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AGENDA

City Council Election Code Committee

May 3, 2018, 12:00-1:30 p.m.

City Clerk's 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 April 5, 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. Disclaimer notices on campaign materials and definition of Independent Expenditures
5. Next Meeting: June 7, 2018, 12:00-1:30 pm, Citizen Information Center, 300 LaPorte Avenue
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.

April 5, 2018

ELECTION CODE COMMITTEE MEETING

12:00 PM

PRESENT: Stephens, Overbeck, Cunniff, Coldiron, Malarkey, Knoll, Gonzales, Daggett
CITIZENS PRESENT: Robby Overland, Kevin Jones, Colin Garfield

1. CALL MEETING TO ORDER

Councilmember Stephens called the meeting to order.

2. CITIZEN COMMENT

None.

3. APPROVAL OF MARCH 1, 2018 COMMITTEE MEETING MINUTES

Councilmember Overbeck made a motion, seconded by Councilmember Cunniff, to adopt the March 1, 2018 Committee meeting minutes. The motion was adopted unanimously.

4. ELECTION-RELATED CHANGES FOR DISCUSSION

a. Value of Campaign Ads on Websites

Daggett stated it might be beneficial to approach this in a way that encompasses a means of setting a value regardless of the specific nature of the medium.

Councilmember Stephens noted there are ways other than social media to get free publicity, such as writing a letter to the editor.

Daggett discussed the importance of focusing on a certain medium.

Councilmember Cunniff stated the question relates to whether money changed hands and whether the communication would have happened had money not changed hands. He noted it would count as a contribution in-kind if a member of the public would have paid to put up a post. He stated there is no proactive way to track that; it would need to be on a complaint basis.

Councilmember Stephens questioned how an endorsement in a newsletter, for example, would be handled. Daggett replied that would be considered free speech.

Councilmember Cunniff replied if the newsletter normally takes money for ads or endorsements, any endorsement would be considered a contribution in-kind.

Daggett noted the Coloradoan's endorsements are different than an ad. She stated staff can look at current language to identify areas wherein clarifying changes could help embody this discussion.

Councilmember Cunniff stated most of these items are already covered in the Code; the clarification would be related to ensuring the public understands the interpretation.

b. Deadlines for Nomination Petitions, Withdrawal, and Write-in Candidates

Knoll stated the timeframe between knowing the final slate of candidates and mailing ballots is extremely tight. She suggested lengthening the deadlines slightly to relieve that issue somewhat.

Daggett stated there is benefit in using the approach of courts and legislature in terms of using a 7-day increment. This makes things more predictable for candidates as well.

Committee members supported the proposed time changes.

Daggett asked if 28 days post-election is preferable to 35 days, and if 70 days is better than 63 for account closing.

Councilmember Cunniff supported 70 days.

Daggett noted 70 days was also used for the front end.

Councilmember Cunniff asked if taking a week off the potential clock ticking on the statute of limitations would cause any issues. Daggett replied failure to report at the 70th day may result in a reporting violation.

Councilmember Cunniff supported 35 days for the first post-election report.

c. UOCAVA Voters

Knoll stated the Committee had previously not been in favor of changing deadlines to fully implement UOCAVA on the front end; however, now that the date of the canvass has been changed and the 8-day post-election cure of signature discrepancies is included, the back end of the UOCAVA process can be accommodated. This would allow us to accept UOCAVA ballots that were postmarked on Election Day.

Knoll stated the January letter language would be formalized and changes will be made to let UOCAVA voters vote in any way they choose, not just by mail.

Councilmember Stephens supported letting voters vote in as many ways as possible.

Councilmember Cunniff asked if hard copies of electronically received ballots are made. Knoll replied in the affirmative and stated she is currently the only staff member who has custody of ballots received electronically. The ballots are treated like absentee voters and are duplicated to machine-readable ballots.

Councilmember Overbeck asked how long election materials are kept after an election. Knoll replied it is 6 months.

d. Requiring “paid for by” Information on Campaign Materials

Daggett stated staff has been looking at options, and there seems to be a range of statements that could be asked to be included, such as noting if the expenditure was made independently or by a committee and noting whether candidates approved ads.

Councilmember Cunniff supported moving in this direction.

Knoll suggested language such as “not coordinated with the candidate.”

Councilmember Cunniff suggested including this information in the committee and candidate guidelines.

Knoll asked if candidates and committees should be required to file copies of advertising materials with the Clerk’s Office. Daggett replied in the affirmative and suggested a photo may be appropriate rather than a physical item.

Councilmember Cunniff suggested making the retention of all election-related materials part of the audit requirements rather than providing them to the Clerk’s Office.

Committee members discussed which materials should be saved.

Daggett stated staff will draft language for the next Committee meeting and Knoll noted samples of broad categories, such as donation envelopes, magnets, key chains, et cetera should be saved.

(Secretary's Note: Councilmember Ovebeck left the meeting at 12:35 PM)

Councilmember Cunniff stated a legible image of the material should also suffice. Committee members agreed.

Councilmember Stephens asked if all material, such as buttons and stickers, would require a "paid for by" notation.

Councilmember Cunniff stated federal regulations require approval by a candidate and a "paid for by" reference if the opponent is mentioned. He also suggested web pages should include "paid for by" references.

Councilmember Stephens discussed the need for a "not coordinated" note on communication.

Councilmember Cunniff suggested regulations related to the aggregate area of a publication.

Daggett summarized the Committee discussion stating any reportable expenditure by a candidate or committee would require a "paid by" statement.

Daggett discussed the need for a retention requirement for committees which may reach the point of not being a small-scale issue committee.

5. FOLLOW-UP ITEMS

Daggett discussed pending Supreme Court case law about redistricting, noting that does not necessarily relate to the Fort Collins redistricting situation.

Councilmember Cunniff asked if City precincts are still required to align with County precincts. Knoll replied in the affirmative and stated the City is attempting to align its ballot artwork and imaging to be as close to that of the County as possible.

Councilmember Cunniff asked why the City has its own precinct numbers. Knoll replied she does not know the history of that difference; however, some precincts do include City land if not City voters.

Councilmember Stephens asked about the formation of a citizen committee. Daggett replied it may be difficult for a citizen committee to be effective as so many issues relate to legal requirements and constrained processes. She noted this Committee creates an opportunity for public input and, if it meets frequently enough, may be a more effective way to accomplish citizen input.

Councilmembers Stephens and Cunniff discussed when the Election Code Committee should discontinue meetings due to the election cycle. Gonzales stated monthly meetings are currently scheduled through October with the caveat any could be canceled.

Councilmember Stephens expressed concern a citizen committee may become too politicized.

Councilmember Cunniff asked if the concern relating the conduct of investigations has been discussed. Daggett replied a round of investigations has occurred over the past year and there may be room for improvement; however, there is not yet a good example to follow.

Councilmember Cunniff stated there may be a conflict of interest regarding staff investigating its elected boss.

Daggett noted that was written in to the complaint process, given the risk of the City Attorney's Office investigating its boss' campaign finance activities. She noted the Attorney's Office can hire outside legal counsel.

Knoll provided updates on the status of prior committee and candidate files and the City's website changes.

6. NEXT MEETING

Knoll stated the next meeting is scheduled for May 3rd.

7. OTHER BUSINESS

Knoll discussed observations of the recent Estes Park election process.

Daggett discussed the decision tree relating to those getting involved in elections.

8. ADJOURNMENT

The meeting adjourned at 1:03 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.
<p>Status:</p> <ul style="list-style-type: none">• Committee discussion on July 20, 2017.• 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.• 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.• Scheduled for discussion at next meeting.		

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>Status:</p> <ul style="list-style-type: none"> • Committee discussion on April 3, 2018. • Move ahead and adjust dates for certain campaign finance reports to maintain 7-day increments. 		

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.

CAMPAIGN FINANCE REPORTS

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

- (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 ~~thirtieth (30th)~~ **thirty-fifth (35th)** day after the election; and
 - f. the ~~sixtieth (60th)~~ **seventieth (70th)** day after the election.

Topic 4c	Source	Questions/Comments/Explanation
UOCAVA	Staff	<ul style="list-style-type: none"> Amend Code to allow receipt of UOCAVA ballots up to 8 days after the election.
<p>Status:</p> <ul style="list-style-type: none"> Committee discussed UOCAVA implementation in 2015 and 2016. 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. Canvass date changed by voter approval to no later than 10 days after the election. 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. 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. 		

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 8th day after the election

Proposed Language:

ARTICLE IX. UNIFORM MILITARY AND OVERSEAS VOTERS

Sec. 7-211. Legislative intent. OR Legislative declaration.

Sec. 7-212. Definitions.

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

Absentee ballot shall mean a ballot transmitted to a covered voter at an address or location other than the residential or mail address of the elector in the County’s voter registration records, or by any other reasonable method acceptable to the covered voter.

Covered voter shall mean:

- (1) A uniformed-service voter, as defined in this section, who is a resident of the City but who is absent from the City by reason of active duty and who otherwise satisfies the City's voter eligibility requirements;
- (2) An overseas voter who, before leaving the United States, was last eligible to vote in the City and, except for a residency requirement, otherwise satisfies the City's voter eligibility requirements;
- (3) An overseas voter who, before leaving the United States, would have been last eligible to vote in the City had the voter then been of voting age and, except for a residency requirement, otherwise satisfies the City's voter eligibility requirements; or
- (4) An overseas voter who was born outside the United States, is not described in paragraph (2) or (3) of this definition, and, except for a residency requirement, otherwise satisfies the City's voter eligibility requirements if the last place where a parent, legal guardian, spouse, or civil union partner of the voter was, or under this article would have been, eligible to vote before leaving the United States is within the City.

Dependent shall mean a spouse, civil union partner, or dependent of a covered voter defined in this section who is a resident of the City but who is absent from the City by reason of the active duty or service of the covered voter.

Overseas voter means a United States citizen who is outside the United States.

Sec. 7-213. Notice of upcoming election.

Prior to any election conducted by the City and not coordinated with the County pursuant to Section 1-7-116, C.R.S., the City Clerk shall mail a letter to all covered voters eligible to participate in the upcoming election notifying said voters of the date ballots will be mailed, the unlikelihood that the time periods for conducting the election will afford said voters the opportunity to receive the ballot mailed and return his or her voted ballot in a timely manner, and alternative methods for casting a ballot for the election. Said letter shall be mailed as follows:

- (1) For a regular municipal election, no less than sixty-three (63) days prior to the date of election.
- (2) For a special municipal election, no less than sixty-three (63) days prior to the date of election.
- (3) For a recall election, as soon as practicable after the election is called.

Sec. 7-214. Alternative methods for casting a ballot; timely casting of ballot.

- (a) A covered voter may vote the original ballot mailed to him or her or may request an absentee ballot.
- (b) Voted ballots may be returned by mail or by any reasonable method to provide the covered voter an opportunity to vote, provided that the method is acceptable to the covered voter and the covered voter acknowledges in writing that he or she has agreed to vote in the method offered and has further agreed that the City Clerk may transfer the covered voter's vote to an official ballot for counting purposes.
- (c) To be valid, a ballot must be received by the City Clerk not later than 7:00 p.m. on the date of election, or the covered voter shall submit the ballot for mailing, electronic transmission, or other authorized means of delivery not later than 7:00 p.m. mountain time on the date of the election.

Sec. 7-215. Transmission and receipt of ballot.

(1) A covered voter may return his or her ballot by mail, electronic transmission, or other authorized means of delivery.

(2) A valid ballot cast in accordance with §7-214 shall be counted if it is received by the City Clerk by the 5:00 p.m. mountain time on the eighth day after the election.

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

Information for May 3 meeting to be provided under separate cover

FUTURE TOPICS

Topic	Source	Questions/Comments/Explanation
Redistricting	Staff	<ul style="list-style-type: none"> • Staff requests a discussion with the Committee to receive guidance • 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. • Would the committee support funding to hire a consultant to help formulate options/different methods for redistricting?
<p>Status:</p> <ul style="list-style-type: none"> • Committee discussion on October 5, 2017. • 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. • Staff asked to consider the possibility of City precincts being smaller than the County's precincts. Discussion with Larimer County planned. • Staff asked to do modeling to demonstrate how much growth could happen between now and the 2020 census. • Staff to provide suggested Code language to limit district boundary changes to occur only after the census. • Precinct boundary changes completed January 2018. 		

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.