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AGENDA

City Council Election Code Committee
January 10, 2020, 3:30-5:00 p.m.
Council Information Center (CIC) Room, 300 LaPorte Avenue

Committee Members: Mayor Wade Troxell
Councilmember Julie Pignataro, District 2
Councilmember Ken Summers, District 3
Mayor Pro Tem Kristin Stephens, District 4 (alternate)

1. Call Meeting to Order
2. Citizen Comment (limited to 5 minutes per speaker)
3. Consideration and approval of the November 15, 2019 Committee Meeting Minutes
4. Discussion Items:
 - a. Review past Election Code changes, grouped by themes.
 - i. Discussion of which areas the Committee would like to see amended
 - b. Possible Election Code changes
 - i. Elimination of anonymous donations
 - ii. Use of unexpended City election candidate contributions in a non-City election
 - iii. Carry-over of unexpended candidate contributions to the next election cycle and the ability of the committee to keep its same name
 - iv. Addition of a cure period for respondents in the campaign violation process
 - v. Removal of the citizen enforcement mechanism in District Court.
5. Other Business
6. Adjournment

ATTACHMENTS

1. November 15, 2019 Committee Meeting Minutes
2. Past Election Code changes, grouped by themes
3. Draft Election Code Changes

There are three or more members of City Council that may attend this meeting. While no formal action will be taken by the Council at this meeting, the discussion of public business will occur and the meeting is open to the public.

- Next Election Code Committee Meeting: 3:30-5:00 p.m., Friday, February 21, 2020.

November 15, 2019

ELECTION CODE COMMITTEE MEETING

3:45 PM

COUNCILMEMBERS PRESENT: Troxell, Pignataro, Summers
STAFF PRESENT: Carrie Daggett, Ryan Malarkey, Delynn Coldiron, Rita Knoll, Sara Gonzales
CITIZENS PRESENT: Marge Norskog, Robbie Moreland, Kathleen Schmidt, Kevin Jones

1. CALL MEETING TO ORDER

Mayor Troxell called the meeting to order.

2. CITIZEN COMMENT

Marge Norskog stated this committee provides a great deal of experience to determine how best to provide oversight for elections going forward. She discussed a new Colorado law: the Campaign Finance Enforcement Code. She stated the Secretary of State is actively creating a campaign enforcement group within its office and encouraged the City to examine a similar process.

3. APPROVAL OF SEPTEMBER 6, 2019 COMMITTEE MEETING MINUTES

Councilmember Summers made a motion, seconded by Mayor Troxell, to adopt the September 6, 2019 Committee meeting minutes. The motion was adopted by unanimous consent.

4. DISCUSSION ITEMS

a. "Fishbowl" donations - Require greater detailed reporting or not allow this type of campaign contribution?

Chair Pignataro stated these types of donations added up to over \$500 in the last election. City Attorney Daggett noted it is challenging to have anonymous donations where you have individual contribution limits; therefore, it may be necessary to have some type of tracking for these donations.

Councilmember Summers stated people try to find ways around the rules and money is pushed out of the control of the candidate when more rules are in place. Campaigns should track individual donations regardless of the amount so it can be reported when the threshold is met. Candidates want to know who is contributing to their campaigns and suggested not allowing "fishbowl" donations may be the appropriate solution.

Mayor Troxell stated this type of donation does not seem to function with the maximum donation amounts.

Chair Pignataro asked about the language around anonymous donations. Chief Deputy City Clerk Knoll stated any donation under \$20 is non-itemized and not reported. A solution would be to not allow non-itemized contributions.

Mayor Troxell supported that solution and asked what constitutes a Charter change with regards to elections. City Attorney Daggett replied there is a Charter provision that prohibits employee contributions to Council candidate campaigns and prohibits contributions from organizations contracting with the City. She also stated ranked voting would also be a Charter amendment and the remainder of the items on this agenda would be Code changes.

City Attorney Daggett noted there has been some discussion about the Charter provision related to not being able to hold office if convicted of a Code violation during an election. She noted Code changes would likely be able to address the concerns about the Charter provision and she reviewed items that could be viewed as criminal versus civil infractions in the election-related Code language.

Chair Pignataro stated eliminating anonymous donations would solve the "fishbowl" contribution issue.

b. Review of the complaint and enforcement procedures and penalties for election code violations.

Chair Pignataro stated the review of the complaint and enforcement procedures and penalties for election code violations would be a much longer effort.

Councilmember Summers stated the significant changes that were made after the 2017 election that applied to the 2019 election should be reviewed. He opposed the “paid for by” requirement for yard signs and stated some of the changes may have been overcorrections. Most of the 2019 election complaints were frivolous, bogus, and inconsequential.

Chair Pignataro stated the “paid for by” requirement began because of mailers that were funded by outside money. She agreed with Councilmember Summers that some of the changes may be overreaching.

Councilmember Summers opposed the requirement for two signatures on joint checking account checks. He stated several of the City's requirements do not even apply at the state level. He expressed concern that taking the control of the campaign out of the candidates' hands diverts it to outside groups.

Mayor Troxell supported adopting a minimalist, candidate-focused, transparent process. He supported doing away with anonymous donations.

Councilmember Summers stated there should be a right to cure things that are deficient in election reporting, such as missing addresses. Knoll replied the Clerk's Office does not review reports at that level of detail; however, if it is brought to the attention of the Clerk, the candidate is told and is able to file an amended report.

Chair Pignataro asked if the priority of this item is changed by Council as a whole bringing it up under Other Business. Knoll replied Council will consider a draft ordinance and recommendation from this committee.

Councilmember Summers stated anything short of misappropriation of funds should not be viewed as a criminal activity.

City Attorney Daggett suggested staff return with options and recommendations.

c. Ranked Choice Voting-pros and cons for our community.

Chair Pignataro noted ranked voting could not be in place by the next election; therefore, while it is still important to discuss, it is not necessarily a priority at this time. She stated ranked voting could even the playing field a bit.

Councilmember Summers discussed his experience with ranked voting and stated he essentially supports the “one vote, one person” philosophy. He noted there could be a large confusion factor for voters and stated ranked voting may not add a great deal of value to city elections.

Mayor Troxell stated there is no existing problem that would be fixed by ranked voting. He noted some areas that have implemented ranked voting have now done away with it.

d. Restrictions on employees and contractors from participating in City elections.

City Attorney Daggett stated staff will likely want to provide more detail on this topic as the discussion progresses. She stated the employee issue is separate from the contractor issue and stated staff is recommending Council consider asking voters to remove the restrictions on contracting organizations in light of Citizens United as there is some question as to whether the prohibition is consistent with how the law has developed. She noted that would be a Charter provision change and stated the committee may need an executive session to fully discuss legal ramifications.

City Attorney Daggett noted the employee contribution prohibition only applies to candidate elections, but employees can participate in issue elections on a personal level.

Chair Pignataro noted the City is one of the largest employers in Fort Collins and stated not allowing employees to participate is difficult for candidates.

City Attorney Daggett noted City Manager Atteberry may want to be involved in this discussion related to concerns about relationships employees may have developed with candidates to whom they have contributed.

e. Campaign naming and carry-over for returning candidates.

Chair Pignataro noted this item relates to using a different campaign name for each election. She expressed concern that this could be wasteful in terms of campaign materials.

Councilmember Summers stated campaigns are active until they are closed at the state level.

Chair Pignataro asked what issues are being faced by the City Clerk's Office that would drive the need for different campaign names. Deputy City Clerk Gonzales replied donations are tied to committee names and it is difficult to determine which campaign is associated with which donations if the campaign name remains the same. She noted funds can be carried over from one committee to the other; however, the itemized items do not carry over.

Councilmember Summers suggested utilizing dates to differentiate campaigns.

Mayor Troxell noted issue committees and candidate committees may need to be treated differently. Gonzales replied issue committees are required to terminate and candidate committees must be reopened for each election, though they can remain open with an annual reporting requirement.

f. Possible alignment with state law regarding LLC election contributions.

Councilmember Summers stated the state law requires a report, which is only held by the candidate, outlining contributions made by an individual and their LLC.

City Attorney Daggett stated it could become cumbersome to attempt to attribute a donation equally among all members of an LLC.

Chair Pignataro stated City elections have a low per person donation limit for a reason and allowing LLC contributions seems to go against that.

Councilmember Summers stated higher contribution limits may be needed in order to avoid LLC contributions.

Chair Pignataro stated she would like to have staff prepare information related to pros and cons of the state regulations.

5. Continuation of Election Code Committee

City Attorney Daggett stated this item has come about as there may be enough interest on the part of the entire Council on some items that a work session may be a better way to proceed with a discussion.

City Clerk Coldiron stated there was also some thought that the amount of changes already made may need to be digested and assessed prior to making more changes.

Members discussed items that they would like to consider in January.

6. OTHER BUSINESS

Chair Pignataro encouraged the Clerk's Office to make scanned reports searchable PDFs.

7. ADJOURNMENT

The meeting adjourned by unanimous consent at 5:14 PM.

ELECTION CODE COMMITTEE ACCOMPLISHMENTS

April 2017 – September 2018

(with certain earlier amendments added for context)

Committee Structure/Registration and Termination

- Added a definition of “registered agent”, which is used in the context of committee registration and campaign finance reports. [Apr 2018]
- Amended Section 7-134 regarding registration of committees to require registration on a form provided by the City Clerk and outlining the required information to be provided. Required prompt provision of information updates. Added provisions relating to voluntary termination and the proper disposition of funds and mandatory termination for political committees and issue committees no later than 60 days after the election. [Apr 2018]
- Provided that any issue committee or political committee formed prior to July 1, 2017 will be deemed terminated and shall cease operation as of April 13, 2018. Such committees are required to disburse remaining funds pursuant to the provisions in Section 7-138 (Unexpended Campaign Contributions) of the Code. [Apr 2018]
- Amended the definition of “candidate committee” to specify that the common purpose is to receive contributions *or* (rather than “and”) make expenditures. {Sept 2018}
- Amended the definition of “issue committee” to clarify that it means any person that has accepted contributions for the purpose of supporting or opposing a ballot question. [Sept 2018]
- Amended the definition of “political committee” to clarify that activity is limited to supporting or opposing candidates only, and eliminating the ability of a political committee to make contributions to other committees. [Sept 2018]

Small-scale Issue Committees

- Added provisions relating to small-scale issue committees. [Jan 2017]
- Applied similar committee registration requirements and update information to small-scale issue committees (which are addressed in a separate section of the Code). [Apr 2018]
- Amended the definition of “contribution”, specifically in the portion describing what “contribution” does not include, to add reference to a small-scale issue committee. [Sept 2018]
- Amended the definition of “contribution in kind” to add reference to a small-scale issue committee. This applies also to what “contribution in kind” does not include. [Sept 2018]
- Amended the definition of “expenditure” to add reference to a small-scale issue committee. [Sept 2018]
- Amended the definition of “unexpended campaign contributions” to add reference to a small-scale issue committee. [Sept 2018]
- Amended the section dealing with registration and termination of committees to add reference to a registered small-scale issue committee. [Sept 2018]
- Amended the section regarding rates and charges for political advertising to include reference to a small-scale issue committee. [Sept 2018]

Filing Requirements

- Added a definition of “public announcement”, which is used in the context of determining when someone becomes a candidate. [Apr 2018]
- Changed the date that a candidate’s first financial disclosure statement is due to coincide with the acceptance of nomination, rather than 10 days after acceptance of nomination. [Apr 2018]
- Amended deadlines for write-in candidates, nomination petitions, withdrawal from candidacy, and nomination petition in a recall election, to provide more time for preparation and mailing of ballots. [June 2018]

Contributions/Expenditures and Campaign Finance Reporting

- Added two additional campaign finance report filing dates: 35 days prior to the election and 60 days after the election. [Apr 2018]
- Clarified that the campaign finance report due on the Friday before the election is due at noon, regardless of the method of filing. (All other reports, if filed electronically, may be filed until midnight on the date due.) [Apr 2018]
- Adjusted the deadline for post-election campaign reports from the 60th day after the election to now be due the 70th day after the election. [June 2018]
- Adjusted the deadline for the report due on the 30th day after the election to instead be due on the 35th day after the election. [June 2018]
- Amended the section relating to campaign contributions and expenditures to:
 - eliminate issue committee and political committee from the provision relating to joint contributions,
 - add reference to small-scale issue committee to the list of committees that cannot knowingly accept contributions from any person who is not a U.S. citizen, from a foreign government, or from any foreign corporation that does not have authority to transact business in Colorado
 - add a new subsection prohibiting any type of committee from coordinating its expenditures with any other committee in a manner that circumvents any restrictions or limitations on campaign contributions, expenditures, or reporting requirements. [Sept 2018]
- Amended the section relating to disclosure and filing of reports to make a committee’s registered agent, rather than treasurer, the person notified of any deficiencies in reporting, and the person responsible for amending a report to cure deficiencies. [Sept 2018]

Campaign Regulations

- Required committees to keep copies of any public communications produced, in addition to invoices, receipts, and other instruments of payment. [June 2018]
- Added a definition of “social media” to mean any electronic medium, including an interactive computer service, application, or data network, that allows users to create, share, and view user-generated content, including but not limited to videos, still photographs, blogs, video blogs, podcasts, instant messages, electronic mail, or internet website profiles. [June 2018]

- Added internet advertisers, website providers and social media providers to the list of possible entities providing paid advertising, and to the reporting requirements for discounted rates. [June 2018]
- Added a new section titled “Responsibility for communications” establishing required “paid-for-by” statements on certain types of communications produced by committees and by persons making independent expenditures. [Sept 2018]

Independent Expenditures

- Strengthened provisions relating to independent expenditures to require:
 - A detailed description of the expenditures sufficient to allow for determination of compliance with the Code.
 - Copies of receipts, invoices, or other documentation related to the independent expenditure.
 - Maintenance of records for one (1) year, or longer if a complaint is received, and production of those records within three (3) business days upon request of the City. [Jan 2017]
- Amended the definition of “independent expenditure” to:
 - clarify that independent expenditure includes advertisements placed for a fee on another person’s website, or advertisement space provided for no fee or a reduced fee when a fee ordinarily would have been charged.
 - require reporting of independent expenditures supporting or opposing a ballot issue or question.
 - require persons making independent expenditures to keep copies of any public communications produced, in addition to invoices, receipts, and other instruments of payment.
 - clarify that the following are not independent expenditures:
 - expenditures made by persons, other than political committees, in the regular course and scope of their business and political messages sent solely to their members.
 - Any news articles, editorial endorsements, opinion or commentary writings, or letters to the editor printed in a newspaper, magazine, or other periodical not owned or controlled by the candidate, or communications other than advertisements posted or published on the internet for no fee. [June 2018]
- Amended the definition of “independent expenditure” to add reference to a small-scale issue committee. [Sept 2018]
- Amended the definition of “independent expenditure”, specifically in the portion describing what “independent expenditure” does not include, to add expenditures made by small-scale issue committees. [Sept 2018]
- Amended the section regulating independent expenditures to:
 - exclude a committee required to register under Chapter 7, Article V, from making independent expenditures.
 - require reporting of independent expenditures once the aggregate amount spent exceeds \$250.
 - require reporting on a form provided by the City Clerk. [Sept 2018]

Complaints

- Added a Division pertaining to campaign complaints/violations. [Jan 2017]
- Amended the section regarding allegation of campaign violation to include a person to the list of those who may commit a campaign violation and be subject to the filing of a complaint. [Sept 2018]

Ballot Processing

- Established the requirement to use signature verification in the manner provided in State Statute beginning with the April 2019 election. [Apr 2018]
- Established provisions specifically addressing the facilitation of voting by uniformed military and overseas voters. [June 2018]

Post-Election

- Charter Amendment approved changing the deadline for final certification of an election so that the City may implement signature verification, and corresponding changes to the date of the Council organizational meeting and the beginning of Councilmember terms of office. [Apr 2017]

Other/Administrative

- Amended the duties of the City Clerk to include serving as the Designated Election Official in any election coordinated with Larimer County. [Apr 2018]

01-10-2020 DRAFT ELECTION CODE CHANGES – FOR DISCUSSION PURPOSES ONLY

ELIMINATION OF ANONYMOUS DONATIONS

Sec. 7-136. Disclosure; filing reports.

(a) All candidate committees, political committees and issue committees shall report to the City Clerk their contributions and contributions in kind received, including the name and address of each person who has made a contributions or a contributions in kind in the amount of twenty dollars (\$20.) or more; expenditures made; and obligations entered into by the committee.

...

*[*Notably, Section 7-135(f)(1) requires that a committee document all contributions and makes no distinction for amount, meaning committees should have been keeping track of sub-\$20 contributions already, just not reporting them.]*

Commented [RM1]: This change removes anonymous donations. All donations, regardless of amount, will need to be reported. At the extreme, this would include a contribution one penny.

01-10-2020 DRAFT ELECTION CODE CHANGES – FOR DISCUSSION PURPOSES ONLY

USE OF UNEXPENDED CITY CAMPAIGN FUNDS IN NON-CITY ELECTIONS & CARRY-OVER OF CANDIDATE COMMITTEE CONTRIBUTIONS TO NEXT ELECTION CYCLE

Sec. 7-138. Unexpended campaign contributions.

- (a) Unexpended campaign contributions to a candidate committee may be:
- (1) Contributed to a political party;
 - (2) Contributed to a candidate committee established by the same candidate person for a subsequent campaign in a federal, state, county or City election. For a City election, such contributions are subject contributed to the limitation set forth in Paragraph 7-135(e)(2), if the candidate committee making such a contribution is affirmatively closed by the candidate no later than ten (10) days after the date such a contribution is made;
 - (3) Donated to a charitable organization recognized by the Internal Revenue Service;
 - (4) Returned to contributors;
 - (5) Used to pay for the cost of a recount requested by the candidate pursuant to § 7-46.

In no event shall contributions to a candidate committee be used for personal purposes not reasonably related to supporting the election or retention of the candidate.

- (b) In addition to any use described in Subsection (a) of this Section, a person elected to the office of Mayor or Councilmember, or retained in office following a recall attempt, may use unexpended campaign contributions held by the person's candidate committee for any of the following purposes:
- (1) Voter registration;
 - (2) Political issue education, which includes obtaining information from or providing information to the electorate;
 - (3) Postsecondary educational scholarships;
 - (4) To defray reasonable and necessary expenses related to mailings and similar communications to constituents;
 - (5) Any expenses that are directly related to such person's official duties as an elected official, including, but not limited to, expenses for the purchase or lease of office equipment and supplies, room rental for public meetings, necessary travel and lodging expenses for legislative education such as seminars, conferences and meetings on legislative issues, and telephone and pager expenses.

Commented [RM2]: This change is to allow candidates to use City election campaign contributions in a future non-City election, in response to MPT Stephens' question.

01-10-2020 DRAFT ELECTION CODE CHANGES – FOR DISCUSSION PURPOSES ONLY

- (c) A candidate committee for a former officeholder or a person not elected to office shall expend all of the unexpended campaign contributions retained by such candidate committee, for the purposes specified in Subsection (a) of this Section, no later than five (5) years from the date such officeholder's term expired or from the date of the election at which such person was a candidate for office, whichever is later.
- (d) Unexpended contributions to an issue committee or political committee may be donated to any charitable organization recognized by the Internal Revenue Service, returned to the contributor, or used to pay for the cost of a recount requested by the committee's registered agent pursuant to § 7-46.
- (e) Any contributions received by a candidate committee that remain unexpended as of the seventieth (70th) day after the election shall be considered contributions to that candidate committee for use in the next election under that same candidate committee name, unless the committee registers with the City Clerk under a new name .

Commented [RM3]: This change is to address the continuance of the same candidate committee and the rolling over of unexpended campaign contributions to the next election cycle.

01-10-2020 DRAFT ELECTION CODE CHANGES – FOR DISCUSSION PURPOSES ONLY

CAMPAIGN FINANCE VIOLATION PROCESS

Sec. 7-145. Allegation of campaign violation.

...

(c) The City Clerk will forward the complaint to the respondent and the City Attorney, who will evaluate the complaint for probable cause.

Commented [RM4]: This makes clear the complaint must be forwarded to the respondent.

Sec. 7-146. Evaluation of campaign complaint.

(a) If the City Attorney determines that no probable cause exists, that the complaint fails to allege an enforceable violation, or that the requirements of § 7-145 were not met by the complainant, the City Attorney shall so notify the City Clerk, who will, in turn, notify the complainant in writing.

(b) If the City Attorney determines probable cause exists, the City Attorney will notify the respondent of the alleged violation(s) for which probable cause exists. The respondent shall have seven (7) business days from the date of the notice to correct, or make a diligent effort to correct, the violation(s). If the respondent cures or makes diligent efforts to cure the alleged violation(s), the respondent shall submit to the City Clerk a written statement of such cure or describing the efforts to cure no later than the seventh (7th) business day. If the respondent disputes the alleged violation(s), the respondent may submit information to the City Clerk in support of the respondent's position, and the City Clerk shall forward that information to the City Attorney for consideration. The complaining party may request and receive the respondent's submitted statement and information. In addition, the City Attorney may notify Fort Collins Police Services, who, in consultation with the City Attorney, may file and serve a summons and complaint to the respondent.

Commented [RM5]: This new language creates a mechanism by which a respondent can cure or attempt to cure a violation. It also makes clear that a respondent has an opportunity to submit information to the Clerk in support of its position. My thought is that this should trigger committees or candidates to provided exculpatory information that the City Attorney can take into account, which may eliminate the need for further investigation or prosecution.

Commented [RM6]: Aligns with cure period for incomplete disclosure reports in 7-136(g).

(c) The City Attorney retains prosecutorial discretion on whether to ultimately file criminal charges. If the City Attorney determines filing a summons and complaint is inappropriate, he or she shall so notify the City Clerk, who will, in turn, notify the complainant and respondent in writing.

Commented [RM7]: This is a new subsection (c) but not new language. I split it out for formatting's sake to make it more readable.

Sec. 7-150. Action by complainant.

(a) After having received written notification from the City Clerk pursuant to § 7-146 that the City Attorney determined filing a summons and complaint is inappropriate, or after one hundred eighty (180) days of filing the complaint, whichever is first, the complainant may bring a civil action in District Court.

(b) The complainant has one (1) year from the date of the violation to bring such suit.

(c) The complainant may sue to compel compliance with this Article, provided however, that complainant must first file a complaint with the City Clerk, pursuant to Section 7-145, and otherwise exhausts his or her administrative remedies.

Commented [RM8]: Removed due to federal district court case holding Secretary of State's citizen enforcement mechanism unconstitutional.

01-10-2020 DRAFT ELECTION CODE CHANGES – FOR DISCUSSION PURPOSES ONLY

(d) — Any person who knowingly violates this Article may be civilly liable in an amount up to two thousand dollars (\$2,000.), or, if applicable, three (3) times the amount of the discrepancy, whichever is greater. (e) Reasonable attorneys' fees for the prevailing party may be awarded if the amount of civil liability alleged is greater than seven thousand five hundred dollars (\$7,500.).

(f) — In determining the amount of civil liability, the court may take into account the seriousness of the violation and culpability of the defendant.