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MEMORANDUM

DATE: November 18, 2022

TO: Honorable Mayor and City Councilmembers

FROM: Anissa Hollingshead, City Clerk

RE: **Ordinance Protest and Referendum Process**

The purpose of this memorandum is to provide a brief overview process-wise regarding the potential for a referendum to come forward relating to the Council's adoption of the Land Development Code, including known timing at this point.

The parameters of the referendum process are provided in the Fort Collins Home Rule Charter in Article X as well as the City Code in Chapter 7, Article VI, with both included as an attachment to this memo. A successful petition effort for a referendum requires valid signatures from registered Fort Collins in an amount equal to 10% of the total ballots cast in the last regular city election. That amount, based on the 2021 City Election, is 4,223 valid signatures.

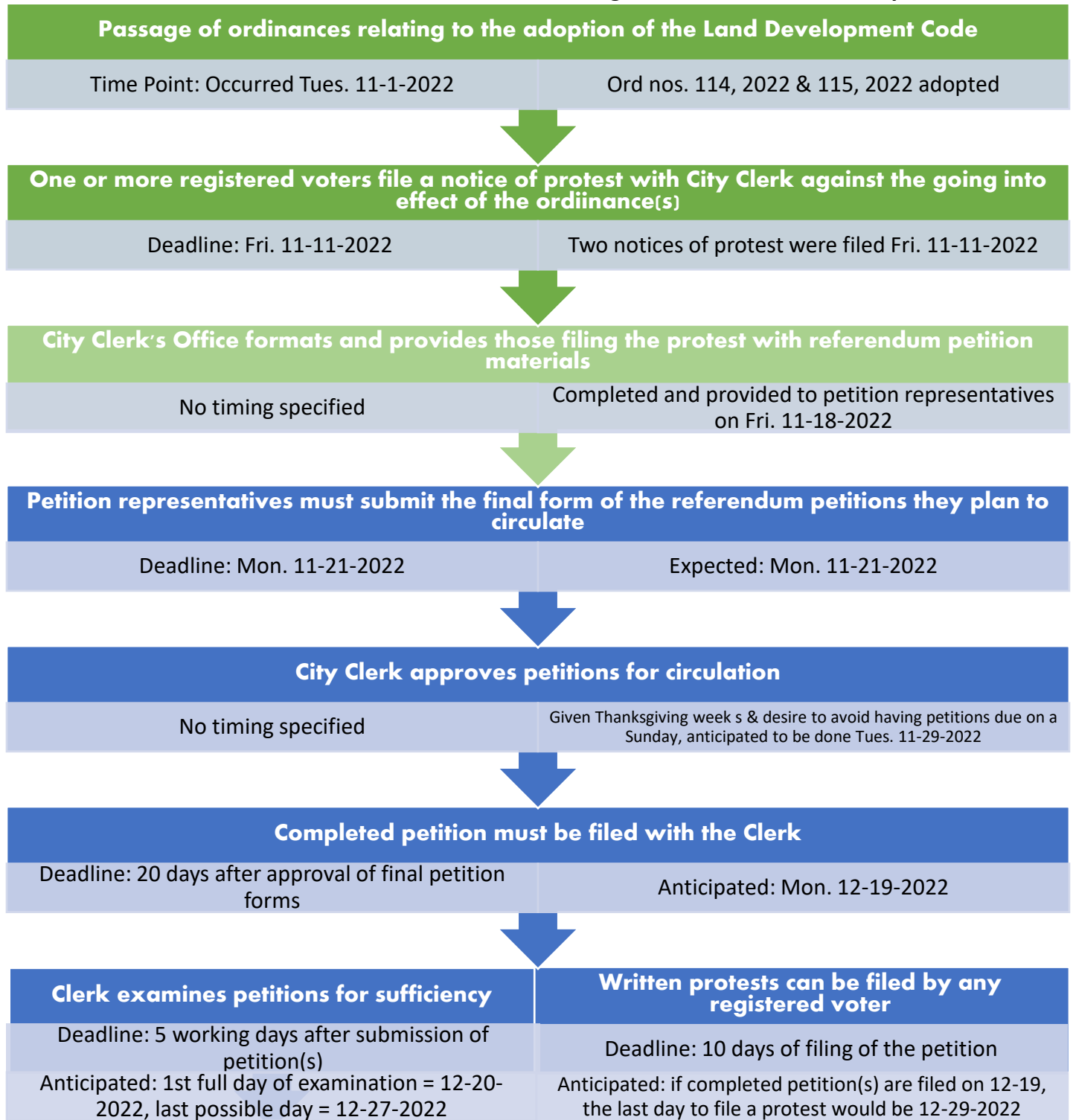
Current Status

Work with the petition representatives has been completed to identify their intent to move forward with a single petition, protesting Ordinance No. 114, 2022, and finalizing the names and addresses of three designated petition representatives (Ross Cunniff, David Roy and Eric Hamrick) as well as the general statement of purpose for petition to be circulated. Using the form of petition approved by the City Council via Ordinance No. 159, 2004, the Clerk's Office has prepared petition forms that are being picked up by the petition representatives for their assembly and numbering.

Timing

The process steps and potential timing outlined here are intended to provide a cursory initial overview of what is possible to occur. After the initial deadline set forth in the Charter for filing a notice of protest, all other dates are dependent at least in part on subsequent actions. As this process progresses, timely communication will continue to ensure Councilmembers, the City organization, and the community have a clear picture of what to expect.

Outline and Timeline of the Referendum Process through Examination of Sufficiency



Next Steps

As of today, Friday, November 18, 2022, the City Clerk's Office has completed the process in the preceding chart through the third listed step. The next step of this process will be the submission of those final petition forms, assembled and numbered, back to the Clerk's Office by end of day Monday, November 21, 2022. At that point, each section provided must be reviewed to ensure it is complete with nothing removed or added. Once the City Clerk's Office finishes this review and approves the final petition sections that will be circulated for signature, the 20-calendar day circulation period starts.

It is currently anticipated the final approval of the petition sections will be completed by Tuesday, November 29, 2022. The week of November 21 is shortened due to the Thanksgiving holidays, likely pushing the completion of this review process into the following week. Targeting the completion of this process for Tuesday to start the 20-day circulation period ensures the deadline for submission of the completed petitions will occur on Monday, December 19, rather than over the preceding weekend. Existing language in the City Charter does not include provisions regarding calculation of days when calendar days are specified, creating potential dispute regarding weekend deadlines. In addition, because of the recency of the November election and the lock down that occurs of the statewide voter database, SCORE, around every state election, there is a benefit to having the process to examine the sufficiency of completed petitions start the week of December 19, especially given the five-day deadline for review of the completed petitions. It is more likely Larimer County will be able to provide the Clerk's Office with an updated list of registered voters at the time of petition circulation for the examination process.

Examination of Completed Petitions

Once completed petitions are submitted to the Clerk's Office as a single instrument, they will be examined for sufficiency. The City Clerk has five working days to complete this process, meaning if completed petitions are submitted on Monday, December 19, this process will run through Tuesday, December 27 due to the Christmas holiday. The first step taken when a completed petition is submitted is to ensure a sufficient number of signatures are included to reach the minimum threshold required for the petition as a whole to be valid prior to an examination of validity of individual signatures. In this instance, 4,223 valid signatures will be required for a petition for referendum to be successful.

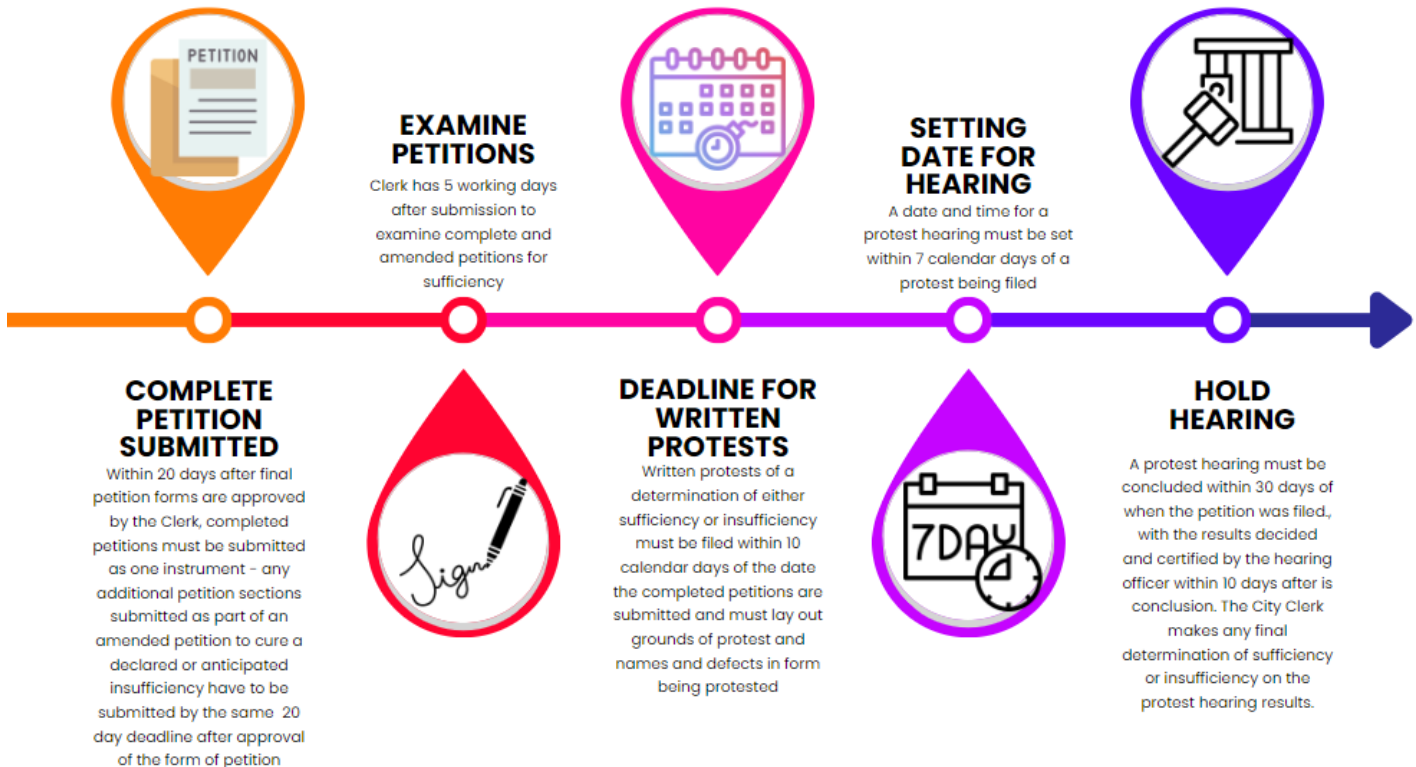
Examination of petitions includes the review of submitted names, addresses, and signatures to ensure each signature is from a Fort Collins resident registered to vote at the time they signed the petition under the name and address listed in the petition.

Outline of Protest Provisions and Related Timing

Written protests can be filed by any Fort Collins registered voter of the City Clerk's determination that a petition is either sufficient or insufficient within 10 days of the filing of the

petition. The City Clerk must set a time for hearing any protest not more than 7 days after it is filed.

- A protest hearing must be completed within 30 days after the petition is filed
- Results must be decided and certified within 10 days after the conclusion of the hearing



If a Petition is Found Insufficient

If the City Clerk’s initial determination is a petition is insufficient it can be amended to submit additional signatures, but only within the same initial 20-day circulation period – there is no additional cure period for referendum petitions.

If a Petition is Found Sufficient

At the point the City Clerk certifies a petition as sufficient, either at the expiration of the 10-calendar day protest period or the conclusion of the process if a protest is filed:

1. The Clerk presents the petition to the City Council, automatically suspending the operation of the ordinance subject to the petition.
2. The Council must reconsider the ordinance at its next regular or special meeting. If the Council does not repeal the ordinance, it must refer the ordinance to the voters at the next regular or special city election scheduled for any other purpose, or may call a special election for that purpose.

Responsibility for Process

Pursuant to Article VIII – Elections, Section 5 – Board of Elections, the Charter creates a Board of Elections consisting of the City Clerk, the Chief Deputy City Clerk, and the Chief Judge with responsibility for any election duties specified in the Charter. In practice, the City Clerk and Chief Deputy City Clerk manage election-related responsibilities on behalf of the City.

As the potential for a referendum moves forward, questions and inquiries regarding process should be directed to myself or Rita Knoll as the Chief Deputy City Clerk as the organization’s designated election officials. Ensuring complete accuracy in all public statements is essential to the integrity of potential referenda and aids in maintaining necessary separation between these processes and the City’s policy actions.

Attachments being provided with this memo include:

1. Excerpts of City Charter and Code provisions relating to Referendums

FORT COLLINS CHARTER – ARTICLE VIII - ELECTIONS

Section 5. Board of Elections.

There is hereby created a Board of Elections consisting of the City Clerk, Chief Deputy City Clerk, and Chief Judge. The Board shall be responsible for any election duties specified in this Charter and for such additional duties related to the conduct of elections as may be established by the Council by ordinance.

(Ord. No. 201, 1986, § 1, Part H, 12-16-86, approved, election 3-3-87; Ord. No. 202, 1986, § 1, Part V, 12-16-86, approved, election 3-3-87; Ord. No. 11, 1997, § 1, 2-4-97, approved, election 4-8-97; Ord. No. 022, 2007, §1, 2-20-07, approved, election 4-3-07; Ord. No. 015, 2021, § 2, 1-19-21, approved, election 4-6-21)

FORT COLLINS CHARTER – ARTICLE X – INITIATIVE AND REFERENDUM

Section 2. The referendum.

- (a) Power. The registered electors of the city shall have the power at their option to approve or reject at the polls, any ordinance adopted by the Council, except ordinances making the annual property tax levy, making the annual appropriation, calling a special election, or ordering improvements initiated by petition and to be paid for by special assessments.
- (b) Commencement of proceedings. One (1) or more registered electors may commence referendum proceedings by filing with the City Clerk within ten (10) days after final passage of the ordinance in question, a notice of protest against the going into effect of the ordinance. The notice shall be brief and need not state any reasons, but shall identify the ordinance or part thereof, or code section it proposes to have repealed. Not later than ten (10) days after the filing of the notice, the proponents shall present to the City Clerk the final form for the referendum petition conforming to the requirements of the Article. If the notice and petition form are timely presented, the City Clerk shall approve the petition form for circulation, in accordance with Section 5(b) of this Article. The petition shall be circulated, signed, verified, and filed in the manner prescribed by Section 5 of this Article.
- (c) Number of signatures required. The petition must be signed by registered electors of the city equal in number to at least ten (10) percent of the total ballots cast in the last regular city election.
- (d) Petition deadlines. The referendum petition shall be filed within twenty (20) days after the City Clerk's approval of the petition for circulation. If a completed petition is not subsequently filed within the requisite time after the City Clerk's approval of the petition for circulation, the referendum effort is null and void and the petition shall not be circulated further.
- (e) Action by Council. The presentation to Council of a petition certified by the City Clerk as sufficient for referendum shall automatically suspend the operation of the ordinance in question pending repeal by Council or final determination by the electors. The Council shall reconsider the ordinance at the next regular or special meeting of the Council following the receipt of the petition by the City Clerk. If the ordinance, or that part sought to be repealed, is not repealed, the Council shall refer the same to a vote of the registered electors at the next regular or special city election scheduled for any other purpose. Alternatively, the Council may call a special election for that specific purpose.

(Ord. No. 6, 1980, 1-16-80, approved, election 2-26-80; Ord. No. 199, 1986, § 1, Part B, § 2, 12-16-86, approved, election 3-3-87; Ord. No. 202, 1986, § 1, Part V, 12-16-86, approved, election 3-3-87; Ord. No. 11, 1997, § 1, 2-4-97, approved, election 4-8-97; Ord. No. 127, 1999, § 1, 8-17-99, approved, election 11-2-99)

Section 5. Petitions.

- (a) Separate petitions required. A separate petition shall be circulated and filed for each measure sought to be initiated or referred to the vote of the electors.
- (b) Form and content.
 - (1) Approval of form for circulation. No petition shall be circulated until the City Clerk has approved the form for circulation. The City Clerk shall first determine that the petition form contains only the matters required by this Article. The Council shall prescribe by ordinance, upon recommendation of the City Clerk, a general form of petition which shall contain warnings and notices to signers as necessary. The City Clerk's approval under this Section shall not constitute an approval of the content of the petition, but rather, shall start the running of the time periods provided for circulation and filing of petitions.
 - (2) Petition content. The petition shall be addressed to Council.
 - a. Initiative. The petition shall contain or have attached to each section throughout its circulation the full text of the proposed ordinance or resolution and shall contain a general statement of purpose fairly and accurately summarizing the proposed ordinance or resolution, indicating that the petition is to be circulated in support of the initiated ordinance or resolution and specifying whether a special election is requested.
 - b. Referendum. The petition shall contain or have attached to each section throughout its circulation the full text of the ordinance sought to be referred, clearly identifying the protested portions if only a partial repeal is sought. In the case of bond ordinances, the full text of the ordinance need not be set forth but the petition shall contain or have attached to each section throughout its circulation the title and summary of the ordinance in question as prepared by the City Clerk.
 - (3) Signatures. Only registered electors may sign the petitions authorized under this Article. Each signer must sign his or her own signature and each signature shall be followed by the printed name of the signer, the street and number address of his or her residence, and the date of signing. No person shall knowingly sign an initiative or referendum petition more than once. In the event that the signature of any person appears more than once on a petition authorized under this Article, the first signature verified shall be counted and all other signatures of that person shall be rejected.
- (c) Circulation of petition. The petition may be circulated and signed in sections with each section consisting of one (1) or more sheets securely fastened at the top, provided that each section contains a full and accurate copy of the text of the petition and the names and addresses of the designated representatives for the petition. All sections shall be filed as one (1) instrument. Only persons eighteen (18) years of age or older may circulate the petition for signatures. The circulation of any petition by any medium other than personally by a circulator is prohibited. No person shall receive any compensation whatever for signing an initiative or referendum petition.
- (d) Affidavit of circulator. A circulator shall attach to each section of the petition circulated an affidavit signed by the circulator under oath before a notary public stating the following:
 - (1) the circulator's address of residence;
 - (2) that the circulator is eighteen (18) years of age or older;
 - (3) that he or she personally circulated the section;
 - (4) that each signature was affixed in the circulator's presence;

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- (5) that to the best of the circulator's knowledge and belief each signer was at the time of signing a registered elector of the city;
 - (6) that to the best of the circulator's knowledge and belief each signature is the genuine signature of the person whose name it purports to be;
 - (7) that each signer had an opportunity before signing to read the full text of the petition; and
 - (8) that the circulator has not paid or offered to pay any money or other thing of value to any signer for the purpose of inducing or causing the signer to affix his or her signature to the petition.

A petition verified by the valid affidavits of its circulators in each of its sections shall be prima facie evidence that the signatures thereon are genuine and true.

- (e) Time limits; petition representatives. Petitions for initiative and referendum shall be filed with the City Clerk within the requisite time limits or they will be deemed null and void. Each petition shall designate by name and address not less than three (3) nor more than five (5) registered electors who shall represent the signers of the petition in all matters affecting the petition.
- (f) Sufficiency of petition.
 - (1) Examination. Within five (5) working days of the filing of a petition the City Clerk shall ascertain by examination of the petition and the registration books whether the petition is signed by the requisite number of registered electors and contains the required particulars and affidavits. If the petition is insufficient, the City Clerk shall so certify and forthwith notify all of the designated petition representatives in writing, specifying the particulars of insufficiency.
 - (2) Insufficient petition; amendment.
 - (i) If an initiative petition is deemed insufficient, whether following the initial determination by the City Clerk, or following protest proceedings, it may be amended by the submission of additional signatures collected after the City Clerk approved the form of the petition and within fifteen (15) days from the filing of the Clerk's certificate of insufficiency. Such signatures must be collected consistent with the requirements for collecting petition signatures as described in this Article. Within five (5) working days after such amendment, the City Clerk shall make examination of the amended petition and certify the result. If the amended petition is still insufficient, or if no amendment was made before the expiration of the time permitted for amendment, the petition shall be null and void without prejudice to the filing of a new petition for the same purpose.
 - (ii) If a referendum petition is deemed insufficient, it may be amended by the submission of additional signatures collected consistent with the requirements of this Article, but to be considered, must be amended within the twenty-day circulation period after the City Clerk's approval of the petition form for circulation. Within five (5) days after such amendment, the City Clerk shall make like examination of the amended petition and certify the result. If the amended petition is still insufficient, or if no amendment was made before the expiration of the time permitted for amendment, said referendum petition is null and void and a new petition may not thereafter be filed for referendum of the same ordinance.
 - (3) Protests. Registered electors desiring to protest a determination by the City Clerk that a petition is either sufficient or insufficient may file a written protest, under oath, in the office of the City Clerk within ten (10) days of the filing of the petition. The protest shall set forth with particularity the grounds of protest and the names and defects in form protested. Upon the filing of a protest, the City Clerk shall set a time for hearing such protest, which shall be no more than seven (7) days thereafter. At least five (5) days prior to the hearing, the City Clerk shall mail a copy of the protest to all of the designated petition representatives together with a notice of the time for hearing. All hearings shall be before a hearing officer appointed by the City Manager who shall have the power to issue subpoenas

to compel the attendance of witnesses and the production of documents. All records and hearings shall be public, and all testimony shall be under oath. The hearing shall be summary in nature and concluded within thirty (30) days after the petition was filed. Said hearing officer shall decide and certify the results of the hearing within ten (10) days after the hearing is concluded. The City Clerk shall make any final determination regarding the sufficiency or insufficiency of a petition and shall base such determination on the protest hearing results certified by the hearing officer. A petition for referendum which has been deemed insufficient after protest may not be amended or circulated further.

- (4) Certification and presentation to Council. When and if a petition or amended petition is deemed sufficient, whether following the sufficiency determination by the City Clerk in the absence of a protest, or following protest proceedings, the City Clerk shall so certify and present the certified petition to the Council at the next regularly scheduled meeting. The City Clerk's certificate shall then be a final determination as to the sufficiency of the petition.

(Res. No. 83-22, 1-18-83, approved, election 3-8-83; Ord. No. 199, 1986, § 1, Part B, § 4, 12-16-86, approved, election 3-3-87; Ord. No. 202, 1986, § 1, Part V, 12-16-86, approved, election 3-3-87; Ord. No. 158, 1988, 12-20-88, approved, election 3-7-89; Ord. No. 21, 1993, § 1, 2-16-93, approved, election 4-6-93; Ord. No. 11, 1997, § 1, 2-4-97, approved, election 4-8-97; Ord. No. 88, 2000, § 1, 8-15-00, approved, election 11-7-00; Ord. No. 004, 2015, § 1, 1-20-15, approved, election of 4-7-15)

Section 6. Elections.

- (a) Generally. Elections on initiative and referendum measures shall be conducted in the same manner as provided generally for regular or special city elections in this Charter.
- (b) Ballots. Upon ordering an election on any initiative or referendum measure, the Council shall, after public hearing, adopt by resolution a ballot title and submission clause for each measure. The ballot title shall contain information identifying the measure as a city initiated or citizen initiated measure. The submission clause shall be brief, shall not conflict with those selected for any petition previously filed for the same election, and shall unambiguously state the principle of the provision sought to be added. The official ballot used when voting upon each proposed or referred measure shall have printed on it the ballot title and submission clause and shall contain the words, "Yes/For" and "No/Against" in response to each measure.
- (c) Publication; notice of election.
 - (1) Initiative. An initiated measure being considered for adoption by Council shall be published in like manner as other proposed ordinances and resolutions. If the initiated measure is submitted to a vote of the people, the City Clerk shall publish a notice of election in conformity with the laws of the State of Colorado relating to municipal elections, together with the ballot title, submission clause and full text of the proposed ordinance or resolution. The text of a successful initiative measure need not be published in full after the election.
 - (2) Referendum. If the referred measure is to be submitted to a vote of the people, the City Clerk shall publish a notice of election in conformity with the laws of the State of Colorado relating to municipal elections, together with the ballot title, submission clause and full text of the referred ordinance. If the ordinance in question is a bond ordinance, the summary from the petition may be published in place of the full text. The full text of an ordinance passed on referendum need not be published after the election.
- (d) Election results. If a majority of the registered electors voting on the initiated measure vote in favor, the measure is adopted as an ordinance or resolution of the city upon certification of the election results. If a majority of the registered electors voting on a referred ordinance, vote in favor of the ordinance, the ordinance shall go into effect without further publication upon certification of the election results, or at such

later date as may be set forth in the ordinance itself. If the provisions of two (2) or more proposed or referred measures adopted or approved at the same election conflict, the measure receiving the highest affirmative vote shall become effective.

- (e) Frequency of elections. Any number of proposed ordinances or resolutions or referred ordinances may be submitted at the same election. Not more than one (1) special election on citizen-initiated measures shall be held in any twelve (12) months. This limitation does not apply to the Council which on its own motion may at any time call a special election for the purpose of considering any measure initiated, or adopted and referred, by the Council.

(Res. No. 83-22, 1-18-83, approved, election 3-8-83; Ord. No. 199, 1986, § 1, Part B, § 5, 12-16-86, approved, election 3-3-87; Ord. No. 202, 1986, § 1, Part V, 12-16-86, approved, election 3-3-87; Ord. No. 11, 1997, § 1, 2-4-97, approved, election 4-8-97; Ord. No. 004, 2015, § 1, 1-20-15, approved, election of 4-7-15)

Section 7. Further regulations.

The Council may, by ordinance, make such further rules and regulations as are consistent with this Charter and the Colorado Constitution in order to carry out the provisions of this Article.

(Res. No. 83-22, 1-18-83, approved, election 3-8-83; Ord. No. 199, 1986, § 1, Part B, § 6, 12-16-86, approved, election 3-3-87; Ord. No. 202, 1986, § 1, Part V, 12-16-86, approved, election 3-3-87; Ord. No. 11, 1997, § 1, 2-4-97, approved, election 4-8-97)

FORT COLLINS CODE – CHAPTER 7 – ELECTIONS

ARTICLE II - ADMINISTRATION

Division 2 Board of Elections¹

Sec. 7-26. Duties.

The Board of Elections, as established in Article VIII, Section 5 of the Charter, shall be responsible for certifying the results of all City elections in the manner described in Article VIII, Section 7 of the Charter, and shall have such other duties related to the conduct of elections as may be established by the Council by ordinance.

(Ord. No. 063, 2007, § 1, 5-15-07)

Secs. 7-27—7-40. Reserved.

ARTICLE VI. INITIATIVE AND REFERENDUM

¹Charter reference(s)—Board of Elections, Art. VIII, § 5.

Cross reference(s)—Boards and commissions, § 2-71.

Sec. 7-155. Generally.

The manner of exercising the powers of initiative and referendum with regard to ordinances and resolutions of the City shall be governed by the provisions of this Article and the provisions of Article X of the Charter. Any matter not covered by the State Constitution, this Article or other provisions of the Code shall be governed by the laws of the State relating thereto.

(Ord. No. 23, 2001, 2-20-01)

Sec. 7-156. Protests of proposed ballot title and/or submission clause.

Any registered elector desiring to protest a proposed ballot title and/or submission clause for any initiated or referred measure shall file a notice of protest with the City Clerk no later than noon on the Monday immediately preceding the date upon which the City Council will consider the ordinance on first reading, or resolution, setting the ballot title and submission clause. Such notice of protest shall be on a form available from the City Clerk, shall be signed by the protestor(s), and shall set forth: (1) the name, address, and phone number of the protestor(s); (2) the title of the ordinance or resolution being protested; (3) with particularity, the grounds of the protest; and (4) any other information required by the City Clerk. Such protest shall be heard, considered and resolved by the City Council prior to the adoption of said ordinance or resolution. Any legal challenge of the form or content of a City ballot title and/or submission clause for any initiated or referred measure shall be brought in the City's Municipal Court or Larimer County District Court using the procedure set forth in, and in accordance with, Section 1-11-203.5, Colorado Revised Statutes, as amended, which shall be the exclusive manner for such legal challenges.

(Ord. No. 23, 2001, 2-20-01; Ord. No. 021, 2016, § 14, 3-1-16)

Secs. 7-157—7-164. Reserved.