

## Division 2 Campaign Violations

### Sec. 7-145. Allegation of campaign violation.

- (a) Any candidate or registered elector of the City ("complainant") who has reason to believe a violation of Chapter 7, Article V, of this Code, has occurred by any person, candidate, candidate committee, issue committee, small-scale issue committee or political committee may file a written complaint with the City Clerk, no later than sixty (60) days after the alleged violation has occurred.
- (b) The complaint must contain:
  - (1) The name of the alleged violator;
  - (2) The Code provision allegedly violated;
  - (3) A brief statement or description of the offense allegedly committed and the basis for the allegation;
  - (4) Identification of any relevant documents or other evidence;
  - (5) Identification of any witnesses or persons with relevant knowledge; and
  - (6) The name, address and telephone number of the complainant.
- (c) For complaints that allege a criminal violation as set forth in § 7-143(b), the City Clerk will forward the complaint to the respondent and to the City Attorney, who will evaluate the complaint for probable cause as provided for in this Division 2.
- (d) For complaints that do not allege a criminal violation, the complaints shall be subject to a civil infraction process as provided herein:
  - (1) The City Clerk will forward the complaint to the respondent by electronic mail, notifying the respondent that the alleged violation may be subject to a civil infraction.
  - (2) The City Clerk will forward the complaint to the City Attorney, who shall review the complaint to determine whether the complaint:
    - a. Was timely filed under § 7-145(a);
    - b. Contains the information required by § 7-145(b); and
    - c. Alleges sufficient facts to support a factual and legal basis for the violations alleged.
  - (3) If the City Attorney determines that the complaint fails to satisfy any of the three (3) elements in the immediately preceding Subsection (2), the City Attorney shall so notify the City Clerk who will, in turn, notify the complainant and respondent in writing.
  - (4) If the City Attorney determines that the complaint satisfies the three (3) elements in the immediately preceding Subsection (2), the City Attorney shall notify the City Clerk who will, in turn, notify the respondent in writing of the presumptive penalty in accordance with § 7-143(a) and that the respondent shall have ten (10) days from the date of the notice to submit written evidence of its cure or diligent efforts to cure the violation, including any amendments to any applicable report containing one or more deficiencies, modified campaign materials or other proof that the violation has been corrected. The respondent's written response shall be due to the City Clerk no later than 5:00 p.m. on the tenth (10<sup>th</sup>) day. In the event the tenth (10<sup>th</sup>) day is a City holiday, the response shall be due no later than 5:00 p.m. the next business day.

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- (5) On receipt of the respondent's written response, the City Attorney may, through the City Clerk, ask the respondent to provide more information and may grant the respondent an extension of time of up to seven (7) additional days to file an amended response regarding cure in order to respond to any such request.
  - (6) After the period for cure has expired, the City Attorney shall determine whether the respondent has cured any violation alleged in the complaint and, if so, whether respondent has substantially complied with its legal obligations under Chapter 7, Article 5, of this Code. In determining whether the respondent has substantially complied with its legal obligations, the City Attorney shall consider:
    - a. The extent of the respondent's noncompliance;
    - b. The purpose of the provision violated and whether that purpose was substantially achieved despite the noncompliance; and
    - c. Whether the noncompliance may properly be viewed as a knowing attempt to mislead the electorate or election officials.

If the City Attorney determines the respondent has cured any violation or otherwise substantially complied with its legal obligations under Chapter 7, Article 5, the City Attorney shall so notify the City Clerk who, in turn, shall notify the complainant and the respondent and no penalty shall apply for the corresponding alleged violation or violations, as applicable.

- (7) If the City Attorney determines the respondent has not cured the alleged violation or otherwise substantially complied with its legal obligations, the City Attorney may conduct additional review or investigation of the allegations of the complaint to determine whether to file a complaint with the Municipal Court.
- (8) If the City Attorney files a complaint with the Municipal Court, the matter shall be governed by Article V of Chapter 19 of this Code.
- (9) A complainant or any other nonrespondent shall not be a party to the City Attorney's initial review, cure proceedings, investigation, or any proceeding in the Municipal Court. A complainant may request permission from the Municipal Judge or their designee to file an amicus curiae brief.
- (10) Any person that commits a violation of this Article shall be personally liable for the penalties imposed. Any candidate shall be personally liable for penalties imposed upon the candidate or the candidate's committee and may use campaign contributions to pay penalties.

(Ord. No. 005, 2017, § 9, 1-17-17; Ord. No. 113, 2018, § 10, 9-4-18; Ord. No. 109, 2020, § 7, 9-15-20; Ord. No. 079, 2022, § 9, 7-5-22)

### **Sec. 7-146. Evaluation of campaign complaint.**

- (a) For those complaints that concern a criminal violation pursuant to § 7-143(b), if the City Attorney determines that no probable cause exists, that the complaint fails to allege an enforceable violation, or that the requirements of § 7-145 were not met by the complainant, the City Attorney shall so notify the City Clerk, who will, in turn, notify the complainant and respondent in writing.
- (b) If the City Attorney determines probable cause exists, the City Attorney may notify Fort Collins Police Services, who, in consultation with the City Attorney, may file and serve a summons and complaint to the respondent.
- (c) The City Attorney retains prosecutorial discretion on whether to ultimately file criminal charges. If the City Attorney determines filing a summons and complaint is inappropriate, he or she shall so notify the City Clerk, who will, in turn, notify the complainant and respondent in writing.

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(Ord. No. 005, 2017, § 9, 1-17-17; Ord. No. 109, 2020, § 8, 9-15-20)

**Sec. 7-147. Conflicts of interest.**

Notwithstanding the above, nothing in this Article shall be read to preclude the City Attorney from declaring a conflict of interest, and taking appropriate action in accordance with this Code and general practices of the City, including, but not limited to, hiring special counsel, if deemed necessary and advisable under the circumstances.

(Ord. No. 005, 2017, § 9, 1-17-17)

**Sec. 7-148. Complaint not required for city action.**

Nothing in this Article shall preclude the City from pursuing an action, civil or criminal, against any person, candidate, candidate committee, issue committee, small-scale issue committee or political committee for any violation of this Chapter, regardless of whether a complaint had been filed pursuant to this Article.

(Ord. No. 005, 2017, § 9, 1-17-17)

**Sec. 7-149. Administrative procedures.**

The City Manager is charged with ultimate authority to pursue complaints under this Article and is hereby authorized to adopt administrative regulations consistent with the provisions of this Article.

(Ord. No. 005, 2017, § 9, 1-17-17)

**Sec. 7-150. Reserved.**

Ord. No. 109, 2020, § 9, adopted September 15, 2020, repealed § 7-150, which pertained to action by complainant, and derived from Ord. No. 005, 2017, § 9, adopted January 17, 2017.

**Secs. 7-151—7-154. Reserved.**