

**AGENDA ITEM SUMMARY**  
 Ethics Review Board

March 13, 2020

**STAFF**

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Carrie Daggett, City Attorney

**SUBJECT**

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Hearing and consideration in accordance with City Code Section 2-569(e) of whether alleged lobbying and political consulting activities of Councilmember Ken Summers has carried out political consulting/lobbying activities that constitute a violation of state or local ethics laws, as alleged in the complaint filed on January 21, 2020, by Rory Heath ("Complaint").

**EXECUTIVE SUMMARY**

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The purpose of this item is to conduct additional investigation of the remaining unresolved allegation in the Heath Complaint, as described above, in follow up to the initial screening by the Ethics Review Board on March 6, 2020. Attached to this Agenda Item Summary are materials pertaining to this allegation that were provided to the Board on March 6, 2020, along with additional materials provided by the Complainant or subject of the Complaint in advance of publication.

**STAFF RECOMMENDATION**

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Staff recommends that the Board consider information and evidence provided in relation to the allegation under consideration and the applicable local and state ethics provisions and determine whether Councilmember Summers has committed an ethics violation as alleged.

**BACKGROUND / DISCUSSION**

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Under City Code Section 2-569(d), any person who believes a Councilmember or board or commission member has violated any provision of state law or the City Charter or City Code pertaining to ethical conduct may file a complaint with the City Clerk. After notice to the complaining party and the subject of the complaint, the Ethics Review Board evaluated the Complaint on March 6, 2020, and determined that further investigation was needed to make a determination regarding the allegation that lobbying and political consulting activities of Councilmember Summers violate state and local ethics laws.

**The Complaint:**

The Complaint was lodged with the Board through the City Attorney on January 21, 2020, by Rory Heath (the "Complainant"), a Fort Collins resident, against Councilmember Ken Summers and others, alleging that Councilmember Summers has a conflict of interest generally and in connection with the Hughes Rezoning and related Ethics Review Board hearings, in light of a webpage offering his services as a political consultant and lobbyist.

The following is an excerpt from the Complaint summarizing Mr. Heath's concern (from page 11 of the Complaint):

...

- II. *Fort Collins City Councilmember Ken Summers is currently hosting on his website kensummers.org, a page dedicated to his political consulting business/lobbyist business. This page promises direct influence of legislative matters that can be interpreted to mean either the influence of a third party, or of himself, in exchange for compensation of some sort.*
- III. *The actions of [Councilmember Summers], as it pertains to all related activities relating to the consideration of Fort Collins Ordinance No. 138, 2019 (including all related Ethics Complaints hearings), are in direct violation of State and Municipal Ethical and Conflict of Interest Laws. [Councilmember Summers has] also failed in performing their fiduciary duty to the people of Colorado, a duty ingrained within their public service. . .*

**Board Review and Determination:**

As provided in City Code Section 2-569, an alternative Ethics Review Board was formed to consider the original Complaint filed by Mr. Heath, because the Complaint originally named multiple members of the appointed Ethics Review Board. The alternate Ethics Review Board, consisting of Councilmember Cunniff, Councilmember Gutowsky, Councilmember Pignataro and Councilmember Gorgol (the "Board"), met on March 6<sup>th</sup> in order to carry out the initial screening of the Complaint. At that time, the Board determined that no further investigation was warranted of any of the Complaint other than the allegation that political consulting/lobbying activities of Councilmember Summers are in violation of state and local ethics and conflict of interest laws.

For continuity of the process and consistency in finalizing action on the Complaint, the Board (as constituted on March 6) will complete the hearing, investigation and determination in this matter called for under Section 2-569(e) of the City Code.

**The Board is required under the Code to evaluate the evidence presented regarding the allegation in the Complaint that political consulting/lobbying activities of Councilmember Summers are in violation of state and local ethics and conflict of interest laws and determine by majority vote whether there has been an ethics violation as alleged.**

**Factual Allegations in the Complaint:**

The Complaint asserts the following basic facts regarding his allegations against Councilmember Summers:

*Ken Summers, through his KGS Consulting, offers the following services via his website (see Ex.4):*

- *"Opening Doors"*
- *"Providing Access"*
- *Empowering Influence"*
- *"PERSONAL CONTACT WITH LEGISLATORS to inform them of your position on a bill and why you support or oppose the legislation."*
- *"COMMUNICATION WITH DEPARTMENTS that interface with your business on the writing and implementation of rules"*

## Agenda Item 3

- *"TOURS AND RECEPTIONS that provide legislators an opportunity to learn firsthand about the work that you do"*
- *"Navigating through the maze of the political arena can be a challenge. That is why an individual with experience working with you and advocating on your behalf can make a difference."*

While the Complaint contains a number of assertions and statements related generally to the input the City Council has received from members of the public regarding the Hughes Rezoning, the Ethics Review Board screening referred only the matter of Councilmember Summers' alleged political consulting/lobbying activities for further investigation.

A copy of the KGS Consulting webpage was attached to the Complaint as Exhibit 4 and is attached to this Agenda Item Summary.

### Relevant City or State Ethics Provisions:

1. **City Ethics Provisions: The City Charter and City Code prohibit members of the City Council from participating in a decision if the Councilmember has a financial interest or a personal interest in the decision.**
  1. A ***financial interest*** is an interest in the Hughes Rezoning that is equated with money or its equivalent.
    - i. If the councilmember is an holder of an ownership interest in or an employee of an affected business, but the Council decision entails NO FORESEEABLE, MEASUREABLE FINANCIAL BENEFIT to the Councilmember, the business relationship does not create a financial interest.
  2. A ***personal interest*** is any interest (other than a financial interest) by reason of which an officer or employee would, in the judgment of a reasonably prudent person, realize or experience:
    - i. some **direct and substantial benefit or detriment**,  
[direct = resulting immediately and proximately from the circumstances and not from an intervening cause.]  
[substantial = more than nominal in value, degree, amount or extent.]  
[benefit = an advantage or gain.]  
[detriment = disadvantage, injury, damage or loss.]
    - ii. **different in kind from that experienced by the general public**.  
[different in kind from that experienced by the general public = 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.]

2. State Ethics Provisions:

1. For the purpose of the **statutory ethics provisions**:
  - i. Councilmembers are “**local government officials**” (as defined in Section 24-18-102(6)).
  - ii. A ***financial interest*** means a substantial interest held by an individual which is (in relevant part):
    1. An ownership interest in a business; or
    2. A directorship or officership in a business.
2. **Section 24-18-103, C.R.S.**, when read in conjunction with the rest of the statutory standards of conduct, is interpreted to establish an ethical standard of conduct concerning activities that could allow covered individuals to improperly benefit financially from their public office. However, it is general in nature and does not specify a standard or rule to determine what is permissible.
3. **Section 24-18-104, C.R.S.**, prohibits disclosure or use of confidential information acquired in the course of official duties and acceptance of certain gifts.
4. **Section 24-18-105, C.R.S.**, sets out ethical principles that are “intended as guides to conduct and do not constitute violations as such of the public trust of office or employment in state or local government.”
  - i. Section 24-18-015(2) provides that:

(2) A ... local government official ... should not acquire or hold an interest in any business or undertaking which he has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by an agency over which he has substantial authority.
  - ii. Section 24-18-105(4) provides that:

(4) A ...local government official ...should not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when he has a substantial financial interest in a **competing firm or undertaking**. (Emphasis added.)
5. **Section 24-18-109, C.R.S.**, provides that
  - i. a local government official shall not (in relevant part) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a **substantial financial interest or is engaged as counsel, consultant, representative or agent** (§ 24-18-109(2)(b));
  - ii. A member of a governing body of a local government who has a **personal or private interest** in any matter proposed or pending before the governing body shall disclose such interest and refrain from participating in the decision unless necessary to obtain a quorum (§ 24-18-109(3));
    1. The statutes don't define the term “personal or private interest.” However, a local government official would likely be considered as having a personal or private interest in any decision that would result in

the official receiving a direct and immediate pecuniary benefit or result in the official receiving a non-pecuniary benefit or suffering a non-pecuniary detriment that is direct, immediate and different in kind from that shared by the general public.

2. Applying this standard here, this means determining whether the City Council's Hughes Stadium rezoning decision would likely result in Councilmember Summers receiving a direct and immediate pecuniary benefit or result in him receiving a non-pecuniary benefit or suffering a non-pecuniary detriment that is direct, immediate and different in kind from that shared by the general public.
  
3. The language of Article XXIX of the Colorado constitution – also referred to as “Amendment 41,” provides that home rule municipalities that have adopted local ethics provisions addressing the topics in that provision are exempt from its application. A copy of Article XXIX is attached to this Agenda Item Summary for reference.

**Evidence and Evaluation of Facts Asserted:**

The procedures for the hearing will be set by the Board chair, with the Board's input, at the beginning of the hearing. The general sequence for the hearing (subject to such time limits as may be set) will be as follows:

1. Overview of procedures, including time limits, and consideration of any procedural objections;
2. Overview of Agenda materials by City Attorney;
3. Introductory Statement by Complainant (time limit to be set);
4. Introductory Statement by Councilmember Summers (time limit to be set);
5. Presentation of Evidence by Complainant (including any witness testimony or additional records) (time limit to be set);
6. Presentation of Evidence by Councilmember Summers (including any witness testimony or additional records) (time limit to be set);
7. Rebuttal and Closing Statement by Complainant (time limit to be set);
8. Rebuttal and Closing Statement by Councilmember Summers (time limit to be set);
9. Board member questions of Complainant and Councilmember Summers;
10. Board discussion of whether evidence supports finding that an ethics violation has occurred;
11. Board vote as to whether evidence supports finding that an ethics violation has occurred.

**At the completion of the hearing and decision, an Ethics Opinion will be prepared for consideration by the Board. Upon approval the Ethics Opinion will be presented to Council for adoption by Resolution.**

**ATTACHMENTS**

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1. Exhibit 4 to Heath Complaint
2. March 7 Memo to Ethics Review Board from Ken Summers re Ethics Complaint
3. Financial Disclosure Statement of Kenneth G. Summers, dated January 5, 2017
4. Financial Disclosure Statement of Kenneth G. Summers, dated April 7, 2017
5. Financial Disclosure Statement of Kenneth G. Summers, dated April 24, 2018
6. Financial Disclosure Statement of Kenneth G. Summers, dated May 7, 2019
7. Lobbyist Summary Regarding lobbying registration of Kenneth G. Summers, dated March 7, 2020.
8. March 6 Agenda Item Summary for Item 3 (with attachments)
9. March 6 Agenda Item Summary for Item 3c (with attachments)
10. March 5 Memo to Ethics Review Board from Ken Summers re Ethics Complaint
11. Article XXIX of the Colorado Constitution (commonly referred to as "Amendment 41")

# KGS CONSULTING



Opening Doors • Providing Access • Empowering Influence



## Ken Summers



The laws that are passed and the regulations that are established have a significant impact on citizens and of all types in Colorado. Navigating through the maze of the political arena can be a challenge. That is why an individual with experience working with you and advocating on your behalf can make a difference.

KGS Consulting provides you with a value-added partnership so you can be proactive on the issues that impact your business. Here is how that is accomplished:

- **PROVIDING INSIGHT** into the legislative process and political environment
- **TRACKING LEGISLATION** that impacts your business and helping you to take a formal position on those pieces of legislation
- **PERSONAL CONTACT WITH LEGISLATORS** to inform them of your position on a bill and why you support or oppose the legislation.
- **PROPOSING NEW LEGISLATION OR CHANGES IN CURRENT LAW**
- **ARRANGING FOR TESTIMONY ON BILLS** before committees in collaboration with others who share your position
- **COMMUNICATION WITH DEPARTMENTS** that interface with your business on the writing and implementation of rules
- **TOURS AND RECEPTIONS** that provide legislators an opportunity to learn firsthand about the work that you do
- **SERVING AS A SPOKESPERSON** for your business at the capitol, with other industry groups and in the community
- **PROVIDING FEEDBACK AND UPDATES** as needed to stay on the forefront of how bills are progressing through the process

These are some of the ways that having a contact inside the capitol can work for you. Some services may be more appropriate than others depending on your needs and area of interest.



*I look forward to developing a partnership where I can serve you at the capitol by providing access, opening doors and empowering influence in the legislative process. You can make a difference and be a part of shaping public policy in Colorado.*

Ken

KGS Consulting \* ken@kensummers.org  
303-725-4765



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One Comment

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Enter your email address:



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## Recent Posts

Hope for a Blue Christmas

The Black Eyes of Jesus

Your Father Knows

The Peril of Forgetting God's Faithfulness

Leadership Under Attack

## Archives

December 2019

May 2019

April 2019

March 2019

January 2019

December 2018

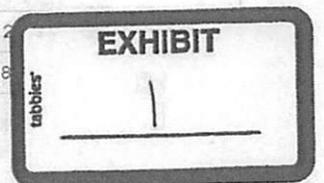
November 2018

October 2018

September 2018

August 2018

July 2018





Julie Braswell

FEB 23, 2017 @ 15:04:32

REPLY

Hi Ken,

I guess it is really a small world after all. You met my teenaged son who is an intern for Senator Lundburg a couple of weeks ago. You must have made an impression on him because he came home and told me all about the visit. I knew your name sounded familiar and when I googled you I realized that we had met several years ago. You officiated my uncle's funeral - his name was Bruce Jones.

Anyway Nathaniel told me you were running for city council here in Fort Collins (which is where I live). That is very exciting news as Fort Collins is in desperate need of conservative Christian leadership. I signed up for your newsletter and look forward to keeping up with your campaign.

Blessings,  
Julie

Leave a Reply

[Large empty text box for leaving a reply]

Your Name \*

Your Email \*

Your Website



- June 2018
- May 2018
- April 2018
- March 2018
- February 2018
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November 2014

October 2014

September 2014

August 2014

July 2014

June 2014

May 2014

April 2014

March 2014

February 2014

**Looking for more on Ken's Story?**

To look at previous post and pictures from Ken's hospitalization go to <http://www.caringbridge.org/visit/kensummers>



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Contact // Email: [ken@kensummers.org](mailto:ken@kensummers.org)



Ken Summers  
Councilmember  
District 3

Date: March 7, 2020  
To: City Council Ethics Committee  
From: Ken Summers  
Re: Ethics Complaint

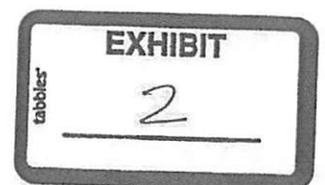
I understand that you have requested "additional" information concerning my employment. I submit the following:

Unlike other City Councilmembers, due to my disability caused from West Nile Virus outside of my City Council salary

## **I HAVE NO OTHER EMPLOYMENT**

This request is confusing due to the fact that City Council members are required to fill out an annual financial disclosure that lists sources of income. Additionally, if there is some question about my lobbying efforts, lobbyists who have clients are required by the Secretary of State to register as a lobbyist and to fill out reports about clients and the amount of income they receive from their clients. This is common knowledge to those who are familiar with the legislative process.

I trust this puts an end to this matter. The ability to of citizens to make ridiculous and unfounded claims of a conflict from employment that doesn't exist and to give any inclining of merit undermines the ethics process and encourages individuals to assume the can make an accusation and then expect an individual to prove they are NOT guilty as charged.





# FINANCIAL DISCLOSURE STATEMENT

RECEIVED  
City Clerk's Office

1-5-17

<b>Printed Name:</b>	
<b>Filing as:</b> <input type="checkbox"/> Mayor/Councilmember <input type="checkbox"/> City Manager <input type="checkbox"/> City Attorney <input checked="" type="checkbox"/> Council Candidate	<b>Type of Report:</b> <input type="checkbox"/> Annual Filing (due on or before May 15) <input type="checkbox"/> Candidate Filing (due 10 days after acceptance of nomination, or upon application for appointment) <input type="checkbox"/> Post-election/Appointment Filing (due within 30 days)
<input checked="" type="checkbox"/> This is my first filing. (Answer all questions) <input type="checkbox"/> This amends my previous filing dated _____. (Answer all questions completely) <input type="checkbox"/> There have been no changes since my previous filing dated _____. (Skip to signature line)	
<b>1. List the source or sources of any income, including capital gains, whether or not taxable, of the person making disclosure and such person's spouse. (It is not necessary to list amounts.)</b>  Social Security Disability Investment Income Spouse salary Halcyon Hospice	
<b>2. Indicate any financial interest in excess of \$10,000 in any business entity.</b>  Universal Communications Company - Loveland, CO	
<b>3. Provide the legal description of any interest in real property owned by the person making disclosure or such person's spouse.</b>  Personal residence - 5706 White Willow Dr Fort Collins, CO 80528	

EXHIBIT  
3

4. Identify by name all offices and directorships held by the person making disclosure and such person's spouse.

Treasurer, G.L.O.B.A.L. Justice  
Loveland, CO

5. List the name of each creditor to whom the person making disclosure or such person's spouse owes money in excess of \$10,000.

Key Bank

6. List businesses with which the person making disclosure, or such person's spouse, are associated that do business with or are regulated by the City of Fort Collins and the nature of such business or regulation.

None

7. Provide any additional information which the person making disclosure might desire.

Signature:

*Donna K. Stewart*

Date:

*1/5/2017*

4-14-17



# FINANCIAL DISCLOSURE STATEMENT

Printed Name: Kenneth G Summers	
<b>Filing as:</b> <input checked="" type="checkbox"/> Mayor/Councilmember <input type="checkbox"/> City Manager <input type="checkbox"/> City Attorney <input type="checkbox"/> Council Candidate	<b>Type of Report:</b> <input type="checkbox"/> Annual Filing (due on or before May 15) <input type="checkbox"/> Candidate Filing (due 10 days after acceptance of nomination, or upon application for appointment) <input checked="" type="checkbox"/> Post-election/Appointment Filing (due within 30 days)
<input type="checkbox"/> This is my first filing. (Answer all questions) <input checked="" type="checkbox"/> This amends my previous filing dated <u>12/30/2016</u> (Answer all questions completely) <input checked="" type="checkbox"/> There have been no changes since my previous filing dated _____ (Skip to signature line)	
<p>1. List the source or sources of any income, including capital gains, whether or not taxable, of the person making disclosure and such person's spouse. (It is not necessary to list amounts.)</p> <p>Social Security Disability Investment Income Spouse salary Halcyon Hospice</p> <p><i>City of Fort Collins</i></p>	
<p>2. Indicate any financial interest in excess of \$10,000 in any business entity.</p> <p>Universal Communications Company - Loveland, CO</p>	
<p>3. Provide the legal description of any interest in real property owned by the person making disclosure or such person's spouse.</p> <p>Personal residence - 5706 White Willow Dr Fort Collins, CO 80528</p>	

EXHIBIT  
4

4. Identify by name all offices and directorships held by the person making disclosure and such person's spouse.

Treasurer, G.L.O.B.A.L. Justice  
Loveland, CO

5. List the name of each creditor to whom the person making disclosure or such person's spouse owes money in excess of \$10,000.

Key Bank

6. List businesses with which the person making disclosure, or such person's spouse, are associated that do business with or are regulated by the City of Fort Collins and the nature of such business or regulation.

None

7. Provide any additional information which the person making disclosure might desire.

Signature:

*Amelia R. Sumner*

Date:

*4/7/2017*



# FINANCIAL DISCLOSURE STATEMENT

RECEIVED  
City Clerk's Office  
4-24-18

Printed Name: <u>Kenneth G. Summers</u>	
Filing as: <input checked="" type="checkbox"/> Mayor/Councilmember <input type="checkbox"/> City Manager <input type="checkbox"/> City Attorney <input type="checkbox"/> Council Candidate	Type of Report: <input checked="" type="checkbox"/> Annual Filing (due on or before May 15) <input type="checkbox"/> Candidate Filing (due 10 days after acceptance of nomination, or upon application for appointment) <input type="checkbox"/> Post-election/Appointment Filing (due within 30 days)
<input type="checkbox"/> This is my first filing. (Answer all questions) <input type="checkbox"/> This amends my previous filing dated _____ (Answer all questions completely) <input checked="" type="checkbox"/> There have been no changes since my previous filing dated <u>5/2017</u> . (Skip to signature line)	
1. List the source or sources of any income, including capital gains, whether or not taxable, of the person making disclosure and such person's spouse. (It is not necessary to list amounts.)	
2. Indicate any financial interest in excess of \$10,000 in any business entity.	
3. Provide the legal description of any interest in real property owned by the person making disclosure or such person's spouse.	

EXHIBIT  
5

<p>4. Identify by name all offices and directorships held by the person making disclosure and such person's spouse.</p>
<p>5. List the name of each creditor to whom the person making disclosure or such person's spouse owes money in excess of \$10,000.</p>
<p>6. List businesses with which the person making disclosure, or such person's spouse, are associated that do business with or are regulated by the City of Fort Collins and the nature of such business or regulation.</p>
<p>7. Provide any additional information which the person making disclosure might desire.</p>
<p>Signature: <u>David G. Finney</u>   Date: <u>4/24/18</u></p>

RECEIVED  
City Clerk's Office

5-8-19

FINANCIAL DISCLOSURE STATEMENT

Printed Name: Kenneth G Summers

Choose one column only and then check appropriate boxes within that column.

Column 1
Filing as: <input checked="" type="checkbox"/> Mayor/Councilmember <i>(currently seated - not seeking reelection)</i>
Type of Filing: <input type="checkbox"/> Post-Election/Appointment Filing <input type="checkbox"/> Annual Filing
Status: <input type="checkbox"/> This is my first filing as an elected/appointed official <i>(answer all questions completely)</i> <input type="checkbox"/> This amends my previous filing dated _____ <i>(answer all questions completely)</i> <input type="checkbox"/> There have been no changes since my previous filing dated _____ <i>(skip to signature line)</i>

Column 2
Filing as: <input type="checkbox"/> Council Candidate <i>(new candidates and incumbents)</i>
Type of Filing: <input type="checkbox"/> Candidate Filing
Status: <input type="checkbox"/> This is my first filing as a candidate <i>(answer all questions completely)</i> <input type="checkbox"/> This amends my previous filing dated _____ <i>(answer all questions completely)</i>

Column 3
Filing as: <input type="checkbox"/> City Manager <input type="checkbox"/> City Attorney
Type of Filing: <input type="checkbox"/> Post-Appointment Filing <input type="checkbox"/> Annual Filing
Status: <input type="checkbox"/> This is my first filing as an appointed official <i>(answer all questions completely)</i> <input type="checkbox"/> This amends my previous filing dated _____ <i>(answer all questions completely)</i> <input type="checkbox"/> There have been no changes since my previous filing dated _____ <i>(skip to signature line)</i>

List the source or sources of any income, including capital gains, whether or not taxable, of the person making disclosure and such person's spouse. (It is not necessary to list amounts.)

City Council Salary  
Halcyon Hospice (Spouse)  
SSA Disability  
PERA Retirement  
Catholic Charities Retirement  
Interest on investments

Indicate any financial interest in excess of \$10,000 in any business entity.

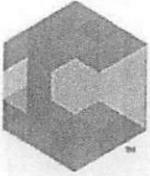
UCC Communications - loan

EXHIBIT  
6

<p>Provide the legal description of any interest in real property owned by the person making disclosure or such person's spouse.</p> <p>5706 White Willow Dr Fort Collins, CO 80528</p>
<p>Identify by name all offices and directorships held by the person making disclosure and such person's spouse.</p> <p>Board member - G.L.O.B.A.L. Justice</p>
<p>List the name of each creditor to whom the person making disclosure or such person's spouse owes money in excess of \$10,000.</p> <p>Residential mortgage - Key Bank</p>
<p>List businesses with which the person making disclosure, or such person's spouse, are associated that do business with or are regulated by the City of Fort Collins and the nature of such business or regulation.</p> <p>None</p>
<p>Provide any additional information which the person making disclosure might desire.</p> <p>None</p>

Signature: *Kenneth C. Summers*      Date: *3/7/19*





Lobbyist Main Page

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# Lobbyist Summary

<b>Lobbyist ID:</b> 20155002638	<b>Status:</b> EXPIRED: 06/06/2016
<b>Name:</b> Summers, Kenneth G	<b>Termination Filed:</b> 06/06/2016
<b>Registration Date:</b> 01/03/2016	<b>Reporting Status:</b> CURRENT

## Lobbyist

**Name:** Summers, Kenneth G  
**Address:** 5706 White Willow Dr  
**City:** Fort Collins **State:** CO **Zip/Postal Code:** 80528

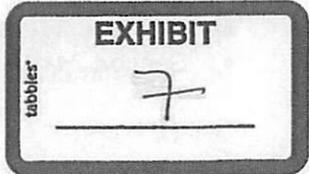
**Phone:** 303-725-4765  
**Email:** ken@kensummers.org

## Lobbyist Menu

- Disclosure Reports (current fiscal year only)
- Clients
- Cumulative Disclosure Report
- Past Disclosure Reports and Registrations
- History

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**AGENDA ITEM SUMMARY**

March 6, 2020

Ethics Review Board

**STAFF**

Carrie Daggett, City Attorney

**SUBJECT**

These are reference materials provided for the Ethics Review Board's use in considering Items 3a, 3b and 3c, all related to review of the complaint filed on January 21, 2020, by Rory Heath under City Code Section 2-569(d)(1) to determine whether the complaint warrants investigation.

**EXECUTIVE SUMMARY**

The purpose of this item is to provide references for use in the initial screening by the Ethics Review Board of a complaint filed with the Board under City Code Section 2-569(d), as described below.

**BACKGROUND / DISCUSSION**

Under City Code Section 2-569(d), any person who believes a Councilmember or board or commission member has violated any provision of state law or the City Charter or City Code pertaining to ethical conduct may file a complaint with the City Clerk. After notice to the complaining party and the subject of the complaint, the Ethics Review Board then considers the complaint and whether it should be further investigated. A copy of Section 2-569 is provided as an attachment to this Agenda Item Summary.

**The Complaint:**

The Board will consider a complaint lodged with the Board through the City Attorney on January 21, 2020, by Rory Heath (the "Complainant"), a Fort Collins resident, against Mayor Wade Troxell, Mayor Pro Tem Kristin Stephens and Councilmember Ken Summers. The Complaint (without attachments) is attached to this AIS and has been electronically provided to Council along with all attachments.

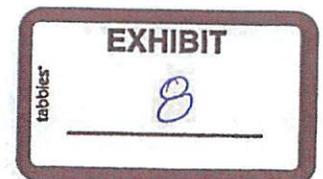
**City Ethics Provisions:**

Generally, the ethics provisions established by the City include City Charter Article IV, Section 9, and City Code Section 2-568. These are each provided as reference materials, attached to this Agenda Item Summary.

**State Ethics Provisions:**

In addition, various state laws are commonly considered ethics laws. These include:

- Sections 24-18-101 through -105, Colorado Revised Statutes (C.R.S.);
- Section 24-18-109, C.R.S.;



- Sections 24-18-201 through -206, C.R.S.;
- Sections 18-8-302 through -308, C.R.S.; and
- Sections 18-8-402 through -409, C.R.S.

These statutes are all attached to this Agenda Item Summary for convenient reference. Advisory Opinion 17-04 of the Colorado Independent Ethics Commission (IEC), interpreting some of these state law provisions, and Advisory Opinion 16-05 of the IEC are also attached.

(The language of Article XXIX of the Colorado constitution – also referred to as “Amendment 41,” provides that home rule municipalities that have adopted local ethics provisions addressing the topics in that provision are exempt from its application.)

**Prior Related Ethics Opinions:**

Also attached for your reference is **Resolution 2014-107**, adopted by the City Council in 2014, accepting advisory opinion and recommendation no. 2014-01 of the Ethics Review Board. At that time, then Councilmember Troxell had requested an advisory opinion regarding whether he would have a conflict of interest in continuing to participate in Council discussions and, ultimately, Council’s vote, regarding the proposed new Colorado State University football stadium then under discussion. The conclusion at that time was that: 1) there was no indication that then Councilmember Troxell would receive any “foreseeable, measurable” financial benefit, so no financial interest was presented; and 2) there was no indication that his position of employment or the amount of his compensation would be affected by his vote or Council’s decision or actions with regard to the proposed football stadium, so there was no “direct and substantial gain or detriment to him and no personal interest was presented.

**The Board Determination:**

The Board is required under the Code to evaluate the Complaint and determine by majority vote whether to formally investigate the Complaint. In doing so, the Board should consider:

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 the Board may consider relevant.

If the Board determines that the Complaint does not warrant investigation, the Board then directs staff to send written notice to the complainant of that determination and the reasoning behind it. A copy of that notice is also sent to the subject of the Complaint and the City Council.

**Summary:**

1. **If the Board determines that there is no potential violation of state or local ethics laws under the facts alleged, the Board should make a motion to that effect that explains the Board’s reasoning, and then vote to make that determination. If the Board makes this determination, no further action is needed on the Complaint (other than the provision of notice as required in the Code).**

2. **If the Board determines that the Complaint states a potential a conflict of interest, then the Board will need to evaluate whether the facts asserted are reliable and sufficient enough to support the allegation in the Complaint that a violation occurred, making an investigation of the Complaint appropriate. The Board may have knowledge of information that contradicts the asserted facts, or there may be a lack of information needed to form a reasonable suspicion that the violation alleged in the Complaint occurred.**
3. **If there is additional information available or presented to the Board that leads the Board to conclude that the Complaint does not merit further investigation, the Board should identify that information and explain how it affects the Board's decision as to whether further investigation is warranted.**

After the completion of its review of all factors, if it has not already made a determination, the Board will need to make a motion and vote on whether it has determined that further investigation is warranted, explaining the reasoning for its decision.

**Next Steps:**

As noted above, if the Board makes this determination, no further action is needed on the Complaint (other than the provision of notice as required in the Code).

Alternatively, if the Board determines that further investigation is warranted, staff will suggest a schedule for next steps for the Board to proceed to that phase of the process. At the end of the Board's review and investigation, if any, the Board will issue an Ethics Opinion stating the outcome of its action. The Board's Ethics Opinion is then presented to the City Council for consideration and possible adoption by resolution.

**ATTACHMENTS**

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1. January 21, 2020, Complaint filed by Rory Heath (EXHIBITS incorporated by reference only)
2. Fort Collins City Code Section 2-569
3. Fort Collins City Charter Article IV, Section 9
4. Fort Collins City Code Section 2-568
5. Sections 24-18-101 through -105, Colorado Revised Statutes (C.R.S.)
6. Section 24-18-109, C.R.S.
7. Sections 24-18-201 through -206, C.R.S.
8. Sections 18-8-302 through -308, C.R.S.
9. Sections 18-8-402 through -409, C.R.S.
10. Advisory Opinion 17-04 of the Colorado Independent Ethics Commission (IEC)
11. Resolution 2014-107, of the City Council of the City of Fort Collins, Accepting Advisory Opinion and Recommendation No. 2014-01 of the Ethics Review Board
12. Advisory Opinion 16-05 of the Colorado Independent Ethics Commission (IEC)

Disclaimer: I am not a licensed attorney in Colorado, nor purporting to be one by submitting this Ethics Complaint.

To the best of my knowledge, information contained within this ethics complaint is accurate and factual, as executed to the best of my ability.

I request that the City of Fort Collins Ethics Review Board evaluate the information given herein and that the Board take any and all appropriate procedures and actions as outlined in the applicable City, State, and Federal laws, not solely limited to the specific ones discussed within this complaint.

Due to the nature of submitting a complaint of this weight I ask that the review process be explicitly contingent upon my presence at City Hall during the Ethics Review Board Meeting.

I submit this complaint with the expressed statement that additional material may be submitted, and the complaint revised, as needed, as new information is discovered and investigated, reserving all rights to do so.

## COMPLAINANT

Rory Heath  
PO Box 271777  
Fort Collins, CO 80527

## COMPLAINEES

Wade Troxell  
Mayor, City of Fort Collins  
Associate Professor, Mechanical Engineering, Colorado State University  
Director, Center for Networked Distributed Energy, Colorado State University  
Director, RamLab, Colorado State University

Kristin Stephens  
Mayor Pro Tem, Fort Collins City Council  
Councilmember representing District 4, Fort Collins City Council  
Graduate Coordinator, Department of Statistics, Colorado State University  
Program Assistant II, Department of Statistics, Colorado State University

Ken Summers  
Councilmember representing District 5, Fort Collins City Council  
Owner and Registered Agent, KGS Consulting



## **ALLEGATIONS**

There exists a consistent betrayal of the public trust vested in the elected officials and the city staff of Fort Collins. This act was evident in varying levels throughout this process and perpetrated by various individuals. The most egregious and measurable violation of this trust was evident in the actions of 3 Fort Collins City Council Members, with questions surrounding why they voted against the overwhelming majority of citizens' wishes, continually, in strong light of each councilmembers' obvious conflicts of interest. The councilmembers in violation are Wade Troxell, Kristin Stephens and Ken Summers.

Wade Troxell and Kristin Stephens are both current employees of Colorado State University. Colorado State University, in seeking to sell a tract of land it owns to Lennar Homes, is seeking government approval before the very city council that Wade Troxell and Kristin Stephens are both voting members of. This is textbook conflict of interest and corruption at the elected official level. Each has significant personal and social interests, significant financial interests, and thus, significant related Conflicts of Interest.

Ken Summers, by all indications, owns and operates KGS Consulting, a business with the key taglines of "Opening Doors", "Providing Access" and "Empowering Influence" listed just below its' entity name, as currently seen on Ken Summers' own website, Kensummers.org. The contents of this website are an explicit billboard for "pay for play" in the political realm. Kensummers.org is a website still very much in use and regularly updated, with a post by the user "kensummers" on 12/23/2019. Ken Summers' email address and personal phone number are listed on the same page, below the list of services he is able to provide. This advertisement for influence into governmental decisions, in light of Ken Summers' present standing as councilmember brings all of his actions under justified scrutiny. Further, when seen voting opposite of the public will, his actions become that much more suspicious and in question.

Summers himself also possesses a near "sky is the limit" conflict of interest from a personal, social, and even specific business perspective, possibly even including related lobbying statutes and laws. To really understand the extent to which Summers' actions have effected his position of public trust, an intense investigation will be required; up to and including obtaining copies of financial statements, business transactions and the like. Opening up the possibility of selling influence invites all possible outside suitors into the legislative process.

The actions of the councilmembers in question have specifically affected the integrity and the procedure of Fort Collins City Government in the consideration and the voting of City Ordinance No. 138, 2019 and even the Ethics Review Board that convened on 12/16/2019.

## **FACTS**

1. Wade Troxell is currently and gainfully employed by Colorado State University. Mr. Troxell is an Associate Professor in the Mechanical Engineering department as well as the Director of the Center

for Networked Distributed Energy, as well as Director for RamLab. Kristin Stephens is currently and gainfully employed by Colorado State University. Ms. Stephens is the Graduate Coordinator of the Department of Statistics and Program II Assistant in the Department of Statistics. *(contained within Ex. 17)*

2. Wade Troxell and Kristin Stephens both took an Oath to CSU as a condition to their employment at CSU. *(see Ex. 11)*
3. Ken Summers is the presumable owner of KGS Consulting, as displayed as a feature tab on the website kensummers.org. Kenneth G Summers is listed as the registered agent on the Colorado Secretary of State website directory for the same KGS Consulting. *(see Ex. 18)*
4. Colorado State University is the owner of a tract of land bounded to the West by Horsetooth Reservoir and it's related Open Space, and bounded to the East by South Overland trail. More particularly described by the accompanying and attached documents, and more generally referred to simply as the former site of Hughes Stadium.
5. The university is attempting to sell this land to a developer, Lennar Homes, under conditional terms, via a Purchase Agreement. *(contained within Ex. 17)*
6. The Purchase Agreement in place explicitly lists an "Additional Purchase Price" to be paid as bonus for every housing unit sold on the property. Also explicitly listed in the Purchase Agreement is a clause titled "Preliminary Entitlement Confirmation" whereby Lennar homes is given a means by which to remove itself from the agreement if a stated minimum number of units is not met. *(contained within Ex. 17)*
7. Wade Troxell has collected a paycheck, aka compensation for his employment and efforts. Wages have been exchanged as consideration for services rendered in the past and continuing to be rendered into the future.
8. Further, Mr. Troxell has gained national notoriety from his continued employment and involvement at programs housed within the CSU System and within the academic buildings of Colorado State University. *(contained within Ex. 17)*
9. Troxell is a director and by extension, a fiduciary, for the Center and the Ramlab. *(contained within Ex. 17)*
10. Wade Troxell, though currently an associate professor, could conceivably be promoted to a full professor or even further promoted to a Dean or the like, as had been the case in the past. This promotion would carry with it all of the additional benefits of the new title.
11. Kristin Stephens has collected a paycheck, aka compensation for her employment and efforts. Wages have been exchanged as consideration for services rendered in the past and continuing to be rendered into the future. *(contained within Ex. 17)*
12. Kristin Stephens, though currently listed as a Graduate Coordinator and a Program Assistant, could conceivably be promoted to a position with better career opportunities, research authoring possibilities or a myriad of other benefits.
13. Ken Summers, through his KGS Consulting, offers the following services via his website *(see Ex. 4)* :
  - "Opening Doors"
  - "Providing Access"
  - "Empowering Influence"
  - "PERSONAL CONTACT WITH LEGISLATORS to inform them of your position on a bill and why you support or oppose the legislation."
  - "COMMUNICATION WITH DEPARTMENTS that interface with your business on the writing and implementation of rules"
  - "TOURS AND RECEPTIONS that provide legislators an opportunity to learn firsthand about the work that you do"

- “Navigating through the maze of the political arena can be a challenge. That is why an individual with experience working with you and advocating on your behalf can make a difference.”
- 14. In 2017 Mayor Wade Troxell received campaign contributions from the National Association of Realtors Fund in the amount of \$39,722. This number was added to \$5,000 that had rolled over from a previous campaign, and \$15,000 collected during this campaign. By definition, local realtors are dependent on housing as their “inventory” by which to make their commission, an overwhelming part of their personal compensation. (see Ex. 9)
- 15. *Thompson Area Against Stroh Quarry, Inc. et al v. Board of County Commissioners of Larimer et al, Larimer County District Court Case No. 2018CV30371*, A court decision within Larimer County, entered in August of 2019, has directly and specifically addressed the question as to whether a campaign contribution would warrant recusal by a government official, in any capacity. (see Ex. 9)
- 16. Wade Troxell had previously recused himself in a matter related to CSU in 2017 regarding ordinance No.051, 2017. (see Ex. 9)
- 17. When collecting research data at the Drake Centre Event regarding as to which zoning was preferred by the general public, a narrow offering of 5 different scenarios was given, with none being composed only of RF and none containing POL. (see Ex. 2)
- 18. When asked for public comment and public feedback throughout the re-zoning process, there exists an absolute preponderance of evidence to support the conclusion that the public would support either the bare minimum of development for that parcel of land or no development at all, leaving it just how it is now, untouched. (see Ex. 1)

## **GOVERNING LAW**

The governing laws presented below are only a selection of applicable laws to the Complaint. As such, consideration of the matter before the Board is not limited only to those cited below and within this Complaint.

The references made below are given in smaller snippet form. Please review the full attached exhibits, and the full verbiage of each statute, etc. *Please see Ex. 5, 6, 7, 8, 9.*

- Fort Collins City Code Sec 2-568 (a) lays out the definitions by which to define the following portions of the city code
- Fort Collins City Code Sec 2-568 (a) (11) 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 judgement 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.” Also citing Section 9(A) of the Charter Article IV.
- Fort Collins City Code Sec 2-568 (a) (18) states: Substantial shall mean more than nominal in value, degree, amount or extent.
- Fort Collins City Code Sec 2-569 (c)(2) states: “To Review and investigate actual or hypothetical situations involving potential conflicts of interest presented by individual Councilmembers or board and commission members”
- Fort Collins City Code Sec 2-569 (d)(1) (a) states: “Any person who believes that a Councilmember or board and commission member had violated any provision of state law or the Charter or Code pertaining to ethical conduct may file a complaint with the city clerk...”

- Fort Collins City Code Sec 2-569 (d)(1) (b) states: "... 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."
- Fort Collins City Code Sec 2-569 (g) states: "Compliance with the applicable provisions of the Charter and Code and the provisions of state law, as well as decisions regarding the existence of 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..."
- Colorado Revised Statute 24-18-102 states:

"As used in this part 1, unless the context otherwise requires:

(1) "Business" means any corporation, limited liability company, partnership, sole proprietorship, trust or foundation, or other individual or organization carrying on a business, whether or not operated for profit.

(2) "Compensation" means any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another.

(3) "Employee" means any temporary or permanent employee of a state agency or any local government, except a member of the general assembly and an employee under contract to the state.

(4) "Financial interest" means a substantial interest held by an individual which is:

- (a) An ownership interest in a business;
- (b) A creditor interest in an insolvent business;
- (c) An employment or a prospective employment for which negotiations have begun;
- (d) An ownership interest in real or personal property;
- (e) A loan or any other debtor interest; or
- (f) A directorship or officership in a business.

(5) "Local government" means the government of any county, city and county, city, town, special district, or school district.

(6) "Local government official" means an elected or appointed official of a local government but does not include an employee of a local government.

(7) "Official act" or "official action" means any vote, decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.

(8) "Public officer" means any elected officer, the head of a principal department of the executive branch, and any other state officer. "Public officer" does not include a member of the general assembly, a member of the judiciary, any local government

official, or any member of a board, commission, council, or committee who receives no compensation other than a per diem allowance or necessary and reasonable expenses.

(9) "State agency" means the state; the general assembly and its committees; every executive department, board, commission, committee, bureau, and office; every state institution of higher education, whether established by the state constitution or by law, and every governing board thereof; and every independent commission and other political subdivision of the state government except the courts."

- Colorado Revised Statute 24-18-103 states:

"(1) The holding of public office or employment is a public trust, created by the confidence which the electorate reposes in the integrity of public officers, members of the general assembly, local government officials, and employees. A public officer, member of the general assembly, local government official, or employee shall carry out his duties for the benefit of the people of the state.

(2) A public officer, member of the general assembly, local government official, or employee whose conduct departs from his fiduciary duty is liable to the people of the state as a trustee of property and shall suffer such other liabilities as a private fiduciary would suffer for abuse of his trust. The district attorney of the district where the trust is violated may bring appropriate judicial proceedings on behalf of the people. Any moneys collected in such actions shall be paid to the general fund of the state or local government. Judicial proceedings pursuant to this section shall be in addition to any criminal action which may be brought against such public officer, member of the general assembly, local government official, or employee."

- Colorado Revised Statute 24-18-104 (1) states: " Proof beyond a reasonable doubt of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty and the public trust. A public officer, a member of the general assembly, a local government official, or an employee shall not:..."
- Please consider Colorado Revised Statute 24-18-105, in it's entirety.
- Colorado Revised Statute 24-18-109 states:

(1) Proof beyond a reasonable doubt of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty and the public trust.

(2) A local government official or local government employee shall not:

(a) Engage in a substantial financial transaction for his private business purposes with a person whom he inspects or supervises in the course of his official duties;

(b) Perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or

(c) Accept goods or services for his or her own personal benefit offered by a person who is at the same time providing goods or services to the local government for which the official or employee serves, under a contract or other means by which the person receives payment or other compensation from the local government, unless the

totality of the circumstances attendant to the acceptance of the goods or services indicates that the transaction is legitimate, the terms are fair to both parties, the transaction is supported by full and adequate consideration, and the official or employee does not receive any substantial benefit resulting from his or her official or governmental status that is unavailable to members of the public generally.

**(3) (a) A member of the governing body of a local government who has a personal or private interest in any matter proposed or pending before the governing body shall disclose such interest to the governing body and shall not vote thereon and shall refrain from attempting to influence the decisions of the other members of the governing body in voting on the matter.**

**(b) A member of the governing body of a local government may vote notwithstanding paragraph (a) of this subsection (3) if his participation is necessary to obtain a quorum or otherwise enable the body to act and if he complies with the voluntary disclosure procedures under section 24-18-110.**

**(4) It shall not be a breach of fiduciary duty and the public trust for a local government official or local government employee to:**

**(a) Use local government facilities or equipment to communicate or correspond with a member's constituents, family members, or business associates; or**

**(b) Accept or receive a benefit as an indirect consequence of transacting local government business.**

**(5) (a) Notwithstanding any other provision of this article 18, it is neither a conflict of interest nor a breach of fiduciary duty or the public trust for a local government official who is a member of the governing body of a local government to serve on a board of directors of a nonprofit entity and, when serving on the governing body, to vote on matters that may pertain to or benefit the nonprofit entity.**

**(b)**

**(i) Except as provided in subsection (5)(b)(ii) of this section, a local government official is not required to provide or file a disclosure or otherwise comply with the requirements of subsection (3) of this section unless the local government official has a financial interest in, or the local government official or an immediate family member receives services from, the nonprofit entity independent of the official's membership on the board of directors of the nonprofit entity.**

**(ii) A local government official who serves on the board of directors of a nonprofit entity shall publicly announce his or her relationship with the nonprofit entity before voting on a matter that provides a direct and substantial economic benefit to the nonprofit entity.**

**In applying the laws referenced and re-stated above, there exist numerous applications, arguments and even very clear cut violations of law and worse yet, violations of the public trust given to the individuals in question.**

## **ANALYSIS**

**Wade Troxell and Kristin Stephens have a direct personal Interest in CSU, a bias because of their relationship with CSU, and a means by which they can be rewarded by CSU as expertly laid out in a previous, and wholly separate ethics complaint regarding the very same ordinance. (see Ex. 17); Their refusal to recuse themselves from the process gave them a means by which they could exert their bias and personal/professional agenda upon the final decision. (see Ex. 3, in lieu of a typed transcript pertaining to the 11/5/2019 Council Meeting, in addition to all other meetings as related to the Ordinance referenced within this Complaint)**

**At every occasion that public comment was collected, the overwhelming majority of respondents asked for zoning that maximized open space, and minimized the number of houses placed on the parcel of land in question. The original materials for the First Reading of the ordinance relating to this parcel of land contained a breathtaking 655 pages full of citizens begging their elected officials to vote with the will of the people and approve a zoning solution best exhibited by either RF or POL zoning for the entirety of the tract. (see Ex. 1)**

**When it came time to declare their voting intentions, both Wade Troxell, Kristin Stephens, and Ken Summers, even upon being directly advised by city staff that affordable housing was unenforceable, chose to vote for higher density/ more housing units under the false rationale that this would create more affordable housing. (see Ex. 3, in lieu of a typed transcript pertaining to the 11/5/2019 Council Meeting, in addition to all other meetings as related to the Ordinance referenced within this Complaint)**

**This voting rationale, especially when told that their argument was proven invalid on record, is suspicious to say the least. By all appearances and indications, Troxell and Stephens voted in line with a course of action that would benefit their employer/ the entity that they are representatives for. Their votes were just opposite of the overwhelming public opinion. Further, the fact that they were even allowed to guide and participate in the discussion is alarming and a tainting of the sanctity of government, and especially alarming when considering their fiduciary duty to their constituents and the greater good of the Colorado public. (see Ex. 1, and all applicable laws regarding fiduciary duty, not limited only to the ones contained within this complaint)**

**Further bringing into question the sanctity of the process is the way that research data was collected and presented to Council, and similarly presented to the public. At the Drake Centre, public respondents were railroaded into choosing amongst only 5 options, with all options containing a large amount of homes to be built in their relating zoning. (see Ex. 2)**

**No options were given that had exclusive RF or POL zoning. Coupled with the slides presented by city staff summarizing support for each of the narrow options, a misrepresentation of the public's will and wishes was provided, with ease. Even the digitization of the post-it comments edited some comments by practice. (see page 19 and 15 of Ex.1)**

**Fundamentally, this is an affront to the will of the people, as perpetrated by city staff and further brings into question the trust that is placed in local government officials, and city staff. These were both actions supported by city staff and referenced by the Councilmembers in question. Also interesting was**

**Troxell's previous recusal when a similar conflict of interest arose in relation to his employment at CSU in 2017 regarding Ordinance No. 051, 2017.**

**By the wording and definitions of the State Statutes and the Fort Collins Codes that generally reference the State Statutes, (see Ex. 6, 7, 8), Troxell and Stephens are representatives and employees of CSU/ the seller of the parcel described in the ordinance. Within (Ex. 6,7,8), there are numerous applications of the terms and concepts introduced within the law, resulting in a very clear violation of nearly each applicable one.**

**Councilperson Summers was presented the same overwhelming number of responses from citizens begging for Open Space and at worst, RF zoning, and just like Troxell and Stephens, he voted against the wishes of the very people that he was entrusted to represent and vote in line with. This decision to vote against the people before him, against the 655 pages of public comment and against the public's wishes in general was particularly alarming when considered in the frame of his website ie "Providing Access", "Empowering Influence". When looked at in that context, a vote against the public will, and instead in line with a possible private commercial interest seems to have possibly occurred.**

**There is also a workplace sociological factor involved in Troxell and Stephens inherent bias towards their workplace. Not only is their future success tied to the future of CSU, but their success is also tied to their relationships with the people whom all fly the same CSU flag. It is a known psychological assertion that those together, all striving towards the same goal, especially in employment, regardless of the sector, tend to exhibit a groupthink mentality and one that is in line with supporting the endeavors of the organization as a whole, regardless of evidence to the contrary; even to the detriment of those not a part of the same organization. Key examples of this can be seen in the Milgram Experiment on Obedience to Authority, The Solomon Asch Conformity Concept, and Irving Janis' work regarding the identification and study of the idea of "groupthink." (see Ex. 12, 13, 14)**

**Previous opponents of the fact that employment within State Education is still employment, with all of it's associated trappings, have argued that there is somehow a difference between the two. When evaluating any differences between public and private employment, they share nearly all of the same key characteristics: They show up to perform work duties at a common location usually, get a paycheck from this work, network and socialize with their peers and fellow employees while at work. They even share the same common goal of the prosperity and continued success of that entity that they represent.**

**This goal in this case is firmed up by an oath to CSU which they both took. (see Ex. 11)**

**When evaluating the issue of conflict of interest, the *Academic Faculty and Administrative Professional Manual of Colorado State University* (see Ex. 10) states "External obligations, financial interests, and activities of each University employee must be managed so that there is no interference with the employee's primary obligation and commitment to the University." When evaluating which of Troxell and Stephen's conflicting interests will win out, it's very clear that the CSU Staff Manual dictates that The University's interests must win out. In this case, dictating that CSU's interest must win out over the public's wishes regarding this Ordinance and the fate of the associated parcel of land. This fact is laid out in writing. In fact, Troxell and Stephens are to even remove themselves from the interference, as per the same Manual.**

Also in relation to this passage in the CSU Manual is the fact that Troxell and Stephens have not even properly adhered to the policies of CSU, nor the public trust placed within them by that employment, by removing themselves from the interference

All of these actions, and suspicious voting patterns, coupled with Troxell and Stephens steadfast refusal to simply recuse themselves places us on the doorsteps of a very scary political principle: corruption. Continuing on this course and allowing these individuals to vote on, much less influence the discussion on the topic, is improper and casts a shade of impropriety on the process.

Further, it has been shown again and again that this approach to determining the fate of a such a large and valuable swath of land is the wrong way to go about it. This is evidence that the fate of the Hughes Site needs to be in the hands of the thousands of people that have enjoyed it, and not just in the hands of 7 people too easily influenced by outside interests and unwilling to recognize their own inherent bias. (see Ex. 1)

At no point during this process has government aptly summarized the people's opinion for them, nor should they be allowed to.

Further disconcerting was the question as to whether the Ethics Review Board that previously met on 12/16/2019 can even be considered to be unbiased, when council themselves are asked to essentially police themselves in the manner. I feel that asking anyone to objectively judge and evaluate a peer whom shares the same duties and responsibilities as oneself is not a fair process in the least due to inherent biases. I.e., you're naturally inclined to feel sympathetic to someone who encounters the same possible challenges and possible pitfalls before them.

What personally concerns me in the matter is the voracity with which Ken Summers attacked all arguments in support of an investigation into the Ethics Complaint (see *future exhibit to be added of record of the Ethics Review Board meeting having taken place on 12/16/2019*). Considering Ken's own promises of "Opening Doors", "Providing Access", and "Empowering Influence" on his website, I can't help but fear that Ken's own consulting business has somehow tainted even the Ethics Review Board. And to be honest, I don't even know where to start on all of the processes that Ken could have tainted by his actions and questionable motives.

The question to consistently be asked here is: What happens when the needs and goals of a client of Ken's consulting service runs opposite of that of his constituents? The fact that the possibility even exists that he could arrive at this decision juncture is unacceptable, especially in view of the public trust that is placed upon him. In fact, the very idea of "opening doors" and "selling access" is antithetical to a properly represented constituency.

When looking to outside advice and academic legal guidance on the subject, Robert Wechsler, a graduate of Harvard College and Columbia University Law School, and contributor to Columbia Law School's Center for The Advancement of Public Integrity, offers terrific exploration of the topic through two writings, *Local Government Ethics Programs: A resource for Ethics Commission Member, Local Officials, Attorneys, Journalists, and Students*, and *A Manual for Ethics Reform EX and Local Government Ethics Programs In a Nutshell*. (see Ex. 15, 16) In the past, Wechsler has even contributed to *The Washington Post* regarding Washington D.C. politics.

Finally, regarding the topic of campaign contributions by the National Association of Realtors Fund to Mayor Troxell's election campaign, there exists case law regarding proportionally large contributions to a candidate's election campaign serving to "violate a person's due process rights to an impartial decision-making body." (see Ex. 5,9) This case law, found in the same county as the parcel in consideration, is a terrific path by which to approach Troxell's actions from an additional front.

## **CONCLUSION**

In summary, the following has been presented:

- I. Fort Collins Mayor Wade Troxell and Fort Collins City Councilmember Kristin Stephens are both employees of Colorado State University, the very same entity seeking favorable re-zoning so that the sale of a large 165-acre parcel of land may be successfully sold to Lennar Homes, a developer.
- II. Fort Collins City Councilmember Ken Summers is currently hosting on his website [kensummers.org](http://kensummers.org), a page dedicated to his political consulting business/lobbyist business. This page promises direct influence of legislative matters that can be interpreted to mean either the influence of a third party, or of himself, in exchange for compensation of some sort.
- III. The actions of all three individuals, as it pertains to all related activities relating to the consideration of Fort Collins Ordinance No. 138, 2019 (including all related Ethics Complaints hearings), are in direct violation of State and Municipal Ethical and Conflict of Interest Laws. All three individuals have also failed in performing their fiduciary duty to the people of Colorado, a duty ingrained within their public service, and in the case of Troxell and Stephens, their employment by Colorado State University.
- IV. A consistent effort to minimize the representation of the public's wishes regarding the end use of the parcel of land in consideration has been continually undertaken by city staff and City Elected officials.

I request that the Ethics Review Board investigate all ethics violations made by Wade Troxell, Kristin Stephens, and Ken Summers. I request that the Board carry this out using all tools and options at its disposal and do so by taking to heart the public's explicit, expressed, and continual wishes regarding one of the most important pieces of land to Fort Collins' Identity. I specifically request that Wade Troxell, Kristin Stephens and Ken Summers are removed from all interactions with the decision-making process, and severe remediation actions are taken to address the harm to the process already caused.

In closing, I'd like to give the opportunity for a few other members of the public to speak and have their voices heard in a more direct way:

"No westward growth. Open Space. Walking trails only."

"500-600 Homes added to this area unacceptable"

"Encourage CSU to look for a buyer that will keep it open space"

**"This 'open space' has been an outdoor recreation location well-known by the community and used as such for many, many years. Development is taking this away from the community. (post-it note placed over word, illegible) allow lots of open space."**

**"Takes public access and enjoyment/ shared use out of the picture. Not fair when we have to stare at those houses instead of our beautiful foothills habitat every day."**

***Above quotes excerpted from Exhibit 1, and pages 94-112 of the First Reading Packet for Ordinance No. 138, 2019.***

**In light of this complaint, and consistent with the actions taken regarding past Ethics Review Board Complaints, I respectfully request a delay in any matters before Council in relation to Ordinance No. 138, 2019, commonly referred to as "The Hughes Re-Zoning." As explicitly acknowledged and stated on 11/19/2019, the mere appearance of impropriety in the process could forever stain the process and further erode the public trust in Council's actions.**

**Submitted with respect and severe concern to the Ethics Review Board this 21<sup>st</sup> day of January, 2020.**

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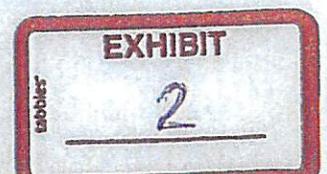
**Rory Heath**

## Exhibits

1. All pages of previous submitted comments, pages 94-748 of the packet
2. All pages of narrow options given to drake centre attendees
3. Video of first reading
4. KGS website
5. Referenced court case by lawyer letter
6. Muni Code
7. State Statutes
8. Statutes submitted by city attorney
9. Lawyer letter
10. Excerpt from Academic Faculty and Administrative Professional Manual of Colorado State University
11. Oath of CSU
12. Voltage- Milgram Experiment
13. Group Think- asch conformity concept
14. Groupthink- Irving L Janis, <https://www.britannica.com/science/groupthink>
15. Shortened Columbia University Paper
16. Long Columbia University Paper
17. Nick Frey Complaint
18. Secretary of State Directory Result for KGS Consulting
19. Official Record of Ethics Meeting to be found in the future

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 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, 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 as soon as reasonably practicable. No more than thirty (30) working days after the date of filing of the complaint, the Review Board shall meet and consider the complaint. In the event extenuating circumstances arise in the scheduling and preparation for such meeting, the time for meeting shall be extended by fourteen (14) calendar days. 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, decide by majority vote whether to formally investigate 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.

- c. In the event that a complaint is filed with the City Clerk 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), such complaint shall not be referred to the regular Review Board for review but shall instead be submitted to an alternate Review Board consisting of all remaining Councilmembers who are not named in the complaint; provided, however, that if five (5) or more Councilmembers are named in the complaint, 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 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. 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, 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 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 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 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 submitted to city Council at a regular City Council meeting, at which time the City Council shall determine whether to adopt the same. Any whose conduct or circumstance is the subject of the opinion shall refrain from participating in any deliberations of the City Council regarding the 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.

(Ord. No. 112, 1989, § 1, 8-1-89; Ord. No. 17, 1993, 2-16-93; Ord. No. 64, 1993, 7-20-93; Ord. 132, 2001, § 2, 9-18-01; Ord. No. 110, 2002, §§ 1—3, 8-20-02; Ord. No. 144, 2014, 11-4-14; Ord. No. 102, 2019, § 2, 9-3-19)

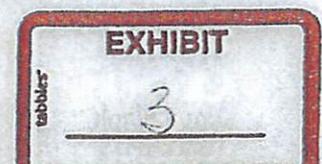
Section 9. - Conflicts of interest.

- (a) *Definitions*. For purposes of construction of this Section 9, the following words and phrases shall have the following meanings:

*Business* means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, activity or entity.

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

- (1) 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;
- (2) 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;
- (3) 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;
- (4) 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;
- (5) 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;
- (6) 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;



- (7) 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
- (8) 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.

*Officer or employee* means any person holding a position by election, appointment or employment in the service of the city, whether part-time or full-time, including a member of any authority, board, committee or commission of the city, other than an authority that is:

- (1) established under the provisions of the Colorado Revised Statutes;
- (2) governed by state statutory rules of ethical conduct; and
- (3) expressly exempted from the provisions of this Article by ordinance of the Council.

*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:

- (1) 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;
- (2) 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
- (3) the interest that an officer or employee has in the compensation, benefits, or terms and conditions of his or her employment with the city.

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

*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.

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

- (1) *Sales to the city.* No officer or employee, or relative of such officer or employee, shall have a financial interest in the sale to the city of any real or personal property, equipment, material, supplies or services, except personal services provided to the city as an officer or employee, if:
  - a. such officer or employee is a member of the Council;
  - b. such officer or employee exercises, directly or indirectly, any decision-making authority on behalf of the city concerning such sale; or
  - c. in the case of services, such officer or employee exercises any supervisory authority in his or her role as a city officer or employee over the services to be rendered to the city.
- (2) *Purchases from the city.* No officer, employee or relative shall, directly or indirectly, purchase any real or personal property from the city, except such property as is offered for sale at an established price, and not by bid or auction, on the same terms and conditions as to all members of the general public.
- (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.
- (4) *Disclosure procedure.* If any officer or employee has any financial or personal interest requiring disclosure under subsection (3) of this section, such person shall immediately upon discovery thereof declare such interest by delivering a written statement to the City Clerk, with copies to the City Manager and, if applicable, to the chairperson of the public body of which such person is a member, which statement shall contain the name of the

officer or employee, the office or position held with the city by such person, and the nature of the interest. If said officer or employee shall discover such financial or personal interest during the course of a meeting or in such other circumstance as to render it practically impossible to deliver such written statement prior to action upon the matter in question, said officer or employee shall immediately declare such interest by giving oral notice to all present, including a description of the nature of the interest.

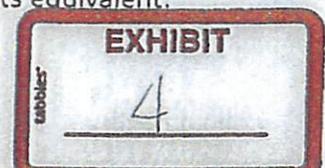
- (5) *Violations*. Any contract made in violation of this Section shall be voidable by the city. If voided within one (1) year of the date of execution thereof, the party obtaining payment by reason of such contract shall, if required by the city, forthwith return to the city all or any designated portion of the monies received by such individual from the city by reason of said contract, together with interest at the lawful maximum rate for interest on judgments.

(Res. No. 71-12, 2-11-71, approved, election 4-6-71; Ord. No. 155, 1988, 12-20-88, approved, election 3-7-89; Ord. No. 10, 1997, § 1, 2-4-97, approved, election 4-8-97; Ord. No. 22, 2001, § 2, 2-20-01, approved, election 4-3-01; Ord. No. 003, 2017, § 2, 1-17-17, approved, election 4-4-17)

## 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) *Attempt to influence or influence*, as it pertains to this Section, shall mean take any action intended to impact, shape, control, sway, bias or prejudice.
  - (2) *Benefit* shall mean an advantage or gain.
  - (3) *Board and commission member* shall mean a member of any appointive board or commission of the City.
  - (4) *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.
  - (5) *Councilmember* shall mean a member of the City Council.
  - (6) *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.
  - (7) *Direct* shall mean resulting immediately and proximately from the circumstances and not from an intervening cause.
  - (8) *Detriment* shall mean disadvantage, injury, damage or loss.
  - (9) *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.

- (10) *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.

- (11) *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.
- (12) *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.

- (13) *Public services* shall mean city services provided to or made available for the public's benefit.
- (14) *Related entity* shall mean any corporation, limited liability company, partnership, sole proprietorship, joint venture, trust, estate, foundation, association, business, company or any other organization, whether or not operated for profit, with respect to which an officer or employee, or a relative of the same, has a substantial ownership interest in, is employed by, is an agent for or otherwise represents in any legal capacity.
- (15) *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.
- (16) *Routine City matter* shall mean a usual and ordinary registration, reservation, or other request or application, within a program or for public services or City approval, such as a registration for a recreation class, reservation of a park shelter, request for standard utility services or application for a building permit, development approval or variance, or an appeal, provided that the same is carried out using a routine process or system or in a manner consistent with standard practices.
- (17) *Similarly situated citizens* shall mean citizens in like circumstances having comparable legal rights and obligations.
- (18) *Substantial* shall mean more than nominal in value, degree, amount or extent.
- (b) Notwithstanding the provisions of § 1-15 of the Code, an alleged violation of the provisions of this Section by a member of the City Council shall not be prosecuted in the Municipal Court as a misdemeanor criminal offense but shall instead be referred to the Ethics Review Board for an advisory opinion and recommendation under the provisions of § 2-569.
- (c) Rules of conduct.
- (1)

Use and disclosure of confidential information. The following rules shall apply to the use and disclosure of confidential information by officers and employees of the City. In the event of any conflict among these provisions, the more specific provision shall take precedence over the more general provision.

- a. No use for personal gain. No officer or employee shall knowingly use information received in confidence as an officer or employee to advance the financial or personal interests of the officer or employee or others.
- b. Disclosure of confidential information, generally. No officer or employee shall knowingly disclose any confidential information to any person who is not an officer or employee or to an officer or employee whose official duties are unrelated to the subject matter of the confidential information or to maintaining an official record of such information on behalf of the City, unless such disclosure is reasonably necessary to protect the City from the gross mismanagement of public funds, the abuse of governmental authority, or illegal or unethical practices.
- c. Disclosure of confidential information provided to the City Council. All information received in confidence by the City Council shall remain confidential, and no officer or employee shall knowingly disclose any such confidential information to any person to whom such information was not originally distributed by City staff unless and until the City Council has, by majority vote, consented to its release, unless such disclosure is reasonably necessary to protect the City from the gross mismanagement of public funds, the abuse of governmental authority, or illegal or unethical practices.
- d. Disclosure of information discussed in executive session. No officer or employee shall knowingly disclose any confidential information discussed in an executive session to any person who was not present during such discussion, other than members of such body who were unable to attend the executive session, without the prior knowledge and consent of the body holding such executive session, unless such disclosure is reasonably necessary to protect the City from the gross mismanagement of public funds, the abuse of governmental authority, or illegal or unethical practices. In the event that a matter discussed in

executive session comes before the City Council or a board or commission of the City for formal action at an open meeting, or if such formal action is anticipated, nothing herein shall be construed as prohibiting a member of the body that will be taking such formal action from stating his or her position or opinion with regard to the matter, as long as such statements do not divulge confidential information received from others during the executive session.

- e. Certain distribution and discussion by City Manager and City Attorney permitted. Notwithstanding the provisions of Subparagraphs c. and d. above, the City Manager and City Attorney may further distribute confidential information provided to the City Council and may disclose confidential information discussed in any executive session of the City Council, or of a Council committee, to such staff members and/or board and commission members as they may consider reasonably necessary to enable them to fully advise the City Council or to implement any direction given by the City Council or to advise other officers and employees of the City whose official duties are related to the subject matter of the confidential information or to maintaining a record of the same on behalf of the City.
- f. No disclosure of confidential information to officer or employee having conflict of interest. No officer or employee who has filed a statement of conflict of interest with the City Clerk under Article IV, Section 9 of the Charter, or who has been determined by the City Council under the provisions of Subparagraph g. below to have a conflict of interest, shall knowingly elicit, accept or inspect any confidential information pertaining to the subject matter of such conflict of interest, nor shall any such officer or employee attend or participate in an executive session of the City Council, or of a Council committee or board or commission of the City, pertaining to said subject matter.
- g. The City Council may determine that a Councilmember shall not receive confidential information or attend executive sessions on a particular topic if the City Council first determines that said Councilmember has a conflict of interest in the subject matter of such confidential information and/or executive session. Any such determination by the City Council

shall be made only after the City Council has received an advisory opinion and recommendation of the Ethics Review Board on the question, rendered in accordance with the provisions of § 2-569.

- (2) With respect to any matter regarding which a Councilmember has declared a conflict of interest, said Councilmember is prohibited from discussing with, or otherwise attempting in any capacity to influence, directly or indirectly, any City officer or employee, and from representing any person or interest before the City Council or any board of commission of the City or in dealing with any City officer or employee, except that such Councilmember may represent with any City employee or before the City Council or a board or commission of the City his or her own interest or that of a relative provided said Councilmember does not violate Section 2-568(c)(5) or (c)(6).
- (3) In any action in which a member of a City board or commission member ("member") declares a conflict of interest, such member shall not communicate to or attempt to influence such board or commission regarding such item, in any capacity, except that:
  - a. the member may communicate with said board or commission to protect a strictly personal interest, in the same or similar ways in which the public is permitted to communicate with the board or commission.
  - b. the member may prepare materials on behalf of another for a project in the normal course of business or operation, so long as the purpose of those materials is not directly and substantially related to advocacy before said member's board or commission. Those materials may be included in materials submitted by another to said member's board or commission so long as they fall within this exception. For illustrative purposes, such materials may include, but are not necessarily limited to architectural plans, technical studies, and engineering designs.
  - c. if a member has declared a conflict of interest in a matter in accordance with the City Charter and Code and so is precluded from participating in or influencing the decision of his or her board or commission, he or she may request a variance from the limitations of this subsection from the City Council in the following circumstances, and in the following manner:
    1. The member must submit a request for a variance to the City Clerk on a form provided by the City Clerk for such purpose.

2. The member must demonstrate that without the variance, he or she would suffer an exceptional hardship, and that no reasonable alternative exists that would allow for that hardship to be avoided or substantially mitigated;
  3. The City Council must act by resolution to approve or disapprove the requested variance.
  - d. This limitation does not apply to other members, partners, or other parties of the member's or firm or entity, who may continue to work on the project and may advocate to such member's board or commission, provided that the member has declared the conflict and refrains from participating in the matter consistent with the application limitations.
- (4) All officers and employees shall refrain from accepting payment for any speeches, debates or other public events and shall further refrain from accepting any gift or favor which, in the judgment of a reasonably prudent person, would tend to impair the officer's or employee's independence of judgment in the performance of his or her official duties. The following shall not constitute prohibited gifts or favors under this Section:
- a. Campaign contributions reported as required by Chapter 7, Article V of this Code;
  - b. A nonpecuniary award publicly presented by a nonprofit organization in recognition of public service;
  - c. Payment of or reimbursement for actual and necessary expenditures for travel and subsistence for attendance at a convention or other meeting at which an officer or employee is scheduled to participate;
  - d. Reimbursement for or acceptance of an opportunity to participate in a social function or meeting which is offered to an officer or employee which is not extraordinary when viewed in light of the position held by such officer or employee;
  - e. Items of perishable or nonpermanent value that are insignificant in value, including, but not limited to, meals, lodging, travel expenses or tickets to sporting, recreational, educational or cultural events; and
  - f. Payment of salary from employment, including other employment in addition to that earned from being an officer or employee.

- (5) 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.
- (6) If any Councilmember contacts an officer or employee regarding a request in connection with that contacted officer's or employee's role and in relation to a matter that is not a routine City matter and is not within the Councilmember's role as an officer of the City, said Councilmember shall no later than 5:00 p.m. on the next business day after such contact deliver a written disclosure to the City Clerk and the City Manager and to all other members of City Council. The written disclosure must describe the date, time and general subject matter of the contact, together with the identity of the officer or employee contacted. Any private or confidential information, such as tax, utility account, or other personal information may be excluded or redacted from such disclosure. Disclosure by means of an electronic message shall be deemed to constitute written disclosure for purposes of this provision.

(Ord. No. 112, 1989, § 1, 8-1-89; Ord. No. 162, 2000, § 2, 11-21-00; Ord. No. 109, 2002, §§ 1—4, 8-20-02; Ord. No. 145, 2014, 11-4-14; Ord. No. 159, 2014, §§ 1—3, 11-18-14; Ord. No. 037, 2017, §§ 2, 3, 3-7-17; Ord. No. 167, 2017, § 2, 12-19-17)

## 24-18-101. Legislative declaration

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The general assembly recognizes the importance of the participation of the citizens of this state in all levels of government in the state. The general assembly further recognizes that, when citizens of this state obtain public office, conflicts may arise between the public duty of such a citizen and his or her private interest. The general assembly hereby declares that the prescription of some standards of conduct common to those citizens involved with government is beneficial to all residents of the state. The provisions of this part 1 recognize that some actions are conflicts per se between public duty and private interest while other actions may or may not pose such conflicts depending upon the surrounding circumstances.

## 24-18-102. Definitions

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As used in this part 1, unless the context otherwise requires:

- (1) "Business" means any corporation, limited liability company, partnership, sole proprietorship, trust or foundation, or other individual or organization carrying on a business, whether or not operated for profit.
- (2) "Compensation" means any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another.
- (3) "Employee" means any temporary or permanent employee of a state agency or any local government, except a member of the general assembly and an employee under contract to the state.
- (4) "Financial interest" means a substantial interest held by an individual which is:
  - (a) An ownership interest in a business;
  - (b) A creditor interest in an insolvent business;
  - (c) An employment or a prospective employment for which negotiations have begun;
  - (d) An ownership interest in real or personal property;
  - (e) A loan or any other debtor interest; or
  - (f) A directorship or officership in a business.
- (5) "Local government" means the government of any county, city and county, city, town, special district, or school district.
- (6) "Local government official" means an elected or appointed official of a local government but does not include an employee of a local government.
- (7) "Official act" or "official action" means any vote, decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.
- (8) "Public officer" means any elected officer, the head of a principal department of the executive branch, and any other state officer. "Public officer" does not include a member of the general assembly, a member of the judiciary, any local government official, or any member of a board, commission, council, or committee who receives no compensation other than a per diem allowance or necessary and reasonable expenses.
- (9) "State agency" means the state; the general assembly and its committees; every executive department, board, commission, committee, bureau, and office; every state institution of higher education, whether established by the state constitution or by law, and every governing board thereof; and every independent commission and other political subdivision of the state government except the courts.

## 24-18-103. Public trust - breach of fiduciary duty

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- (1) The holding of public office or employment is a public trust, created by the confidence which the electorate reposes in the integrity of public officers, members of the general assembly, local government officials, and employees. A public officer, member of the general assembly, local government official, or employee shall carry out his duties for the benefit of the people of the state.
- (2) A public officer, member of the general assembly, local government official, or employee whose conduct departs from his fiduciary duty is liable to the people of the state as a trustee of property and shall suffer such other liabilities as a private fiduciary would suffer for abuse of his trust. The district attorney of the district where the trust is violated may bring appropriate judicial proceedings on behalf



of the people. Any moneys collected in such actions shall be paid to the general fund of the state or local government. Judicial proceedings pursuant to this section shall be in addition to any criminal action which may be brought against such public officer, member of the general assembly, local government official, or employee.

## 24-18-104. Rules of conduct for all public officers, members of the general assembly, local government officials, and employees

- (1) Proof beyond a reasonable doubt of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty and the public trust. A public officer, a member of the general assembly, a local government official, or an employee shall not:
- Disclose or use confidential information acquired in the course of his official duties in order to further substantially his personal financial interests; or
  - Accept a gift of substantial value or a substantial economic benefit tantamount to a gift of substantial value:
    - Which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties; or
    - Which he knows or which a reasonable person in his position should know under the circumstances is primarily for the purpose of rewarding him for official action he has taken.
  - An economic benefit tantamount to a gift of substantial value includes without limitation:
    - A loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans and compensation received for private services rendered at a rate substantially exceeding the fair market value of such services; or
    - The acceptance by a public officer, a member of the general assembly, a local government official, or an employee of goods or services for his or her own personal benefit offered by a person who is at the same time providing goods or services to the state or a local government under a contract or other means by which the person receives payment or other compensation from the state or local government, as applicable, for which the officer, member, official, or employee serves, unless the entirety of the compensation is attributable to the goods or services indicated that the transaction is legitimate, the terms are fair to both parties, the transaction is supported by full and adequate consideration, and the officer, member, official, or employee does not receive any substantial benefit resulting from his or her official or governmental status that is unavailable to members of the public generally.
  - The following are not gifts of substantial value or gifts of substantial economic benefit tantamount to gifts of substantial value for purposes of this section:
    - Carry-over contributions and contributions in kind reported as required by section 1-45-108, C.R.S.;
    - An unsolicited item of trivial value;
    - A gift with a fair market value of fifty-three dollars or less that is given to the public officer, member of the general assembly, local government official, or employee by a person other than a professional lobbyist;
    - An unsolicited token or award of appreciation as described in section 3 (3)(c) of article XXIX of the state constitution;
    - Unsolicited informational material, publications, or subscriptions related to the performance of official duties on the part of the public officer, member of the general assembly, local government official, or employee;
    - Payment of or reimbursement for reasonable expenses paid by a nonprofit organization or state and local government in connection with attendance at a convention, fact-finding mission or trip, or other meeting as permitted in accordance with the provisions of section 3 (3)(f) of article XXIX of the state constitution;
    - Payment of or reimbursement for admission to, and the cost of food or beverages consumed at, a reception, meal, or meeting that may be accepted or received in accordance with the provisions of section 3 (3)(e) of article XXIX of the state constitution;
    - A gift given by an individual who is a relative or personal friend of the public officer, member of the general assembly, local government official, or employee that may be accepted or received by the public officer, member of the general assembly, local government official, or employee in accordance with the provisions of section 3 (3)(g) of article XXIX of the state constitution.

with the provisions of section 3 of article XXIX of the state constitution that are reported pursuant to section 24-6-203 (3)(d);

(h) Payment of salary from employment, including other government employment, in addition to that earned from being a member of the general assembly or by reason of service in other public office;

(i) A component of the compensation paid or other incentive given to the public officer, member of the general assembly, local government official, or employee in the normal course of employment; and

(j) Any other gift or thing of value a public officer, member of the general assembly, local government official, or employee is permitted to solicit, accept, or receive in accordance with the provisions of section 3 of article XXIX of the state constitution, the acceptance of which is not otherwise prohibited by law.

(4) The provisions of this section are distinct from and in addition to the reporting requirements of section 1-45-106, C.R.S., and section 24-6-203, and do not relieve an incumbent in or elected candidate to public office from reporting an item described in subsection (3) of this section, if such reporting provisions apply.

(5) The amount of the gift limit specified in paragraph (b.5) of subsection (3) of this section, set at fifty-three dollars as of August 8, 2012, shall be identical to the amount of the gift limit under section 3 of article XXIX of the state constitution, and shall be adjusted for inflation contemporaneously with any adjustment of the constitutional gift limit pursuant to section 3 (6) of article XXIX.

## 24-18-105. Ethical principles for public officers, local government officials, and employees

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(1) The principles in this section are intended as guides to conduct and do not constitute violations as such of the public trust of office or employment in state or local government.

(2) A public officer, a local government official, or an employee should not acquire or hold an interest in any business or undertaking which he has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by an agency over which he has substantive authority.

(3) A public officer, a local government official, or an employee should not, within six months following the termination of his office or employment, obtain employment in which he will take direct advantage, unavailable to others, of matters with which he was directly involved during his term of employment. These matters include rules, other than rules of general application, which he actively helped to formulate and applications, claims, or contested cases in the consideration of which he was an active participant.

(4) A public officer, a local government official, or an employee should not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when he has a substantial financial interest in a competing firm or undertaking.

(5) Public officers, local government officials, and employees are discouraged from assisting or enabling members of their immediate family in obtaining employment, a gift of substantial value, or an economic benefit tantamount to a gift of substantial value from a person whom the officer, official, or employee is in a position to reward with official action or has rewarded with official action in the past.

## 24-18-109. Rules of conduct for local government officials and employees

(1) Proof beyond a reasonable doubt of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty and the public trust.

(2) A local government official or local government employee shall not:

(a) Engage in a substantial financial transaction for his private business purposes with a person whom he inspects or supervises in the course of his official duties;

(b) Perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or

(c) Accept goods or services for his or her own personal benefit offered by a person who is at the same time providing goods or services to the local government for which the official or employee serves, under a contract or other means by which the person receives payment or other compensation from the local government, unless the totality of the circumstances attendant to the acceptance of the goods or services indicates that the transaction is legitimate, the terms are fair to both parties, the transaction is supported by full and adequate consideration, and the official or employee does not receive any substantial benefit resulting from his or her official or governmental status that is unavailable to members of the public generally.

(3) (a) A member of the governing body of a local government who has a personal or private interest in any matter proposed or pending before the governing body shall disclose such interest to the governing body and shall not vote thereon and shall refrain from attempting to influence the decisions of the other members of the governing body in voting on the matter.

(b) A member of the governing body of a local government may vote notwithstanding paragraph (a) of this subsection (3) if his participation is necessary to obtain a quorum or otherwise enable the body to act and if he complies with the voluntary disclosure procedures under section 24-18-110.

(4) It shall not be a breach of fiduciary duty and the public trust for a local government official or local government employee to:

(a) Use local government facilities or equipment to communicate or correspond with a member's constituents, family members, or business associates; or

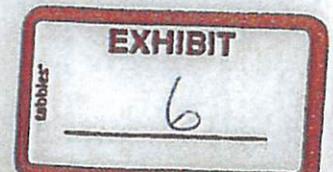
(b) Accept or receive a benefit as an indirect consequence of transacting local government business.

(5) (a) Notwithstanding any other provision of this article 18, it is neither a conflict of interest nor a breach of fiduciary duty or the public trust for a local government official who is a member of the governing body of a local government to serve on a board of directors of a nonprofit entity and, when serving on the governing body, to vote on matters that may pertain to or benefit the nonprofit entity.

(b)

(I) Except as provided in subsection (5)(b)(II) of this section, a local government official is not required to provide or file a disclosure or otherwise comply with the requirements of subsection (3) of this section unless the local government official has a financial interest in, or the local government official or an immediate family member receives services from, the nonprofit entity independent of the official's membership on the board of directors of the nonprofit entity.

(II) A local government official who serves on the board of directors of a nonprofit entity shall publicly announce his or her relationship with the nonprofit entity before voting on a matter that provides a direct and substantial economic benefit to the nonprofit entity.





#### 24-18-201. Interests in contracts

- (1) Members of the general assembly, public officers, local government officials, or employees shall not be interested in any contract made by them in their official capacity or by any body, agency, or board of which they are members or employees. A former employee may not, within six months following the termination of his employment, contract or be employed by an employer who contracts with a state agency or any local government involving matters with which he was directly involved during his employment. For purposes of this section, the term:
- (a) "Be interested in" does not include holding a minority interest in a corporation;
- (b) "Contract" does not include:
- (i) Contracts awarded to the lowest responsible bidder based on competitive bidding procedures;
- (ii) Merchandise sold to the highest bidder at public auctions;
- (iii) Investments or deposits in financial institutions which are in the business of loaning or receiving moneys;
- (iv) A contract with an interested party if, because of geographic restrictions, a local government could not otherwise afford itself of the subject of the contract. It shall be presumed that a local government could not otherwise reasonably afford itself of the subject of a contract if the additional cost to the local government is greater than ten percent of a contract with an interested party or if the contract is for services that must be performed within a limited time period and no other contractor can provide those services within that time period.
- (v) A contract with respect to which any member of the general assembly, public officer, local government official, or employee has disclosed a personal interest and has not voted thereon or with respect to which any member of the governing body of a local government has voted thereon in accordance with section 24-18-109 (3)(b) or 31-4-404 (3), C.R.S. Any such disclosure shall be made to the governing body, for local government officials and employees, in accordance with the rules of the house of representatives and the senate, for members of the general assembly, and to the secretary of state, for all others.

#### 24-18-202. Interest in sales or purchases

Public officers and local government officials shall not be purchasers at any sale or vendors at any purchase made by them in their official capacity.

#### 24-18-203. Voidable contracts

Every contract made in violation of any of the provisions of section 24-18-201 or 24-18-202 shall be voidable at the instance of any party to the contract except the officer interested therein.

#### 24-18-204. Dealings in warrants and other claims prohibited

State officers, county officers, city and county officers, city officers, and town officers, as well as all other local government officials, and their deputies and clerks, are prohibited from purchasing or selling or in any manner receiving to their own use or benefit or to the use or benefit of any person or persons whatever any state, county, city and county, city and county, county, city and county, city, or town warrants, scrip, orders, demands, claims, or other evidences of indebtedness against the state or any county, city and county, city, or town thereof except evidences of indebtedness issued to or held by them for services rendered as such officer, deputy, or clerk, and evidences of the funded indebtedness of such state, county, city, and county, city, or town.

#### 24-18-205. Settlements to be withheld on affidavit

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(1) Every officer charged with the disbursement of public moneys who is informed by affidavit establishing probable cause that any officer whose account is about to be settled, audited, or paid by him has violated any of the provisions of this part 2 shall suspend such settlement or payment and cause such officer to be prosecuted for such violation by the district attorney of the appropriate jurisdiction.

(2) If there is judgment for the defendant upon such prosecution, the proper officer may proceed to settle, audit, or pay such account as if no such affidavit had been filed.

#### 24-18-206. Penalty

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A person who knowingly commits an act proscribed in this part 2 commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S. In addition to the penalties provided in section 18-1.3-501, C.R.S., the court may impose a fine of no more than twice the amount of the benefit the person obtained or was attempting to obtain in violating a provision of this part 2.

### 18-8-302. Bribery

- (1) A person commits the crime of bribery, if:
- (a) He offers, confers, or agrees to confer any pecuniary benefit upon a public servant with the intent to influence the public servant's vote, opinion, judgment, exercise of discretion, or other action in his official capacity; or
  - (b) While a public servant, he solicits, accepts, or agrees to accept any pecuniary benefit upon an agreement or understanding that his vote, opinion, judgment, exercise of discretion, or other action as a public servant will thereby be influenced.
- (2) It is no defense to a prosecution under this section that the person sought to be influenced was not qualified to act in the desired way, whether because he had not yet assumed office, lacked jurisdiction, or for any other reason.
- (3) Bribery is a class 3 felony.

### 18-8-303. Compensation for past official behavior

- (1) A person commits a class 6 felony, if he:
- (a) Solicits, accepts, or agrees to accept any pecuniary benefit as compensation for having, as a public servant, given a decision, opinion, recommendation, or vote favorable to another or for having otherwise exercised a discretion in his favor, whether or not he has in so doing violated his duty; or
  - (b) Offers, confers, or agrees to confer compensation, acceptance of which is prohibited by this section.

### 18-8-304. Soliciting unlawful compensation

A public servant commits a class 2 misdemeanor if he requests a pecuniary benefit for the performance of an official action knowing that he was required to perform that action without compensation or at a level of compensation lower than that requested.

### 18-8-305. Trading in public office

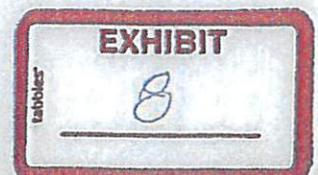
- (1) A person commits trading in public office if:
- (a) He offers, confers, or agrees to confer any pecuniary benefit upon a public servant or party officer upon an agreement or understanding that he or a particular person will or may be appointed to a public office or designated or nominated as a candidate for public office; or
  - (b) While a public servant or party officer, he solicits, accepts, or agrees to accept any pecuniary benefit from another upon an agreement or understanding that a particular person will or may be appointed to a public office or designated or nominated as a candidate for public office.
- (2) It shall be an affirmative defense that the pecuniary benefit was a customary contribution to political campaign funds solicited and received by lawfully constituted political parties.
- (3) Trading in public office is a class 1 misdemeanor.

### 18-8-306. Attempt to influence a public servant

Any person who attempts to influence any public servant by means of deceit or by threat of violence or economic reprisal against any person or property, with the intent thereby to alter or affect the public servant's decision, vote, opinion, or action concerning any matter which is to be considered or performed by him or the agency or body of which he is a member, commits a class 4 felony.

### 18-8-307. Designation of supplier prohibited

- (1) No public servant shall require or direct a bidder or contractor to deal with a particular person in procuring any goods or service required in submitting a bid to or fulfilling a contract with any government.
- (2) Any provision in invitations to bid or any contract documents prohibited by this section are against public policy and void.



(3) It shall be an affirmative defense that the defendant was a public servant acting within the scope of his authority exercising the right to reject any material, subcontractor, service, bond, or contract tendered by a bidder or contractor because it does not meet bona fide specifications or requirements relating to quality, availability, form, experience, or financial responsibility.

(4) Any public servant who violates the provisions of subsection (1) of this section commits a class 6 felony.

### **18-8-308. Failing to disclose a conflict of interest**

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(1) A public servant commits failing to disclose a conflict of interest if he exercises any substantial discretionary function in connection with a government contract, purchase, payment, or other pecuniary transaction without having given seventy-two hours' actual advance written notice to the secretary of state and to the governing body of the government which employs the public servant of the existence of a known potential conflicting interest of the public servant in the transaction with reference to which he is about to act in his official capacity.

(2) A "potential conflicting interest" exists when the public servant is a director, president, general manager, or similar executive officer or owns or controls directly or indirectly a substantial interest in any nongovernmental entity participating in the transaction.

(3) Failing to disclose a conflict of interest is a class 2 misdemeanor.

### 18-8-402. Misuse of official information

- (1) Any public servant, in contemplation of official action by himself or by a governmental unit with which he is associated or in reliance on information to which he has access in his official capacity and which has not been made public, commits misuse of official information if he:
- (a) Acquires a pecuniary interest in any property, transaction, or enterprise which may be affected by such information or official action; or
  - (b) Speculates or wagers on the basis of such information or official action; or
  - (c) Aids, advises, or encourages another to do any of the foregoing with intent to confer on any person a special pecuniary benefit.
- (2) Misuse of official information is a class 6 felony.

### 18-8-403. Official oppression

- (1) A public servant, while acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity, commits official oppression if, with actual knowledge that his conduct is illegal, he:
- (a) Subjects another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, or lien; or
  - (b) Has legal authority and jurisdiction of any person legally restrained of his liberty and denies the person restrained the reasonable opportunity to consult in private with a licensed attorney-at-law, if there is no danger of imminent escape and the person in custody expresses a desire to consult with such attorney.
- (2) Official oppression is a class 2 misdemeanor.

### 18-8-404. First degree official misconduct

- (1) A public servant commits first degree official misconduct if, with intent to obtain a benefit for the public servant or another or maliciously to cause harm to another, he or she knowingly:
- (a) Commits an act relating to his office but constituting an unauthorized exercise of his official function; or
  - (b) Refrains from performing a duty imposed upon him by law; or
  - (c) Violates any statute or lawfully adopted rule or regulation relating to his office.
- (2) First degree official misconduct is a class 2 misdemeanor.

### 18-8-405. Second degree official misconduct

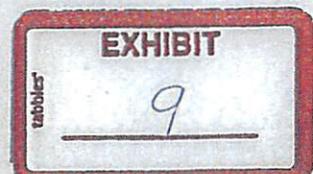
- (1) A public servant commits second degree official misconduct if he knowingly, arbitrarily, and capriciously:
- (a) Refrains from performing a duty imposed upon him by law; or
  - (b) Violates any statute or lawfully adopted rule or regulation relating to his office.
- (2) Second degree official misconduct is a class 1 petty offense.

### 18-8-406. Issuing a false certificate

A person commits a class 6 felony, if, being a public servant authorized by law to make and issue official certificates or other official written instruments, he makes and issues such an instrument containing a statement which he knows to be false.

### 18-8-407. Embezzlement of public property

- (1) Every public servant who lawfully or unlawfully comes into possession of any public moneys or public property of whatever description, being the property of the state or of any political subdivision of the state, and who knowingly converts any of such public moneys or property to his own use or to any use other than the public use authorized by law is guilty of embezzlement of public property. Every person convicted under the provisions of this section shall be forever thereafter ineligible and



disqualified from being a member of the general assembly of this state or from holding any office of trust or profit in this state.

(2) Embezzlement of public property is a class 5 felony.

#### **18-8-408. Designation of insurer prohibited**

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(1) No public servant shall, directly or indirectly, require or direct a bidder on any public building or construction contract which is about to be or has been competitively bid to obtain from a particular insurer, agent, or broker any surety bond or contract of insurance required in such bid or contract or required by any law, ordinance, or regulation.

(2) Any such public servant who violates any of the provisions of subsection (1) of this section commits a class 1 petty offense.

(3) Any provisions in invitations to bid or in any contract documents prohibited by this section are declared void as against the public policy of this state.

(4) Nothing in this section shall be construed to prevent any such public servant acting on behalf of the government from exercising the right to approve or reject a surety bond or contract of insurance as to its form or sufficiency or the lack of financial capability of an insurer selected by a bidder.

(5) This section shall apply only to contracts entered into on or after July 1, 1977.

#### **18-8-409. Violation of rules and regulations of judicial nominating commissions not subject to criminal prosecution**

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A person who violates a rule or regulation promulgated by any judicial nominating commission shall not be subject to criminal prosecution.

# State of Colorado



William Leone, *Chair*  
Bob Bacon, *Vice-Chair*  
April Jones, *Commissioner*  
Matt Smith, *Commissioner*  
Jo Ann Sorensen, *Commissioner*

Independent Ethics Commission  
1300 Broadway, Suite 240  
Denver CO 80203  
Phone: (720) 625-5697  
www.colorado.gov/iec

Dino Ioannides, *Executive Director*

## Advisory Opinion 17-04 (Conflict of Interest, Local Government Official)

**Summary:** It is not a violation of Article XXIX or the statutory Standards of Conduct for a county commissioner to continue serving as a director on the board of a transportation authority under the facts and circumstances presented in the request.

### I. Background

Requester is an Eagle County Commissioner. Among other duties as a county commissioner, the Requester sits "in a quasi-judicial capacity" to review, hear, and approve or deny land use applications.

Requester also serves as a member of the Board of Directors for the Roaring Fork Transportation Authority ("RFTA"). RFTA is a regional transportation authority created under § 43-4-603, C.R.S. RFTA's purpose is to finance, construct, operate, and maintain an efficient, sustainable, and regional multi-modal transportation system at locations within or without the boundaries of RFTA. RFTA directors serve without compensation, except for expense reimbursement. The members of RFTA include Eagle County, Garfield County, Pitkin County, the City of Aspen, the Town of Basalt, the Town of Carbondale, the City of Glenwood Springs, and the Town of Snowmass Village.

Article 4 of Title 43, C.R.S., authorizes the creation of transportation authorities, each of which is a "separate political subdivision and body corporate of the state" having "all the duties, privileges, immunities, rights, liabilities, and disabilities of a public body politic and corporate." § 43-4-603(1), C.R.S. Each transportation authority is mandated to have at least five directors, each of whom must be an elected official from every member of the combination. § 43-4-603(2)(b)(I), C.R.S.

One of the issues pending before the Eagle County Board of County Commissioners ("BOCC") is a land-use application for Preliminary Plan for Planned Unit Development. The application concerns property that is located within the Roaring Fork Valley portion of Eagle County and seeks a rezoning of the property. The application initially presented a public benefit dedication of 50 parking spaces to RFTA, and was later amended to dedicate 20 parking spaces and \$400,000 to build additional parking on other land. As a result of the application amendment,



RFTA's Director of Planning sent a letter to be considered by Eagle County in connection with the County's consideration of the application. The letter expressed dissatisfaction with the application amendment.

Requester does not recall being involved in discussions concerning the public benefit being offered by the land-use applicant. The Requester did not have any involvement in developing RFTA's position on the application, or in drafting or approving RFTA's responsive letter.

Requester is concerned about the potential for a conflict of interest if the Requester was to take official action on the application, given that RFTA could benefit from a County decision on the application. Requester asks whether her taking of official action would violate the code of ethics for local government officials as set forth in the Colorado Constitution and in § 24-18-109(2)(b), C.R.S. During the pendency of this advisory opinion request, Requester has resigned from the RFTA Board, but asks whether she may be reappointed to the RFTA Board during the pendency of the hearing on the application.

## **II. Jurisdiction**

Colo. Const. Art. XXIX gives the Commission jurisdiction over local government officials. *See generally*, Colo. Const. Art. XXIX §§ 3, 4, and 6. Requester is a local government official under Colo. Const. Art. XXIX § 2(3).

## **III. Applicable Law**

Section 43-4-603, C.R.S., provides, in pertinent part:

- (2) Any contract establishing [a transportation] authority shall specify:
  - (a) The name and purpose of the authority and the regional transportation systems to be provided;
  - (b) The establishment and organization of the board of directors in which all legislative power of the authority is vested, including:
    - (i) The number of directors, which shall be at least five, all of which, except as provided in subsection (5) of this section, shall be elected officials from the members of the combination and which shall include at least one elected official from each member of the combination...

The declarations in Section 1 of Colo. Const. Art. XXIX state, in pertinent part:

- (a) The conduct of public officers, members of the general assembly, local government officials, and government employees must hold the respect and confidence of the people;
- (b) They shall carry out their duties for the benefit of the people of the state;
- (c) They shall, therefore, avoid conduct that is in violation of their public trust or that creates a justifiable impression among members of the public that such trust is being violated;
- (d) Any effort to realize personal financial gain through public office other than compensation provided by law is a violation of that trust...

Section 5 of Colo. Const. Art. XXIX provides, in pertinent part:

...The purpose of the independent ethics commission shall be to hear complaints, issue findings, and assess penalties, and also to issue advisory opinions, on ethics issues arising under this article and under any other standards of conduct and reporting requirements as provided by law...

Section 24-18-109, C.R.S., provides, in pertinent part:

(2) A local government official or local government employee shall not:  
(b) Perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent...

#### IV. Discussion

At the heart of this request for advisory opinion is the extent to which the dual role of the Requester could inherently create an appearance of impropriety or a conflict of interest that violates Article XXIX of the Colorado Constitution or the Standards of Conduct found in Article 18 of Title 24, C.R.S.

#### Article XXIX of the Colorado Constitution

The voters who adopted Article XXIX expressed the intention, *inter alia*, to preserve the respect and confidence of the people in their elected officials by requiring elected officials to avoid conduct that is a violation of the public trust. In Position Statement 08-01, the Commission stated that the term "public trust" means that employees and officials must carry out their duties for the benefit of the people. The dual role played by the Requester as both an Eagle County Commissioner and as a Director on the RFTA Board does not, in and of itself, violate public trust or the provisions of Article XXIX.

As a member of RFTA, Eagle County is required by state law to have one of its elected commissioners serve as a Director on the RFTA Board. This dual role created by the statutory scheme appears to contemplate that the interests of Eagle County will be represented on the RFTA Board by an Eagle County elected official in the very same manner that the interests of the other RFTA member governments are represented. But the reverse is not true; namely, it is not true that a Director on the RFTA Board is expected to represent the RFTA's interests in the official business of the member government.

This is not to say that RFTA's interests will always be aligned with those of the member governments. This is clearly not the case, inasmuch as the RFTA is composed of various member governments with different interests. Rather, it is to say that the statutory scheme contemplates that *Requester* should represent her member government's interests in both fora. As such, there is no inherent conflict of interest nor is there an appearance of impropriety that would erode the public trust.

**Standards of Conduct in Article 18 of Title 24, C.R.S.**

Section 24-18-109(2)(b), C.R.S., prohibits a local government official from performing an official act that directly and substantially affects to its economic benefit a business *or other undertaking* in which he either has a substantial financial interest or is engaged as counsel, consultant, *representative*, or agent (emphasis added).

Requester receives no personal economic benefit from her service on the RFTA. Under the statutory scheme, the Requester serves as a representative of Eagle County in the RFTA. The reverse is not true; namely, it is not true that the Requester serves as a representative of the RFTA in Eagle County. Moreover, the reference to “other undertaking” should not be interpreted to refer to the RFTA, which is a “public body politic and corporate” that, under the statutory scheme, mandates representation from the various member governments. As such, § 24-18-109(2)(b), C.R.S., is inapplicable to the facts as presented in this case.

**Best Practices**

Due to the unique nature of Requester’s dual role, the Commission recommends that Requester disclose her dual role whenever taking official action for the County that would also implicate Requester’s role in the RFTA.

**V. Conclusion**

It is not a violation of Article XXIX or the statutory Standards of Conduct for Requester to continue serving as both a county commissioner and as a director on the board of a transportation authority under the facts and circumstances presented in the request.

The Commission cautions that this opinion is based on the specific facts presented herein, and that different facts could produce a different result. The Commission therefore encourages individuals with particular questions to request more fact-specific advice through requests for advisory opinions and letter rulings related to their individual circumstances.

**The Independent Ethics Commission**

William J. Leone, *Chair*  
Bob Bacon, *Vice-Chair*  
April Jones, *Commissioner*  
Matt Smith, *Commissioner*  
Jo Ann Sorensen, *Commissioner*

Dated: April 3, 2017

# State of Colorado



**William Leone, Chair**  
**Bob Bacon, Vice-Chair**  
**April Jones, Commissioner**  
**Matt Smith, Commissioner**  
**Jo Ann Sorensen, Commissioner**

**Independent Ethics Commission**  
1300 Broadway, Suite 240  
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**Dino Ioannides, Executive Director**

## **Advisory Opinion 17-04** **(Conflict of Interest, Local Government Official)**

**Summary:** It is not a violation of Article XXIX or the statutory Standards of Conduct for a county commissioner to continue serving as a director on the board of a transportation authority under the facts and circumstances presented in the request.

### **I. Background**

Requester is an Eagle County Commissioner. Among other duties as a county commissioner, the Requester sits "in a quasi-judicial capacity" to review, hear, and approve or deny land use applications.

Requester also serves as a member of the Board of Directors for the Roaring Fork Transportation Authority ("RFTA"). RFTA is a regional transportation authority created under § 43-4-603, C.R.S. RFTA's purpose is to finance, construct, operate, and maintain an efficient, sustainable, and regional multi-modal transportation system at locations within or without the boundaries of RFTA. RFTA directors serve without compensation, except for expense reimbursement. The members of RFTA include Eagle County, Garfield County, Pitkin County, the City of Aspen, the Town of Basalt, the Town of Carbondale, the City of Glenwood Springs, and the Town of Snowmass Village.

Article 4 of Title 43, C.R.S., authorizes the creation of transportation authorities, each of which is a "separate political subdivision and body corporate of the state" having "all the duties, privileges, immunities, rights, liabilities, and disabilities of a public body politic and corporate." § 43-4-603(1), C.R.S. Each transportation authority is mandated to have at least five directors, each of whom must be an elected official from every member of the combination. § 43-4-603(2)(b)(I), C.R.S.

One of the issues pending before the Eagle County Board of County Commissioners ("BOCC") is a land-use application for Preliminary Plan for Planned Unit Development. The application concerns property that is located within the Roaring Fork Valley portion of Eagle County and seeks a rezoning of the property. The application initially presented a public benefit dedication of 50 parking spaces to RFTA, and was later amended to dedicate 20 parking spaces and \$400,000 to build additional parking on other land. As a result of the application amendment,

RFTA's Director of Planning sent a letter to be considered by Eagle County in connection with the County's consideration of the application. The letter expressed dissatisfaction with the application amendment.

Requester does not recall being involved in discussions concerning the public benefit being offered by the land-use applicant. The Requester did not have any involvement in developing RFTA's position on the application, or in drafting or approving RFTA's responsive letter.

Requester is concerned about the potential for a conflict of interest if the Requester was to take official action on the application, given that RFTA could benefit from a County decision on the application. Requester asks whether her taking of official action would violate the code of ethics for local government officials as set forth in the Colorado Constitution and in § 24-18-109(2)(b), C.R.S. During the pendency of this advisory opinion request, Requester has resigned from the RFTA Board, but asks whether she may be reappointed to the RFTA Board during the pendency of the hearing on the application.

## **II. Jurisdiction**

Colo. Const. Art. XXIX gives the Commission jurisdiction over local government officials. *See generally*, Colo. Const. Art. XXIX §§ 3, 4, and 6. Requester is a local government official under Colo. Const. Art. XXIX § 2(3).

## **III. Applicable Law**

Section 43-4-603, C.R.S., provides, in pertinent part:

- (2) Any contract establishing [a transportation] authority shall specify:**
  - (a) The name and purpose of the authority and the regional transportation systems to be provided;**
  - (b) The establishment and organization of the board of directors in which all legislative power of the authority is vested, including:**
    - (I) The number of directors, which shall be at least five, all of which, except as provided in subsection (5) of this section, shall be elected officials from the members of the combination and which shall include at least one elected official from each member of the combination...**

The declarations in Section 1 of Colo. Const. Art. XXIX state, in pertinent part:

- (a) The conduct of public officers, members of the general assembly, local government officials, and government employees must hold the respect and confidence of the people;**
- (b) They shall carry out their duties for the benefit of the people of the state;**
- (c) They shall, therefore, avoid conduct that is in violation of their public trust or that creates a justifiable impression among members of the public that such trust is being violated;**
- (d) Any effort to realize personal financial gain through public office other than compensation provided by law is a violation of that trust...**

Section 5 of Colo. Const. Art. XXIX provides, in pertinent part:

...The purpose of the independent ethics commission shall be to hear complaints, issue findings, and assess penalties, and also to issue advisory opinions, on ethics issues arising under this article and under any other standards of conduct and reporting requirements as provided by law...

Section 24-18-109, C.R.S., provides, in pertinent part:

(2) A local government official or local government employee shall not:  
(b) Perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent...

#### **IV. Discussion**

At the heart of this request for advisory opinion is the extent to which the dual role of the Requester could inherently create an appearance of impropriety or a conflict of interest that violates Article XXIX of the Colorado Constitution or the Standards of Conduct found in Article 18 of Title 24, C.R.S.

#### **Article XXIX of the Colorado Constitution**

The voters who adopted Article XXIX expressed the intention, *inter alia*, to preserve the respect and confidence of the people in their elected officials by requiring elected officials to avoid conduct that is a violation of the public trust. In Position Statement 08-01, the Commission stated that the term "public trust" means that employees and officials must carry out their duties for the benefit of the people. The dual role played by the Requester as both an Eagle County Commissioner and as a Director on the RFTA Board does not, in and of itself, violate public trust or the provisions of Article XXIX.

As a member of RFTA, Eagle County is required by state law to have one of its elected commissioners serve as a Director on the RFTA Board. This dual role created by the statutory scheme appears to contemplate that the interests of Eagle County will be represented on the RFTA Board by an Eagle County elected official in the very same manner that the interests of the other RFTA member governments are represented. But the reverse is not true; namely, it is not true that a Director on the RFTA Board is expected to represent the RFTA's interests in the official business of the member government.

This is not to say that RFTA's interests will always be aligned with those of the member governments. This is clearly not the case, inasmuch as the RFTA is composed of various member governments with different interests. Rather, it is to say that the statutory scheme contemplates that *Requester* should represent her member government's interests in both fora. As such, there is no inherent conflict of interest nor is there an appearance of impropriety that would erode the public trust.

**Standards of Conduct in Article 18 of Title 24, C.R.S.**

Section 24-18-109(2)(b), C.R.S., prohibits a local government official from performing an official act that directly and substantially affects to its economic benefit a business *or other undertaking* in which he either has a substantial financial interest or is engaged as counsel, consultant, *representative*, or agent (emphasis added).

Requester receives no personal economic benefit from her service on the RFTA. Under the statutory scheme, the Requester serves as a representative of Eagle County in the RFTA. The reverse is not true; namely, it is not true that the Requester serves as a representative of the RFTA in Eagle County. Moreover, the reference to “other undertaking” should not be interpreted to refer to the RFTA, which is a “public body politic and corporate” that, under the statutory scheme, mandates representation from the various member governments. As such, § 24-18-109(2)(b), C.R.S., is inapplicable to the facts as presented in this case.

**Best Practices**

Due to the unique nature of Requester’s dual role, the Commission recommends that Requester disclose her dual role whenever taking official action for the County that would also implicate Requester’s role in the RFTA.

**V. Conclusion**

It is not a violation of Article XXIX or the statutory Standards of Conduct for Requester to continue serving as both a county commissioner and as a director on the board of a transportation authority under the facts and circumstances presented in the request.

The Commission cautions that this opinion is based on the specific facts presented herein, and that different facts could produce a different result. The Commission therefore encourages individuals with particular questions to request more fact-specific advice through requests for advisory opinions and letter rulings related to their individual circumstances.

**The Independent Ethics Commission**

William J. Leone, *Chair*  
Bob Bacon, *Vice-Chair*  
April Jones, *Commissioner*  
Matt Smith, *Commissioner*  
Jo Ann Sorensen, *Commissioner*

Dated: April 3, 2017

RESOLUTION 2014-107  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
ACCEPTING ADVISORY OPINION AND RECOMMENDATION NO. 2014-01  
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 November 18, 2014, to consider whether Councilmember Troxell's position as a tenured faculty member in the mechanical engineering department at Colorado State University ("CSU") limits his participation as a City Council member representing District 4 in any discussion and any vote related to a CSU stadium; and

WHEREAS, the Board has issued an advisory opinion with regard to this matter concluding that Councilmember Troxell does not have a conflict of interest with respect to the CSU stadium issue; and

WHEREAS, Section 2-569(e) of the City Code provides that all advisory opinions and recommendations of the Board be placed on the agenda for the next special or regular City Council meeting, at which time the City Council shall determine whether to adopt such opinions and recommendations; and

WHEREAS, the City 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. 2014-01 of the Ethics Review Board, a copy of which is attached hereto and incorporated herein by this reference as Exhibit "A," 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 25th day of November A.D. 2014.

Kevin Wittmann  
Mayor

ATTEST:

Wanda Nelson  
City Clerk



interest and refrain from voting on, attempting to influence, or otherwise participating in such decision in any manner as a Councilmember. Under the Charter, the following definitions apply:

a. "Financial Interest"

A "financial interest" is defined under the Charter as "any interest equated with money or its equivalent." The Charter expressly excludes from the definition of "financial interest" the interest that a Councilmember has as an employee of a business where the Council decision may financially benefit or otherwise affect the business but entails no "foreseeable, measurable financial benefit" to the Councilmember.

In reviewing the facts of this situation, it is likely that the Council's deliberations and actions with regard to the CSU football stadium will "affect" the University, since, at a minimum, the University will have difficulty moving forward with any stadium project without some degree of cooperation and coordination with the City. There is no indication, however, that Troxell, as an individual, will receive any "foreseeable, measurable financial benefit" as a result of the Council decision(s), as no evidence has been presented to the effect that Troxell's salary or other compensation will be changed or discontinued as a result of the Council's decision related to the CSU football stadium. Therefore, the Board believes that Troxell does not have a financial interest in the Council's actions related to the CSU football stadium.

b. "Personal Interest"

The next inquiry is whether Troxell has a "personal interest" under the Charter. The Charter defines a personal interest in relevant part as an interest by reason of which a Councilmember 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." This benefit or detriment need not be financial in nature, but it must be "direct and substantial." As recently established by the City Council in Ordinance No. 145, 2014, "direct" means "resulting immediately and proximately from the circumstances and not from an intervening cause," and "substantial" means "more than nominal in value, degree, amount or extent."

Clearly, Troxell is differently situated with regard to this matter than are the members of the general public because of his employment with the University. The question is whether, because of his status as an employee, he might realize any "direct and substantial benefit or detriment" by reason of Council's decision related to the CSU football stadium. Again, there is no indication that Troxell's position of employment or the amount of his compensation would be affected by his vote or Council's decision or actions with regard to the proposed football stadium. In fact, Troxell's status as a tenured member of the academic faculty indicates to the contrary, that is, that there could be no job related ramifications based upon the manner in which Troxell votes with regard to these upcoming Council decisions. Moreover, the Charter standard requires that the potential benefit or detriment to Troxell be "direct and substantial" and not merely indirect or

# State of Colorado



William Leone, *Chair*  
Bob Bacon, *Vice-Chair*  
April Jones, *Commissioner*  
Matt Smith, *Commissioner*

Independent Ethics Commission  
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Dino Ioannides, *Executive Director*

## Advisory Opinion 16-05 (Conflict of Interest)

**Summary:** A local government official should avoid real and perceived conflicts of interest when voting on or debating questions that affect the personal, private, or financial interests of the official.

### I. Background

Board of Trustees member Rachel New ("New"), of the Town of Pitkin, Colorado, filed a request for an advisory opinion requesting guidance about a possible conflict of interest between New's personal business and her role as a member of the Town's Board of Trustees (the "Board").

New indicates that she is a newly elected member of the Board as a result of elections held in April, 2016. Prior to her election, in the spring of 2014, New established a property management business, which she owns. Among other services, her business provides house winterizing, de-winterizing, cleaning, lawn maintenance, window washing, laundry services, errand services, pest control, and general maintenance. Included in the business portfolio is the management of short-term rental properties. New assists in the short-term leasing of these properties by taking reservations, receiving rental payments, and remitting taxes on behalf of the homeowner. Twenty percent of the business income is generated by managing the two short-term rentals.

The Town of Pitkin is a statutory town. Recent issues being addressed by the Board include updating the zoning code to regulate short term rentals. In this regard, New may be faced with policy debate and/or voting on short term rental issues in the context of her duties as a member of the Board. Specifically, Sections 3, 7, and 8 of the Amended Town of Pitkin Zoning Code of 2012 provide:

Section 3. Definitions. For the purpose of this code, certain words and phrases used herein shall be defined as follows:

\* \* \*

37. Short-term Transient Rental (Lodging): Rental of a residential structure or part thereof, for any twenty-nine (29) day period or less, is considered a



commercial/business use.

\* \* \*

**Section 7. Principal Permitted Uses.** This section enumerates the principal uses which are permitted in each zoning district:

**A. Resident, Low Density Residential:**

1. Dwellings, single family
2. Community centers and public buildings
3. Parks and playgrounds
4. Accessory uses as listed in Section 10 of this Code
5. Long-term permanent rental: Rental of a residential use of structure, or part thereof, where the occupants are primarily permanent in nature for any thirty (30) day period or more. (Nontransient)

**B. Business, Business:**

1. Any use permitted in the Resident district
2. Accessory buildings and uses
3. Amusement or recreation
4. Automobile gas stations or garages
5. Automobile parking lots
6. Club or lodge
7. Dining or drinking places
8. Hotel or motel
9. Laundromat
10. Office or clinic
11. Retail store or shop
12. Schools and churches, including seasonal church schools.

**Section 8. Conditional Uses.** The following uses shall be permitted only after written request to the Board of Trustees, and acceptance of written approval made by the Board of Trustees:

\* \* \*

**D. Short Term Rental (Lodging) in the Business District:** After review of the Zoning Board of Adjustment, a recommendation for conditional use appropriate to the available water, sewage, and off-street parking will be referred to the Board of Trustees for final decision. [Emphasis added.]

The Town Clerk confirms that the Town of Pitkin does not currently have any conflicts of interest or other ethical policies in place.

**II. Jurisdiction**

Ms. New is a member of a statutory town's Board of Trustees and is therefore a "local

government official" under Colo. Const. Article XXIX, sec. 2(3), and C.R.S. § 24-18-102(6).

The Independent Ethics Commission has authority to issue advisory opinions on ethics issues arising under Article XXIX or any other standards of conduct or reporting requirements as provided by law. *See* Colo. Const. Article XXIX, sec. 5(5).

### III. Applicable Law

Conflicts of interest are addressed in C.R.S. § 24-18-109 as follows:

(2) A local government official or local government employee shall not:

\* \* \*

(b) Perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent[.]

\* \* \*

(3) (a) A member of the governing body of a local government who has a personal or private interest in any matter proposed or pending before the governing body shall disclose such interest to the governing body and shall not vote thereon and shall refrain from attempting to influence the decisions of the other members of the governing body in voting on the matter.

### IV. Discussion

#### A. *Conflicts of Interest.*

The conflicts of interest statute cited herein restricts a local government official such as New from: (1) performing an official act directly and substantially affecting to its economic benefit a business in which the local government official has a substantial financial interest; and (2) voting on or attempting to influence the decisions of other members of the governing body in voting on a matter in which the local government official has a personal or private interest.

The Commission finds that New's ownership interest in a property management business that manages short-term rentals in the Town of Pitkin is substantial. As such, New must refrain from performing any official act that directly and substantially benefits the business economically. For example, because the Town's zoning code requires the Board to give final approval for conditional short-term rental uses, New should refrain from voting to grant or withhold such approval when doing so would economically benefit her business. Moreover, New must not vote or attempt to influence the decisions of other members of the Board when she has a personal or private interest in the outcome.

### ***B. Appearance of Impropriety.***

In addition to the statutory provisions cited above, Colo. Const. Article XXIX, sec. 1(c), requires covered individuals “to avoid conduct that is in violation of their public trust or that creates a justifiable impression among members of the public that such trust is being violated.”

Appearances of impropriety are generally referred to as “perception issues” or “violating the smell test.” They can weaken public confidence in government and create a perception of dishonesty, even among government officials who are in technical compliance with the law.

In order to avoid the appearance of impropriety, local government officials should avoid voting on or debating questions in a manner that may lead the public to perceive that the local government official is either placing his or her own private business interests in a position of competitive advantage or keeping his or her own private business interests from being adversely affected by the decisions of the governing body.

The Commission also recommends that when feasible, counties and municipalities should consider enacting an ethics code to provide further guidance to elected officials with similar potential conflicts.

### **V. Conclusion**

A member of a town’s board of trustees should follow Colorado statutes pertaining to conflicts of interest and constitutional requirements pertaining to the appearance of impropriety.

The Commission cautions public official and employees that this opinion is based on the specific facts presented herein, and that different facts could produce a different result. The Commission therefore encourages individuals with particular questions to request more fact specific advice through requests for advisory opinions and letter rulings related to their individual circumstances.

### **The Independent Ethics Commission**

William J. Leone, *Chair*  
Bob Bacon, *Vice-Chair*  
April Jones, *Commissioner*  
Matt Smith, *Commissioner*

Dated: June 30, 2016

**AGENDA ITEM SUMMARY**  
Ethics Review Board

March 6, 2020

**STAFF**

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Carrie Daggett, City Attorney

**SUBJECT**

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Consideration in accordance with City Code Section 2-569(d)(1) of whether a complaint filed on January 21, 2020, by Rory Heath, alleging that **Councilmember Ken Summers** has a financial and personal interest in the Hughes Stadium annexation property rezoning decision, warrants investigation.

**EXECUTIVE SUMMARY**

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The purpose of this item is to complete the initial screening by the Ethics Review Board of a complaint filed with the Board under City Code Section 2-569(d), as described below. The Complaint and other materials referenced are provided as attachments to the Agenda Item Summary for Item 3 (overall), and that information is incorporated into this subpart by reference.

**STAFF RECOMMENDATION**

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Staff recommends that the Board consider the Complaint and determine whether to proceed with an investigation of the Complaint.

**BACKGROUND / DISCUSSION**

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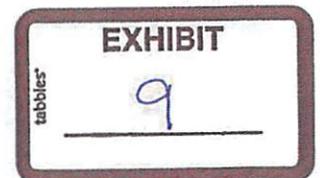
Under City Code Section 2-569(d), any person who believes a Councilmember or board or commission member has violated any provision of state law or the City Charter or City Code pertaining to ethical conduct may file a complaint with the City Clerk. After notice to the complaining party and the subject of the complaint, the Ethics Review Board then considers the complaint and whether it should be further investigated.

**The Complaint:**

The Board will consider a complaint lodged with the Board through the City Attorney on January 21, 2020, by Rory Heath (the "Complainant"), a Fort Collins resident, against Councilmember Ken Summers (as well as against Mayor Wade Troxell and Mayor Pro Tem Kristin Stephens). The Complaint alleges Councilmember Summers has a conflict of interest in connection with the Hughes Rezoning and related Ethics Review Board hearings in light of a webpage offering his services as a political consultant and lobbyist.

The following is an excerpt from the Complaint summarizing Mr. Heath's concern (from page 11 of the Complaint):

...



- II. *Fort Collins City Councilmember Ken Summers is currently hosting on his website kensummers.org, a page dedicated to his political consulting business/lobbyist business. This page promises direct influence of legislative matters that can be interpreted to mean either the influence of a third party, or of himself, in exchange for compensation of some sort.*
- III. *The actions of all three individuals, as it pertains to all related activities relating to the consideration of Fort Collins Ordinance No. 138, 2019 (including all related Ethics Complaints hearings), are in direct violation of State and Municipal Ethical and Conflict of Interest Laws. All three individuals have also failed in performing their fiduciary duty to the people of Colorado, a duty ingrained within their public service, and in the case of Troxell and Stephens, their employment by Colorado State University.*
- IV. *A consistent effort to minimize the representation of the public's wishes regarding the end use of the parcel of land in consideration has been continually undertaken by city staff and City Elected Officials.*

The Complaint goes on to request that the Ethics Review Board do the following:

- investigate all ethics violations made by Wade Troxell, Kristin Stephens, and Ken Summers;
- carry this out using all tools and options at its disposal and "do so by taking to heart the public's explicit, expressed, and continual wishes regarding one of the most important pieces of land to Fort Collins' Identity;" and
- remove Wade Troxell, Kristin Stephens and Ken Summers from all interactions with the decision-making process, and take "severe remediation actions" to address "the harm to the process already caused."

(The Complaint provides argument and additional description of the concerns of the Complainant not repeated in this Summary.)

**City Ethics Provisions:**

Generally, the ethics provisions established by the City include City Charter Article IV, Section 9, and City Code Section 2-568.

**State Ethics Provisions:**

In addition, various state laws are commonly considered ethics laws. These include:

- Sections 24-18-101 through -105, Colorado Revised Statutes (C.R.S.);
- Section 24-18-109, C.R.S.;
- Sections 24-18-201 through -206, C.R.S.;
- Sections 18-8-302 through -308, C.R.S.; and
- Sections 18-8-402 through -409, C.R.S.

(The language of Article XXIX of the Colorado constitution – also referred to as "Amendment 41," provides that home rule municipalities that have adopted local ethics provisions addressing the topics in that provision are exempt from its application.)

**The Board Determination:**

The Board is required under the Code to evaluate the Complaint and determine by majority vote whether to formally investigate the Complaint. In doing so, the Board should consider:

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 the Board may consider relevant.

If the Board determines that the Complaint does not warrant investigation, the Board then directs staff to send written notice to the complainant of that determination and the reasoning behind it. A copy of that notice is also sent to the subject of the Complaint and the City Council.

**Factual Allegations in the Complaint:**

The Complaint asserts the following basic facts regarding the allegations against Councilmember Summers:

*Ken Summers, through his KGS Consulting, offers the following services via his website (see Ex.4):*

- "Opening Doors"
- "Providing Access"
- "Empowering Influence"
- "PERSONAL CONTACT WITH LEGISLATORS to inform them of your position on a bill and why you support or oppose the legislation."
- "COMMUNICATION WITH DEPARTMENTS that interface with your business on the writing and implementation of rules"
- "TOURS AND RECEPTIONS that provide legislators an opportunity to learn firsthand about the work that you do"
- "Navigating through the maze of the political arena can be a challenge. That is why an individual with experience working with you and advocating on your behalf can make a difference."

The Complaint contains a number of assertions and statements related generally to the input the City Council has received from members of the public regarding the Hughes Rezoning. The Complaint asserts that when looked at in the context of a vote contrary to the public opposition to the Hughes Rezoning outcome that had been expressed, "a vote against the public will, and instead in line with a possible private commercial interest seems to have possibly occurred." (page 9).

**\*\*Screening Review Steps\*\***

**I. Whether the Complaint Alleges a Violation of City or State Ethics Provisions:**

**1. City Ethics Provisions: The City Charter and City Code prohibit members of the City Council from participating in a decision if the Councilmember has a financial interest or a personal interest in the decision.**

1. A **financial interest** is an interest in the Hughes Rezoning that is equated with money or its equivalent.

i. If the councilmember is an holder of an ownership interest in or an employee of an affected business, but the Council decision entails **NO FORESEEABLE, MEASUREABLE FINANCIAL BENEFIT** to the Councilmember, the business relationship does not create a financial interest.

2. A **personal interest** is any interest (other than a financial interest) by reason of which an officer or employee would, in the judgment of a reasonably prudent person, realize or experience:

i. some **direct and substantial benefit or detriment**,

[direct = resulting immediately and proximately from the circumstances and not from an intervening cause.]

[substantial = more than nominal in value, degree, amount or extent.]

[benefit = an advantage or gain.]

[detriment = disadvantage, injury, damage or loss.]

ii. **different in kind from that experienced by the general public.**

[different in kind from that experienced by the general public = 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.]

3. The Ethics Review Board must evaluate whether the facts as asserted in the Complaint (assuming they are true) support the allegation that Councilmember Summers has either a financial interest or a personal interest in the Hughes Rezoning.

**2. State Ethics Provisions:**

1. For the purpose of the **statutory ethics provisions:**

i. Councilmembers are "**local government officials**" (as defined in Section 24-18-102(6)).

ii. A **financial interest** means a substantial interest held by an individual which is (in relevant part):

1. An ownership interest in a business; or

2. A directorship or officership in a business.

- iii. **Terms not defined in the statutes are considered to have their commonly understood meaning, and they are generally interpreted with the aid of reference to common resources such as a standard dictionary.**
2. **Section 24-18-103, C.R.S., when read in conjunction with the rest of the statutory standards of conduct, is interpreted to establish an ethical standard of conduct concerning activities that could allow covered individuals to improperly benefit financially from their public office. However, it is general in nature and does not specify a standard or rule to determine what is permissible.**
3. **Section 24-18-104, C.R.S., prohibits disclosure or use of confidential information acquired in the course of official duties and acceptance of certain gifts.**
4. **Section 24-18-105, C.R.S., sets out ethical principles that are "intended as guides to conduct and do not constitute violations as such of the public trust of office or employment in state or local government."**
  - i. **Section 24-18-105(2) provides that:**
    - (2) **A ... local government official ... should not acquire or hold an interest in any business or undertaking which he has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by an agency over which he has substantial authority.**
  - ii. **Section 24-18-105(4) provides that:**
    - (4) **A ... local government official ... should not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when he has a substantial financial interest in a competing firm or undertaking. (Emphasis added.)**
5. **Section 24-18-109, C.R.S., provides that**
  - i. **a local government official shall not (in relevant part) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative or agent (§ 24-18-109(2)(b));**
  - ii. **A member of a governing body of a local government who has a personal or private interest in any matter proposed or pending before the governing body shall disclose such interest and refrain from participating in the decision unless necessary to obtain a quorum (§ 24-18-109(3));**
    1. **The statutes don't define the term "personal or private interest" and there is no directly relevant guidance interpreting this provision.**
      - a. **The Colorado Independent Ethics Commission ("IEC"), which is authorized to issue opinions concerning the state's ethics statutes) has applied this provision in considering a complaint against a local official related to that official's interest in a regulatory decision of the body she was a member of. The IEC did not specifically interpret the term "private interest" while focusing on the direct and substantial benefit to the official. (IEC Advisory Opinion 16-05, which is attached to the Item 3 Agenda Item Summary for reference).**

- b. A common explanation found consistently in the review of provisions of this sort suggests that a “personal or private interest” is one that tends to impair a person’s independence of judgment in the performance of the person’s duties, and this is typically interpreted to relate to a financial interest of the person or their relative in a private enterprise.
  - c. A local government official would likely be considered as having a personal or private interest in any decision that would result in the official receiving a direct and immediate pecuniary benefit or result in the official receiving a non-pecuniary benefit or suffering a non-pecuniary detriment that is direct, immediate and different in kind from that shared by the general public.
  - d. The City’s local provisions related to financial and personal interests are essentially parallel to this formulation.
2. Applying this standard here, the Board must determine whether the City Council’s Hughes Stadium rezoning decision would likely result in Councilmember Summers receiving a direct and immediate pecuniary benefit or result in him receiving a non-pecuniary benefit or suffering a non-pecuniary detriment that is direct, immediate and different in kind from that shared by the general public.

**III. Reliability and Sufficiency of Facts Asserted:**

If the Board determines that there may have been a violation, then the Board will need to evaluate the facts asserted in the Complaint.

The Board may know information that contradicts the facts that were asserted in the Complaint, or there may not be enough information in the Complaint for you to form a reasonable suspicion that the violation alleged in the Complaint occurred.

**On this basis, the Board may determine that the facts asserted in the Complaint are not reliable or sufficient and find the Complaint does not warrant further investigation.**

**III. Other Relevant Facts or Circumstances:**

If there is additional information available or presented to the Board that leads the Board to conclude that the Complaint does not merit further investigation, the Board may identify that information and find the Complaint does not warrant further investigation on that basis.

**ATTACHMENTS (in addition to the Attachments to the Agenda Item Summary for Item 3 overall)**

1. Exhibit 4 to Heath Complaint (*kensummers.org* website screenshot)
2. Review Checklist – Heath Complaint re Ken Summers



# KGS CONSULTING



Opening Doors • Providing Access • Empowering Influence



## Ken Summers



The laws that are passed and the regulations that are established have a significant impact on citizens and of all types in Colorado. Navigating through the maze of the political arena can be a challenge. That is why an individual with experience working with you and advocating on your behalf can make a difference.

**KGS Consulting** provides you with a value-added partnership so you can be proactive on the issues that impact your business. Here is how that is accomplished:

- **PROVIDING INSIGHT** into the legislative process and political environment
- **TRACKING LEGISLATION** that impacts your business and helping you to take a formal position on those pieces of legislation
- **PERSONAL CONTACT WITH LEGISLATORS** to inform them of your position on a bill and why you support or oppose the legislation.
- **PROPOSING NEW LEGISLATION OR CHANGES IN CURRENT LAW**
- **ARRANGING FOR TESTIMONY ON BILLS** before committees in collaboration with others who share your position
- **COMMUNICATION WITH DEPARTMENTS** that interface with your business on the writing and implementation of rules
- **TOURS AND RECEPTIONS** that provide legislators an opportunity to learn firsthand about the work that you do
- **SERVING AS A SPOKESPERSON** for your business at the capitol, with other industry groups and in the community
- **PROVIDING FEEDBACK AND UPDATES** as needed to stay on the forefront of how bills are progressing through the process

These are some of the ways that having a contact inside the capitol can work for you. Some services may be more appropriate than others depending on your needs and area of interest.



*I look forward to developing a partnership where I can serve you at the capitol by providing access, opening doors and empowering influence in the legislative process. You can make a difference and be a part of shaping public policy in Colorado.*

Ken

KGS Consulting \* ken@kensummers.org  
303-725-4765



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- May 2019
- April 2019
- March 2019
- January 2019
- December 2018
- November 2018
- October 2018
- September 2018
- August 2018
- July 2018





**Julie Braswell**  
FEB 23, 2017 @ 15:04:32

REPLY

Hi Ken,

I guess it is really a small world after all. You met my teenaged son who is an intern for Senator Lundburg a couple of weeks ago. You must have made an impression on him because he came home and told me all about the visit. I knew your name sounded familiar and when I googled you I realized that we had met several years ago. You officiated my uncle's funeral - his name was Bruce Jones.

Anyway Nathaniel told me you were running for city council here in Fort Collins (which is where I live). That is very exciting news as Fort Collins is in desperate need of conservative Christian leadership. I signed up for your newsletter and look forward to keeping up with your campaign.

Blessings,  
Julie

Leave a Reply

Your Name \*

Your Email \*

Your Website

Post Comment

- June 2018
- May 2018
- April 2018
- March 2018
- February 2018
- January 2018
- December 2017
- November 2017
- October 2017
- September 2017
- August 2017
- July 2017
- June 2017
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- January 2015
- December 2014



November 2014

October 2014

September 2014

August 2014

July 2014

June 2014

May 2014

April 2014

March 2014

February 2014

**Looking for more on Ken's Story?**

To look at previous post and pictures from Ken's hospitalization go to <http://www.caringbridge.org/visit/kensummers>



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Contact // Email [ken@kensummers.org](mailto:ken@kensummers.org)



**ETHICS REVIEW BOARD -- REVIEW CHECKLIST FOR KEN SUMMERS**  
**March 6, 2020**

- | <u>Claim Stated?</u>                                     | <u>Provision Allegedly Violated</u>   |
|--|---|
| <input type="checkbox"/> Yes <input type="checkbox"/> No | City Charter Article IV, Section 9(b)(3) – prohibits participation when official has a <b>FINANCIAL INTEREST</b>  |
| <input type="checkbox"/> Yes <input type="checkbox"/> No | City Charter Article IV, Section 9(b)(3) – prohibits participation when official has a <b>PERSONAL INTEREST</b>   |
| <input type="checkbox"/> Yes <input type="checkbox"/> No | Section 24-18-103, C.R.S. generally states ethical standard of conduct concerning activities that could allow covered individuals to improperly benefit financially from their public office (no specific standard or rule stated), and permits enforcement by the district attorney.                     |
| <input type="checkbox"/> Yes <input type="checkbox"/> No | Section 24-18-104, C.R.S. prohibits disclosure or use of confidential information acquired in the course of official duties and acceptance of certain gifts.  |
| <input type="checkbox"/> Yes <input type="checkbox"/> No | Section 24-18-105(2), C.R.S. prohibits acquiring or holding an interest in any business or undertaking which official has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by an agency over which official has substantial authority. |
| <input type="checkbox"/> Yes <input type="checkbox"/> No | Section 24-18-105(4), C.R.S. prohibits an official act directly and substantially affecting a business or other undertaking to its economic detriment when official has a substantial financial interest in a competing firm or undertaking.  |
| <input type="checkbox"/> Yes <input type="checkbox"/> No | Section 24-18-109(2)(b), C.R.S. - prohibits an official act directly and substantially affecting to its economic benefit a business or other undertaking in which official either has a substantial financial interest or is engaged as counsel, consultant, representative or agent                      |
| <input type="checkbox"/> Yes <input type="checkbox"/> No | Section 24-18-109(3), C.R.S. – requires official with a personal or private interest in any matter proposed or pending before the governing body to disclose such interest and refrain from participating in the decision unless necessary to obtain a quorum.  |

**\*\*If any of the "YES" boxes are checked, the Ethics Review Board must then consider the facts alleged related to that item and whether those facts are reliable and sufficient to warrant further investigation.**

**EXHIBIT**

2

ethics

**Carrie Daggett**

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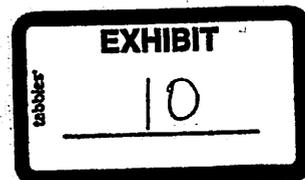
**From:** Ken Summers  
**Sent:** Thursday, March 5, 2020 1:34 PM  
**To:** Carrie Daggett  
**Subject:** Ethics Complaint Reponse  
**Attachments:** Ethics\_Complaint\_response.docx

Carrie

I will not be attending the Ethics Committee meeting on March 6, 2020. I am attaching for the committee a written response.

Ken Summers  
Councilmember  
District 3

With limited exceptions, emails and any files transmitted with them are subject to public disclosure under the Colorado Open Records Act (CORA). To promote transparency, emails will be visible in an online archive, unless the sender puts #PRIVATE in the subject line of the email. However, the City of Fort Collins can't guarantee that any email to or from Council will remain private under CORA.



## **Colorado Constitution Article XXIX Ethics in Government**

### **Section 1. Purposes and findings.**

- (1) The people of the state of Colorado hereby find and declare that:
- (a) The conduct of public officers, members of the general assembly, local government officials, and government employees must hold the respect and confidence of the people;
  - (b) They shall carry out their duties for the benefit of the people of the state;
  - (c) They shall, therefore, avoid conduct that is in violation of their public trust or that creates a justifiable impression among members of the public that such trust is being violated;
  - (d) Any effort to realize personal financial gain through public office other than compensation provided by law is a violation of that trust; and
  - (e) To ensure propriety and to preserve public confidence, they must have the benefit of specific standards to guide their conduct, and of a penalty mechanism to enforce those standards.
- (2) The people of the state of Colorado also find and declare that there are certain costs associated with holding public office and that to ensure the integrity of the office, such costs of a reasonable and necessary nature should be born by the state or local government.

### **Section 2. Definitions.**

As used in this article, unless the context otherwise requires:

- (1) "Government employee" means any employee, including independent contractors, of the state executive branch, the state legislative branch, a state agency, a public institution of higher education, or any local government, except a member of the general assembly or a public officer.
- (2) "Local government" means county or municipality.
- (3) "Local government official" means an elected or appointed official of a local government but does not include an employee of a local government.
- (4) "Person" means any individual, corporation, business trust, estate, trust, limited liability company, partnership, labor organization, association, political party, committee, or other legal entity.
- (5) "Professional lobbyist" means any individual who engages himself or herself or is engaged by any other person for pay or for any consideration for lobbying. "Professional lobbyist" does not include any volunteer lobbyist, any state official or employee acting in his or her official capacity, except those designated as lobbyists as provided by law, any elected public official acting in his or her official capacity, or any individual who appears as counsel or advisor in an adjudicatory proceeding.



(6) "Public officer" means any elected officer, including all statewide elected officeholders, the head of any department of the executive branch, and elected and appointed members of state boards and commissions. "Public officer" does not include a member of the general assembly, a member of the judiciary, any local government official, or any member of a board, commission, council or committee who receives no compensation other than a per diem allowance or necessary and reasonable expenses.

**Section 3. Gift ban.**

(1) No public officer, member of the general assembly, local government official, or government employee shall accept or receive any money, forbearance, or forgiveness of indebtedness from any person, without such person receiving lawful consideration of equal or greater value in return from the public officer, member of the general assembly, local government official, or government employee who accepted or received the money, forbearance or forgiveness of indebtedness.

(2) No public officer, member of the general assembly, local government official, or government employee, either directly or indirectly as the beneficiary of a gift or thing of value given to such person's spouse or dependent child, shall solicit, accept or receive any gift or other thing of value having either a fair market value or aggregate actual cost greater than fifty dollars (\$50) in any calendar year, including but not limited to, gifts, loans, rewards, promises or negotiations of future employment, favors or services, honoraria, travel, entertainment, or special discounts, from a person, without the person receiving lawful consideration of equal or greater value in return from the public officer, member of the general assembly, local government official, or government employee who solicited, accepted or received the gift or other thing of value.

(3) The prohibitions in subsections (1) and (2) of this section do not apply if the gift or thing of value is:

(a) A campaign contribution as defined by law;

(b) An unsolicited item of trivial value less than fifty dollars (\$50), such as a pen, calendar, plant, book, note pad or other similar item;

(c) An unsolicited token or award of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;

(d) Unsolicited informational material, publications, or subscriptions related to the recipient's performance of official duties;

(e) Admission to, and the cost of food or beverages consumed at, a reception, meal or meeting by an organization before whom the recipient appears to speak or to answer questions as part of a scheduled program;

(f) Reasonable expenses paid by a nonprofit organization or other state or local government for attendance at a convention, fact-finding mission or trip, or other meeting if the person is scheduled to deliver a speech, make a presentation, participate on a panel, or represent the state or local government, provided that the non-profit organization receives less than five percent (5%) of its funding from for-profit organizations or entities;

(g) Given by an individual who is a relative or personal friend of the recipient on a special occasion.

(h) A component of the compensation paid or other incentive given to the recipient in the normal course of employment.

(4) Notwithstanding any provisions of this section to the contrary, and excepting campaign contributions as defined by law, no professional lobbyist, personally or on behalf of any other person or entity, shall knowingly offer, give, or arrange to give, to any public officer, member of the general assembly, local government official, or government employee, or to a member of such person's immediate family, any gift or thing of value, of any kind or nature, nor knowingly pay for any meal, beverage, or other item to be consumed by such public officer, member of the general assembly, local government official or government employee, whether or not such gift or meal, beverage or other item to be consumed is offered, given or paid for in the course of such lobbyist's business or in connection with a personal or social event; provided, however, that a professional lobbyist shall not be prohibited from offering or giving to a public officer, member of the general assembly, local government official or government employee who is a member of his or her immediate family any such gift, thing of value, meal, beverage or other item.

(5) The general assembly shall make any conforming amendments to the reporting and disclosure requirements for public officers, members of the general assembly and professional lobbyists, as provided by law, to comply with the requirements set forth in this section.

(6) The fifty-dollar (\$50) limit set forth in subsection (2) of this section shall be adjusted by an amount based upon the percentage change over a four-year period in the United States bureau of labor statistics consumer price index for Denver- Boulder-Greeley, all items, all consumers, or its successor index, rounded to the nearest lowest dollar. The first adjustment shall be done in the first quarter of 2011 and then every four years thereafter.

#### **Section 4. Restrictions on representation after leaving office.**

No statewide elected officeholder or member of the general assembly shall personally represent another person or entity for compensation before any other statewide elected officeholder or member of the general assembly, for a period of two years following vacation of office. Further restrictions on public officers or members of the general assembly and similar restrictions on other public officers, local government officials or government employees may be established by law.

#### **Section 5. Independent ethics commission.**

(1) There is hereby created an independent ethics commission to be composed of five members. The purpose of the independent ethics commission shall be to hear complaints, issue findings, and assess penalties, and also to issue advisory opinions, on ethics issues arising under this article and under any other standards of conduct and reporting requirements as provided by law. The independent ethics commission shall

have authority to adopt such reasonable rules as may be necessary for the purpose of administering and enforcing the provisions of this article and any other standards of conduct and reporting requirements as provided by law. The general assembly shall appropriate reasonable and necessary funds to cover staff and administrative expenses to allow the independent ethics commission to carry out its duties pursuant to this article. Members of the commission shall receive no compensation for their services on the commission.

**(2) (a) Members of the independent ethics commission shall be appointed in the following manner and order:**

**(I) One member shall be appointed by the Colorado senate;**

**(II) One member shall be appointed by the Colorado house of representatives;**

**(III) One member shall be appointed by the governor of the state of Colorado;**

**(IV) One member shall be appointed by the chief justice of the Colorado supreme court; and**

**(V) One member shall be either a local government official or a local government employee appointed by the affirmative vote of at least three of the four members appointed pursuant to subparagraphs (I) to (IV) of this paragraph (a).**

**(b) No more than two members shall be affiliated with the same political party.**

**(c) Each of the five members shall be registered Colorado voters and shall have been continuously registered with the same political party, or continuously unaffiliated with any political party, for at least two years prior to appointment to the commission.**

**(d) Members of the independent ethics commission shall be appointed to terms of four years; except that, the first member appointed by the Colorado senate and the first member appointed by the governor of the state of Colorado shall initially serve two year terms to achieve staggered ending dates.**

**(e) If a member is appointed to fill an unexpired term, that member's term shall end at the same time as the term of the person being replaced.**

**(f) Each member shall continue to serve until a successor has been appointed, except that if a member is unable or unwilling to continue to serve until a successor has been appointed, the original appointing authority as described in this subsection shall fill the vacancy promptly.**

**(3) (a) Any person may file a written complaint with the independent ethics commission asking whether a public officer, member of the general assembly, local government official, or government employee has failed to comply with this article or any other standards of conduct or reporting requirements as provided by law within the preceding twelve months.**

**(b) The commission may dismiss frivolous complaints without conducting a public hearing. Complaints dismissed as frivolous shall be maintained confidential by the commission.**

(c) The commission shall conduct an investigation, hold a public hearing, and render findings on each non-frivolous complaint pursuant to written rules adopted by the commission.

(d) The commission may assess penalties for violations as prescribed by this article and provided by law.

(e) There is hereby established a presumption that the findings shall be based on a preponderance of evidence unless the commission determines that the circumstances warrant a heightened standard.

(4) Members of the independent ethics commission shall have the power to subpoena documents and to subpoena witnesses to make statements and produce documents.

(5) Any public officer, member of the general assembly, local government official, or government employee may submit a written request to the independent ethics commission for an advisory opinion on whether any conduct by that person would constitute a violation of this article, or any other standards of conduct or reporting requirements as provided by law. The commission shall render an advisory opinion pursuant to written rules adopted by the commission.

#### **Section 6. Penalty.**

Any public officer, member of the general assembly, local government official or government employee who breaches the public trust for private gain and any person or entity inducing such breach shall be liable to the state or local jurisdiction for double the amount of the financial equivalent of any benefits obtained by such actions. The manner of recovery and additional penalties may be provided by law.

#### **Section 7. Counties and municipalities.**

Any county or municipality may adopt ordinances or charter provisions with respect to ethics matters that are more stringent than any of the provisions contained in this article. The requirements of this article shall not apply to home rule counties or home rule municipalities that have adopted charters, ordinances, or resolutions that address the matters covered by this article.

#### **Section 8. Conflicting provisions declared inapplicable.**

Any provisions in the statutes of this state in conflict or inconsistent with this article are hereby declared to be preempted by this article and inapplicable to the matters covered by and provided for in this article.

#### **Section 9. Legislation to facilitate article.**

Legislation may be enacted to facilitate the operation of this article, but in no way shall such legislation limit or restrict the provisions of this article or the powers herein granted.

**Source: Initiated 2006:** Entire article added, effective upon proclamation of the Governor, L. 2007, p. 2960, December 31, 2006.