

ORDINANCE NO. 077, 2018
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 of 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, in January 2017, Council made the ad hoc Committee a standing committee of the Council for the purpose of identifying and evaluating ideas for improvements to City election laws and practices and anticipating adjustments that may be needed to adopt to a changing legal and technological environment, for Council consideration; and

WHEREAS, as a result of the Committee's work (as both an ad hoc committee and a standing committee), Ordinance No. 021, 2016, Ordinance No. 005, 2017, and Ordinance No. 045, 2018 were considered and adopted by the Council to update various provisions of Chapter 7; and

WHEREAS, the Committee continued to meet in 2017 and 2018, and has recommended additional clarifications and amendments to Chapter 7; and

WHEREAS, the Committee has recommended that deadlines for submission of filings be adjusted to provide clarification in Code Sections 7-103, 7-116, 7-117, and 7-136; and

WHEREAS, the Committee has recommended that the definition of independent expenditure be expanded to include uncoordinated expenditures supporting or opposing ballot issues or ballot questions, while excluding certain media communication, and to also require persons making such expenditures to retain copies of public communications resulting from said expenditures; and

WHEREAS, the Committee has recommended changes to Code Sections 7-132, 7-135, 7-139, and 7-141 to address changing methods of political communication, including but not limited to campaign advertisements on websites and social media; and

WHEREAS, the Committee has recommended the creation of a new Article IX of the Code to address absentee voting by uniform military and overseas voters; and

WHEREAS, these amendments generally improve and clarify the City's campaign finance disclosure and election requirements and processes; and

WHEREAS, the Council desires to enact the recommendations of the Committee and staff 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 7-103 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 7-103. Write-in Candidates.

No write-in vote for a candidate for City Council office shall be counted unless the person whose name appears as the write-in vote has filed an affidavit of intent with the City Clerk, no later than the close of business forty-two (42) days before the election, indicating that such person desires and is qualified for the office.

Section 3. That Section 7-116 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 7-116. Nomination of candidates; withdrawal from candidacy.

A nominating petition required pursuant to Article VIII of the Charter may not be circulated earlier than seventy (70) days before the election and must be filed with the City Clerk not later than forty-nine (49) days before the election. A person who has been nominated may, not later than forty-two (42) days before the election, withdraw by filing with the City Clerk a request therefor in writing, and no name so withdrawn shall be placed upon the ballot.

Section 4. That Section 7-117 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 7-117. Recall elections; nomination of candidates.

Anyone desiring to become a candidate at a recall election shall do so by nominating petition as required in Article VIII of the Charter. All nominating petitions for such candidates shall be filed with the Office of the City Clerk no later than forty-nine (49) days prior to the date of the recall election.

Section 5. That Section 7-132 of the Code of the City of Fort Collins is hereby amended with respect to the definition of the term "independent expenditure," to read as follows:

Sec. 7-132. Definitions.

...

Independent expenditure shall mean the payment of money by any person for the purpose of advocating the election, defeat or recall of a candidate, which expenditure is not controlled by, or coordinated with, any candidate or any agent of such candidate. *Independent expenditure* shall include expenditures for political messages which unambiguously refer to any specific public office or candidate for such office. Independent expenditure shall also include the payment of money by any person for supporting or opposing a ballot issue or ballot question that is not controlled by, or coordinated with, an issue committee. Independent expenditure shall include, but not be limited to, advertisements placed for a fee on another person's website or advertisement space provided for no fee or a reduced fee where a fee ordinarily would have been charged.

Independent expenditure shall not include:

- (1) Expenditures made by persons, other than political committees, in the regular course and scope of their business and political messages sent solely to their members; or
- (2) Any news articles, editorial endorsements, opinion or commentary writings, or letters to the editor printed in a newspaper, magazine or other periodical not owned or controlled by the candidate, or communications other than advertisements posted or published on the internet for no fee.

Section 6. That Section 7-132 of the Code of the City of Fort Collins is hereby amended to add a definition of the term "social media," to read as follows:

Sec. 7-132. Definitions.

...

Social media shall mean any electronic medium, including an interactive computer service, application, or data network, that allows users to create, share, and view user-generated content, including but not limited to videos, still photographs, blogs, video blogs, podcasts, instant messages, electronic mail, or internet website profiles.

...

Section 7. That Section 7-134(d) of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 7-134. Registration of committees; termination.

...

- (d) Any political committee or issue committee that has not taken the necessary steps to terminate pursuant to Subsection (c) above must have properly disposed of

all funds and must file a termination report no later than seventy (70) days after the election.

Section 8. 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, instruments of payment, and copies of any public communications produced as a result of the expenditure, shall be maintained by the committee for one (1) 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 9. That Section 7-136(c) of the Code of the City of Fort Collins is hereby amended to read as follows:

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

...

(c) Reports shall be filed with the City Clerk as follows:

(1) All committees must file reports on the following dates:

- a. the thirty-fifth (35th) day before the election;
- b. the twenty-first (21st) day before the election;
- c. the fourteenth (14th) day before the election;
- d. no later than noon on the Friday before the election;
- e. the thirty-fifth (35th) day after the election; and
- f. the seventieth (70th) day after the election.

(2) Candidate committees that continue in operation must file a report 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.

(3) If the reporting day falls on a weekend or legal holiday, the report shall be filed by the close of the next business day.

...

Section 10. 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, instruments of payment, and copies of any public communications produced as a result of the expenditure, 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 11. That Section 7-141 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 7-141. Expenditures for political advertising; rates and charges.

(a) No candidate committee shall pay to any radio or television station, newspaper, periodical, internet advertiser or website provider, social media provider or other supplier of materials or services a higher charge than that normally required for local commercial customers for comparable use of space, materials or services. Any such rate shall not be rebated, directly or indirectly.

(b) Any radio or television station, newspaper, internet advertiser or website provider, social media provider or periodical that charges an issue committee or candidate committee a lower rate for use of space, materials or services than the rate such station, newspaper, internet advertiser or website provider, social media provider or periodical or supplier charges another issue committee or candidate committee for the same ballot measure or public office for comparable use of space, materials or services shall report the difference in such rate as a contribution in kind to the issue committee or candidate committee that is charged such lower rate.

(c) Nothing in this Article shall be construed to prevent an adjustment in rates related to frequency, volume, production costs and agency fees if such adjustments are offered consistently to other advertisers.

Section 12. That Chapter 7 of the Code of the City of Fort Collins is hereby amended by the addition of a new Article IX to read as follows:

**ARTICLE IX.
UNIFORM MILITARY AND OVERSEAS VOTERS**

Sec. 7-211. Legislative Intent.

The City Council hereby finds and declares that it is appropriate and necessary to provide an avenue for City electors who are active members of the various uniformed services or who are overseas to submit absentee votes in City elections.

Sec. 7-212. Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section:

Absentee ballot shall mean a ballot transmitted to a covered voter at an address or location other than the residential or mail address of the elector in the County's voter registration records, or by any other reasonable method acceptable to the covered voter.

Covered voter shall mean:

- (1) A uniformed-service voter, as defined in this Section, who is a resident of the City but who is absent from the City by reason of active duty and who otherwise satisfies the City's voter eligibility requirements;
- (2) An overseas voter who, before leaving the United States, was last eligible to vote in the City and, except for a residency requirement, otherwise satisfies the City's voter eligibility requirements;
- (3) An overseas voter who, before leaving the United States, would have been last eligible to vote in the City had the voter then been of voting age and, except for a residency requirement, otherwise satisfies the City's voter eligibility requirements; or
- (4) An overseas voter who was born outside the United States, is not described in paragraph (2) or (3) of this definition, and, except for a residency requirement, otherwise satisfies the City's voter eligibility requirements if the last place where a parent, legal guardian, spouse or civil union partner of the voter was, or under this Article would have been, eligible to vote before leaving the United States is within the City.

Dependent shall mean a spouse, civil union partner, or dependent of a covered voter defined in this Section who is a resident of the City but who is absent from the City by reason of the active duty or service of the covered voter.

Overseas voter shall mean a United States citizen who is outside the United States.

Uniformed-service voter shall mean an individual who is qualified to vote in the City and is:

- (1) A member of the active or reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States who is on active duty;
- (2) A member of the merchant marine, the commissioned corps of the public health service, or the commissioned corps of the national oceanic and atmospheric administration of the United States; or
- (3) A member on activated status of the National Guard.

Sec. 7-213. Notice of upcoming election.

Prior to any election conducted by the City and not coordinated with the County pursuant to Section 1-7-116, C.R.S., the City Clerk shall mail a letter to all covered voters eligible to participate in the upcoming election notifying said voters of the date ballots will be mailed, the unlikelihood that the time periods for conducting the election will afford said voters the opportunity to receive the ballot mailed and return his or her voted ballot in a timely manner, and alternative methods for casting a ballot for the election. Said letter shall be mailed as follows:

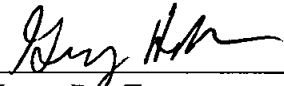
- (1) For a regular municipal election, no less than sixty-three (63) days prior to the date of election.
- (2) For a special municipal election, no less than sixty-three (63) days prior to the date of election.
- (3) For a recall election, as soon as practicable after the election is called.

Sec. 7-214. Alternative methods for casting a ballot; transmission and receipt.

- (a) A covered voter may vote the original ballot mailed to him or her or may request an absentee ballot.
- (b) Voted ballots may be returned by mail, or by electronic mail or any other reasonable method to provide the covered voter an opportunity to vote, provided that the method is acceptable to the City Clerk and the covered voter and provided the covered voter acknowledges in writing that he or she has chosen to vote using the alternative method and has further agreed that the City Clerk may manually transfer the covered voter's vote to an official ballot for counting purposes.
- (c) To be valid, a ballot must be either received by the City Clerk by 7:00 p.m. on the date of election, or be postmarked or deposited by the covered voter with a military post office by 7:00 p.m. mountain time on the date of the election.

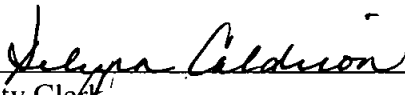
(d) A valid ballot cast by mail shall be counted if it is received by the City Clerk by 5:00 p.m. mountain time on the eighth (8th) day after the election.

Introduced, considered favorably on first reading, and ordered published this 5th day of June, A.D. 2018, and to be presented for final passage on the 19th day of June, A.D. 2018.

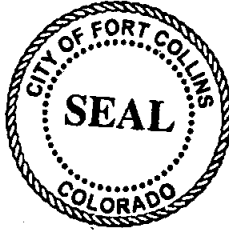


Mayor Pro Tem


ATTEST:



City Clerk

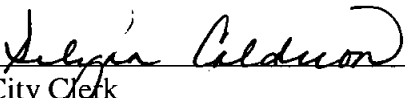


Passed and adopted on final reading on this 19th day of June, A.D. 2018.



Mayor

ATTEST:



City Clerk

