

CITY COUNCIL COMMUNICATION



MEETING DATE: January 19, 2010 **ITEM NUMBER:** 4
TYPE OF ITEM: Study Session
PRESENTED BY: Valeria Skitt, City Clerk 303-651-8650

SUBJECT/AGENDA TITLE: Joint Meeting with the Election Committee to Discuss Future Direction

EXECUTIVE SUMMARY:

A year-end report from the Election Committee (attached) was presented to City Council in December providing a summary of the Committee's work during the past year and a synopsis of potential changes to the Longmont Fair Campaign Practices Act (LFCPA) that the Committee was planning to review in more detail beginning in January. At that time, the City Council expressed a desire to discuss alternative roles for the Committee including the potential of reverting back to the previous system where the Clerk made the determination of a violation and issued a summons to municipal court or even repealing the LFCPA and reverting to the State's Fair Campaign Practices Act.

The Election Committee requested a joint meeting with Council to discuss Council's concerns with the new LFCPA and the operation of the committee before doing too much work on proposed changes to the Act. Committee members will be present at this Council meeting to discuss the LFCPA, the work of the committee, and issues that Council believes need to be addressed in any amendments to the Act.

COUNCIL OPTIONS: Share thoughts with the Election Committee on proposed changes to the Longmont Fair Campaign Practices Act and provide direction to the Committee.

RECOMMENDED OPTIONS: N/A

FISCAL IMPACT & FUND SOURCE FOR RECOMMENDED ACTION: N/A

BACKGROUND AND ISSUE ANALYSIS: N/A

ATTACHMENTS: Election Committee 2009 Year-End Report



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ELECTION COMMITTEE YEAR END REPORT
FOR
NOVEMBER 3, 2009
REGULAR MUNICIPAL ELECTION

Background

In early 2000, the Longmont City Council adopted an ordinance which established the Longmont Fair Campaign Practices Act (LFCPA). While there was a statewide Fair Campaign Practices Act in place, the City Council, at that time, was interested in establishing greater control and increased accountability for local elections. Longmont became one of the first Colorado communities to adopt its own election campaign reporting requirements.

Over the course of the next eight years, several interpretation issues arose which prompted City Council to ask staff to prepare information regarding necessary amendments to Longmont's Fair Campaign Practices Act. Information was presented to the Council in March, 2008, along with a comparison of the ordinances and charter provisions of municipalities in the State that have adopted their own local campaign regulations.

Upon initial review of the information provided, it became apparent that there were many different views about how the ordinance should be amended. With the consent of City Council, Council members Sarah Levison and Gabe Santos volunteered to pull together a citizen task force to review the code and make recommendations for potential changes. Longmont's Charter specifies that Longmont's elections are non-partisan; however, both Council member Santos and Levison felt the best approach to insuring a fair process was to involve representatives from various political parties. A group of nine Longmont residents were chosen to assist with this effort—three Republicans, three Democrats, one Libertarian Party member, one Green party member, and one unaffiliated voter. The City Clerk rounded out the team to provide input, research and facilitation assistance.

The Elections Task Force began meeting in May, 2008, and met every other week through July. From August through November, 2008, the task force met weekly in an effort to complete their research and present their findings and recommendations to the Council prior to the end of the year. The Task Force's final report was presented to the Longmont City Council at the December 2, 2008, Study Session. Council provided direction regarding which Task Force recommendations to include in an ordinance which was adopted by Council on March 10, 2009.

Following adoption of the ordinance, final appointments to the Election Committee were made by Council on June 9, 2009, and the committee held its first meeting that same month. The Council then approved \$10,000 from its Contingency Fund to hire Special Counsel, Hayes, Phillips, Hoffmann & Carberry, PC, to assist the Election Committee with its work. Shortly thereafter it was determined that it would be a conflict for the Special Counsel to both prosecute violators and advise the Election Committee so Council authorized an additional \$10,000 from its Contingency Fund to hire Special Prosecutor, Murray, Dahl, Kuechenmeister, Renaud, LLP.

2009 Election Committee

The Committee's first order of business was to review City Clerk recommended changes to the forms utilized by candidates and committees to report contributions and expenditures. Additionally, a new form was created for reporting alleged violations. Some forms were modified very little and others received a significant overhaul. Response to the changes was very positive. Those who have run for office in the past, indicated that the modifications significantly improved the reporting process. Newcomers to the election process, indicated that the forms were easy to follow and fill out. The newly created form for reporting alleged violations was developed to be user friendly but did not fully meet the Election Committee's needs in terms of detail and will need additional modification for future election cycles.

By the time the Election Committee began its work and Special Counsel was appointed, there was very little time for training. The Committee did a quick review of the LFCPA but was not able to spend a great deal of time going over the details with its Special Counsel. Additionally, the first alleged violations came before any specific training on hearing procedures could be conducted. As a result, the Committee had to rely on hands-on training in conducting quasi-judicial hearings.

The City Clerk's Office received eleven alleged violations all of which were forwarded to the Election Committee for review. Four of the eleven alleged violations resulted in full public hearings before the Election Committee. Two hearings resulted in a final finding of a violation of the LFCPA with total sanctions of \$700 for the committee in violation. A matrix outlining the disposition of all alleged violations is attached to this report. There was also one late filing fee assessed by the City Clerk in an amount of \$100.

Costs associated with the Special Council and Special Prosecutor were significantly higher than anticipated due mainly to the large number of alleged violations heard by the committee and, to a lesser extent, the "learn as you go" approach required by a lack of time for thorough training. Additionally, several of the hearings took a significant amount of time because issues were encountered resulting from some vague and ambiguous language in the Act. In 2009, special counsel charges were \$21,983 and special prosecutor charges were \$13,398, totaling \$35,381 for legal services support for the Election Committee. In December, the City Council allocated additional funding from its Council Contingency Fund to fully cover the cost of these services.

Next Steps

Because the last set of changes to the LFCPA were significant, it was understood that additional changes for clarification purposes may be needed once the new provisions were implemented. The Election Committee decided to complete one election cycle with the Act as it is written to flush out any clarifications needed. The Committee has been compiling a list of issues (attached) that have arisen over the past few months regarding interpretations, processes, and procedures associated with the LFCPA. It is the Election Committee's intent to begin working in January on developing recommendations for additional amendments to the Act to address most, if not all, of

these items. Additionally, the Election Committee has plans to discuss the need for additional training on hearing processes and procedures to improve its efficiency in conducting quasi-judicial hearings.

One Election Committee alternate member, David McCulloch, tendered his resignation in November after moving outside the City. Mr. McCulloch's resignation was not received in time to include the vacancy in the year end board recruitment process being conducted by the City Clerk's office. The Election Committee will be asking the City Council to recruit and appoint a new alternate committee member to fill Mr. McCulloch's seat.

As with any new committee, there were a number of operational issues to work through and the Election Committee anticipates that their efficiency and effectiveness will improve significantly in future years as a result of this first year's experience. The members of the Election Committee wish to express thanks to the City Council for the opportunity to serve on this group and welcome City Council input regarding the LFCPA and the Committee's operations.

2009 Election Committee Members:

Linda Champion, Chair
Marilyn Hughes, Vice-Chair
Strider Benston
Dan Bernard
Barbara Hansen
Mike Palmer
Paul Tiger
Michele Painter
David McCulloch (*resigned November, 2009*)

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ALLEGED VIOLATION - NOVEMBER 3, 2009 ELECTION CYCLE							
Alleged Violation	Complaint Filed	Complainant	Respondent	Description	Prelim Determination	Public Hearing Results	Sanctions
2009-01	10/5/2009	Karen Benker	Longmont Leadership Committee	Mailer: Karen Benker: History of Hiding Meetings from the Public	Potential Violation of 2.04.206(A) Independent Expenditures Section of LFCPA--moved forward to hearing	Violation of 2.04.206(A) - Independent Expenditure Report filed three days late	\$200/day = \$600
2009-02	10/5/2009	Karen Benker	Longmont Leadership Committee & Western Tradition Partnership	Push poll	Potential Violation of 2.04.206(A) Independent Expenditures Section of LFCPA--no determination of violation	N/A	N/A
2009-03	10/5/2009	Karen Benker	Longmont Leadership Committee	Robo Call urging citizens to attend Council meeting re: Clover Basin Fire District issue	Potential Violation of 2.04.206(A) Independent Expenditures Section of LFCPA--no determination of violation	N/A	N/A
2009-04	10/12/2009	Karen Benker	Longmont Leadership Committee	Mailer: No-win Lawsuits Mailer: Clover Basin	Potential Violations of 2.04.206(A) Independent Expenditures Section of LFCPA-- moved forward to hearing	No violation found -- independent expenditure report filed within time allowed	N/A
2009-05	10/12/2009	Karen Benker	Greg Burt	Mr. Burt hired and paid by a Longmont resident to investigate Ms. Benker--no expenditure report filed	Potential Violation of LFCPA--no determination of violation found	N/A	N/A
2009-06	10/19/2009	Shari Malloy	Longmont Leadership Committee	1. Robo Call urging citizens to attend Council meeting re: Council's attempts to stop free speech; 2. Failure to disclose by several campaign committees who listed P.O. Boxes rather than street addresses on their Committee Statements of Organization	1. Potential Violation of LFCPA--no determination of violation found 2. Committee directed Clerk to contact all committees with P.O. Boxes listed to correct their statements of organization	1. N/A 2. N/A	1. N/A 2. N/A

ALLEGED VIOLATION - NOVEMBER 3, 2009 ELECTION CYCLE							
Alleged Violation	Complaint Filed	Complainant	Respondent	Description	Prelim Determination	Public Hearing Results	Sanctions
2009-07	10/19/2009	Shari Malloy	Unknown	Robo Call from Bob Beauprez urging citizens to vote for Katie Witt	Candidate Katie Witt claimed responsibility for the call and reported on her contributions and expenditures report--no requirement for candidates to file independent expenditure reports--no determination of violation found	N/A	N/A
2009-08	10/16/2009	Richard Yale	Karen Benker-- Benker for City Council Committee	Candidate acting in prosecutorial role with Election Committee - denial of due process and conflict of interest (several concerns recited regarding the committee's hearing procedures)	No determination of violation found--Complaint was vague as to the actual portions of the code violated and committee found that the complaint appeared to be about hearing procedures rather than a specific violation by an individual	N/A	N/A
2009-09	10/22/2009	Richard Yale	Charles Hanson-- Elect Kaye Fissinger Committee	Committee did not report expenditures or in-kind contributions for large billboard sign used in campaign	Potential violation of LCPA Sections 2.04.204(G), 2.04.207(A)(1), and 2.04.204(A)--Moved forward to hearing	No violation found	N/A
2009-10	10/22/2009	Richard Yale	Charles Hanson-- Elect Kaye Fissinger Committee	Candidate loans to committee not reported and/or not reported correctly--potential violations of 2.04.204(G), 2.04.207(A)1	No determination of violation found--Respondent had filed an amended report correctly identifying the loans	N/A	N/A

ALLEGED VIOLATION - NOVEMBER 3, 2009 ELECTION CYCLE							
Alleged Violation	Complaint Filed	Complainant	Respondent	Description	Prelim Determination	Public Hearing Results	Sanctions
2009-11	11/10/2009	Shari Malloy	Longmont Leadership Committee	Committee Statement of Organization lists a P. O. Box as the primary place of operation rather than a street address as required by the LFCPA	Potential violation of LFCPA Section 2.04.207(B)(3). -- Moved forward to hearing	Violation of 2.04.207(B)(3)-- failure to provide street address of principal place of operation on Committee State of Organization	\$100

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LONGMONT FAIR CAMPAIGN PRACTICES ACT
Items for Discussion and Potential Revision

Definitions:

"Candidate" – Right now, it includes candidates for state office – was this intended? Also, the second sentence of subsection 1 should be moved to its own subsection, as this should apply to all candidates, not just candidates for the municipal judge position. (Carberry)

"Candidate committee" – How does the Clerk close a candidate committee? (Carberry)

"Conduit" – Why is political committee omitted from this definition? What is an "event"? We should add a definition. (Carberry)

"Contribution" – The word "any" preceding "advance" should be deleted. "Anything of value" should be modified to "thing of value." (Carberry)

Review the definitions of Electioneering Communication and Independent Expenditure.

- Review our definition of “expenditure” in light of applicable case law?
- Delete the words "is distributed that" immediately following "which" in the opening phrase (Carberry)
- The Act only use "electioneering communication" again rarely – instead, it often uses other terms and phrases like "expressly advocating the defeat of any candidate . . ." or "influencing an election"– why? The terms and phrasing should be consistent. (Carberry)

Look at “election cycle” vs. “election year” or visa versa.

Consider substitution of “expenditures” (as defined) for “obligations” as obligations is used in 2.04.207(A). Also, this relates to Subparagraph D of 2.04.207.

"Independent expenditure" only applies to candidate committees, not issue committees or political committees. Why? (Carberry)

The definitions section is not consistent – it uses terms like "city office, "public office" interchangeably. These terms should be used consistently. (Carberry)

Define “principal place of operation”

2.04.204 – CONTRIBUTIONS

- **E** -- Suggested amendment to last sentence: “No person shall be reimbursed for a contribution made to any candidate committee, issue committee or political committee, nor shall any person make such reimbursement except as provided in subsection B *and G* of this section 2.04.204. – *This addition clarifies that loans made by the candidate to his/her own committee may be reimbursed.*

- **F** -- Sections 1 and 2—Champion suggested that language should be added to these sections to make it clear that the contribution limits include in-kind contributions as well as monetary contributions.
- **F** -- Contributions by individuals who also own an LLC. I saw some heads nodding in both directions at my question about this: I own a couple LLCs, and I’m also a “natural person” (some may dispute that), so could I theoretically donate \$200 plus \$500 for each LLC? *(Rodriguez)*
- **F.3** -- Limits raised based on inflation: I agree it’s a little silly to raise contributions by \$4 or \$6 or \$12.94, how about it’s just increased to the next highest \$50 or \$100 increment? *(Rodriguez)*

2.04.205 – UNEXPENDED CAMPAIGN CONTRIBUTIONS

- **B** -- Any unexpended campaign contributions retained by a candidate committee for use in a subsequent election cycle shall be counted and reported as contributions from political committees in any subsequent election for purposes of Section 2.04.207(A) of this chapter no matter how those contributions were originally classified

City Attorney’s interpretation is that since candidates are allowed to retain their funds for use in a subsequent campaign (Section 2.04.205A.1.), candidates with open candidate committees from a previous election may use all remaining funds in a new election cycle when running for the same office. These funds will be reported as a contribution from a “political committee” on the first report in the new election cycle. While Political Committees can only contribute \$500 to any one candidate during an election cycle (Section 2.04.204F.2.), these two provisions of the code taken together would basically be an exception to the \$500 contribution limit.

- Refunds of contributions: Is paying back a loan a candidate received to run their campaign a legitimate use of unexpended contributions? A candidate may get out a loan and gradually pay it back with contributions, why not use the surplus at the end of the campaign? I didn’t see this in the acceptable list of options. I definitely would not want to see the LFCPA get in the business of deciding how to divide up the unexpended contributions, except maybe for the suggestion that candidates try to the best of their ability to refund contributions to contributors in a manner that takes into account how much each person contributed – which may not amount to spreading it out equally. *(Rodriguez)*

2.04.206 – INDEPENDENT EXPENDITURES

- Hughes wanted to make sure that people/groups filing an Independent Expenditure Report have the same option of filing an amended report as candidates and committees do to correct an incomplete report (Section 2.04.208D).
- **A** – If the Clerk has all independent expenditure reports on file, does the person making the expenditure really need to send notice to all candidates as well? (Carberry)
- **B** – Review what is required to be included in the communication produced by the expenditure (i.e. registered agent, amount of expenditure, etc.)

Questions around reporting for independent expenditures.

- Are 527s and 501c(4)s and other similar groups are covered by the reporting requirements of this section even though they are not required to register with the City Clerk's office as a Political Committee?
- Under 2.04.206 Independent expenditures. Part C, what if a candidate designs a flier, or an advertisement for that matter, but then posts those items on a website for anyone's use. It appears that anyone in the public at large can print and distribute those items with their own time and money, without any coordination from the candidate and the candidate would not be responsible for reporting anything (and the individual who did that would only need to report something if their personal expense to do so was \$100 or more). Is this correct? (*Rodriguez*)
- If someone prints a yard sign or puts an ad in the paper as an independent expenditure and the cost is less than \$100, does it need to have printed on it who is paying for that sign or advertisement and how much it cost (if they are not a candidate and not a committee)? (*Rodriguez*)
- If a candidate designs a t-shirt or a yard sign and gives that design to a printer and allows for supporters to print the signs and t-shirts for their own use, at their own expense and without coordination of the candidate as far as distribution of those items, is the candidate responsible for reporting that or only the individual (if the independent expense for said items is in excess of \$100 and if not, then is it not reported?) (*Rodriguez*)

2.04.207 – DISCLOSURE

- **A** -- Champion suggested adding language to this section to clarify that in kind contributions are part of this disclosure.
- **A** – ... who has contributed twenty dollars or more; expenditures made; and obligations entered into ... Add "in-kind services"?
- **A** – Delete the word "party" from the end of the first sentence. (Carberry)

- **A.1.** – The word "must" should be replaced with the word "shall." (Carberry)
- **A.1.** – A candidate does not become a candidate until he or she declares the intent to be a candidate publicly, so the language regarding declaration of intent is duplicative in this section, and should be deleted. (Carberry)
- **A.1.** – The definition of "election year" should be moved to the definitions section. (Carberry)
- **A.2.a** -- Champion felt the language for this section was confusing. Review language.
- **A.2.a. and b.** Could each of these have more clarification?
- **A.2.b.** -- Palmer suggested this section be relocated to 2.04.207A.1. for better clarity.
- **A.2.c.** -- Last sentence of this section needs to be changed to the following: “The summary shall include the names of all persons who have contributed ~~more than~~ \$100.00 *or more*, as listed on the report filed the twenty first day and/or fourteenth day before an election.
- **A.2.e.** – Change "special municipal election" to the defined term "special election." (Carberry)
- **B.1.** – Change "organization's" to "committee's". (Carberry)
- **B.5.** – Delete the word "party" at the end of the sentence. (Carberry)
- **B.3** -- Street addresses versus PO Boxes. When and why required? Discuss the need for a street address for the "principal place of business" —potentially define what that means.
- **C.1.** – What if the person being recalled resigns rather than having a recall election? (Carberry)
- **E.** – What does "persons associated for" mean? This is ambiguous. (Carberry)

2.04.208 – FILING—WHERE TO FILE—TIMELINESS

- Tiger suggested moving the late filing deadlines and fines to 2.04.211.C so all fines are in one place.
- **B** (last sentence) -- Champion wanted to see the word “Election” added to identify the committee. – “Any report not filed within the third 24-hour period after the deadline shall be referred to the *Election* committee as an alleged violation of this Act . . .”

2.04.209 – CANDIDATE AFFIDAVIT

- A candidate who is defeated should have already filed the affidavit, so it does not make sense to exclude a candidate who is defeated from this requirement. (Carberry)

2.04.210 – DUTIES OF CITY CLERK

- F -- Need to add the word “candidate” in the first sentence to allow candidates who do not form a committee to use the indicia. – “Develop as a trademark an indicia, including a statement or symbol that *candidates*, candidate committees, issue committees, and political committees may use on electioneering communications . . .”

2.04.210.5 – ELECTION COMMITTEE

- A -- ELECTION COMMITTEE - Change wording to: “This Act creates an election committee for the city with the power and duties set forth herein.”
- B.2. -- Last sentence. This sentence is difficult to understand. Could it be reworded? Also, add: “the city” to the word “council” to be consistent with paragraph B.1.
- B.4. – Change to "A committee member must resign if . . ." to match tense. (Carberry)
- C.2. – The requirement for "concurrent" review by the Committee and the Clerk is challenging. Ideally, the reports should be reviewed by the Clerk for completeness and accuracy, and once deemed complete and accurate by the Clerk, referred to the Committee. (Carberry)
- C.6. – Change "rules for its transaction of business" to "bylaws governing its proceedings." (Carberry)

2.04.211 – HEARING PROCEDURES AND PENALTIES

- The Committee, which is a quasi-judicial body, should not be "investigating" violations of the Act. Instead, it should hear alleged violations (Carberry)
- Discuss and potentially revise the allegation and hearing process
What is required to bring an allegation before the Committee?
Should there be a filtering system for complaints? Potentially the Clerk?
May the Clerk reject complaints that are not completely filled out, or are ambiguous as to the violation alleged? (Carberry)
Are there other steps or filters that can be taken rather than having a full blown public hearing?
 - Amend second sentence in (A)(1): “If the committee makes a preliminary determination that there ~~has~~ MAY HAVE been a violation....” As currently written, it seems to prejudge the outcome. (Carberry)
Additional Alternatives for resolving issues:

- Allow negotiated resolution to easily proven violations
- Utilize special prosecutor only for violations brought forward by the City Clerk
- Let complainant put on the case before the Election Committee
- Allow alleged violator to admit guilt and accept penalties to avoid a hearing, *using a form similar to a form used for plea bargains in court (Carberry)*
- **A.2** – “a hearing” appears twice in 4th line. --

Carberry – this section conflicts with 2.04.211.A.1. which requires a hearing in every case. Carberry has recommended that, under the current language, the Committee always holds a hearing once a preliminary determination has been made, whether or not the alleged violator wants to participate. That way a record can be created as evidence of how the Election Committee made its decision.

- **B.2** – Carberry indicated that “appellant” should be “alleged violator”
- B.4. – The word "party is unclear in this context. We need to clarify who needs to be served with copies of the findings. (Carberry)
- Should there be a procedure for a complainant to withdraw a complaint once filed? (Carberry)

2.04.212 – EXPENDITURES—POLITICAL ADVERTISING—RATES AND CHARGES

- Carberry indicated that that the language should say “different” charge instead of “higher” charge.

There should be an overall editorial review of the Act for consistency, etc.

Form Changes:

- Put on contribution forms: Office sought and Ward, Political Committee, Issue Committee
- Need date on Schedule F
- Add oath/affirmation to alleged violation form

Bylaw Changes:

- Clarify that a regular board member may be reseated during a meeting once an item utilizing an alternate member has been completed; additionally clarify the alternates’ role in hearings (i.e. discussion versus deliberation)