



AGENDA ITEM SUMMARY

City Council

STAFF

Carrie M. Daggett, City Attorney

SUBJECT

Second Reading of Ordinance No. 153, 2022, Amending Section 2-569 of the Code of the City of Fort Collins to Update and Clarify the Process for Review of Ethics Complaints.

EXECUTIVE SUMMARY

This Ordinance, adopted 6-0 on December 20, 2022, updates the Code provisions describing the ethics complaint process and establishing a new process for screening and investigation of complaints alleging ethics violations by Councilmembers. The Ethics Review Board met in November 2021, January 2022, May 2022, and October to discuss options for improvements to the ethics complaint screening and review process. The Ethics Review Board recommended the changes in the Ordinance for adoption.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

BACKGROUND / DISCUSSION

The Ethics Review Board's discussion has particularly focused on a proposal to retain one or more attorneys with ethics expertise to complete the initial screening of ethics complaints against Councilmembers and determine whether investigation of the complaint is warranted. If so, a retained attorney would also be responsible for investigating and making a recommendation to the Review Board for a final determination as to whether an ethics violation had occurred.

The Ordinance adds to the Code a more extensive explanation of the considerations for screening of ethics complaints.

The Ordinance also includes several other edits required to incorporate these changes as well as to increase readability of this Section.

To inform the Review Board's discussion, staff researched examples of ethics review processes in Colorado and in some other jurisdictions to identify ways that outside attorneys are used in the screening or complaint review. There is significant variation from city to city and no clear pattern in this respect. More detailed information related to this was provided for the Review Board's meeting on January 31, 2022, and May 5, 2022, meetings are available at the following links, respectively:

<https://records.fcgov.com/CouncilCorr/DocView.aspx?id=15423379&dbid=0&repo=FortCollins>

<https://records.fcgov.com/CouncilCorr/DocView.aspx?id=15452432&dbid=0&repo=FortCollins> .

Under the Code now, the Review Board reviews (screens) all complaints to evaluate and determine by majority vote whether to formally investigate the complaint based on the following:

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

Under the current process, if the Review Board determines that a complaint does not warrant investigation, the Review 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, and the matter is closed. If the complaint is not screened out, the Review Board then proceeds with an investigation and hearing about the allegations in the complaint.

The process elements considered in formulating a recommended new process, with proposed approaches based on the Review Board's discussion recommendations, include:

1. **What parts of the process would the Review Board (or the Council) retain in connection with a complaint against a Councilmember?**
 - a. the decision whether to take action to admonish a violator or take other action;
 - b. the final decision as to whether a violation occurred (Council on the recommendation of the Review Board);
 - c. the application of the Charter and Code to determine of whether a violation occurred (with a recommendation from the fact finder/investigator);
 - d. **not the investigation and finding of facts related to the accusations;**
 - e. **not the initial screening of a complaint for whether it merits investigation.**
2. **If an outside resource will be used, what type of expert or resource would be preferred?** *The Review Board recommended using an outside attorney with expertise in ethics matters to carry out the screening step.*
3. **For parts of the process that will be carried out by others, should there be a standing appointment, a pool of appointees to be drawn upon, or an ad hoc appointment?** *The Review Board preferred having outside resources in place to be called upon as needed.*
4. **Would there be special considerations in making the appointment, such as whether the person is local, for example.** *It may be beneficial to use outside counsel from outside the community to reduce the potential for existing relationships or involvement.*
5. **Who would select or appoint the outside resources?** *The Review Board recommended the City Attorney select and make arrangements for the outside counsel for a screening process (after consultation with the Review Board and update information provided to the Council).*
6. **Would the use of outside resources apply to all ethics complaints (including those about board and commission members as well as Councilmembers)?** *The Review Board preferred limiting the special screening to only complaints against Councilmembers, since those raised the original question about impartiality.*

CITY FINANCIAL IMPACTS

There will be financial impacts resulting from the cost of retaining outside ethics counsel to screen and investigate ethics complaints against City councilmembers if such complaints are filed. The costs and when they would arise are difficult to predict and, depending on the extent of the work required, it may be absorbed within the City Attorney's Office budget.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

The Ethics Review Board reviewed and discussed the Code changes set out in the Ordinance and recommended approval of them at its October 12, 2022, meeting.

PUBLIC OUTREACH

NA

ATTACHMENTS

First Reading attachments not included.

1. Ordinance for Consideration