

City Code of Ethics Training

Downtown Review Board

June 2, 2022

Lisa O'Boyle, Senior Attorney



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