

ORDINANCE NO. 120, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
REORGANIZING CHAPTER 2, ARTICLE VII, DIVISIONS 1 AND 2 OF THE CODE OF
THE CITY OF FORT COLLINS TO CONSOLIDATE THE ETHICAL RULES OF CONDUCT
AND BOARD OF ETHICS SECTIONS WITH A COMPLAINT PROCESS FOR
VIOLATIONS OF THE CODE OF CONDUCT

WHEREAS, the City has 25 boards and commissions, whose members are appointed by the City Council; and

WHEREAS, on November 15, 2023, the City Council adopted Resolution 2022-122 creating an ad hoc committee on boards and commissions (“Committee”) to consider and make recommendations to improve efficiency and consistency of board and commission processes and reduce barriers to participation; and

WHEREAS, with input from individual City Councilmembers, City staff developed a Code of Conduct that applies to board and commission members, and some provisions that apply to both board and commission members as well as City Councilmembers; and

WHEREAS, the Code of Conduct includes provisions about upholding standards of integrity and honesty, and respectful discourse; and

WHEREAS, City staff presented versions of the Code of Conduct to the Committee for comment and, after revisions were made in response to comments, on July 19, 2023, the Committee recommended adoption of a final version of the Code of Conduct for City Council approval; and

WHEREAS, the Code of Conduct will be considered for approval by separate City Council resolution and, if approved, attached as an appendix to the Boards and Commissions Manual; and

WHEREAS, City staff developed a process for formally filing and resolving complaints of violation of the Code of Conduct (“Complaint Process”); and

WHEREAS, on July 19, 2023, the Committee recommended adoption of the Complaint Process; and

WHEREAS, Sections 2-568 and 2-569 of the City Code contain ethical rules of conduct and discussion about a board of ethics charged with interpreting and applying the definitions, rules and procedures pertaining to ethics established by the City Charter and City Code and applicable provisions of state statute; and

WHEREAS, the ethical rules and the Code of Conduct are similar in that they both address City Councilmember and board or commission member conduct; and

WHEREAS, the City developed its ethical rules and board of ethics under its home rule authority; and

WHEREAS, City staff recommends combining the ethical rules and the board of ethics provisions with the Complaint Process in Division 2 of Chapter 2, Article VII to reorganize and simplify rules governing the conduct of City Councilmembers and board and commission members with the Complaint Process in one division; and

WHEREAS, the City Council finds that the proposed changes to the City Code are in the best interests of the City and its residents.

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 Division 2 of Article VII of Chapter 2 of the Code of the City of Fort Collins is hereby entitled "Ethical Rules and Conduct: Related Procedures."

Section 3. That Section 2-568 of the Code of the City of Fort Collins is hereby repealed and reenacted in multiple new sections in Division 2 of Article VII, Sections 2-575 through 2-578, to read as follows:

Sec. 2-575. Ethical Rules of Conduct - Definitions

The following words, terms and phrases, when used in this Division, and in Section 9 of the Charter Article IV, shall have the following meanings:

- (a) *Attempt to influence or influence*, as it pertains to this Division, shall mean take any action intended to impact, shape, control, sway, bias or prejudice.
- (b) *Benefit* shall mean an advantage or gain.
- (c) *Board and commission member* shall mean a member of any appointive board or commission of the City.
- (d) *Confidential information* or *information received in confidence* shall mean:
 - (1) Information contained in any writing that may properly be withheld from public inspection under the provisions of the Colorado Open Records Act and that is marked "confidential" when provided to the officer or employee;
 - (2) All information exchanged or discussed in any executive session properly convened under § 2-31 or 2-71 of the Code, except to the extent that such information is also contained in a public record available to the general public under the provisions of the Colorado Open Records Act; or

(3) All communications between attorneys representing the City and officers or employees of the City that are subject to the attorney-client privilege, whether oral or written, unless the privilege has been waived.

(e) *Councilmember* shall mean a member of the City Council.

(f) *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.

(g) *Direct* shall mean resulting immediately and proximately from the circumstances and not from an intervening cause.

(h) *Detriment* shall mean disadvantage, injury, damage or loss.

(i) *Financial interest* shall have the meaning given to this term in Section 9(a) of Charter Article IV, which states:

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

(1) 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;

(2) 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;

(3) 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;

(4) 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;

(5) 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;

(6) 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;

(7) 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

(8) 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.

(j) *Officer or employee* shall mean any person holding a position by election, appointment or employment in the service of the City, whether part-time or full-time, including any member of the City Council and any member of any authority, board, committee or commission of the City, other than an authority that is:

(1) Established under the provisions of the Colorado Revised Statutes;

(2) Governed by state statutory rules of ethical conduct; and

(3) Expressly exempted from the provisions of Article IV of the City Charter by ordinance of the City Council.

(k) *Personal interest* shall have the meaning given to this term in Section 9(a) of the Charter Article IV, which states:

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:

(1) 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;

(2) 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

(3) the interest that an officer or employee has in the compensation, benefits, or terms and conditions of his or her employment with the city.

(l) *Public body* shall have the meaning given to this term in Section 9(a) of Charter Article IV, which states:

Public body means the Council or any authority, board, committee, commission, service area, department or office of the city.

(m) *Public services* shall mean city services provided to or made available for the public's benefit.

(n) *Purchases from the city*, as described in Section 9(b)(2) of Charter Article IV, shall not include payments by an employee to the city pursuant to an agreement for housing in which such employee is required to live as a condition of employment with the city.

(o) *Related entity* shall mean any corporation, limited liability company, partnership, sole proprietorship, joint venture, trust, estate, foundation, association, business, company or any other organization, whether or not operated for profit, with respect to which an officer or employee, or a relative of the same, has a substantial ownership interest in, is employed by, is an agent for or otherwise represents in any legal capacity.

(p) *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.

(q) *Routine City matter* shall mean a usual and ordinary registration, reservation, or other request or application, within a program or for public services or City approval, such as a registration for a recreation class, reservation of a park shelter, request for standard utility services or application for a building permit, development approval or variance, or an appeal, provided that the same is carried out using a routine process or system or in a manner consistent with standard practices.

(r) *Similarly situated citizens* shall mean citizens in like circumstances having comparable legal rights and obligations.

(s) *Substantial* shall mean more than nominal in value, degree, amount or extent.

Sec. 2-576. Ethical rules of conduct – officers and employees.

(a) Use and disclosure of confidential information. The following rules shall apply to the use and disclosure of confidential information by officers and employees of the City. In the event of any conflict among these provisions, the more specific provision shall take precedence over the more general provision.

(1) No use for personal gain. No officer or employee shall knowingly use information received in confidence as an officer or employee to advance the financial or personal interests of the officer or employee or others.

(2) Disclosure of confidential information, generally. No officer or employee shall knowingly disclose any confidential information to any person who is not an officer or employee or to an officer or employee whose official duties are unrelated to the subject matter of the confidential information or to maintaining an official record of such information on behalf of the City, unless such disclosure is reasonably necessary to protect the City from the gross mismanagement of public funds, the abuse of governmental authority, or illegal or unethical practices.

(3) Disclosure of confidential information provided to the City Council. All information received in confidence by the City Council shall remain confidential, and no officer or employee shall knowingly disclose any such confidential information to any person to whom such information was not originally distributed by City staff unless and until the City Council has, by majority vote, consented to its release, unless such disclosure is reasonably necessary to protect the City from the gross mismanagement of public funds, the abuse of governmental authority, or illegal or unethical practices.

(4) Disclosure of information discussed in executive session. No officer or employee shall knowingly disclose any confidential information discussed in an executive session to any person who was not present during such discussion, other than members of such body who were unable to attend the executive session, without the prior knowledge and consent of the body holding such executive session, unless such disclosure is reasonably necessary to protect the City from the gross mismanagement of public funds, the abuse of governmental authority, or illegal or unethical practices. In the event that a matter discussed in executive session comes before the City Council or a board or commission of the City for formal action at an open meeting, or if such formal action is anticipated, nothing herein shall be construed as prohibiting a member of the body that will be taking such formal action from stating his or her position or opinion with regard to the matter, as long as such statements do not divulge confidential information received from others during the executive session.

(5) Certain distribution and discussion by City Manager and City Attorney permitted. Notwithstanding the provisions of Subparagraphs (3) and (4) above, the City Manager and City Attorney may further distribute confidential information provided to the City Council and may disclose confidential information discussed in any executive session of the City Council, or of a Council committee, to such staff members and/or board and commission members as they may consider reasonably necessary to enable them to fully advise the City Council or to implement any direction given by the City Council or to advise other officers and employees of the City whose official duties are related to the subject matter of the confidential information or to maintaining a record of the same on behalf of the City.

(6) No disclosure of confidential information to officer or employee having conflict of interest. No officer or employee who has filed a statement of conflict of interest with the

City Clerk under Article IV, Section 9 of the Charter, or who has been determined by the City Council under the provisions of Subparagraph g. below to have a conflict of interest, shall knowingly elicit, accept or inspect any confidential information pertaining to the subject matter of such conflict of interest, nor shall any such officer or employee attend or participate in an executive session of the City Council, or of a Council committee or board or commission of the City, pertaining to said subject matter.

(7) The City Council may determine that a Councilmember shall not receive confidential information or attend executive sessions on a particular topic if the City Council first determines that said Councilmember has a conflict of interest in the subject matter of such confidential information and/or executive session. Any such determination by the City Council shall be made only after the City Council has received an advisory opinion and recommendation of the Ethics Review Board on the question, rendered in accordance with the provisions of § 2-579.

(b) All officers and employees shall refrain from accepting payment for any speeches, debates or other public events and shall further refrain from accepting any gift or favor which, in the judgment of a reasonably prudent person, would tend to impair the officer's or employee's independence of judgment in the performance of his or her official duties. The following shall not constitute prohibited gifts or favors under this Section:

(1) Campaign contributions reported as required by Chapter 7, Article V of this Code;

(2) A nonpecuniary award publicly presented by a nonprofit organization in recognition of public service;

(3) Payment of or reimbursement for actual and necessary expenditures for travel and subsistence for attendance at a convention or other meeting at which an officer or employee is scheduled to participate;

(4) Reimbursement for or acceptance of an opportunity to participate in a social function or meeting which is offered to an officer or employee which is not extraordinary when viewed in light of the position held by such officer or employee;

(5) Items of perishable or nonpermanent value that are insignificant in value, including, but not limited to, meals, lodging, travel expenses or tickets to sporting, recreational, educational or cultural events; and

(6) Payment of salary from employment, including other employment in addition to that earned from being an officer or employee.

(c) No officer or employee shall request on his or her own behalf, or for or through a relative or related entity, from any other officer or employee, or grant to any other officer or employee, or relative or related entity of the same, any consideration, treatment or advantage in the interpretation, administration or enforcement of the Charter, Code, any City regulation, policy or

program or in the provision of public services, that is substantially different from that available to other persons in the same circumstances or having the same need.

Sec. 2-577. Additional ethical rules of conduct – board or commission members

(a) In any action in which a member of a City board or commission ("member") declares a conflict of interest or is prohibited from participation pursuant to subsection (7~~5~~) below, or for any other reason, such member shall not communicate to or attempt to influence such board or commission regarding such item, in any capacity, except that:

(1) the member may communicate with said board or commission to protect a strictly personal interest, in the same or similar ways in which the public is permitted to communicate with the board or commission.

(2) the member may prepare materials on behalf of another for a project in the normal course of business or operation, so long as the purpose of those materials is not directly and substantially related to advocacy before said member's board or commission. Those materials may be included in materials submitted by another to said member's board or commission so long as they fall within this exception. For illustrative purposes, such materials may include, but are not necessarily limited to architectural plans, technical studies, and engineering designs.

(3) if a member is precluded from participating in or influencing the decision of their board or commission, they may request a variance from the limitations of this subsection from the City Council in the following circumstances, and in the following manner:

a. The member must submit a request for a variance to the City Clerk on a form provided by the City Clerk for such purpose.

b. The member must demonstrate that without the variance, they would suffer an exceptional hardship, and that no reasonable alternative exists that would allow for that hardship to be avoided or substantially mitigated;

c. The City Council must act by resolution to approve or disapprove the requested variance.

(4) This limitation does not apply to persons other than the member who are affiliated with that member's firm or entity, and such other persons, but not the member, may continue to work on the project and may advocate to such member's board or commission, provided that the member complies with the applicable requirements and limitations.

(5) Additional limitations on participation.

a. No member of a Quasi-Judicial Commission, as defined in Article III of this Chapter 2, who has participated or intends to participate as a member of the public, or on behalf of another person or entity, to provide input or public comment as part

of a City process about a particular proposal or project for which a City review, permit or approval is required (such as, for example, speaking at a neighborhood meeting for a development project or appearing at an administrative hearing for a project), is allowed to participate in that process in their role as a board or commission member.

1. In the event such input or public comment has been provided, or is expected to be provided, the commission member must promptly provide written notice to the City Clerk that they are required to refrain from participation in their role as a commission member in the City process or decision.

2. The commission member must also provide the required notice to the chair of the commission of which they are a member.

- b. The prohibitions and requirements of this subsection (5) apply whether or not a conflict of interest is presented or has been declared and are in addition to, and not in place of, the requirements applicable to any officer or employee in the event of a conflict of interest.

- c. No member of a Quasi-Judicial Commission, as defined in Article III of this Chapter 2, may provide input or public comment on behalf of that commission as part of a City process about a particular proposal or project for which a City review, permit or approval is required, except as expressly authorized and directed by such commission.

Sec. 2-578. Additional ethical rules of conduct – mayor and council members.

- (a) With respect to any matter regarding which a Councilmember has declared a conflict of interest, said Councilmember is prohibited from discussing with, or otherwise attempting in any capacity to influence, directly or indirectly, any City officer or employee, and from representing any person or interest before the City Council or any board or commission of the City or in dealing with any City officer or employee, except that such Councilmember may represent with any City employee or before the City Council or a board or commission of the City his or her own interest or that of a relative provided said Councilmember does not violate § 2-577.

- (b) If any Councilmember contacts an officer or employee regarding a request in connection with that contacted officer's or employee's role and in relation to a matter that is not a routine City matter and is not within the Councilmember's role as an officer of the City, said Councilmember shall no later than 5:00 p.m. on the next business day after such contact deliver a written disclosure to the City Clerk and the City Manager and to all other members of City Council. The written disclosure must describe the date, time and general subject matter of the contact, together with the identity of the officer or employee contacted. Any private or confidential information, such as tax, utility account, or other personal information may be excluded or redacted from such disclosure. Disclosure by means of an electronic message shall be deemed to constitute written disclosure for purposes of this provision.

(c) Notwithstanding the provisions of § 1-15 of the Code, an alleged violation of the provisions of this Division by a member of the City Council shall not be prosecuted in the Municipal Court as a misdemeanor criminal offense but shall instead be referred to the Ethics Review Board for an advisory opinion and recommendation under the provisions of § 2-579.

(d) With respect to any Councilmember serving as a liaison to a board or commission, such Councilmember must not direct the board in its activities or work. A liaison's role is to serve as a contact rather than an advocate for or ex-officio member of the board or commission.

Section 4. That Section 2-569 of the Code of the City of Fort Collins regarding the Board of Ethics is hereby moved to Division 2 of Article VII and renumbered to Section 2-579, with all internal references renumbered accordingly.

Section 5. That Chapter 2, Article VII, Division 2 of the Code of the City of Fort Collins is hereby amended by the addition of a new Section 2-580 which reads in its entirety as follows:

Sec. 2-580. Code of Conduct formal complaint and resolution process.

(a) Definitions

(1) *Appointee* shall mean any person who is serving on a Council-appointed board or commission.

(2) *Code of Conduct* shall mean the "Code of Conduct" applicable to City board and commission members and members of the City Council, and adopted by the City Council by resolution or ordinance, as amended from time to time.

(3) *Colorado Open Records Act* shall mean C.R.S. §§24-72-200.1, et. seq, as the same may be amended from time to time.

(4) *Members* shall mean any appointee or City Councilmember.

(5) *Liaison* shall mean the councilmember appointed to serve as council liaison to a given board or commission.

(b) The City Council encourages any person who is a witness to a violation of the Code of Conduct to immediately bring the violation to the attention of the City, in accordance with the following procedures.

(c) Confidentiality and Privacy Interests.

(1) Members must be accountable to the City Council, the City organization and the public they serve. The public deserves to have access to some information about complaints and complaint trends, but this must be balanced with the needs of the parties to have a safe, fair, and impartial process with appropriate confidentiality. The complaint resolution

process is a confidential process. Those involved in the complaint process must ensure that reporting parties can communicate privately and confidentially with them in discussing their complaints. Complaints and information about the investigation must be kept confidential by all parties, witnesses, those who handle the complaints, and those who recommend discipline or remediation, to the fullest extent possible. Information received through the complaint process shall not be disclosed pursuant to an open records request except in accordance with the Colorado Open Records Act.

(d) Complaints.

(1) Any person who believes that a member has violated any provision of the Code of Conduct may file a complaint with the City Clerk. Complaints may be filed by any member, a City staff person, a City contractor or vendor, or a person whose employment gives them access to or contact with the board or commission at issue or the City Council.

(2) The complaint must contain all facts available to the reporting party regarding the alleged violation.

(3) No action may be taken under this section on any complaint that is filed later than twelve months after discovery of the facts supporting an allegation that a violation of the Code of Conduct has occurred.

(4) Upon receipt of the complaint, the City Clerk shall immediately notify the City Manager's Office, the member named in the complaint, the City Council, and the City Attorney. Each complaint shall name only one individual as its subject.

(5) The City Attorney or City Manager or their designee shall review the complaint to determine whether the alleged misconduct falls within the scope and purpose of the Code of Conduct and whether the complaint warrants investigation in light of commonly known and documented facts and circumstances. If investigation is warranted, the City Attorney shall develop facts relevant to the complaint and interpret and apply the provisions of the Code of Conduct. The City Attorney may select and retain one or more qualified attorneys to review complaints as his or her designee.

(6) After investigation, the City Attorney shall issue written findings of fact and conclusions of law to the City Council, which shall be filed with the City Clerk and available for public inspection.

(e) Sanctions and Remedies for Violation.

(1) If the party conducting an investigation pursuant to this section finds that a member has violated any provision of the Code of Conduct, the City Council may take any of the following actions:

a. In the case of a City Councilmember, a motion of censure or a motion to remove the particular Councilmember from the role of liaison;

b. In the case of an appointee, removal from the applicable board or commission;

c. In the case of a member:

i. Issue verbal or written direction (for appointee) or encouragement (for member) to cease the violative conduct;

ii. Direct (for appointee) or encourage (for member) corrective training; or

iii. Require the violator (for appointee) or encourage (for member) to issue a written or verbal apology to the reporting party if the latter consents to such an apology.

iv. Any other actions determined appropriate by City Council.

d. While a violation of the Code of Conduct shall not constitute a violation of the City Code, as such, this provision is not intended to impair or supersede such other action as may be appropriate under applicable state statutes, the City Charter, ordinances, resolutions, or rules and policies of the City or City Council.

Section 6. That Sections 2-568 and 2-569 of the Code of the City of Fort Collins are now held in reserve.

Section 7. That all references in the Code of the City of Fort Collins to Section 2-568 or Section 2-569, or any portions thereof, shall be renumbered in accordance with the new section numbers assigned to those provisions in this Ordinance.

Introduced, considered favorably on first reading and ordered published this 5th day of September, 2023, and to be presented for final passage on the 19th day of September, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 19th day of September, 2023.

Mayor

ATTEST:

City Clerk