

AGENDA ITEM SUMMARY

July 15, 2020

Ethics Review Board

STAFF

Carrie Daggett, City Attorney

SUBJECT

Consideration of the July 8, 2020, request by Councilmember Emily Gorgol for an advisory review and opinion by the Ethics Review Board pursuant to City Code Section 2-569(d)(2) regarding her participation in Council's upcoming decisions regarding manufactured housing.

EXECUTIVE SUMMARY

The purpose of this item is consideration of the July 8, 2020, request by Councilmember Emily Gorgol for an advisory review and opinion by the Ethics Review Board pursuant to City Code Section 2-569(d)(2) regarding the following questions related to her participation in Council's upcoming decisions regarding manufactured housing:

1. Under the conflicts of interest provisions in the City Charter, does my employment and role at the Family Center/La Familia prevent me from participating in the City Council's decision(s) regarding (1) the establishment of manufactured housing zone district; or (2) the rezoning of particular manufactured housing communities?
2. Under the ethics provisions in the laws of the State of Colorado, does my employment and role at the Family Center/La Familia prevent me from participating in the City Council's decision(s) regarding (1) the establishment of manufactured housing zone district; or (2) the rezoning of particular manufactured housing communities?

STAFF RECOMMENDATION

The Ethics Review Board ("ERB") should consider Councilmember Gorgol's questions in light of the City Charter and Code, relevant ethics opinions, and applicable State ethics laws, and information obtained from Councilmember Gorgol regarding her circumstances, and formulate an advisory opinion.

BACKGROUND / DISCUSSION

Under **City Code Section 2-569 (attached)**, City Councilmembers may present to the Council Ethics Review Board ("ERB") inquiries regarding the application of state or local ethical rules to actual or hypothetical situations involving potential conflicts of interest. On July 6, Councilmember Gorgol indicated her intent to request that the ERB consider one or more ethics questions related to her participation in upcoming Council action regarding manufactured housing. On July 8, 2020, Councilmember Gorgol submitted the following questions to ERB chair, Mayor Pro Tem Kristin Stephens:

1. Under the conflicts of interest provisions in the City Charter, does my employment and role at the Family Center/La Familia prevent me from participating in the City Council's decision(s) regarding (1) the establishment of manufactured housing zone district; or (2) the rezoning of particular manufactured housing communities?
2. Under the ethics provisions in the laws of the State of Colorado, does my employment and role at the Family Center/La Familia prevent me from participating in the City Council's decision(s) regarding (1)

the establishment of manufactured housing zone district; or (2) the rezoning of particular manufactured housing communities?

Upcoming Council decisions regarding Manufactured Housing:

- Scheduled for Council consideration in July and August is the proposed adoption of amendments to the City's Land Use Code establishing a Manufactured Housing zone district.
- Assuming such amendments are adopted, the Council would subsequently consider ordinances the rezoning of properties appropriately placed within this zone district after such proposed rezonings had been considered by the Planning and Zoning Board for recommendation to Council.
- In addition, if City Plan amendments are needed in order to reflect the policies underlying the Manufactured Housing zone district, Council would consider those amendments after consideration and recommendation by the Planning and Zoning Board.
- Finally, Council enacted a moratorium on redevelopment of manufactured housing communities in August 2019 and that moratorium will terminate at the end of August 2020 unless extended by the Council. Council may wish to consider an ordinance extending the moratorium and if so this action would likely occur in July and August as well.

Councilmember Gorgol's employment and role at the Family Center/La Familia:

The following is the statement submitted by Councilmember Gorgol describing her position and role at The Family Center/La Familia:

My position at TFC/LF is primarily funded by the Health Disparities Grant Program (HDGP) administered by the Colorado Department of Health and Environment (CDPHE) Health Equity office. CDPHE receives funding for the HDGP through Amendment 35 (tobacco tax). HDGP was created to "provide prevention, early detection, and treatment of cancer and cardiovascular and pulmonary diseases to under-represented population" (CRS 25-4 2201 (2)). Smaller portions of funding for my position have included the Larimer County Built Environment (LCDHE) through the Cancer, Cardiovascular, and Chronic Pulmonary Disease (CCPD) grant program which receives funding from Amendment 35 as well. Due to being grant funded my compensation is not tied to the success of the program, rather it is tied to meeting deliverables such as number of meetings.

Overview of Work

Pertaining to this advisory opinion I will focus my work activities on a program called "Mi Voz" (My Voice). Mi Voz is a community-led project working with Spanish speaking residents in mobile home parks to address housing insecurity through civic engagement, leadership development, and advocacy. Mi Voz works very intentionally with three mobile home parks: Poudre Valley Mobile Home Park (Larimer County), Hickory Mobile Home Park (City of Fort Collins), and Parklane Mobile Home Park (Larimer County). While Mi Voz works closely with these three parks there are community members that have attended informational meetings from Harmony Mobile Home Park and Collins Aire Mobile Home Park (both located in the County).

Below is the project summary:

"This project addresses toxic community stress among low income and Hispanic/Latinx families living in mobile home parks in Larimer County by increasing protective local policies for land preservation/designation, facilitating resident ownership of property, and transforming the delivery of community-based trauma informed care and supportive services to families with young children" During my time at TFC/LF my role has changed, both roles are outlined below. For a year and half (July 2018-January 2019) my position at TFC/LF was the Special Projects Manager.

My role during this time was to:

- Hold events with mobile home park residents to learn about community issues
- Hold events to educate mobile home park residents on Resident Rights
- Connect residents to elected officials and city/county staff to advocate for community improvements
- Connect residents to leadership development opportunities
- Advise residents on advocacy and civic engagement opportunities

Due to the expansion of the program my role has shifted to the Policy and Grants Director. This role is more removed from working directly with community members and serves as an advisory role to the Mi Voz program.

My role now includes:

- Advise staff on advocacy opportunities for community members
- Work with elected officials on how to engage with residents
- Advise residents on civic engagement opportunities
- Bridge between government processes and mobile home park residents
- Expand organization's presence in other policy processes

Due to the focus of the community advocacy efforts and my involvement, I am seeking an advisory opinion from the Ethics review board as to my involvement with mobile home park land use and code changes.

Question 1: Under the conflicts of interest provisions in the City Charter, does Councilmember Gorgol's employment and role at the Family Center/La Familia prevent her from participating in the City Council's decision(s) regarding (1) the establishment of manufactured housing zone district; or (2) the rezoning of particular manufactured housing communities?

Relevant 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. A copy of the Charter provisions and City Code Section 2-568 are attached for reference.

1. Section 2-568(a) of the City Code defines and interprets several **key terms** used in these definitions:
 - (2) *Benefit* shall mean an advantage or gain.
 - (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.
 - (13) *Public services* shall mean city services provided to or made available for the public's benefit.
 - (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.

- (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.

2. A financial interest is defined in Section 9(a) of the Charter Article IV as follows:

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.

3. A personal interest is defined in Section 9(a) of the Charter Article IV as follows:

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.

- **NOTE:** One ethics opinion from a prior Ethics Review Board review of the “personal interest” test in 2000 applying the currently applicable provision, **Ethics Opinion 2000-1**, is attached for reference and consideration by the Board in evaluating how this provision applies to Councilmember Gorgol’s inquiry and circumstances.

Question 2: Under the ethics provisions in the laws of the State of Colorado, does Councilmember Gorgol’s employment and role at the Family Center/La Familia prevent her from participating in the City Council’s decision(s) regarding (1) the establishment of manufactured housing zone district; or (2) the rezoning of particular manufactured housing communities?

Potentially Relevant State Ethics Provisions (all attached in full):

1. As defined for the purpose of the **statutory ethics provisions**:
 - i. Councilmembers are “**local government officials**” (as defined in Section 24-18-102(6)).
 - ii. “**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. (Section 24-18-102(4))
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(2)**, C.R.S., provides that a local government official or employee shall not (in relevant part):

- i. 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 (§ 24-18-109(2)(a)); or
- ii. 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));
- iii. 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. It is unclear whether the reference to “personal or private interest” in this subparagraph of Section 109 is intended to reference back to the specified types of interests described in Section 109, or to introduce some other additional limitation. The term is not defined or discussed, so it is reasonable to interpret this provision as setting out the requirements for acting when one of the personal or private interests described in Section 109 is identified.

6. **Article XXIX of the Colorado constitution – also referred to as “Amendment 41,”** sets out limits for state and local officers and employees, by establishing limits on the acceptance of gifts and forming an Independent Ethics Commission to hear complaints about conduct of covered officials. While the amendment applies to municipalities in general, Section 7 provides, “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.*” (Emphasis added.)

Since the enactment of Amendment 41, it has been generally understood that Section 7 exempts home-rule cities that have enacted their own local charter and code ethics provisions, like Fort Collins, from its provisions. **A copy of Amendment 41 (Article XXIX) is attached to this Agenda Item Summary for reference.**

In September 2010, the City Council adopted Resolution 2010-063, finding and determining that the City’s Charter and Code adequately and appropriately address those matters covered by Amendment 41, that no further action by the City Council is warranted or necessary in order to further the purposes of Amendment 41 or address the matters contained therein, and that the requirements of Amendment 41 shall not be applicable to the City of Fort Collins.

ATTACHMENTS:

- 1. Statement from Emily Gorgol
- 2. Grant and Policy Job Description
- 3. City Code Section 2-569
- 4. City Code Section 2-568(a)
- 5. City Charter Section 9(a)
- 6. Resolution 80-2000 and Ethics Opinion 2000-1
- 7. CRS Section 24-18-102(4) and (6)
- 8. CRS Section 24-18-103
- 9. CRS Section 24-18-104
- 10. CRS Section 24-18-105
- 11. CRS Section 24-18-109
- 12. Article XXIX of Colorado Constitution (also known as “Amendment 41”)
- 13. Resolution 2010-063