

Council Election Ad-Hoc Committee Minutes
December 16, 2015
3:30 p.m.

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

Also present: Ann Hutchison, Fort Collins Chamber of Commerce; Johnathon Carnahan; Karen Wagner, League of Women Voters

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 Wednesday, December 16, 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 3:34 p.m. The Board reviewed the Agenda which contained these items:

1. Call Meeting to Order
2. Approval of November 30, 2015 Committee Meeting Minutes
3. Suggested Election Code Changes
4. Other Business
5. Adjournment
 - a. Next meeting: December 23, 2:00 p.m. - 3:30 p.m.

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 November 20, 2015 meeting. Councilmember Stephens moved for the approval of the minutes, Councilmember Overbeck seconded the motion. The minutes were approved unanimously.

City Clerk Winkelmann summarized where the committee concluded concerning the UOCAVA (Uniformed and Overseas Citizens Absentee Voting Act) following the meeting on November 30, 2015. Ms. Winkelmann indicated that she would not review those unless there were specific questions. Councilmember Cunniff indicated that he believed that the overriding question was whether the City should implement UOCAVA or stick with something that is more in line with our current process.

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

Staff Recommended Changes – Election Code Amendments

The Committee bypassed UOCAVA related changes and moved on to discuss the other staff-recommended changes:

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 indicated that the matrix was changed to reflect the Committee's comments during the last meeting, but additional changes were made following a meeting of Winkelmann, Knoll and City Attorney Daggett to add suggested language so the Committee could discuss the proposed language.

City Clerk Winkelmann indicated that what they proposed in this this change is similar to the process one would go through to file an appeal related to other City matters. She indicated that the Clerk's Office would like an appeal of any ballot language to be submitted on a form so it doesn't get lost in an e-mail, and that it is clear that someone wishes to protest proposed ballot language. Ms. Winkelmann indicated that the City would follow a similar procedure for protests to redistricting.

Councilmember Cunniff asked questions about the timing of protests and the potential issue which might arise wherein the Council might modify the language of a ballot issue on the fly on the night of a potential vote on a ballot language.

City Attorney Daggett indicated that one option would be to create a special process that would allow for someone protesting ballot language to have another opportunity during that item to speak again, so that if there is revised language, a protestor could voice an opinion on any change. This process would not allow new people to come up and bring up new issues concerning modified ballot language. Ms. Daggett indicated that such a process might create additional lead time in getting ballot language finalized and ready, and this has been an issue in the past without creating this additional process. Ms. Daggett indicated this is largely a policy question for the Committee and Council to decide. Ms. Daggett indicated there are additional mechanisms to protest language, and at the state level, these are heard in a judicial setting. Councilmember Cunniff followed up with some questions about this judicial process at the state level. City Attorney Daggett answered questions about the limited reasons one can challenge ballot language under a judicial review; i.e. problematically confusing.

The Committee had questions about whether the proposed language gives additional opportunity to citizen input on ballot language, and Ms. Daggett indicated that the proposed language just gives the City the opportunity to specifically identify a protest. City Attorney Daggett indicated that staff could come back with additional process language if the Committee was interested in them doing so.

Councilmember Stephens followed up with some questions concerning a possible process that might work and clarify the actual protest. She indicated that she thinks the paper trail of the protest would be valuable.

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.

City Clerk Winkelmann indicated that she believed that the Committee agreed this was a change they would suggest to the Council. The Committee agreed. There was discussion about different scenarios and the order Council certifications might occur and petitions might be received. Councilmember Cunniff suggested that the language clarify that the order be dependent on "final" signature verification and certification is completed on the petition, and not based on Council Agenda or the order they appear based on Leadership Planning Team, etc. Chief Deputy Clerk suggested that perhaps they could take the first date that a Petition was turned in with signatures, and that a matter would lose placement on the ballot if it had to be amended for additional signatures or some other reason. The Committee was okay with this proposal.

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

City Clerk Winkelmann indicated that the Committee had agreed to this suggested change at the last meeting.

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.

Chief Deputy City Clerk Knoll reported that she had gathered information as a follow up to Committee member questions at the last meeting. She reported that in the November, 2015 election, 444 were

rejected for no signature or no identification. Of those 444, Larimer County rejected 343 ballots of the 82,001 ballots cast for signature verification reasons. The others were related to no presentation of identification. These numbers reflect the eight (8) days given to the voter correct or reconcile the issues.

Councilmember Cunniff followed up with questions concerning the process of verification. He also had questions concerning possibilities of leasing equipment from Larimer County. City Clerk Winkelmann indicated that the City had followed up concerning this issue and reported that we could not lease this equipment. Ms. Knoll added that the Secretary of State will not give municipalities direct access to the statewide voter registration system.

Councilmember Stephens followed up with her comments concerning cost prohibitions and issues with space requirements. She also indicated that she is not for trying to amend the way the City currently reviews signatures. Councilmember Overbeck indicated that he agreed.

Councilmember Cunniff agreed and had a follow up question about how the signature verifications worked.

City Clerk Winkelmann asked the Committee their opinions concerning amending the Code to say that signature verification will not occur. Councilmember Cunniff indicated that he is comfortable with how the Code is currently written as it reflects the efforts made by the City under the current process. Chief Deputy City Clerk Knoll indicated that she agrees with Councilmember Cunniff but related that a citizen complained during the last election wherein the citizen stated that the Code clearly says that the City should be doing signature verification.

City Attorney Daggett indicated there might be a way to edit this provision for the Committee to consider. The Committee agreed this is a good idea.

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

City Clerk Winkelmann indicated that the Committee had asked for additional information concerning Loveland and Longmont at the last meeting of the Committee. She referred the Committee to the matrix on Page 9 of the materials provided.

Councilmember Cunniff indicated that Fort Collins has a tighter limit than some. Councilmember Stephens indicated that she thinks that the limit is fine and asked how often the Council considers a change to the limit. Staff indicated that it is not brought up consistently.

City Clerk Winkelmann asked whether this item should be left in the list of options before Council. Councilmember Cunniff indicated that he believed it should be included in a list of items that the Committee was not recommending be 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 stated that the Committee agreed on changing this section after the discussion from the last meeting. She indicated that Chief Deputy Clerk Knoll had a great suggestion that Section 7-184 which outlines the requirements for the Notice of Election to be amended. When amended, it would state that the City will include information about financial disclosures and other useful information in the publication of the Notice of Election. Ms. Winkelmann indicated that in the Notice of Election, the City would include that Campaign Finance Reports are available on the City's website.

The Committee agreed this would be a good way to approach this issue.

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.*

City Clerk Winkelmann stated this proposed change was agreed to by the Committee at the prior meeting.

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

City Clerk Winkelmann indicated this is one of the items where the Committee wanted to have additional discussion. Ms. Winkelmann indicated this is a question that arises every election and believes that it comes from persons on a limited pension or some other payment where they are limited in the money they can earn.

Councilmember Overbeck asked if staff was able to gather any additional information. City Attorney Daggett reminded the Committee this is a modification which would require a Charter change, which is more difficult. She also indicated that the language is not difficult, but it would have to be put to a citizen vote. Councilmember Overbeck asked what the language might be. Ms. Daggett indicated that it would be simple to write.

Councilmember Stephens expressed her concern about this item allowing compensation to be used for political gamesmanship. Councilmember Cunniff stated he would support discussing with the entire Council. Councilmember Overbeck again stated that he didn't want salary to be a barrier to public service.

Councilmember Cunniff indicated that he would like to just say that the Committee recommends that the Council discuss this item and not indicate that the Committee recommends it.

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. No elector shall be allowed to open, change, or alter his or her ballot while in the process of correcting the deficiency.*

City Clerk Winkelmann indicated this item was added in only if the City decided to fully implement UOCAVA, and the last sentence above was added.

The Committee agreed this captured what the Committee was thinking.

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

As a followup to what was previously discussed, City Clerk Winkelmann indicated that the Committee had indicated that they thought this was a good change and the City didn't need to adopt UOCAVA to make this change. The City Clerk's office modified the language proposed so it was clear that the ballot was secret, and not the counting procedure.

City Attorney Daggett said this change is helpful because it reflects the current practice. Councilmember Cunniff followed up with questions concerning implications of the secrecy of poll books. City Attorney Daggett indicated that she wanted to reconsider this language to make sure it is clear what is secret and what is subject to public information.

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

City Clerk Winkelmann indicated that staff added a provision for recount and it was taken from C.R.S. 31-10-1207. It also addresses mandatory and requested recounts.

City Attorney Daggett stated this follows the statutory language except there are modifications to make the timeframe more workable. She indicated this would make it more concrete what the expectations of a recount would be.

City Clerk Winkelmann asked if there was agreement on adding a provision about whether campaign funds could be used to pay for the recount. Councilmember Cunniff stated that he wanted it to be explicitly stated one way.

The Committee discussed "post-election expenses" and the definition of that term. Councilmember Cunniff stated that he thought the Committee had two questions;

- 1) Should a campaign committee spend unused funds for a recount?
- 2) Should there be any restrictions on additional monies raised to pay for a recount?

Councilmember Stephens indicated that she thought a campaign committee could use funds toward a recount, but there needed to be restrictions on additional monies. Councilmember Cunniff agreed. He suggested that perhaps a clarification was needed to campaign expenditures in the Municipal Code.

City Attorney Daggett agreed that she would bring back specific language on this particular issue, including the disclosure of the source of funds.

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

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

The specific form of the change will need to be further developed for further Committee consideration.

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

Chief Deputy City Clerk Knoll reported on the data available from the preceding six municipal elections. Ms. Knoll handed around the data for the Committee members to inspect. There was discussion about requiring issue committees to terminate.

Councilmember Stephens indicated that she would be in favor of requiring issue committees to terminate, but that the candidate committees are harder to decide what to do with. Councilmember Cunniff recommended some sort of latency provision requiring reporting and some procedure for missed deadlines.

Chief Deputy City Clerk Rita Knoll indicated that staff would work on proposed language on this modification and bring it back to the next meeting.

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.*

Because the Committee was generally in favor of this change at the prior meeting, discussion was about specifying the order of precedence of the MEC and UEC.

Ms. Daggett indicated that she would follow up with additional language on this issue.

Proposed Change 15: *Add a section to the duties of the City Clerk to codify actions taken to inform UOCAVA voters of the upcoming election.*

This is a new change from the prior meeting. Based on the Committee comments, staff would recommend that the City clarify this in the Code at this time.

Chief Deputy City Clerk Rita Knoll indicated that the City would also have a written administrative policy on exactly what notifying UOCAVA voters will look like. She reported on the statistics asked for at the last meeting. They were as follows:

- 622 letters to UOCAVA voters notifying them of upcoming Election
- 508 ballots were not returned
- 17 ballots came back undeliverable after Election Day
- Before Election Day, 30 ballots came back undeliverable
- 25 people voted by e-mail
- 36 voted by regular process – got their ballot back in time
- 8 ballots received after Election Day

The Committee then generally agreed that the City's current process is sufficient to give UOCAVA voters the most opportunity to vote if they wish.

UOCAVA Implementation

Councilmember Cunniff moved the discussion to whether or not the Committee would recommend implementation of UOCAVA. Councilmember Stephens indicated that she believes the current process is sufficient, and does not think implementation is necessary. The Committee was comfortable because the City is doing everything to insure that UOCAVA voters are being given the opportunity to vote.

There was general agreement among the Committee they did not believe it was necessary to implement UOCAVA.

Other Business

The next meeting of the Committee has been scheduled to take place on December 23, 2:00 p.m. – 3:30 p.m. However, there are issues with this scheduled meeting and the timing of getting the Committee packet materials. Councilmember Overbeck would be out of town for this meeting.

There was discussion about what would be the best thing to do to give everyone time to put together materials and have all Committee members available. It was decided that the meeting would be moved to January 4, 2016 at 3:00 p.m.

Meeting adjourned at 4:42 p.m.

MINUTES APPROVED: JANUARY 4, 2016