

ORDINANCE NO. 144, 2014  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AMENDING SECTION 2-569 OF THE CODE OF THE CITY OF FORT COLLINS  
PERTAINING TO PROCEDURES OF THE ETHICS REVIEW BOARD

WHEREAS, Section 2-569 of the Code of the City of Fort Collins establishes the Ethics Review Board (the "Review Board") and establishes the procedures under which the Review Board operates, including the process for considering and making advisory recommendations to the City Council regarding ethics complaints; and

WHEREAS, the Review Board has met and discussed the process for initiating and considering complaints pursuant to Section 2-569, and has developed recommendations for modifying the process for initiating complaints to expedite and simplify the initial review to determine whether a Review Board investigation of the complaint is warranted, along with other process improvements; and

WHEREAS, the Review Board discussed specific revisions to Section 2-569 at meetings on June 11, 2014, and September 19, 2014, and on both occasions recommended that the Council adopt the proposed amendments to the City Code, as set forth herein; and

WHEREAS, the City Council therefore finds and intends that these amendments be adopted to further the purposes of Section 9 and to facilitate the enforcement of its provisions and the provisions of the City Code.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS that Section 2-569 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 2-569. Board of ethics.**

(a) In order to assist the Councilmembers and board and commission members in interpreting and applying the definitions, rules and procedures pertaining to ethics established by the Charter and Code and by the applicable provisions of state statute, there is hereby created a Board of the City to be known as the Ethics Review Board, hereafter referred to in this Division as the "Review Board."

(b) The Review Board shall consist of three (3) Councilmembers elected by the City Council, one (1) of whom shall be elected by the Review Board to serve as a Chairperson. One (1) alternate shall also be appointed by the City Council to serve in the event that a regular member of the Review Board is unavailable or in the event that any particular complaint or inquiry is directed towards a member of the Review Board.

(c) Subject to the provisions of Subsection (d) below, the duties and responsibilities of the Review Board shall be as follows:

- (1) To review and investigate complaints of unethical conduct filed against Councilmembers or board and commission members by any person;
  - (2) To review and investigate actual or hypothetical situations involving potential conflicts of interest presented by individual Councilmembers or board and commission members;
  - (3) After review and investigation, to render advisory opinions or interpretations pertaining to such complaints or inquiries under the relevant provisions of the Charter and Code and the applicable provisions of state law, if any, and to make written recommendations to the City Council and any affected board or commission concerning the same; and
  - (4) To propose any revisions to the provisions of the Charter or Code or other regulations, rules or policies of the City pertaining to ethical conduct as the Review Board may deem necessary and appropriate in the best interests of the City.
- (d) Complaints and inquiries shall be submitted to the Review Board only according to the following procedures:

- (1) Complaints.

- a. Any person who believes that a Councilmember or board and commission member has violated any provision of state law or the Charter or Code pertaining to ethical conduct may file a complaint with the City Clerk, who shall immediately notify the Chairperson of the Review Board, the Councilmembers or board and commission members named in the complaint and the City Council. The complaint shall be promptly scheduled for consideration by the Review Board. No more than ten (10) working days after the date of filing of the complaint, the Review Board shall meet and consider the complaint. All Councilmembers or board and commission members named in the complaint, as well as the complainant, shall be given written notice of such meeting at least three (3) working days prior to the meeting. A notice of the complaint, including the identity of the complainant, shall be posted along with the meeting notice.

- b. Upon receipt of any such complaint, the Review Board shall, after consultation with the City Attorney, decide by majority vote whether to formally investigate the complaint. In making such determination, the Review Board shall consider the following: (1) whether the allegations in the complaint, if true, would constitute a violation of state or local ethical rules; (2) the reliability and sufficiency of any facts asserted in support of the allegations; and (3) any other facts or circumstances that the Review Board may consider relevant. If the Review Board determines that the complaint does not warrant investigation, the Review Board shall send

written notice to the complainant of its determination and the reasoning behind that determination, and shall provide a copy of such notice, together with a copy of the complaint, to all Councilmembers or board or commission members named in the complaint, as well as the City Council.

c. In the event that a complaint is filed with the City Clerk under the provisions of this Subsection which alleges a violation on the part of two (2) or more members of the Review Board (including the alternate), such complaint shall not be referred to the regular Review Board for review but shall instead be submitted to an alternate Review Board consisting of all remaining Councilmembers who are not named in the complaint; provided, however, that if five (5) or more Councilmembers are named in the complaint, the alternate Review Board shall also include as many members of City boards and commissions as are necessary to constitute a seven-member board. Said board and commission members shall be selected at random by the City Clerk within ten (10) working days of the date upon which the complaint is filed with the City Clerk. Any board and commission members selected by the City Clerk who elect not to serve on the alternate Review Board shall immediately so notify the City Clerk, who shall thereafter select as many additional board and commission members as are necessary to constitute the seven-member alternate Review Board. The procedures utilized by the alternate Review Board for reviewing and investigating the complaint and rendering an advisory opinion and recommendation shall be as provided in Subsections (b) and (e) of this Section, except that: (i) the opinion and recommendation of such Review Board shall be final and shall not be submitted to the City Council for review or adoption by the City Council unless at least three (3) Councilmembers remain available to consider and take action on the opinion and recommendation; and (ii) the City Council and City staff shall, upon request by the alternate Review Board, make available to such Review Board all information in the possession of the City that is relevant to the Review Board's investigation, including, without limitation, tape recordings of any relevant executive sessions, unless the release of said information is prohibited by state or federal law; and, in reviewing and discussing such information, the Review Board shall abide by any local, state or federal confidentiality requirements that might limit or prohibit the release of such information to third parties.

(2) City Council inquiries. Any Councilmember may present directly to the Review Board any inquiry regarding the application of ethical rules of conduct under state statute or the Charter or Code to any actual or hypothetical situation of a Councilmember or board and commission member.

(e) In performing its review and investigation of any complaint or inquiry submitted in accordance with Subsection (d) hereof, the Review Board shall afford all affected Councilmembers or board and commission members an opportunity to

present their interpretations of the facts at issue and of the applicable provisions of law before rendering its opinion and recommendation. The Review Board may also request such additional materials or information from City staff or members of the public which it considers reasonably necessary or helpful to its deliberations. In addition, in the case of a complaint, the Review Board shall have the power to compel by subpoena the attendance and testimony of witnesses and the production of such documents as the Review Board may consider necessary to its investigation. After investigation, the Review Board shall forthwith issue an advisory opinion and recommendation to the City Council, which shall immediately thereafter be filed with the City Clerk and be available for public inspection. Said opinion and recommendation shall be submitted to the City Council at a regular City Council meeting, at which time the City Council shall determine whether to adopt the same. Any Councilmember or board and commission member whose conduct or circumstance is the subject of the opinion shall refrain from participating in any deliberations of the City Council regarding the opinion.

- (f) The City Attorney shall provide legal advice to the Review Board and shall prepare and execute all advisory opinions and recommendations of the review board.
- (g) Compliance with the applicable provisions of the Charter and Code and the provisions of state law, as well as decisions regarding the existence or nonexistence of conflicts of interest and the appropriate actions to be taken in relation thereto, shall be the responsibility of each individual Councilmember or board and commission member, except as provided in Subparagraph 2-568(c)(1)(g). An opinion adopted by the City Council under Subsection (e) of this Section shall constitute an affirmative defense to any civil or criminal action or any other sanction against a Councilmember or board or commission member acting in reliance thereon.

Introduced, considered favorably on first reading, and ordered published this 21st day of October, A.D. 2014, and to be presented for final passage on the 4th day of November, A.D. 2014.

ATTEST:

Wanda Nelson  
City Clerk



Karen Weikert  
Mayor

Passed and adopted on final reading on the 4th day of November, A.D. 2014.

Karen Weithornat  
Mayor

ATTEST:

Wanda Nelson  
City Clerk

