AUDIT REPORT

Ethics

Board of Ethics and Clerk and Recorder’s Office

February 2020

Office of the Auditor
Audit Services Division
City and County of Denver
Timothy M. O’Brien, CPA
Denver Auditor
Audit Team

Emily Owens Gerber, MPA, Audit Supervisor
Vilma Balnyte, CPA, MBA, Lead Auditor
Alex Dickerson, Senior Auditor
Kristin McCormack, JD, Senior Auditor
Tyson Faussone, Staff Auditor

Audit Management

Timothy M. O’Brien, CPA, Auditor
Valerie Walling, CPA, Deputy Auditor
Dawn Wiseman, CRMA, Audit Director

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Florine Nath
Charles Scheibe
Ed Scholz

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Office of the Auditor
201 West Colfax Avenue, #705
Denver CO, 80202
(720) 913-5000  •  Fax (720) 913-5253

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Cover photo illustration by Denver Auditor’s Office staff.
The objectives of our audit were to determine whether the City and County of Denver’s Code of Ethics aligns with model ethics codes and those of select other governments and to determine the degree to which the processes for Denver’s Board of Ethics support the city’s overall ethics program. We also sought to determine whether the process for city officers’ gift disclosures adheres to the letter and spirit of Denver’s ordinances and regulations. I am pleased to present the results of this audit.

Denver’s Code of Ethics says city employees should “adhere to high levels of ethical conduct, honesty, integrity, and accountability” so that city residents will have confidence these employees act “for the benefit of the public.” However, our audit revealed gaps in the Board of Ethics’ authority and role in the city, which may limit its effectiveness and ability to foster a strong ethical culture. We also found a lack of important policies and procedures could be impacting the ethics board’s effectiveness. Additionally, the city’s formal ethics training and ethics website are not consistent with leading practices in several areas. Finally, we found the city’s process for documenting compliance with the ethics code’s gift requirements is insufficient; several officers did not submit required gift disclosure forms, and these gift disclosures were not readily available online for two months last year.

Through taking steps to ensure appropriate enforcement, stronger documented procedures, training, and collaboration with other city agencies, the Board of Ethics will be better equipped to measure and monitor the city’s ethical environment, including by identifying areas of improvement to address existing and emerging risks. Our report lists several related recommendations.

This performance audit is authorized pursuant to the City and County of Denver Charter, Article V, Part 2, Section 1, “General Powers and Duties of Auditor,” and was conducted in accordance with generally accepted government auditing standards. Those standards require we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We extend our appreciation to personnel at the Board of Ethics and in the Clerk and Recorder’s Office who assisted and cooperated with us during the audit. For any questions, please feel free to contact me at 720-913-5000.

Denver Auditor’s Office

Timothy M. O’Brien, CPA
Auditor
Ethics
February 2020

Objective
The audit had three objectives:

1. To determine the degree to which select areas of the City and County of Denver’s Code of Ethics align with model ethics codes and other government ethics codes;
2. To determine the extent to which the processes for Denver’s Board of Ethics support the city’s ethics program; and
3. To determine whether the process for city officers’ gift disclosures adheres to city ordinance and the letter and spirit of the Code of Ethics.

Background
Adopted in 1965, the city’s Code of Ethics defines what actions are allowed and which actions would breach the public trust.

The Board of Ethics is made up of five volunteer members and supported by one full-time employee: an executive director. The board operates under authority granted by Denver’s Code of Ethics and city charter, and it meets monthly to hear requests for advisory opinions, to screen complaints, and to issue findings for alleged violations of the ethics code.

REPORT HIGHLIGHTS

Highlights from Audit
We identified several areas where improvements to the board’s authority and processes are necessary to achieve greater impact in fostering an ethical culture in the city. Additionally, we found a need for more oversight of city officers’ gift disclosures to ensure compliance with code requirements.

The Board of Ethics’ Insufficient Authority and Role May Impact the City’s Ethical Environment
- Gaps in the board’s authority could impact employees’ willingness to report.
- The board is not adequately informed of and incorporated into the city’s ethics program.

The Board of Ethics Can Increase Its Impact and Effectiveness through Addressing Operational Risks and through More Outreach
- The board operates without sufficient policies and procedures.
- The board should enhance training and outreach to city agencies and personnel.

The City Did Not Ensure Full Compliance with Rules for City Officials’ Semiannual Gift Disclosures
- Some city officials failed to submit semiannual gift disclosure forms.
- Semiannual gift disclosure forms are inadequate and not sufficiently reviewed for compliance.
- Denver residents do not have complete, year-round access to the gift disclosures.

Denver Auditor Timothy M. O’Brien, CPA
(720) 913-5000  |  www.denverauditor.org
BACKGROUND

Strong ethics programs are critical to ensuring public trust in government and the integrity of actions taken on the public's behalf.¹

The Ethics & Compliance Initiative, a best-practice community of organizations committed to creating and sustaining high-quality ethics programs, states the basic purpose of an ethics compliance program is to:

- Protect the integrity of an organization's performance and reputation;
- Minimize the risk of misconduct by those employed by or associated with the organization;
- Enable management to identify wrongdoing;
- Increase the likelihood that wrongdoing is addressed; and
- Lessen any penalties imposed by regulatory or governmental groups for violations.²

Ethics training provided to all new City and County of Denver employees defines how city personnel should view ethics. Specifically, “ethics” refers to standards of conduct on how a person should behave based on moral duties and virtues. Further, while government ethics has many similarities to personal or business ethics, it focuses on the importance of serving the public interest — not the interests of elected officials or government employees or their relatives, friends, or business associates.

Since 1965, the city’s Code of Ethics has defined what actions are allowed and which actions would breach the public trust. In the ethics code, city leaders communicate the clear expectation that all officers, officials, and employees adhere to “high levels of ethical conduct, honesty, integrity, and accountability, so that the public will have confidence that persons in positions of public responsibility are acting for the benefit of the public.” It further directs city personnel to comply with “both the letter and spirit” of the ethics code and “to avoid situations that create impropriety or the appearance of impropriety.”³

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The ethics code also establishes the creation and appointment of a five-member Board of Ethics and other elements of a system that enable citizens to report possible wrongdoing and seek enforcement related to breaches of the public trust.

The ethics code's rules are organized into several categories. Reference Table 1 for the types of rules and their purpose.

### Table 1. Type and Purpose of Ethics Rules

<table>
<thead>
<tr>
<th>Type of Rule</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employment and supervision of family members</td>
<td>To avoid favoritism by city officers, officials, or employees to their immediate family members</td>
</tr>
<tr>
<td>Gifts to officers, officials, and employees</td>
<td>To avoid special influence by donors who give gifts to city officers, officials, or employees</td>
</tr>
<tr>
<td>Conflicts of interest while employed</td>
<td>To avoid influence on the official actions of city officers, officials, or employees by their private or family interests</td>
</tr>
<tr>
<td>Prior employment</td>
<td>To indicate that persons are not disqualified from a city job because of prior employment; to avoid special advantage being given to former employers of city officers, officials, or employees; and to avoid special advantage being given to a city officer, official, or employee by a former employee</td>
</tr>
<tr>
<td>Outside employment or business activity</td>
<td>To avoid possible conflicts of interest and time conflicts between city jobs and outside employment or other business activities</td>
</tr>
<tr>
<td>Subsequent employment</td>
<td>To avoid the actual or apparent conflict of interest that employers who hire former city officers or employees may get special treatment</td>
</tr>
</tbody>
</table>

*Source: City and County of Denver Code of Ethics.*

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* Denver Revised Municipal Code § 2-59 through 2-64.
The ethics code also prohibits city personnel from using their public office or position for private gain for themselves, their immediate family, or any business entity they are affiliated with. Further, city personnel cannot disclose any information or records that are not available to the public and that were acquired during official duties, except in the performance of official duties or as required by law or court order.

The ethics code has been revised multiple times over the years, including a major rewrite in January 2001. Among the changes made at that time were revisions allowing any person to file a complaint with the board — not just city personnel — and giving the Denver City Council a role in appointing board members. Also in 2001, the City Council appropriated funds to hire an employee to support the Board of Ethics.

The ethics code has been updated several times since, with the most recent amendments made in 2017 and 2018.

Significant changes made to the ethics code in 2017 included:

- Establishing a nomination committee to screen and recommend candidates for the five-person Board of Ethics
- Expanding the definition of "immediate family" to include a father- or mother-in-law, son- or daughter-in-law, brother- or sister-in-law, aunt, uncle, nephew, and niece
- Placing an upper limit of $300 on the exception that allows city personnel to receive donations of meals or tickets to events from the same donor in any calendar year even if the city person can take direct official action regarding the donor and even if the city has a contractual, business, or regulatory relationship with the donor

In 2018, the City Council amended the Code of Ethics again to clarify that items given to city personnel by city agencies (e.g., water bottles, jackets, paid travel expenses, etc.) are not considered gifts. Therefore, they are not regulated by the gift section of the ethics code but must be reported if the value is more than $50.

The Board of Ethics’ purpose is to issue advisory opinions and waivers on ethical issues, to hear inquiries or complaints, and to issue findings and recommendations regarding alleged violations of the ethics code.

The five-member, volunteer board is supported by one employee — an executive director, who operated with a $153,000 budget in 2019. Table 2 on the next page details the board’s budget over the last six years.

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5 Denver Revised Municipal Code § 2-67 and 2-68.
6 Denver Revised Municipal Code § 2-52(b) and 2-60(b)(4).
The executive director’s duties include preparing agendas and minutes for board meetings, drafting reports of board decisions, maintaining case files, fielding informal inquiries, preparing the board’s annual report, and completing administrative activities.

Board members serve four-year terms. The mayor appoints two board members, while the City Council also appoints two members. The fifth board member, who must be an officer or employee of the city, is nominated by the mayor and appointed by the council. When a vacancy occurs, a three-member volunteer nomination committee reviews applications and interviews candidates before identifying at least three nominees for consideration by the respective appointing authority (i.e., the mayor or City Council).\(^7\)

During 2019, the board and its executive director experienced significant turnover. Three of the board’s five members stepped down and were replaced, while the executive director — who had served since 2001 — retired in August. Since then, the board hired a new executive director.

The Board of Ethics’ Responsibilities

The board and its executive director receive and respond to a variety of requests. City personnel who need formal guidance about whether a specific action could violate the Code of Ethics file requests for an advisory opinion from the board. Alternately, if Denver residents or city employees believe any city personnel may have violated the ethics code, they can submit a written complaint or inquiry to the board.

The board’s executive director also receives telephone, email, and in-person requests for unofficial and informal consultation about the ethics code or other ethical issues.

In monthly public meetings, the board considers requests for advisory opinions and other inquiries. Board decisions regarding advisory opinions and complaints are posted on the board’s website.\(^8\)

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\(^7\) Denver Revised Municipal Code § 2-53(c). One member of the nomination committee is appointed by the mayor, while the City Council appoints a second member. The presiding judge of the Denver County Court appoints the third member. City personnel are not eligible to serve on the nomination committee.

\(^8\) The board’s digest of opinions is located here: [https://www.denvergov.org/content/denvergov/en/denver-board-of-ethics/digest-of-opinions-search.html](https://www.denvergov.org/content/denvergov/en/denver-board-of-ethics/digest-of-opinions-search.html).
Advisory Opinions – The city’s ethics code requires the board to provide an advisory opinion within six weeks of the time it received a written request, unless the board provides written notice explaining the reason for a delay and an estimate of when the opinion will be provided. If a board advisory opinion is not complied with, the ethics code directs the board to inform the individual who is out of compliance, along with their appointing authority and the city attorney. The ethics code empowers the board to grant a waiver to an individual who requests an advisory opinion, if the board finds the proposed action would violate the Code of Ethics but is in the best interests of the city.

Complaints – The ethics code also requires that upon receiving a signed complaint describing an action that took place within the previous two years, the board must notify the person who is the subject of the complaint within five days. The subject of the complaint is provided a copy of the full complaint, the applicable portion of the ethics code that may have been violated, and a copy of the board’s procedural rules that describe its process for implementing code requirements. Within 31 days of receiving the complaint, the board screens the information provided. This occurs during an executive — or private — session of its monthly meeting.

The board may immediately dismiss a complaint if it determines:

- The board lacks jurisdiction;
- The alleged action does not violate the ethics code;
- The alleged action is a minor violation;
- The complaint is frivolous or groundless;
- The subject of the complaint no longer works for the city;
- The subject of the complaint obtained a waiver or advisory opinion regarding the action; or
- The appointing authority of the subject of the complaint already took action the board believes to be appropriate regarding the alleged violation.

If the complaint is not dismissed, the board’s executive director may

9 Denver Revised Municipal Code § 2-54(a).
10 Denver Revised Municipal Code § 2-54(e); City and County of Denver, Career Service Rules, Rule 1 – Definitions.
11 Denver Revised Municipal Code § 2-56(2) and 2-56(4).
investigate the issue further to determine whether a hearing is needed. The board reviews the results of the executive director’s investigation and determines whether to dismiss the complaint, to request written arguments from both parties before making its decision, or to issue a hearing notice.

Any hearing conducted is open to the public, and the board’s findings and recommendations are provided to both parties. If the board determines corrective action is needed, it notifies the subject of the complaint’s appointing authority and recommends appropriate action, including discipline. If the subject of the complaint is an elected official, the board can recommend that person recuse themselves from future action on the matter or seek a waiver, adopt a resolution reprimanding the person, or refer the matter to the appropriate authority (which could mean a prosecutor if the offense was a crime), among other options.

According to the former and current executive directors, only four hearings have occurred between 2001 and 2019. In 2011, two other cases were resolved before their hearings.

**Unofficial Inquiries** – In 2001, the board authorized its executive director to provide unofficial advice to residents or city personnel who have ethics-related questions. If the inquiry is easily answered, the executive director provides immediate feedback, but if it is more complicated, the executive director may suggest the matter be submitted to the board for an official advisory opinion.

As shown in Figure 1, the number of requests for advisory opinions has stayed relatively constant in the last six years, but the number of complaints has fluctuated. Unofficial inquiries continue to be the most common type of

![FIGURE 1. Number of Advisory Opinions, Complaints, and Unofficial Inquiries, 2014-2019](image)

**Source:** Board of Ethics annual reports.

**Note:** Auditors did not verify the accuracy of the board’s data, only the accuracy of the total calculations using data provided by the board’s executive director.
request the board’s executive director receives.

In addition to the board’s monthly meetings, the board also holds an annual ethics forum. During this event, city personnel and residents can meet the board members and the executive director and ask questions or learn more about ethics.

Although the board is responsible for reviewing and responding to requests for advisory opinions and waivers, assessing complaints, and issuing findings and recommendations, other agencies and groups in the city also have responsibilities that may impact the city’s overall ethical environment. This includes the City Council and the Office of Human Resources.

The city’s Ethics Handbook states that, in addition to the Code of Ethics, Denver has several other sources of law or regulation that relate to ethics, including career service rules and city ordinances, such as the whistleblower protection ordinance.\textsuperscript{12}

\textbf{City Council} – The Denver City Council created and periodically amends the Code of Ethics, which establishes the Board of Ethics’ responsibilities and the city’s ethics rules.\textsuperscript{13} Additionally, as previously referenced, the City Council appoints two members of the board and one member of the board’s nomination committee.

The City Council and the mayor also receive an annual report, which the ethics code requires the board to create and provide. The report describes the board’s activities during the previous year and the board’s recommendations for modifying the ethics code.

\textbf{Career Service Board and the Office of Human Resources} – The city’s Career Service Board oversees the Office of Human Resources and adopts, administers, and enforces rules — including the city’s Code of Conduct and Discipline. That code “sets clear expectations for [employee] conduct in an effort to maintain the public trust.”\textsuperscript{14} Among the expectations and rules to be adhered to by employees, the Code of Conduct references the Code of Ethics, along with applicable executive orders, sections of the Denver Charter relevant to ethics, and stricter ethics rules developed by city agencies.\textsuperscript{15}

Employees can file a complaint with the Career Service Board regarding alleged violations of the whistleblower ordinance.

\begin{footnotesize}
\begin{enumerate}
\item\textsuperscript{13} Denver Revised Municipal Code § 2-53 and 2-66.
\item\textsuperscript{14} City and County of Denver, Career Service Rules § 16 – Code of Conduct.
\item\textsuperscript{15} City and County of Denver, Career Service Rules § 16-20 – Code of Conduct. Executive orders referenced in the “Compliance with Code of Ethics and Executive Orders” section of the Code of Conduct include those related to Denver’s policies regarding alcohol and drug use, workplace violence, use of electronic and communication devices, and department information centers.
\end{enumerate}
\end{footnotesize}
Civil Service Commission – The city’s Civil Service Commission maintains a personnel system for hiring and promoting the best applicants within the Denver Police and Fire departments. This commission is also responsible for establishing and administering a disciplinary and disqualification review process within these departments.

Controller’s Office and the Fraud Hotline Committee – The city’s fraud hotline, established in 2014, allows city personnel to anonymously report any concerns about another employee or city official who might be engaging in fraud or financial misconduct. The fraud hotline is run by an independent, third party called Lighthouse Services with oversight by the city's Controller’s Office. Reports can be submitted online or by phone, fax, mail, and email.

According to the most recent annual report available, six submissions were received in 2017. The Fraud Hotline Committee — staffed by various city personnel, including a representative from both the Controller’s Office and the Auditor’s Office — review all cases and refer them to the agency management associated with the case. The respective agency management then investigates, reaches a conclusion, and takes action if needed. Management prepares a case summary report for the Fraud Hotline Committee members, who can follow up with additional questions or close the case.

Of the six cases received in 2017, one case was referred to agency management, while five were closed because they were not under the purview of the Fraud Hotline Committee.

Clerk and Recorder’s Office – The Code of Ethics establishes rules for the types of gifts city personnel can accept. There are also other sections of city ordinance that apply to the Clerk and Recorder’s Office and establish the process by which city personnel must disclose gifts on forms available to the public, in the interest of preventing special influence by donors.

OTHER DISCLOSURE REQUIREMENTS

In addition to elected officials’ filing gift disclosure forms, city ordinance mandates other disclosures for city personnel. These include:

- Other city employees also filing an annual report with the Clerk and Recorder’s Office to document gifts valued at $50 or more; and
- Officers completing and submitting to the Clerk and Recorder’s Office an annual financial disclosure statement that documents their financial activities, such as business interests and other sources of income.

16 City and County of Denver, “Fraud Hotline Summary – 2017.”
City officers must complete and submit a gift disclosure statement semiannually (by Jan. 31 and July 31 of each year) that lists all gifts received from “persons pursuing business with the city or with whom the city has an existing, ongoing, or pending contract, business, or regulatory relationship and over whom the officer may take direct official action.”

Beginning in 2019, officers are also required to complete a city-item disclosure statement (also by Jan. 31 and July 31 of each year) to disclose each item received from the city (i.e., another city agency) that has an estimated value of $50 or more. Intangible items, such as paid travel expenses, must also be reported.¹⁸

These gift disclosure statements are public records, and under city ordinance, the Clerk and Recorder’s Office must make them “available to the public online within a reasonable time,” not to exceed seven business days after the date the city receives them.¹⁹

Various Entities – The whistleblower protection ordinance, passed by the City Council in 2007, states no city employee should suffer retaliation from a supervisor or appointing authority for “communicating information about illegal activities, unethical practices, or other forms of official misconduct experienced or witnessed by employees in the scope of their employment.”²⁰ To receive the ordinance’s described protections, employees must direct their report to any of the following “appropriate reporting authorities”:

- The mayor and members of the mayor’s cabinet;
- The City Council, any council committee, or individual member of council;
- The auditor and the Audit Committee;
- The Board of Ethics;
- The district attorney and other law enforcement agencies; or
- The appointing authority for the officer or employee who is alleged to have engaged in the official misconduct that is the subject of the report.

The definition of “official misconduct,” as described in the ordinance, includes violations of law; violations of any rule, regulation, or executive order; violations of the ethics code; misuse, misallocation, mismanagement, or waste of any city funds or other city assets; and abuse of official authority.

Previous Ethics Audit

In 2010, the Auditor’s Office conducted a citywide ethics audit that reviewed not only the Board of Ethics and the ethics code but also the city’s whistleblower ordinance and the Career Service Board’s Code of Conduct.²¹

Auditors found that a more comprehensive whistleblower program would have enhanced the impact of the whistleblower ordinance and that enhancements were needed to the city’s ethics and compliance program.

- The audit pointed out that a whistleblower hotline capable of accepting anonymous complaints was a critically needed element to the city’s whistleblower program. This would have provided whistleblowers with a single point of contact and reduced the available reporting avenues, which would have allowed for better assessment of the city’s ethical culture.

- Among the improvements needed to the city’s ethics program was better alignment between the Code of Ethics and the Career Service Board’s Code of Conduct. More specifically, auditors found then that the ethics code did not address many ethics issues, including sexual harassment or workplace violence, whereas other codes of conduct in the city did address these topics. This lack of alignment impacted the clarity of the city’s expectations for employees’ ethical behavior.

- The program could have included more frequent and targeted ethics training and allowed for the acceptance of anonymous complaints.

- That audit also reported that if the board’s responsibilities were increased in response to the audit’s recommendations, the board’s staff resources (i.e., only the executive director) would likely be insufficient to allow the board to fulfill its role.

Of the 16 audit recommendations offered to address the 2010 audit findings, auditors found four years later, in 2014, only one recommendation had been acted upon by the board, the City Council, and the Mayor’s Office. A third-party fraud hotline was, at the time, soon to be implemented with contract oversight provided by the Controller’s Office.

**FINDING 1**

**The Board of Ethics’ Insufficient Authority and Role May Impact the City’s Ethical Environment**

The Board of Ethics is one component of the city’s overall ethics program and is responsible for monitoring and enforcing the Code of Ethics through issuing advisory opinions, waivers, and recommendations on complaints.\(^2^2\) The city’s ethics code, however, is narrowly scoped and covers ethical matters surrounding only employment, gifts, conflicts of interest, use of public office for private gain, and confidential information.

Although the board is exclusively responsible for providing advisory opinions and waivers, the board does not have the ability to enforce sanctions for ethical violations and it is not the only avenue for submitting ethics complaints. Managers of individual city agencies are responsible for enforcing action on ethics violations and agencies may have stricter ethics policies than the citywide ethics code.\(^2^3\) Individual agencies are required to disclose any additional ethics policies to the board, according to the Code of Ethics, but they are not obligated to disclose the outcomes of ethical violations.\(^2^4\)

Through our research, we discovered the board’s authority is lacking in three major areas when compared to ethics programs in eight cities, counties, and states and when compared to leading practices. These gaps in the board’s authority may discourage employees from making ethics complaints, thus limiting the number of ethics complaints received. Additionally, the board is not appropriately integrated into the city’s overall ethics program.

**As noted, the city’s Code of Ethics establishes the board’s purpose “to hear inquiries or complaints and issue findings and recommendations regarding alleged violations.”**\(^2^5\) To determine potential gaps related to the board’s purpose, we examined the ethics code, the board’s rules of procedure, and the board’s processes. We compared this information to eight benchmarking entities, as well as leading practices.\(^2^6\) Through this analysis, we discovered

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\(^2^2\) Denver Revised Municipal Code § 2-53(a).

\(^2^3\) Denver Revised Municipal Code § 2-59 through 2-64 and § 2-67 and 2-68.


\(^2^6\) Auditors researched ethics programs in the following eight cities, counties, and states and compared them to Denver’s ethics program: Atlanta; Minneapolis; Palm Beach County, Florida; New Castle County, Delaware; Colorado Springs, Colorado; the state of Colorado; Seattle, and Austin, Texas. For additional information on our selection criteria, reference the Objective, Scope, and Methodology section.
three notable gaps where the board’s lack of authority may limit the number of ethics complaints it receives.

However, we did also note that the city’s process for selecting new board members compares favorably to leading practices and benchmark entities. The process for selecting new board members, as laid out in the ethics code, establishes a three-member nomination committee appointed by the mayor, the City Council, and the presiding judge of the Denver County Court. This establishes separation between elected officials and the individuals appointed to the Board of Ethics, as recommended by leading practices.

Our research found, in contrast, most benchmarking entities have ethics boards that are directly selected and appointed by elected officials, which does not provide independence in the selection process.

The Board Cannot Accept Anonymous Reports of Ethical Complaints

Although anyone can file a formal complaint with the board, we found that the person filing the complaint cannot be anonymous. They must identify themselves by providing personal information on the board’s formal complaint form, including their signature, their home address, their email address, and their telephone number.

The complaint process also requires that the board give the subject of the complaint a copy of the complaint within five days of when it was filed — providing the subject of the complaint with the filer’s identity. If the complainant does not provide the required identifying information, the board cannot act on the complaint. Although the fraud hotline allows anonymous reports, complaints to that hotline can be submitted only by employees and they can involve only financial fraud, waste, and abuse.

During the Auditor’s Office’s 2010 ethics audit, we recommended the Code of Ethics be amended to allow anonymous complaints through the board’s formal process and that complainants’ names be better protected. Neither recommendation was implemented but both remain relevant. We found the Board of Ethics advocated in 2012 for a change in the ethics code that would have allowed for accepting anonymous reports, but the City Council did not.

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27 Denver Revised Municipal Code § 2-53(c)(4)(a). The proposed changes to the ethics code in 2016 included having the nomination committee made up of designees from the Denver Bar Association, the University of Colorado Denver, and Metropolitan State University of Denver, as well as the chief judge of Denver District Court and the presiding judge of Denver County Court. This change was not implemented.


30 Denver Revised Municipal Code § 2-56(2).


implement this change. The board has not requested this change again, although it sought and implemented other changes to the ethics code in 2016.

Interviews with the former executive director and current and former board members found that the former executive director and a majority of current board members are in favor of the board accepting anonymous complaints.

We also researched ethics programs in eight cities, counties, and states to compare them with various elements of Denver’s ethics program. Similar to Denver’s ethics program, seven of the eight programs reviewed have boards that are made up of unpaid, volunteer members. Our review found four programs empowered their ethics board or commission to accept anonymous complaints. Specifically, the cities of Minneapolis and Atlanta allow anonymous reporting through their formal complaint processes, while Palm Beach County, Florida, and the City of Seattle accept anonymous complaints through other avenues.33

Several leading practices also note that allowing anonymous reporting is a key element of any effective ethics program. The Ethics & Compliance Initiative notes organizations should provide employees with a way to report anonymously. The organization also says reporting should be allowed, at a minimum, by phone or internet.34 In addition, Robert Wechsler, a self-published author of government ethics, wrote that an anonymous hotline is the most common way to receive ethics complaints and it allows employees to submit complaints without fear of retaliation.35 He notes that having a hotline also allows for data collection, and he argues it is not possible to have a fully functioning, robust ethics program without a hotline.36

Although advocated by leading practices and recommended in our 2010 audit, some city leaders previously expressed concern that allowing anonymous complaints within the Board of Ethics’ formal process would cause the board to spend more time investigating baseless accusations. Two former board members also expressed concern about increased time spent on unwarranted investigations and the potential for an increase in reports made in bad faith.

However, not allowing anonymous complaints may have several consequences, according to leading practices. First, Robert Wechsler noted that it may reduce the number of valid ethics complaints submitted by

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33 Two of the benchmark entities — Seattle and Palm Beach County, Florida — have formal complaint processes like Denver’s Board of Ethics and do not allow anonymous complaints. However, Seattle accepts anonymous complaints through its website, while Palm Beach County has an ethics hotline that accepts anonymous complaints.


36 Ibid., 847.
employees because of a fear of identification and retaliation. And second, it limits the city’s ability to understand its ethical environment based on the amount and type of complaints received. The board’s inability to accept anonymous complaints may also cause an increase in unethical behavior as valid complaints go unreported.

We surveyed all 14,712 city employees with a valid email address on a variety of ethics-related issues and received responses from about 3,700 individuals, a response rate of 25%. As shown in Figure 2, 16% of those employees indicated that they would not file a complaint if they could not do so anonymously. An additional 27% said they were less likely to file a complaint without the ability to be anonymous.

Additionally, a series of survey questions asked employees to state whether they had observed and reported unethical behavior. For those who did observe unethical behavior but opted not to report it, we asked why they decided to not report the unethical behavior. Figure 3 on the next page shows that the top two reasons provided were “fear of retaliation” and that they “did not expect any action” to be taken.

37 Ibid., 302.
Although the concern about anonymous complaints potentially causing an increase in bad faith or baseless accusations may be a valid concern, the board does not open investigations without determining the credibility of complaints. This concern could be mitigated by creating a formal process documenting how the board intends to vet anonymous complaints for credibility prior to initiating an investigation.

**RECOMMENDATION 1.1**

**Allow Anonymous Reporting** – The Board of Ethics and its executive director should work with the City Council to update the Code of Ethics and allow the acceptance of anonymous reports.

**Agency Response:** Agree, Implementation Date – Oct. 30, 2020

**RECOMMENDATION 1.2**

**Develop and Document Policies and Procedures** – Once Recommendation 1.1 is implemented, the Board of Ethics and its executive director should develop and document a process to ensure they vet anonymous complaints and ensure credibility of a complaint is established before initiating an investigation.

**Agency Response:** Agree, Implementation Date – Oct. 30, 2020
The Board Cannot Impose Sanctions for Ethics Violations, and It Is Not Often Informed of the Outcome of Ethics Violations Reported to City Agencies

In addition to determining that the board’s inability to accept anonymous complaints may be limiting the amount of complaints received, we found nothing within city ordinance grants the board the ability to enforce its decisions.38

Enforcing sanctions is exclusively up to agency management, which is not required to follow the board’s decisions on ethics violations.39 We also found agencies are not required to keep the board informed of an agency’s actions after the board’s recommendation — leaving the board uninformed as to whether its recommendation was appropriately followed.40

The Code of Ethics states its intent is “to establish a system that enables citizens to report possible wrongdoing and seek enforcement so that any breach of the public trust may be discovered and dealt with appropriately.” The code also states the board’s purpose is to “issue findings and recommendations regarding alleged violations,” but it does not specify how the board’s findings and recommendations are to be enforced.41

Several leading practices recommend ethics boards should have enforcement authority. Specifically, Robert Wechsler writes that sanctions have four purposes:

• “The most important purpose is education.”
• “A second purpose is preserving the public’s trust in the ethics program. The amount of a fine is less important than the fact that there is a concrete penalty.”
• “A third purpose served by sanctions is restitution, that is, making right what was done wrong.”
• “A fourth purpose served by sanctions (too often considered the principal purpose) is punishment.”42

Wechsler also recommends ethics boards and commissions should have the power to actively sanction, because having the limited ability to only recommend action often leads to the ethics board not receiving information

39 Denver Charter § 2.2.10.
on whether and how the recommendation was ultimately acted upon. City Ethics Inc., a nonprofit formed to provide information and resources for local government ethics programs, describes in its “Model Code” that an ethics board that only recommends action has little value.

Enforcement authority is standard practice based on our research of eight benchmark entities. The following seven give their board enforcement authority:

- Atlanta
- Austin, Texas
- Colorado Springs, Colorado
- New Castle County, Delaware
- Palm Beach County, Florida
- Seattle
- The state of Colorado

Notably, the two Colorado-based ethics commissions we reviewed — those of Colorado Springs and the state of Colorado — both have enforcement authority. Based on our research, a variety of enforcement methods are used. Of the seven entities that allow enforcement, six are authorized to sanction ethics violations by levying fines.

Overall, the Denver Board of Ethics' inability to enforce ethics violations stems from a lack of explicitly granted authority within city rules or codes.

The city's Code of Conduct states that compliance with the ethics code is required to comply with the Code of Conduct. However, city rules specifically grant agency leadership broad enforcement authority, while the Board of Ethics is not granted this authority. The board is only able to recommend action to an individual's management, and no process ensures the board's recommendations are implemented.

The inability for the ethics board to take or ensure action may cause ethics violations to go unreported. As previously noted in Figure 3 on page 15, for those employees who reported that they have already observed an ethics violation but chose not to report the issue, 25% stated that their reason for not reporting was that they did not expect any action to be taken.

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Ibid., 794.
City and County of Denver, Career Service Rules § 16-20 – Code of Conduct.
City and County of Denver, Career Service Rules § 16-41; Denver Charter § 2.2.10. Enforcement authority is granted to management in two areas. First, the Code of Conduct states: “The appointing authority shall impose the type and amount of discipline he or she believes is needed to correct the situation and achieve the desired behavior or performance.” Second, the Denver Charter states: “The mayor and the cabinet shall formulate the general administrative policies of the City and County, and each manager and officer in its department, shall be responsible for and have full power to carry out such policies.”
Additionally, as shown in Figure 4, our survey found that 25% of respondents said they would not report an ethical issue should they observe one, and of those, 21% selected that they would not report because they “do not expect any action” to be taken.

**FIGURE 4.** Likelihood of Reporting Ethics Issues and Reasons for Not Reporting

City employees surveyed were not required to answer all 13 survey questions. 3,732 individuals responded to question 6, the first of the questions in this figure. For question 7, the second of the questions in this figure, respondents could give more than one reason for not reporting unethical behavior.

**Source:** Auditor’s Office analysis of citywide ethics survey results.

**Note:** Reference Appendix A for additional information on our survey questions, methodology, and analyses.

The board’s former executive director noted that agency managements have, at times, ignored the board’s recommendations.

As seen in Figure 5 on the following page, 33% of city employees who responded to our survey said they witnessed unethical behavior. Only 37% of those who witnessed unethical behavior said they reported it, and of those individuals who said they did report observed unethical behavior, 79% were either unsure whether their concern was addressed or felt it had not been addressed.

The Board of Ethics also does not have a follow-up process to track how often its recommendations are followed, and agencies are not required to notify the board of what action, if any, they take.

Without enforcement authority or consistent notification regarding agency decisions to ensure ethical allegations are being acted upon appropriately, credible ethical allegations may go unreported.
RECOMMENDATION 1.3

Collaborate to Ensure Enforcement and Information Sharing – The Board of Ethics and its executive director should work with the City Council, the Office of Human Resources, and the Civil Service Commission to discuss and create a formal process that ensures appropriate enforcement. This could be achieved through updating the Code of Ethics and the city charter to grant the board the authority to impose sanctions or through formal coordination between the board and the Office of Human Resources to develop information-sharing policies and procedures that ensure the board receives information on the outcomes of all ethics-related violations.

Agency Response: Agree, Implementation Date – Oct. 30, 2020

The Board Does Not Initiate Investigations, which May Impact Its Effectiveness

While the Board of Ethics is responsible for investigating potential ethics violations, the board initiates an investigation only when it receives a complaint. This may be limiting the number of ethics complaints, as the board does not initiate its own investigations.

In our review of the Code of Ethics and the board’s rules of procedure, we found self-initiated investigations are not explicitly authorized but
also not prohibited. Further, through interviews with board members and the executive director, we found no formal process exists to initiate investigations, and it is only the executive director’s undocumented process that dictates an investigation is initiated only after receiving a complaint.

The Code of Ethics does not limit the board or executive director from submitting complaints. The ethics code states that “any person may file an official written complaint or inquiry with the Board of Ethics asking whether a current officer, official, or employee has failed to comply with this Code of Ethics.” The former executive director said board members could bring forward unfiled, unofficial complaints as it is not prohibited by the ethics code.

Leading practices say an ethics board should have the ability to initiate an investigation without receiving a formal complaint. Specifically, guidance from Robert Wechsler notes a government ethics board cannot be effective in enforcing code without the ability to initiate an investigation. Wechsler also drew a contrast between the formal ethics complaint process and the criminal justice process by noting a criminal investigation can be initiated against someone based on tips, while the investigation of a government officer with a duty to the public can require a formal complaint first. Granting Denver’s Board of Ethics the power to initiate an investigation would not negate the board’s need to investigate and ensure the complaint was credible.

Through our research, we found it is common practice for government ethics boards to allow the initiation of an investigation without receiving a complaint. Of the eight benchmark entities reviewed, these five can initiate investigations without receiving a complaint:

- Austin, Texas
- Atlanta
- New Castle County, Delaware
- Palm Beach County, Florida
- Seattle

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50 Denver Revised Municipal Code § 2-55, emphasis added.

Our survey data also shows that employees may already doubt the effectiveness of the city’s overall ethics program.

According to the executive director of Colorado’s Independent Ethics Commission, the state of Colorado does not initiate investigations of complaints because of the limitation of having a single staff member, like Denver's Board of Ethics has.

When we asked Denver’s current executive director why the board does not self-initiate investigations, they gave several possible reasons:

- The board member or executive director who submits a complaint may need to recuse themselves from the complaint process.
- The board member or executive director who submits the complaint may not have all the details necessary to start an investigation.
- Having the executive director as the board’s only employee may limit staff resources and may also impact the board’s ability to take on additional work.

When known ethical concerns go unreported because the Board of Ethics does not initiate an investigation without receiving a complaint, that lack of investigation by the board may cast doubt on the board’s effectiveness to enforce the ethics code. For example, auditors’ analysis of our ethics survey results showed those city employees who had observed unethical behavior were less likely to believe the city fosters an ethical environment.

Our survey data also shows that employees may already doubt the effectiveness of the city’s overall ethical program.

As Figure 6 on the following page shows, only 22% of employees who responded to the survey believe the city's ethics rules are always enforced. This perception may improve if the board allowed itself to act on known ethical issues without receiving a complaint.

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52 The current executive director noted that they may not be able to gather enough information on a complaint submitted by a board member or the executive director, as the board’s rules of procedure state the board must first determine whether a complaint should be dismissed. After the complaint is deemed to have enough information, then the executive director proceeds with their investigation.

FIGURE 6. Employees’ Perceptions of Ethics Rules

City employees surveyed were not required to answer all 13 survey questions. For this question, 3,732 individuals responded.

Source: Auditor’s Office analysis of citywide ethics survey results.

Note: Reference Appendix A for additional information on our survey questions, methodology, and analyses.

RECOMMENDATION 1.4

Develop and Document Procedure for Board-Initiated Investigations – The Board of Ethics and its executive director should consider the minimum information needed and the recusal process necessary to initiate an investigation without receiving a complaint. They should also document this process in a procedure.

Agency Response: Disagree

Auditor’s Addendum: See page 59 under Recommendation 1.4
RECOMMENDATION 1.5

Assess Workload and Obtain Additional Resources If Necessary – The Board of Ethics’ executive director should work with the board and the Budget and Management Office to assess the board’s workload and determine whether additional staff resources are necessary. If necessary, the board should request additional staff resources.

Agency Response: Agree, Implementation Date – Oct. 30, 2020

The Board of Ethics Is Not Adequately Informed of and Incorporated into the City’s Ethics Program

We found Denver’s Board of Ethics is not fully integrated into the city’s overall ethics program in several areas. Not only were board members unaware of impending changes to a relevant section of city ordinance, but they are not involved in the city’s process for documenting compliance with the Code of Ethics’ gift requirements. Additionally, the board does not adequately analyze the data it has, nor does it have sufficient access to ethics-related data from other agencies.

The underlying cause of these weaknesses is the decentralization of the city’s ethics program, which requires no cooperation or information sharing among agencies. As a result, the board is not equipped to properly assess ethics-related risks, awareness, and compliance across city agencies, and it is not able to recommend improvements.

Knowledge of the City’s Ethics Program – Board members were unaware of some new developments and existing programs in the city that impact their duties.

For example, during the June 2019 board meeting, the board considered a case involving half siblings. The ethics code prohibits hiring and directly supervising immediate family members. While stepsiblings were included in the ethics code’s definition of an “immediate family member,” half siblings were not mentioned.54 Although other city rules — city ordinance and the city’s Code of Conduct — did not delineate between full siblings, half siblings, and stepsiblings and were being updated to include half siblings in the definition of immediate family, the board decided ethics code restrictions did not apply in that case because half siblings were not included in the ethics code.55

When we informed one board member of this discrepancy between the ethics code and other city rules, they indicated the board was unlikely to recommend an update to the ethics code related to this definition because the board typically focuses on more significant code updates, such as the

54 Denver Revised Municipal Code § 2-52(c).
55 Denver Revised Municipal Code § 18-122(e); City and County of Denver, Career Service Rules § 10-11(D).
types of gifts city officers are allowed to receive.

We also found that two board members — one current and one former — were unaware of the city’s fraud hotline, which has existed for five years.

Leading practices state ethics board members should be well prepared to perform their duties.

Specifically, the Ethics & Compliance Initiative states ethics groups should have access to other groups within an organization — such as business units, internal audit, risk management, and other partners — to ensure the ethics program takes into account emerging information about operations, risks, and ethics priorities. The ethics group should participate in high-level strategic discussions to help align decisions with values.\(^\text{56}\)

Further, the U.S. Department of Justice emphasizes that effective compliance programs continuously improve and adapt to changing customers, laws, leading practices, and environments in which they operate. Groups responsible for compliance programs such as ethics boards should update their risk assessments; review compliance policies, procedures, and practices; and identify and address gaps in compliance efforts.\(^\text{57}\)

Without adequate training on relevant new developments and existing programs in the city, the Board of Ethics does not have a complete understanding of the city’s ethics program. The board also lacks a complete understanding of risks addressed by other groups within the city or how to apply the city’s rules in a manner consistent with those groups.

For example, when ethics board members are unaware of the city’s fraud hotline, they are unlikely to seek information gathered via this hotline — reports of financial fraud, waste, and abuse — to further their understanding of the city’s overall ethical environment. This could also prevent the board from identifying weaknesses and potential improvements, such as recommended updates to the ethics code or additional activities or coordination needed to address new risks.

Review of Gift Disclosure Forms — Another gap in the board’s integration into the city’s ethics program is that board members are not given the opportunity to review and provide input for how the city documents officers’ compliance with the Code of Ethics’ gift requirements.

As discussed, the ethics code establishes rules and restrictions regarding which actions are allowed and which constitute a breach of the public trust. Further, the ethics code gives the board authority to issue advisory opinions and to be a resource to employees regarding ethics issues. As the code prohibits accepting some gifts and requires officials to disclose accepting

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other gifts, the board is a key resource for verifying whether the disclosure forms accurately and completely describe and collect the necessary information.58

Without the ethics board’s input on how the city collects information on gifts accepted throughout the year, the city may not be effectively tracking and monitoring officials’ compliance with gift requirements.

Collection and Analysis of Data – Further, the ethics board does not adequately collect and analyze ethics-related data. Data the ethics board does have access to includes information about the requests and complaints received by the board and its executive director and survey responses to nine ethics-related questions in a citywide employee engagement survey conducted every two years.

However, the board does not have a good understanding of and access to other potential ethics-related data collected by other agencies. And, as discussed, the board is not often informed of the outcome of ethics violations and associated recommendations it provides to city agencies.

The board’s executive director manually tracks some ethics-related data associated with the board’s own activities. When preparing the board’s annual reports, the executive director reviews paper files of all official cases to count formal complaints and advisory opinions, in total and by type. In addition, they track and count in a Word file the informal inquiries received throughout the year. They show this data in annual reports for each year and in total since 2001.

However, we found that some counts in the board’s annual reports between 2014 and 2018 were inaccurate. Specifically, in the 2018 report, the total number of formal and informal requests since 2001 were short by 29 and 356, respectively. This inaccuracy in adding up total cases since 2001 did not have a significant impact on the accuracy of the annual report overall, because the numbers of cases for each year were properly displayed in annual lists and charts. Reference Figure 1 on page 6 for the total number of requests, complaints, and unofficial inquiries since 2014.

In addition, the board receives summary data from the biennial citywide employee engagement survey, which includes several questions the city considers to be ethics-related. Ethics board members and Human Resources representatives discussed the results of last year’s survey in the October 2019 ethics board meeting. Meeting participants noted an incremental improvement on all questions — which appears to indicate the ethics environment in the city has slightly improved since 2015. The responses to ethics-related questions from the city’s 2019 employee engagement survey are presented in Figure 7 on the following page.

Of the data available to the board, the board has not analyzed information
FIGURE 7. Results of Ethics-Related Questions in City and County of Denver Employee Engagement Surveys

<table>
<thead>
<tr>
<th>Question</th>
<th>2015</th>
<th>2017</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>My supervisor conducts city business ethically and honestly.</td>
<td>81%</td>
<td>82%</td>
<td></td>
</tr>
<tr>
<td>My coworkers conduct city business ethically and honestly.</td>
<td>78%</td>
<td>81%</td>
<td>81%</td>
</tr>
<tr>
<td>In my department/agency, workplace violence or bullying are not tolerated.</td>
<td>68%</td>
<td>72%</td>
<td>72%</td>
</tr>
<tr>
<td>In my department/agency, the most qualified are promoted.</td>
<td>30%</td>
<td>33%</td>
<td>35%</td>
</tr>
<tr>
<td>In my department/agency, I provide my opinions without fear of retaliation or retribution.</td>
<td>47%</td>
<td>50%</td>
<td>54%</td>
</tr>
<tr>
<td>I am encouraged and expected to speak up about any agency practices and policies that are ethically questionable.</td>
<td>52%</td>
<td>56%</td>
<td>60%</td>
</tr>
<tr>
<td>Employees are treated fairly at this organization regardless of differences in race, gender, age, religion, sexual orientation, etc.</td>
<td>61%</td>
<td>64%</td>
<td>67%</td>
</tr>
<tr>
<td>In my organization, employees of every race, ethnic background, gender, religion, disability, sexual orientation, and family status are able to contribute.</td>
<td></td>
<td></td>
<td>78%</td>
</tr>
<tr>
<td>We have a workplace culture where various attributes of diversity (e.g., experiences, backgrounds, skills, points of view) are respected and appreciated.</td>
<td></td>
<td></td>
<td>70%</td>
</tr>
</tbody>
</table>

Source: Office of Human Resources.

Note: Some questions were added in more recent surveys, so 2015 and 2017 data lack results for certain survey questions.

to identify trends over time, issues most prevalent in specific agencies, emerging risks, or what training might be most needed.

Other entities in the city also may have ethics-related data that could further illustrate the ethical environment of the city. For example, the mayor, the City Council, the auditor, and appointing authorities within city agencies may receive reports of illegal activities, unethical practices, and other official misconduct under the whistleblower ordinance.59

Additionally, the fraud hotline could potentially receive reports of ethics-related violations, but only financial misconduct and fraud violations are within its jurisdiction. If cases are outside its jurisdiction, the Fraud Hotline Committee informs the person making the report where they should direct their case, when possible. If that person cannot be reached, the committee closes the case.

Meanwhile, the Office of Human Resources receives complaints related to the Code of Conduct, such as harassment, discrimination, and employees engaging in political activities during working hours. The Code of Conduct even includes information on the ethics code and the behaviors it regulates. Further, the Office of Human Resources may be receiving additional complaints as a result of the annual fraud hotline report. It directs employees to report observed preferential hiring treatment to the Office of Human Resources even though this activity — employment and supervision of family members — is addressed in the ethics code and related complaints are assessed by the ethics board.

In addition, as discussed, the board is often uninformed of the outcomes of ethics violations once the board makes its finding and recommendation to an agency. In contrast, when the Fraud Hotline Committee makes its determination, it requires a report from the agency, which includes actions taken in response to the violation. The committee can ask questions until they are answered to its satisfaction and only then does it close the case.

There is no process for collecting all these reports, inquiries, and remediation actions into one central database or for sharing the information with the Board of Ethics. Responses to a question in our ethics survey distributed to all city personnel illustrates the strong likelihood that other city agencies or groups may be receiving ethics-related complaints.

While 460 survey respondents said they saw and reported unethical behavior, the board received only 65 official complaints between 2014 and 2018. Although our survey respondents may have been referring to complaints submitted prior to 2014 or to complaints outside the board's jurisdiction, the notable difference between these figures suggests the board may be unaware of a significant number of complaints submitted to other city agencies.

Leading practices recommend that groups responsible for ethics compliance should know the nature and source of all allegations and that organizations should keep metrics on violations and analyze them by type and subsequent discipline. Data and information sharing are especially important to measure how often employees' and officials' conduct creates an appearance of impropriety.

Additionally, the U.S. Department of Justice recommends ethics compliance groups should have full access to reporting and investigative information and that they should periodically assess risks. Ethics groups should collect, analyze, and use information to identify patterns of misconduct and red

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60 City and County of Denver, Career Service Rules § 16-22 and 16-25.
61 Ibid., § 16-21.
flags, as well as assess timeliness of complaint investigations and the timeliness of corrective measures.63

Further, standards published by the U.S. Government Accountability Office say management should use quality information to achieve the organization’s objectives. More specifically, GAO recommends government organizations periodically identify relevant data to be collected and then process that data into quality information to inform decisions and help achieve key objectives.64

Inadequate collection and analysis of data prevents Denver’s Board of Ethics from identifying trends in the types of ethics questions and complaints the city receives. Trends may help identify the need for additional or better-tailored training, the root causes of ethical issues, the need for city ordinance changes or clarification, repeat offenders, and problem areas or agencies.

The decentralization of Denver’s ethics program is the fundamental cause of the board’s inadequate knowledge of, and incorporation into, the city’s ethics program. Several agencies or groups have responsibilities that impact the overall ethical environment. However, there is no formal requirement for data sharing and communication with the board regarding updates to ethics-related city rules and processes outside the ethics board and the Code of Ethics — not even those covered by the Code of Ethics, such as gift disclosures and preferential hiring practices.

Without adequate knowledge of the whole ethics program and all ethics inquiries or reported violations, either actual or apparent, the ethics board and other groups in the city cannot fully understand the ethical risks and required procedures to address those risks. Therefore, the city’s ethics program may be ineffective or inefficient.

RECOMMENDATION 1.6

 Collaborate on Data Collection and Analysis – The Board of Ethics’ executive director should coordinate with representatives from the City Council, the Office of Human Resources, the Fraud Hotline Committee, the Civil Service Commission, and the Clerk and Recorder’s Office to identify and document processes and data relevant to the city’s ethical environment.

 Agency Response: Agree, Implementation Date – Oct. 30, 2020


RECOMMENDATION 1.7

**Develop Plan for Sharing Data** – The Board of Ethics’ executive director should work with the City Council, the Office of Human Resources, the Fraud Hotline Committee, the Civil Service Commission, and the Clerk and Recorder’s Office to develop and document a plan for regular communication and data sharing with the board to ensure it can adequately monitor the city’s ethical environment.

**Agency Response:** Agree, Implementation Date – Oct. 30, 2020
FINDING 2
The Board of Ethics Can Increase Its Impact and Effectiveness through Addressing Operational Risks and through More Outreach

As the administrator of the Code of Ethics, the Board of Ethics strives to ensure city employees, officers, and elected officials adhere to both the letter and the spirit of the ethics code. However, we found the board lacks the necessary policies and procedures to mitigate operational risks and to ensure it operates most efficiently and effectively.

According to the U.S. Government Accountability Office, policies and procedures should be designed and built as an integral part of an organization’s operations. The board could increase its effectiveness by documenting policies and procedures that address its operational risks and fulfill the expectations established by the ethics code.

Additionally, the board can increase its impact by enhancing the city’s ethics training program and through more effective outreach to city agencies and personnel via its website.

Auditors found the board does not have adequate and up-to-date policies and procedures that enable the board to effectively and efficiently fulfill its objectives.

The Committee of Sponsoring Organizations of the Treadway Commission — which develops frameworks for enterprise risk management and internal controls — states that adequate documentation of board policies and procedures would establish standards and expectations of conduct and specify the individuals responsible for specific functions. Without these policies and procedures, the Board of Ethics risks losing organizational knowledge as members and its executive director retire or step down from the board.

Although a variety of policies and procedures may be required to help the board mitigate risks to its operations, we identified three specific policies and procedures that were missing: procedures for the recusal of board members and the executive director, guidance on records retention and

67 The Committee of Sponsoring Organizations of the Treadway Commission, “Internal Control Framework” (2013). The Committee of Sponsoring Organizations of the Treadway Commission is a joint initiative of five private-sector accounting, finance, and auditing groups that publishes internal control standards to reduce fraud in organizations and to enhance organizations’ internal controls.
security, and procedures for documenting potential improvements to the ethics code.

**Recusal Procedures** – The board lacks a formal process for members and staff to recuse themselves in the event of a conflict of interest. Both of the board’s only guidelines — the Code of Ethics and the board’s rules of procedure — state that recusal is required when impartiality of board members or the executive director may be reasonably questioned. However, no further guidance exists regarding how potential conflicts of interest should be disclosed or when potential or known conflicts should be announced. In attending five of the 10 board meetings in 2019, we observed no formal or standard process for discussing and addressing potential or actual conflicts of interest.

According to Robert Wechsler, conflicts of interest can occur when government employees and officials must balance their personal interests with their obligations to the public. The primary function of an ethics program is to provide guidelines on how to responsibly deal with these conflicts of interest and to require that officials and employees disclose the information necessary to identify these situations.

To fulfill this obligation, the board’s executive director provided guidance in 2014 to all members of city boards and commissions about “avoiding the appearance of impropriety” in the course of their service.

Upon board members recognizing a conflict of interest is present, this guidance recommended they verbally state for the record that they will not participate in a matter before their board and then provide the reason for this decision. The guidance stated the expectation that those individuals would not then be present for any part of the meeting and should not vote on the matter before their board, because the identified conflict may impact those members’ impartiality. It further suggests that the individual later review meeting minutes to validate whether their announced conflict and reasoning was documented, so the public knows board members are appropriately identifying conflicts and are not participating in matters that they should not.

According to the U.S. Department of Justice, policies and procedures should provide the appropriate detail to promote ethical behavior in the organization, so risks are appropriately identified and managed.

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A review of the policies and procedures adopted by multiple ethics programs across the country found that other entities require the announcement of a conflict at a predetermined time and that their respective rules of procedure document this expectation. For example, the City of Atlanta requires board members to disclose a conflict of interest at the meeting where the matter is discussed, and Palm Beach County, Florida, requires an announcement to be made as soon as is practical.

Several of these programs also detail how a member must formally announce their conflict. Colorado’s Independent Ethics Commission developed a formal board member recusal process in response to a recommendation from the state auditor. A 2016 audit of the commission found it lacked the formal policies and procedures necessary to create a consistent practice for determining whether a conflict of interest may exist. As a result, the Independent Ethics Commission now requires board members to make a public statement of the recusal “if and when possible” or by announcing the recusal after the ethics board enters executive session.

Meanwhile, Atlanta requires members to complete an online report that discloses the conflict of interest, and Palm Beach County requires a motion to be filed with the county ethics commission to announce when a member is disqualified. The county also requires an affidavit to accompany the motion to explain the reason for the disqualification. Upon determining the motion and affidavit are legally sufficient, the member should then recuse themselves from the matter in question.

Despite variation in how these ethics programs define the process around board member recusal, they are consistent in having policies with greater detail about how and when the announcement should be made. While Denver’s ethics code and its board’s rules of procedure note that recusal should occur when impartiality may be questioned, there are no details on how or when that should be announced.

The absence of more specific conflict-of-interest disclosure processes means Board of Ethics members and the executive director may not immediately recognize or address a potential conflict. If the board proceeds with reviewing and deciding on a matter in which one or more of the board members or the executive director are not impartial, this could impact the board’s objectivity and negatively impact the public’s perception of the board’s impartiality.

**Records Retention Procedures** – The board lacks procedures that clearly define how long it should retain and how well it should secure documentation of the types of cases it handles.

Specifically, neither the Code of Ethics nor the board’s rules of procedure include guidelines for records retention or security. The board’s case files

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since 2001 have been retained indefinitely for historical reference and to support board decisions.

Between January 2001 and Dec. 31, 2018, the board processed 810 formal cases, including both advisory opinions and complaints.\(^{73}\) Formal complaints and requests for advisory opinions are assigned a case number, as required by the board's rules of procedure, and a physical file is created by the executive director.\(^{74}\) Case files include the official request for an opinion or the signed complaint, any relevant documentation, and the final board opinion.

The executive director offers informal advice in some situations to individuals who need quick guidance or who choose not to submit a written request to the board. In 2018, the executive director received 212 requests for informal guidance or advisory opinions. These informal requests are often received through mail or email.\(^ {75}\) The former executive director printed and retained these emails, but they were not assigned a case number or cataloged in a managed filing system.

Simply storing documents is insufficient, because this does not by itself guarantee the records can be retrieved and used in the future.\(^ {76}\) The board's records management approach for these informal requests does not follow the guidelines established in the city's records retention schedule — which was developed to manage the security, accessibility, and cost of storing records.\(^ {77}\)

A 2002 executive order established the city's procedures for handling official city records from creation to retention to disposal.\(^ {78}\) A record can be in any media — including paper or electronic documents — because the purpose of the policy is to manage all sources of information that support decision-making and ensure accountability.\(^ {79}\)

The city's records management manual explains policies and procedures are needed to guarantee information can be accessed and used during the entire period it must be retained.\(^ {80}\) For both paper and electronic records, this means that they should be placed into a managed filing system, so they can be accessed when needed.\(^ {81}\) Case numbers are an example of a managed


\(^{76}\) City and County of Denver, “General Records Retention Schedule” (2018), 181.

\(^{77}\) Ibid., 3.


\(^{79}\) Ibid., 2; City and County of Denver, “General Records Retention Schedule” (2018), 181.


\(^{81}\) City and County of Denver, “General Records Retention Schedule” (2018), 181.
filing system that allows documents to be readily accessed during their retention period.\textsuperscript{82}

Regardless of a record's physical format, the Board of Ethics' records are subject to varying minimum retention periods, and this is determined by the case being considered. The city's policy specifies a minimum retention period for two types of board records: complaints and requests for advisory opinions.\textsuperscript{83} The retention periods are the same for both:

- Records from cases that are immediately dismissed should be kept for two years after the case is closed;
- Records from cases where no new precedent is set should be kept for four years after the case is closed; and
- Records from cases where new precedent is set should be retained permanently.

Because of the board's lack of procedures for records retention, the board's former executive director was retaining information indefinitely — which could limit storage space over time and create less efficient operations.

Additionally, board records include potentially sensitive or identifying information — such as an individual's name, address, and the alleged unethical behavior — but the board lacks procedures for handling and protecting this information.\textsuperscript{84}

The protection of this information is critical to prevent unauthorized access, and current city policy states that keeping sensitive information in a locked and secure office is necessary. Storing sensitive records in a locked filing cabinet, in an unlocked office, is not sufficient.\textsuperscript{85}

Additionally, assigning case numbers is not only a component of an indexed filing system but it is also an additional security measure, because this approach uses a labeling system that is less identifiable than an individual's name.\textsuperscript{86}

\textbf{Procedures for Documenting Proposed Changes to the Code of Ethics} —

The board also lacks procedures describing its process for identifying and tracking potential updates or improvements to the ethics code. As the group responsible for understanding and implementing the Code of Ethics, the board is well positioned to identify possible areas for improvement in the code to ensure the code remains relevant.

Not only does the board lack procedures that describe its process for

\textsuperscript{83} City and County of Denver, “General Records Retention Schedule” (2018), 153.
\textsuperscript{85} Ibid., 15.
\textsuperscript{86} Ibid., 16.
suggesting updates to the ethics code, it also has not actively documented and reported on potential updates to the ethics code over the years.

The opportunity and obligation for the board to propose changes to the code is established in the Code of Ethics itself, through the requirement that the board develop and submit an annual report to the mayor and the City Council that both summarizes the board’s activities over the previous year and includes any recommendations for modifying the ethics code. However, the code does not exclude the board from advocating for changes using other methods, such as by speaking at City Council meetings. However, these activities are not a substitute for recommending these changes and publishing them in the board’s annual report, as required.

By not tracking and reporting on recommended changes to the ethics code over time, the board cannot ensure it accounts for all its observations on needed improvements to the code that the board identifies throughout the year. Absent an ongoing list of proposed changes, the board could lose that knowledge because of the periodic turnover of members as their terms on the board expire. As board members leave, so too does the knowledge and perspective those members possess.

Additionally, the board is missing an opportunity to create a long-term and public record of its views on needed improvements to the ethics code. Without documenting its proposed changes annually, the board limits its ability to retain institutional knowledge of needed updates to the code and to document its recommended specific improvements.

The Committee of Sponsoring Organizations of the Treadway Commission explains that all organizations encounter risk and that risk assessment is an ongoing process used to enhance an organization’s ability to accomplish its goals.

Because risks can hinder an organization’s ability to achieve stated objectives, risk identification should include an analysis of all objectives and should identify all external and internal factors that contribute to risk.

Further, as discussed by the U.S. Government Accountability Office, policies and procedures help organizations mitigate the risk that their goals and objectives are not achieved.

The board has not adequately assessed risks to its operations — such as an outdated Code of Ethics and no clear process for recusal — nor has it designed policies and procedures to mitigate those risks.

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89 Ibid., 42.
RECOMMENDATION 2.1

Develop Policies and Procedures to Address Risks – The Board of Ethics and its executive director should develop and document policies and procedures that define a time frame for periodically assessing and documenting significant risks to the board’s operations and developing or updating policies and procedures that mitigate those identified risks. This should include but not be limited to procedures that document:

- A formal process to ensure board members and the executive director recuse themselves in the event of a conflict of interest;
- The board’s records retention and records security process; and
- The board’s approach to tracking and documenting proposed changes to the Code of Ethics.

Agency Response: Agree, Implementation Date – Oct. 30, 2020

The Board’s Procedural Rules Are Outdated and, in Several Areas, Inconsistent with the Code of Ethics

In addition to the lack of important policies and procedures, we also found the board’s only guiding document outside the ethics code — its rules of procedure — was inconsistent with the ethics code in some important areas, such as time frames for requesting a waiver, notification requirements for advisory opinions, and conditions for recusal.

The ethics code states any officer, official, or employee may submit a written request for a waiver of a code requirement before taking any action that is subject to the waiver request. However, the board’s rules of procedure do not state whether the waiver should be requested before the action that may violate the ethics code.

As noted previously, the board can grant a waiver to an individual requesting an advisory opinion if the board finds a proposed action would violate the code but is in the best interest of the city. So, for example, individuals may seek waivers after requesting an advisory opinion regarding their interest in attending a conference hosted by a city vendor at no cost. Although the Board of Ethics may find the employee’s attendance at the conference ultimately benefits the city, it could still present an ethical conflict prohibited by the code. The inconsistency between the code and the board’s rules of procedure could result in the board granting a waiver for the prohibited activity after (as opposed to before) the activity occurred, which is not aligned with the ethics code.

91 Denver Revised Municipal Code § 2-54(f).
The rules of procedure also apply an additional restriction the ethics code does not. Specifically, the ethics code requires that an individual who is the subject of a complaint must be notified; however, the rules of procedure also apply this notification requirement to requests for advisory opinions, which is not an ethics code requirement.

Lastly, as discussed, the ethics code states board members and the executive director must disqualify themselves from a matter before the board if the member’s or executive director’s impartiality might reasonably be questioned. This could be in such instances as when the member or executive director made a campaign contribution or volunteered for the campaign of an elected official who is before the board. The board’s rules of procedure do not include this same recusal requirement.

The U.S. Government Accountability Office states that policies and procedures should be periodically reviewed to ensure they are effectively managing risk and to validate whether current processes remain relevant.92

The board’s rules of procedure are misaligned with the ethics code because they have not been updated since 2016 — even though the ethics code was updated twice since that time, in 2017 and again in 2018.

This inconsistency between the rules and the ethics code puts the board at risk of operating with guidelines that are not compliant with the city’s principal ethics framework: the Code of Ethics. This may result in a board decision or activity that does not fully enforce the ethics code, which can negatively impact the overall ethical culture in the city.

**RECOMMENDATION 2.2**

**Develop and Document Review Process for Policies and Procedures** — The Board of Ethics should develop, document, and implement a process to regularly review its rules of procedure and any other internal policies and procedures to ensure compliance with the Code of Ethics and to ensure their continued relevance.

**Agency Response: Agree, Implementation Date — Oct. 30, 2020**

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Ethics infractions can occur when employees or elected officials are unaware their behavior violates the established ethics code. Therefore, government employees and officials need a strong training program to aid them in identifying situations with ethical implications and in determining how they should react or in knowing what resources are available to assist them in determining whether their behavior complies with both the letter and spirit of the ethics code.93

The city's current ethics training approach involves infrequent formal training opportunities and content that is not customized to the various responsibilities and roles of city personnel.

Meanwhile, according to leading practices, the Board of Ethics' website is the most effective and least expensive way to educate the public, government employees, and elected officials about the ethics program.94 However, we found the website is not optimized to ensure this, because it contains broken links and incorrect or missing information, and it did not include links to other ethics-related resources in the city.

The Frequency and Content of Formal Citywide Ethics Training Is Insufficient Compared to Leading Practices

In 2019, the city instituted an online “ethics refresher” training course to be delivered to employees every three to five years. Previously, the only ethics training was provided to new employees after they were hired. As a result, some city personnel had not received ethics training in many years — even decades in some cases. While the frequency of training has improved, the city's formal ethics training still is not customized to specific positions, responsibilities, or risks identified by the Board of Ethics.

Robert Wechsler wrote that most ethics training occurs at specific times, such as when training a new employee, when promoting an employee to another role, or when electing and appointing government officials and officers.95 However, Wechsler explains that, in addition to these customary times of providing ethics training, ongoing training should be delivered through periodic newsletters, online quizzes, advisory opinions, and the dissemination of board decisions and outcomes when a violation occurs and is investigated.96

The Institute of Internal Auditors, an organization established to provide leadership for the internal auditing profession, advises that a mature ethics

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94 Ibid., 616.
95 Ibid., 459.
96 Ibid., 471.
The value of ethics training is maximized when the focus is placed on the issues people actually encounter in their daily work.

program would provide annual training to reinforce the program.\textsuperscript{97}

The Defense Industry Initiative, a nonprofit organization composed of government contracting companies, also states that regular training communicates to employees and officials that the organization is committed to ethics. It too suggests ongoing training be provided annually through a formal course or informally through a variety of delivery methods—including incorporating ethics into ongoing conversation, such as staff meetings and employee forums.\textsuperscript{98}

In addition to increased frequency of training, an article published by the American Society for Public Administration—a group that provides services and programs that connect public administration theory to government practitioners—recommends customizing ethics training for the audience based on individuals’ actual roles. For example, employees who are not managers need to know how they can report an ethics violation, and managers need to be trained to ensure the methods to report are functioning as intended.\textsuperscript{99}

The article adds that training should evolve to ensure it aligns with current risks.\textsuperscript{100} For these reasons, the value of ethics training is maximized when the focus is placed on the issues people actually encounter in their daily work.\textsuperscript{101}

Further, the Ethics & Compliance Initiative says role- and risk-specific training should be continuously evaluated, so employees regularly receive training that is relevant and current.\textsuperscript{102} Training materials further this effort, as Wechsler wrote that materials specific to the audience will be more interesting and may include examples of situations they encounter.\textsuperscript{103}

The reason for these deficiencies in the city’s formal ethics training is that the Office of Human Resources is responsible for executing citywide learning and development, so the board cannot independently develop and implement formal ethics training. The former executive director of the Board of Ethics worked with Human Resources for about five years to develop and deliver the “ethics refresher” training that debuted in 2019. However, the impact of the city’s existing approach to ethics training is that individuals may not be able to recognize potential ethical concerns, for

\textsuperscript{97} The Institute of Internal Auditors, “Evaluating Ethics-Related Programs and Activities” (2012).


\textsuperscript{100} Ibid., 287-288.

\textsuperscript{101} Ibid., 286.


themselves or others, or have the knowledge of ethics-related resources, which could lead to a lack of reporting and degradation of the ethics environment.

As previously illustrated in Figure 4 on page 18 when we posed a question in our ethics survey about whether employees would report a behavior that violates the ethics code, about 25% of respondents stated they would not have reported the behavior. The most common reason employees gave for not reporting was that they were unsure if the behavior was an ethics concern. The fact that 34% of employees who completed the survey responded that they did not recognize the behavior as a violation of the ethics code is a clear indicator more training is needed.

The ethics survey also included a question that posed different scenarios to gauge employees’ understanding of what behaviors or activities pose ethics concerns.

As Figure 8 demonstrates, employees recognized nepotism and conflict of interest as ethics concerns. Also, respondents correctly noted that excessive noise created by colleagues is not an ethics concern. However, 28% of respondents did not recognize that being involved in procuring a contract from a vendor and then leaving city employment to work for that vendor in

**FIGURE 8.** Employees’ Responses to whether Various Activities Represent Ethical Concerns

<table>
<thead>
<tr>
<th>ETHICAL CONCERN</th>
<th>NOT AN ETHICAL CONCERN</th>
<th>DON’T KNOW</th>
<th>COMBINED</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hiring a relative (nepotism)</td>
<td>93%</td>
<td>3%</td>
<td>4%</td>
</tr>
<tr>
<td>Claiming false work hours (time fraud)</td>
<td>88%</td>
<td>8%</td>
<td>4%</td>
</tr>
<tr>
<td>Taking office supplies (theft)</td>
<td>89%</td>
<td>6%</td>
<td>5%</td>
</tr>
<tr>
<td>Procuring from a vendor and leaving city employment to work for this vendor (potential conflict of interest)</td>
<td>72%</td>
<td>12%</td>
<td>16%</td>
</tr>
<tr>
<td>Undisclosed external employment (potential conflict of interest)</td>
<td>85%</td>
<td>6%</td>
<td>9%</td>
</tr>
<tr>
<td>Noise in cubicle (rudeness)</td>
<td>13%</td>
<td>70%</td>
<td>17%</td>
</tr>
</tbody>
</table>

City employees surveyed were not required to answer all 13 survey questions. For this question, 3,732 individuals responded.

**Source:** Auditor’s Office analysis of citywide ethics survey results.

**Note:** Reference Appendix A for additional information on our survey questions, methodology, and analyses.
a short period of time may be an ethics concern. Further, scenarios involving time fraud and theft — activities that are prohibited by other areas of city ordinance, but not in the Code of Ethics — were widely considered to be ethics violations.

These results further support the need for more ethics training for city personnel.

Additionally, as depicted in Figure 9, 81% of those who responded to our ethics survey said they would ask their supervisor if they had a question about ethics, among other options they could also choose from. This illustrates the importance of role-specific ethics training for supervisors who may be regularly called on to respond to general or agency-specific ethics-related questions.

FIGURE 9. Individuals and Agencies that Employees Would Contact Regarding Ethics-Related Questions

<table>
<thead>
<tr>
<th>Option</th>
<th>Total respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ask my supervisor</td>
<td>3,021 (81%)</td>
</tr>
<tr>
<td>Contact Board of Ethics</td>
<td>1,221 (33%)</td>
</tr>
<tr>
<td>Contact Office of Human Resources</td>
<td>1,088 (29%)</td>
</tr>
<tr>
<td>Ask my agency leadership</td>
<td>1,064 (29%)</td>
</tr>
<tr>
<td>Other</td>
<td>301 (8%)</td>
</tr>
<tr>
<td>Call fraud hotline</td>
<td>146 (4%)</td>
</tr>
<tr>
<td>Call Denver 311</td>
<td>38 (1%)</td>
</tr>
</tbody>
</table>

Respondents could give more than one answer.

Source: Auditor’s Office analysis of citywide ethics survey results.

Note: Reference Appendix A for additional information on our survey questions, methodology, and analyses.
RECOMMENDATION 2.3

**Document Plan to Strengthen Formal Ethics Training and Outreach** – The Board of Ethics should assess the frequency and content of the city’s formal ethics training and develop and document a plan for strengthening formal ethics training that includes the optimal frequency and content of ethics training needed for different management levels. The plan should also document informal training opportunities the board and its executive director can pursue independently, such as in-person meetings with agency officials and staff or regular newsletters containing frequently asked questions and advisory opinions.

*Agency Response: Agree, Implementation Date – Oct. 30, 2020*

RECOMMENDATION 2.4

**Update Formal Ethics Training** – After implementation of Recommendation 2.3, the Board of Ethics’ executive director should work with the Office of Human Resources to update the city’s formal ethics training in accordance with the board’s plan.

*Agency Response: Agree, Implementation Date – Oct. 30, 2020*

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The Board of Ethics’ Website Contains Functional Errors that Diminish the Public’s Ability to Access the City’s Ethics-Related Resources

Throughout our audit, the Board of Ethics’ website contained broken links and incorrect or missing information, and it did not include links to other ethics-related resources in the city.104

For example, links on the website that direct individuals to key ethics content — such as the Code of Ethics and the board’s rules of procedure — were inoperable. In another instance, the links to 2012 board meeting minutes redirected to either the city home page or an error screen that reflected the page was “not found.” To locate these resources, visitors to the website needed to explore various links, an effort that may go beyond what some visitors are willing to put forth.

In addition to broken links, there were instances of outdated information on the board’s website, such as the contact information for the former executive director and a listing of current board members that included members who no longer serve.

Although the website was recently updated to address some of these

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104 The Board of Ethics’ website is located here: https://www.denvergov.org/content/denvergov/en/denver-board-of-ethics.html.
Instances of incorrect information, the website’s list of the board’s digest of advisory opinions included duplicates each time we reviewed website content, most recently in October, and the name of the former executive director remains on a form advising individuals to request advisory opinions. Further, two digests covering the six-month periods of July-December 2017 and July-December 2018 were still missing from the board’s website, as of December 2019.

Robert Wechsler writes that advisory opinions are an important component of ethics training and outreach, because this advice can be used as a tool for continuing education and to better define the guidelines established by an ethics code. Therefore, instances of missing advisory opinions are a lost opportunity for Denver’s Board of Ethics to leverage and educate the public about its previous decisions.

Lastly, the board’s website does not provide links to other city rules and services that, together, represent the city’s comprehensive ethics program. Examples include links to the Code of Conduct administered by the Career Service Board, executive orders applicable to ethics, the fraud hotline, and the gift and financial disclosure forms retained on the Clerk and Recorder’s Office website.

Wechsler also wrote that a website is important because it is the one area where an ethics board has the most control over how it is perceived. He also recommends a website be current and reflect accurate information to be effective and to present the best image of the board. Information should encompass the topics visitors may want, but it should be well organized, so visitors can quickly access what they need.

The site should also have the necessary documentation and links to resources that will provide the depth of information visitors may want. An organization of local government professionals, known as the International City and County Management Association, states that a government website’s focus should be on customer service and succinctly providing information, so the user can spend as little time on the site as needed. Further, all site content should be important and intentional, so its value to the user is maximized.

According to the Institute for Local Government, an organization that promotes good government at the local level for California communities, ethics board websites should include information that promotes

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106 Ibid., 564.

107 Ibid., 571.


109 Ibid.
“information and process transparency” — such as contact information, meeting schedules, agendas, and minutes; the ethics code and other applicable policies; and information on how to apply to be a board member.\(^\text{110}\)

Wechsler adds that a board’s records-retention policy, as well as guidance on how to make a records request, should also be available online, so individuals can easily request records.\(^\text{111}\) He also advises that ethics training materials should be online, too, to maximize their use and value, because the training materials can be used with advisory opinions as an ongoing educational resource.\(^\text{112}\)

In addition to leading practices, the websites of other city, county, and state ethics boards provide further guidance regarding useful website content. Websites of ethics programs for the City of Atlanta and Palm Beach County, Florida provide links to their corresponding hotlines where reports of unethical or fraudulent behavior can be reported. Each of these websites also contains functional links that direct visitors to applicable documents and information, including their respective codes of ethics, meeting minutes, and digests of advisory opinions.

Overall, the poor functionality of the Denver Board of Ethics’ website is because of two factors:

- The board’s executive director relies on the city’s Technology Services agency to make changes and updates to the website; and
- The board lacks a formal process to periodically review its website to identify nonfunctioning links, missing information, or other areas of improvement.

If Denver residents or other individuals attempt to access content on the board’s website and links do not function as expected, visitors may not be provided the information necessary to seek guidance or to file a complaint with the board. For example, while the option to file a formal complaint is detailed in the Code of Ethics, a city employee may not be aware of this information, and a broken link to the code would further limit the employee’s ability to learn of this service.\(^\text{113}\) Without access to this information on the board’s website, the employee may not seek an advisory opinion or may not have access to other information necessary to report an ethics concern.


\(^\text{112}\) Ibid., 571.

\(^\text{113}\) Denver Revised Municipal Code § 2-55 and 2-56.
As shown in Figure 10 above, less than 50% of respondents to our citywide ethics survey said they knew how to contact the Board of Ethics’ executive director or how to access the digest of advisory opinions. Therefore, the board’s website should provide this information and links should work appropriately.

Additionally, when asked to identify areas in need of improvement related to the city’s ethics program, 40%, or 1,182 employees who completed the survey question, indicated accessibility of information and guidance were a needed improvement, along with elected officials’ and agency leadership’s commitment to ethics, as shown in Figure 11.
RECOMMENDATION 2.5

Review Website Content – The Board of Ethics and its executive director should review the Board of Ethics’ website content to identify additional information or resources that should be incorporated to guide visitors to the appropriate resources, such as the board’s executive director, the fraud hotline, and the Office of Human Resources. The board’s executive director should subsequently document a procedure that defines how often and by whom the website should be reviewed and updated, as well as the process for updating the website with support from the city’s Technology Services agency.

Agency Response: Agree, Implementation Date – Oct. 30, 2020
FINDING 3

The City Did Not Ensure Full Compliance with Rules for City Officials’ Semiannual Gift Disclosures

We found three key elements associated with the semiannual city official gift disclosure process that did not align with city rules or leading practices:

- Not all elected officers and their appointees submitted the required disclosures by the deadline.
- The level of review applied to these gift disclosures was insufficient, and as a result, the city may not be able to determine whether city officials accepted unallowable gifts and it may not be able to take action to remedy such noncompliance.
- The Clerk and Recorder’s Office has restricted public access to gift disclosures for about two months every year. Restricting access is not permitted by city ordinance and reduces transparency to Denver residents.

By better aligning city code, the city's process for collecting and reviewing gift disclosures, and leading practices, the city could better ensure compliance and reduce the potential for distrust of city government.

The Code of Ethics not only describes the Board of Ethics and its function in the City and County of Denver, but it also defines what gifts are allowed to be accepted by elected officers, appointees, and employees. The “gifts” section of the ethics code — which is reprinted in Appendix B of this report — describes certain gifts that must be reported through gift disclosure forms submitted semiannually. City officials are generally allowed to accept gifts from businesses, nonprofits, and other governments. If these gifts come from a business that has pending or ongoing dealings with the city — which the official may directly influence in some way — then the city official must report such gifts.

However, other gifts are not required to be reported. For example, if an official receives free or discounted tickets to an event from a business that does not have — and is not, at that time, seeking — a contract with the city, the tickets do not have to be reported as a gift.

114 Denver Revised Municipal Code § 2-60.
In addition to ethics code requirements for gifts, other sections of city ordinance require gifts given to officials by city agencies be reported through city-item disclosure forms, which are also collected semiannually.\textsuperscript{115} For example, if a city agency gave city officials gift baskets worth more than $50, officials should report the gift on the semiannual city-item disclosure form. Officials are not required to report gifts valued lower than $50.

The Clerk and Recorder’s Office administers and retains these gift and city-item disclosures for public access, as required by city ordinance.\textsuperscript{116} If a city official does not submit both these disclosure forms on time, city ordinance directs the Clerk and Recorder’s Office to contact the official to bring them into compliance with disclosure requirements. If this first effort to contact and collect the official’s missing disclosure forms is unsuccessful, the Clerk and Recorder’s Office is supposed to file formal complaints of noncompliance with the City Attorney’s Office and the Board of Ethics.\textsuperscript{117}

Of the 94 gift disclosures and 94 city-item disclosures that should have been submitted by city officials by July 31, 2019, 12 gift disclosures and nine city-item disclosures had not been submitted as of September. When asked about these examples of noncompliance, the Clerk and Recorder’s Office described an informal and inconsistent process it uses to collect these disclosure forms. Additionally, incomplete information and unclear authority impact the office’s ability to ensure all officials submitted these gift disclosures, as required.

If the Clerk and Recorder’s Office has current contact information for the official who has not yet submitted the gift disclosure forms — such as for those officials still employed by or recently departed from the city — the office contacts those individuals in an attempt to collect the required information. If the official cannot be reached and the official does not submit the forms within 10 days of the due date, the Clerk and Recorder’s Office takes no further action.

A different process unfolds for mayoral appointees when they are late submitting gift disclosure forms. For any mayoral appointees who did not submit gift or city-item disclosure forms, the Clerk and Recorder’s Office provides a list of these individuals to the Mayor’s Office’s administrative director instead of reaching out directly to the individual appointee.

\textsuperscript{115} Denver Revised Municipal Code § 2-74.
\textsuperscript{116} Denver Revised Municipal Code § 2-72(c) and 2-74.
\textsuperscript{117} Denver Revised Municipal Code § 2-75.
Ensuring compliance with the gift disclosure requirement is further complicated, because the Clerk and Recorder’s Office does not have an accurate and updated list of all mayoral appointees who are required to complete the gift disclosure forms. The Mayor’s Office updates and confirms a list for the Clerk and Recorder’s Office of the mayoral appointees who are required to report; however, the current list used by the Clerk and Recorder’s Office is not accurate. Some individuals on the list had not been mayoral appointees since before the reporting period started.

Clerk and Recorder’s Office personnel explained they depend on the Mayor’s Office to provide updates to and confirm the accuracy of the list, but the Mayor’s Office does not always make updates as needed or confirm the list is accurate. As a result, there is no way for the Clerk and Recorder’s Office to be certain all mayoral appointees who are required to submit these disclosure forms actually do so. Further, after the Clerk and Recorder’s Office notifies the Mayor’s Office about instances of noncompliance, once again the Clerk and Recorder’s Office takes no further steps to address the noncompliance.

In those cases where the official left their position during the reporting period, the Clerk and Recorder’s Office may not have personal contact information for the individual. Nevertheless, the former official is still required to submit gift and city-item disclosures for the time they were employed with the city.

City ordinance dictates that the Clerk and Recorder’s Office should send written notice to an official who has not submitted their gift disclosure by the due date. If the official does not submit the disclosure forms within 10 days of the due date and they have not arranged for an extension, the Clerk and Recorder’s Office should file two complaints: one with the City Attorney’s Office and one with the Board of Ethics. However, for these missing gift and city-item disclosure forms, the Clerk and Recorder’s Office did not file these complaints.

City rules do not provide any additional guidance regarding what else should be done to bring an individual into compliance or how these parties should communicate or coordinate.

Federal guidance on compliance programs states that those tasked with ensuring compliance must operate with appropriate authority. While the Board of Ethics, the Clerk and Recorder’s Office, and the City Attorney’s Office have some involvement with disclosure reporting, city ordinance does not provide further detail regarding how noncompliance is addressed and who is ultimately responsible for enforcing compliance.

Not only does the Clerk and Recorder’s Office lack consistent procedures for collecting all gift and city-item disclosures, but the city has not established

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118 Denver Revised Municipal Code § 2-75.
what individual or agency has the ultimate authority to bring officials into compliance.

Without clear authority and policies and procedures to enforce compliance with the city’s gift and city-item disclosure requirements, some city officials are out of compliance with city rules. This lack of compliance reduces the transparency and accountability intended by the disclosure requirement, which is meant to “foster public trust.”

**RECOMMENDATION 3.1**

**Identify Responsible Parties** – The Clerk and Recorder’s Office should work with the Board of Ethics and the City Attorney’s Office to identify the responsible party for ensuring all disclosure forms are submitted as required. The Clerk and Recorder’s Office should also develop a procedure to document who is responsible for ensuring compliance and the office’s methods for doing so.

**Agency Response:** Agree, Implementation Date – Oct. 30, 2020

**RECOMMENDATION 3.2**

**Ensure Accurate Reporting** – After establishing the party responsible for ensuring compliance as detailed in Recommendation 3.1, that responsible party should develop and implement a process to ensure a complete and up-to-date list is maintained of all officials who are required to submit semiannual gift and city-item disclosures.

**Agency Response:** Agree, Implementation Date – Oct. 30, 2020

To foster trust between the government and its residents, city ordinance requires officials to disclose specific information about gifts received from third parties or other city agencies. Because the city allows officials to accept certain gifts, it is important that those who receive gifts describe them fully and accurately, so the public can assess whether officials may be using their government position for private gain. Gift disclosure forms collect some key information about gifts, such as the donor’s name and organization, the gift itself, and the value of the gift.

During our review of semiannual gift and city-item disclosures, we identified two areas of concern:

- No one agency or individual in the city reviews all disclosure forms.

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for compliance with gifts requirements defined in the Code of Ethics and other sections of city ordinance. For mayoral appointees, many gift and city-item disclosure forms are reviewed shortly before forms are due. The focus of this review is to ensure mayoral appointees report gifts on the correct disclosure form and to identify any reported gifts that do not have to be disclosed.

- Second, we could not fully review the forms to identify compliance because of inconsistent and missing information related to compliance with maximum gift thresholds, the value of gifts, and the source of gifts.

Gift Thresholds – Our review of a sample of 39 of 82 gift disclosures showed that multiple officials were inconsistent in reporting gifts worth more than $300 from a single entity.

The disclosure form specifically asks whether the official did or did not receive gifts worth more than $300 from the same donor “pursuant to” a specific section of city ordinance. This section of city ordinance, found in the Code of Ethics, prohibits officials — when they have the opportunity to take “direct official action” regarding the donor — from accepting certain gifts from a for-profit organization that are valued at more than $300 in a calendar year. However, the ethics code does not address gifts received from nonprofit entities or gifts received from for-profit organizations when the official has no opportunity to take direct official action.

THE CITY’S DEFINITION OF ‘DIRECT OFFICIAL ACTION’

City ordinance defines “direct official action” as:

1. “Negotiating, approving, disapproving, administering, enforcing, or recommending for or against a contract, purchase order, lease, concession, franchise, grant, business loan or other similar instrument in which the city is a party. With regard to ‘recommending,’ direct official action occurs only if the person making the recommendation is in the formal line of decision making”

2. “Enforcing laws or regulations or issuing, enforcing, or regulating permits, licenses, benefits, or payments”

3. “Selecting or recommending vendors, concessionaires, or other types of entities to do business with the city”

4. “Appointing and terminating employees, temporary workers, and independent contractors”

5. “Doing research for, representing, or scheduling appointments for an officer, official, or employee, provided that these activities are provided in connection with that officer’s, official’s, or employee’s performance of (1) through (4) above.”

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121 Denver Revised Municipal Code § 2-60(b)(4), (7), (9) and (10); Denver Revised Municipal Code § 2-72(b) and 2-74.

122 Only 82 gift disclosures were available for review because of the 12 missing gift disclosures. The sample of 39 gift disclosures included 15 gift disclosure forms that were reviewed to identify updates to disclosures and an additional 24 randomly selected from the remaining population of officials, as a statistical sample. We excluded the auditor and his appointees from the sample.
This results in gift disclosure forms that may list gifts valued at well over $300, but in which the official certifies they did not receive gifts worth more than $300 “pursuant to” the city ordinance restrictions. Even officials are confused by this language, as we found some certified they had received such gifts, even though they received gifts from nonprofit entities that are not “pursuant to” these city ordinance restrictions.

A review of the disclosure forms is made more confusing because there is no way to detail on the form that a gift is from a nonprofit entity, especially when reporting a gift worth more than the $300 threshold. As a result, our review of the sample of 39 disclosures required research about the gift-giving organization and whether the gift-giver has a current or pending contractual relationship with the city agency that employs the official who received the gift.

As an example, one mayoral appointee reported a gift with a $500 value but certified that they did not receive a gift worth more than $300 “pursuant to” the city ordinance restrictions. However, the form did not offer any explanation of why the $500 gift was allowable.

Auditors researched the gift-giving organization and determined it was a for-profit organization. Auditors then searched internal city systems for any contracts or purchase orders associated with this organization. While the search returned no evidence of a contract or invoices associated with this organization — indicating direct official action could not be taken — auditors followed up with the City Attorney's Office representative who may have previously reviewed the form to ask for the reason this gift was reported.

The City Attorney's Office representative explained that the city does not now — and is unlikely to in the future — have a regulatory relationship with this particular organization. As such, the appointee was not required to report the gift they did — but they were correct in certifying they had not received an unallowable gift, because there was no opportunity for them to take direct official action over this for-profit entity.

However, without the additional research, there would have been no way to determine from the gift disclosure form alone whether this official was compliant.

Valuation of Gifts — Beyond the issues with reporting gifts worth more than $300, our review found seven gift disclosure forms did not contain a clear valuation of the gifts received. For example, an official may have reported four tickets to an event, but it was unclear if the estimated value listed was the value for each individual ticket or the total for all four tickets.

Source of Gifts — Our review of disclosures also found that officials could report gifts without identifying the entity that was responsible for giving the gift — making it impossible to determine whether an official received more than $300 in gifts from a for-profit entity.

City ordinance requires key details to be reported on gift disclosure forms.
to verify compliance with gift rules. Specifically, if the official can take "direct official action" with regard to an organization and they receive a gift from that organization, the official must report the gift.\textsuperscript{123}

The ethics code prohibits officials from accepting more than $300 worth of gifts of meals and tickets or reduced admission to events within a single calendar year from any for-profit entity over which they can take direct official action. However, officials can accept any amount of allowable gifts from nonprofit organizations. Commemorative gifts from events when an official is acting in their official role as a city employee are also allowed, such as scissors from a ribbon-cutting ceremony. Allowable gifts that must be reported are further described in Figure 12 and in Appendix B.

FIGURE 12. Gifts that Are Allowed and Must Be Reported

<table>
<thead>
<tr>
<th>From Nonprofit Entity</th>
<th>From For-Profit Entity</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Any value.</strong> If the gift is free or discounted admission to an event, it may be accepted so long as the nonprofit entity that is providing the gift is also hosting the event.</td>
<td><strong>Total value of all meals and tickets or reduced admission to events must be no more than $300 annually from the entity (or any individuals who work for the entity) when the event is related to the officer's role and/or job duties with the city.</strong></td>
</tr>
<tr>
<td>Reasonable expenses paid for an event or trip related to the officer's role and/or job duties with the city.</td>
<td>Expenses — of no more than $300 annually — associated with an event related to the officer's role and/or job duties with the city.</td>
</tr>
<tr>
<td>Gifts from a commemorative event attended by the officer in their official role with the city.</td>
<td>Gifts from a commemorative event attended by the officer in their official role with the city.</td>
</tr>
</tbody>
</table>

Source: Illustration by Auditor’s Office staff using information from Denver’s Code of Ethics.

Note: Gifts are only subject to these rules and required to be reported if the official receiving the gifts can take “direct official action” with regard to the gift-giver. Gifts must be reported even if the gift-giver is reimbursed.

\textsuperscript{123} Denver Revised Municipal Code § 2-52(b).
Meanwhile, federal law requires federal employee gift and financial disclosures to be reviewed within 60 days of submission. Further, if those responsible for reviewing disclosures find that an official has received gifts that are out of compliance with regulations, the reviewing party is supposed to take action to bring that official into compliance.\(^{124}\)

Robert Wechsler wrote that the best way to cut down on omissions and incorrect information on disclosure forms is to ensure the language in the form can be understood by those who fill them out.\(^{125}\)

**Gift Disclosure Forms Do Not Collect Necessary Details**

We found that no one reviews the disclosure forms for compliance because city ordinance does not require this review. However, when we attempted to review gift disclosure forms for each gift requirement described in the ethics code, we found that even if city ordinance required a thorough review of forms, the gift disclosure forms do not capture all the information necessary to determine compliance.

Specifically, the gift disclosure forms do not capture:

- Whether the gift is from a nonprofit organization or a for-profit entity;
- Acknowledgment that attendance to an event was reasonably related to an official's work and/or responsibilities with the city, if the gift was free admission to an event;
- Commemorative gifts given to an official for attending an event in their official capacity as a representative of the city; and
- Gifts whose value was reimbursed to the gift-giver.

Including these four elements on the disclosure form is vital to ensure any reviewer, resident, or city employee can determine whether each official complied with city gift requirements.

Without a consistent method for reviewing gift disclosure forms, the city cannot ensure officials adhere to gift rules as intended and that they avoid special influence by donors.

Further, without a means for enforcement, the city cannot bring those who have accepted gifts inappropriately into compliance with city ordinance. And regardless, if gift disclosure forms do not collect and report useful, clear, and consistent information, a review of disclosure forms cannot be useful.


RECOMMENDATION 3.3

**Identify Key Information for Disclosures** – The Clerk and Recorder’s Office should work with the Board of Ethics to identify what information should be required to be reported about gifts and then update gift disclosure forms to clearly collect and report this information.

*Agency Response: Agree, Implementation Date – Oct. 30, 2020*

RECOMMENDATION 3.4

**Identify Responsible Party and Process for Review** – The Clerk and Recorder’s Office should work with the Board of Ethics to identify who should be responsible for reviewing the semiannual gift and city-item disclosure forms for compliance with gift rules and document a process that describes the elements that should be reviewed, the time frame for review, and an escalation procedure to enforce compliance.

*Agency Response: Agree, Implementation Date – Oct. 30, 2020*

RECOMMENDATION 3.5

**Review City Ordinance** – The Clerk and Recorder’s Office and the Board of Ethics should work with the City Council to determine whether the process for reviewing disclosure forms should be documented in city ordinance. If so, the office and the board should work with the City Council to update Denver Revised Municipal Code sections 2-72 and 2-74 to require that the gift and city-item disclosure forms be reviewed, the time frame for review, and to identify who is responsible for conducting this review.

*Agency Response: Agree, Implementation Date – Oct. 30, 2020*

The Public Does Not Have Complete, Year-Round Access to Semiannual Gift Disclosures

City officials’ gift and city-item disclosures are required to be publicly available, because they ensure transparency of officials’ interactions with businesses in the city.

But access to semiannual gift and city-item disclosures was disabled from the first week in July 2019 through the first week in August 2019. During this time, the Clerk and Recorder’s Office’s website did not provide any guidance to the public regarding alternative ways they could access the disclosure forms. This lack of access occurs twice a year for both reporting deadlines — during January for the Jan. 31 deadline and again during July for the July 31 deadline.
Additionally, access to most gift disclosure forms remained disabled as of December 2019 even after the system was re-activated. Further, the Clerk & Recorder’s Office was unaware that access to financial disclosures — including those which document officials’ business interests and other sources of income, among other information — was accidentally disabled in July 2019; however, the office has since corrected the lack of access to the financial disclosures.

This inability of the public to access these disclosure forms online diminishes transparency and does not align with city ordinance, which states: Disclosure statements shall be public records and “available to the public online within a reasonable time, not to exceed seven (7) business days after the date of receipt of the completed statements.” Additionally, the Colorado Open Records Act dictates that where public records are kept only in digital form, "the custodian shall ... ensure public access to public records without unreasonable delay or unreasonable cost.”

The primary reason for the lack of public access to Denver officials’ disclosure statements is system limitations associated with the Clerk and Recorder’s Office’s process for posting disclosures.

In recent years, the office has disabled public access to the disclosures in its records retention system (called Seamless) to accommodate the Mayor’s Office’s review of mayoral appointee gift and city-item disclosures. As seen in Figure 13 on the following page, the system is disabled 30 days before disclosures are due. This is because the system will otherwise automatically publish any disclosure that is submitted while the system is active and available to the public.

During the audit, personnel from the Mayor’s Office, with assistance from the City Attorney’s Office, reviewed mayoral appointee gift and city-item disclosure forms and, when needed, requested appointees to submit a second, revised disclosure form before publication on the Clerk and Recorder’s Office website. However, to accommodate this review and update period, the Clerk and Recorder’s Office system remained offline until final disclosure forms were submitted. Reference Figure 13 on the next page for a visual depiction of this review process for mayoral appointee disclosure forms.

By restricting public access to these disclosures for two months every year, the city is not complying with city ordinance or the spirit of the Colorado Open Records Act. This limits transparency and the public’s ability to monitor the activities of their local government representatives.

126 Denver Revised Municipal Code § 2-72(f), emphasis added.

RECOMMENDATION 3.6

Address Gaps in Public Access – The Clerk and Recorder's Office should assess and select one or more methods to ensure the public has timely access to the gift and city-item disclosures in compliance with city ordinance. This could include ceasing its practice of disabling the website for two months out of the year or including instructions on the Clerk and Recorder's Office website for how to access the disclosures while the Seamless records retention system is disabled. The method should be formalized in documented policy or procedure.

Agency Response: Agree, Implementation Date – Oct. 30, 2020
RECOMMENDATIONS

The agency narratives below are reprinted verbatim from the agency’s response letter, shown in the next section of this report.

1.1 Allow Anonymous Reporting – The Board of Ethics and its executive director should work with the City Council to update the Code of Ethics and allow the acceptance of anonymous reports.

Agency Response: Agree, Implementation Date – Oct. 30, 2020

Agency Narrative: As the Audit identifies, this is one of the most effective ways to enable ethical oversight without fear of repercussion. The Board needs to consider this issue in collaboration with the Mayor and with City Council to determine if the Code of Ethics should be amended. The Board notes, however, that ultimate responsibility for enacting such an authorization rests with the Mayor and City Council, to whom this recommendation is appropriately directed.

1.2 Develop and Document Policies and Procedures – Once Recommendation 1.1 is implemented, the Board of Ethics and its executive director should develop and document a process to ensure they vet anonymous complaints and ensure credibility of a complaint is established before initiating an investigation.

Agency Response: Agree, Implementation Date – Oct. 30, 2020

Agency Narrative: The Board agrees that identifying a process to vet anonymous complaints is a necessary component of carrying the authority to receive them. The Board will begin expanding on the processes already in place concurrent with efforts to amend the Code of Ethics. The Board needs to consider this issue in collaboration with the Mayor and with City Council to determine if the Code of Ethics should be amended. Ultimately, any process is dependent on City Council and the Mayor amending the Code.

1.3 Collaborate to Ensure Enforcement and Information Sharing – The Board of Ethics and its executive director should work with the City Council, the Office of Human Resources, and the Civil Service Commission to discuss and create a formal process that ensures appropriate enforcement. This could be achieved through updating the Code of Ethics and the city charter to grant the board the authority to impose sanctions or through formal coordination between the board and the Office of Human Resources to develop information-sharing policies and procedures that ensure the board receives information on the outcomes of all ethics-related violations.

Agency Response: Agree, Implementation Date – Oct. 30, 2020

Agency Narrative: The Board will initiate conversations with City Council and the Mayor to collaboratively determine whether the Code of Ethics and the City Charter should be amended, as
The Board agrees that collaboration between the Board and the Office of Human Resources can best ensure appropriate responses to ethical violations, particularly where an appointing authority may not otherwise take a violation seriously or act upon a decision rendered by the Board outlining an ethical violation. The Board believes that the better course of action to accomplish this goal is to consider formal amendment to the Code of Ethics and the City Charter.

1.4 **Develop and Document Procedure for Board-Initiated Investigations** – The Board of Ethics and its executive director should consider the minimum information needed and the recusal process necessary to initiate an investigation without receiving a complaint. They should also document this process in a procedure.

**Agency Response: Disagree**

**Agency Narrative:** The Board disagrees that because the Code of Ethics is silent on this issue, there is implied authority for Board-initiated investigations. Rather, the Board believes that explicit authority would need to be in place, and that this would necessitate amendment of the Code. The Board notes that ultimate responsibility for enacting such an authorization rests with the Mayor and City Council, to whom this recommendation is appropriately directed.

**Auditor’s Addendum:** If the board believes that the Code of Ethics should be amended to provide explicit authority to conduct board-initiated investigations before taking the steps described in Recommendation 1.4, the board can proactively work with the Mayor’s Office and the City Council to pursue the necessary code amendments.

1.5 **Assess Workload and Obtain Additional Resources If Necessary** – The Board of Ethics’ executive director should work with the board and the Budget and Management Office to assess the board’s workload and determine whether additional staff resources are necessary. If necessary, the board should request additional staff resources.

**Agency Response: Agree, Implementation Date – Oct. 30, 2020**

**Agency Narrative:** The Board will assess its needs regarding additional personnel (particularly if other recommendations are implemented, such as review of gift disclosure forms, which would yield significant increase in workload). The Board will identify what type of personnel and budget increase would be necessary. After that, the Board will defer to City Council and the Mayor, to whom this recommendation is directed, as the Board has no appropriation authority to acquire additional staff resources. However, the Board should be involved in the discussion including any Board recommendations for modifying the Code of Ethics and/or a discussion of any budgetary implications.

1.6 **Collaborate on Data Collection and Analysis** – The Board of Ethics’ executive director should coordinate with representatives from the City Council, the Office of Human Resources, the Fraud Hotline Committee, the Civil Service Commission, and the Clerk and Recorder’s Office to identify and document processes and data relevant to the city’s ethical environment.
Agency Response: Agree, Implementation Date – Oct. 30, 2020

Agency Narrative: The Executive Director of the Board will contact representatives from each of the noted agencies and identify an appropriate path forward. The Board agrees that the entire City and citizens would benefit if a consistent collaborative protocol could be developed for collecting, analyzing, and dealing with complaints and communicating them to all reporting authorities. It also would benefit the City if gift reports are filed with and reviewed by the Board. This will improve timely compliance.

1.7 Develop Plan for Sharing Data – The Board of Ethics’ executive director should work with the City Council, the Office of Human Resources, the Fraud Hotline Committee, the Civil Service Commission, and the Clerk and Recorder’s Office to develop and document a plan for regular communication and data sharing with the board to ensure it can adequately monitor the city’s ethical environment.

Agency Response: Agree, Implementation Date – Oct. 30, 2020

Agency Narrative: As with Recommendation 1.6, supra, the Executive Director of the Board will contact representatives from each of the noted agencies and identify an appropriate path forward. The Board agrees that the entire City and citizens would benefit if a consistent collaborative protocol could be developed for collecting, analyzing, and dealing with complaints and communicating them to all reporting authorities.

2.1 Develop Policies and Procedures to Address Risks – The Board of Ethics and its executive director should develop and document policies and procedures that define a time frame for periodically assessing and documenting significant risks to the board’s operations and developing or updating policies and procedures that mitigate those identified risks. This should include but not be limited to procedures that document:

- A formal process to ensure board members and the executive director recuse themselves in the event of a conflict of interest;
- The board’s records retention and records security process; and
- The board’s approach to tracking and documenting proposed changes to the Code of Ethics.

Agency Response: Agree, Implementation Date – Oct. 30, 2020

Agency Narrative: While the Board agrees that a process needs to be in place to allow for recusals by Board members and for identifying conflicts that may impact the involvement and/or disqualification/removal of Board members, the Board believes that these processes are already in place and that they have been effectively utilized in the past. The Board notes that the recusal process is fact-specific and a matter of personal and ethical responsibility by each Board member. The Board has already adopted a script that enables Board members to disclose conflicts. Additionally, Section 2-52(e) of the Ethics Code already governs conflicts and applies to the Board. The Board will identify whether additional formal processes are necessary. The Board will adopt and follow the City’s record retention policies, to the extent they are not already in place. The Board will document and track proposed changes to the Code of Ethics in future Annual Reports.
2.2 Develop and Document Review Process for Policies and Procedures – The Board of Ethics should develop, document, and implement a process to regularly review its rules of procedure and any other internal policies and procedures to ensure compliance with the Code of Ethics and to ensure their continued relevance.

Agency Response: Agree, Implementation Date – Oct. 30, 2020

Agency Narrative: The Board will install a process to review its rules of procedure and policies.

2.3 Document Plan to Strengthen Formal Ethics Training and Outreach – The Board of Ethics should assess the frequency and content of the city's formal ethics training and develop and document a plan for strengthening formal ethics training that includes the optimal frequency and content of ethics training needed for different management levels. The plan should also document informal training opportunities the board and its executive director can pursue independently, such as in-person meetings with agency officials and staff or regular newsletters containing frequently asked questions and advisory opinions.

Agency Response: Agree, Implementation Date – Oct. 30, 2020

Agency Narrative: The Board of Ethics believes that targeted refresher ethics training will improve the ethics culture of city government. Denver officials, officers, and employees should receive the same training on the same schedule. The Board believes that the Mayor and members of City Council should be trained by Board personnel and that this training should be mandatory.

2.4 Update Formal Ethics Training – After implementation of Recommendation 2.3, the Board of Ethics' executive director should work with the Office of Human Resources to update the city's formal ethics training in accordance with the board's plan.

Agency Response: Agree, Implementation Date – Oct. 30, 2020

Agency Narrative: To a large extent, this is already underway. But, as above, targeted ethics training will benefit individual agencies, and the Executive Director will undertake a review of this process and make recommendations to improve the training.

2.5 Review Website Content – The Board of Ethics and its executive director should review the Board of Ethics' website content to identify additional information or resources that should be incorporated to guide visitors to the appropriate resources, such as the board’s executive director, the fraud hotline, and the Office of Human Resources. The board’s executive director should subsequently document a procedure that defines how often and by whom the website should be reviewed and updated, as well as the process for updating the website with support from the city's Technology Services agency.

Agency Response: Agree, Implementation Date – Oct. 30, 2020
Agency Narrative: This recommendation is already underway. The Board will continue to improve and fix its website, inclusive of posting advisory opinions and decisions in full—ideally within five business days of the Board’s decision. This will require either additional training for Ethics personnel to properly post on the website or coordination with IT to ensure timely action.

3.1 **Identify Responsible Parties** – The Clerk and Recorder’s Office should work with the Board of Ethics and the City Attorney’s Office to identify the responsible party for ensuring all disclosure forms are submitted as required. The Clerk and Recorder’s Office should also develop a procedure to document who is responsible for ensuring compliance and the office’s methods for doing so.

**Agency Response: Agree, Implementation Date – Oct. 30, 2020**

Agency Narrative: The City aligned its procedures with existing language in city code to further compliance by City officials with semiannual gift disclosure requirements. To address instances where city officials fail to submit required gift disclosure forms, the Auditor’s Office recommends the Clerk and Recorder’s Office to: 1) work with the Board of Ethics and the City Attorney’s Office to identify “the responsible party” to oversee required disclosure forms are submitted; and 2) develop a procedure to document who is responsible for compliance and “the office’s methods for doing so.”

The report asserts that twelve (12) city officials failed to submit gift disclosures and nine (9) officials failed to submit city-item disclosures “as of September” 2019. (Audit Report Ethics, p. 47). This finding highlights a gap in city code concerning access to the most current contact information for City officials – those currently employed and those that either leave office or end their employment with the City during a reporting period. Currently, contact information is provided by City officials at the time disclosure forms are filed. However, the code neither requires City officials to supply change of contact information after they leave the City nor does it require appointing authorities to provide that information about its own officials. Some City offices have supplied the Clerk with a list of their appointees, but these lists may contain outdated information. Without access to the most current contact information, Clerk and Recorder’s Office’s efforts to notify individuals of their non-compliance are less effective.

The finding also addresses efforts by some City offices to centralize communications with City officials to boost compliance efforts. As the report reflects, “City rules do not provide any additional guidance regarding what else should be done to bring an individual into compliance or how these parties should communicate or coordinate.” (Audit Report Ethics, p. 48). The lack of clear authority to enforce filing requirements was a likely factor in the collection practices of the previous administration in working with other City offices. The current administration welcomes the recommendation to work with the Board of Ethics and the City Attorney’s office to identify the responsible party for ensuring all disclosure forms are submitted as required.

As for the recommendation to develop a new procedure to establish the responsible party, we understand the language in the last sentence to mean that this office should develop and document a procedure to identify an individual to oversee submission of disclosure forms by City officials. The Clerk and Recorder welcomes the opportunity to work with the Board of Ethics and City Attorney’s Office to develop a new procedure to identify responsible parties.

The Board of Ethics will defer to the Clerk and Recorder’s Office, to whom this recommendation is mostly directed. However, the Board shall be involved in the discussion, including any Board
recommendations for modifying the Code of Ethics—such as to allow for Board review of gift disclosure forms—and/or a discussion of any budgetary implications. Additionally, the Board should have the authority to follow up with questions regarding gift disclosure forms. The Board will reach out to City Council and work with the Council to identify appropriate language to amend the Code of Ethics to explicitly authorize Board review of gift disclosure forms, as necessary. The Board strongly believes that gifts by city agencies to employees, officers or officials, should be regulated by Section 2-60 of the Code of Ethics as these gifts are often made to seek special influence. Thus, the Board would support a change to Section 2-52(f) of the Code which would include any city agency in the term “donor.” The Board notes, however, that ultimate responsibility for amending the Code of Ethics rests with the Mayor and City Council.

3.2 **Ensure Accurate Reporting** – After establishing the party responsible for ensuring compliance as detailed in Recommendation 3.1, that responsible party should develop and implement a process to ensure a complete and up-to-date list is maintained of all officials who are required to submit semiannual gift and city-item disclosures.

**Agency Response: Agree, Implementation Date – Oct. 30, 2020**

**Agency Narrative:** We agree with the substance of the recommendation directed to responsible parties in all City agencies. Without specific legal requirements directing appointing authorities to maintain a list of their own City officials and requiring the authorities to supply the responsible party with updated contact information, a new administrative process may not be effective to reach this goal. City code does not currently require that any list must be maintained by the appropriate appointing authority and then supplied to the responsible party for further compliance efforts. We agree that new processes and procedures may be warranted, but they do not provide legal enforcement authority over fellow City agencies.

The Board of Ethics will defer to the Clerk and Recorder’s Office, to whom this recommendation is directed. However, the Board should be involved in the discussion, including any Board recommendations for modifying the Code of Ethics and/or a discussion of any budgetary implications.

3.3 **Identify Key Information for Disclosures** – The Clerk and Recorder’s Office should work with the Board of Ethics to identify what information should be required to be reported about gifts and then update gift disclosure forms to clearly collect and report this information.

**Agency Response: Agree, Implementation Date – Oct. 30, 2020**

**Agency Narrative:** When filed, the Clerk and Recorder’s office currently does conduct a compliance review of the forms for completeness. The Audit Report, pp. 49-54, instead frames the review process by seeking to add new disclosure requirements on forms addressing whether a gift was received from a nonprofit entity and adding new factual statements for the valuation of gifts received and acknowledgements of attendances at events. Section DRMC 2-72(c) states that the semi-annual gift disclosure statement “shall include the identification, estimated value, and the source of any gifts which were accepted under sections DRMC 2-60 (b)(4), (7), (9) and (10) received by the officer during the reporting period.” The current form provides fields for an officer to disclose these three items because the form itself is driven by DRMC Section 2-72, not 2-60. Additionally, DRMC Section 2-60
states that the acceptance of donated items “are subject to the reporting requirements set forth in article V of this chapter 2” acknowledging that DRMC Section 2-72 dictates the form fields instead of 2-60. The Clerk’s current forms fully comply with DRMC 2-72, but it welcomes the opportunity to work with the Board of Ethics to assess the information supplied by City officials and updates to forms.

The Board of Ethics will defer to the Clerk and Recorder’s Office, to whom this recommendation is directed. However, the Board should be involved in the discussion, including any Board recommendations for modifying the Code of Ethics and/or a discussion of any budgetary implications.

3.4 **Identify Responsible Party and Process for Review** – The Clerk and Recorder’s Office should work with the Board of Ethics to identify who should be responsible for reviewing the semiannual gift and city-item disclosure forms for compliance with gift rules and document a process that describes the elements that should be reviewed, the time frame for review, and an escalation procedure to enforce compliance.

*Agency Response: Agree, Implementation Date – Oct. 30, 2020*

*Agency Narrative: The Clerk and Recorder’s Office welcomes the opportunity to work with the Board of Ethics to identify the responsible party who will review the data elements on forms for compliance, a time frame for reviews, and escalation procedures.*

The Board of Ethics will defer to the Clerk and Recorder’s Office to whom this recommendation is directed. However, the Board should be involved in the discussion, including any Board recommendations for modifying the Code of Ethics and/or a discussion of any budgetary implications.

3.5 **Review City Ordinance** – The Clerk and Recorder’s Office and the Board of Ethics should work with the City Council to determine whether the process for reviewing disclosure forms should be documented in city ordinance. If so, the office and the board should work with the City Council to update Denver Revised Municipal Code sections 2-72 and 2-74 to require that the gift and city-item disclosure forms be reviewed, the time frame for review, and to identify who is responsible for conducting this review.

*Agency Response: Agree, Implementation Date – Oct. 30, 2020*

*Agency Narrative: The Clerk and Recorder’s Office welcomes the opportunity to work with the Board of Ethics to identify for Council’s consideration updates to DRMC Sections 2-72 and 2-74, D.R.M.C.*

The Board of Ethics will defer to the Clerk and Recorder’s Office, to whom this recommendation is directed. However, the Board should be involved in the discussion, including the discussion of any recommendations for modifying city ordinances and/or budgetary implications.

3.6 **Address Gaps in Public Access** – The Clerk and Recorder’s Office should assess and select one or more methods to ensure the public has timely access to the gift and city-item disclosures in compliance with city ordinance. This could include ceasing its practice of disabling the website for
two months out of the year or including instructions on the Clerk and Recorder’s Office website for how to access the disclosures while the Seamless records retention system is disabled. The method should be formalized in documented policy or procedure.

**Agency Response: Agree, Implementation Date – Oct. 30, 2020**

*Agency Narrative: The Clerk and Recorder’s office acknowledges the substance of the recommendation. Disabling the website for limited periods of time was an inherited practice from the previous administration to ensure a review period before the deadline. The concerns have been addressed now that the current administration has revised that practice to enable year-round availability. The Clerk and Recorder’s Office will also publish instructions on its webpage informing the public of alternative methods to access the records in the event of any system outage or interruption.*

*The Board of Ethics will defer to the Clerk and Recorder’s Office, to whom this recommendation is directed.*
AGENCY RESPONSE TO AUDIT RECOMMENDATIONS

CITY AND COUNTY OF DENVER

BOARD MEMBERS
JOSEPH G. MICHAELS – CHAIR
DIANNE CRISWELL – VICE CHAIR
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JANE T. FELDMAN

EXECUTIVE DIRECTOR
LORI WEISER

DENVER BOARD OF ETHICS
WEBB MUNICIPAL BUILDING
201 West Colfax, 2nd Floor - (2.H-13)
Department 703 - (for U.S. Mail)
Denver, CO 80202-5330
E-mail: lori.weiser@denvergov.org
Website: www.denvergov.org/ethics
Phone: (720) 865-8412
Fax: (720) 865-8419

February 6, 2020

Auditor Timothy M. O’Brien, CPA
Office of the Auditor
City and County of Denver
201 West Colfax Avenue, Dept. 705
Denver, Colorado 80202

Dear Mr. O’Brien,

The Office of the Auditor has conducted a performance audit of Ethics. Audit Findings 1 and 2 are directed to the Board of Ethics. Audit Finding 3 is directed to the Clerk and Recorder and the Board of Ethics. The Board of Ethics appreciates the time, energy, and thought that went into this performance audit. The Clerk and Recorder was sworn in in July of 2019 and is looking forward to doing his part to assist with supporting a robust ethical culture in the City and County of Denver.

This memorandum provides a written response for each reportable condition noted in the Auditor’s Report final draft that was sent to us on January 16, 2020. This response complies with Section 20-276 (c) of the Denver Revised Municipal Code (D.R.M.C.).

AUDIT FINDING 1
The Board of Ethics’ Insufficient Authority and Role May Impact the City’s Ethical Environment

RECOMMENDATION 1.1
Allow Anonymous Reporting – The Board of Ethics and its executive director should work with the City Council to update the Code of Ethics and allow the acceptance of anonymous reports.

Page 1 of 12
Narrative for Recommendation 1.1
As the Audit identifies, this is one of the most effective ways to enable ethical oversight without fear of repercussion. The Board needs to consider this issue in collaboration with the Mayor and with City Council to determine if the Code of Ethics should be amended. The Board notes, however, that ultimate responsibility for enacting such an authorization rests with the Mayor and City Council, to whom this recommendation is appropriately directed.

RECOMMENDATION 1.2
Develop and Document Policies and Procedures – Once Recommendation 1.1 is implemented, the Board of Ethics and its executive director should develop and document a process to ensure they vet anonymous complaints and ensure credibility of a complaint is established before initiating an investigation.

Narrative for Recommendation 1.2
The Board agrees that identifying a process to vet anonymous complaints is a necessary component of carrying the authority to receive them. The Board will begin expanding on the processes already in place concurrent with efforts to amend the Code of Ethics. The Board needs to consider this issue in collaboration with the Mayor and with City Council to determine if the Code of Ethics should be amended. Ultimately, any process is dependent on City Council and the Mayor amending the Code.

RECOMMENDATION 1.3
Collaborate to Ensure Enforcement and Information Sharing – The Board of Ethics and its executive director should work with the City Council, the Office of Human Resources, and the Civil Service Commission to discuss and create a formal process that ensures appropriate enforcement. This could be achieved through updating the Code of Ethics and the city charter to grant the board the authority to impose sanctions or through formal coordination between the board and the Office of Human Resources to develop information-sharing policies and procedures that ensure the board receives information on the outcomes of all ethics-related violations.
Narrative for Recommendation 1.3
The Board will initiate conversations with City Council and the Mayor to collaboratively determine whether the Code of Ethics and the City Charter should be amended, as recommended. The Board agrees that collaboration between the Board and the Office of Human Resources can best ensure appropriate responses to ethical violations, particularly where an appointing authority may not otherwise take a violation seriously or act upon a decision rendered by the Board outlining an ethical violation. The Board believes that the better course of action to accomplish this goal is to consider formal amendment to the Code of Ethics and the City Charter.

RECOMMENDATION 1.4
Develop and Document Procedure for Board-Initiated Investigations – The Board of Ethics and its executive director should consider the minimum information needed and the recusal process necessary to initiate an investigation without receiving a complaint. They should also document this process in a procedure.

Narrative for Recommendation 1.4
The Board disagrees that because the Code of Ethics is silent on this issue, there is implied authority for Board-initiated investigations. Rather, the Board believes that explicit authority would need to be in place, and that this would necessitate amendment of the Code. The Board notes that ultimate responsibility for enacting such an authorization rests with the Mayor and City Council, to whom this recommendation is appropriately directed.

RECOMMENDATION 1.5
Assess Workload and Obtain Additional Resources If Necessary – The Board of Ethics’ executive director should work with the board and the Budget and Management Office to assess the board’s workload and determine whether additional staff resources are necessary. If necessary, the board should request additional staff resources.
Narrative for Recommendation 1.5
The Board will assess its needs regarding additional personnel (particularly if other recommendations are implemented, such as review of gift disclosure forms, which would yield significant increase in workload). The Board will identify what type of personnel and budget increase would be necessary. After that, the Board will defer to City Council and the Mayor, to whom this recommendation is directed, as the Board has no appropriation authority to acquire additional staff resources. However, the Board should be involved in the discussion including any Board recommendations for modifying the Code of Ethics and/or a discussion of any budgetary implications.

RECOMMENDATION 1.6
Collaborate on Data Collection and Analysis – The Board of Ethics’ executive director should coordinate with representatives from the City Council, the Office of Human Resources, the Fraud Hotline Committee, the Civil Service Commission, and the Clerk and Recorder’s Office to identify and document processes and data relevant to the city’s ethical environment.

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<td>Lori Weiser 720-865-8412</td>
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Narrative for Recommendation 1.6
The Executive Director of the Board will contact representatives from each of the noted agencies and identify an appropriate path forward. The Board agrees that the entire City and citizens would benefit if a consistent collaborative protocol could be developed for collecting, analyzing, and dealing with complaints and communicating them to all reporting authorities. It also would benefit the City if gift reports are filed with and reviewed by the Board. This will improve timely compliance.

RECOMMENDATION 1.7
Develop Plan for Sharing Data – The Board of Ethics’ executive director should work with the City Council, the Office of Human Resources, the Fraud Hotline Committee, the Civil Service Commission, and the Clerk and Recorder’s Office to develop and document a plan for regular communication and data sharing with the board to ensure it can adequately monitor the city’s ethical environment.

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Narrative for Recommendation 1.7
As with Recommendation 1.6, supra, the Executive Director of the Board will contact representatives from each of the noted agencies and identify an appropriate path forward. The Board agrees that the entire City and citizens would benefit if a consistent collaborative protocol could be developed for collecting, analyzing, and dealing with complaints and communicating them to all reporting authorities.

AUDIT FINDING 2
The Board of Ethics Can Increase Its Impact and Effectiveness through Addressing Operational Risks and through More Outreach

RECOMMENDATION 2.1
Develop Policies and Procedures to Address Risks – The Board of Ethics and its executive director should develop and document policies and procedures that define a time frame for periodically assessing and documenting significant risks to the board’s operations and developing or updating policies and procedures that mitigate those identified risks. This should include but not be limited to procedures that document:

- A formal process to ensure board members and the executive director recuse themselves in the event of a conflict of interest;
- The board’s records retention and records security process; and
- The board’s approach to tracking and documenting proposed changes to the Code of Ethics.

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Narrative for Recommendation 2.1
While the Board agrees that a process needs to be in place to allow for recusals by Board members and for identifying conflicts that may impact the involvement and/or disqualification/removal of Board members, the Board believes that these processes are already in place and that they have been effectively utilized in the past. The Board notes that the recusal process is fact-specific and a matter of personal and ethical responsibility by each Board member. The Board has already adopted a script that enables Board members to disclose conflicts. Additionally, Section 2-52(e) of the Ethics Code already governs conflicts and applies to the Board. The Board will identify whether additional
formal processes are necessary. The Board will adopt and follow the City’s record retention policies, to the extent they are not already in place. The Board will document and track proposed changes to the Code of Ethics in future Annual Reports.

**RECOMMENDATION 2.2**
**Develop and Document Review Process for Policies and Procedures** – The Board of Ethics should develop, document, and implement a process to regularly review its rules of procedure and any other internal policies and procedures to ensure compliance with the Code of Ethics and to ensure their continued relevance.

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**Narrative for Recommendation 2.2**
The Board will install a process to review its rules of procedure and policies.

**RECOMMENDATION 2.3**
**Document Plan to Strengthen Formal Ethics Training and Outreach** – The Board of Ethics should assess the frequency and content of the city’s formal ethics training and develop and document a plan for strengthening formal ethics training that includes the optimal frequency and content of ethics training needed for different management levels. The plan should also document informal training opportunities the board and its executive director can pursue independently, such as in-person meetings with agency officials and staff or regular newsletters containing frequently asked questions and advisory opinions.

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**Narrative for Recommendation 2.3**
The Board of Ethics believes that targeted refresher ethics training will improve the ethics culture of city government. Denver officials, officers, and employees should receive the same training on the same schedule. The Board believes that the Mayor and members of City Council should be trained by Board personnel and that this training should be mandatory.

**RECOMMENDATION 2.4**
Update Formal Ethics Training – After implementation of Recommendation 2.3, the Board of Ethics’ executive director should work with the Office of Human Resources to update the city’s formal ethics training in accordance with the board’s plan.

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Narrative for Recommendation 2.4
To a large extent, this is already underway. But, as above, targeted ethics training will benefit individual agencies, and the Executive Director will undertake a review of this process and make recommendations to improve the training.

RECOMMENDATION 2.5
Review Website Content – The Board of Ethics and its executive director should review the Board of Ethics’ website content to identify additional information or resources that should be incorporated to guide visitors to the appropriate resources, such as the board’s executive director, the fraud hotline, and the Office of Human Resources. The board’s executive director should subsequently document a procedure that defines how often and by whom the website should be reviewed and updated, as well as the process for updating the website with support from the city’s Technology Services agency.

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Narrative for Recommendation 2.5
This recommendation is already underway. The Board will continue to improve and fix its website, inclusive of posting advisory opinions and decisions in full—ideally within five business days of the Board’s decision. This will require either additional training for Ethics personnel to properly post on the website or coordination with IT to ensure timely action.

AUDIT FINDING 3
The City Did Not Ensure Full Compliance with Rules for City Officials’ Semiannual Gift Disclosures

RECOMMENDATION 3.1
Identify Responsible Parties – The Clerk and Recorder’s Office should work with the Board of Ethics and the City Attorney’s Office to identify the responsible party for
ensuring all disclosure forms are submitted as required. The Clerk and Recorder’s Office should also develop a procedure to document who is responsible for ensuring compliance and the office’s methods for doing so.

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Narrative for Recommendation 3.1

The City aligned its procedures with existing language in city code to further compliance by City officials with semiannual gift disclosure requirements. To address instances where city officials fail to submit required gift disclosure forms, the Auditor’s Office recommends the Clerk and Recorder’s Office to: 1) work with the Board of Ethics and the City Attorney’s Office to identify “the responsible party” to oversee required disclosure forms are submitted; and 2) develop a procedure to document who is responsible for compliance and “the office’s methods for doing so.”

The report asserts that twelve (12) city officials failed to submit gift disclosures and nine (9) officials failed to submit city-item disclosures “as of September” 2019. (Audit Report Ethics, p. 47). This finding highlights a gap in city code concerning access to the most current contact information for City officials – those currently employed and those that either leave office or end their employment with the City during a reporting period. Currently, contact information is provided by City officials at the time disclosure forms are filed. However, the code neither requires City officials to supply change of contact information after they leave the City nor does it require appointing authorities to provide that information about its own officials. Some City offices have supplied the Clerk with a list of their appointees, but these lists may contain outdated information. Without access to the most current contact information, Clerk and Recorder’s Office’s efforts to notify individuals of their non-compliance are less effective.

The finding also addresses efforts by some City offices to centralize communications with City officials to boost compliance efforts. As the report reflects, “City rules do not provide any additional guidance regarding what else should be done to bring an individual into compliance or how these parties should communicate or coordinate.” (Audit Report Ethics, p. 48). The lack of clear authority to enforce filing requirements was a likely factor in the collection practices of the previous administration in working with other City offices. The current administration welcomes the recommendation to work with the Board of Ethics and the City Attorney’s office to identify the responsible party for ensuring all disclosure forms are submitted as required.

As for the recommendation to develop a new procedure to establish the responsible party, we understand the language in the last sentence to mean that this office should develop and document a procedure to identify an individual to oversee submission of disclosure.
forms by City officials. The Clerk and Recorder welcomes the opportunity to work with the Board of Ethics and City Attorney’s Office to develop a new procedure to identify responsible parties.

The Board of Ethics will defer to the Clerk and Recorder’s Office, to whom this recommendation is mostly directed. However, the Board shall be involved in the discussion, including any Board recommendations for modifying the Code of Ethics—such as to allow for Board review of gift disclosure forms—and/or a discussion of any budgetary implications. Additionally, the Board should have the authority to follow up with questions regarding gift disclosure forms. The Board will reach out to City Council and work with the Council to identify appropriate language to amend the Code of Ethics to explicitly authorize Board review of gift disclosure forms, as necessary. The Board strongly believes that gifts by city agencies to employees, officers or officials, should be regulated by Section 2-60 of the Code of Ethics as these gifts are often made to seek special influence. Thus, the Board would support a change to Section 2-52(f) of the Code which would include any city agency in the term “donor.” The Board notes, however, that ultimate responsibility for amending the Code of Ethics rests with the Mayor and City Council.

| RECOMMENDATION 3.2 Ensure Accurate Reporting – After establishing the party responsible for ensuring compliance as detailed in Recommendation 3.1, that responsible party should develop and implement a process to ensure a complete and up-to-date list is maintained of all officials who are required to submit semiannual gift and city-item disclosures. |
|---|---|---|
| Agree or Disagree with Recommendation | Target date to complete implementation activities (Generally expected within 60 to 90 days) | Name and phone number of specific point of contact for implementation |
| Agree | October 30, 2020 | Dan Volkosh 720-865-4980 |

**Narrative for Recommendation 3.2**
We agree with the substance of the recommendation directed to responsible parties in all City agencies. Without specific legal requirements directing appointing authorities to maintain a list of their own City officials and requiring the authorities to supply the responsible party with updated contact information, a new administrative process may not be effective to reach this goal. City code does not currently require that any list must be maintained by the appropriate appointing authority and then supplied to the responsible party for further compliance efforts. We agree that new processes and procedures may be warranted, but they do not provide legal enforcement authority over fellow City agencies.

The Board of Ethics will defer to the Clerk and Recorder’s Office, to whom this recommendation is directed. However, the Board should be involved in the discussion, including any Board recommendations for modifying the Code of Ethics and/or a discussion of any budgetary implications.
RECOMMENDATION 3.3
Identify Key Information for Disclosures – The Clerk and Recorder’s Office should work with the Board of Ethics to identify what information should be required to be reported about gifts and then update gift disclosure forms to clearly collect and report this information.

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Narrative for Recommendation 3.3
When filed, the Clerk and Recorder’s office currently does conduct a compliance review of the forms for completeness. The Audit Report, pp. 49-54, instead frames the review process by seeking to add new disclosure requirements on forms addressing whether a gift was received from a nonprofit entity and adding new factual statements for the valuation of gifts received and acknowledgements of attendances at events. Section DRMC 2-72(c) states that the semi-annual gift disclosure statement “shall include the identification, estimated value, and the source of any gifts which were accepted under sections DRMC 2-60 (b)(4), (7), (9) and (10) received by the officer during the reporting period.” The current form provides fields for an officer to disclose these three items because the form itself is driven by DRMC Section 2-72, not 2-60. Additionally, DRMC Section 2-60 states that the acceptance of donated items “are subject to the reporting requirements set forth in article V of this chapter 2” acknowledging that DRMC Section 2-72 dictates the form fields instead of 2-60. The Clerk’s current forms fully comply with DRMC 2-72, but it welcomes the opportunity to work with the Board of Ethics to assess the information supplied by City officials and updates to forms.

The Board of Ethics will defer to the Clerk and Recorder’s Office, to whom this recommendation is directed. However, the Board should be involved in the discussion, including any Board recommendations for modifying the Code of Ethics and/or a discussion of any budgetary implications.

RECOMMENDATION 3.4
Identify Responsible Party and Process for Review – The Clerk and Recorder’s Office should work with the Board of Ethics to identify who should be responsible for reviewing the semiannual gift and city-item disclosure forms for compliance with gift rules and document a process that describes the elements that should be reviewed, the time frame for review, and an escalation procedure to enforce compliance.

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Narrative for Recommendation 3.4
The Clerk and Recorder’s Office welcomes the opportunity to work with the Board of Ethics to identify the responsible party who will review the data elements on forms for compliance, a time frame for reviews, and escalation procedures. The Board of Ethics will defer to the Clerk and Recorder’s Office to whom this recommendation is directed. However, the Board should be involved in the discussion, including any Board recommendations for modifying the Code of Ethics and/or a discussion of any budgetary implications.

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<th>RECOMMENDATION 3.5</th>
<th>Review City Ordinance – The Clerk and Recorder’s Office and the Board of Ethics should work with the City Council to determine whether the process for reviewing disclosure forms should be documented in city ordinance. If so, the office and the board should work with the City Council to update Denver Revised Municipal Code sections 2-72 and 2-74 to require that the gift and city-item disclosure forms be reviewed, the time frame for review, and to identify who is responsible for conducting this review.</th>
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Narrative for Recommendation 3.5
The Clerk and Recorder’s Office welcomes the opportunity to work with the Board of Ethics to identify for Council’s consideration updates to DRMC Sections 2-72 and 2-74, D.R.M.C.

The Board of Ethics will defer to the Clerk and Recorder’s Office, to whom this recommendation is directed. However, the Board should be involved in the discussion, including the discussion of any recommendations for modifying city ordinances and/or budgetary implications.

| RECOMMENDATION 3.6 | Address Gaps in Public Access – The Clerk and Recorder’s Office should assess and select one or more methods to ensure the public has timely access to the gift and city-item disclosures in compliance with city ordinance. This could include ceasing its practice of disabling the website for two months out of the year or including instructions on the Clerk and Recorder’s Office website for how to access the disclosures while the Seamless records retention system is disabled. The method should be formalized in documented policy or procedure. |

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**Narrative for Recommendation 3.6**

The Clerk and Recorder’s office acknowledges the substance of the recommendation. Disabling the website for limited periods of time was an inherited practice from the previous administration to ensure a review period before the deadline. The concerns have been addressed now that the current administration has revised that practice to enable year-round availability. The Clerk and Recorder’s Office will also publish instructions on its webpage informing the public of alternative methods to access the records in the event of any system outage or interruption.

The Board of Ethics will defer to the Clerk and Recorder’s Office, to whom this recommendation is directed.

Please contact Lori Weiser at 720-865-8412 with any questions concerning recommendations under Finding Nos. 1 and 2.

Please contact Dan Volkosh at 720-865-4980 with any questions concerning Findings and Recommendations No. 3.

Sincerely,

Joseph G. Michaels, Chair

cc: Valerie Walling, CPA, Deputy Auditor  
    Dawn Wiseman, CRMA, Audit Director  
    Emily Owens, Audit Supervisor  
    Paul D. Lopez, Clerk and Recorder  
    Victoria Ortega, Deputy Clerk and Recorder  
    Dan Volkosh, Legislation, Policy and Compliance
OBJECTIVE

The audit had the following three objectives:

1. To determine the degree to which select areas of Denver’s Code of Ethics align with model ethics codes and other government ethics codes;
2. To determine the extent to which the processes for Denver’s Board of Ethics support the city’s ethics program; and
3. To determine whether the process for city officers’ gift disclosures adheres to city ordinance and the letter and spirit of the Code of Ethics.

SCOPE

The audit’s scope included the city’s Code of Ethics, select Board of Ethics policies and practices between 2014 and 2019, and semiannual gift disclosure forms submitted by city officers and mayoral appointees in July 2019. This audit was not part of the 2019 Audit Plan; it was initiated at the request of the Board of Ethics’ former executive director.

METHODOLOGY

We used several methodologies during the audit process to gather and analyze pertinent information related to the audit objectives. The methodologies included but were not limited to:

- Interviewing the following individuals:
  - Executive directors, board members, and legal representatives for the Board of Ethics
  - Members of the Board of Ethics nomination committee
  - Leadership and staff from various city agencies including the Department of Public Safety, the Department of General Services’ Purchasing Division, Denver Human Services, the Denver 311 program, the city’s Technology Services agency, the Department of Public Works, and the Office of Human Resources
  - Select mayoral appointees
  - Representatives from the Mayor’s Office and the City Attorney’s Office regarding gift disclosure forms
  - Select current and former members of the City Council
  - The executive director of Colorado Common Cause
  - The clerk and recorder and other personnel from the Clerk and Recorder’s Office
  - Staff members of benchmark city, county, and state ethics entities including those of Atlanta;
Minneapolis; Austin, Texas; Seattle; Colorado Springs, Colorado; Palm Beach County, Florida; and the state of Colorado

• Reviewing the following criteria:
  ○ The Code of Ethics and the Board of Ethics' rules of procedure
  ○ The Denver Charter, city ordinance, and the Career Service Board's Code of Conduct and Discipline
  ○ Leading practices related to specific areas of the ethics code, ethics training, gift disclosure collection and review, and board processes as described by: Robert Wechsler, the Ethics & Compliance Initiative, the Institute of Internal Auditors, the Institute for Local Government, the International City and County Management Association, the U.S. Government Accountability Office, the Committee of Sponsoring Organizations of the Treadway Commission, the U.S. Sentencing Commission, and the U.S. Department of Justice
  ○ Benchmarking research to identify common practices with ethics codes, board processes and websites, and processes for collecting and reviewing gift disclosures using the following city, county, and state ethics entities including Atlanta; Minneapolis; Austin, Texas; Seattle; Colorado Springs, Colorado; New Castle County, Delaware; Palm Beach County, Florida; and the state of Colorado.

  We selected benchmark entities to ensure a broad spectrum of ethics programs was included — from well-recognized robust programs to those that may be less developed. To be included, the city, county, or state entity had to have an ethics board that reviews complaints. Next, we selected entities that had either a robust ethics program according to the Council on Governmental Ethics Laws or are frequently used as comparison against Denver based on cultural and population characteristics.
  ○ The Board of Ethics' 2014 conflict-of-interest and recusal guidance to boards and commissions
  ○ Additional ethics policies from other agencies including: the city's purchasing policy manual; discipline handbooks from the Denver Police Department, Sheriff Department, and Fire Department; and the Denver Police Department's operating manual
  ○ The Council on Governmental Ethics Law's “Blue Book” for budget and overall ethics program information surrounding potential benchmarking entities
  ○ Documentation from the former executive director, including the evolution of the Code of Ethics and letters to the City Council regarding proposed changes to the ethics code
  ○ Previous evaluations of the Board of Ethics, including the Auditor's Office's 2010 citywide ethics audit and 2014 follow-up memo

• Analyzing the following:
  ○ Denver's Code of Ethics compared to leading practices, model ethics codes, and benchmark entities’ ethics codes
  ○ Board of Ethics' website content compared to leading practices and benchmark entities’ ethics websites
  ○ Board of Ethics and staff policies and practices surrounding board meetings, official and unofficial
inquiries, advisory opinions, records retention and security, and data collection compared to leading practices

○ Board of Ethics’ rules of procedure as compared to the Code of Ethics

○ The city's ethics training materials for new employees and refresher trainings compared to leading practices

○ Board of Ethics’ annual reports from 2014 to 2018

○ Survey data from the 13-question Auditor’s Office 2019 Ethics Survey distributed to all city employees

○ Public access to gift and city-item disclosures on the Clerk and Recorder’s Office’s website between July and September 2019

○ The Clerk and Recorder's Office's disclosure-tracking spreadsheet

○ Original and updated gift and city-item disclosures submitted in June 2019 by elected officials and mayoral appointees

○ The fraud hotline’s 2016 and 2017 annual reports, website, and contracts

○ Audits and annual reports of other governmental ethics programs including: Nassau County (New York) Board of Ethics 2019 audit, Atlanta 2018 report, Palm Beach County (Florida) 2018 report, New York City Conflicts of Interest Board 2018 report, British Columbia (Canada) 2017 ethics management audit, and the Colorado Independent Ethics Commission 2016 audit

• Observing the following:

○ Five monthly Board of Ethics meetings between May and October 2019; there was no meeting in July

○ The annual Board of Ethics Forum

○ Informal ethics training sessions with the Police Department, Purchasing Division, and Department of Public Safety

○ The Clerk and Recorder’s Office’s disclosure collection, review, and notification process

○ The daily processes of the Board of Ethics’ executive director
APPENDICES

Appendix A – Methodology for Ethics Audit Survey

Using a secure, licensed Survey Monkey account, auditors conducted an online survey of city employees to understand their perspectives on the ethical environment in which they work and to determine their awareness of city resources that exist to foster an ethical culture.

We administered the survey over a four-week period, from Sept. 4-Oct. 1, 2019, to all 14,712 city employees who had a valid email address. To maintain auditor independence, Auditor’s Office employees were excluded from the survey results. Of the employees who received the survey, 3,732 individuals responded — a response rate of about 25%. To ensure the integrity and confidentiality of the survey data, we restricted access to the survey results to only the auditors managing the survey. To further maintain confidentiality of the respondents, we reported survey results only in the aggregate.

The survey consisted of 13 questions that addressed employees’ perceptions of the city’s ethical culture, the prevalence of observed unethical behavior, their willingness to report issues, their fear of retaliation, and their understanding of the city’s ethics code and other resources.

The survey included question logic, which directed recipients to specific questions based on their responses. As a result, employees were not necessarily required to answer all 13 survey questions. Table 3 displays each survey question and the response options. In addition, some respondents chose not to complete the whole survey, but we still analyzed their responses provided. This explains why the number of respondents fluctuated between questions.

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<tr>
<th>Question No.</th>
<th>Question, with Answer Options</th>
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| Q1 | I feel that the City and County of Denver fosters an ethical environment. (Select one)         
Strongly agree; Agree; Neither agree nor disagree; Disagree; Strongly disagree |
| Q2 | If I had an ethical question related to my job duties, I would do the following (Select all that apply):  
Ask my supervisor; Ask my agency leadership; Call 311; Call the Fraud Hotline;  
Contact the Board of Ethics; Contact the Office of Human Resources; Other (open-ended) |
| Q3 | I know how to access the following resources:  
The Board of Ethics Digest of Advisory Opinions; The Board of Ethics executive director;  
Denver Charter and ordinances; My department’s ethics-related policies and procedures;  
The Ethics Code; The Ethics Handbook; The Fraud Hotline; The Office of Human Resources |
| Q4 | I believe the City and County of Denver’s ethics rules and requirements are: 1) Easy to understand, 2)  
Too Strict, 3) Always enforced  
Strongly agree; Agree; Neither agree nor disagree; Disagree;  
Strongly disagree; I don’t know the rules and requirements |

Source: City and County of Denver Auditor’s Office.
Note: Table 3 continues across the following two pages.
### Table 3, Continued.

<table>
<thead>
<tr>
<th>Question No.</th>
<th>Question, with Answer Options</th>
</tr>
</thead>
</table>
| Q5           | If you witnessed the scenarios referenced below, would you consider it an ethical concern?  
1) A supervisor hires her son to work on her team.  
2) A coworker is not working the hours he is paid for.  
3) A coworker regularly takes office supplies home for his children to use on their school projects.  
4) A coworker is directly involved in choosing a nursery to supply trees for city land. Soon after signing a contract with the nursery, the coworker ends employment with the city to work for the nursery.  
5) A project manager has not disclosed that she also works for a construction company.  
6) A coworker is arguing with his spouse in a nearby cubicle. (Select one for each scenario)  
   This is an ethical concern; This is not an ethical concern; I don’t know if this is an ethical concern |
| Q6           | You have just witnessed this scenario from the previous question: A project manager has not disclosed that she also works for a construction company. Would you report the issue?  
   Yes; No |
| Q7           | If you would not report the behavior described in the previous question, please select the reasons that would influence your decision not to report. (Select all that apply)  
   I am unsure if this is an ethical concern; I am unsure if the issue is serious enough to report; I am unsure whom to report the issue to; I do not want to become involved in the situation; I am afraid I would not be protected from retaliation; I do not think any action would be taken if I report; I would speak directly to the person about the issue; I think someone else will likely report the issue; Other (open-ended) |
| Q8           | Have you observed unethical behavior in the workplace?  
   Yes; No; I don’t know; I prefer not to answer |
| Q9           | Did you report the unethical behavior?  
   Yes; No; I prefer not to answer |
| Q10          | If you reported the unethical behavior, was the situation addressed to your satisfaction?  
   Yes; No; I don’t know the outcome |
| Q11          | If you did not report the unethical behavior you observed, please select the reasons that may have influenced your decision not to report. (Please select all that apply)  
   I was not sure if the issue was serious enough to report; I was not sure whom to report the issue to; I did not want to become involved in the situation; I did not think I would be protected from retaliation; I did not think any action would be taken if I did report; I spoke directly to the person about the issue; Someone else reported the issue; Other (open-ended) |
| Q12          | If your name would be provided to the individual who is the subject of your complaint, would this influence your decision to report unethical behavior? (Select only one)  
   I would not file a complaint, because I would prefer to remain anonymous; I would be less likely to file a complaint; I would file a complaint, regardless of my name being provided; I would file a complaint, but I would prefer having the option to remain anonymous; I am not sure what I would do |

**Source:** City and County of Denver Auditor’s Office.  
**Note:** Table 3 is continued from the previous page and continues on the next page.
Prior to analyzing the survey results, we merged the survey data with a dataset containing the respondents’ agency and management level, obtained from the Office of Human Resources. This allowed us to examine the data for any trends in the results related to where the individual worked or what level of management they were. Although this audit report references only the results of survey questions in the aggregate, we provided summary-level data, by agency, to the Board of Ethics for its consideration in training and outreach needs in the city. Survey responses by respondent remained accessible only to the audit team.

We used both quantitative and qualitative analysis methods to analyze the survey results. First, we compiled survey results per question. For multiple-choice questions, we calculated the overall count for each response, as well as the percentage, by taking the total number of responses for each answer and dividing by the total number of respondents. The percentage represents the proportion of respondents providing a specific answer to each question, relative to the other response options. For open-ended, written responses, we analyzed the information to identify common themes that added context or support for the other survey responses.

For example, most employees who completed our citywide ethics survey strongly agreed or agreed that Denver fosters an ethical environment, as shown in Figure 14.

FIGURE 14. Employees’ Perception of Whether the City Fosters an Ethical Environment

City employees surveyed were not required to answer all 13 survey questions. For this question, 3,732 individuals responded.

Source: Auditor's Office analysis of citywide ethics survey results.
Finally, we used a data-modeling technique to examine the relationship between an individual's perception of the city's ethical environment (question 1), and other survey questions, which identified whether the individual had observed unethical conduct (question 8), were knowledgeable of available ethics resources (question 3), their views of the current ethics rules (question 4), and what types of behavior were unethical according to the ethics code (four scenarios from question 5). Because the response options to question 1 were an ordered set (i.e., strongly agree, agree, neither agree nor disagree, disagree, or strongly disagree), we conducted an ordered logistic regression analysis to show how different responses to questions 3, 4, 5, and 8 affected the odds that employees selected “strongly agree” to question 1.

To help describe the results of the logistic regression analysis, we conducted the following two additional analyses:

- A percent estimation to show the percent change in odds that each variable has on responding "strongly agree" to question 1. This analysis shows, for example, how different levels of understanding in the city's rules changes the odds that a person believes the city fosters an ethical environment.
- A simulation that predicts the probability of the response of either “strongly agree” or “strongly disagree” to question 1, under different specific values of the independent variable. This analysis shows the marginal effects and interactions of the variables we were interested in explaining. For example, how observing unethical behavior and different levels of knowledge impact the likelihood that the individual would strongly agree or disagree that the city fosters an ethical environment.

The results of the logistic regression are shown in terms of odds ratio in Table 4 on the following page.

When interpreting the odds ratio, a value over 1 indicates a positive relationship between the independent variable and the dependent variable, while a value less than 1 indicates a negative relationship. For example, for the “perceptions of the city's ethics rules” variable, individuals who believe the ethics rules are easy to understand are 1.09 times more likely to strongly agree that the city fosters an ethical environment.
### TABLE 4. Logistic Regression Results of the Model to Understand Survey Questions Related to Respondent’s Feelings that the City Fosters an Ethical Environment, Shown in Odds Ratio, with P-values

<table>
<thead>
<tr>
<th>Dependent Variable:</th>
<th>I feel the City and County of Denver fosters an ethical environment (Strongly Disagree to Strongly Agree)</th>
<th>Percent Change in Odds of Being in Highest Category (Strongly Agree)</th>
<th>Odds Ratio</th>
<th>P-value</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Independent Variables</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Have you observed unethical behavior?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I don't know</td>
<td>-47.1%</td>
<td>0.53</td>
<td>0.00</td>
<td></td>
</tr>
<tr>
<td>I prefer not to answer</td>
<td>-75.1%</td>
<td>0.25</td>
<td>0.00</td>
<td></td>
</tr>
<tr>
<td>No</td>
<td></td>
<td>1.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>-75.6%</td>
<td>0.24</td>
<td>0.00</td>
<td></td>
</tr>
<tr>
<td>Knowledge of resources: I know how to access</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>... the Board of Ethics Digest of Advisory Opinions</td>
<td>-14%</td>
<td>0.86</td>
<td>0.10</td>
<td></td>
</tr>
<tr>
<td>... the Board of Ethics executive director</td>
<td>26.3%</td>
<td>1.26</td>
<td>0.01</td>
<td></td>
</tr>
<tr>
<td>... the Office of Human Resources</td>
<td>48.6%</td>
<td>1.49</td>
<td>0.00</td>
<td></td>
</tr>
<tr>
<td>... the fraud hotline</td>
<td>17.8%</td>
<td>1.18</td>
<td>0.03</td>
<td></td>
</tr>
<tr>
<td>Perceptions of the city’s ethics rules</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I believe the ethics rules and requirements are easy to understand</td>
<td>8.5%</td>
<td>1.09</td>
<td>0.03</td>
<td></td>
</tr>
<tr>
<td>I believe the ethics rules and requirements are always enforced</td>
<td>163%</td>
<td>2.63</td>
<td>0.00</td>
<td></td>
</tr>
<tr>
<td>I believe the ethics rules and requirements are too strict</td>
<td>-35.9%</td>
<td>0.64</td>
<td>0.00</td>
<td></td>
</tr>
<tr>
<td>Demonstrated knowledge</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of correctly identified ethics concerns in question 5 (range 0-4)</td>
<td>4.4%</td>
<td>1.04</td>
<td>0.25</td>
<td></td>
</tr>
<tr>
<td>Management level</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Individual Contributors</td>
<td></td>
<td></td>
<td>1.00</td>
<td></td>
</tr>
<tr>
<td>Supervisors</td>
<td>11.8%</td>
<td>1.12</td>
<td>0.18</td>
<td></td>
</tr>
<tr>
<td>Executive Management</td>
<td>264%</td>
<td>3.64</td>
<td>0.00</td>
<td></td>
</tr>
</tbody>
</table>

**Source:** Auditor’s Office analysis of citywide ethics survey results.
Given the difficult nature of interpreting such results for an ordered set, the results of the predicted probability simulations are visualized in Figure 15 to show the impact of two independent variables (observing unethical behavior and knowledge of the ethics rules) on the dependent variable. Results show across all values of understanding ethics rules, those who have not observed unethical behavior are more likely to feel the city fosters an ethical environment than those who have observed unethical behavior (i.e., the green line in Figure 15 is always above the blue line).

**FIGURE 15.** Probability of Strongly Agreeing that the City Fosters an Ethical Environment between Those Who Did or Did Not Observe Unethical Behavior and Their Varying Knowledge of Ethics Rules

![Figure 15](image)

Source: Auditor’s Office analysis of citywide ethics survey results.

Additionally, as shown in Table 4, the percent change in odds of respondents answering “strongly agree” to the question of whether the city fosters an ethical environment was notable for two variables. The odds of selecting “strongly agree” were reduced by 75.6% for respondents who had observed unethical behavior. Also, the odds of strongly agreeing that the city fosters an ethical culture for respondents in executive management positions in the city were 264% greater than for those in nonmanagerial positions.
Appendix B – Code of Ethics: Gifts to Officers, Officials, and Employees

The following excerpt is reprinted from Denver’s Code of Ethics and includes the city’s rules and prohibitions on accepting gifts.¹²⁸

Sec. 2-60. - Gifts to officers, officials, and employees.

The purpose of this section is to avoid special influence by donors who give gifts to city officers, employees or officials.

(a) Except when acceptance is permitted by paragraph (b) below, it shall be a violation of this code of ethics for any officers, officials, or employees, any member of their immediate families to solicit or to accept any of the following items if (1) the officer, official, or employee is in a position to take direct official action with regard to the donor; and (2) the city has an existing, ongoing, or pending contract, business, or regulatory relationship with the donor:

(1) Any money, property, service, or thing of value that is given to a person without adequate and lawful compensation;

(2) Any honoraria or payment for participation in an event;

(3) Any loan of goods, equipment, or other items that is not available to the general public on the same terms and conditions;

(4) Any loan of money that is not available to the general public at the same interest rate and the same conditions;

(5) Any ticket to a sporting, recreational, or cultural event except as provided for in subsection (b)(4) of this section;

(6) Travel expenses and lodging;

(7) Any reduction in price or any discount that is not similarly available to all city officers, officials, and employees on the same terms;

(8) Parking passes except as provided for in subsection (b)(4) of this section; and

(9) Meals except as provided for in subsection (b)(4) of this section.

This prohibition shall also apply to gifts from a lobbyist or representative of a client if (1) the officer, official, or employee is in a position to take direct official action with regard to the client and (2) the city has an existing, ongoing, or pending contract, business, or regulatory relationship with the client.

(b) Officers, officials, and employees and the members of their immediate family may accept the following even if the officer, official, or employee is in a

¹²⁸ Denver Revised Municipal Code § 2-60.
position to take direct official action with regard to the donor, or, if the donor is a lobbyist or representative, the donor's client:

(1) Gifts from other officers, officials, or employees and their family members on appropriate occasions;

(2) Campaign contributions as permitted by law;

(3) Nonpecuniary awards that are publicly presented by an organization in recognition of public service if the award is not extraordinary when viewed in light of the position held by the recipient;

(4) The donation of meals, tickets to events for which admission is charged, or free or reduced price admission to events for which a fee is charged, but only under the following conditions:

   a. The value of any meals, tickets, or free or reduced price admissions accepted from the same donor in any calendar year shall not exceed three hundred dollars ($300.00) and shall be subject to the reporting requirements set forth in article V of this chapter 2;

   b. A donation from an employee of a business or entity shall be counted as a gift from the business or entity;

   c. The individual or entity which pays for the meal, ticket, or admission shall be considered the donor for purposes of this subsection regardless of whether that individual or entity is reimbursed for the cost;

   d. Attendance must be reasonably related to the official or ceremonial duties of the officer, official, or employee;

   e. The donation of parking for the meal or event shall be allowed on the same terms and conditions;

   f. Officers, officials and employees may accept the following donations of meals regardless of the annual cap on the value of such meals set forth in paragraph a. of this subsection and without the need to report the donation under article V of this chapter 2: meals provided to all attendees at a public meeting and consumed while the meeting is in progress, including by way of example "working lunches;" and meals provided to all members of any governmental, civic, or non-profit board of which the officer, official or employee is a member and consumed in conjunction with any meeting of the board;

   g. Officers, officials and employees may accept the following donations of tickets or free admissions to events, regardless of the annual cap on the value of such donations set forth in paragraph a. of this subsection: tickets or free admission to a charitable event, as long as the ticket or free admission is offered directly by and at the expense
of the charitable, other non-profit, or governmental entity hosting
the event and not directly or indirectly offered by any sponsor
of the event or other donor to which the gift restriction set forth in
paragraph a. of this section applies. Any ticket or free admission
to an event accepted under this paragraph g., shall be subject to
reporting requirements set forth in article V of this chapter 2.

(5) Unsolicited items of trivial value. "Items of trivial value" means items
or services with a value of twenty-five dollars ($25.00) or less, such as
inexpensive tee shirts, pens, calendars, books, flowers, or other similar
items and does not mean cash or gift cards;

(6) Gifts while visiting other cities, counties, states, or countries or hosting
visitors from other cities, counties, states, or countries when it would be
a breach of protocol to refuse the gift;

(7) Reasonable expenses paid by non-profit organizations or other
governments 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 on a panel, or represent the city in an official
capacity reasonably related to the recipient's employment by the city;

(8) Gifts on special and infrequent occasions if the gift is appropriate to the
occasion. These occasions include weddings, funerals, and illnesses;

(9) Gifts to commemorate a public event in which the officer, official, or
employee participated in an official capacity, provided that the gift is
appropriate to the occasion. Such occasions include ground breaking
ceremonies and grand openings;

(10) Memberships and passes from the Denver Art Museum, Denver Botanic
Gardens, Denver Museum of Nature and Science, and Denver Zoo;

(11) Gifts from family members;

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

(c) It shall not be a violation of this article for an officer, official, or employee to
solicit or accept donations to the city or to solicit, accept, or redirect donations
for charitable purposes to a 501(c) or other charitable organization or to
provide assistance to individuals affected by illness, crime or disaster or who
have educational or other charitable needs, provided, however, that:

(1) If an officer or employee soliciting such a donation is in a position to
take direct official action with regard to the donor; and the city has
an existing, ongoing, or pending contract, business, or regulatory
relationship with the donor, any donation that is actually made as a
result of the officer or employee's solicitation is reported by the officer
or employee as required in article V of this chapter 2; and
(2) The soliciting person, or a member of the soliciting person's immediate family does not keep or use the gift or receive any monetary benefit therefrom.

(d) It shall not be a violation of this article for a member of an officer's, official's or employee's immediate family to accept a gift which arises from an independent relationship of an adult member, if:

(1) The officer, official or employee does not use the gift; and

(2) It cannot reasonably be inferred that the gift was intended to influence the officer, official, or employee in the performance of his or her duties.
Office of the Auditor

The Auditor of the City and County of Denver is independently elected by the citizens of Denver. He is responsible for examining and evaluating the operations of City agencies and contractors for the purpose of ensuring the proper and efficient use of City resources. He also provides other audit services and information to City Council, the Mayor, and the public to improve all aspects of Denver's government.

The Audit Committee is chaired by the Auditor and consists of seven members. The Audit Committee assists the Auditor in his oversight responsibilities regarding the integrity of the City's finances and operations, including the reliability of the City's financial statements. The Audit Committee is structured in a manner that ensures the independent oversight of City operations, thereby enhancing citizen confidence and avoiding any appearance of a conflict of interest.

Our Mission

We deliver independent, transparent, and professional oversight in order to safeguard and improve the public's investment in the City of Denver. Our work is performed on behalf of everyone who cares about the City, including its residents, workers, and decision-makers.