

August 2, 2018

**ELECTION CODE COMMITTEE MEETING**

**12:00 PM**

PRESENT: Stephens, Cunniff, Malarky, Knoll, Gonzales, Daggett  
(Councilmember Overbeck was absent)

CITIZENS PRESENT: Marge Norskog, Jody Deschenes, Robbie Moreland, Anne Thompson, Sarah Pitts, Jan Rossi

**1. CALL MEETING TO ORDER**

Councilmember Stephens called the meeting to order.

**2. CITIZEN COMMENT**

Marge Norskog thanked the Committee for publishing its working draft and presented the Committee with a chart comparing various municipalities regarding various election-related topics. She stated protecting election integrity is paramount and supported some of the changes made since the Council work session. However, she expressed concern about the \$1,000 independent expenditure limit without a "paid for by" requirement. She stated no city with its own election code that is the size of Fort Collins or smaller has a \$1,000 limit. Anonymous communication undermines election integrity.

Jody Deschenes thanked the Committee for holding an August meeting. She requested a balance be found between freedom of speech and election transparency and integrity. It is not undue hardship to require additional text on advertisements and constituents deserve to know who is attempting to influence elections. Candidates and voters will be protected by requiring "paid for by" statements on all candidate, committee, and outside group advertising. She also opposed raising the independent expenditure threshold above \$200.

Robbie Moreland stated using Denver and Colorado as benchmarks for the \$1000 independent expenditure amount is not accurate. The threshold for requiring independent expenditure reporting should be as consequential in the state as it is in Fort Collins and noted \$1000 can buy a great deal of advertising in Fort Collins. She supported requiring "paid for by" statements on all independent expenditure ads as well as candidate and issue committee ads because anonymous free speech does not allow for the enforcement of reporting requirements, nor does it assure election integrity.

Sarah Pitts reported on the League of Women Voters assessment of money in elections, stating campaign finance regulation should enhance political equality for all citizens, ensure transparency, protect the representative democracy from distortion by big money, and combat corruption.

Jan Rossi suggested all candidates and committees should be required to report any expenditures over \$200 and requested "paid for by" statements be required for all campaign items.

Anne Thompson, League of Women Voters, discussed the importance of transparency in elections and encouraged the Committee to listen to the speakers.

Councilmember Stephens thanked the speakers. She stated the City's goals were to be in line with the State of Colorado as much as possible. She noted money cannot be eliminated from politics.

Councilmember Cunniff thanked the speakers for their time and commitment to these issues.

City Attorney Daggett stated this item will go before Council on August 21 and September 4 for First and Second Readings. She noted the Ordinance will include a blank for the independent expenditure limit for Council to choose that amount.

### 3. APPROVAL OF JULY 5, 2018 COMMITTEE MEETING MINUTES

Councilmember Cunniff made a motion, seconded by Councilmember Stephens, to adopt the July 5, 2018 Committee meeting minutes. The motion was adopted by unanimous consent.

### 4. DISCUSSION ITEMS

#### **Follow-up and Discussion of July 17, 2018 Council Work Session (independent expenditures and paid for by requirements) and Further Recommendations**

City Attorney Daggett noted the Ordinance coming forward with a blank for the independent expenditure amount was part of the discussion at the Work Session. After examining this Code Section, staff has determined that some language needs to be added and a new approach to referencing committees needs to be developed. Other than those changes, the Ordinance is conceptually the same as what was presented at the Work Session.

City Attorney Daggett stated requiring someone to report an expenditure as a committee and also as an independent expenditure is overly confusing; therefore, the addition of the word "natural" will make clear independent expenditures apply to individuals spending money not in coordination with the candidate.

Councilmember Cunniff asked about the threshold for small scale issue committees. City Attorney Daggett replied they must register as a small-scale issue committee at \$200 and must start reporting as an issue committee at \$5,000.

City Attorney Daggett discussed case law related to small-scale issue committees and stated the City's language regarding them matches the State's language.

Councilmember Stephens asked about the initial small-scale issue committee language. City Attorney Daggett replied there was no dollar threshold for registration; as soon as any money was spent, registration and reporting were required.

Councilmember Cunniff asked about corporations making expenditures to advocate for a certain election outcome. City Attorney Daggett read the definition of an issue committee, which does include corporations.

Councilmember Cunniff suggested using language related to a natural person and corporations and other groups when discussing independent expenditures.

Chief Deputy City Clerk Knoll noted the reporting of independent expenditures does not include a disclosure of contributions.

Councilmember Cunniff stated any party soliciting contributions has effectively created a committee.

Chief Deputy City Clerk Knoll suggested placing corporations back in under the definition of political committee and allowing political committees to make independent expenditures.

City Attorney Daggett noted a corporation would not need to register as a committee unless they are soliciting contributions.

Councilmember Cunniff stated the term "election outcome advocate" could be a good catch-all reference.

City Attorney Daggett stated staff will look at the independent expenditure language with a focus on not narrowing related to natural persons but focusing on existing persons or entities not taking contributions. Staff will also look at ensuring any individual or entity taking contributions is a committee.

Councilmember Cunniff expressed concern the \$5,000 amount for small-scale issue committees to switch to full issue committees may be too high. Chief Deputy City Clerk Knoll replied committees are required to go back to the beginning and report everything if they hit the \$5,000 threshold. The plan for independent expenditures is to have a check box that indicates the first report following the expenditure of whatever amount Council deems fit. This would then require expenditures to be reported from then on.

City Attorney Daggett stated Section 5 of the Ordinance is written to have the “paid for by” requirement apply to any committee, including small-scale issue committees. As written, this requirement does not apply to independent expenditures.

Councilmember Cunniff stated it would be important to include the requirement for independent expenditures if the limit is set higher. He stated it would be more uniform to require the statement for all expenditures.

City Attorney Daggett suggested having an exception. Councilmember Cunniff suggested having a size requirement for materials, such as 10 square inches.

Assistant City Attorney Ryan Malarky stated the proposal is a condensed version of the federal “paid for by” requirements.

City Attorney Daggett noted the “paid for by” requirement excludes apparel, as written. She reviewed the minor changes to other sections of the Ordinance.

Staff discussed the formation of flow charts for committees.

Councilmember Cunniff suggested rephrasing one of the whereas statements regarding furthering the City’s interest to furthering the public interest.

### **Education/Orientation**

Councilmember Stephens asked about the formation of an educational component. Chief Deputy City Clerk Knoll replied the Clerk’s Office will not be able to form a large educational outreach as the focus is on material formation for this election and education for the next election.

### **Motion to amend Committee Recommendation**

Councilmember Cunniff made a motion, seconded by Councilmember Stephens, that the Committee recommend the independent expenditure amount be raised from \$100 without specifying the new amount and presenting a blank in the Ordinance. The motion was adopted by unanimous consent.

Chief Deputy City Clerk Knoll stated the minutes for this meeting could be posted as draft minutes online as they will not be officially adopted until the Committee meets again after the election.

## **5. ADJOURNMENT**

The meeting adjourned by unanimous consent at 1:15 PM.

## **MINUTES APPROVED AT SEPTEMBER 6, 2019 ELECTION CODE COMMITTEE MEETING**