

***AD-HOC Weld County Home Rule Charter
Amendment Study Committee
Meeting Minutes June 20, 2018***

I. CALL TO ORDER – ROLL CALL:

Al Dominguez, Chair Pro-Tem, called the meeting to order at 6:30 p.m. The following Committee members were present: Sam Gluck, Mark Lawley, Dave Kisker, Justus Pettit, Garrett Varra, James Welch and Ray Patch; and Jackie Johnson was excused. Also present were Bruce Barker - County Attorney, and Esther Gesick - Clerk to the Board.

II. APPROVAL OF MINUTES – JUNE 13, 2018: Ray Patch moved to approve the Minutes of June 13, 2018. The motion was seconded by Sam Gluck, and it carried unanimously.

III. OLD BUSINESS:

A. FELONY CONVICTION REQUIREMENT: Mr. Barker stated, based on his research, he believes the HRCC members can require candidates for elected offices to disclose a felony conviction. He stated case law indicates felonies do not necessarily preclude someone's right to run, and including the disclosure as a qualification does not violate the First Amendment of the U.S. Constitution because local county government positions are county made and not created in the Constitution. However, in Colorado, county offices are state constitution positions, but Home Rule entities may set qualifications, and he displayed language currently used by the Cities of Greeley, Fort Collins, Brighton, Thornton and Aurora. Upon review, Mr. Patch expressed support for adding language that would prevent any candidate for an elected office if they have a prior felony conviction. Mr. Pettit and Mr. Welch indicated they do not want to preclude an individual from serving if they made an error in judgement as a teen, served their sentence and have demonstrated full rehabilitation in service to the community as a valuable citizen. They agreed it should be disclosed and allow the voters to decide. There was discussion concerning Section 6-5, Elected Officers Qualifications, the seriousness of felonies and plea bargains, and Section 13-8(5) under the County Council which indicates an elected official may be removed from office if they are charged or indicted for a crime. Mr. Barker explained the State Constitution is silent on the issue of felonies; however, it does list crimes of trust. Mr. Patch moved to amend Section 6-5(5) to state: "*A person who has been convicted of a felony shall not be eligible to become a candidate for County office.*" Mr. Kisker seconded the motion. Upon a call for the vote, the motion passed five to three, with Mr. Welch, Mr. Pettit and Mr. Varra placing the dissenting votes. Mr. Kisker moved to amend the motion to add "...*candidate or be appointed to County office.*" The motion was seconded by Mr. Patch. Upon a call for the vote, the motion again carried five to three with the same dissenting votes.

B. SUGGESTIONS FOR INTRODUCTION TO THE COMMITTEE'S RECOMMENDATIONS: Mr. Kisker stated the Chair had previously requested the HRCC members submit their suggestions for inclusion in the summary of topics for future consideration or general information. In the absence of Ms. Johnson, Mr. Kisker

committed to draft the introductory summary of informational items. There was consensus to table this to the next General meeting to allow time to draft and be reviewed by the other HRCC members.

IV. NEW BUSINESS

A. COUNTY COUNCIL – ARTICLE XIII:

- 1) Ethics Enforcement: Mr. Kisker stated last year the Weld County voters passed Amendment 1B which changed the responsibility of the County Council regarding conflicts of interest. Additionally, there are other State regulations and statutes which also address ethics, and the Colorado Supreme Court ruled last week that the Independent Ethics Commission (IEC) has authority to review complaints. Based on those recent rulings and his belief that ethics complaints now fall under the jurisdiction of the IEC versus the County Council, he suggested no change to the Home Rule Charter. The consensus of the HRCC members was to make no change.

- 2) Whistle Blower Program; Performance Audits; Staffing/Budget: Mr. Kisker stated this issue was raised by the public based on last year's performance audit which recommended a whistle blower program be established by the Board of Commissioners and administered by the County Council. He stated the Commissioners have been struggling with setting it up and for the moment the topic is on hold, although it is still being discussed by the County Council. Mr. Kisker suggested a review of the County Council at a higher level, noting they do not have established bylaws. He referenced a set of Rules and Regulations for proceedings, pursuant to Section 13-4(2), which may not necessarily have the support of the Commissioners. He suggested a Charter provision which requires the Board of Commissioners to work with the County Council to establish bylaws to give everyone clear direction in an effort to bridge the gap between their differing viewpoints concerning the powers of the Council and what they are supposed to do. Mr. Barker stated it is advisable to have a process in place and then follow it consistently. For instance, there are thorough procedures for the removal of an individual convicted of a crime, which came about because they had to deal with it in the past, and currently they are working to deal with the issue of a recall. He stated there is no constitutional requirement for suspending an elected official until a recall ballot issue is resolved, but it may be determined necessary to avoid ongoing misdeeds. Conversely, the decision for suspension can be abused for political reasons and the goal is to have procedures for the County Council to follow so that all parties involved are given adequate due process. Mr. Welch commented the worst time to develop procedures is in the midst of a controversial situation. Mr. Dominguez noted a recall effort is different from the charge of a crime, and the County Council can suspend prior to a conviction while a trial is pending. He further stated the matter of suspension is based on existing case law, versus a recall petition which is based on differing opinions, accusations and signatures. Mr. Kisker stated that is why it is important for the County Council to review, and if the petition is found to be frivolous, then they could refuse to suspend and just wait for the outcome of the election. Overall, it was agreed

that established procedures make a situation less political. Mr. Barker referenced Sections 13-8(4) and (5), and stated if the procedures include a public hearing, then they must clarify who is able to speak and provide criteria to determine whether suspension is justified or not.

Brett Abernathy, County Council member, agreed the current challenge for the Council is that there is not much in the Charter or the current procedures because it has never been encountered or dealt with before. He referenced Section 15-3 Recall, and recommended strengthening the language under Section 13-8(4) to replace the word "may" with "shall" because 15% of the electors from a district have expressed their belief of a problem and with oversight of the County Council, the position "shall" be suspended. He stated the issue of guilt or innocence is moot and a recall is about the wishes of 15% or more of the electorate choosing who they want, or don't want, in office. If removed, then the County Council is tasked with filling the vacancy and he requested the inclusion of specific timing of when a recall takes effect. Mr. Dominguez stated the timing is already established in the state statutes; however, the topic at hand is whether, or not, a suspension is mandatory during the time between the filing of a petition and the vote of the people.

There was additional discussion concerning the need to require bylaws of the County Council, which could be drafted by the Council members and, perhaps, should have been done a long time ago. Mr. Dominguez reviewed the responsibilities of the Council, including a quarterly Report to the People, setting of elected salaries, reviewing the functions of County government, and adjusting the tax limit. Mr. Barker displayed the 2014 version of the County Council Rules and Procedures. He also gave examples of past collaboration efforts between the County Council and Board of Commissioners to complete audits and follow through on the specific results. He noted there has also been instances where the opposite took place and there was no participation or cooperation. Mr. Dominguez commented the Council could use the quarterly Report to the People more effectively to communicate their view of County functions.

Mr. Abernathy commented when the current County Council members have tried to exercise their responsibilities, they have been faced with resistance through budgetary constraints. He stated the County Council needs to be strengthened with the ability to enforce their findings concerning salaries and audit results.

In response to Mr. Dominguez, Mr. Barker stated the current elected officials testified to the Commissioners that they did not believe a Whistle Blower program was necessary because the existing system allows for complaints without retaliation. Mr. Kisker agreed there was a shortcoming with the audit because it did not justify the recommendation. Mr. Barker explained Chapter 3 Human Resources of the Weld County Code details the process for reporting a complaint to an immediate supervisor, or a person in authority.

Chair Pro-Tem Dominguez opened the meeting to public input. Jerry Kilpatrick inquired whether his suggestion concerning salary compensation had been discussed, which Mr. Dominguez confirmed had been addressed and referred to in the minutes of a prior meeting.

B. NEXT STEPS: Mr. Kisker stated the purpose of the next meeting is to present the revisions which have been vote upon as part of the pending recommendation. He also volunteered to compile a rough draft of the summary. Mr. Barker stated a “working draft” of the highlighted changes could be provided. Following the July 4th holiday, the remaining two weeks will be set aside to refine the recommendation and craft proposed ballot language.

V. ADJOURNMENT: The next meeting will be held on June 27th, at 6:30 p.m., in the Weld County Administration Building – Events Room, to present the recommended changes. There being no further discussion, Mr. Kisker moved to adjourn the meeting, which was seconded by Mr. Gluck, and carried unanimously. Chair Pro-Tem Dominguez adjourned the meeting at 7:58 p.m.

*Minutes submitted by Esther E. Gesick, Clerk to the Board

