

ORDINANCE NO. 21-02

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES AMENDING ARTICLE 1 OF CHAPTER 2 OF THE MUNICIPAL CODE TO ESTABLISH AN ADMINISTRATIVE PROCEDURE TO ADDRESS MUNICIPAL CAMPAIGN FINANCE COMPLAINTS AND ALLEGED VIOLATIONS

WHEREAS, the City of Castle Pines (the “City”) is a home rule municipality organized in accordance with Article XX of the Colorado Constitution; and

WHEREAS, the City has operated under the applicable provisions of Article XXVIII of the Colorado Constitution, entitled Campaign and Political Finance, and Title 1, Article 45, C.R.S., known as the Fair Campaign Practices Act (“FCPA”); and

WHEREAS, pursuant to the FCPA, complaints regarding municipal campaign finance violations were filed with and resolved by the Colorado Secretary of State; and

WHEREAS, Senate Bill 19-232 (“SB 19-232”) amended the FCPA by adding Section 1-45-111.7, C.R.S., which provides that any complaint arising out of a municipal campaign finance matter must be exclusively filed with the clerk of the applicable municipality; and

WHEREAS, pursuant to Colorado regulations concerning campaign and political finance, 8 CCR 1505-6, “municipal campaign finance matter” as used in section 1-45-111.7(9)(b), C.R.S., means any campaign finance matter exclusively related to a municipal campaign, including matters involving a candidate for a municipal office; a municipal ballot issue or ballot question; and contributions or expenditures made by any person, committee, or group to support or oppose any candidate for municipal office, or municipal ballot issue or ballot question, which definition applies to all municipalities; and

WHEREAS, to comply with the requirements established by SB 19-232, the City Council desires to establish a review and hearing process for FCPA complaints arising out of City campaign finance matters.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Castle Pines, Colorado:

Section 1. Article 1, Chapter 2 of the Castle Pines Municipal Code, titled “Elections”, is hereby amended to add Section 2-1-40, to read in full as follows:

Sec. 2-1-40. – Municipal campaign finance.

- (a) Complaint filed. Any person who believes that a municipal campaign finance violation under Article XXVIII of the Colorado Constitution or under Article 45 of Title 1, C.R.S., commonly known as the “Fair Campaign Practices Act” or “FCPA,” has occurred in a City election may file a written complaint with the City Clerk in conformance with subsection (b) below. A written complaint shall be filed with the

City Clerk no later than thirty (30) days after the person knew or should have known by the exercise of reasonable diligence of the alleged violation. This Section 2-1-40 shall apply to any purported violations relating to a municipal campaign finance matter, which refers to any matter exclusively related to a municipal campaign, including matters involving a candidate for a municipal office; a municipal ballot issue or ballot question; and contributions or expenditures made by any person, committee, or group to support or oppose any candidate for municipal office, or municipal ballot issue or ballot question.

- (b) Complaint contents. Written complaints shall be filed on a form provided by the City Clerk and shall include the following:
 - (1) The name, address, e-mail address, telephone number, and signature of the complainant (and if complainant is represented by legal counsel, legal counsel's name, address, e-mail address, telephone number, and signature);
 - (2) The name and, if known, the telephone number and address of the person alleged to have committed a violation (the "respondent"); and
 - (3) The particulars of the violation and any available documentation or evidence supporting the allegation.
- (c) Filing date. 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.
- (d) Initial Review. The City Clerk shall review the complaint within fifteen (15) days of receipt and within such timeframe shall take one (1) or more of the following actions:
 - (1) The City Clerk shall dismiss a complaint if the City Clerk determines, upon consultation with the City Attorney, that the complaint:
 - (i) was not timely filed under Section 2-1-40(a);
 - (ii) has not identified one or more specific violations of Article XXVIII of the Colorado Constitution or the FCPA pertaining to a municipal campaign finance matter, or any rules promulgated by the City Clerk concerning municipal campaign finance matters; or
 - (iii) does not allege specific facts or provide information sufficient to support a legal and factual basis for the complaint.

In the case of dismissal, the City Clerk shall notify the complainant and respondent of the reasons for dismissal in writing. The City Clerk's dismissal is a final decision, and subject to review under Rule 106 of the Colorado Rules of Civil Procedure.

- (2) If the City Clerk determines that the complaint alleges one (1) or more curable violations, the City Clerk will notify the respondent(s) and provide an opportunity to cure in accordance with Subsection (e).
- (3) If the City Clerk determines that the complaint alleges one (1) or more violations, asserts facts, or provides information sufficient to support the alleged violations but that may require additional factual finding(s) or legal interpretation, and that the asserted violations may not be curable as described in Subsection (e), the City Clerk will take the actions set forth in Subsection (f).

(e) Curing violations by respondent.

- (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) by e-mail, or by registered mail or certified mail, return receipt requested, if e-mail is unavailable, of the curable deficiencies alleged in the complaint.
- (2) Respondent(s) shall have ten (10) business days from the date the notice is mailed to cure any deficiencies specified in the notice.
- (3) The City Clerk may ask the respondent to provide additional information and may grant extension(s) of time upon written request and good cause shown by respondent(s).
- (4) After the period for cure, the City Clerk will determine, within five (5) business days, whether the respondent(s) cured the violation(s), and if so, whether the respondent(s) substantially complied with respondent's legal obligations under Article XXVIII of the Colorado Constitution or the FCPA pertaining to municipal campaign finance matters ("legal requirements").
 - (i) If the City Clerk determines that the respondent(s) substantially complied with the legal requirements, the City Clerk will dismiss the complaint.
 - (ii) If the City Clerk determines that the respondent(s) did not substantially comply with the legal requirements, the City Clerk will take the action as set forth in Subsection (f).
 - (iii) The City Clerk's determination under this Subsection (e)(4) is a final decision and subject to review under Rule 106, C.R.C.P.
- (5) In determining whether respondent(s) "substantially complied" pursuant to this Subsection (e), the City Clerk shall consider:
 - (i) The extent of the noncompliance;

- (ii) The purpose of the provision violated and whether that purpose was substantially achieved despite the noncompliance;
 - (iii) Whether the noncompliance can properly be viewed as an intentional attempt to mislead the electorate or elected officials.
- (f) Hearing officer, hearing, and determination.
- (1) When the City Clerk is required to take further action as set forth in Subsections (d)(3) or (e)(4)(ii), the City Clerk shall notify the City Manager of the complaint, and the City Manager, 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. Such referral shall occur within ten (10) business days of the City Clerk action as set forth in Subsections (d)(3) or (e)(4)(ii).
 - (2) The hearing officer shall schedule a hearing to be held within fifteen (15) calendar days of referral of the complaint to the hearing officer.
 - (3) 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 complaint received by the City Clerk, within two (2) business days of the date of referral of the complaint to the hearing officer. Notice may be delivered by e-mail to the address of the complainant shown on the complaint form and to the respondent(s) at the address provided by respondent(s). Notice shall be sent by registered mail or certified mail, return receipt requested, if e-mail is unavailable.
 - (4) 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 municipal campaign finance violation, which shall be served on the party to whom it is directed by the requesting party pursuant to Rule 4, C.R.C.P. It shall be unlawful for a witness or party to fail to comply with such a subpoena, and any person convicted of a violation hereof shall be punished in accordance with Section 1-4-20 of this Code.
 - (5) The hearing officer may grant the respondent(s) a continuance of up to thirty (30) calendar days upon a showing of good cause.
 - (6) The hearing shall be electronically audibly recorded and held in substantial accordance with Section 24-4-105, C.R.S., or such other rules as the City Clerk may have promulgated. At the hearing, complainant shall have the burden of proof to establish that a violation occurred under a preponderance of the evidence standard. Respondent(s) and complainant may present evidence to the hearing officer in the form of testimony, documents, rebuttal testimony, and opening and closing statements.

- (7) Following hearing, the hearing officer shall issue a written decision within seven (7) business days.
- (8) If the hearing officer determines that respondent(s) violated Article XXVIII of the Colorado Constitution or the FCPA, the hearing officer's order shall include any appropriate order, sanction, or relief authorized hereunder and may include, without limitation, sanctions as follows:
 - (i) 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 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 FCPA is not filed by the close of business on the day due.
 - (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 that was the subject of the violation.
- (g) Personal liability. Candidates shall be personally liable for penalties imposed upon the candidate's committee.
- (h) Collection of penalties. The City may collect civil penalties in accordance with applicable law, and may engage the use of a private collection agency.
- (i) Rules and regulations. The City Clerk, in consultation with the City Attorney, shall be authorized to adopt rules and regulations as may be required to implement the provisions of this Section 2-1-40.

Section 2. Severability. If any portion of this Ordinance is found to be void or ineffective, it shall be deemed severed from this Ordinance and the remaining provisions shall remain valid and in full force and effect, in accordance with Section 6.8 of the Charter.

Section 3. No Existing Violation Affected. Nothing in this Ordinance shall be construed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any ordinance hereby repealed or amended by this Ordinance, or any just or legal right or remedy of any character be lost, impaired, or affected by this Ordinance.

Section 4. Publication and Effective Date. The City Clerk is hereby directed to cause publication of this Ordinance in accordance with Section 6.5 of the Charter. This Ordinance

shall be effective thirty (30) days after final publication on the City’s official website and posting at the City Clerk’s office pursuant to Section 1-3-40 of the Municipal Code.

INTRODUCED, READ, AND PASSED ON FIRST READING, AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO the 27th day of April, 2021.

READ, PASSED, AND ADOPTED ON SECOND READING, FOLLOWING A PUBLIC HEARING, AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO the 11th day of May, 2021.



ATTEST

DocuSigned by:

Tobi Basile

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Tobi Basile, CMC, City Clerk

DocuSigned by:

Tera Stave Radloff

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Tera Stave Radloff, Mayor

Approved as to form:

Linda C. Michow

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Linda C. Michow, City Attorney

CERTIFICATION OF PUBLICATION

I hereby attest and certify that the within and foregoing Ordinance was introduced and read on first reading on April 27, 2021; published by title only in the *Douglas County News-Press*, together with the statement that “[t]he complete text of the ordinance is available through the City Clerk’s office and on the City’s official website with second reading and public hearing to be held on May 11, 2021”; and finally passed and adopted by the City Council on May 27, 2021, following a duly noticed public hearing and published on the City’s official website and posted at the City Clerk’s office on April 28, 2021.

ATTEST:

DocuSigned by:

Tobi Basile

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Tobi Basile, CMC, City Clerk