



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: March 13, 2017

TO: President Stephen G. Nawrocki and Members of City Council
CC: Sam Azad, City Manager
VIA: Gina Dutcher, City Clerk
FROM: Daniel C. Kogovsek, City Attorney
SUBJECT: AN ORDINANCE AMENDING CHAPTER 9, TITLE I OF THE PUEBLO MUNICIPAL CODE RELATING TO THE CODE OF ETHICS FOR THE CITY OF PUEBLO AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF

SUMMARY:

Attached is an Ordinance which makes revisions to the City's Ethics Code which is found at Chapter 9 of Title I of the Pueblo Municipal Code. The attached Ordinance adds clarifying language to the Ethics Code and adds an Article II which addresses nepotism and fraternization.

PREVIOUS COUNCIL ACTION:

The City's Code of Ethics was last revised by City Council by Ordinance No. 7484, dated July 10, 2006.

BACKGROUND:

The Code of Ethics Task Force of Pueblo, Colorado ("CETF") is a citizen's group organized by civic activist Ted Freeman for the purpose of studying and updating the City's Code of Ethics. Many of CETF's suggestions are incorporated in the proposed Ordinance, particularly those addressing the procedure for filing an ethics complaint and the imposition of penalties for City employees who violate the City's Code of Ethics.

FINANCIAL IMPLICATIONS:

None.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Council members and City staff have met with CETF representatives on many occasions regarding the City's Code of Ethics.

ALTERNATIVES:

Make no changes to the City's current Code of Ethics.

RECOMMENDATION:

Approval of this Ordinance.

Attachments: Proposed Ordinance

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 9, TITLE I OF
THE PUEBLO MUNICIPAL CODE RELATING TO THE
CODE OF ETHICS FOR THE CITY OF PUEBLO AND
PROVIDING PENALTIES FOR THE VIOLATION
THEREOF

WHEREAS, the City Council of Pueblo recognizes that the conduct of City officials and employees must hold the respect and confidence of the people; and

WHEREAS, public confidence in the integrity of City government demands that City officials and employees demonstrate high ethical standards at all times; and

WHEREAS, Article XXIX of the Colorado Constitution and Articles 6, 18, and 18.5 of Title 24, Colorado Revised Statutes, set forth standards of conduct common to those citizens involved with government in the State of Colorado; and

WHEREAS, although such standards of conduct are drafted to be applicable to home rule cities, since they relate to local and municipal matters which are by Article XX of the Colorado constitution reserved to home rule cities, a question exists as to their applicability to the City of Pueblo; and

WHEREAS, City officials and employees should have the benefit of prescribed uniform standards of conduct and citizens should have the benefit of holding City officials and employees accountable for a breach of those standards; and

WHEREAS, it is the intent of the City Council of Pueblo to adopt this Code of Ethics as a uniform standard of conduct for City officials and employees in furtherance of the public trust; and

WHEREAS, all matters referred to herein are expressly and specifically declared to be matters of exclusive home rule authority and supersede any other state statute; and

WHEREAS, this Code of Ethics addresses the matters contained within Article XXIX of the Colorado Constitution, and therefore supersedes by its own terms Article XXIX. NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that: (Brackets indicate matter being deleted, underscoring indicates new matter being added.)

SECTION 1.

Chapter 9, Title I of the Pueblo Municipal Code, is hereby amended to read as follows:

Code of Ethics

Article 1

Sec. 1-9-1. Legislative declaration.

The City Council recognizes the importance of the participation of the citizens of the City in all levels of government in the City. The City Council further recognizes that, when citizens of the City obtain public office, conflicts may arise between the public duty of such a citizen and his or her private interest. The City Council hereby declares that the prescription of uniform standards of conduct for City officials and employees consistent with those applicable to local governments adopted by the Colorado legislature is beneficial to the citizens of the City. The provisions of this Chapter recognize that some actions are conflicts per se between public duty and private interest while other actions may or may not pose such conflicts depending upon the surrounding circumstances.

Sec. 1-9-2. Definitions.

As used in this Chapter, unless the context otherwise requires:

(1) *Boards and commissions* means all boards and commissions appointed by the City Council.

(2) *Business* means any corporation, limited liability company, partnership, sole proprietorship, trust or foundation, or other individual or organization carrying on a business, whether or not operated for profit.

(3) *City official* means an elected or appointed official of the City, including **the City Manager, a deputy city manager, an assistant city manager, a department director and** appointed members of boards and commissions, but excluding an employee of the City.

(4) *Compensation* means any money, thing of value or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or herself or another.

(5) **Domestic partner means an unmarried adult, unrelated by blood, with whom an unmarried employee has an exclusive committed relationship, maintains a mutual residence, and shares basic living expenses.**

[(5)] (6) *Employee* means any temporary or permanent employee of the City **but excluding a City official and excluding employees of the Board of Water Works of Pueblo, Colorado.**

[(6)] (7) *Family* means [spouse, child, father, mother, brother or sister] **domestic partner and any person related by blood, marriage (in-law), step or adoption, in any of the following degrees: parent, spouse, children, brothers, sisters, nephews, nieces, aunts, uncles, first cousins, grandparents and grandchildren. A divorce or separation between spouses shall not be deemed to terminate the relationships described herein.**

[(7)] (8) *Financial interest* means a substantial interest held by an individual which is:

- a. An ownership interest in a business;
- b. A creditor interest in an insolvent business;
- c. An employment or a prospective employment for which negotiations have begun;
- d. An ownership interest in real or personal property;
- e. A loan or any other debtor interest; or
- f. A directorship or official ship in a business.

(9) *Official act* or *official action* means any vote, decision, recommendation, approval, disapproval or other action, including inaction, which involves the use of discretionary authority.

Sec. 1-9-3. Public trust; breach of fiduciary duty.

(a) The holding of public office or employment is a public trust, created by the confidence which the electorate reposes in the integrity of City officials and employees. A City official or employee shall carry out his or her duties and services in a competent, unbiased, open and honest manner for the benefit of the people of the City and shall maintain the highest standards of personal and professional conduct, decorum and integrity.

(b) A City official or employee whose conduct departs from his or her fiduciary duty is liable to the people of the City as a trustee of property and shall suffer such other liabilities as a private fiduciary would suffer for abuse of his or her trust. The City Attorney may bring appropriate judicial proceedings on behalf of the people of the City. Any moneys collected in such actions shall be paid to the general fund of the City. Judicial proceedings pursuant to this Section shall be in addition to any criminal action which may be brought against such City official or employee.

Sec. 1-9-4. Rules of conduct for all City officials and employees.

(a) Proof beyond a reasonable doubt of commission of any act enumerated in this Section is proof that the actor has breached his or her fiduciary duty and the public trust. A City official or an employee shall not:

(1) Disclose or use confidential information acquired in the course of his or her official duties in order to further substantially his or her personal financial interests; or

(2) Accept a gift of substantial value or a substantial economic benefit tantamount to a gift of substantial value:

a. Which would tend improperly to influence a reasonable person in his or her position to depart from the faithful and impartial discharge of his or her public duties; or

b. Which he or she knows or which a reasonable person in his or her position should know under the circumstances is primarily for the purpose of rewarding him or her for official action he or she has taken.

(b) An economic benefit tantamount to a gift of substantial value includes without limitation a loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans and compensation received for private services rendered at a rate substantially exceeding the fair market value of such services.

(c) The following shall not be considered gifts of substantial value or gifts of substantial economic benefit tantamount to gifts of substantial value for purposes of this Section:

(1) Campaign contributions and contributions in kind reported as required by Section 5-2-1;

(2) An occasional nonpecuniary gift, insignificant in value;

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

(4) Payment of or reimbursement for actual and necessary expenditures for travel and subsistence for attendance at a convention or other meeting at which such City official or employee is scheduled to participate;

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

(6) Items of perishable or nonpermanent value, including, but not limited to, meals, lodging, travel expenses or tickets to sporting, recreational, educational or cultural events;

(7) Payment for speeches, appearances or publications reported pursuant to Section 24-6-203, C.R.S.;

(8) Compensation from employment, including other government employment, in addition to that earned from being a member of the City Council or by reason of service in other public office.

(d) The provisions of this Section are distinct from and in addition to the reporting requirements of Section 5-2-1 of this Code and Section 24-6-203, C.R.S. and do not relieve an incumbent in or elected candidate to public office of the City from reporting an item described in Subsection (c) of this Section, if such reporting provisions apply.

Sec. 1-9-5. Ethical principles.

(a) The principles in this Section are intended as guides to conduct and do not constitute violations as such of the public trust of office or employment in the City.

(b) A City official or an employee should not acquire or hold an interest in any business or undertaking which he or she has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by an agency, official or employee over which he or she has substantive authority.

(c) A City official or an employee should not, within six (6) months following the termination of his or her office or employment, obtain employment in which he or she will take direct advantage, unavailable to others, of matters with which he or she was directly involved during his or her term of employment. These matters include rules, other than rules of general application, which he or she actively helped to formulate and applications, claims or contested cases in the consideration of which he or she was an active participant.

(d) A City official or an employee should not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when he or she has a substantial financial interest in a competing firm or undertaking.

Sec. 1-9-6. Disclosure of information.

No City official or employee shall disclose any information or records that are not available to the public, which were acquired in the course of public office duties, except in the performance of public office duties or as required by law or court order. Records or discussions of an executive session of City Council or a board or commission shall not be disclosed except pursuant to Section 24-6-402(2)(d.5)(II)(D), C.R.S.

Sec. 1-9-7. Personal interest rules of conduct for City officials and employees.

(a) Proof beyond a reasonable doubt of commission of any act enumerated in this Section is proof that the actor has breached his or her fiduciary duty and the public trust.

(b) A City official or employee and members of City Boards and Commissions shall not:

(1) Engage in a substantial financial transaction for his or her private business purposes with a person whom he or she inspects or supervises in the course of his or her official duties; or

(2) Perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he or she or his or her family either has a substantial financial interest or is engaged as counsel, consultant, representative or agent.

(c) A member of the City Council who or whose family has a personal or private interest in any matter proposed or pending before the City Council shall disclose such interest to the City Council and shall not vote thereon and shall refrain from attempting to influence the decisions of the other members of the City Council in voting on the matter.

(d) It shall not be a breach of fiduciary duty and the public trust, nor a violation of any provision of this Chapter, for a City official or employee to:

(1) Use City facilities or equipment to communicate or correspond with a member's constituents, family members or business associates;

(2) Accept or receive a benefit as an indirect consequence of transacting City business; or

(3) Take direct official action on the following matters even if the person or a relative employed by the City would benefit:

(I) The City's annual budget or an amendment to the annual budget; or

(II) Establishing the pay or fringe benefit plans of City officials, employees, or official s. Notwithstanding this subsection (II), City Council members pay shall be established pursuant to section 2-1 of the Charter of the City of Pueblo.

Sec. 1-9-8. Penalty.

Any individual who is found to have violated any provision of this Code of Ethics shall be liable to the City for double the amount of financial equivalent of any benefits obtained by such actions. The manner of recovery and any additional penalties may be as provided by law. City employees and non-elected City officials who violate this Code of Ethics are also subject to appropriate disciplinary action, up to and including termination of employment.

Sec. 1-9-9. Powers of the City Attorney.

The City Attorney may issue advisory opinions to persons subject to the provisions of this Chapter concerning issues relating to the requesting person's conduct and the provisions of this Chapter with such deletions as are necessary to protect the identity of the requesting party or the party about whom the opinion is written. The requesting person may also request an advisory opinion from the Secretary of State pursuant to Section 24-18-111, C.R.S.

Sec. 1-9-10. Interests in contracts.

City officials or employees shall not be interested in any contract made by them in their official capacity or by any body, agency or board of which they are members or employees. A former employee may not, within six (6) months following the termination of his or her employment, contract or be employed by an employer who contracts with the City involving matters with which he or she was directly involved during his or her employment. For purposes of this Section, the term:

(1) *Be interested in* does not include holding a minority interest in a corporation.

(2) *Contract* does not include:

a. Contracts awarded to the lowest responsible bidder based on competitive bidding procedures;

b. Merchandise sold to the highest bidder at public auctions;

c. Investments or deposits in financial institutions which are in the business of loaning or receiving monies;

d. A contract with respect to which any City official or employee has disclosed a personal interest and has not voted thereon. Any such disclosure shall be made to the City Council.

Sec. 1-9-11. Interest in sales or purchases.

(a) City officials shall not be purchasers at any sale or vendors at any purchase made by them in their official capacity.

(b) Notwithstanding anything contained in this Chapter to the contrary, no City official or employee of the City shall be financially interested, directly or indirectly, in the sale of any land, materials, supplies or services to the City, except it be by competitive bidding or not exceeding the sum of one hundred dollars (\$100.00) in any calendar year; in cases of emergency necessary to protect the public health, safety and welfare, competitive bidding may be waived. Members of boards or commissions shall be permitted to provide technical or professional services to the City where such services are exempt from the requirements of competitive bidding.

Sec. 1-9-12. Voidable contracts.

Every contract made in violation of any of the provisions of Section 1-9-10 or 1-9-11 shall be voidable at the instance of any party to the contract except the City official interested therein.

Sec. 1-9-13. Applicability.

This Chapter shall apply to all elected and appointed officials of the City, all employees of the City and all City boards and commissions. This Chapter is intended to conform, as nearly as may be, to Article 18, Title 24, C.R.S. To the end that the interpretation of this Chapter shall be uniform with the interpretation of such state law, the content of each section have, as near as practicable, been kept consistent with such state law applicable to local government officials, employees and boards and commissions. However, all matters referred to herein are expressly and specifically declared to be local and municipal matters under Article XX of the Constitution of the State, and in the event of conflict between this Chapter and Article 18, Title 24, C.R.S., this Chapter shall govern and control.

Secs. 1-9-14 – 1-9-19. Reserved.

Article II.

Nepotism and Fraternization

Sec. 1-9-20. Definitions.

As used in this Article, unless the context otherwise requires:

(1) *Direct line of supervision* shall mean the immediate supervisor of an employee and the immediate supervisor of the employee's immediate supervisor.

(2) *Personal relationship* means dating or any other intimate relationship beyond mere friendship and excluding domestic partner or spouse.

(3) *Relative* means domestic partner and any person related by blood, marriage (in-law), step or adoption, in any of the following degrees: parent, spouse, children, brothers, sisters, nephews, nieces, aunts, uncles, first cousins, grandparents and grandchildren. A divorce or separation between spouses shall not be deemed to terminate the relationships described herein.

(4) *Subordinate* means an employee who is subject to the authority of a supervisor.

(5) *Supervisor* means a City official who has authority to undertake or recommend tangible employment decisions affecting an employee or who has authority to direct, in part or whole, the employee's work activities.

Sec. 1-9-21. Restrictions.

(a) City officials are prohibited from occupying a position in the direct line of supervision with respect to any employee who is a relative. The City shall attempt to take steps to mitigate or avoid such violations whenever reasonably possible. If circumstances require that a City official temporarily occupy a position in direct line of supervision of a relative, reasonable efforts shall be made to refer matters involving the involved employee to an uninvolved supervisor.

(b) A City official is prohibited from engaging in or maintaining a personal relationship with any subordinate employee of the City official.

(c) City officials are prohibited from participating in appointments, promotions, or other hiring decisions with respect to any employee who is a relative or with whom they are involved in a personal relationship.

Sec. 1-9-22. City official responsibility.

Upon entering into any personal relationship that the City official knows or reasonably should know could create a violation of this Article II, the City official shall promptly notify his or her uninvolved, immediate supervisor.

Sec. 1-9-23. Exemption.

City officials shall be exempt from the prohibition set forth in subsection 1-9-31(a) with respect to any relative who is an employee of the City as of the effective date of subsection 1-9-21(a). The scope of this exemption will be limited to the positions held by the City official and the City official's relative(s) on said effective date and shall not apply to any change in such positions.

Sec. 1-9-24. Waiver.

When there is a change in the individuals constituting the relatives of a City official which would result in a violation of subsection 1-9-21(a), the City official may request a waiver of the prohibition set forth in subsection 1-9-21(a). Such request shall be submitted to and may be granted by the City Manager where the City official establishes:

(1) a waiver will be in the best interest of the City; and

(2) the City official can and will abstain from participating in any employment decision affecting the relative or appropriate measures can be implemented to reasonably mitigate any conflict of interest.

Secs. 1-9-25 – 1-9-29. Reserved.

Article III.
Complaint Procedure

Sec. 1-9-30 Complaints against City officials and employees.

(1) Any person may file a verified written complaint with the City Manager charging a failure to comply with a provision of this Code of Ethics by a City employee (other than a Municipal Judge or an elected City official) and non-elected City officials. The City Manager shall investigate or direct a department head of the City to investigate such a complaint. Nothing in this subsection shall limit City Council's ability to investigate pursuant to Section 3-5 of the Charter of the City of Pueblo.

(2) Any person may file a verified written complaint with the President of the City Council charging a failure to comply with a provision of this Code of Ethics by the City Manager, a Municipal Judge or elected City officials. The President of the City Council shall investigate such a complaint. If the complaint is against the President of the City Council, the complaint shall be filed with and investigated by the Vice-President of the City Council. If an ethics complaint is filed against a member of the City Council, that member shall be prohibited from investigating or voting to take action on the complaint.

(3) Complaints which fail to state a claim of a violation of this Code of Ethics shall be dismissed.

(4) Any complaint against a City employee and any action taken with respect thereto (including, but not limited to, documents placed in the City employee's personnel file) shall remain confidential, unless confidentiality is waived by the City employee.

SECTION 2.

The officials and staff of the City are directed and authorized to perform any and all acts consistent with the intent of this Ordinance which are necessary to implement the changes to the Pueblo Municipal Code described herein.

SECTION 3.

This Ordinance shall become effective thirty (30) days following final passage and approval.

INTRODUCED March 13, 2017

BY: Ed Brown
COUNCILPERSON

APPROVED: _____
PRESIDENT OF CITY COUNCIL

ATTESTED BY: _____
CITY CLERK

PASSED AND APPROVED: _____