

September 14, 2016

ELECTION CODE COMMITTEE MEETING

12:00 PM

PRESENT: Overbeck, Stephens, Cunniff, Winkelmann, Knoll, Gonzales, Daggett
CITIZENS PRESENT: Ward Luthi, Mike Sportiello

● **APPROVAL OF JULY 18, 2016 COMMITTEE MEETING MINUTES**

Councilmember Overbeck made a motion, seconded by Councilmember Stephens, to adopt the minutes of the July 18, 2016 Committee meeting. The motion was adopted unanimously.

● **SUGGESTED ELECTION CODE/CHARTER CHANGES**

a. Certifying Election Results (Charter Amendment)

City Clerk Winkelmann stated this Charter Amendment would amend the canvass date to no later than the tenth day following the election.

Councilmember Cunniff requested staff check to ensure nothing in the organizational meeting specified in the Charter is dependent on these dates. Chief Deputy City Clerk Knoll stated the language addresses 'the first regular or special meeting after every biennial election.' The wording could be changed to state "after the certification of the election" or "after the results are final".

City Attorney Daggett stated the two necessary Charter Amendments could be packaged as one.

b. Signature Verification

City Clerk Winkelmann noted these changes will not be brought forth until after the 2017 election.

c. Recordkeeping Requirements for Campaign Expenditures and Independent Expenditures

City Clerk Winkelmann stated this item was discussed at the previous meeting and it was decided that records would need to be produced within 3 business days of a request.

Councilmember Cunniff mentioned the possibility of this regulation being applicable to a small issue committee category.

d. Amending the District-Precinct Map

Councilmember Cunniff stated this issue involves whether there is a practical way to structure the redistricting process such that no citizens are forced to wait 6 years to vote for a City Council member. The Charter currently requires districts to be kept as balanced as possible.

City Clerk Winkelmann noted this would be a Code change.

Councilmember Cunniff suggested staff survey other cities regarding their processes and requested the City Attorney examine a possible stagger in the roll-out of precinct changes.

Councilmember Overbeck asked if the recent redistricting is set. City Clerk Winkelmann replied in the affirmative.

Councilmember Overbeck suggested staff research with the National League of Cities. City Clerk Winkelmann replied some cities in Arizona and California hire consultants to aid in going through the redistricting process so as to avoid splitting communities of interest. However, there is no simple solution in terms of how Fort Collins currently conducts its elections.

City Attorney Daggett stated the criteria used when redistricting emphasizes population as a key factor. Consultants are often more concerned with other considerations such as contiguity, ethnic make-up and communities of interest. The question of staggering districts is a separate question which staff can research.

Councilmember Overbeck asked if staff has looked at increasing the number of districts to 8. City Attorney Daggett replied that might actually make redistricting more difficult because it might require more balancing.

Mike Sportiello discussed an email he sent and stated a Charter amendment could be placed on the 2017 ballot which would change the redistricting process for ensuing elections. He stated he will need to wait 6 years between voting for a Councilmember and argued there are court-supported options to address the issue such as truncating terms for Councilmembers whose district boundaries have changed. He argued the concept of "one person, one vote" trumps other considerations such as continuity.

Councilmember Stephens did not support the use of truncated terms as they would be disruptive to the Council process.

Councilmember Cunniff expressed concern that the use of truncated terms could lead to political game-playing. He suggested examining concurrent terms but noted that would require a one-time truncation of three terms, which could be compensated by allowing those Councilmembers to seek an additional term. Another potential option could be placing all Councilmembers on four-year terms, including the Mayor.

Councilmember Cunniff questioned whether an annexation could trigger redistricting. City Attorney Daggett noted population changes can result from annexations.

Councilmember Cunniff suggested staff should research options, including concurrent four-year terms and information regarding other jurisdictions' processes.

Councilmember Stephens supported the inclusion of some type of public process.

Chief Deputy City Clerk Knoll asked if the proposed Code changes could be brought forward for consideration now. Councilmembers Cunniff and Stephens supported moving forward with the Code changes.

City Attorney Daggett noted the next census data which will drive redistricting will occur in 2021.

Chief Deputy City Clerk Knoll noted the consultant contacted by the City Clerk's Office indicated nothing is uncommon or faulty in the current Fort Collins system and it is currently in line with the state statutes.

Mr. Sportiello stated the system is not optimal or even acceptable despite being common.

City Attorney Daggett asked if the Committee would like to consider these options prior to a work session. Councilmembers Cunniff suggested scheduling an Election Committee meeting prior to the December 13 Work Session.

City Clerk Winkelmann suggested the possibility of having two at-large Councilmembers in addition to the 6 district Councilmembers.

Councilmember Stephens encouraged staff to consider that option among others.

e. Election Complaints

City Clerk Winkelmann stated this item will require complaints to be made in writing.

City Attorney Daggett discussed language addressing how the City would respond when it receives a complaint, how a registered elector or candidate can submit a complaint, information to be included in the complaint, the process of the City Manager and City Attorney working to evaluate the complaint and formally decide whether to move forward with an enforcement action, and provides for notice to the complaining party and to the subject of the complaint.

Councilmember Overbeck asked if other communities use similar processes. City Attorney Daggett replied Boulder had a citizen initiative which created a process in its Code. This is not identical to Boulder's Code, but is similar. Other communities have variations on this basic language but some do not include a civil action option.

Councilmember Overbeck asked if a citizen can receive assistance from the City Clerk's Office in filing a complaint. City Attorney Daggett replied there is a fine line between being helpful and being involved in something which may lead to litigation.

Councilmember Overbeck suggested language should make clear the level of assistance which could be provided. City Clerk Winkelmann noted the Code allows for the Human Relations Commission to aid a complainant if necessary and stated she would look into the issue.

Chief Deputy City Clerk Knoll suggested the creation of a form which ensures all necessary information is provided; however, she noted staff would not be able to aid in writing a complaint.

City Attorney Daggett suggested the creation of a guideline document for the process.

Councilmember Cunniff asked Ward Luthi to comment on his experience with the issue. Mr. Luthi replied staff members were very helpful, within somewhat nebulous guidelines, in his experience. He suggested the creation of a statement regarding what the City would like to see in its elections and discussed fundraising difficulties for those without large resources. He expressed concern regarding secret donors and funds and stated individual citizens should have equal input to large organizations.

Councilmember Cunniff questioned the appropriateness of the cap level on civil liabilities and the attorney fee reimbursement. City Attorney Daggett stated attorney fees likely would not be awarded by the court unless the claim was deemed frivolous. Councilmember Cunniff stated he does not want the possibility of attorney fees to have a chilling effect in an asymmetric situation.

City Attorney Daggett stated it is unpredictable which side of a dispute would be the one disadvantaged from a financial standpoint.

Mr. Luthi questioned how election committees prove they have committed funds. Councilmember Cunniff noted the Code addresses the timing of when funds are committed to be spent rather than when a check is actually written. One of the Code adoptions being discussed requires all issue committees and candidate committees to keep their financial records in a way that can be audited.

Councilmember Stephens supported the proposed changes overall and encouraged the formation of a guidelines document as proposed by City Attorney Daggett.

Councilmember Cunniff stated the Code should reflect the City's values of open and accessible government and supported strict and enforceable campaign finance requirements in terms of the amount of money candidates may solicit from an individual and how much an individual might contribute to a candidate.

City Attorney Daggett stated one system that addresses the constitutional limitations on restricting contributions is to have a self-funded campaign support program using public funds.

Councilmember Cunniff asked if that changes anything regarding the First Amendment rights of political action committees. City Attorney Daggett replied it does not provide a way to limit those who do not want to participate.

Councilmember Cunniff stated he personally supports publicly-financed elections; however, Council as a whole may not.

City Attorney Daggett noted this would not deal with the big money that can come in.

Chief Deputy City Clerk Knoll asked if the amount groups spend can be capped or if independent expenditures can be capped. City Attorney Daggett replied there may be some areas in which limitations could potentially be imposed; however, they are likely fairly limited.

Councilmember Cunniff suggested waiting for direction from the full Council prior to examining limitations.

f. Canceling a Council Meeting (Charter Amendment)

City Clerk Winkelmann stated this change would permit the cancellation of a Council meeting in the event of an emergency, natural disaster, or unforeseen circumstances that render the holding of a meeting undesirable or impracticable. It would allow the City Manager, with the agreement of the Mayor, to cancel a City Council meeting and make a reasonable attempt to notify the public of such cancellation prior to the time of the meeting.

City Attorney Daggett noted the current provision does not allow a meeting cancellation until, at the time of the start of a meeting, no Councilmembers arrive.

● **SENATE BILL 16-186: SMALL ISSUE COMMITTEE DISCLOSURE REQUIREMENTS**

City Attorney Daggett stated case law in recent years exists regarding the extent to which small committees that do not pose the same degree of risk of overtaking the election process can be regulated and less burdened in their participation in the election process. Once a committee has reached certain limits, it will no longer be considered a small issue committee and will need to comply with all requirements that would have applied had it started out as a larger committee. Should a committee become full-scale, it will need to file full reports within 15 days of crossing the threshold, or by noon on the Friday prior to the election, whichever is earlier.

City Attorney Daggett noted the 15 days period to begin filing could be shorter if the committee were preparing with reports assuming it may become full-scale.

Councilmember Stephens questioned how many of the committees would have been affected by this in the last election and expressed concern this possibly sets up a bit of confusion in terms of record keeping. Chief Deputy City Clerk Knoll speculated most issue committees spend well in excess of \$5,000. The case which prompted this was an annexation election; therefore, the only voters are those within the area to be annexed.

Councilmember Stephens stated this may help more people get involved in the process but noted it is valuable for records to be kept regardless of the amount of money being collected.

Councilmember Cunniff asked about the \$5,000 limit amount. City Attorney Daggett replied most cases have used \$3,500 and the \$5,000 number has been used to allow room for some growth over time for numbers being discussed in some of the cases.

Councilmember Overbeck suggested the possibility even small amounts need to be reported in the interest of transparency.

Councilmember Stephens stated she would not like the limit to be greater than \$5,000 and questioned whether multiple small issue committees could be started to get around the system. City Attorney Daggett noted the adopted legislation has addressed that possibility by stating committees involving the same people addressing essentially the same issue will be treated as a single committee.

Chief Deputy City Clerk Knoll noted enforcement could be difficult; for example, advertising materials are not required to disclose who pays for them.

Councilmember Cunniff questioned under what circumstances the City would audit a committee's financial records if it has not registered.

Councilmember Cunniff suggested the 15 day requirement should be shortened. City Attorney Daggett replied that window could be made shorter.

Councilmember Cunniff suggested 7 days given records are supposed to be being kept and rules and forms will have been set by the City well in advance of the election.

Councilmember Cunniff requested the City Attorney provide information to the full Council as to whether or not the City is required to adopt small scale issues committee regulations because of the court cases and state law.

- **OTHER BUSINESS**

Councilmember Cunniff noted the committee may want to recommend to the next Council that this committee become a standing committee rather than ad hoc.

- **ADJOURNMENT**

The meeting adjourned at 1:33 PM.

MINUTES APPROVED: NOVEMBER 1, 2016