

**ORDINANCE NO. O-2014-39**

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF DURANGO BY THE CREATION OF ARTICLE VII TO CHAPTER 2 OF THE CODE CONCERNING THE ADOPTION OF A CODE OF CONDUCT AND CODE OF ETHICS POLICY FOR THE CITY OF DURANGO AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the City Council recognizes that the proper operation of municipal government requires that Council members as well as other City Officials, employees of the City, volunteers, and members of City boards and commissions be impartial and abide by the highest standards of ethics and conduct; and

WHEREAS, Council adopted Resolution No. R-2014-30, July, 15<sup>th</sup>, 2014, which directed staff to begin the process of creating enforceable guidelines that further the public's trust and public interest in municipal government; and

WHEREAS, such guidelines and standards have not been codified to date in the City Charter, Ordinances or any policies adopted by the City Council; and

WHEREAS, the Council through its goals and objectives desires to create a policy that will foster civic engagement, demonstrate open and transparent government; and

WHEREAS, the City of Durango ("City") is a municipal home-rule corporation created and organized pursuant to Article XX of the Colorado Constitution and the Charter of the City of Durango, Colorado; and

WHEREAS, such authority, as well as Article XXIX of the Colorado Constitution ( Amendment 41), grants home rule cities the authority to establish and adopt precise standards of conduct expected for City Officials, employees of the City, volunteers and members of City boards and commissions; and

WHEREAS, the process of developing and refining a Code of Conduct and Code of Ethics for the City of Durango has been highly transparent with numerous public workshops, Council study sessions and a public hearing held before Council on September 2, 2014; and

WHEREAS, the Council has determined, subsequent to said public hearing, that the new Code of Conduct and Code of Ethics policy is in the best interest of the citizens of the City of Durango;

NOW, THEREFORE, THE CITY OF DURANGO HEREBY ORDAINS:

**Section 1:** The Code of Ordinances of the City of Durango, Colorado is hereby amended by the addition of Article VII to Chapter 2 of the Code entitled "Code of Conduct and Code of Ethics" to read in its entirety as follows:

ARTICLE VII. CODE OF CONDUCT AND CODE OF ETHICS

**Sec. 2-200 Legislative intent and purpose.**

(a) *Legislative intent:* It is the intent of the City that Officers, Appointed Board and Commission Members, Employees, Volunteers and Independent Contractors adhere to high levels of ethical conduct to assure that the public has confidence in the integrity of all aspects of City government and the City Officials that exercise discretionary powers. This code is intended to uphold the public trust in the persons in positions of public responsibility who are acting benefit of the public. Officers, Officials, Employees, Volunteers, and Independent Contractors shall comply with both the letter and the spirit of the ethics code and strive to avoid situations that create impropriety or the appearance of impropriety. The Code defines and discourages certain actions that may create impropriety or the appearance of impropriety that undermine public trust in the accountability and loyalty of elected and appointed public officials and employees.

The City shall be guided by the principle of non-partisanship: all actions, decisions and votes shall be made in the best interest of the public, on their merits, objectively and without regard to political party, or regional or ideological partisanship.

(b) *Declaration of purpose:*

(1) Framework: This Code of Conduct and Code of Ethics should evoke a commitment to maintain high ethical standards. The following substantive provisions form the framework of the essential principles governing the conduct and ethics of elected officials, appointed board and commission members, city employees, independent contractors, and volunteers of the City.

- i. Public Trust. Treat public service as a public trust, only using the power and resources of public service to advance public interest and not to attain personal or private benefit.
- ii. Objective Judgment. Employ independent, objective judgment in performing duties, deciding all matters on the merits, free from avoidable conflicts of interest and both real and perceived improper influences.
- iii. Accountability. Assure that government is conducted openly, efficiently, equitably and honorably in a manner that permits the citizenry to make informed judgments and hold City Officials accountable.
- iv. Democratic Leadership. Honor and respect the principles and spirit of representative democracy and set a positive example of good citizenship by scrupulously observing the letter and spirit of laws, polices, and rules.
- v. Respectability. Safeguard public confidence in the integrity of government

by being honest, fair, and respectful, and by avoiding conduct that creates an impropriety or the appearance of impropriety or which otherwise befits a City Official.

(2) Purpose of Code of conduct and code of ethics:

- i. Promote public confidence in the integrity of City Officials;
- ii. State principles of conduct and ethics which are to be applied in public service;
- iii. Identify standards of ethical conduct for City Officials and Public Employees;
- iv. Inform the public of the standards to which their City Officials are expected to adhere;
- v. Help motivate City Officials and Public Employees to pursue productive conduct and ethical ideals which exceed minimum standards;
- vi. Provide a process by which City Officials and the public may identify and resolve conduct and ethical issues; and
- vii. Establish penalties, when appropriate, for City Officials who violate the public trust.

**Sec. 2-201 Definitions.**

The following words and phrases used in this Article shall have the following meanings unless the context clearly indicates otherwise:

*Board or commission* shall mean a voluntary body, appointed by City Council that is established pursuant to state law or City ordinance or resolution.

*Board of ethics* means a five (5) member board comprised of five (5) at large community members who are appointed by City Council. A minimum of three city residents shall serve on the Board. During the time of an investigation, the Board of Ethics shall not include any person, either as a voting member or staff liaison, who is being investigated by the Board of Ethics.

*Business entity* means any of the following entities, whether or not carried on for purposes of profit: business, sole proprietorship, firm, partnership, unincorporated association, venture, trust or corporation.

*City Official* means an Officer, Board or Commission Member, a candidate for such position, and former Officers, Board and Commission Member for six months after termination of service.

*Confidential Information* means any information deemed confidential under law; or information not available to the general public, obtained by reason of the individual's official position, and under circumstances where a reasonable person would have an expectation of confidentiality, or where it could reasonably be expected that the information could be beneficial or harmful to the City or any other person if prematurely disclosed. Confidential information shall also include privileged attorney-client information and communication required to be kept confidential in compliance with applicable law.

*Contract* means any arrangement or agreement pursuant to which any material, service, or other thing of value is to be furnished for a valuable consideration or is to be sold or transferred. For purposes of considering violations of this Code of Ethics, "Contract" does not include:

- (a) Contracts awarded to the lowest responsible bidder based on competitive-bidding procedures;
- (b) Merchandise sold to the highest bidder at public auctions;
- (c) Investments or deposits in financial institutions which are in the business of loaning or receiving moneys;
- (d) Contracts with a City Official or Business Entity in which a City Official has an Interest if, because of its geographic restrictions, the City could not otherwise reasonably afford itself of the subject of the Contract. It shall be presumed that the City could not otherwise reasonably afford itself of the subject of a Contract if the additional cost to the City is greater than ten percent, or if the Contract is for services that must be performed within a limited time period and no other contractor can provide those services within that time period;
- (e) Contracts in which a City Official who has an Interest has disclosed a personal interest and has not taken official action thereon or with respect to which any member of the City Council who has an Interest has voted thereon in accordance with Section 24-18-109(3)(b) C.R.S. Any such disclosure shall be made to the City Council and to the Secretary of State;
- (f) Contracts with a business entity in which the City Official exercising an official action holds a twenty-five percent interest or less.

*Gift of Substantial Value" or Gift of Substantial Economic Benefit Tantamount to Gifts of Substantial Value* includes without limitation a loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans and compensation received for private services rendered at a rate substantially exceeding the fair market value of such services, and also includes any pecuniary gift of any value associated in any way with a Contract over which the City Official has or may perform an Official Action. The following shall not be considered Gifts of Substantial Value or Gifts of Substantial Economic Benefit Tantamount to Gifts of Substantial Value unless they involve a pecuniary gift associated with a Contract over which a City Official performs an Official Action:

- (a) Campaign contributions and contributions in kind reported as required by Section 1-45-108, C.R.S.;
- (b) Any unsolicited, occasional non-pecuniary gifts having fair market value of or an aggregate value of fifty dollars (\$50.00) or less in value in any calendar year;
- (c) A non-pecuniary award publicly presented in recognition of public service;
- (d) Payment of or reimbursement by the City for actual and necessary expenditures for travel and subsistence for attendance at a convention or other meeting related to City business. This includes tuition waivers for meetings or conventions hosted by non-profit entities that the City is a member;
- (e) Reimbursement for or acceptance of an opportunity to participate in a social function or meeting which is offered to the City Official which is not extraordinary when viewed in light of the position held by the City Official;

- (f) A single unsolicited ticket given to a City Official to attend a local event open to the public as an official representative of the City, including but not limited to, awards dinners, nonprofit organization banquets, seminars, tickets to sporting, recreational, educational, or cultural events, provided that:
  - (1) The ticket is offered only to the City Official and has no resale value; and
  - (2) The ticket is not offered by a commercial vendor who sells or wishes to sell services or products to the city.
- (g) Payment for speeches, appearances, or publications reported pursuant to Section 24-6-203, C.R.S.;
- (h) Payment of salary from employment, including other government employment, in addition to that earned by reason of service as a City Official;
- (i) Pecuniary or non-pecuniary gifts or contributions to programs or events sponsored by the City in which multiple City Officials may participate.

*Independent Contractor* means a person or entity other than an Officer, or employee who is paid for services rendered to the City pursuant to a contract for services.

*Interest* means a substantial interest held by an individual that is:

- (a) An ownership interest in a business entity;
- (b) Existing employment, prospective employment for which negotiations have begun, and current or prospective independent contractor relations with an individual or entity that would constitute a substantial Interest;
- (c) An ownership interest in real or personal property;
- (d) A loan or any other debtor or creditor interest;
- (e) A position as a director or officer in a business entity; or
- (f) A position as a director or officer of a non-profit entity.

The term Interest is intended to reflect a pecuniary, property, or commercial benefit, or any other benefit the primary significance of which is economic gain or the avoidance of economic loss, but does not include any matter in which a similar benefit is conferred to all persons or property similarly situated. An Interest of the following persons and entities shall be deemed to constitute an Interest of a City Official:

- (g) Any Relative of the City Official; or
- (h) Any Business Entity in which the City Official is an officer, director, employee, partner, owner, or independent contractor; or
- (i) Any Business Entity in which the City Official owns or controls shares of stock, the aggregate amount of which constitutes more than twenty-five percent of the shares of stock of the Business Entity then outstanding. Participation in a stock mutual fund shall not be considered an Interest in a Business Entity of which the mutual fund owns or controls shares of stock.

*Officer* means all elected or appointed officers, including but not limited to:

- (a) Mayor;
- (b) Other Council Members;
- (c) City Attorney;
- (d) Municipal Judge;

(e) City Manager.

*Official Action* means any vote, decision, recommendation, approval, disapproval or other action, including inaction, which includes use of discretionary authority of any City Official.

*Public Employee* means any non-appointed person holding any paid position of employment with the City.

*Relative* means any person related to a City Official by blood or marriage, in any of the following degrees: parents, spouse, domestic partners, children, brothers, sisters, parents-in-law, nephews, nieces, aunts, uncles, first cousins, grandparents, grandchildren, and children-in-law. A separation between spouses or domestic partners shall not be deemed to terminate relationships described herein.

*Volunteer* means any person who is appointed by staff or authorized to act on behalf of the City in any manner without compensation.

#### **Sec. 2-202 General Requirements.**

- (a) Duty. All City Officials, Public Employees, and representatives of the City have a duty to use their public positions to contribute to the public good. This Code of Conduct and Code of Ethics shall not preclude City Officials from acting in any manner consistent with their official duties or from providing assistance or public services to anyone who is entitled to them. All City Officials, however, also have a fiduciary duty to refrain from using their positions in any manner for personal or private gain or which is detrimental to the public good. City Officials must be mindful that the appearance of impropriety can be as corrosive of public confidence as an actual impropriety, and must strive to avoid situations which may create an appearance of impropriety.
- (b) City Officials are non-partisan. There shall be no partisan references or campaigning for political office at City Council meetings. Partisanship shall not be a factor in any Official Action of any city Official.
- (c) Chronic Violation of Laws. City Officials have an ethical duty to abide by federal, state, and City laws. Chronic or excessive violations of federal, state or City laws, even when they do not result in convictions for the commission of felonies, misdemeanors, or other laws whose violation constitutes a violation of this Code of Conduct and Code of Ethics, may indicate disrespect for the law and may contribute to the public's disrespect for City Officials .
- (d) State Statutory Requirements. All City Officials shall comply with all applicable provisions of the Colorado Revised Statutes and Colorado Constitution regarding ethics, including Section 24-18-101, et seq., and Section 31-4-404, C.R.S., and Article XXIX of the Colorado Constitution notwithstanding the requirements of this Code of Conduct and Code of Ethics. The more stringent, applicable standards of conduct shall prevail in the event of any conflict among locally adopted standards and Statutory Requirements.

**Sec. 2-203 Code of conduct.**

The City of Durango Code of Conduct represents a reasonable policy for guiding the conduct of City Officials, and defining acceptable conduct in dealing with each other and individuals who are outside City government. The City Council believes the Code of Conduct should be adhered to by all City Officials to provide a productive, effective and respectful atmosphere. Nothing in this subsection shall limit the authority of the City Manager to investigate the conduct of and discipline employees.

(a) Code of Conduct for City Officials. In conducting the City's business, City officers and Officials shall:

- (1) Strive at all times to serve the best interests of the City regardless of his or her personal interests;
- (2) Perform duties with honesty, diligence, professionalism, impartiality and integrity;
- (3) Be prepared for each meeting; listen and interact respectfully;
- (4) Focus on the issue being discussed;
- (5) Keep language and decorum of City Officials should on a professional level;
- (6) Seek common ground before disagreements and differences;
- (7) Refrain from personally attacking other City Officials or residents whether in writing or speech, this includes inflammatory or defaming language against any person or their person;
- (8) Once a decision is made, move on to the next issue;
- (9) Listen respectfully to opinions of others before offering a counterpoint; avoid making rash judgments;
- (10) Assume the best intention of others;
- (11) Speak for yourself not for others, and base your comments and decisions on your best judgment;
- (12) Attend all meetings, unless given excused absence prior to meeting;
- (13) Accurately represent known facts in an issue involving city business;
- (14) Vote on all matters before the governing or advisory board, except when recusal is required in matters where a Conflict of Interest exists and as provided in other sections of this Code. In all instances, an Elected Official or a Board and Commission Member shall state his or her reasons for abstaining;
- (15) Avoid appearances of impropriety or conflict by virtue of past relationships. Disclose any prior relationships that would have constituted a substantial

Interest within three years of the matter pending before the board or commission.

(b) In conducting the City's business, City Officers shall:

- (1) Act within the boundaries of their authority as defined by the City Charter and Code;
- (2) Honor the chain of command; refrain from directing subordinate personnel; coordinate communication with staff through the City Manager's Office; direct correspondence with staff shall remain at the department head level and above;
- (3) As appropriate, speak to each other, not to the audience;
- (4) Speak with one voice once a decision is made and when providing direction to staff.

**Sec. 2-204 Code of ethics.**

The City recognizes that ethical issues may arise in the course of public service. It is the intent of this Code of Ethics:

- (a) To clarify the actions are allowed and those that constitute a breach of public trust, specifically relating to the use of public office for private gain, gifts, conflict of interest, improper use of confidential information or records, and other ethics matters not consistent with existing policies or the City Charter;
- (b) To establish guidelines and principles to help City Officials, employees, volunteers and independent contractors determine if their actions may cause an appearance of impropriety that will undermine the public's trust in local government;
- (c) To establish a Board of Ethics empowered to issue advisory opinions so that City Officials may seek guidance about ethical issues relevant to their service;
- (d) To establish a system that allows citizens to report a possible wrongdoing and seek enforcement so that any breach of the public trust may be discovered and dealt with appropriately;
- (e) To outline a process that provides equal protection for the complainant and the subject of the inquiry; and
- (f) To outline a process for penalizing Officers and Officials who violate the provisions of this code.

**Sec. 2-205 Mandatory standards of ethical conduct.**

The following requirements shall constitute the Durango Code of Ethics, establishing reasonable standards for the ethical conduct of City Officials, Public Employees, and representatives of the City. Failure to abide by these standards shall be deemed a violation of the Code of Ethics and shall subject the City Official, Public Employee, or representative of the City to an investigation by the Board of Ethics and discipline by the City Council (in issues involving City Officials), and the City Manager (in issues involving Employees, Independent Contractors and Volunteers). Violations may also constitute a violation of state law. It is a violation of the Code of Ethics for any City Official, Public Employee, or representative of the City to:



- (a) Confidential Information. Disclose or use confidential information acquired in the course of official duties that is not generally available to the public to further the City Official's personal financial interests, or disclose any confidential information, including any information obtained in an Executive Session, unless approved by majority vote of City Council members in office, or waive any confidence or privilege of the City Council or any Board or Commission without approval of the respective City Council, Board or Commission.
- (b) Disclosure. Fail to disclose any Interest as defined in Section 2-201 in a matter pending or being considered by the governing or advisory board prior to the vote. The Official shall give written notice to the city council or the city board, commission, task force or similar body of which the Official is a member, and to the city manager and city attorney as soon as reasonably possible after the Interest has arisen. However, no written notice is required if the Official discloses the conflict of interest on the record of a public meeting of the governing body or advisory board and/or commission of which the Official is a member.
- (c) Gifts of Substantial Value. Accept Gifts of Substantial Value or of Substantial Economic Benefit Tantamount to a Gift of Substantial Value of fifty dollars (\$50.00) or more which would tend to improperly influence a reasonable person in a public position to depart from the faithful and impartial discharge of the City Official's public duties, of which the City Official knows, or which a reasonable person should know, is primarily for the purpose of rewarding an official action the City Official has taken or could take.
- (d) Engaging in Financial Transactions. Engage in a substantial financial transaction for the Public Official's private business purposes with a person the City Official inspects or supervises in the course of the City Official's official duties.
- (e) Benefiting Business Interests. Perform an Official Act directly and substantially affecting, to its economic benefit, a business or other undertaking in which the City Official either has an Interest or is engaged as counsel, consultant, representative or agent.
- (f) Interest. Vote on or attempt to influence the other members of the City Council, a Board or Commission on which the City Official sits regarding any proposed or pending matter in which the Public Official has an Interest. A member of the City Council or a Board or Commission may vote on such matter notwithstanding this prohibition if his or her participation is necessary to obtain a quorum and allow the Council, Board or Commission to vote and if he or she complies with the disclosure requirements of Section 24-18-110, C.R.S.
- (g) City Officials shall not appear before the City Council or any Board or Commission on which or over which the City Official presides or has supervisory responsibilities, except in the City Official's representation of the City.
- (h) Crimes. Be convicted of or plead guilty to any felony or a misdemeanor (excluding traffic infractions 6 points or less), whether or not the crime relates directly to the City Official's position in public service.
- (i) Discrimination. Violate any federal, state or City laws prohibiting

discrimination.

- (j) Harassment. Violate any federal, state or City laws concerning prohibited harassment.
- (k) Retaliation. Be found guilty of violating or plead guilty to violating any federal, state or City laws prohibiting retaliation, including retaliation against whistleblowers or those filing claims against the City or those filing claims against a City Official under the provisions of this policy.
- (l) Outside Employment or Service. Engage in or accept any employment or service, other than employment by the City, if such employment or service reasonably would tend to impair the City Official's independence of judgment in the performance of the City Official's duties. This restriction is in addition to any other restrictions on outside employment applicable to a City Official and is not intended to authorize outside employment by any Public Official if otherwise prohibited.
- (m) Personal Benefit. Use his or her own time or efforts or request or direct the use of another City Official's time or efforts for personal or private purposes while such time is being compensated by the City or intended for general public benefit.
- (n) Unauthorized use of name, position, or logo. No City Official or Employee shall use or authorize the use of his or her title, the name "City of Durango", or the city's logo in a manner that suggests endorsement, approval, favoritism, or bias by the city or a City Official regarding goods or services, unless the use is authorized by a majority vote of the City Council.
- (o) Vehicles and Equipment. Request, direct, or permit the personal or private use of any City vehicle or City equipment except in the same manner and under the same circumstances applicable to any person who is not a Public Official, unless such use will also substantially benefit the City.
- (p) Special Consideration. Request, or grant to any person, any special consideration, treatment, or advantage beyond that which is available to every other person in similar circumstances or need.
- (q) Vote Trading. Offer or promise to give his or her vote or influence in favor of or against any proposed Official Action in consideration or upon condition that any other City Official will promise or assent to give his or her vote or influence in favor of or against any other proposed Official Action.
- (r) Appearance by Former City Officials. At any time within six months after termination or service from the City, appear on behalf of the Interest of any person or entity, before the Council or any Board or Commission, or City Official of the City, in relation to any matter concerning which the former City Official performed an Official Act or had supervisory responsibility. During such period before a former City Official represents any person or entity in a matter not involving an Interest or in relation to a matter over which the former City Official did not perform an Official Act or have supervisory responsibility, the former City Official shall disclose his or her prior relationship to the City.
- (s) Respect. Fail to interact with all persons and entities in a respectful and fair manner at all times. Individual members of the public should at no time be criticized, berated, or belittled for their requests or views.

(t) Nepotism.

(1) Hiring. Be directly responsible for the hiring, appointment, retention, or supervision of, or influence or attempt to influence the hiring, appointment, supervision, or retention by the City of, any Relative of the City Official.

(2) Terms of Engagement. Influence or attempt to influence the compensation, benefits, or other terms and conditions of engagement by or service to the City applicable to any Relative of the City Official.

(3) Employment Procedures. Engage, hire or appoint a Relative of a City Official as a City Official unless the City's personnel procedures applicable to such employment or appointment have been followed.

(u) Similar Conduct. Other similar conduct which threatens the public confidence in the integrity of government including but not limited to illegal conduct, conduct which puts self-interest before public interest, willful or persistent failure to perform his or her duties, or any other conduct involving dereliction of duties.

(v) Training Requirements. Ethics education regarding this Code of Ethics and other ethics training shall be provided annually to City Officials and Employees covered under this policy.

Further, in conducting city business, City Officers—the Mayor, City Council, City Manager, City Attorney, and Municipal Judge—shall attend, on an annual basis, at a minimum, eight (8) hours of training and continuing education to maintain high standards of conduct, foster public trust in government, and advance the public interest. Training and continuing education in appropriate areas is critical to the proper governmental function and reasoned action on matters of governance. Said courses shall include, but are not limited to, instruction in the following areas: ethics, conflicts of interest, municipal finance, issues of budgeting and budget process requirements, and Open Public Meetings Act. Where possible preference shall be given to ethics training.

(w) Acceptance of the Policy. City Officials, Employees and representatives of the City who are covered under the Code of Conduct and Ethics shall sign a form stating that they received a copy of the policy and agree to abide by the provisions of the Code.

**Sec. 2-206 Board of ethics.**

(a) Purpose. The purpose of the Board of Ethics shall be to issue advisory opinions on ethical issues arising under this article; to hear inquiries or complaints; to issue findings and recommendations regarding alleged violations of this article.

(b) Membership. The Board of Ethics shall be comprised of five (5) at large community members who are appointed by a majority vote of City Council. In selecting the at large community members, Council will appoint a minimum of three city residents to serve on the Board. In selecting and appointing the other two members, City Council may appoint non-city residents. Where possible, priority shall be given to city residents.

- (c) Qualifications. Appointees shall have expertise in ethics acquired through education or experience.
- (d) Terms of Office. During the initial creation of the Board of Ethics, three at large community member shall be appointed to serve three (3) year terms and the remaining two members shall be appointed to serve two (2) year terms. Following their initial appointment, all board members shall serve three year terms. A member whose term has expired will continue to serve until a replacement is appointed or unless the member is removed or resigns. Members appointed to a vacancy will serve the remainder of the term.
- (e) Removal. Members serve at the pleasure of the City Council; Council may remove any member by a majority vote. City Council shall appoint a new member to fill the vacated seat within ninety (90) days of the removal.
- (f) Meetings. The Board of Ethics shall convene annually independent of pending ethics inquires, complaints or investigations. The members of the Board of Ethics shall elect from its regular membership a Chairperson and a Vice-Chairperson. whose terms of office shall be two (2) years. The Board of Ethics shall adopt written rules of procedure to govern its operations.
- (g) Consultation with City Attorney. The Board of Ethics may consult with the City Attorney or a designee of the City Attorney regarding legal issues which may arise in connection with the inquiry or complaint and may request advisory assistance from the City Attorney in conducting hearing on inquires during any stage of the process. In the event that the City Attorney is the subject of an inquiry or complaint, the Board shall consult with alternate legal counsel.
- (h) Access to Resources. The Board of Ethics shall have access to City resources as deemed necessary and reasonable to facilitate this process, including: consultation with the City Manager, the Colorado Municipal League, and Colorado Intergovernmental Risk Sharing Agency (CIRSA).

**Sec. 2-207 Advisory opinions.**

- (a) Any current or former City Official may submit a written request to the Board of Ethics for an advisory opinion on whether any conduct by that person would constitute a violation of the Code of Ethics. The Board of Ethics shall exercise and give notice of one of three options, pursuant to written rules adopted by the board, within four (4) weeks from the time of receiving the request: (1) issue an opinion; (2) issue a statement that it will not issue an opinion (because the request was withdrawn or because it declines to act in accordance with Section 2-208(a)(6)); (3) explain why it has not acted to issue an advisory opinion or to give written notice explaining the reasons for the delay in rendering an advisory opinion. The Board may extend the time needed to render an advisory opinion if the person who requested the opinion withdraws the request in writing, the Board has requested additional information that has not been received, or the Board of Ethics declines to issue an opinion or dismisses the inquiry based on the criteria outlined in Section 2-208(a)(6).
- (b) The Board or its designee may request any additional information deemed necessary to render an advisory opinion.
- (c) The Board may publish its advisory opinions. It shall do so with redactions as may be lawful and necessary to prevent disclosure of the identity of the individual involved. The Board may also publish guidelines based on an advisory opinion if

the subject of the opinion may be of general interest and guidance.

(d) A person whose conduct is in accordance with an advisory opinion or a published unreserved advisory opinion of the Board of Ethics shall not be found in violation of any of the provisions in this article.

(e) Noncompliance with advisory opinions. When the Board of Ethics has reason to believe that the advisory opinion has not been complied with, the Board shall inform the person, the person's appointing authority, or City Council as appropriate, and the City Attorney. The appointing authority after consulting with the City Attorney, shall take appropriate action to ensure compliance.

**Sec. 2-208 Enforcement of the code of conduct and code of ethics.**

(a) Complaints or Inquiries to the Board of Ethics.

(1) Any person, either personally or on behalf of an organization or governmental body, may file an inquiry or complaint for the Board of Ethics with the City Clerk. Said inquiry or complaint may ask whether a current official has failed to comply with the Code of Conduct or the Code of Ethics. Within five (5) days of receiving an inquiry or complaint the City Clerk shall forward it to the Board of Ethics. In inquiries or complaints involving Employees, Independent Contractors and Volunteers, the Clerk shall forward the complaint to the City Manager.

(2) An inquiry or complaint (hereinafter "inquiry") must be in writing on a form approved by the Board, be signed, and show the home address of the person who submitted it. The form shall contain a statement that must be signed and which states that, to the best of the person's knowledge, information, and belief formed after reasonable reflection, the information in the inquiry is true. The inquiry must describe the facts that constitute the violation of the Code of Conduct or Code of Ethics in sufficient detail so that the Board and the person who is the subject of the inquiry can reasonably be expected to understand the nature of any offense that is being alleged. The Board or its designee may request any additional information deemed necessary to screen the inquiry or to render a decision.

(3) No inquiries shall be accepted or considered which relate to actions that took place more than one year prior to the date of filing. The individual filing the inquiry or complaint has sixty (60) days from the date that the issue is brought to his or her attention to file in accordance with this policy.

(4) The Board or its designee must notify the person who is the subject of the inquiry that an inquiry has been filed no more than five (5) days from the day the inquiry was forward to the Board from the City Clerk. The notice shall include a copy of the full inquiry; a copy of any portion of the Code of Conduct or Code of Ethics that is alleged to have been or that may be violated; and the Board's Rules of Procedure.

(5) The Board shall provide the subject of the inquiry with a copy of the inquiry before it provides copies to any other parties. The Board recognizes that distribution to the public of an inquiry prior to screening by the Board as required below could harm the reputation of an innocent person and is contrary to the public interest;

therefore, the public release of the inquiry is prohibited until the screening process below has been completed.

- (6) The Board or a committee of the Board shall consult in confidence to screen the inquiry within fourteen (14) days of receiving an inquiry. The Board may immediately dismiss an inquiry if:
  - i. It has no jurisdiction; or
  - ii. The alleged violation, if true, would not constitute a violation of the Code of Ethics; or
  - iii. The alleged violation is a minor or de minimis violation; or
  - iv. The inquiry is, on its face, frivolous, groundless, or brought for purposes of harassment; or
  - v. The matter has become moot because the person who is the subject of the Inquiry is no longer an officer, official or employee; or
  - vi. The person who is the subject of the inquiry had obtained an advisory opinion under Section 2-207 permitting the conduct; or
  - vii. The appointing authority of the person who is the subject of the inquiry has already taken action as a result of finding a violation and the Board believes the action was appropriate.
  
- (7) In issues regarding Code of Conduct violations, the enforcement process is intended to be corrective rather than remedial unless the violation is a repeated offense. In the event the Board of Ethics determines a Code of Conduct violation has occurred, and it is minor in nature, with the concurrence of the complainant and the subject of the inquiry, the Board may dispense with the Hearing process and conduct a more informal mediation process in lieu of a Hearing.
  
- (8) If the inquiry is not dismissed pursuant Section 2-208(a)(6) or (7), the Board may direct a staff member or appoint an individual to investigate the inquiry in order to determine if a hearing is warranted. The investigation typically should not exceed thirty (30) days. The investigation may include obtaining further detail or clarification from the complainant or obtaining additional information from the person who is the subject of the inquiry, that person's supervisor if any, public records, or other reasonable and readily available sources. The Board shall review the additional information and determine whether the investigation is complete or whether additional information is needed. Once the Board finds that the investigation is complete, the Board shall either: (1) dismiss the inquiry, (2) request written arguments, weigh the arguments and make a finding, or (3) proceed under paragraph 9 below. If information received is confidential or privileged, the Board shall maintain the confidentiality or privilege.
  
- (9) If the inquiry is not dismissed or otherwise resolved pursuant to Section 2-208(a)(6) (7) or (8), the Board shall issue a Notice of Hearing, which shall set forth in reasonable detail the alleged violations of the Code of Ethics and the facts supporting the allegations. The Notice of Hearing shall be mailed to the person filing the inquiry (hereinafter the complainant) and to the subject of the inquiry within ten (10) days of its adoption. The notice shall inform the parties that they may consult with or be represented by an attorney or other representative of their own choosing. The Notice shall require a Response to the Notice of Hearing to be filed by the subject of the inquiry within twenty (20) days, unless an extension is granted for good cause. When received by the Board, the Response shall be mailed promptly to the complainant.
  
- (10) Within fourteen (14) days of the receipt of the Response, the Board shall issue to

the parties a notice to set a date and place for the hearing, which shall be open to the public. The Board will attempt to accommodate the parties in selecting a date that is mutually agreeable. If no Response is received, the hearing shall proceed nonetheless.

- (11) Any time after the issuance of the Notice of Hearing, the Board, at its discretion, may make a finding solely on the basis of written arguments without holding a public hearing if it determines that there is no significant discrepancy in the facts. However, the subject of the inquiry shall have the right to request a hearing, which shall be open to the public.
- (12) At any time after the issuance of the Notice of Hearing, the Board may dismiss an inquiry without a finding for or against the subject of the inquiry if it finds that the person committed the violation due to oversight and the person comes into voluntary compliance.
- (13) After the inquiry has been filed, none of the parties or their representatives may communicate on an ex parte basis with the Hearing Officer or any other Board member on any manner pertaining to the inquiry. All communications pertaining to the inquiry shall be sent to the Board appointed staff member.
- (14) Hearing. The Board of Ethics shall select one of its members to preside over the hearing as the Hearing Officer. The Hearing Officers shall determine all procedural issues. The complainant, or the complainant's representative, may make an opening statement and present the evidence in support of the allegations set forth in the Notice of Hearing. In the alternative, at the request of the Board, the investigator, as selected by the Board of Ethics, may summarize the allegations and other documents for consideration. The subject of the inquiry, or the representative of the subject of the inquiry, shall be entitled to cross-examine witnesses and make objections to any documents offered for consideration. The subject of the inquiry may be represented pro se, or by any person of his or her choice. The hearing shall be conducted so as to provide fundamental fairness, although strict rules of procedure and evidence need not be followed. Documentary evidence that can be reasonably authenticated shall be admitted for consideration. The Board may continue the hearing to discuss, or receive additional evidence, regarding the appropriate penalty.
- (15) The Board may dismiss an inquiry if the complainant does not appear at the hearing and if, in the opinion of the Board, it would be unfair to the subject of the inquiry not to have the opportunity to examine the complainant.
- (16) An electronic or stenographic record of the hearing shall be made and kept in the City Clerk's office in accordance with the City's records retention policy after the case is concluded.
- (17) Within ten (10) days of the conclusion of the hearing, the Board may meet in executive session to review the evidence and determine if the allegations in the Notice of Hearing have been proven by clear and convincing evidence. Only members who have been present for the hearing may participate in the deliberations, and any findings and recommendations must be adopted by a majority of the Board. The Board may consider, when making findings and recommendations, the severity of the offense, the presence or absence of any intention to conceal, deceive, or mislead, whether the violation was deliberate,

negligent or inadvertent, and whether the incident was isolated or part of a pattern.

- (18) Within twenty (20) days of the conclusion of deliberations, the Board shall issue an Order setting forth its findings and recommendations. In the alternative, the Board where it deems it appropriate, may issue an advisory opinion in lieu of making findings and recommendations.
- (19) If the subject of the inquiry is an employee, volunteer, or independent contractor the Board may, if it determines corrective action is necessary, notify the City Manager and recommend that he or she take action, including discipline.
- (20) If the subject of the inquiry is a City Official, the Board may propose actions to the City Council that are appropriate to the finding as specified in Section 2-209.
- (21) The Board or its designee shall send a written copy of the Board's findings and recommendations to the subject of the inquiry and the person who submitted the inquiry and, unless provided otherwise in these Rules or in the Code of Ethics, shall make the findings and recommendations public.
- (22) In computing any deadline required by these rules, calendar days shall be used, unless the period of time is less than seven days, in which case business days shall be used.

**Sec. 2-209 Penalties for violations of the code of conduct and code of ethics.**

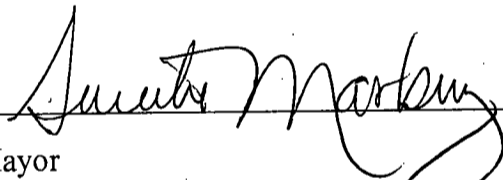
- (a) Penalties for Elected Officers and Board and Commission Appointees. Upon the Board of Ethics finding that a City Official has violated the Code of Ethics, the City Council shall order penalties as deemed just and appropriate, depending on the seriousness of the violation and any mitigating circumstances. The City Council reserves the right to take any of the following steps for violation of the Code of Conduct and Code of Ethics by said Officials, after consideration of the Board of Ethics findings, seriousness, duration, and nature of the violation:
  - (1) Written reprimand;
  - (2) Remedial or educational training on the subject of the violation intended to avoid or prevent future violations payable by the City but subject to reimbursement by the City Official through reduction or withholding of compensation (if any);
  - (3) Public reprimand;
  - (4) Suspend or Remove from any appointed position or policy liaison role.
  - (5) Public censure, to include a letter of apology and/or a written resolution of City Council of apology to be sent to affected persons;
- (b) Penalties for Appointed City Officers. Nothing in this subsection shall preclude the powers provided to City Council by the City Charter. Disciplinary action against the three Appointed City Officers—the City Manager, City Attorney and Municipal Judge—for violations of the Code of Ethics shall be handled by the City Council. The City Council reserves the right to take any of the following steps for violation of the Code of Ethics by an Appointed City Officer, after consideration of the seriousness, duration, and nature of the violation:



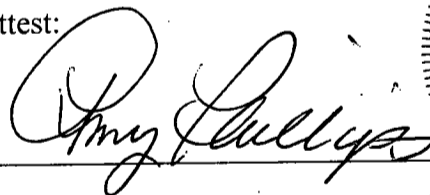
- (1) Removal from appointed position;
  - (2) Issue penalties in accordance with the recommendations of the Board of Ethics;
  - (3) Refer the violation to their respective professional organizations: the International City/County Management Association or the Colorado Supreme Court respectively.
- (c) Penalties for Public Employees, Independent Contractors and Volunteers. As per the City Charter, all department heads, offices, agencies, and employees are under the direction and supervision of the City Manager; as such, employees who violate the Code of Ethics shall be subject to disciplinary action as deemed appropriate by the City Manager. Employee violations shall be handled in accordance with the City's personnel regulations. At the City Manager's discretion, he or she may act on the findings and recommendations of the Board of Ethics in allegations involving public employees, independent contractors, and volunteers.
- (d) No Appeal. The decision of the City Council or City Manager shall be final and no further appeal within the City shall be permitted.

**Section 2.** This ordinance shall become effective within ten (10) days after its passage and final publication as provided by law.

CITY COUNCIL OF THE CITY OF DURANGO

  
 \_\_\_\_\_  
 Mayor

Attest:

  
 \_\_\_\_\_

Amy Phillips  
 City Clerk



STATE OF COLORADO                    )  
   ) ss.  
 COUNTY OF LA PLATA                 )

I, Amy Phillips, City Clerk of the City of Durango, La Plata County, Colorado, do hereby certify that Ordinance No. 0-2014-39 was regularly introduced and read at a regular meeting of the City Council of the City of Durango, Colorado on the 16th day of September, 2014, and was ordered published in accordance with the terms and conditions of the statutes in such cases made and provided, in the Durango Herald, a newspaper of general circulation, on the 21st day of September, 2014, prior to its final consideration by the City Council.

*Amy Phillips*

Amy Phillips

City Clerk



I further certify that Ordinance No. 0-2014-39 was duly adopted by the Durango City Council on the 7th day of October, 2014, and that in accordance with instructions received from the Durango City Council, said ordinance was published, by title only, in the Durango Herald on the 8th day of October, 2014.

*Amy Phillips*

Amy Phillips

City Clerk

