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OPEN MEETINGS

City Attorney's Office
Spring, 2008

The City Code specifically requires that all meetings of a board or commission, and all meetings of any committee of a board or commission, shall be open to the public at all times, except when the board or commission is meeting in a validly convened executive session.

The term "meeting" is defined as a gathering of a quorum or three or more members, whichever is fewer, of any board or commission, or any committee of such board or commission, at which any public business is discussed or at which any formal action may be taken. It is important to remember that the open meeting requirements apply to more than just in-person gatherings. They also apply to telephone conference calls, electronic "chat room" conferences, or any other means of communication where conference-like communication can occur. However, the term "meeting" does not include a chance meeting or social gathering at which the discussion of public business is not the central purpose.

Notice requirement

The *notice* requirement for meetings is slightly different from the public openness requirement. Full and timely notice to the public must be given prior to the holding of any meeting of a board or commission (or committee of a board or commission) at which a majority or quorum is in attendance or is expected to be in attendance or at which formal action could be taken. Therefore, a gathering of three members of a seven member board to discuss board business would be open to the public but there would be no notice requirement if a quorum of the board were not expected to be in attendance and no formal action was to occur.

Public notice may be required not only when the board or commission has called or arranged a meeting, but also when a majority or quorum (whichever is less) of that body is present or expected to be present at a meeting called or arranged by others. If a majority or quorum of a board or commission is reasonably expected to attend a meeting of another entity, such as a City Council meeting or even a meeting of a non-City entity, at which matters relevant to the official duties of the board or commission are likely to be discussed, the meeting must be posted as a meeting of the board or commission. This posting requirement is also applicable to subcommittees of a board or commission when a majority or quorum of the subcommittee is expected to be in attendance at another entity's meeting at which matters relevant to the official duties of the subcommittee are likely to be discussed. From a practical standpoint, board or commission members should let their staff liaison know anytime they receive an invitation in their official capacity to attend an event at which a matter relevant to the board or commission may be

discussed. The staff liaison can then determine whether or not a majority or quorum of the board or commission plans to be in attendance and, if so, post notice of the potential meeting.

The City Code defines full and timely notice for regularly scheduled meetings as providing a statement with the City Clerk's Office with the regular meeting dates, times and locations. For special meetings, irregularly scheduled meetings, or rescheduled meetings, notice of the meeting must be filed with the City Clerk's Office and posted at the south vestibule bulletin board of City Hall West at least 24 hours before the time of the meeting. The posting is required to advise people where they can obtain agenda information prior to the meeting. The City Code provides that the chairperson is responsible for the posting.

Minutes

Minutes must be taken of any meeting of a board or commission (or committee of a board or commission) at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or could occur. The minutes must be open to public inspection and a copy must be filed with the City Clerk upon approval.

Except with regard to the documentation of executive sessions, state law and City Code do not prescribe the level of detail to be contained in the minutes. As provided in the City Code, minutes of executive sessions are not taken. However, the City Code does require that the executive session be tape recorded in most circumstances, as will be more fully explained later in this outline. At a minimum, the minutes of a meeting should contain the following information:

1. Date, time and location of the meeting;
2. Listing of members present and a statement that such members constituted a quorum;
3. General outline of each major topic discussed, considered, and the outcome.
4. Verbatim (to the extent possible) recital of all motions along with the recording of how each member voted on each motion.
5. Detailed recital of all formal action taken.
6. If a motion is made to go into executive session, the minutes must reflect the topic for the executive session in as much detail as possible without compromising the purpose for which the executive session is to be held. The specific citation to the provision of the City Code that authorizes the board or commission to meet in executive session, as well as the vote on the motion, must be carefully documented. (See next section on executive sessions.) Additionally, the time of convening and adjourning the executive session should be noted.
7. Time of adjournment.

In situations where the board or commission is acting in a quasi-judicial manner or is otherwise conducting an important or controversial meeting, the minutes of a meeting may not be sufficient to adequately record the events of the meeting. In those situations, City staff or the City Attorney's Office may recommend that the meeting be electronically recorded or recorded with the assistance of a court reporter. Even in this situation, minutes should still be taken as the electronic recording or stenographer's notes may never be transcribed.

Executive Sessions

The holding of an executive session is the only time that a meeting of a board or commission may lawfully be conducted privately. Because of the strong public interest in maintaining an open and public government, the City Code and the courts have strictly limited the use of executive sessions to certain prescribed situations. For most boards and commissions, the use of executive sessions is a rare event and board and commission members are encouraged to obtain advice in advance from City staff and the City Attorney's Office if they contemplate requesting such a session.

The City Code provides that any board or commission, upon the affirmative vote of 2/3 of the quorum present, may go into executive session for the purpose of considering such matters as would be permissible for consideration by the City Council in executive session, insofar as such matters may be pertinent to the purposes for which the board or commission has been established. The permissible purposes are generally as follows:

1. Meetings with the City Attorney or other attorneys representing the city regarding litigation or potential litigation involving the city and/or the manner in which particular policies, practices or regulations of the city may be affected by existing or proposed provisions of federal, state or local law (City Code §2-31(a)(2)).

2. Consideration of actual or hypothetical situations involving potential conflicts of interests with individual board or commission members, provided that no executive session shall be held for the purpose of concealing the fact that a member has a financial or personal interest in the purchase, acquisition, lease, transfer or sale of any real, personal or other property interest from the city (City Code §2-31(a)(1)c).

3. Consideration of water and real property acquisitions and sales by the city, restricted to consideration of appraisals and other value estimates and the consideration of strategy for the acquisition or sale of such property (City Code §2-31(a)(3)).

4. Personnel matters (unless the employee who is the subject of the session has requested an open meeting). This exception does not apply to the discussion of matters pertaining to board or commission members or to

personnel policies that do not require the discussion of matters personal to particular employees (City Code §2-31(a)(1)a, b, & d).

5. Consideration of electric utility matters if such matters pertain to issues of competition in the electric utility industry (City Code §2-31(a)(4)).

Additionally, the City's pension boards may go into executive session for the purpose of reviewing pension applications, medical records, personnel records and reports and discussing pending as well as previously granted pensions with board attorneys (City Code §2-71(d)(1)). The Citizen Review Board review subcommittees may go into executive session for the purpose of receiving and considering evidence relating to internal investigations conducted by Police Services (City Code §2-71(d)(2)).

A motion to go into an executive session must contain a statement as to the topic for the executive session. The statement as to the topic for the executive session must provide as much detail as possible without compromising the purpose for which the executive session is to be held. However, it is not necessary or advisable to identify a confidential component of the topic, such as the specific individual or specific property that the executive session will concern. Additionally, the motion to go into an executive session must specifically cite the provision of the City Code that authorizes the board or commission to meet in executive session. An example of a valid motion to go into an executive session is as follows:

> "As authorized by City Code section 2-31(a)(2), I move to go into executive session for the purpose of meeting with the City Attorney to receive legal advice regarding potential litigation and the manner in which the board's actions may be affected by existing law."

In order to convene an executive session, it is necessary that the motion to do so be made at an open and validly convened regular or special meeting of the board or commission. The motion must be approved by not less than two-thirds (2/3) of the quorum present at the meeting. The minutes of the regular or special meeting must specifically reflect the motion, the topic of the proposed executive session, the specific citation in the City Code authorizing the executive session, and the vote upon the motion.

An audio recording must be made of all discussions that occur in an executive session, except those discussions that constitute a privileged attorney-client communication. In that attorney-client situation, a recording need not be made so long as the attorney is present at the executive session and the audio recording of the executive session discussion reflects the fact that no further record was kept of the discussion based on the opinion of said attorney that the discussion constitutes a privileged attorney-client communication. The board or commission may choose to record the privileged attorney-client communication portion of the executive session so there is no question about the propriety of going "off the record."

The audio recording of an executive session must be maintained for not less than 90 days, after which the tape may be destroyed pursuant to the City's document retention policy. It is important to realize that any person may file an application with the District Court challenging the lawfulness of an executive session. In such a circumstance, the District Court Judge would review the audio tape to determine whether or not the requirements of the City Code were met. If the above described legal requirements were not met, the Court will make public that portion of the executive session that either strayed from the appropriate topic or where formal action was taken.

During an executive session, the board or commission cannot make final policy decisions, pass resolutions, or take other formal action. If a board or commission does attempt to take formal or final action in an executive session, such action would be void and of no effect. Information received by board and commission members in an executive session should be kept confidential by the members. A member could become criminally liable for misuse of official information if a member used confidential information for his or her personal pecuniary gain or aided another in achieving a pecuniary benefit. Disclosure of confidential information could also result in the loss of liability protection under the Colorado Governmental Immunity Act for the individual making the disclosure and removal from membership on the board or commission.

Sec. 2-71. Meetings defined, open meetings required; exceptions.

(a) The following words, terms and phrases, when used in this Division, shall have the meanings ascribed to them in this Section:

Meeting shall mean any gathering of a quorum or three (3) or more members, whichever is fewer, of any board or commission of the City, or any committee of such board or commission, at which any public business is discussed or at which any formal action may be taken, but shall not mean any chance meeting or social gathering at which the discussion of public business is not the central purpose.

(b) All meetings of boards and commissions of the City, and all meetings of any committees of such boards and commissions, shall be open to the public at all times, except that any board or commission, upon the affirmative vote of two-thirds (⅔?) of the quorum present, may go into executive session for the purpose of considering such matters as would be permissible for consideration by the City Council in executive session, as enumerated in Subsection 2-31(a) above, insofar as such matters may be pertinent to the purposes for which the board or commission has been established by the City Council.

(c) No final policy decisions shall be made, nor shall any resolution be passed or other formal action taken by any board or commission in executive session.

(d) The following shall be exempted from the provisions of this Section:

(1) The trustees of the police, fire and general employees' pensions shall have the authority to meet in executive session for the purpose of reviewing pension applications, medical records, personnel records and reports and discussing pending as well as previously granted pensions with board attorneys.

(2) The review subcommittees of the Citizen Review Board, as described in Subsection 2-138(d), shall meet in executive session for the purpose of receiving and considering evidence relating to internal investigations conducted by Police Services unless the police officer(s) or community service officer(s) against whom the complaint is filed requests that the matter be considered in open session. If such a request is made, the subcommittee shall determine the extent to which the consideration and discussion of evidence will occur in open session. In making this determination, the subcommittee shall consider the extent to which the consideration and discussion will directly concern personnel matters of the officer(s), the need to maintain the confidentiality of information in circumstances where the public dissemination of the information would do substantial injury to the public interest and any other constraints upon public dissemination imposed by law.

Sec. 2-72. Notice of meetings.

Any meeting at which any formal action could occur or at which a majority or quorum is in attendance, or is expected to be in attendance, shall be held only after full and timely notice to the public. For the purpose of this provision, adopting a regular meeting date and the filing of a statement with the City Clerk shall be considered full and timely notice. In the case of boards or commissions meeting on call or irregularly or in the event of any change to a regular meeting date on file with the City Clerk, the posting of a notice of the meeting pursuant to § 2-74 at least twenty-four (24) hours before the time of such meeting shall be full and timely notice. The City Clerk shall make all of such notices available to all interested members of the public.

Sec. 2-73. Minutes of meetings.

Minutes shall be taken of any meeting of any board or commission of the City, or any committee of such board or commission, at which the adoption of any proposed policy, position, resolution, rule, regulation or formal action occurs or could occur. Such minutes shall be open to public inspection and shall be filed with the City Clerk upon approval by such board, commission or committee. Such approval shall occur no later than the next regular meeting of the board, commission or committee, except in those instances when an audio or video recording has been made and maintained by the City of the board, commission or committee meeting which is the subject of the minutes. Discussions that occur in an executive session of a board or commission, or any committee thereof, shall be subject to the same audio recording requirements and related procedures and regulations as are contained in § 2-33 pertaining to executive sessions of the City Council and its committees. The minutes of a meeting during which an executive session is held shall reflect the topic of the discussion at the executive session.

Sec. 2-74. Place of posting.

The vestibule at the south entrance of City Hall West, 300 LaPorte Avenue, is designated as the proper place for the posting of public notice of any meetings of any City boards and commissions, or their committees, for which public notice is required to be given by the provisions of the Code. When possible, such notices should also be posted on the City's website. All meeting notices shall include information about the availability of agenda materials. The chairperson of each board or commission, or his or her designee, shall be responsible for the posting of such notice.

Sec. 2-31. Executive sessions.

(a) The City Council, and any committee of the City Council, may, by two-thirds (⅔) majority vote of those members present and voting, hold an executive session upon announcement of the topic for discussion in the executive session, which announcement

shall include a specific citation to the provision of this Section that authorizes the City Council or Council committee to meet in executive session, and shall identify the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is to be held. Said executive session may be held only at a regular or special meeting and only for the purposes of considering any of the following matters and providing direction, through individual expressions of opinion, to City staff or other persons with regard to such matters:

(1) Personnel matters restricted to those described in Subparagraphs a. through d. below. Except as provided in Subparagraph c. below, "personnel matters" shall not include discussions concerning any member of the City Council or members of City boards and commissions, or discussions concerning the appointment of persons to fill such positions, or to discussions of personnel policies that do not require the discussion of matters personal to particular employees:

a. Matters involving the hiring, appointment, dismissal, demotion, promotion, assignment and discipline of City personnel, and the review and discussion of the performance and proposed compensation and benefits of the City Manager, City Attorney or other direct City Council employees.

b. Consideration of complaints or charges against individual City personnel, provided that such matter shall not be considered in executive session if the individual concerned requests that the matter be considered in open session.

c. Consideration of actual or hypothetical situations involving potential conflicts of interests with individual Councilmembers or City board or commission members, provided that no executive session shall be held for the purpose of concealing the fact that a member of the City Council or of a City board or commission has a financial or personal interest in the purchase, acquisition, lease, transfer or sale of any real, personal or other property interest from the City.

d. Consideration and discussion of strategy matters relating to negotiations with employee groups including unions.

(2) Meetings with the City Attorney or other attorneys representing the City regarding litigation or potential litigation involving the City and/or the manner in which particular policies, practices or regulations of the City may be affected by existing or proposed provisions of federal, state or local law.

(3) Consideration of water and real property acquisitions and sales by the City.

(4) Consideration of electric utility matters if such matters pertain to issues of competition in the electric utility industry.

(b) No final legislative action shall be taken by the City in executive session. Such final legislative action may be taken only in an open meeting.

(c) Executive sessions shall be closed to the general public, but the City Council may permit any person or group to attend such sessions.

OPEN RECORDS

City Attorney's Office
Spring, 2008

General Rule:

> The City Charter states that all City records shall be available for public inspection, subject only to reasonable restrictions.

This means that, generally speaking, the documents reviewed or generated by boards and commissions will be accessible by any member of the public upon request. The phrase "public records" includes more than just paper documents. "Public records" include computer information, photographs, tape recordings, e-mail, microfilm, and correspondence.

The phrase "public records" does not include records which are made, kept, or used for purposes other than for use in exercising functions required or authorized by law or administrative rule, or involve the receipt or expenditure of public funds. In a recent case, the Colorado Supreme Court ruled that romantic and sexually explicit e-mails between the Arapahoe County Clerk and one of his employees were not public records subject to public disclosure because there was no demonstrable connection between them and the exercise of public functions or functions involving public funds.

Exceptions:

The "reasonable restrictions" to the general rule of public accessibility are found in the state Open Records Act. For instance, confidential communications between the City Attorney's Office and the board or commission are not subject to public disclosure or inspection in the absence of a waiver of the attorney/client privilege by the board or commission. The following records may also be exceptions to the general rule, depending upon specific circumstances:

* Personnel files
* Medical records
* Investigatory files produced by law enforcement
* Test questions and scoring keys
* Contents of real estate appraisals prior to purchase
* Letters of reference
* Trade secrets, privileged information, and confidential commercial, financial, geological, or geophysical data
* Library records disclosing the identity of users

* Address, phone number, and personal financial info of past or present users of public utilities, public facilities, or recreational or cultural services
* Any record where disclosure would do substantial injury to the public interest

While many of the exceptions to the general rule of disclosure have been well defined by the state legislature and the courts, others are in the process of interpretation. The Colorado Supreme Court and the state legislature have only recently recognized and approved of the "deliberative process" exception which allows for the non-disclosure of pre-decisional information intended to aid and advise the decision maker in making a decision.

Deliberative Process Exception:

The deliberative process exception to the open records requirements would allow for the non-disclosure of staff documents sent to a board or commission if the documents

a) were pre-decisional,
b) expressed opinions, gave advice, made suggestions or recommendations, or evaluated situations under review,
c) were intended to help the board or commission in making a decision, and
d) were so candid or personal that public disclosure would likely stifle honest and frank discussion within the government.

This exception, as well as the statutory "work product" exception discussed below, could also apply to communications from the board or commission to the City Council. However, in recognizing the deliberative process exception to the open records requirements, the state legislature has placed some pretty significant procedural hurdles for the City to overcome in order to preserve non-disclosure any time a person requests these types of records. Because of the technical nature of this process, it is recommended that board and commission members seek help and advice from the City Attorney's Office any time that a request is made for records that may fall within the deliberative process exception.

Work Product Exception:

State law provides that "work product" prepared for elected officials is not considered to be a public record. Therefore, advisory or deliberative materials assembled by a board or commission for the benefit of elected officials may be confidentially transmitted to the City Council, but the City Council could choose to make the materials public. Based upon City Council's ability to make a board or commission's "work product" public, a board or commission should keep in mind that the confidentiality of such advisory or deliberative materials is not assured.

Points to Remember:

When a board or commission is presented with information which is marked or otherwise considered confidential, the board or commission should maintain the confidentiality of the information, immediately advise City staff of any request for this information, and seek the advice of the City Attorney's Office when in doubt.

As for records that are produced by a board or commission or any member, it should generally be assumed that such records will be considered "public records" subject to inspection and copying by any member of the public, including the press. If the board or commission or any member intends to maintain the confidentiality of any record, it should seek the advice of City staff and the City Attorney's Office before the record is generated.

Remember that once a record is generated, it may not be possible to retract it or protect it from public view. Once a record is requested by any member of the public, it is too late to destroy it. Destruction of records should occur consistent with a pre-determined plan based on good business practices and not based on the desire to keep otherwise public information from public exposure.

Finally, state law provides that any person who willfully and knowingly violates the provisions of the state law, by either making public those records which are considered confidential or by not making available to the public those records which are considered public, is guilty of a misdemeanor punishable by a fine of up to $100 and a jail term of up to 90 days. Also, a violation of the City Charter is potentially punishable as a misdemeanor.

Because the stakes are potentially high, a board or commission member should not hesitate to seek advice from City staff and the City Attorney's Office when any doubt exists as to the public nature of a record.

ETHICAL RULES

City Attorney's Office
Spring, 2008

The members of City boards and commissions are subject to certain rules of ethical conduct established by the City Charter at Article IV, §9 and by the City Code at §2-568. The City's rules of ethical conduct deal with:

1. conflicts of interest that prevent a board or commission member from either participating in a City decision or buying from or selling to the City;

2. prohibited gifts or favors; and

3. use of confidential information.

The following summary highlights the primary areas of concern addressed by these rules.

I. General Guidelines for Conflicts of Interest

A. Become familiar enough with the rules to recognize when a conflict issue may exist and know where to obtain the detailed rules.

B. When in doubt, the board or commission member should consult with the City Attorney's Office for any clarification of any applicable regulations.

C. The board or commission's Council liaison is permitted under the City Code to submit an inquiry to the Council Ethics Review Board on behalf of a board or commission member for an advisory opinion and recommendation.

D. As a general rule, it is better to err on the side of caution when determining whether or not there is a conflict of interest.

II. Conflicts of Interest in Decision Making

A. When does a conflict of interest arise in making a decision or recommendation?

1. <u>Financial interest</u>

a. When a decision or recommendation will entail a foreseeable, measurable financial benefit or detriment to you or a relative (or your business). The term "relative" is defined in the

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

b. Exceptions - Financial interest does not include:

(i) The interest that a board or commission member or relative has as an employee of a business, or as a holder of an ownership interest in such business, when the decision financially benefits or otherwise affects such business but entails no foreseeable, measurable financial benefit to the board or commission member or relative.

(ii) The interest that a board or commission member 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.

(iii) The interest that a board or commission member 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 a board or commission member.

(iv) The interest that a board or commission member 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.

(v) The interest that a board or commission member 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.

(vi) The interest that a board or commission member or relative has as an owner of a government-issued security, 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 a board or commission member, could immediately, definitely and measurably affect the value of such security, policy, deposit or similar interest.

(vii) The interest that a board or commission member, who is also a City employee, has in the compensation received from the City for personal services provided to the city by the member.

c. Examples

(I) A Water Board member would not be disqualified for making recommendations as to water rates, merely because he or she is a ratepayer. (See b.(iii) above)

(ii) A member would not be disqualified from making a decision concerning a bank from which they have received a commercially reasonable loan. (See b.(iv) above)

2. Personal interest

a. Often, if there is a question of a financial conflict of interest, but that interest appears to be exempted from the Charter provision dealing with financial interests, there may still be a "personal" conflict of interest.

b. A personal interest exists when a decision would, in the judgement of a reasonably prudent person, cause you or your relative to experience a direct and substantial benefit or detriment that is different in kind from that experienced by the public at large.

c. Exceptions - Personal interest does not include:

(I) The interest that a board or commission member or relative has as a member of a board, commission, committee, or authority of another government entity or of a nonprofit corporation or association or of an educational, religious, charitable, fraternal, or civic organization.

(ii) The interest that a board or commission member 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.

(iii) The interest that a board or commission member, who is also a City employee, has in the compensation, benefits, or terms and conditions of his or her employment with the city.

d. Example:

A Planning and Zoning board member should declare a conflict of interest and not become involved in the discussion or decision concerning a planned unit development when the member resides within the 500 foot notification area. This is because the member may experience a direct and substantial benefit or detriment different in kind from that experienced by the general public.

B. The Following State Laws Governing Conflicts of Interest Should Also be Borne in Mind.

1. Section 24-18-108.5, Colorado Revised Statutes, provides that a member of a board or commission shall not perform an official act which may have a direct economic benefit on a business or other undertaking in which such member has a direct or substantial financial interest.

2. Section 24-18-110, Colorado Revised Statutes, provides an affirmative defense to the board or commission member whose actions may "impinge on his fiduciary duty and the public trust" if the member provides disclosure of the possible conflict to the Secretary of State. This provision would not allow a person who has a conflict of interest under the City Charter to remain involved in the decision in which he or she has a conflict. However, this disclosure statement should probably be filed with the Secretary of State if there is no conflict under the City Charter but there may be a conflict under the state law standard stated in §24-18-108.5, C.R.S.. (It is questionable whether the state conflict of interest laws apply to Fort Collins, as a home rule municipality.) (See example 5 in the next section).

3. Section 18-8-308, Colorado Revised Statutes, provides that a member of a board or commission commits a criminal offense when he/she fails to provide at least 72 hours advance disclosure to the Secretary of State and City Council of a conflict of interest if he/she exercises any substantial discretionary function in connection with a government contract, purchase, payment, or other pecuniary transaction.

4. So, even if you determine that there is not a financial interest as defined by the City Charter, you still need to consider these state law requirements. The overlap and gaps between the City Charter and the state law conflicts provisions can be very confusing, so don't hesitate to seek advice from the City Attorney's Office.

C. What to do when there is a conflict of interest in a decision or recommendation?

1. The board or commission member must refrain from voting on or attempting to influence any decision in which they have a financial or personal interest.

2. The member must immediately file a statement of disclosure (copy attached) concerning the conflict with the City Clerk, City Manager, and chairperson of the board or commission. It may also be advisable to file a disclosure statement with the Secretary of State and the City Council if one of the above state laws is applicable. If the conflict is discovered during a meeting or if it's otherwise impossible to file a written disclosure, the member must give oral notice to all present and describe the nature of the interest.

III. Sales to the City

A. A board or commission member or relative is prohibited from having a financial interest in the sale to the City of any real or personal property, equipment, material, supplies or services to the City **unless** the board or commission member does not exercise, either directly or indirectly, any decision making authority over the sale, and in the case of services, does not have any supervisory authority over the services to be rendered.

Example:

A member of the Citizen Review Board may sell computers to the City because the board member does not exercise, either directly or indirectly, any decision making authority over the sale. The Citizen Review Board does not make recommendations to the City concerning the purchase of computers.

IV. Purchases from the City

A. A board or commission member or relative is prohibited from directly or indirectly purchasing any real or personal property from the City **unless** the property is being offered for sale at an established price, and not by bid or auction, on the same terms and conditions as to all members of the general public.

B. Examples:

1. A board member could buy a golf bag from a City owned golf course, if it's at the same price, terms and conditions that anyone else would receive.

2. A board member could not bid on real or personal property being sold by the City at auction.

V. Gifts and Honoraria (Section 2-568 of the City Code)

A. A board or commission member must not accept payment for any speeches, debates or other public events which occur as a result of his or her membership on a board or commission.

B. A board or commission member must not accept any gift or favor which, in the judgment of a reasonably prudent person, would tend to impair the board or commission member's independence of judgment in the performance of his or her official duties. However, the following are <u>not</u> considered to be prohibited gifts or favors:

1. Campaign contributions reported as required by state law.

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 the member is scheduled to participate.

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

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.

6. Payment of salary from employment.

C. State law prohibitions.[1]

1. Section 18-8-302, Colorado Revised Statutes, defines the felony crime of bribery to include the acceptance or the agreement to accept any pecuniary benefit upon agreement or understanding that the board member's vote, opinion, judgment, exercise of discretion, or other action will thereby be influenced.

2. Section 18-8-303, Colorado Revised Statutes, makes it a felony offense for a board or commission member to accept or agree to accept any pecuniary benefit as compensation for having, as a public servant, given a decision, opinion, recommendation, or vote favorable to another or for having otherwise exercised a discretion in his/her favor, whether or not he/she has in so doing violated his/her duty.

3. These two state bribery laws make it clear that it may well be unlawful to accept a gift in any amount which is intended to influence your board duties or reward you for having exercised your board duties in a certain way, even if the gift fits within a safe harbor provision of the City Code. This is because someone may contend that you knew the unlawful purpose behind the gift and agreed to accept it in exchange for some official "favor."

D. Example

1. Some members of the Affordable Housing Board are sent a small fruit basket by a developer who appreciates the members' position on affordable housing. Because it is perishable and insignificant in value, the receipt of such a gift would not constitute a prohibited gift,

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[1] Amendment 41 to the Colorado Constitution (Article XXIX) was approved by Colorado voters in 2006. It establishes, among other things, a value limitation of $50 per calendar year on the solicitation, acceptance or receipt of "any gift or thing of value" made by any "person" to a "government employee" and "local government official." This general rule is subject to various exceptions. However, Amendment 41 states that it is not applicable to home rule municipalities, such as the City of Fort Collins, that have adopted their own charter and ordinance provisions addressing the matters covered by Amendment 41. Therefore, this outline focuses on the City's own ethical rules and regulations, with attention to those other state regulations that may be applicable.

unless it was accepted as compensation for having made a specific decision, recommendation, or vote favorable to the developer.

VI. Use of Confidential Information (Section 2-568 of the City Code)

A. A board or commission member **may not**:

1. Knowingly use information received in confidence as a board or commission member to advance the financial or personal interests of the member or others.

2. Knowingly disclose any confidential information to any person who is not an officer, board member, or employee or to an officer, board member, 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.

3. Knowingly disclose any confidential information provided to City Council 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.

4. 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. In the event that a matter discussed in executive session comes before the board or commission for formal action at an open meeting, or if such formal action is anticipated, a member of the board or commission that will be taking such formal action may state 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. Knowingly elicit, accept, or inspect any confidential information about which the member has a conflict of interest;

6. Knowingly attend or participate in an executive session of the City Council or a board or commission pertaining to a subject which the board or commission member has a conflict of interest.

B. Exception to the prohibition on disclosure: Disclosure of the confidential information is permissible if necessary to protect the city from the gross mismanagement of public funds, the abuse of governmental authority, or

illegal or unethical practices. However, consultation with the City Attorney's Office is recommended before making any such disclosure.

C. Example

1. A board or commission member who hears confidential information in an executive session concerning the City's proposed purchase of real estate should not give that information to a friend. The disclosure would violate the Code.

VII. Consequences for Not Recognizing or Violating Conflict of Interest Provisions

A. To the individual

1. A violation of City Charter, Code, or state law provisions can be investigated and prosecuted as a criminal offense, with a fine and/or imprisonment as a possible punishment.

2. The member being convicted of a conflict of interest violation would be removed from membership on the board or commission and would be ineligible for any City office or employment for two years thereafter.

B. To the City

1. Any contracts made in violation of conflict of interest provisions are voidable.

2. Any kind of quasi-judicial decisions made in violation of conflict of interest provisions could be set aside by a court.

3. There is the possibility that a party aggrieved by a decision made in violation of conflict of interest provisions could seek damages from the City; however, that party has the burden of proof of establishing the conflict.

EXAMPLES

Spring 2008

"WHAT SHOULD I DO?"

Example #1

A member of the Water Board owns an irrigation/sprinkler installation business and is very knowledgeable about irrigation, sprinklers, and water supply issues. This knowledge is what convinced City Council that she would make a good candidate for the Board.

The Board is studying ways to reduce the risk of back-flow from irrigation systems into the City's water supply and one of the options that could be recommended to City Council is an ordinance that would require the use of a specific type of back-flow prevention device by anyone who currently has or who installs a yard sprinkler system. If the ordinance is adopted, the member would probably see an increase in business resulting from the widespread need to install this device.

Should the member declare a conflict of interest?

Example #2

A member of the Telecommunications Board is very knowledgeable in the field of telecommunications and will be serving as an expert witness for a citizen who has filed a lawsuit against the City concerning a telecommunications issue (The City allowed the cable company to dig a trench in the citizen's back yard, resulting in damage). Can this member continue to be on the Board? Also, the Board member's company is doing work for the City's utility department, but the member does not exercise any supervisory authority over the services that his company provides to the City. Is the member's business with the City a problem?

Example #3

A member of the Tennis Board (no, we don't really have such a Board) and his wife are offered a "comp" health club pass at a swank mountain resort from a tennis pro who works there and who is an applicant for a recreation position that supervises the City's youth tennis program. The Tennis Board will be interviewing all the applicants and will make recommendations to the hiring department. The health club pass probably has a value of approximately $100, although the value is hard to quantify.

Should the member accept the pass?

Example #4

A youth reports to a Youth Advisory Board member that an employee at the local teen center is rude and condescending to many of the youth who frequent the center. After visiting the center and noticing the poor behavior by the employee, the member sends a letter to the teen center director demanding that the employee be severely disciplined. The letter is written on City letterhead and states that the demand is made on behalf of the Youth Advisory Board.

Did the member act properly?

Example #5

A member of the Planning and Zoning Board has a personal cause: to protect wildlife habitat from development. She pickets, writes letters, and raises money for conservation trust organizations, all in the advancement of her cause. May she participate in a decision involving consideration of a development plan proposal of a parcel of property that currently provides good wildlife habitat?

Answers

Example #1

Conclusion: Yes, the member should declare a conflict of interest.

Analysis:

(1) Is there a financial interest conflict?

As the owner of a business, the member stands to profit from the adoption of such an ordinance. In determining whether or not the member has a financial interest that creates a conflict of interest under the City Charter, it must be determined whether or not the recommendation would entail a foreseeable, measurable financial benefit to him. Certainly, it is foreseeable, but is it measurable? Since this is questionable, let's go to the personal interest analysis.

(2) Is there a personal interest conflict?

Even if it is not clear that the member has a financial interest that creates a conflict of interest, we must consider whether or not the recommendation would constitute a personal interest as defined by the City Charter. The recommendation would constitute a personal interest if the member would, in the judgement 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. Since it is clear that the member would directly and substantially benefit through increased profit in a way that is not experienced by the general public and none of the exceptions apply, the member should declare a conflict, file the Conflict of Interest Disclosure Statement with the City Clerk, and remove herself from the discussion and consideration of the recommendation.

(3) Is there a state law financial conflict?

As it appears that there is a Charter-based personal interest conflict, there is not a need to determine whether or not a state law conflict exists. The member is prohibited from participating in the recommendation and should file the conflict of interest disclosure statement with the City Clerk. In the absence of a personal interest conflict, the test for a state law financial conflict would be whether or not the member's actions would have a direct economic benefit to his business. In this case, it appears that there is a strong argument that it would.

Example #2

Conclusion #1: The member may continue to serve on the Board.

Analysis:

A person's ability to serve on a board or commission is not called into question by a single potential conflict. However, if the Board were to deal with an issue that was related to the lawsuit, the member would have to declare a conflict of interest and not participate in the board's consideration of the issue. This is because his employment as an expert witness for the plaintiff in the lawsuit gives him at least a personal interest (direct and substantial benefit or detriment different in kind from that experienced by the general public) in the issue.

Conclusion #2: The Board Member's company may do business with the City.

Analysis:

The next question presented is whether there is a prohibited sale of services to the City. Since the Board member does not exercise any supervisory authority as a Board member over the services that his company provides to the City utility department, the sales prohibition in the City Charter is not applicable. If, however, the Telecommunications Board oversaw the work performed by the member's company or provided recommendations to City management or City Council concerning the evaluation of the company's performance, then the sale of services to the City would be prohibited.

Example #3

Conclusion: The member would be well advised not to accept the pass.

Analysis:

The rules of ethical conduct described in the City Code state that a board member shall refrain from accepting any gift or favor which, in the judgment of a reasonably prudent person, would tend to impair the member's independence of judgment in the performance of his or her official duties. The rules go on to specifically provide that certain items do not constitute prohibited gifts or favors. These include items of perishable or nonpermanent value that are *insignificant* in value, including tickets to recreational events.

Here, the pass arguably does have significant value. If that is true, it would not fit into the exception for tickets to recreational events that are insignificant in value and it would be subject to the general test applicable to gifts and favors. In applying that test, a reasonably prudent person might well think that a person making a hiring recommendation could be duly influenced by a gift of significant value from one of the applicants.

Also, keep in mind that the state bribery statute would be violated if a gift of any pecuniary value was accepted or agreed to be accepted by a board member with the agreement or understanding that the board member's vote would be influenced by the gift. The "comp" health club pass could become a very expensive gift for the board member!

Example #4

Conclusion: No, the member exceeded his authority.

Analysis:

(1) Is the action taken by the Board member within the scope of the functions of the Board? (2) Did the Board authorize the member's actions?

Each City board or commission has its functions defined by the City Code provisions which create the board or commission. The Youth Advisory Board's functions, as set forth at §2-446 of the City Code, do not include investigating or making recommendations concerning personnel at teen centers. By acting outside the scope of the Board's functions, the member has risked the loss of governmental immunity protection provided by state law. This loss could mean that the City would not provide a legal defense for the member or pay a judgment in the event that the member was sued or otherwise became liable for the payment of damages resulting from his actions.

Even if the Board member was taking action that was within the scope of the Board's functions, the member's use of City letterhead and the member's statement that he is acting "on behalf of the Youth Advisory Board" is inappropriate as the Board, as a whole, did not authorize the action.

Example #5

Conclusion: The member does not appear to have a conflict as defined by the Charter or state law and is free to participate in the board decision process. And, because she has not publicly advocated for or against the project itself, she is not disqualified on due process grounds.

Analysis:

(1) Is there a financial interest conflict?

The member does not appear to have an interest that can be equated with money or its equivalent. Even if the board member was a nonsalaried officer or member of a civic organization dedicated to the protection of wildlife habitat, such a situation is excluded as a conflict by the Charter. There does not appear to be a financial interest conflict.

(2) Is there a personal interest conflict?

Assuming that the member does not live adjacent to or within a Code defined perimeter of interest, it would appear that the member would not experience a direct and substantial benefit or detriment that is different in kind from that experienced by the public at large. As she will be affected by the preservation or loss of wildlife habitat in the same manner as the rest of the public, there does not appear to be a personal interest conflict. Even if the board member was also the member of the board of a non-profit organization dedicated to the preservation of wildlife habitat, such a situation is excluded as a personal conflict by the Charter.

(3) Has the impartiality of the board member been compromised?

Because the Planning and Zoning Board will be making a quasi-judicial decision with regard to the project development plan, the member must consider not only the conflict of interest rules but also the due process requirements associated with quasi-judicial proceedings, including the requirement that all decision makers remain impartial. If the member had been publicly advocating for or against the particular project development plan, the member would likely not be able to participate in a decision of the board relating to the plan. However, because her activities were not directed toward the plan itself, the relevant case law would allow her to participate.

CONFLICT OF INTEREST DISCLOSURE STATEMENT
CITY OF FORT COLLINS, COLORADO

The following disclosure statement is submitted to the Clerk of the City of Fort Collins pursuant to the requirements of Article IV, Section 9 of the City Charter and, to the extent applicable, Section 24-18-109(3)(a), C.R.S.	
Name:	
Title:	
Decision(s) affected (give description of item to be addressed by Council, Board, etc.):	
Brief statement of interest:	
Date:	Signature:
REMOVAL OF CONFLICT OF INTEREST I affirm that the above-stated conflict of interest no longer exists.	
Date:	Signature:

cc: City Attorney
City Manager

Section 9. Conflicts of interest.

(a) *Definitions.* For purposes of construction of this Section 9, the following words and phrases shall have the following meanings:

Business means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, activity or entity.

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.

Officer or employee means any person holding a position by election, appointment or employment in the service of the city, whether part-time or full-time, including a 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 this Article by ordinance of the Council.

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.

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

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.

(b) *Rules of conduct concerning conflicts of interest.*

(1) *Sales to the city.* No officer or employee, or relative of such officer or employee, shall have a financial interest in the sale to the city of any real or personal property, equipment,

material, supplies or services, except personal services provided to the city as an officer or employee, if:

a. such officer or employee is a member of the Council;

b. such officer or employee exercises, directly or indirectly, any decision-making authority concerning such sale; or

c. in the case of services, such officer or employee exercises any supervisory authority over the services to be rendered to the city.

(2) *Purchases from the city.* No officer, employee or relative shall, directly or indirectly, purchase any real or personal property from the city, except such property as is offered for sale at an established price, and not by bid or auction, on the same terms and conditions as to all members of the general public.

(3) *Interests in other decisions.* Any officer or employee who has, or whose relative has, a financial or personal interest in any decision of any public body of which he or she is a member or to which he or she makes recommendations, shall, upon discovery thereof, disclose such interest in the official records of the city in the manner prescribed in subsection (4) hereof, and shall refrain from voting on, attempting to influence, or otherwise participating in such decision in any manner as an officer or employee.

(4) *Disclosure procedure.* If any officer or employee has any financial or personal interest requiring disclosure under subsection (3) of this section, such person shall immediately upon discovery thereof declare such interest by delivering a written statement to the City Clerk, with copies to the City Manager and, if applicable, to the chairperson of the public body of which such person is a member, which statement shall contain the name of the officer or employee, the office or position held with the city by such person, and the nature of the interest. If said officer or employee shall discover such financial or personal interest during the course of a meeting or in such other circumstance as to render it practically impossible to deliver such written statement prior to action upon the matter in question, said officer or employee shall immediately declare such interest by giving oral notice to all present, including a description of the nature of the interest.

(5) *Violations.* Any contract made in violation of this Section shall be voidable by the city. If voided within one (1) year of the date of execution thereof, the party obtaining payment by reason of such contract shall, if required by the city, forthwith return to the city all or any designated portion of the monies received by such individual from the city by reason of said contract, together with interest at the lawful maximum rate for interest on judgments.

CITY CODE
SECTION 2-568

Sec. 2-568. Ethical rules of conduct.

(a) *Definitions.* The following words, terms and phrases, when used in this Section and § 2-569, shall have the following meanings:

(1) *Board and commission member* shall mean a member of any appointive board or commission of the City.
(2) *Confidential information or information received in confidence* shall mean:

a. 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;

b. 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

c. 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.

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

(4) *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:

a. Established under the provisions of the Colorado Revised Statutes;

b. Governed by state statutory rules of ethical conduct; and

c. Expressly exempted from the provisions of Article IV of the City Charter by ordinance of the City Council.

(b) Notwithstanding the provisions of § 1-15 of the Code, an alleged violation of the provisions of this Section 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 § 2-569.

(c) *Rules of conduct.*
(1) 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.

a. 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.

b. 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.

c. 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.

d. 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.

e. Certain distribution and discussion by City Manager and City Attorney permitted. Notwithstanding the provisions of Subparagraphs c. and d. 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.

f. 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.

g. 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 § 2-569.

(2) No Councilmember shall represent any person or interest before the City Council or any board or commission of the City.

(3) 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:

a. Campaign contributions reported as required by Chapter 7, Article V of this Code;

b. A nonpecuniary award publicly presented by a nonprofit organization in recognition of public service;

c. 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;

d. 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;

e. 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

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

24-18-108.5. Rules of conduct for members of boards and commissions.

(1) Proof beyond a reasonable doubt of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty.

(2) A member of a board, commission, council, or committee who receives no compensation other than a per diem allowance or necessary and reasonable expenses shall not perform an official act which may have a direct economic benefit on a business or other undertaking in which such member has a direct or substantial financial interest.

24-18-110. Voluntary disclosure.

A member of a board, commission, council, or committee who receives no compensation other than a per diem allowance or necessary and reasonable expenses, a member of the general assembly, a public officer, a local government official, or an employee may, prior to acting in a manner which may impinge on his fiduciary duty and the public trust, disclose the nature of his private interest. Members of the general assembly shall make disclosure as provided in the rules of the house of representatives and the senate, and all others shall make the disclosure in writing to the secretary of state, listing the amount of his financial interest, if any, the purpose and duration of his services rendered, if any, and the compensation received for the services or such other information as is necessary to describe his interest. If he then performs the official act involved, he shall state for the record the fact and summary nature of the interest disclosed at the time of performing the act. Such disclosure shall constitute an affirmative defense to any civil or criminal action or any other sanction.

18-8-308. Failing to disclose a conflict of interest.

(1) A public servant commits failing to disclose a conflict of interest if he exercises any substantial discretionary function in connection with a government contract, purchase, payment, or other pecuniary transaction without having given seventy-two hours' actual advance written notice to the secretary of state and to the governing body of the government which employs the public servant of the existence of a known potential conflicting interest of the public servant in the transaction with reference to which he is about to act in his official capacity.

(2) A "potential conflicting interest" exists when the public servant is a director, president, general manager, or similar executive officer or owns or controls directly or indirectly a substantial interest in any nongovernmental entity participating in the transaction.

(3) Failing to disclose a conflict of interest is a class 2 misdemeanor.

18-8-302. Bribery.

(1) A person commits the crime of bribery, if:

(a) He offers, confers, or agrees to confer any pecuniary benefit upon a public servant with the intent to influence the public servant's vote, opinion, judgment, exercise of discretion, or other action in his official capacity; or

(b) While a public servant, he solicits, accepts, or agrees to accept any pecuniary benefit upon an agreement or understanding that his vote, opinion, judgment, exercise of discretion, or other action as a public servant will thereby be influenced.

(2) It is no defense to a prosecution under this section that the person sought to be influenced was not qualified to act in the desired way, whether because he had not yet assumed office, lacked jurisdiction, or for any other reason.

(3) Bribery is a class 3 felony.

18-8-303. Compensation for past official behavior.

(1) A person commits a class 6 felony, if he:

(a) Solicits, accepts, or agrees to accept any pecuniary benefit as compensation for having, as a public servant, given a decision, opinion, recommendation, or vote favorable to another or for having otherwise exercised a discretion in his favor, whether or not he has in so doing violated his duty; or

(b) Offers, confers, or agrees to confer compensation, acceptance of which is prohibited by this section.

FAIR CAMPAIGN PRACTICES ACT GUIDELINES

City Attorney's Office

Spring, 2008

Occasionally, boards and commissions may find themselves wanting to take a position or otherwise become involved in campaigns concerning local or state-wide ballot issues.

First, the board or commission needs to ensure that the action it is contemplating taking is consistent with and authorized by the provisions of the City Code that define the functions and responsibilities of the specific board or commission. If a board or commission acts beyond the scope of its authority, it may subject its members to a loss of entitlement to governmental immunity and its members may be accused of violating the City Charter or Code. Second, assuming that the actions the board or commission desires to take are consistent with and authorized by the City Code, the restrictions of the Colorado Fair Campaign Practices Act ("FCPA") (C.R.S. §1-45-101, et seq.) must be considered.

The FCPA specifically states that no board or commission of a city shall make any contribution in campaigns involving the election of any person to any public office; nor expend any public moneys from any source, or make any contributions to urge electors to vote in favor of or against any state-wide or local ballot issue. For state-wide ballot issues, the prohibition begins when the ballot issue has been submitted to the secretary of state for the designation of a title. For local ballot issues, the prohibition begins when the ballot issue has been approved by the City Council for placement on the ballot.[2] What follows are guidelines concerning what is permissible and what is impermissible under the FCPA with regard to ballot issues.

It is permissible under the FCPA to do the following:

1. The City may expend public moneys and may use staff time and City resources to create and dispense a factual summary regarding the ballot issue. The summary must include arguments both for and against the question. The

[2]The City's local ballot measures may not be subject to the FCPA because the FCPA applies only to local ballot issues that have been submitted for the purpose of having a title fixed pursuant to a particular provision of the state law. City ballot measures have their title and submission clause fixed pursuant to the provisions of the City's home rule charter. Historically, however, the City has chosen to abide by the requirements of the FCPA with regard to these local measures.

summary must not contain a conclusion or opinion in favor of or against the question.

2. A board or commission may freely discuss and pass a resolution urging City Council to take a position in favor of or against a ballot issue if the action is consistent with and authorized for that board or commission by the provisions of the City Code. Staff background research related to the resolution performed prior to its passage is also permissible. However, the resolution may be publicly distributed by the City only by established customary means.

3. A board or commission member may respond at a board or commission meeting to questions about a ballot issue if the member has not solicited the questions.

4. Board and commission members may advocate for or against a ballot issue on their own time, and they may contribute their own personal funds to urge electors to vote in favor of or against the issue. However, any such activities should be documented to show they did not involve the use of public moneys.

The following activities are <u>impermissible</u> under the FCPA with regard to ballot questions:

1. Public funds and resources may not be used to influence the passage or defeat of a ballot issue (there is a $50 exception for policy making officials that is not applicable to boards and commissions).

2. City staff may not work to influence the passage or defeat of a ballot issue on City time.

3. City facilities and equipment may generally not be used to influence the passage or defeat of a ballot issue. However, if the City has a policy of allowing public groups to use certain City facilities for community purposes, the City may allow groups opposed to or in favor of a ballot issue to also use the facilities so long as this policy is applied in a fair fashion. The City cannot be involved in organizing such events.

1-45-117. State and political subdivisions - limitations on contributions.

(1) (a) (I) No agency, department, board, division, bureau, commission, or council of the state or any political subdivision thereof shall make any contribution in campaigns involving the nomination, retention, or election of any person to any public office, nor shall any such entity expend any public moneys from any source, or make any contributions, to urge electors to vote in favor of or against any:

(A) State-wide ballot issue that has been submitted for the purpose of having a title designated and fixed pursuant to section 1-40-106 (1) or that has had a title designated and fixed pursuant to that section;

(B) Local ballot issue that has been submitted for the purpose of having a title fixed pursuant to section 31-11-111 or that has had a title fixed pursuant to that section;

(C) Referred measure, as defined in section 1-1-104 (34.5);

(D) Measure for the recall of any officer that has been certified by the appropriate election official for submission to the electors for their approval or rejection.

(II) However, a member or employee of any such agency, department, board, division, bureau, commission, or council may respond to questions about any such issue described in subparagraph (I) of this paragraph (a) if the member, employee, or public entity has not solicited the question. A member or employee of any such agency, department, board, division, bureau, commission, or council who has policy-making responsibilities may expend not more than fifty dollars of public moneys in the form of letters, telephone calls, or other activities incidental to expressing his or her opinion on any such issue described in subparagraph (I) of this paragraph (a).

(b) (I) Nothing in this subsection (1) shall be construed as prohibiting an agency, department, board, division, bureau, commission, or council of the state, or any political subdivision thereof from expending public moneys or making contributions to dispense a factual summary, which shall include arguments both for and against the proposal, on any issue of official concern before the electorate in the jurisdiction. Such summary shall not contain a conclusion or opinion in favor of or against any particular issue. As used herein, an issue of official concern shall be limited to issues that will appear on an election ballot in the jurisdiction.

(II) Nothing in this subsection (1) shall be construed to prevent an elected official from expressing a personal opinion on any issue.

(III) Nothing in this subsection (1) shall be construed as prohibiting an agency, department, board, division, bureau, commission, or council of the state or any political subdivision thereof from:

(A) Passing a resolution or taking a position of advocacy on any issue described in subparagraph (I) of paragraph (a) of this subsection (1); or

(B) Reporting the passage of or distributing such resolution through established, customary means, other than paid advertising, by which information about other proceedings of such agency, department, board, division, bureau, or council of the state or any political subdivision thereof is regularly provided to the public.

(C) Nothing in this subsection (1) shall be construed as prohibiting a member or an employee of an agency, department, board, division, bureau, commission, or council of the state or any political subdivision thereof from expending personal funds, making contributions, or using personal time to urge electors to vote in favor of or against any issue described in subparagraph (I) of paragraph (a) of this subsection (1).

(2) The provisions of subsection (1) of this section shall not apply to:

(a) An official residence furnished or paid for by the state or a political subdivision;

(b) Security officers who are required to accompany a candidate or the candidate's family;

(c) Publicly owned motor vehicles provided for the use of the chief executive of the state or a political subdivision;

(d) Publicly owned aircraft provided for the use of the chief executive of the state or of a political subdivision or the executive's family for security purposes; except that, if such use is, in whole or in part, for campaign purposes, the expenses relating to the campaign shall be reported and reimbursed pursuant to subsection (3) of this section.

(3) If any candidate who is also an incumbent inadvertently or unavoidably makes any expenditure which involves campaign expenses and official expenses, such expenditures shall be deemed a campaign expense only, unless the candidate, not more than ten working days after the such expenditure, files with the appropriate officer such information as the secretary of state may by rule require in order to differentiate between campaign expenses and official expenses. Such information shall be set forth on a form provided by the appropriate officer. In the event that public moneys have been expended for campaign expenses and for official expenses, the candidate shall reimburse the state or political subdivision for the amount of money spent on campaign expenses.

(4) Any violation of this section shall be subject to the sanctions authorized in section 1-45-113 or any appropriate order or relief, including injunctive relief or a restraining order to enjoin the continuance of the violation.

LIABILITY OF BOARD AND COMMISSION MEMBERS

City Attorney's Office
March, 2007

I. INTRODUCTION

In this increasingly litigious society, municipal officials, including members of boards and commissions, need to be aware of the potential for personal liability that can arise from the performance of their municipal duties. Today, a major civil lawsuit can threaten the financial well-being of most people if they have no insurance to pay the attorneys' fees, the other costs of litigation, and to pay any judgments or settlements that result from the lawsuit. Fortunately for municipal officials in Fort Collins, both state law and local policy generally require the City to defend their officials and employees by paying their costs of defense in such a lawsuit and to indemnify them by paying any judgments or settlements that the officials may incur in the lawsuit. However, as explained below, that is not true in certain situations, most notably when the conduct of the official or employee was "willful or wanton" or was outside the scope of the performance of their duties.

II. CITY'S OBLIGATION TO DEFEND AND INDEMNIFY ITS OFFICIALS

A. Colorado Governmental Immunity Act

In 1971, the Colorado General Assembly adopted into law the Colorado Governmental Immunity Act ("the Act"). The Act was adopted for the purpose of enacting by statute the common law doctrine of sovereign immunity. Simply stated, sovereign immunity is the legal doctrine which states that governments and their officials cannot be sued for their negligent acts and omissions unless the government consents to the suit.

One of the primary reasons for the adoption of the Act was the recognition that government officials should be provided with protection from unlimited liability so that they will not be discouraged from providing the services or functions required by the citizens or from exercising powers that are authorized or required by law.

Nonetheless, the General Assembly has determined that governmental entities and their officials should not have immunity from liability in all circumstances. Therefore, the Act specifically defines certain limited circumstances for which

governmental entities and their officials will not be protected from liability based on sovereign immunity. These circumstances are discussed below in Section III.C.

B. Requirements Under the Act that Obligate a Municipality to Defend and Indemnify Its Board and Commission Members

Under the Act, a municipality is obligated to defend and indemnify its officials with respect to most civil claims brought against them. The Act provides, however, that the municipality is obligated to so defend and indemnify its officials only if all of the following requirements are satisfied:

(1) The claim arises out of injuries sustained from an act or omission of the official occurring during the performance of the official's duties and within the scope of the official's employment;

(2) The official's act or omission was not "willful and wanton";[3]

(3) If the lawsuit filed against the official does not name the municipality as a co-defendant, the official must have notified the municipality in writing about the lawsuit within fifteen (15) days after being served with the summons and complaint;

(4) The official has not willfully and knowingly failed to notify the municipality of the incident or occurrence which led to the claim within a reasonable time after such incident or occurrence, if such incident or occurrence could reasonably have been expected to lead to a claim;

A municipality is liable for payment of all judgments and settlements against its officers and employers when (1) through (4) apply and the following also apply:

(5) The defense of sovereign immunity is not available under the Act to bar the claim against the municipality; and

[3]An official's act or omission is considered "willful and wanton" if the act or omission was purposefully committed which the official must have realized as dangerous, done heedlessly and recklessly, without regard to consequences, or of the rights and safety of others, particularly of the person injured. Said another way, an act or omission that the official committed deliberately, intentionally, or maliciously.

(6) The official has not compromised or settled the claim without the consent of the municipality.

In most cases it will be obvious at the beginning of the lawsuit whether all of these requirements have been satisfied. The Act, however, seems to anticipate that at the beginning of a lawsuit there will sometimes be uncertainty as to whether requirements (1) and (2) above have been satisfied.

In such a case, the Act provides that if a court determines that the claim did not arise out of injuries sustained from an act or omission of the official occurring during the performance of the official's duties and within the scope of the official's employment, or if it determines that the official's act or omission was willful and wanton, then the municipality is not liable for the official's costs of defense (and presumably is not obligated to indemnify the official). If a court makes either of these determinations, the municipality may then ask the court to order the official to reimburse the municipality for the reasonable costs and attorneys' fees that it may have incurred up to that time in defense of the official.

C. City's Obligation Under the Act and City Code §2-611 to Defend and Indemnify Its Officials from Civil Claims

The Act's provisions regarding a municipality's obligation to defend and indemnify its officials that are discussed above apply to all Colorado municipalities and, therefore, apply to the City and its officials, including board and commission members. However, it is important to note that the City Council has adopted City Code Section 2-611 which sets forth, much like the Act does, the requirements that must be satisfied in order to obligate the City to defend and indemnify its officials in civil lawsuits brought against them. (City Code §2-611 is attached hereto) The requirements of Code Section 2-611 are substantially identical to the requirements of the Act.

D. City's Obligation Under City Code §2-613 to Pay Attorneys' Fees Incurred by Its Officials in Defending Criminal Investigations or Charges

Section 2-613 of the City Code provides that the City will also pay, under certain circumstances, the reasonable attorneys' fees incurred by City officials and employees, including members of boards and commissions, in defending themselves against criminal investigations or charges. (City Code §2-613 is attached hereto) The City is obligated to pay such attorneys fees only if all of the following circumstances exist:

(1) The investigation is conducted or the charge is formally filed by an agency of the federal, state or local government;

(2) The investigation or charge arises from an alleged act or omission of the official occurring during the performance of the official's duties and within the scope of the official's employment;

(3) The investigation results in no charge being filed, or the prosecution of the charges results in dismissal or acquittal; and

(4) The City Manager determines that the official did not act in a willful and wanton fashion.

If any one of these four circumstances does not exist in connection with a particular criminal investigation or charge, the City is not obligated to pay the attorneys' fees of the official investigated or charged with that crime.

Under the Act, Colorado municipalities have no obligation to pay the attorneys' fees of their officials charged with a crime, regardless of the circumstances. So, in the City Code, the City has obligated itself to do more than it is required to do under State law.

III. CIVIL CLAIMS AGAINST MUNICIPAL OFFICIALS

A. Types of Civil Claims

In Colorado, civil claims that seek monetary damages against municipal officials are usually of two general types. The first is a tort claim based on the common law or statutory law of the State ("a State-law tort claim"). The second is a civil rights claim based on Federal law.

The term "tort" refers to a civil wrong or injury, other than a breach of contract, for which the courts will provide a remedy in the form of a civil action for monetary damages. Torts can arise either as a result of an intentional or a negligent act or omission.

State-law tort claims arise from an almost infinite variety of contexts and circumstances. A few examples of the most common kinds of State-law tort claims that are filed with the City include: (1) claims for bodily injury and property damage resulting from the negligent operation of City motor vehicles; (2) claims for bodily injury and property damage resulting from dangerous conditions of City streets and sidewalks; (3) claims for property damage resulting from the negligent maintenance and operation of the City's sewer system; and (4) claims for bodily injury resulting from dangerous conditions of a public facility located in a City park or recreational area.

It is unlikely that State-law tort claims will form the basis for a claim against an official sitting on a City board or commission for the obvious reason that members of City boards and commissions rarely have the opportunity to be involved in the kind of activities from which such claims might arise. Not only is it unlikely that these kinds of claims would be asserted against such officials, it is also unlikely that other kinds of State-law tort claims would be asserted against them because of the sovereign immunity protection that is afforded municipal officials under the Colorado Governmental Immunity Act. This immunity protection from State-law tort claims will be discussed in more detail in Section III.C. below.

The second type of claim, a civil rights claim, arises under Federal law and is commonly called a "Section 1983 claim." It is called this because the Federal statute which creates this claim is found in the Federal Code at 42 U.S.C. Section 1983.

Section 1983 was enacted as a federal statute in the Civil Rights Act of 1871 (also known as the Ku Klux Klan Act of 1871). The original purpose of this Civil Rights Act was to provide a federal civil remedy for African-Americans whose constitutional rights were being violated by state authorities in the post-Civil War South. In modern times, however, the application of Section 1983 has been significantly broadened. In fact, if there is such a thing as a "growth industry" in the legal profession, Section 1983 claims against municipalities and their officials has been one during the past 20 years. In fact today, many, if not most, civil claims for monetary damages brought against municipal officials in Colorado are asserted as Section 1983 claims.

B. Elements of State-Law Tort Claims

As mentioned previously, a tort can either result from an intentional or a negligent act or omission. Torts that result from an intentional act or omission are called "intentional torts." Torts based on a negligent act or omission are simply called "negligence" (or sometimes "unintentional torts").

An intentional tort can be described as a wrong perpetrated by one who intends to do that which the law has declared to be wrong. Examples of intentional torts include battery, assault, and intentional infliction of emotional distress. Each of these torts has its own peculiar elements, but the key element that must be proven to establish each as a civil claim is intent. And again, the intent that must be proven is the intent to do that act which the law has declared to be wrong. Said another way, the wrongful act must have been committed intentionally, deliberately, or recklessly and heedlessly.

As probably seems apparent, the intent element that is often required for intentional torts is closely related to the notion of an act being "willful and wanton." Consequently, if a municipal official's conduct which gives rise to an intentional tort claim was willful and wanton, the municipality would have no obligation to defend and indemnify the official from a civil claim based upon such conduct, as was discussed in Section II.B. above. In addition, if such conduct was willful and wanton, the official would not have sovereign immunity as a defense to the claim, as will be discussed in Section III.C. below. **Therefore, conduct which constitutes an intentional tort should be scrupulously avoided by municipal officials.**

Negligence, on the other hand, is a tort that is based on the concept of a careless act or omission being committed rather than an intentional act or omission. Negligence can also be described as doing an act which a reasonably prudent person would not do, or failing to do an act which a reasonably prudent person would do.

To establish a claim for negligence, four basic elements must be shown. These elements are:

(1) A duty recognized by law exists that requires the defendant to conform his or her conduct to a certain standard of care to protect others from unreasonable risks of harm;

(2) The defendant has breached that duty by failing to conform to the required standard of care;

(3) A reasonable causal connection exists between the defendant's conduct and the resulting injury (often called proximate cause); and

(4) The plaintiff has suffered actual loss or damage.

If any of these four elements is lacking, a civil action for negligence will not be sustained.

C. Immunity Defenses to State-Law Tort Claims

Under the Colorado Governmental Immunity Act, municipal officials have sovereign immunity for most State-law tort claims provided:

(1) That the official's act or omission from which the claim arises occurred during the performance of the official's duties and within the scope of the official's employment; and

(2) That the official's act or omission was not willful and wanton.

If the official's act or omission does not satisfy both of these conditions, the official will not have the protection of sovereign immunity under the Act.

The word "most" is emphasized in the preceding paragraph because the Act does not give a municipal official sovereign immunity from all State-law tort claims. The Act specifically waives sovereign immunity for State-law tort claims against municipal officials that result from:

(1) The operation of a municipally-owned or leased motor vehicle by an official while in the course of his or her employment;

(2) The operation and maintenance by a municipality of its public water, gas, sanitation, electrical, power, and swimming facilities;

(3) The dangerous condition[4] of a public building;

(4) The operation of a public hospital, correctional facility, or a jail by a municipality;

[4]"Dangerous condition" means a physical condition of a facility or the use thereof which constitutes an unreasonable risk to the health or safety of the public, which is known to exist or which in the exercise of reasonable care should have been known to exist and which condition if proximately caused by the negligent act or omission of the municipality in constructing or maintaining such facility.

(5) The dangerous condition of any public highway, road, street, or sidewalk within the municipality that physically interferes with the movement of traffic; and

(6) The dangerous condition of a municipality's public hospital or jail; of a municipality's public water, gas, sanitation, electrical, power, or swimming facility; or of a public facility located in a park or recreation area maintained by the municipality.

It is unlikely that City officials, particularly those serving on advisory boards and commissions, will operate a City motor vehicle; be involved in creating a dangerous condition on a City street or sidewalk or in a City facility; or participate in the operation or maintenance of any kind of City facility or utility. Consequently, it is unlikely that City officials who are performing their official duties within the scope of their employment and who are not committing willful and wanton acts or omissions, will be the object of a State-law tort claim, or at least the object of a successful State-law tort claim provided that sovereign immunity is properly asserted as a legal defense to the claim.

Although sovereign immunity is not available under the Act to municipal officials as a legal defense under the circumstances discussed above, it should be noted that another type of immunity is sometimes available to municipal officials as a defense to State-law tort claims when sovereign immunity is not available. This immunity is the common law doctrine known as "official immunity."

Under the doctrine of official immunity, a Colorado municipal official has immunity from liability from State-law tort claims arising from the official's performance of a discretionary act within the scope of the official's duties provided that the official's conduct in performing such act was not willful, malicious, or intended to cause harm. An official's act is considered "discretionary" if it was an act that the official was not required by law to either perform or not perform, but instead was an act of a judgmental, planning, or policy nature.

If, however, the official's act was "non-discretionary," that is, it involved the official performing a mandatory duty at the operational level, the official will not have official immunity unless the court determines that the needs of the municipality outweigh the harm to the citizen in the context of the facts of the particular claim. The court does this by balancing the harm to the individual citizen against the policy of promoting effective government.

Most decisions by City officials who serve on City boards and commissions will be considered discretionary acts. Therefore, official immunity will usually be an effective defense to State-law tort claims against such officials. However, the official immunity doctrine will only be needed by such City officials as a defense to a State-law tort claim when the defense of sovereign immunity under the Act is not otherwise available.

D. Elements of Federal Section 1983 Claims

As mentioned previously, many, if not most, civil claims filed today in Colorado seeking monetary damages against municipal officials are brought pursuant to Section 1983 of the Civil Rights Act of 1871. Section 1983 reads in pertinent part as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

To sustain a claim under Section 1983 against a municipal official, a plaintiff must prove the following elements:

(1) That a deprivation of the plaintiff's rights secured by the U.S. Constitution or by a federal law has occurred;

(2) That the official which deprived the plaintiff of such rights did so acting under color of state law;[5]

(3) That there is a causal link between the official's conduct and the plaintiff's injuries; and

(4) That the plaintiff has suffered actual loss or damage.

[5]A municipal official who is performing his or her official duties within the scope of his or her employment will almost always be considered as acting under color of state law.

Section 1983 claims against municipal officials typically allege that the plaintiff's Federal constitutional rights were violated by the official. Usually it is claimed that the official deprived the plaintiff of liberty or property without due process of law; deprived the plaintiff of property without just compensation; or that the plaintiff's constitutional protections relating to equal protection, free speech, religion, free association, privacy, and searches and seizures were violated. It should be noted that a Section 1983 claim can arise from the violation of a federal statutory right as well.

Although the courts have not always been clear or consistent on this point, a municipal official will generally have no liability for a Section 1983 claim if the official's conduct which gives rise to the claim was merely negligent conduct. In order for there to be liability, it appears that the official's conduct must have been intentional, or at least conduct amounting to "reckless disregard" or "gross negligence." Therefore, if a municipal official's conduct was such that liability under Section 1983 is a real possibility, the familiar question of whether the official's conduct was "willful and wanton" arises again. And, as was discussed above, if the municipal official's conduct is found to have been willful and wanton, the municipality may have no obligation to defend and indemnify its official from the Section 1983 claim.

E. Immunity Defenses to Federal Section 1983 Claims

The law affords to municipal officials sued under Section 1983 immunity defenses similar to the defenses that officials have to State-law tort claims. The courts have recognized two basic types of immunity defenses with respect to Section 1983 claims: "absolute immunity" and "qualified immunity."

The courts have recognized these two types of immunity for reasons similar to those cited by the Colorado General Assembly for enacting the doctrine of sovereign immunity in the Colorado Governmental Immunity Act (see discussion in Section II.A. above). One of these reasons is that it would be unjust to subject municipal officials to liability for exercising their discretion that they are required by law to exercise. Another reason is to reduce the likelihood that liability concerns will deter municipal officials from being decisive in exercising their discretionary decision-making authority. In other words, it is better to risk error on the part of municipal officials than it is to discourage them from decision making entirely.

Since a primary purpose of these immunity defenses is to encourage municipal officials to decisively exercise their discretionary decision-making authority, these immunity defenses only apply to Section 1983 claims arising from a discretionary act of a municipal official. As discussed in Section III.C. above, a discretionary act

is one made by an official that the official was not required by law to either make or not make, but instead was a decision of a judgmental, planning, or policy nature.

Absolute immunity, as the name suggests, affords municipal officials an absolute and complete defense to a Section 1983 claim, but only when they are acting in a legislative or quasi-judicial capacity. Therefore, if the official's discretionary act complained of can be characterized as a legislative or quasi-judicial act, absolute immunity will bar the Section 1983 claim against the official. If, however, the official's act occurs while acting outside the official's legislative or quasi-judicial role, absolute immunity cannot be used as a defense, although in such a case qualified immunity *might* be available to the official as a defense.

Under qualified immunity (sometimes called "good faith immunity"), municipal officials performing discretionary functions will generally be shielded from liability for Section 1983 claims provided that their conduct did not violate a clearly established federal statutory or constitutional right of which a reasonable person would have known. In other words, if the law existing at the time of the official's conduct clearly established that the official's conduct violated the complaining party's federal statutory or constitutional rights, qualified immunity will fail as a defense to a Section 1983 claim. If, however, the law is not clearly established, the official will have qualified immunity which will bar the Section 1983 claim.

IV. DO'S AND DON'TS TO ENSURE CITY'S OBLIGATION TO DEFEND AND INDEMNIFY YOU AS A CITY OFFICIAL AND TO HELP AVOID CIVIL CLAIMS BEING BROUGHT AGAINST YOU AS A CITY OFFICIAL

A. **Be familiar with what the City Charter and Code say regarding the specific powers and duties of the City board or commission that you serve on.**

B. **When making any decision or taking any action as a City official, particularly a decision or action that may have an economic impact on a person or business or that may affect a person's constitutional rights, make sure that the decision being made or action being taken is within the scope of the powers and duties given you under the City Charter and Code as a member of your board or commission.**

C. **If named as a party in a lawsuit based on your conduct as a City official, never compromise or settle the claim without obtaining the prior written consent of the City.**

D. **If a lawsuit is filed against you arising from your conduct as a City official, notify the City Clerk's Office and the City Attorney's Office in writing about the lawsuit as soon as possible, but at least within fifteen (15) days after being served with the summons and complaint. Also, provide the City Clerk's and City Attorney's Offices with copies of the summons and complaint and advise them of the date on which you were served.**

E. **If in your capacity as a City official you become aware of a potential claim against you, notify the City Clerk's Office and the City Attorney's Office in writing of this potential claim as soon as possible after the incident which gives rise to the potential claim.**

F. **Always keep a copy of any written notice you give to the City. Also, document in some manner how, when, and to whom such written notice was given.**

G. **If you are aware of a dangerous condition of a City facility or aware of the negligent operation and maintenance of a City facility, notify the City staff in charge of the facility and the City's Risk Management Office immediately.**

H. **Never make a decision or take an action as a City official for a malicious purpose, in a reckless and heedless way, or with the intent to deliberately and unlawfully cause harm to another person.**

I. **When in doubt about the legality of a particular decision or action that you are considering as a City official, always seek the advice of the City Attorney's Office before making the decision or taking the action.**

Sec. 2-610. Public employee defined.

When used in this Division, the terms *public employee* and *employee* shall have the same meaning as the term "public employee" is given in the Colorado Governmental Immunity Act, Section 24-10-103(4), C.R.S. In addition, these terms shall include within their meaning any official of a board, commission or authority appointed by the City Council and who is also subject to removal by the City Council, whether or not such board or commission is itself under the control of the City Council. However, with respect to any such official, the City's defense and indemnity obligations under this Division shall be secondary to any insurance coverage carried by the board, commission or authority for the benefit of the official. Further, these terms may include the "public employees" (as defined in the Colorado Governmental Immunity Act, Section 24-10-103(4), C.R.S., of any other governmental entity provided the City has entered into an intergovernmental agreement with that governmental entity as authorized by Section 29-1-203, C.R.S., and the intergovernmental agreement provides that the other governmental entity may participate in the City's self-insurance program as established in Division 3, Article III of Chapter 8 of this Code. However, the City's obligations to defend and indemnify the public employees of the other governmental entity under this Division shall be governed by the specific terms and conditions of the parties' intergovernmental agreement.

Sec. 2-611. City's defense and indemnification obligations to employees.

The City shall assume liability, to the extent permitted by law, for the payment of all defense costs, attorneys' fees, judgments and settlements of all civil claims, except those arising under contract, against any of its present or former public employees, whether or not the City itself is separately liable to the claimant, if all of the following circumstances exist:

(1) The claim against the employee arises from an act or omission of the employee occurring during the performance of the employee's duties and within the scope of the employee's employment with the City;

(2) The employee's act or omission was not "willful and wanton," that is, conduct purposely committed which the employee must have realized as dangerous, done heedlessly and recklessly, without regard to consequences, or of the rights and safety of others, particularly the person injured;

(3) The defense of sovereign or governmental immunity is not available under the Colorado Governmental Immunity Act to bar the claim against the

employee (this circumstance, however, shall not apply to the City's obligation under this Division to pay the defense costs of its employees);

(4) The employee has not compromised or settled the claim without the consent of the City;

(5) If the civil claim is asserted in a lawsuit filed against the employee that does not name the City as a co-defendant, the employee has notified the City in writing about the lawsuit within fifteen (15) days after being served with the summons and complaint;

(6) The employee has not willfully and knowingly failed to notify the City of the incident or occurrence which led to the claim within a reasonable time after such incidence or occurrence, if such incidence or occurrence could reasonably have been expected to lead to a claim; and

(7) If there exists any other prerequisite under the Colorado Governmental Immunity Act to the City's obligations to defend and indemnify the employee, the employee has satisfied that prerequisite.

Sec. 2-612. Legal representation of employees.

The City's obligation in § 2-611 to pay an employee's attorney's fees shall apply only to legal counsel chosen and retained by the City to represent the employee in the civil action. When the City and the employee are named defendants in the same civil action, the City may retain the same legal counsel to represent them both. If, however, in the judgment of the City Attorney, a conflict of interest is determined to exist between the employee and the City, the City shall retain separate legal counsel for the employee and shall be obligated under § 2-611 to pay the fees for such legal counsel. In either case, if a court subsequently determines that the employee's act or omission did not occur during the employee's performance of his or her duties for the City and within the scope of the employee's employment with the City, or that the act or omission of the employee was willful and wanton, the City may request, and the court is required to order, such employee to reimburse the City for its reasonable costs and attorney's fees incurred in the defense of the employee in the civil action.

Sec. 2-613. Reimbursement of employees' attorneys' fees in criminal matters.

(a) The City shall pay the reasonable attorney's fees, as determined by the City Manager (or by the City's special legal counsel if it is the City Manager's attorney's fees being paid), incurred by an employee related to any criminal investigation or criminal charge if all of the following circumstances exist:

(1) The investigation is conducted or the charge is formally filed by an agency of the federal government or of a state or local government;

(2) The investigation or charge arises from an alleged act or omission of the employee occurring during the performance of his or her duties and within the scope of his or her employment with the City;

(3) The investigation results in no charge being filed or any prosecution results in the dismissal or acquittal of all charges filed; and

(4) The City Manager determines that the employee's conduct from which the investigation or charge arises was not willful and wanton, as described in Paragraph 2-611(2); provided, however, if it is the City Manager's attorney's fees that are being considered for payment, special legal counsel for the City shall make the determination of whether the City Manager's conduct from which the investigation or charge arises was willful and wanton, as described in Paragraph 2-611(2).

(b) At the direction of the City Manager, or at the direction of the City's special legal counsel if it is the City Manager's attorney's fees that are being paid, such fees may be paid by the City as incurred by the employee or may be reimbursed by the City upon disposition of the charge. In the event that such fees are advanced by the City and the investigation and/or prosecution of the charge results in a disposition other than dismissal or acquittal, the employee shall reimburse the City for the full amount of said fees within ninety (90) days of the disposition date of the charge.

Sec. 2-614. No liability to third parties.

The City's assumption of liability in this Division shall not be construed so as to expand in any way the City's liability to third-party claimants, whether under the provisions of the Colorado Governmental Immunity Act or otherwise.

QUASI-JUDICIAL PROCEEDINGS

City Attorney's Office

Spring, 2008

A quasi-judicial proceeding is a method by which an administrative body determines the rights of an individual by receiving facts and applying those facts to pre-existing legal standards to reach a decision. Usually a quasi-judicial proceeding involves a presentation by an applicant and opposing arguments made by other parties who are interested in the decision. Those parties may be, for example, a land developer versus a neighborhood. Often the City staff itself will be a participant in providing facts (and possibly opinion) for the board or commission to consider.

Several of the boards and commissions of the City must, upon occasion, conduct hearings and make decisions in a manner similar to a court, hence the term "quasi-judicial proceedings" In these situations, the board or commission will:

- ☛ provide notice of the hearing to the public and/ or to specific parties,
- ☛ receive and consider evidence presented at the hearing, and
- ☛ make a decision by applying the evidence received at the hearing to criteria established by law.

The following boards or commissions, at times, conduct quasi-judicial proceedings:

Building Review Board

Human Relations Commission

Landmark Preservation Commission

Planning and Zoning Board

General Employees Retirement Committee

Water Board

Zoning Board of Appeals

While the frequency with which these boards and commissions will conduct quasi-judicial proceedings will vary, their members need to have a working knowledge of what a reviewing court or City Council will expect from them if their decision is to be upheld on appeal. In some circumstances the decision of the board or commission will be appealable to the City Council. For example, the decision of the Building Review Board to grant or deny a variance is appealable to the City Council. In other situations, the decision will only be appealable directly to the District Court, as with a decision of the Human Relations Commission to uphold or reverse the City Manager's decision concerning probable cause.

In the case of decisions appealable to the City Council, the Council exercises broader review than would a court[6]. If Council concludes that a board or commission did not properly interpret and apply relevant provisions of the City Code or City Charter, it may overturn the decision of the board or commission. In the case of a court's review of a quasi-judicial decision, the court will generally uphold the decision if all procedural requirements discussed below have been met, and the decision of Council or the board or commission was supported by some competent evidence contained in the record on appeal. In essence, the difference is that the City Council may re-weigh the evidence considered by the board or commission and reach a different conclusion than that reached by the board or commission. A court, in conducting its review of the board or commission decision, will not re-weigh the evidence as long as there is some evidence in the record that supports the decision of the board or commission.

Under either scenario, both the City Council and a reviewing court will generally review only the record that has been made during the hearing before the board or commission[7]. The following irregularities in the quasi-judicial proceedings conducted by the board or commission can result in the decision being overturned by the City Council or a Court:

1. Failure to apply relevant provisions of the City Code, City Charter, or state law.

2. Failure to follow applicable provisions pertaining to notice and hearing;

3. Failure to conduct the hearing in a fair and impartial manner; or

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[6]Appeal procedures used by the City Council in its review of board or commission decisions are set forth in Chapter 2, Article II, Division 3 of the City Code.

[7]City Council may consider new evidence in limited circumstances where substantially false or grossly misleading evidence was considered at the board or commission hearing or when the new evidence is in response to a clarifying question by the City Council.

4. Failure to provide an adequate record for review.

Due Process Requirements

The above irregularities relate to the failure to provide both procedural and substantive due process. Procedural due process has to do with the manner in which the hearing is conducted and requires that no person be deprived of valuable property rights or liberty interests without adequate notice and an opportunity to be heard in a meaningful manner. Substantive due process imposes the requirement that the decision of the board or commission not be arbitrary or capricious and that the decision be based on proper criteria and competent evidence in the record.

Adequate Notice

Generally, the City Code or state law will require a certain amount of notice to the public and interested parties prior to the hearing. A board or commission will usually be held to have provided adequate notice to affected parties if the normal administrative procedures and the requirements of the Code or law are followed.

Unless otherwise specifically provided by Code or law, additional or follow-up notice is not required when a matter is continued to another date providing the new date, time and location for the continued hearing are announced to the parties and the public at the original properly noticed hearing.

Sometimes, a board or commission will decide to reconsider a matter decided at a previous hearing. Even though this may be permissible under some circumstances,[8] due process will generally require a delay so that affected parties can be notified of the fact that the matter will be reconsidered.

Fair Hearing

In addition to the notice requirement, persons affected by a decision must be accorded a reasonable opportunity at the hearing to present evidence and argument in support of their positions. As to the length of presentations, it is permissible for a board or commission to establish reasonable time limitations. In determining whether particular evidence should be received at the hearing, it is not necessary to apply strict rules of

[8]Reconsidering a prior decision may entail some legal risk to the City, especially if an affected party has acted in reliance upon the decision.

evidence. The basic requirement is that principles of fundamental fairness be observed. Evidence should be received if it possesses probative value commonly accepted by reasonable and prudent people in the conduct of their affairs.

In order to ensure that each party has a fair opportunity to respond to evidence introduced at the hearing, opportunities for rebuttal should be incorporated into the hearing procedure, but rebuttal statements should be limited to new issues raised. Rebuttals need not be expanded into opportunities to "rehash" a party's entire presentation.

Impartial Tribunal

Due process requires, as part of a fair hearing, that the quasi-judicial decision be made by an "impartial tribunal," i.e., a board or commission which is free of any undue bias regarding the subject matter or the parties involved. That does not mean that the board or commission must agree with every speaker, but it must give those who are directly affected by the decision a fair opportunity to be heard. Just because individual board or commission members or the board or commission as a whole disagrees with the speakers does not mean that the board or commission was not impartial. There is a presumption under Colorado case law that those serving in quasi-judicial capacities will exercise integrity, honesty and impartiality in their decision making. Thus, a decision maker will not be disqualified on due process grounds simply for having taken a position, even in public, on a policy issue related to the decision unless there is a clear showing that the decision maker is incapable of judging the particular controversy fairly on its merits. However, a decision maker who has, before all evidence has been received at the hearing, publicly or privately announced a strong position on the specific matter to be considered at the hearing, stands a good chance of having the decision of the board or commission invalidated on due process grounds.

In making the determination on impartiality, the courts have generally been reluctant to find that a decision maker's personal interest in the subject matter of a quasi-judicial hearing has been so strong as to preclude him or her from participating in the decision. At the same time, however, the courts have not hesitated to disqualify a board or commission member because of improper "lobbying" on behalf of interested parties. For example, a decision was overturned in one instance because a hearing officer was seen having lunch with one of the witnesses in the case during a recess in the proceedings. Thus, a board or commission member should not engage in "ex parte" communications (contact with only one side of the matter) with individuals affected by the decision outside of the public hearing setting, since such communications may well disqualify a board or commission member from participating in the decision or may provide a basis for challenging the decision.

Ex parte communication with City staff on a matter which is the subject of an upcoming quasi-judicial hearing can also be problematic depending on the circumstances.

If staff is an advocate for a particular position that will be decided by the quasi-judicial proceedings, the ex parte communication could form the basis for a challenge by the party who was not included in the communication. Of course, a communication is not ex parte if all parties are made aware of it and have an opportunity to address it at the hearing.

If City staff is not an advocate for a particular decision outcome, the information provided to a board or commission member by staff in an ex parte communication can still be problematic if that information is not part of the hearing record, but is used by the board or commission in reaching its decision. For this reason, as well as to avoid the appearance of impropriety which is often present in ex parte communication situations, it is recommended that ex parte communications with City staff be avoided and when they do occur, that the board or commission member state on the record of the hearing that the communication occurred and the nature of the information provided. Each party should then be given an opportunity to address that information in the hearing proceedings.

In summary, in addition to observing the conflict of interest rules established by the City Charter, a board or commission member should be careful to refrain from any ex parte communications which would call into question the impartiality of the board or commission.

Basing a Decision "on the Record"

Because the reviewing entity (City Council or District Court) will be studying the record of the quasi-judicial hearing in order to determine whether any irregularities occurred which warrant the overturning of the board or commission's decision, it is crucial that the record of the proceeding be complete and accurate. Generally, neither the City Council nor the Court will look beyond the record or accept new evidence at the appeal stage. From the record of the proceedings, the reviewing entity will determine whether or not there is any competent evidence to support the decision of the board of commission.

The record of the proceeding consists of the evidence and argument presented at the hearing, as well as the board or commission's deliberations and decision. The record needs to establish, through the adoption of a written resolution, or, more commonly, through the deliberative discussions and motions made and voted on, that the board:

- ★ considered the evidence presented at the hearing;
- ★ applied that evidence to the proper criteria (standards in the Code, Charter, or law); and

★ made a decision based only upon the above.

Courts will generally uphold the quasi-judicial decisions of a board or commission as long as the record at least indicates the existence of certain "ultimate facts" from which the court can infer an appropriate rationale for the decision. An example of an ultimate fact would be a finding that a proposed Project Development Plan meets the relevant criteria of the Land Use Code. In the motion approving or denying an application, the board or commission member making the motion should, at a minimum, state the ultimate facts upon which the decision is to be based. An example of a written findings and decision from the Human Relations Commission is attached.

Given the courts' willingness to uphold the decision of a board or commission as long as the record indicates the existence of the ultimate facts supporting the decision, a board or commission member is faced with a decision as to whether to expound upon his or her reasons for voting in favor of a motion. In the final analysis, if the reasons are good ones (related to the evidence and the valid criteria), it is helpful for them to be stated. If the reasons are questionable, however (for example, statements of personal preference which have nothing to do with the evidence and valid criteria), the statements will be legally harmful.

Conducting Quasi-Judicial Proceedings

Each board or commission that conducts quasi-judicial proceeding will most likely have adopted rules of hearing procedures. The board or commission Chairperson usually presides over the proceedings and will decide procedural and evidentiary questions, with advice from the City Attorney's Office. The order and manner of the presentation of witnesses and evidence is usually controlled by the Chair. The Chair will generally ensure that an adequate record is being made of the proceedings (tape recorded or court reporter) and that exhibits are marked and admitted into evidence.

Responding to evidentiary objections during the hearing is usually the role of the Chair, with advice from the City Attorney's Office. Again, the rules of hearing procedures probably address this issue. Formal rules of evidence do not generally apply to administrative hearings and hearsay is admissible as long as it has probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs. Evidence has probative value if it reasonably contributes to proving or supporting a relevant point being made in the proceedings.

It is appropriate for a board or commission to impose time limitations on the presentation of testimony, evidence and argument so long as parties are afforded a

reasonable opportunity to present testimony, evidence, and argument. Likewise, repetitive testimony, evidence or argument can be limited. Limiting testimony, evidence, and argument is often a balancing act and it is good to get advice from the attorney assigned to the board or commission.

Other Related Issues

Site Visits

Frequently, a board or commission member may be familiar with the site involved in a particular decision, such as a planning or zoning matter. This, in itself, does not disqualify the member from participating in the decision, nor does that familiarity taint the decision. However, since a decision is to be based upon the record of evidence introduced at the hearing, all board and commission members should base their decisions on the same evidence, and that evidence should appear in the record of the hearing. Thus, ideally, if on-site inspections are to form part of the basis of the board or commission's decision, the board or commission should view the premises as a body, and notice should be given to the parties in interest so that they will have an opportunity to be present and answer questions. When a group visit is not possible or practical, the board or commission member who wishes to use information obtained from his or her site visit should, during the course of the hearing, announce that they have viewed the site, state the information they obtained by visiting the site, and allow each party the chance to provide additional evidence concerning that information. Either of these procedures would ensure that: (i) all decision makers are operating with the same base of information, (ii) all affected parties have an opportunity to respond to the information obtained by the site visit, and (iii) the decision is based on considerations which were made a part of the record.

Continuances and Member Participation

Occasionally, a quasi-judicial hearing will be continued from one meeting to another, and board or commission members who were absent from the first meeting will be present at the second meeting. In order for such members to participate in the decision, they should review the evidence received during the initial portion of the hearing by reading, viewing, or listening to a transcript of the earlier proceedings and, if possible, the discussion pertaining thereto. The easiest way to accomplish this is to review the video or audio tape of the initial proceedings if one was made, as well as any physical items of evidence that were presented to the board or commission. Failure to read the transcript, view the video, or listen to the audio tape may be grounds for invalidating the decision of the board or commission. If such review is not possible, the member should remove him/herself from the decision making process.

Summary

Parties affected by quasi-judicial proceedings are entitled to due process, which means that the procedure whereby a decision is made, and the decision itself, must be "fundamentally fair." The following steps will help ensure that a board or commission acting in a quasi-judicial capacity will satisfy the requirements of due process:

❶ All persons whose interests may be affected by the decision should be accorded reasonable notice of the upcoming hearing.

❷ The procedures at the hearing should ensure that interested parties have a reasonable opportunity to be heard.

❸ The board or commission's discussion and decision should focus on the application of established criteria to the facts presented at the hearing.

❹ Board or commission members should avoid any conversations with affected parties "off the record" which may affect their impartiality.

❺ The record of the proceedings should reflect appropriate reasons for the decision.

HUMAN RELATIONS COMMISSION
CITY OF FORT COLLINS, COLORADO

FINDINGS AND DECISION

In Re the Appeal of:

_____

Appellant.

On _____, the City of Fort Collins Human Relations Commission ("Commission") conducted an appeal hearing at the request of Appellant, _____ ("Appellant"), pursuant to Section 13-23 of the City Code. The Appellant was present and represented himself. This Respondent, _____ ("Respondent") was present and represented by its employee, _____.

The Commission received and considered the testimony of the Appellant, two witnesses presented by the Respondent, and Barbara Spalding, the Human Rights Officer. The Commission also considered the following documentation: the original complaint filed by the Appellant, the claim notice letters sent by the Human Rights Officer to both the Appellant and Respondent, the Respondent's response letter, the Human Rights Officer decision letter, the Appellant's appeal letter, the appeal notice letters to both the Appellant and the Respondent, and the Appeal Procedures previously adopted by the Commission.

FINDINGS

Based upon the evidence presented at the hearing, the Commission makes the following findings:

1. There is no new evidence which supports the complaint and which was not available at the time of the investigation by the Human Rights Officer.

2. The findings of fact or conclusions of the Human Rights Officer were not clearly erroneous based on the evidence presented to the Human Rights Officer at the time of the investigation.

3. The Human Rights Officer did not abuse her discretion or act beyond the scope of her authority.

DECISION

Therefore, based upon the above findings and evidence presented at the hearing, it is the decision of the Commission to affirm the decision of the Human Rights Officer dismissing the complaint.

DATED this _____ day of _____, 20__.

HUMAN RELATIONS COMMISSION

_____

_____, Chair

BOARDS AND COMMISSIONS AND ATTORNEY ADVISORS

Advisory to City Council:

Affordable Housing ..... Paul Eckman
Air Quality Advisory Board ..... Jenny Lopez Filkins
Art In Public Places ..... Ingrid Decker
Commission on Disability ..... Ingrid Decker
Commission on the Status of Women..... Teresa Ablao
Community Development Block Grant Commission ..... Paul Eckman
Cultural Resources Board ..... Ingrid Decker
Electric Board ..... Jenny Lopez Filkins
Golf Board ..... Ingrid Decker
Land Conservation and Stewardship Board ..... Carrie Daggett
Natural Resources Advisory Board ..... Carrie Daggett
Parks and Recreation Board ..... Ingrid Decker
Senior Advisory Board ..... Kraig Ecton
Telecommunication Board ..... Kraig Ecton
Transportation Board ..... Paul Eckman
Youth Advisory Board ..... Teresa Ablao

Advisory to City Administration:

Citizen Review Board ..... Greg Tempel

Quasi-Judicial:

Building Review Board ..... Paul Eckman
Human Relations Commission ..... Greg Tempel
Landmark Preservation Commission ..... Paul Eckman
Planning and Zoning Board ..... Paul Eckman
Retirement Committee ..... Greg Tempel
Water Board ..... Carrie Daggett
Zoning Board of Appeals ..... Paul Eckman

RESOLUTION 2008-042

OF THE COUNCIL OF THE CITY OF FORT COLLINS

AMENDING RESOLUTION 2008-023 PERTAINING TO THE TRAINING PROGRAM FOR BOARD AND COMMISSION MEMBERS

WHEREAS, on February 19, 2008, the City Council adopted Resolution 2008-023 (the "Resolution") establishing a training program for members of City boards and commissions; and

WHEREAS, the program was made mandatory for both current and future board and commission members, with members being required to attend the training session either in person or in such other fashion as the City Manager and City Attorney may deem appropriate, and to do so within certain time frames established in the Resolution; and

WHEREAS, following the two training sessions held since the passage of the Resolution, members who attended the sessions provided feedback and suggestions as to how the training itself and the requirements related thereto could be improved; and

WHEREAS, among the suggestions submitted was the suggestion to modify the requirement that all persons appointed to a board or commission receive the training within six months of the date of their appointment, since members who are re-appointed to the same board or commission or appointed to a different board or commission may have recently received the training; and

WHEREAS, the City Manager and City Attorney agree with this suggestion and have recommended that the Council amend the Resolution accordingly; and

WHEREAS, in response to other feedback from board and commission members, the City staff who present the training will be recording an additional training session for those who did not attend the training in person, and after completion of the recording, additional time should be allowed for members to view the recorded session.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that Resolution 2008-023 is hereby amended so that the training requirements for members of City boards and commission read as follows:

1. That all current members of City boards who have not previously attended the training program offered by City staff with regard to the structure and operation of City

government and the legal and ethical duties and responsibilities of board and commission members must receive such training, either in person or in such other fashion as the City Manager and City Attorney may deem appropriate, on or before September 1, 2008.

2. That each person appointed to a City board or commission after the date of this Resolution must receive such training within six (6) months of the date of his or her appointment; provided, however, that this requirement shall not apply to:

a. persons who are re-appointed to the same board or commission; or

b. persons who have already received the training, as a member of another board or commission, within the four (4) year period immediately prior to the date of their appointment.

3. That a record of compliance with this requirement shall be maintained in the office of the City Clerk and retained for at least two years following the expiration of each board and commission member's term of office.

4. Notice of this requirement shall be included in the City's Board and Commission Manual.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 6th day May, A.D. 2008.

_____

Mayor

ATTEST:

_____

City Clerk