

AGENDA ITEM SUMMARY

March 7, 2017

City Council

STAFF

Carrie Daggett, City Attorney

SUBJECT

Second Reading of Ordinance No. 037, 2017, Amending Section 2-568 of the Code of the City of Fort Collins Proscribing Certain Actions in the Event a City Board or Commission Member has Declared a Conflict of Interest and Establishing a Related Variance Procedure.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on February 21, 2017, amends Section 2-568(a) and 2-568 (c) of the City Code to clarify certain actions in the event a City board or commission member has declared a conflict of interest and establish a related variance procedure.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS

1. First Reading Agenda Item Summary, February 21, 2017 (w/o attachments) (PDF)
2. Ordinance No. 037, 2017 (PDF)

AGENDA ITEM SUMMARY

February 21, 2017

City Council

STAFF

Carrie Daggett, City Attorney

SUBJECT

First Reading of Ordinance No. 037, 2017, Amending Section 2-568 of the Code of the City of Fort Collins Proscribing Certain Actions in the Event a City Board or Commission Member has Declared a Conflict of Interest and Establishing a Related Variance Procedure.

EXECUTIVE SUMMARY

The purpose of this item is to amend Section 2-568(a) and 2-568 (c) of the City Code to clarify certain actions in the event a City board or commission member has declared a conflict of interest and establish a related variance procedure.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

Section 2-568 of the City Code establishes the ethical rules of conduct for officers and employees of the City. The Ethics Review Board met on July 25, 2016, October 4, 2016 and February 7, 2017 to discuss the need to clarify activities that are prohibited for City board and commission members and Councilmembers when they have a conflict of interest in a City matter, along with establishing a variance procedure by which Council could, in certain circumstances, authorize a board or commission member to participate in a matter he/she otherwise would be prohibited from participating in due to a conflict of interest. A new definition of *attempt to influence or influence* has been added to Section 2-568(a) of the City Code which defines and clarifies certain actions of Councilmembers. Section 2-568(c)(3) has been added to the City Code in order to clarify that a board or commission member who has declared a conflict of interest is not allowed to communicate to or attempt to influence such board or commission in any capacity, and to list out certain exceptions from this prohibition. Such exceptions will clarify a City board or commission member may communicate with board or commission members in order to protect a strictly personal interest, and may prepare materials on behalf of a project such as architectural plans, technical studies or engineering designs (so long as that member does not present the material him/herself). The Ordinance also establishes a variance process by which a board or commission member may seek Council authorization to influence or participate in a decision of his or her board or commission in the event here or she would otherwise suffer an exceptional hardship that can't avoided.

BOARD / COMMISSION RECOMMENDATION

The Ethics Review Board recommends Council approve the ordinance.

ATTACHMENTS

1. Ethics Review Board Minutes July 25, 2016 (PDF)
2. Ethics Review Board Minutes October 4, 2016 (PDF)
3. Ethics Review Board Minutes February 7, 2017 (PDF)

ORDINANCE NO. 037, 2017
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING SECTION 2-568 OF THE CODE OF THE CITY OF FORT COLLINS
PROSCRIBING CERTAIN ACTIONS IN THE EVENT A CITY BOARD
OR COMMISSION MEMBER HAS DECLARED A CONFLICT OF INTEREST
AND ESTABLISHING A RELATED VARIANCE PROCEDURE

WHEREAS, Article IV, Section 9(b) of the Charter of the City of Fort Collins establishes rules of conduct concerning conflicts of interest; and

WHEREAS, Section 2-568 of the Code of the City of Fort Collins establishes the ethical rules of conduct for officers and employees of the City of Fort Collins; and

WHEREAS, the Ethics Review Board has met and discussed the need to clarify the activities that are prohibited for City board and commission members and Councilmembers when they have a conflict of interest in a City matter, along with establishing a variance procedure by which Council could, in certain circumstances, authorize a board or commission member to actively participate in a matter that he or she otherwise would be prohibited from participating in due to a conflict of interest; and

WHEREAS, the Ethics Review Board discussed specific revisions to Article IV, Section 9(b) of the Charter of the City of Fort Collins and Section 2-568 of the Code of the City of Fort Collins at meetings on July 25, 2016, and October 4, 2016; and

WHEREAS, on January 17, 2017, City Council adopted on second reading the Ordinance No. 003, 2017, submitting to the voters at the regular City election in April the question of an amendment to the City Charter to clarify the scope of the prohibition on sales to the City; and

WHEREAS, this Ordinance amends the City Code as recommended by the Ethics Review Board at its February 7, 2017, meeting, consistent with the terms of Ethics Opinion 2016-001, adopted by the City Council in July, 2016.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That Section 2-568(a) of the Code of the City of Fort Collins is hereby amended by the addition of a new definition "*Attempt to influence or influence*" which reads in its entirety as follows and by renumbering accordingly all subsequent subparagraphs:

- (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.

Section 3. That Section 2-568(c) of the Code of the City of Fort Collins is hereby amended by the addition of a new subparagraph (3) to read as follows and renumbering accordingly all subsequent subparagraphs:

(3) In an 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.

Introduced, considered favorably on first reading, and ordered published this 21st day of February, A.D. 2017, and to be presented for final passage on the 7th day of March, A.D. 2017.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on this 7th day of March, A.D. 2017.

Mayor

ATTEST:

City Clerk