

Potential Referendum Charter Changes

Technical change needed

Current language includes some contradictory language between sections 2 and 5 of Article X. *Initiative and Referendum*, regarding when an ordinance subject to a referendum is presented to the Council for reconsideration.

The language in Section 5. *Petitions*, relates to both initiatives and referendums, and states a petition is presented to the Council only once it has been certified as sufficient by the City Clerk, after any amendments or protest proceedings.

Section 2(e) *Action by Council*, indicates both that:

- the presentation to Council of a petition certified as sufficient automatically suspends the operation of the ordinance in question pending repeal by the Council or final determination by the electors, and
- that the Council shall reconsider the ordinance at the next regular or special meeting of Council following receipt of the petition by the City Clerk.

That specific requirement in Section 2 for Council to reconsider the ordinance at its next meeting after receipt of the petition by the Clerk contradicts Section 5 in both:

- specifying different events for action on a referendum petition to reach Council, which in practice occur at different time points, and
- indicating in one place that the action can return to the next regular or special meeting while the other citation requires action to occur at the next regularly scheduled meeting.

As a practical matter, it is not reasonable in all instances to read these two provisions together and attempt to follow them both, as it would require bringing an ordinance subject to a referendum petition back to Council at least several days and possibly multiple weeks before it is known if the petition is sufficient or not. Figure 1 on page 3 of this document demonstrates the referendum process steps, and where the requirements of both Section 2 and 5 slot in. Figure 2 on page 4 takes a more detailed look at the possible protest process, which could extend the timeline for certifying a petition up to 40 days beyond the point in time when the petition was submitted to the clerk, while under Section 2, the ordinance must be reconsidered by Council at its next regular or special meeting after the petition is submitted, which in most cases will occur within 1-14 days of submission. The discrepancy in citing the next regular versus the next regular or special meeting also presents potential logistical challenges.

Fort Collins City Charter Article X:

Section 2. The referendum.

(e) Action by Council. The presentation to Council of a petition certified by the City Clerk as sufficient for referendum shall automatically suspend the operation of the ordinance in question pending repeal by Council or final determination by the electors. The Council shall reconsider the ordinance at the next regular or special meeting of the Council following the receipt of the petition by the City Clerk. If the ordinance, or that part sought to be repealed, is not repealed,

the Council shall refer the same to a vote of the registered electors at the next regular or special city election scheduled for any other purpose. Alternatively, the Council may call a special election for that specific purpose.

Section 5. Petitions.

(f) Sufficiency of petition.

(4) Certification and presentation to Council. When and if a petition or amended petition is deemed sufficient, whether following the sufficiency determination by the City Clerk in the absence of a protest, or following protest proceedings, the City Clerk shall so certify and present the certified petition to the Council at the next regularly scheduled meeting. The City Clerk's certificate shall then be a final determination as to the sufficiency of the petition.

Figure 1 Referendum petition process steps

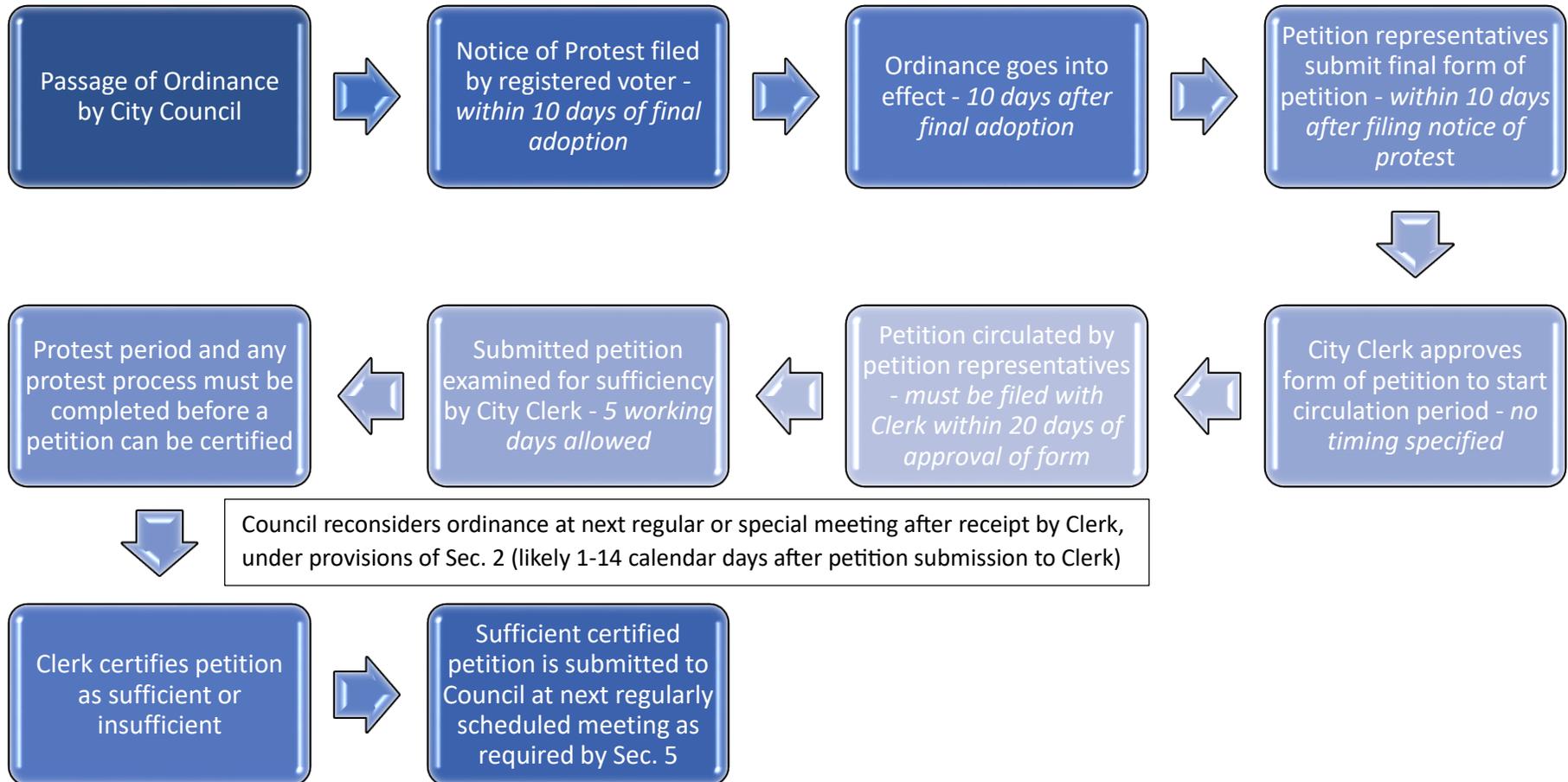
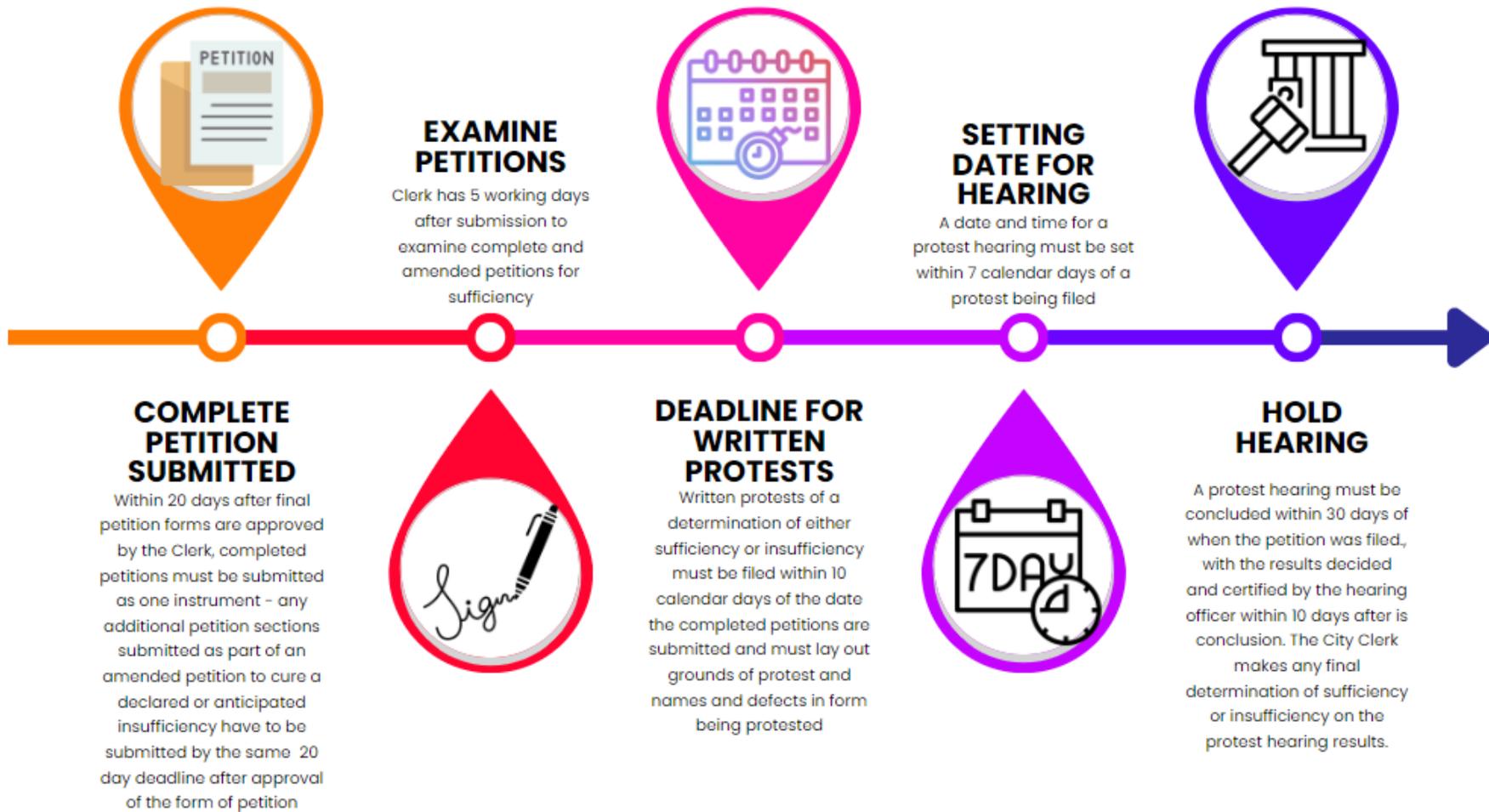


Figure 2 Detailed look at potential protest process steps



Policy change that may be desired

Another issue with the current referendum language Council may wish to consider is around adjusting the timing of either the referendum process or when an ordinance is stayed from going into effect to prevent an ordinance from taking effect and then subsequently being suspended by a successful referendum effort.

The timelines in the Charter for many steps of the referendum process mirror those found in state statute for the process as it applies to statutory municipalities or home rule municipalities without their own provisions. Because Fort Collins has established its own timeframe under Charter for when ordinances take effect upon adoption, these timelines do not take into account that ordinances subject to a petition for referendum will go into effect before the referendum process can be completed. This is not an issue for municipalities following state statute, as statute provides ordinances do not take effect until 30 days after final passage and publication. The Charter provides ordinances in Fort Collins take effect 10 days after final passage and publication. There could be potentially significant issues associated with an ordinance going into effect and then being suspended, pending possible repeal or referral to the voters.

In the most recent referendum in December of 2022, major issues from this timing were avoided because although the ordinance that was subject to the referendum did in fact go into effect 10 days after its adoption, the major action of the ordinance was the implementation of the Land Development Code, which was set out in the ordinance to take effect several additional weeks after the adoption of the ordinance. This unusual circumstance helped to avoid the actions of an ordinance going into effect and being in place for a period of time before being suspended upon the certification of a sufficient petition.