

**CITY CLERK'S OFFICE MEMORANDUM**  
**#17-2020**

**DATE:** November 23, 2020

**TO:** Honorable Mayor Meredith Leighty and City Council Members

**THROUGH:** Heather Geyer, City Manager *hmg*

**FROM:** Johanna Small, City Clerk *JS*

**SUBJECT:** CB-1960 – Campaign Finance Complaint Process

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**PURPOSE**

To consider CB-1960, an ordinance on first reading adopting a local process for third-party campaign finance complaints as required by Senate Bill 19-232.

**BACKGROUND**

The City currently utilizes the election campaign regulations provided in Title 1, Article 45 of the Colorado Revised Statutes, commonly referred to as the Fair Campaign Practices Act (FCPA). During the 2019 legislative session, the Colorado General Assembly enacted SB19-232, which amended the FCPA to provide that any complaint arising out of a municipal campaign finance matter must be exclusively filed with the clerk of the applicable municipality. Previously, complaints were handled by the Secretary of State's Office and the City does not have a local process or rules in place to handle such complaints.

City Council discussed a draft ordinance to address complaints at the Nov. 2, 2020 study session and there was consensus to bring the ordinance forward for consideration on first reading.

CB-1960 provides a process and timeline for campaign finance complaints as summarized below:

Filing Complaints	Must be filed within 180 days of the alleged violation
	Must specifically identify one or more violations of Article XXVIII of the Colorado Constitution, FCPA, or campaign finance rules
	Must provide facts sufficient to support a factual or legal basis for alleged violations
Reviewing Complaints	City Clerk conducts initial review of complaints
	Within 10 business days of receipt, City Clerk must: <ul style="list-style-type: none"><li>- Dismiss complaint if not filed timely or lacks required information</li><li>- Provide respondent an opportunity to cure the violations</li><li>- Refer complaint to hearing officer if a factual finding or legal interpretation is required</li></ul>
Curing Alleged Violations	If complaint alleges a curable violation, City Clerk will notify respondent and provide 10 days for the respondent to file a report or an amendment to a report to cure deficiencies
	If complaint alleges a violation that is not curable, complaint is referred to hearing officer without providing an opportunity to cure the violation
Hearings & Penalties	If a hearing is necessary, hearing officer schedules a hearing within 30 days of complaint being filed; hearing may be continued for 30 days
	Hearing must conclude within 60 days of the date the complaint was filed
	Hearing officer must issue a written determination no later than 5 days after hearing concludes
	City Clerk or hearing officer may impose penalties or sanctions for violations

**STAFF RECOMMENDATION**

Staff recommends approval of CB-1960 on first reading. If CB-1960 is approved on first reading, a public hearing and second reading of the proposed ordinance will be scheduled for Dec. 14, 2020.

**BUDGET/TIME IMPLICATIONS**

The next regular City election will be held on Nov. 2, 2021. The adoption of a local complaint process now will allow staff to update election information in the candidate guidelines and online to ensure candidates, committees, and the public are informed of the new complaint process prior to the 2021 election season.

**STAFF REFERENCE**

If Council members have any questions they may contact City Clerk Johanna Small at [jsmall@northglenn.org](mailto:jsmall@northglenn.org) or 303.450.8757.

**ATTACHMENTS**

1. Draft Campaign Finance Complaint Form
2. Draft Penalty Schedule

CB-1960 – Campaign Finance Complaint Process

## Campaign Finance Complaint Form

Complaints must specifically identify a violation of Colorado Constitution Article XXVIII, the Fair Campaign Practices Act, or Secretary of State Campaign and Political Rules, and allege specific facts to support a legal and factual basis for the complaint.

**Complainant's Information** – Information about the person or entity filing the complaint

Full Name:

Mailing Address:

Email Address:

Home Phone:

Cell Phone:

**Respondent's Information** – Information about the person or entity alleged to have committed the violation

Full Name:

Mailing Address:

Email Address:

Phone:

Elected office/ballot question involved:

Provide a description of the alleged violation. State all facts as specifically as possible. Attach additional pages, if necessary.

Provide the names, addresses, and contact information of potential witnesses, if known:

Attach copies of evidence and documentation (e-mails, letters, mailers, photos, etc.) supporting the alleged violation.

Complainant's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

### Draft Penalty Schedule for Campaign Finance Violations

[Based on penalties and sanctions set forth in C.R.S. § 1-45-111.5 and 8 C.C.R. 1505-6, Rule 23.3, as amended.]

Violation	Fine Amount
Late filing penalty	\$50 per day for every day that a report remains outstanding beyond the due date
Failure to file three or more successive committee reports	\$500 per day
Failure to file three or more successive independent expenditure committee reports	\$1,000 per day
Failure to register a committee	At least \$150 if activity is less than \$1,000
Fine amount is based on the amount of contributions accepted or expenditures made while out of compliance (the “activity”)	At least \$300 if activity is between \$1,001 and \$5,000
	At least \$300 plus at least 10% of the amount of the contributions accepted and expenditures made if activity is greater than \$5,000
Failure to file a candidate affidavit	\$50 if submitted within 14 days of deadline
	\$100 if submitted after 14 days post deadline
Failure to file complete and accurate reports	\$100 per report plus 5% of the activity not accurately or completely reported
Accepting a prohibited contribution or making a prohibited expenditure	\$100 minimum and 10% of the prohibited activity
Prohibited use of unspent campaign funds	\$250 minimum per violation and 25% of the amount of the prohibited activity
Noncompliant disclaimer and electioneering communications	At least 5% of the cost of the noncompliant communication if mitigated prior to the election
	At least 10% of the cost of the noncompliant communication if not mitigated prior to the election

**In addition to monetary fines, the City Clerk or Hearing Officer may seek specific action(s) from the respondent.** Specific actions may include:

- (1) Registering as a committee or candidate;
- (2) Return or donation of prohibited contribution or disgorgement of the value of the improper conduct;
- (3) Filing or amending disclosure reports;
- (4) Inclusion or correction of disclaimer on the communication; or
- (5) Other specific performance or terms that may be warranted.

**Mitigating and aggravating factors that may be considered when determining penalties:**

- (1) Nature and extent of the violation;
- (2) Timing of the violation (including proximity to the election);
- (3) Ability or effort to mitigate the violation;
- (4) Evidence of an intentional act or a pattern or practice of misconduct;
- (5) Extent to which the harm caused by the violation or the value of the violation cannot be reasonably calculated; or
- (6) Other aggravating or mitigating factors may be taken into consideration in reaching a just and equitable outcome.

SPONSORED BY: MAYOR LEIGHTY

COUNCILMAN'S BILL

ORDINANCE NO.

No. CB-1960  
Series of 2020

\_\_\_\_\_  
Series of 2020

A BILL FOR AN ORDINANCE AMENDING ARTICLE 4 OF CHAPTER 13 OF THE NORTHGLENN MUNICIPAL CODE REGARDING CAMPAIGN FINANCE COMPLAINTS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. Chapter 13, Article 4 of the Northglenn Municipal Code is hereby amended to read as follows:

**Section 13-4-1. Campaign finance complaints.** In addition to the campaign finance duties outlined in C.R.S. § 1-45-112 for a municipal clerk, the City Clerk shall have the responsibilities set forth in this Article related to campaign finance complaints.

**Section 13-4-2. Complaint process.** Any person who believes that a violation of Article XXVIII of the Colorado Constitution, the Fair Campaign Practices Act, C.R.S. § 1-45-101, *et seq.*, or the Secretary of State's rules concerning campaign and political finance has occurred in municipal campaign finance matters may file a complaint with the City Clerk.

(a) A "municipal campaign finance matter" has the meaning defined in C.R.S. § 1-45-111.7(9)(b) and 8 C.C.R. 1505-6, both as amended. The process for review and handling of complaints related to a municipal campaign finance matter shall be as set forth in this Article in a manner consistent with the Fair Campaign Practices Act, C.R.S. § 1-45-101, *et seq.*, specifically C.R.S. § 1-45-111.7, as amended, and the rules promulgated by the Colorado Secretary of State at 8 C.C.R. 1505-6, specifically Rule 23, as amended.

(b) A complaint must be filed no later than one hundred eighty (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 and must meet the minimum requirements set forth in 8 C.C.R. 1505-6, Rule 23.1, as amended. A complaint must be filed in writing and signed by the complainant on the form provided by the City. A complaint may be submitted via fax, email, regular mail, or in person. The complaint must identify one or more respondents and shall 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 counsel's name, address, email address, telephone number, and signature.

2. The name and, if known, the address and telephone number or other contact information for the person alleged to have committed a violation (the "respondent").

3. The particulars of the violation. Details about the violation, including how and when complainant became aware of the violation and what is known about the violation must be included.

4. Any available documentation or evidence supporting the allegation.

(c) Upon receipt of a complaint, the City Clerk shall notify the respondent of the complaint by e-mail or by regular mail if e-mail is unavailable.

(d) Documents related to a complaint will be publicly available as set forth in 8 C.C.R. 1505-6, Rule 23.2, as amended.

**Section 13-4-3. Initial determination.** The City Clerk shall conduct an initial review of a complaint to determine whether the complaint was timely filed, specifically identifies one or more violations of Article XXVIII of the Colorado Constitution, the Fair Campaign Practices Act, C.R.S. § 1-45-101, *et seq.*, or the Secretary of State's rules concerning campaign and political finance; and alleges sufficient facts to support a factual and legal basis for the violations of law alleged in the complaint.

Within ten (10) business days of receiving a complaint, the City Clerk shall take one or more of the following actions:

(a) If the City Clerk determines that the complaint was not timely filed, has not specifically identified one or more violations of Article XXVIII of the Colorado Constitution, the Fair Campaign Practices Act, C.R.S. 1-45-101, *et seq.*, or the Secretary of State's rules concerning campaign and political finance, or does not assert facts sufficient to support a factual or legal basis for an alleged violation, the City Clerk shall notify the complainant and respondent of such determination by e-mail or by regular mail if e-mail is unavailable. The City Clerk's determination hereunder is a final action subject only to judicial review pursuant to C.R.C.P. 106(a)(4).

(b) If the City Clerk determines that the complaint alleges one or more curable violations, the City Clerk shall notify the respondent and provide the respondent an opportunity to cure the violations. The process for curing shall be as set forth below.

(c) If the City Clerk determines that the complaint has specifically identified one or more violations of Article XXVIII of the Colorado Constitution, the Fair Campaign Practices Act, C.R.S. § 1-45-101, *et seq.*, or the Secretary of State's rules concerning campaign and political finance, and has alleged facts

sufficient to support a factual or legal basis for each alleged violation, and that either a factual finding or a legal interpretation is required, the City Clerk shall forward the complaint to a hearing officer appointed by the City Council.

**Section 13-4-4. Process for curing.**

(a) Upon the City Clerk's determination that a complaint alleges a failure to file or otherwise disclose required information, or alleges another curable violation, the City Clerk shall notify the respondent by e-mail or by regular mail if e-mail is unavailable of the curable deficiencies alleged in the complaint.

(b) The respondent has ten (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.

(c) The respondent shall provide the City Clerk with notice of the respondent's intent to cure on the form provided the City Clerk and include a copy of any amendments to any report containing one or more deficiencies.

(d) 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.

(e) After the period for cure has expired, the City Clerk shall determine whether the respondent has cured any violation alleged in the complaint and, if so, whether the respondent has substantially complied or acted in good faith.

(1) If the City Clerk determines that the respondent has substantially complied or acted in good faith, the City Clerk will dismiss the complaint.

(2) If the City Clerk determines that the respondent neither substantially complied nor acted in good faith, the City Clerk will refer the matter to a hearing officer.

(3) The City Clerk's determination under this subsection is a final decision subject to review under Rule 106, C.R.C.P.

**Section 13-4-5. Hearing procedure.** The hearing officer shall schedule a hearing on a complaint referred by the City Clerk within thirty (30) days of the filing of the complaint. The hearing may be continued upon the motion of any party for up to thirty (30) days or a longer extension of time upon a showing of good cause. The hearing shall be in compliance with C.R.S. § 1-45-111.7(6), as amended. Testimony shall be given under oath, and the hearing officer shall have the power to issue subpoenas and compel the attendance of witnesses. The hearing shall be summary and not subject to delay and shall be concluded within sixty (60) days after the petition is filed. No later than five (5) days after the conclusion of the hearing, the hearing officer shall issue a written determination. The hearing officer's written determination is a final action subject only to judicial review

pursuant to C.R.C.P. 106(a)(4).

**Section 13-4-6. Penalties.** The City Clerk or a hearing officer, as appropriate, may impose penalties and sanctions as set forth in C.R.S. § 1-45-111.5, and 8 C.C.R. 1505-6, Rule 23.3.3, both as amended. Recovery of a party's reasonable attorney fees and costs shall be as set forth therein.

INTRODUCED, READ AND ORDERED POSTED this \_\_\_\_ day of \_\_\_\_\_,  
2020.

\_\_\_\_\_  
MEREDITH LEIGHTY  
Mayor

ATTEST:

\_\_\_\_\_  
JOHANNA SMALL, CMC  
City Clerk

PASSED ON SECOND AND FINAL READING this \_\_\_\_ day of \_\_\_\_\_,  
2020.

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MEREDITH LEIGHTY  
Mayor

ATTEST:

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JOHANNA SMALL, CMC  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
COREY Y. HOFFMANN  
City Attorney