



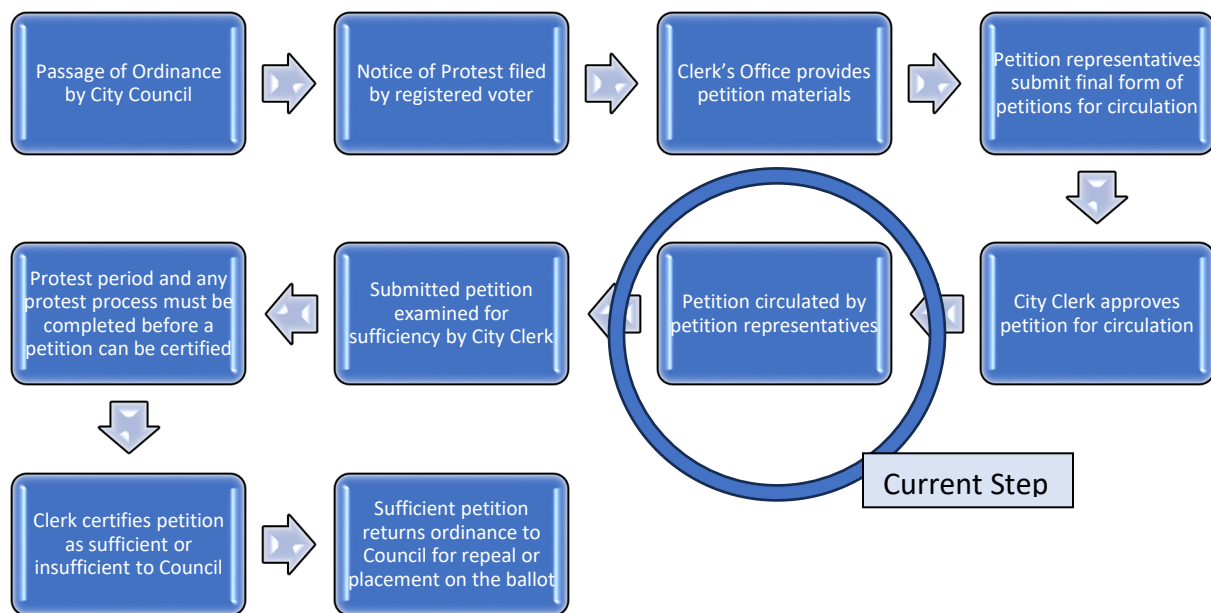
City Clerk
300 Laporte Avenue
PO Box 580
Fort Collins, CO 80522
970.221.6515
970.221-6295 - fax
fcgov.com/cityclerk

MEMORANDUM

DATE: November 21, 2023
TO: Honorable Mayor and City Councilmembers
FROM: Anissa Hollingshead, City Clerk
THROUGH: Kelly DiMartino, City Manager
RE: **Ordinance Protest and Referendum Process Update No. 3:
Addressing questions relating to the process**

The process for the referendum petition against the going into effect of Ordinance No. 136, 2023, is currently in the middle of the 20-day petition circulation period. That period ends at 5 p.m. on Tuesday, November 28. As requested at Leadership Planning Team, the purpose of this memorandum is to ensure City Council is aware of how the City Clerk’s Office is providing answers to the public and other petition stakeholders regarding specific aspects of both the petition circulation process and campaign finance requirements associated with the referendum effort.

OVERVIEW OF REFERENDUM PROCESS



How Information About the Referendum Petition Process is Being Shared

The City website is the primary way the City Clerk's Office is ensuring all stakeholders have access to the same information about the referendum process at each stage. In addition, memos updating City Council are being provided directly from the City Clerk as public documents for maximum accessibility.

Updated structure and content was developed by the City Clerk team to the Office's section of the City website once the petition process began. Previously, there was a page providing an overview of the various types of petitions possible as well as a specific page with content about the 2022 referendum petition process. An administrative decision was made to break out more detailed information about the referendum process generally into its own page, and to enable details about any specific referendum efforts to be part of that page whenever any such effort was commenced. That new page was designed and added on Tuesday, October 31, and contains details about both the 2022 referendum process and the current 2023 process. The 2023 process information is being added continually. The referendum page is located at fcgov.com/elections/referendums.

Also part of the City Clerk's webpage are FAQs regarding various election topics. There is a specific section of the FAQs relating to the referendum process. That is where answers to questions coming into the Clerk's Office are being shared as well as the information being provided in this memo specifically regarding campaign finance provisions applying to the referendum process. There is a link to the FAQs from the referendum page and they are also directly accessible at fcgov.com/elections/faq.

When questions are received by the City Clerk's Office, answers are provided that link directly to these FAQs in order to ensure every party receives the same information. If a question comes up that is not already addressed in the FAQs, it is an opportunity to add to these FAQs as well. Any time such an inquiry occurs, the City Clerk's Office works closely with the City Attorney's Office as the City's legal advisor to ensure information being provided is accurate and vetted for legal considerations. The realm of the referendum process as well as related areas such as any enforcement activities and campaign finance provisions all involve interpretation of code provisions and require legal advice. As always, outside parties are also encouraged to consult their own legal advisors regarding any matters of legal interpretation, as the City Clerk's Office is unable to provide legal advice, and the City Attorney serves as the City's legal advisor.

Questions Regarding Campaign Finance Provisions Applying to the Referendum Process

The City Attorney's Office has advised the City's own campaign finance requirements and restrictions found in City Code go into effect once a referendum process is started by the filing of a notice of protest. In this instance, that notice of protest was filed Friday, October 27, and marked the start of the applicability of the City's provisions in [Chapter 7, Article V of the City Code](#).

The Code includes provisions that apply to:

- reporting any spending by an individual or entity that exceeds \$250 in total to support or oppose the referendum or measure to be referred;
- when people working together or receiving contributions must register as either a small issue committee or an issue committee once reaching minimum spending thresholds;
- when tracking of sources of funds and expenditures must occur; and
- what reporting requirements apply to issue committees.

In response to questions both from members of the public and discussions at Leadership Planning Team meetings, a memo was requested outlining the specifics of these provisions. The City Attorney's Office has prepared a summary to be posted on the City website that also forms the basis of this memo on the subject. There is some layering in how these requirements apply. For clarity, the three general categories of applicable requirements are outlined below. Charts illustrating how these requirements play out are also being provided to better demonstrate when different provisions apply.

Categories of Requirements

Independent Expenditures:

- Reporting of independent expenditures regarding the referendum is required within three business days of obligating funds for an expenditure to support or oppose the referendum or referred measure, if:
 - the expenditure causes the total of those expenditures to meet or exceed \$250 (or that total has already been exceeded).
- The person making the expenditure must report it on the required form provided by the City Clerk's Office.
 - Forms can be found online here: fcgov.com/elections/independent-expenditures
- Communications for which an independent expenditure must be reported must also include the required "paid-for-by" information.
- Any person making independent expenditures to advocate for or against the referendum must register as an issue committee within three business days of obligating an aggregate amount of \$2,500 or more.
- The initial report of any such committee must at the time of registration provide the dates of any reports of independent expenditures previously made and the source of funds for them.

Small-scale Issue Committees:

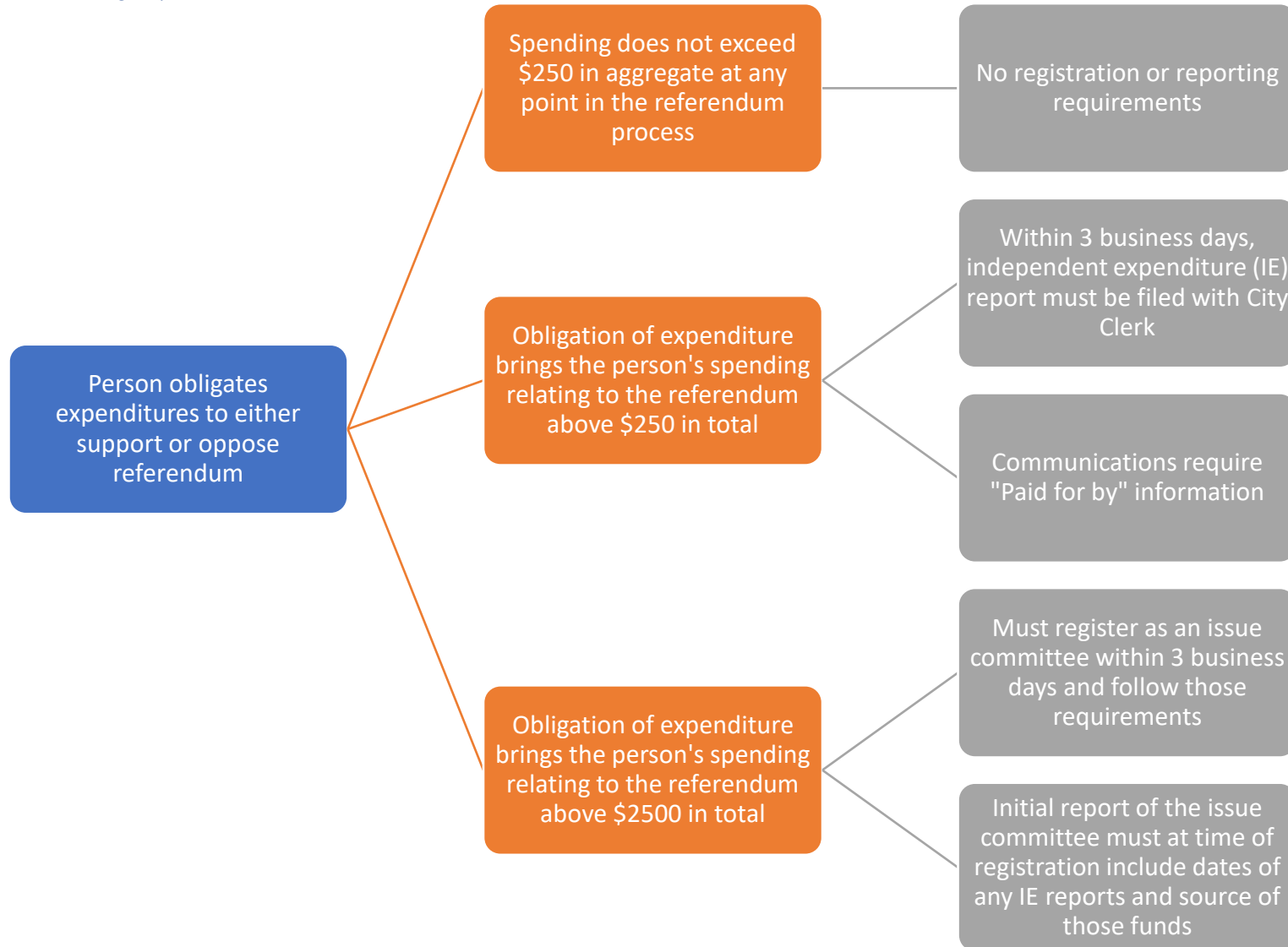
- Small-scale issue committees (people working together or receiving contributions) must register once they have spent \$250, track sources of funds and expenditures, and must begin operation as a full-fledged issue committee and meet all related requirements once they have spent \$2,500.

Issue Committees:

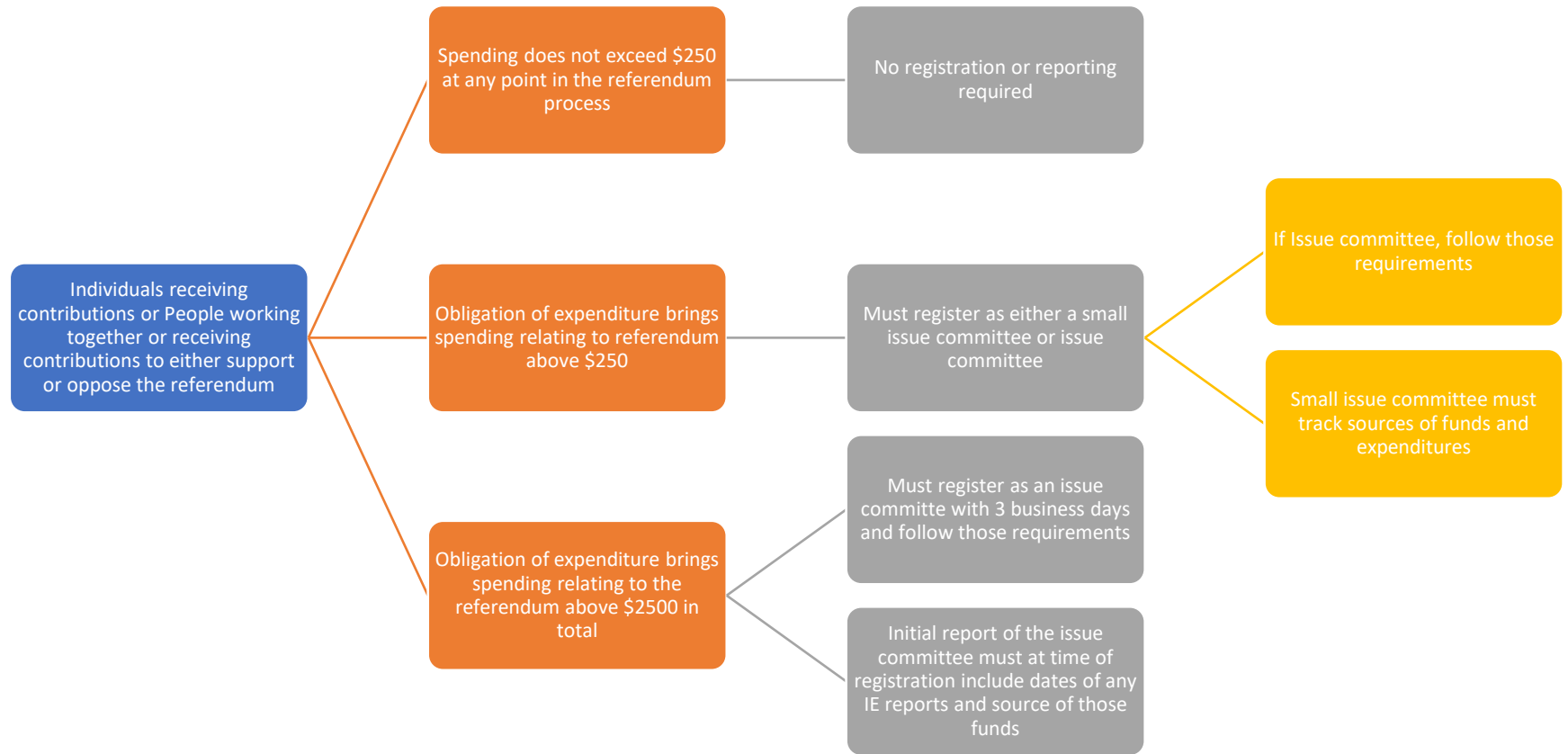
- Any person receiving or taking steps to receive contributions to fund activities to support or oppose the referendum or referred measure, or any groups of more than one person coming together to receive contributions or make expenditures, must register as an issue committee at the time the activities begin.
 - Information required at the time of registration and related forms are provided online at: fcgov.com/elections/committees
 - Issue committees must track all funds received and expenditures and provide financial reporting starting the 35th day prior to the date of the election scheduled for the referred measure, and then on several subsequent dates.
- Those who would otherwise be required to register as an issue committee, may choose to operate as a small-scale issue committee until the \$2,500 threshold is reached.

Requirements Based on Role and Spending Levels

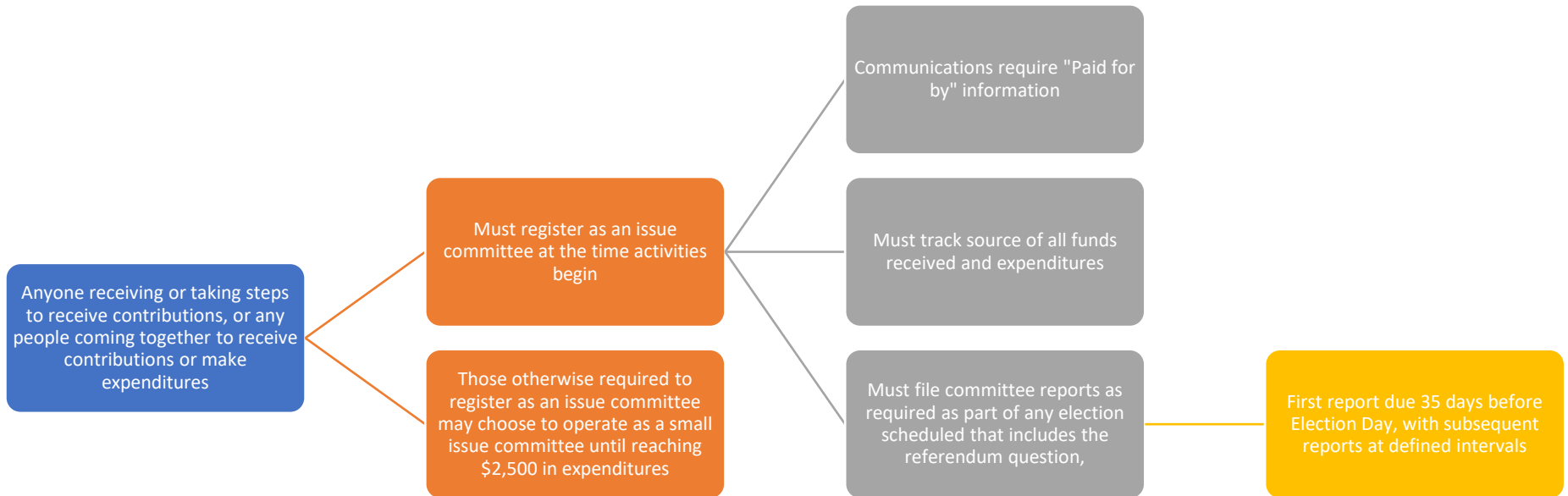
Person Making Expenditures



Individuals Receiving Contributions or People Working Together or Receiving Contributions Making Expenditures



Individuals Taking Contributions or Groups Formed to Receive Contributions or Make Expenditures



Other Requirements for Committees

Any committee will also be required to use unexpended funds in accordance with the requirements in the Code and to terminate the committee once its activities are completed.

It is important to note that the City Code also includes general prohibitions that would apply to referendum campaign activities. For example:

- Committees are prohibited from coordinating with each other or making contributions to each other.
- Contributions by LLC's require special documentation.
- Committees are prohibited from knowingly accepting contributions or contributions in kind from any person who is not a citizen of the United States, and from any foreign government or corporation that does not have authority to transact business in Colorado, or is prohibited from contributing under the City Charter.
- No person may make a contribution in the name of another.
- No person may make a contribution for which that person will be reimbursed by another.
- No committee may pay a higher charge for media services or receive a rebate of amounts paid. Discounted rates constitute a contribution in kind subject to reporting requirements.

Finding Committee Registration and Report Information

Campaign reports are public records and are posted on the City's website soon after submittal. Any committee registrations (there is currently one) or independent expenditure reports received (currently none) are also posted on the [Referendum webpage](#).

What to Expect Next

City Clerk staff is currently working to finalize updates to the petition checking process required as part of the inclusion of the exhibit book in this petition process. This manual is relied upon in this process and will be up to date and available for our staff participating as petition examiners. The intent is also to make it available for review by the City Council and the public in the interest of demonstrating the Office's commitment to clear and transparent processes.

This manual includes details regarding how the examination of the petition works. In response to specific questions about what actually is verified on a petition by the City Clerk's Office, a brief overview is being provided now. At a high level, the process includes several key steps to first ensure the submitted petition is valid and then to verify each of the signatures contained to determine sufficiency.

1. **Determining the submitted petition is valid.** Each petition section submitted is logged in a spreadsheet, with the number of the last line used on the petition noted. Total signature counts from all sections are totaled to estimate of the actual number of signatures submitted. If that number is less than the number of required valid

signatures (4,228), it is not a valid petition, and the referendum process ends. If greater, the process moves to the next step.

2. **Verification of each petition section for adherence to Charter requirements.** Each section is examined, with particular attention given to the Affidavit of Circulator attached to each, to determine that it meets the requirements of the Charter. If not, the section is set aside for further review and consultation with the City Attorney's Office. If it does comply, the section moves to the next step. Because there is also a separate exhibit book required as part of circulation in this particular effort, those must also be examined after circulation to ensure completeness and adequacy.
3. **Verification of individual signatures.** Colorado law does not permit municipal clerks to have full access to the state's voter database, SCORE. Access is generally provided to municipalities through their county clerk, with limitations for certain elements in the database considered private data, including full birth dates and signature images. Municipalities are only authorized to view any signature images for comparisons as part of processing mail ballots in an election and no municipality or county in Colorado is allowed to use signature images for comparisons as part of petition verification. Larimer County provides current voter registration records that are loaded into a database used to search for each signer of the petition to verify they are a registered voter under the name and address used to sign the petition. The database provides examiners with multiple ways to search by name and/or address until there is reasonable certainty that all methods of determining status have been exhausted.

Additional questions received by the City Clerk's Office will be added to the FAQs on the website when appropriate. The next planned update to City Council will occur prior to the point the petition is due, providing more details on the full petition review process as well as the parameters for the protest period that also begins when the petition is submitted for review. Following submission of the petition, City Council will be updated advising on what is turned in and when.

Attachment being provided with this memo:

1. Chart with Outline and Timeline of the Referendum Process through Examination of Sufficiency

cc: **City Manager Kelly DiMartino**
 City Attorney Carrie Daggett
 Deputy City Manager Tyler Marr
 Assistant City Manager Rupa Venkatesh

Outline and Timeline of the Referendum Process through Examination of Sufficiency

