



Sandy City Council Office

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MEMORANDUM

July 13, 2021

To: Sandy City Council Members

CC: Kurt Bradburn, Mayor
Mike Applegarth, Council Executive Director

From: Council Member Cyndi Sharkey, Council Chair

Subject: Candidate Financial Disclosures and Ranked Choice Voting

INTRODUCTION

On April 20th, the Sandy City Council voted to participate in the Ranked Choice Voting Pilot Program for the 2021 municipal election (**Exhibit "A"**). During the discussion and analysis leading up to the Council vote, the issue of financial disclosures was touched upon, and a question was raised: Should Candidate Financial Disclosures be adjusted because of the adoption of RCV?

The purpose of this agenda item is to consider the issue of Candidate Financial Disclosures, evaluate certain data and concepts, and decide the matter in advance of candidate filing.

After the Council's final vote confirming Sandy City's participation in the RCV pilot program, the Sandy City Records Office gave notice of the City's intent to opt-in on April 22nd, as per State Statute. While the Utah RCV pilot program began on January 1, 2019, and will run until January 1, 2026, Sandy City's resolution specifies participation **only** in the 2021 election.

Like many other cities participating in RCV, the Council voted to take the usual path of eliminating the primary election and instead ranking candidates by preference on the general election ballot. Elimination of the primary saved taxpayers' money and delayed the candidate filing period until August 10th through the 17th. Eliminating the primary election also eliminated candidate financial disclosure dates tied to the cancelled primary election.

Currently the Sandy candidates will face the following 2021 election deadlines:

- August 10-17 – Candidate Filing Period
- October 11 - First Candidate Financial Disclosure Due
- October 26 – Second Candidate Financial Disclosure Due

- November 2 – General Election Day
- December 2 – Final Candidate Financial Disclosure Due

The question before the Council is whether further changes should be made to Candidate financial Disclosure deadlines in the upcoming election.

RESEARCH AND ANALYSIS

While considering this issue, I asked for opinions, analysis, and expertise from state, legal, and policy perspectives.

Stan Lockhart of Utah Ranked Choice Voting gathered information from local and national RCV advocates to explore the idea of whether the adoption of RCV and the resulting delay of candidate filing dates tended to trigger a change to candidate financial disclosure dates. This was his response:

“Some ranked choice voting cities have experimented with different rules for the timing of campaign finance disclosures. It is worth noting that in many cases existing campaign finance disclosures are adequate. For example, Payson and Vineyard didn't change their campaign finance disclosure rules when they went to ranked choice voting two years ago. In other cases, additional disclosures are a non-issue, as campaigns don't begin fundraising as early without a primary election.”

City Attorney Lynn Pace was asked to provide a legal opinion on whether the City can legally require a candidate to file a campaign financial disclosure prior to the date that candidate officially files a declaration of candidacy. Mr. Pace's analysis and conclusion follow:

Discussion: *Utah Code section 10-3-208 addresses the issue of campaign disclosure in municipal elections. That section generally requires a candidate to file campaign finance disclosures 7 days before and 30 days after a primary or general election. (Subsection 3.) A municipality may also impose requirements that are more stringent than the State requirements. (Subsection 2.) The term "candidate" is defined as a person who (a) has filed a declaration of candidacy; or (b) who receives or spends funds to bring about someone's election to office. (Subsection 1(c).) Thus, if someone is accepting or expending funds for a campaign, they become a candidate even before they have filed a declaration of candidacy.*

State law also requires that the municipal recorder notify each candidate of the campaign finance disclosure requirements, including all dates and penalties, at the time the candidate files a declaration of candidacy, and again 14 days before the general election. (Subsection 7.) One of the penalties for failing to timely file a campaign finance disclosure requirement is that the candidate shall be removed from the ballot. (Subsection 9.) Although the statute does not specifically address the issue, it is clear that if a municipality imposed an earlier date for filing campaign finance reports, the municipality would be obligated to notify candidates of those obligations in advance.

It is well established, under the principles of due process and the State Code, that we cannot impose a campaign finance disclosure requirement upon candidates unless we first notify them

of what those requirements are. In *Bivens v Salt Lake City Corporation*, 416 P.3d 338 (Utah 2017), the Utah Supreme Court stated, "the core question in any due process challenge to the adequacy of notice is ... whether it reasonably apprises the prospective litigant of the 'essential information' she needs to assert her rights." *Id.* at para. 30. In the present case, if the City were to impose earlier campaign finance disclosure deadlines, all candidates would be entitled to this essential information before being penalized for failing to meet those requirements.

However, since we do not know who is or is not a candidate prior to the filing of a declaration of candidacy, our ability to identify and notify candidates of our campaign finance disclosure rules, as required by due process and State law, is inadequate. For example, at present we are generally aware of several individuals who have announced that they will be candidates for the office of Mayor of Sandy City. However, there may be many more individuals who are also candidates because they are collecting or spending campaign funds, but who have not yet made any announcement of their candidacy. It is well established, under the principles of equal protection, that we cannot treat one candidate different from another. In *Gallivan v Walker*, 54 P.3d 1069 (Utah 2002), the Utah Supreme Court stated that "the Equal Protection Clause requires states generally to treat voters similarly and not to unreasonably subject voters to disparate treatment." *Id.* at para. 68. Likewise, I am confident that a court would rule that Sandy City is required to treat candidates similarly and cannot unreasonably subject candidates to disparate treatment. For that reason, we cannot impose earlier campaign finance disclosure deadlines only on the candidates who have publicly announced their candidacy, and not upon others. Thus, if the Council were to impose an earlier campaign disclosure deadline, it would need to be imposed upon all candidates, announced or unannounced, and all candidates would be subject to the penalty (removal from the ballot) if they fail to file that report timely.

Conclusion: In summary, the City is obligated to treat all candidates equally, and is obligated to provide all candidates adequate notice of any campaign finance disclosure requirements imposed. However, there is no practical way for the City to determine who is or is not a candidate prior to the date that an individual files a declaration of candidacy, or to provide those unknown candidates with the notification required. As such, it is my opinion that the City cannot legally impose campaign finance disclosure requirements prior to the date that a candidate files a declaration of candidacy without violating the due process and equal protection laws.

Council Office Staff conducted a survey of all municipalities who opted in to the RCV pilot program in Utah (**Exhibit "B"**). Data was collected regarding existing financial disclosure deadlines, and city representatives were asked whether any changes were adopted or anticipated due the use of RCV. No municipality reported making changes due to adopting RCV, nor reported an intent to make changes. (Note: data for two towns, Newton and Genola, was not able to be collected, either due to an inability to reach town representatives or lack of information). Data collected for each municipality is shown in the table attached.

Sandy is one of 26 Utah municipalities that have chosen to use RCV in the upcoming election. As the table shows, only one municipality in this group of 26 requires more candidate financial disclosures than Sandy: Elk Ridge in Utah County. State law dictates one disclosure before an election and one after, but

Sandy requires **two before** an election and **one after**. Additionally, Sandy requires **one additional** disclosure each January for all sitting elected officials.

When asked for her expert opinion on this issue, Sandy City Recorder Wendy Downs, expressed some concern that changing financial disclosure deadlines may cause additional confusion amongst candidates for office. She stated:

“With RCV potentially being a onetime thing, I worry that we will confuse candidates if we change anything. I would hate for a candidate to get confused on the dates and then not get their disclosure turned in on time and be disqualified from the race.”

SUMMARY AND CONCLUSION

The data and analysis collected by the City Legal Team, the Council Office Staff, and Mr. Lockhart of Utah Ranked Choice Voting combined with the expert opinion of the City Recorder clearly summarize the fact that there is no apparent reason to change city law regarding candidate financial disclosures.

In short:

1. Sandy City already requires more candidate financial disclosures than all but one city in the group of cities participating in RCV in this upcoming election.
2. Sandy City has opted into the Ranked Choice Voting Pilot for only one municipal election, and a change in City law or code would encompass all future elections in Sandy City, even if the Council opts out of the RCV pilot program after this year.
3. State law requires one candidate financial disclosure prior to and after an election, yet Sandy City already exceeds the minimum requirement and requires an additional disclosure prior to the election.
4. No other city participating in the RCV Pilot in 2021 has chosen to or expressed an intent to alter or increase financial disclosure deadlines because of their participation in RCV.
5. Changing financial reporting deadlines for the 2021 election may breed unnecessary confusion for candidates.

In conclusion, the data and opinions in this analysis suggest no reason to change city law regarding candidate financial disclosures for one election cycle under a State-authorized test. The elimination of the primary election and the withdrawal of previous financial disclosure deadlines associated with that election is not uncommon and in fact can occur in any election type, and therefore does not necessitate changes to financial disclosure deadlines for the remaining general election. **In all regards, the State and local mandates will be satisfied to provide voters with the information available and needed to cast informed votes.**

Exhibit "A"

(On Next Page)

RESOLUTION 21-15C

A RESOLUTION REQUESTING INCLUSION OF SANDY CITY IN THE MUNICIPAL ALTERNATE VOTING METHODS PILOT PROJECT FOR 2021

WHEREAS, the State of Utah by its State Legislature has made available a pilot project for participation in the alternate voting methods for municipal elections beginning January 1, 2019 and ending on January 1, 2026; and

WHEREAS, House Bills 35 and 75 as passed during the 2018 and 2021 General Sessions respectively, allow municipalities to conduct nonpartisan races using ranked choice voting in accordance with the requirements of 20A-4 of the Utah Code and all other applicable provisions of law, during any odd-numbered year that the pilot project is in effect; and

WHEREAS, the Sandy City Council, on or before May 10, 2021, must provide written notice to the lieutenant governor and county clerk stating that the municipality intends to participate in the pilot project for the year specified in the notice; and

WHEREAS, Sandy City desires to contract with Salt Lake County to conduct municipal elections and does have the resources and capability necessary to participate in the pilot project; and

WHEREAS, the Sandy City Council finds that it would be in the best interest of Sandy City and of its citizens to hold its 2021 municipal elections by ranked choice voting,

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF SANDY CITY AS FOLLOWS:

1. That the Sandy City Council adopts ranked choice voting for the 2021 municipal general election, and that by this resolution, gives notice to the Lieutenant Governor and to the Salt Lake County Clerk to enter the pilot project by use of ranked choice voting for its 2021 municipal general election, and
2. Sandy City will not hold a primary election in 2021, and
3. City Administration is hereby authorized and directed to do all things necessary to cause the 2021 Sandy City municipal elections to be held in accordance with the ranked choice voting process.

PASSED AND APPROVED by the Sandy City Council this 20th day of April 2021.

DocuSigned by:

Cyndi Sharkey

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Cyndi Sharkey, Chair
Sandy City Council

ATTEST:

DocuSigned by:

Wendy P...

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City Recorder



Exhibit "B"

Candidate Financial Disclosure Deadlines for 2021: Cities and Towns Participating in RCV										
City/Town	Primary Election (August 10)****				General Election (November 2)				Other	
	Deadline 1	Deadline 2	Deadline 3	Deadline 4	Deadline 1	Deadline 2	Deadline 3	Deadline 4	Deadline 1	Deadline 2
Bluffdale	August 3	September 9			October 26	December 2				
Cottonwood Heights	August 3	September 9			October 26	December 2				
Draper	August 3	September 9			October 26	December 2				
Elk Ridge	June 27	August 3	September 9	October 9	October 19	October 26	December 2	January 2		
Genola										
Goshen	August 3	September 9			October 26	December 2				
Heber	August 3	September 9			October 26	December 2				
Lehi	August 3	September 9			October 26	December 2				
Magna	August 3	September 9			October 26	December 2				
Midvale	August 3	September 9			October 26	December 2				
Millcreek	August 3	September 9			October 26	December 2				
Moab	August 3	September 9			October 26	December 2				
Newton										
Nibley	August 3	September 9			October 26	December 2				
Payson	August 3	September 9			October 26	December 2			30 Days**	
River Heights	August 3	September 9			October 26	December 2				
Riverton	August 3	September 9			October 26	December 2				
Salt Lake City	August 3	September 9			October 26	December 2			July 1	February 15***
Sandy	July 19	August 3	September 9		October 11	October 26	December 2		January 15*	
South Salt Lake	August 3	September 9			October 26	December 2				
Springville	August 3	September 9			October 26	December 2				
Vineyard	August 3	September 9			October 26	December 2				
Woodland Hills	August 3	September 9			October 26	December 2				
State Requirement for all elections:	August 3	September 9			October 26	December 2				

Notes:

Green lettering indicates a disclosure that is in addition to any required by the State of Utah

*Sitting elected officials only

**If a candidate receives contributions or makes expenditures after the date of the last filing, an additional campaign finance statement shall be filed within 30 days of receiving the

***Do not have to file this disclosure if candidate files a termination report with City Recorder

****These dates are only required if the entity is holding a primary election