

ORDINANCE NO. 25, Series 2019

INTRODUCED BY: COUNCILOR STEPHANIE WALTON

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO SUBMITTING TO THE VOTERS AT THE REGULAR MUNICIPAL ELECTION ON NOVEMBER 5, 2019, AMENDMENTS TO THE HOME RULE CHARTER PERTAINING TO RECALL ELECTIONS, FILLING VACANCIES IN ELECTIVE OFFICES, AND INITIATIVE AND REFERENDUM PROCEDURES, AND SETTING THE BALLOT TITLES THEREFOR

WHEREAS, in 1993, the City adopted the Uniform Election Code of 1992 (C.R.S Title 1) for participating in all coordinated elections, and the City adopted the Colorado Municipal Election Code (C.R.S. Title 31) for city-only elections;

WHEREAS, since 1993, all City regular elections have been conducted in accordance with Colorado state law; and

WHEREAS, the City's recall election procedures in Section 3.17 of the Lafayette Home Rule Charter were established when the Charter was adopted in 1958, and have not been amended since;

WHEREAS, the City's initiative and referendum procedures in Sections 7.9, 7.10, 7.11, 7.12, and 7.13 of the Lafayette Home Rule Charter were established when the Charter was adopted in 1958 and, except for one amendment to change the timeline to call a special election in Section 7.12 in 2011, have not been amended since; and

WHEREAS, certain conflicts exist between the current Charter provisions addressing the procedures for recall, initiatives, and referendum elections, which cannot be reconciled with statutory provision for coordinated and mail ballot elections; and

WHEREAS, modern election procedures, such as coordinated elections and mail ballot elections, allow for more efficient and effective administration of recall, initiative, and referendum elections; and

WHEREAS, amending the recall, initiative, and referendum petition and election provisions in the Lafayette Home Rule Charter to conform to applicable Colorado state laws would modernize those provisions of the City's Charter and would allow for the more efficient and effective administration of such elections; and

WHEREAS, City Council further proposes to amend Section 5.7 of the Lafayette Home Rule Charter to extend the timelines for filling vacancies on City Council by appointment or election to more closely align with timelines in state law for recall and initiative elections; and

WHEREAS, City Council wishes to refer to the electorate proposed amendments to the Lafayette Home Rule Charter that would align recall, initiative, and referendum procedures with

applicable provisions in Colorado state laws, and to extend the timelines applicable to filling vacancies on City Council.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, AS FOLLOWS:

Section 1. Pursuant to the provisions of Article 20, Section IX of the Constitution of the State of Colorado and Section 31-2-210(1)(b) of the Colorado Revised Statutes at a coordinated, regular municipal election, to be held on Tuesday, November 5, 2019, there shall be submitted to the vote of the registered electors of the City of Lafayette the following changes to Section 3.17 of the Lafayette Home Rule Charter, along with the ballot question and title thereto, provided that the amendments to Section 3.17 shall not become effective until January 1, 2020. (STRIKE THROUGH DENOTES REPEAL OR DELETION OF CHARTER SECTIONS AND UNDERSCORE DENOTES ADDITIONS TO CHARTER SECTIONS):

Question No. ___ - Recall Elections

Section 3.17. – Recall. *(To become effective January 1, 2020)*

Any incumbent of an elective office may be removed from office by the qualified electors of the city after he/she has held office for six (6) months.

~~A petition demanding the recall of the officer sought to be removed and signed by qualified electors equal in number to at least twenty-five (25) per centum of the total number of votes cast for the office that is being recalled, to conform with Article XXI of the Constitution, shall be addressed to the Council and delivered to the City Clerk, not less than five (5) nor more than thirty (30) days after the affidavit making charges against said officer has been filed. Each elector signing the petition shall write his/her home address after his/her name. Said petition may be in sections of one or more sheets fastened securely at the top, and upon each section of the petition shall be written or printed a copy of the charges previously filed with the City Clerk. One of the electors signing each section shall append thereto his/her affidavit that each signature written thereon is the genuine signature of the person whose name it purports to be and that the affiant has not and will not receive any compensation for obtaining the signatures. All sections of the petition shall be filed as one instrument, with the endorsement of the names of three (3) persons designated as filing the same. Provided, however, that prior to the filing of any recall petition one or more qualified electors shall file with the City Clerk an affidavit of not more than three hundred (300) words stating the reasons for the recall of the officer sought to be removed. The City Clerk shall, within forty eight (48) hours after the filing of said affidavit, mail a copy by registered mail to the officer sought to be recalled who may file with the City Clerk a sworn statement in defense of charges made against him/her.~~

~~Within ten (10) days of the filing of said petition the City Clerk shall ascertain by examination of the petition and the registration books whether the petition is signed by the requisite number of qualified electors and shall attach thereto his/her certificate showing the result of such examination. If the petition is insufficient he/she shall forthwith in writing, notify one or more of the persons designated on the petition as filing the same. The petition may be~~

~~withdrawn and amended within twenty (20) days from the filing of the certificate. The City Clerk, within five (5) days after such amendment, shall make like examination of the amended petition and attach thereto his/her certificate of the result. If the petition is still insufficient, he/she shall return it to one of the persons designated thereon as filing it, without prejudice to the filing of a new petition for the same person.~~

~~Any qualified elector desiring to become a candidate at the recall election shall do so by petition as required by the article on the elections hereof, which petition if presented to the City Clerk at least twenty (20) days before said election shall entitle him/her to have his/her name placed on the ballot. Notice of election shall be given as provided in the article of this Charter relating to elections.~~

~~If the petition or amended petition is found sufficient, the City Clerk shall submit the same with his/her certificate to the Council without delay and the Council, if the officer sought to be removed does not resign within five (5) days thereafter, shall order an election. There shall be printed on the official ballot as to every officer whose recall is to be voted on, the words "Shall (name of person against whom the recall petition is filed) be recalled from the office of (_____)?" Following such question shall be the words "Yes" and "No" on separate lines, with a blank space at the right of each, in which the voter shall indicate, by marking a cross (x), his/her vote for or against such recall.~~

~~On such ballots, under the questions, there shall be printed the names of those persons who have been nominated as candidates to succeed the person sought to be recalled; but no vote cast shall be counted for any candidate for such office, unless the voter also voted for or against the recall of such person sought to be recalled from said office. The foregoing sentence or instructions shall be printed on the ballot. The name of the person against whom the petition is filed shall not appear on the ballot as a candidate for the office.~~

~~If the majority of those voting on said question of the recall of any incumbent from office shall vote "NO," said incumbent shall continue in said office; if a majority shall vote "YES," such incumbent shall thereupon be deemed removed from such office upon the qualification of his/her successor. Such election shall be held on a Tuesday fixed by the Council not less than forty five (45) nor more than sixty (60) days from the date that the City Clerk's said certificate was filed; provided that if any other city election is to occur within ninety (90) days from the date of the City Clerk's certificate, the Council shall postpone and consolidate the recall election with such other city elections.~~

~~If a vacancy occurs in said office after a recall election has been ordered, the election to fill the vacancy shall nevertheless proceed as in this article provided.~~

~~No person who has been recalled or has resigned while recall proceedings were pending against him/her shall serve the city in any capacity within two (2) years after such removal or resignation.~~

~~No person shall receive any compensation whatsoever for canvassing for signatures to a petition for recall of any official.~~

Except as to requirements contained in this Charter, recall petitions and recall elections shall conform to and be conducted in accordance with the municipal recall election laws of the State of Colorado.

BALLOT TITLE
Question _____ – Recall Elections

SHALL SECTION 3.17 OF THE LAFAYETTE HOME RULE CHARTER REGARDING RECALL ELECTIONS BE AMENDED TO PROVIDE THAT STATE LAWS REGARDING THE RECALL OF ELECTED MUNICIPAL OFFICERS SHALL APPLY TO CITY RECALL ELECTIONS, WHILE RETAINING EXISTING CHARTER PROVISIONS REGARDING THE MINIMUM NUMBER OF SIGNATURES REQUIRED TO BE SUBMITTED WITH A RECALL PETITION?

YES _____

NO _____

Section 2. Pursuant to the provisions of Article 20, Section IX of the Constitution of the State of Colorado and Section 31-2-210(1)(b) of the Colorado Revised Statutes at a coordinated, regular municipal election, to be held on Tuesday, November 5, 2019, there shall be submitted to the vote of the registered electors of the City of Lafayette the following changes to Section 5.7 of the Lafayette Home Rule Charter, along with the ballot question and title thereto, provided that the amendments to Section 5.7 shall not become effective until January 1, 2020. (STRIKE THROUGH DENOTES REPEAL OR DELETION OF CHARTER SECTIONS AND UNDERSCORE DENOTES ADDITIONS TO CHARTER SECTIONS):

Question No. ____ - Filling Vacancies in Elective Offices

Section 5.7. - Filling vacancies in elective offices. *(To become effective January 1, 2020)*

(a) Any vacancy which occurs in the Council more than one hundred eighty (180) ~~ninety (90)~~ days before the next regular city election shall be filled within forty-five (45) ~~thirty (30)~~ days by a majority vote of the remaining members of the Council, said appointee to hold office until the next regular Council meeting following certification of the next election, at which election such vacancy shall be filled as provided in Section 3.2 for any balance of the unexpired original term.

(b) If any vacancy in the office of Councilor which the Council is authorized to fill is not so filled within forty-five (45) ~~thirty (30)~~ days after such vacancy occurs, or if three (3) or more vacancies exist simultaneously in the office of Councilor, such vacancies shall be filled for the respective unexpired terms at a special election.

BALLOT TITLE

Question _____ – Filling Vacancies in Elective Offices

SHALL THE EXISTING TIMELINES IN SECTION 5.7 OF THE LAFAYETTE HOME RULE CHARTER BE AMENDED TO PROVIDE THAT ANY VACANCIES IN THE CITY COUNCIL OCCURRING MORE THAN 180 DAYS BEFORE THE NEXT REGULAR CITY ELECTION SHALL BE FILLED BY CITY COUNCIL WITHIN 45 DAYS?

YES _____

NO _____

Section 3. Pursuant to the provisions of Article 20, Section IX of the Constitution of the State of Colorado and Section 31-2-210(1)(b) of the Colorado Revised Statutes at a coordinated, regular municipal election, to be held on Tuesday, November 5, 2019, there shall be submitted to the vote of the registered electors of the City of Lafayette the following changes to Sections 7.9, 7.10, 7.11, 7.12, and 7.13 of the Lafayette Home Rule Charter, along with the ballot question and title thereto, provided that the amendments to Sections 7.9, 7.10, 7.11, 7.12, and 7.13 shall not become effective until January 1, 2020. (STRIKE THROUGH DENOTES REPEAL OR DELETION OF CHARTER SECTIONS AND UNDERSCORE DENOTES ADDITIONS TO CHARTER SECTIONS):

Question No. ____ - Initiative and Referendum

Sec. 7.9. - Initiative and referendum. *(To become effective January 1, 2020)*

An ordinance may be initiated by petition, or a referendum on an enacted ordinance may be had by petition, ~~as hereafter [hereinafter] provided.~~

Except as to requirements contained in this Charter, initiative and referendum petitions and elections shall conform to and be conducted in accordance with the municipal initiative and referendum laws of the State of Colorado.

Sec. 7.10. - Initiatory and referendary petition. *(To become effective January 1, 2020)*

An initiatory ~~or referendary~~ petition shall be signed by not less than ten (10) percent of the number of persons who were registered electors of the city, as of the date the notice of an initiatory petition is filed with the clerk. ~~of the last regular city election, and all signatures on said petition shall be obtained within twenty-one (21) days before the date of filing the petition with the Clerk. Any such petition shall be addressed to the Council and may be the aggregate of two (2) or more petition papers identical as to content and simultaneously filed by one person. An initiatory petition shall set forth in full the ordinance it proposes to initiate, and no petition~~

~~shall propose to initiate more than one ordinance. A referendary petition shall identify the ordinance or part thereof, or code section it proposes to have repealed.~~

A referendary petition protesting against the effect of an ordinance or any part thereof shall be signed by not less than ten (10) percent of the number of persons who were registered electors of the city as of the date of final publication of the ordinance.

~~Each signer of a petition shall sign his/her name, and shall place thereon, after his/her name, the date and his/her place of residence by street and number, or by other customary designation. To each petition paper there shall be attached a sworn affidavit by the circulator thereof, stating the number of signers thereof and that each signature thereon is the genuine signature of the person whose name it purports to be, and that it was made in the presence of the affiant. Such petition shall be filed with the Clerk who shall, within fifteen (15) days, canvass the signatures thereon. If the petition does not contain a sufficient number of signatures of qualified electors of the city, the Clerk shall notify forthwith by registered mail the person filing such petition and fifteen (15) days from such notification shall be allowed for filing of supplemental petition papers. When a petition with sufficient signatures is filed within the time allowed by this section, the Clerk shall present the petition to the Council at its next regular meeting.~~

Sec. 7.11. - Council procedure on initiatory and referendary petitions. *(To become effective January 1, 2020)*

Upon final determination of petition sufficiency ~~the presentation to the Council of an initiatory or referendary petition~~ by the Clerk, the Council shall, within thirty (30) days, unless otherwise provided by statute either:

- (a) Adopt the ordinance as submitted by an initiatory petition;:
- (b) Repeal the ordinance, or part thereof, referred to by a referendary petition;: or
- (c) Determine to submit the proposal provided for in the petition to the electors.

~~Sec. 7.12. - Submission of initiatory and referendary ordinances to electors.~~ *(Repeal to become effective January 1, 2020)*

~~Should the Council decide to submit the proposal to the electors, it shall be submitted at the next election held in the city for any other purpose, or in the discretion of the Council at a special election called for that specific purpose. In the case of an initiatory petition, if no election is to be held in the city for any other purpose within one hundred fifty (150) days from the time the petition is presented to the Council and the Council does not enact the ordinance, then the Council shall call a special election within ninety (90) days from such date of presentation for the submission of the initiative proposal. The result of all elections held under the provisions of this section shall be determined by a majority vote of the electors voting thereon.~~

Sec. 7.13. - Ordinance suspended; miscellaneous provisions on initiatory and referendary petitions. (To become effective January 1, 2020)

The filing of a referendary petition with the Clerk ~~The presentation to the Council by the Clerk of valid and sufficient referendary petition containing a number of signatures equal to ten (10) percent of the number of persons who were registered electors of the city as of the date of the last regular city election, which signatures have been obtained within sixty (60) days before the date of filing the petition with the Clerk,~~ shall automatically suspend the operation of the ordinance in question pending final determination of petition sufficiency by the Clerk, and, if the petition is determined to be sufficient, pending repeal by the Council or final determination by the electors. If the referendary petition is declared not sufficient by the Clerk or found not sufficient in a protest, the ordinance shall forthwith take effect, unless otherwise provided therein.

An ordinance adopted by the electorate through initiatory proceedings may not be amended or repealed for a period of six (6) months after the date of the election at which it was adopted, and an ordinance repealed by the electorate may not be re-enacted for a period of six (6) months after the date of the election at which it was repealed; provided however, that any ordinance may be adopted, amended or repealed at any time by appropriate referendum or initiatory procedure in accordance with the foregoing provisions of this chapter or if submitted to the electorate by the Council on its own motion.

If two (2) or more ordinances adopted at the same election shall have conflicting provisions, the provisions in the ordinance receiving the highest number of affirmative votes shall govern.

BALLOT TITLE
Question – Initiative and Referendum

SHALL THE INITIATIVE AND REFERENDUM PROCEDURES IN CHAPTER VII OF THE LAFAYETTE HOME RULE CHARTER BE AMENDED TO PROVIDE THAT STATE LAWS REGARDING MUNICIPAL INITIATIVE AND REFERENDUM PROCEDURES SHALL APPLY TO CITY INITIATIVES AND REFERENDA, WHILE RETAINING EXISTING CHARTER PROVISIONS REGARDING THE MINIMUM NUMBER OF SIGNATURES REQUIRED TO BE SUBMITTED WITH AN INITIATIVE OR REFERENDUM PETITION?

YES _____

NO _____

Section 4. Pursuant to the Uniform Election Code of Colorado Revised Statutes, the municipal regular election of November 5, 2019, shall be conducted as a coordinated, mail ballot election and the Election Official is hereby authorized and directed to take all such actions as are necessary or desirable there under to effectuate the election as a coordinated, mail ballot election.

Section 5. The Council appoints Susan Koster, City Clerk, as the designated election official (the “Election Official”) for purposes of the election. The Election Official shall have all of the rights and obligations prescribed under statutes for such an Election Official in the conduct of a coordinated election and shall act as primary liaison between Boulder County Clerk and the City with respect to the election as provided in the Intergovernmental Agreement.

Section 6. The City authorizes the City Clerk, to enter into and carry out the terms of an Intergovernmental Agreement (the “Intergovernmental Agreement”) with the Boulder County Clerk as required by state statute, describing the allocation of responsibility among the County Clerk, the City and the other political subdivisions in the County for the preparation and the conduct of the election and the provision for reasonable sharing of the cost of the election among the County, the City and the other participating political subdivisions.

Section 7. If any article, section, paragraph, sentence, clause or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 8. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof is hereby repealed to the extent of such inconsistency or conflict.

Section 9. The repeal or modification of any provision of the Code of Ordinances of Lafayette, Colorado by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.

Section 10. This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

Section 11. This ordinance shall become effective upon the latter of the 10th day following enactment, or the day following final publication of the ordinance.

INTRODUCED AND PASSED ON FIRST READING THE 6TH DAY OF AUGUST, 2019.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED
THE 20TH DAY OF AUGUST 2019.

CITY OF LAFAYETTE, COLORADO

Alexandra Lynch, Mayor

ATTEST:

Susan Koster, CMC
City Clerk

APPROVED AS TO FORM:

David S. Williamson, City Attorney