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CFEWG MEETING PACKET
April 25, 2018

A copy of the meeting packet will not be available in hard copy. If you wish to have a hard copy at the meeting, you will need to print the packet out and bring it with you to the meeting.

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2. **Meeting Summary 4.11.18** – Pages 3-6;
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5. **Draft Electioneering Ordinance language** – Pages 10-11.

Campaign Finance/Election Working Group

Meeting Ground Rules

- Assume best intents from others.
- Focus on the discussion at hand.
- Avoid side conversations; this can be distracting for everyone.
- Speak respectfully.
- Characterize your own perspective, understanding and interests; let others do the same.
- Respect the time of the group; speak briefly and on-topic.
- Limit comment and discussion to the scope of this strategy session.
- Pay attention to facilitator's notes to ensure items are being captured accurately.
- Let other participants talk once on a topic before you talk twice.
- Recognize that everyone has different levels of background in particular topics, and therefore:
 - o Provide context;
 - o Refrain from using pronouns - use instead the proper name of "it" or "they" about which you are speaking;
 - o Try to be clear and succinct to avoid confusion by others;
 - o Minimize compound questions;
 - o Use terms that have been defined; and
 - o Be as specific as possible in your statements and questions.

MEETING SUMMARY
of the
Campaign Finance & Elections Working Group
(CFEWG)
Date: April 11, 2018
Location: West Senior Center, 909 Arapahoe,
Boulder, Co

The attendees are as follows:

Appointed members: Matt Benjamin, Ed Byrne, Allyn Feinberg, Mark McIntyre, Rionda Osman-Jouchoux, Steve Pomerance, Evan Ravitz, Tyler Romero, Michael Schreiner, John Spitzer (absent) and Valerie Yates

City Staff: Lynnette Beck, Tammye Burnette, David Gehr, Kathy Haddock, Joe Rigney and Rewa Ward

Election/Campaign Finance Attorney Advisor: Geoff Wilson

Number of citizen attendees: 0

1. Welcome and Agenda Review

The meeting commenced at 5:36 p.m.

Meeting facilitator, David Gehr, welcomed everyone.

Mr. Gehr briefly explained what the members may be presented with at the meeting. They would quickly discuss the Working Group's report to council then go right into campaign finance.

2. Review of Meeting Summary and Action Items

There were no action items from the March 14 meeting that were included in the April 11 meeting packet.

3. Meeting Discussion

Mr. Gehr asked the Working Group for their thoughts on the latest draft report. It was requested that "calendar days" and "business days" be put back in the section language. The Working Group members then unanimously approved the report with the addition of the above. A brief discussion followed. Mr. Gehr informed the group that he and Tammye Burnette were working on a PowerPoint presentation of the report for the April 17, 2018 city council meeting. He

invited members of the group to review the PowerPoint and provide feedback. He would email it out to the group prior to the weekend. Mr. Gehr reminded the group of the city council meeting date and time and encouraged everyone to attend.

Mr. Gehr then turned to the subject of campaign finance. He reminded the members as to why they were selected to participate in the Campaign Finance and Elections Working Group. The group was presented with its charter language reminding them of what council requested they investigate and recommend as to campaign finance reform. See the following:

- a. For campaign finance reform, propose recommended options to change the City Charter or Code that promote the integrity of the election process by:
 - providing for maximum campaign finance disclosure under existing law; AND
 - providing for maximum campaign finance disclosure in ways that have not previously been judicially recognized, considering both the objectives of election integrity and constitutional rights.
- b. The working group will also study, consider, and make recommendations to the council on election procedures and requirements, including the following subject matter areas:
 - Clarifying the role of the City Clerk in election contests;
 - Combined campaign ads and literature;
 - Other matters such as the use of social media or technology in elections.

Mr. Gehr requested that each member, based upon their experience with the last city election, talk about what went poorly or what could be improved upon. Kathy Haddock was asked to write down on the wall boards the topics and issues that the members provided. Problem statements would then be formulated for future discussion. After this exercise Geoff Wilson was asked to present his memo on Judicial Parameters Affecting Disclosure Requirements in Ballot Issue Elections.

Each member had a chance to express their thoughts. See attached wall board notes.

Debate and discussion followed.

Questions were asked of Mr. Wilson concerning electioneering, electioneering communication, advocacy and disclosure. Mr. Wilson referenced the “Buckley” and “Williams” cases.

Questions and answers ensued regarding the above topics.

Mr. Wilson then moved to his memo on Judicial Parameters Affecting Disclosure Requirements in Ballot Issue Elections (see [4.11.18 meeting packet](#) for a copy of the memo). The members brought up the need for an electioneering ordinance. Denver’s ordinance and the “Williams” case were discussed. Mr. Wilson stated that the “Williams” case has the language Boulder would need to start with. The group requested that staff provide draft electioneering ordinance language for the next meeting.

At 7:09 p.m. Mr. Gehr asked the members for a 10-minute break so that he and Ms. Haddock could put the members wall board notes into categories for further discussion.

The meeting resumed at 7:20 p.m.

Mr. Gehr and Ms. Haddock presented the members with a problem identification chart that categorized the members' wall board notes. Discussion followed. Through the members' discussion they expanded on the chart and completed the first topic "Rules that are not clear/not enforced." See below.

Rules that are not clear/not enforced

- Combining committees
 - Means not combining bank accounts/commingling funds
 - Doesn't mean collaborating on expenditures
- Proper disclosure of combined expenditures
 - If combine ad, accurately apportion expenditures in disclosures
 - Disclosed on ad allocation of participants
- Coordination between OCC and UCC – not allowed in current Code
 - Lit drop process is specific exemption – should be changed?
 - Minority report - OCC materials cannot be combined for distribution with UCC materials
- After election, bank accounts are closed or have procedure for continuing disclosure until next election

Other topics not yet discussed include: disclosures and protest process.

Mr. Gehr ended the conversation due to time constraints. The group will pick up where they left off at the next meeting. At the next meeting, Staff will provide the group with an outline of the groups' work thus far.

Members of the group then began discussing piercing the corporate veil. Mr. Gehr had to end the conversation due to timing. Mr. Gehr reminded everyone again of the city council meeting scheduled for April 17, 2018 and that the Working Group's report is last on the council's agenda, so it will be heard late but encouraged members to attend. The meeting ended at 8:10 p.m.

4. Next Steps

The next meeting will be held on Wednesday, April 25, 2018, from 5:30 p.m. to 8:00 p.m. in the 1777 Conference Room, Municipal Building, Boulder, Co.

5. Public Comment

There was no public comment.

April 11, 2018 CFEWG Meeting Wall Notes

Why complaints/protests are confidential?

What is definition of “combined” committees?

Preference voting

Expand def of express advocacy

Dark money

Getting behind corporate veil

Go back further than 60 days

Be as strict with CC as IC

Need penalties that matter

2 Slates not healthy

Combination of at-large and ward council members

Mayor elected

2Q shouldn't have been on ballot

Enforcement

Levels for determining whether protest is valid

How to inform public (should enforce and inform)

Disclosure of donors to groups

Alternative voting methods

What triggers disclosure?

Should be appellate review?

Dianne Marshall is amazing

CF Topics

Entities should be able to do independent expenditures without following disclosure procedures
(need simplified procedure)

Official candidate procedures well done

UCC – abused in 2017

Lack of clarity about electioneering

Existing materials are good

Coordination between OCC and UCCs

Current violation

Define express advocacy

Election authority delegates directly to the city clerk

Hearing officers in lieu of city clerk

Election system; Districts/Hybrid

PROBLEM IDENTIFICATION CHART

Rules that are not clear/not enforced

- Combining committees
 - Means not combining bank accounts/commingling funds
 - Doesn't mean collaborating on expenditures
- Proper disclosure of combined expenditures
 - If combine ad, accurately apportion expenditures in disclosures
 - Disclosed on ad allocation of participants
- Coordination between OCC and UCC – not allowed in current Code
 - Lit drop process is specific exemption – should be changed?
 - Minority report - OCC materials cannot be combined for distribution with UCC materials
- After election, bank accounts are closed or have procedure for continuing disclosure until next election

Disclosures

- Expand definition of express advocacy
- Require for electioneering activity
- Pierce corporate veils
 - Disclose until get to individuals?
 - Require statement on ads if refuse to disclose
- What triggers obligation to disclose?
- Require disclosure of contributions more than 90 days before election?
- Should be able to make expenditures without having to form a committee or disclosing any more than name of committee (small scale issue committees?)

Protest Process

- Should be confidential?
- Should process be changed?
- Add appellate/review process?
- What are penalties that matter?
- Process for determining whether a protest is valid?

Improvements to Democratic Process/Miscellaneous

- 2 slates Not healthy
- Go to combination ward/at-large system?
- Preferential voting
- Directly electing mayor

**Follow-up of 4-11-18 meeting – Outline of Problem Statement
Suggestions on Campaign Finance Issues - For Discussion Purposes**

- I. Rules that are not clear/not enforced
 - A. Combining Committees
 - 1. 4-11-18 Conclusion: Means not combining bank accounts or comingling funds among committees
 - a. Questions for discussion:
 - i. If Sally contributes to x candidate, is it OK to use her contribution to support a particular ballot measure or other candidate or a slate?
 - ii. Should separate disclosure be required with solicitation of contribution that describes other issues/candidates that will be supported or opposed with the contribution?
 - B. 4-11-18 Conclusion: Does not prevent collaboration on expenditures
 - 1. Assumptions because of matching funds:
 - a. Issue Committee and Unofficial Candidate Committee (UCC) can combine expenditures
 - b. Official Candidate Committee (OCC) accepting matching funds cannot combine with Issue Committee or UCC.
 - 2. Questions for Discussion:
 - a. Any disclosure required as to slate or other candidates/issues that will be supported when contribute to x issue/candidate?
 - b. Effect on matching funds?
 - i. Can OCC coordinate with UCC (currently prohibited) in lit drop/other
 - C. Proper disclosure of combined expenditures
 - 1. 4-11-18 Conclusion:
 - a. If combine ad or flyer, accurately apportion expenditures in disclosures
 - b. Identify on ad/flyer the allocation of expenditures by committee
 - D. Coordination between OCC and UCC – not allowed in current Code
 - 1. Questions for Discussion:
 - a. Should there be an exemption for lit drops?
 - b. Minority report on issue?
 - E. Closing of Campaign Bank Accounts after election
 - 1. Questions for Discussion:
 - a. CFR required non-profit donation of excess?
 - b. OK to carry-over funds?
 - i. If so, what purpose can be used for?
 - ii. Disclosure to contributor of what funds used for?

II. Disclosures Generally

- A. What triggers obligation to disclosure (Currently within 3 days of receiving contribution)?
- B. When can contributions start being accepted?
 - 1. Currently:
 - a. After candidate nomination petition
 - b. After initiative approved for circulation
 - c. After Council puts on ballot
 - 2. Options:
 - a.
 - b.
 - c.
- C. Membership organization
 - 1. Disclosures of dues expenditure different disclosure than if organization has fund raising campaign?
- D. Small-Scale Issue Committees
 - 1. Should expenditures be allowed without having to form a committee or disclose more than name of committee?

III. Protest process

- A. Currently
 - 1. Confidential until hearing, if any
 - 2. No appellate/review process
 - 3. Penalties
 - a. Criminal for campaign law violations
 - b. Filing corrected disclosure or publishing corrective advertising
 - c. Refunding contributions/matching funds received
 - d. Warning letter
 - e. Remedial order
 - f. Civil Action
- B. Confidentiality
- C. Process
 - 1. How to determine whether protest is valid?
- D. Review/Appeal
- E. Penalties that Matter

IV. Two slates

- A. Not healthy
- B. Go to ward system or combination ward/at-large
- C. Preferential Voting

Expanding what communications requires Disclosure

Definition of Electioneering Communication:

Denver addition to constitutional language

Electioneering communication means any communication broadcasted by television or radio, printed in a newspaper or on a billboard, directly mailed or delivered by hand to personal residences, placed on a website, streaming media service, or online forum for a fee, or a pre-recorded audio message delivered by telephone, or otherwise distributed that:

- (1) Unambiguously refers to any candidate, ballot issue or ballot question; and
- (2) Is broadcast, printed, mailed, delivered, posted or otherwise distributed in the period beginning sixty (60) days before a general municipal election until the run-off election, or within thirty (30) days of a special or vacancy election; and
- (3) Is broadcast to, printed in a newspaper distributed to, mailed or delivered by hand to, targeted online to, or posted on a billboard or otherwise distributed to an audience that includes members of the electorate for the candidate, ballot issue or ballot question.

Electioneering communication does not include:

- a. 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 a candidate or political party;
- b. Any editorial endorsements or opinions aired by a broadcast facility not owned or controlled by a candidate or political party; or
- c. Any communication by persons, other than committees, made in the regular course and scope of their business or any communication made by a membership organization solely to members of such organization and their families.

An electioneering communication is made when the actual spending occurs or when there is a contractual agreement requiring such spending and the amount is determined.

Express Advocacy means any communication that contains the words “[magic words]” or the functional equivalent which is susceptible to no other reasonable interpretation than as an appeal to vote in a given manner.

Wherever “express advocacy” currently in code add “or electioneering communication.” Most references are in other definitions rather than throughout the code.

Expanding Disclosure of Source of Funds:

Add to 13-2-1 Legislative Intent:

- (k) The city council further finds that:
1. Legal entities are being created with names that do not sufficiently disclose to a voter the individuals or other entities that are funding the campaign committee; and
 2. Disclosure of the names of the individuals or public-traded corporations which are the funders of ___% or more of a campaign committee is necessary to provide the voters with sufficient information to make informed voting decisions; and
 3. Non-disclosure of the primary individuals or publicly-traded corporations funding a campaign committee leads to corruption and the appearance of corruption; and
 4. It is necessary to know the identity of the primary sources of campaign funding to effectively enforce compliance with the city's campaign financing laws.