

CITY OF BOULDER

PARKS AND RECREATION ADVISORY BOARD HANDBOOK

*(Presented by the Rules Subcommittee to PRAB
for its review at the February 25, 2008 Board meeting)*

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SCOPE

Part one is a summary of laws relevant to the Parks and Recreation Advisory Board (PRAB); it is not intended to be an authoritative source of the law and should be updated when laws change.

Part one is intended to provide an overview of the most important legal information relating to PRAB and to provide the legal context in which PRAB exists. PRAB should request assistance from the City Attorney's Office regarding questions of legal interpretation. Note that PRAB members are bound by their oaths of office to "... support the Constitution of the United States of America and of the State of Colorado and the Charter and ordinances of the City of Boulder."

Note that the actual legal text as accessed online is shown in italics in part one; any text not italicized in part one is not part of the law. For Boulder's Charter and the Boulder Revised Code (BRC), the text was taken from <http://www.colocode.com/boulder2/index.htm> on November 19, 2007 (Note that 4-20-21 and 2-7 were taken on January 16, 2008). For the Colorado Revised Statutes, the text was taken from <http://www2.michie.com/colorado/lpext.dll?f=templates&fn=fs-main.htm&2.0> on November 19, 2007.

Part two is intended to provide rules for PRAB to conduct its business. The rules in part two are made by PRAB under authority granted to it by the Boulder Revised Code and are based on The Standard Code of Parliamentary Procedure (2001). These rules are incorporated into the handbook and become effective upon an affirmative vote of four PRAB members. Thereafter, all prior rules of PRAB in conflict therewith shall be of no further force or effect.

Note that PRAB may not revise the statutory language quoted in parts 1 and 3, but the non-statutory rules set forth in part 2 are subject to revision by the vote of a majority of PRAB. **In addition, it is the responsibility of PRAB to maintain this document; the department may assist PRAB by providing an annual reminder to review and update this document, but that work is to be done by PRAB.**

This document has been prepared with the assistance of the City of Boulder's Office of the City Attorney.

RECOMMENDED READING

PRAB members are advised to read and familiarize themselves with the following:

Parks and Recreation Master Plan.

BRC 2-7 Code of Conduct. Included in part I of the appendix to this document.

City Attorney's March 30, 2007 Report entitled "Summary of Important Legal Responsibilities for Board Members and Commissioners" Included in part II of the appendix to this document.

The Standard Code of Parliamentary Procedure (2001).

PART ONE: LEGAL CONTEXT

I. COLORADO REVISED STATUTES

A. Open Meetings

PRAB members are advised to read and familiarize themselves with Title 24, Article 6, Part 4, Section 202 of the Colorado Revised Statutes, which reads in part:

(2) (a) All meetings of two or more members of any state public body at which any public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times.

(b) All meetings of a quorum or three or more members of any local public body, whichever is fewer, at which any public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times.

(c) Any meetings at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or at which a majority or quorum of the body is in attendance, or is expected to be in attendance, shall be held only after full and timely notice to the public. In addition to any other means of full and timely notice, a local public body shall be deemed to have given full and timely notice if the notice of the meeting is posted in a designated public place within the boundaries of the local public body no less than twenty-four hours prior to the holding of the meeting. The public place or places for posting such notice shall be designated annually at the local public body's first regular meeting of each calendar year. The posting shall include specific agenda information where possible.

(d) (I) Minutes of any meeting of a state public body shall be taken and promptly recorded, and such records shall be open to public inspection. The minutes of a meeting during which an executive session authorized under subsection (3) of this section is held shall reflect the topic of the discussion at the executive session.

(II) Minutes of any meeting of a local public body at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or could occur shall be taken and promptly recorded, and such records shall be open to public inspection. The minutes of a meeting during which an executive session authorized under subsection (4) of this section is held shall reflect the topic of the discussion at the executive session.

(III) If elected officials use electronic mail to discuss pending legislation or other public business among themselves, the electronic mail shall be subject to the requirements of this section. Electronic mail communication among elected officials that does not relate to pending legislation or other public business shall not be considered a "meeting" within the meaning of this section.

II. CHARTER OF THE CITY OF BOULDER, COLORADO

A. The People of Boulder and Colorado's Constitution

The preamble to the city charter reads:

We, the people of the City of Boulder, under the authority of the constitution of the State of Colorado, do ordain and establish this charter for the municipal government of the City of Boulder, Colorado.

B. City Council

1. Specific duties of council

The specific duties of council are given in Article II section 12 of the city charter, which reads:

The council shall choose and appoint a city manager, a city attorney, a police magistrate, and an auditor for such independent audits as are in this charter required or authorized to be made by order of the council, and such advisory boards or commissions as may be desired or are elsewhere provided for by this charter; but no member of the council shall act or be chosen as manager.

The council shall cause to be made at least annually, and at such other times as it may deem necessary, an audit of all financial accounts of the city.

The council shall consider all recommendations and reports from time to time presented by the city manager, or by any of the advisory commissions or the departments of planning and parks, and shall accept or reject the same within thirty days from the date of filing thereof with the council.

2. Powers expressly withheld from council

Powers expressly withheld from council are given in Article II section 13 of the city charter, which reads:

Except for purposes of inquiry, the council shall deal with the administrative service solely and directly through the city manager, and neither council, its members, nor committees shall either dictate the appointment, retention or removal or direct or interfere with the work of any officer or employee under the city manager. Any such dictation, attempted direction, or interference on the part of any member of the council shall be punishable in the manner deemed appropriate by the other members of the council, which may include removal from office. (Amended by Ord. No. 6008 (1998), § 2, adopted by electorate on November 3, 1998. Further amended by Ord. No. 6009 (1998), § 2, adopted by electorate on November 3, 1998.)

C. City Manager

1. The city manager defined

Boulder Revised Code 1-2-1(b) states:

"City manager" means the city manager of the City of Boulder, Colorado or the manager's authorized representative.

2. The city manager's role

The city manager's role is given in Article V section 63 of the city charter, which reads, in part:

The city manager shall be the chief executive and administrative officer of the city. As such, the manager shall possess, have, and exercise all the executive and administrative powers vested in the city.

3. The city manager's powers and duties

The city manager's powers and duties are given in Article V section 64 of the city charter. Subsection c of Article V section 64 reads:

To exercise control and supervision over all departments herein created, except as otherwise in this charter provided;

4. The city manager and the department of parks and recreation

The relationship between the department of parks and recreation and the city manager as well as the functions of the department of parks and recreation are given in Article XI section 155 of the city charter, which reads:

Under the direction, supervision and control of the city manager, the department of parks and recreation:

(a) Shall supervise, administer, and maintain all park property and recreation facilities.

(b) Shall supervise, administer, and execute all park and recreation programs, plans, functions, and activities of the city.

(c) Shall prepare and submit to the parks and recreation advisory board written recommendations on those matters where this article requires a recommendation from said board prior to council or department action.

(d) May, at the request of the parks and recreation advisory board, prepare and submit to the board information and recommendations on such park and recreation matters as are not provided for by (c) above.

(e) May request advice on any park and recreation matter from the parks and recreation advisory board. (Added by Ord. No. 2392 (1961), § 1, adopted by electorate on January 31, 1961.)

D. PRAB

1. General provisions

General provisions for advisory commissions are given in Article IX, section 130 of the city charter, which reads:

At any time after the organization of the council elected under the provisions of this charter, the council by ordinance may create and provide for such advisory commissions as it may deem advisable; provided, that a library commission is hereby created, and the council shall, within ninety days from its organization, appoint the members thereof.

Each of such commissions, including the library commission, shall be composed of five electors, appointed by the council, not all of one sex, well known for their ability, probity, public spirit, and particular fitness to serve on such respective commissions. When first constituted, the council shall designate the terms for which each member is appointed so that the term of one commissioner shall expire on December 31 of each year; and thereafter the council shall by March of each year appoint one member to serve for a term of five years. The council shall have the power to remove any commissioner for non-attendance to duties or for cause. All vacancies shall be filled by the council. When first appointed and annually thereafter following the council's appointment of the commissioner, each commission shall organize by appointing a chair, a vice-chair, and a secretary; all commissioners shall serve without compensation, but the secretary of any commission, if not a member, may receive a salary to be fixed by the council; any commission shall have power to make rules for the conduct of its business. All commissioners shall serve until their successors are appointed.

All commissions shall hold regular monthly meetings. Special meetings may be called at any time upon due notice by three members. Three members shall constitute a quorum, and the affirmative vote of at least three members shall be necessary to authorize any action by the commission.

All commissions shall keep accounts and records of their respective transactions, and at the end of each quarter or more often, if requested by the council, and at the end of each fiscal year shall furnish to the council a detailed report of receipts and expenditures and a statement of other business transacted.

The chair of a commission shall preside at the meetings thereof and sign, execute, acknowledge, and deliver for the commission all contracts and writings of every kind required or authorized to be signed or delivered by the commission. The signature of the chair shall be attested by the secretary.

The commissions shall have the right to the floor of the council to speak on plans and expenditures proposed or to appeal for a decision in a failure to agree with another commission or the manager.

*Wherever there shall be suitable accommodations in the city building, the offices of the commissions shall be maintained there. (Amended by Ord. No. 6007 (1998), § 2, adopted by electorate on November 3, 1998.)**

2. Creation of PRAB

PRAB is created by Article XI, section 157 of the city charter, which reads:

There shall be a parks and recreation advisory board consisting of seven members appointed by the city council. The members of the board shall be residents of the city, shall not hold any other office in the city, and shall serve without pay. The council may appoint such ex-officio members to the board for such terms as it deems advisable. (Added by Ord. No. 2392 (1961), § 1, adopted by electorate on January 31, 1961.)

3. PRAB office

PRAB term of office, removal, and vacancy are given by Article XI, section 158 of the city charter, which reads:

The term of each board member shall be five years, provided, however, that in appointing the original members of the board, the city council shall designate one member to serve until December 31, 1961, two members to serve until December 31, 1962, one member to serve until December 31, 1963, two members to serve until December 31, 1964, and one member to serve until December 31, 1965.

The council may remove any board member who displays lack of interest or who fails to attend board meetings for three consecutive months without formal leave of absence.

The council shall fill all vacancies. (Added by Ord. No. 2392 (1961), § 1, adopted by electorate on January 31, 1961.)

4. Organization and procedure of PRAB

Organization and procedure of PRAB is given by Article XI, section 159 of the city charter, which reads:

The board shall choose a chair and a secretary. The director of parks and recreation may be designated as secretary by the board.

The board shall have regular meetings once a month. Special meetings may be called at any time by three members of the board upon giving of at least twenty-four hours' notice of said special meeting to the board members.

Four members of the board shall constitute a quorum. Unless otherwise expressly provided herein, an affirmative vote of a majority of the members present shall be necessary to authorize any action by the board.

The board shall keep minutes and records of its meetings and transactions.

*Except for such provisions as are herein expressly provided for, the board shall have power to make reasonable rules for the conduct of its business. (Added by Ord. No. 2392 (1961), § 1, adopted by electorate on January 31, 1961.)**

5. Functions of PRAB

Functions of PRAB are given by Article XI, section 160 of the city charter, which reads:

The parks and recreation advisory board shall not perform any administrative functions unless expressly provided in this charter. The board:

(a) Shall make recommendations to the council concerning the disposal of park lands pursuant to Section 162 of this charter.

(b) Shall make recommendations to the council concerning any expenditure or appropriation from the permanent park and recreation fund pursuant to Section 161 of this charter.

(c) Shall make recommendations to the council concerning the grant or denial of any license or permit in or on park lands, pursuant to Section 164 of this charter.

(d) Shall review the city manager's proposed annual budget as it relates to park and recreation matters and submit its recommendations concerning said budget to the council.

(e) May, at the request of the council or the department of parks and recreation, prepare and submit to the council, city manager, or the department recommendations on such park and recreation matters as are not provided for by paragraphs (a), (b), (c) and (d) above.

(f) May request information and recommendations from the department pursuant to the provisions of Section 155(d) above.

The city council and the parks and recreation department shall not act on any of the matters set forth in paragraphs (a), (b), (c) and (d) above without securing a recommendation from the board as above provided; however, the council and department may act on the matters set forth in paragraphs (c) and (d) above without a board recommendation if the board fails to submit its recommendation to the council within thirty days after request therefor is made by the council.

The board's recommendation shall not be binding upon the city council unless expressly provided by this charter. (Added by Ord. No. 2392 (1961), § 1, adopted by electorate on January 31, 1961.)

6. Permanent park and recreation fund

The permanent park and recreation fund is created and defined by Article XI, section 161 of the city charter, which reads:

There shall be a permanent park and recreation fund. This fund shall consist of the following:

(a) An annual levy of nine-tenths of one mill on each dollar of assessed valuation of all taxable property within the city.

(b) Gifts and donations to the fund.

(c) Proceeds of the sale of any park or recreation property or equipment whether real, personal, or mixed.

(d) Appropriations made to the fund by the city council.

Expenditures from this fund shall be made only upon the favorable recommendation of the parks and recreation advisory board and appropriation by the council. Said fund shall not be used for any purpose other than the acquisition of park land or the permanent improvement of park and recreation facilities.

Any portion of the fund remaining unexpended at the end of any fiscal year shall not in any event be converted into the general fund nor be subject to appropriation for general purposes. Money

appropriated from the fund which is not expended in whole or in part shall be returned to the fund and shall not be subject to appropriation for general purposes. Money appropriated from the general fund for park or recreational purposes which is not expended for the purpose designated shall be returned to the general fund. (Added by Ord. No. 2392 (1961), § 1, adopted by electorate on January 31, 1961.)

7. Disposal of park properties

The disposal of park properties is governed by Article XI, section 162 of the city charter, which reads:

Park lands may be disposed of by the city council, but only upon the affirmative vote of at least four members of the parks and recreation advisory board. An advisory recommendation, which shall not be binding on the council, shall be obtained from the planning board prior to the disposition or lease of park lands. (Added by Ord. No. 2392 (1961), § 1, adopted by electorate on January 31, 1961. Amended by Ord. No. 5574 (1993), § 1, adopted by electorate on November 2, 1993.)

8. Acquisition of park land

The acquisition of park land is governed by Article XI, section 163 of the city charter, which reads:

The council may acquire park land for the city, provided that the council shall not make any expenditure of money for the purpose of acquiring park lands without first securing a recommendation from the planning board and the parks and recreation advisory board. Provided, however, that the council can act without such recommendations if said boards fail to submit their recommendation to the council within thirty days after request therefor is made by the council. The recommendations of the said boards shall not be binding on the council except that the recommendation of the parks and recreation advisory board concerning expenditures from the permanent park and recreation fund shall be binding on the council pursuant to Section 161 of this charter. (Added by Ord. No. 2392 (1961), § 1, adopted by electorate on January 31, 1961.)

9. Franchises, leases, permits, and licenses in parks

Franchises, leases, permits, and licenses in parks are governed by Article XI, section 164 of the city charter, which reads:

No franchise shall ever be granted in or on park lands except on vote of the qualified tax-paying electors in accordance with the provisions of article VIII of the charter of the city.

The council may by motion grant leases, permits, or licenses in or on park lands, but only upon the affirmative vote of at least four members of the parks and recreation advisory board. The council may, by ordinance, delegate all or any part of this authority to the parks and recreation advisory board to approve such leases, permits, or licenses. The parks and recreation advisory board may, by motion, subdelegate all or any part of its delegated authority to approve such leases, permits, or licenses to the city manager. The city manager may enter into standard

commercial licensing agreements for automatic food vending machines on park lands without the approval of the parks and recreation advisory board or the council.

The term of any license or permit granted hereunder shall not exceed five years, and any such license or permit so granted shall be revocable by the council at its pleasure at any time, whether such right to revoke be expressly reserved in such permit or license. (Added by Ord. No. 2392 (1961), § 1, adopted by electorate on January 31, 1961. Amended by Ord. No. 5574 (1993), § 1, adopted by electorate on November 2, 1993.)

III. CITY OF BOULDER REVISED CODE

A. Boards and Commissions General Procedures

1. Rules of meeting procedure

Title 2, chapter 3, section 1, subsection b, part 4 states the boards and commissions shall:

Conduct its meetings under Robert's Rules Of Order, Newly Revised (1981), unless the board or commission adopts other rules of meeting procedure

2. Open meetings

Title 2, chapter 3, section 1, subsection b, part 5 states the boards and commissions shall:

Hold all meetings open to the public, after full and timely notice of date, time, place, and subject matter of the meeting, and provide an opportunity for public comment at the meeting

3. Procedures

Title 2, chapter 3, section 1, subsection d, part 3 states the boards and commissions are authorized to:

Adopt rules interpreting its legislative duties under this code and establishing procedures in aid of its functions

4. Voting

Title 2, chapter 3, section 1, subsection d, part f states:

If a member of a city board or commission is present at a meeting and refuses to vote, the member's vote shall be recorded in the affirmative. No member is excused from voting except on approving minutes of a meeting that the member did not attend or on a matter creating a conflict of interest under chapter 2-7, "Code Of Conduct," B.R.C. 1981, or on consideration of such member's conduct in the business of the board or commission.

B. Parks and Recreation Advisory Board

1. Subpoenas

Title 2, chapter 3, section 10, subsection e, states:

The board is not authorized to issue subpoenas.

PART TWO: PRAB RULES

I. BASIC PRINCIPLES

The basic principles of parliamentary procedure that PRAB shall strive to uphold:

- A. Rules should facilitate the transaction of business and promote cooperation and harmony.
- B. All members are equal; officers only have additional duties.
- C. The majority vote decides.
- D. The rights of the minority must be protected.
- E. Full and free discussion of propositions presented for decision is a right of members; balanced with the chair's duty to move thru the agenda in addressing time management issues.
- F. Every member has the right to comprehend the meaning of the motion before PRAB and its effect.
- G. Meetings should be characterized by fairness and good faith.

II. OFFICERS

PRAB shall have a chair, a vice-chair, and a secretary. The chair and vice-chair shall be PRAB members chosen by majority vote of PRAB at its first business meeting following the annual City Council board appointments. PRAB may by an affirmative vote of four members at any business meeting remove the chair or vice-chair from office. Should a vacancy arise in the office of either the chair or vice-chair, PRAB shall fill the vacancy by majority vote. The secretary shall be a staff member designated either by the city manager or the city manager's authorized representative. The secretary does not have authority to vote.

III. CONDUCT

PRAB members shall

- A. act on behalf of PRAB only when delegated such authority by a majority vote of PRAB and report back to PRAB on the exercise of the charge (Note that PRAB members participating in working groups act as representatives of PRAB but not as spokespersons for PRAB)
- B. clearly identify whether they are speaking on behalf of PRAB or speaking for themselves when speaking in public forums other than PRAB meetings, including but not limited to city council meetings
- C. recuse themselves from matters raising a conflict of interest, and not speak on behalf of their own interests as to that particular matter before city council
- D. conduct themselves in all interactions with one another, city council, city staff, and the public in a professional and courteous manner
- E. make all reasonable efforts to avoid "surprise" by being proactive and open in all communications

IV. COMMUNICATIONS TO CITY COUNCIL

The complete text of any motion presented to City Council shall be in writing. PRAB may designate a PRAB member to present the motion to City Council during the period of public comment or, if requested by the City Council, the City Manager, or the Department, during the Council meeting. The PRAB member authorized to present the motion shall provide written copies of the motion to City Council and **request to** read the complete text of the motion to City Council.

V. AGENDA FOR MONTHLY BUSINESS MEETINGS

A. Overview

The agenda is generally set by the department as most matters arise from the department for consideration by PRAB under provisions of Article XI, Sections 155(c), (d), and (e). Items arising from PRAB for consideration by the department under Article XI, Section 160(f) may be placed on the agenda as described below in B. Other items on which a PRAB member desires discussion should be placed on the agenda under ‘matters from board members’ or ‘matters for discussion/information.’

B. Notes on Specific Agenda Item Categories

1. Public Comment

Following public comments, the chair shall recognize a representative of the Department, usually the Director, to provide the Department an opportunity to respond directly to the public.

2. Items for Action

- (a) Items for action are those items for which a motion and vote are anticipated. Usually, such items should have been discussed at a previous PRAB meeting under ‘items for discussion/information’. Items on which the Department and/or Council requests PRAB advice shall generally be presented initially under ‘items for discussion/information’ and then at the following business meeting under ‘items for action.’
- (b) Items for action are usually preceded by a staff presentation regarding the item and the question or questions for which the staff is seeking the advice of PRAB. The staff presentation may be followed by questions from PRAB.
- (c) Public hearings are discretionary for PRAB. However, in the interests of openness and accountability, PRAB shall hold public hearings prior to action on items arising under sections 160 (a) – (d) and prior to action on any item for which the PRAB determines that the period of public comment may not have provided the public an appropriate opportunity for input.
- (d) PRAB usually has a period of informal discussion following the close of the public hearing, which should result in a motion.
- (e) PRAB then debates the motion.
- (f) PRAB then votes on the motion. The exact wording of the final motion as voted upon shall appear in the minutes.

3. Matters from the Department

Matters from the Department may include a summary of upcoming work, events, and/or collaborative activities of which the staff would like PRAB to be aware.

4. Matters from Board Members

Matters from Board members may include ideas regarding information or recommendations to request from the department, reports from individual PRAB members on sub-committees or other PRAB-

related activities to which less than a quorum of PRAB has been assigned, or PRAB-related activities which are not agenda items that an individual PRAB member wishes to bring to the attention of PRAB as a whole.

C. Agenda Committee

1. The agenda committee is composed of the PRAB chair, PRAB vice-chair, Parks and Recreation Department Director, and any pertinent staff. In the event that the PRAB chair or PRAB vice-chair can not attend an agenda committee meeting, another PRAB member can be appointed as a pro tem agenda committee member by the PRAB member who can not attend.
2. The agenda committee usually meets on a weekday during the week of the monthly PRAB meeting.
3. The agenda committee receives a draft agenda from the Parks and Recreation Department Director, which reflects charter-mandated actions and items on which the Department and/or Council requests PRAB advice as defined by Article XI, Sections 160 through 164 inclusive of the city charter.
4. The agenda committee carries out only the agenda setting function on behalf of PRAB as a whole; therefore, it shall not use the agenda committee meeting to advance the PRAB member's own agendas or points of view or to limit or constrain other points of view.
5. The agenda committee determines how to present each item to PRAB, works to balance content with time, and allocates time for each item (times assigned are guidelines to be monitored by the chair during the board meeting).

D. The Parks and Recreation Department

1. The Parks and Recreation Department prepares packets containing the agenda and any other pertinent documents for each PRAB meeting. PRAB materials should clearly articulate the subject or question on which PRAB's advice is sought, or the reason why the matter is being brought to the attention of the PRAB. PRAB materials should allow PRAB members to prepare appropriately prior to the meeting, such as formulating any pertinent motion, discussion points, and questions.
2. In order for PRAB members to have the most informed discussion of the issues before it, the Parks and Recreation Department is requested to provide PRAB with objective information. When analyzing alternative courses of action, it is requested that the Department present and analyze a range of realistic alternatives, including those proposed by PRAB members and members of the public, and present the Department's preferred alternative.
3. The Parks and Recreation Department distributes the packets to PRAB members, usually on the Wednesday prior to a Monday board meeting.
4. The Parks and Recreation Department provides notice of PRAB meetings as required by BRC 2-3-1(b)(5).

VI. COMMON MODES OF PRAB OPERATIONS

A. PRAB Requests to the Department

PRAB may request information and recommendations from the department under Article XI, Section 160(f) via passing a motion that makes that request. The usual process for making such a request is to introduce an idea during the ‘approval of agenda’ portion of the meeting and then have an initial discussion of it under either the ‘matters for discussion/information’ or ‘matters from board members’ portion of the meeting. Following initial discussion, PRAB should vote on a motion to dispose of the idea, to include it on the agenda for the next business meeting for further work, or to make another motion that actually spells out the request of the department.

B. PRAB Informal Discussion

Items that a PRAB member wishes to discuss with PRAB should be raised by that member in the form of a motion for informal consideration. If the motion carries, then an informal discussion can take place either under the ‘matters from board members’ portion of the current meeting or under another portion of the current meeting as specified in the motion approved. An informal discussion is started by a motion but does not center on a motion, so the rules for handling motions and debate do not apply during the period of informal discussion. Following informal discussion, a PRAB member may make a motion to include the item for action on the agenda for the current meeting or for the next meeting. If a motion to add the item to the current meeting agenda is approved, then any PRAB member may make a motion on that item.

C. PRAB Action

PRAB takes action via a motion, debate on a motion, and voting on a motion. If a PRAB member wishes the board to take immediate action on an item, that member should raise the item during the ‘approval of agenda’ portion of the meeting in the form of a motion for debate. If the motion carries, then the issue can be debated during the ‘items for action’ portion of the current meeting.

VII. RULES OF MEETING PROCEDURE

A. Prior to a Meeting

1. PRAB members should review their meeting packets and come to the meeting prepared to address the agenda without undue delay.
2. To the extent that an individual PRAB member has a question regarding a particular agenda item, the PRAB member may address the question to the Department Director. If time permits, staff may respond to the PRAB member who raised the question prior to the meeting and the PRAB as a whole. The inquiry and response shall be reported at the PRAB meeting by the PRAB member who raised the question and the chair shall provide the Department an opportunity to speak to the question.

B. Meeting Time and Place

1. The usual meeting time and place shall be the fourth Monday of each month starting at 6 pm in the City Council chambers; however, the time and place may be changed upon adequate prior notice to the public, PRAB, and the department.

C. Required Officers

1. Presiding Officer

The chair of PRAB is the presiding officer, unless absent. In the absence of the chair of PRAB, the vice-chair of PRAB shall be the presiding officer. If both the chair of PRAB and the vice-chair of PRAB are absent, then a member of PRAB shall be elected by a majority vote of the PRAB members present as chair pro tem and shall serve as the presiding officer.

2. Secretary

In the absence of the secretary, a secretary pro tem shall be elected by a majority vote of the members present.

D. Duties of the Presiding Officer

The presiding officer shall:

- Determine the presence of a quorum
- Call the meeting to order
- Move through the agenda while monitoring the time
- Ensure that all persons speaking during public participation have provided the appropriate written information to PRAB
- Ensure that access to the floor is fair, equitable, and untainted by his/her position on the issue
- State and put to vote all motions
- Announce the result of each vote
- Enforce the rules relating to procedure and decorum
- Refuse to recognize dilatory or improper motions
- Announce the basis or reason for ruling any motion improper

E. Rights of Members

Members' rights include:

- Make motions
- Speak in debate on motions
- Vote
- Require a retake of a voice vote of which the result is doubted by the member
- Make a point of order to insist on the enforcement of the rules if the member notices a breach of the rules that the presiding officer has not corrected
- Make a parliamentary inquiry of the presiding officer if uncertain as to whether there is a breach on which a point of order can be made

F. Appeal

Although the duty of ruling on all questions of parliamentary procedure rests with the presiding officer, any two members can require him to submit a ruling to the vote of PRAB by moving and seconding an appeal immediately after the presiding officer has made a ruling. By one member making the appeal and another seconding it, the ruling is taken from the presiding officer and vested in PRAB for final decision.

G. Quorum

1. **Four** members of PRAB constitute a quorum, as specified in Article XI, Section 159.
2. It is the duty of the presiding officer to determine that a quorum is present before calling a meeting to order. An announcement is not required.
3. The only actions that can be taken in the absence of a quorum are:
 - Fix a time at which to adjourn
 - Adjourn
 - Recess
 - Take measures to obtain a quorum

H. Assignment of the Floor

1. Before speaking, a member must claim the floor by raising their hand. The chair will recognize a member by nodding or announcing.
2. While a motion is open to debate, if the member who made the motion claims the floor and has not already spoken on the question, then she or he is entitled to be recognized first.

I. Rules of Speaking

At all times, members shall

- Maintain a courteous tone
- Avoid repetition to the greatest extent possible
- Not engage in personal attacks
- Confine their statements to 5 minutes, unless permission has been obtained from PRAB to exceed that limit

J. The Handling of a Main Motion

1. Making a motion

A member, after obtaining the floor, makes a motion. If necessary, the motion can be prefaced by a few words of explanation, which must not become a statement, or a member can first request information or can indicate briefly what he wishes to propose and request the chair or another member to assist with appropriate wording. A resolution or a long or complicated motion should be prepared in advance of the meeting, if possible, and should be put in writing before it is offered.

2. Seconding a motion

Another member can second the motion to indicate that the motion should come before PRAB for consideration. The seconder may speak and vote against the motion. If there is no second, the chair shall not recognize the motion.

3. Stating the motion

The chair formally places the motion before PRAB by stating the exact motion and announcing it is open to debate. The chair may require any motion to be in writing before she or he states it. Note

that a motion can be withdrawn by its proposer anytime before the chair states the motion. Once the chair has stated it, the motion can be withdrawn only by permission of PRAB.

4. Debate

- (a) The presiding officer can enter into the debate on the pending motion.
- (b) The assignment of the floor in section VI H above applies.
- (c) The speaker's position on the motion should be stated directly, such as "I support this motion because..." or "I oppose this motion because..."
- (d) In addition to the rules for speaking in section VI I above, the following rules of decorum apply:
 - i. Members shall confine remarks to the merits of the pending question – discussion that departs from the subject is out of order
 - ii. Members shall refrain from attacking a member's motives
 - iii. Members shall not disturb PRAB during debate
 - iv. Members who are interested and informed on the subject may speak several times providing that members who have not already spoken are not seeking recognition.
 - v. Merely asking a question or making a brief suggestion is not considered a statement in debate.
 - vi. After each member has had the opportunity to be heard in each round of debate, the chair shall ask if there is any further discussion. If not, the motion is put to a vote.
- (e) Amendments
 - i. An amendment must always be closely related to or have bearing upon the subject of the motion to be amended. No new subject can be introduced under the pretext of an amendment but an amendment can be hostile to or defeat the spirit of the original motion.
 - ii. Amendments may
 - a) insert or add words or paragraphs
 - b) strike out words or paragraphs
 - c) strike out and insert words
 - d) substitute words, from one word to the entire text of the motion
 - iii. Handling of amendments
 - a) A member obtains the floor during debate on a motion
 - b) The member moves to amend
 - c) Another member seconds
 - d) The presiding officer states the proposed amended form of the motion
 - e) Debate on the amendment
 - f) The presiding officer puts the amendment to a vote

5. Putting the motion to a vote

- (a) The presiding officer asks “Is there any further discussion?” If no one claims the floor, then the chair announces the exact motion. If there is any possibility of confusion, the chair should explain the effect of a yes vote and the effect of a no vote.
- (b) The presiding officer announces the form of the vote, in accordance with section L below.
- (c) The presiding officer calls for the affirmative vote
- (d) The presiding officer calls for the negative vote
- (e) The presiding officer announces the result of the vote

K. Other Useful Motions

Motions other than main motions are available and members are encouraged to consult The Standard Code of Parliamentary Procedure (2001) for further information. Some of the more useful motions available are summarized in the table appearing in part II of the appendix.

L. Improper Motions

1. A motion is out of order if it conflicts with US, Colorado, or City of Boulder law.
2. A motion is out of order if it proposes action outside the legal scope of PRAB.
3. A motion is dilatory and out of order if it seeks to obstruct or thwart the will of PRAB as clearly indicated by the existing parliamentary situation or if it is absurd in substance.

M. Principal Rules Governing Motions

The following chart is adopted from The Standard Code of Parliamentary Procedure (2001):

| category | precedence | motion | interrupt | second | Vote |
|--------------------|------------|------------------------------|-----------|--------|--|
| Privileged | 1 | Adjourn | no | yes | Majority |
| | 2 | Recess | no | yes | Majority |
| | 3 | Question of privilege | yes | no | None |
| Subsidiary | 4 | Postpone temporarily (table) | no | yes | majority, 2/3 if suppresses debate on the motion |
| | 5 | Close debate | no | yes | 2/3 |
| | 6 | Limit debate | no | yes | 2/3 |
| | 7 | Postpone to a certain time | no | yes | Majority |
| | 8 | Refer to committee | no | yes | Majority |
| | 9 | Amend | no | yes | Majority |
| Main | 10 | Main motion | no | yes | Majority |
| | 10 | Amend a previous action | no | yes | Majority |
| | 10 | Ratify | no | yes | Majority |
| | 10 | Reconsider | yes | yes | Majority |
| | 10 | Rescind | no | yes | Majority |
| | 10 | Resume consideration | no | yes | Majority |
| Incidental Motions | NA | Appeal | yes | yes | Majority |
| | NA | Suspend rules | no | yes | 2/3 |

| | | | | | |
|---------------------|----|-----------------------|-----|-----|----------|
| | NA | Consider informally | no | yes | Majority |
| Incidental Requests | NA | Point of order | yes | no | None |
| | NA | Parliamentary inquiry | yes | no | None |
| | NA | Withdraw a motion | yes | no | None |

N. Voting

1. A roll call vote on a rotating basis of the roll shall be taken upon all motions pertaining to:
disposal of park lands
expenditure or appropriation from the permanent park and recreation fund
grant or denial of any license or permit in or on park lands
review of the budget
recommendations on the budget
2. For all other motions, the vote may be taken by voice, by show of hands, or by roll call on a rotating basis of the roll as determined by the presiding officer subject to appeal.
3. Unless otherwise expressly provided in the Charter or BRC, an affirmative vote of a majority of the members present shall be necessary to authorize any action of PRAB, as specified in Article XI, Section 159.
4. Any member who doubts the result of a voice vote has a right to require a retake of that voice vote as a show of hands.
5. If a PRAB member is present and refuses to vote, the member’s vote shall be recorded in the affirmative. No member is excused from voting except on approving minutes of a meeting that the member did not attend or on a matter creating a conflict of interest as specified by BRC 2-3-1(f).

VIII. OTHER MEETINGS

PRAB may hold meetings other than the monthly business meeting. Such meetings shall be called by PRAB by a majority vote on a motion – the motion shall include the time and place of the meeting. Such meetings are subject to the legal context in which PRAB exists including notice and minutes. Such meetings may be study meetings with city staff, PRAB working meetings without staff, or other forms as needed.

IX. PARLIAMENTARY PROCEDURE

Except as provided herein or specified in the Charter or BRC, all matters of procedure are governed by The Standard Code of Parliamentary Procedure (2001).

X. AMENDMENT

Provided notice of proposed changes, which includes additions, has been given to each PRAB member and to the Office of the City Attorney at least fifteen days prior to a business meeting, these rules may be amended by PRAB by an affirmative vote of four members.

XI. REVIEW

At the first business meeting of each calendar year, these rules shall be reviewed by PRAB for the purposes of PRAB members maintaining familiarity with these procedures, assessing the effectiveness of these rules,

and evaluating if any modifications are needed. Updates to the handbook, especially updating the statutory quotations, should also be made by PRAB in cooperation with the City Attorney's Office at that time.

PART THREE: APPENDIX

I. BRC CODE OF CONDUCT

Chapter 2-7: Code of Conduct

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

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

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

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

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

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

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

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

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

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

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

2-7-2 Conflicts of Interest Prohibited.

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

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

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

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

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

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

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

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

2-7-5 Gifts to Officials and Employees.

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

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

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

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

(1) Campaign contributions as permitted by law;

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

(3) A gift from a relative;

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

(5) Reasonable expenses paid by other governments or governmentally related organizations for attendance at a convention, fact-finding mission or trip, or other meeting if the person is scheduled to deliver a speech, make a presentation, participate in a panel, or represent the city;

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

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

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

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

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

2-7-6 Prior Employment, Outside Employment, and Subsequent Employment.

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

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

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

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

(e) Participation Of Former Officials Or Employees: No former official or employee shall appear before, or participate in, a city board, commission, task force or similar body on which he or she was a member or served directly as an employee concerning any matter or on which he or she took official action during his or her service with the city for twelve months following termination of office or employment. This prohibition may be waived by the city council by

appointment or vote. This prohibition shall not apply to persons who appear before the city in their capacity as an elected official following termination of their office or employment with the city.

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

2-7-7 Employment of Relatives.

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

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

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

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

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

2-7-8 Representing Others Before the City Prohibited.

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

(b) Board, Commission Or Task Force Members Barred From Representing Others: An appointee to a city board, commission, task force or similar body may appear or be affiliated with a firm appearing concerning any transaction with the city under the following circumstances:

(1) An appointee may appear on his or her own behalf before the body of which he or she is a member to represent his or her personal interests, if the appointee discloses the situation and recuses himself or herself pursuant to section 2-7-10, "Disclosure and Recusal Procedure," B.R.C. 1981, or before the city council;

(2) An appointee may appear on behalf of another person before any city body except the city council or the body of which the appointee is a member;

(3) A firm with which an appointee is affiliated may not appear on behalf of or be employed by another person concerning any transaction before the body of which the appointee is a member unless the appointee discloses the situation and recuses himself or herself pursuant to Section 2-7-10, "Disclosure and Recusal Procedure," B.R.C. 1981.

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

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

(e) City Employees And Municipal Court: No city employee who is an attorney shall appear on behalf of or be employed by another person or be affiliated with a firm that appears on behalf of or is employed by another person concerning any matter before the municipal court. A non-attorney employee may appear before the municipal court on his or her own behalf, and an employee other than a municipal court judge may appear on behalf of such employee's spouse, parent, or child to the extent otherwise allowed by law. This authority is intended to allow employees to assist family members in matters before the municipal court to the extent permitted by law but not to promote the unauthorized practice of law.

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

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

Ordinance No. 7517 (2007)

2-7-9 Appearances of Impropriety Discouraged.

(a) These guidelines are intended to establish ethical goals and principles to help city council members, employees, and appointees to a city board, commission, task force or similar body to

determine if their actions may cause an appearance of impropriety that will undermine the public's trust in local government.

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

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

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

(2) If the person has a close friend with a substantial interest in any transaction with the city, and the council member, appointee, or employee believes that the friendship would prevent such person from acting impartially with regard to the particular transaction;

(3) If the person has an interest in any transaction with the city that is personal or private in nature that would cause a reasonable person in the community to question the objectivity of the city council member, employee, or appointee to a city board, or commission;

(4) If the person is called upon to act in a quasi-judicial capacity in a decision regarding any of the situations described in paragraphs (c)(1), (c)(2), and (c)(3) of this section; or

(5) If the person owns or leases real property within six hundred feet from a parcel of property that is the subject of a transaction with the city upon which he or she must make a decision, and is not required to receive official notice of a quasi-judicial action of the city. (Ordinance No. 7453 (2006))

2-7-10 Disclosure and Recusal Procedure.

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

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

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

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

(b) Recusal By The Council, Board, Commission, Task Force Or Similar Body: The city council and any city board, commission, task force or similar body may order recusal of one of its

members if that member has an obligation to do so under this chapter and has failed to do so. Such an order is valid if reached after majority vote of the members of the body, not including the member whose recusal is sought, based on competent evidence.

2-7-11 Enforcement.

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

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

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

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

(3) Complaints Initiated By The City Council: The city council may initiate an investigation of any of its employees, and of any city council member or appointee to a city board, commission, task force or similar body if facts are alleged to the council that, if true, would constitute a violation of the provisions of this chapter.

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

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

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

2-7-12 Sanctions and Remedies for Violation.

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

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

(c) Sanction Recommendations: If the party conducting an investigation pursuant to section 2-7-11, "Enforcement," B.R.C. 1981, finds that a city council member or an appointee to a city board, commission, task force or similar body, or employee has violated any provision of this chapter, the investigator shall provide its findings and recommendations to the city manager or city council, as appropriate, who or which in turn may take any of the following actions:

(1) In the case of a city council member, a motion of censure;

(2) In the case of a city employee, a motion for censure or a recommendation that the employee's appointing authority consider disciplining or discharging the employee;

(3) Removal as provided in subsection (b) of this section; or

(4) As an alternative or in addition to the sanctions imposed herein, the city council may resolve that any person or entity causing, inducing, or soliciting a public official or public employee to violate this chapter may not be involved in any transaction with the city, including but not limited to the award of any city contract, grant, loan or any other thing of value for a period of twelve months or that any such contract, grant, loan or thing of value be terminated, repaid or forfeited.

(d) Civil Remedies: Any person affected by a city transaction may commence a civil action in the District Court in and for the County of Boulder for equitable relief to enforce the provisions of this chapter upon a showing of willful violation of any provision of this chapter. Before filing such an action, the person shall present the claim to the city attorney to investigate in accordance with subsection 2-7-11(c), B.R.C. 1981. The city attorney or appointed special council shall have sixty days to act thereon. No civil action in district court pursuant to this subsection may be commenced later than twelve months after a violation of this chapter is alleged to have occurred.

(e) Criminal Sanctions: The city attorney, or special counsel authorized to act on behalf of the city attorney, acting on behalf of the people of the city, may prosecute any violation of this chapter in municipal court in the same manner that other municipal offenses are prosecuted.

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

2-7-13 Advisory Opinions and Outside Counsel Appointment.

(a) City Attorney To Provide Advisory Opinions: Any city council member, employee, or appointee to a city board, commission, task force or similar body may request an advisory opinion of the city attorney whenever a question arises as to the applicability of this chapter to a particular situation. The city attorney's advisory opinion may provide a specific defense from prosecution as set forth in section 2-7-12, "Sanctions And Remedies For Violation," B.R.C. 1981.

(b) Appointment Of Outside Counsel: If a significant controversy arises under this chapter, the city attorney may appoint a neutral outside counsel to assist in resolving the issue.

2-7-14 Exemptions From Chapter.

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

2-7-15 Definitions.

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

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

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

(a) Has a substantial interest in any transaction with the city;

(b) Has a relative with a substantial interest in any transaction with the city;

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

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

(e) Is an officer of an organization that has taken an official position on any transaction with the city;

(f) Is on the board of directors of an organization that is substantially affected by a transaction with the city;

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

(h) Is required to receive official notice of a quasi-judicial action from the city.

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

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

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

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

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

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

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

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

Adopted by Ordinance No. 4677. Amended by Ordinance Nos. 5396, 7286. Derived from Ordinance No. 3792. Repealed and reenacted by Ordinance No. 7442.

II. City Attorney's March 30,2007 Report entitled "Summary of Important Legal Responsibilities for Board Members and Commissioners



March 30, 2007

CITY BOARDS AND COMMISSIONS
Boulder, Colorado

RE: Summary of Important Legal Responsibilities for Board
Members and Commissioners

Dear City Board Members and Commissioners:

I would like to offer my personal thanks for your willingness to serve the Boulder community. Public service in Boulder's form of "home rule" local government can be very rewarding. It can be challenging as well. Robust public engagement in civic affairs is an essential hallmark of Boulder. The Colorado pioneers who created home rule had a deep and abiding mistrust of distant, secretive government because of the corruption often bred in that environment. As a result, the City of Boulder conducts all of its business in the bright sunshine of public and media scrutiny. Our behavior as public officials, public employees, and board and commission appointees becomes the example by which the quality and character of Boulder's local governance is judged. I have great pride in this city's commitment to open, ethical, and responsive government. I know you will join me in feeling a sense of stewardship for the qualities that make Boulder one of the truly great American cities.

This report summarizes some important city and state laws that govern how you must conduct yourself as a Boulder board or commission appointee. These laws create rules to protect the public's trust in local government. But they are more than rules - these laws truly define the essentials of responsive and effective local governance.

This report is organized into six sections which discuss the following topics:

- The Basics of Colorado "Home Rule" Government
- Voting Rules for Boards and Commissions
- Boulder's Conflict of Interest Law
- Sunshine Laws: Open Meetings and Open Records
- Special Constitutional Rules for Quasi-Judicial Hearings
- Rules on Removal from Board or Commission Positions

A final caveat is necessary. This report is meant as a brief summary of some very complex issues. You should not treat this report as authoritative legal advice that is binding upon the city. If you have additional questions, please feel welcome to contact me or your board's or commission's assigned assistant city attorney for further information at (303) 441-3020. Please recognize, however, that the City Attorney's Office represents the city as a corporate entity. We are not able to represent you as an individual in a confidential attorney-client relationship. We can and do, however, provide legal advice to the Council, city staff, and boards and commissions on city business. Moreover, you are entitled to receive non-confidential individual advice from this office on conflict of interest matters that arise during your service with the city.

Respectfully submitted,

ARIEL PIERRE CALONNE
City Attorney

APC:lh

cc: City Council
Frank W. Bruno, City Manager

1. The Basics of Colorado "Home Rule" Government.

*"The powerful corporate interests engaged in the exploitation of municipal franchises are securely entrenched behind a series of constitutional and legal checks on the majority which makes it extremely difficult for public opinion to exercise any effective control over them."*¹

Between the Civil War and the early twentieth century, municipal governments were considered "creatures" of the state. Cities had only those few and limited powers that were granted by state legislation. During the same period, the Fourteenth Amendment - which was intended to assure Constitutional protection for freed slaves - was interpreted to extend a wide array of rights to corporations. It is perhaps not coincidental that several leading jurists of the day (and the leading municipal law scholar) were former railroad corporation lawyers.²

Powerful railroads and weak cities lead to widespread legislative corruption. In an attempt to control cutthroat and monopolistic railroad business practices, Colorado established a Railroad Commissioner in 1885. The legislature promptly failed to fund the office, and it was abolished in 1893. A three member Railroad Commission (the precursor to today's Public Utilities Commission) was established in 1907, but didn't begin its work until 1910 as a result of extensive railroad litigation.³

Finally, in 1904, Colorado dramatically changed the balance of power between cities and the state by giving the City of Denver "home rule" authority. Home rule powers are developed by and founded upon the will of municipal voters. The voters organize their municipal corporation around a "charter" which describes and limits the powers of the city government. Rather than being a "creature" of the state, a home rule city's power over "local affairs" is **paramount** to state law. Boulder adopted its first charter in 1917.

Today, Colorado home rule cities remain vigilant to protect home rule power from intrusion by the state legislature. Areas such as zoning, control of streets and wildlife, and public finance face regular

¹ J. Allen Smith, LL.B., Ph.D., *The Spirit of American Government*, p.289 (1911); The Chautauqua Press, Chautauqua, New York.

² In 1868, Iowa Supreme Court Justice (and former railroad lawyer) John F. Dillon authored "Dillon's Rule." This rule held that cities have only those powers expressly granted by the state or necessarily implied as essential to the purposes declared by the state.

³ The CoPUC website has a nicely done history at <http://www.dora.state.co.us/puc/about/AboutHistory.htm>

challenges from interest groups which would prefer to have uniform state control. Home rule power must also be protected **for the people** who have vested local control in Boulder's city government. Many of the laws discussed below are aimed at maintaining the open and ethical foundation of Boulder's home rule powers.

2. Voting Rules for Boards and Commissions.

Boulder's general rules concerning boards and commissions are in Chapter 2-3 of the Boulder Revised Code⁴. The first important rule is that three affirmative votes are required for any action of a board or commission of five members. There are a few major exceptions: Four affirmative votes are required for any action of the Planning Board and for any action of the Parks and Recreation Advisory Board to dispose of park land or to appropriate funds from the Permanent Parks and Recreation Fund. If members are absent, it may be necessary to re-hear a matter so that it is possible for the entire board or commission to vote. This makes it particularly critical that board and commission members attend every meeting if possible, in order to give applicants a fair opportunity for a timely decision.

Board members and commissioners are not permitted to abstain from voting. An "abstention" is a refusal to vote, despite being present and qualified to do so. Section 2-3-1(f), B.R.C. 1981 states that if a member is present but refuses to vote, the member's vote: "Shall be recorded in the affirmative." The only exceptions are approval of minutes of a meeting that the member did not attend or if the member was excused under Chapter 2-7-2 "Conflicts of Interest Prohibited," B.R.C.1981, or on consideration of such member's conduct in the business of the board or commission.

The general provisions of the code, reflecting Section 130 of the Charter, provide for election of officers of each board and commission by the board or commission, minutes and summaries, taping of meetings, application of Robert's Rules of Order, Newly Revised (1990), unless the board or commission adopts other rules of the procedure.

⁴ We cite references to the Boulder Revised Code as "B.R.C. 1981" which signifies that last major revision and reorganization of the code back in 1981. A searchable version of the code is available online at http://www.bouldercolorado.gov/index.php?option=com_content&task=view&id=330&Itemid=204

3. Boulder's Conflict of Interest Law.

Conflicts of interest are prohibited in Chapter 2-7-2 B.R.C. 1981.⁵ Basically, the code requires public officials and employees not to participate in any decision which could affect them or a member of their immediate family financially. The law works by defining city "transactions" in which an official or employee might have a "substantial interest." A "substantial interest" means:

" . . . a situation, including, without limitation, a financial stake in the outcome of a decision in which, considering all of the circumstances, would tend to influence the decision of a reasonable person faced with making the same decision." Section 2-7-15, B.R.C. 1981.

Although the rule creates an objective standard ("reasonable person"), there is no set dollar amount that determines when a conflict arises. Thus, in interpreting the law the City Attorney's Office evaluates all of the facts and circumstances surrounding the decision. Legal advice is only binding with respect to the facts upon which it is based. This means that board members or commissioners are required to disclose personal financial information when a conflict issue arises. This can include sources of income, investments, real estate interests, debts, and loans. While this kind of disclosure is admittedly intrusive, it is necessary for legal advice and required by the municipal code.

When a conflict exists, the board or commission member must "**disclose and recuse.**" This is the process of publicly declaring the nature of the conflict and refraining from voting or otherwise participating in the decision making process in any manner. The process of **public** disclosure may be uncomfortable for some people, but it is required because it provides explicit reassurance to the community that corrupting influences are not at work. The actual code describes the "disclose and recuse" rules as follows:

"a) Disclosure and Recusal: No person with a conflict of interest . . . shall fail to give written notice of the interest described in such subsection to the city council or the city board, commission, task force or similar body of which the person is a member and the city manager as soon as reasonably

⁵ The city is exempt from the requirements of the recently-approved initiative known as "Amendment 41," which would be codified in a new Article XXIX of the Colorado Constitution. Section 7 of Amendment 41 states: "The requirements of this article **shall not apply to** home rule counties or **home rule municipalities that have adopted charters, ordinances, or resolutions that address the matters covered by this article.**"

possible after the interest has arisen. However, no written notice is required if such person discloses the conflict of interest on the record of a public meeting of the city council or the city board, commission, task force or similar body of which the person is a member. The interested councilmember, employee, or appointee shall thereafter:

- (1) Refrain from voting upon or otherwise acting in an official capacity in such transaction;
- (2) Physically absent himself or herself from the room in which a matter related to such transaction is being considered; and
- (3) Not discuss any matter related to such transaction with any other member of the council, board, commission, task force, or similar body of which the person is a member." Section 2-7-10(a), B.R.C. 1981.

If a board or commission member is unsure about whether or not a conflict of interest exists, the board or commission member is entitled to consult with a member of the City Attorney's Office and to request an advisory opinion on the conflict of interest rules to a particular situation. Section 2-7-13, B.R.C. 1981. Complying with the City Attorney's advice provides a defense from prosecution for violation of the code. Section 2-7-12(f), B.R.C. 1981.

The city's conflict of interest law also provides non-binding ethical guidelines to address the **appearance of impropriety** that could arise in some situations. While violation of these rules is not a crime, the public's trust can be undermined if these principals are not upheld. Specifically, the code calls for **voluntary** recusal in the following situations:

- "(1) If the person is an employee of a state or federal government entity with a substantial interest in any transaction with the city;
- (2) If the person has a close friend with a substantial interest in any transaction with the city, and the councilmember, appointee, or employee believes that the friendship would prevent such person from acting impartially with regard to the particular transaction;
- (3) If the person has an interest in any transaction with the city that is personal or private in nature that would cause a reasonable person in the community to question the objectivity of the city councilmember, employee, or appointee to a city board, or commission;
- (4) If the person is called upon to act in a quasi-judicial capacity in a decision regarding any of the situations described in paragraphs (c) (1), (c) (2), and (c) (3) of this section; or

(5) If the person owns or leases real property within six hundred linear feet from a parcel of property that is the subject of a transaction with the city upon which he or she must make a decision, and is not required to receive official notice of a quasi-judicial action of the city." Section 2-7-9, B.R.C. 1981.

4. Sunshine Laws: Open Meetings and Open Records.

Sunshine laws are the tools by which a skeptical public retains control of the government it has created.⁶ These laws are monikered "sunshine" because they were designed to let the sun shine into the legendary smoke-filled back rooms of government decision-making.

In this context, we use the intentionally provocative term **secret** to make clear how the press and public view government actions that take place in **private** settings. Secret government decision-making is problematic for many reasons, most of which are well beyond the scope of this report. Public decisions help make sure that the voters have a clear and accurate view of the actions and values of their local elected and appointed officials. The voters cannot be expected to make wise decisions on Election Day if they cannot fully evaluate the skills and values of their elected representatives. Thus, secret decisions fundamentally undermine the democratic process. These laws also protect the public's ability to participate meaningfully in government decision making.

Sunshine laws fall into two major categories: Open meetings, and open records (or "Freedom of Information"). Boulder is highly unusual in that the charter has been interpreted to forbid **any** closed or executive session of the Council, or any board or commission. This demonstrates the paramount importance of open government in Boulder.

Notice of Meetings is Required

Section 2-3-1(b) (5), B.R.C. 1981 requires each board or commission to: "Hold all meetings open to the public, after notice of the date, time, place, and subject matter of the meeting, and provide an opportunity for public comment at the meeting." This requires at a minimum that boards and commissions provide twenty-four hour specific notice of each meeting by posting a copy of the meeting agenda in the

⁶ While the rules discussed in this report are designed to protect the public's ability to **trust** local government, it is important to recognize that **skepticism** about government is not necessarily an indicator of failure. Indeed, skepticism should be respected as it is a measure of the public's **engagement** in their civic affairs. As public officials, we answer skepticism by openness, honesty, hard work, and demonstrated competence. Public trust is **earned** by daily dedication to these core values.

lobby of the Municipal Building and electronically. Agendas for regular board and commission meeting are published in the Daily Camera as well.

Avoid Private Discussions and Casual Meetings

The state open meetings laws, as well as our consistent interpretation of Section 2-3-1, B.R.C. 1981, require that if three or more members of a board or commission meet at any time and discuss public business, notice must be given of such meeting, and the meeting must be open to the public. If a chance meeting occurs, such as at a social event, the members of the board or commission must not discuss public business. One-on-one communication about public business between members of a board or commission is permitted.

It is important to recognize that a meeting of three or more members may not necessarily have to happen **in the same time and place**. In other words, a face-to-face meeting is only one way for potentially unlawful action to occur. "Serial" meetings in which decisions are made as one official garners support and commitment for certain actions from several of his or her colleagues, one-by-one, are problematic as well.

State law specifies that three or more elected officials communicating by e-mail constitutes a public meeting, and all such communications are to be copied to the Hotline e-mail address. While not explicitly required by the state law, we advise similar caution for boards and commissions because a court could find such an electronic communication to constitute an illegal meeting. Use of one-on-one telephone or fax communications is a better idea, since the risk of forwarding is much less, and thus the risk of an illegal meeting can be more easily avoided.

5. Special Constitutional Rules for Quasi-Judicial Hearings.

The Constitution requires certain city decision-making processes to follow court-like procedures. These procedures assure a fair and thoughtful decision that protects the individual rights involved. The procedures also assure that affected persons have notice of the potential action and an opportunity to be heard before the decision is made. These are called "quasi-judicial" hearings.

A quasi-judicial hearing calls for a determination of facts based upon evidence presented during a hearing. Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, specifies all of the details of handling procedural and evidentiary issues at such hearings. Special notice requirements apply, and particular notice requirements are imposed for certain matters, such as land use and liquor license proceedings. Quasi-judicial hearings may give rise to an appeal to district court.

Board members and commissioners should be aware that the city's quasi-judicial procedures include the following requirements:

- Specific, mandatory rules for advance notice by mail or publication;
- Testimony must be taken under oath or by affirmation;
- Oral and documentary evidence are allowed;
- Cross-examination is allowed if requested;
- Some evidentiary rules (although less stringent than those used in court); and
- Written findings of fact and conclusions of law.

No Ex Parte Contacts

A fair hearing requires the decision to be made upon the basis of evidence that all have heard, and all have had a chance to challenge. This means that the substance of all material contacts (conversations, site visits, etc.) outside of the hearing, dealing with the subject matter of the decision, must be disclosed on the hearing record, and that an opportunity be given for comment at the hearing if the material is to be considered in any way by the board or commission. **The City Attorney's Office recommends that board and commission members avoid all such ex parte discussions outside of the hearing** in order to avoid problems of disclosure under Section 1-3-6 ("Ex Parte Contacts,") B.R.C. 1981. In the alternative, whenever an *ex parte* contact cannot be avoided, we recommend that careful notes be kept of any communications so that they can be disclosed in detail. We also advise that such disclosure be made whether or not the board or commission member intends to actually rely upon the communication, so that no allegation to the contrary can ever be made. Board and commission members should also avoid site visits guided by an applicant or other interested party whenever possible, to avoid any chance of improper influence on a decision. The easiest way to disclose information is to compare what was said to the written agenda materials and then to disclose anything that was said that is not contained in the agenda materials.

6. Rules on Removal from Board or Commission Positions.

The Charter provisions concerning boards and commissions generally are contained in Section 130, "General Provisions Concerning Advisory Commissions." Section 130 provides that: "The Council shall have the power to remove any commissioner for non-attendance to duties or for cause." "Non-attendance to duties" clearly includes unexcused meeting absences, and can include other kinds of failures to attend to duties. The Council has relatively broad authority to address inappropriate conduct by board members and commissioners.

The Charter contains more specific provisions dealing with specific boards. The provisions concerning the Planning Board, contained in Section 74, are slightly more detailed with regard to removal by the council for cause: "The Council shall remove any appointed member who displays lack of interest, or fails, upon due notice, and continuously for three months, to attend meetings of the board without formal leave of absence."

The provisions for the Parks and Recreation Advisory Board contained in Section 158 are similar: "The Council may remove any board member who displays lack of interest or who fails to attend board meetings for three consecutive months without formal leave of absence."

Finally, the provisions concerning the Open Space Board of Trustees are quite general. Section 173 provides only that: "Five members of the Council may remove any board member for cause."

Council has codified the absence rule at Section 2-3-1, B.R.C. 1981: Failure to attend three consecutive regularly scheduled meetings without a leave approved by a majority of the board is grounds for Council to remove a member.

To summarize, any unexcused period of absence in excess of three regularly scheduled meetings can result in termination of membership on a board or commission. However, the Council retains the power to remove a board or commission member for absences of a shorter period and for causes other than absence from board or commission meetings.

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