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MEMORANDUM

DATE: November 29, 2023

TO: Honorable Mayor and City Councilmembers

FROM: Anissa Hollingshead, City Clerk

RE: **Ordinance Protest and Referendum Process Update No. 4:
Petition Submission and Start of Timeframes for Examination and Protest
Periods**

The complete referendum petition against the going into effect of Ordinance No. 136, 2023, has been submitted to the City Clerk's Office. Work has been completed to determine the petition as submitted is valid, as 6,718 signature lines were used in the complete petition, and examination of the petition has begun. The purpose of this memorandum is to provide more details on the next two steps of the referendum process that begin now that the City Clerk has determined the submitted petition is valid.

BOTTOM LINE

Submission of the petition starts two processes and their associated timelines:

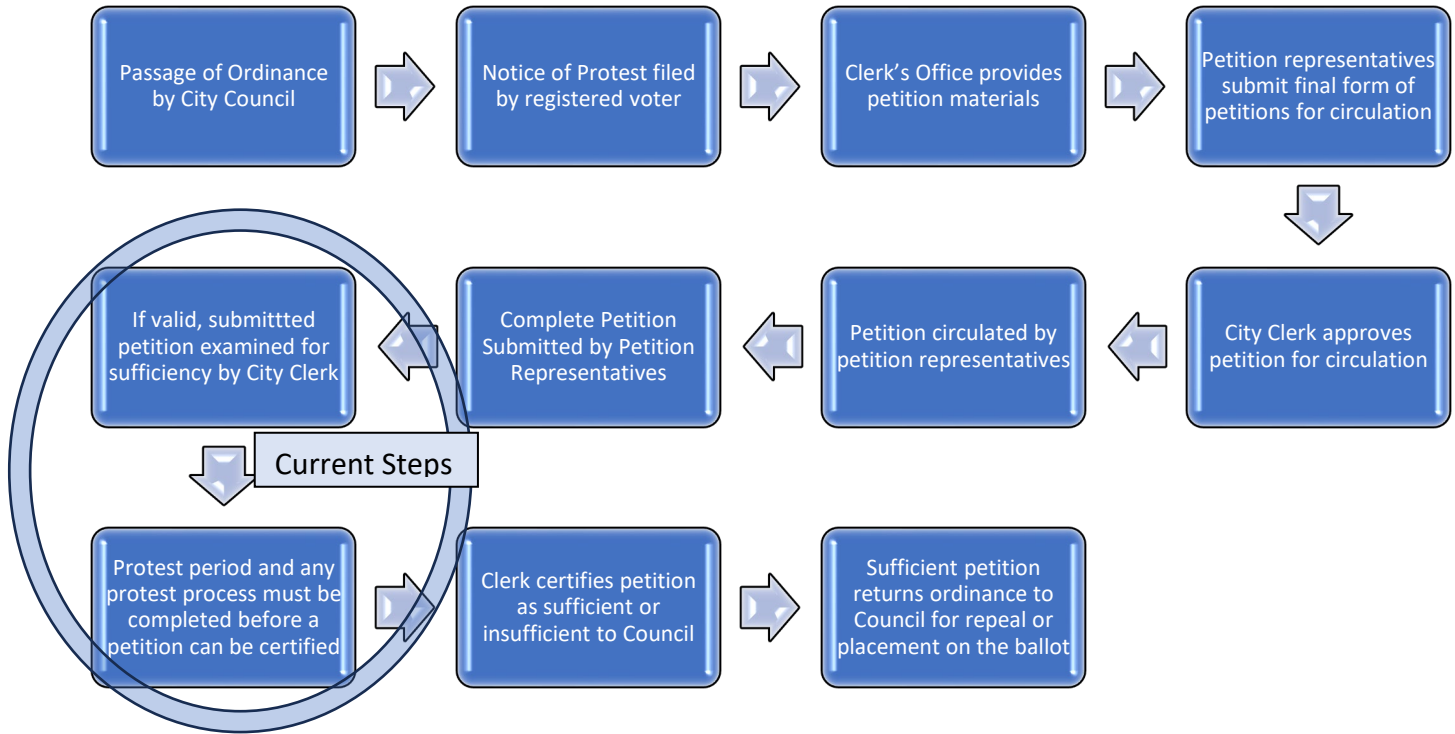
Examination of the petition begins, completed by the City Clerk's Office, over a 5-working day period, ending Tuesday, Dec. 5.

The 10-calendar day protest period also starts, ending Friday, Dec. 8 at 5 p.m., where any Fort Collins voter can file a protest of a determination of the City Clerk of the petition's sufficiency.

Examination of the petition is defined by City Charter. The process used to compare the petition with voter registration information to determine if enough properly registered voters signed as well as to verify the required particulars and affidavits is outlined on pp. 2-3. Page 4 also outlines what is not part of examination, including comparing signature images. City Charter provides the affidavit done by each circulator of every section is prima facie evidence the signatures are genuine and true.

The protest process allows written protests to be filed in the City Clerk's Office of a petition's sufficiency, as outlined on pp. 6-8. A protest must be specific and can be about any aspect of the form of the petition, including affidavits, or particular names on the petition. Petition sections and exhibit books, with the results of their examination, will be available for public review at City Hall. Daily updates will be posted at fcgov.com/elections/referendums of sections complete.

OVERVIEW OF REFERENDUM PROCESS



Current Steps of Referendum Process

COMPLETED PETITION MUST BE FILED WITH THE CITY CLERK: Done Tues., Nov. 28 at 3:40 p.m.
Timeframe: Deadline is 20 days after the Clerk approves the petition for circulation

Completed petitions must be submitted to the City Clerk's Office as a single instrument by 5 p.m. on the 20th day after the Clerk approved the petition for circulation.

EXAMINATION OF SUBMITTED PETITION: Started Tues., Nov. 28
Timeframe: Clerk must complete review in 5 working days

Following receipt of the complete petition, the City Clerk's Office took several steps to prepare for the examination process:

1. Every submitted petition section and exhibit book was documented to produce a petition receipt provided to the petition representatives.
2. Every petition section submitted was date and time stamped as received by the City Clerk.
3. Each section was reviewed to determine how many signature lines were used, and these amounts were totaled in order to determine the total number of signature lines used.
4. The petition was determined to be valid, as the number of signature lines used (6,718) exceeds the threshold of signatures needed for a sufficient petition (4,228). This is the point examination begins.

Examination of the petition continues Wednesday, November 29, the first full day of the five working day examination period. All petition materials are being handled with full regard for chain of custody and process integrity to preserve the form of petition submitted. When not in active review, petition sections and exhibit books are being secured in locked totes placed in the locked vault of the Office. Each tote has a numbered seal affixed. Two members of the City Clerk's Office team verify the number of the seal when it is placed on each tote, and that seal number is recorded on a log kept with each tote. The team members verifying the seal number initial the log. When a tote is opened to allow examination of petition sections or exhibit books contained, it is again done by at least two City Clerk team members, who verify the seal number and that the seal has not been tampered with before breaking the seal and initialing the log.

What examination of the petition includes

The City Charter provides the parameters of the examination process in Article X, Section 5(f)(1):

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.

A list of registered voters from the statewide voter database is obtained from Larimer County and constitutes the registration books examined to determine if the signatures on the petition are from Fort Collins voters properly registered at the name and address listed on the petition.

The information from Larimer County is loaded into an Access Database that allows search queries using different data fields included in the voter registration information provided, including *voter name, address, year of birth* and *date of registration*. On each petition section, a petition examiner reviews every line completed to determine if it contains a valid signature. The signature must include the voter's name and address, and that information must match what is in the voter registration information. In addition, the date of voter registration is verified as occurring prior to the date the voter signed the petition, as is the date of birth for any voter born in the current year to ensure the voter turned 18 prior to signing the petition.

Using the Access database also allows petition examiners to record when a voter's signature has been verified and counted. This provides tracking of valid signatures, as well as voters who are found in the database but for whom a signature cannot be counted because of being registered at a different address than is listed on the petition, not being 18 before signing the petition, or not being registered before signing the petition. Recording this information alerts examiners if a voter's signature has already been counted on another petition section so that only one signature per voter is counted.

The City Clerk also verifies each petition section conforms to the required particulars and affidavits required by the Charter. This requires examining each section to ensure all pages are properly attached and have not been altered from their approved form, and that the required

affidavit of circulator is attached to each section and properly completed, including the notarized signature of the circulator.

What examination of the petition does not include

Signatures on the petition are not compared to any signature images on file in the statewide voter database, SCORE. Colorado law does not permit municipal clerks to have full access to SCORE. The voter registration information provided by the county clerk does not include elements in the voter 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. No municipality or county in Colorado is allowed to use signature images for comparisons as part of petition verification.

The City Charter indicates the affidavits required of circulators is what is used to verify the legitimacy of signatures, reading in Article X, Section 5 (d):

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.

Determination of Sufficiency

By the conclusion of the examination period, ending Tuesday, December 5, 2023, at 5 p.m., the City Clerk must make an initial determination of the sufficiency of the petition. To be deemed sufficient, the petition must include at least 4,228 verified signatures of registered Fort Collins voters. This initial determination a petition is either sufficient or insufficient is subject to protest and cannot be certified until the expiration of the protest period or the end of any protest process.

If a Petition is Found Insufficient

If the City Clerk's initial determination is a petition is insufficient, the petition 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. This petition effort has no time remaining in its circulation period and therefore has no available cure period. The petition is certified as insufficient at the end of the protest period and any protest process and the referendum process concludes.

If a Petition is Found Sufficient

At the expiration of the 10-calendar day protest period or conclusion of any protest process, the City Clerk certifies the petition as sufficient, leading to the following steps:

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.

VISUAL TIMELINE OF EXAMINATION AND PROTEST PROCESSES



PROTEST PERIOD: Protest(s) must be filed by Fri., Dec. 8 & any hearing must be complete by Thurs. Dec. 28

Timeframe: There is a 10-calendar day period to file a protest and a 30-calendar day period for the completion of any protest hearing process, both starting when the complete petition is filed

Before a petition can be certified as sufficient or insufficient, either the period allowed for filing a protest must expire or any protests filed must be resolved. Written protests can be filed by any Fort Collins registered voter of the City Clerk's determination of sufficiency within 10 days of the filing of the petition.

To ensure any registered voter is able exercise the right to file a protest, procedures have been put in place to allow review of petition sections during the overlapping examination and protest periods. Petition sections and exhibit books will be available for public review once they have been examined by the City Clerk's Office team. Anyone interested in reviewing petition sections or exhibit books is asked to contact the City Clerk's Office via email at cityclerk@fcgov.com or by phone at 970-221-6515 to schedule a time to view available sections at City Hall. As part of daily updates on the petition process on the referendum page of the City website, fcgov.com/elections/referendums, the sections and books available for review will be listed.

Reasons and Process for Filing a Protest

Registered electors who want 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 City Charter provides a protest shall set forth with particularity the grounds of protest and the names and defects in form protested.

There are not additional requirements for protest content beyond his Charter language. The Charter does state specific requirements for signatures and for the circulation of a petition, as well as for circulator affidavits. A protest must clearly indicate which names and petition sections are being protested, or if there is an aspect of the form of the entire petition subject to protest, and explain the objection or disputed aspect to be considered. Unless clearly outside these broad parameters, a question of the appropriateness of a protest is generally something addressed through the protest hearing process.

Conducting a Protest Hearing

Upon the filing of a protest, the City Clerk shall set a time for hearing the protest within seven days. Notice requirements including mailing a copy of the protest with a notice of the time for the hearing to all designated petition representatives at least five days prior to the hearing.

- All hearings are before a hearing officer appointed by the City Manager.
- The hearing officer has the power to issue subpoenas to compel the attendance of witnesses and the production of documents.
- All records and hearings are public, and all testimony must be under oath.
- A protest hearing is summary in nature.
- The hearing process must be completed within 30 days after the petition is filed.

- Results must be decided and certified by the hearing officer within 10 days after the conclusion of the hearing.

Certifying Sufficiency or Insufficiency Following a Protest

The City Clerk makes a final determination regarding the sufficiency or insufficiency of a petition based upon the determination of the protest hearing results certified by the hearing officer. A petition deemed insufficient after protest may not be amended or circulated further. A sufficient petition is certified and presented to the City Council as outlined above.

Communications During the Examination Period

At the conclusion of each day of the five working day examination period, an update will be provided to City Council and posted on the referendum page of the City website, fcgov.com/elections/referendums. This update will include information about the sections for which examination has been completed, and the results of that examination. This also includes listing the petition sections and exhibit books available for public review.

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
 Assistant City Manager Denzel Maxwell

Outline and Timeline of the Referendum Process through Examination of Sufficiency

