



REQUEST FOR CITY COUNCIL ACTION

Meeting Date: 12/15/20

ORIGINATING DEPARTMENT:

Clerk's Office

PRESENTED BY:

Nina Williams

ITEM:

Ordinance 2020-12 An Ordinance of the City Council of the City of Salida, Colorado, Concerning Elections, and Creating a Process for Addressing Complaints Alleging Campaign Finance Law Violations in City Elections

BACKGROUND:

Please see the Attorney's Memo on the next page.

STAFF RECOMMENDATION:

Staff recommends approving Ordinance 2020-12

SUGGESTED MOTION:

A City Councilperson should make a motion to "approve Ordinance 2020-12 An Ordinance Concerning Elections, and Creating a Process for Addressing Complaints Alleging Campaign Finance Law Violations in City Elections on second reading" followed by a roll call vote.



MEMORANDUM

TO: Mayor P.T. Wood, Salida City Council

FROM: Geoffrey Wilson, Asst. City Attorney

CC: Nina P. Williams, City Attorney

DATE: November 30, 2020

RE: **Complaint and hearing process for election complaints**

Introduction

The attached draft ordinance creates a process for reviewing and conducting hearings on complaints alleging violation of the campaign finance laws in City elections.

Prior to 2019, complaints alleging violations of Art XXVIII of the Colorado Constitution or the State Fair Campaign Practices Act (FCPA) in municipal elections were filed with the Secretary of State. During its 2019 regular session, the Colorado General Assembly enacted SB19-232, which changed this process, providing instead that “any complaint arising out of a municipal campaign finance matter must be exclusively filed with the clerk of the ...municipality.” (codified at C.R.S. 1-45-111.7(9)(b))

The passage of SB19-232 has resulted in municipalities across Colorado adopting local complaint procedures, in order to address campaign finance complaints that may arise in their local elections. Many of these ordinances adopt a procedure similar to that set forth by the General Assembly in SB19-232 for processing such complaints in State elections.

Proposed Code Amendment

The proposed amendment to the City Code is modeled after the complaint process set forth in SB19-232 for complaints filed with the State, as well as various municipal ordinances implementing local complaint processes in the wake of the State legislation. This complaint process will address alleged violations of the campaign finance laws; complaints alleging violations of other election codes governing City elections will be pursued under those Codes, and applicable City ordinances. The proposed ordinance includes the following elements:

- Creates a detailed process for filing a complaint in writing, followed by initial review by the municipal clerk.
- Authority of the clerk to dismiss the complaint, provide an opportunity to cure deficiencies in the complaint, or set the complaint for a hearing.
- A process for the conduct of a hearing by an independent hearing officer.
- Authority of the hearing officer to impose penalties of at least twice the amount contributed, received or spent unlawfully, a daily civil penalty for delinquent filings, as well as other penalties.

CITY OF SALIDA, COLORADO
ORDINANCE NO. 12
(Series of 2020)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO, CONCERNING ELECTIONS, AND CREATING A NEW SECTION 2-1-60 OF THE SALIDA MUNICIPAL CODE TO CREATE A PROCESS FOR ADDRESSING COMPLAINTS ALLEGING CAMPAIGN FINANCE LAW VIOLATIONS IN CITY ELECTIONS

WHEREAS, the City of Salida, Colorado (“City”) is a statutory city, duly organized and existing under the laws of the state of Colorado; and

WHEREAS, pursuant to its statutory authority, the City, acting through its City Council (“Council”), is authorized to enact and update City ordinances as necessary to provide a process for addressing complaints alleging violation of campaign finance laws in municipal elections, and

WHEREAS, in its 2019 Regular Session, the Colorado General Assembly adopted SB19-232, which provides, among other things, that “any complaint arising out of a municipal campaign finance matter must be exclusively filed with the clerk of the ...municipality”; and

WHEREAS, the 2019 legislation necessitates creation of a process by which the City may address complaints alleging violations of the campaign finance laws applicable in City elections, which update also presents an opportunity to clarify which laws govern City elections; and

WHEREAS, the City Council therefore now desires to amend the Salida Municipal Code to add a new section to Chapter 2, Article I, concerning Elections, entitled “Enforcement of third-party complaints” to create such a process and to comply with State law.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO:

Section 1. The City Council incorporates the foregoing recitals as conclusions, facts, determinations and findings by the City Council.

Section 2. A new Section 2-1-60 is hereby created and added to Chapter 2, Article I of the Salida Municipal Code, concerning Elections, to read as follows:

Sec. 2-1-60. – Enforcement of third-party complaints.

- (a) Any person who believes a violation of Article XXVIII of the Colorado Constitution, or the Fair Campaign Practices Act (Section 1-45-101 et seq., C.R.S.), as amended 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 ninety (90) 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:
 - (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 and address of the respondent(s) (or each person alleged to have committed a violation);
 - (3) The particulars of the violation; 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; and
 - b. Whether the complainant has specifically identified one or more violations of Article XXVIII of the Colorado Constitution OR the Fair Campaign Practices Act (Section 1-45-101 et seq., C.R.S.), as amended, or any rules adopted and promulgated by the City Clerk concerning campaign and political finance.
 - (2) Within ten (10) business days of receiving the complaint, the City Clerk must take one (1) or more of the following actions:
 - a. If the City Clerk determines that the complaint was not timely filed, or has not specifically identified one (1) or more violations of Article XXVIII of the Colorado Constitution OR the Fair Campaign Practices Act (Section 1-45-101 et seq., C.R.S.), as amended, the City Clerk will dismiss the complaint and notify the complainant and

respondent of the reasons for dismissal. The City Clerk's dismissal is a final decision, and subject to review under Rule 106, C.R.C.P.

- b. If the City Clerk determines that the complaint 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).
- c. If the City Clerk determines that the complaint alleges (1) one or more violations, and that the asserted violations may not 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 of an obligation under Article XXVIII of the Colorado Constitution or the Fair Campaign Practices Act (C.R.S. 1-45-101 et seq.), the City Clerk will notify the respondent(s) by email, or by United States mail if email is unavailable, of the curable deficiencies alleged in the complaint.
- (2) Respondents shall have ten (10) business days from the date the notice is mailed to file an amendment to the relevant report or reports that cures any deficiencies specified in the notice.
- (3) After the period for cure, the City Clerk will determine, within five (5) business days, whether the respondent(s) cured the violation(s).
 - a. If the Clerk determines that respondent cured the violations, the Clerk shall dismiss the complaint and notify complainant and respondent of such dismissal.
 - b. If the Clerk determines that respondent failed to cure the violation, the clerk shall notify respondent of such determination, together with the fine or other penalty imposed.
 - c. The respondent shall have ten (10) business days from the date of the Clerk's notice of determination to either pay the fine and accept any penalty imposed or contest the violation by submitting to the Clerk a request for a hearing.
- (h) Upon receipt of a request for a hearing under subsection (g)(3)c., or upon the Clerk's determination that the complaint falls under subsection (f)(2)c., the City Clerk shall notify the City Administrator of the complaint, and the City Administrator, in consultation with the City Clerk and the City Attorney, shall refer the complaint to an independent hearing officer to hear and determine such complaint.

- (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.
- (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, or by United States mail if email is unavailable 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 the hearing 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 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 hereof shall be punished in accordance with Chapter 1, Article IV of this Code, provided, however, that the municipal judge shall not have authority to impose any form of imprisonment for the same.
- (m) The hearing shall be electronically audibly recorded and held in substantial accordance with the provisions of Section 24-4-105, C.R.S., or such other rules as the City Clerk may have promulgated. The hearing may be held virtually, in the discretion of the hearing officer. At the hearing, the complainant and the respondent(s) shall be present and, in accordance with Section 24-4-105(7), C.R.S., the complainant shall have the burden of proof in similar manner as the proponent of an order.
- (n) Following hearing, the hearing officer shall issue a decision within seven (7) business days. The decision may be issued orally at the conclusion of the hearing or may be issued in writing, at the discretion of the hearing officer.
- (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) 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.

- (2) Impose a civil penalty of twenty-five dollars (\$25.00) 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 (Section 1-45-101, et seq., C.R.S.), as amended by this Code, is not filed by the close of business on the day due.
- (3) Order disclosure of the source and amount of any undisclosed contributions or expenditures.
- (4) Order the return to the donor of any contribution made which was the subject of the violation.
- (p) The hearing officer's determination under subsections (n) and (o) is a final decision subject to review under Rule 106, C.R.C.P.
- (q) Candidates shall be personally liable for penalties imposed upon the candidate's committee.
- (r) Civil penalties may be collected in the similar manner as a municipal court judgment under this Code, including the use of a private collection agency.
- (s) In no event shall the City take any action, including referring the penalty debt to a collection agency as contemplated by subsection (r), 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.
- (t) A party in any action brought pursuant to this Section shall be entitled to recovery of the party's reasonable attorney fees and costs from any attorney or party who has brought or defended the action, either in whole or in part, if the hearing officer finds any of the following:
 - (1) The action, or any part thereof, lacked substantial justification;
 - (2) The action, or any part thereof, was interposed for delay or harassment; or
 - (3) That an attorney or party unnecessarily expanded the proceeding by other improper conduct, including but not limited to abuses of discovery procedures authorized by this Section.

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

Section 3. The provisions of this ordinance are severable and the invalidity of any section, phrase, clause or portion of the ordinance as determined by a court of competent jurisdiction shall not affect the validity or effectiveness of the remainder of the ordinance.

INTRODUCED ON FIRST READING, on December 1, 2020, ADOPTED and ORDERED PUBLISHED IN FULL in a newspaper of general circulation by the City Council on this 1st day of December, 2020 and set for second reading and public hearing on the 15th day of December, 2020.

INTRODUCED ON SECOND READING FINALLY ADOPTED and ORDERED PUBLISHED IN FULL BY TITLE ONLY by the City Council on this 15th day of December, 2020.

City of Salida

Mayor P.T. Wood

ATTEST:

City Clerk/Deputy City Clerk