  - You or your family member own or have ownership/financial interest in a property seeking board approval
  - You use the financial information you receive as a board member to solicit a contract with a developer
  - You have City staff make copies of flyers for your personal event

# Conflicts of Interest

- You have a prohibited conflict of interest. What should you do?
  - Disclose the conflict of interest
  - Recuse yourself from participation
    - Don't attempt to influence committee's decision
      - Don't communicate with members of committee or by social media regarding the matter
    - Physically leave the room before matter is considered
    - If on Teams, mute and turn off camera while item is being discussed.
    - Don't vote or take action on matter

# What Is a Conflict of Interest?

- Appearance of Impropriety
  - When a covered person takes a direct official action that may create a reasonable perception that the covered person is not able to carry out his/her official duties with integrity, impartiality and competition
- A covered person with an appearance of impropriety may:
  - Disclose and recuse (same as prohibited conflict of interest); OR
  - Declare in writing or orally at an appropriate public meeting that the appearance of impropriety will not impact the covered person's ability to participate fairly and impartially

# Independent Ethics Commission

- Covered persons subject to IEC jurisdiction
  - Elected officials, administrative officers, Municipal Court Judges, and members of boards, committees and commissions appointed by the Mayor and/or City Council
- Covered persons subject to HR jurisdiction
  - Independent contractors, employees, volunteers of the City

# Independent Ethics Commission

## **Creation and Purpose:**

- IEC gives recommendations to City Council on ethical complaints and issues written advisory opinions in response to inquiries

## **Subpoena and Recommendations:**

- IEC has power to subpoena documents and witnesses
- Recommendations by IEC are based on the preponderance of evidence before it



# Independent Ethics Commission

## **Complaints; Inquiries:**

- Any person may file written complaint or inquiry for consideration by the IEC
- Filed with City Attorney
- Confidential
- Written complaint or inquiry only considered for matters occurring within last twelve (12) months
- Members of boards, committees, or commissions are subject to IEC jurisdiction

# Independent Ethics Commission

## **Frivolous Complaints; Inquiries:**

- IEC may dismiss frivolous complaints or inquiries without further action
- Frivolous dismissals maintained as confidential

## **Nonfrivolous, Formal Complaints; Inquiries:**

- IEC investigates nonfrivolous complaints
- IEC will issue confidential written recommendation to City Council containing its investigative findings of fact and statement as to whether the IEC finds Ethics Code violations occurred

# Independent Ethics Commission

## **Council Action:**

- Proceed with allegations of ethics violations it determines in its independent judgment are appropriate
  - Accused party may request hearing
  - Legal representation available / reservation of rights
- Issue finding of no violation
- Dismiss all or part of IEC recommendation
- Accept recommendation of IEC

# Independent Ethics Commission

## **Final Action:**

Decision of City Council is final action, subject to any appeal to a court with proper jurisdiction

## **Penalty:**

Reprimand (oral or written), censure (elected officials), fine for up to double the amount of financial equivalent of any benefits obtained, suspension/removal

# Independent Ethics Commission

## **Legal Representation**

- Those subject to IEC jurisdiction who are subject to an ethics violation investigation are entitled to independent legal representative
- City will pay up to \$10,000 in legal fees if requested
- City-paid legal fees must be paid back if person is found to have committed ethics violation

# Advisory Opinions

- Any covered person may request an advisory opinion (confidential or non-confidential) from the IEC or City Attorney
  - IEC opinion should be your first choice
- Must be regarding future action
- Must fully disclose all pertinent facts and circumstances in writing
- Defense if you, in good faith, follow the advisory opinion
- Verbal advisory opinions are not binding – ask for writing
- Covered person must provide opinion to IEC if investigation
- Please give advance warning if you need an opinion

## Many ethical issues are not clear cut.

- Feel free to call if you have any questions or specific situations
- City Attorney's Office
  - (719) 385-5909