

ORDINANCE NO. 2328

INTRODUCED BY: ALLEN-THOMAS, FRANK, GRIMES, GUARDIOLA, HURST,
HUSEMAN, MADERA, NOBLE, SMITH

AN ORDINANCE ENACTING A NEW SECTION 2-1005 IN ARTICLE I OF CHAPTER 2 OF THE COMMERCE CITY REVISED MUNICIPAL CODE CREATING A PROCESS FOR HANDLING THIRD PARTY COMPLAINTS ALLEGING VIOLATIONS OF CAMPAIGN FINANCE LAWS RELATING TO MUNICIPAL ELECTIONS.

WHEREAS, the City of Commerce City has not exercised its home rule authority to address matters covered by the Colorado Constitution Article XXVIII or the Colorado Fair Campaign Practices Act, C.R.S. §§ 1-45-101 *et. seq.* relating to municipal campaign finance;

WHEREAS, on May 29, 2019, the Governor signed SB 19-232, which amends C.R.S. § 1-45-117(9)(b) of the Colorado Fair Campaign Practices Act and provides that any complaint arising out of a municipal campaign finance matter be exclusively filed with the clerk of the applicable municipality;

WHEREAS, prior to the enactment of SB 19-232, all complaints concerning campaign finance violations were handled by the Colorado Secretary and State;

WHEREAS, while the Colorado Constitution, Article XXVIII, provides that the Colorado Secretary of State handle third party complaints alleging violations of campaign finance laws, the Secretary of State may no longer accept filings of complaints concerning municipal campaign finance matters; and

WHEREAS, it is prudent to establish a process for review of municipal campaign finance complaints in order to ensure that such matters are addressed.

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

SECTION 1. Findings. The recitals to this ordinance are incorporated as findings of the City Council. This ordinance is found to be necessary for the preservation of the public health, safety, and welfare and in the public interest.

SECTION 2. Enactment. Section 2-1005 of the Commerce City Revised Municipal Code, to be entitled “Enforcement of third party campaign finance complaints.,” is enacted as set forth in Exhibit “A” to this ordinance, which is attached and incorporated herein.

SECTION 3. Repealer. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or

SECTION 4. Effective Date. This ordinance shall be effective upon approval by the City Council on second and final reading.

INTRODUCED, PASSED ON FIRST READING AND PUBLIC NOTICE ORDERED
THIS 3RD DAY OF MAY 2021.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED
THIS 7TH DAY OF JUNE 2021.

CITY OF COMMERCE CITY, COLORADO

Benjamin A. Huseman, Mayor

ATTEST

Dylan A. Gibson, City Clerk

Sec. 2-1005. - Enforcement of third party campaign finance complaints.

- (a) Any person who resides in the city who believes a violation of Article XXVIII of the Colorado Constitution or the Fair Campaign Practices Act (C.R.S. § 1-45-101 et seq.), as amended, subject to the modifications made by this Code, has occurred related to a city election may file a written complaint with the city clerk.
- (b) Complaints must be filed no later than thirty (30) calendar days after the complainant knew or should have known by the exercise of reasonable diligence of the alleged violation.
- (c) A written complaint filed with the city clerk shall include the city clerk's complaint cover sheet which must include the following information and any other information that the city clerk deems necessary to process the complaint:
 - (1) The name, address, e-mail address, telephone number and signature of the complainant (if the complainant is represented by counsel, include the counsel's name, address, e-mail address, telephone number and signature along with the name, address, e-mail address, telephone number and signature of the complainant);
 - (2) The name and, if known, the telephone number, email address, and mailing address of the respondent(s) (or each person alleged to have committed a violation);
 - (3) The particulars of the violation, including the specific factual and legal basis for the allegation; and
 - (4) Optionally, documentation or other evidence supporting the allegation.
- (d) If an incomplete complaint is received, the date on which the originally filed complaint was received is considered the filed date if a complete copy is received within three (3) business days of notification from the city clerk that the complaint was incomplete.
- (e) A complaint may be submitted by fax or electronic mail if a signed original is received by the city clerk no later than three (3) business days thereafter.
- (f) Initial review.
 - (1) The city clerk will review the complaint to determine:
 - a. Whether the complaint was timely filed in accordance with this section;
 - b. Whether the complainant has specifically identified one or more violations of Colorado Constitution Article XXVIII, the Fair Campaign Practices Act, or any rules adopted and promulgated by the city clerk concerning campaign and political finance;
 - c. Whether the complainant has alleged sufficient facts and/or provided sufficient information to support a legal and factual basis for the complaint; and
 - d. Whether it is possible through reasonable efforts, to identify the subject of the complaint.
 - (2) Within fourteen (14) business days of receiving the complaint, the city clerk must take one (1) or more of the following actions following their initial review:
 - a. If the city clerk determines that the complaint fails to satisfy each criteria in subsection (f)(1), the city clerk will dismiss the complaint and notify the complainant and respondent of the reasons for dismissal. The city clerk's determination and dismissal is a final decision.
 - b. If the city clerk determines that the complaint satisfies each criteria in subsection (f)(1), and alleges one (1) or more curable violations as described in subsection (g), the city clerk will notify the respondent(s) and provide an opportunity to cure as described in subsection (g), holding in abeyance any alleged violations that may not be curable.

- c. If the city clerk determines that the complaint satisfies each criteria in subsection (f)(1), and that none of the alleged violations may be curable as described in subsection (g), the city clerk will take the actions set forth in subsection (h).
- (g) Curing violations.
- (1) Upon the city clerk's determination that a complaint alleges a failure to file or otherwise disclose required information, or other curable violation, the city clerk will notify the respondent(s) by email, or by mail if email is unavailable, of the curable deficiencies alleged in the complaint.
 - (2) Respondent(s) must provide the city clerk with notice of intent to cure on the form provided by the city clerk and include a copy of any amendments prior to curing the violation in accordance with this subsection.
 - (3) Respondents shall have fourteen (14) business days from the date the notice is issued to cure the alleged violation and to notify the city clerk, in writing, of actions taken to cure the alleged violation.
 - (4) After the period for cure, the city clerk will determine, within five (5) business days, whether the respondent(s) cured the violation(s), and if so, whether the respondent(s) substantially complied or acted in good faith under subsections (g)(6). The city clerk may ask the respondent to provide additional information and may grant an extension of time to file a notice of intent to cure in order to respond to such a request.
 - a. If the city clerk determines that the respondent(s) substantially complied or acted in good faith in curing any alleged violation, the city clerk will dismiss the complaint as to such violation. The clerk's determination and dismissal under this subsection (g)(4)(a) is a final decision.
 - b. If the city clerk determines that the respondent neither substantially complied nor acted in good faith in curing any alleged violation, the city clerk will take the action as set forth in subsection (h) as to such violation.
 - c. The city clerk will take the actions set forth in subsection (h) with respect to any alleged violations held in abeyance pursuant to subsection (f)(2)(b).
 - (5) In determining whether an entity "substantially complied" as that term is used in subsection (g)(4), the city clerk must consider:
 - a. The extent of the noncompliance;
 - b. The purpose of the provision violated and whether that purpose was substantially achieved despite the noncompliance; and
 - c. Whether the noncompliance can properly be viewed as an intentional attempt to mislead the electorate or election officials.
 - (6) In determining whether an entity registered or disclosed in "good faith" as that term is used in subsection (g)(4), the city clerk may consider whether ten percent (10%) or less of either the entity's disclosures or, alternatively, the reported dollar amounts required on the report or appearing on the filed reports at issue in the complaint are out of compliance.
- (h) When the city clerk is required to take further action as set forth in subsections (f)(2)(c), (g)(4)(b), or (g)(4)(c), the city clerk shall notify the city manager of the complaint, and the city manager, in consultation with the city clerk and the city attorney, shall refer the complaint to a hearing officer appointed by city council. to hear and determine such complaint. Such referral shall occur within ten (10) business days of the city clerk action as set forth in subsections (f)(2)(c), (g)(4)(b), or (g)(4)(c).
- (i) An informal hearing shall be scheduled as soon as practicable with due regard for the convenience and necessity of the parties but, unless an enlargement of time is granted as set forth in subsection (k), the

hearing shall be held within fifteen (15) calendar days of referral of the complaint to the hearing officer, or the closest business day thereafter if the 15th day falls on a weekend or holiday. The City will not be a necessary party to the hearing and will not represent either the complainant or respondent, but may intervene as a party on its own behalf.

- (j) Notice of the hearing and any applicable rules governing the hearing process shall be sent to the complainant and to the respondent(s), who shall also receive a copy of the entire complaint received by the city clerk, within two (2) business days of the date of referral of the complete complaint to the hearing officer and may be delivered by electronic mail to the address of the complainant shown on the complaint form and to the respondent(s).
- (k) Upon written motion, the hearing officer may grant the subject of the complaint a continuance of up to thirty (30) calendar days upon a showing of good cause.
- (l) Upon the request of either party, the hearing officer may issue an administrative subpoena requiring the attendance of a witness or party in relation to an alleged campaign finance violation, which shall be served on the party to whom it is directed by the requesting party pursuant to Rule 4, C.R.C.P. It shall be unlawful for a witness or party to fail to comply with such subpoena, and any person convicted of a violation hereof shall be punished in accordance with the procedures of the municipal court.
- (m) The hearing shall be electronically audibly recorded and held in substantial accordance with the provisions of C.R.S. § 24-4-105 or such other rules as the city clerk may have promulgated, including rules for holding hearings remotely by electronic means when necessary in the opinion of the hearing officer. At the hearing, the complainant and the respondent(s) shall be present and, in accordance with C.R.S. § 24-4-105(7), the complainant shall have the burden of proof in similar manner as the proponent of an order.
- (n) Following the hearing, the hearing officer shall issue a decision in writing within seven (7) business days.
- (o) If the hearing officer determines after a hearing that a violation has occurred, the hearing officer's decision shall include any appropriate order, sanction or relief authorized hereunder and may include, without limitation, sanctions as follows:
 - (1) A civil penalty, payable to the city, of at least double and up to five (5) times the amount contributed, received or spent in violation of any contribution prohibition or limitation or in violation of a contribution reporting requirement.
 - (2) A civil penalty, payable to the city, of fifty dollars (\$50.00) per day for each day that a statement or other information required to be filed pursuant to Article XXVIII of the Colorado Constitution or the Fair Campaign Practices Act (C.R.S. § 1-45-101, et seq.), as amended by this code, is not filed by the close of business on the day due.
 - (3) An order requiring disclosure of the source and amount of any undisclosed contributions or expenditures.
 - (4) An order requiring the return to the donor of any contribution made which was the subject of the violation.
- (p) A party in a hearing brought pursuant to this chapter, including the city if it intervenes, may request that the hearing officer issue an order requiring one party who has brought or defended the action, either in whole or in part, to pay another party's reasonable attorney fees and costs. In considering whether to do so, the hearing officer will determine, if relevant, whether:
 - (1) the complaint, or any part thereof, lacked substantial justification;
 - (2) the complaint, or any part thereof, was interposed for delay or harassment; or

- (3) an attorney or party unnecessarily expanded the proceeding by other improper conduct, including but not limited to abuses of discovery procedures authorized by this article.

Notwithstanding any other provision of this subsection, no attorney fees shall be awarded unless the hearing officer has first considered the provisions of C.R.S. §§ 13-17-102(5) and (6). As used herein, *lacked substantial justification* means substantially frivolous, substantially groundless or substantially vexatious.

- (q) The hearing officer's decisions as set forth in subsections (n), (o), and (p) are a final decision subject to review under Rule 106, C.R.C.P.
- (r) Candidates shall be personally liable for penalties imposed upon the candidate's committee.
- (s) The city may pursue any legal means for the collection of civil penalties imposed under this article. The city manager may also refer the matter for collection by whatever means are available to the city, including by a private collection agency and the party responsible to pay the penalty may be assessed the cost of collection.
- (t) In no event shall the city take any action, including referring the penalty debt to a collection agency as contemplated by subsection (s), but not including action of the collection agency, to collect civil penalties assessed hereunder after the date that is more than one (1) year from the date that the filing was due.

[End of Exhibit A to Ordinance 2328]