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AGENDA

City Council Election Code Committee

June 5, 2020, 3:30-5:00 p.m.

Remote Participation Only

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 [electioncodecommittee060520](#). 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, June 5. 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):

- Dial public participation phone number: (346) 248-7799.
- Enter the Meeting ID for the Election Code Committee Meeting, **845 9935 7920**, followed by the pound sign (#)
- 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.

1. Call Meeting to Order
 - This meeting is being conducted remotely pursuant to Ordinance No. 061, 2020. The City Manager and the Mayor have determined that remote participation continues to be allowed and appropriate due to ongoing Coronavirus concerns and public health agency recommendations and Safer at Home orders and that election-related updates are pressing and require prompt action due to the upcoming election dates.
2. Citizen Comment (limited to 5 minutes per speaker)
3. Consideration and approval of the May 1, 2020 Committee Meeting Minutes
4. Staff Report: Overview of Code changes previously approved by the Election Code Committee and proposed timeline of changes to City's Election Code.
5. Discussion Items:
 - a. Possible Charter amendments
 - i. 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. **No discussion needed. ECC previously supported bringing this forward to City Council.**
 - ii. 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.
 - iii. Consideration of Possible Amendment to City Charter Article VIII, Section 9 regarding corrupt practices.
 - iv. 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.
6. Other Business
7. Adjournment

ATTACHMENTS

1. May 1, 2020 Committee Meeting Minutes
2. Materials for each agenda item.

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., July 1, 2020.

May 1, 2020

ELECTION CODE COMMITTEE MEETING

3:30 PM

COUNCILMEMBERS PRESENT: Troxell, Pignataro, Summers, Stephens (alternate)
STAFF PRESENT: Carrie Daggett, Ryan Malarkey, Delynn Coldiron, Rita Knoll, Sara Gonzales
CITIZENS PRESENT: Michelle Haefele, Jody Deschenes, Kathleen Schmidt, Robbie Moreland, Jan Rossi

(Secretary's Note: Due to the COVID-19 crisis and state and local orders to remain safer at home and not gather, all Councilmembers, staff, and public attended the meeting remotely, via teleconference.)

1. CALL MEETING TO ORDER

Chair Pignataro called the meeting to order and discussed the Zoom remote participation.

2. CITIZEN COMMENT

Kathleen Schmidt, Election Reform Team Chair for the League of Women Voters of Larimer County, supported the City matching the state law regarding campaign contributions from LLCs.

Robbie Moreland thanked Council for its work during this time and supported a requirement to wear face masks in public buildings. She expressed support for matching the state law regarding campaign contributions from LLCs.

Jan Rossi opposed the current LLC contribution regulations in Fort Collins. Stating money buys influence. She supported aligning the City's regulations with the state law.

Michelle Haefele reiterated the City's legislative declaration for campaigns. Large campaign contributions create the potential for corruption and the appearance of corruption and the public interest is best served by limiting campaign contributions. She supported changing the City's election rules to align with those of the state to limit the total contribution of any individual.

Jody Deschenes commended staff and Council for carrying on with responsibilities under unique and challenging circumstances. She supported keeping campaign contribution limits as is, stating most grass roots candidates would not receive a benefit from increased limits.

3. CONSIDERATION AND APPROVAL OF FEBRUARY 21, 2020 COMMITTEE MEETING MINUTES

Mayor Troxell made a motion, seconded by Councilmember Summers, to adopt the February 21, 2020 Committee meeting minutes. The motion was adopted by unanimous consent.

4. DISCUSSION ITEMS

a. City Regulation of LLC Campaign Contributions

Chair Pignataro stated her impression is that this Committee will not likely come to a strict agreement regarding this item; therefore, she suggested no LLC changes be included in the package of changes sent to Council and, if desired, the entire Council could take up the issue.

Councilmember Summers agreed noting the current LLC regulations have been in place for decades. He took exception to statements of corruption without any type of proof.

Mayor Troxell agreed and stated the Committee should move on.

Chair Pignataro stated Mayor Troxell and Councilmember Summers are in favor of leaving the LLC regulations unchanged; however, she is a proponent of changing them. The Committee will send its package of changes forward to Council without changes in the LLC language at this time and the entire Council could take up the issue at that time.

b. Possible Charter Amendments Relating to Elections

i. Amend Article VIII, Section 9 Corrupt Practices

Assistant City Attorney Ryan Malarky stated this item concerns a section of the Charter that came to the attention of Council and the Committee after the last election cycle. Several citizen complaints were filed concerning alleged Election Code violations. Questions were raised as to the consequences or penalties if an allegation is sustained and someone is ultimately convicted of an Election Code violation.

Malarky outlined the existing penalties, including a ban on holding City office or employment for a certain number of years, which seem to be fairly significant and stated staff wanted to give the Committee an opportunity to discuss this section to see if there is any interest in making changes.

Clarifying the portion that addresses “at a city election” could be considered. Malarky questioned if this provision is intended to apply to election-related offenses that would have an impact on the outcome of an election or call into question the propriety of City elections. He also noted there is a difference between civil violations and criminal violations, the latter of which generally have stricter penalties. The Committee could consider this provision being triggered only by a criminal violation as opposed to something that would be strictly civil.

Mayor Troxell supported getting more information and involving more discussion, perhaps in the form of a work session.

City Attorney Daggett suggested it may be helpful for staff to develop some different versions for consideration at the next meeting.

Mayor Troxell and Chair Pignataro agreed with that suggestion.

City Attorney Daggett outlined what she has heard in the discussion including recognition that this section needs to be related to what would be considered significant offenses that relate to an election or campaign.

(Secretary's note: Councilmember Summers left the meeting at this point and Mayor Pro Tem Stephens stepped in as Committee alternate)

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

City Attorney Daggett stated an executive session might be helpful to discuss legal issues. This item is on the agenda as there were some issues that came up during the last election related to some employee organizations and generally related to this section. The key part of the section staff is suggesting the Committee may want to consider is the limitation on contributions or expenditures of any money or valuable things, directly or indirectly, to assist in the election or defeat of a candidate by any of the following: a political party, a City employee, a public service corporation, and any person, firm, or corporation owning, interested in, or intending to apply for, any franchise or contract with the City.

Mayor Pro Tem Stephens made a motion, seconded by Mayor Troxell, 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 Statute 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. Yeas: Pignataro, Troxell, and Stephens. Nays: none.

THE MOTION CARRIED.

(Secretary 's Note: The Committee went into Executive Session at this point in the meeting and returned at 5:15 pm.)

Chair Pignataro stated there is value in looking at this section more carefully at next month's meeting.

Mayor Troxell and Mayor Pro Tem Stephens concurred.

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

City Attorney Daggett stated this issue was created when the Charter was amended in 2017, but a provision was missed that needs to be modified, given the recount procedure and time needed to finalize the certification of the election. This would be a corrective edit to the Charter that would ensure the newly elected Council is selecting the Mayor Pro Tem. Staff has discussed an idea that sets a specific date for swearing in of the new Council and subsequent actions, such as selecting a Mayor Pro Tem, would tie into that date.

City Clerk Coldiron stated a having a date certain for swearing in of new Councilmembers seems to make sense as the Clerk's Office received many questions after the last election and there was disagreement as to when to move forward with certain actions. This would build certainty into the process.

City Attorney Daggett noted the Charter states a Councilmember's term continues until a successor is sworn in and having a date certain for the swearing in would provide more predictability.

Chief Deputy City Clerk Knoll stated a full course of a recount and election certification could be out as far as the second Tuesday in May. She also noted there have been issues wherein some Councilmembers are subject to a recount and others are not.

Chair Pignataro asked if the language could be changed to select the Mayor Pro Tem at the first regular meeting after the new Council is sworn in. City Attorney Daggett replied that could work if it was made clear that would occur after each seat is resolved and after the completion of any recount.

Chief Deputy City Clerk Knoll noted if no recount is requested, the opportunity to swear in Councilmembers would be sooner, which is one argument against setting a date certain for swearing in. However, setting a date certain would be more similar to county and state offices.

Chair Pignataro stated she would like to receive additional information from staff regarding preferences and ease of understanding for voters as this is a Charter amendment.

Chair Pignataro suggested staff return at the next meeting with information as to what would be affected by adding a date certain.

Mayor Troxell stated the entire Council should be seated prior to selecting a Mayor Pro Tem. He asked about the timeframe for a requested recount. Deputy City Clerk Gonzales replied a recount must be requested within five days after certification of the election, which is ten days after the election.

City Attorney Daggett suggested there could be two alternative set dates, one in the case of a recount, and one if there is no recount. Chief Deputy City Clerk Knoll recommended that those two options are likely the first meeting in May or the second meeting in May, or potentially a special meeting at the end of April.

Chair Pignataro suggested staff return with options at the next meeting.

Mayor Troxell suggested the swearing in does not necessarily need to occur on a Tuesday.

(Secretary's Note: Mayor Troxell left the meeting at this point.)

- 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*

Chief Deputy City Clerk Knoll stated this provision was eliminated in one portion of the Charter, but staff recently discovered a hold over of similar language in another section. This change will clarify that language.

Mayor Pro Tem Stephens stated that language cleanup makes sense.

5. OTHER BUSINESS

Mayor Pro Tem Stephens stated there may be some desire from the rest of Council to bring forward the issue related to LLC campaign contributions and suggested staff may want to have language prepared.

City Attorney Daggett stated there may be benefit in having a Council work session to discuss some of these issues.

Chair Pignataro noted the importance of timing as Charter amendments would need to be on the April ballot.

6. ADJOURNMENT

The meeting adjourned by unanimous consent at 5:43 PM.

ELECTION CODE COMMITTEE – JUNE 5, 2020 MEETING

AGENDA ITEM #4

Summary of Proposed Election Code Changes Approved by ECC

City Code Sec. 7-136. Disclosure; filing of reports.

- Eliminating anonymous donations, which will require the reporting of the name and address of each person making a contribution to candidate committees, political committees, or issue committees, regardless of how small the amount.

City Code Sec. 7-138(a) and (e). Unexpended Campaign Contributions.

- Allowing a candidate to use their unexpended candidate committee contributions for a non-City election as well as a subsequent City election.
- Allowing a candidate committee to retain unexpended contributions for use in the next election under the same candidate committee name. However, the candidate committee may register under a new name if it desires.

City Code Chapter 7, Article V, Division 2 – Campaign Violations.

- Amending the campaign finance violation enforcement process to decriminalize most violations, except:
 - an intentional violation of the reporting requirements to fraudulently misrepresent campaign contributions or expenditures;
 - an intentional violation of the ordinance prohibiting the encouragement of a candidate to withdraw from their candidacy; and
 - where a person has been found liable for campaign finance violations two or more times in a single election cycle.
- Creating an administrative penalty process with fines set forth in a schedule approved by City Council. Disputes regarding administrative penalties will be handled by a hearing officer – a role to be filled by an outside attorney. The City will have the right to collect any unpaid administrative penalties the same as a debt owed to the City.
- Adjusting the process for City Attorney review of citizen-submitted campaign finance complaints to account for the new administrative penalty process.
- Removing the private cause of action previously available to complainants to bring a civil action in District Court for alleged campaign finance violations.

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Proposed Timeline for Election Code and City Charter Changes

- **June 5, 2020 – Election Code Committee meeting.**
 - Discuss whether proposed Charter amendments should be brought forward to City Council.

- **July 1, 2020 – Election Code Committee meeting.**
 - Further discussion of proposed Charter or Code amendments, as necessary.

- **July 21 or August 4 – City Council meeting**
 - First Reading of an Ordinance amending the Election Code.
 - These Code changes are ones the ECC discussed at prior meetings and approved.
 - If pursuing Charter amendments:
 - First Reading of an Ordinance calling a special election on November 3, 2020; and
 - First Reading of an Ordinance submitting Charter amendments to voters on the November ballot.

- **August 4 or August 18 – City Council meeting**
 - Second Reading of the Ordinance amending the Election Code.
 - If pursuing Charter amendments:
 - Second Reading of an Ordinance calling a special election on November 3, 2020; and
 - Second Reading of an Ordinance submitting Charter amendments to the voters on the November ballot.

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Important Dates for a November 3, 2020 Special Election

Action	Requirement	Date	Notes
Election Code Committee meeting		05/01/20	
Election Code Committee meeting		06/05/20	
Election Code Committee meeting		07/01/20	
Earliest to publish notice of Charter amendments	120 days before election	07/06/20	
<i>First Reading of Ordinance Calling November Special Election and Authorizing IGA with County</i>		07/21/20	
<i>First Reading of Ordinance(s) submitting Charter amendment(s) to November ballot</i>		07/21/20	Could be done at first meeting in Aug if alternative date found
Notify County of intent to participate in election	100 days in advance (if known)	07/24/20	
<i>Second Reading of Ordinance Calling November Special Election and Authorizing IGA with County</i>		08/18/20	
<i>Deadline for Second Reading of Ordinance(s) submitting Charter amendment(s) to November ballot</i>		08/18/20	Cannot be Sept 1 because ordinance will not be in effect before deadline to certify ballot language
Deadline to sign IGA with County	70 days before the election	08/25/20	
Last day to publish notice of election	60 days before the election	09/04/20	Practical date August 30
Deadline to certify ballot language to County	60 days before the election	09/04/20	
Date of Election		11/03/20	

**Red text denotes Council action required*

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AGENDA ITEM #5

Possible City Charter Amendments

I. Article VIII, Section 4(a).

- To eliminate the requirement that affidavits of circulators contain a statement of the number of signers on each section of a petition.
- No discussion required. Previously approved by ECC to go to City Council.

II. Article II, Section 4.

This amendment would establish when the selection of the Mayor Pro Tem takes place and correct an inadvertent inconsistency in current Charter language.

Article II, Section 4 of the Charter currently states:

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 meeting after final certification of a City election, 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.

The language in the second paragraph is problematic for two reasons. One, it calls for the selection of the Mayor Pro Tem prior to newly elected Councilmembers taking office, which is addressed in Charter Art. II, Sec. 1(d). Two, it requires the selection of the Mayor Pro Tem before all possible election processes have taken place, such as a recount.

City staff is proposing an amendment to Section 4 to align it with Article II, Section 1(d). Section 1(d) was amended in 2017, to establish that the Mayor and Councilmembers will take the oath of office at the first regular or special Council meeting following the final certification of election results and after expiration of the recount period. Section 1(d) states:

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Section 1. Membership; terms.

...

(d) Terms. Except as otherwise provided in Section 18 of this Article and Section 3(d) of Article IX, the term of office of the Mayor shall be two (2) years, and the term of office of all other members of the Council shall be four (4) years each; provided, however, that all such officers shall serve until their successors have been elected and have taken office. The terms of the Mayor and other members of the Council shall begin when they take the oath of office, which shall occur as the first order of business at the first regular or special Council meeting following the final certification of election results and after expiration of the recount period, or their appointment.

Options for Aligning Article II, Section 4 and Article II, Section 1(d)

Option 1. Amend Section 4 to read as follows:

Section 4. Organization.

...

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. In no event shall the Mayor Pro Tem be elected until such time as all newly elected Mayor and members of Council have taken the oath of office.

Pros	Cons
<ul style="list-style-type: none"> Allows newly elected Mayor and Councilmembers to take office earlier (but no sooner than after the deadline to request a recount has passed, i.e., 5 days after certification of the election results) 	<ul style="list-style-type: none"> Unable to predict with certainty when the organizational meeting will occur until the deadline to request a recount has expired or until a recount (mandatory or requested) has been completed Lack of predictability makes it challenging to plan logistics of

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	organizational meeting and related celebration <ul style="list-style-type: none"> • Lack of predictability affects scheduling of business (such as Council priorities) before newly constituted Council take over
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Option 2. Amend Section 4 and Section 1(d) to set a date certain for newly elected Councilmembers to take office and for the selection of the Mayor Pro Tem.

City elections are held on the first Tuesday after the first Monday in April of odd-numbered years. The latest date that a City election could be held is April 8. If all election processes following election day were to take the full amount of time allowed, the significant dates follow (assuming an election year of 2025):

Election Day	Tuesday, April 8
Deadline to certify results of the election	Friday, April 18
Deadline to request a recount (when one is not mandated)	Wednesday, April 23
Deadline to complete the recount	Saturday, May 3 (would likely complete on Friday, May 2)
Deadline to complete amended certification of election results	Thursday, May 8 (or Wednesday, May 7 if recount is completed on Friday, May 2)
Options for oaths of office and selection of Mayor Pro Tem	Tuesday, May 13 (special mtg) Tuesday, May 20 (regular mtg) Any other day of week after May 8 (special mtg)

One alternative is to amend Section 4 to set a specific date follows:

Section 4. Organization.

...

At the ~~first regular or special meeting~~ **on the third Tuesday] [special meeting on the second Tuesday] in May** following the city election ~~after final certification of a City election,~~ the Council shall elect a Mayor Pro Tem for a two (2) year term from

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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. **In no event shall the Mayor Pro Tem be elected until such time as all newly elected Mayor and members of Council have taken the oath of office.**

Section 1(d) could be correspondingly amended as follows:

Section 1. Membership; terms.

...

(d) Terms. Except as otherwise provided in Section 18 of this Article and Section 3(d) of Article IX, the term of office of the Mayor shall be two (2) years, and the term of office of all other members of the Council shall be four (4) years each; provided, however, that all such officers shall serve until their successors have been elected and have taken office. The terms of the Mayor and other members of the Council shall begin when they take the oath of office, which shall occur as the first order of business at the ~~first~~ [regular or special Council meeting **on the third Tuesday in May**][~~special meeting on the second Tuesday in May~~] following the **city election** ~~final certification of election results and after expiration of the recount period~~, or their appointment.

Pros	Cons
<ul style="list-style-type: none"> • Consistent with how other elected officials take office <ul style="list-style-type: none"> - President – January 20 - Federal officials – January 3 - Colorado Governor – second Tuesday in January - Colorado General Assembly – first day of the legislative session after election, which begins no later than the second Wednesday in January - County officials – second Tuesday in January • Provides consistency and predictability • Survives delay in election results in event of recount • Assures that newly elected members participate in the selection of the 	<ul style="list-style-type: none"> • Adjustment to new timeline will be difficult for some to process • Extends date of organizational meeting by at least two weeks

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Mayor Pro Tem and can vie for the designation	
<ul style="list-style-type: none">• Provides predictability for outgoing Councilmembers with regard to the end of his/her term of office• Provides newly elected members with a break between election campaign and new role	

III. Article VIII, Section 9.

This amendment concerns the corrupt practices language in 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 expenses 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

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was eventually removed from the Charter. However, a similar requirement exists in the City Code today. Section 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.

Of note, if the City Council adopts the proposed administrative penalty process for campaign finance violation, the vast majority of such potential violations would no longer be considered criminal, which means a *conviction* would not enter. Without a conviction, the penalties of Section 9 are not triggered. If Council adopts the administrative penalty process, there will remain three instances where a violation would be criminal: (1) where a person acts with a fraudulent intent to misrepresent campaign contributions or expenditures on a disclosure form; (2) where a person intentionally violates the prohibition against encouraging a candidate to withdraw from their candidacy; and (3) where a person violates a campaign finance requirement after already being found liable for violations two or more times in an election cycle.

Potential Charter Amendments to Article VIII, Section 9 (if a change is desired)

Option 1

Remove Section entirely and place similar restrictions in City Code.

Option 2 – introduces an intent element, sets the timeframe for when an offense would trigger this section, and elaborates on what type of offenses trigger this section.

Any person who, with the intent to interfere with the registration of any elector, circulation of any petition, or the conduct of a city election, violates, ~~at~~ within six (6) months preceding a city election or prior to the certification of city election results any state law, provision of this Charter or ordinance of the city directly regulating the conduct of, or participation in, city elections, ~~and~~ shall, upon

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conviction thereof, be disqualified from holding any city position or employment for two (2) years, or any elective city office for four (4) years.

Option 3 – no specific intent element but sets a timeframe for offenses and elaborates on what type of offenses would trigger this section.

Any person who violates ~~at~~ within six (6) months preceding a city election or prior to the certification of city election results, any state law, provision of this Charter or ordinance of the city directly regulating the conduct of, or participation in, city elections, ~~and~~ shall, upon conviction thereof, be disqualified from holding any city position or employment for two (2) years, or any elective city office for four (4) years.

III. Article VIII, Section 8.

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.

Since the ECC's May 1, 2020 meeting, the City Attorney's Office and the City Clerk's Office have continued to evaluate Section 8 in light of developments in the law following the 2010 U.S. Supreme Court *Citizens United* case. City staff are considering options to address the questions raised in a way that would not require a Charter amendment.

If there is a desire to relax the prohibitions in this provision for policy reasons, the Committee may wish to discuss those policy considerations as part of this item.

If the ECC would like an executive session to discuss these potential *legal issues*, here is a motion for the ECC to consider:

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“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):

- To consult with attorneys representing the city regarding specific legal questions involving litigation or potential litigation; and
- 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.”