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AGENDA

City Council Election Code Committee

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

Council Information Center (CIC) 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 May 3, 2018 Committee Meeting Minutes
4. Discussion Items:
 - a. Independent Expenditures-expenditure amount triggering reporting requirement
 - b. "Paid for by" statements
5. Education/Orientation
6. Other Business
7. Adjournment

Next Meeting: August 2, 2018, 12:00-1:30 pm, Council Information Center, 300 LaPorte Avenue

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.

May 3, 2018

ELECTION CODE COMMITTEE MEETING

12:00 PM

PRESENT: Overbeck, Cunniff, Coldiron, Malarkey, Knoll, Gonzales, Daggett
ABSENT: Stephens
CITIZENS PRESENT: Marge Norskog, Robbie Moreland,

1. CALL MEETING TO ORDER

Councilmember Cunniff called the meeting to order.

2. CITIZEN COMMENT

Marge Norskog thanked the Committee for recent Election Code changes, especially those related to the registered agent and committee termination. She supported simplifying the calendar for all committees and discussed the value of campaign ads issue. Ms. Norskog requested the Committee require a legible image of any material referenced in expenditure reports and supported the formation of a citizen committee. She also stated she is attempting to meet with Councilmember Martinez regarding her concerns.

Councilmember Overbeck stated public comment rather than a citizen committee may be the most effective way to get topics into the process swiftly and directly.

Councilmember Cunniff noted citizen comment summaries are included in the minutes.

Councilmember Overbeck noted all Councilmembers receive Election Code Committee minutes.

Councilmember Cunniff stated the best process for citizen oversight of elections is ongoing and he is not opposed to citizen involvement in some fashion. He stated he is supportive of having a "paid for by" statement on advertisements and noted the Committee has discussed requiring candidates and committees to save printed campaign materials in a fashion similar to financial records. He stated it is important to balance candidate and committee first amendment rights with the ease of citizens to find information. He noted "paid for by" disclaimers must also be crafted to withstand first amendment challenges.

3. APPROVAL OF APRIL 5, 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

City Attorney Daggett provided language that would add some specific references to online methods of communicating and noted that language will also be included in other Code sections as applicable.

Councilmember Cunniff suggested the addition of language related to social media.

City Attorney Daggett suggested the addition of a social media definition.

Chief Deputy City Clerk Knoll discussed the importance of making it clear that internet and social media expenditures must be reported. She asked if this language can be placed into a draft ordinance. Councilmembers Overbeck and Cunniff replied in the affirmative.

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

Councilmember Cunniff stated the goal is to align deadlines in 7-day increments and stated this language is ready to proceed to a draft ordinance.

c. UOCAVA Voters

City Attorney Daggett discussed language changes and noted overseas military post offices may not postmark immediately and this topic may need some additional research.

Councilmember Cunniff asked if early counts will be provided after polls close on Election Day. Knoll replied unofficial results will be posted on Election Day; however, to protect the secrecy of ballots received or signatures cured in the 8-day period, there will be some ballots held back from the Election Day tabulation.

Councilmembers Cunniff and Overbeck stated they have no additional concerns and suggested language move forward.

d. Disclaimer Notices on Campaign Materials and Definition of Independent Expenditures

City Attorney Daggett stated staff is attempting to create a foundation for moving forward with the “paid for by” language. She presented language for changes specifically requiring the retention of sample communications and expanding the definition of independent expenditures to include expenditures to support or oppose ballot measures.

Councilmember Cunniff supported the expansion of independent expenditures and suggested the agenda materials state that these changes are proposed because the amount of money being spent on elections is increasing and is in the interest of voter education and better transparency.

Councilmember Overbeck suggested the Clerk or this Committee write a “letter to the editor” about this process and changes.

Councilmember Cunniff suggested copies of materials to be retained be allowed to be electronic as well as physical. He asked if staff has examples of the enabling legislation and rationale for the statement “this message is approved by the candidate” requirements. City Attorney Daggett replied the federal rules have been in place for some time and may be part of the federal register; however, they may have been created administratively. She stated Denver has recently adopted “paid for by” requirements.

5. FOLLOW-UP ITEMS

Knoll noted redistricting will be a future topic.

City Clerk Coldiron stated the Clerk’s Office has put an enhancement offer in the upcoming budget process to hire a consultant for the 2020 redistricting efforts.

Councilmember Overbeck asked how a consultant was selected. City Clerk Coldiron replied a consultant has not been selected. She stated a consultant would provide a non-biased approach and could provide some expertise staff does not already possess.

Knoll stated the scope of work for the budget offer includes a public outreach component.

6. NEXT MEETING

Councilmember Cunniff stated the next meeting is June 7, 2018.

7. OTHER BUSINESS

8. ADJOURNMENT

The meeting adjourned at 12:45 PM.

Topic 4a	Source	Questions/Comments/Explanation
Independent Expenditures	Staff	<ul style="list-style-type: none"> Amending expenditure amount triggering reporting requirement
<p>Status:</p> <ul style="list-style-type: none"> City Code has been amended to broaden the definition of “independent expenditure” to include those related to ballot issues and questions (Ordinance No. 077, 2018) Below is proposed Code amendment to raise the threshold requirement for reporting of independent expenditures from \$100 to \$200 to exclude insignificant expenditures from the application of the reporting requirement 		

Staff has suggested raising the threshold requirement for reporting independent expenditures from \$100 to \$200. The Election Code Committee may wish to consider a higher amount as part of its discussion.

Sec. 7-139. - Independent expenditures.

Any person or political committee making independent expenditures totaling more than ~~one~~ **two** hundred dollars (~~\$400~~ **200**.) shall deliver notice in writing of such independent expenditures to the City Clerk no later than three (3) business days after the day that such funds are obligated. Said notice shall include the following information:

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

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

Topic 4b	Source	Questions/Comments/Explanation
Disclaimer notices on campaign materials	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. • Discussion at April meeting regarding retention of public political communications (to document) and regarding possible approaches to requiring disclaimers and related requirements. • With the adoption of Ordinance No. 077, 2018, City Code was modified to add a requirement to retain a sample of each public communication to current recordkeeping requirements. • In addition, there was Committee discussion of expenditures that might be subject to possible disclaimer, including independent expenditures for ballot issues and questions (rather than only candidate-related expenditures). The City Code has been amended to broaden the definition of “independent expenditure” to include those related to ballot issues and questions. • Proposed Code language for “paid for by” disclaimer requirements is included here. This language would include expenditures concerning ballot issues and questions. • Staff has suggested that Council may want to consider a process for engaging the public and evaluating the need for the paid for by requirement prior to final proposal and consideration. 		

The Election Code Committee requested staff provide Code language for discussion purposes only. The following proposed Code language can serve as a basis for further discussion:

Sec. 7-140. – Responsibility for communications.

(a) Whenever any person makes an expenditure for the purpose of financing communications expressly advocating a particular result in an election, or solicits any contribution or contribution in-kind through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing or any other type of general public political advertising, such communication:

(1) If paid for or authorized by a candidate, candidate committee, issue committee, or political committee or their agents, shall clearly state that the communication is paid for by that candidate, candidate committee, issue committee, or political committee;

(2) If paid for by other persons but authorized by a candidate, a candidate committee, issue committee, political committee or their agents, shall clearly state that the communication is paid for by such other persons and authorized by the candidate, candidate committee, issue committee, or political committee; or

(3) If paid for by a person as an independent expenditure or electioneering communication, shall clearly state both the full name of the person making the expenditure and that the advertisement or material is not authorized by the candidate, candidate committee, issue committee, or political committee.

(b) In to the different forms of communication set forth in subsection (a) of this Section 7-140, "communication" shall include:

(1) Websites of a candidate, candidate committee, political committee, or issue committee available to the general public; and

(2) Advertisements placed for a fee on another person's website.

(c) The statement required by this Section 7-140 must be clear and conspicuous in the communication. In printed materials, the statement must be of a sufficient typeface and color contrast to be clearly readable. Nothing herein shall be deemed to alleviate any person from complying with federal campaign finance law, as applicable.

(d) The statement required herein shall not apply to communications where including the statement would be impractical, including:

(1) Bumper stickers, pins, buttons, pens and similar small items upon which the disclaimer cannot be conveniently printed;

(2) Skywriting, water towers, wearing apparel, or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable; or

(3) Checks, receipts, and similar items of minimal value that are used for purely administrative purposes and do not contain a political message.

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.