

June 5, 2020

ELECTION CODE COMMITTEE MEETING

3:30 PM

COUNCILMEMBERS PRESENT: Troxell, Pignataro, Summers
STAFF PRESENT: Carrie Daggett, Ryan Malarky, Delynn Coldiron, Rita Knoll, Kelly DiMartino
CITIZENS PRESENT: Jody Deschenes, Robbie Moreland, Kathleen Schmidt, Kevin Jones, Jan Rossi,
Michele Haefele

(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 citizens 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

Robbie Moreland thanked the Committee for sending the recommendation to eliminate anonymous contributions to the entire Council. She stated there is no limit on donations from individuals to political committees in Fort Collins but at the state level, that limit is \$625 per two-year election cycle. She requested the Committee address this campaign finance loophole as soon as possible. She requested confirmation on her assertions that the limits do not exist, and that political committees can coordinate with candidates.

Jody Deschenes stated there are currently no limits on donations from individuals to political committees and no prohibition of coordination between candidates and political committees. She requested contributions to political committees be limited to \$100. She thanked the Committee for recommending to Council that anonymous donations be eliminated.

Kathleen Schmidt, League of Women Voters of Larimer County, thanked the Committee for its work. She expressed support for matching the state law regarding campaign contribution limits from LLCs.

Chair Pignataro asked if it is true there is no limit on contributions to political committees and that there is no prohibition of political committees coordinating with candidates. City Attorney Daggett replied the definitions of the different types of committees do not necessarily describe contribution limits; however, there is a Code provision that specifically states committees of all types shall not coordinate expenditures with any other such committee in a manner that circumvents any restrictions or limitations on campaign contributions, expenditures, or reporting. She stated there are no limits on expenditures of committees because the campaign finance system in the Code, with the exception of the limitations on contributions to candidates, is aimed at essentially bringing light to expenditures through disclosures. The reason for that is that First Amendment protections exist for political speech.

City Attorney Daggett clarified there is a limit on contributions to candidates, but not to political or issue committees. Staff is in the process of writing a memo addressing these topics.

Mayor Troxell noted self-funding of campaigns can occur as well and he discussed the importance of candidates wanting to control their own messaging.

3. CONSIDERATION AND APPROVAL OF MAY 1, 2020 COMMITTEE MEETING MINUTES

Mayor Troxell made a motion, seconded by Councilmember Summers, to adopt the May 1, 2020 Committee meeting minutes. The motion was adopted by unanimous consent.

4. STAFF REPORT: Overview of Code changes previously approved by the Election Code Committee and proposed timeline of changes to City's Election Code.

Ryan Malarkey, City Attorney's Office, outlined the previously approved Code changes which include the elimination of anonymous donations, addressing allowing candidates to use unexpended candidate committee contributions for a non-City election or a subsequent City election, and making the majority of campaign finance violations administrative penalties rather than criminal violations, among other items.

Chief Deputy City Clerk Knoll stated there is one more ECC meeting scheduled as proposed Charter amendments will need to go before the full Council by July or August to make the November ballot. The timeline for Charter amendments is different as they must be put on the ballot by ordinance, which requires two readings.

City Attorney Daggett noted staff has considered having a work session for the entire Council on July 14. Chair Pignataro supported adding these items for discussion.

5. DISCUSSION ITEMS

a. Possible Charter Amendments

- i. Consideration of possible amendment to City Charter Article VIII, Section 4(a) to eliminate the requirement that the affidavit of circulator contain a statement of the number of signers on that section of the petition.**

(No discussion needed; ECC previously supported bringing this forward to City Council.)

- ii. Consideration of possible amendment to City Charter 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.**

Knoll stated the last round of amendments included a change related to when Council takes office, but no amendments were made to when the Mayor Pro Tem is selected, which has resulted in conflicting language. She outlined options for language clarification and provided pros and cons for various options.

Mayor Troxell asked how long the outgoing Council would sit. Knoll replied they always remain until the new members are sworn in.

Mayor Troxell suggested taking the two options to the work session perhaps with a preferred option from the Commission.

Councilmember Summers stated it would be beneficial to get feedback from the full Council on this item.

Committee members and staff discussed the timeline issues with both options. Chair Pignataro stated the option that provides more time could allow for onboarding to occur, which would be an advantage.

Councilmember Summers discussed the possibility of establishing a date for the oaths of office and selection of the Mayor Pro Tem with the caveat that those dates would change if a recount is requested. Knoll replied that is essentially option one; however, there is no way to predict when the date of swearing in will be until the deadline to request a recount has passed.

Mayor Troxell asked what would trigger a mandatory recount. Knoll replied it is a difference of less than one half of one percent; however, anyone can request a recount and fund it themselves.

Councilmember Summers stated he would favor option one. Mayor Troxell concurred and stated he would prefer the swearing in to be closer to the election.

Councilmember Summers asked if the November coordinated election is occurring only for these issues. City Clerk Coldiron replied these are the only City matters as of right now.

Councilmember Summers asked about the cost of a coordinated election. City Clerk Coldiron replied the cost is based on the number of registered voters, as well as the number of other jurisdictions that are participating. The exact cost is difficult to determine, but there will be additional costs because it is a presidential election. If the ballot becomes two pages, there is a significant additional cost. She estimated the cost to be at least \$200,000.

Councilmember Summers questioned whether that cost would be worth it when the items could be rolled into the regular City election in April. City Attorney Daggett stated a ballot question could be written for the April election that would make the effective date of the changes immediate.

Chair Pignataro suggested the Committee continue the discussion at the full Council work session.

Chair Pignataro asked if there is a hierarchy to be considered for the coordinated election. Knoll replied there is a hierarchy for how questions are placed on the ballot, with municipalities following state and county items. When the City participated in the 2012 presidential election, the cost to the City was \$292,000, which did not include a second page.

iii. Consideration of possible amendment to City Charter Article VIII, Section 9 regarding corrupt practices.

City Attorney Daggett noted the issue that triggered this possible Charter amendment was the question about campaign finance complaints and the risk that someone who is elected to office would be found to have had a campaign finance violation. She stated the Code provisions reviewed by Malarky and the Commission over the past few meetings address that issue for the most part. There have not been many issues with this Charter provision from a practical standpoint.

City Attorney Daggett stated if there was concern about the Charter provision applying to activities in advance of the April election, then a Charter change should perhaps be proposed to voters.

Chair Pignataro stated she is leaning toward leaving the provision as is for now.

Councilmember Summers supported leaving the provision as is or going with the option of deleting it and having it in the Code as an ordinance. Mayor Troxell agreed.

City Attorney Daggett noted there is a challenge when discussing constraining someone from serving in a Council seat if the ordinance is contained in the Code rather than a provision in the Charter.

City Attorney Daggett suggested Malarky explain options 2 and 3, as well. Malarky replied there has been a question as to the definition of "at a City election" and both options 2 and 3 attempt to clarify that. Option 2 contains a specific intent element which would make the provision a little more specific as to the type of conduct it is trying to address. It also contains a timeframe limitation for specific offenses. Option 3 has the same narrowing of timeframe and types of offenses, but without the specific intent element. Malarky acknowledged trying to prove intent can be challenging.

Chair Pignataro stated the intent piece introduces more confusion.

City Attorney Daggett clarified this item deals with the mechanics of the election rather than campaign activities.

Chair Pignataro asked what problem is being solved by this change. City Attorney Daggett replied the current language is vague in the sense that it talks about violating any law at a City election. It may or may not be an urgent problem in the sense that it has not actually been a problem other than during the last few elections when the number of complaints has increased and there has been more risk of someone being convicted of a campaign finance violation as a criminal misdemeanor. With the Code changes recommended by the Committee, that will no longer be an issue.

Councilmember Summers made some language suggestions. City Attorney Daggett replied staff will return with some options for how this could be approached at the next meeting.

- iv. Consideration of possible amendment to City Charter Article VII, 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.**

The Committee postponed consideration of this item to the next meeting.

6. OTHER BUSINESS

None.

7. ADJOURNMENT

The meeting adjourned by unanimous consent at 5:00 PM.