

Ethics Review Board Meeting Minutes
September 19, 2014
11:45 a.m.
City Attorney Large Conference Room

Members in Attendance: Board members Karen Weitkunat, Gino Campana, and Ross Cunniff (alternate).

Staff in Attendance: Carrie Daggett, Interim 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 Friday, September 19, 2014, to consider the following issues:

1. Proposed revisions to the definitions 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 11:50 a.m. The Board reviewed the Agenda which contained the following items:

1. Review of June 11, 2014, Meeting Minutes.
2. Appointment of Chair for Meeting of the Ethics Review Board for September 19, 2014, Meeting.
3. Discussion of proposed revisions to the definitions in City Code Sec. 2-568, relating to ethical rules of conduct, and related Board recommendation.

4. Review of items for presentation to City Council for adoption, including proposed revisions to Ethics Review Board Complaint Process in City Code Sec. 2-569, and related Board recommendation.
5. Other Business.
6. Adjournment.

The Board reviewed the minutes of the June 11, 2014 meeting and acknowledged they accurately reflected the contents of the meeting. (Mr. Cunniff then arrived). The Board discussed appointment of a chairperson for the meeting. The Mayor volunteered to chair the meeting, and the members agreed to this by unanimous consent.

Proposed Revisions definitions to City Code Sec. 2-568 (Definitions).

The Mayor summarized her thoughts concerning the definitions and their relationship going directly to the complaint process. The Board reviewed the prior minutes concerning additional possible definitions discussed on June 11, 2014. Carrie Daggett described the evolution of the work done following the June 11, 2014 discussion regarding terms that were discussed as proposed modifications from the existing Municipal Code.

Mr. Campana wanted to discuss the term “judgment of a reasonably prudent person.” Mr. Duval responded that this is a legal term of art used to describe an objective evaluation rather than a subjective one.

The Mayor asked that the Board move methodically through the additional definitions in the version of Section 2-568 as described in the meeting materials. The Board then discussed the proposed definition of the term “different in kind from that experienced by the general public”. Mr. Cunniff indicated that in reading the memorandum received this week, he remembered the discussion of “different in kind” vs. “different in degree” and noted that “different in kind” was a recognized term from the Fort Collins City Charter and had a recognized legal meaning. There was Board discussion at this point regarding the desire to stay consistent with legally defined terms so the courts would interpret them the same way as the City.

The Board then moved on to discuss the terms “direct”, “detriment”, and “financial interest”. Mr. Cunniff expressed a desire to include the text of the Charter referenced definitions within Section 2-568 rather than just referencing the Charter.

The Board then discussed amending the suggested definition of “public services” to mean “city services provided to or made available for the public’s benefit”. They also discussed adding to the definition “similarly situated citizens” to mean “citizens in like circumstances having comparable legal rights and obligations”. They discussed the general concepts of “legal rights” and “natural rights,” and whether the term “legal” should be included in this definition.

The Board moved on to the last definition, “substantial”. They agreed the definition was appropriate. The Board reviewed the changes that are being recommended to the definitions to be taken as an ordinance to the Council as a whole.

The Board discussed different scenarios that have arisen in the past in order to apply the definitions in an effort to analyze how useful the new definitions are in determining whether a conflict exists. Mr. Cunniff brought up the example of electric charging stations.

As an additional example, Ms. Daggett brought up prior Councilmember Kastein’s question related to the park and ball fields (particularly the lighting related to the ball field) that his property abutted. Mr. Kastein ultimately declared a conflict. The Board discussed whether, under the current definitions, this Councilmember would have had a conflict. Mr. Duval cited to the condemnation

case regarding Colonial Hotel off of I-70 in Denver as an example of the Court's use of this term and the Board discussed this example. The Board discussed the differences between "different in kind" as it contrasts with "different in degree".

Ms. Daggett also discussed the interpretation challenges that arise from the related language in the Charter, the prior definitions of "personal interest" and the changes that have been made to that definition.

Mr. Campana indicated that in the last several years, and regarding some of the conflicts that have been discussed, several Councilmembers have been conflicted out on items where their knowledge and experience could have been very helpful to informing the public and other Councilmembers with less knowledge and experience. Mr. Campana expressed an interest in really trying to nail down the process and definitions which would add clarity to the process.

The Board briefly discussed related issues in quasi-judicial proceedings, and the distinction between quasi-judicial and legislative matters. The Board discussed the need for any defined word to remain close to the same definition in the Charter.

The Mayor queried about whether the revisions to the definitions are likely to accomplish the original intent of the revisions. The Mayor reiterated the purpose was to make it easier for the Ethics Review Board to reach a conclusion based on the definitions, the Charter provisions, and the complaint process. Mr. Cunniff expressed that the discussions that the Board has had have been productive, and he expressed an interest in encapsulating the discussion and onboarding them with the Council as a whole.

Ms. Daggett reminded the Board members these revised definitions, especially interpreting the terms in a more restrictive way than that outlined in the code, apply to other Board and Commission members and City employees and not only to Councilmembers. Ms. Daggett indicated it is important to remember the consequences under the Charter where a conflict of interest exists.

The Board indicated they unanimously support bringing forward the changes to the City Council, as discussed above.

Proposed Revisions to City Code Sec. 2-569 (Complaint Process).

The Board then moved on to the Complaint Process. Ms. Daggett reminded the Board members about what they had previously recommended on June 11, 2014.

The Board revisited their previous discussions and their goal of improving the process to handle ethics complaints more quickly. Mr. Cunniff raised public disclosure and notice requirements and indicated a desire to add a procedure wherein transparency and publication of the process is addressed. The Board discussed possible the requirement that notice of meetings of the Ethics Review Board be provided. Mr. Cunniff expressed an interest in people signing up for e-mail

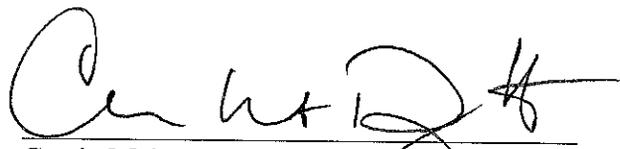
notification when a new meeting was scheduled as it relates to any and all Council meetings and any committee meeting. Mr. Campana suggested that the Notice should say the Ethics Review Board was meeting on an allegation of an ethics violation. Ms. Daggett suggested that one alternative would be a Notice and agenda that identified the complaint as an agenda item by reference to the person(s) who lodged the complaint.

Ms. Daggett indicated that she would review whether there are any legal concerns related to this approach and the requirements for public notice. She indicated this particular procedure about how the notice would be posted for the initial determination of merit is not necessarily one that needs to be in the Code, but is something that could be in a set of written procedures regarding complaints which allege ethics violations.

Mr. Cunniff and Mr. Campana indicated a desire to make the notice requirement part of the Code revisions to the Complaint process.

The Board unanimously approved the revisions to Sections 2-568 and 2-569 as discussed, and indicated they desired to see this on Council Agenda as a discussion item at the earliest practical time, possibly in October.

Meeting adjourned at 1:08 p.m.



Carrie M. Daggett, Interim City Attorney