

RESOLUTION 2017-025
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ACCEPTING ADVISORY OPINION AND RECOMMENDATION
NO. 2017-01 OF THE ETHICS REVIEW BOARD

WHEREAS, the City Council has established an Ethics Review Board (the "Board") consisting of designated members of the City Council; and

WHEREAS, the Board is empowered under Section 2-569 of the City Code to render advisory opinions and recommendations regarding actual or hypothetical situations of Councilmembers or board and commission members of the City; and

WHEREAS, the Ethics Review Board met on February 7 and February 14, 2017, to review and approve the draft Ethics Opinion 2017-01, responding to an inquiry by Councilmember Campana requesting that the Board consider and provide an advisory opinion regarding whether under the City Charter and City Code City Councilmembers who have declared a conflict of interest regarding a matter may discuss that matter in his or her personal or professional capacity with City staff; and

WHEREAS, the Board has issued an advisory opinion with regard to this matter concluding that there is no prohibition in the City Charter and City Code prohibiting City Councilmembers who have declared a conflict of interest regarding a matter from discussing that matter in his or her personal or professional capacity with City staff, provided that the Councilmember does not request special treatment, a special interpretation or special application of a City Code provision or other requirement, policy or program; and

WHEREAS, the Board indicated it will further review and recommend an amendment of City Code Section 2-568(c)(2), which prohibits Councilmember from representing persons or interests before the City Council or any City board or commission; and

WHEREAS, the City Council has reviewed the opinion of the Board and wishes to adopt the same.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that Opinion No. 2017-01 of the Ethics Review Board, a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, has been submitted to and reviewed by the City Council, and the Council hereby adopts the opinion contained therein.

Passed and adopted at an adjourned meeting of the Council of the City of Fort Collins
this 21st day of February, A.D. 2017.



Mayor

ATTEST:

W Winkelmann
City Clerk



2017 -01
**OPINION OF THE ETHICS REVIEW BOARD
OF THE CITY COUNCIL OF THE CITY OF FORT COLLINS**

February 14, 2017

The City Council Ethics Review Board ("the Board") met on February 7, 2017, to render an advisory opinion on a question submitted to the Board by Councilmember Gino Campana. The question presented is the whether a Councilmember may discuss with City staff a matter regarding which the Councilmember has declared a conflict (recognizing that communicating with Council/Councilmembers and board and commission members is prohibited).

Background.

This inquiry relates not to whether a conflict of interest must be declared, but rather to whether what the limits are on a boardmember or Councilmember once a conflict has been declared.

Article IV, Section 9(b) of the City Charter states as follows (*emphasis added*):

...
(b) Rules of conduct concerning conflicts of interest.

...
(3) Interests in other decisions. Any officer or employee who has, or whose relative has, a financial or personal interest in any decision of any public body of which he or she is a member or to which he or she makes recommendations, shall, upon discovery thereof, disclose such interest in the official records of the city in the manner prescribed in subsection (4) hereof, and shall refrain from voting on, attempting to influence, or otherwise participating in such decision in any manner as an officer or employee.

Ethics Opinion 2016-01, approved by the City Council in July 2016, clarified that the language of Article IV, Section 9(b)(3) of the City Charter is best read to restrict only actions taken "as an officer or employee," meaning, not in a personal capacity, but in an official or formal one.

In addition to these Charter limitations on Councilmembers with conflicts of interest, Section 2-568(c)(2) of the Fort Collins Municipal Code provides that "No Councilmember shall represent any person or interest before the City Council or any board or commission of the City."

In 2014, the City Council adopted City Code Section 2-568(c)(4), regarding requests for special treatment. That Section provides as follows:

- (4) No officer or employee shall request on his or her own behalf, or for or through a relative or related entity, from any other officer or employee, or grant to any other officer or employee, or relative or related entity of the same, any consideration, treatment or advantage in the interpretation, administration or enforcement of the Charter, Code, any City regulation, policy or program or in the provision of public services, that is substantially different from that available to other persons in the same circumstances or having the same need.

Finally, City Charter Article II, Section 13 limits Councilmembers' latitude to discuss matters with City staff "except for purposes of inquiry" without working through the City Manager, and precluded Councilmembers from giving orders, publicly or privately, to subordinates of the City Manager. This provision does not express a distinction between Councilmember contacts in an official capacity and Councilmember contacts in an individual capacity. Here is the text of that Section:

Section 13. - Council not to interfere with administrative service.

Except for purposes of inquiry, the Council and its members shall deal with the administrative service of the city solely through the City Manager, and neither the Council nor any member shall give orders to any subordinates of the City Manager either publicly or privately.

Board Conclusions and Recommendations:

1. Upon review of the foregoing Charter and Code provisions, the Board concluded that as these provisions are currently written, there is nothing that prohibits a Councilmember from interacting with City staff regarding a particular matter, after declaring a conflict of interest regarding that matter, so long as the Councilmember is not:
 - a. acting in his or her role as a Councilmember; or
 - b. seeking special consideration, treatment or advantage in the interpretation, administration or enforcement of the Charter, Code, any City regulation, policy or program or in the provision of public services.
2. Article II, Section 13 of the City Charter is not intended to limit every interaction with the City organization by a person who is a Councilmember. Rather, it is intended to limit Councilmember interactions with City staff in the Councilmember role. Where the interaction is by the Councilmember in his or her personal or professional role, so long as other applicable requirements and limits are met, this Section is not interpreted to prohibit the interaction. To read this Section otherwise would preclude Councilmembers from normal interactions with the City

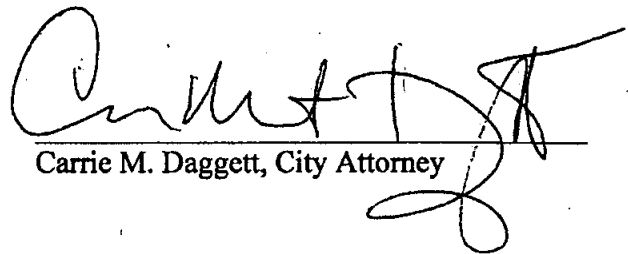
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organization, such as establishing Utility services, seeking a building permit, or participating in a Recreation program.

3. The Board intends to further consider potential amendments to City Code Section 2-568(c)(2) to clarify the limits on Councilmember actions once a conflict of interest has been declared, and will make further recommendation to Council in that regard after its discussions are completed.

This advisory opinion was reviewed and approved by Councilmembers Ray Martinez, and Kristin Stephens, as the designated regular members of the Ethics Review Board, and Councilmember Ross Cunniff, as the alternate member of the Board. Pursuant to Section 2-569(e) of the City Code, this opinion and recommendation is to be immediately filed with the City Clerk and made available for public inspection. Additionally, this opinion shall be considered by the City Council at its regular meeting on February 21, 2017.

Dated this 14th day of February, 2017.



Carrie M. Daggett, City Attorney