



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: February 19, 2019**

**AGENDA TITLE**

Introduction, first reading, and consideration of a motion to order published by title only Ordinance 8317 to repeal and re-enact Title 13, "Elections and Campaign Disclosure," B.R.C. 1981; and setting forth related details

**PRESENTERS**

Jane S. Brautigam, City Manager  
Tom Carr, City Attorney  
David Gehr, Chief Deputy City Attorney  
Luis Toro, Senior Assistant City Attorney  
Lynnette Beck, City Clerk  
Tammye Burnette, Assistant to the City Manager

**EXECUTIVE SUMMARY**

The purpose of this agenda item is for the council to consider adoption of the recommendations of the Campaign Finance and Elections Working Group's (CFEWG) changes to the city's campaign finance, activities, election administration and election enforcement laws. The council last discussed the CFEWG's recommendations at a study session on December 11, 2018.

At the study session, council members endorsed or reached a consensus on recommended revisions to the recommendations of the CFEWG. One of the recommendations of the CFEWG was to reorganize the elections code within Title 13, B.R.C. 1981. This has been completed with the help of the CFEWG subcommittee that includes Rionda Osman-Jouchoux, Michael Schreiner, John Spitzer and Valerie Yates.

## STAFF RECOMMENDATION

### Suggested Motion Language

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to introduce and order published by title only Ordinance 8317 to repeal and re-enact Title 13, "Elections and Campaign Disclosure," B.R.C. 1981; and setting for related details.

## BACKGROUND

At its December 19, 2017 meeting, the city council directed the city manager to form a working group to address concerns raised by council members and members of the public regarding the city's campaign finance and election laws. The Charter for the CFEWG was presented on January 4, 2018 and describes the expectations established by the city council for analysis of the City Charter and Boulder Revised Code provisions related to campaign finance, initiative and referendum provisions and other election matters.

The CFEWG has satisfied its goals pursuant to its Charter which can be found here:

[https://www-static.bouldercolorado.gov/docs/Election\\_working\\_group\\_charter-1-201801091618.pdf?\\_ga=2.254951240.1595357094.1543248890-142577884.1522354914](https://www-static.bouldercolorado.gov/docs/Election_working_group_charter-1-201801091618.pdf?_ga=2.254951240.1595357094.1543248890-142577884.1522354914)

The CFEWG took on a detailed review of the city's campaign finance and initiative processes and made its recommendations for charter amendments related to its review of the city's municipal initiative processes in April 2018. Thereafter, the group met many times between April and the council's study session in December.

Those meetings resulted in recommendations for changes to the Boulder Revised Code which were presented to the council at a study session on December 11, 2018.

Background information regarding the December 11, 2018 Study Session can be found here:

[https://documents.bouldercolorado.gov/WebLink/0/edoc/167505/Agenda\\_2018\\_12\\_11\\_Meeting.pdf](https://documents.bouldercolorado.gov/WebLink/0/edoc/167505/Agenda_2018_12_11_Meeting.pdf)

The summary of the above Study Session can be found here:

[https://documents.bouldercolorado.gov/WebLink/0/edoc/167698/Agenda\\_2019\\_1\\_15\\_Meeting.pdf](https://documents.bouldercolorado.gov/WebLink/0/edoc/167698/Agenda_2019_1_15_Meeting.pdf)

The CFEWG's web page, which includes all of the background documents surrounding its work can be found here:

<https://bouldercolorado.gov/elections/campaign-financeelections-working-group>

Per council direction, the CFEWG formed a subcommittee to draft the ordinance which will address the recommended revisions to Chapter 13-1, "Elections," Chapter 13-2, "Campaign Financing Disclosure," and Chapter 13-4, "Complaints Related to Election Procedures and Regulations." (See **Attachment A**).

## **COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS**

- Economic – No direct economic impacts are anticipated.
- Environmental – No direct environmental impacts are anticipated.
- Social – Voter trust in the election process and the ability of the people to have an avenue to participate in direct democracy efforts is important and good governance.

## **OTHER IMPACTS**

- Fiscal – The changes anticipated by the ordinance will be implemented using funds typically allocated for election administration and enforcement.
- Staff time – The changes anticipated with the proposed ordinance will require additional resources of (1) staff time; and (2) funds for software modifications. Staff will have a better understanding of the known impacts after the first year of implementation.

## **PUBLIC FEEDBACK**

All of the public feedback has been gathered directly from the CFEWG that was appointed by the council and directed to make recommendations.

## **ANALYSIS**

Transparency and fairness in elections are qualities that are highly valued by the community. In 1999, the voters passed a campaign finance reform initiative that addressed contribution limits, public matching funds, enforcement provisions and campaign reporting requirements. The initiative was implemented for the 2001 election, with the following key goals:

- To make the process as simple to use as possible.
- To make the process as simple to administer as possible.
- To ensure that there are thorough controls over public funds used to fund city council campaigns.
- To provide easy and timely resident access to key financial information about city council campaigns.

The legislative intent of the initiative has informed campaign and election policy since its adoption and was a guiding factor in the CFEWG's discussions.

The CFEWG's charter, approved by the city council, was the basis for its recommendations. The council asked the CFEWG to recommend laws that promote the integrity of the election process by:

- providing for maximum campaign finance disclosure under existing law; and
- providing for maximum campaign finance disclosure in ways that have not previously been judicially recognized, considering both the objectives of election integrity and constitutional rights.

The CFEWG began working on the ordinance in April and continued through December, culminating in a study session with the city council on December 11, 2018. At the study session, members of the CFEWG presented the report. As part of the process, the city hired Geoff Wilson, an elections attorney, to advise the group and council on legal matters related to the ordinance. Geoff Wilson also participated in the study session and provided his legal advice to the council on each of the topics that were raised.

The CFEWG recommended that the city reorganize and redraft Title 13, citing problems with readability and organization. That project has also been completed with the assistance of the subcommittee that continued to work on revisions to Title 13. Given the scope of the changes, it is not practical to present the ordinance in the typical redline and strike-out format. Instead, changes are described in a table in **Attachment B**.

The changes to the ordinance, at a higher level, are described below:

### **1. Expand the Definition of Express Advocacy and Add Regulations for Electioneering Communications**

The CFEWG identified a problem in that groups were advertising and avoiding the need to report expenditures by communicating in ways that did not meet the standards related to "express advocacy" code language. The code did not capture all forms of advocacy that may be regulated under current law as express advocacy. As drafted, it is limited to language approved in the case of *Buckley v. Valeo*, 424 U.S. 1 (1976) such as "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat," or "reject."

The CFEWG recommended broadening the definition of "express advocacy" to include all the terms set forth in *Buckley v. Valeo*, along with words or symbols that are the "functional equivalent" of these terms. This expansion reflects the evolution of the case law that now includes the functional equivalent of the express advocacy "magic words" described above. The CFEWG also recommended adding the word "endorse" to the *Buckley* list of terms to ensure that advertisements communicating endorsements would be treated as express advocacy.

In the 2017 election, a number of participants were using electioneering communications. Electioneering communications are intended to influence the outcome of an election but do not meet the definition of “express advocacy.” An example of an electioneering communication would be an advertisement that mentions the name of a candidate and urging a person to vote for him or her. It might be something like “I like Burt, he’s a harder worker and loves Boulder” during an election cycle. This was another way to avoid the standards contemplated by *Buckley v. Valeo* and its progeny. The city does not have any disclosure requirements for contributions and expenditures for electioneering communications.

The caselaw regarding the regulation of electioneering is favorable with respect to candidates. It is not well developed for issues, petitions or ballot measures. The ability to regulate spending outside of candidates is more limited under the First Amendment. The council indicated support in defining and regulating electioneering communications related to candidate elections. “Electioneering communication” is proposed to be a communication that refers to a candidate during an election cycle; and requiring disclosure for electioneering communication spending an aggregate of \$1,000 or more in the same manner and schedule as reporting of express advocacy.

Council directed staff to continue to monitor the caselaw related to regulating electioneering disclosures for ballot measure elections. There is a lesser governmental interest in regulating ballot measure elections as opposed to candidate elections.

## **2. Identification of Natural Persons and Campaign Matching Funds**

The CFEWG addressed issues related to contributions by entities to candidate and ballot measure committees. Under present rules, the entities are not required to disclose the natural persons who are behind an entity’s contributions. The CFEWG recommended that the city require detailed disclosure requirements for entities making contributions to candidate or ballot measure committees and/or expenditures on express advocacy or electioneering communications. The policy rationale for this approach was that it identified a natural person with every contribution and provided maximum transparency for constituents.

After a discussion at the December 11 Study Session, council members directed staff to draft language to require natural-person only contributions to candidates accepting matching funds. Because the matching fund program is voluntary, the city could also use this approach and disqualify candidates from the matching if they take money from non-natural persons. Candidates who do not participate in the matching funds program would be able to accept contributions from non-natural persons but would have to report the names of the contributors.

At council’s direction, an amendment has been made that will allow the amount of campaign expenditures, and in turn, matching funds, to increase over time based on the Denver-Boulder-Greeley consumer price index. See Section 13-2-3(a)(2).

### **3. Clarify the Regulations for Committees that Coordinate Advertising**

The CFEWG identified issues related to the rules about how unofficial candidate committees and issue committees have jointly purchased advertising or collaborated on other forms of advocacy materials.

The proposed ordinance now specifies how the costs of joint advertising should be allocated and reported. Allocation must be proportional to the committee's portion of advertising and the cost of the advertisement. Reporting must include the total cost of the joint material and the amount the committee paid for its portion. Language was added that clarifies that contributions from one committee to another committee is prohibited.

### **4. Ensure Proper Disclosure for Various Types of Media**

The Boulder Revised Code does not regulate the format of the disclosures required on campaign materials. The CFEWG concluded that advertisement disclosures are inadequate because they only require identification of the committee's name and not the identity of the individuals who are paying for the material and/or its dissemination. Council members directed staff to draft amendments to address disclosures associated with ballot measures, reasoning that they are not as important for candidates given the city's campaign finance limitations.

Ballot measure committees do not have the same contribution limitations as official and unofficial candidate committees due to court rulings that limit such regulations and matters that substantially serve an important governmental interest. Therefore, it makes sense to require disclosure of major contributors, given that there are no limits on contributions.

Section 13-2-5 includes several standards related to disclosure requirements for individuals and committees. The code requires that the advertisement identify who paid for the material. Additional requirements are included for ballot measure committees to include top contributors that provide major funding for the advertisement. For ballot measure committees, the top three contributors are defined as persons that make cumulative contributions of \$1,000 or more. Individuals that make independent expenditures are also required to identify the person who paid for the advertisement.

Similar standards were set for disclosures associated with video and audio advertisements, including the length of time. The standards include the formatting, the size, type, font, clarity, duration, location, etc., of any required disclosures across a variety of media types.

### **5. Clarify the Role of the City Clerk**

The city clerk is responsible for administering elections and the requirements of the campaign finance disclosure rules. The CFEWG identified a number of areas where the

code could be clarified regarding the role of the city clerk in the election process and the administration of the campaign finance and disclosure requirements.

- Election Complaint Administrator. The code is proposed to be amended so that authority is granted by the council to the city clerk, rather than the city manager. The reason for this is to attempt to create a greater perception of fairness given the fact that the city manager directly reports to the council. This structure is also used by statutory cities in Colorado.
- Disclosure of Complaint Practices. The present practice, as required by the code, is that the clerk keep confidential any complaints that are made without merit and dismissed. In a past election, a number of complaints were made, with the complainant issuing press releases of the complaint. The public policy consideration of keeping them confidential is based in the city's attempt to remain as a neutral party in elections. Additionally, the city attorney has the ability to pursue prosecution of election violations in the municipal court. Section 13-3-9 has been revised so that, without regard to whether a complaint is dismissed, the clerk's final determination on any complaint will be made available to the public.
- Challenges of Clerk Decisions. The CFEWG expressed a concern that there could be a perception of unfairness if the city clerk presides over hearings where she may have to review her prior ruling on the issue. Section 13-3-6 has been amended to explicitly authorize the city clerk to employ hearing officers in campaign finance if the petition process should require an external hearing officer.

Council members have also expressed a desire, when using hearing officers, to use persons that reside outside of Boulder or are not otherwise active in local politics to further the objective of creating a fair hearing process.

- Enforcement Generally. Concerns have been expressed about the approaches to enforcement under the code. Generally speaking, there are three primary approaches:
  - Staff reporting of errors and omissions and the cure by individuals and committees. The code allows for cure of violations to the campaign finance provisions. Typically, things like missed filing dates or minor reporting errors. If such matters are cured, the code deems that no violation of the campaign finance disclosure requirements have occurred.
  - Third-party complaints alleging violations comprise a large part of Chapter 13-3, "Compliance and Enforcement for Campaign Violations."
  - Enforcement by the city clerk and city attorney. The city attorney has the authority under the Boulder Revised Code to prosecute any violations to the Boulder Revised Code. This authority can be found in Section 13-3-7, "Remedies Not Exclusive."

Chapter 13-3, "Compliance and Enforcement for Campaign Violations," has been redrafted and clarified to help the reader understand the approaches to enforcement. In

addition to the “Remedies Not Exclusive” section, language has been added to the Legislative Intent section to clarify the city clerk’s and city attorney’s role in the enforcement process by making an express reference to general enforcement provisions of Title 5 of the Boulder Revised Code.

Also, with regards to third party complaints, in the past, it has been anticipated that the person making the complaint would prosecute the complaint at an administrative hearing. A provision was added that requires the complainant to state whether the complainant is willing to pursue the complaint through a hearing process. If the person is not, the city clerk will need to determine whether the complaint has merit and should be investigated and prosecuted.

Provisions have also been added to the enforcement requirements that include specific criminal acts that set clear obligations on people that are subject to the campaign finance laws. Section 13-3-10 provides clear language on the most obvious violations of the campaign finance laws. The penalty provisions were in a number of locations in Title 13. They have all be consolidated in Section 13-3-10. Finally, there was a provision added to explicitly state that the general penalty provisions of Title 5, “General Offenses,” also apply to violations of the campaign finance laws.

## **6. Reorganization of Title 13**

The proposed ordinance simplifies Title 13 in several ways. Former Chapter 13-3, “Campaign Activities,” has been merged with Chapter 13-2, “Campaign Finance Disclosure,” to create a new Chapter 13-2, “Campaign Finance, Disclosure, and Reporting Requirements,” that includes contribution limits as well as disclosure and reporting requirements.

Chapter 13-2 has been reorganized for ease of use. The definitions section is followed by sections on campaign participants (candidates, committees and persons acting alone), campaign activities, disclosure requirements for advertisements, reporting requirements for campaign participants, public access to campaign filings and severability. Regulations concerning public funding of candidate campaigns are now found under Section 13-2-3(a)(2), regarding candidates for office.

The legislative intent section has been changed to remove council findings that are now out-of-date.

## **7. Changes suggested by the Drafting Subcommittee**

The drafting subcommittee of the CFEWG recommended that expenditures which are made by entities that are not the result of coordination with other persons or for which the entity has not received contributions from others be treated the same way as independent expenditures by individuals. The entity will still be required to disclose expenditures in the same manner as an individual would for an independent expenditure. In order to comport with Supreme Court precedent, no limits are proposed for independent



expenditures. Given that there is no coordination with another person, it makes sense to treat independent expenditures by entities the same as individual independent expenditures. This change can be found in the definition for “independent expenditure” in Section 13-2-2, “Definitions.” Individuals and entities that do not collect contributions are not required to register as a committee but are required to report independent expenditures on the same schedule that committees report their contributions and expenditures. Section 13-2-6(c)(4) sets forth the new reporting requirements for individuals and entities making independent expenditures.

The drafting subcommittee also recommended two new provisions in the Campaign Activities section. These would prohibit the personal use of committee funds and the use of city resources to make contributions or fund express advocacy. These restrictions are parallel to those in state law and are necessary because as a home rule city Boulder’s campaign finance regulation will completely supersede state law.

## **NEXT STEPS**

This ordinance is scheduled for a second reading public hearing on March 5, 2019. Upon adoption, staff will update the public information materials (including the “blue book”), make necessary software modifications, schedule and conduct general public trainings in May, and hold committee trainings this summer.

## **ATTACHMENTS**

A – Proposed Ordinance 8317

B – Chart of the Proposed Amendments

ORDINANCE 8317

AN ORDINANCE TO REPEAL AND RE-ENACT TITLE 13,  
“ELECTIONS AND CAMPAIGN DISCLOSURE,” B.R.C. 1981;  
AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER,  
COLORADO:

Section 1. Title 13, “Elections and Campaign Disclosure,” B.R.C. 1981, is hereby  
repealed and reenacted as follows:

**Chapter 1 – Elections.**

**13-1-1. - Legislative Intent.**

- (a) The purposes of this chapter are (1) to establish procedures for regular and special elections of the home rule City of Boulder; and (2) to set the date upon which a proposed ballot measure is final for its submission to the voters for purposes of complying with the intent and spirit of § 1-45-117, C.R.S. This chapter does not apply to initiatives concerning the amendment or abolition of the charter.
- (b) The procedures for regular and special elections are intended to be consistent with the Municipal Election Code of 1965 as adopted by the state of Colorado, except as necessary to comply with provisions of the charter or to meet a specific need of the city as determined by the city council.

**13-1-2. - General Municipal Elections.**

- (a) The Municipal Election Code of 1965, § 31-10-101, *et seq.*, as it may be amended, is adopted by reference and incorporated to have the same force and effect as if printed in full in this code, except as specifically amended by the charter or provisions of this chapter.
- (b) Unless the context or ordinance requires otherwise, general municipal elections as defined in Section 22 of the charter shall be held as specified for regular municipal elections in the Municipal Election Code.

**13-1-3. - Responsibility of the City Clerk.**

The city clerk shall administer the requirements of this chapter and comply with all laws regulating the conduct of elections.

**13-1-4. - Initiative and Referendum.**

All aspects of the exercise of the initiative and referendum power reserved to the people by the charter of the city of Boulder shall be governed exclusively by the provisions of the charter, this code, and any other applicable ordinance of the city, and no statute of the state purporting to regulate in any way the exercise of the initiative or referendum shall govern the exercise of the initiative or referendum, except for those criminal provisions of state law not in conflict with any provision of the charter or this code which prohibit fraud or deception in the circulation or signing of initiative or referendum petitions, or respecting affidavits concerning said petitions.

**13-1-5. - Special Provisions Concerning Filling Council Vacancies by Special Election.**

- (a) The city council may, in the resolution calling for a special election to fill a council vacancy, specify a number of days before the election that the early voters' polling place shall be open, and may also specify additional hours during which such early voters' polling places shall be open. Such a provision is only effective for a special election which is not conducted as a coordinated election.
- (b) The term of a council member elected in a special election held pursuant to charter section 8 to fill a council vacancy shall expire at 10:00 a.m. on the third Tuesday in November following the next general municipal election.

**13-1-6. - Fixing of Ballot Title for Purposes of § 1-45-117, C.R.S.**

For purposes of § 1-45-117, C.R.S., ballot titles for city ballot measures shall be considered fixed upon the final vote of the council after final reading of a motion, resolution, or ordinance which officially submits a specific ballot measure in the form it is to appear on the ballot for a vote of the electors at the next election. The date the election is called for consideration of city ballot measures shall not change the date upon which the ballot title is fixed as provided in this section.

**Chapter 2 – Campaign Finance, Disclosure and Reporting Requirements****13-2-1. - Legislative Intent.**

- (a) The provisions of this chapter have been modeled on the Federal Election Campaign Act and the Colorado Fair Campaign Practices Act and in accordance with an initiative passed by the people of the city in 1999. Modifications have been made where necessary to meet specific needs of the city, to clarify and make more specific various requirements, and to comply with the evolving law in this area.
- (b) The purposes of this chapter include the following:
  - (1) Assisting electors in making informed election decisions by requiring disclosure of information from candidates for city office and from persons supporting or opposing such candidates and/or ballot measures. The purpose of disclosure is to provide for transparency in the collection and disbursement of monies spent on campaigns and not to regulate speech;
  - (2) Limiting contributions to candidates running for city council and committees formed to support or oppose such candidates. This limit is meant to ensure that large campaign

contributions do not cause corruption or the appearance of corruption in the election process, are not used to buy political access or to influence governmental actions, and to ensure that access to large amounts of money will not be a prime requirement for participation in the political process. This chapter does not limit contributions made to committees supporting or opposing ballot measures;

(3) Assuring the public that there is transparency of the companies or individuals that are providing financial support or otherwise backing electioneering communications and express advocacy materials, while not putting an onerous burden on contributors;

(4) Providing public financing for candidate campaigns that is contingent on candidates who receive public funds complying with expenditure limits. These measures are meant to reduce candidates' need to focus on fundraising and also to reduce the amount of money that is needed to run an effective campaign, which benefits the recipients of matching funds as well as other candidates and the citizens generally; and

(5) Providing members of the public with information regarding financial dealings of candidates and council members that might affect their ability to make impartial decisions.

(c) The provisions of this chapter are exclusive and supersede any state statute on the subject, whether in conflict herewith or not, including, without limitation, article 1-45, C.R.S., unless the provisions of such statute are expressly made applicable by reference in this chapter.

### **13-2-2. - Definitions.**

The following terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

*Advertisement* means any notice, announcement, bulletin, materials, display, handout or similar materials, or radio or video messages, distributed or posted to convey support for or opposition to a candidate or ballot measure.

*Ballot measure* means any amendment to the city charter, and any initiative, referendum, or recall for which petitions have been properly certified by the city clerk for submission to the city council, or any ordinance, issue, or question – put to a vote of the electors of the city of Boulder under the provisions of the city charter. For purposes of this chapter only, “*ballot measure*” also includes any initiative, referendum, or recall for which a petition committee has submitted a proposed petition to the city clerk. Such term does not include any question placed on the ballot by the United States, the State of Colorado, or any political subdivision thereof other than the city.

*Ballot measure committee* means any person who accepts contributions, or any two or more persons who make expenditures, for the purpose of supporting or opposing a ballot measure at a city election, regardless of whether they have obtained the consent of the proponents of the ballot measure.

*Candidate* means any natural person whose petition of nomination for city council, whether at a regular, special, or recall election, has been certified as sufficient by the city clerk pursuant to section 26 of the city charter. A person is no longer a *candidate* after the date of the election for which the person filed a petition.

1        *Candidate committee* means a person, including the candidate, or persons with the common  
 2        purpose of receiving contributions or making expenditures under the authority of a candidate. The  
 3        term official candidate committee is synonymous with *candidate committee*.

4        *Candidate forum* means provisions or broadcasts of a forum for candidates which:

- 5        (a) Is conducted after expiration of the time during which candidates may be certified;
- 6        (b) Is open to all candidates without discrimination;
- 7        (c) Provides all candidates equal time to express their positions;
- 8        (d) Is not sponsored by a committee; and
- 9        (e) If rebroadcasted, includes the full statements of all participants.

10       *Committee* means a candidate committee, an unofficial candidate committee, or a ballot  
 11       measure committee, unless the context indicates that it can mean only one or two of these types of  
 12       committees.

13       *Contribution* means:

- 14       (a) Any payment, loan, pledge, or advance of money, including, without limitation, checks  
 15       received but not deposited or payments made by credit card, or guarantee of a loan, made  
 16       to or for the benefit of any candidate or committee;
- 17       (b) Any payment made to a third party for the benefit of any candidate or committee, including,  
 18       without limitation, the use of a credit card to secure such benefit;
- 19       (c) Anything of value given, directly or indirectly, to a candidate for the purpose of promoting  
 20       the candidate's election, including, without limitation, commercial services such as  
 21       banking, printing, and mailing services;
- 22       (d) With regard to a *contribution* for which the contributor receives compensation or  
 23       consideration of less than equivalent value to such contribution, including, without  
 24       limitation, items of perishable or nonpermanent value, goods, supplies, services, or  
 25       participation in a campaign-related event, an amount equal to the value in excess of such  
 compensation or consideration; or
- 26       (e) A contribution in kind.

27       *Contribution* does not include services provided without compensation by individuals  
 28       volunteering their time on behalf of a candidate or committee.

29       *Contribution in kind* means the fair market value of a gift or loan of any item of real or  
 30       personal property, other than United States currency, made to or for any candidate or committee  
 31       for the purpose of influencing the passage or defeat of any issue or the election or defeat of any  
 32       candidate. Personal services are a *contribution in kind* by the person paying compensation  
 33       therefor. In determining the value to be placed on contributions in kind, a reasonable estimate of  
 34       fair market value shall be used by the candidate or committee. Contributions of foreign currency  
 35       or cryptocurrency are contributions in kind. *Contribution in kind* does not include an  
 36       endorsement of a candidate or an issue by any person, nor does it include the payment of  
 37       compensation for legal or accounting services rendered to a candidate if the person paying for  
 38       the services is the regular employer of the individual rendering the services and the services are  
 39       solely for the purpose of ensuring compliance with the provisions of this title.

*Distributing, distribution, or distributed* refers to any communication broadcast by television, radio, cable or satellite to residents of the city; printed in a newspaper, magazine, or other periodical, or billboard, that reaches residents of the city; directly mailed or delivered by hand to personal residences in the city; or delivered for a fee digitally or by telephone, or similar means or communication targeted to residents of the city.

*Election cycle* means the period from the day after an election until the day of the election in the following year.

*Electioneering communications* means any communication that is:

- (a) Taken as a whole and in context unambiguously referring, in writing or pictorially, to any candidate;
- (b) Distributed before the end of the election cycle and after the first date a city council candidate nomination petition could be certified about any candidate; and
- (c) Distributed to an audience that includes residents of the city;

*Electioneering communication* does not include:

- (a) Any communication by persons, other than committees, made in the regular course and scope of their business;
- (b) Any communication made by a membership organization solely to members or such organization and their families;
- (c) Any communication that refers to a candidate or ballot measure only as part of the popular name of a bill or statute;
- (d) The original broadcast or distribution of any news articles, editorial endorsements, opinions, commentary writings, or letters to the editor, through media not owned or controlled by a candidate, committee, or a person contributing over \$1000 towards the original broadcast or printing; or
- (e) Candidate forums.

*Entity* means any person or group of persons, other than one natural person, that makes contributions or expenditures, including without limitation corporations, partnerships, limited liability companies, limited liability partnerships, commissions, enterprises, or any other formal or informal associations or organizations.

*Excepted investment* means a mutual fund, common trust fund of a bank, pension, or deferred compensation plan, any other investment fund, or a ten percent or less interest in the stock of a company, which for funds or stocks is widely held; publicly traded (or available) or widely diversified; and which for funds under circumstances where the investor neither exercises control over nor has the ability to exercise control over the financial interests held by the fund. A fund is widely diversified when it holds no more than five percent of the value of its portfolio in the securities of any one issuer (other than the U.S. Government).

*Expenditure* means the payment, distribution, loan, or advance of any money, whether in cash, by check, as a credit card charge, or otherwise. *Expenditure* also includes the payment, distribution, loan, or advance of any money by a person for the benefit of a candidate or committee that is made with the prior knowledge and consent of an agent of the candidate or committee. An *expenditure* occurs when the actual payment is made or when a contract is agreed upon, whichever comes first. Consent may be implied from collaboration and need not be express.

1 *Express Advocacy* means any communication that contains words urging election or defeat,  
 2 such as “vote for,” “support,” “cast your ballot for,” “vote against,” “defeat,” “reject,” “Smith for  
 3 Congress,” “endorse,” or any communication, by words or symbols, which is the functional  
 equivalent of *express advocacy* because it is susceptible to no other reasonable interpretation than  
 as an appeal to vote for or against a specific candidate or ballot measure.

4 *Fair market value* means the amount a willing buyer and a willing seller would pay for the  
 product or service when neither was under any obligation to do so.

5 *Income* means money received for the provision of goods or services, not including the  
 6 unrealized appreciation of any asset, *income* from any excepted fund, or interest earned from any  
 commercial bank, savings and loan, or credit union.

7 *Independent expenditure* means an expenditure by any person for the purpose of creating or  
 8 disseminating express advocacy or electioneering communications, which expenditure is not  
 controlled by, coordinated with, or made upon consultation with any committee or any agent of  
 9 such committee. *Independent expenditure* does not include expenditures made by persons in the  
 regular course and scope of their business, including political messages sent solely to members.

10 *Loan* means providing something of value, including money, to another, with a promise,  
 express or implied, that money will be paid in the future for the item of value.

11 *Natural person* means a human being.

12 *Official candidate committee* means a person, including the candidate, or persons with the  
 13 common purpose of receiving contributions or making expenditures under the authority of a  
 candidate.

14 *Other household income* means any income earned by a spouse, domestic partner, or partner  
 15 in a civil union who resides in the same household as the reporting person that is reportable by a  
 candidate or incumbent for federal or state income tax purposes.

16 *Other household member* means a spouse, domestic partner, or partner in a civil union who  
 resides in the same household as the reporting person.

17 *Person* means the same as the definition in Chapter 1-2-1.

18 *Published* means a writing presented for distribution in exchange for money or other item of  
 value.

19 *Reportable interest* means:

20 (a) In the case of a corporation, either more than ten percent of the total combined voting  
 21 power of all classes of stock of the corporation entitled to vote, or more than ten percent of  
 the capital, profits, or beneficial interest in the voting stock of the corporation;

22 (b) In the case of a partnership, association, trust, or other entity, more than ten percent of the  
 23 capital, profits, or beneficial interest in such partnership, association, trust, or other entity;  
 or

24 (c) Any interest in any entity that owns real property, if more than fifty percent of the entity's  
 holdings are in Boulder County.

25 *Solicitation* means a written or oral or other endeavor to obtain, seek or plead for money or  
 other item of value.

1        *Top contributors* means the persons from whom the ballot measure committee paying for a  
 2 communication has received its three largest cumulative contributions of \$1000 or more for a  
 3 communication that includes express advocacy as of the date of the first broadcast or other  
 4 distribution of the communication.

5        *Unofficial candidate committee* means any natural person who accepts contributions, or any  
 6 two or more persons who make expenditures, for the purpose of supporting or opposing a candidate  
 7 for city council. An *unofficial candidate committee* ceases to be independent if its expenditures  
 8 are in any way, directly or indirectly, controlled by, coordinated with, or made upon consultation  
 9 with any candidate or candidate committee or agent thereof.

### 10        **13-2-3. - Participants.**

#### 11        (a) Candidates.

12        (1) Official Candidate Committee. A candidate is deemed to have an official candidate  
 13 committee even if none has been formed. A candidate may hold any position in the  
 14 candidate's official campaign committee. No candidate shall have more than one  
 15 candidate committee. If more than one committee acts under the authority of or in  
 16 coordination with a candidate, all shall be deemed the candidate's official candidate  
 17 committee and shall file combined reports as required by this title and all shall jointly be  
 18 subject to the limitations of this title.

#### 19        (2) Public Matching Funds.

20        (A) Eligibility. A candidate who meets the following requirements shall be eligible to  
 21 receive matching funds: (1) The candidate raises at least ten percent of the  
 22 expenditure limit from contributions of no more than \$25; (2) the candidate accepts  
 23 contributions only from natural persons, and (3) The candidate signs a contract with  
 24 the city committing that the candidate will:

- 25        i. Limit his or her expenditures to \$20,740;
- ii. Contribute to his or her campaign no more than twenty percent of the expenditure  
       limit from his or her own personal wealth; and
- iii. Return at least fifty percent of any unexpended funds to the city, but not more than  
       the matching funds received.

      (B) Match Amount. The city will allocate and provide matching funds, up to fifty  
 percent of the expenditure limit as herein defined, to any city council candidate who  
 meets the eligibility requirements set forth above. Only actual currency or its  
 equivalent shall be matched with public funds. Neither loans nor contributions in  
 kind or amounts exceeding \$100 from the candidate's personal wealth shall be  
 eligible for matching funds.

      (C) Disbursements. After meeting the eligibility requirements, any candidate may request  
 matching funds from the city no more frequently than once per week in amounts no  
 less than \$500. The final request for matching funds must be submitted to the city no  
 later than fourteen days before the election and may be for less than \$500.



(D) Inflation Adjustment. The city clerk shall adjust the limit set forth in subsection (2)(A) of this section based upon the percentage change over a two-year period in the United States Bureau of Labor Statistics Consumer Price Index for Denver-Boulder-Greeley, all urban consumers, or its successor index, rounded to the nearest dollar. The first adjustment shall be done in the first quarter of 2021 and then every two years thereafter.

(b) Persons Who Support or Oppose Candidates or Ballot Measures.

- (1) Unofficial Candidate Committee. Any persons meeting the definition of an unofficial candidate committee are deemed to have formed a committee and must adhere to the requirements of this chapter.
- (2) Ballot Measure Committee. Any persons meeting the definition on a ballot measure committee are deemed to have formed a committee and must adhere to the requirements of this chapter.
- (3) Individuals. Any person making an independent expenditure in excess of \$200 to support or oppose one or more candidates, or in excess of \$1000 to support or oppose a ballot measure, shall be subject to the reporting and disclosure requirements set forth below in this chapter.
- (4) Coordination. Expenditures by any person or committee on behalf of a candidate that are, in any way, directly or indirectly, controlled by, coordinated with, or made upon consultation with any candidate or candidate committee or agent thereof shall be considered a contribution to the candidate and subject the candidate and the contributor to any applicable limitations contained in this chapter. Such expenditures also count toward the expenditure limit of any candidate who has received public funding under this chapter.

**13-2-4. - Campaign Activities.**

(a) Contribution Limitations.

- (1) No person shall make contributions to or for the benefit of any official candidate committee or unofficial candidate committee that, in the aggregate, exceeds \$100 with respect to any election cycle in which such candidate or committee is participating for a municipal election. Persons are not limited in the amount that may be contributed to ballot measure committees.
- (2) Any expenditure that is controlled by, or coordinated with, a committee or agent of a committee, is deemed to be both a contribution by the maker of the expenditure and an expenditure by the committee.
- (3) Contributions to unofficial candidate committees are subject to the \$100 limitation per person per committee regardless of how many candidates the unofficial candidate committee supports or opposes.
- (4) The recipient of any contribution which would cause the total amount of contributions from a single person to exceed \$100 per committee limitation shall promptly return any such excess to the donor.

1 (5) No person shall make contributions of coin or paper currency for the benefit of any ballot  
2 measure committee that, in the aggregate, exceeds \$100 per election cycle.

3 (6) A committee may not make a contribution to another committee.

4 (b) Contributions in Name of Another Prohibited. No person shall make a contribution in the  
5 name of another person or knowingly permit such person's name to be used to effect such a  
6 contribution, and no person shall knowingly accept a contribution made by one person in the  
7 name of another person.

8 (c) Anonymous Contributions.

9 (1) Anonymous contributions to any official candidate committee or unofficial candidate  
10 committee may not be retained or expended by the committee. If anonymous  
11 contributions are received by such a committee, they shall be disposed of as follows:

12 (A) If the candidate has accepted public financing under this chapter, all anonymous  
13 contributions to the candidate or the candidate's committee shall be forwarded to the  
14 city clerk with the next required report, noted in the report, and deposited in the  
15 general fund of the city.

16 (B) Unofficial candidate committees and candidate committees of candidates who have  
17 not accepted public financing under this chapter shall be allowed to donate  
18 anonymous contributions to any charitable organization recognized by the Internal  
19 Revenue Service pursuant to section 501(c)(3) of the Internal Revenue Code or to the  
20 city, and the distribution of such funds shall be indicated on the next report required  
21 to be filed pursuant to section 13-2-6(c)(2).

22 (C) If an anonymous contribution is donated to a charitable organization recognized by  
23 the Internal Revenue Service pursuant to section 501(c)(3) of the Internal Revenue  
24 Code, the candidate or committee shall retain the envelope or other container in  
25 which it arrived, together with any other material which arrived with it, a photocopy  
of the contribution itself (showing only the amount and serial number of any bills),  
and shall retain such information as candidate or committee records for at least six  
months after the election, and shall make such records available to the city clerk upon  
request.

(2) If an anonymous contribution is received by a ballot measure committee, the committee  
shall retain the envelope or other container in which it arrived, together with any other  
material which arrived with it, and a photocopy of the contribution itself (showing the  
amount and serial number of any bills) as committee records for at least six months after  
the election, and shall make such records available to the city clerk upon request.

(d) Unexpended Campaign Contributions. Candidates receiving matching funds must return at  
least fifty percent of any unexpended funds to the city, but not more than the matching funds  
received. Any remaining unexpended contributions to candidates or committees may be  
donated to any charitable organization recognized by the Internal Revenue Service pursuant  
to section 501(c)(3) of the Internal Revenue Code or returned to the contributor, and the  
distribution of such funds shall be indicated on the final report of the committee required to  
be filed pursuant to section 13-2-6(c)(2).

- (e) Campaign Advertising Requirements. No person who sells space in a newspaper or magazine to a candidate or committee to use in connection with a municipal election may charge an amount for such space which exceeds the amount charged for comparable use of such space for other purposes.
- (f) Misrepresentation of Campaign Authority. No candidate or any agent of a candidate or committee shall make any fraudulent misrepresentation as speaking or writing or otherwise acting for or on behalf of any other candidate or committee on a matter which is damaging to such other candidate or committee; or willfully and knowingly participate in or conspire to participate in any plan, scheme or design to do so.
- (g) No Personal Use. Committee funds shall not be used for personal purposes not reasonably related to supporting or opposing the election of a candidate or the adoption of a ballot measure.
- (h) City Resources. City resources shall not be used to make any contribution to a committee or to fund express advocacy. Nothing in this subsection shall be construed as prohibiting the city from expending city resources to dispense a factual summary, which shall include arguments both for and against the proposal, on any ballot measure. Notwithstanding the foregoing, city council may pass a resolution or take a position of advocacy for or against a ballot measure, and city resources may be used to report city council's action through established, customary means other than paid advertising.

### **13-2-5. - Disclosure Requirements.**

- (a) Election Materials and Advertising Contain Sponsor's Name.
- (1) A committee that distributes an advertisement shall include therein the words "Paid for by" followed by the name of the committee. An unofficial candidate committee that distributes an advertisement shall include therein the words "Not affiliated with any candidate or candidate committee."
  - (2) A ballot measure committee that distributes an advertisement supporting or opposing a candidate or ballot measure shall include therein the words "Major funding from" followed by the names of the top contributors to the committee paying for the advertisement. If two or more contributors of identical amounts qualify as top contributors, all the contributors of that amount shall be listed.
  - (3) A person, other than a committee, who makes an independent expenditure shall include in the advertisement the words "Paid for by" followed by the name of the person.
  - (4) An advertisement that is distributed as video shall include the disclosures required by this section at the beginning or end of the advertisement, displayed for at least five seconds of a broadcast of thirty seconds or less or for at least ten seconds of a broadcast that lasts longer than thirty seconds on the entire bottom one-third of the television or video display screen, with the type size of the smallest letters no less than four percent of the height of the television or video display screen. The written disclosures shall be underlined, except for the names of the top contributors.

- 1 (A) The top contributors to a ballot measure committee, if any, shall each be disclosed on  
2 a separate horizontal line centered horizontally, in descending order, beginning with  
the top contributor who made the largest cumulative contributions on the first line.
- 3 (B) If using a type size of four percent of the height of the television or video display  
4 screen causes the name of any of the top contributors to exceed the width of the  
5 screen or causes the disclosures to exceed one-third of the television or video display  
6 screen, the type size of the name of the contributor shall be reduced until the top  
contributor's name fits within one-third of the television or video display screen, but  
in no case shall the type size be smaller than two and one half percent of the height of  
the screen.
- 7 (5) An advertisement in printed form shall include the required disclosure on a solid  
8 background with the words in a contrasting color in an Arial equivalent font within a box  
9 and set apart from any other print on the advertisement. Display of the disclosure shall  
be in one of the following forms:
- 10 (A) A print advertisement that is distributed shall include the disclosures required by  
11 this section, with a type size of at least ten-point; or
- 12 (B) A print advertisement that is larger than those designed to be individually  
13 distributed, including, but not limited to, yard signs or billboards, shall display the  
14 disclosure with a total height of at least five percent of the height of the  
advertisement. The text may be adjusted so it does not appear on separate horizontal  
lines, with the top contributors separated by a comma; or
- 15 (C) For a print advertisement of twenty square inches or less paid for by a ballot issue  
16 committee, the disclosure is only required to include the single top contributor of  
\$1000 or more.
- 17 (6) An advertisement that is distributed by audio shall include the disclosures required by  
18 this section at the beginning or end of the advertisement, read in a clearly spoken manner  
19 and in a pitch and tone substantially similar to the rest of the advertisement, and shall last  
20 no less than three seconds. Notwithstanding the definition of "top contributors," radio and  
prerecorded telephonic advertisements made by a ballot measure committee shall disclose  
only the top two contributors of \$1000 or more unless the advertisement lasts fifteen  
seconds or less or the disclosure statement would last more than eight seconds, in which  
case only the single top contributor of \$1000 or more shall be disclosed.
- 21 (b) Solicitation for Candidate Campaign Funds. Whenever any person makes an expenditure for  
22 the purpose of soliciting any contribution through any broadcasting station, newspaper,  
23 magazine, outdoor advertising facility, direct mailing, or any other type of advertisement,  
such communication:
- 24 (1) If authorized by a candidate or committee or any agent thereof, shall clearly state that the  
25 communication has been so authorized;

- (2) If not authorized by a candidate or committee, or its agents, shall clearly state the name of the person who paid for the communication and state that the communication is not authorized by any candidate or committee.

### **13-2-6. - Reporting Requirements.**

- (a) Persons required by this chapter to prepare and file statements shall do so on the basis of information that is complete and current at least as of 5:00 p.m. on the calendar day before the filing date. A statement due on a weekend or holiday shall be filed on the next business day.

(b) Committee Statements of Organization.

- (1) Initial Filing. A committee's initial Statement of Organization shall be filed:

- (A) No more than three days after a candidate's petition of nomination for city council has been certified as sufficient by the city clerk pursuant to section 26 of the city charter, the candidate shall file a statement of organization of the committee formed to assist the candidate in being elected to city council. This statement shall be filed even if the candidate has not formed a committee and shall be amended later if a committee is formed or the information required changes.
- (B) No more than three days after an unofficial candidate committee accepts a contribution or makes or obligates itself to make an expenditure, the committee shall file a statement of organization as set forth below in this chapter.
- (C) No more than three days after a ballot measure committee accepts a contribution or makes an expenditure, the committee shall file a statement of organization as set forth below in this chapter. Once a ballot measure committee files a statement of organization, it cannot add or change the ballot measure(s) supported or opposed.

- (2) Information Required. The statement of organization for all committees shall include the name and address of the committee and the names and addresses of all persons acting as officers of the committee, including committee chairperson(s) and treasurer. In addition, statements shall include the following information:

- (A) The statement of organization for the official candidate committee shall include the name and address of the candidate.
- (B) The statement of organization for an unofficial candidate committee shall include the names of the candidate(s) the committee supports or opposes and a statement of whether the committee supports or opposes each candidate.
- (C) The statement of organization for a ballot measure committee shall include the names of all ballot measure(s) the committee supports or opposes and a statement of whether the committee supports or opposes each measure.

- (3) Updates. Committees shall file a statement with any changes to the information required by this section no more than three days after such change occurs.

1 (c) Contributions and Expenditures.

2 (1) Information required. In accordance with the schedule below, committees shall file  
3 regular reports from the date of the prior report to the end of the reporting period unless  
4 the statement is the first one required containing the following information:

5 (A) The names and addresses of each person making contributions to the treasurer's  
6 knowledge, and the amount, dates, and nature of such contributions since the last  
7 report required.

8 (B) For anonymous contributions, a statement of all such contributions received together  
9 with their disposition.

10 (C) The names and addresses of each person to whom an expenditure has been made and  
11 the amount, date, and nature of such expenditure. For expenditures for joint  
12 advertising by multiple committees, each committee must disclose the total cost of  
13 the joint advertisement along with the amount each paid for its portion of the  
14 advertisement. The amount expended must be proportional to the committee's  
15 portion of the advertising.

16 (2) Schedule of Reports. All committees shall file Statements of Contributions and  
17 Expenditures on the following schedule:

18 (A) Initial submission:

19 (i) Official candidate committees shall file three days after the candidate's petition  
20 of nomination for city council has been certified as sufficient by the city clerk  
21 pursuant to section 26 of the city charter. This statement shall cover all  
22 contributions and expenditures made in anticipation of candidacy.

23 (ii) Unofficial candidate committees and ballot measure committees shall file three  
24 days after the committee accepts a contribution or makes or obligates itself to  
25 make an expenditure. This statement shall cover all contributions and  
expenditures made to date.

(B) Subsequent Reports. Reports are due on the following schedule and shall include all  
contributions and expenditures made that were not included in a prior filed report:

(i) On the forty-second day prior to the election.

(ii) On the twenty-eighth day prior to the election.

(iii) On the twenty-first day prior to the election.

(iv) On the fourteenth day prior to the election.

(v) By 5:00 p.m. on the Thursday before the election. This statement shall also  
identify anticipated contributions and expenditures for the remainder of the  
campaign, if any, before or after the election.

(vi) On or before the thirtieth day after the election: If a balance remains on the  
candidate's or committee's books, this statement shall also include the intended  
disposition of that balance.

(vii) Not more than sixty days after the election: Committees with a balance remaining on the 30-day report shall file a final statement showing the actual disposition of that balance.

(3) Independent Expenditure Reports of Unofficial Candidate Committees.

If an unofficial candidate committee makes an independent expenditure in excess of \$5000 on or before the twenty-first day prior to the election, the committee shall file a statement of expenditure giving the names and addresses of each person to whom such an expenditure has been made, and the amount, date, and purpose of such expenditure within three business days after obligating funds for the first such expenditure.

(4) Other Independent Expenditure Reports.

If a person, other than an unofficial candidate committee, makes an independent expenditure in excess of \$1000 to support or oppose a ballot measure, or in excess of \$200 to support or oppose the election of a candidate, the person shall file a statement of expenditure giving the names and addresses of each person to whom such an expenditure has been made, and the amount, date, and nature of such expenditure and any other reportable expenditure not previously reported according to the schedule established in section 13-2-6(c).

(d) Interest Disclosure Statement.

(1) Reporting schedule.

(A) On or before September 10, any candidate having filed a petition of nomination shall file a statement of financial disclosure as set forth below. Candidates shall report any changes to the information reported below in subsections (2)(A), (C), and (D), of this provision, within fifteen days after the change has occurred.

(B) On or before April 15 of each year, every member of the city council shall file a statement of financial disclosure as set forth below. Council members shall report any changes to the information reported below in subsections (2)(A), (C), and (D), of this provision, within fifteen days of the end of the calendar quarter in which the change occurred.

(2) Any person required to file a financial disclosure statement required by this chapter shall file a statement on a form provided by the city clerk, that includes the following information:

(A) The reporting person's employer and occupation.

(B) The source of any income in excess of \$1000 per year, including, without limitation, other household income, capital gains, whether or not taxable, dividends, interest, wages, salaries, rents, profits, and retirement accounts.

(C) The name, location, and nature of activity of any business entities or enterprises, with holdings of real or personal property or with business dealings in the area encompassed by the Boulder Valley Comprehensive Plan, in which the reporting person or other household member has any financial interest or is actively engaged as an officer, director, or partner, and the nature of the reporting person's or other

household member's interest or activity. A reporting person or other household member is not required to report any financial interest in any business entity in which the reporting person's or other household member's only interest is through an investment in an excepted investment. A charitable donation is not a financial interest.

(D) The location of any real property within Boulder County in which the reporting person or other household member has an interest or, if the reporting person or other household member has a reportable interest in an entity or enterprise disclosed pursuant to paragraph (b)(3) above, in which the entity or enterprise has any interest and the nature of such interest.

(E) Any other information that the reporting person feels would be helpful or should be disclosed;

(3) Each financial disclosure statement shall include all information current on the date of filing, except for the sources of income required by subsection (d)(2)(B) of this section shall be reported as of the end of the previous calendar year.

(4) When reporting information regarding the activities of a third party, a reporting person is required to report only information about which he or she has actual knowledge. Notwithstanding any other provision of this chapter, no reporting person or other household member is required to disclose any confidential relationship protected by law.

### **13-2-7. - Filing, Preservation and Public Inspection of Statements.**

#### **(a) Recordkeeping.**

(1) Copies of documents supporting the contributions and expenditures included in any statements required by this section shall be maintained by the person or committee and provided to the city clerk in the event of an audit.

(2) Individuals and unofficial candidate committees who make an expenditure on behalf of any candidate who has received public funding under this chapter shall keep records of the time, place, and general subject matter of all consultation with any person about the substance, venue, and timing of the expenditure, which records shall be given to the city clerk if the clerk makes a demand for same. The clerk is authorized to make such a demand any time the clerk has a reasonable suspicion that the expenditures were controlled by or coordinated with or made upon consultation with any candidate or candidate's committee or agent thereof.

(b) Persons required by this chapter to file statements or deliver notices shall file such statements or notices with the city clerk on forms that the clerk provides and preserve such records for a period of six months from the date of the election.

(c) The city clerk shall preserve all statements filed under this chapter for a period of six months from the date of the election or, in the case of a successful candidate, until six months after the person finally leaves office, or as specified in the city's Records Retention Schedule, whichever is longer. Such statements constitute a part of the public records of the city and shall be available for public inspection during normal business hours.



## **Chapter 3 - Compliance and Enforcement for Campaign Violations.**

### **13-3-1. - Legislative Intent.**

The provisions of this chapter are intended to assist with the enforcement of the regulatory provisions of chapter 13-2, “Campaign Finance, Disclosure and Reporting Requirements,” B.R.C. 1981. The provisions of this chapter (a) provide procedures for citizen enforcement of complaints before the city clerk or a hearing officer and quasi-judicial review of that decision; (b) identify cures, remedial orders, and penalties that may be imposed by the city; and (c) make clear the city retains its power to enforce any code provision in a civil or criminal action. The procedures set forth in this chapter are not exclusive and shall supplement other applicable enforcement provisions, including those in Title 5, B.R.C. 1981.

### **13-3-2. - Allegation of Election Code Violation by Registered Elector.**

(a) A registered elector of the city may file a complaint with the city clerk alleging that any provision of chapter 13-2, “Campaign Finance, Disclosure and Reporting Requirements,” B.R.C. 1981, of this title has been violated. The complaint shall be in writing and must be submitted no later than forty-five days following any election in which it is alleged that the violation occurred. The complaint shall:

- (1) Identify the particular provisions of chapter 13-2, “Campaign Finance, Disclosure and Reporting Requirements” that allegedly were violated;
- (2) Identify the person violating the stated provisions (the “respondent”);
- (3) State the factual basis for that allegation;
- (3) Identify any relevant documents or other evidence;
- (4) Identify any witnesses or persons with relevant knowledge; and
- (5) State whether the person filing the complaint (the “complainant”) is willing to pursue the complaint through a hearing process as provided for in this chapter if the city clerk determines a hearing is necessary.

(b) The city clerk will notify the respondent and may provide the respondent an opportunity to provide information or otherwise respond to the allegations of the complaint.

### **13-3-3. - Review of Complaint.**

The city clerk will evaluate the complaint and all information in the clerk’s possession related to the complaint to determine whether there is probable cause to believe that further investigation would disclose a violation by the respondent. The city clerk may, at the clerk’s discretion, consult with the city attorney or delegated legal counsel regarding this review. Such determination shall be made based upon the complaint, any information provided by the complainant or the respondent, and upon such additional information as the clerk may determine to be pertinent.

**13-3-4. - Action by City Clerk.**

- (a) If the city clerk determines that the violation, if any, can be cured, the city clerk shall provide written notice to the complainant and the respondent of the potential cure. After the cure is implemented in accordance with the direction of the city clerk, the city clerk shall provide written notice that no violation exists to the complainant and the respondent.
- (b) If the city clerk determines that no probable cause exists that further investigation would disclose a violation by the respondent, the city clerk shall close the file with regard to the matter. In that event, the city clerk shall notify both the complainant and the respondent in writing. A determination by the city clerk that there is no probable cause that further investigation would disclose a violation shall be final and no appeal or review from such determination shall be permitted.
- (c) If the city clerk determines that there is probable cause that there may be a violation and can make the decision on the allegation without a hearing, the city clerk shall provide a written determination to the complainant and the respondent.

If the city clerk determines that there is probable cause that there may be a violation and additional facts are necessary to make a final determination on the violation, and the complainant is willing to present the case to prove the violation, a hearing shall be held as provided herein.

**13-3-5. - Power of City Clerk to Offer Cure or Issue Remedial Order.**

At any point prior to or during the investigation of a complaint, if the city clerk determines that an alleged violation can be cured or handled by remedial action, the city clerk may direct the respondent to cure the violation or take remedial action within seventy-two hours, including, without limitation, the following:

- (a) Filing a corrected disclosure form;
- (b) Publishing corrective advertising;
- (c) Refunding any contributions obtained in violation of Chapter 13-2; and
- (d) Refunding to the city any public monies inappropriately obtained for the financing of election activities.

In the event the respondent timely complies with the cure or remedial action required, any investigation of a complaint shall be terminated, and the final written decision of the city clerk shall be provided to the complainant and respondent.

**13-3-6. - Hearings on Complaints.**

- (a) The purpose of hearings on complaints will be to determine whether sufficient evidence of a violation by the respondent exists to warrant finding a violation occurred and imposing a penalty.
- (b) The hearing may be held before the city clerk or a hearing officer appointed by the city manager who may be a city employee. A hearing officer shall be appointed when the

dispute involves the city clerk's decisions regarding the administration or enforcement of this article. Any hearing shall be held in conformance with this chapter.

- (c) The hearing officer has the authority provided in Section 1-3-5, "Hearings and Determinations," to conduct the hearing and any decision shall be in accordance with the intent of Chapter 13-2 and this chapter.

#### **13-3-7. - Remedies Not Exclusive.**

The procedures set forth by these provisions shall not impair the right of any interested party, including the city clerk, the city attorney or a complainant, to notify the district attorney or the police of crimes that might be investigated or potentially prosecuted by those agencies, or pursue in municipal or state court such remedies as may be appropriate, including but not limited to prosecution under Title 5, B.R.C. 1981. This chapter shall not be construed as to require administrative proceedings before such criminal or civil action.

#### **13-3-8. - No Appeal to City Council.**

No decision by the city clerk made pursuant to this chapter shall be reviewed or reversed by the city council. The city council shall not become involved in the handling of any matter brought or investigated pursuant to these provisions. Nothing in this chapter shall be deemed to create a right of appeal to the city council by a complainant or person named in a complaint.

#### **13-3-9. - Confidentiality of Investigation.**

The contents of files relating to pending inquiries or investigations into possible violations of the provisions of chapter 13-2, "Campaign Finance, Disclosure and Reporting Requirements," and preliminary reports or drafts relating to the results of investigations, shall not be made public. The complaint, any written direction by the city clerk to a respondent to cure a violation, the final results of the clerk's inquiry or investigation, and the clerk's final decision on a complaint may be made public. The city council finds that other disclosures could compromise criminal justice investigations and undermine the purposes of this title 13 for compliance with the election and campaign disclosure requirements. Further, the city council finds that such disclosures would be contrary to the public interest because such disclosures might have the effect of politically damaging a person or interest in a case in which the final disposition of an investigation would not sustain a finding of misconduct. The release of interim findings or draft reports might in that manner interfere with the appropriate workings of the democratic process.

#### **13-3-10. - Campaign Finance Violations and Penalty.**

- (a) Criminal Acts and Penalties: It shall be unlawful to:

- (1) File any statement required by chapter 13-2 that the person knows contains false information;
- (2) Fail to file a required statement within seventy-two hours of having been notified by the city clerk pursuant to this chapter;
- (3) Fail to provide required information necessary to complete a required statement within seventy-two hours of having been notified by the city clerk pursuant to this chapter;

1 (4) Knowingly misstate or misrepresent the names of the persons required to be disclosed  
2 by chapter 13-2; or

3 (5) Fail to comply with any of the requirements of chapter 13-2.

4 (b) Civil Action by Registered Elector. In lieu of filing a complaint with the city as provided in  
5 section 13-3-2 above, any registered elector of the city may bring a civil action including,  
6 without limitation, an action for injury, and may sue for injunctive relief to enjoin violations  
7 or to compel compliance with chapter 13-2, provided such person first files with the city  
8 attorney a written request for the city attorney to commence action. The request to the city  
9 attorney shall include a statement of grounds for believing a cause of action exists. The city  
attorney shall respond within ten days after receipt of the request indicating whether the city  
attorney intends to file a civil action. If the city attorney indicates in the affirmative and  
files suit within thirty days thereafter, no other civil action for the same violation may be  
brought by any registered elector unless the action brought by the city attorney is dismissed  
without prejudice.

10 (c) Penalties. In addition to any other applicable remedy at law or in equity, the following shall  
11 apply:

12 (1) Any official or unofficial candidate committee that knowingly accepts a contribution in  
13 excess of \$100, or exceeds the expenditure limit in violation of chapter 13-2, is liable in  
14 a civil action initiated by the city attorney or by a registered elector of the city for an  
15 amount up to \$500, or three times the amount by which the contribution or expenditure  
limit is exceeded, whichever is greater. In determining the amount of civil liability, the  
hearing officer or court may take into account the seriousness of the violation and  
culpability of the defendant.

16 (2) The penalties in section 5-2-4, "General Penalties," B.R.C 1981.

17 Section 2. This ordinance is necessary to protect the public health, safety, and welfare of  
18 the residents of the city, and covers matters of local concern.

19 Section 3. The city council deems it appropriate that this ordinance be published by title  
20 only and orders that copies of this ordinance be made available in the office of the city clerk for  
21 public inspection and acquisition.  
22  
23  
24  
25

1 INTRODUCTION, READ ON FIRST READING, AND ORDERED PUBLISHED BY  
2 TITLE ONLY this 19th day of February 2019.

3 \_\_\_\_\_  
4 Suzanne Jones,  
Mayor

5 Attest:

6  
7 \_\_\_\_\_  
8 Lynnette Beck,  
City Clerk

9 READ ON SECOND READING, PASSED AND ADOPTED this 5th day of March 2019.

10  
11 \_\_\_\_\_  
12 Suzanne Jones,  
Mayor

13 Attest:

14 \_\_\_\_\_  
15 Lynnette Beck,  
City Clerk

CHART OF PROPOSED AMENDMENTS

SECTION	OLD CODE LOCATION	NEW PLACEMENT/CHANGES	COMMENTS
<b>Chapter 1</b>	<b>Elections</b>		
13-1-1	Legislative Intent	N/A	Historical information was removed. Section was redrafted to improve readability. A sentence was added to make it clear that this section does not cover charter amendments. Charter amendments are covered by state law.
13-1-2	Adoption of Municipal Elections Code of 1965	Title change to General Municipal Elections.	
13-1-3	Responsibility of the City Manager	Title change to Responsibility of City Clerk.	The city clerk, rather than the city manager will be responsible for the administration of elections.
13-1-4	Initiative and Referendum	N/A	Moved last sentence to 13-1-1 as a statement of legislative intent.
13-1-5	Special Provisions Concerning Filling Council Vacancies by Special Election	N/A	Historical information was removed. Change intended to improve readability.
13-1-6	Fixing of Ballot Title for Purposes of § 1-45-117, C.R.S.	N/A	No change.
<b>Chapter 2</b>	<b>Campaign Finance Disclosure</b>		
13-2-1	Legislative Intent	Same	Historical information removed. Redrafted to improve readability. This section is focused on the primary purposes of the chapter: financial disclosure, contribution limits, entity transparency, campaign financing and the financial dealings of council members and candidates.
13-2-2	Definitions	Same	A number of the definitions were amended to implement the recommendations of the working group.
		“Advertisement” definition added	
		“Ballot measure committee” definition added	Replaces definition of “issue committee.” “Ballot Measure Committee is used throughout Title 13. The definition includes persons that accept contributions or two or more people that make an expenditure.

CHART OF PROPOSED AMENDMENTS

SECTION	OLD CODE LOCATION	NEW PLACEMENT/CHANGES	COMMENTS
		“Candidate forum” definition added	Candidate forums, if open to all, are not subject to campaign finance disclosure requirements.
		“Distribute, distribution, or distributed” definition added	Clarification. The term is used though out the code to describe communications that require disclosures.
		“Election cycle” definition added	Defines the period during which contribution limits apply.
		“Electioneering communication” definition added	Electioneering is a defined communication type that is now regulated.
		“Entity” definition added	Clarification that an entity is not the same as a natural person. An “Entity” has reporting requirements.
		“Express advocacy” definition added	Change was necessary to implement the various types of communications that will require expenditure disclosures.
	“Issue Committee definition deleted		Renamed a “Ballot measure committee” in the new code.
	“Material change” definition deleted		Now addressed in the revised reporting requirements.
		“Natural person” definition added	Some of the regulations now apply to natural persons, which are humans.
		“Person” definition added	Clarification. It refers to the definition that applies to the entire B.R.C. 1981.
		“Top contributors” definition added	The top three contributors over \$1000 will need to be disclosed for Ballot measure committees.
13-2-3	Interest Disclosure Statement	Now 13-2-6(d)	New title – Reporting Requirements. All types of reporting requirements for individuals and committees are consolidated into one place.
13-2-4	Filing Dates and Disclosure Periods – Candidates and Incumbents	Now 13-2-6(d)	New title – Reporting Requirements. All types of reporting requirements for individuals and committees are consolidated into one place.
13-2-5	Statement of Organization of Official Candidate Committee	Now 13-2-6(b)	New title – Reporting Requirements. All types of reporting requirements for individuals and committees are consolidated into one section.
13-2-6	Statement of Organization of	Now 13-2-6(b)	New title – Reporting Requirements with new language. All committee

CHART OF PROPOSED AMENDMENTS

SECTION	OLD CODE LOCATION	NEW PLACEMENT/CHANGES	COMMENTS
	Unofficial Candidate Committee		statements are combined into one section.
13-2-7	Statement of Organization of Issue Committee	Now 13-2-6(b)	New title – Reporting Requirements. All statements are combined into one section.
13-2-8	Statement of Contributions and Expenditures of Official Candidate Committee	Now 13-2-6(c)	New title – Reporting Requirements. All contribution and expenditure statements are combined into one section.
13-2-9	Statement of Contributions and Expenditures of Unofficial Candidate Committee	Now 13-2-6(c)	New title – Reporting Requirements. All contribution and expenditure statements are combined into one section.
13-2-10	Independent Expenditures - Applies to Natural Persons and Unofficial Candidate Committees	Now 13-2-6(c)	New title – Reporting Requirements. All statements are combined into one section. Requirements were added to regulate electioneering communications.
13-2-11	Statement of Contributions and Expenditures of Issue Committee	Now 13-2-6(c)	New title – Reporting Requirements. All statements are combined into one section.
13-2-12	Election Materials and Advertising Supporting or Opposing Candidate to Contain Sponsor's Name	Now 13-2-5(a)	New title – Disclosure Requirements. All committee and independent disclosure requirements were combined into one section.
13-2-13	Solicitation for Candidate Campaign Funds	Now 13-2-5(b)	New title – Disclosure Requirements. Redrafted to improve readability.
13-2-14	Filing, Preservation, and Public Inspection of Statements	Now 13-2-7	Redrafted to improve readability.
13-2-15	Notice of Disclosure Requirements and Enforcement	Now in 13-2-6(a), 13-2-7(b)	There were administrative requirements that do not need to be in the code and were removed.
13-2-16	Contribution Limitation – Applies to Natural Persons and Unofficial Candidate Committees	Now 13-2-4(a)	New title – Campaign Activities. Redrafted to improve readability. Combined with similar relations related to campaign activities.
13-2-17	Anonymous Contributions	Now in 13-2-4(c)	New title – Campaign Activities. Redrafted to improve readability. Combined with similar relations related to campaign activities.



CHART OF PROPOSED AMENDMENTS

SECTION	OLD CODE LOCATION	NEW PLACEMENT/CHANGES	COMMENTS
13-2-18	Unexpended Campaign Contributions	Now 13-2-4(d)	New title – Campaign Activities. Redrafted to improve readability. Combined with similar relations related to campaign activities.
13-2-19	Public Matching Funds	Now 13-2-3(a)(2)	New title – Participants. Redrafted to improve readability. Combined with similar relations related to campaign activities.
13-2-20	Eligibility for Matching Funds	Now 13-2-3(a)(2)(A)	New title – Participants. Redrafted to improve readability. Combined with similar relations related to campaign activities.
13-2-21	Violations and Penalty	Now 13-3-10	New title – Campaign Finance Violations and Penalty.
<b>Chapter 3</b>	<b>Campaign Activities</b>	13-3-2 to 13-3-5 moved into Chapter 13-2	13-3-1 Historical information removed. This change was part of the reorganization of the chapter.
13-3-1	Legislative Intent.	Moved to 13-1-1	Redrafted and simplified to improve readability.
13-3-2	Campaign Advertisement Requirements	13-2-4(e)	New title – Campaign Activities. Moved as part of the reorganization of Title 13.
13-3-3	Contributions in the name of another prohibited.	13-2-4(b)	New title – Campaign Activities. Moved as part of the reorganization of Title 13.
13-3-4	Limitation on the contribution of Currency	13-2-4(a)	New title – Campaign Activities. Moved as part of the reorganization of Title 13.
13-3-5	Misrepresentation of Campaign Authority	13-2-4(f)	New title – Campaign Activities. Moved as part of the reorganization of Title 13.
<b>Chapter 4</b>	<b>Complaints Related to Election Procedures and Regulations</b>	Now Chapter 3	Title changed to Compliance and Enforcement for Campaign Violations.
13-4-1	Legislative Intent	Now 13-3-1	New language explaining provisions of this chapter.
13-4-2	Allegations of Election Code Violation	Now 13-3-2	New title - Allegation of Election Code Violation by Registered Elector.
13-4-3	Initial Review of Request for Action	Now 13-3-3	New title - Review of Complaint.
13-4-4	Denial of Request for Action by City Manager	Now 13-3-4	New title - Action by City Clerk.
13-4-5	Determination by City Manager Final	Now 13-3-4	Reworded and incorporated with additional language related to the

CHART OF PROPOSED AMENDMENTS

SECTION	OLD CODE LOCATION	NEW PLACEMENT/CHANGES	COMMENTS
			actions that be made by the city clerk.
13-4-6	Power of City Manager to Hold Hearings	Hearings standards for complains can be found in 13-3-6.	Deleted – hearings will be held in conformance with Chapter 1-3 on quasi-judicial hearings.
13-4-7	Hearing Procedures	Hearings standards for complains can be found in 13-3-6.	Deleted – hearings will be held in conformance with Chapter 1-3 on quasi-judicial hearings.
13-4-8	Negative Determination by City Manager	Now 13-3-4(b)	Deleted and replaced with similar language.
13-4-9	Power of City Manager to Issue Remedial Order or Warning Letter	Now 13-3-5	New title – Power of City Clerk to Offer Cure or Issue Remedial Order with additional language.
13-4-10	Referral to City Attorney for Criminal or Civil Prosecution	Prosecution provision are not in Section 13-3-7, which notes the various ways that violations can be prosecuted.	Replaced with 13-3-10 with new title Campaign Finance Violations and Penalty. This section contains the major violations that may occur under Title 13 and includes charging language.
13-4-11	Remedies Not Exclusive	Now 13-3-7	With new language. Changes were made to clarify that the clerk and city attorney may prosecute violations through civil and criminal actions.
13-4-12	No Appeal to City Council	Now 13-3-8	With new language. There is “no appeal” language also in Section 13-3-4(b).
13-4-13	Confidentiality of Investigation	Now 13-3-9	Deletions and new language. Language was added that the final decision of the clerk on complaints may be made available to the public.