

May 1, 2020

ELECTION CODE COMMITTEE MEETING

3:30 PM

COUNCILMEMBERS PRESENT: Troxell, Pignataro, Summers, Stephens (alternate)
STAFF PRESENT: Carrie Daggett, Ryan Malarkey, Delynn Coldiron, Rita Knoll, Sara Gonzales
CITIZENS PRESENT: Michelle Haefele, Jody Deschenes, Kathleen Schmidt, Robbie Moreland, Jan Rossi

(Secretary's Note: Due to the COVID-19 crisis and state and local orders to remain safer at home and not gather, all Councilmembers, staff, and public attended the meeting remotely, via teleconference.)

1. CALL MEETING TO ORDER

Chair Pignataro called the meeting to order and discussed the Zoom remote participation.

2. CITIZEN COMMENT

Kathleen Schmidt, Election Reform Team Chair for the League of Women Voters of Larimer County, supported the City matching the state law regarding campaign contributions from LLCs.

Robbie Moreland thanked Council for its work during this time and supported a requirement to wear face masks in public buildings. She expressed support for matching the state law regarding campaign contributions from LLCs.

Jan Rossi opposed the current LLC contribution regulations in Fort Collins, stating money buys influence. She supported aligning the City's regulations with the state law.

Michelle Haefele reiterated the City's legislative declaration for campaigns. Large campaign contributions create the potential for corruption and the appearance of corruption and the public interest is best served by limiting campaign contributions. She supported changing the City's election rules to align with those of the state to limit the total contribution of any individual.

Jody Deschenes commended staff and Council for carrying on with responsibilities under unique and challenging circumstances. She supported keeping campaign contribution limits as is, stating most grass roots candidates would not receive a benefit from increased limits.

3. CONSIDERATION AND APPROVAL OF FEBRUARY 21, 2020 COMMITTEE MEETING MINUTES

Mayor Troxell made a motion, seconded by Councilmember Summers, to adopt the February 21, 2020 Committee meeting minutes. The motion was adopted by unanimous consent.

4. DISCUSSION ITEMS

a. City Regulation of LLC Campaign Contributions

Chair Pignataro stated her impression is that this Committee will not likely come to a strict agreement regarding this item; therefore, she suggested no LLC changes be included in the package of changes sent to Council and, if desired, the entire Council could take up the issue.

Councilmember Summers agreed noting the current LLC regulations have been in place for decades. He took exception to statements of corruption without any type of proof.

Mayor Troxell agreed and stated the Committee should move on.

Chair Pignataro stated Mayor Troxell and Councilmember Summers are in favor of leaving the LLC regulations unchanged; however, she is a proponent of changing them. The Committee will send its package of changes forward to Council without changes in the LLC language at this time and the entire Council could take up the issue at that time.

b. Possible Charter Amendments Relating to Elections

i. Amend Article VIII, Section 9 Corrupt Practices

Assistant City Attorney Ryan Malarky stated this item concerns a section of the Charter that came to the attention of Council and the Committee after the last election cycle. Several citizen complaints were filed concerning alleged Election Code violations. Questions were raised as to the consequences or penalties if an allegation is sustained and someone is ultimately convicted of an Election Code violation.

Malarky outlined the existing penalties, including a ban on holding City office or employment for a certain number of years, which seem to be fairly significant and stated staff wanted to give the Committee an opportunity to discuss this section to see if there is any interest in making changes.

Clarifying the portion that addresses “at a city election” could be considered. Malarky questioned if this provision is intended to apply to election-related offenses that would have an impact on the outcome of an election or call into question the propriety of City elections. He also noted there is a difference between civil violations and criminal violations, the latter of which generally have stricter penalties. The Committee could consider this provision being triggered only by a criminal violation as opposed to something that would be strictly civil.

Mayor Troxell supported getting more information and involving more discussion, perhaps in the form of a work session.

City Attorney Daggett suggested it may be helpful for staff to develop some different versions for consideration at the next meeting.

Mayor Troxell and Chair Pignataro agreed with that suggestion.

City Attorney Daggett outlined what she has heard in the discussion including recognition that this section needs to be related to what would be considered significant offenses that relate to an election or campaign.

(Secretary's note: Councilmember Summers left the meeting at this point and Mayor Pro Tem Stephens stepped in as Committee alternate)

ii. Amend Article VIII, Section 8 regarding participation in elections by political parties, city employees, public service corporations or any other person intending to apply for a franchise or have a contract with the City

City Attorney Daggett stated an executive session might be helpful to discuss legal issues. This item is on the agenda as there were some issues that came up during the last election related to some employee organizations and generally related to this section. The key part of the section staff is suggesting the Committee may want to consider is the limitation on contributions or expenditures of any money or valuable things, directly or indirectly, to assist in the election or defeat of a candidate by any of the following: a political party, a City employee, a public service corporation, and any person, firm, or corporation owning, interested in, or intending to apply for, any franchise or contract with the City.

Mayor Pro Tem Stephens made a motion, seconded by Mayor Troxell, that the Election Code Committee go into Executive Session for the purpose of meeting with the City's attorneys and City Clerk's Office staff to discuss the following matters as permitted under City Charter Article II, Section 11-2, City Code Section 2-31(a)(2), and Colorado Revised Statute Section 24-6-402(4)(b): the manner in which the particular policies, practices, or regulations of the City related to City elections may be affected by existing or proposed provisions of federal, state, or local law. Yeas: Pignataro, Troxell, and Stephens. Nays: none.

THE MOTION CARRIED.

(Secretary 's Note: The Committee went into Executive Session at this point in the meeting and returned at 5:15 pm.)

Chair Pignataro stated there is value in looking at this section more carefully at next month's meeting.

Mayor Troxell and Mayor Pro Tem Stephens concurred.

iii. Amend Article II, Section 4 to conform with Article II, Section 1(d) to reflect the selection of Mayor Pro Tem does not occur until recount period has expired

City Attorney Daggett stated this issue was created when the Charter was amended in 2017, but a provision was missed that needs to be modified, given the recount procedure and time needed to finalize the certification of the election. This would be a corrective edit to the Charter that would ensure the newly elected Council is selecting the Mayor Pro Tem. Staff has discussed an idea that sets a specific date for swearing in of the new Council and subsequent actions, such as selecting a Mayor Pro Tem, would tie into that date.

City Clerk Coldiron stated a having a date certain for swearing in of new Councilmembers seems to make sense as the Clerk's Office received many questions after the last election and there was disagreement as to when to move forward with certain actions. This would build certainty into the process.

City Attorney Daggett noted the Charter states a Councilmember's term continues until a successor is sworn in and having a date certain for the swearing in would provide more predictability.

Chief Deputy City Clerk Knoll stated a full course of a recount and election certification could be out as far as the second Tuesday in May. She also noted there have been issues wherein some Councilmembers are subject to a recount and others are not.

Chair Pignataro asked if the language could be changed to select the Mayor Pro Tem at the first regular meeting after the new Council is sworn in. City Attorney Daggett replied that could work if it was made clear that would occur after each seat is resolved and after the completion of any recount.

Chief Deputy City Clerk Knoll noted if no recount is requested, the opportunity to swear in Councilmembers would be sooner, which is one argument against setting a date certain for swearing in. However, setting a date certain would be more similar to county and state offices.

Chair Pignataro stated she would like to receive additional information from staff regarding preferences and ease of understanding for voters as this is a Charter amendment.

Chair Pignataro suggested staff return at the next meeting with information as to what would be affected by adding a date certain.

Mayor Troxell stated the entire Council should be seated prior to selecting a Mayor Pro Tem. He asked about the timeframe for a requested recount. Deputy City Clerk Gonzales replied a recount must be requested within five days after certification of the election, which is ten days after the election.

City Attorney Daggett suggested there could be two alternative set dates, one in the case of a recount, and one if there is no recount. Chief Deputy City Clerk Knoll recommended that those two options are likely the first meeting in May or the second meeting in May, or potentially a special meeting at the end of April.

Chair Pignataro suggested staff return with options at the next meeting.

Mayor Troxell suggested the swearing in does not necessarily need to occur on a Tuesday.

(Secretary's Note: Mayor Troxell left the meeting at this point.)

- iv. Amend Article VIII, Section 4(a) to eliminate requirement that the affidavit of circulator contain a statement of the number of signers on that section of the petition*

Chief Deputy City Clerk Knoll stated this provision was eliminated in one portion of the Charter, but staff recently discovered a hold over of similar language in another section. This change will clarify that language.

Mayor Pro Tem Stephens stated that language cleanup makes sense.

5. OTHER BUSINESS

Mayor Pro Tem Stephens stated there may be some desire from the rest of Council to bring forward the issue related to LLC campaign contributions and suggested staff may want to have language prepared.

City Attorney Daggett stated there may be benefit in having a Council work session to discuss some of these issues.

Chair Pignataro noted the importance of timing as Charter amendments would need to be on the April ballot.

6. ADJOURNMENT

The meeting adjourned by unanimous consent at 5:43 PM.

MINUTES APPROVED JUNE 5, 2020