

Council Election Ad-Hoc Committee Minutes  
July 18, 2016  
12:00 p.m.

**Members in Attendance:** Kristin Stephens, Bob Overbeck, and Ross Cunniff (chair).

**Also present:** Members of League of Women's Voters

**Staff in Attendance:** Carrie Daggett, City Attorney; Wanda Winkelmann, City Clerk; Rita Knoll, Chief Deputy City Clerk; Jeanne Sanford, Paralegal.

A meeting of the City Council Ad-hoc Election Committee ("Committee") was held on Monday, July 18, 2016, in the City Clerk's Office Large Conference Room, to consider proposed changes to the Fort Collins Charter and Municipal Code related to elections.

The meeting began at 12:00 p.m. The Board reviewed the Agenda which contained these items:

1. Call Meeting to Order
2. Approval of February 23, 2016 Committee Meeting Minutes
3. Suggested Election Code Changes
  - a. Signature Verification
  - b. Charter Amendment Regarding Date of Canvass (Certifying Election Results);
  - c. Recordkeeping Requirements for Campaign Expenditures and Independent Expenditures;
  - d. Amending the District-Precinct Map
  - e. Election Complaints
4. Senate Bill 16-186: Small Issue Committee Disclosure Requirements
5. Other Business
6. Adjournment

Councilmember Cunniff called the meeting to order and stated that the second order of business from the agenda was approval of the minutes from the February 23, 2016 meeting. Councilmember Stephens moved for the approval of the minutes, Councilmember Overbeck seconded the motion. The minutes were approved unanimously.

The Ad-Hoc Committee then moved on to the Suggested Election Code Changes.

**Suggested Election Code Changes**

- A. Signature Verification**
- B. Amend Canvass Date**

City Clerk Wanda Winkelmann discussed signature verification pursuant to House Bill 16-1070. Ms. Winkelmann stated the suggested language would basically start with the April, 2019 election and the Clerk's Office would begin conducting signature verifications. Following the same practice as Larimer County, the City would like the opportunity to contact all voters if they sent a ballot in unsigned, for example, then a letter would be sent out. Even if the ballot was received at 6:59 p.m. on election night without a signature, the City would like the ability to contact that voter by a mailed letter so they have time to receive it, come in and sign the ballot, therefore, we would like to move the canvass date out pursuant to Proposed Change B Charter amendment. Ms. Winkelmann stated the two issues go hand in hand, you must move date of canvass out or the City wouldn't be able to send all voters a letter. Ms. Winkelmann asked City Attorney Daggett if she had anything to add to that.

City Attorney Daggett replied she did not.

Deputy City Clerk Rita Knoll added that the Bill requires giving 8 days after election to be consistent with the provisions of that bill.

City Clerk Winkelmann discussed the challenge was that if the ordinance was adopted with Code amendment in April, 2019, then bill would be adopted in April, 2019, but if the voters reject the Charter

amendment, then the risk is in adopting the provisions now which are not back up with a vote to amend the Charter.

City Attorney Daggett stated that this does not work unless the Charter change is approved. Ms. Daggett stated there were a number of ways to do this. One option would be to put the change into Code then take it back out if the Charter was not approved or secondly, Council could put a contingency in the Code to hold it until the Charter change was approved.

Councilman Ross Cunniff asked City Attorney Daggett for her suggestion on this.

City Attorney Daggett replied, from a legal standpoint, it would be best to do it once there was a Charter change so the City is not adopting Code provisions that do not conform to the Charter. Ms. Daggett stated it would be best to wait until voters vote on the matter before we put it in the Charter.

Councilmen Cunniff added that it made sense to wait for a Charter change and make it clear that signature verification is consistent with state law. Important to note the intent is there to take the extra step in between.

City Clerk Winkelmann had a question of where to put this in the language. City Attorney Daggett indicated she would provide formal direction from herself and City Manager, Darin Atteberry at a later date.

City Clerk Winkelmann asked about timing of bringing forth this specific Charter amendment of this issue.

City Attorney Daggett suggested going ahead and getting it ready for April, but it may depend on other things coming along with more Charter changes. Ms. Daggett suggested that multiple Charter change issues could be discussed at once.

City Clerk Winkelmann suggested a Charter change work session for December and it was agreed by all for early December.

Councilman Cunniff asked if there was any other business for Proposed Changes A and B, which there was not.

### **Suggested Election Code Changes**

#### **C. Add Expenditure Recordkeeping Requirements for Campaign Committees and Independent Expenditures**

City Clerk Winkelmann discussed Proposed Change C, which was adding expenditure recordkeeping requirements for campaign committees and independent expenditures. Ms. Winkelmann turned this subject over to Deputy City Clerk Knoll who was better informed to speak on this topic.

Deputy City Clerk Knoll discussed what prompted this change was a recent complaint about independent and campaign expenditures. Ms. Knoll indicated although it is the expectation for committees to do this, she does not believe the record keeping is at a level that would be good for an investigation if there was a complaint, so it seems pretty simple to just add this.

Councilman Overbeck asked what the reasonable expectation of time was.

City Attorney Daggett answered technically, upon request is immediate.

Councilman Overbeck stated he believed there needs to be a specific time line assessed.

Councilman Cunniff stated next day would be reasonable. Mr. Cunniff then asked about the ramifications of failure to produce records and thereafter the penalties for violation?

City Attorney Daggett answered they would violate Code if they failed to produce, which would result in financial ramifications on the front end, but that it was unlikely a judge would assess jail time unless it snowballed into something bigger, but the campaign would be cited, prosecuted in Municipal Court and fined.

Councilman Overbeck asked about the timing to get before a judge.

City Attorney Daggett replied two to three weeks after being cited, which is how long it takes for paperwork and the court process. Then, if a trial was desired, there would be additional delay involved due to court scheduling and turn-around time, so it could take several months. Ms. Daggett added one could seek a jury trial on the ticket but more months of additional time would be added to the process before the conclusion.

Councilman Cunniff asked if it would be productive to move those portions towards civil penalties. Mr. Cunniff added the reason he asks is at the state level, penalties start immediately, but pursuant to CRS, the Secretary of State can waive them for sufficient cause. This is a more immediate feedback loop for campaigns, for example if we don't report by this day, there is \$1,000 penalty plus \$X penalty per day.

City Attorney Daggett stated the City does have the ability to be backed up by Court for failing to produce records resulting in a daily penalty, but it still won't get to the conclusion more quickly which she believes is what Councilman Cunniff is interested in.

Councilman Cunniff stated yes he was looking to shorten that cycle since the election cycle is so short.

City Attorney Daggett stated the Committee brought up the same issue about two years ago and there is still not a great process for pursuing those violations and perhaps this should be put on the list of priorities.

Councilman Cunniff agreed it was necessary.

City Clerk Winkelmann added it has been interesting when other jurisdictions were asked how they have handled similar things. They were surprised with the question of handling campaign complaints.

Deputy City Clerk Knoll added it is a relatively-new phenomena here too with just a couple complaints per election.

City Clerk Winkelmann stated she would like to add a place on the form to list an alternative person to contact.

Councilman Cunniff asked if electronic filing was allowed for the filing of these receipts.

Deputy City Clerk Knoll replied no, a hard copy is required, unless the investigator handling the complaint cases agreed to electronic filing.

Councilman Overbeck asked if there was any forensic accounting to check up on documents.

City Attorney Daggett answered that the challenge would be for an expenditure to become significant enough of a violation that you would start using such resources. For example, is a \$128 expense worth using resources to investigate such expense.

Councilman Cunniff stated that it comes down to why a civil penalty is a better option than judicial proceeding.

Councilman Stephens stated it is about awareness of what has to be documented. It can be confusing for a candidate and it is important to spell it out what they need to do so they don't make mistakes. Ms. Stephens added that providing next day documents can create a scramble, not because of bad record keeping, but due to chaos of the campaign.

Councilman Cunniff indicated he heard what was stated and maybe three business days was better.

Deputy City Clerk Knoll stated it will go in the issues committee guidelines. Ms. Knoll has noted to dedicate a section on complaints, but wanted to clarify something Mr. Cunniff had said to Ms. Daggett about court procedures playing out and about funds being exhausted. Ms. Knoll inquired whether it was important to make it clear that campaign funds cannot be used for paying these fines? Not sure that is what voters have given campaign funds for defending the candidate.

Councilmember Cunniff stated that when you are talking about candidates, it is part of the overall package of a campaign and part of campaign expense. Voters can vote if that reflects what they want. Mr. Cunniff stated that the Colorado Secretary of State assesses the campaign with the penalties, not individuals. Mr. Cunniff also suggested that there should be requirements for complaints so they are not frivolous. Mr. Cunniff stated the need for accountability there.

City Clerk Winkelmann stated that on Proposed Change E, she added that "complaints made by alleged violation should be in writing and shall contain a detailed description on the allegation". Ms. Winkelmann asked if that was sufficient or if more needed to be said on that.

City Attorney Daggett stated she was not looking for things to prosecute, but wants to make sure an outside complaint is not the only way an issue could arise. Ms. Daggett explained there have been issues that happened where it is very clear there is a violation and the City could prosecute the issue without a complaining party. There are a range of violations where it is so obvious and intentional as to prosecute as a criminal offense and then there are some which are minor. Ms. Daggett stated she believes the Board might want to create new tools and yet retain some we already have so there is not only one path.

Councilman Stephens agreed and asked Ms. Knoll if there is a check for accuracy?

Deputy City Clerk Knoll stated she does not check for accuracy.

Councilman Stephens asked Ms. Daggett if she was saying we need to be more proactive at better screening?

Ms. Daggett replied that the underlying premise is that "sunshine is the best disinfectant" so getting information to the public so people can see what is submitted is more effective than a drawn-out process for prosecuting. Information is so readily available now than in the earlier days where people did not have easy access to information. Currently, there is daily posting of information available for the public to see.

Councilman Cunniff added he would not be in favor of City staff proactively trying to enforce. As long as the City is following the appropriate rules, anyone who wants to post a complaint can and the citizens can be their own watchdogs.

City Attorney Daggett followed up with a discussion in particular with reference to Ward Luthi. It was frustrating for him because the process was not pursued to his liking. Ms. Daggett explained we have been talking about on how to make it work legally and there may be benefit in creating a process for someone who wanted to know whether or not the City was cooperating with them or not. Ms. Daggett stated that right now, there is no way for anyone with strong feeling that something was done wrong to pursue that. Ms. Daggett explained it is tricky talking about City Code provisions and will it work. Ms. Daggett termed it a "Private cause of action" – giving someone who feels strongly the ability to take their own steps in a court setting.

Councilmember Cunniff stated we have no mechanism or requirements for expenditures, currently. If we fixed all this, would he (Luthi) complain again? Mr. Cunniff explained he did not know, but if it was done right, the City will provide the transparency that people need.

City Clerk Winkelmann stated it is almost like when a complaint is made and receipts are turned over and the report issued findings that nothing was done wrong, then what is the next step? Trust me or provide backup documentation?

Councilman Cunniff replied they would file a court records request and get them.

City Attorney Daggett stated she supposed an argument could be made under CORA, but it is not completely clear and could be protected as confidential.

Deputy City Clerk Knoll asked if there was a distinction between records and records submitted as evidence? Once they become evidence, then not subject to CORA?

City Attorney Daggett replied she was not comfortable saying yes or no. A legal memo is needed. Ms. Daggett stated it was a really good question and one reason it hasn't come up in the past is there hasn't been talk about private citizens taking up their own cause and it has been like police getting evidence from an alleged crime - that would not be considered public and is covered under the criminal justice records act.

Councilman Cunniff confirmed the need to get a legal Memo out on this subject.

The Board stated there was nothing else on Proposed Change C.

#### **Suggested Election Code Changes**

#### **D. Amend Sections 7-71 and 7-87 to clarify when the City Clerk recommends amending the District-Precinct Map.**

City Clerk Winkelmann discussed Proposed Change D - clarifying when City Clerk recommends amending the district precinct city map, when the clerk would welcome feedback and when the Clerk would bring recommendations regarding redistricting forward.

City Attorney Daggett added another change in 7-87 (c), by saying not less than once every 6 years, it helps address situation of where you do year 4 redistricting. Ms. Daggett stated the City wouldn't want to do another redistricting again right before an election. Ms. Daggett explained the last time redistricting was done was after the 2010 census in 2012, but theoretically if redistricting happened in 2011, then once every 5 years could force extra redistricting events to occur. Ms. Daggett emphasized the importance of trying to avoid extra rounds of redistricting.

Deputy City Clerk Knoll discussed the issue of the only way we know if someone is going 6 years without an election is to change how the district is numbered, so it is even or odd on east side and opposite on west side because we are often moving from 4 to 5 or 5 to 6 and we are moving between those so sides so less than that if adjusting between the evens or adjusting between the odds could potentially have less impact than someone going 6 years without voting. Ms. Knoll stated it was less frequent having to go across college from side to side, but no way to predict if that'll stay less frequent.

Councilman Cunniff stated there is a concern that we would end up with whole district transitioning and waiting six years, and another concern is the north/south shifting based on Fort Collins historic build out. Moving south, there was the CSU fallout, but that our future growth patterns are going northeast. College is not a hard boundary. Mr. Cunniff added he would like to see if there are ways we can address the concerns about a six year wait? Mr. Cunniff stated the City is both constrained by Charter and federal election code on how to do that. There is a need to balance out as best as equal, but is there a way to

write language for council elections? Important to note we are not disenfranchising anybody. Everyone still gets to vote for council members, mayor, initiatives, etc. Can we craft Charter to stage it?

City Attorney Daggett stated there is one school of thought in that the closer you can get the deviation to zero, the less likely you will get to exceed more than 10%. Ms. Daggett explained the reason for the deviations in 2016 was because there were bigger deviations in 2012. Ms. Daggett discussed ideally working from the census data.

Councilman Cunniff agreed and noted that then you are working with data not projections.

Deputy City Clerk Knoll stated there have been recent court opinions that state if you are not choosing the lowest deviation, you are not doing it to the extent reasonably possible. The other criteria is not as important.

Councilman Cunniff asked if there were any concerns about this change.

Council members Overbeck and Stephens replied no, but it was good to think about.

Councilman Overbeck brought up a discussion regarding precinct maps and if they are posted in the newspaper so people understand redistricting and have a visual of where they are.

Deputy City Clerk Knoll stated they send mailings to every precinct affected containing a new brochure, map, and letter.

Councilman Overbeck asked if the Notice was printed in The Coloradoan. He was concerning with going the full extent of informing the public.

Deputy City Clerk Knoll stated it may confuse people now before November election and that the information is available online within City.

There was discussion among the Board regarding advertising as a way of ramping up voter turnout.

#### **E. Proposed Change.**

##### **Clarifying that election complaints shall be in writing.**

City Clerk Winkelmann read Proposed Change E and added that this answers Councilman Cunniff's questions that complaints not be anonymous, they have to be in writing now.

#### **Other Business:**

Deputy City Clerk Winkelmann discussed Senate Bill 186 dealing with small business expenses between \$200- \$5,000.

City Attorney Daggett discussed that there has been litigation over this issue in the last eight months or so. There was a 10<sup>th</sup> Circuit decision that calls for this distinction being made for "small scale committees". Ms. Daggett explained there is some imperative for making that distinction and lightening up the level of burden on smaller committees. If one exceeds the threshold, they would have to report expenditures. Ms. Daggett explained this makes it easier for small dollar amount size groups to actually not have to comply with so many requirements.

Councilman Cunniff asked if the City was subject to this.

City Attorney Daggett explained that yes, what we would need to do if there is interest in this issue is create similar a version of what we have in Code. What is in the state statute is a well laid out way to address the issue and she would tend to use it as a model, unless concerns against this.

Councilmembers Overbeck and Cunniff stated they thought that was reasonable.

The Board discussed questions of what happens when the threshold was hit.

City Attorney Daggett stated they would just need to know going in to either stop before they hit \$5,000 or be prepared to disclose. Ms. Daggett stated she would work on a City Code provision that parallels the new state statute so it will be ready for Council to look at in subsequent discussions.

City Clerk Winkelmann asked if the Board would you like to meet again so it could be cleaned up and ready for review.

The Board affirmed.

Councilman Cunniff asked if there was any interest to establish an elections committee board instead of it being ad hoc due to the interest in citizens and the number of legislation coming up on the matter.

Councilman Stephens stated it might be worth it because there is a lot to talk about.

Deputy City Clerk Knoll stated we would need to move it to Council quickly to be able to get the matter into candidate guidelines.

Councilman Overbeck asked if there was a drop-dead date.

Deputy City Clerk Knoll stated she would need to get it in the Guidelines and available no later than Oct 1<sup>st</sup>.

The Board discussed timing and dates that would work. City Clerk Winkelmann suggested September and Ms. Daggett suggested meeting in late August.

The Board affirmed that time frame would work and a lunch hour meeting was best.

The Meeting was adjourned at 1:15.

**MINUTES APPROVED: SEPTEMBER 14, 2016**