

Council Election Ad-Hoc Committee Minutes
November 30, 2015
2:00 p.m.

Members in Attendance: Kristin Stephens, Bob Overbeck, and Ross Cunniff.

Also present: Ann Hutchison, Fort Collins Chamber of Commerce

Staff in Attendance: Carrie Daggett, City Attorney; Wanda Winkelmann, City Clerk; Rita Knoll, Chief Deputy City Clerk; Cary Carricato Alton, Paralegal.

A meeting of the City Council Ad-hoc Election Committee ("Committee") was held on Monday, November 30, 2015, 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 2:05 p.m. The Board reviewed the Agenda which contained these items:

1. Call Meeting to Order
2. Selection of Committee Chair
3. Discussion Items
 - a. Define Purpose of Committee
 - i. Review Staff Recommended Election Code Changes
 - ii. Committee Identified Issues Related to Election Code
 - b. Suggested Election Code Changes
 - i. Changes due to HB 15-1130 (Uniformed and Overseas Citizens Absentee Voting Act – UOCAVA)
 - ii. Staff Recommended Changes
4. Other Business
5. Adjournment
 - a. Next meeting: December 16, 3:30 p.m. – 5:00 p.m.

City Clerk Winkelmann called the meeting to order and asked the Committee to elect a chair. Councilmember Overbeck nominated Councilmember Cunniff and the Committee approved his selection unanimously. Mr. Cunniff asked the City Clerk to go through the staff recommended changes and point out which ones are optional and which changes are mandatory.

City Clerk Winkelmann indicated that they would first discuss the Staff Recommended Election Code Changes as enumerated in the handout, and then move on to any other items that Council had identified that needed to be modified. Councilmember Cunniff stated that the charge of the Committee from the City Council was along these same lines, and he had no questions about proceeding in this way.

City Clerk Winkelmann moved the discussion to Election Code Changes because of HB15-1130, which is the "UOCAVA" (Uniformed and Overseas Citizens and Absentee Voting Act) bill. City Clerk Winkelmann recommended going through the handout materials provided to the Committee and to discuss each one. She indicated that Rita Knoll was present as the election expert from the Clerk's Office and City Attorney Carrie Daggett was present to answer legal questions. UOCAVA, which was passed earlier this year by the legislature, impacts the dates of many of the City's election activities. City Attorney Daggett added that even if the Council chooses not to add the modified timeframes, there might be value in making code changes just to clarify the timeframes that the City is using and to make sure that we have adopted a local schedule. City Clerk Winkelmann indicated that Leadership Planning Team has expressed that it would prefer to home rule all of the associated election timeframes and this would mean sticking with the City's current practices.

City Attorney Daggett suggested that the City Clerk outline the practices of the City Clerk's Office that promote transparency and voter turnout as they go through the list of changes. City Clerk Winkelmann indicated that beginning in the last election, they mailed a letter to each UOCAVA voter in February that indicated that a municipal election would occur in April, and that they should watch for their ballot. It also described the procedure to be followed if they did not receive their ballot and the procedure to follow if they could not return their ballot before the deadline and still wished to vote. City Clerk Winkelmann stated that the voter had to sign an absentee voter application where they acknowledged that they give

up a right to privacy of their vote. She also indicated that the City paid for Fed-Ex for some ballots and allowed people to electronically transmit their ballots after signing an absentee voter application form.

Chief Deputy City Clerk Knoll added that in Fort Collins, there are approximately 650 UOCAVA voters, not all of whom were stationed overseas. She said that she did not have the exact numbers but they had a response somewhere around 40-50 voters.

City Clerk Winkelmann stated that the UOCAVA bill does not allow for the return of ballots electronically, so it was one of the items that the City questioned concerning the bill. She indicated that the City has been accommodating the return of UOCAVA ballots electronically for several elections.

Councilmember Overbeck asked whether the City had been given the opportunity for input into the UOCAVA bill as it was proceeding through the legislature, and Chief Deputy City Clerk Knoll indicated that the City had given input through the Colorado Municipal Clerk's Association. City Clerk Winkelmann indicated that she expected the Clerk's Association and the Colorado Municipal League (CML) to lobby the legislature to fix some issues with the bill during the upcoming legislative session in 2016.

Councilmember Stephens asked what other issues with the bill were being targeted for correction in 2016. City Clerk Winkelmann indicated that besides returning ballots electronically, a correction is needed to a provision related to the cancelling of an election.

The Committee then went through the UOCAVA changes as listed in the handout:

Item A, Candidate Petitions Due: If adopted, UOCAVA would require that candidate petitions be due 71-91 days before Election Day rather than the current 40-60 days.

Item B, Candidate Withdrawal: If adopted, UOCAVA would require that a candidate withdraw at least 67 days before Election Day as opposed to the current practice of 35 days.

The City Clerk noted that a change like this must be made at least a year before an upcoming election, so these would have to be made before March of 2016.

Item C, Ballots Mailed: If adopted, UOCAVA would require that ballots be mailed to overseas voters 45 days before Election Day rather than the 18-22 days under the current practice.

Item D, Deadline Ballots must be received by to be counted: If adopted, UOCAVA ballots postmarked by 7:00 p.m. on Election Day would be accepted until 8 days after the Election. City Attorney Daggett pointed out this change would create an issue with the Charter because the Charter requires that all ballots be counted and the Canvass be completed within three (3) days of the election, and creates a direct conflict.

Items E, Return of Ballot and Absentee Voting: If adopted, UOCAVA provides that only ballots returned by mail are permissible. The current practice of the City is that electronic ballots are acceptable if the voter fills out an Absentee Voter application.

Item F, Canvass Due: If adopted, UOCAVA would require that the date of the canvass be changed in order to count the UOCAVA ballots up to 8 days for finalization the election results. Because it would require a vote to modify the Charter, this would require the issue to be put on the ballot for voter approval.

Item G, Recall – Date of Election: If adopted, UOCAVA would require an election 90-120 days after a recall petition is certified. Under the current practice, it is 60-90 days after recall petition is certified. City Clerk Winkelmann indicated this modification would also require a Charter change.

City Clerk Winkelmann indicated that for Items F & G, staff had offered the suggestion of moving those items from the Charter to the Municipal Code so the City could further adapt to any other changes that might come in election law.

Item H, Recall – Nominating Petitions: If adopted, UOCAVA would require nominating petitions 71 days before Recall Election Day, and the current practice is 40 days before Recall Election Day.

Item I, Write-in Candidate: If adopted, UOCAVA provides for a deadline for write-ins of 67 days before Election Day, and the current practice is 35 days before Election Day.

Councilmember Stephens inquired whether or not the City had received complaints or concerns from UOCAVA voters on the current practices. City Clerk Winkelmann indicated that there really haven't been complaints or concerns, and when there have been issues with someone getting their ballot, the Clerk's Office has made accommodations for those voters. Chief Deputy City Clerk Knoll indicated that all of the UOCAVA voters she worked with were all very complimentary and appreciative of the opportunity to vote.

The Committee asked several other questions concerning other municipalities, but Chief Deputy City Clerk Knoll explained there are not very many other home rule municipalities that have adopted their own election provisions, so staff rarely has a City with whom they can compare notes.

The Committee asked Ms. Daggett to summarize what issues she thought needed clarifying in the present code. Ms. Daggett indicated that it might be helpful to codify expectations for contacting UOCAVA voters, including the specific process for contacting overseas voters. Councilmember Overbeck questioned what kind of resources might be involved with making such a modification. City Attorney Daggett indicated that that could be better estimated after the Committee has reached a consensus about what they would recommend.

Councilmember Cunniff commented that Fort Collins doesn't seem to have the problems that the UOCAVA bill was trying to solve. City Clerk Winkelmann indicated that the argument for adopting UOCAVA she has heard is because it allows the UOCAVA voter's ballot to remain secret. City Clerk Winkelmann indicated that the UOCAVA voters they dealt with in the last election were not concerned about their ballots not being secret.

The Committee then asked questions about the City's experiences in the last election, and asked that the Clerk's Office research the number of notifications concerning the election returned as undeliverable. Staff indicated that this research would be done and provided to the Committee.

The Committee expressed a general consensus that the City was dealing with the process in a reasonable way to give every voter an opportunity to vote if they desired to do so.

Staff Recommended Changes – Election Code Amendments

The Committee then moved on to discuss the staff-recommended changes unrelated to UOCAVA, as follows:

Proposed Change 1: *Amend Section 7-156 to further clarify how a protest of ballot language is filed for ballot language adopted by **ordinance or** (new language) resolution.*

Amend Section 7-88 to further clarify how a protest of redistricting is filed.

City Clerk Winkelmann stated this change to clarify how a protest to ballot language could be filed. City Attorney Daggett stated that the process as laid out in the Code is not very clear or detailed, and may be read to suggest that a separate hearing on a protest is required. Ms. Daggett used the example of the protests of the tax questions on the ballot earlier this year. Because it was the first time there had been a ballot language protest, the current process is not very efficient and it created a strange overlap of the

protest and the Council consideration of the ballot language. Councilmember Cunniff asked about the differences between the state process and our current process. City Attorney Daggett described the state process to some extent, but indicated that she would look at the state process of setting a ballot title a little more closely and provide additional information. Chief Deputy City Clerk Knoll indicated that staff would have to be very mindful of the timeframes under a formal protest procedure. City Attorney Daggett indicated that staff could come back with suggestions about how a protest could be set up, and Councilmember Cunniff indicated that he thought that would be a good idea.

Proposed Change 2: *Add a provision to Article VII, Section 7 pertaining to Mail Ballot Elections that prescribes the order items appear on the ballot.*

Staff would recommend the following order:

1. City-initiated TABOR measures;
2. Citizen-initiated TABOR measures;
3. City-initiated measures;
4. Citizen-initiated or referred measures.

In the event of multiple citizen initiated measures, they would appear in the order they were received.

Proposed Change 3: *Amend Section 7 regarding election workers to address appointment, compensation and oath of office.*

City Clerk Winkelmann indicated that the City Clerk's Office just wants to clean up this provision in the Code. She said that during the recount was really the first time they had used election workers. It went smoothly and the City Clerk expects to use them in the future.

Proposed Change 4: *Pending further Council direction, Amend Section 7-191 to state that: a) signature verification of returned ballots will not occur; or b) establish a process for signature verification.*

City Clerk Winkelmann indicated that the Code does not require signature verification. The election workers look at the signatures, but don't verify them against a signature database. The Committee discussed the additional cost and time consumption to do this. The Clerk outlined the current process for reviewing ballots. Councilmember Cunniff asked for statistics from the County on how often they reject ballots because of signature verification. Chief Deputy City Clerk Knoll indicated that they would follow up on this issue.

Proposed Change 5: *Review Section 7-135 regarding campaign contribution limits for Council candidates.*

City Clerk Winkelmann indicated that her office has polled other municipalities for information about contribution limits. Councilmember Stephens asked how long it had been since these provisions were amended. Chief Deputy City Clerk Knoll indicated that they were modified in 2001.

Councilmember Stephens indicated that she felt it was time to amend them, and she is still for a limit, but it is difficult to run a campaign on the current numbers. She wanted to know how Loveland adjusts its amount every 5 years. Councilmember Cunniff indicated that he will discuss this item further, but wasn't sure that a change was necessary at this point and time.

Councilmember Cunniff asked for the minutes from the meeting in 2001 where the amounts were modified.

Proposed Change 6: *Amend Section 7-137 to remove the requirement of publishing 14-days prior to the election campaign finance reports and 30-days after the election campaign finance reports on the newspaper and add a provision that all reports be posted online.*

City Clerk Winkelmann indicated this was just a provision to remove the publication requirement because during the last election it cost the City \$10,000 in publication costs. City Clerk Winkelmann indicated that the City publishes these reports online and the requirement to publish in the newspaper is antiquated. The City contacted other municipalities to find out how they handle publishing. Councilmember Overbeck expressed an interest in publication of a notice providing information to the public regarding how to go online to review the reports and perhaps a hyperlink in the digital form of the paper, but forgoing publication of the entire reports as is presently done. Ms. Winkelmann indicated that staff would return with some options.

Proposed Change 7: *Amend Section 7-136 to change the requirement that reports are filed on the Friday before the Election Day to be filed by noon on the Friday before the election.*

Staff is recommending putting a noon deadline for filing the reports due the Friday before the election so the information can be posted online the same day. Sometimes reports are not coming in until 5:00 p.m. and staff won't always be able to post them that day. The Committee liked this idea because it gives citizens the weekend to review the reports.

Proposed Change 8: *Clarify whether members of City Council can accept a wage lower than the amount outlined in the code.*

Every election, staff is asked if a candidate can accept a lower wage than in the Code, or forego the Council wages altogether. Although staff is not certain of the basis for the concern, it has been assumed this might apply to persons running for office and on social security or disability and cannot make over a certain amount per month and still maintain their benefits.

City Attorney Daggett indicated that the Code states that the City "shall" pay. There is also a provision in the Code for changing salaries during a current term, so it would have to a change that applied to a future Council. Ms. Daggett indicated this is part of the Charter, so it would take voter approval to change it.

Councilmember Overbeck and Councilmember Stephens both expressed some interest in encouraging all who are interested in running for City Council to run, and concern about the salary as a barrier to participation.

Councilmember Cunniff indicated that running for office means you explicitly accept employment by the citizens of the city, so that if there is a problem or conflict, it is up to the candidate to work it out.

Proposed Change 9 (only if UOCAVA fully implemented): *Amend Section 7-192 to state that an eligible voter has eight days after Election Day to correct deficiencies causing his/her ballot to be rejected (as long as the ballot was originally received by 7 p.m. on Election Day), such as a missing signature on the return envelope. Include a statement that the elector cannot change his ballot in the process of correcting the deficiency.*

Staff recommends this change only in the event UOCAVA is fully implemented. Chief Deputy City Clerk Knoll indicated there were only approximately 80 ballots in the last election not signed, and the Clerk gave people the opportunity to correct them before 7:00 p.m. on Election Day. She indicated that they did not keep track of how many people came in to correct their unsigned ballots, but they intend to keep this statistic during the next election. The Committee generally agreed that they would wait to discuss this issue until deciding what to recommend on UOCAVA.

Proposed Change 10 (only if UOCAVA fully implemented): *Amend Section 7-193 to include a provision about the release of results on Election Day.*

If the City implements UOCAVA, staff would recommend a provision which allows the City to release preliminary results of the election prior to the finalization of Election results. The Committee agreed they would discuss this recommendation after deciding what to recommend about UOCAVA.

Proposed Change 11: *Insert a section to address recount procedures.*

Because of the recount that took place during the last election and the Clerk's experience with the statutory recount provision, staff would recommend a change to the City Code to outline the recount procedure. Staff is in the beginning stages of crafting this procedure and expects to have something for the Committee to review at the next meeting.

Proposed Change 12: *Amend Section 7-143 to add a deadline for the filing of election complaints.*

City Clerk Winkelmann stated that the City does not have a deadline for filing of election related complaints, and would like to outline this. Staff recommends 45 days from the date of the Election Certification so there is a date certain that all complaints must be filed.

Councilmember Cunniff inquired regarding the proper jurisdiction for election related complaints and City Attorney Daggett explained that the question had been raised and that there is disagreement about whether the proper jurisdiction is in the municipal court only or some other jurisdiction. Ms. Daggett indicated there is room for looking at what we might think would work best and specifically spelling out where a complaint would be heard.

The Committee generally agreed that the 45 days from the Election Certification would be the appropriate amount of time for lodging complaints.

Proposed Change 13: *Amend Section 7-134 to establish the termination of a campaign committee.*

Staff recommends that because the City does not have a provision related to termination of campaign committees, that the Code be amended to include a deadline to terminate within six (6) months of election certification.

There was discussion about what it means to terminate a committee and if the requirements of doing so meant zeroing out the funds associated. Chief Deputy City Clerk Knoll confirmed that it would require zeroing out funds. She described the problems associated with allowing them to continue indefinitely; including issues with enforcement and tracking, no actual termination ever occurring, and no ability to contact the person or persons associated with the committee.

Chief Deputy City Clerk Knoll indicated there are several municipalities that have deadlines to terminate. The committee discussed the issues with requiring termination for candidates who decide they will run for another term. Councilmember Cunniff suggested that it be an option for those not filing reports as required, there be an administrative termination after a certain period of time.

Staff agreed that they would come back with options for this process at a future meeting. Staff further agreed that they would update and bring to the next meeting the data available on the number of campaign committees that had not terminated for the years they have available data.

Proposed Change 14: *Amend Section 7 to state that the Municipal Election Code (MEC) and Uniform Election Code (UEC) will be followed when our Code or Charter are silent on an election issue.*

Staff recommends that the Code expressly state the controlling authorities for election questions that arise that are not specifically spelled out in our Code, particularly in light of related questions that have been raised about this issue.

Other Business

There was no other business to be discussed at this meeting. The next meeting of the Committee will take place on December 16, 3:30 p.m. – 5:00 p.m.

Meeting adjourned at 3:29 p.m.

MINUTES APPROVED: DECEMBER 16, 2015