

July 1, 2020

ELECTION CODE COMMITTEE MEETING

4:00 PM

COUNCILMEMBERS PRESENT: Troxell, Pignataro, Summers
STAFF PRESENT: Carrie Daggett, Ryan Malarky, Delynn Coldiron, Rita Knoll, Sara Gonzales
CITIZENS PRESENT: Jody Deschenes and Robbie Moreland

(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 process.

2. CITIZEN COMMENT

Robbie Moreland stated she would like the Committee to discuss contribution limits to political committees. Avenues of unlimited spending still exists at both the local and state levels in the form of issue committees and independent expenditures.

Jody Deschenes noted the Committee did not agree to support limiting LLC contributions to candidate committees; therefore, she and others reached out for support from the remaining Councilmembers at the last Council meeting and she looks forward to the full Council discussion on implementing the change. Limits should exist on contributions to political committees and she looks forward to a full Council discussion on this as well. Deschenes requested discussions regarding updating campaign finance forms to some sort of accessible online database and allowing electronic signature collection for petitions.

3. CONSIDERATION AND APPROVAL OF JUNE 5, 2020 COMMITTEE MEETING MINUTES

Mayor Troxell made a motion, seconded by Councilmember Summers, to adopt the June 5, 2020 Committee meeting minutes. The motion was adopted by unanimous consent.

4. DISCUSSION ITEMS

a. Possible Charter Amendments

i. Consideration of possible amendments to City Charter 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 this item was placed on the agenda as there had been a great deal of question and discussion during the 2019 election around this Section of the Charter and what the limit on City employee direct or indirect contributions meant. In order for these changes to be in effect for the April 2021 election, Charter amendments would need to be considered on the November ballot. At this point in time, there is no specific plan to move forward with a special election in November and associated costs are expected to be several hundred thousand dollars. It is worth considering whether trying to move this forward now is necessary, though it is still possible should Council desire.

Councilmember Summers asked if this provision applies to Councilmembers. City Attorney Daggett replied there is a distinction between the Council as elected officials, or City officers, and other City employees.

Mayor Troxell asked if this applies to any other type of election. City Attorney Daggett replied it only applies to City Council candidate elections and does not interfere with employees participating on their own time using their own resources regarding issues in a City election.

Mayor Troxell asked how this provision applies to spouses. City Attorney Daggett replied it is limited to actions of the City employee.

Mayor Troxell expressed support for increasing clarity, but suggested the Charter language should remain as is.

Chair Pignataro agreed with Mayor Troxell and stated ballot wording is critical to lessen confusion.

City Attorney Daggett stated the Committee may want to state to the full Council it does not recommend action in terms of putting this item on the November ballot, but may want to ask staff to consider what clarifying language could be put in the Code to interpret the provision. Chair Pignataro and Mayor Troxell agreed with that assessment.

ii. **Consideration of possible amendments to City Charter Article VIII, Section 9 regarding corrupt practices**

Ryan Malarky, Assistant City Attorney, stated this item came to Council's attention in the last election cycle when there was an enforcement action that implicated this provision, specifically the portion that would have disqualified a person from holding Council office. In response to some of the concerns raised, staff researched the issue to attempt to bring some clarity to the purpose of the provision and what issues it may be trying to address. Research did not provide any clear answer as to what "at a City election" means; therefore, staff has provided some options to help bring clarity to the meaning of the Charter provision.

Malarky stated switching from a criminal process to an administrative penalty process would aid in alleviating concerns raised about this Section. One approach could be to not recommend a change to this Section now and see how the Council decides to approach the administrative penalty process. Another approach could be to send the administrative process to Council while simultaneously moving forward with changes to this language.

City Attorney Daggett noted there was discussion at the last Committee meeting about a modification to the Charter that would include a reference to disqualifying events and that could be included in a package of Charter changes when others come forward.

Mayor Troxell supported the first option to not act on the Charter language aspect at this time. Chair Pignataro agreed.

Councilmember Summers stated it makes sense to have administrative penalties for things that are not corrupt practices. He discussed the importance of contextualizing City policies.

City Attorney Daggett stated staff will work to have the Code changes finalized for discussion at the upcoming Council work session and consideration in August.

5. OTHER BUSINESS

a. Petitioning Process Update

Chair Pignataro noted the Colorado Supreme Court declared today that online petitions are not to be allowed.

Malarky stated the Court issued a ruling in a case that specifically challenged the Governor's order allowing online petitioning. The Court ruled online petitioning is unconstitutional as the state constitution requires in-person petitioning. He stated the effect of this on the City will be examined by staff.

Mayor Troxell noted there have been active signature solicitors recently.

Chair Pignataro asked if the Clerk's Office is still working on making campaign forms searchable. Chief Deputy City Clerk Knoll replied the date stamping issue has been resolved; however, forms are not required to be filled electronically; therefore, some handwritten reports are still received and those would have to be scanned and would not be searchable. She would like to require all parties to use the provided Excel spreadsheet, however, there were issues in the last election where people converted those to other software, and they were not formatted properly when returned. Forms returned in proper Excel format can be converted to a searchable PDF.

Chair Pignataro asked how to require candidates to use the provided Excel spreadsheet. Knoll replied staff has yet to discuss whether that can be legislated in the Code. City Attorney Daggett replied that could be examined to be included as part of the August changes.

Committee members and staff discussed the reporting requirements.

Mayor Troxell commended the City Clerk's Office for being service-oriented, particularly for first-time candidates.

Knoll noted the Excel spreadsheet format is helpful to avoid math errors.

City Attorney Daggett noted the Code already states that reports are to be submitted on forms provided by the City Clerk.

Chair Pignataro commended staff work on the memo regarding political committees.

Malarky stated the memo responds to some questions that came up at a recent Council meeting following public comment. The questions include how political action committees are regulated by the City Code, whether there is a limit on the amount of contributions that can be made to a political committee, and whether political committees have the ability to coordinate with other types of committees.

Knoll noted the City does not allow political committees to make contributions to candidate committees, though the state law does.

City Attorney Daggett noted any time the City is taking action that limits political activity, it creates a need to ensure First Amendment issues are being considered.

Chair Pignataro noted political committees, small-scale issue committees, and issue committees do not have contribution limits and asked if all three types of committees have the same types of attributes. City Attorney Daggett replied small-scale issue committees are handling so little money that the requirements to which they are subject has been pared back, pursuant to applicable case law. When one of those committees grows beyond that threshold, it becomes an issue committee. Issue committees focus on ballot questions whereas political committees are focused on candidate races, although they cannot coordinate with, nor make direct contributions to, candidates.

Chair Pignataro stated she is not comfortable making a change at this point.

City Clerk Coldiron stated there are no additional Committee meetings scheduled and noted the work of the Committee would typically stop at this point until after the next election. Staff will put forth an item calling for a special election in November simply as a placeholder.

Chair Pignataro asked if the Committee would need to meet again should Charter amendments be desired to be placed on the April ballot. City Clerk Coldiron replied that could either go before the Committee at another meeting or could go before the full Council.

Chair Pignataro suggested not scheduling another meeting at this time but waiting until after the work session to see if it would be needed. Mayor Troxell and Councilmember Summers concurred.

6. ADJOURNMENT

The meeting adjourned by unanimous consent at 4:55 PM.