

CITY OF LAFAYETTE, COLORADO

ORDINANCE NO. 12, Series 2021

INTRODUCED BY: Councilor Chelsea Behanna

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, ENACTING SECTION 40-3, “FAIR CAMPAIGN PRACTICES; ENFORCEMENT OF MUNICIPAL CAMPAIGN FINANCE COMPLAINTS,” OF CHAPTER 40 (ELECTIONS) OF THE CODE OF ORDINANCES OF THE CITY OF LAFAYETTE

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

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; and

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

WHEREAS, while Section 9 of Article XXVIII of the Colorado Constitution provides that the Colorado Secretary of State accept and administer complaints from persons alleging violations of the State’s campaign finance laws, the Secretary of State will no longer accept filings of complaints concerning municipal campaign finance matters; and

WHEREAS, it is therefore prudent for the City to establish a process for review of municipal campaign finance complaints.

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

Section 1. That the Code of Ordinances, City of Lafayette, Colorado, is hereby amended by enacting Section 40-3, entitled “Fair campaign practices; enforcement of municipal campaign finance complaints,” which reads as follows:

Sec. 40-3. – Fair campaign practices; enforcement of municipal campaign finance complaints.

- (a) Any person who asserts that a violation of Article XXVIII of the Colorado Constitution or the Colorado Fair Campaign Practices Act (C.R.S. §§ 1-45-101 *et seq.*), as amended, 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 complaint shall 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 alleged violation(s), including the specific factual and legal basis for the allegation(s); and
- (4) Documentation or other evidence supporting the allegation(s).

(d) A complaint may be submitted by personal delivery, mail, or electronically.

(e) Initial review of complaint.

(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 a violation(s) of Article XXVIII of the Colorado Constitution, the Colorado Fair Campaign Practices Act, or any local campaign finance laws or rules adopted and promulgated by the city concerning a municipal election;
- 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(s) of the complaint. If the subject is identifiable, the city clerk shall promptly notify the subject of the complaint in writing.

(2) Within fifteen (15) business days of receiving the complaint, the city clerk must take one or more of the following actions following initial review:

- a. If the city clerk determines that the complaint fails to satisfy all of the criteria in subsection (e)(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 are a final decision.
- b. If the city clerk determines that the complaint satisfies all of the criteria in

subsection (e)(1), and alleges one (1) or more curable violations as described in subsection (f), the city clerk will notify the respondent(s) in writing 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 all of the criteria in subsection (e)(1), and that none of the alleged violations are curable, the city clerk will proceed to set the matter for a hearing as described herein.

(f) 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) in writing and advise them of the curable deficiencies alleged in the complaint.
- (2) Respondents shall have fifteen (15) business days from the date the notice is issued by the city clerk to cure the alleged violation(s) and to notify the city clerk, in writing, of actions taken to cure the alleged violation(s).
- (3) The city clerk will determine, within seven (7) business days of receipt of the respondent's notice of proposed cure, or, if no response, upon expiration of the cure period, whether the respondent(s) cured the violation(s), and if so, whether the respondent(s) "substantially complied" or acted in "good faith" as described herein. The city clerk may ask the respondent(s) to provide additional information, and may grant an extension of time to cure the violation(s).
 - 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 city clerk's determination and dismissal are 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 shall set the matter for a hearing and notify the complainant and respondent in writing.
 - c. The city clerk will schedule a hearing with respect to any alleged violations held in abeyance after the city clerk's initial evaluation of the complaint.
- (4) In determining whether an entity "substantially complied," 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.

(5) In determining whether an entity registered or disclosed in “good faith,” 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.

(g) Hearing.

(1) When required, a hearing before the city clerk shall be scheduled as soon as practicable with due regard for the convenience and necessity of the parties but, unless an extension of time is granted by the city clerk, the hearing shall be held within fifteen (15) business days after the date of notice to the parties. 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.

(2) Notice of the hearing shall include any applicable rules of the city clerk governing the hearing process and the respondent(s) shall also receive a copy of the entire complaint received by the city clerk.

(3) Upon written motion, the city clerk may grant either party a continuance of up to thirty (30) calendar days upon a showing of good cause.

(4) Upon the request of either party, the city clerk may issue administrative subpoenas requiring the attendance of a witness or party in relation to an alleged local campaign finance violation, which shall be served on the party to whom it is directed by the requesting party pursuant to Rule 4, Colorado Rules Civil Procedure (“C.R.C.P.”). It shall be unlawful for a witness or party to fail to comply with such subpoena.

(5) The hearing shall be electronically recorded and held in substantial conformance with such rules as the city clerk may have promulgated, including rules for holding hearings remotely by electronic means, when necessary, in the opinion of the city clerk. At the hearing, the complainant and the respondent(s) shall be present, and the complainant shall have the burden of proof to establish the alleged violation(s) by a preponderance of the evidence.

(6) Following the hearing, the city clerk shall issue a decision in writing within seven (7) business days.

(7) If the city clerk determines after a hearing that a violation has occurred, the city clerk's decision shall include any appropriate order, sanction, or relief authorized hereunder and may include, without limitation, sanctions as follows:

a. A civil penalty, payable to the city, of at least double the amount contributed,

received, or spent in violation of any contribution prohibition or in violation of a contribution reporting requirement.

- b. A civil penalty, payable to the city, in the amount 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 Colorado Fair Campaign Practices Act (C.R.S. §§ 1-45-101 et seq.), is not filed by the close of business on the day due.
 - c. An order requiring disclosure of the source and amount of any undisclosed contributions or expenditures.
 - d. An order requiring the return to the donor of any contribution made which was the subject of a violation.
- (8) The city clerk's decisions are a final decision subject to review under Rule 106(a)(4), C.R.C.P.
- (9) Candidates shall be personally liable for penalties imposed upon their candidate committee.
- (10) The city may pursue any legal means for the collection of civil penalties imposed under this article. The city administrator 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.

Section 2. If any article, section, paragraph, sentence, clause or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

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

Section 4. The repeal or modification of any provision of the Code of Ordinances, City of Lafayette, Colorado, by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.

Section 5. This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

Section 6. Violations of this ordinance, in addition to the civil penalties set forth herein, shall be punishable in accordance with Section 1-10 of the Code of Ordinances of the City of Lafayette, Colorado.

Section 7. This ordinance shall become effective upon the latter of the 10th day following enactment, or the day following final publication of the ordinance.

INTRODUCED AND PASSED ON FIRST READING THE 3rd DAY OF AUGUST, 2021.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED THE 17th DAY OF AUGUST, 2021.

CITY OF LAFAYETTE, COLORADO

Jamie Harkins, Mayor

ATTEST:

Lynnette Beck, City Clerk

APPROVED AS TO FORM:

Mary Lynn Macsalka, City Attorney