

INTRODUCED BY:       Ayala      

AN ORDINANCE AMENDING SECTION 2-240 OF THE THORNTON CITY CODE TO PROVIDE REPORTING PERIODS FOR REPORTS REQUIRED TO BE FILED WITH THE CITY CLERK UNDER THE FAIR CAMPAIGN PRACTICES ACT AND CREATING A NEW SECTION 2-245 CONCERNING CAMPAIGN FINANCE COMPLAINTS RELATING TO CITY ELECTIONS.

WHEREAS, Colorado House Bill 24-1283 (HB 1283) requires that any complaint arising out of a municipal campaign finance matter (complaint) must be filed with the Clerk of the applicable municipality; and

WHEREAS, HB 1283 authorizes a Municipal Clerk to refer complaints to the Colorado Secretary of State if the Clerk determines that the complaint creates an actual or perceived conflict for the Clerk or the Clerk's staff; and

WHEREAS, HB 1283 requires a municipality to adopt an ordinance pursuant to the bill's provisions in order for the Municipal Clerk to refer complaints that create a conflict to the Colorado Secretary of State; and

WHEREAS, the City believes it appropriate to adopt such an ordinance to enable the City Clerk to refer to the Colorado Secretary of State any complaints that the City Clerk determines create a conflict for the City Clerk or the City Clerk's staff; and

WHEREAS, the City believes other complaints should be referred to a hearing officer appointed by the City Manager for review and adjudication; and

WHEREAS, the City wishes to adopt its own reporting periods for reports required to be filed with the City Clerk under the Fair Campaign Practices Act (FCPA) in lieu of the reporting periods provided in the FCPA.

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

1. Section 2-240 of the Thornton City Code is hereby amended by the addition of the words double-underlined to read as follows

**Sec. 2-240. - Campaign contributions; reporting periods for campaign finance reports.**

(a) A campaign contribution as that term is defined in Colorado Revised Statutes Section 1-45-103(6), as amended, may be accepted by a candidate for city council from persons, businesses, corporations and labor organizations. All campaign contributions and expenditures shall be reported and filed as required by law.

(b) Except as otherwise provided in this subsection, reports that are required to be filed with the city clerk under the Fair Campaign Practices Act, Title 1, Article 45 of the Colorado Revised Statutes, must be filed no later than 120 days, 90 days, 60 days, 30 days, and 15 days before, and 30 days after, the major election and annually in off-election years on the first day of the month in which the anniversary of the major election occurs. Except for candidate committees and issue committees, a committee must file a report only if it has activity to report during the reporting period. For purposes of this subsection, "major election" means:

(1) For any candidate for city council and the candidate's candidate committee, the election that elects the candidate to city council;

(2) For any issue committee, the election that decides the city ballot issue that the issue committee is supporting or opposing;

(3) For any political committee, the election in which it supports or opposes a candidate for city council;

(4) For any small donor committee, the election in which it makes contributions to a candidate for city council;

(5) For any independent expenditure committee, the election in which it makes expenditures in connection with a city election.

2. A new Section 2-245 of the Thornton City Code is hereby created to read as follows:

#### **Sec. 2-245. - Municipal campaign finance complaints.**

- (a) Pursuant to C.R.S. § 1-45-111.7(10), any complaint alleging that a violation of Article XXVIII of the Colorado Constitution, the Fair Campaign Practices Act, Title 1, Article 45 of the Colorado Revised Statutes, or rules adopted thereunder by the secretary of statute has occurred in connection with a municipal campaign finance matter pertaining to a city election shall be timely filed with the city clerk not later than 180 days after the date on which the complainant either knew or should have known, by the exercise of reasonable diligence, of the alleged violation.
- (b) A complainant shall file the complaint in writing, sign the complaint, identify one or more respondents and provide the complainant's address and e-mail address and the respondent's address and e-mail address, if known.
- (c) The city clerk shall review the complaint within 10 business days of receiving it to determine whether the complaint satisfies the requirements of subsection (b) of this section. After reviewing the complaint, the city clerk shall:

- (1) Dismiss the complaint if the city clerk determines that the complaint does not satisfy the requirements of subsection (b) of this section;
  - (2) Refer the complaint to the secretary of state, in a form and manner determined by the secretary of state, within 14 business days of receiving the complaint if the city clerk determines that the complaint presents an actual or potential conflict for the city clerk or the city clerk's staff, as determined in writing by the city clerk. As provided in C.R.S. § 1-45-111.7(10)(g), the city clerk's determination that a conflict exists is not reviewable by the secretary of state;
  - (3) Refer the complaint to a hearing officer appointed by the city manager within 14 business days of receiving the complaint if the city clerk determines that the complaint does not present an actual or potential conflict for the city clerk or the city clerk's staff;
  - (4) Notify the complainant of the city clerk's action taken pursuant to this subsection by e-mail or regular mail if e-mail is unavailable.
- (d) The following shall apply to any complaint referred to the secretary of state pursuant to subsection (c)(2) of this section:
- (1) The secretary of state may use the provisions of C.R.S. § 1-45-111.7(3) through (7) to process, investigate, and resolve the complaint;
  - (2) The filing of the complaint shall be in writing and signed by the complainant on a form provided by the secretary of state, including identification of one or more respondents and the information required to be provided on the form;
  - (3) The city shall cooperate with the secretary of state in the processing and investigation of the complaint;
  - (4) The city shall disclaim any interest in fines collected in connection with a complaint that the city clerk referred to the secretary of state.
- (e) The following shall apply to any complaint referred to a hearing officer pursuant to subsection (c)(3) of this section:
- (1) The filing of the complaint shall be in writing and signed by the complainant on a form provided by the city clerk;
  - (2) The hearing officer shall conduct an initial review of the complaint to determine whether the complaint:

- a. Was timely filed with the city clerk pursuant to subsection (a) of this section;
  - b. Specifically identifies one or more violations of Article XXVIII of the Colorado Constitution, the Fair Campaign Practices Act, or rules adopted thereunder by the secretary of state; and
  - c. Alleges and provides sufficient facts and other information to support a factual and legal basis for the violations of law alleged in the complaint.
- (3) Within 10 business days of a complaint being referred from the city clerk, the hearing officer shall take one or more of the following actions:
- a. Dismiss the complaint, in whole or in part, as appropriate, if the hearing officer determines that the complaint or part thereof does not satisfy the requirements of subsection (e)(2) of this section;
  - b. Notify the respondent by e-mail or regular mail if e-mail is unavailable of the opportunity to cure violations alleged in the complaint pursuant to subsection (e)(4) of this section if the hearing officer determines that the complaint alleges a failure to file or otherwise disclose required information or alleges another curable violation;
  - c. Schedule a hearing to hear and determine violations alleged in the complaint pursuant to subsection (e)(5) of this section. For a complaint that alleges both curable and non-curable violations, the hearing officer may decide whether to schedule a hearing on the complaint pursuant to subsection (e)(5) of this section after the hearing officer determines if the respondent cured all curable violations in accordance with subsection (e)(4) of this section.
- (4) The following shall apply to any determination of a hearing officer that a complaint alleges one or curable violations pursuant to subsection (e)(3)b. of this section:
- a. The respondent shall have 10 business days from the date the notice is e-mailed or mailed to file an amendment to any relevant report that cures any deficiencies specified in the notice;
  - b. The respondent shall provide the hearing officer with notice of the respondent's intent to cure and include a copy of any amendments to any report containing one or more deficiencies;
  - c. Upon receipt of the respondent's notice of an intent to cure, the hearing officer may ask the respondent to provide additional information and may grant the respondent an extension of time to file an amended notice of intent to cure in order to respond to any such request;

- d. After the period to cure has expired, the hearing officer shall determine whether the respondent has cured any violation alleged in the complaint and, if so, whether the respondent has substantially complied with its legal obligations under Article XXVIII of the Colorado Constitution, the Fair Campaign Practices Act, and rules adopted thereunder by the secretary of state. In determining whether the respondent substantially complied with such legal obligations, the hearing officer shall consider the extent of the respondent's noncompliance, the purpose of the provision violated and whether that purpose was substantially achieved despite the noncompliance, and whether the noncompliance may properly be viewed as an intentional attempt to mislead the electorate or election officials. If the hearing officer determines that the respondent substantially complied with its legal obligations, the hearing officer shall dismiss the complaint, in whole or in part, as appropriate. The order to dismiss shall specify the manner in which the respondent has satisfied the factors specified herein and shall be provided to the complainant and the respondent by e-mail or by regular mail if e-mail is unavailable. If the hearing officer determines that the respondent failed to substantially comply with its legal obligations, the hearing officer shall hold a hearing on the complaint pursuant to subsection (e)(5) of this section.

(5) A hearing on a complaint is subject to the following:

- a. The hearing officer shall schedule the hearing to be held within 30 calendar days of determining to hold the hearing. The hearing may be continued upon the motion of the complainant or respondent for up to 30 calendar days or a longer extension of time upon a showing of good cause;
- b. The hearing officer shall by e-mail or regular mail if e-mail is unavailable provide a minimum of 15 calendar days' notice of the hearing to the complainant and respondent;
- c. Upon the request of the complainant or respondent, the hearing officer may issue an administrative subpoena requiring the attendance of a witness or party in relation to an alleged municipal campaign finance violation pertaining to a city election, which shall be served on the party to whom it is directed by the requesting party pursuant to Rule 4 of the Colorado Rules of Civil Procedure. It shall be unlawful for a witness or party to fail to comply with such subpoena, and any person convicted of a violation thereof shall be punished in accordance with Section 1-8(a) of City Code;
- d. The hearing shall be electronically recorded, and may be held virtually at the discretion of the hearing officer;

- e. The hearing officer shall conduct the hearing in an informal manner and shall not be bound by technical rules of evidence. The complainant shall have the burden of proof to establish that a violation alleged in the complaint occurred under a preponderance of the evidence standard. The respondent and complainant may present evidence to the hearing officer in the form of testimony, documents, rebuttal testimony, and opening and closing statements;
  - f. The hearing officer shall issue a decision in writing within 30 business days of the hearing;
  - g. If the hearing officer determines that a violation occurred, the hearing officer's decision shall include any appropriate order, relief, or sanction and may include, without limitation, sanctions as follows:
    - i. Impose a civil penalty 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;
    - ii. Impose a civil penalty of \$50 per day for each day that a statement or other information required to be filed pursuant to Article XXVIII of the Colorado Constitution, the Fair Campaign Practices Act, or rules adopted thereunder by the secretary of state is not filed by the close of business on the day due, provided, however, that the hearing officer may waive the civil penalty, in full or in part, to the extent the hearing officer deems appropriate;
    - iii. Order disclosure of the source and amount of any undisclosed contributions or expenditures;
    - iv. Order the return to the donor of any contribution made which was the subject of the violation.
- (6) The city may pursue by any legal means for the collection of civil penalties imposed by a hearing officer pursuant to this section. The city clerk 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.
- (f) As used in this section:
- (1) *City clerk* means the city clerk or designee;
  - (2) *Conflict* means the actual or reasonably perceived inability to process a campaign finance complaint or impose a remedy in a fair and impartial manner, including an actual or reasonably perceived bias or other factors that may impact the independence of the decision-maker regarding the complainant or a candidate;

(3) *Secretary of state* means the Colorado secretary of state or designee.

3. Notwithstanding Section 2-245(c)(2) and (3), as created in Section 1 of this ordinance, the City Clerk may refer a complaint that presents an actual or potential conflict for the City Clerk or the City Clerk's staff to a hearing officer until the City is authorized to refer such a complaint to the Secretary of State pursuant to C.R.S. § 1-45-111.7(10)(d).
4. If any portion of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the constitutionality or validity of the remaining portions of this ordinance. City Council hereby declares that it would have passed this ordinance and each part hereof irrespective of the fact that any one part be declared unconstitutional or invalid.
5. 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 conflict.
6. The repeal or amendment of any provision of the Code 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, and 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 the 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.
7. This ordinance shall take effect upon final passage.

INTRODUCED, READ, PASSED on first reading, ordered posted in full, and title ordered published by the City Council of the City of Thornton, Colorado, on September 24, 2024.

PASSED AND ADOPTED on second and final reading on \_\_\_\_\_, 2024.

CITY OF THORNTON, COLORADO

---

Jan Kulmann, Mayor

ATTEST:

---

Kristen N. Rosenbaum, City Clerk

THIS ORDINANCE IS ON FILE IN THE CITY CLERK'S OFFICE FOR PUBLIC INSPECTION.

APPROVED AS TO LEGAL FORM:

---

Tami Yellico, City Attorney

PUBLICATION:

Posted at City Hall, Margaret W. Carpenter Recreation Center, Thornton Active Adult Center, and Trail Winds Recreation Center after first and second readings.

Published on the City's officer website after first reading on September 25, 2024, and after second and final reading on \_\_\_\_\_, 2024.