

**Ethics Review Board Meeting Minutes
October 12, 2022, Meeting Via Zoom**

Ethics Review Board members in attendance: Mayor Jeni Arndt, Councilmembers Julie Pignataro, Councilmember Susan Gutowsky.

Staff in attendance: Carrie Daggett, City Attorney; Briana McCarten, Paralegal

Other Attendees: Kevin Jones, Fort Collins Chamber of Commerce

A meeting of the City Council Ethics Review Board (the “Board”) was held on Wednesday, October 12, 2022, at 3:00 p.m.

Board chair Gutowsky called the meeting to order at 3:02 pm. The Board reviewed the Agenda which contained the following items:

1. Call to Order
2. Roll Call
3. Review and approval of the May 2, 2022, Minutes of the Ethics Review Board
4. Consideration of draft proposals for ethics complaint screening and investigation process and possible recommendation to Council.
5. Review of materials previously provided regarding conflicts of interest related to employment relationships and discussion of next steps on this issue, if any.
6. Other Business
7. Adjournment

Paralegal Briana McCarten took roll call for the Board. All members were in attendance.

Councilmember Pignataro made a motion to approve the May 2, 2022, Minutes. Mayor Arndt seconded the motion. The Minutes were approved by unanimous vote.

Next, Item 4 was up – consideration of draft proposals for ethics complaint screening and investigation process and possible recommendation to Council.

City Attorney Daggett presented draft revisions to City Code Section 2-569 regarding the screening process for complaints against Councilmember(s) and using an outside expert for the process. Draft revisions have only been made to sections about complaints made against councilmembers; processes relating to complaints against boards and commission members remain as is. Some longer paragraphs have simply been broken out into pieces to make them easier to read. Subsection (d)(1) addresses inquiries against Councilmembers and part (2) addresses complaints. The provisions call for arrangement in advance to have one or more screening attorneys selected in case a complaint is filed. The proposed change to subsection (d)(2)(d) provides that once a complaint comes in and notice has gone out, the City Attorney then provides the complaint to one of the screening attorneys for screening the complaint and making a determination as to whether the complaint warrants further investigation.

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Councilmember Pignataro commented that the draft revisions look fine and asked if City Attorney Daggett would like to point out any specific proposed revisions.

City Attorney Daggett presented draft revisions that provide for a time limit within which the screening attorney must make a determination. Ms. Daggett went on to explain that under the draft revisions, if the screening attorney decides that a complaint warrants an investigation, the City Attorney will arrange for the investigation. Presumably, the screening attorney would also oversee the investigation, but in the event that attorney is unable to do it, the City Attorney will assign a different attorney to complete the investigation.

Councilmember Pignataro asked about the proposed time constraints.

City Attorney Daggett stated that the 30-day time limit by which to do the screening has not changed from the previous version.

Councilmember Pignataro asked about the 14-day enlargement of time for the Board to meet and render an opinion on the screening attorney's determination proposed under subsection (d)(2)(d)(vii) and suggested that leaving the time frame open might be more practical.

City Attorney Daggett said that she will change the language to eliminate the 14-day extension of time and instead reflect that the meeting must happen as soon as is reasonably practicable.

Councilmember Pignataro asked about a time limit for the investigation.

City Attorney Daggett clarified that the draft revisions do not provide such a time limit and allow for the investigation to take as long as is needed given the variation in circumstances that may arise. Ms. Daggett stated that when the City Attorney's Office engages outside counsel for any issue, she usually considers the attorney's ability to see to the issue timely.

Councilmember Pignataro asked about subsection (d)(2)'s alternate review procedures for when a complaint is filed against five or more Councilmembers.

City Attorney Daggett clarified that the process will remain the same except for that final review by the alternate Board, which is based on outside counsel's recommendation. Ms. Daggett further clarified that it is the City's practice to split complaints against multiple councilmembers and/or that involve multiple distinct issues out in a way that makes the most sense, and that optional language specifying that requirement can be retained in the final draft.

Councilmember Gutowsky stepped away briefly.

City Attorney Daggett then moved on to address proposed changes to the screening criteria in subsection (d)(2)(f). Ms. Daggett consulted with other jurisdictions' screening criteria and suggested that the screening process will be more effective if the criteria are more specific and cover more possible reasons a complaint may not need to move forward.

City Attorney Daggett pointed out that under the current Code, because the Board is responsible for the screening step and because any Board meeting is public, historically the meeting at which

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the Board would screen a complaint would often turn into something resembling a hearing. Having the screening go to an attorney will prevent that from happening.

Councilmember Gutowsky appreciated that the proposed changes will save a lot of time.

City Attorney Daggett pointed out that if most complaints get screened out, the Board won't have to be very involved with councilmember complaints.

Councilmember Gutowsky asked if the proposed revisions apply to all boards and commissions or only City Council.

City Attorney Daggett confirmed that the process for boards and commissions remains the same. Ms. Daggett went on to suggest that if, after it has been implemented for a period of time, City Council likes the new process they could have it apply to all boards and commissions. Right now, if the Board determines that further investigation of a complaint is not warranted, the Board sends a letter to the complainant and subject to that effect. If the Board determines that further investigation is warranted, then the Board holds a hearing, considers evidence, and determines if a violation has occurred. The City Attorney then drafts a formal opinion. Once the Board signs off on the opinion, they will bring it to City Council for adoption by resolution. City Council typically adopts the Board's opinions.

Councilmember Gutowsky asked about how often investigations of ethics complaints are warranted. Ms. Gutowsky declined City Attorney Daggett's offer to gather data.

There was discussion about how there are stretches of time when there are very few complaints and stretches when there are a lot of complaints.

Mayor Arndt asked if the proposed revisions to Section 2-569 were ready to be taken to City Council.

City Attorney Daggett will put the proposed revisions into ordinance form for the City Council to consider adopting as an amendment to the City Code. The Board can recommend that City Council adopt the changes.

City Attorney Daggett asked if further discussion with Council, at a work session, for example, would be helpful. Board members indicated that additional processing would not be necessary.

City Attorney Daggett and Mayor Arndt agreed that this should be slated for a discussion item.

City Attorney Daggett will work with the City Manager to propose a time to add this to a Council meeting agenda.

City Attorney Daggett addressed a proposed revision providing that each complaint name only one officer as its subject and suggested that alternatively the Code could allow for including two officers together in one complaint if the allegations are identical.

Mayor Arndt stated that each complaint should only focus on one officer because facts will never be completely identical.

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By unanimous consent, the ERB recommended bringing the proposed revisions to Section 2-569 to City Council for adoption.

City Attorney Daggett brought up the cost of outside counsel for screening and investigating complaints and indicated it may not be necessary at the outset to set up a budgeted amount for that expense, given that it's unknown if it will be needed and what the cost would be, although it would likely be somewhere in the five-figure range.

Mayor Arndt stated that City Council has a budget line for these kinds of expenses already and that any charges can come from there.

The Board then moved on to Item number 5 – review of materials previously provided regarding conflicts of interest related to employment relationships and discussion of next steps on this issue, if any.

City Attorney Daggett explained the Board's previous interest in revising the standards in the Charter to define conflicts of interest arising from the interests of a Councilmember's employer.

Councilmember Gutowsky stated that because any past conflict of interest issues related to a Councilmember's employment have been resolved through consultation and the existing processes, there is no need to look at revisions to the Charter at this time.

Councilmember Pignataro agreed and stated that every councilmember has their own responsibility and takes their own risk with respect to conflicts of interest.

All members of the Board expressed the view that employment-related conflicts of interest are not a concern requiring further action at this time and that they are comfortable leaving the Charter provisions as is.

City Attorney Daggett will remain aware of the issue and bring it up in the future if it appears it may be beneficial to discuss it further.

Councilmember Gutowsky asked when the Board should meet next. It was agreed the Board will continue to meet as needed. There are no other pending matters so no additional meetings will be scheduled unless something new for consideration arises.

Meeting adjourned at 3:45 pm