



City Clerk
300 LaPorte Avenue
PO Box 580
Fort Collins, CO 80522
970.221.6515
970.221-6295 - fax
fcgov.com/cityclerk

AGENDA

City Council Election Code Committee

May 1, 2020, **3:30-5:30 p.m.**

Remote Participation only

(Agenda amended-4/30/2020)

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

Public Participation for Election Code Committee Meeting

Public Participation for this remote Election Code Committee meeting will be available online or by phone. No one will be allowed to attend in person.

[View Meeting Agenda](#)

Public Participation (Online): Individuals who wish to address the Committee via remote public participation can do so through Zoom at [electioncodecommittee050120](#). Individuals participating in the Zoom session should also watch the meeting through that site.

The meeting will be available to join beginning at 3:15 p.m., Friday, May 1. Participants should try to sign in prior to 3:30 p.m. meeting start time, if possible. For public comments, the Chair will ask participants to click the "Raise Hand" button to indicate you would like to speak at that time. Staff will moderate the Zoom session to ensure all participants have an opportunity to address the Committee.

In order to participate:

- Use a laptop, computer, or internet-enabled smartphone. (Using earphones with a microphone will greatly improve your audio).
- You need to have access to the internet.
- Keep yourself on muted status.

Public Participation (Phone): If you do not have access to the internet, call the City Clerk's office at (970) 221-6515 **no later than 2:00 p.m. on the day of the meeting.**

- Please indicate that you want to participate in Election Code Committee public participation by phone and give your name and phone number. If you get a voicemail message, please leave the same information.
- Once you have given this information (in person or by message), a staff person will provide you with the phone number that will allow you access to the Zoom meeting.
- As listed above, the meeting will be available beginning at 3:15 p.m. Please call in to the meeting prior to 3:30 p.m., if possible. For public comments, the Chair will ask participants to click the "Raise Hand" button to indicate you would like to speak at that time – **phone participants will need to hit *9 to do this.** Staff will be moderating the Zoom session to ensure all participants have an opportunity to address the Committee. Once you join the meeting:
 - Keep yourself on muted status.

Documents to Share: If residents wish to share a document or presentation, the City Clerk needs to receive those materials via email by 2:00 pm the day of the meeting.

Individuals uncomfortable or unable to access the Zoom platform or unable to participate by phone are encouraged to participate by emailing general public comments you may have to cityclerk@fcgov.com. The City Clerk will

ensure the Committee receives your comments. If you have specific comments on any of the discussion items scheduled, please make that clear in the subject line of the email and send prior to 2:00 p.m. the day of the meeting.

AGENDA

1. Call Meeting to Order
2. Citizen Comment (limited to 5 minutes per speaker)
3. Consideration and approval of the February 21, 2020 Committee Meeting Minutes
4. Discussion Items:
 - a. City regulation of LLC campaign contributions
 - b. Possible Charter amendments relating to elections
 - i. Amend Article VIII, Section 9 Corrupt practices
 - ii. Amend Article VIII, Section 8 regarding participation in elections by political parties, city employees, public service corporations or any other person intending to apply for a franchise or have a contract with the City. (additional material added to agenda 4/30/2020)
 - iii. Amend Article II, Section 4 to conform with Article II, Section 1(d) to reflect the selection of Mayor Pro Tem does not occur until recount period has expired.
 - iv. Amend Article VIII, Section 4(a) to eliminate requirement that the affidavit of circulator contain a statement of the number of signers on that section of the petition.
5. Other Business
6. Adjournment

ATTACHMENTS

1. February 21, 2020 Committee Meeting Minutes
2. Information regarding possible Charter amendments relating to elections, including an update relating to 4.b.ii

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., June 5, 2020.

February 21, 2020

ELECTION CODE COMMITTEE MEETING

3:32 PM

COUNCILMEMBERS PRESENT: Troxell, Pignataro, Summers
STAFF PRESENT: Carrie Daggett, Ryan Malarky, Delynn Coldiron, Rita Knoll, Sara Gonzales
CITIZENS PRESENT: Robbie Moreland, Michael Pruznick, Michelle Haefele, Jody Deschenes, Psyche Spangler, Roxanne Griffin, Lori Brunswig, Kathleen Schmidt, Dick Thomas, Adolfine Thomas, Anne Thompson, Karen Wagner

1. CALL MEETING TO ORDER

Chair Pignataro called the meeting to order.

2. CITIZEN COMMENT

Robbie Moreland suggested new election laws should strive to meet the intent of the legislative declaration in Chapter 7 of the Municipal Code. LLC contributions should be limited, and City law should match state law to avoid the appearance of corruption. She also supported matching state law relative to the formation of independent expenditure committees and stated the formation of an independent expenditure committee should be required when donations in excess of \$250 have been received, or an expenditure in excess of \$250 has occurred, and donor disclosures should be required for donations of \$100 or more.

Jody Deschenes stated the City's high standards should include the highest level of transparency for voters. She requested that contributions from individual voters be limited to \$75 or \$100 in total, regardless of how many LLCs are owned by that individual. She also requested candidate committees be terminated in full at the end of each election, including liquidating all unused campaign funds, and requested that all committee and independent expenditure reporting forms be updated to digital versus PDFs to make filing, storage, and review easier. Ms. Deschenes also requested an update regarding the vetting and hiring of an independent redistricting consultant and supported the use of ranked choice voting. Additionally, she requested an update on guidelines for employment as an election judge.

Kathleen Schmidt, League of Women Voters of Larimer County, requested the City change its law to match the state law relative to campaign contribution limits from LLCs.

Michael Pruznick discussed his energy-neutral home and stated there is a large loophole in the LLC issue. He discussed the "paid for by" requirement and penalties for campaign violations. He mentioned legalizing vote buying.

Anne Thompson, League of Women Voters of Larimer County, stated the League was recently approached by members of Represent Fort Collins regarding changes that should be made regarding contribution limits from LLCs. Fort Collins should change its laws to match those of the state.

Michelle Haefele supported aligning Fort Collins regulations with those of the state regarding LLC contributions, and supported ranked choice voting.

Roxanne Griffin supported aligning Fort Collins regulations with those of the state regarding LLC contributions.

Karen Wagner opposed the outside influence of money on politics and supported aligning Fort Collins regulations with those of the state regarding LLC contributions.

Richard Thomas supported aligning Fort Collins regulations with those of the state regarding LLC contributions and stated any Councilmembers who have accepted a contribution from an LLC should recuse themselves from votes related to developments.

Councilmember Summers noted not all LLCs are related to developers and that Fort Collins has the lowest contribution limits of any municipality in the state. Election codes should provide the candidate the greatest

control over his or her election if there is a concern about who is influencing elections. He also noted state guidelines allow \$400 contributions per individual and stated local City Councilmembers are not professional politicians. He spoke in favor of keeping money directed to candidates for their use.

Chair Pignataro asked about changing the campaign finance report forms from PDFs. Knoll replied they are fillable PDFs but they are scanned and posted online so as to ensure the Clerk's Office date stamp is reflected. She suggested there could be another way to address that in the future.

Regarding ranked choice voting, Councilmember Summers commented on the low number of races over the last several elections that had candidates receiving less than 50% of the vote.

Mayor Troxell commented on ranked voting not appearing to be necessary based on prior elections.

Councilmember Summers stated he would like to get some information from other Colorado municipalities who use ranked choice voting.

Councilmember Pignataro asked about redistricting. City Clerk Coldiron stated census data will not be available until the first quarter of 2021 and redistricting would be based on that.

3. APPROVAL OF JANUARY 10, 2020 COMMITTEE MEETING MINUTES

Mayor Troxell made a motion, seconded by Councilmember Summers, to adopt the January 10, 2020 Committee meeting minutes. The motion was adopted by unanimous consent.

4. DISCUSSION ITEMS

a. Civil versus criminal penalty options for election code violations

City Attorney Daggett stated the City has a history of limited enforcement action around campaign finance issues and the Committee has discussed evaluating potentially changing violations from all violations being a criminal misdemeanor to making some less egregious complaints civil infractions or administrative violations.

Councilmember Pignataro mentioned the Committee decided at its previous meeting to leave the existing "paid for by" requirements in place as they were just implemented in the previous code change cycle.

City Attorney Daggett stated the next meeting agenda is planned to include possible Charter amendments related to elections.

Malarky presented information related to a possible new enforcement system. He noted the existing process is complaint-based and complaints go through a review process by the City Attorney for probable cause, and if probably cause is found, there would be further investigation and prosecution if deemed appropriate. All violations of campaign finance requirements are currently criminal misdemeanors. This proposed system makes most violations of the campaign finance requirements subject to civil penalties. Malarky outlined the items that would remain criminal offenses under this system. The current proposal would disallow campaign contributions from being used to pay administrative penalties.

Councilmember Summers disagreed with that recommendation.

Knoll discussed the reasoning for the draft language, stating donors provide contributions to aid in getting an individual elected.

Councilmember Pignataro stated she could see both sides of the issue relating to whether or not campaign contributions should be able to be used for fines.

Committee members and staff discussed the number of violations that would need to occur prior to a violation becoming criminal.

Councilmember Summers suggested the process related to joint account contributions would benefit from being aligned with the state regulations.

Mayor Troxell commended the overall work of the City Attorney's Office stating the changes align with the Committee discussions.

b. City regulation of LLC campaign contributions

Malarky stated this proposed language amends the campaign contributions and expenditures Code section related to contribution limits. The change mirrors state law and would require an LLC to submit a written statement to the candidate or candidate committee when it makes a contribution, providing the name and address of all the members of the LLC, information on how the contribution will be attributed to those individual members, and the contributions made by the LLC as they are attributed to the members. The contributions would then count toward the individual contribution limits of the members.

Mayor Troxell asked about the situation in relation to a C-corporation. Malarky replied this is strictly related to LLCs.

Mayor Troxell questioned the legal structure of an LLC and how it is considered beyond being a legal entity.

City Attorney Daggett stated she has not examined the rationale for looking at LLCs only as opposed to other types of business entities, though it is likely because an LLC is easier to form and there are fewer related consequences to forming an LLC than other types of business entities.

Councilmember Summers stated the rules as they are now are not discriminatory in terms of one candidate over another and suggested changing the regulations will allow LLCs to make the same contributions to an independent expenditure committee rather than to an individual candidate which takes control away from the candidate.

Knoll commented on nested LLCs which may need to be addressed in these provisions. City Attorney Daggett stated that could be addressed by requiring information if a member is not a natural person.

Mayor Troxell supported increasing the maximum donation amount for each individual if the LLC regulations are changed.

Councilmember Pignataro stated she would not support that.

Councilmember Summers stated it would be interesting to have data related to LLC contributions from the last election to ensure recommended changes are not reactionary.

Mayor Troxell stated he does not believe there is corruption involved in LLC contributions and questioned whether changes would improve the system. He questioned what problem is being solved.

Councilmember Pignataro stated the problem as she sees it is that LLC contributions take the power away from individual voters and place it with entities that have more money.

Mayor Troxell disagreed. Councilmember Summers noted individuals still cast ballots.

5. OTHER BUSINESS

Chair Pignataro suggested that joint account contributions be addressed at a later meeting.

6. ADJOURNMENT

The meeting adjourned by unanimous consent at 5:25 PM.

Discussion Item 4(a) – City regulation of LLC campaign contributions.

At the February 21, 2020 Election Code Committee (“ECC”) meeting, City staff presented sample Code language for the ECC’s consideration regarding regulation of contributions by limited liability companies (“LLCs”). The language mirrored the restrictions at the State level. In general, the language would require LLCs to submit an affirmation form along with a contribution that details the members of the LLC and how the contribution is apportioned among the LLC’s members. The amount of a contribution apportioned to a member would count against that member’s individual campaign contribution limits.

During the February 21st meeting, the ECC had questions regarding the why the State regulations have a particular focus on LLCs as opposed to other corporate forms.

To begin with, it is important to recognize when and why restrictions were placed on corporations’ political spending, because the LLC regulation is a response to those restrictions. In November 2002, Colorado voters approved Amendment 27, which amended Article XXVIII of the Colorado Constitution to, in part, prohibit corporations from making contributions to candidate committees or political parties, and from making expenditures expressly advocating for or against the election of a candidate. For reference, the City does not have a similar blanket prohibition regarding corporations but does have a prohibition in City Charter Art. VIII, Section 8 that applies to public service corporations and corporations having interests in any franchise or contract with the City.

The LLC restrictions were established in 2007 by House Bill 07-1323. Our research did not reveal any legislative history for that bill. However, our research revealed some information related to a predecessor bill, House Bill 05-1332, which was passed by the legislature but vetoed by Governor Owens. HB05-1332 contained the same restrictions on LLC contributions as HB07-1323, meaning information pertaining to the 2005 bill may be reasonably reliable to discern the intent behind the 2007 bill that became law.

At the time HB05-1332 was introduced, the Colorado Constitution prohibited corporations from making contributions to campaign committees and political parties. However, no such restriction existed for LLCs at that time, because LLCs are not corporate entities. According to a 2006 article from a now-defunct online news magazine, Colorado Confidential, the intent behind HB05-1332 was to apply some restrictions on LLCs, which were not covered by Amendment 27. The article, written by an attorney who worked with the bill’s primary House sponsor when the bill was introduced, states that the bill would have “expressly prevented LLCs from being used as strawmen for illegal contributions” by requiring the LLC to affirm it had no illegal donors (such as a foreign citizen). The article also states the bill’s requirements that an LLC must apportion contributions to its members would have prevented LLCs from being used to “cloak contributions

or expand limits on contributions.” The author goes on to identify the apparent problem being addressed, by stating “anyone can, for a small filing fee, make as many LLCs as they wish, and make anonymous campaign contributions to candidate races from all them, rendering Colorado’s campaign finance laws all but dead letter.” One may infer, from this article and from the fact that HB07-1323 is substantially similar to HB05-1332, that the intent behind the LLC restrictions that became law was to prevent people from using easily formed LLCs to circumvent contribution limits.

It should be noted that since the passage of Amendment 27 in 2002 and the adoption of the LLC restrictions in 2007, the Colorado Supreme Court has held that the prohibition in the Colorado Constitution against corporations making expenditures expressly advocating for the election or defeat of a candidate is unconstitutional because it violates corporations’ First Amendment freedom of speech.¹ This decision was in response to the U.S. Supreme Court case of *Citizens United v. Federal Election Commission*,² in which the Supreme Court held that a federal law banning corporate independent expenditures was an unconstitutional restriction on freedom of speech.

¹ *In re Interrogatories Propounded by Governor Ritter, Jr., Concerning Effect of Citizens United v. Federal Election Commission*, 588 U.S. --- (2010) on Certain Provisions of Article XXVIII of the Constitution of the State of Colorado, 227 P.3d 892 (Colo. 2010).

² 558 U.S. 310 (2010).

Discussion Item 4(b)(i) – Consideration of Possible Amendment to City Charter Article VIII, Section 9 regarding corrupt practices.

This item concerns the corrupt practices language in City Charter Article VIII, Section 9, which states:

Any person who violates at a city election any state law, provision of this Charter or ordinance of the city shall, upon conviction thereof, be disqualified from holding any city position or employment for two (2) years, or any elective office for four (4) years.

This language in its current form was added to the Charter in 1997. Similar language preceded this version, beginning in 1986. Some questions have been raised regarding what is meant by “at a city election.” To gain a better understanding of that language, with the assistance of the City Clerk’s Office we researched the legislative history behind this Charter provision. To do so, we reviewed the Charter Review Committee reports and minutes that led to the Charter provision as it reads today. Prior to 1997, the language stated:

Any person who violates at a city election any state law, provision of this Charter or ordinance of the city, relative to registration or election, or who, if a candidate, fails to file a sworn statement of expenses³ as herein required, upon conviction thereof shall be disqualified from holding any city position or employment for two (2) years, or any elective city office for four (4) years.

The pre-1997 language contained the qualifier that the violation must be “relative to registration or election” for the corrupt practices prohibition to apply. “Relative to registration or election” is not substantially different from “at a city election” so it does not provide readily available guidance as to what types of offenses were of concern to the Charter’s drafters.

The pre-1997 language also stated that the failure to file “a sworn statement of expenses” was an offense punishable by this Section. At that time, a sworn statement of expenses was a requirement in a previous version of the Charter. It required that, within thirty days after a city election, every candidate must file an itemized statement showing in detail all amounts of money contributed or expended by the candidate, and giving the names of the persons receiving that money, the nature of each expenditure and its purpose. This requirement was eventually removed from the Charter. However, a similar requirement exists in the City Code today. Section

³ A statement of expenses was a requirement in a previous version of the Charter. It required that, within thirty days after a city election, every candidate must file an itemized statement showing in detail all amounts of money contributed or expended by the candidate, and giving the names of the persons receiving that money, the nature of each expenditure and its purpose. This requirement was removed from the Charter.

7-136 requires candidate committees to file regular disclosure statements that list contributions received, the source of the contributions, expenditures made, and other obligations of the committee.

Other than that, our research has not revealed what was originally intended with respect to “at a city election.” One could interpret “at a city election” in Section 9 was intended to discourage illegal acts that would interfere with, or call into question the validity of, a city election. This may include direct interference with the election itself, such as submitting fraudulent ballots. It might also include interference with the circulation of a petition, such as causing fraudulent signatures to be collected.

The Election Code Committee has expressed interest in revisiting Section 9 after it was recently brought to the City Council’s attention during a campaign finance enforcement action. Possible alternatives with respect to Section 9 include: (1) removing the Section entirely; (2) amending the language to clarify what is meant by “at a city election;” (3) amending the language so that it is only triggered if a person is convicted of a criminal act; or (4) amending the language to clarify that it is triggered if a person is convicted of a criminal or civil violation. Following the ECC’s discussion and direction, City staff would draft proposed Charter language.

Discussion Item 4(b)(ii) – Consideration of possible amendment to City Charter Article VIII, Section 8 regarding participation in elections by political parties, city employees, public service corporations or any other person intending to apply for a franchise or have a contract with the City.

City Charter Art. VIII, Sec. 8 states, in relevant part:

. . .

No political party or city employee, directly or indirectly, and no public service corporation, nor any other person, firm or corporation, owning, interested in, or intending to apply for any franchise or contract with the city shall contribute or expend any money or other valuable thing, directly or indirectly, to assist in the election or defeat of any candidate.

Since the adoption of this Charter provision in approximately 1980, there have been developments in the law that may bear on the restrictions on who may contribute, directly or indirectly, to assist in the election or defeat of a Council candidate. The application of Section 8 to City employees was the matter of some discussion during and after the 2019 election.

The City Attorney's Office will be providing additional information on this matter as early as possible prior to the ECC's May 1st meeting.

Discussion Item 4(b)(iii) – Consideration of possible amendment to City Charter Article II, Section 4 to conform with Article II, Section 1(d) to reflect the selection of Mayor Pro Tem does not occur until recount period has expired.

This item concerns a proposed amendment to City Charter Article II, Section 4, which governs when the Council must elect the Mayor Pro Tem following an election. This proposed amendment is to align Section 4 with City Charter Article II, Section 1(d). Section 1(d) was amended in 2017 to read that the Mayor and Council members shall take their oaths of office at the first regular or special Council meeting that occurs after the final certification of the election and after the time for recount expires. This proposed amendment would revise the language in Section 4 to mirror the language of Section 1(d), meaning the Council would elect the Mayor Pro Tem at the first regular or special Council meeting following the final certification of election results and after the expiration of the recount period.

Article II, Section 4 – Organization.

The Mayor shall preside at meetings of the Council and shall be recognized as head of the city government for all ceremonial purposes and by the Governor of the state for purposes of military law. The Mayor shall execute and authenticate legal instruments requiring the signature of the Mayor. The Mayor shall also perform such other duties as may be provided by ordinance which are not inconsistent with the provisions of this Charter.

At the first regular or special Council meeting after following the final certification of a City election of election results and after the expiration of the recount period, the Council shall elect a Mayor Pro Tem for a two (2) year term from among the members of the Council to act as Mayor during the absence or disability of the Mayor. If a vacancy occurs in the position of Mayor, the Mayor Pro Tem shall become Mayor as provided in Section 18(b) below.

Discussion Item 4(b)(iv) – Consideration of possible amendment to City Charter Article VIII, Section 4(a) to eliminate the requirement that the affidavit of circulator contain a statement of the number of signers on that section of the petition.

This item concerns a proposed amendment to City Charter Article VIII, Section 4(a), which establishes requirements for the circulation of a nominating petition. Section 4(a) currently requires that the circulator of the petition provide a signed statement that states the number of signers in a particular section of a petition and also stating that each signature was made in the circulator’s presence by the actual person whose signature it is. This requirement regarding the number of signers is similar to a requirement that had previously existed in Article VIII, Section 4(b). It stated that if a petition is found to be signed by more persons than the number of signatures the circulator certified, the last signatures in excess of the number certified must be disregarded. This requirement was removed in 2015. The proposed amendment here removes a remaining reference to the circulator having to certify the number of signers of a petition, which is unnecessary and serves no practical purpose after the 2015 amendment.

Article VIII, Section 4 – Petitions.

- (a) Form; circulation. The Council shall prescribe by ordinance, upon recommendation of the City Clerk, the form for a nominating petition which shall include such warnings and notices to signers as may be deemed appropriate by the Council, as well as the candidate's verified acceptance of nomination. The signatures on a nominating petition need not all be subscribed on one (1) page, but to each separate section of the petition there shall be attached a signed statement of the circulator thereof, stating ~~the number of signers on that section of the petition, and~~ that each signature thereon was made in the circulator's presence and is the genuine signature of the person whose name it purports to be. When executed, such statement shall be accepted as true until it shall be proved false. If any portion is proved false, that portion of any petition shall be disregarded. Following each signature on the petition of nomination shall be written the printed name and the residence address of the signer, and the date of signing. All nominating papers comprising a petition shall be filed as one (1) instrument.

...

April 30, 2020 Supplement to May 1, 2020 Election Code Committee Agenda

Discussion Item 4(b)(ii) – Consideration of possible amendment to City Charter Article VIII, Section 8 regarding participation in elections by political parties, city employees, public service corporations or any other person intending to apply for a franchise or have a contract with the City.

City Charter Art. VIII, Sec. 8 states, in relevant part:

...

No political party or city employee, directly or indirectly, and no public service corporation, nor any other person, firm or corporation, owning, interested in, or intending to apply for any franchise or contract with the city shall contribute or expend any money or other valuable thing, directly or indirectly, to assist in the election or defeat of any candidate.

Since the adoption of this Charter provision in approximately 1980, there have been developments in the law that may bear on the restrictions on who may contribute, directly or indirectly, to assist in the election or defeat of a Council candidate. The application of Section 8 to City employees was the matter of some discussion during and after the 2019 election.

In addition to the questions raised about Section 8's application to City employees, developments in the law have also raised potential legal issues regarding Section 8's restrictions on political parties and public service corporations, other persons, firms and corporations having interests in City contracts or franchises.

Because these other issues regarding Section 8 are a new topic of discussion for the ECC, it may be premature for the ECC to have a complete discussion on the issues and to provide its recommendations at its May 1st meeting. The ECC may wish to consider addressing these issues at a future meeting.

In the event the ECC desires to hold an executive session to discuss these potential legal issues, here is a motion for the ECC to consider:

"I move that the Election Code Committee go into executive session for the purpose of meeting with the City's attorneys and City Clerk's Office staff to discuss the following matters as permitted under City Charter Article II, Section 11(2), City Code Section 2-31(a)(2), and Colorado Revised Statutes Section 24-6-402(4)(b):

- The manner in which the particular policies, practices or regulations of the City related to City elections may be affected by existing or proposed provisions of federal, state or local law."