ORDINANCE NO. O-2020 -

AN ORDINANCE OF THE CITY OF DURANGO, COLORADO AMENDING ARTICLE VI OF CHAPTER 2 (ELECTIONS) OF THE CITY CODE REGARDING MUNICIPAL CAMPAIGN FINANCE REQUIREMENTS AND ADDING PROVISIONS TO ESTABLISH PROCESSES TO ADDRESS MUNICIPAL CAMPAIGN FINANCE COMPLAINTS AND VIOLATIONS AND DECLARING AN EFFECTIVE DATE

WHEREAS, the City of Durango is a home rule municipality; and

WHEREAS, the City has authority to adopt ordinances with respect to municipal elections and municipal campaign finance issues; and

WHEREAS, the Colorado legislature has recently amended the provisions of C.R.S. §1-45-111.7 directing that all complaints arising out of municipal campaign finance matters must now be filed exclusively with the City Clerk rather than with the Colorado Secretary of State; and

WHEREAS, the City Council desires to clarify provisions related to municipal campaign finance matters and to establish an administrative process for receiving, investigating and responding to third party complaints alleging violations of regulations and rules related to municipal campaign finance matters; and

WHEREAS, the adoption of the amendments to the City Code are intended to provide confidence in the municipal election process and to assure the highest levels of transparency related to municipal campaign finance matters within the City; and

WHEREAS, a public hearing has heretofore been held before the City Council, and the Council has determined, subsequent to said public hearing, that amendments to Article VI of Chapter 2 (Elections) of the Code of Ordinances regarding municipal campaign finance requirements with the addition of provisions to establish processes to addresses municipal campaign finance complaints and violations would be in the best interests of the citizens of the City of Durango;

NOW, THEREFORE, THE CITY OF DURANGO HEREBY ORDAINS:

Section 1. That Article VI of Chapter 2 (Elections) Section 2-173 of the City Code of the City of Durango are amended to read in its entirety as follows:

Sec. 2-173. Campaign finance.

a. Definitions
“Municipal campaign finance matter” as used in this code 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.

“Article XXVII” shall mean Article XXVII of the Colorado Constitution.

“CFCPA” shall mean the Colorado Fair Campaign Practices Act, C.R.S. §1-45-101 et seq.

b. General applicability. Except as specifically stated herein, the provisions of Article XXVII and the CFCPA applicable to municipal elections shall apply to all Durango municipal elections and shall govern municipal campaign finance matters related to those elections.

c. Specific provisions. All committees formed for the purpose of supporting or opposing a candidate, ballot issue or ballot question in a Durango municipal election, including, but not limited to, candidate committees, political committees, small donor committees, issues committees and small scale issues committees as defined in Article XXVII and the CFCPA shall report to the City Clerk the contributions received, including the name and address of each person who has contributed twenty dollars ($20.00) or more and all expenditures made and obligations entered into by that committee. All other registration, reporting requirements and deadlines regarding such committees shall be as stated in Article XXVII and the CFCPA or in accordance with rules, regulations and forms developed by the City Clerk in accordance with section 2-197.

Section 2. A Division 3 is hereby added to Article VI of Chapter 2 of the Code of Ordinances of the City to read in its entirety as follows:

Division 3. Actions and complaints related to violations of municipal campaign finance matters.

Sec. 2-195. Enforcement of third-party complaints.

(a) Any resident of the City who believes a violation of Article XXVIII or the CFCPA 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 sixty (60) 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 must include the following information:

(1) The name, address, e-mail address, telephone number and signature of the complainant, and if the complainant is represented by counsel, include the counsel’s name, address, e-mail address, telephone number and signature.

(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) A statement detailing the particulars of the violation; and

(4) If available, 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 shall conduct an initial review of the complaint to determine:

a. Whether the complaint was timely filed.

b. Whether the complainant has specifically identified one or more violations of Section XXVIII, the CFCPA or any rules promulgated and adopted by the City Clerk concerning campaign and political finance; and

c. Whether the complainant has alleged sufficient facts and/or provided sufficient information to support a legal and factual basis for the complaint.

(2) The City Clerk shall provide notice of a third-party complaint to the respondent within three (3) business days of receipt of the third-party complaint.

(3) 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, has not specifically identified one (1) or more violations, or that the complainant did not assert facts or provide information sufficient to support the alleged violations, the City Clerk shall 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 of the Colorado Rules of Civil Procedure (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 shall notify the complainant and 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, assert 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 (g), the City Clerk will take the actions set forth in Subsection (h).

(g) Cure of 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, the City Clerk shall notify the parties by email, or by 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 sufficient to cure any deficiencies specified in the notice.

(3) Respondent(s) must provide the City Clerk with notice of intent to cure on the form provided by the City Clerk and include a copy of any amendments.

(4) The City Clerk may ask the complainant and/or 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.

(5) After the receipt of the amendment, the City Clerk shall determine, within five (5) business days, whether the respondent(s) cured the violation(s), and if so, whether the respondent(s) substantially complied or acted in good faith under Subsections (g)(6) and (g)(7).

a. If the City Clerk determines that the respondent(s) substantially complied or acted in good faith, the City Clerk shall dismiss the complaint.
b. If the City Clerk determines that the respondent neither substantially complied nor acted in good faith, the City Clerk shall take the action as set forth in Subsection (h).

c. The City Clerk's determination under this Subsection (g)(5) is a final decision subject to review under Rule 106, C.R.C.P.

(6) In determining whether an entity "substantially complied" as that term is used in Subsection (g)(5), the City Clerk must consider:

a. The extent of the noncompliance;

b. The purpose of the provision violated and whether that purpose was substantially achieved despite the initial noncompliance; and

c. Whether the noncompliance can reasonably be viewed as an intentional attempt to mislead the electorate or election officials.

(7) In determining whether an entity registered or disclosed in "good faith" as that term is used in Subsection (g)(5), the City Clerk may consider whether ten percent (10%) or less of either the entity's disclosures or, alternatively, the reported dollar amounts required on the report or appearing on the filed reports at issue in the complaint are out of compliance.

(8) In the event the violation cannot be cured by complying with the reporting requirements in article XXVIII or the CFCPA, the respondent may propose an alternative resolution to cure the violation to the City Clerk. The City Clerk shall have the discretion to accept, recommend an alternative, or decline the proposed alternative resolution. Acceptance of an alternative resolution by the City Clerk is deemed to be a cure of the violation if made within seven (7) business days of the date of the notice of violation.

(h) When the City Clerk is required to take further action as set forth in Subsections (f)(2)(c) or (g)(5)(b) 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 (f)(2)(c) or (g)(5)(b).

(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) business 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 and any additional supporting documents, within three (3) business days of the date of referral of the complete complaint to the hearing officer by electronic mail.

(k) Upon written motion, the hearing officer may grant the respondent a continuance 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 or the production of documents in relation to an alleged violation of a municipal campaign finance matter, 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 subpoena, and any person convicted of a violation hereof shall be punished in accordance with Section 1-16 of the City Code.

(m) The hearing shall be electronically recorded and held in substantial accordance with rules and regulations as the City Clerk may have promulgated. At the hearing, the complainant and the respondent(s) shall be allowed to present evidence and the complainant shall have the burden of proof by a preponderance of the evidence.
(n) Following the 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 was not filed as required.

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 these provisions 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 by the city in any lawful manner.

(s) In no event shall penalties accrue for late filings for more than one hundred (100) calendar days, or beyond a total maximum penalty for any individual late filing of two thousand five hundred dollars ($2,500.00) and the City shall not take any action to collect civil penalties assessed hereunder after the date that is more than one (1) year from the date that the filing was due.

Sec. 2-196. Action by Clerk without third party complaint.

If the City Clerk believes that a violation of Article XXVIII or the CFCPA has occurred, the City Clerk may, without the necessity of a formal complaint from a third party, commence enforcement proceedings or take other reasonable actions to seek compliance or allow for a cure of violations in accordance with the procedures set forth in Section 2-195 of this Code.

Sec. 2-197. Rules and regulations.

The City Clerk is authorized to adopt such rules and regulations consistent with the provisions hereof as may be required to implement this chapter. In the absence of rules adopted by the City Clerk, the City Clerk may use applicable rules adopted by the Colorado Secretary of State for guidance in implementing this chapter.

Section 3. This Ordinance shall become effective ten (10) days after its passage and final publication as provided by law.

CITY COUNCIL OF THE CITY OF
DURANGO

Attest:

________________________________________

City Clerk

Mayor

STATE OF COLORADO

) ) ss.

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COUNTY OF LA PLATA

I, Amy Phillips, City Clerk of the City of Durango, La Plata County, Colorado, do hereby certify that Ordinance No. O-2020- was regularly introduced and read at a regular meeting of the City Council of the City of Durango, Colorado on the 20th day of October, 2020, and was ordered published in accordance with the terms and conditions of the statutes in such cases made and provided, in the Durango Herald, a newspaper of general circulation, on the ___ day of October, 2020, prior to its final consideration by the City Council.

________________________________
City Clerk

I further certify that said Ordinance No. O-2020- was duly adopted by the Durango City Council on the ___ day of November, 2020, and that in accordance with instructions received from the Durango City Council, said ordinance was published by title only in the Durango Herald on the ___ day of November, 2020.

________________________________
City Clerk