

AGENDA ITEM SUMMARY

July 28, 2020

City Council

STAFF

Carrie Daggett, City Attorney

SUBJECT

Resolution 2020-070 Accepting and Adopting Ethics Opinion No. 2020-02 of the Ethics Review Board Advising Councilmember Emily Gorgol in Response to Her Request for an Advisory Opinion.

EXECUTIVE SUMMARY

The purpose of this item is proposed adoption by the City Council of Ethics Opinion No. 2020-02 of the Ethics Review Board providing an advisory opinion to Councilmember Emily Gorgol in response to her request related to various upcoming Council decisions regarding manufactured housing.

STAFF RECOMMENDATION

Not applicable.

BACKGROUND / DISCUSSION

Under City Code Section 2-569(d)(2), any Councilmember may present directly to the Ethics Review Board (the "Board" or "ERB") any inquiry regarding the application of ethical rules of conduct under state statute or the City Charter or Code to any actual or hypothetical situation of a Councilmember or board and commission member.

The Board, comprised of Mayor Pro Tem Kristin Stephens, chair, Councilmember Ken Summers and Councilmember Julie Pignataro, 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?

A copy of the Agenda Item Summary from the July 15 meeting and the July 24 meeting are attached (without their lengthy attachments) as background. All materials from the Board's meetings are available at the following web address: <https://www.fcgov.com/council/ethics.php>.

The local ethics provisions considered as part of the Board's 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-

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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 in Ethics Opinion No. 2020-02, as applicable.

Section 2-569(c) provides for the opinions and recommendations of the Board to be submitted to the full Council for Council consideration for approval by resolution.

ATTACHMENTS

1. Ethics Review Board Agenda Item Summary, July 15, 2020 (PDF)
2. Ethics Review Board Agenda Item Summary, July 24, 2020 (PDF)

AGENDA ITEM SUMMARY

July 15, 2020

Ethics Review Board

STAFF

Carrie Daggett, City Attorney

SUBJECT

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

EXECUTIVE SUMMARY

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

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

STAFF RECOMMENDATION

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

BACKGROUND / DISCUSSION

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

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

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

Upcoming Council decisions regarding Manufactured Housing:

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

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

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

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

Overview of Work

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

Below is the project summary:

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

My role during this time was to:

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

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

My role now includes:

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

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

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

Relevant City Ethics Provisions:

The City Charter and City Code prohibit members of the City Council from participating in a decision if the Councilmember has a *financial interest* or a *personal interest* in the decision. A copy of the Charter provisions and City Code Section 2-568 are attached for reference.

1. Section 2-568(a) of the City Code defines and interprets several **key terms** used in these definitions:
 - (2) *Benefit* shall mean an advantage or gain.
 - (6) *Different in kind from that experienced by the general public* shall mean of a different type or nature not shared by the public generally and that is not merely different in degree from that experienced by the public generally.
 - (7) *Direct* shall mean resulting immediately and proximately from the circumstances and not from an intervening cause.
 - (8) *Detriment* shall mean disadvantage, injury, damage or loss.
 - (13) *Public services* shall mean city services provided to or made available for the public's benefit.
 - (15) *Relative* shall have the meaning given to this word in Section 9(a) of Charter Article IV, which states:

Relative means the spouse or minor child of the officer or employee, any person claimed by the officer or employee as a dependent for income tax purposes, or any person residing in and sharing with the officer or employee the expenses of the household.

- (17) *Similarly situated citizens* shall mean citizens in like circumstances having comparable legal rights and obligations.
- (18) *Substantial* shall mean more than nominal in value, degree, amount or extent.

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

Financial interest means any interest equated with money or its equivalent. Financial interest shall not include:

a. the interest that an officer, employee or relative has as an employee of a business, or as a holder of an ownership interest in such business, in a decision of any public body, when the decision financially benefits or otherwise affects such business but entails no foreseeable, measurable financial benefit to the officer, employee or relative;

b. the interest that an officer, employee or relative has as a nonsalaried officer or member of a nonprofit corporation or association or of an educational, religious, charitable, fraternal or civic organization in the holdings of such corporation, association or organization;

c. the interest that an officer, employee or relative has as a recipient of public services when such services are generally provided by the city on the same terms and conditions to all similarly situated citizens, regardless of whether such recipient is an officer, employee or relative;

d. the interest that an officer, employee or relative has as a recipient of a commercially reasonable loan made in the ordinary course of business by a lending institution, in such lending institution;

e. the interest that an officer, employee or relative has as a shareholder in a mutual or common investment fund in the holdings of such fund unless the shareholder actively participates in the management of such fund;

f. the interest that an officer, employee or relative has as a policyholder in an insurance company, a depositor in a duly established savings association or bank, or a similar interest-holder, unless the discretionary act of such person, as an officer or employee, could immediately, definitely and measurably affect the value of such policy, deposit or similar interest;

g. the interest that an officer, employee or relative has as an owner of government-issued securities unless the discretionary act of such owner, as an officer or employee, could immediately, definitely and measurably affect the value of such securities; or

h. the interest that an officer or employee has in the compensation received from the city for personal services provided to the city as an officer or employee.

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

Personal interest means any interest (other than a financial interest) by reason of which an officer or employee, or a relative of such officer or employee, would, in the judgment of a reasonably prudent person, realize or experience some direct and substantial benefit or detriment different in kind from that experienced by the general public. Personal interest shall not include:

a. the interest that an officer, employee or relative has as a member of a board, commission, committee, or authority of another governmental entity or of a nonprofit corporation or association or of an educational, religious, charitable, fraternal, or civic organization;

b. the interest that an officer, employee or relative has in the receipt of public services when such services are generally provided by the city on the same terms and conditions to all similarly situated citizens; or

c. the interest that an officer or employee has in the compensation, benefits, or terms and conditions of his or

her employment with the city.

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

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

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

1. As defined for the purpose of the **statutory ethics provisions**:
 - i. Councilmembers are “**local government officials**” (as defined in Section 24-18-102(6)).
 - ii. “**Financial interest**” means a substantial interest held by an individual which is:
 - (a) An ownership interest in a business;
 - (b) A creditor interest in an insolvent business;
 - (c) An employment or a prospective employment for which negotiations have begun;
 - (d) An ownership interest in real or personal property;
 - (e) A loan or any other debtor interest; or
 - (f) A directorship or officership in a business. (Section 24-18-102(4))
2. **Section 24-18-103**, C.R.S., when read in conjunction with the rest of the statutory standards of conduct, is interpreted to establish an ethical standard of conduct concerning activities that could allow covered individuals to improperly benefit financially from their public office. However, it is general in nature and does not specify a standard or rule to determine what is permissible.
3. **Section 24-18-104**, C.R.S., prohibits disclosure or use of confidential information acquired in the course of official duties and acceptance of certain gifts.
4. **Section 24-18-105**, C.R.S., sets out ethical principles that are “intended as guides to conduct and do not constitute violations as such of the public trust of office or employment in state or local government.”
 - i. Section 24-18-015(2) provides that:
 - (2) A ... local government official ... should not acquire or hold an interest in any business or undertaking which he has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by an agency over which he has substantial authority.
 - ii. Section 24-18-105(4) provides that:
 - (4) A ...local government official ...should not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when he has a substantial financial interest **in a competing firm or undertaking**. (Emphasis added.)
5. **Section 24-18-109(2)**, C.R.S., provides that a local government official or employee shall not (in relevant part):

- i. Engage in a substantial financial transaction for his private business purposes with a person whom he inspects or supervises in the course of his official duties (§ 24-18-109(2)(a)); or
- ii. Perform an official act directly and substantially affecting to its economic benefit a business or other undertaking **in which he either has a substantial financial interest or is engaged as counsel, consultant, representative or agent** (§ 24-18-109(2)(b));
- iii. A member of a governing body of a local government who has a **personal or private interest** in any matter proposed or pending before the governing body shall disclose such interest and refrain from participating in the decision unless necessary to obtain a quorum (§ 24-18-109(3));
 - 1. It is unclear whether the reference to “personal or private interest” in this subparagraph of Section 109 is intended to reference back to the specified types of interests described in Section 109, or to introduce some other additional limitation. The term is not defined or discussed, so it is reasonable to interpret this provision as setting out the requirements for acting when one of the personal or private interests described in Section 109 is identified.

6. **Article XXIX of the Colorado constitution – also referred to as “Amendment 41,”** sets out limits for state and local officers and employees, by establishing limits on the acceptance of gifts and forming an Independent Ethics Commission to hear complaints about conduct of covered officials. While the amendment applies to municipalities in general, Section 7 provides, “Any county or municipality may adopt ordinances or charter provisions with respect to ethics matters that are more stringent than any of the provisions contained in this article. *The requirements of this article shall not apply to home rule counties or home rule municipalities that have adopted charters, ordinances, or resolutions that address the matters covered by this article.*” (Emphasis added.)

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

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

ATTACHMENTS:

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

AGENDA ITEM SUMMARY

July 24, 2020

Ethics Review Board

STAFF

Carrie Daggett, City Attorney

SUBJECT

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

EXECUTIVE SUMMARY

The purpose of this item is 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

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

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

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**

RESOLUTION 2020-070
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ACCEPTING AND ADOPTING ETHICS OPINION NO. 2020-02
OF THE ETHICS REVIEW BOARD ADVISING COUNCILMEMBER
EMILY GORGOL IN RESPONSE TO HER REQUEST FOR AN ADVISORY OPINION

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 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

WHEREAS, on July 8, 2020, Councilmember Emily Gorgol requested that the Board consider and provide an advisory opinion 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; and
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; and

WHEREAS, the Board, comprised of Mayor Pro Tem Kristin Stephens, chair, Councilmember Ken Summers and Councilmember Julie Pignataro, met on July 15, July 17, and July 24, 2020, to consider Councilmember Gorgol’s inquiry; and

WHEREAS, at the conclusion of its review and discussions, the Board unanimously adopted and issued an ethics opinion, Ethics Opinion 2020-02, describing and explaining its advisory conclusions and recommendations to Councilmember Gorgol; 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 Council 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. 2020-02 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 accepts and adopts the opinion contained therein.

Passed and adopted at an adjourned meeting of the Council of the City of Fort Collins this 28th day of July, A.D. 2020.

Mayor

ATTEST:

City Clerk

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 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 in other policy processes.

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

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

Council Decisions Regarding Manufactured Housing

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

- Scheduled for Council consideration in July and August is the proposed adoption of amendments to the City’s Land Use Code establishing a Manufactured Housing zone district to preserve and maintain manufactured housing (mobile home parks).

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

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

- If City Plan amendments are needed in order to reflect the policies underlying the Manufactured Housing zone district, Council would consider those amendments after consideration and recommendation by the Planning and Zoning Board.
- Council enacted a moratorium on redevelopment of manufactured housing communities in August 2019 and that moratorium will terminate at the end of August 2020 unless extended by the Council. Council may wish to consider an ordinance extending the moratorium and if so consideration of an extension would likely occur in July or August.
- Council has asked staff to prepare for Council consideration City Code changes to protect the interests of manufactured housing/mobile home park residents from landlord practices related to utility bills and arrangements, property maintenance and leasing practices and other similar matters, including potential licensing of manufactured housing communities.

This Opinion addresses each of these potential Council decisions below.

Conflicts of Interest under the City Charter

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

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

Financial interest means any interest equated with money or its equivalent.
Financial interest shall not include:

- a. the interest that an officer, employee or relative has as an employee of a business, or as a holder of an ownership interest in such business, in a decision of any public body, when the decision financially benefits or otherwise affects such business but entails no foreseeable, measurable financial benefit to the officer, employee or relative;

...

Personal interest means any interest (other than a financial interest) by reason of which an officer or employee, or a relative of such officer or employee, would, in the judgment of a reasonably prudent person, realize or experience some direct and substantial benefit or detriment different in kind from that experienced by the general public. . . .

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

- (2) *Benefit* shall mean an advantage or gain.
- (6) *Different in kind from that experienced by the general public* shall mean of a different type or nature not shared by the public generally and that is not merely different in degree from that experienced by the public generally.
- (7) *Direct* shall mean resulting immediately and proximately from the circumstances and not from an intervening cause.
- (8) *Detriment* shall mean disadvantage, injury, damage or loss.
- (13) *Public services* shall mean city services provided to or made available for the public's benefit.
- (15) *Relative* shall have the meaning given to this word in Section 9(a) of Charter Article IV, which states:

Relative means the spouse or minor child of the officer or employee, any person claimed by the officer or employee as a dependent for income tax purposes, or any person residing in and sharing with the officer or employee the expenses of the household.
- (17) *Similarly situated citizens* shall mean citizens in like circumstances having comparable legal rights and obligations.
- (18) *Substantial* shall mean more than nominal in value, degree, amount or extent.

State Law Ethics Provisions

1. **Section 24-18-103**, C.R.S., when read in conjunction with the rest of the statutory standards of conduct, is interpreted to establish an ethical standard of conduct concerning activities that could allow covered individuals to improperly benefit financially from their public office. However, it is general in nature and does not specify a standard or rule to determine what is permissible.
2. **Section 24-18-104**, C.R.S., prohibits disclosure or use of confidential information acquired in the course of official duties and acceptance of certain gifts.
3. **Section 24-18-105**, C.R.S., sets out ethical principles that are “intended as guides to conduct and do not constitute violations as such of the public trust of office or employment in state or local government.”

- i. Section 24-18-015(2) provides that:
 - (2) A ... local government official ... should not acquire or hold an interest in any business or undertaking which he has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by an agency over which he has substantial authority.
- ii. Section 24-18-105(4) provides that:
 - (4) A ...local government official ...should not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when he has a substantial financial interest **in a competing firm or undertaking**. (Emphasis added.)
4. **Section 24-18-109(2)**, C.R.S., provides that a local government official or employee shall not (in relevant part):
 - i. Engage in a substantial financial transaction for his private business purposes with a person whom he inspects or supervises in the course of his official duties (§ 24-18-109(2)(a)); or
 - ii. Perform an official act directly and substantially affecting to its economic benefit a business or other undertaking **in which he either has a substantial financial interest or is engaged as counsel, consultant, representative or agent** (§ 24-18-109(2)(b));
5. **Section 24-18-109(3)**, C.R.S., provides that 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.
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.)

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, as defined in the City Charter, 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 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.

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 listed above as number (1) and numbers (3) through (5).

However, with respect to the number (2), 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, as defined in the City Charter, 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 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, as defined in the City Charter, 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.



Carrie M. Daggett, City Attorney