

# AGENDA ITEM SUMMARY

October 21, 2014

City Council

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## STAFF

Carrie Daggett, Interim City Attorney

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## SUBJECT

Items Relating to Ethics Review Board Code Changes

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## EXECUTIVE SUMMARY

- A. First Reading of Ordinance No. 144, 2014, Amending Section 2-569 of the City Code Pertaining to Procedures of the Ethics Review Board.
- B. First Reading of Ordinance No. 145, 2014, Amending Section 2-568(a) of the City Code Pertaining to Definitions Applicable to Ethical Rules of Conduct.

The purpose of the first ordinance is to adopt revisions to the City Code to simplify and expedite the process of initiating Ethics Review Board review of ethics complaints and to update provisions related to alternative composition of the Board in the event members of the Board are themselves the subject of a complaint. The second ordinance is intended to incorporate into the City Code the definitions related to conflicts of interest that are specified in the City Charter, and to add new definitions to assist in the interpretation and application of the conflicts of interest provisions in the City Charter and City Code.

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## STAFF RECOMMENDATION

Staff recommends adoption of the Ordinances on First Reading.

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## BACKGROUND / DISCUSSION

### Introduction

The Ethics Review Board (the "Board") met on June 11, 2014, to discuss possible amendments to City Code Sections 2-568 and 2-569. It met again on September 19, 2014, and voted to recommend to Council the amendments to Section 2-568 and 2-569 as set out in the proposed ordinances.

Code Section 2-568 establishes certain "ethical rules of conduct" that apply to the City's councilmembers, board and commission members, and employees. Subparagraph (a) of Section 2-568 defines several of the words and terms used in both Sections 2-568 and 2-569.

Code Section 2-569 creates the Board and defines its duties and procedures in providing advisory opinions concerning conflicts of interest and other ethical matters that pertain to councilmembers and board and commission members that arise under the City's Charter and Code and under state law. The Board does not hear complaints related to employees.

### Proposed Amendments

- A. First Reading of Ordinance No. 144, 2014, Amending Section 2-569 of the City Code Pertaining to Procedures of the Ethics Review Board.

The amendments proposed for Section 2-569 relate primarily to changing the Board's procedures for considering an ethics complaint and how that process would be initiated:

- The proposed process would eliminate the currently required review of each complaint by the City Council prior to consideration by the Board. Instead, the City Clerk would notify the chairperson of the Board, the persons (Councilmembers or board and commission members) named in the complaint, and the City Council of the complaint.
- Then the Board would meet (after notice of at least three days to the complainant and subjects of the complaint, and after required public notice of the meeting) within ten days to determine whether to formally investigate the complaint, based on whether the allegations, if true, would constitute an ethics violation, the reliability and sufficiency of the supporting facts, and any other relevant facts or circumstances.
- If the Board determines that an investigation is not warranted, written notice of the determination and the Board's reasoning for it would be provided to the complainant, the subjects of the complaint, and the City Council.
- If the Board determines that a formal investigation is warranted, the Board would proceed to review and investigate the complaint as in the past.

Ordinance No. 144 also adds a clear statement of the Board's power to compel by subpoena the attendance and testimony of witnesses and production of documents. It also provides for the appointment of an alternate Board in the event that members of the Board are the subject of an ethics complaint.

- B. First Reading of Ordinance No. 145, 2014, Amending Section 2-568(a) of the City Code Pertaining to Definitions Applicable to Ethical Rules of Conduct.

The amendments proposed for Section 2-568 add several new definitions to subparagraph (a) of the section. These new definitions will help clarify and facilitate the enforcement of the conflicts-of-interest provisions in Section 9 of Article IV of the City Charter. More specifically, they are intended to reduce the difficulty the Board and Council have experienced in the past in understanding and applying the term "personal interest" as it is used in Section 9(b)(3) of Charter Article IV. It is therefore also being proposed that Code Section 2-568 be amended to expressly provide that the new and existing definitions in Section 2-568(a) be applied to the conflicts-of-interest provisions in Section 9 of Charter Article IV.

### Personal Interest

Section 9(b)(3) of Charter Article IV makes it a misdemeanor offense for any councilmember, board or commission member, or City employee to vote on, attempt to influence, or otherwise participate in any manner as a City official in any decision of any City body or office of which he or she is member or to which he or she makes recommendations if he or she, or a "relative", has a "personal interest" in that decision. If convicted under Section 9(b)(3), the maximum penalties are a \$2,650 fine or 180 days imprisonment, or both such fine and imprisonment. In addition, the convicted City official is deprived of his or her office or employment and is ineligible for *any* City office or employment for two years after conviction.

"Personal interest" is defined in Section 9(a) of Charter Article IV to mean "*any interest . . . by reason of which an officer or employee, or a relative of such officer or employee, would, in the judgment of a reasonably prudent person, realize or experience some **direct and substantial benefit or detriment different in kind from that experienced by the general public.***" The words and terms in this definition in bold that have created the difficulty in understanding and applying Section 9(b)(3). Consequently, it is for these words and terms that definitions have been proposed for adoption in Section 2-568(a).

It should also be noted that two of the new definitions are terms used in the second of the three exceptions to a "personal interest" as set out in Section 9(a). This second exception excludes from the definition of "personal interest" the interest a City official, or his or her relative, "has in the receipt of *public services* when such services are generally provided by the City on the same terms and conditions to all *similarly situated citizens.*"

### Approach To Drafting Definitions

The approach that has been followed in drafting the proposed definitions has been to give the defined words and terms the meaning that the Colorado courts are likely to give them. Since the newly defined words and terms from the “personal interest” definition that are being proposed are words and terms used, but not defined, in the City Charter, the meaning given to them are hopefully consistent with how the Colorado courts would interpret and apply them. In other words, the proposed amendments define these words and terms in the “personal interest” definition in a way consistent with how the courts would likely define or use them.

### Recommended Definitions

Based on the foregoing, the Board and the City Attorney’s Office are recommending the following new definitions be added to Code Section 2-568(a). (Because “public services” and “similarly situated citizens,” are the key terms used in the second exception to the “personal interest” definition, definitions for these terms have also been recommended.)

- *Benefit* shall mean an advantage or gain.
- *Different in kind from that experienced by the general public* shall mean of a different type or nature not shared by the public generally and that is not merely different in degree from that experienced by the public generally.
- *Direct* shall mean resulting immediately and proximately from the circumstances and not from an intervening cause.
- *Detriment* shall mean disadvantage, injury, damage or loss.
- *Public services* shall mean city services provided to or made available for the public’s benefit.
- *Similarly situated citizens* shall mean citizens in like circumstances having comparable legal rights and obligations.
- *Substantial* shall mean more than nominal in value, degree, amount or extent.

### ATTACHMENTS

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1. Ethics Review Board minutes, June 11, 2014 (PDF)
2. Ethics Review Board minutes, September 9, 2014 (PDF)

## 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.

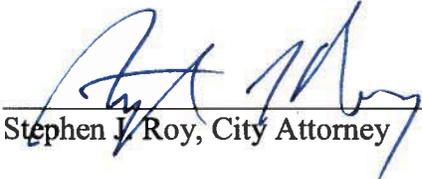
*Substantial* shall mean more than nominal in value or extent.

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

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.

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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

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** ~~elected~~ 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, Mayor, 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. ~~placed on the agenda for the next special or regular City Council meeting for review and possible action by the City Council.~~ 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, ~~City Council shall~~ decide by majority vote whether to submit the complaint to the Review Board for an advisory opinion as to formally investigate ~~whether the violation alleged in 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. ~~has occurred and, if so, the action, if any, that should be taken with regard to such violation. In the event that such complaint is not submitted to the Review Board, the City Council may decide what, if any, other action pertaining to the same is appropriate.~~

c. In the event that a complaint is filed with the City Clerk ~~Mayor~~ 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), four (4) or more Councilmembers,~~ such complaint shall not be referred to the ~~regular Review Board City Council~~ for review but shall instead be submitted to an alternate Review Board ~~consisting~~ ~~Said Board shall consist of all any~~ remaining Councilmembers who are not named in the complaint; ~~provided, however, that if five (5) or more Councilmembers are named in the complaint, and 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~~ 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 Mayor~~. 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 below,~~ except that: (i) the opinion and recommendation of such 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, ~~without a conflict of interest, and are able~~ 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 Board all information in the possession of the city that is relevant to the ~~Board's~~ 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 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 ~~or complaint~~ 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 ~~placed on the agenda for the next special or~~ **submitted to city Council at a** regular City Council meeting, at which time the City Council shall determine whether to adopt the same. Any Councilmember ~~having a personal or financial interest in~~ **whose conduct or circumstance is the subject of** the opinion shall refrain from participating in any deliberations of the City Council regarding the ~~same~~ **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.

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Mayor

ATTEST:

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City Clerk

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

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Mayor

ATTEST:

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City Clerk

ORDINANCE NO. 145, 2014  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AMENDING SECTION 2-568(a) OF THE CODE OF THE CITY OF FORT COLLINS  
PERTAINING TO DEFINITIONS APPLICABLE TO ETHICAL RULES OF CONDUCT

WHEREAS, Section 2-568(a) of the City Code currently defines a number of words and terms as they are used in the ethical rules of conduct set out in Section 2-568(c) and as they are used in City Code Section 2-569, which establishes the Ethics Review Board (the “Review Board”) and sets out the procedures under which the Review Board operates; and

WHEREAS, after reviewing the definitions contained in Section 2-568 of the City Code, the Review Board believes that several new definitions should be added to this Section to clarify the meaning of “personal interest” as this term is used in Section 9(a) of Article IV of the City Charter and in Section 2-569; and

WHEREAS, the City Council therefore finds and intends that these new definitions be applied to and used in Section 9 of Article IV of the City Charter to further the purposes of Section 9 and to facilitate the enforcement of its provisions.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS that Section 2-568(a) of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 2-568. Ethical rules of conduct.**

(a) *Definitions.* The following words, terms and phrases, when used in this Section, Section 2-569 and in Section 9 of the Charter Article IV, shall have the following meanings:

(1) *Benefit* shall mean an advantage or gain.

(2) *Board and commission member* shall mean a member of any appointive board or commission of the City.

(3) *Confidential information* or *information received in confidence* shall mean:

a. Information contained in any writing that may properly be withheld from public inspection under the provisions of the Colorado Open Records Act and that is marked "confidential" when provided to the officer or employee;

b. All information exchanged or discussed in any executive session properly convened under § 2-31 or 2-71 of the Code, except to the extent that such information is also contained in a public record available to the general public under the provisions of the Colorado Open Records Act; or

c. All communications between attorneys representing the City and officers or employees of the City that are subject to the attorney-client privilege, whether oral or written, unless the privilege has been waived.

(34) *Councilmember* shall mean a member of the City Council.

(5) *Different in kind from that experienced by the general public* shall mean of a different type or nature not shared by the public generally and that is not merely different in degree from that experienced by the public generally.

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

(7) *Detriment* shall mean disadvantage, injury, damage or loss.

(8) *Financial interest* shall have the meaning given to this term in Section 9(a) of Charter Article IV, which states:

*Financial interest* means any interest equated with money or its equivalent. Financial interest shall not include:

a. the interest that an officer, employee or relative has as an employee of a business, or as a holder of an ownership interest in such business, in a decision of any public body, when the decision financially benefits or otherwise affects such business but entails no foreseeable, measurable financial benefit to the officer, employee or relative;

b. the interest that an officer, employee or relative has as a nonsalaried officer or member of a nonprofit corporation or association or of an educational, religious, charitable, fraternal or civic organization in the holdings of such corporation, association or organization;

c. the interest that an officer, employee or relative has as a recipient of public services when such services are generally provided by the city on the same terms and conditions to all similarly situated citizens, regardless of whether such recipient is an officer, employee or relative;

d. the interest that an officer, employee or relative has as a recipient of a commercially reasonable loan made in the ordinary course of business by a lending institution, in such lending institution;

e. the interest that an officer, employee or relative has as a shareholder in a mutual or common investment fund in the holdings of such fund unless the shareholder actively participates in the management of such fund;

f. the interest that an officer, employee or relative has as a policyholder in an insurance company, a depositor in a duly established savings association or bank, or a similar interest-holder, unless the discretionary act of such person, as an officer or employee, could immediately, definitely and measurably affect the value of such policy, deposit or similar interest;

g. the interest that an officer, employee or relative has as an owner of government-issued securities unless the discretionary act of such owner, as an officer or employee, could immediately, definitely and measurably affect the value of such securities; or

h. the interest that an officer or employee has in the compensation received from the city for personal services provided to the city as an officer or employee.

(49) *Officer or employee* shall mean any person holding a position by election, appointment or employment in the service of the City, whether part-time or full-time, including any member of the City Council and any member of any authority, board, committee or commission of the City, other than an authority that is:

- a. Established under the provisions of the Colorado Revised Statutes;
- b. Governed by state statutory rules of ethical conduct; and
- c. Expressly exempted from the provisions of Article IV of the City Charter by ordinance of the City Council.

(10) *Personal interest* shall have the meaning given to this term in Section 9(a) of the Charter Article IV, which states:

*Personal interest* means any interest (other than a financial interest) by reason of which an officer or employee, or a relative of such officer or employee, would, in the judgment of a reasonably prudent person, realize or experience some direct and substantial benefit or detriment different in kind from that experienced by the general public. *Personal interest* shall not include:

- a. the interest that an officer, employee or relative has as a member of a board, commission, committee, or authority of another governmental entity or of a nonprofit corporation or association or of an educational, religious, charitable, fraternal, or civic organization;

b. the interest that an officer, employee or relative has in the receipt of public services when such services are generally provided by the city on the same terms and conditions to all similarly situated citizens; or

c. the interest that an officer or employee has in the compensation, benefits, or terms and conditions of his or her employment with the city.

(11) *Public body* shall have the meaning given to this term in Section 9(a) of Charter Article IV, which states:

*Public body* means the Council or any authority, board, committee, commission, service area, department or office of the city.

(12) *Public services* shall mean city services provided to or made available for the public's benefit.

(13) *Relative* shall have the meaning given to this word in Section 9(a) of Charter Article IV, which states:

*Relative* means the spouse or minor child of the officer or employee, any person claimed by the officer or employee as a dependent for income tax purposes, or any person residing in and sharing with the officer or employee the expenses of the household.

(14) *Similarly situated citizens* shall mean citizens in like circumstances having comparable legal rights and obligations.

(15) *Substantial* shall mean more than nominal in value, degree, amount or extent.

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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.

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Mayor

ATTEST:

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City Clerk

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

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Mayor

ATTEST:

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City Clerk