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AGENDA

City Council Election Code Committee
February 21, 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 January 10, 2020 Committee Meeting Minutes
4. Discussion Items:
 - a. Civil vs. Criminal penalty options for election code violations.
 - b. City regulation of LLC campaign contributions.
5. Other Business
6. Adjournment

ATTACHMENTS

1. January 10, 2020 Committee Meeting Minutes
2. Previous Council races with more than 2 candidates

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, April 3, 2020.

January 10, 2020

ELECTION CODE COMMITTEE MEETING

3:31 PM

COUNCILMEMBERS PRESENT: Troxell, Pignataro, Summers
STAFF PRESENT: Carrie Daggett, Ryan Malarkey, Delynn Coldiron, Rita Knoll, Sara Gonzales
CITIZENS PRESENT: Robbie Moreland, Jody Deschenes, Anne Thompson, Sam Houghteling, Eric Sutherland

1. CITIZEN COMMENT

Robbie Moreland stated Secretary of State regulations state that campaign contributions made as a member of an LLC counts toward contribution limits for that individual; however, City law allows an individual to make contributions under their own name as well as through their LLCs. She opposed the City provisions, as LLCs are not individuals and do not receive a ballot to vote. She requested the City develop a way to align contributions limits for LLCs with the state requirements. She expressed support for ranked choice voting, is interested in the continued discussion on non-itemized contributions under \$20, and requested the Committee recommend doing away with anonymous donations altogether.

Jody Deschenes expressed support for the City adopting Colorado's rules regarding campaign contributions from individuals and LLCs. She also supported independent redistricting and requested an update on the timeline for hiring an independent redistricting consultant following the 2020 census. She supported eliminating anonymous or non-itemized contributions under \$20 and supported ranked choice voting.

Chair Pignataro noted she had previously requested staff prepare pro and con information regarding possible alignment with state LLC contribution provisions and requested an update. Gonzales replied that topic will be discussed at the February meeting.

Mayor Troxell requested information regarding the LLC provisions related to a home rule municipality. City Attorney Daggett replied the City has its own set of campaign finance rules and would need to adopt something different to match the state provisions.

Councilmember Summers stated it is important not to pick and choose what the City models locally after the state guidelines. He asked if the intent is to make it more difficult to run for City Council than for the State House or State Senate.

Chair Pignataro replied she would like to look at pros and cons of changing the regulations.

Councilmember Summers stated he would like to look at the state model for donations from couples. He noted the Fort Collins model is more restrictive than state law for couples to donate to a candidate.

Mayor Troxell discussed the importance of identifying goals to be achieved prior to making changes.

Chair Pignataro noted ranked choice voting would require Council to vote to place the item on a ballot as it is a Charter change. Knoll noted the only option to have that in place for the next City election would be to place it on the November 2020 ballot.

Councilmember Summers stated it would be helpful to have an analysis of how many elections had more than 2 candidates when looking at ranked voting. Knoll replied she would provide a spreadsheet of the number of candidates in each race for each election and data on whether the winning candidate acquired more than 50% of the vote.

Mayor Troxell discussed the recent ethics complaint regarding Mayor Pro Tem Stephens and his participation in the Hughes Stadium site rezoning and stated it is false to claim issue committee donations are related to individual campaigns as was suggested as part of that complaint.

2. APPROVAL OF NOVEMBER 15, 2019 COMMITTEE MEETING MINUTES

Mayor Troxell made a motion, seconded by Councilmember Summers, to adopt the November 15, 2019 Committee meeting minutes. The motion was adopted by unanimous consent.

3. DISCUSSION ITEMS

a. Review past Election Code changes, grouped by themes - Discussion of which areas the Committee would like to see amended

Councilmember Summers stated the definition of a Candidate Committee was changed to specify the common purpose is to receive contributions *or* make expenditures rather than *and* make expenditures and asked why that change was made. City Attorney Daggett replied that change was made realizing candidate committees would not technically meet the definition of a candidate committee until it started spending money.

Councilmember Summers suggested some context may be missing related to the candidate committee language. Knoll replied both contributions and expenditures were required to meet the definition of a candidate committee when the language was first written; however, there could be a situation in which the candidate funds the committee totally by loaning the campaign money, which is not technically a contribution, but is a loan. This would mean expenditures could be made, but contributions were not received, and the proposed language would allow a candidate committee to either receive contributions or make expenditures, or both.

City Attorney Daggett stated the language could be revisited as necessary.

Councilmember Summers asked if an individual could run for Council and not have a candidate committee. City Attorney Daggett replied candidate committees are defined as “a person, including the candidate, or persons with a common purpose, of receiving contributions, making expenditures, under the authority of the candidate”; therefore, the definition is written to include the candidate as a person. She stated it is a requirement of the candidate to have a committee unless there is no money being contributed.

Councilmember Summers asked if there is a time limit for which candidates are required to retain copies of public communication, invoices, receipts, and other instruments of payment. Gonzales replied it is for a year unless a complaint has been filed, then items must be kept until after its resolution.

Councilmember Summers asked if it must be counted as a contribution if someone from an individual's campaign committee voluntarily sets up the candidate's webpage. City Attorney Daggett replied certain items online are free, and other things are not; therefore, it would depend on whether the page was placed on a hosted site or one that could be freely used. She stated this section prohibits different rates being given to certain candidates over others.

Councilmember Summers stated there may have been some confusion prior to the requirement that independent expenditures must have a “paid for by” declaration. City Attorney Daggett replied most of the confusion was on the part of complaining parties, and it was made clear that new regulations such as this do require a fair amount of education. She stated there is opportunity to continue improving the education around the requirements.

Chair Pignataro asked if the Code language indicates “paid for by” statements are required when money or in-kind donations are exchanged. Assistant City Attorney Malarky noted a trigger for the use of “paid for by” is when a candidate or committee makes an expenditure. City Attorney Daggett stated the Code language includes examples of items that are understood to be impractical for a notice requirement.

Mayor Troxell asked if this section could include something about social media. City Attorney Daggett replied the language does say communication shall include, but is not limited to, websites or social media of a candidate committee, issue committee, or small-scale committee, if and to the extent they are financed by independent expenditures.

Chair Pignataro clarified the requirement would apply to ads purchased on Facebook, for example, but not to posts on personal pages.

City Clerk Coldiron noted there may be some confusion and question as to what is impractical for the “paid for by” requirement.

City Attorney Daggett mentioned the question as to whether materials from previous elections, such as yard signs, should be required to have the “paid for by” notation.

Councilmember Summers questioned why “paid for” declarations are required. Knoll replied this came from a request from citizens because there were very negative ballot materials against another candidate sent out in the April 2017 election that appeared to be from the candidate's campaign, and it was difficult to identify who had sent it.

Councilmember Summers stated that kind of issue should be the focus of what needs to be solved with a “paid for by” requirement.

Chair Pignataro stated she would like to see this requirement used through one more election cycle before making any amendments.

Mayor Troxell agreed.

b. Possible Election Code Changes-Review of draft Code Amendments

1. Elimination of anonymous donations

Malarky stated the direction staff received from the Committee was to eliminate all anonymous donations; therefore, the \$20 threshold has been eliminated in the draft language so any donation amount would need to be tracked and recorded.

Mayor Troxell stated this requirement may make things simpler. City Attorney Daggett noted this requirement would eliminate the possibility that someone could make multiple small donations that would not be tracked under the previous regulations.

Chair Pignataro noted she would want to know who is supporting her as a candidate.

The Committee supported the proposed language on this issue.

2. Use of unexpected City election candidate contributions in a non-City election

Chair Pignataro stated she does not want this to appear as if it is being done for a specific candidate and asked if a similar provision exists at the state level.

Councilmember Summers replied funds can be rolled over among state campaigns. He noted new committees must be formed if the campaigns are for different offices on different levels.

Mayor Troxell noted unexpended campaign funds can now go to non-profits and other entities and suggested a campaign for another position should also qualify under that category.

Councilmember Summers asked if leftover campaign funds are considered the candidate's funds when being transferred from one year's campaign to another. City Attorney Daggett replied there would not be a limit on the transferred amount.

3. Carry-over of unexpended candidate contributions to the next election cycle and the ability of the committee to keep its same name

Malarky stated this item was intended to address a concern that was raised about having to develop a new committee name. The Election Code Committee provided direction that candidates be able to retain the same committee names. Knoll suggested committee names could be amended with the knowledge and documentation that the committee is the same.

4. Addition of a cure period for respondents in the campaign violation process

Malarky outlined the language for this proposed change.

Mayor Troxell asked about the repercussions for campaign violations that are not corrected. Malarky replied there would then be a determination made either by the City Attorney's Office or outside counsel regarding whether further investigation or prosecution is warranted.

5. Removal of the citizen enforcement mechanism in District Court

City Attorney Daggett stated the current Code allows the complaining party to file a case in District Court should the City's prosecutor chose not to pursue prosecution of a violation. Staff recommends removing this ability from the Code based on questions of constitutionality in recent court cases. She outlined a complaint received regarding an election which was ultimately reviewed and determined to not merit further investigation. She stated the citizen was frustrated with the time it took to investigate the complaint.

Chair Pignataro asked what options would be available for a citizen. City Attorney Daggett replied the initial logic of the campaign finance disclosure requirements was that the political process is political and whatever information people have about what may have happened would feed into the political process and be usable for people who wanted to advocate for or against individual candidates, or seek recall of individual candidates.

4. OTHER BUSINESS

Chair Pignataro asked when the civil versus criminal penalty option will come before the Committee. City Attorney Daggett stated any violation is currently a criminal misdemeanor and there are some types of violations that staff would recommend continue to be so. She stated it is clear there is interest in backing off consequences and intensity of enforcement for items like filing violations. She stated those issues would shift from a criminal violation to a civil infraction or other administrative violation.

City Attorney Daggett stated staff will need to work on developing a recommendation for what the process may look like. She noted civil infractions are punishable by fines and stated a fine schedule could be outlined.

Councilmember Summers stated it is important to delineate between oversights and mistakes versus true law violations such as fraud, which is already illegal. He stated creating disproportionate penalties will discourage people from serving in public office.

City Clerk Coldiron and City Attorney Daggett outlined the process by which complaints are addressed through the two offices.

Chair Pignataro asked if the City is planning to place any items on the November 2020 ballot. City Clerk Coldiron replied in the negative. Mayor Troxell discussed how items may emerge to be placed on the ballot.

Chair Pignataro asked about cost of adding an item to a presidential election ballot. City Clerk Coldiron replied it would be quite expensive and noted all local items are placed near the end of the ballot.

5. ADJOURNMENT

The meeting adjourned by unanimous consent at 5:22 PM.

ADMINISTRATIVE PENALTY PROCESS FOR CAMPAIGN FINANCE VIOLATIONS

This language amends several provisions of the City Code to provide for an administrative penalty process, whereby a set penalty may be imposed against a candidate or committee for certain campaign finance violations. There exist other alternatives to the process detailed below, but in consultation with City Clerk’s staff, this process is being proposed for discussion.

Penalties for these specific violations would no longer be criminal, unless and until a violator has committed two or more violations. This language also keeps criminal penalties for conduct where: (1) a person or committee violates disclosure requirements with the intent to fraudulently misrepresent contributions or expenditures; or (2) a person offers a candidate or candidate committee money or anything of value to withdraw, or a candidate offers to withdraw for money or anything of value. Criminal violations would not be subject to the administrative penalty process, and instead would remain subject to review by the City Attorney’s Office for probable cause.

The language provides that, in response to a citizen complaint alleging non-criminal violations, the City Clerk will forward the complaint to the candidate or committee (“respondent”), which will trigger a seven (7) day cure period. If the respondent fails to cure the violation or fails to respond, the City Clerk may impose a fine if the violation can be objectively determined. If the violation and cure cannot be objectively determined, the City Clerk would forward the matter to a hearing officer for a determination of whether a penalty should be imposed.

If the respondent disputes a penalty, the matter could be set for a hearing before the hearing officer, at which the respondent could present evidence in opposition to the complaint. If a penalty is sustained and goes unpaid, the City would have the authority to collect the penalty as a debt to the City. Candidates would be personally liable for penalties and would be prohibited from using campaign contributions to pay penalties.

For context, we have provided the entirety of Article V, which regulates campaign finance. To avoid confusion, the following language does not include potential amendments that were discussed by the ECC at its January 10, 2020 meeting, including but not limited to the elimination of anonymous donations and the carry-over of campaign funds. However, this language does include amendments that differ from proposed language we provided to the ECC at the January 10th meeting with respect to the City Attorney review process. This new language differs because of necessary changes to accommodate the creation of a proposed administrative penalty process.

ARTICLE V. - CAMPAIGNS⁽⁴⁾

Footnotes:

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Charter reference— City Council, Art. II; campaign contributions, Art. VIII, § 7.

Sec. 7-131. - Legislative declaration.

The City Council hereby finds and declares that large campaign contributions to political candidates allow wealthy contributors and special interest groups to exercise a disproportionate level of influence over the political process; that large campaign contributions create the potential for corruption and the appearance of corruption; that the rising costs of campaigning for political office prevent qualified citizens from running for political office; and that the interests of the public are best served by limiting campaign contributions, full and timely disclosure of campaign contributions and strong enforcement of campaign laws.

(Ord. No. 162, 2000, § 1, 11-21-00)

Sec. 7-132. - Definitions.

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

Ballot issue, ballot question or issue shall mean any measure put to a vote of the registered electors of the City by the City Council at any election held under the provisions of the Charter. For purposes of this Article V, *ballot issue, ballot question or issue* shall also mean any measure for which recall, initiative or referendum proceedings have been commenced pursuant to Article IX, Section 1(b), Article X, Section 1(b), and Article X, Section 2(b), respectively, of the Charter.

Candidate shall mean any person who seeks nomination or election to the office of Mayor or Councilmember at any City election. A person is a candidate if the person has publicly announced an intention to seek such election or has filed nominating petitions for the office of Mayor or Councilmember. *Candidate* shall also mean any elected official who is the subject of recall proceedings pursuant to Article IX of the Charter.

Candidate committee shall mean a person, including the candidate, or persons with the common purpose of receiving contributions or making expenditures under the authority of a candidate. A candidate shall have only one (1) candidate committee. A candidate committee shall be considered open and active until the committee has filed a termination report with the City Clerk.

Contribution shall mean:

- (1) The payment, loan, pledge or advance of money, or guarantee of a loan, made to any candidate committee, issue committee or political committee;
- (2) Any payment made to a third party for the benefit of any candidate committee, issue committee or political committee;
- (3) Anything of value given, directly or indirectly, to a candidate committee for the purpose of promoting the candidate's nomination, retention, recall or election; or
- (4) With regard to a contribution for which the contributor receives compensation or consideration of less than equivalent value to such contribution, including, but not limited to, items of perishable or nonpermanent value, goods, supplies, services or participation in a campaign-related event, an amount equal to the value in excess of such compensation or consideration as determined by the candidate committee, issue committee or political committee.

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Contribution shall not include:

- (1) Services provided without compensation by individuals volunteering their time on behalf of a candidate, candidate committee, political committee, issue committee or small-scale issue committee;
- (2) Funds collected subsequent to the election to pay the cost of a requested recount pursuant to 7-46.

Contribution in kind shall mean the fair market value of a gift or loan of any item of real or personal property, other than money, made to or for any candidate committee, issue committee, small-scale issue committee or political committee for the purpose of influencing the passage or defeat of any issue or the nomination, retention, election or defeat of any candidate. Personal services shall be considered a contribution in kind by the person paying compensation therefor. In determining the value to be placed on contributions in kind, a reasonable estimate of fair market value shall be used.

Contribution in kind shall not include an endorsement of a candidate or an issue by any person and shall not include the payment of compensation for legal and accounting services rendered to a candidate, candidate committee, political committee, issue committee or small-scale issue committee if the person paying for the services is the regular employer of the individual rendering the services and the services are solely for the purpose of ensuring compliance with the provisions of this Article.

Expenditure shall mean the payment, distribution, loan or advance of any money by any candidate committee, political committee, issue committee or small-scale issue committee. *Expenditure* shall also include the payment, distribution, loan or advance of any money by a person for the benefit of a candidate committee, political committee, issue committee or small-scale issue committee that is made with the prior knowledge and consent of an agent of the committee. An expenditure occurs when the actual payment is made or when there is a contractual agreement and the amount is determined.

Independent expenditure shall mean the payment of money by any person for the purpose of advocating the election, defeat or recall of a candidate, which expenditure is not controlled by, or coordinated with, any candidate or any agent of such candidate. *Independent expenditure* shall include expenditures for political messages which unambiguously refer to any specific public office or candidate for such office. Independent expenditure shall also include the payment of money by any person for supporting or opposing a ballot issue or ballot question that is not controlled by, or coordinated with, an issue committee or a small-scale issue committee. Independent expenditure shall include, but not be limited to, advertisements placed for a fee on another person's website or advertisement space provided for no fee or a reduced fee where a fee ordinarily would have been charged.

Independent expenditure shall not include:

- (1) Expenditures made by persons in the regular course and scope of their business and political messages sent solely to their members;
- (2) Expenditures made by small-scale issue committees; or
- (3) 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.

Issue committee shall mean:

- (1) Two (2) or more persons who are elected, appointed or chosen, or have associated themselves, for the purpose of accepting contributions or making expenditures to support or oppose any ballot issue or ballot question; or
- (2) Any person that has accepted contributions for the purpose of supporting or opposing any ballot issue or ballot question.

Issue committee shall not include small-scale issue committees as otherwise defined in this Section.

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Person shall mean any individual, partnership, committee, association, corporation, labor organization or other organization or group of persons.

Political committee shall mean:

- (1) Two (2) or more persons who are elected, appointed or chosen, or have associated themselves, for the purpose of accepting contributions or making expenditures to support or oppose one (1) or more candidates.
- (2) Any person that has accepted contributions for the purpose of supporting or opposing one (1) or more candidates.

Political committee shall not include candidate committees as otherwise defined in this Section.

Political message shall mean a message delivered by telephone, any print or electronic media or other written material which advocates the election or defeat of any candidate or which unambiguously refers to such candidate.

Public announcement shall mean:

- (1) Registration of a candidate committee; or
- (2) A statement made by the candidate signifying an interest in, or exploring the possibility of, seeking the office by means of a speech, advertisement or other communication reported or appearing in public media or in any place accessible to the public, including social media, that a reasonable person would expect to become public.

Registered agent shall mean a natural person designated by or representing a committee and responsible to receive mailings, respond to inquiries regarding the committee, to receive complaints related to the committee, and timely filing campaign finance reports and other filings required pursuant to this Chapter.

Small-scale issue committee means a committee otherwise meeting the definition of *issue committee* that has accepted or made contributions or expenditures in an amount that does not exceed five thousand dollars (\$5,000.) during an applicable election cycle for the major purpose of supporting or opposing any ballot issue or ballot question.

The following are each treated as single small-scale issue committees:

- a. All small-scale issue committees that support or oppose a common ballot measure if the committees are established, financed, or controlled by a single corporation or its subsidiaries;
- b. All small-scale issue committees that support or oppose a common ballot measure if the committees are established, financed, maintained, or controlled by a single labor organization or the affiliated local units it directs; and
- c. All small-scale issue committees that support or oppose a common ballot measure if the committees are established, financed, maintained, or controlled by substantially the same person, group of persons, or other organizations.

Social media shall 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.

Termination report shall mean a final report prepared by a candidate committee, issue committee or political committee and filed with the City Clerk which discloses the committee's contributions received, expenditures made and obligations entered into, when the following conditions have been met:

- (1) The committee no longer intends to receive contributions or make expenditures; and

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- (2) A zero (0) balance exists in the account established and maintained under Subsection 7-135(f) and the committee has no outstanding debts or obligations.

Unexpended campaign contributions shall mean the balance of funds on hand in any candidate committee, issue committee, political committee or small-scale issue committee following an election, less the amount of all unpaid monetary obligations incurred prior to the election.

(Ord. No. 162, 2000, § 1, 11-21-00; Ord. No. 148, 2001, § 1, 11-6-01; [Ord. No. 021, 2016, § 9, 3-1-16](#); Ord. No. [005, 2017](#), § 5, 1-17-17; Ord. No. [045, 2018](#), §§ 3, 4, 4-3-18; Ord. No. [077, 2018](#), §§ 5, 6, 6-19-18; Ord. No. [113, 2018](#), § 2, 9-4-18)

Sec. 7-133. - Candidate affidavit; disclosure statement; failure to file.

- (a) When any individual becomes a candidate, such individual shall certify, by affidavit filed with the City Clerk within ten (10) days, that the candidate is familiar with the provisions of this Article.
- (b) Each candidate shall file a financial disclosure statement pursuant to § 2-636 with the City Clerk at the same time as filing an acceptance of nomination.
- (c) Failure of any person to file the affidavit or disclosure statement required under this Section shall result in the disqualification of such person as a candidate for the office being sought.
- (d) The requirements of this Section shall not apply to any elected official who is the subject of recall proceedings.

(Ord. No. 162, 2000, § 1, 11-21-00; Ord. No. 148, 2001, § 2, 11-6-01; Ord. No. [045, 2018](#), § 5, 4-3-18)

Sec. 7-134. - Registration of committees; termination.

- (a) All candidate committees, political committees and issue committees shall register with the City Clerk before accepting or making any contributions. Registration must be on a form provided by the City Clerk and must include the following, together with any other information required to complete the registration form:
- (1) The committee's full name, spelling out any acronyms used therein;
 - (2) The name of a natural person authorized to act as a registered agent for the committee;
 - (3) A current street address, mailing address (if different from the street address), telephone number and email address for the principal place of business of the committee;
 - (4) A current mailing address, telephone number and email address for the registered agent;
 - (5) The purpose or nature of interest of the committee;
 - (6) The date of the election regarding which the committee intends to be active;
 - (7) The name and address of the financial institution in which all contributions received by the committee are deposited in a separate account bearing the name of the committee, and documentation of such account reasonably satisfactory to the City Clerk; and
 - (8) An acknowledgement and certification signed by the registered agent and, for any candidate committee, the candidate.
- (b) A registered committee must promptly provide updated address, telephone and email information to the City Clerk upon the change of such information for the committee or the registered agent of the committee, or any change in financial institution or account.

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- (c) Any candidate committee, political committee, issue committee or registered small-scale issue committee that has registered with the City Clerk, but has not engaged in any election activities or reported any contributions accepted or expenditures made, may terminate at any time by filing an amended committee registration indicating the nature of the amendment is termination of the committee and verifying that no contributions have been received or expenditures made since registration occurred pursuant to § 7-134. Alternatively, the committee shall file a campaign report indicating no contributions have been received or expenditures made, and indicating it is a termination report.
- (d) Any political committee, issue committee or registered small-scale issue committee that has not taken the necessary steps to terminate pursuant to Subsection (c) above must have properly disposed of all funds and must file a termination report no later than seventy (70) days after the election.

(Ord. No. 162, 2000, § 1, 11-21-00; Ord. No. 148, 2001, § 3, 11-6-01; Ord. No. [045, 2018](#), § 6, 4-3-18; Ord. No. [077, 2018](#), § 7, 6-19-18; Ord. No. [113, 2018](#), § 3, 9-4-18)

Sec. 7-135. - Campaign contributions/expenditures.

- (a) *Limits* . No person may make contributions and/or contributions in kind totaling more than one hundred dollars (\$100.) to the candidate committee of any candidate for the office of Mayor. No person may make contributions and/or contributions in kind totaling more than seventy-five dollars (\$75.) to the candidate committee of any candidate for the office of Councilmember. No person shall make a contribution or contribution in kind in the name of another person or knowingly permit one's name to be used by another person to effect such a contribution or contribution in kind. These limitations shall apply to all contributions or contributions in kind, whether made directly to a candidate committee or indirectly via earmarked gifts passed through an intermediary, except that these limitations shall not apply to:
 - (1) Contributions or contributions in kind made by a candidate to his or her own candidate committee;
 - (2) Independent expenditures;
 - (3) Monetary loans that are: (a) personally guaranteed in writing by the candidate, the candidate's immediate family or a business entity in which the candidate owns at least five (5) percent; or (b) secured by real or personal property owned by the candidate, the candidate's immediate family or a business entity in which the candidate owns at least five (5) percent; or
 - (4) Contributions made to a candidate committee by another candidate committee established by the same candidate for the office of Mayor or Councilmember.
- (b) *Joint contributions* . No person shall make a contribution jointly with another person through the issuance of a check drawn on a jointly owned account unless: (i) the total amount of the joint contribution is less than the maximum amount that can be contributed by one (1) person under the contribution limits established in Subsection (a) of this Section or (ii) the check is signed by all owners of the account, in which event the amount of the total contribution shall be allocated equally among all such persons unless a different allocation is specified on the face of the check. No candidate committee shall knowingly accept a contribution made in violation of this Subsection (b).
- (c) *Contributions in excess of limits* . No later than ten (10) business days after receiving a contribution in excess of the limits set forth in this Section, the candidate committee that received the contribution shall remit the excess to the contributor.
- (d) No candidate committee, issue committee, small-scale issue committee or political committee shall knowingly accept contributions from any person who is not a citizen of the United States, from a foreign government or from any foreign corporation that does not have authority to transact business in this State pursuant to Article 115 of Title 7, C.R.S.
- (e) *Contributions from one (1) candidate committee to another* .

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- (1) No candidate committee shall make a contribution or contribution in kind to, or accept a contribution or contribution in kind from, a candidate committee of another candidate.
 - (2) No candidate committee shall accept a contribution or contribution in kind from a candidate committee of the same candidate that was established or maintained for a federal, state or county election campaign or office.
- (f) *Recordkeeping.*
- (1) All contributions received by a candidate committee, small-scale issue committee, issue committee or political committee shall be documented and deposited and maintained in a financial institution in a separate account whose title shall include the name of the committee. All records pertaining to contributions and related accounts shall be maintained by the committee for one (1) year following any election in which the committee received contributions unless a complaint has been filed under Subsection 7-145(a) alleging a violation of the provisions of this Article, or the person or committee has received notice of an investigation or prosecution of a violation of this Article by the City or other law enforcement authority, in which case they shall be maintained until final disposition of the complaint and any consequent court proceedings. Such records shall be subject to inspection in connection with any investigation or other action to enforce the terms of this Article.
 - (2) All expenditures shall be documented and all records pertaining to said expenditures, including but not limited to invoices, receipts, instruments of payment, and copies of any public communications produced as a result of the expenditure, shall be maintained by the committee for one (1) year following any election in which the committee expended the funds unless a complaint has been filed under Subsection 7-145(a) alleging a violation of the provisions of this Article, or the person or committee has received notice of an investigation or prosecution of a violation of this Article by the City or other law enforcement authority, in which case they shall be maintained until final disposition of the complaint and any consequent court proceedings. Documentation shall include the name and address of the vendor(s) or payee(s) providing the property, materials, or services and the amount of the expenditure. Such records shall be made available within three (3) business days upon request of the City and subject to inspection in connection with any investigation or other action to enforce the terms of this Article.
- (g) *Reimbursements prohibited* . No person shall make a contribution to a candidate committee, issue committee, small-scale issue committee or political committee with the expectation that some or all of the amounts of such contribution will be reimbursed by another person. No person shall be reimbursed for a contribution made to any candidate committee, issue committee, small-scale issue committee or political committee, nor shall any person make such reimbursement. An unexpended campaign contribution returned to a contributor by a candidate committee pursuant to § 7-135(c) shall not be considered a reimbursement.
- (h) A candidate committee, issue committee, small-scale issue committee or political committee shall not coordinate its expenditures with any other such committee in a manner that circumvents any restrictions or limitations on campaign contributions, expenditures or reporting set forth in this Article.

(Ord. No. 162, 2000, § 1, 11-21-00; Ord. No. 189, 2000, § 1, 1-2-01; Ord. No. 148, 2001, § 4, 11-6-01; Ord. No. [005, 2017](#), § 6, 1-17-17; Ord. No. [077, 2018](#), § 8, 6-19-18; Ord. No. [113, 2018](#), §§ 4, 5, 9-4-18)

Sec. 7-136. - Disclosure; filing of 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 contributions or contributions in kind in the amount of twenty dollars (\$20.) or more; expenditures made; and obligations entered into by the committee.

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- (b) For purposes of complying with the requirements of this Section, an issue committee consisting of an organization whose primary purpose is not to support or oppose ballot issues shall report only those contributions accepted, expenditures made and obligations entered into for the purpose of supporting or opposing a ballot issue or ballot question. Such issue committee shall not be required to report donations, membership dues or any other payments received unless such amounts are used or to be used for the purpose of supporting or opposing a ballot issue or ballot question.
- (c) Reports shall be filed with the City Clerk as follows:
 - (1) All committees must file reports on the following dates:
 - a. the thirty-fifth (35th) day before the election;
 - b. the twenty-first (21st) day before the election;
 - c. the fourteenth (14th) day before the election;
 - d. no later than noon on the Friday before the election;
 - e. the thirty-fifth (35th) day after the election; and
 - f. the seventieth (70th) day after the election.
 - (2) Candidate committees that continue in operation must file a report annually on the first day of the month in which the anniversary of the election occurs until such time as a termination report is filed.
 - (3) If the reporting day falls on a weekend or legal holiday, the report shall be filed by the close of the next business day.
- (d) The reports required by this Section shall include the balance of funds at the beginning of the reporting period, the total of contributions received, the total of expenditures made during the reporting period and the name and address of the financial institution used by the committee or party.
- (e) All reports shall be submitted on forms provided by the City Clerk and shall be complete in all respects. Reports shall be current in all respects as of two (2) days prior to the date upon which each such report is to be filed.
- (f) A report required to be filed by this Section is timely if the paper report is received by the City Clerk not later than the close of business on the date due or if the report is filed electronically not later than midnight Mountain Standard Time on the date due. Notwithstanding the foregoing, the report that is due by noon on the Friday before the election must be filed by noon regardless of the manner of filing.
- (g) Any report that is deemed by the City Clerk to be incomplete or inconsistent with the requirements of this Article shall be accepted on a conditional basis, and ~~the committee's registered agent shall be notified in writing as to any deficiencies found. Such notice may be delivered in person, by mail, by fax, or, if an electronic mail address is on file with the City Clerk, by electronic mail. The committee's registered agent shall have seven (7) business days from the date of delivery of such notice to file an amended report that cures the deficiencies. Any such amended report shall supersede the original report filed for the reporting period shall be subject to the penalties of § 7-143.~~
- (h) Any candidate committee, political committee or issue committee which has not accepted any contributions or contributions in kind, made any expenditures, or entered into any obligations during a reporting period, shall file a report with the City Clerk on the days specified in Subparagraph (c) above certifying that the committee has not accepted any contributions or contributions in kind, made any expenditures or entered into any obligations during the relevant reporting period.
- (i) Except as specified in this Subparagraph (i), the disclosure requirements specified in this Section shall not apply to a small-scale issue committee. To the extent there is any conflict between the small-scale issue committee provisions of Subparagraphs (i), (j), (k), and (l) of this Section 7-136, those Subparagraphs shall control. Any small-scale issue committee shall disclose or file reports about the contributions or expenditures it has made or received or otherwise register as an issue committee in connection with accepting or making such contributions or expenditures in accordance with the following alternative requirements:

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- (1) Any small-scale issue committee that accepts or makes contributions or expenditures in an aggregate amount during any applicable election cycle that does not exceed two hundred dollars (\$200.) is not required to disclose or file reports about the contributions or expenditures it has made or received or otherwise register as an issue committee in connection with accepting or making such contributions or expenditures.
 - (2) Any small-scale issue committee that accepts or makes contributions or expenditures in an aggregate amount during any applicable election cycle of between two hundred dollars (\$200.) and five thousand dollars (\$5,000.) shall register with the City Clerk within ten (10) business days of the date on which the aggregate amount of contributions or expenditures exceeds two hundred dollars (\$200.). The registration required by this subparagraph must be on a form provided by the City Clerk and must include the following, together with any other information required to complete the registration form:
 - a. The committee's full name, spelling out any acronyms used in the name;
 - b. The name of a natural person authorized to act as a registered agent of the committee;
 - c. A current street address, mailing address (if different from the street address), telephone number and email address for the principal place of business of the committee;
 - d. A current mailing address, telephone number and email address for the registered agent;
 - e. The purpose or nature of interest of the committee;
 - f. The date of the election regarding which the committee intends to be active;
 - g. The name and address of the financial institution in which all contributions received by the committee are deposited in a separate account bearing the name of the committee, and documentation of such account reasonably satisfactory to the City Clerk; and
 - h. An acknowledgement and certification signed by the registered agent and, from any candidate committee, the candidate.
 - (3) A registered small-scale issue committee must promptly provide updated address, telephone and email information to the City Clerk upon the change of such information for the committee or the registered agent of the committee, or any change in financial institution or account.
- (j) Except as required by Subsection 7-135(f)(2), no small-scale issue committee described in subsection (i)(2) is required under this Article to disclose or report any contributions or expenditures it has made or received, so long as it continues to meet the definition of small-scale issue committee.
 - (k) Within seven (7) days of the date on which a small-scale issue committee accepts or makes contributions or expenditures in an aggregate amount during any applicable election cycle that exceeds five thousand dollars (\$5,000.), the committee shall:
 - (1) through its registered agent, report this change in the committee's status to the City Clerk; and
 - (2) report to the City Clerk on an approved form, for each particular contribution or expenditure accepted or made, the name and address of each person who has made such contribution and the amount of each specific contribution and expenditure accepted or made by the committee.
 - (l) Once any issue committee that began as a small-scale issue committee accepts or makes contributions or expenditures in an aggregate amount during any applicable election cycle that exceeds five thousand dollars (\$5,000.), the committee shall from that point forward make disclosure of any contributions or expenditures it accepts or makes not already reported under Subparagraph (k) and comply with all requirements under this Article applicable to issue committees.
 - (m) Any political committee or issue committee formed prior to July 1, 2017, will be deemed to have been formed for an election held prior to said date, and shall be deemed terminated and shall cease to operate as a committee as of April 13, 2018, except that any such terminated committee and persons responsible for the operation of such committee shall continue to be subject to the limitations on disbursement of funds set forth in § 7-138.

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(Ord. No. 162, 2000, § 1, 11-21-00; Ord. No. 189, 2000, § 2, 1-2-01; Ord. No. 148, 2001, § 5, 11-6-01; [Ord. No. 173, 2014, § 7, 12-16-14](#); [Ord. No. 021, 2016, § 10, 3-1-16](#); Ord. No. [005, 2017](#), § 8, 1-17-17; Ord. No. [045, 2018](#), § 7—11, 4-3-18; Ord. No. [077, 2018](#), § 9, 6-19-18; Ord. No. [113, 2018](#), § 6, 9-4-18)

Sec. 7-137. - Reports to be public record.

- (a) Upon receipt of any campaign report submitted pursuant to this Article, the City Clerk shall make available such report for public inspection and post the report on the City's website no later than the next business day.
- (b) No information contained in any campaign report submitted pursuant to this Article shall be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose.

(Ord. No. 162, 2000, § 1, 11-21-00; Ord. No. 148, 2001, § 6, 11-6-01; [Ord. No. 021, 2016, § 11, 3-1-16](#))

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 for a subsequent campaign, subject to the limitations 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 the 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.
- (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

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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.

(Ord. No. 162, 2000, § 1, 11-21-00; Ord. No. 148, 2001, § 7, 11-6-01; [Ord. No. 021, 2016, § 12, 3-1-16](#))

Sec. 7-139. - Independent expenditures.

Any person, excluding a committee required to register under this Article, who makes independent expenditures in connection with any particular ballot totaling in the aggregate more than two hundred fifty dollars (\$250.) shall report any such independent expenditures made after that threshold is met to the City Clerk on a form provided by the City Clerk no later than three (3) business days after the day that funds are obligated to pay for said independent expenditure. Said notice shall include the following information, together with any other information required by the City Clerk:

- (1) The name, address and telephone number of the person making the independent expenditures;
- (2) The name of the candidate whom the independent expenditures are intended to support or oppose;
- (3) The name and address of the vendor(s) providing the property, materials or services;
- (4) A detailed description of the independent expenditures sufficient to allow for determination of compliance with this section;
- (5) The amount of the independent expenditures;
- (6) The date the funds were obligated; and
- (7) Copies of receipts, invoices, or other documentation related to the independent expenditure.

For the purposes of this provision, funds shall be considered to have been obligated as soon as an agreement is reached for the provision of the property, materials or services in question, regardless of when payment is to be made for such property or services. All independent expenditures shall be documented and all records pertaining to independent expenditures, including but not limited to invoices, receipts, instruments of payment, and copies of any public communications produced as a result of the expenditure, shall be maintained for one (1) year following any election in which the funds were expended unless a complaint has been filed under Subsection 7-145(a) alleging a violation of the provisions of this Article, or the person or committee has received notice of an investigation or prosecution of a violation of this Article by the City or other law enforcement authority, in which case they shall be maintained until final disposition of the complaint and any consequent court proceedings. Such records shall be made available within three (3) business days upon request of the City and subject to inspection in connection with any hearing held pursuant to this Article.

(Ord. No. 162, 2000, § 1, 11-21-00; Ord. No. 148, 2001, § 8, 11-6-01; Ord. No. [005, 2017](#), § 7, 1-17-17; Ord. No. [077, 2018](#), § 10, 6-19-18; Ord. No. [113, 2018](#), § 7, 9-4-18)

Sec. 7-140. - Responsibility for communications.

(a) Required Statements.

- (1) Whenever a candidate, candidate committee, issue committee, political committee or registered small-scale issue committee makes an expenditure for the purpose of financing communications

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expressly advocating a particular result in an election, or solicits any contribution or contribution in-kind through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing or any other type of general public political advertising, such communication if paid for or authorized by a candidate, candidate committee, issue committee, political committee, registered small-scale issue committee, or any agent for the same, shall clearly state that the communication is paid for by that candidate, candidate committee, issue committee, political committee or registered small-scale issue committee.

- (2) Whenever any person makes an independent expenditure in excess of the reporting threshold in § 7-139 for the purpose of financing communications expressly advocating for a particular result in an election, such communication shall clearly state that the communication is paid for by that person.
- (b) In regard to the different forms of communication set forth in subsection (a) of this Section 7-140, "communication" shall include, but shall not be limited to:
 - (1) Websites or social media of a candidate, candidate committee, issue committee, political committee or registered small-scale issue committee available to the general public;
 - (2) Websites or social media of a person if and to the extent they are financed by independent expenditures in excess of the reporting threshold in § 7-139 and are available to the general public; and
 - (3) Advertisements placed for a fee on another person's website or social media.
- (c) The statement required by this Section 7-140 must be clear and conspicuous in the communication. The statement required herein shall not apply to communications where including the statement would be impractical, such as:
 - (1) Bumper stickers, pins, buttons, pens and similar small items upon which the disclaimer cannot be conveniently printed;
 - (2) Skywriting, water towers, wearing apparel, or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable; or
 - (3) Checks, receipts, and similar items of minimal value that are used for purely administrative purposes and do not contain a political message.
- (d) Nothing herein shall be deemed to alleviate any person from complying with federal campaign finance law, as applicable.

(Ord. No. [113, 2018](#), § 8, 9-4-18)

Sec. 7-141. - Expenditures for political advertising; rates and charges.

- (a) No candidate committee shall pay to any radio or television station, newspaper, periodical, internet advertiser or website provider, social media provider or other supplier of materials or services a higher charge than that normally required for local commercial customers for comparable use of space, materials or services. Any such rate shall not be rebated, directly or indirectly.
- (b) Any radio or television station, newspaper, internet advertiser or website provider, social media provider or periodical that charges an issue committee, small-scale issue committee or candidate committee a lower rate for use of space, materials or services than the rate such station, newspaper, internet advertiser or website provider, social media provider or periodical or supplier charges another issue committee or candidate committee for the same ballot measure or public office for comparable use of space, materials or services shall report the difference in such rate as a contribution in kind to the committee that is charged such lower rate.
- (c) Nothing in this Article shall be construed to prevent an adjustment in rates related to frequency, volume, production costs and agency fees if such adjustments are offered consistently to other advertisers.

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(Ord. No. 162, 2000, § 1, 11-21-00; Ord. No. [077, 2018](#), § 11, 6-19-18; Ord. No. [113, 2018](#), § 9, 9-4-18)

Sec. 7-142. - Encouraging withdrawal from campaign prohibited.

No person shall offer or give any candidate or candidate committee any money or any other thing of value for the purpose of encouraging the withdrawal of the candidate's candidacy, nor shall any candidate offer to withdraw a candidacy in return for money or any other thing of value.

(Ord. No. 162, 2000, § 1, 11-21-00)

Sec. 7-143. - Violations and penalties.

(a) Except as provided in subsection (b), Any any person who knowingly violates or fails to comply with any of the provisions of this Article, as set forth in the following schedule, commits an misdemeanor administrative violation and is subject to a civil penalty as follows: a fine or imprisonment in accordance with § 1-15.

Code Section	Fine Amount
7-134 – Registration of committees; termination.	\$150 first offense; \$300 each subsequent offense
7-135 – Campaign contributions/expenditures.	\$100 first offense; \$200 each subsequent offense
7-136 – Disclosure; filing of reports.	\$100 first offense; \$200 each subsequent offense
7-137(b) – Reports to be public record.	\$50 first offense; \$100 each subsequent offense
7-138 – Unexpended campaign contributions.	\$100 first offense; \$200 each subsequent offense
7-139 – Independent expenditures	\$100 first offense; \$200 each subsequent offense
7-140 – Responsibility for communications.	\$50 first offense; \$100 each subsequent offense
7-141 – Expenditures for political advertising; rates and charges.	\$50 first offense; \$100 each subsequent offense

(b) Any person who undertakes the following commits a misdemeanor and is subject to a fine or imprisonment in accordance with § 1-15:

(1) Knowingly violates § 7-136 with the intent to fraudulently misrepresent campaign contributions or expenditures on a disclosure report;

(2) Knowingly violates § 7-142; or

(3) Has previously been found liable for two (2) or more violations under this Article in a single election cycle.

(c) Failure to comply with the provisions of this Article shall have no effect on the validity of any election, except as expressly required by the City Charter.

(Ord. No. 162, 2000, § 1, 11-21-00)

Sec. 7-144. - Severability.

If any provision of this Article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable.

(Ord. No. 162, 2000, § 1, 11-21-00)

Division 2 - Campaign Violations

Sec. 7-145. - Allegation of campaign violation.

- (a) Any candidate or registered elector of the City ("complainant") who has reason to believe a violation of Chapter 7, Article V, of this Code, has occurred by any person, candidate, candidate committee, issue committee, small-scale issue committee or political committee may file a written complaint to the City Clerk, no later than sixty (60) days after the alleged violation has occurred.
- (b) The complaint must contain:
 - (1) The name of the alleged violator;
 - (2) The Code provision allegedly violated;
 - (3) A brief statement or description of the offense allegedly committed and the basis for the allegation;
 - (4) Identification of any relevant documents or other evidence;
 - (5) Identification of any witnesses or persons with relevant knowledge; and
 - (6) The name, address and telephone number of the complainant.
- (c) For complaints that allege a criminal violation as set forth in § 7-143(b), ~~The~~ the City Clerk will forward the complaint to the City Attorney and the respondent, who will evaluate the complaint for probable cause as provided for in this Division 2.
- (d) For complaints that do not allege a criminal violation, the complaints shall be subject an administrative penalty process as provided herein:
 - (1) The City Clerk will forward the complaint to the respondent by electronic mail, notifying the respondent that the alleged violation may be subject to an administrative penalty and that the respondent shall have seven (7) days from the date of the notice to submit written evidence of its cure or diligent efforts to cure the violation. The respondent's written response shall be due to the City Clerk no later than close of business on the seventh (7th) day. In the event the seventh (7th) day is a City holiday, the response shall be due no later than the close of business the next business day.
 - (2) If the respondent does not timely submit a written response to the City Clerk, the City Clerk shall impose an administrative penalty for the violation as provided in § 7-143(a).
 - (3) If the City Clerk receives a timely written response, the City Clerk shall review the complaint and the response. If in the City Clerk's reasonable discretion, the alleged violation and the evidence of cure is such that it can be objectively determined that a violation occurred and that the violation was cured, the City Clerk shall notify the complainant and respondent in writing that the violation was cured and no penalty will be imposed. If in the City Clerk's reasonable discretion, the alleged violation and the evidence of cure is such that it can be objectively determined that a violation occurred and that the violation was not cured, the City Clerk shall impose a penalty as provided in § 7-143(a) and provide written notice to the complainant and respondent.

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(4) If the City Clerk determines that the violation or evidence of cure is not subject to objective determination, the City Clerk shall forward the complaint and the evidence of cure to a hearing officer for a determination of whether a penalty should be imposed on the respondent based on the evidence submitted in the complaint and any response. The City Clerk shall provide written notice to the respondent of the forwarding of the matter to the hearing officer. In the event the hearing officer determines a penalty should be imposed based upon a review of the complaint and the response, the hearing officer shall notify the respondent in writing of the penalty amount.

(5) A respondent upon whom a penalty is imposed by either the City Clerk or the hearing officer shall have seven (7) days from the date of the notice to either pay the penalty or file a written petition with the City Clerk for a hearing concerning the imposition of the penalty. If the respondent requests a hearing, the penalty shall be stayed. The City Clerk shall refer the petition to the hearing officer.

(6) The hearing officer shall provide written notice to the respondent and the City Clerk of the date, time and place of the hearing no less than fourteen (14) days prior to the date of the hearing. The hearing shall be conducted in accordance with the provisions of § 7-149.

(7) In the event the respondent does not timely submit evidence of its cure or diligent efforts to cure, and does not timely file a request for a hearing, the respondent shall be deemed to have waived the right to challenge the validity of any such violation or penalty in any future civil or criminal proceeding.

(8) If any administrative fine imposed under this Section 7-145 goes unpaid beyond the date payment is due, the unpaid amount shall be considered a debt to the City and the City may pursue any legal means for collection, including assigning such accounts to private counsel or private collection agencies, or suing the debtor in any court of competent jurisdiction. The City may seek reasonable collection costs, attorney's fees, and legal expenses, in addition to the amount due.

(9) Any person that commits a violation shall be personally liable for the penalties imposed. Any candidate shall be personally liable for penalties imposed upon the candidate or the candidate's committee and shall not use campaign contributions to pay penalties.

(Ord. No. [005, 2017](#), § 9, 1-17-17; Ord. No. [113, 2018](#), § 10, 9-4-18)

Sec. 7-146. - Evaluation of campaign complaint.

- (a) For those complaints that concern a criminal violation pursuant to § 7-143(b), 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 may notify Fort Collins Police Services, who, in consultation with the City Attorney, may file and serve a summons and complaint to the respondent. 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.

(Ord. No. [005, 2017](#), § 9, 1-17-17)

Sec. 7-147. - Conflicts of interest.

Notwithstanding the above, nothing in this Article shall be read to preclude the City Attorney from declaring a conflict of interest, and taking appropriate action in accordance with this Code and general practices of the City, including, but not limited to, hiring special counsel, if deemed necessary and advisable under the circumstances.

(Ord. No. [005, 2017](#), § 9, 1-17-17)

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Sec. 7-148. - Complaint not required for city action.

Nothing in this Article shall preclude the City from pursuing an action, civil or criminal, against any person, candidate, candidate committee, issue committee, small-scale issue committee or political committee for any violation of this Chapter, regardless of whether a complaint had been filed pursuant to this Article.

(Ord. No. [005, 2017](#), § 9, 1-17-17)

Sec. 7-149. - ~~Administrative Hearing~~ procedures.

~~The City Manager is charged with ultimate authority to pursue complaints under this Article and is hereby authorized to adopt administrative regulations consistent with the provisions of this Article.~~

In holding a hearing as provided in § 7-145, the hearing officer shall conduct the hearing in accordance with the following:

- (a) The hearing officer shall hear the matter anew and shall not be limited to the evidence originally presented to the hearing officer. The hearing officer's decision shall be based on the evidence and such criteria as exists in the Code.
- (b) At the hearing, the hearing officer shall provide the respondent and the City an opportunity to present testimony and evidence regarding the matter being appealed. This shall include:
 - (1) Explanation of the nature of the petition by the City;
 - (2) Presentation by the respondent of evidence and argument in support of the petition;
 - (3) Presentation by the City in opposition of the petition; and
 - (3) Presentation of rebuttal arguments, as permitted in the discretion of the hearing officer.
- (c) The hearing officer shall set aside or reduce the penalty upon a showing of good cause, and the burden of proof in the hearing shall be on the respondent.
- (d) The hearing officer shall issue his or her final decision in writing no later than fourteen (14) days following the hearing and shall provide a copy of such decision to the respondent and the City Clerk.
- (e) If the hearing officer finds the filing of the petition was frivolous, groundless, or vexatious, the hearing officer shall order the person or committee filing the request for hearing to pay reasonable attorney fees and costs of the City in connection with such proceeding.
- (f) The decision of the hearing officer shall be final and subject only to judicial review in Municipal Court. Review in the Municipal Court shall be conducted in accordance with Rule 106(a)(4) of the Colorado Rules of Civil Procedure. The review must be sought no later than twenty-eight (28) days after the date of the hearing officer's written decision.

(Ord. No. [005, 2017](#), § 9, 1-17-17)

~~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.~~

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- ~~(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.~~

~~(Ord. No. 005, 2017, § 9, 1-17-17)~~

Secs. 7-151—7-154. - Reserved.

REGULATION OF LIMITED LIABILITY COMPANY CONTRIBUTIONS

Although we are not clear on the ECC's level of interest in bringing this matter forward, we thought it would be helpful to provide sample Code language for the ECC's consideration. This language would amend Section 7-135 of the City Code to specifically address contributions by limited liability companies ("LLCs"), which is an issue the ECC had expressed interest in exploring in prior meetings. This language is based on requirements at the State level. This language would require that LLCs submit an affirmation form along with a contribution that details the members of the LLC and how the contribution is apportioned among the members of the LLC. Contributions apportioned to a member of the LLC would be counted towards that individual's contribution limit.

Sec. 7-135. - Campaign contributions/expenditures.

- (a) *Limits* . No person may make contributions and/or contributions in kind totaling more than one hundred dollars (\$100.) to the candidate committee of any candidate for the office of Mayor. No person may make contributions and/or contributions in kind totaling more than seventy-five dollars (\$75.) to the candidate committee of any candidate for the office of Councilmember. No person shall make a contribution or contribution in kind in the name of another person or knowingly permit one's name to be used by another person to effect such a contribution or contribution in kind. These limitations shall apply to all contributions or contributions in kind, whether made directly to a candidate committee or indirectly via earmarked gifts passed through an intermediary, except that these limitations shall not apply to:
- (1) Contributions or contributions in kind made by a candidate to his or her own candidate committee;
 - (2) Independent expenditures;
 - (3) Monetary loans that are: (a) personally guaranteed in writing by the candidate, the candidate's immediate family or a business entity in which the candidate owns at least five (5) percent; or (b) secured by real or personal property owned by the candidate, the candidate's immediate family or a business entity in which the candidate owns at least five (5) percent; or
 - (4) Contributions made to a candidate committee by another candidate committee established by the same candidate for the office of Mayor or Councilmember.
- (b) *Limited Liability Company Contributions*. A limited liability company ("LLC") may make contributions to and/or contributions in kind subject to the limits provided herein and to the following requirements:
- (1) LLC contributions shall be attributed to the members of the LLC. For those members that are natural persons, the amount the person contributes as a member of the LLC counts towards the aggregate contribution limit for that person in subsection (a) herein.
 - (2) The LLC shall provide the candidate or committee with a written statement affirming the permissibility of the contribution on a form provided by the City Clerk. The affirmation shall include:
 - a. The name and address of all LLC members;

- b. Information on how the contribution is attributed among the LLC members, which attribution must reflect the capital the member has invested in the LLC or the percentage of ownership the member has in the LLC at the time of the contribution.

(3) The candidate or committee receiving the contribution shall:

- a. Retain the affirmation statements for one (1) year after the end of the election cycle; and
- b. List both the individual LLC members' names as contributors as well as the name of the LLC.

(4) As used in this Subsection (b), "limited liability company" shall have the same meaning as "domestic limited liability company" as defined in Section 7-90-102(15), C.R.S., or "foreign limited liability company" as defined in Section 7-90-102(24), C.R.S.

(c) *Joint contributions* . No person shall make a contribution jointly with another person through the issuance of a check drawn on a jointly owned account unless: (i) the total amount of the joint contribution is less than the maximum amount that can be contributed by one (1) person under the contribution limits established in Subsection (a) of this Section or (ii) the check is signed by all owners of the account, in which event the amount of the total contribution shall be allocated equally among all such persons unless a different allocation is specified on the face of the check. No candidate committee shall knowingly accept a contribution made in violation of this Subsection (b).

(ed) *Contributions in excess of limits* . No later than ten (10) business days after receiving a contribution in excess of the limits set forth in this Section, the candidate committee that received the contribution shall remit the excess to the contributor.

(de) No candidate committee, issue committee, small-scale issue committee or political committee shall knowingly accept contributions from any person who is not a citizen of the United States, from a foreign government or from any foreign corporation that does not have authority to transact business in this State pursuant to Article 115 of Title 7, C.R.S.

(ef) *Contributions from one (1) candidate committee to another* .

- (1) No candidate committee shall make a contribution or contribution in kind to, or accept a contribution or contribution in kind from, a candidate committee of another candidate.
- (2) No candidate committee shall accept a contribution or contribution in kind from a candidate committee of the same candidate that was established or maintained for a federal, state or county election campaign or office.

(fg) *Recordkeeping*.

- (1) All contributions received by a candidate committee, small-scale issue committee, issue committee or political committee shall be documented and deposited and maintained in a financial institution in a separate account whose title shall include the name of the committee. All records pertaining to contributions and related accounts shall be maintained by the committee for one (1) year following any election in which the committee received contributions unless a complaint has been filed under Subsection 7-145(a) alleging a violation of the provisions of this Article, or the person or committee has received notice of an investigation or prosecution of a violation of this Article by the City or other law enforcement authority, in which case they shall be maintained until final disposition of the complaint and

any consequent court proceedings. Such records shall be subject to inspection in connection with any investigation or other action to enforce the terms of this Article.

- (2) All expenditures shall be documented and all records pertaining to said expenditures, including but not limited to invoices, receipts, instruments of payment, and copies of any public communications produced as a result of the expenditure, shall be maintained by the committee for one (1) year following any election in which the committee expended the funds unless a complaint has been filed under Subsection 7-145(a) alleging a violation of the provisions of this Article, or the person or committee has received notice of an investigation or prosecution of a violation of this Article by the City or other law enforcement authority, in which case they shall be maintained until final disposition of the complaint and any consequent court proceedings. Documentation shall include the name and address of the vendor(s) or payee(s) providing the property, materials, or services and the amount of the expenditure. Such records shall be made available within three (3) business days upon request of the City and subject to inspection in connection with any investigation or other action to enforce the terms of this Article.

(gh) *Reimbursements prohibited* . No person shall make a contribution to a candidate committee, issue committee, small-scale issue committee or political committee with the expectation that some or all of the amounts of such contribution will be reimbursed by another person. No person shall be reimbursed for a contribution made to any candidate committee, issue committee, small-scale issue committee or political committee, nor shall any person make such reimbursement. An unexpended campaign contribution returned to a contributor by a candidate committee pursuant to § 7-135(c) shall not be considered a reimbursement.

(hi) A candidate committee, issue committee, small-scale issue committee or political committee shall not coordinate its expenditures with any other such committee in a manner that circumvents any restrictions or limitations on campaign contributions, expenditures or reporting set forth in this Article.

(Ord. No. 162, 2000, § 1, 11-21-00; Ord. No. 189, 2000, § 1, 1-2-01; Ord. No. 148, 2001, § 4, 11-6-01; Ord. No. [005, 2017](#), § 6, 1-17-17; Ord. No. [077, 2018](#), § 8, 6-19-18; Ord. No. [113, 2018](#), §§ 4, 5, 9-4-18)






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MEMORANDUM

DATE: February 13, 2020

TO: Election Code Committee

THRU: Darin Atteberry, City Manager 
Jeff Mihelich, Deputy City Manager 

FROM: Delynn Coldiron, City Clerk 

RE: History of Votes Received by Candidates 2005-2019

As promised at the last Election Code Committee meeting, attached is a spreadsheet illustrating the percentage of votes allocated to each candidate in each election from 2005-2019. Although the Committee indicated that it would not be moving this item forward for further discussion, this information was specifically requested.

Six races are highlighted in yellow, indicating that the winner in each of those races won with less than 50% of the vote. It is not possible to determine if the outcome of those races would have been different if ranked choice voting was used in those elections.

If you need any further information, please let me know.

Attachment

	2005	2007	2009	2011	2013	2015	2017	2019
Mayor	46.79 Hutchinson 40.67 Bertschy 08.26 Brophy 04.29 VanTatenhove	81.71 Hutchinson 18.29 VanTatenhove	67.66 Hutchinson 32.34 Griggs	45.53 Weitkunat 42.36 Cunniff 12.11 Sutherland	70.09 Weitkunat 29.91 Sutherland	59.43 Troxell 35.08 Luthi 05.49 Pruznick	56.79 Troxell 30.40 Hudetz 07.53 Atlas 05.27 Pruznick	73.74 Troxell 26.26 Pruznick
District 1	58.85 Manvel 41.15 Davis		53.03 Manvel 39.25 Anderson 07.71 Armendariz		47.71 Overbeck 27.00 Stockover 18.52 Johnson 06.77 Payne		57.22 Overbeck 42.78 Budd	46.95 Gutowsky 31.33 Haas 21.72 Somodi
District 2		50.67 Poppaw 49.33 Fries		53.29 Poppaw 46.71 Pawlak		52.50 Martinez 47.50 Tellez		41.06 Pignataro 40.44 Hutchison 10.05 Eggleston 08.45 Holmes
District 3	59.95 Brown 40.05 Hamrick		51.20 Kottwitz 48.80 Lockwood		64.42 Campana 35.58 Blake		53.49 Summers 46.51 Coombes	
District 4		52.03 Troxell 44.75 Colton 03.22 Gomez		56.43 Troxell 43.57 Stephens		51.14 Stephens 48.86 Kronwall		100.00 Stevens
District 5	55.93 Ohlson 44.07 Tharp		57.26 Ohlson 38.28 Boucher 04.46 Gates		72.09 Cunniff 27.91 Edwards		69.31 Cunniff 30.69 Hansen	
District 6		70.65 Roy 16.29 Purdum 13.06 Smith		100.00 Horak		50.37 Horak 49.63 Wangsvick		48.72 Gorgol 26.09 Kirsch 25.19 Brunswig