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## **AGENDA**

City Council Election Code Committee

April 5, 2018, 12:00-1:30 p.m.

City Clerk Large Conference Room, 300 LaPorte Avenue

Committee Members:            Councilmember Bob Overbeck, District 1  
   Councilmember Kristin Stephens, District 4 (Chair)  
   Councilmember Ross Cunniff, District 5

1. Call Meeting to Order
2. Citizen Comment (limited to 5 minutes per speaker)
3. Approval of March 1, 2018 Committee Meeting Minutes
4. Discussion Items:
  - a. Value of campaign ads on websites
  - b. Deadlines for nomination petitions, withdrawal, and write-in candidates
  - c. UOCAVA voters
  - d. Requiring "paid for by" information on campaign materials
5. Next Meeting: May 3, 2018, 12:00-1:30 pm, City Clerk Large Conference Room
6. Other Business
7. Adjournment

*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.*

**March 1, 2018**

**ELECTION CODE COMMITTEE MEETING**

**12:00 PM**

PRESENT: Overbeck, Cunniff, Coldiron, Malarkey, Knoll, Gonzales, Daggett  
ABSENT: Stephens  
CITIZENS PRESENT: Marge Norskog, Karen Wagner, Robbie Moreland, Sam Houghteling, Dale  
Adamy, Jody Deschenes, Kevin Jones, Nick Coltrain and Sarah Pitts.

**1. CALL MEETING TO ORDER**

Councilmember Overbeck made a motion, seconded by Councilmember Cunniff, to allow Councilmember Cunniff to Chair the meeting. The motion was adopted unanimously.

Councilmember Cunniff called the meeting to order.

**2. CITIZEN COMMENT**

Marge Norskog discussed research she conducted with Loveland, Longmont, and Boulder, and based on that research, suggested committee information and finance reports should be the responsibility of the City Clerk. She stated temporary staff should be hired during municipal elections to allow for effective and efficient review of reports and complaints.

Ms. Norskog stated Fort Collins should require 'paid for by' statements on campaign-related communications.

Robbie Moreland supported the requirement for "paid for by" statements and supported zeroing out all candidate committee funds after every election.

Karen Wagner suggested the Election Code Committee should consistently allow citizen input and should meet monthly to allow the Code to be reviewed and updated in a timely manner. She also suggested adding an earlier filing date for campaigns and questioned whether the requirements and penalties for finance reports are meaningful and enforceable. She discussed the importance of increasing voter turnout.

Sam Houghteling discussed the importance of representation and public service. He discussed the need for real-time oversight of election expenditures, "paid for by" requirements, and the potential for working with the County on regular redistricting. He suggested elections should have some type of dashboard function on the City's web site.

Dale Adamy, Fort Collins Parity, discussed the organization's focus on the City's triple bottom line and the issue of process. He suggested the Election Code Committee should be formalized and commended the citizens who have commented.

Jody Deschenes supported the previous comments and encouraged a requirement for "paid for by" notices on all ads. She also supported zeroing out all candidate committee funds after each election and noted the individuals speaking represent local and national organizations.

Councilmember Overbeck asked if there would be a minimum threshold for zeroing out account balances. Ms. Moreland replied it should be zero every time in order to create a level playing field for all candidates.

Councilmember Overbeck asked where funds should be transferred. Ms. Moreland replied it could be similar to issue committees, where the funds could be donated to charities or returned to donors.

Councilmember Cunniff thanked the speakers and concurred with the frustration regarding ease of accessibility on the City's web site. He stated he would like to find a way to enable transparency in

reports and suggested the possibility of a budget offer to fund temporary or permanent staff to provide oversight. He agreed a more regular schedule for the Committee could be helpful.

### **3. APPROVAL OF OCTOBER 5, 2017 COMMITTEE MEETING MINUTES**

Councilmember Overbeck made a motion, seconded by Councilmember Cunniff, to adopt the October 5, 2018 Committee meeting minutes. The motion was adopted unanimously.

### **4. ELECTION-RELATED CHANGES FOR DISCUSSION**

#### **a. Review draft Ordinance for March 20 Council meeting**

Chief Deputy City Clerk Knoll stated this Ordinance represents the issues the Committee has already agreed to move forward. The issues are: adding to the Clerk's duties the role to serve as the City's designated election official in a coordinated election; defining a "public announcement," define a "registered agent"; requiring the financial disclosure statement to be filed at the same time as the acceptance of nomination; and making the committee registration process more robust, including the requirement for a registered agent.

Councilmember Cunniff suggested the inclusion of details of those expectations upon committee formation.

Daggett detailed the registered agent requirements.

Committee members discussed the possibilities of verifying the existence of independent bank accounts.

Councilmember Cunniff asked about small-scale issue committees. Daggett replied their filing requirements are different; however, the same registration information will now be required, and once a certain dollar threshold is met, they automatically become issue committees with the same requirements.

Councilmember Cunniff suggested the possibility of adding an earlier filing report requirement date. Knoll and Daggett stated they would research appropriate earlier filing dates.

Councilmember Overbeck questioned how candidate committees should account for donor refund checks not being cashed in the case of zeroing out account balances. Daggett suggested there are generally time limits on the cashing of checks, after which an alternative means of disposing of the funds could occur. Knoll noted an amended report could be filed in that case.

Councilmember Overbeck questioned how to handle refunds of donations over the maximum amount. Councilmember Cunniff stated this issue will require more research and noted the State has an unclaimed funds mechanism. Daggett noted a local unclaimed fund mechanism also exists and suggested this is likely a separate topic for future discussion.

Knoll mentioned the next ordinance topics: clarifying the Friday-before report deadline time, making the same registration requirements apply to small-scale issue committees, the implementation of signature verification, and clarifying what will be done with rejected ballots.

Daggett discussed Section 14 of the ordinance which addresses the termination of old committees. It will essentially start the next election cycle with a clean slate.

Councilmember Cunniff expressed concern with this section and the removal of requirements for old committees. Daggett replied staff will see if there is a way to accomplish the goals of Section 14 without giving committees a free pass for the November election.

Councilmember Cunniff stated he would prefer this item not be on the Consent Agenda.

**b. Value of Campaign Ads on Websites**

Ryan Malarkey provided background on this topic and stated staff has found there is not much guidance in case law or statute regarding the value of campaign ads on websites.

Councilmember Cunniff stated he would be interested in more research on advertising versus First Amendment rights to endorse candidates.

Councilmember Overbeck questioned the possibility of the impact of net neutrality on this topic.

Councilmember Cunniff suggested the possibility of a media exemption. Knoll stated there is an existing exemption. Daggett stated staff could examine the modernization of the existing exemption and will provide an update at the next meeting.

**5. FOLLOW-UP ITEMS**

**a. Requiring “paid for by” information on campaign materials**

Councilmembers Cunniff and Overbeck supported moving forward with a requirement for including “paid for by” information. Daggett suggested staff could return with language at the next meeting.

**b. Citizen oversight board**

Councilmember Cunniff suggested this item may require a discussion at a Council meeting.

Councilmember Overbeck suggested this Committee develop some recommendations.

Daggett stated alternative ideas have come forward with the goal of accomplishing what a citizen board might. She expressed concern with the formation of an official citizen board given the definition of its function could be difficult.

Councilmember Overbeck discussed the possibility of a citizen advisory group which may not have any actual authority.

Councilmember Cunniff suggested making this Committee’s procedures welcoming to public input and feedback.

Knoll noted there are legal considerations when discussing election administration and the City is not in a position to take advice but is in a position to follow the law.

Daggett stated the Clerk’s Office has continued to improve upon the election process and transparency.

Councilmember Overbeck suggested the Committee meet regularly in part to gain citizen input but would not meet for some period of time prior to municipal elections.

Daggett noted Committee meetings take considerable staff time to prepare and requested that be considered.

Councilmember Cunniff suggested having a standing meeting time; however, meetings could be cancelled if there were no topics to be discussed.

Knoll suggested monthly meetings for now.

**c. Extending deadline to file election complaints**

Councilmember Cunniff stated he would like more information about what recourse citizens may have on the federal tax code side of this issue.

Daggett noted there may be enough practical separation for committees with new termination requirements. She stated staff met with Ms. Norskog recently and the Clerk's Office discussed the formation of new guidance materials for people to use to evaluate whether they need to register as a committee or just need to report independent expenditures.

Daggett stated staff will research the federal tax issue and report back to the Committee.

**6. NEXT MEETING**

Knoll stated the next meeting is scheduled for April 5.

**a. Future Topics**

- **Redistricting**

**7. OTHER BUSINESS**

Knoll stated the time between when ballots go to print and when they must be mailed is extremely tight. She requested the Committee entertain adjusting some deadlines for the circulation of nomination petitions, withdrawal, and registration as a write-in candidate.

Councilmember Cunniff stated this topic should be on the next agenda. He briefly reviewed the Committee topics discussed to date.

**8. ADJOURNMENT**

The meeting adjourned at 1:37 PM.

## DISCUSSION ITEMS

Topic 4a	Source	Questions/Comments/Explanation
Value of campaign ads on websites	Mayor Pro Tem Horak (Feb 2017 LPT request)	Suggested that staff provide Council candidates information on declaring the value of campaign ads on websites.
<b>Status:</b> <ul style="list-style-type: none"><li>• Committee discussion on July 20, 2017.</li><li>• City Attorney's Office continues to research language that would be examples of what is or is not an independent expenditure, especially in the area of social media use.</li><li>• Need for additional clarification (City Code and/or candidate guidelines) of when a web-based campaign ad should be reported as a contribution or contribution in-kind.</li><li>• Scheduled for discussion at next meeting.</li></ul>		

Topic 4b	Source	Questions/Comments/Explanation
Deadline for nomination petitions, withdrawal, and write-in candidates	Staff	The time period between the actions affecting the content of the ballot and when the ballots need to be mailed are extremely tight. Staff is recommending minor adjustments to provide relief.
<p><b>Status:</b></p> <ul style="list-style-type: none"> <li>• Committee discussion on April 3, 2018.</li> <li>•</li> </ul>		

**Proposed Amendments:**

**Sec. 7-103. Write-in candidates.**

No write-in vote for a candidate for City Council office shall be counted unless the person whose name appears as the write-in vote has filed an affidavit of intent with the City Clerk, no later than the close of business ~~thirty-five (35)~~ **forty-two (42)** days before the election, indicating that such person desires and is qualified for the office.

**Sec. 7-116. Nomination of candidates; withdrawal from candidacy.**

A nominating petition required pursuant to Article VIII of the Charter may not be circulated earlier than ~~sixty (60)~~ **seventy (70)** days before the election and must be filed with the City Clerk not later than ~~forty (40)~~ **forty-nine (49)** days before the election. A person who has been nominated may, not later than ~~thirty-five (35)~~ **forty-two (42)** days before the election, withdraw by filing with the City Clerk a request therefor in writing, and no name so withdrawn shall be placed upon the ballot.

**Sec. 7-117. Recall elections; nomination of candidates.**

Anyone desiring to become a candidate at a recall election shall do so by nominating petition as required in Article VIII of the Charter. All nominating petitions for such candidates shall be filed with the Office of the City Clerk no later than ~~forty (40)~~ **forty-nine (49)** days prior to the date of the recall election.

Topic 4c	Source	Questions/Comments/Explanation
UOCAVA	Staff	<ul style="list-style-type: none"> <li>Amend Code to allow receipt of UOCAVA ballots up to 8 days after the election.</li> </ul>
<p>Status:</p> <ul style="list-style-type: none"> <li>Committee discussed UOCAVA implementation in 2015 and 2016.</li> <li>At that time, we were unable to implement the “back end” of UOCAVA (accepting ballots through the 8 days after the election) because the canvass was set for 3 days after election day.</li> <li>Canvass date changed by voter approval to no later than 10 days after the election.</li> <li>Committee was not interested in implementing the “front end” of UOCAVA because it would require significant changes to election cycle deadlines (particularly with regard to nomination petitions, write-ins, and withdrawal) in order to have ballots ready to mail to UOCAVA voters 45 days prior to the election.</li> <li>Corrections to signature deficiencies and discrepancies will be allowed within the 8 days following the election, so it is not unreasonable to allow UOCAVA ballots received in that same period to be counted.</li> </ul>		

**Suggested Action:**

Staff recommends adding to the City Code provisions relating to UOCAVA voters. Those provisions would include:

- Definitions
- Requirement for the City Clerk to provide advance notice of an election via letter in January
- Alternative methods for a UOCAVA voter to cast a ballot
- Provisions relating to receipt of ballots up to and including the 8<sup>th</sup> day after the election

Topic 4d	Source	Questions/Comments/Explanation
Paid for by	Staff	<ul style="list-style-type: none"> <li>• Requiring “paid for by” information on campaign materials</li> </ul>
<p>Status:</p> <ul style="list-style-type: none"> <li>• Committee has received input from citizens requesting that campaign materials include “paid for by statements”.</li> <li>• Committee expresses interest in researching possibilities.</li> </ul>		

Information for April 5 meeting to be provided under separate cover

**FUTURE TOPICS**

Topic	Source	Questions/Comments/Explanation
Redistricting	Staff	<ul style="list-style-type: none"> <li>• Staff requests a discussion with the Committee to receive guidance</li> <li>• Would the Committee consider removing sections 7-71(b), 7-87(c) and (d)? Removing this review will lessen the frequency of moving precincts between districts.</li> <li>• Would the committee support funding to hire a consultant to help formulate options/different methods for redistricting?</li> </ul>
<p>Status:</p> <ul style="list-style-type: none"> <li>• Committee discussion on October 5, 2017.</li> <li>• OK given to move forward with precincts boundary changes now to correspond with County precincts. Ordinance will need to include suspension of requirement to review district boundaries when County reprecincts.</li> <li>• Staff asked consider the possibility of City precincts being smaller than the County's precincts. Discussion with Larimer County planned.</li> <li>• Staff asked to do modeling to demonstrate how much growth could happen between now and the 2020 census.</li> <li>• Staff to provide suggested Code language to limit district boundary changes to occur only after the census.</li> <li>• Precinct boundary changes completed January 2018.</li> </ul>		

Review of precinct boundaries is required by City Code Section 7-71(b), 7-87(c) and (d) whenever Larimer County changes its precinct boundaries.

**Current Code language:**

**Division 2-Election Precincts and Polling Places**

**Sec. 7-71. - Precinct map/amendment.**

- (a) The boundaries of the election precincts as herein created in the City are hereby fixed and established as shown on the map entitled "District-Precinct Map," which map is on file in the office of the City Clerk.
- (b) Upon notice by Larimer County that its precinct boundaries have been amended, the City Clerk shall review precinct boundaries and recommend to City Council any precinct boundary changes to ensure they match Larimer County's precincts.

### **Division 3-Election Districts**

#### **Sec. 7-86. - Establishment.**

Pursuant to the Charter, the City is hereby divided into six (6) Districts. From each District one (1) City Councilmember will be elected. Such Districts are designated as District No. 1, District No. 2, District No. 3, District No. 4, District No. 5 and District No. 6, and are delineated on the District-Precinct Map which is adopted by ordinance and made a part hereof by reference and is on file in the City Clerk's office.

#### **Sec. 7-87. - Redistricting; notice.**

- (a) The City Council shall, by ordinance, amend the boundaries of the foregoing districts as necessary to comply with the provisions of Article II, Section 1(c) of the Charter. The City Clerk shall cause to be published twice, in a local newspaper of general circulation in the City, notice of the date, time and place of the City Council's consideration of any such redistricting ordinance. The first such notice shall be published no less than fourteen (14) days prior to the date of first hearing of the redistricting ordinance, and the second notice shall be published no less than ten (10) days prior to the date of the first reading of the same.
- (b) Not more than eighteen (18) months after the official decennial publication of the United States Census concerning the population of the City of Fort Collins, the City Clerk shall recommend to the City Council any district boundary changes necessary to ensure that, to the extent reasonably possible, there is no more than a ten-percent deviation between the most populous and the least populous district.
- (c) Not less than once every six (6) years after making the determination required under Subsection (b) above, the City Clerk shall again review the district boundaries to determine whether the maximum deviation between the most populous and the least populous district meets the standard described in Subsection (b) above. If the standard in Subsection (b) above is not met, the City Clerk shall recommend to the City Council any district boundary changes necessary to ensure that the districts conform to such standard.
- (d) The need to amend precinct boundaries pursuant to § 7-71(b) shall automatically cause the City Clerk to review current population deviations, regardless of how long it has been since the last review. If the deviation is found to exceed ten (10) percent, the City Clerk shall recommend that the City Council make boundary adjustments, and present the Council with possible redistricting options that to the maximum extent possible equalize the population in each district, subject to the requirements for contiguity and compactness set forth in Article II, Section 1(c) of the Charter, with a maximum permissible deviation of ten (10) percent between the most populous and least populous district.
- (e) Any changes to district boundaries shall be established by ordinance no less than one hundred eighty (180) days before a regular municipal election.

Larimer County notified the City in June that the Commissioners had approved precinct boundary changes. Pursuant to City Code, this action by Larimer County triggered the review of the population deviation between districts. Staff discovered that the deviation between the most populous and least populous districts is greater than 10%. District 1 has grown dramatically since the last redistricting, which occurred in June 2016. Districts 2, 3, 5, and 6 had about equal growth while District 4 had no growth. The current practice for reviewing and adjusting districts appears to be unsustainable.

Criteria considered for redistricting:

1. **To the extent possible, Districts consist of an equal number of inhabitants (Charter)**
2. Districts must be contiguous (Charter)
3. Districts must be reasonably compact, consisting of contiguous, undivided general election precincts (Charter)
4. Residence address of each Councilmember so that no Councilmember is disenfranchised from his or her district.