

Ethics Review Board Meeting Minutes
February 14, 2017
5:00 p.m.

Members in Attendance: Board members Ray Martinez, Gino Campana and Kristin Stephens and Ross Cunniff (alternate)

Also Present: Kevin Jones, Fort Collins Chamber of Commerce;

Staff in Attendance: Carrie Daggett, City Attorney; Jeanne Sanford, Paralegal;

A meeting of the City Council Ethics Review Board (“Board”) was held on Tuesday, February 14, 2017, in the City Attorney’s Office Large Conference Room, to review and recommend City Code amendments in follow up to and as discussed in Ethics Opinion 2017-01, and continued consideration of an inquiry by Councilmember Campana requesting that the Board consider and provide an advisory opinion regarding the question of whether a Councilmember is allowed to discuss with City staff a matter regarding which a conflict has been declared upon filing a conflict of interest disclosure.

The meeting began at 5:00 p.m. The Board reviewed the Agenda which contained the following items:

1. Review and approval of the February 7, 2017 Minutes of the Ethics Review Board.
2. Review and Approval of draft Ethics Opinion 2017-01, with continued consideration of an inquiry by Councilmember Campana requesting that the Board consider and provide an advisory opinion regarding the question of whether a Councilmember is allowed to discuss with City staff a matter regarding which a conflict has been declared upon filing a conflict of interest disclosure.
3. Review and recommend City Code amendments in follow-up to and as discussed in Ethics Opinion 2017-01.
4. Other Business.
5. Adjournment.

Chair Martinez stated that this was an Ethics Review Board meeting on February 14, 2017 at 5:00 p.m., and after roll call, declared that all members of the Board were present. Also present were Carrie Daggett, City Attorney, Jeanne Sanford, Paralegal, Kevin Jones, Fort Collins Chamber of Commerce. Ross Cunniff, as alternate, was also present.

Chair Martinez called for the record reflect that Councilmember Cunniff, as alternate, was acting on the Board and Councilmember Campana was acting as audience member, excluding his participation on item 2.

Chair Martinez called for the approval of the February 7, 2017, Minutes of the Ethics Review Board.

Councilmember Cunniff made a motion to approve the February 7, 2017, Minutes. Councilmember Stephens seconded the motion. The Board unanimously approved the February 7, 2017, Minutes.

Chair Martinez called for and read the second agenda item, which was review and discussion of draft Ethics Opinion 2017-01, with continued consideration of an inquiry by Councilmember Campana requesting that the Board consider and provide an advisory opinion regarding the question of whether a Councilmember is allowed to discuss with City staff a matter regarding which a conflict has been declared upon filing a conflict of interest disclosure.

City Attorney Daggett explained this was the first draft of Ethics Opinion 2017-01 based on discussion from last Tuesday. Ms. Daggett stated there had not been specific discussion about Article 2, Section 13 of the Charter which contains the language limiting Councilmembers dealing with administrative services City, except through the City Manager. Ms. Daggett further explained that implicitly from things being discussed, she took from the Board discussion that it was the interpretation that was intended to imply as pertaining to Councilmember activities as opposed to as an individual citizen. Ms. Daggett stated she wrote about that because it was implied by what the Board talked about but since there was not specific discussion regarding that specifically, she wanted to bring that to the Board's attention.

Ms. Daggett asked the Board to look at Page 2 under *Board Conclusions and Recommendations*. Ms. Daggett stated the Article 2, Section 13 of the Charter is not intended to limit every interaction with City organization by a person who is a Councilmember. Ms. Daggett directed the Board take a particularly close look at that to make sure everyone was comfortable with that.

Councilmember Cunniff stated it was consistent with his understanding of a professional role. Mr. Cunniff explained that *professional role* actually covers the situation the Board discovered last meeting with Councilmember Campana's question of staff asking him for feedback in his professional role.

City Attorney Daggett explained this ethics opinion was not as extensive as other opinions in the past in the areas of analysis and discussion, since this situation was more of a discussion about looking at the requirements that are in Charter and Code.

Ms. Daggett explained that since drafting the ethics opinion and related Code language, she did a further review and thought the Board needed to take a slightly more refined approach. Ms. Daggett stated she understood the Board wants to see the ethics opinion language change, but the absolute language discussed last week would prevent Councilmembers from protecting their own interests in any way in the four (4) years they are on Council which could become an issue for someone. For example, if a Councilmember's property was taken for a project which they have declared a conflict and are not acting as Councilmember, it would be hard for that

Councilmember to protect his/her interests without directly or indirectly attempting to influence. Ms. Daggett explained the current language creates an opening that eliminates the clarity talked about before, but is suggesting it because it most likely creates an indefensible barrier to someone protecting their own interests and exercising their first amendment rights to protecting their own interests when they have no other way to do that.

Councilmember Cunniff asked if there was a way to narrow it down to matters under appeal in quasi-judicial.

Ms. Daggett explained that the place where she was trying to narrow it down was where it said, “the prohibition shall not apply if the subject matter of the conflict is an individual and personal matter of the Councilmember.”

Councilmember Cunniff stated he felt more comfortable being explicit with that because on policy level issues, there is normally not the opportunity for individual citizens to have a structured role in discussions with City Council and restricting City Council from participating in general public comments seems consistent with the intent of Charter.

Ms. Daggett suggested one way to get past the ethics opinion piece is she could make the discussion in #3 more general suggesting the change to Code and move on from there.

Councilmember Cunniff approved of this idea.

Councilmember Campana stated his intent to finalize the Opinion, reconvene and work on Code changes next meeting. Mr. Campana stated it would be best to wrap this up before April 4th.

City Attorney Daggett stated her suggestion to modify #3 would be to say, “the Board recommends that the Board further consider a recommendation to Council to amend City Code Section 2-568(c)(2) to more clearly address the actions permitted.”

Chair Martinez asked if City Attorney Daggett could work on alternative language and she stated she would.

Councilmember Cunniff stated the big picture is to develop language that allows a Councilmember to directly or indirectly represent their personal property interests without basically completely nullifying the conflict of interest provision.

City Attorney Daggett agreed.

City Attorney Daggett stated if you start out with the interpretation of Charter that says that a Councilmember cannot influence, then she wanted to make clear we are tightening down from there. Ms. Daggett stated she was not deviating from Charter, but defining the outlines of what Council thinks is appropriate. Ms. Daggett stated she would be happy to work on and present different options for the Board to look at.

Chair Martinez stated he would like that and that he did not think you could tell an elected official they cannot protect their own property interests.

Councilmember Cunniff brought up a zoning issue that is coming up by his house and he would like an ethics opinion on whether this will require him to recuse himself. Mr. Cunniff stated his property will be in within the notification area, but they are not rezoning the property. Mr. Cunniff also suggested saving this issue until it comes forward. The Board discussed the similar situation which came up with the mall redevelopment.

City Attorney Daggett stated the gist of the situation which came up with the mall redevelopment project was that the mere fact you are in a notice area does not necessarily mean you have a conflict, but certain circumstances could create a conflict.

Councilmember Cunniff stated it was important to take this issue all the way through to conclusion.

City Attorney Daggett asked if the Board was prepared to approve the ethics opinion to get it on the agenda next Tuesday night.

Councilmember Cunniff made the motion to approve the Ethics Opinion 2017-01 and Councilmember Stephens seconded the motion. The Board unanimously approved Ethics Opinion 2017-01.

Councilmember Campana asked if he should fill out a new conflict form and City Attorney Daggett stated he could do that.

Chair Martinez read the next agenda item which was review and recommend City Code amendments and follow up to and as discussed in Ethics Opinion 2017-01.

City Attorney Daggett stated she felt there was a desire to see different permutations to this to get to the idea of the matter of things uniquely affecting Councilmembers but not other citizens. Ms. Daggett stated she would work on some variations on that to compare side by side to see the issues. She is happy to do that and get out well ahead of time.

Chair Martinez called for other business. As there was no other business, Chair Martinez made a motion to adjourn and Councilmember Campana seconded.

The Board voted unanimously to adopt Chair Martinez's Motion to adjourn the meeting.

Meeting adjourned at 5:39 p.m.

Carrie M. Daggett, City Attorney