

Fort Collins City Council Election Code Committee Agenda

Regular Meeting
4:30 p.m., Wednesday, March 27, 2024
CIC Conference Room at City Hall, 300 Laporte Ave, Fort Collins, CO 80521
Zoom Webinar link: <https://fcgov.zoom.us/j/94661373164>

Committee Members:

Tricia Canonico, District 3
Jeni Arndt, Mayor
Julie Pignataro, District 2
Melanie Potyondy, District 4

NOTICE:

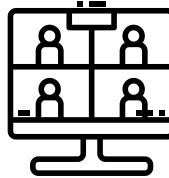
Regular meetings of the Election Code Committee will be determined at this meeting. Meetings are conducted in a hybrid format, with a Zoom webinar in addition to the in person meeting in the CIC Conference Room at City Hall.

Councilmembers may participate in this meeting via electronic means pursuant to their adopted policies and protocol.

How to view this Meeting::



Meetings are open to the public and can be attended in person by anyone.



Meetings are available through the Zoom platform, electronically or by phone.

Call in: +1 720 928 9299

Meeting ID: 946 6137 3164

Upon request, the City of Fort Collins will provide language access services for individuals who have limited English proficiency, or auxiliary aids and services for individuals with disabilities, to access City services, programs and activities. Contact 970.221.6515 (V/TDD: Dial 711 for Relay Colorado) for assistance. Please provide 48 hours advance notice when possible.

A solicitud, la Ciudad de Fort Collins proporcionará servicios de acceso a idiomas para personas que no dominan el idioma inglés, o ayudas y servicios auxiliares para personas con discapacidad, para que puedan acceder a los servicios, programas y actividades de la Ciudad. Para asistencia, llame al 970.221.6515 (V/TDD: Marque 711 para Relay Colorado). Por favor proporcione 48 horas de aviso previo cuando sea posible.



There are four options for members of the public who would like to participate in or provide input regarding Council Committee meetings:

Comment in real time::

- In person attendees can address the Election Code Committee in the CIC Conference Room at City Hall.
- *During the public participation portion of the meeting and discussion items:*
The public can join the Zoom webinar and comment from the remote meeting, joining online or via phone.

Join the online meeting using the link in this agenda to log in on an internet-enabled smartphone, laptop or computer with a speaker and microphone. Using earphones with a microphone will greatly improve audio experience. To be recognized to speak during public participation portions of the meeting, click the 'Raise Hand' button.

Participate via phone using the call in number and meeting ID below. Enter the meeting ID when prompted, and then hit the # key.

Call in number: 720 928 9299

Meeting ID: 946 6137 3164

During public participation opportunities in the meeting, press *9 to indicate a desire to speak.

Submit written comments::

- Email comments about any item on the agenda to cityleaders@fcgov.com
- Written comments can be mailed or dropped off at the City Clerk's Office at City Hall, at 300 Laporte Ave, Fort Collins, CO 80521

The Election Code Committee is supported by the Office of the City Clerk
cityclerk@fcgov.com 970.221.6515



Agenda

Election Code Committee

March 27, 2024 – 4:30 PM

**CIC Conference Room, City Hall, 300 Laporte Ave and
via Zoom at <https://fcgov.zoom.us/j/94661373164>**

Remote Participation Available

- A) Call Meeting to Order**
- B) Roll Call**
- C) Public Participation**
- D) Public Participation Follow-up**
- E) Approval of Minutes**
- F) Discussion / Informational Items**

1. Planning Future Work for the Election Code Committee.

In 2015, prior to formally establishing the Election Code Committee (ECC), Council appointed an Ad Hoc Council Committee to review recent changes in relevant election rules, laws, policies and procedures to make recommendations of possible City Code and City Charter changes for further discussion by Council. The Committee was formally established in 2017 as a standing Council Committee.

In February 2024, Council appointed Mayor Jeni Arndt and Councilmembers Tricia Canonico and Julie Pignataro to serve as members of the ECC and Councilmember Melanie Potyondy to serve as an alternate.

- G) Review of Upcoming Calendar**
- H) Other Business**
- I) Adjournment**

Next Scheduled Committee Meeting: TBD

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March 27, 2024



AGENDA ITEM SUMMARY

Election Code Committee

STAFF

Rupa Venkatesh, Assistant City Manager
Heather Walls, Interim City Clerk
Rita Knoll, Chief Deputy City Clerk
Tyler Robbins, Business Analyst I/Elections
Sara Arfmann, Legal
Carrie Daggett, Legal

SUBJECT

Planning Future Work for the Election Code Committee.

EXECUTIVE SUMMARY

In 2015, prior to formally establishing the Election Code Committee (ECC), Council appointed an Ad Hoc Council Committee to review recent changes in relevant election rules, laws, policies and procedures to make recommendations of possible City Code and City Charter changes for further discussion by Council. The Committee was formally established in 2017 as a standing Council Committee.

In February 2024, Council appointed Mayor Jeni Arndt and Councilmembers Tricia Canonico and Julie Pignataro to serve as members of the ECC and Councilmember Melanie Potyondy to serve as an alternate.

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

1. Election of the ECC Chair
2. What topics would ECC like to consider for discussion in 2024-2025 and in what priority order?
3. What meeting cadence would the Committee like to follow going forward?

BACKGROUND / DISCUSSION

2021-2023 ECC Accomplishments

The previous ECC met from April 2021 to January 2023. Typically, ECC work is paused to allow for its recommendations to be considered by Council prior to elections. The accomplishments of this past ECC include the following:

- Per the U.S. Constitution, a census occurs every 10 years which results in the need for redistricting. The Committee looked at various options; however, no Code update has yet moved forward to address the current redistricting requirements.
- Updates to and adoption of new campaign finance provisions

- A Charter amendment (which was approved by voters) shifting the City's regular municipal elections from each odd-year in April to each odd-year in November
- A Charter amendment (which was approved by voters) requiring that for all regular city elections conducted after January 1, 2025, the offices of Mayor and each District Councilmember will be elected using a ranked voting method

A comprehensive summary of accomplishments from 2015 to present is included as an attachment.

2024 ECC Potential Topics

The three topics that were identified by the previous ECC and did not move forward include the following.

- Public Financing of Elections
- Election Oversight Board
- Partisan/non-partisan elections

In addition, staff has compiled a list of potential topics based on feedback heard from Councilmembers as well as recommendations from staff. This list is included as an attachment.

Staff is also prepared to debrief with ECC the campaign finance complaint process to include a brief overview of the process, some examples, and staff recommendations to improve the process.

ATTACHMENTS

1. Election Code Committee Accomplishments, 2015-date
2. Potential Topics for 2024
3. Presentation

Election Code and Charter Amendments 2015-Present

October 2015

Ad Hoc Council Committee to review election matters formed.

March 2016

- Added a new section to Chapter 7, Article 1, addressing the applicable law for City elections.
- Relocated, consolidated, and amended the duties of the City Clerk.
- Amended the section dealing with the appointment of elections judges to reflect that they are now called workers, and removing the language requiring that they be appointed for each precinct.
- Amended the section dealing with compensation for election workers (formerly judges) to allow the City Clerk to establish the amount of compensation based on a review of comparable types of work.
- Added a new section requiring election workers to take and subscribe to an oath.
- Added a new Division relating to recounts and procedures for recounts.
- Amended the procedure for protesting the proposed manner of redistricting.
- Amended the definition of “contribution” to clarify that funds collected subsequent to the election to pay the cost of a requested recount is not a contribution.
- Amended the filing deadline for the campaign finance report due on the Friday before the election to be noon (rather than close of business).
- Added language requiring the City Clerk to post campaign finance report on the City’s web site no later than the next business day, and eliminated the requirement for publication of certain reports in the newspaper.
- Amended the section on unexpended campaign contributions to allow unexpended contributions to be used to pay for the cost of a recount requested by a candidate committee, issue committee, or political committee.
- Added clarifying language to the section on filing a protest of a proposed ballot title and/or submission clause and specifying the information provided in a notice of protest.
- Added to the information to be included in the Notice of Election published 20 days prior to the election the following: “Such other information that may be useful to voters regarding the conduct of the election or related to disclosures required in this Chapter.” [Chapter refers to Chapter 7 on Elections]

- Established the order in which items shall appear on the ballot.
- Clarified the current practice for qualifying a ballot, and specified that signature verification by comparing the signature on a return envelope to signature images in the state-wide voter registration system is not required.
- Clarified that a voter, in the course of correcting a deficiency on the return envelope, is not allowed to open, change, or alter his or her ballot in the process.
- Clarified the timing of the release of preliminary election results and final election results.

January 2017

Election Code Committee (a standing subcommittee of the Council) formed to replace the ad hoc committee.

January 2017

- Clarified City Clerk duties pertaining to election complaints.
- Added a requirement to amend City precinct boundaries upon notification that Larimer County precinct boundaries have changed.
- Added a triggering factor requiring review of population deviation between districts.
- Increased time in advance of an election that district boundaries must be changed from 120 days prior to the election to 180 days prior to the election.
- Added provisions relating to small-scale issue committees.
- Strengthened provisions relating to independent expenditures to require:
 - A detailed description of the expenditures sufficient to allow for determination of compliance with the Code
 - Copies of receipts, invoices, or other documentation related to the independent expenditure
 - Maintenance of records for one (1) year, or longer if a complaint is received, and production of those records within three (3) business days upon request of the City
- Added a Division pertaining to campaign complaints/violations.

April 2017

- Charter Amendment approved changing the deadline for final certification of an election so that the City may implement signature verification, and corresponding changes to the date of the Council organizational meeting and the beginning of Councilmember terms of office.

April 2018

- Amended the duties of the City Clerk to include serving as the Designated Election Official in any election coordinated with Larimer County.
- Added a definition of “public announcement”, which is used in the context of determining when someone becomes a candidate.
- Added a definition of “registered agent”, which is used in the context of committee registration and campaign finance reports.
- Changed the date that a candidate’s first financial disclosure statement is due to coincide with the acceptance of nomination, rather than 10 days after acceptance of nomination.
- Amended Section 7-134 regarding registration of committees to require registration on a form provided by the City Clerk and outlining the required information to be provided. Required prompt provision of information updates. Added provisions relating to voluntary termination and the proper disposition of funds and mandatory termination for political committees and issue committees no later than 60 days after the election.
- Added two additional campaign finance report filing dates: 35 days prior to the election and 60 days after the election.
- Clarified that the campaign finance report due on the Friday before the election is due at noon, regardless of the method of filing. (All other reports, if filed electronically, may be filed until midnight on the date due.)
- Applied similar committee registration requirements and update information to small-scale issue committees (which are addressed in a separate section of the Code).
- Provided that any issue committee or political committee formed prior to July 1, 2017 will be deemed terminated and shall cease operation as of April 13, 2018. Such committees are required to disburse remaining funds pursuant to the provisions in Section 7-138 (Unexpended Campaign Contributions) of the Code.
- Established the requirement to use signature verification in the manner provided in State Statute beginning with the April 2019 election.

June 2018

- Amended deadlines for write-in candidates, nomination petitions, withdrawal from candidacy, and nomination petition in a recall election, to provide more time for preparation and mailing of ballots.
- Amended the definition of “independent expenditure” to:
 - clarify that independent expenditure includes advertisements placed for a fee on another person’s website, or advertisement space provided for no fee or a reduced fee when a fee ordinarily would have been charged.
 - require reporting of independent expenditures supporting or opposing a ballot issue or question.
 - require persons making independent expenditures to keep copies of any public communications produced, in addition to invoices, receipts, and other instruments of payment.
 - clarify that the following are not independent expenditures:
 - 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.
 - 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.
- Required committees to keep copies of any public communications produced, in addition to invoices, receipts, and other instruments of payment.
- Adjusted the deadline for post-election campaign reports from the 60th day after the election to now be due the 70th day after the election.
- Adjusted the deadline for the report due on the 30th day after the election to instead be due on the 35th day after the election.
- Added a definition of “social media” to 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.
- Added internet advertisers, website providers and social media providers to the list of possible entities providing paid advertising, and to the reporting requirements for discounted rates.
- Established provisions specifically addressing the facilitation of voting by uniformed military and overseas voters.

September 2018

- Amended the definition of “candidate committee” to specify that the common purpose is to receive contributions *or* (rather than “and”) make expenditures.
- Amended the definition of “contribution”, specifically in the portion describing what “contribution” does not include, to add reference to a small-scale issue committee.
- Amended the definition of “contribution in kind” to add reference to a small-scale issue committee. This applies also to what “contribution in kind” does not include.
- Amended the definition of “expenditure” to add reference to a small-scale issue committee.
- Amended the definition of “independent expenditure” to add reference to a small-scale issue committee.
- Amended the definition of “independent expenditure”, specifically in the portion describing what “independent expenditure” does not include, to add expenditures made by small-scale issue committees.
- Amended the definition of “issue committee” to clarify that it means any person that has accepted contributions for the purpose of supporting or opposing a ballot question.
- Amended the definition of “political committee” to clarify that activity is limited to supporting or opposing candidates only, and eliminating the ability of a political committee to make contributions to other committees.
- Amended the definition of “unexpended campaign contributions” to add reference to a small-scale issue committee.
- Amended the section dealing with registration and termination of committees to add reference to a registered small-scale issue committee.
- Amended the section relating to campaign contributions and expenditures to:
 - eliminate issue committee and political committee from the provision relating to joint contributions,
 - add reference to small-scale issue committee to the list of committees that cannot knowingly accept contributions from any person who is not a U.S. citizen, from a foreign government, or from any foreign corporation that does not have authority to transact business in Colorado
 - add a new subsection prohibiting any type of committee from coordinating its expenditures with any other committee in a manner that circumvents any restrictions or limitations on campaign contributions, expenditures, or reporting requirements.
- Amended the section relating to disclosure and filing of reports to make a committee’s registered agent, rather than treasurer, the person notified of any deficiencies in reporting, and the person responsible for amending a report to cure deficiencies.

- Amended the section regulating independent expenditures to:
 - exclude a committee required to register under Chapter 7, Article V, from making independent expenditures
 - require reporting of independent expenditures once the aggregate amount spent exceeds \$250
 - require reporting on a form provided by the City Clerk
- Added a new section titled “Responsibility for communications” establishing required “paid-for-by” statements on certain types of communications produced by committees and by persons making independent expenditures.
- Amended the section regarding rates and charges for political advertising to include reference to a small-scale issue committee.
- Amended the section regarding allegation of campaign violation to include a person to the list of those who may commit a campaign violation and be subject to the filing of a complaint.

September 2020

- Amended the section in Chapter 2 requiring the filing of a Financial Disclosure Statement to align filing requirements for seated Councilmembers and newly elected Councilmembers so that the filing deadline falls on the same date (May 15 each year).
- Added a clarification that no issue committee, small-scale issue committee or political committee may make a contribution or contribution in kind to any candidate committee.
- Eliminated the \$20 threshold for itemizing contributions and contributions in kind so that ALL contributions and contributions in kind must be reported and itemized.
- Amended provisions relating to the use of unexpended campaign contributions to
 - enable them to be contributed to a candidate committee established by the same candidate for a subsequent campaign in a non-City election, to the extent permitted by law
 - clarify the process for a candidate committee to be used in a subsequent election
- Established a civil infraction process for violation of campaign finance provisions (8), while maintaining certain violations as criminal misdemeanors (3). Defined in detail the processing of complaints.
- Established a \$100 limit on contributions and/or contributions in kind to a political committee.
- Established provisions, similar to State law, regarding contributions from limited liability companies (LLCs), including attribution of LLC contributions among the members of the LLC so that no natural person exceeds contribution limits.

April 2021

- Charter amendment approved updating the provision for election of a Mayor Pro Tem.

- Charter amendment approved updating the reference to “Chief Judge” in the Board of Elections provision.

July 2022

- Amended the City Code to clarify, revise and strengthen restrictions and requirements for campaign finance in City elections.
- Adopted an amended District-Precinct Map.

November 2022

- Charter amendment approved requiring that for all regular city elections conducted after January 1, 2025, the offices of Mayor and of each District Councilmember will be elected using a ranked voting method.
- Charter amendment approved shifting the City’s regular municipal election from each odd-year April to each odd-year November.
 - Extended the term of the Mayor and each Councilmember from April to November, without altering the number of terms each may serve.
 - Allowing for coordinated elections to be conducted by the County Clerk and Recorder.
- Charter amendment approved increasing the compensation of the Mayor and Councilmembers according to the Area Median Income (AMI) for the Fort Collins/Loveland area for a single-person household, adjusted annually, as follows:
 - The Mayor will receive 75% of the AMI
 - The Mayor Pro Tem will receive 60% of the AMI
 - All other Councilmembers will receive 50% of the AMICouncilmembers will be entitled to opt into the City organization’s healthcare-related benefits, on the same terms those benefits are available to City employees.

April 2023

- Amended City Code relating to the conduct of the City’s regular municipal election (in November rather than April).
- Amended City Code relating to candidacy deadlines in a City election.
- Amended City Code relating to financial disclosure requirements (modifying deadline to file)

November 2023

- Charter amendment approved to correct, reconcile and clarify the referendum and petition process requirements, and to increase the readability of those provisions.

Potential Election Code Committee Topics for Discussion

Campaign Finance Complaints

- What constitutes a cure of a violation? Especially after the election has concluded.
- Include ability for a respondent to resolve a complaint by paying a fine (eliminates resources needed for municipal court prosecution, and facilitates a resolution when it is not possible to cure the violation)
- Remove Police Services from the process and replace with an investigator. Investigator could also perform other parts of the process.
- Improve communications (to all parties even if not required; more timely, other?)
- New options State law (HB24-1283) may offer, if enacted.

Campaign Finance (in General)

- Increase contribution limits?
 - HB23-1245 set the limit any person at \$400 and for small donor committees at \$4,000
- Independent expenditure definition and provisions need to include political parties
- Update the reporting requirements to match the requirements set in CRS 1-45-108
 - 60 days, 30 days, and 15 days prior to the election
 - 30 days after the election
 - Annually in off-election years on the first day of the month in which the major election occurs
 - Runoff elections – no later than 15 days before and after
- Need to address “issue” committees formed before there is an actual ballot issue (during a referendum process before Council makes a decision to repeal or refer to voters)
- Referring complaints to the Secretary of State, reliant on the passage of HB24-1283

Candidates

- Increase number of signatures required for nomination?
- Write-in Candidates
 - Potentially eliminate them

OR

- Update Code provisions to provide clarity
 - Definition of candidate
 - Applicability of campaign finance provisions
- CHARTER AMENDMENT(S) – possible amendment(s) for clarity

Initiative and Referendum

- Update the petition forms
 - Cure incongruent language on bottom of front page
 - Preparation of petition for circulation (who prints the packets; cost recovery?)
- Consider City Code provisions regarding the requirement for a circulator to read the text of the proposed or referred measure (currently required via adoption of the form of the petition)
- CHARTER AMENDMENTS relating to referendum to address:
 - Requirement to include the full text of the referred ordinance
 - When a protested ordinance is suspended
 - Timelines, specifically regarding if a hearing is required and for review of signed petitions and other related steps

- Signature requirements (currently 10% of the ballots cast in the last election)
- Restructuring of the provisions for clarity
- CHARTER AMENDMENTS relating to initiatives to address:
 - Timelines for review of signed petitions and other related steps
 - Signature requirements (currently 10% of the ballots cast in the last election for both; 15% if seeking a special election for initiatives)
 - CO Constitution sets the limit as 10% for referendums and 15% for initiatives
- Requests to withdraw a signature from a petition (Colorado Springs 5.1.408(C)(1) and CRS 1-12-108(9)(d)(1) examples)

Ranked Choice Voting

- Review Secretary of State rules regarding RCV
- RCV provisions need to be added to the City Code (if City is conducting the election)
- Voter outreach and education

Other

- CHARTER AMENDMENT adjusting Council vacancy process
- Clarify in Sec 2-636 what financial disclosures are required upon leaving office

Elections Code Committee



- Election of Chair
 - Purpose of ECC
 - 2023 Review: Accomplishments, remaining items on previous workplan
 - 2024 Workplan: Potential topics
 - 2024 sequencing
 - Meeting cadence
-
- Debrief of campaign finance complaint process

In 2015, prior to formally establishing the ECC, City Council appointed an Ad Hoc Council Committee to review recent changes in relevant election rules, laws, policies and procedures and to make recommendations of possible City Code and City Charter changes for further discussion by the City Council. The work of the Ad Hoc Committee proved to be beneficial and necessary on an ongoing basis, and the Committee was formally established in 2017.

- Redistricting
- Campaign Finance Provisions
- November Elections
- Ranked Choice Voting

2021-23 ECC Items Not Moved Forward



PUBLIC FINANCING OF
ELECTIONS



ELECTION OVERSIGHT
BOARD



PARTISAN/NON-
PARTISAN ELECTIONS

Potential topics for discussion

- Campaign finance complaints process and enforcement
- Campaign finance (in general)
- Candidates
- Initiative and referendum processes
- Ranked choice voting implementation
- Other



2024 Sequencing

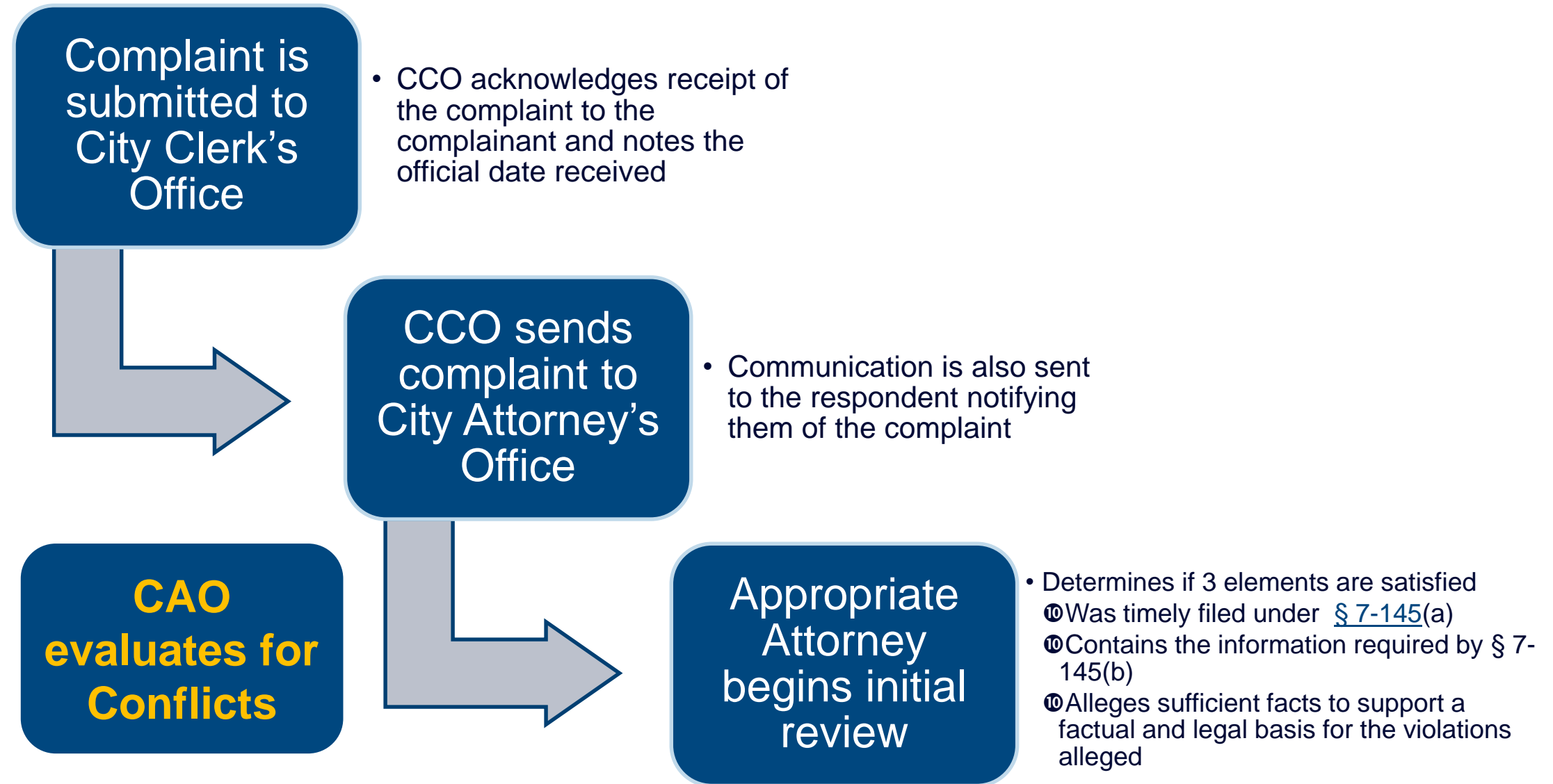


Meeting cadence



Campaign Finance Complaint Process Overview

Steps for Complaints Alleging Civil Infractions



- Conflicts arise when there is a concern that the CAO may not be neutral in evaluating the complaint or could create future concerns, for example:
 - The CAO advises the individual as a client and involvement in a complaint could create a difficult future working relationship with the person involved in a complaint; or
 - When the CAO has already been deeply involved in the matter prior to the complaint
- What are routine conflicts:
 - Complaints related to anyone running for an elected position
 - Complaints related to an issue that the CAO has been closely involved with (ex: referendum)
- Currently when a conflict exists the CAO sends the matter to outside counsel to take the place of the CAO in the complaint process

Reviewing Attorney determines if the complaint satisfies initial 3 elements



Reviewing Attorney
notifies CCO that
the 3 elements were
not satisfied



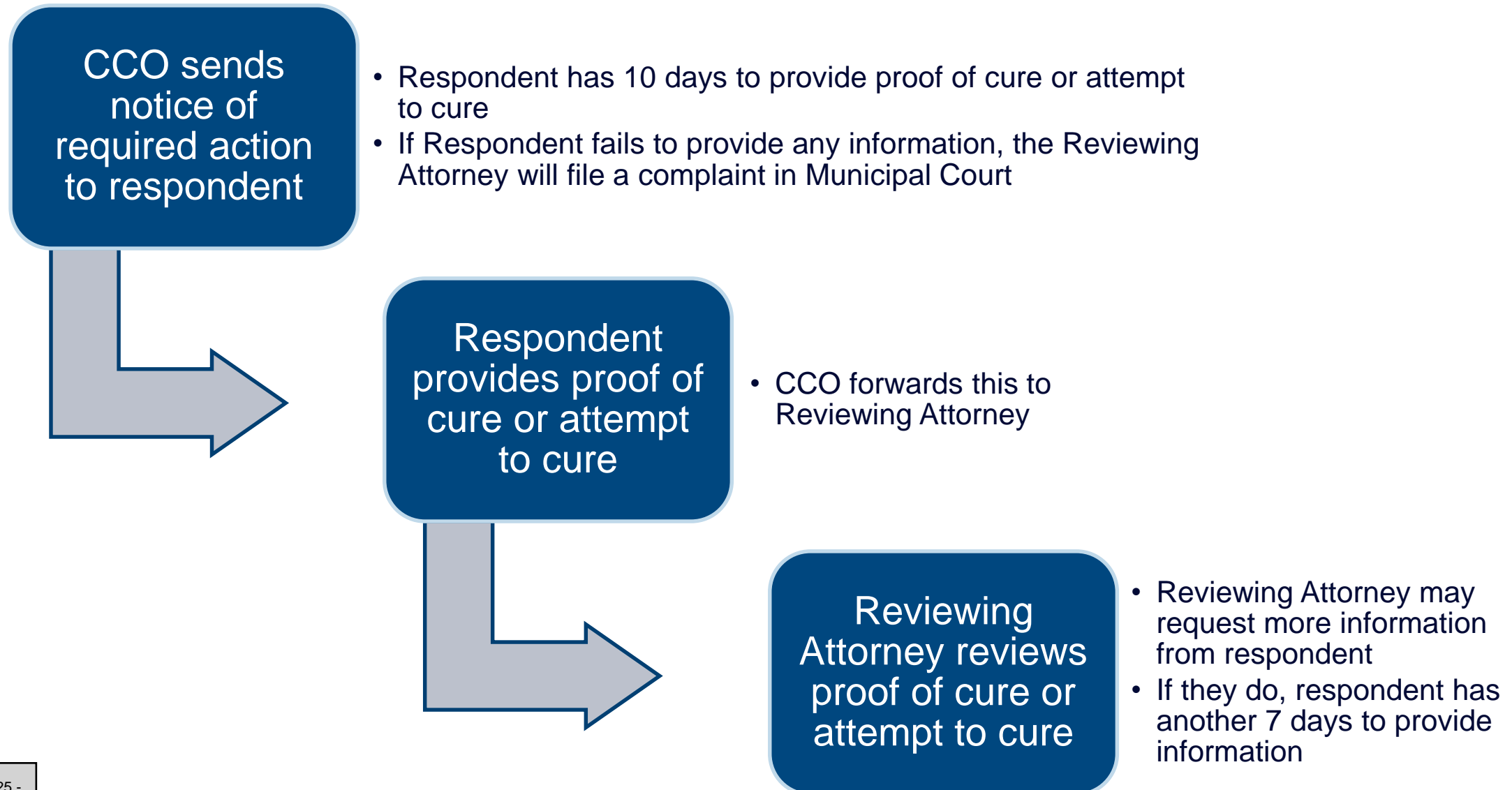
CCO notifies
complainant and
respondent of
failure to satisfy
requirements



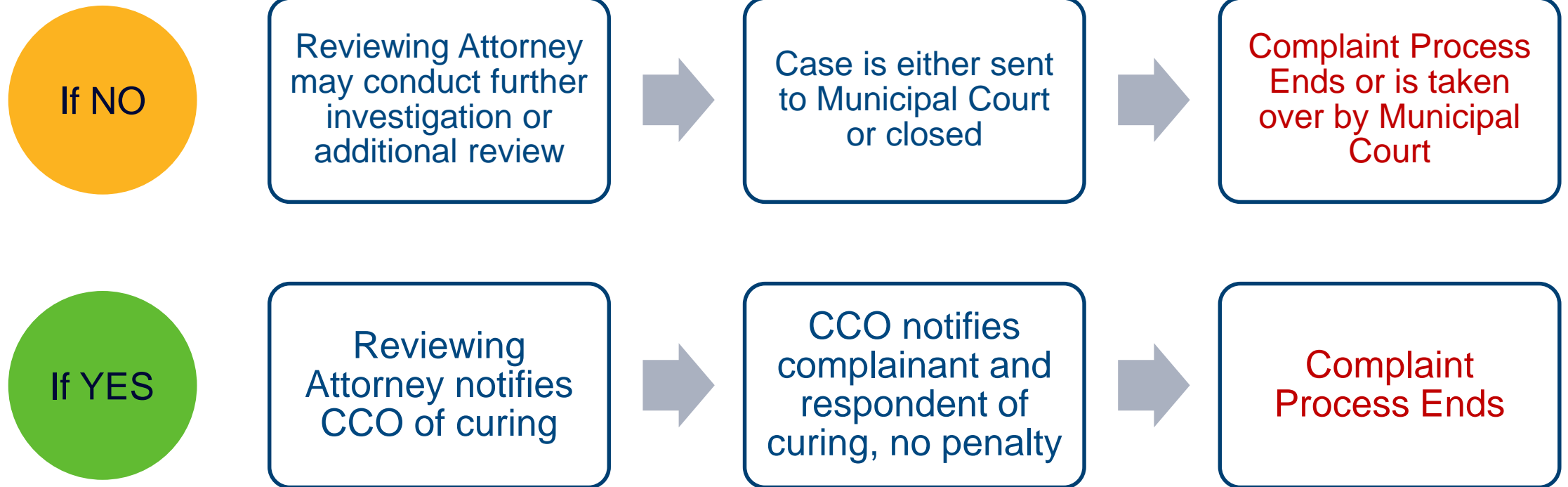
Complaint Process
Ends



Reviewing Attorney notifies CCO who will, in turn, notify the respondent in writing of the presumptive penalty in accordance with 7-143(a) and that they have 10 days to file a response



Reviewing Attorney determines if the violation has been cured



Campaign Finance Complaint Example #1

- Common complaint – “no paid for by” on campaign materials
- Section 7-140(a)(1) requires that any candidate/etc “expressly advocating a particular result in an election, or solicits any contribution or contribution in-kind through any” communication, if paid for or authorized by the candidate/etc, “shall clearly state the communication is paid for by” the candidate/etc
- 2022 complaint related to “Vote NO Ballot Question 2c” sign
- Conclusion was that while the “paid for by” language would make it even clearer, the inclusion of the logo itself provided ample information for the reader of the sign to determine who has paid for the communication
- Therefore, no violation of Section 7-140



Campaign Finance Complaint Example # 2

- 2021 complaint regarding alleged violation of a candidate in sending a “robotext” sent without “paid for by” language
- Unlike the prior sign, in this situation the absence of a clear “paid for by” makes it unclear who sent this (the candidate, their committee, or a separate committee that endorses the candidate)
- Violation found and plea with agreed upon monetary penalty paid

Fort Collins mayor elections
are April 6. [REDACTED] is
the clear choice. A proven
leader endorsed by [REDACTED]
[REDACTED]. VOTE 4 [REDACTED]
[REDACTED]!

Text STOP to end

- In 2019, a complaint was filed alleging that an issue committee violated the Sec. 7-136 disclosure requirements because a contribution made was missing the address as required by Code
- In reviewing the filing of this issue committee, it was found that they reported the contributor's name, the date and the amount of the contribution but did not include the contributor's address
- While this was a violation of the Code per se, it was found to be a *de minimis* violation of the Code, factors that were considered in this determination:
 - The issue committee did note "no address on record" in their report, indicating that they knew of the requirement but did not have the information
 - The cost to the City in prosecution compared with the benefit to the City and its residents if prosecution were successful

Campaign Finance Complaint Example # 4

- In 2019, a complaint was filed alleging that a candidate's campaign Facebook page did not include the "paid for by" required statement
- Counsel found that the Facebook page doesn't establish a clear link between the page and an expenditure from the candidate's campaign
 - While "social media of a candidate" is a form of communication subject to Sec. 7-140, it still must be an expenditure to trigger the "paid for by" requirement
 - Counsel found that as Facebook pages are free for creation, there was no expenditure, and therefore no violation