

January 10, 2020

**ELECTION CODE COMMITTEE MEETING**

**3:31 PM**

COUNCILMEMBERS PRESENT: Troxell, Pignataro, Summers  
STAFF PRESENT: Carrie Daggett, Ryan Malarkey, Delynn Coldiron, Rita Knoll, Sara Gonzales  
CITIZENS PRESENT: Robbie Moreland, Jody Deschenes, Anne Thompson, Sam Houghteling, Eric Sutherland

**1. CITIZEN COMMENT**

Robbie Moreland stated Secretary of State regulations state that campaign contributions made as a member of an LLC counts toward contribution limits for that individual; however, City law allows an individual to make contributions under their own name as well as through their LLCs. She opposed the City provisions, as LLCs are not individuals and do not receive a ballot to vote. She requested the City develop a way to align contributions limits for LLCs with the state requirements. She expressed support for ranked choice voting, is interested in the continued discussion on non-itemized contributions under \$20, and requested the Committee recommend doing away with anonymous donations altogether.

Jody Deschenes expressed support for the City adopting Colorado's rules regarding campaign contributions from individuals and LLCs. She also supported independent redistricting and requested an update on the timeline for hiring an independent redistricting consultant following the 2020 census. She supported eliminating anonymous or non-itemized contributions under \$20 and supported ranked choice voting.

Chair Pignataro noted she had previously requested staff prepare pro and con information regarding possible alignment with state LLC contribution provisions and requested an update. Gonzales replied that topic will be discussed at the February meeting.

Mayor Troxell requested information regarding the LLC provisions related to a home rule municipality. City Attorney Daggett replied the City has its own set of campaign finance rules and would need to adopt something different to match the state provisions.

Councilmember Summers stated it is important not to pick and choose what the City models locally after the state guidelines. He asked if the intent is to make it more difficult to run for City Council than for the State House or State Senate.

Chair Pignataro replied she would like to look at pros and cons of changing the regulations.

Councilmember Summers stated he would like to look at the state model for donations from couples. He noted the Fort Collins model is more restrictive than state law for couples to donate to a candidate.

Mayor Troxell discussed the importance of identifying goals to be achieved prior to making changes.

Chair Pignataro noted ranked choice voting would require Council to vote to place the item on a ballot as it is a Charter change. Knoll noted the only option to have that in place for the next City election would be to place it on the November 2020 ballot.

Councilmember Summers stated it would be helpful to have an analysis of how many elections had more than 2 candidates when looking at ranked voting. Knoll replied she would provide a spreadsheet of the number of candidates in each race for each election and data on whether the winning candidate acquired more than 50% of the vote.

Mayor Troxell discussed the recent ethics complaint regarding Mayor Pro Tem Stephens and his participation in the Hughes Stadium site rezoning and stated it is false to claim issue committee donations are related to individual campaigns as was suggested as part of that complaint.

## **2. APPROVAL OF NOVEMBER 15, 2019 COMMITTEE MEETING MINUTES**

Mayor Troxell made a motion, seconded by Councilmember Summers, to adopt the November 15, 2019 Committee meeting minutes. The motion was adopted by unanimous consent.

## **3. DISCUSSION ITEMS**

### **a. Review past Election Code changes, grouped by themes - Discussion of which areas the Committee would like to see amended**

Councilmember Summers stated the definition of a Candidate Committee was changed to specify the common purpose is to receive contributions *or* make expenditures rather than *and* make expenditures and asked why that change was made. City Attorney Daggett replied that change was made realizing candidate committees would not technically meet the definition of a candidate committee until it started spending money.

Councilmember Summers suggested some context may be missing related to the candidate committee language. Knoll replied both contributions and expenditures were required to meet the definition of a candidate committee when the language was first written; however, there could be a situation in which the candidate funds the committee totally by loaning the campaign money, which is not technically a contribution, but is a loan. This would mean expenditures could be made, but contributions were not received, and the proposed language would allow a candidate committee to either receive contributions or make expenditures, or both.

City Attorney Daggett stated the language could be revisited as necessary.

Councilmember Summers asked if an individual could run for Council and not have a candidate committee. City Attorney Daggett replied candidate committees are defined as “a person, including the candidate, or persons with a common purpose, of receiving contributions, making expenditures, under the authority of the candidate”; therefore, the definition is written to include the candidate as a person. She stated it is a requirement of the candidate to have a committee unless there is no money being contributed.

Councilmember Summers asked if there is a time limit for which candidates are required to retain copies of public communication, invoices, receipts, and other instruments of payment. Gonzales replied it is for a year unless a complaint has been filed, then items must be kept until after its resolution.

Councilmember Summers asked if it must be counted as a contribution if someone from an individual's campaign committee voluntarily sets up the candidate's webpage. City Attorney Daggett replied certain items online are free, and other things are not; therefore, it would depend on whether the page was placed on a hosted site or one that could be freely used. She stated this section prohibits different rates being given to certain candidates over others.

Councilmember Summers stated there may have been some confusion prior to the requirement that independent expenditures must have a “paid for by” declaration. City Attorney Daggett replied most of the confusion was on the part of complaining parties, and it was made clear that new regulations such as this do require a fair amount of education. She stated there is opportunity to continue improving the education around the requirements.

Chair Pignataro asked if the Code language indicates “paid for by” statements are required when money or in-kind donations are exchanged. Assistant City Attorney Malarky noted a trigger for the use of “paid for by” is when a candidate or committee makes an expenditure. City Attorney Daggett stated the Code language includes examples of items that are understood to be impractical for a notice requirement.

Mayor Troxell asked if this section could include something about social media. City Attorney Daggett replied the language does say communication shall include, but is not limited to, websites or social media of a candidate committee, issue committee, or small-scale committee, if and to the extent they are financed by independent expenditures.

Chair Pignataro clarified the requirement would apply to ads purchased on Facebook, for example, but not to posts on personal pages.

City Clerk Coldiron noted there may be some confusion and question as to what is impractical for the “paid for by” requirement.

City Attorney Daggett mentioned the question as to whether materials from previous elections, such as yard signs, should be required to have the “paid for by” notation.

Councilmember Summers questioned why “paid for” declarations are required. Knoll replied this came from a request from citizens because there were very negative ballot materials against another candidate sent out in the April 2017 election that appeared to be from the candidate's campaign, and it was difficult to identify who had sent it.

Councilmember Summers stated that kind of issue should be the focus of what needs to be solved with a “paid for by” requirement.

Chair Pignataro stated she would like to see this requirement used through one more election cycle before making any amendments.

Mayor Troxell agreed.

## **b. Possible Election Code Changes-Review of draft Code Amendments**

### **1. Elimination of anonymous donations**

Malarky stated the direction staff received from the Committee was to eliminate all anonymous donations; therefore, the \$20 threshold has been eliminated in the draft language so any donation amount would need to be tracked and recorded.

Mayor Troxell stated this requirement may make things simpler. City Attorney Daggett noted this requirement would eliminate the possibility that someone could make multiple small donations that would not be tracked under the previous regulations.

Chair Pignataro noted she would want to know who is supporting her as a candidate.

The Committee supported the proposed language on this issue.

### **2. Use of unexpected City election candidate contributions in a non-City election**

Chair Pignataro stated she does not want this to appear as if it is being done for a specific candidate and asked if a similar provision exists at the state level.

Councilmember Summers replied funds can be rolled over among state campaigns. He noted new committees must be formed if the campaigns are for different offices on different levels.

Mayor Troxell noted unexpended campaign funds can now go to non-profits and other entities and suggested a campaign for another position should also qualify under that category.

Councilmember Summers asked if leftover campaign funds are considered the candidate's funds when being transferred from one year's campaign to another. City Attorney Daggett replied there would not be a limit on the transferred amount.

### **3. Carry-over of unexpended candidate contributions to the next election cycle and the ability of the committee to keep its same name**

Malarky stated this item was intended to address a concern that was raised about having to develop a new committee name. The Election Code Committee provided direction that candidates be able to retain the same committee names. Knoll suggested committee names could be amended with the knowledge and documentation that the committee is the same.

4. Addition of a cure period for respondents in the campaign violation process

Malarky outlined the language for this proposed change.

Mayor Troxell asked about the repercussions for campaign violations that are not corrected. Malarky replied there would then be a determination made either by the City Attorney's Office or outside counsel regarding whether further investigation or prosecution is warranted.

5. Removal of the citizen enforcement mechanism in District Court

City Attorney Daggett stated the current Code allows the complaining party to file a case in District Court should the City's prosecutor chose not to pursue prosecution of a violation. Staff recommends removing this ability from the Code based on questions of constitutionality in recent court cases. She outlined a complaint received regarding an election which was ultimately reviewed and determined to not merit further investigation. She stated the citizen was frustrated with the time it took to investigate the complaint.

Chair Pignataro asked what options would be available for a citizen. City Attorney Daggett replied the initial logic of the campaign finance disclosure requirements was that the political process is political and whatever information people have about what may have happened would feed into the political process and be usable for people who wanted to advocate for or against individual candidates, or seek recall of individual candidates.

#### **4. OTHER BUSINESS**

Chair Pignataro asked when the civil versus criminal penalty option will come before the Committee. City Attorney Daggett stated any violation is currently a criminal misdemeanor and there are some types of violations that staff would recommend continue to be so. She stated it is clear there is interest in backing off consequences and intensity of enforcement for items like filing violations. She stated those issues would shift from a criminal violation to a civil infraction or other administrative violation.

City Attorney Daggett stated staff will need to work on developing a recommendation for what the process may look like. She noted civil infractions are punishable by fines and stated a fine schedule could be outlined.

Councilmember Summers stated it is important to delineate between oversights and mistakes versus true law violations such as fraud, which is already illegal. He stated creating disproportionate penalties will discourage people from serving in public office.

City Clerk Coldiron and City Attorney Daggett outlined the process by which complaints are addressed through the two offices.

Chair Pignataro asked if the City is planning to place any items on the November 2020 ballot. City Clerk Coldiron replied in the negative. Mayor Troxell discussed how items may emerge to be placed on the ballot.

Chair Pignataro asked about cost of adding an item to a presidential election ballot. City Clerk Coldiron replied it would be quite expensive and noted all local items are placed near the end of the ballot.

#### **5. ADJOURNMENT**

The meeting adjourned by unanimous consent at 5:22 PM.

**MINUTES APPROVED FEBRUARY 21, 2020**