

ORDINANCE NO. 005, 2017
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CHAPTER 7 OF THE CODE OF THE CITY OF FORT COLLINS
TO AMEND REQUIREMENTS AND PROCEDURES FOR CITY ELECTIONS

WHEREAS, Chapter 7 of the City Code sets out procedures and requirements for redistricting of Council districts, for the conduct City elections, for disclosure of campaign finance information, and other related matters; and

WHEREAS, in 2015 the City Council formed an ad hoc committee, including Councilmembers Cunniff, Overbeck and Stephens, to review, discuss and recommend the most beneficial changes to the Code and City Charter regarding elections and other related matters; and

WHEREAS, as a result of the committee's work, Ordinance No. 021, 2016, was considered and adopted by the Council to update various provisions of Chapter 7; and

WHEREAS, the committee continued to meet during summer and fall 2016, and has recommended addition clarifications and amendments to Chapter 7 and to the City Charter; and

WHEREAS, on December 13, 2016, the City Council considered the recommendations of the committee at a work session; and

WHEREAS, the Council desires to enact the recommendations of the committee in order to clarify and improve the various provisions of Chapter 7, as set forth below.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That Section 7-20 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 7-20. Duties of City Clerk.

The City Clerk shall:

...

(4) Report complaints received regarding alleged violations of Article V to the City Manager.

...

Section 3. That Section 7-71 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 7-71. Precinct map/amendment.

(a) The boundaries of the election precincts as herein created in the City are hereby fixed and established as shown on the map entitled "District-Precinct Map," which map is on file in the office of the City Clerk.

(b) Upon notice by Larimer County that its precinct boundaries have been amended, the City Clerk shall review precinct boundaries and recommend to City Council any precinct boundary changes to ensure they match Larimer County's precincts.

Section 4. That Section 7-87 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 7-87. Redistricting; notice.

...

(c) Not less than once every six (6) years after making the determination required under Subsection (b) above, the City Clerk shall again review the district boundaries to determine whether the maximum deviation between the most populous and the least populous district meets the standard described in Subsection (b) above. If the standard in Subsection (b) above is not met, the City Clerk shall recommend to the City Council any district boundary changes necessary to ensure that the districts conform to such standard.

(d) The need to amend precinct boundaries pursuant to § 7-71(b) shall automatically cause the City Clerk to review current population deviations, regardless of how long it has been since the last review. If the deviation is found to exceed ten (10) percent, the City Clerk shall recommend that the City Council make boundary adjustments, and present the Council with possible redistricting options that to the maximum extent possible equalize the population in each district, subject to the requirements for contiguity and compactness set forth in Article II, Section 1(c) of the Charter, with a maximum permissible deviation of ten (10) percent between the most populous and least populous district.

(e) Any changes to district boundaries shall be established by ordinance no less than one hundred eighty (180) days before a regular municipal election.

Section 5. That Section 7-132 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 7-132. Definitions.

...

Issue committee shall not include political committees, small-scale issue committees, or candidate committees as otherwise defined in this Section.

...

Small-scale issue committee means a committee otherwise meeting the definition of *issue committee* that has accepted or made contributions or expenditures in an amount that does not exceed five thousand dollars (\$5,000.) during an applicable election cycle for the major purpose of supporting or opposing any ballot issue or ballot question.

The following are each treated as single small-scale issue committees:

- a. All small-scale issue committees that support or oppose a common ballot measure if the committees are established, financed, or controlled by a single corporation or its subsidiaries;
- b. All small-scale issue committees that support or oppose a common ballot measure if the committees are established, financed, maintained, or controlled by a single labor organization or the affiliated local units it directs; and
- c. All small-scale issue committees that support or oppose a common ballot measure if the committees are established, financed, maintained, or controlled by substantially the same person, group of persons, or other organizations.

...

Section 6. That Section 7-135(f) of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 7-135. Campaign contributions/expenditures.

...

(f) *Recordkeeping.*

(1) All contributions received by a candidate committee, small-scale issue committee, issue committee or political committee shall be documented and deposited and maintained in a financial institution in a separate account whose title shall include the name of the committee. All records pertaining to contributions and related accounts shall be maintained by the committee for one (1) year following any election in which the committee received contributions unless a complaint has been filed under Subsection 7-145(a) alleging a violation of the provisions of this Article, or the person or committee has received notice of an investigation or prosecution of a violation of this Article by the City or other law enforcement authority, in which case they shall be maintained until final disposition of the complaint and any consequent court proceedings. Such records

shall be subject to inspection in connection with any investigation or other action to enforce the terms of this Article.

(2) All expenditures shall be documented and all records pertaining to said expenditures, including but not limited to invoices, receipts, and instruments of payment, shall be maintained by the committee for one year following any election in which the committee expended the funds unless a complaint has been filed under Subsection 7-145(a) alleging a violation of the provisions of this Article, or the person or committee has received notice of an investigation or prosecution of a violation of this Article by the City or other law enforcement authority, in which case they shall be maintained until final disposition of the complaint and any consequent court proceedings. Documentation shall include the name and address of the vendor(s) or payee(s) providing the property, materials, or services and the amount of the expenditure. Such records shall be made available within three (3) business days upon request of the City and subject to inspection in connection with any investigation or other action to enforce the terms of this Article.

...

Section 7. That Section 7-139 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 7-139. Independent expenditures.

Any person or political committee making independent expenditures totaling more than one hundred dollars (\$100.) shall deliver notice in writing of such independent expenditures to the City Clerk no later than three (3) business days after the day that such funds are obligated. Said notice shall include the following information:

- (1) The name, address and telephone number of the person making the independent expenditures;
- (2) The name of the candidate whom the independent expenditures are intended to support or oppose;
- (3) The name and address of the vendor(s) providing the property, materials or services;
- (4) A detailed description of the independent expenditures sufficient to allow for determination of compliance with this section;
- (5) The amount of the independent expenditures;
- (6) The date the funds were obligated; and
- (7) Copies of receipts, invoices, or other documentation related to the independent expenditure.

For the purposes of this provision, funds shall be considered to have been obligated as soon as an agreement is reached for the provision of the property, materials or services in question, regardless of when payment is to be made for such property or services. All independent expenditures shall be documented and all records pertaining to independent expenditures, including but not limited to invoices, receipts, and instruments of payment shall be maintained for one (1) year following any election in which the funds were expended unless a complaint has been filed under Subsection 7-145(a) alleging a violation of the provisions of this Article, or the person or committee has received notice of an investigation or prosecution of a violation of this Article by the City or other law enforcement authority, in which case they shall be maintained until final disposition of the complaint and any consequent court proceedings. Such records shall be made available within three (3) business days upon request of the City and subject to inspection in connection with any hearing held pursuant to this Article.

Section 8. That Section 7-136 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 7-136. Disclosure; filing of reports.

(a) All candidate committees, political committees and issue committees shall report to the City Clerk their contributions and contributions in kind received, including the name and address of each person who has made contributions or contributions in kind in the amount of twenty dollars (\$20.) or more; expenditures made; and obligations entered into by the committee.

(b) For purposes of complying with the requirements of this Section, an issue committee consisting of an organization whose primary purpose is not to support or oppose ballot issues shall report only those contributions accepted, expenditures made and obligations entered into for the purpose of supporting or opposing a ballot issue or ballot question. Such issue committee shall not be required to report donations, membership dues or any other payments received unless such amounts are used or to be used for the purpose of supporting or opposing a ballot issue or ballot question.

(c) Reports shall be filed with the City Clerk on the twenty-first day, fourteenth day, and no later than noon on the Friday before the election, thirty (30) days after the election, and annually on the first day of the month in which the anniversary of the election occurs until such time as a termination report is filed. If the reporting day falls on a weekend or legal holiday, the report shall be filed by the close of the next business day.

(d) The reports required by this Section shall include the balance of funds at the beginning of the reporting period, the total of contributions received, the total of expenditures made during the reporting period and the name and address of the financial institution used by the committee or party.

(e) All reports shall be submitted on forms provided by the City Clerk and shall be complete in all respects. Reports shall be current in all respects as of two (2) days prior to the date upon which each such report is to be filed.

(f) A report required to be filed by this Article is timely if the paper report is received by the City Clerk not later than the close of business on the date due or if the report is filed electronically not later than midnight Mountain Standard Time on the date due.

(g) Any report that is deemed by the City Clerk to be incomplete or inconsistent with the requirements of this Article shall be accepted on a conditional basis, and the committee treasurer shall be notified in writing as to any deficiencies found. Such notice may be delivered in person, by mail, by fax, or, if an electronic mail address is on file with the City Clerk, by electronic mail. The committee treasurer shall have seven (7) business days from the date of delivery of such notice to file an amended report that cures the deficiencies. Any such amended report shall supersede the original report filed for the reporting period.

(h) Any candidate committee, political committee or issue committee which has not accepted any contributions or contributions in kind, made any expenditures, or entered into any obligations during a reporting period, shall file a report with the City Clerk on the days specified in Subparagraph (c) above certifying that the committee has not accepted any contributions or contributions in kind, made any expenditures or entered into any obligations during the relevant reporting period.

(i) Except as specified in this Subparagraph (i), the disclosure requirements specified in this Article shall not apply to a small-scale issue committee. Any small-scale issue committee shall disclose or file reports about the contributions or expenditures it has made or received or otherwise register as an issue committee in connection with accepting or making such contributions or expenditures in accordance with the following alternative requirements:

(1) Any small-scale issue committee that accepts or makes contributions or expenditures in an aggregate amount during any applicable election cycle that does not exceed two hundred dollars (\$200.) is not required to disclose or file reports about the contributions or expenditures it has made or received or otherwise register as an issue committee in connection with accepting or making such contributions or expenditures.

(2) Any small-scale issue committee that accepts or makes contributions or expenditures in an aggregate amount during any applicable election cycle of between two hundred dollars (\$200.) and five thousand dollars (\$5,000.) shall register with the City Clerk within ten (10) business days of the date on which the aggregate amount of contributions or expenditures exceeds two hundred dollars (\$200.). The registration required by this subparagraph must include a statement listing:

- a. The committee's full name, spelling out any acronyms used in the name;
- b. The name of a natural person authorized to act as a registered agent of the committee;
- c. A street address for the principal place of business of the committee;
- d. The purpose or nature of interest of the committee; and
- (e) The name of the financial institution in which all contributions received by the committee are deposited in a separate account bearing the name of the committee.

(j) Except as required by Subsection 7-135(f)(2), no small-scale issue committee described in subsection (i)(2) is required under this Article to disclose or report any contributions or expenditures it has made or received, so long as it continues to meet the definition of small-scale issue committee.

(k) Within seven (7) days of the date on which a small-scale issue committee accepts or makes contributions or expenditures in an aggregate amount during any applicable election cycle that exceeds five thousand dollars (\$5,000.), the committee shall:

(1) through its registered agent, report this change in the committee's status to the City Clerk; and

(2) report to the City Clerk on an approved form, for each particular contribution or expenditure accepted or made, the name and address of each person who has made such contribution and the amount of each specific contribution and expenditure accepted or made by the committee.

(l) Once any issue committee that began as a small-scale issue committee accepts or makes contributions or expenditures in an aggregate amount during any applicable election cycle that exceeds five thousand dollars (\$5,000.), the committee shall from that point forward make disclosure of any contributions or expenditures it accepts or makes not already reported under Subparagraph (k) and comply with all requirements under this Article applicable to issue committees.

Section 9. That Article V of Chapter 7 of the Code of the City of Fort Collins is hereby amended by the addition of a new Division 2, which reads in its entirety as follows:

ARTICLE V. CAMPAIGNS

Division 2 Campaign Violations

Sec. 7-145. Allegation of campaign violation.

(a) Any candidate or registered elector of the City (“complainant”) who has reason to believe a violation of Chapter 7, Article V, of this Code, has occurred by any candidate, candidate committee, issue committee, small-scale issue committee or political committee may file a written complaint to the City Clerk, no later than sixty (60) days after the alleged violation has occurred.

(b) The complaint must contain:

1. The name of the alleged violator;
2. The Code provision allegedly violated;
3. A brief statement or description of the offense allegedly committed and the basis for the allegation;
4. Identification of any relevant documents or other evidence;
5. Identification of any witnesses or persons with relevant knowledge; and
6. The name, address and telephone number of the complainant.

(c) The City Clerk will forward the complaint to the City Attorney, who will evaluate the complaint for probable cause.

Sec. 7-146. Evaluation of campaign complaint.

(a) If the City Attorney determines that no probable cause exists, that the complaint fails to allege an enforceable violation, or that the requirements of § 7-145 were not met by the complainant, the City Attorney shall so notify the City Clerk, who will, in turn, notify the complainant in writing.

(b) If the City Attorney determines probable cause exists, the City Attorney may notify Fort Collins Police Services, who, in consultation with the City Attorney, may file and serve a summons and complaint to the respondent. The City Attorney retains prosecutorial discretion on whether to ultimately file criminal charges. If the City Attorney determines filing a summons and complaint is inappropriate, he or she shall so notify the City Clerk, who will, in turn, notify the complainant and respondent in writing.

Sec. 7-147. Conflicts of interest.

Notwithstanding the above, nothing in this Article shall be read to preclude the City Attorney from declaring a conflict of interest, and taking appropriate action in accordance with this Code and general practices of the City, including, but not limited to, hiring special counsel, if deemed necessary and advisable under the circumstances.

Sec. 7-148. Complaint not required for City action.

Nothing in this Article shall preclude the City from pursuing an action, civil or criminal, against any person, candidate, candidate committee, issue committee, small-scale issue committee or political committee for any violation of this Chapter, regardless of whether a complaint had been filed pursuant to this Article.

Sec. 7-149. Administrative procedures.

The City Manager is charged with ultimate authority to pursue complaints under this Article and is hereby authorized to adopt administrative regulations consistent with the provisions of this Article.

Sec. 7-150. Action by complainant.

(a) After having received written notification from the City Clerk pursuant to § 7-146 that the City Attorney determined filing a summons and complaint is inappropriate, or after one hundred eighty (180) days of filing the complaint, whichever is first, the complainant may bring a civil action in District Court.

(b) The complainant has one (1) year from the date of the violation to bring such suit.

(c) The complainant may sue to compel compliance with this Article, provided however, that complainant must first file a complaint with the City Clerk, pursuant to Section 7-145, and otherwise exhausts his or her administrative remedies.

(d) Any person who knowingly violates this Article may be civilly liable in an amount up to two thousand dollars (\$2,000.), or, if applicable, three (3) times the amount of the discrepancy, whichever is greater.

(e) Reasonable attorneys' fees for the prevailing party may be awarded if the amount of civil liability alleged is greater than seven thousand five hundred dollars (\$7,500.).


(f) In determining the amount of civil liability, the court may take into account the seriousness of the violation and culpability of the defendant.

Introduced, considered favorably on first reading, and ordered published this 3rd day of January, A.D. 2017, and to be presented for final passage on the 17th day of January, A.D. 2017.



Mayor


ATTEST:



City Clerk




Passed and adopted on final reading on the 17th day of January, A.D. 2017.



Mayor

ATTEST:



City Clerk / Chief Deputy

