

ORDINANCE NO. 2376
INTRODUCED BY: Johnston

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO,
ADDING SECTION 2-4-14 OF THE BRIGHTON MUNICIPAL CODE REGARDING A
COMPLAINT PROCESS FOR A FAIR CAMPAIGN PRACTICE ACT VIOLATION

WHEREAS, the Fair Campaign Practice Act (“FCPA”) finds that the interests of the public are best served by limiting campaign contributions, full and timely disclosure of campaign contributions, and strong enforcement of campaign laws; and

WHEREAS, the FCPA, specifically C.R.S. § 1-45-108, requires specific disclosures of contributions above twenty dollars (\$20), expenditures made, and obligations of the candidate committee to be reported. Such reports must be filed with the municipal clerk on the twenty-first (21) day before, the Friday before, and thirty (30) days after the election, to include the balance of funds at the beginning of the reporting period, the total contributions received, the total expenditures made, and the financial institution used by the committee; and

WHEREAS, candidates and candidate committees must register with the municipal clerk before accepting or making any contributions; any covered communication controlled by or coordinated with a candidate or candidate’s agent or a political party is considered both a contribution by the maker of the expenditure or spending and an expenditure by the candidate committee; and

WHEREAS, candidates in municipal elections, their candidate committee, any political committee in support of or in opposition to such candidate shall file required reports with the municipal clerk, C.R.S. §1-45-109; and

WHEREAS, when an individual becomes a candidate, the individual certifies familiarity with the provisions of the FCPA by including a statement in the candidate’s affidavit as required by C.R.S. §1-45-110 referencing C.R.S. § 31-10-302; and

WHEREAS, the Secretary of State will not accept complaints arising out of a municipal campaign finance matters and local elections, and these must be exclusively filed with the municipal clerk, C.R.S. § 1-45-111(9)(b); and

WHEREAS, the City of Brighton (“City”) is a home rule municipality that has not adopted any ordinances or charter provisions with respect to local elections, making the requirements of Article XXVIII of the State Constitution and Article 45 of Title 1 of the Colorado Revised Statutes applicable to municipal elections; and

WHEREAS, the City has no procedure for accepting and addressing complaints alleging violations of the FCPA and the City Council desires to adopt a consistent, clear, and fair process for receiving and investigating FCPA complaints in municipal elections and affording due process for enforcement of the FCPA requirements.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AS FOLLOWS:

Section 1. Section 2-4-14 of the Brighton Municipal Code shall be added to read as follows:

Sec. 9-4-14 Fair Campaign Practice Act Complaints.

- (a) Any person who believes a violation of the Fair Campaign Practice Act 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) days after the election.
- (c) A written complaint filed with the city clerk shall include the city clerk's complaint cover sheet form, which must include the following information:
 - 1. The name, address, email 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 as well.
 - 2. Name and contact information, if known, for each person alleged to have committed a violation.
 - 3. Details about the violation, including how and when complainant became aware of the violation and what is known about the violation.
 - 4. Documentation, such as photographs or copies of flyers, or other evidence supporting the allegations in the complaint, if complainant has such evidence.
- (d) If an incomplete complaint is received, the date on which the complaint is first received is considered the filed date if the complainant cures and completes any information requested by the city clerk within three (3) business days of being notified.
- (e) A complaint may be submitted via fax, email, regular mail, or in-person.
- (f) ***Initial review:***
 - 1. The city clerk will review the complaint to determine the following:
 - a. Whether the complaint was timely filed;
 - b. Whether the complainant has specifically identified one or more specific alleged violations;
 - c. Whether the complainant has alleged sufficient facts and/or provided sufficient information to support a legal and factual basis for the complaint or whether additional information or fact-finding is needed.
- (g) Within fifteen (15) business days of receiving the complaint, the city clerk must take one or more of the following actions:
 - 1. Dismiss the complaint if the city clerk determines the complaint was not timely filed, has not specifically identified one or more violations, or the complainant did not assert facts or provide information sufficient to support any alleged violation after being

requested to provide more information. The city clerk will notify the complainant and respondent of the reasons for dismissal, and the city clerk's decision is a final decision.

2. Issue a notice to cure if the city clerk determines that the complaint alleges one or more curable violations, described in Subsection F.3 below, and provide an opportunity to cure.

3. Refer the matter to an independent hearing officer per Subsection G if: 1) the city clerk determines the complaint alleges one or more violations that are not curable, 2) additional fact-finding or legal interpretation is needed to ascertain the facts or information sufficient to support the alleged violations, or 3) the city clerk has determined the respondent did not substantially comply with the FCPA or act in good faith.

(h) ***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, the city clerk will notify the respondent(s) by email, or by mail if email is unavailable, of the curable deficiencies alleged in the complaint.
2. Respondents shall have fifteen (15) 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 an extension of time to file a notice of intent to cure in order to respond to such a request.
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 or acted in good faith.
5. If the city clerk determines that the respondent(s) substantially complied or acted in good faith, the city clerk will dismiss the complaint.
6. If the city clerk determines that the respondent neither substantially complied nor acted in good faith, the city clerk will take the action as set forth in Subsection (i).

(i) ***Referral for Hearing:*** When the city clerk determines the complaint has alleged sufficient facts and/or provided sufficient information to support that the alleged violations were not curable, or the city clerk has determined the respondent(s) did not substantially comply with the FCPA or act in good faith, the city clerk shall refer the complaint to an independent hearing officer to hear and determine such complaint.

1. An informal hearing will be scheduled as soon as practicable, but no later than thirty (30) days after referral, unless the parties request an enlargement of time.
2. Notice of the hearing and any applicable procedures governing the hearing process will be sent to the complainant and respondent(s), who shall also receive a copy of the entire complaint received by the city clerk, within ten (10) business days of the referral to the hearing officer and may be sent via email.
3. Upon the request of either party, the hearing officer may issue an administrative subpoena requiring the attendance of a witness or party or documents, 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 may be prosecuted in municipal court with all penalties available in Section 1-24-10 of this Code.

4. The hearing shall be electronically recorded. The complainant and respondent(s) must be present. The city clerk may present the case, but the complainant shall have the burden of proof. The parties may question witnesses, and the city clerk may testify as to the information received and the city's campaign finance requirements or procedures.

5. Upon conclusion of the hearing, the hearing officer may render a decision orally on the record or in writing within ten (10) business days, at the discretion of the hearing officer.

6. If the hearing officer determines after a hearing that a violation has occurred, the decision shall include any of the following orders, sanctions, or relief:

- a. Imposition of 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.
 - b. Imposition of a civil penalty of twenty-five (\$25.00) per day for each day that a statement or other information required to be filed is not filed by the close of business on the day it is due.
 - c. Order disclosure of the source and amount of any undisclosed contributions or expenditures.
 - d. Order the return to the donor of any contribution made which was the subject of the violation.
 - e. Any other relief or order deemed appropriate.
- (j) The hearing officer's determination is a final decision subject to review under Rule 106, C.R.C.P.
- (k) Civil penalties may be collected in any manner authorized by law, included filing a civil action in state court or using a private collection agency. The city attorney shall be authorized to proceed with all judgment execution and collection procedures authorized by law, including interest if not paid within sixty (60) days of the hearing officer's decision.
- (l) Any 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 was interposed for delay or harassment;
 2. An attorney or party unnecessarily expanded the proceeding by improper conduct;
 3. A finding of bad faith either in filing the complaint or in the proceeding.

Section 2. The purpose of this Ordinance is to provide for the health, safety, and welfare of the people.

INTRODUCED, PASSED ON FIRST READING, AND ORDERED PUBLISHED
THIS 21st DAY OF September, 2021.

PASSED ON SECOND AND FINAL READING AND ORDERED PUBLISHED BY
TITLE ONLY THIS 5th DAY OF October, 2021.

CITY OF BRIGHTON, COLORADO

GREGORY MILLS, Mayor

ATTEST:

NATALIE HOEL, City Clerk

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APPROVED AS TO FORM:

ALICIA CALDERÓN, City Attorney