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To: Ethics Review Board Members
From: Jeanne Sanford
RE: Supplemental Materials for Ethics Review Board

Attached please find Supplemental Materials to the Ethics Review Board 8-19-2020 meeting for today's Read-Before electronic packet.

Thanks!

RESOLUTION 2014-107
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ACCEPTING ADVISORY OPINION AND RECOMMENDATION NO. 2014-01
OF THE ETHICS REVIEW BOARD

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

WHEREAS, the Board is empowered under Section 2-569 of the City Code to render advisory opinions and recommendations regarding actual or hypothetical situations of Councilmembers or board and commission members of the City; and

WHEREAS, the Ethics Review Board met on November 18, 2014, to consider whether Councilmember Troxell's position as a tenured faculty member in the mechanical engineering department at Colorado State University ("CSU") limits his participation as a City Council member representing District 4 in any discussion and any vote related to a CSU stadium; and

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

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

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

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that Opinion No. 2014-01 of the Ethics Review Board, a copy of which is attached hereto and incorporated herein by this reference as Exhibit "A," has been submitted to and reviewed by the City Council, and the Council hereby adopts the opinion contained therein.

Passed and adopted at an adjourned meeting of the Council of the City of Fort Collins this 25th day of November A.D. 2014.

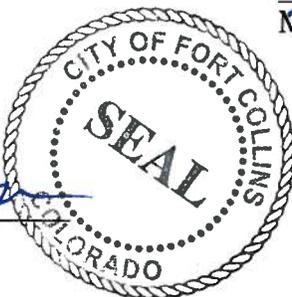


Mayor

ATTEST:



City Clerk



2014 -1
OPINION OF THE ETHICS REVIEW BOARD
OF THE CITY COUNCIL OF THE CITY OF FORT COLLINS

November 18, 2014

The City Council Ethics Review Board ("the Board") met on November 18, 2014, to render an advisory opinion on a question submitted to the Board by Councilmember Wade Troxell. The question presented is whether Councilmember Troxell ("Troxell") would have a conflict of interest in continuing to participate in Council discussions and, ultimately, Council's vote, regarding the proposed new Colorado State University ("CSU" or the "University") football stadium. The question arises because Troxell is employed by CSU as a tenured faculty member in the University's Department of Mechanical Engineering.

Factual Summary.

University officials have been considering development of a possible new football stadium, and the Board of Governors of the CSU System is expected to consider four options for moving forward at its meeting in early December. In light of potential impacts to the City and its citizens of a new stadium, City Council has directed staff to analyze the expected impacts and to present a resolution expressing the Council's position related to the stadium for Council consideration at the December 2, 2014, Council meeting.

Councilmember Troxell is a tenured member of the academic faculty at CSU, and as a result he enjoys a high degree of protection from adverse employment decisions. He is currently the Associate Dean for Research and Economic Development in CSU's College of Engineering and has served in that capacity for ten years. His responsibilities in that position relate to the research, graduate education, distance education and economic development initiatives of the College of Engineering, which is an academic unit of the University, and not to the administration of the greater University or University facilities or auxiliary enterprises of the University, such as athletic programs. Councilmember Troxell has indicated that as a tenured faculty member he will not be subject to dismissal and his employment with the University will not be advantaged or disadvantaged in any way, as a result of his actions on Council related to the proposed football stadium.

The question presented for the Board, is whether, under these facts, Troxell's employment with CSU creates a conflict of interest under the City Charter that would prevent Troxell from participating in Council's discussion and vote related to the proposed CSU football stadium. The Board is of the opinion that Troxell does not have a conflict of interest in this matter under the relevant provisions of the City Charter, as explained below.

Application of City Charter Provisions.

The determination of this question is governed by the City's local conflict of interest provisions, as contained in Art. IV, Sec. 9 of the City Charter (the "Charter"). These provisions require 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. Under the Charter, the following definitions apply:

a. “Financial Interest”

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

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

b. “Personal Interest”

The next inquiry is whether Troxell has a “personal interest” under the Charter. The Charter defines a personal interest in relevant part as an interest by reason of which a Councilmember would, in the judgment of a reasonably prudent person, realize or experience some “direct and substantial benefit or detriment different in kind from that experienced by the general public.” This benefit or detriment need not be financial in nature, but it must be “direct and substantial.” As recently established by the City Council in Ordinance No. 145, 2014, “direct” means “resulting immediately and proximately from the circumstances and not from an intervening cause,” and “substantial” means “more than nominal in value, degree, amount or extent.”

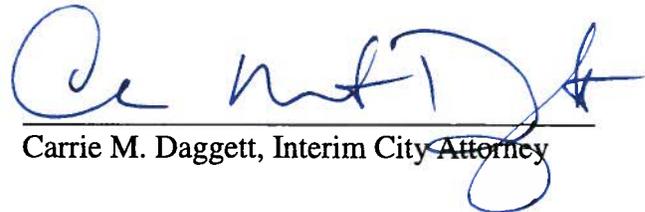
Clearly, Troxell is differently situated with regard to this matter than are the members of the general public because of his employment with the University. The question is whether, because of his status as an employee, he might realize any “*direct and substantial benefit or detriment*” by reason of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

speculative. The Board believes that any possibility of Council's decision affecting Troxell's employment is entirely speculative.

In summary, the Board believes that Councilmember Troxell does not have a conflict of interest in participating in the City Council's deliberations and vote with regard to the proposed CSU football stadium. 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. 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 Troxell 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 Councilmember Troxell, the Board does not believe that that kind of clear and direct benefit or detriment exists in this case. To recommend that Troxell 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 Mayor Karen Weitkunat, and Councilmembers Gino Campana regular members of the Ethics Review Board, and Councilmember Ross Cunniff, the alternate member of the Board. Councilmember Cunniff participated in the deliberations and decision of the Board because Councilmember and Ethics Review Board member Lisa Poppaw was not available to participate. 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 November 25, 2014.

Dated this 18th day of November, 2014.



Carrie M. Daggett, Interim City Attorney



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AGENDA

Ethics Review Board Meeting
CIC Conference Room
City Hall (300 Laporte Avenue)
December 16, 2019
3:00 p.m.

1. Selection of Presiding Officer for Alternate Ethics Review Board as it considers the pending complaints.
2. Review and Approval of the July 29, 2019 Minutes of the Ethics Review Board.
3. Consider in accordance with City Code Section 2-569(d)(1) whether a complaint filed on November 14, 2019, by Nicolas Murphy Frey and Mary Satterfield Grant, alleging that Mayor Wade Troxell has a financial interest and a personal interest in the Hughes Stadium annexation property rezoning decision, warrants investigation.
4. Consider in accordance with City Code Section 2-569(d)(1) whether a complaint filed on November 14, 2019, by Nicolas Murphy Frey and Mary Satterfield Grant, alleging that Mayor Pro Tem Kristin Stephens has a financial interest and a personal interest in the Hughes Stadium annexation property rezoning decision, warrants investigation.
5. Consider in accordance with City Code Section 2-569(d)(1) whether the additional complaint filed by Gordon Hadfield, Esq., on behalf of Amy Satterfield Grant, alleging that Mayor Wade Troxell has a conflict of interest in the Hughes Stadium annexation property rezoning decision in light of National Association of Realtors Fund campaign activities in 2017 warrants investigation.
6. Other Business.
7. Adjournment.

AGENDA ITEM SUMMARY

December 16, 2019

Ethics Review Board

STAFF

Carrie Daggett, City Attorney
Ingrid Decker, Sr. Assistant City Attorney

SUBJECT

Consideration in accordance with City Code Section 2-569(d)(1) of whether a complaint filed on November 14, 2019, by Nicolas Murphy Frey and Mary Satterfield Grant, alleging that Mayor Wade Troxell has a financial interest and a personal interest in the Hughes Stadium annexation property rezoning decision, warrants investigation.

EXECUTIVE SUMMARY

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

STAFF RECOMMENDATION

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

BACKGROUND / DISCUSSION

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

The Complaint:

The Board will consider a complaint lodged with the Board through the City Attorney on November 14, 2019, by Nicolas Murphy Frey and Mary Satterfield Grant (the "Complainants"), two Fort Collins residents, against Mayor Wade Troxell (as well as against Mayor Pro Tem Kristin Stephens). The Complaint, is provided in its entirety as an attachment to this Agenda Item Summary, and it alleges Mayor Wade Troxell has a conflict of interest in the form of a financial interest and a personal interest in the Hughes Stadium annexation property rezoning decision in light of his employment at Colorado State University, which owns the property. The following is an excerpt from the Complaint summarizing Mr. Frey's and Ms. Grant's concern:

As current employees of Colorado State University, Wade Troxell and Kristin Stephens should not be participating in the decision making process for the re-zoning of the parcel of land currently owned by Colorado State University located northwest of Overland Trail and Dixon Canyon Road (the former site of the Hughes Stadium). Each has both personal interests and financial interests as defined in Article IV, Section 9 of the City Charter (EXHIBIT 1) because a reasonably prudent person would judge that Mr. Troxell and Ms. Stephens would realize a direct and substantial benefit different in kind from that experienced by the general public. Based on these personal and financial interests in the re-zoning of this parcel of land, Mr. Troxell and Ms. Stephens should refrain from voting on, attempting to influence, or otherwise participating in such decision in any manner as an officer or employee.

Please note: attached are documents intended to assist the Board in working through the various elements of these questions, referred to as “Workbook” and “Flowchart for Complaint Review”.

The Complaint provides argument and description about a number of events and concerns, which are identified in the attached Workbook document.

City Ethics Provisions:

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

State Ethics Provisions:

In addition, various state laws are commonly considered ethics laws. These include Sections 24-18-101 through 105, Colorado Revised Statutes, Sections 24-18-201 through 206, Colorado Revised Statutes, Sections 18-8-302 through 308, Colorado Revised Statutes, and Sections 18-8-402 through 409, Colorado Revised Statutes, all provided as attachments to this Agenda Item Summary.

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

The Board Determination:

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

1. Whether the allegations in the Complaint, if true, would constitute a violation of state or local ethical rules;
2. The reliability and sufficiency of any facts asserted in support of the allegations; and
3. Any other facts or circumstances the Board may consider relevant.

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

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

Summary:

- 1. If the Board determines that there is no potential violation of state or local ethics laws under the facts alleged, the Board should make a motion to that effect that explains the Board's reasoning, and then vote to make that determination. If the Board makes this determination, no further action is needed on the Complaint (other than the provision of notice as required in the Code).**
- 2. If the Board determines that the Complaint states a potential conflict of interest, then the Board will need to evaluate whether the facts asserted are reliable and sufficient enough to support the allegation in the Complaint that a violation occurred, making an investigation of the Complaint appropriate. The Board may have knowledge of information that contradicts the asserted facts, or there may be a lack of information needed to form a reasonable suspicion that the violation alleged in the Complaint occurred.**
- 3. If there is additional information available or presented to the Board that leads the Board to conclude that the Complaint does not merit further investigation, the Board should identify that information and explain how it affects the Board's decision as to whether further investigation is warranted.**

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

Next Steps:

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

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

ATTACHMENTS

1. Email (Complaint) from Nicolas Murphy Frey and Mary Satterfield Grant to Delynn Coldiron, City Clerk, dated November 14, 2019 with Exhibits 1 - 8.
2. City Code Section 2-569
3. City Charter Article IV, Section 9
4. City Code Section 2-568
5. Sections 24-18-101 through 105, Colorado Revised Statutes
6. Sections 24-18-201 through 206, Colorado Revised Statutes
7. Sections 18-8-302-308, Colorado Revised Statutes
8. Sections 18-8-402-409, Colorado Revised Statutes
9. Workbook for Review of Complaint
10. Flowchart for Complaint Review
11. Resolution 2014-107, Accepting Advisory Opinion and Recommendation No. 2014-01 of the Ethics Review Board