

# Ethics Review Board Meeting Minutes

June 11, 2014

10:45 a.m.

City Attorney Large Conference Room

**Members in Attendance:** Board members Karen Weitkunat, Gino Campana, Lisa Poppaw, and Russ Cunniff (alternate).

**Staff in Attendance:** Steve Roy, City Attorney; John R. Duval, Senior Assistant City Attorney, Cary Carricato Alton, Paralegal.

A meeting of the City Council Ethics Review Board (“Board”) was held on Wednesday, June 11, 2013, to consider the following issues:

1. Proposed revisions to the definitions contained in City Code Sec. 2-568, relating to ethical rules of conduct.
2. Proposed revisions to the complaint process as referenced in City Code Sec. 2-569.

The meeting began at 10:51 a.m.

City Attorney confirmed with the members of the Board they had had an opportunity to review the materials provided to them in advance of the meeting. The Mayor indicated a preference of starting with the complaint process revisions.

## **Proposed Revisions to the Complaint Process, City Code Sec. 2-569**

Mr. Roy summarized the intent to amend the current complaint process to streamline the process and screening of complaints. He also summarized the proposed new process. Essentially, any complaint would be submitted to the City Clerk’s office instead of the Mayor, which is how the current process currently operates. The Review Board would meet within ten (10) working days of the filing of a complaint. Based on the specific criteria set out in the revised complaint process, the Review Board would decide whether a complaint should be formally investigated. If the Review Board determined that a complaint does not warrant investigation, the Review Board would notify the complainant in writing and explain the reasoning behind the conclusion. An Alternate Review Board would be appointed if a complaint alleges ethical violations on the part of two or more members of the Review Board. Any Councilmember whose conduct or circumstances is the subject of an opinion of the Review Board would refrain from participating in deliberations of the Council regarding that opinion. The Board Members spent a few minutes reviewing the suggested modifications. The Mayor asked if Mr. Roy had received any feedback from the commissions and boards that were asked to comment on the streamlining of the current complaint procedure. Mr. Roy indicated that no comments had been received to date, and that the modifications had been sent to all of the boards and commissions.

The Board had a short discussion regarding the revisions proposed to the complaint process and the goal of streamlining the process. Mr. Roy indicated that the initial feedback had been that this modification might be viewed as shuttling the complaints out of the public eye, at least for the initial screening. Mr. Cunniff indicated that the Ethics Review Board is a public meeting, so he didn't see that this was taking the concerns out of public view, and he indicated that the meeting is just not televised as the Council meetings are. Mr. Cunniff also indicated that the intent is to streamline the process, and not to hide anything.

Complaints would not be sent to the Council as a whole unless and until the Ethics Review Board finds that the complaint has merit, instead of every complaint going to the entire Council. However, notice would be given to the Council that a complaint had been filed. (Lisa Poppaw arrived at this time). Mr. Roy outlined how the process would work, including a decision by majority vote as to whether or not a complaint needs to be submitted to the entire Council for consideration. Mr. Roy indicated that, historically, all complaints that have gone to the Council have been sent to the Ethics Review Board for consideration, so the new process would eliminate the extra time between Council meetings and give the complaint quicker consideration.

The Mayor indicated that her only concern revolved around the criteria to be used in determining whether or not a full investigation should be done. Mr. Campana indicated that the criteria are essentially what the Ethics Review Board has always worked from and always applied to complaints. Mr. Roy indicated that even if the Ethics Review Board determined that a complaint did not merit a full investigation, the entire Council could recommend that a full investigation be completed.

The Board unanimously agreed that the suggested revisions to the complaint process make sense and would likely accomplish the streamlining of the process. Mr. Roy indicated that the revisions to the complaint process should be available for Council consideration on July 15, 2014.

#### **Proposed Revisions definitions contained in City Code Sec. 2-568**

The Board then moved on to the consideration of modifying the definitions contained in City Code Section 2-568. Mr. Roy asked that Mr. Duval explain how he came up with the revised definitions.

Mr. Duval indicated that the terms that the Board is dealing with pertain to *personal interest*, as defined in the Charter. Mr. Duval indicated that he looked at case law as to how courts have treated the specific terms in this Code section. He went on to explain that whenever there are disagreements about terms, the courts have generally applied the standard of what a reasonably prudent person understands a term to mean. Mr. Duval did some research about whether or not the courts had defined "detriment different in kind". He did find that they have defined the term the context of public nuisance law and condemnation proceedings. He also discussed what courts have found "different in degree" to mean. Mr. Duval indicated that the court has found that "different in kind from that experienced by the general public" to mean *of a type or nature*

*not shared by the general public as a whole and not merely different in degree from that experienced in general by the public.* He also discussed the term “substantial” and “direct” as defined by the courts, as well as “benefit” and “detriment”.

The Board then discussed examples of prior situations in which Council members have recused themselves because of a benefit or detriment that was either “different in degree” or “different in kind”. Mr. Campana indicated a desire to reduce the gray area of the definition of terms, because they are currently so broad. Mr. Roy indicated that although some things in this Code provision could be revised to try to clarify the meanings of certain terms, they cannot be modified in such a way that they conflict with the Charter.

Mr. Roy indicated that “general public” does not necessarily mean everyone in the City of Fort Collins. The Board also discussed the term “similarly situated”.

The Board generally agreed that the following definitions are appropriate:

*Benefit* shall mean an advantage or gain.

*Different in kind* shall mean of a different type or nature not merely different in degree.

*Direct* shall mean resulting immediately and proximately from the circumstances and not from an intervening cause.

*Detriment* shall mean disadvantage, injury, damage or loss.

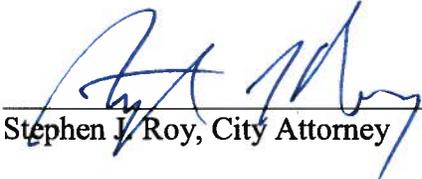
*Substantial* shall mean more than nominal in value or extent.

Mr. Cunniff indicated that he believed it was necessary to also define “different in degree”.

The Board then discussed a possible need to further define the terms “general public”, “community”, “public services”, and possibly “geographic proximity”.

Mr. Campana indicated he would like to meet one more time to finalize these definitions prior to bringing them to Council.

Meeting adjourned at 11:55 a.m.

  
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Stephen J. Roy, City Attorney