

# AGENDA ITEM SUMMARY

July 24, 2020

Ethics Review Board

## STAFF

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Carrie Daggett, City Attorney

## SUBJECT

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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

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The purpose of this item is continued 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

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The Ethics Review Board ("ERB" or the "Board") 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 received in prior ERB meetings on July 15 and July 17 regarding this item, and formulate an advisory opinion.

## BACKGROUND / DISCUSSION

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A copy of the agenda materials provided to the ERB for its July 15 meeting regarding this matter, with an updated checklist identifying the applicable ethics provisions, are attached for reference.

In follow up to ERB discussion on July 15, a draft Ethics Opinion 2020-02 with two options was provided for Board consideration on July 17. A copy of that draft, dated July 17, 2020, is also attached for reference.

For easy reference, Councilmember Gorgol's inquiry expressly relates to the following anticipated Council decisions:

- (1) 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).
- (2) 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 similar ethics questions may be raised by, the following:

- (3) If **City Plan amendments** are needed **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.
- (4) 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.
- (5) 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.

To the extent the advisory opinion addresses each of these potential Council decisions, it will assist Councilmember Gorgol in evaluating her involvement in them as they come forward.

At the July 17 meeting, the Board's discussion mainly focused on:

- (1) What kind of impact or relationship do these upcoming manufactured housing decisions have to Councilmember Gorgol's current and prior roles at The Family Center/La Familia ("TFC/LF");
- (2) Do those impacts/relationships suggest that Councilmember Gorgol will experience some direct and substantial benefit or detriment different in kind from the general public as a result of one or more of the Council decisions to come (i.e., does she have a **personal interest** in any of these decisions);
- (3) Do those impacts/relationships suggest that Councilmember Gorgol has a "**personal or private interest**" in these Council decisions under § 24-18-109(3), Colorado Revised Statutes ("C.R.S."); and
- (4) Are there other considerations (such as an "appearance of conflict" or bias/lack of impartiality in quasi-judicial decision-making) to be considered in evaluating whether Councilmember can properly participate in these decisions.

To assist the Board in further working through these questions, each is discussed below:

**Question 1: What kind of impact or relationship do these upcoming manufactured housing decisions have to Councilmember Gorgol's current and prior roles at The Family Center/La Familia ("TFC/LF")?**

The Board has inquired of Councilmember Gorgol and discussed her roles and responsibilities at TFC/LF during its prior meetings. There may be continued confusion or uncertainty about the work she has done and is doing at TFC/LF and her working relationships with stakeholders directly interested in the manufactured housing related decisions Council will be making.

This information is critical to the evaluation of whether Councilmember Gorgol has a personal or private interest or bias that bars her participation in any of the Council's decisions. It may be helpful to further develop the Board's understanding of these facts, considering:

- a) Is Councilmember Gorgol's work at TFC/LF advanced by actions the Council will be taking and, if so, will that result in a direct and substantial impact to her?
- b) What specific interest does Councilmember Gorgol's work at TFC/LF give her in these Council decisions?
- c) Does Councilmember Gorgol's work for TFC/LF create a significant and close relationship with key stakeholders in any particular rezoning decision(s) that will interfere with her ability to be an impartial decision-maker?

**Question 2: Do those impacts/relationships suggest that Councilmember Gorgol will experience some benefit or detriment different in kind from the general public as a result of one or more of the Council decisions to come (i.e., does she have a *personal interest* in any of these decisions)?**

The Board must evaluate, based on the information about Councilmember Gorgol's roles and responsibilities with TFC/LF, whether she will experience some benefit or detriment different in kind from the general public as a result of any of the Council decisions under consideration.

City Charter and City Code prohibit members of the City Council from participating in a decision if the Councilmember has a *personal interest* in the decision.

Under City Charter Article IV, Section 9(a), a *personal interest* is:

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.

Related **key terms** (from Section 2-568(a) of the City Code) include:

- (2) *Benefit* = an advantage or gain.

- (6) *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.
- (7) *Direct* = resulting immediately and proximately from the circumstances and not from an intervening cause.
- (8) *Detriment* = disadvantage, injury, damage or loss.
- (13) *Public services* = city services provided to or made available for the public's benefit.
- (15) *Relative* = 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.
- (18) *Substantial* = more than nominal in value, degree, amount or extent.

**If the Board finds that any policy or zoning decision Council will make about manufactured housing will:**

**~have an impact on Councilmember Gorgol that will be *different from the impact on the public generally* AND**

**~that impact will be *direct and substantial*,**

**then the Board should conclude that Councilmember Gorgol has a personal interest in that decision.**

**Question 3: Do those impacts/relationships suggest that Councilmember Gorgol has a "personal or private interest" in these Council decisions under § 24-18-109(3), C.R.S.?**

The Board must evaluate, based on the information about Councilmember Gorgol's roles and responsibilities with TFC/LF, whether she has a personal or private interest in any of the Council decisions under consideration.

Under Colorado Revised Statutes **Section 24-18-109(3)**, 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.

Although the key term from this statute "personal or private interest" is not defined, guidance from other uses of this term in related Colorado law may be helpful. As noted in a 2014 *Colorado Lawyer* article describing this statute (an excerpt of which is attached), this "standard of conduct" was likely adapted from a provision of the Colorado constitution that is applicable to members of the General Assembly (Colo. Constitution Art. V, § 43). As described in the article, the limits focus primarily on financial relationships in determining whether an impermissible personal or private interest exists.

In light of the relationship between this provision and the constitutional limit on members of the General Assembly, the way the constitutional limit has been applied to the General Assembly may provide some useful guidance in considering the meaning of "personal or private interest." Attached to this Agenda Item Summary are materials further elaborating on this limit on members of the General Assembly: Joint Rule 42, which states a legislative interpretation of the limit, and two excerpts from

materials prepared and published by the Office of Legislative Legal Services to help with applying it.

**To summarize, Joint Rule 42 provides that:**

- a) **If the passage or failure of a measure will result in the legislator deriving a direct financial or pecuniary benefit that is greater than any such benefit derived by or shared by other person's in the legislator's profession, occupation, industry or region, the legislator is considered to have a personal, private or financial interest in the measure.**
- b) **If the interest a legislator has in a measure affects the entire membership of a class to which the legislator belongs, the interest is not deemed to be a personal, private or financial interest.**

Merriam-Webster's online definition of the term "pecuniary" is: **1.** consisting of or measured in money; such as *pecuniary* aid *pecuniary* gifts; **2:** of or relating to money

Examples interpreting the constitutional limit on the General Assembly and Joint Rule 42 are provided in the attached; none directly correspond to Councilmember Gorgol's situation.

In the review of recusal decisions by judges in Colorado courts, the Colorado Supreme Court has also articulated a distinction between a "private interest" and a "public interest." The Court has held that "a public interest is one shared by other citizens, and a judge's interest as a citizen in a public issue is not a basis per se for removal as a trial judge. . . . If the trial judge's decision would affect him in a pecuniary way, however, this constitutes a private interest" (Zoline v. Telluride Lodge Assn, 732 P.2d 635, 639-640 (Colo. 1987)). While the standards for recusal of a judge are arguably more sensitive to potential conflicts than would apply to a legislator, this distinction is a helpful one in evaluating whether Councilmember Gorgol's interest in manufactured housing issues is a public interest or a private interest.

**Under this analysis, if the Board finds that any policy or zoning decision Council will make about manufactured housing will:**

**~result in a direct financial or monetary impact to Councilmember Gorgol that will be greater than the impact on others in her profession, occupation, industry or region AND**

**~that impact will not affect the entire membership of that profession, occupation, industry or region,**

**then the Board should conclude that Councilmember Gorgol has a "personal or private interest in that decision under Section 24-18-109(3).**

**Question 4: Are there other considerations (such as an "appearance of conflict" or bias/lack of impartiality in quasi-judicial decision-making) to be considered in evaluating whether Councilmember can properly participate in these decisions?**

Although there is no City Charter or Code provision precluding a Councilmember from participating in a decision due to the "appearance of a conflict" if the specific ethics standards that apply are met, Councilmembers do on occasion recuse themselves from an item by leaving the Council meeting for the item when that Councilmember is uncomfortable participating due to the potential for or appearance of a conflict.

In addition, where acting as a quasi-judicial decisionmaker, a Councilmember has an obligation to consider carefully whether his or her relationships, particularly business or professional relationships result in a bias or inability to be impartial in a quasi-judicial decision. As described on page 3 of the attached *Colorado Lawyer* article:

Often, opponents or proponents in a public hearing will accuse a board member of having a private interest or conflict simply because he or she is acquainted with the applicant. However, the Standards focus primarily on financial relationships in determining whether an impermissible personal or private interest exists.

Following are examples of relationships that ordinarily would not disqualify a board member from acting in his or her quasi-judicial capacity. They reflect the practical reality of life in a small community and, standing alone, should not prevent a board member from voting on an application. Bearing in mind that the Standards are primarily concerned with financial interest, it is important to note that these kinds of fact patterns lack the potential of personal financial gain or loss:

1. The member lives next door to the applicant;
2. The member and the applicant know and like (or dislike) each other, are friends, go to the same church, have memberships at the same club, or play golf together.
3. The member is related by blood or marriage to the applicant, but has no financial connection or potential of experiencing financial gain or loss. However, to the extent the blood or marriage relationship is immediate (for instance, husband and wife or father and son), the member *should* step down. Even though there may be not financial connection, the relationship is so close that a conflict of interest would be presumed.

The City does have an interest in assuring that those making quasi-judicial decisions have carefully considered whether they have a bias or will not be able to be impartial. In those instances, the individual should seriously consider not participating in the decision.

If the Board finds that Councilmember Gorgol has relationships, particularly business or professional relationships, that suggest she cannot be unbiased and impartial in a particular quasi-judicial decision, such as a particular rezoning matter, the Board may choose to recommend that she recuse herself from that matter on that basis.

## **ATTACHMENTS**

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1. Ethics Review Board Agenda Item Summary, July 15, 2020
2. Updated Ethics Checklist
3. July 17, 2020, Draft Ethics Opinion 2020-02
4. Excerpt from 2004 *Colorado Lawyer* Article re Quasi-Judges
5. Colorado General Assembly Joint Rule 42 and related guidance
6. July 24, 2020, Draft Ethics Opinion 2020-02, **OPTION A**
7. July 24, 2020, Draft Ethics Opinion 2020-02, **OPTION B**
8. July 24, 2020, Draft Ethics Opinion 2020-02, **OPTION C**

# AGENDA ITEM SUMMARY

July 15, 2020

Ethics Review Board

## STAFF

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Carrie Daggett, City Attorney

## SUBJECT

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## EXECUTIVE SUMMARY

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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

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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

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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:**

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- 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

Dear Ethics Review Board,

Thank you for taking the time to provide an advisory opinion regarding any conflicts of interest due to my employment and nature of work at The Family Center/La Familia (TFC/LF). Below I have outlined how my position is funded and my job responsibilities. In addition, I have attached my job description.

### **Funding**

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.

I look forward to the discussion and answering any questions you may have.

Best,  
Emily Gorgol

**The Family Center/La Familia**  
**Policy and Grants Director**  
**Job Description**

General Statement of Duties:

Since 1995, The Family Center/La Familia (TFC/LF), a bilingual and multicultural organization, has provided childcare and support services to families in Fort Collins and Larimer County.

Reporting to the Executive Director, the Grants and Policy Director will provide oversight, direction, and technical support for grants awarded to The Family Center, particularly the Health Disparities Grant Program (HDGP). This position will also be responsible for building relationships and community support to advocate for community identified issues at a policy level.

Responsibilities include:

Policy Grant Oversight

- Identify and provide oversight for HDGP subcontractors
- Identify and lead subcontracted work with other partners as lead agencies
- Work with the HDGP team to ensure completion and documentation of grant funded work for the purposes of evaluation and reporting
- Work with HDGP Manager to develop statements of work
- Work with Finance Director on budget reconciliation for reporting to funders
- Provide support to HDGP manager for program budget direction
- Maintain positive relationships with funders through ongoing communication and timely reporting

Advocacy and Policy

- Advise elected officials, city/county staff and other leaders on best practices for community engagement
- Monitor local opportunities to influence policy change to support community identified issues
- Attend meetings with partner agencies with an emphasis on early childhood education and housing policy
- Assess policy/systems needs and opportunities through community relationships, work piloted through grant contracts, and coordination with other agency program leaders
- Advise Executive Director and Board of Directors on policy direction for organization

Other duties as assigned including but not limited to:

- Provide support to the Executive Director with grant research and applications
- Work with program leaders and ED to design agency wide planning and evaluation

Qualifications:

- Bachelor's Degree or equivalent experience required
- Demonstrated experience in policy and advocacy
- A minimum of two years of program management
- A minimum of two years grant management
- Demonstrated experience in grant management
- Must successfully pass background check.

Skills and Experience:

- Experience influencing policy and system changes; preferably at the government level
- Ability to identify opportunities for policy change at the systems level
- Proven experience building relationships with agencies
- Demonstrated ability to organize multiple tasks, prioritize projects and achievement of project deadlines, goals, and objectives
- Strong written and verbal communication skills
- Proven ability to manage long-term projects; preferably with subcontractors.
- Experience working in or with manufactured home communities highly desired, but not required
- Ability to successfully facilitate meetings
- Work with diverse populations

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)

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) *Purchases from the city*, as described in Section 9(b)(2) of Charter Article IV, shall not include payments by an employee to the city pursuant to an agreement for housing in which such employee is required to live as a condition of employment with the city.
- (15) *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.

- (16) *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) *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.

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

- (19) *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 or 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; Ord. No. [057, 2020](#), § 2, 4-21-20)

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)

RESOLUTION 2000-80  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
ACCEPTING THE ADVISORY OPINION AND RECOMMENDATION NO. 2000-1  
OF THE ETHICS REVIEW BOARD

WHEREAS, the City Council has established an Ethics Review Board (the "Board") consisting of three 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 of board and commission members of the City; and

WHEREAS, the Ethics Review Board met on May 23, 2000, to consider whether Mayor Pro Tem Chuck Wanner has a conflict of interest in participating in City Council's consideration of proposed floodplain regulations for the Poudre River by reason of his employment as Executive Director of The Friends of the Poudre or as a member of the Board of Directors of the Friends of the Poudre; and

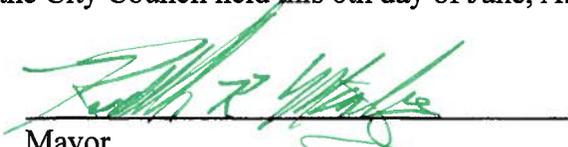
WHEREAS, the Board has issued an advisory opinion that Mayor Pro Tem Wanner does not have a conflict of interest with regard to the proposed floodplain regulations; and

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

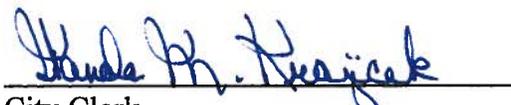
WHEREAS, the City has reviewed the opinion and recommendations of the Board and wishes to adopt the same.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that Opinion No. 2000-1 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 and recommendation contained therein.

Passed and adopted at a regular meeting of the City Council held this 6th day of June, A.D. 2000.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

2000 -1  
**OPINION OF THE ETHICS REVIEW BOARD  
OF THE CITY COUNCIL OF THE CITY OF FORT COLLINS**

May 23, 2000

The City Council Ethics Review Board ("the Board") met on May 23, 2000, to render an advisory opinion on a question submitted to the Board by Mayor Pro Tem Chuck Wanner. The question presented is whether Mayor Pro Tem Wanner ("Wanner") would have a conflict of interest in continuing to participate in Council discussions and, ultimately, Council's vote, regarding the proposed new floodplain regulations for the Poudre River. The question arises because Wanner is employed by The Friends of the Poudre, a non-profit organization that has been actively involved in commenting on the new proposed floodplain regulations and that has lobbied for "Option C," the most restrictive alternative that has been presented by staff. The Friends of the Poudre is a citizen's group formed to protect the River. According to its Mission, Vision and Goals Statement (copy attached), one the goals of The Friends of the Poudre is to "preserve, restore and enhance critical areas of the Cache La Poudre watershed." Toward that end, it actively seeks ways in which to minimize development in the floodplain and to influence the kind of development that does occur. At present, the Friends of the Poudre has 160 dues-paying members and an operating budget of approximately \$45,000.

Wanner is employed as the Executive Director of The Friends of the Poudre and he is a member of its seven-member board of directors (the "Board of Directors"). He assumed both positions in the fall of last year. Wanner's term of employment with The Friends of the Poudre is of indefinite duration, and he is employed at the will of the Board of Directors. Funding for his position has been secured in the form of a grant from River Network, a national non-profit organization. The grant funding has been allocated over a ten-month period in the form of a salary to Wanner in the amount of \$1,666 per month, which will be payable through September of 2000. Wanner has indicated that, at the time of accepting his employment, he and the Board of Directors discussed the fact that Wanner would need to exercise independent judgment as a Councilmember with regard to any changes to the floodplain regulations for the Poudre River. That arrangement was reportedly acceptable to the Board of Directors, and Wanner has indicated that there have been no attempts by members of the Board of Directors to influence his position with regard to those regulations other than those lobbying efforts that have been directed to Councilmembers generally. There is no indication from Wanner or others that Wanner's employment, the amount of his compensation, or his membership on the Board of Directors is dependent upon the position that he takes with regard to the proposed floodplain regulations. Neither Wanner nor the Friends of the Poudre have a financial interest in any real property that will be affected by the proposed floodplain regulations. It is unclear whether any future funding for the Friends of the Poudre in the form of other grants might be affected by the floodplain regulations that are approved by the Friends of the Poudre, since each grant has different terms and conditions.

Ethics Opinion 2000-1  
May 23, 2000  
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The question presented for the Board, is whether, under these facts, Wanner's employment with The Friends of the Poudre and/or his membership on the Board of Directors creates a conflict of interest under the City Charter or the state statutes that would prevent Wanner from participating in Council's discussion and vote on the proposed Poudre River floodplain regulations.

#### ANALYSIS.

#### 1. City Charter Provisions.

The City Charter requires that any Councilmember who has a financial or personal interest in a decision of the Council disclose such interest and refrain from voting on, attempting to influence, or otherwise participating in such decision in any manner as a Councilmember. The City Charter defines two kinds of interests that can create a conflict of interest for officers or employees of the City: financial and personal interests.

##### 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 might fairly be said that the Council's decision with regard to the floodplain regulations for the Poudre River may “affect” The Friends of the Poudre since those regulations will determine the nature and extent of development that will be permitted in the Poudre River floodway, product corridor and floodplain. There is no indication, however, that that decision will financially benefit The Friends of the Poudre, much less Wanner himself. Wanner's compensation with the Friends of the Poudre is in a fixed amount, and no evidence has been presented to the effect that Wanner's salary will be changed or discontinued as a result of the Council's decision on the floodplain regulations. Therefore, the Board believes that Wanner does not have a financial interest in the proposed regulations.

##### b. Personal Interest.

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.”

Clearly, Wanner is differently situated with regard to this matter than are the members of the general public because of his employment with The Friends of the Poudre and his membership on the Board of Directors. The Charter expressly excludes from the definition of personal interest the interest of a member of a board of directors of a non-profit organization. Therefore, the question here is

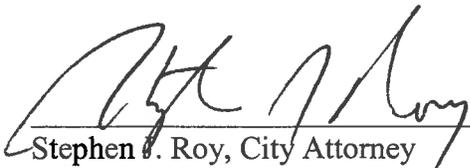
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whether Wanner will realize any "direct and substantial benefit or detriment" by reason of Council's decision on the floodplain regulations because of his position of employment. Again, there is no indication that Wanner's position of employment or the amount of his compensation would be affected by his vote or Council's decision with regard to the proposed floodplain regulations. One can speculate that, if Wanner's vote proves to be inconsistent with the organization's philosophy or objectives, the Board of Directors may discontinue or decide not to renew Wanner's employment. However, the Charter standard requires that the potential benefit or detriment be "direct and substantial" and not merely indirect or speculative. The Board believes that the possibility of Council's decision affecting Wanner's employment is entirely speculative.

In summary, the Board believes that Mayor Pro Tem Wanner does not have a conflict of interest in participating in the City Council's deliberations and vote with regard to the proposed floodplain regulations. The Board recognizes that the perception of a conflict of interest may exist whenever a councilmember is employed by, or closely associated with, an organization that is strongly interested in proposed legislation. This is especially true when the councilmember is employed in a managerial capacity with that organization. However, the City Charter rules of ethical conduct have been established to distinguish situations where councilmembers and their employers may be affected and concerned about proposed legislation from those situations in which councilmembers themselves may somehow experience some personal gain or loss as result of the Council decision. Under the Charter standards, a conflict of interest would exist in this situation only if the potential personal gain or loss to Wanner was either "foreseeable and measurable" (in the case of a financial interest) or "direct and substantial" (in the case of a personal interest). After analyzing the situation presented by Mayor Pro Tem Wanner, the Board does not believe that that kind of clear and direct benefit or detriment exists in this case. To recommend that Mayor Pro Tem Wanner declare a conflict of interest in this situation would, in the Board's view, establish a very difficult precedent that would require councilmembers to regularly refrain from representing the views of their constituents with regard to proposed legislation even when the potential benefits or repercussions to councilmembers are merely hypothetical or speculative.

This advisory opinion was reviewed and approved by Councilmembers Councilmembers Byrne, Kastein and Weitkumat, members of the Ethics Review Board of the City Council. 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 meeting on June 6, 2000.

Dated this 23rd day of May, 2000.

  
\_\_\_\_\_  
Stephen F. Roy, City Attorney

SJR:med

## CRS 24-18-102(4)

(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.

## CRS 24-18-102(6)

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

# Colorado Revised Statutes Title 24.

## Government State § 24-18-103

(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 Statutes Title 24.

## Government State § 24-18-104

(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:

(a) Disclose or use confidential information acquired in the course of his official duties in order to further substantially his personal financial interests; or

(b) Accept a gift of substantial value or a substantial economic benefit tantamount to a gift of substantial value:

(I) 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

(II) 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.

(2) An economic benefit tantamount to a gift of substantial value includes without limitation:

(a) 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

(b) 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 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 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.

(3) 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:

- (a) Campaign contributions and contributions in kind reported as required by [section 1-45-108, C.R.S.](#) ;
- (b) An unsolicited item of trivial value;
- (b.5) 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.
- (c) An unsolicited token or award of appreciation as described in [section 3\(3\)\(c\) of article XXIX of the state constitution](#) ;
- (c.5) 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;
- (d) 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](#) ;
- (e) 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](#) ;
- (f) 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 on a special occasion.
- (g) Payment for speeches, appearances, or publications 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 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 1-45-108, 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](#) .

# Colorado Revised Statutes Title 24.

## Government State § 24-18-105

(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.

# Colorado Revised Statutes Title 24.

## Government State § 24-18-109

(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.

## **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.

RESOLUTION 2010-063  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
REGARDING ARTICLE XXIX OF THE COLORADO CONSTITUTION  
CONCERNING ETHICS IN GOVERNMENT

WHEREAS, in 2008, the citizens of Colorado amended the state constitution via the initiative process to add Article XXIX (also known as Amendment 41) concerning ethics in government; and

WHEREAS, Amendment 41 sets forth a detailed regulatory framework that limits gifts to public officials and employees, and creates an independent ethics commission to perform the following functions: hear and investigate complaints filed against state and local officials and employees; issue findings and advisory opinions; and assess penalties in connection with ethics issues arising not only under its own provisions, but also under any other standards of conduct and regulatory requirements as are provided by law; and

WHEREAS, Section 7 of Amendment 41 provides that its provisions shall not apply to home rule municipalities that have adopted charters, ordinances, or resolutions that address the matters covered by Amendment 41; and

WHEREAS, the City, through Article IV, Section 9 of its Charter and Section 2-568 of its City Code, has in place comprehensive regulations which effectively address the ethical behavior of its officials and employees, and which pre-date the adoption of Amendment 41; and

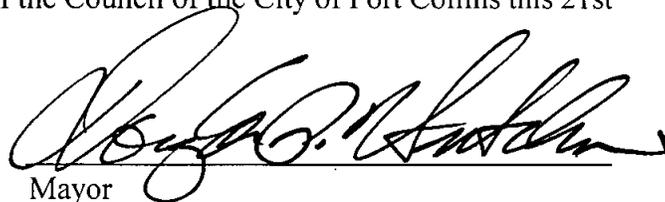
WHEREAS, said City Charter and Code provisions, as well as other provisions of the Charter and City Code, specifically limit gifts to City officials and employees, create a board of ethics for the review and investigation of actual and hypothetical situations involving potential conflicts of interest by Councilmembers and members of City boards and commissions, provide for the ability of City employees to obtain advice concerning ethical issues via consultation with City management and the City Attorney's Office, and establish a penalty and enforcement process concerning the ethical conduct of City officials and employees through prosecution in the Municipal Court; and

WHEREAS, the concerns addressed in Amendment 41 by its creation of an ethics commission are addressed to the extent deemed necessary by the City through its creation of the board of ethics described at Section 2-569 of the City Code, and by the ability of City employees to obtain advice concerning ethical issues via consultation with City management and the City Attorney's Office; and

WHEREAS, the concerns addressed in Amendment 41 by providing jurisdiction to the state ethics commission over other standards of ethical conduct contained in state law are addressed locally to the extent deemed necessary by the City by those state laws which provide for civil and criminal enforcement and advisory opinions by the Secretary of State independent of the state ethics commission, and by the penalties provided under the City Code for violation of similar standards of ethical conduct contained in the City Charter and City Code.

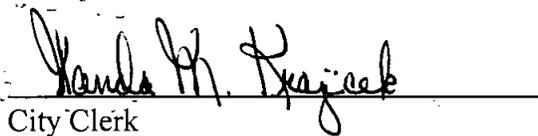
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that the City Council hereby finds and determines that the City's Charter and Code adequately and appropriately address those matters covered by Amendment 41, that no further action by the City Council is warranted or necessary 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.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 21st day of September A.D. 2010.



Mayor

ATTEST:



City Clerk

## ETHICS REVIEW BOARD -- REVIEW CHECKLIST

July 24, 2020

Manufactured Housing

**\*\*For an advisory opinion, it is helpful for the Board to discuss and explain why these various limits are or are not triggered by the scenario under consideration.**

Limit Triggered?

Potentially Applicable Limit - FORT COLLINS CHARTER:

Yes  No

**City Charter Article IV, Section 9(b)(3) – prohibits participation when official has a **FINANCIAL INTEREST**:**

**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.

## ETHICS REVIEW BOARD -- REVIEW CHECKLIST

July 24, 2020

### Manufactured Housing

**\*\*For an advisory opinion, it is helpful for the Board to discuss and explain why these various limits are or are not triggered by the scenario under consideration.**

Limit Triggered?

Potentially Applicable Limit - FORT COLLINS CHARTER:

Yes  No

**City Charter Article IV, Section 9(b)(3) – prohibits participation when official has a **PERSONAL INTEREST**:**

**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.**

## ETHICS REVIEW BOARD -- REVIEW CHECKLIST

July 24, 2020

### Manufactured Housing

**\*\*For an advisory opinion, it is helpful for the Board to discuss and explain why these various limits are or are not triggered by the scenario under consideration.**

Limit Triggered?

Potentially Applicable Limit – STATE LAW:

Yes  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.

Yes  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.

Yes  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.

Yes  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**.

Yes  No

**Section 24-18-109(2)(a), C.R.S.** - prohibits engaging in a **substantial business transaction for private business purposes with a person he/she inspects or supervises in his/her official duties**.

Yes  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**.

Yes  No

**Section 24-18-109(3), C.R.S.** - prohibits 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 from participating in the decision unless necessary to obtain a quorum (and requires disclosure of the interest).

**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

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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).

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- 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

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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

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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:**

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**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.

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Carrie M. Daggett, City Attorney

**33-MAR Colo. Law. 69****Colorado Lawyer**  
March, 2004

Specialty Law Column

Government and Administrative Law News

[Gerald E. Dahl<sup>1</sup>](#)

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**ADVISING QUASI-JUDGES: BIAS, CONFLICTS OF INTEREST, PREJUDGMENT, AND EX PARTE CONTACTS**

**This article identifies the nature of certain due process pitfalls facing quasi-judicial decision-making bodies, including bias, conflicts of interest, prejudgment, and *ex parte* contacts. Suggestions are made to deal effectively with these problems to ensure a fair, impartial, and defensible decision.**

Local government attorneys often face the challenge of guiding elected and appointed decision-making bodies when they act in a “quasi-judicial” capacity. These bodies typically comprise town and city councils, boards of county commissioners, planning commissions, and boards of adjustment. Their members (“quasi-judges”) are usually unpaid volunteers (for planning commissions and boards of adjustment), or elected officials (for town or city councils and boards of county commissioners). Quasi-judges are also referred to in this article as “board members.”

Quasi-judges generally have no judicial background and little government experience. Nonetheless, they are expected to act with much of the same formality and dignity as judges when deciding quasi-judicial matters.

This article addresses some of the practical aspects of advising quasi-judges. It discusses how bias, conflict of interest, prejudgment, and *ex parte* contact problems should be resolved prior to the hearing. Also covered are situations where board members engaging in those contacts must recuse themselves.

**Explanation of Quasi-Judicial Actions**

The first task of the local government attorney is to determine whether the matter to be considered is quasi-judicial, rather than administrative or legislative. The due process and deliberative protections discussed in this article apply only if the matter is quasi-judicial.

Administrative matters involve day-to-day decisions, such as approving contracts, hiring staff, and setting utility rates. Legislative matters affect large areas (such as multiple parcels of property) or set broad policy directives. Examples of legislative matters include adoption of an entire or general amendment to a land use code, comprehensive plan, leash law, or general parking ordinance.

By contrast, quasi-judicial actions apply general rules to a specific interest, such as a zoning change affecting a single piece of property, a variance, or a conditional or special use permit. Rezonings in Colorado are quasi-judicial.<sup>1</sup> They constitute one

of the largest categories of such actions considered by local government decision-making bodies. Other quasi-judicial matters include historic preservation district permits, conditional and special use permits, and variances.<sup>2</sup>

Quasi-judicial actions have three characteristics. They involve a state or local law that: (1) requires that notice be given before the action is taken; (2) requires that a hearing be conducted before the action is taken; and (3) directs that the action results from application of prescribed \*70 criteria (such as criteria for rezoning found in local zoning regulations) to the individual facts of the case.<sup>3</sup>

Throughout the quasi-judicial process, counsel must ensure that all due process requirements are properly met. Notice required by any state statute and applicable local regulations must be given. Further, an adequate right to present evidence and cross-examine witnesses must be provided to the applicant or landowner whose interest is the subject of the hearing.

### **Bias and Conflict Of Interest**

Colorado law contains a presumption that quasi-judicial hearings are conducted impartially.<sup>4</sup> This presumption can be overcome by evidence of actual bias or conflict of interest that creates an appearance of impropriety.<sup>5</sup>

At the local level, particularly in small communities, it is common for members of the decision-making body to personally know the applicant and opponent and, perhaps, have pre-existing relationships with them. However, by itself, this does not create a bias, prejudice, or conflict of interest sufficient to exclude members from the decision. It is necessary to review any local charter, ordinance, or land use regulation governing conflicts of interest. The attorney must look to state law for guidance on conflict-of-interest matters.

### **Standards of Conduct**

In 1988, the General Assembly enacted a comprehensive code of ethics for both state and local government officials, entitled “Standards of Conduct” (*hereafter*, “Standards”).<sup>6</sup> The Standards establish recommended guidelines, as well as mandatory rules of conduct. The Standards also prohibit public officials or employees from performing

an official act directly [such as voting to approve] 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.<sup>7</sup>

The Standards address circumstances where a member of a governing body of a local government has a “personal or private interest” in any matter proposed or pending before the governing body. Such board members must: (1) disclose the interest; (2) not vote on the matter; and (3) refrain from attempting to influence the decisions of the other members.<sup>8</sup>

In certain situations, the Standards prohibit local government officials and employees from accepting gifts of substantial value or substantial economic benefit. This would apply if acceptance of the gift by a reasonable person would tend to improperly influence him or her to depart from faithful and impartial discharge of public duties.<sup>9</sup> Such prohibition also would apply if a reasonable person in the same position should know under the circumstances that the gift is primarily for the purpose of rewarding that person for official action taken.<sup>10</sup>

The Standards contain an exception for campaign contributions, occasional non-pecuniary gifts of insignificant value, or payment or reimbursement for travel expenses for attendance at a convention in which the official is participating.<sup>11</sup> Also excluded are items of perishable or non-permanent value, including meals; lodging; travel expenses; or tickets to sporting, recreational, or cultural events.<sup>12</sup>

### **Personal or Private Interests**

The “personal or private interest” key phrase in the Standards was likely adapted from a provision of the Colorado

Constitution that is applicable to members of the General Assembly.<sup>13</sup> To the extent the local government attorney can determine that a board member has a personal or private interest in the subject matter of the hearing, it may be necessary to advise the member to step down.

There are numerous examples of personal or private interests that might require recusal. The board member might: (1) be involved in a zoning matter, represent an applicant, or attempt to represent himself or herself at the hearing; (2) own or have an interest in a business that is making the application; (3) have financial dealings with the applicant; (4) have a financial interest in a business that is a competitor of the applicant business;<sup>14</sup> or (5) be a creditor of the business that is asking for action.

It is helpful to have an understanding of what is *not* a personal or private interest. Often, opponents or proponents in a public hearing will accuse a board member of having a private interest or conflict simply because he or she is acquainted with the applicant. However, the Standards focus primarily on financial relationships in determining whether an impermissible personal or private interest exists.

Following are examples of relationships that ordinarily would *not* disqualify a board member from acting in his or her quasi-judicial capacity. They reflect the practical reality of life in a small community and, standing alone, should not prevent a board member from voting on an application. Bearing in mind that the Standards are primarily concerned with financial interest, it is important to note that these kinds of fact patterns lack the potential of personal financial gain or loss:

1. The member lives next door to the applicant.
2. The member and the applicant know and like (or dislike) each other, are friends, go to the same church, have memberships at the same club, or play golf together.
3. The member is related by blood or marriage to the applicant, but has no financial connection or potential of experiencing financial gain or loss. However, to the extent the blood or marriage relationship is immediate (for instance, husband and wife or father and son), the member *should* step down. Even though there may be no financial connection, the relationship is so close that a conflict of interest would be presumed.

## Prejudgment

Local government officials sometimes are allowed or compelled to have engaged in prior decision-making on a matter that later comes before them in their quasi-judicial capacities. A common example is where members of a city council or board of trustees in statutory municipalities are required by their municipal home-rule charters to sit on the planning commission.<sup>15</sup> No Colorado case law states that board members receiving such additional information have been impermissibly prejudiced by receiving information prior to the public hearing.

The practice of county commissioners appointing themselves to the board of adjustment was upheld by the Colorado Court of Appeals in *Fedder v. McCurdy*.<sup>16</sup> However, the *Fedder* court was troubled by the concept of incompatible offices.

In *Johnson v. City Council*,<sup>17</sup> the Colorado Court of Appeals found no violation of due process where two council members received evidence at an informal hearing and expressed opinions prior to participating in the formal hearing before the entire council.<sup>18</sup> In a later case, the Court of Appeals considered a case involving several members of the Public Employees Retirement Association Board who initially denied an application and later sat on the board for its final decision. The court found that the applicant had been **\*71** improperly prejudiced by at least some of the evidence on which the applicant relied.<sup>19</sup>

Board members must exercise extreme caution in their activities and statements outside public hearings. Although the case law is largely fact-specific, counsel for local governments should advise public official clients not to participate in any public dialogue or discussion on a quasi-judicial matter prior to the hearing on the matter.

In *Booth v. Trustees of the Town of Silver Plume*,<sup>20</sup> a committee of the town board of trustees had investigated an application for a liquor license prior to the hearing, then recommended against issuance of the license. The Colorado Supreme Court found that these board actions, combined with other facts, resulted in the applicant being denied a fair and impartial hearing.<sup>21</sup>

## Conflict-of-interest and voting on legislation - 1 of 25

### Background

Under [article V, section 43 of the Colorado Constitution](#), [House Rule 21\(c\)](#), [Senate Rules 17\(c\) and 41](#), and [Joint Rule 42](#), a member of the General Assembly who has a personal or financial interest in pending legislation is required to disclose the fact of that interest and may not vote on the legislation. Ethical principles set forth in statute, such as section [24-18-107, C.R.S.](#), also provide guidance in matters of conflict of interest. [An improper conflict of interest situation does not arise from legislation affecting the entire membership of a class](#). [Joint Rule 42](#) specifies that a legislator shall be considered to have a personal, private, or financial interest in a pending bill, measure, or question if the passage or failure of the legislation will result in the legislator deriving a direct financial or pecuniary benefit that is greater than any such benefit derived by or shared by other persons in the legislator's profession, occupation, industry or region. Joint Rule 42 further provides that a legislator shall not be deemed to have such an interest in legislation where that interest arises from legislation affecting the entire membership of a class to which the legislator belongs.

### Hypothetical

#### *Legislator's financial interest in legislation arising from benefits from legislation accruing to spouse*

A bill is being considered by the General Assembly that would provide comprehensive state assistance to promote biotechnological research within the state as well as related commercial applications. The assistance includes tax benefits and the establishment of a special state fund and a new grants program. You are a member of the General Assembly and your spouse is a well-known and well-recognized research scientist who heads a special institute for biotechnological research at one of our state's leading research universities. Under the bill, state financial assistance would be directed to a variety of public and private entities but significant resources would be particularly directed to the institute headed by your spouse. It is likely the benefits from the bill would have the effect of increasing the institute's budget and your spouse's national profile and income.

### Question

#### *May you vote on the legislation?*

1. [YES](#). Since the legislation only benefits your spouse, there is no problem voting on the legislation.
2. [YES](#). With sluggish economic growth, the legislation is vital for creating jobs and members need to put aside their private qualms about ethics and enact good programs.
3. [YES](#). The legislation would appear to distribute benefits to many private and public entities across the state. You can vote on the legislation because all persons with an interest in the legislation amount to one big class of persons.
4. [NO](#). By virtue of your spouse's position, you have a personal, private, or financial interest in the legislation necessitating your abstention from voting on the bill.

## Conflict-of-interest and voting on legislation - 1 of 25

## CORRECT ANSWER:

NO. By virtue of your spouse's position, you have a personal, private, or financial interest in the legislation necessitating your abstention from voting on the bill is CORRECT.

Joint Rule 42 directs the relevant inquiry to whether you, as a member, will benefit from or be disadvantaged by the legislation more than any other member of the General Assembly. By virtue of the special position held by your spouse and the extra benefits that will be directed to the institute generally and to your spouse more specifically because of the legislation, there is a reasonable likelihood that your immediate household will benefit from the legislation more than other members of the General Assembly. This gives you a personal, private, or financial interest in the legislation necessitating your abstention from voting on the bill.

[Next Question](#)

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The information on this page is presented as an informational service only and should not be relied upon as an official record of action or legal position of the [State of Colorado](#), the [Colorado General Assembly](#), or the [Office of Legislative Legal Services](#).

## Conflict-of-interest and voting on legislation - 2 of 25

### Background

Under [Colorado constitutional](#) and [statutory provisions](#) and provisions of various legislative rules ([House Rule 21\(c\)](#) and [Senate Rules 17\(c\) and 41](#)), a member of the General Assembly who has a personal or financial interest in pending legislation is required to disclose the fact of that interest and may not vote on the legislation. Ethical principles set forth in statute, such as section [24-18-107, C.R.S.](#), also provide guidance in matters of conflict of interest. [An improper conflict of interest situation does not arise from legislation affecting the entire membership of a class.](#) [Joint Rule 42](#) specifies that a legislator shall be considered to have a personal, private, or financial interest in a pending bill, measure, or question if the passage or failure of the legislation will result in the legislator deriving a direct financial or pecuniary benefit that is greater than any such benefit derived by or shared by other persons in the legislator's profession, occupation, industry or region. Joint Rule 42 further provides that a legislator shall not be deemed to have such an interest in legislation where that interest arises from legislation affecting the entire membership of a class to which the legislator belongs.

### Hypothetical

#### *Legislator's membership in a group affected by legislation*

You are the owner of several apartment buildings and other rental properties in your community. A bill has been introduced that would lengthen the period of time available to a tenant to pay past-due rent.

### Question

#### *May you vote on the legislation?*

1. **YES.** But only if you vote "for" the bill. Since the bill favors tenants and you are a property owner, no one would think it improper for you to support the bill.
  2. **YES.** Because the governing legal requirements specify that a conflict of interest situation does not arise from legislation affecting the entire membership of a class. Here, the relevant class is the entire group of rental property owners across the state. Because you are a member of this class, you do not have an improper conflict-of-interest situation and, accordingly, may vote on the legislation.
  3. **NO.** Because landlords are so distrusted in the community, it would be better to abstain than to call public attention to your outside real estate interests.
  4. **NO.** Existing law already affords tenants sufficient time within which to cure any default.
-

## Conflict-of-interest and voting on legislation - 2 of 25

## CORRECT ANSWER:

YES. Because the governing legal requirements specify that a conflict of interest situation does not arise from legislation affecting the entire membership of a class. Here, the relevant class is the entire group of rental property owners across the state. Because you are a member of this class, you do not have an improper conflict-of-interest situation and, accordingly, may vote on the legislation is CORRECT.

The governing legal requirements, specifically section 24-18-107 (3), C.R.S., and Joint Rule 42 explicitly state that a conflict-of-interest situation does not arise from legislation affecting the entire membership of a class. Under this same principle, teachers who are members of the General Assembly are permitted to vote on education bills and attorneys who are members of the General Assembly are permitted to vote on bills affecting tort liability and evidentiary matters. Here, the relevant class is the entire group of rental property owners across the state. Assuming you will not benefit from, or be disadvantaged by, the legislation any more than any other owner of such properties statewide, an improper conflict-of-interest situation is not present and you would be permitted to vote on the legislation.

[Next Question](#)

## 42. MEMBER INTEREST IN BILLS - VOTING

(a) For purposes of section 43 of article V of the state constitution, House Rule No. 21 (c), and Senate Rule No. 17 (c):

(1) A member of the General Assembly shall be considered to have a personal, private, or financial interest in a pending bill, measure, or question if the passage or failure of such bill, measure, or question will result in the member deriving a direct financial or pecuniary benefit that is greater than any such benefit derived by or shared by other persons in the member's profession, occupation, industry, or region.

(2) A member shall not be deemed to have a personal, private, or financial interest in a pending bill, measure, or question where such interest arises from a bill, measure, or question that affects the entire membership of a class to which the member belongs; except that, where such an interest arises, nothing in this paragraph (2) shall be construed as prohibiting a member from disclosing such interest and not voting on the bill, measure, or question.

OPTION A

(Personal Interest in all decisions)

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

July 24, 2020

The City Council Ethics Review Board (“the Board”) met on July 15, July 17, and July 24, 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

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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:

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- 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** 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.)

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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, so there is no foreseeable, measurable financial benefit to her.

#### *State Ethics Provisions*

Similarly, the state law ethics provisions each relate to personal or private interests in which some economic benefit or detriment financial or pecuniary impact 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.

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.

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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 decision-making 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 decision-making 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.

#### **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 a Personal Interest in Each of the Identified Council Decisions.**

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**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.**

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 24, 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 adjourned meeting on July 28, 2020.

Dated this 24th day of July, 2020.

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Carrie M. Daggett, City Attorney

OPTION B

(Personal Interest in Rezoning)

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

July 24, 2020

The City Council Ethics Review Board (“the Board”) met on July 15, July 17, and July 24, 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

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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:

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- 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** 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.)

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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, so there is no foreseeable, measurable financial benefit to her.

#### *State Ethics Provisions*

Similarly, the state law ethics provisions each relate to personal or private interests in which some economic benefit or detriment financial or pecuniary impact 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.

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.

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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 decision-making 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 decision-making 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 a Personal Interest in Some of the Identified Council Decisions.**

**The Board finds that Councilmember Gorgol generally will not experience a direct and substantial benefit or detriment different in kind from that**

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**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 24, 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 adjourned meeting on July 28, 2020.

Dated this 24th day of July, 2020.

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Carrie M. Daggett, City Attorney

OPTION C

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

July 24, 2020

The City Council Ethics Review Board (“the Board”) met on July 15, July 17, and July 24, 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

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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:

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- 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;

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...

*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.

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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** 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.)

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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, so there is no foreseeable, measurable financial benefit to her.

#### *State Ethics Provisions*

Similarly, the state law ethics provisions each relate to personal or private interests in which some economic benefit or detriment financial or pecuniary impact 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.

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.

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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 decision-making 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 decision-making 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 the above identified decisions.

In addition, with respect to the rezoning of particular properties, the Board ~~is concerned~~ notes that although the role Councilmember Gorgol has had working directly with and promoting the advocacy of residents of manufactured housing communities/mobile home parks presents a closer question, more there is not a direct and substantial ~~link~~ impact to her that is sufficient to constitute a personal interest. Moreover, although she may have relationship with interested stakeholders in some of the potential rezonings, those relationships are not sufficiently close to convert her public interest in supporting manufactured housing into a source of private interest and -and potential bias in those rezoning decisions.

For these reasons, the Board has concluded that Councilmember Gorgol ~~will~~ does not have a personal interest in the above-identified Council actions because she 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 each of the above-identified decisions~~ above. Consequently, the Board has determined that recommends that Councilmember Gorgol is not required to declare a conflict of interest in these items ~~and or~~ refrain from voting on, attempting to influence or otherwise participating in ~~such those~~ decisions.

Notwithstanding these conclusions, the Board recommends that Councilmember Gorgol continue to evaluate her ability to participate in an unbiased and impartial way in any quasi-judicial decisions, such as rezonings, related to the matters addressed in this Opinion. This Opinion is not intended to discourage her from reaching an independent conclusion that recusal is appropriate in any of these matters, 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.

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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 ~~Does Not Have~~Has a Personal Interest in ~~Each-Any~~ of the Identified Council Decisions.

The Board finds that Councilmember Gorgol 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 any of the above-identified the Council's decisions ~~for each of the above-identified decisions~~. Consequently, the Board has not found recommends that Councilmember Gorgol must declare a conflict of interest in these items ~~and or~~ refrain from voting on, attempting to influence or otherwise participating in ~~such those~~ decisions ~~in any manner as a Councilmember, including participation in related work session and executive session discussions~~.

4. Councilmember Gorgol Encouraged to Continue Monitoring Quasi-Judicial Council Decisions for Potential Bias or Impartiality.

Notwithstanding these conclusions, the Board recommends that Councilmember Gorgol continue to evaluate her ability to participate in an unbiased and impartial way in any quasi-judicial decisions, such as rezonings, related to the matters addressed in this Opinion. This Opinion is not intended to discourage her from reaching an independent conclusion that recusal is appropriate in any of these matters.

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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 24, 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 adjourned meeting on July 28, 2020.

Dated this 24th day of July, 2020.

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Carrie M. Daggett, City Attorney