

## **Report from the Campaign Finance and Elections Working Group to Boulder City Council**

April 17, 2018

The Working Group's job is to focus on campaign finance and the initiative processes. This report only covers the initiative process.

The Working Group met on January 31, February 13, March 1 and 14, 2018 to work on the initiative and referendum portion of the Working Group charter. From those meetings, the Working Group is pleased to provide the council consensus recommendations for changes to the Boulder Revised Code and Home Rule Charter. We believe these satisfy the project deadlines of March 15 and April 15, 2018 in our Charter.

### Background:

The working group received a primer on the distinctions between the two types of initiative processes: Charter Amendments and Municipal Initiatives.

**Initiated Charter Amendments** - change the city charter. The process is governed by state law and a time table set by the state. The city has limited ability to change any aspect of how charter amendments go to the ballot.

**Municipal Initiatives, Recalls, and Referendum** - add, create, or change the city code and allow for recalls of elected officials. We are allowed to set the rules, procedures and timing for these processes.

### Guiding Principles:

The Working Group operated with two guiding principles:

1. The municipal initiative, referendum, and recall processes are aspects of "direct democracy," and it is highly likely that their use by citizens may conflict with the desires of those within the "representative" government. Therefore, the Working Group believes that the timelines and processes guiding these activities should be embedded in the city charter so as to provide certainty and independence from such potential conflicts.

2. The city's processes for municipal initiatives should be designed to be the best possible for Boulder citizens, and not therefore simply follow those in state law. Home rule cities are empowered to write their own regulations for municipal initiatives, referenda, and recalls. The process for charter amendments is governed by state law. For example, state law sets the maximum time for signature gathering, the latest time for submittal (which is quite close to when the measure would need to be submitted to the county clerk to be put on the ballot), the required number of signatures, and a number of important details in the petition's format. An ordinance or other regulation is not permitted that would conflict with either state laws or the Colorado Constitution. But state law allows a city to enforce ordinances regulating the process of amending its charter

that do not conflict with state law. The Working Group unanimously agreed that these two aspects of direct democracy should be managed as two distinct processes, because the state law processes for municipal initiatives are simply not the best.

We focused on the local processes (municipal initiative, referendum and recall), and did not try to add local laws to fill in any minor holes in the state's extensive rules for initiated charter amendments. To repeat, state law sets the required number of signatures, the petition format, and the timeline for such charter amendments. Thus, there is very little local flexibility.

Important Note: The municipal initiative rules and timeline for the 2018 election that were prepared by the city clerk are in conformance with the proposals of the Working Group, and the Working Group unanimously supports these rules and timeline.

#### This Report's Organization:

This report is organized by charter section and includes at the end two discussions: 1) the newly available means for signature verification, and 2) electronic voter verification for petition "signing." The issues covered in this report include:

- Setting timelines in the charter for municipal initiative processes, including review of initial petition, signature verification, title setting, and title challenges.
- Setting numerical signature requirements for municipal initiatives, referenda, and recalls, and suggesting expanding timelines for referenda and recalls.
- Clarifying the existing charter rule that municipal initiatives may not be repealed except by another vote of the citizens.
- Verifying actual signatures on petitions in addition to verification of voter registration information.
- Allowing for the use of electronic voter identification for petition "signing."

Here are the recommendations for changes to the charter language, with discussions below each charter section, in order. The proposed charter language is included below, and changes are shown in redline and strike out text. We suggest that you might put the current charter up on one part of your computer screen and this report next to it to be able to compare.

[https://library.municode.com/co/boulder/codes/municipal\\_code?nodeId=THCHBOCO](https://library.municode.com/co/boulder/codes/municipal_code?nodeId=THCHBOCO)

#### **Sec. 29 - Withdrawal from nomination.**

**Issue:** The Working Group and staff agreed that the language in 2Q did not specify what should occur if a candidate withdraws on the 66th day before the election. Here is the recommended charter language for section 29; it has been rewritten to address that missing piece. It is also written to ensure that it will function even if the county changes its procedures.

Any person having been duly and regularly nominated as herein provided, may, ~~prior to the sixty-sixth day preceding the election for which such person has been nominated,~~ withdraw from such nomination by filing with the city clerk a sworn statement of such withdrawal. If a withdrawal

occurs on the sixty-fifth day or any day thereafter preceding the election, before the ballots are finalized for printing, the name of the person shall not appear on the ballot. If the withdrawal occurs after ballots are finalized for printing, the votes cast for that person shall not be counted.

### **Sec. 38. - Preparation of initiative petitions.**

**Issue:** This section has had a sentence added at the end to allow for electronic identity verification, a topic which is discussed at the end of this report. This sentence will likely need to be rewritten, depending on the results from future work on this opportunity.

Petitions shall be worded clearly and simply so the petition is not misleading or likely to cause confusion to voters. Petition drafts shall be consistent with applicable law. The draft shall present the ballot measure in such manner that a vote for the measure would be a vote for the proposition and that a vote against the measure would be a vote against the proposition. Signatures to initiative petitions need not all be on one paper, but the circulator of every such paper shall make an affidavit that each signature appended to the paper is the genuine signature of the person whose name it purports to be. With each signature shall be stated the place of residence of the signer, giving the street and number or other description sufficient to identify the place, and the date the signer signed the petition. All such papers pertaining to any one measure shall have written or printed thereon the names and addresses of at least five registered electors who shall be officially regarded as filing the petition and shall constitute a committee of the petitioners for the purposes hereinafter named. All such papers shall be filed in the office of the city clerk as one instrument. Electronic petitions and electronic identity verification shall be allowed as permitted by the Boulder Revised Code.

### **Sec. 38A. — ~~Five percent petition or fifteen percent petition~~ Signatures required for initiative, referenda and recall petitions.**

**Issue:** As the council is aware, the number of registered voters has inflated over the last years because of changes in federal rules that made it more difficult to delete names from the voter list. The Working Group unanimously supports changing the signature requirement from five percent of the registered voters to ten percent of the average number of voters in the last two municipal candidate elections. This would make the required number be somewhat over 3,000 signatures, which approximates the Boulder signature number requirement prior to the changes in federal rules. Using the number of voters in a local election as a base makes sense because those are the people who actually participate in local elections.

For comparison, Fort Collins, which is also a university city with a population not too much bigger than Boulder, uses ten percent of the voters in the last local election as the basis for their signature requirement. And Denver also ties its signature requirement to the actual voter number in their municipal elections.

The Working Group approved the deletion of the option for a 15 percent initiative requiring a special election, as it seemed superfluous because the initiative elections can be done in any November, odd or even year. Here's the proposed Charter language:

~~Attached to every instrument filed as an initiative petition shall be a certificate signed by a majority of the committee of petitioners stating whether the petition is intended to be a “five per cent petition” or a “fifteen per cent petition.” The ballot for a five percent petition in compliance with this charter will be placed on the ballot at an election held in November. The ballot for a fifteen percent petition in compliance with this charter will be placed on the ballot at the next available election, which may be a special election other than a November election called by the city. A petition signed by registered electors of the city of at least ten percent of the average of the number of registered electors of the city who voted in the previous two municipal candidate elections shall be required for an initiative, referendum, or recall petition to be sufficient.~~

**Sec. 38B. - Submission of initiative form for comment.**

**Issue:** The adoption of ballot measure 2Q removed from the charter the timelines related to municipal initiatives and designated that the timelines would be consistent with city manager rule, or failing that, with state law. The Working Group recommends reinstating the timelines for municipal initiatives back into the charter so that they are not subject to a city manager rule or ordinance, and finds it acceptable to have two different timelines, one for municipal initiatives and one for charter amendments. The recommended timeline allows for proper review as to form and substance, and ensures that if the signatures are certified, that there is time for negotiations between the council and the petitioners, as well as for any title challenges. For municipal initiatives, the Working Group recommends the following changes to section 38B regarding these dates, as well as changes to section 39, which is below:

Prior to obtaining any signatures on the petition, the committee of the petitioners shall submit the proposed petition form to the city manager for review and comment. ~~Within ten days, the time determined by the city manager, or if none is determined, the time provided in the applicable state law, the city manager shall provide the committee of the petitioners with comments concerning the format or contents of the petition. Where appropriate, such comments may also contain suggested editorial changes to enhance the clarity and simplicity of the language in the petition. The committee of petitioners may amend the petition in response to some or all of the comments of the city manager and resubmit it for review. Any additional comments from the city manager on these amendments shall be provided within five calendar days.~~ If any substantial amendment is made to the petition, other than an amendment in direct response to the comments of the city manager, the amended petition shall be resubmitted to the city manager in accordance with this section. In the event the committee of the petitioners fails to submit the proposed petition form, or any substantial amendment to the proposed petition form, prior to obtaining signatures, the city clerk may refuse to accept the petition for filing.

**Sec. 39. - Filing of petition; protest.**

**Issues:** Again, the Working Group determined that the timeline should be in the charter and not left up to the city manager’s discretion. In particular, the signature certification process needs a specific timeline with a specific starting date so that the clerk can plan ahead to staff up for petition review. Also, the five percent of registered voters in the current language needs to be changed to ten percent of the actual voters averaged over the last two municipal (odd-year) elections.

Finally, all actual signatures should be checked, now that we know that they are available from the Secretary of State in an easily read on-line format that includes signature, name, and address (and DOB). Denver currently uses this process, and so is completely set up for this and their staff is trained for this work. And their elections staff has volunteered to do our signature checking at just the cost of the staff's time, making our process much simpler and less costly.

~~Within the time determined by the city manager, or if none, the time in state law, the city clerk shall ascertain by examination the number of registered electors whose signatures are appended thereto, dated no more than one hundred eighty days prior to the date of filing, and whether this number is at least five percent of the number of registered electors of the city as of the day the petition is submitted for comment pursuant to section 38B.~~ By the last business day on or before 150 calendar days before the November election, the committee of petitioners shall submit its petition. The city clerk shall ascertain by examination the number of registered electors whose signatures are appended thereto, dated no more than 180 calendar days prior to the date of filing, and whether this number meets the requirements of section 38A. By 140 calendar days before the November election~~F~~the clerk shall attach to said petition a certificate showing the result of said examination. If by the city clerk's certificate, of which notice in writing shall be given to one or more of the persons designated, the petition is shown to be insufficient, it may be amended within ten days from the date of said certificate by filing supplementary petition papers with additional signatures. The city clerk shall make like examination of the amended petition, with such examination being completed by 120 calendar days before the November election, and shall certify whether the petition is sufficient or insufficient on or before that day. ~~and if the clerk's certificate shall show the same to be insufficient, the city clerk shall file the petition in the clerk's office and shall notify each member of the committee of that fact. The final finding of the insufficiency of a petition shall not prejudice the filing of a new petition for the same purpose.~~

When examining the signatures on petitions, the clerk may verify signatures to the extent reasonably possible by comparison with the election records of the Boulder County Clerk or the Secretary of State and shall compare the signatures as available, and comparison of signatures on a petition for duplication. The clerk may use facilities of other cities to assist in this process. Protests of petitions may be made as provided by Colorado law and ~~rules adopted by the city manager, the Boulder Revised Code but must be submitted by 40 calendar days after submittal of the petition to the clerk.~~

#### **Sec. 40. - Submission of petition to council.**

**Issue:** In the current version of the charter, the 60-day timelines for petition review by a council committee or the council as a whole do not fit with the charter requirement that allows the petition to be certified as late as 120 calendar days before the election, because there is not enough time between signature certification and when the title needs to be set. Here's the recommended replacement language to remove that provision:

If the petition shall be found to be sufficient, the city clerk shall so certify and submit the measure to the council at its next regular meeting, ~~at which meeting the council shall read and refer the same to an appropriate committee, which may be a committee of the whole. Provision shall be made for public hearings upon the measure before the committee to which it is referred. Thereafter the committee shall report the measure to the council, with its recommendation thereon, not later~~

~~than sixty days after the date upon which such measure was submitted to the council by the city clerk. Upon receiving the measure from the committee, the council shall at once proceed to consider it and shall take final action thereon within sixty days from the date of such committee report. Unless the committee of petitioners withdraws the petition, the council shall take final action, including setting the title, prior to 70 calendar days before the November election. Title challenges shall be filed no later than seven calendar days after setting of the ballot title.~~

#### **Sec. 44. - Referendum petition.**

**Issue:** The number of required signatures needs to be brought into agreement with that for municipal initiatives.

If, within thirty calendar days after final passage of any measure by the council, a petition signed by at least ten percent of the average of the number of registered electors of the city who voted in the previous two municipal candidate elections ~~registered electors of the city to the number of at least ten percent of the registered electors of the city as of the day the petition is filed~~ be filed with the city clerk requesting that any such measure, or any part thereof, be repealed or be submitted to a vote of the electors, it shall not, except in the case of an emergency measure, become operative until the steps indicated herein have been taken.

#### **Sec. 48 - Title of Ballots.**

**Issue:** Ballot measure 2Q specified that the ballot title for initiatives be determined by council but failed to require consultation with the petitioners. This consultation is important because it is the petitioners' proposal and so they should have a say in how it is presented. And such consultation is also valuable to avoid possible title challenges by the petitioners, or possibly by third parties. Finally, having the council actually set the title is appropriate because the city will have to defend it against any challenges.

Here is the recommended charter language that allows for input by the petition committee but leaves the final decision to the council.

Proposed measures and charter amendments shall be submitted by ballot title. There shall appear upon the official ballot a ballot title which may be distinct from the legal title of any such proposed measure or charter amendment and which shall be a clear, concise statement, without argument or prejudice, descriptive of the substance of such measure or charter amendment. The ballot title shall be prepared by a committee of the council which may be a committee of the whole. If the proposed measure is an initiative, council shall seek the input of the petitioner committee prior to setting the ballot title.

#### **Sec. 54. – Repeal or amendment of initiated or referred measures.**

**Issue:** The current charter language simply states that a citizen initiative cannot be “repealed” except by another vote of the people. The question is – what constitutes “repeal”? The Working Group recommends adding language that clarifies what constitutes “repeal,” as below:

No ordinance that has been passed by vote of the people under the initiative or has received a favorable vote of the people under the referendum shall be repealed except by an ordinance submitted to a vote of the people. An ordinance passed by vote of the people under the initiative or has received a favorable vote of the people under the referendum may be amended by two-thirds of the council members present provided that the amendments do not alter or modify the basic intent of such ordinance or are necessary to come into compliance with state or federal law.

#### Notes on Signature Checking:

As laid out above, the Working Group is recommending changing the provision that the clerk compare signatures on the petition with signatures from the statewide voter registration database from being discretionary to being mandatory. For clarification, it is important to understand that, to date, the verification of the information on the petition has not included comparing actual signatures to the database. Previously, access to the statewide voter registration database was not available. Ballot measure 2Q added a provision authorizing the clerk to do such comparison assuming the database would be available to the clerk in the future.

The Working Group has determined (and staff agrees) that the actual signatures are now available and are already being used by Denver to check 100 percent of the actual signatures. So, the Working Group recommends changing the discretion to a requirement that, in addition to the present practices, the clerk also compares each signature on a petition with the signatures in the statewide voter registration database. And, as pointed out above, the Denver elections staff have offered to do this for Boulder at just the cost of the staff time.

#### Notes on Electronic Signatures and Electronic Identity Verification:

The members of the working group support establishing a mechanism for municipal ballot measure petitions that allows for online access to read about the petition and allows for online “signing” via electronic identity verification. The clear benefits of online access and signing include:

- access to and by a broader population of voters
- heightened integrity of the petition “signing” process and greater security than current physical signing process
- the opportunity to read the full text of petition language before signing
- improved efficiency, and reduced burden on administrative staff
- *the ability to sign at any time from any place*
- the ability to un-sign prior to the petition signing deadline

Our neighboring city of Denver has an app for this. You can read more about the success of their efforts at this link <http://303software.com/eSign>.

In addition, the Colorado Secretary of State uses a secure online process for voter registration. You can experience this tool at <http://GoVoteColorado.com>.

An example of this electronic identity verification process is how the Colorado Secretary of State (“SOS”) allows people to change party affiliation or address on the SOS website using their

Colorado ID numbers or last 4 digits of their social security numbers as identification.

If this provision is added to the charter, the Working Group requests that the council direct the city manager to appoint a new working group that would explore how to implement online “signing” of petitions and make recommendations to council.

Once the council has made a decision on this, charter section 38 would need to be amended to allow or require such a process.

The process for the city to create the mechanism to allow “signing” of initiative petitions on-line would impact the budget and work plans for several departments within the city, including Innovation and Technology, City Clerk, City Manager’s Office, City Attorney’s Office and Communication. However, once implemented, it may be considerably less costly than the current process of dealing with piles of paper.