



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: September 1, 2020**

**AGENDA TITLE: Supplemental Memorandum Requested by Council Member Young – Item 3K – Ordinance 8420**

**PRESENTERS**

Jane S. Brautigam, City Manager  
Tom Carr, City Attorney  
Luis Toro, Senior Assistant City Attorney  
Pamela Davis, Acting City Clerk

**EXECUTIVE SUMMARY**

On Tuesday, September 1, 2020, council will consider, on consent, Ordinance 8420, which would place on the November 3, 2020 ballot a measure to amend the charter to require direct election of the mayor through ranked choice voting. On Monday, August 31, 2020, Molly Fitzpatrick, Boulder County's Clerk and Recorder, provided council with a memorandum stating that there is no guarantee that Boulder County could conduct a ranked choice voting election in 2023, the year in which the proposed charter amendment would require such elections to begin. **(A copy of the memorandum is Attachment A.)** Council member Young requested the city manager and city attorney to provide an analysis of the administrative and legal issues for council consideration at the September 1, 2020 council meeting. In the limited time available, staff has drafted this brief memorandum.

**ANALYSIS**

The city currently contracts with Boulder County to run coordinated elections for the city. Thus, the city does not have staff or experience in running elections. The city only recently received access to the county voter database to implement the city's online petitioning system. If the county is unable to run an election with ranked choice voting, and the charter is amended to require ranked choice voting, then the city would have to run its own elections in mayoral election years, which under the proposed ordinance would be every odd-numbered year. The ballot also contains council candidates, city of

Boulder ballot measures; county, school district and special district ballot measures; and possible statewide ballot measures in odd-numbered years. Staff would need to research further to determine how the city would coordinate with the county under these circumstances.

When the Our Mayor, Our Choice initiative was first proposed, the city clerk's office researched the potential issues associated with implementing the initiative. In January 2020, Justine Vigil-Tapia, Boulder County's Deputy Clerk-Election Coordinator, collected information regarding options and cost for the city to implement ranked choice voting. Dominion Voting Systems (Boulder County's vendor and one used by the majority of CO counties) provided options. Here is a high-level summary of vendor cost:

Service	Cost
City can contract with Dominion and they would provide equipment, training, and professional services for City of Boulder to conduct the election.	<ul style="list-style-type: none"> <li>• Service not available in 2020 (vendor capacity constraints)</li> <li>• Start up costs for a city-wide license are unknown at this time. The county license cost is \$350K</li> <li>• Estimated annual cost for ongoing voting system support is \$70K</li> <li>• City would be responsible for and have additional costs for ballot printing, mailing, processing.</li> <li>• Vendor also noted that voter education/outreach is critical.</li> <li>• Software allows up to 10 rankings; ballot layout is very different and requires significant voter outreach.</li> <li>• Round by round results and reporting (candidates drop out after each round). Need all ballots processed before outcome can be determined. Winner is candidate who receives 50%+1 of vote. This is how the software is programmed and cannot be changed unless customer wants to pay for software development build.</li> </ul>
Boulder County voting system upgrade	<ul style="list-style-type: none"> <li>• Ranked Choice Voting is not included in current county license and annual support fee. Boulder County uses the state contract for terms and conditions.</li> <li>• Cost is \$350K for a county license, \$70K/year annual license fee</li> <li>• Staff time cost for training, testing (software, audit), operating procedure changes is not included in this information. No roadmap/budget plans for Ranked Choice Voting support.</li> </ul>

Colorado counties have no experience in conducting ranked choice voting elections. Small towns such as Basalt and Telluride have used ranked choice (basically an instant run-off election after the initial election) for contests. Keep in mind, these elections were done by the towns with a hand-count and their voting population is in the 2,000 to 4,000 range. After conducting a ranked choice voting election, Telluride city staff drafted a memorandum for council summarizing the experience. **(A copy is Attachment B.)**

As noted above, the proposed amendment in Charter Sec. 14 would require election of the mayor through ranked choice voting in 2023. There is no certainty that the city would be able to meet this deadline.

Council has several options. Because the Our Mayor – Our Choice committee did not file enough signatures to qualify for the ballot, the council is free to delay consideration until 2021. Also, council is free to amend the ballot measure. One option would be to change the word “shall” to the word “may” in Sec. 14. This would allow the council in 2023 the option of using ranked choice voting or not. If council wishes to consider other options, staff has drafted the two options below:

### **Option 1**

#### **Sec. 14. - Selection and term of office of mayor.**

If three or more candidates run for the office of mayor, then the election shall be conducted by ranked choice (instant runoff) voting **only if the city council determines that ranked choice voting can be conducted without adverse budgetary impacts.** ~~The presiding officer of the council shall be called mayor. The mayor shall be chosen by the council from its own number, upon the convening of the new council, following each general municipal election. The mayor shall serve as mayor for a term of two years, and until a successor is duly chosen and qualified. The mayor may be removed from the office of mayor (but not from the office of council member) by a two-thirds vote of all members of the council, and thereupon, or in case of vacancy from any other cause, the council shall choose a successor for the unexpired term.~~

### **Option 2**

#### **Sec. 14. - Selection and term of office of mayor.**

If three or more candidates run for the office of mayor, then the election shall be conducted by ranked choice (instant runoff) voting **only if the Boulder County Clerk and Recorder has the capacity to implement ranked choice voting as part of a coordinated election.** ~~The presiding officer of the council shall be called mayor. The mayor shall be chosen by the council from its own number, upon the convening of the new council, following each general municipal election. The mayor shall serve as mayor for a term of two years, and until a successor is duly chosen and qualified. The mayor may be removed from the office of mayor (but not from the office of council member) by a two-thirds vote of all members of the council, and thereupon, or in case of vacancy from any other cause, the council shall choose a successor for the unexpired term.~~

### **Attachments**

**Attachment A** – Memorandum from Molly Fitzpatrick, Boulder County Clerk and Recorder to Boulder City Council dated August 31, 2020.

**Attachment B** – Town of Telluride Town Council Agenda Memorandum, Meeting Date January 26, 2016.



## Office of the Clerk & Recorder

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**Molly Fitzpatrick, Boulder County Clerk & Recorder**

**To:** Boulder City Council

**From:** Molly Fitzpatrick, Boulder County Clerk and Recorder

**Date:** August 31, 2020

**Re:** Ranked Choice Voting

Dear Boulder City Council Members,

I am writing in regards to the recent conversations the Clerk and Recorder's office has been asked to join regarding conducting the 2023 Boulder mayoral election using the instant runoff voting method (IRV), the single-winner type of ranked choice voting method (RCV). My intention is to share information on the technical and legislative needs the Clerk & Recorder's Office requires in order to run an IRV election. Further, I want to make you aware of the City of Boulder's independent ability to contract with Dominion Voting Systems to provide the services, support, and technology necessary to use IRV for the 2023 mayoral race.

Dominion Voting Systems (Dominion) is a voting systems provider that licenses voting system hardware and software to states and counties across the country. Boulder County, like almost every other Colorado county, utilizes Dominion's Democracy Suite® voting system to conduct elections. Unlike home rule municipalities, counties may use a voting system only if it is certified and authorized for use in Colorado by the Secretary of State. Although Democracy Suite® is the only commercially available voting system I know of that offers full RCV functionality, Boulder County has not licensed, and the Secretary of State has not tested or certified for use in Colorado, those particular applications. That is because (a) counties conduct federal, state and local elections in accordance with Title 1 of the Colorado Revised Statutes; (b) Title 1 currently does not authorize the use of any voting method other than the plurality method; (c) neither the U.S. Election Assistance Commission, the Colorado General Assembly, nor the Secretary of State have published or adopted voting system standards, technical requirements or specifications for RCV elections or ballot contests; and (d) the Secretary of State's office cannot test and certify Dominion's RCV features until standards and specifications have been adopted against which to test and certify.

Santa Fe and San Francisco have conducted IRV elections with Dominion's voting system. However, they are subject to different legal requirements than Boulder County. And, although the towns of Telluride and Basalt have conducted IRV elections in recent years, the municipal clerk's hand-counted the IRV races, a drastically different solution than using a voting system to layout, tabulate and report the results of IRV ballots. While the City and County of Denver

recently launched a review committee to assess proposals and updates to the election provisions of its charter, at this time, there are no formal plans to implement RCV elections under any timeframe.

It is my understanding that article XX, section 6(d) of the Colorado constitution grants home rule municipalities like Boulder broad authority to conduct municipal elections using the voting methods or voting systems they desire. Therefore, the City may contract with Dominion directly to provide the services, support and technology necessary for Boulder to implement IRV in its 2023 municipal election.

In my opinion, the best chance for successfully implementing RCV in Colorado lies with the General Assembly, which can direct and provide necessary resources to the Secretary of State to implement RCV on a statewide or multi-county basis. The legislature may take up the topic in the next legislative session. At the present time, however, the ask is for the Clerk and Recorder's office to internally develop pre-election testing and post-election auditing protocols of the voting system that will tabulate and report results of the election. My office does not have the financial or technical resources necessary to develop and implement those protocols itself in the manner that Boulder County and City of Boulder residents deserve and expect.

I have communicated to the RCV proponents that a voting system change needs to be treated and planned for with a great deal of intention. I understand the desire to get this on the ballot and sort out the details later. However, that is something I cannot recommend as a suitable path forward. If the legislature does not pass new legislation, my office would be caught in an unfortunate position with no guarantees that the voters would extend a timeline for us to implement RCV thoughtfully, carefully and correctly. For those reasons, I cannot commit at this point to conduct RCV elections for the City of Boulder by 2023.

It is the intention of the Clerk & Recorder's Office to be the best possible partner to all of the municipalities in Boulder County. It simply feels like we are one year too soon on this and in a position of relying on something that we do not know will occur (support for Title 1 legislative changes). I am committed to keeping this conversation going and being involved in the conversations at the Legislature to help shape the work needing to get done in a strategic way.

I do believe RCV is coming and I would like for my team to help shape the implementation on a timeline that sets us up to be as successful as possible. Colorado is nationally recognized as a leader in elections, and we are committed to continuing that reputation as we forge ahead in the future.

Thank you for your time.

A handwritten signature in black ink, appearing to read "Molly Fitzpatrick", with a stylized flourish at the end.

Molly Fitzpatrick  
Boulder County Clerk and Recorder

## Town of Telluride Town Council Agenda Memorandum

Item No: 9a1

Meeting Date: 01/26/2016

**TITLE:** IRV UPDATE

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**SUBMITTING DEPARTMENT:** Clerks

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**ATTACHMENTS:** None

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### **INTRODUCTION:**

In 2008 the Colorado legislature enacted legislation to allow Instant Runoff Voting (IRV) to be implemented for municipal elections. At its general municipal election in 2008, by an initiative titled "A Citizen Initiated Ordinance Calling For The Use Of Instant Runoff Voting (IRV) To Be Implemented For The Office Of Mayor", the Town of Telluride electorate directed the Town Clerk (by a vote of 868-426) to implement IRV procedures for the next three Mayoral Elections.

The November 2011 election was the first mayoral election following approval of the initiated ordinance. Three mayoral candidates were certified to the ballot triggering Instant Runoff/Ranked Choice Voting, which requires a candidate receive 50% plus one of qualified votes to win. While preparations were completed for an instant runoff, the threshold for a second round of counting was not met as the winner garnered over 50% of the votes in the first round, and runoff procedures were not required.

The November 2015 election was the second mayoral election in which Instant Runoff Voting was to be implemented. The process was further complicated by the legal requirement of coordinating the election with San Miguel County due to Proposition BB, a TABOR issue, being on the ballot.

This summary of implementation is presented for Council consideration.

### **BACKGROUND:**

Following is an overview of the 2015 Telluride IRV election process.

#### Challenges of IRV Elections:

- While the Colorado Secretary of State provides a few guidelines and requirements for IRV elections, no rules or procedures for governing the process have been adopted.
- The only IRV election previously conducted in the State of Colorado (using Title 31, the Colorado Municipal Election Code) was counted by computer.



Many ballots were disqualified during the count, processes were litigated, and the municipality subsequently repealed ranked choice voting.

- No National or State certified software computer program exists for counting IRV elections, which requires manual tabulation of votes.
- There exists no recognized hand counting standard for IRV elections.
- While IRV computer software programming is possible, it is cost prohibitive for municipalities, particularly small municipalities.
- The only other municipality in the state currently using ranked voting has not had to implement IRV processes as there have not been over two candidates in an election since IRV was adopted. Consequently, they have no established procedures.
- Additional judges, ballot language, and election outreach are required for and IRV election.
- Significant additional Clerk's Department and Legal Department staff time is allocated to IRV elections.

#### Goals of Implementation of IRV in Telluride:

- An effective ballot format to limit the number of disqualified votes.
- Accuracy of count.
- Transparency of systems and processes.
- Effective voter education of IRV process.
- Comprehensive election judge education.
- Resolution of conflicts between IRV implementation and a Title 1 coordinated election.

#### Challenges Unique to the 2015 Election including Title 1 Considerations:

- The inclusion of a TABOR question on the 2015 ballot triggered the requirement of a coordinated election with the county.
- The coordination of the election with San Miguel County was further complicated as the county has no processes and is not equipped to count IRV ballots.
- Monumental research and experimentation preceded the establishment of a documented Town of Telluride IRV process governed by Title 31 and adopted in 2011. As a coordinated election however, the 2015 election was governed by Title 1 and required significant changes to the processes and procedures adopted in 2011.
- Through mock counts using the 2011 procedures staff and election judges identified omissions in the processes related to the counting of subsequent round. (A second round of counting was not required in 2011.) Significant additions and changes were made to the procedures.

- Coordinated election process required the use of a separate mayoral page of the ballot adding to the expense of f ballot preparation.
- The IRV processes and procedures and the counting judges manuals were updated to include preparation of a Ballot Image Report, required under Title 1, and the addition of associated judges (2) and processes.
- Telluride Municipal Code amendments were made by Town Council to reduce conflicts in the timing for resolution of provisional ballots and IRV counting for the 2011 Title 31 election. No provisions for a coordinated Title 1 election could be made.
- The Town was dependent upon the County for determination of the number of mayoral ballots received as well as outstanding provisional, UOCAVA, and ballots with unresolved signatures which could have affected the outcome of a round. In that instance, a recess of eight days would have been necessary before proceeding to the next round of counting. (An algorithm was written by a University of Colorado professor in 2011 to determine when IRV counting must be stopped due to the potential effect of outstanding ballots in any given round.)
- In addition to the team of County election judges, a team of eight Telluride election judges was required for the manual count of mayoral ballots.
- The County and the Town rely on the same experienced pool of election judges, but with two teams required on the same day, experienced judges were split between the County and the Town.
- Experienced and new election counting judges required significant additional training on IRV processes and procedures.
- Separate ballot format and instructions were necessary for the mayoral vote only, potentially causing confusion with voters in a community that has a history of bullet voting.
- An IRV educational brochure was updated and approved by the Colorado Secretary of State's office and mailed to all registered Telluride voters and were available at Voter Services and Polling Centers.

#### Costs:

- ✓ Direct costs of the 2011 IRV election were \$13770 as compared to the previous Title 31 election at \$4730. Direct one-time costs totaled approximately \$3885.
- Election direct costs for 2015 totaled \$8963 and included San Miguel County Coordinated Election Charges (\$5435) and Town of Telluride direct costs (\$3528).
- Costs associated directly to the IRV process were \$4812. This included additional County staff hours for management of the IRV process and the cost of the separate IRV ballot design and production.



- The majority of additional equipment required for the 2015 IRV election was on hand from the 2011 election. Direct costs for 2015 supplies totaled about \$1055 as compared to \$3100 for the 2011 election.
- An estimated 500 hours of Town staff resources can be directly attributed to the IRV portion of the 2015 election. Staff hours include time spent from March through December 2015 by members of the Clerk's and Facilities Departments.

Additional Considerations:

- Preliminary results were that the first round winner (by only one vote) did not win the election after the ballots from the lowest vote getter in the first round were re-distributed in the second round. (After provisional and UOCAVA ballots were counted, the first round was a tie for top vote getter.)
- The IRV process in Telluride does not preclude runoff elections as the Telluride Home Rule Charter does not require runoff elections.
- In both the 2011 and 2015 elections voters expressed concern that they did not fully understand the implications of IRV.
- The last of the three mayoral elections for which the electorate directed the Town Clerk to implement the IRV process is scheduled to occur in 2019.

**FINANCIAL ANALYSIS:**

Regular election expense estimates are included in the annual budget.

**ASSESSMENT:**

Staff has summarized challenges, advantages and established processes for implementation of IRV in Telluride and will be available for any questions from the Town Council.

Prepared by:           Tiffany Kavanaugh, Town Clerk  
                               Lauren Bloemsma, Assistant Clerk

Town Manager Approval:

  
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