

ORDINANCE NO. 153, 2022
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING SECTION 2-569 OF THE CODE OF THE CITY OF FORT COLLINS
TO UPDATE AND CLARIFY THE PROCESS
FOR REVIEW OF ETHICS COMPLAINTS

WHEREAS, City Code Section 2-569 establishes an Ethics Review Board comprised of three Councilmembers and an alternate, to consider ethics-related inquiries and complaints; and

WHEREAS, Section 2-569(d) addresses the processes for review of ethics inquiries and complaints; and

WHEREAS, in recent years questions have been raised as to how the screening and investigation of complaints, particularly complaints against Councilmembers, are best structured and carried out; and

WHEREAS, the Ethics Review Board met in November 2021, January 2022, May 2022 and October 2022 to consider the complaint process and options for modifying it to provide an efficient, objective review of complaints; and

WHEREAS, based on those discussions, the Ethics Review Board voted unanimously on October 12, 2022, to recommend the amendments to City Code Section 2-569 set out in this Ordinance; and

WHEREAS, in addition to establishing a new screening and investigation process for complaints against Councilmembers, the amendments reorganize and clarify the processes and requirements and provide additional considerations to guide the screening of ethics complaints; and

WHEREAS, the Council finds these changes to advance the public's interest in effective and fair consideration of ethical action by Council and boards and commissions, and desires to adopt and implement the new procedures for ethics complaints, if any, received after first reading of this Ordinance.

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 2-569(d) of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 2-569. Board of ethics.

. . .

(d) Inquiries and complaints shall be submitted to the Review Board only according to the following procedures:

(1) *City Council inquiries.* Any Councilmember may present directly to the Review Board any inquiry regarding the application of ethical rules of conduct under state statute or the Charter or Code to any actual or hypothetical situation of a Councilmember or board and commission member.

a. In performing its review and investigation of any inquiry submitted in accordance with this Subsection (d)(1), the Review Board shall afford all affected board and commission members an opportunity to present their interpretations of the facts at issue and of the applicable provisions of law before rendering its advisory opinion and recommendation.

b. It is not necessary for the Review Board to conduct a full public hearing and take public comment on an inquiry, although the Review Board may do so if it determines public input will assist the Board in its consideration of the inquiry.

c. The Review Board may also request such additional materials or information from City staff or members of the public which it considers reasonably necessary or helpful to its deliberations.

d. After consideration of an inquiry, the Review Board shall forthwith issue an advisory opinion and recommendation to the City Council, which shall immediately thereafter be filed with the City Clerk and be available for public inspection. Said advisory opinion and recommendation shall be submitted to City Council at a regular City Council meeting, at which time the City Council shall determine whether to adopt the same as a final ethics opinion of the Council.

e. Any whose conduct or circumstance is the subject of the opinion shall refrain from participating in any deliberations of the City Council regarding the opinion.

(2) *Complaints.*

a. Any person who believes that a Councilmember or board or commission member has violated any provision of state law or the Charter or Code pertaining to ethical conduct may file a complaint with the City Clerk, who shall immediately notify the chairperson of the Review Board, the Councilmembers or board or commission member named in the

complaint, the City Council and the City Attorney. Each complaint shall name only one officer as its subject.

b. The City Attorney shall periodically seek proposals and select and retain, after consultation with the Review Board, one or more qualified attorneys to review complaints filed against Councilmembers under this subsection (2) and determine whether the complaint warrants investigation in light of the applicable screening criteria and commonly known and documented facts and circumstances. Such review attorneys shall also function as investigators to develop the facts relevant to a complaint under investigation and interpret and apply the applicable state and local ethics provisions and based on that investigation and evaluation, make a recommendation to the Review Board (or alternate Review Board, if applicable) of such findings and determinations as may be appropriate in response to the complaint.

c. For a complaint against a board or commission member:

i. The City Clerk shall schedule the complaint for consideration by the Review Board as soon as reasonably practicable. The Review Board will meet and consider the complaint within thirty (30) working days after the date of filing of the complaint. In the event extenuating circumstances arise in the scheduling and preparation for such meeting the Review Board shall meet to consider the complaint as soon as reasonably practicable.

ii. The City Clerk shall provide written notice of the scheduled meeting for initial review of the complaint to the board or commission member named in the complaint, as well as the complainant, the chair of the board or commission of which the subject of the complaint is a member, and the City Council, at least three (3) working days prior to the meeting. A notice of the complaint, including the identity of the complainant shall be posted along with the meeting notice.

iii. Upon receipt of any such complaint, the Review Board shall, after consultation with the City Attorney, decide by majority vote whether to formally investigate the complaint. In making such determination, the Review Board shall consider the screening criteria set out in this subsection (d)(2)f below. If the Review Board determines that the complaint does not warrant investigation, the Review Board shall send written notice to the complainant of its determination and the reasoning behind that determination, and shall provide a copy of such notice, together with a copy of the complaint, to the board or commission member named in the complaint, as well

as the chair of the board or commission of which the subject of the complaint is a member, and the City Council.

iv. If a complaint proceeds to investigation after the initial review, in performing its review and investigation of any complaint or inquiry submitted in accordance with Subsection (d)(2)c hereof, the Review Board shall afford all affected board and commission members an opportunity to present their interpretations of the facts at issue and of the applicable provisions of law before rendering its opinion and recommendation.

v. Prior to reaching a decision on the merits of a complaint, the Review Board shall provide the complainant an opportunity to present facts and argument in support of the complaint, however, it is not necessary for the Review Board to conduct a full public hearing and take public input on a complaint.

vi. The Review Board may also request such additional materials or information from City staff or members of the public which it considers reasonably necessary or helpful to its deliberations. In addition, the Review Board shall have the power to compel by subpoena the attendance and testimony of witnesses and the production of such documents as the Review Board may consider necessary to its investigation.

vii. After investigation, the Review Board shall forthwith issue an opinion and recommendation to the City Council, which shall immediately thereafter be filed with the City Clerk and be available for public inspection. Said opinion and recommendation shall be submitted to City Council at a regular City Council meeting, at which time the City Council shall determine whether to adopt the same as a final ethics opinion of the Council.

d. For a complaint against a Councilmember:

i. The City Clerk shall provide written notice of the complaint, including a copy of the complaint and brief explanation of the review process, to the Councilmember named in the complaint, as well as the complainant, within five (5) working days of receipt of the complaint.

ii. The City Attorney shall forward the complaint to a review attorney retained as described above in subsection (d)(2)b for review of the complaint. No more than thirty (30) working days after the date of filing of the complaint, subject to extenuating circumstances making delay reasonably necessary, the review attorney shall

evaluate the complaint to determine whether it is sufficient and warrants investigation pursuant to the screening criteria set out in subsection (d)(2)f below. The review attorney shall promptly provide to the City Clerk and City Attorney for distribution to the Review Board a written determination of whether the complaint warrants further investigation, including a brief explanation of the decision.

iii. The City Clerk shall send written notice to the complainant of the review attorney's determination and the reasoning behind that determination, and shall provide a copy of such notice, together with a copy of the complaint, to the Councilmember named in the complaint, as well as the City Council and City Attorney.

iv. If the review attorney has determined that the complaint does not warrant investigation, no further action will be taken on the complaint. If the review attorney has determined that the complaint warrants investigation, the City Attorney will arrange for investigation by the review attorney who completed the initial review or another retained review attorney, depending on availability and other related circumstances and considerations.

v. If a complaint proceeds to investigation after the initial review, in their review and investigation of any complaint, the investigating attorney shall interview the complainant and all affected or interested Councilmembers to learn their interpretations of the facts at issue and of the applicable provisions of law, may interview such other persons as the investigating attorney reasonably believes may have relevant or useful information pertinent to the investigation, and may request such additional materials or information from City staff or members of the public that the investigating attorney considers reasonably necessary or helpful to the investigation or determination. In addition, the investigating attorney shall have the power as vested in the Review Board to compel by subpoena the attendance and testimony of witnesses and the production of such documents as the investigating attorney may consider necessary to the investigation.

vi. Upon completion of the investigation the reviewing attorney shall interpret and apply the applicable state and local ethics provisions and, based on that investigation and evaluation, make a recommendation to the Review Board (or alternate Review Board, if applicable) of such findings and determinations as may be appropriate in response to the complaint.

vii. The City Clerk shall schedule the investigating attorney's determination and recommendations on a complaint for consideration by the Review Board within thirty (30) working days after receipt, or, as soon as reasonably practicable. The Review Board shall meet to consider the determination and recommendations and render a formal Review Board opinion based upon the determination and in light of the recommendations, but shall not be bound to follow the recommendation made.

viii. The City Clerk shall provide written notice of the scheduled meeting for consideration of the investigating attorney's determination and recommendations on a complaint to the complainant, the Councilmember named in the complaint, and the City Council and City Attorney, at least three (3) working days prior to the meeting. The complaint and investigation attorney's determination and recommendations shall be provided with such notice and shall be available with the agenda for the meeting.

ix. Prior to reaching a final decision on the merits of a complaint, the Review Board shall provide the complainant an opportunity to present facts and argument in support of the complaint, and the subject of the complaint an opportunity to present facts and argument related to the complaint. However, it is not necessary for the Review Board to conduct a full public hearing and take public input on a complaint.

x. After investigation, the Review Board shall forthwith issue an opinion and recommendation to the City Council, which shall immediately thereafter be filed with the City Clerk and be available for public inspection. Said opinion and recommendation shall be submitted to City Council at a regular City Council meeting, at which time the City Council shall determine whether to adopt the same as a final ethics opinion of the Council.

xi. Any Councilmember whose conduct or circumstance is the subject of the opinion shall refrain from participating in any deliberations of the City Council regarding the opinion.

e. Alternate Review Procedures.

i. In the event multiple complaints are filed with the City Clerk under the provisions of this Subsection that allege a related violation on the part of two (2) or more members of the Review Board (including the alternate) and are subject to investigation and a decision by the Review Board, such complaints shall not be considered by the regular Review Board but instead upon a

determination that the complaints warrant investigation, shall be submitted to an alternate Review Board consisting of all remaining Councilmembers who are not named in the complaints.

ii. In the event related complaints are filed naming five (5) or more Councilmembers and upon review it is determined that an investigation of complaints naming five (5) or more Councilmembers is warranted, the alternate Review Board shall also include as many members of City boards or commissions as are necessary to constitute a seven-member board. Said Board or commission members shall be selected at random by the City Clerk within ten (10) working days of the date upon which the determination that further investigation is warranted is received by the City Clerk. Any board or commission member selected by the City Clerk who elects not to serve on the alternate Review Board shall immediately so notify the City Clerk, who shall thereafter select as many additional board and commission members as are necessary to constitute the seven-member alternate Review Board. The procedures utilized by the alternate Review Board for reviewing and investigating the complaint and rendering an advisory opinion and recommendation shall be as provided in the applicable subsections of this Section, except that: (i) the opinion and recommendation of such Board shall be final and shall not be submitted to the City Council for review or adoption by the City Council unless at least three (3) Councilmembers remain available to consider and take action on the opinion and recommendation; and (ii) the City Council and City staff shall, upon request by the alternate Review Board, make available to such Board all information in the possession of the city that is relevant to the Board's investigation, including, without limitation, tape recordings of any relevant executive sessions, unless the release of said information is prohibited by state or federal law; and, in reviewing and discussing such information, the Board shall abide by any local, state or federal confidentiality requirements that might limit or prohibit the release of such information to third parties.

f. Screening criteria. The determination as to whether a complaint merits investigation and further action shall be made on the basis of one or more of the following considerations:

i. The City Council has no jurisdiction over the individual(s) alleged to have violated the relevant ethics provision;

ii. The alleged violation, even if true, would not constitute a violation of the relevant ethics provisions;

iii. The allegations of the complaint were previously asserted in another complaint that is already being considered or was resolved by the Review Board and/or City Council;

iv. The alleged violation, even if true, is minor in nature and fails to justify the use of public resources to investigate or prosecute;

v. The allegations of the complaint involve actions or events that occurred more than one (1) year prior to the date of the filing of the complaint and, due to the passage of time and the likely unavailability of evidence, witnesses, and witnesses' recollections, investigation and prosecution of the complaint will not justify the use of public resources, except that complaints based on conduct resulting in a criminal conviction (regardless of the type of plea entered) or entry into a plea agreement subject to a deferred prosecution, deferred judgment, or deferred sentencing agreement may be referred to an appropriate enforcement agency;

vi. The complaint is, on its face, frivolous, groundless, or brought for purposes of harassment;

vii. The alleged violation is unlikely to be proven by the required standard of preponderance of the evidence due to the evidence consisting of conflicting oral testimony and unverifiable statements;

viii. The person who is the subject of the complaint has admitted wrongdoing and made or committed to make sufficient redress or remedy satisfactory to Review Board or City Council;

ix. The matter has become or will become moot because the person who is the subject of the complaint is no longer a city official or will no longer be a city official prior to the conclusion of any consideration or investigation of the allegations in the complaint;

x. The person who is the subject of the complaint previously obtained an advisory opinion under this code of ethics that identified the conduct as not being in violation of the code of ethics; or

xi. The City Council has elected to refer the complaint to another agency with jurisdiction of the allegations of the complaint and such referral will better serve the public interest (e.g., law enforcement, district attorney, state or federal attorney general; or department of justice).

Section 3. That Section 2-569(e) of the Code of the City of Fort Collins is hereby deleted.

Section 4. That Section 2-569(f) of the Code of the City of Fort Collins is hereby renumbered as Section 2-569(e) and amended as follows:

Sec. 2-569. Board of ethics.

. . .

(e) The City Attorney shall provide legal advice to the Review Board and shall prepare and execute all advisory opinions and recommendations of the Review Board.

Section 5. That Section 2-569(f) of the Code of the City of Fort Collins is hereby renumbered as Section 2-569(g):

Sec. 2-569. Board of ethics.

. . .

(g) Compliance with the applicable provisions of the Charter and Code and the provisions of state law, as well as decisions regarding the existence or nonexistence of conflicts of interest and the appropriate actions to be taken in relation thereto, shall be the responsibility of each individual Councilmember or board and commission member, except as provided in Subparagraph 2-568(c)(1)(g). An opinion adopted by the City Council under Subsection (e) of this Section shall constitute an affirmative defense to any civil or criminal action or any other sanction against a Councilmember or board or commission member acting in reliance thereon.

Section 6. That the processes and standards enacted in this Ordinance shall be applied to any complaints filed subsequent to adoption of the Ordinance on first reading.

Introduced, considered favorably on first reading and ordered published this 20th day of December, A.D. 2022, and to be presented for final passage on the 17th day of January, A.D. 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 17th day of January, A.D. 2023.

Mayor

ATTEST:

City Clerk