

2020-02
OPINION OF THE ETHICS REVIEW BOARD
OF THE CITY COUNCIL OF THE CITY OF FORT COLLINS

July 17, 2020

The City Council Ethics Review Board (“the Board”) met on July 15 and July 17, 2020, to consider and render an advisory opinion addressing two questions submitted to the Board by Councilmember Emily Gorgol on July 8, 2020. Councilmember Gorgol asked 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?

Background

Under City Code Section 2-569, councilmembers may present to the Council’s Ethics Review Board inquiries regarding the application of state or local ethical rules to actual or hypothetical situations involving potential conflicts of interest. Upon completion of its review, the Ethics Review Board adopts an Ethics Opinion that is then presented to the City Council for consideration and possible adoption by the Council by resolution.

The local ethics provisions considered as part of this inquiry are City Charter Article IV, Section 9(a), regarding conflicts of interest, and City Code Section 2-568(a), establishing related definitions. The state ethics provisions considered as part of this inquiry include the following Colorado Revised Statutes: Sections 24-18-102 through -105 and Section 24-18-109. The Board also considered the applicability of Article XXIX of the Colorado Constitution (referred to as “Amendment 41”). These provisions are discussed and examined below as applicable.

Councilmember Gorgol’s Position and Role at The Family Center/La Familia

Councilmember Gorgol is employed by a local nonprofit, The Family Center/La Familia (TFC/LF), as the Policy and Grants Director, a position that is primarily funded by the Health Disparities Grant Program administered by the Colorado Department of Public Health and Environment, with additional grant funding from the Larimer County Department of Health and Environment’s Cancer, Cardiovascular, and Chronic Pulmonary Disease Grant Program. All of this funding originates from the state tobacco tax revenues and is dependent upon completion of work deliverables not focused on specific outcomes but rather on completion of contacts and

meetings with the subjects of the project, including Mi Voz (My Voice) program staff and participants. 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.

According to the summary provided:

The 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.

This Mi Voz work is directed to three particular mobile home parks (Hickory Mobile Home Park in Fort Collins and Poudre Valley Mobile Home Park and Parklane Mobile Home Park in Larimer County), and also includes community members from Harmony Mobile Home Park and Collins Aire Mobile Home Park (both also in Larimer County). Her work is mainly advisory to the Mi Voz program, and involves:

- Advising staff on advocacy opportunities for community members;
- Working with elected officials on how to engage with residents;
- Advising residents on civic engagement opportunities;
- Bridging between government processes and mobile home park residents; and
- Expanding the presence of TFC/LF and Mi Voz in other policy processes.

In her prior role as Special Projects Manager at TFC/LF from July 2018 to January 2020, Councilmember Gorgol was more directly engaged in outreach and education for mobile home park residents, and she was responsible for:

- Holding events with mobile home park residents to learn about community issues;
- Holding events to educate mobile home park residents on “Resident Rights;”
- Connecting residents to elected officials and city/county staff to advocate for community improvements;
- Connecting residents to leadership development opportunities; and
- Advising residents on advocacy and engagement opportunities.

Council Decisions Regarding Manufactured Housing

Councilmember Gorgol’s inquiry expressly relates to the following anticipated Council decisions:

- 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 to preserve and maintain manufactured housing (mobile home parks).

- Assuming such amendments are adopted, the Council may subsequently consider ordinances to rezone properties into this zone district (mainly existing manufactured housing/mobile home parks) after such proposed rezonings had been considered by the Planning and Zoning Board for recommendation to Council.

In addition, Council may consider, and a similar ethics question may be raised by, the following:

- 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.
- 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 consideration of an extension would likely occur in July or August.
- Council has asked staff to prepare for Council consideration City Code changes to protect the interests of manufactured housing/mobile home park residents from landlord practices related to utility bills and arrangements, property maintenance and leasing practices and other similar matters, including potential licensing of manufactured housing communities.

This Opinion addresses each of these potential Council decisions below.

Conflicts of Interest under the City Charter

Article IV, Section 9(b)(3) of the City Charter requires a Councilmember to disclose upon discovery any *financial interest* or *personal interest* in a Council decision and to refrain from voting on, attempting to influence or otherwise participating in such decision in any manner as an officer or employee.

Article IV, Section 9(a) of the City Charter defines the key terms *financial interest* and *personal interest*, 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;

...

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. . . .

For the purpose of interpreting and applying these provisions, the Council has adopted in Section 2-568(a) of the City Code the following relevant 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.

State Law Ethics Provisions

1. **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.
2. **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.
3. **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.)
4. **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** (as described in Section 24-18-109) 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)).
5. **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.)

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.

Application of Conflicts/Ethics Provisions to Council Decisions

Financial Interest Under City Charter

Considering the circumstances presented by Councilmember Gorgol, the Board readily concluded that there is not a financial interest presented by any of the identified Council decisions regarding manufactured homes. This is because there is no connection between the funding for her position at TFC/LF and the decisions, nor any identifiable indirect connection.

State Ethics Provisions

Similarly, the state law ethics provisions each relate to personal or private interests in which some economic benefit or detriment may be experienced by a local government official from official actions. The Board did not identify any direct or indirect financial or economic impact to Councilmember Gorgol or her employer TFC/LF that may result from the identified Council decisions. Accordingly, the Board has concluded that the state law ethics provisions do not bar participation by Councilmember Gorgol in the Council decisions identified above.

Personal Interest Under City Charter

As is frequently the case, the primary focus of the Board's attention and discussion has been the question of whether Councilmember Gorgol has a personal interest under the City Charter in any of the identified Council decisions. In general, there was concern expressed by each member of the Board arising from how Councilmember Gorgol's work appears to be narrowly focused on a part of the community that almost by definition has an interest in the outcome of Council's decisions regarding manufactured housing communities/mobile home parks, in a way that relates directly to the issues that Council will be considering and creates at least some appearance of a conflict or personal interest.

OPTION A:

The work Councilmember Gorgol does for TFC/LF is focused on and emphasizes promoting effective advocacy and involvement by manufactured housing/mobile home park residents in policy decisions. The members of the Board are concerned about how directly this work relates to the Council's decisions on (1) establishing a manufactured housing zone district; (2) deciding whether to and which properties to rezone into the new district if it is established; (3) determining whether to extend the existing moratorium on redevelopment of manufactured housing communities/mobile home parks; (4) amending comprehensive plan documents for the express purpose of preserving manufactured housing communities/mobile home parks; and (5) enacting Code provisions intended specifically to protect tenants/occupants of manufactured housing communities/mobile home parks.

The Board acknowledged that it is not uncommon for individual councilmembers to work with members of the public to assist them in navigating the policymaking and decisionmaking process

and advocating for their interests. However, as the Board noted, the fact that Councilmember Gorgol does this as part of her paid employment means that part of her overall success and continuing interests in her position and in working with manufactured housing/mobile home park community residents depends on promoting the interests of, and to some extent the success of, these participants in the policymaking and decisionmaking processes.

In addition, with respect to the rezoning of particular properties, the Board is concerned that the role Councilmember Gorgol has had working directly with and promoting the advocacy of residents of manufactured housing communities/mobile home parks presents a more direct and substantial link that is sufficient to constitute a personal interest and potential bias in those rezoning decisions.

For these reasons, the Board has concluded that Councilmember Gorgol will have a personal interest in the above-identified Council actions because she will experience a direct and substantial benefit or detriment of a different nature from that experienced by the general public as a result of the Council's decisions for each of the above identified decisions. Consequently, the Board recommends that Councilmember Gorgol declare a conflict of interest in these items and refrain from voting on, attempting to influence or otherwise participating in such decision in any manner as a Councilmember, including participation in related work session and executive session discussions.

OPTION B:

The work Councilmember Gorgol does for TFC/LF is focused on and emphasizes promoting effective advocacy and involvement by manufactured housing/mobile home park residents in policy decisions. The members of the Board are concerned about how directly this work relates to the Council's decisions on (1) establishing a manufactured housing zone district; (2) deciding whether to and which properties to rezone into the new district if it is established; (3) determining whether to extend the existing moratorium on redevelopment of manufactured housing communities/mobile home parks; (4) amending comprehensive plan documents for the express purpose of preserving manufactured housing communities/mobile home parks; and (5) enacting Code provisions intended specifically to protect tenants/occupants of manufactured housing communities/mobile home parks.

The Board acknowledged that it is not uncommon for individual councilmembers to work with members of the public to assist them in navigating the policymaking and decisionmaking process and advocating for their interests. In addition, while Councilmember Gorgol does this as part of her paid employment, her overall success or continuing interests in her position and in working with manufactured housing/mobile home park community residents does not depend on their success in promoting their interests and succeeding in the policymaking and decisionmaking processes. For this reason, the Board has concluded that Councilmember Gorgol generally will not experience a direct and substantial benefit or detriment of a different nature from that experienced by the general public as a result of the Council's decisions for most of the above identified decisions.

However, with respect to the rezoning of particular properties, the Board is concerned that the role Councilmember Gorgol has had working directly with and promoting the advocacy of residents of manufactured housing communities/mobile home parks presents a more direct and substantial link that is sufficient to constitute a personal interest and potential bias in those rezoning decisions. Consequently, the Board recommends that Councilmember Gorgol declare a conflict of interest in individual rezoning matters for manufactured housing community/mobile home park properties whose residents she has worked with directly as part of her work for TFC/LF. This means that for these items she should refrain from voting on, attempting to influence or otherwise participating in such decision in any manner as a Councilmember, including participation in related work session and executive session discussions.

Board Conclusions and Recommendations:

1. **Councilmember Gorgol Does Not Have a Financial Interest in the Identified Council Decisions.**

The Board finds that Councilmember Gorgol does not have a financial interest in any of the Council decisions identified above, based on the facts as presented in this review.

2. **Councilmember Gorgol Does Not Have a State Law Ethics Bar From Participating in the Identified Council Decisions.**

The Board finds that state law ethics provisions do not bar Councilmember Gorgol from participating in any of the Council decisions identified above, based on the facts as presented in this review.

3. **Councilmember Gorgol Has/May Have a Personal Interest in Some/Each of the Identified Council Decisions.**

OPTION A:

The Board finds that Councilmember Gorgol will experience a direct and substantial benefit or detriment of a different nature from that experienced by the general public as a result of the Council's decisions for each of the above identified decisions. Consequently, the Board recommends that Councilmember Gorgol declare a conflict of interest in these items and refrain from voting on, attempting to influence or otherwise participating in such decision in any manner as a Councilmember, including participation in related work session and executive session discussions.

OPTION B:

The Board finds that Councilmember Gorgol generally will not experience a direct and substantial benefit or detriment different in kind from that experienced by the general public as a result of the Council's decisions for the above identified decisions, except for the rezoning of individual properties. With respect to the rezoning of particular properties, the Board finds that Councilmember Gorgol has a personal interest and potential bias. Consequently, the Board recommends that Councilmember Gorgol declare a conflict of interest in individual rezoning matters for manufactured housing community/mobile home park properties whose residents she has worked with directly as part of her work for TFC/LF. This means that for those items she should refrain from voting on, attempting to influence or otherwise participating in such decision in any manner as a Councilmember, including participation in related work session and executive session discussions.

This advisory opinion was reviewed and approved by Councilmembers Kristin Stephens, Ken Summers and Julie Pignataro, as the designated regular members of the Ethics Review Board, at a meeting of the Ethics Review Board on July 17, 2020. Pursuant to Section 2-569(e) of the City Code, this opinion and recommendation is to be immediately filed with the City Clerk and made available for public inspection. Additionally, this opinion shall be considered by the City Council at its regular meeting on July 21, 2020.

Dated this 17th day of July, 2020.

Carrie M. Daggett, City Attorney