

AGENDA ITEM SUMMARY

City Council-Ethics Review Board

March 26, 2015

STAFF

Carrie M. Daggett, City Attorney

SUBJECT

Review of Complaint submitted by citizen, Michael Pruznick, under Section 2-569(d)(1)(a) of the City Code concerning Councilmember Horak.

EXECUTIVE SUMMARY

This matter comes before the Ethics Review Board ("Board") based on a complaint submitted by Michael Pruznick, a citizen alleging the Councilmember Gerry Horak violated the Fair Campaign Practices Act through statements made at the City Council meeting. The City Code calls for the Board to first determine if the complaint merits formal investigation.

BACKGROUND / DISCUSSION

This matter comes before the Ethics Review Board ("Board") based on a complaint submitted by Michael Pruznick, a citizen.

Mr. Pruznick's complaint is attached. It alleges specifically that Councilmember Horak violated the Fair Campaign Practices Act prohibition on local government officials using City money or resources to support a candidate's campaign through statements he made during the City Council meeting of March 17, 2015. The complaint further states that Councilmember Horak acted "in conflict of interest between his duty to serve now and his desire to get elected at any cost," and also alleges that Councilmember Horak "injected political campaigning" into the discussion at a meeting of a nonprofit group "SOSH".

The Colorado Fair Campaign Practices Act (the "Act") (Colorado Revised Statutes ("CRS"), Title 1, Article 45) establishes election campaign regulations that, among other things, prohibit local governments and their officials from using City money or resources to support a candidate's campaign. Complaints under the Act are filed with the Colorado Secretary of State and referred to an administrative law judge for a determination as to whether a violation has occurred.

The Code provides for the Board to consider complaints that a councilmember has violated any provision of state law or the Charter or Code pertaining to ethical conduct. The City's ethics provisions are established in Article IV, Section 9 of the Charter of the City of Fort Collins, and in Fort Collins Municipal Code ("Code") Section 2-568. Those provisions relate to conflicts of interest (financial and personal) and to 1) use and disclosure of confidential information; 2) representing interests of other persons before the City Council or any City board or commission; 3) acceptance of payment for speeches, debates or other public events, or certain gifts or favors; 4) requesting special treatment from the City; 5) reporting of contacts regarding personal interests.

Colorado law (Title 24, Article 18, CRS) establishes rules of conduct and ethical principles for public officers that address issues similar to those covered in the City's Charter and Code.

Ordinance 159, 2014 (passed on November 18, 2014) amended Section 2-569(d) of the Code, regarding the procedure for Ethics Review Board complaints. Regarding the complaint process, Section 2-569(d)(1) and (2) of the Code state as follows (with the initial review process provisions highlighted):

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

(1) *Complaints.*

a. Any person who believes that a Councilmember or board and commission member has violated any provision of state law or the Charter or Code pertaining to ethical conduct may file a complaint with the City Clerk, who shall immediately notify the chairperson of the Review Board, the Councilmembers or board and commission members named in the complaint and the City Council. The complaint shall be promptly scheduled for consideration by the Review Board. No more than ten (10) working days after the date of filing of the complaint, the Review Board shall meet and consider the complaint. All Councilmembers or board and commission members named in the complaint, as well as the complainant, shall be given written notice of such meeting at least three (3) working days prior to the meeting. A notice of the complaint, including the identity of the complainant shall be posted along with the meeting notice.

b. Upon receipt of any such complaint, the Review Board shall, after consultation with the City Attorney, decide by majority vote whether to formally investigate the complaint. In making such determination, the Review Board shall consider the following: (1) whether the allegations in the complaint, if true, would constitute a violation of state or local ethical rules; (2) the reliability and sufficiency of any facts asserted in support of the allegations; and (3) any other facts or circumstances that the Review Board may consider relevant. If the Review Board determines that the complaint does not warrant investigation, the Review Board shall send written notice to the complainant of its determination and the reasoning behind that determination, and shall provide a copy of such notice, together with a copy of the complaint, to all Councilmembers or board or commission members named in the complaint, as well as the City Council.

If the Board believes that the allegations in the complaint, if true, would constitute a violation of state or local ethics rules, it should consider the reliability and sufficiency of the facts presented and any other relevant facts or circumstances, and determine whether an investigation of the matter should proceed. If not, then the Board should issue a notice of its determination that no investigation is warranted.

PUBLIC OUTREACH/NOTICES

No public outreach was conducted. Public notice of the Board meeting was posted and emailed notice of the Board meeting was provided to the complainant and to the subject of the complaint three working days prior to the Board's meeting.

ATTACHMENT

Public Notice (with March 20, 2015 E-mail and Complaint from Michael Pruznick to Wanda Nelson attached)



City Attorney's Office
300 Laporte Avenue
PO Box 580
Fort Collins, CO 80522
970.221.6520
970.221.6327
fcgov.com

PUBLIC NOTICE

Notice is hereby given that the City Council Ethics Review Board will meet on Thursday, March 26, 2015, at 4:30 p.m., in the City Attorney's Large Conference Room at City Hall, located at 300 Laporte Avenue, City Hall West, Fort Collins, Colorado. The purpose of the meeting will be to address the following issue:

1. A Complaint submitted by citizen, Michael Pruznick, under Section 2-569 (d)(1)(a) of the City Code concerning Councilmember Horak as it relates to an allegation that Councilmember Horak violated provisions of state law or the Charter or Code pertaining to ethical conduct. Specifically, Mr. Pruznick alleges a violation of the Colorado Fair Campaign Practices Act. Mr. Pruznick's complaint and materials are attached hereto as Exhibit "A".

As the majority of Council may attend this meeting, the meeting is also being regarded as a meeting of the City Council for the purposes of this notice.

The City of Fort Collins will make reasonable accommodations for access to City services, programs, and activities and will make special communication arrangements for persons with disabilities. Please call 221-6505 (TDD 224-6001) for assistance.

Fort Collins City Attorney
Posted: March 23, 2015
(970) 221-6520

Cary Alton

EXHIBIT

tabular

A

From: Wanda Nelson
Sent: Thursday, March 19, 2015 3:33 PM
To: City Council
Cc: Darin Atteberry; Jeff Mihelich; Carrie Daggett; Rita Knoll
Subject: FW: Ethical Complaint Against Gerry Horak from 2015-03-17 council meeting

Ethics Review Board:

Pursuant to Section 2.569(d)(1) (included below), I am informing you of a complaint filed against Mayor Pro Tem Gerry Horak. The provision states that the complaint must be considered by the Board within ten working days. Carrie Daggett will provide details regarding the next steps.

Complaints and inquiries shall be submitted to the Review Board only according to the following procedures:

(1)

Complaints.

a.

Any person who believes that a Councilmember or board and commission member has violated any provision of state law or the Charter or Code pertaining to ethical conduct may file a complaint with the City Clerk, who shall immediately notify the chairperson of the Review Board, the Councilmembers or board and commission members named in the complaint and the City Council. The complaint shall be promptly scheduled for consideration by the Review Board. No more than ten (10) working days after the date of filing of the complaint, the Review Board shall meet and consider the complaint. All Councilmembers or board and commission members named in the complaint, as well as the complainant, shall be given written notice of such meeting at least three (3) working days prior to the meeting. A notice of the complaint, including the identity of the complainant shall be posted along with the meeting notice.



Wanda Nelson, City Clerk
City of Fort Collins
P.O. Box 580
Fort Collins, CO 80522
wnelson@fcgov.com
970.416.2995

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City of Fort Collins
P.O. Box 580
Fort Collins, CO 80522
wnelson@fcgov.com
970.416.2995

-----Original Message-----

From: mikepruz@gmail.com [<mailto:mikepruz@gmail.com>]
Sent: Thursday, March 19, 2015 2:44 PM
To: Wanda Nelson
Subject: Ethical Complaint Against Gerry Horak from 2015-03-17 council meeting

City Clerk,

Per Sec. 2-569. - Board of ethics. (d)(1)(a) "Any person who believes that a Councilmember or board and commission member has violated any provision of state law or the Charter or Code pertaining to ethical conduct may file a complaint with the City Clerk"

Complaint is attached as follows:

2015-03-17.gerry-horak.cfcpa-ethics.txt -- The text of the complaint.

2015-03-17.gerry-horak.cfcpa-ethics.jpg -- Screen shot of the facial expression referenced in the complaint.

I'm not familiar with the new process, please let me know my role and responsibilities are.

Thank you, Michael Pruznick, D3 Citizen

2015-03-17.gerry-horak.cfcpa-ethics.txt

The Colorado Fair Campaign Practices Act prohibits local governments and their officials from using City money or resources to support a candidate's campaign.

At the 2015-03-17 council meeting Gerry Horak appears to violate this on two occasions:

1H:28M:30S to 1H:28M:45S

Gerry Horak said, "Since this was really a political thing tonight I think it is important for folks to know that the two accusations against me were made by my opponent and his campaign manger." His demeaning facial expressions (attached) should also be taken into account.

The Mayor is on the record saying the public cannot campaign during public comments. The only reference I can specifically find is a few years back from the 2012-04-18 Economic Board meeting minutes. "Mayor Weitkunat commented that political campaigning at Boards and Commissions meetings was not appropriate."

The candidates did their job by not campaigning and only bringing up facts from their viewpoint. Gerry made assumptions about their motives and used his public position to unfairly demean his competition.

Gerry should have had his campaign manger in the room. His campaign manager could have used public comment to point out the political aspect. Gerry didn't have to bring up the political aspect in his official position, in view of the public, under color of authority of the Mayor Pro Tem. His comments with the City Attorney clearly explained his viewpoint. Bringing up the political aspect only served his political campaign and added nothing to the discussion of the issue.

This is a clear violation of the law.

4H:41M:25S to 4H:41M:45S

Gerry Horak said, "I only say this because my other occupation these days is walking door to door. So I've literally walked through the Avery Park neighborhood and most of the other neighborhoods that, uh, I mean I only have part of this. But the neighborhoods that in this plan, that are district six, I've walked nearly every door and I can tell you what they look like and we need to do something about this."

Gerry could have simply said that he's lived in the area for years, has visited most neighborhoods during various time of the years, knows what they look like, knows something needs to be done, and that this West Central Plan is a good thing to do based on his extensive familiarity with the area. Same, if not stronger message, without using his position of authority to campaign.

This is clearly a political message attempting to let the people of these areas know how he is campaigning for them to encourage their vote.

This is a clear violation of the law.

1H:10M:05S to 1H:10M:25S

Michael Pruznick said, "Gerry and Wade I'm going to pick on you tonight because you are the only two council members seeking re-election claiming you've done a great job serving this community. I would like to know how allowing rapes to happen and allowing rapists to roam free in our community is a great thing that deserves your re-election."

2015-03-17.gerry-horak.cfcpa-ethics.txt

My statement was clearly political, but not campaigning, and yet neither Gerry nor Wade responded.

This clearly shows that Gerry was using his position to protect his campaign and not serve the people.

Why else would Gerry only go after his opponent and not candidates in other races?

4H:22M:55S to 4H:23M:15S

Michael Pruznick said, "I would like to conclude by simply reminding you that we serve at your pleasure and at the election we will fix the last vote and before that RECALL GINO. Anyone who would like to help me do that, my number is in the public record."

No council member mentioned the political nor campaigning nature of this message. Why was Gerry only concerned about his opponent, and not the general issue of campaigning politics during public comment?

Clearly, Gerry's actions were focused on promoting his campaign while discrediting his competition. Neither Gerry nor council as a whole was worried about any other political motivation, campaign, or election race. Gerry violated The Colorado Fair Campaign Practices Act acting in conflict of interest between his duty to serve now and his desire to get re-elected at any cost.

ALSO: Please note that at the SOSH meeting on Monday, March 2nd, Gerry Horak, who was invited as D6 representative, also injected political campaigning into that meeting. Specifically targeting me. I disengaged by saying "this is not about that," apologized, withdrew my question, and putting my head down. Gerry kept trying to engage me, but I held my ground. Gerry should know better than to inject candidacies into 501(c)3 meetings. Everyone else knew and obeyed the rules. I've been a member SOSH since early 2013. I was there in that capacity.

Michael Pruznick, D3 Citizen

II 01:28:43 / 04:54:29



Citizen Participation Follow-Up

Fort Collins City Council Meeting

March 17, 2015