

ORDINANCE NO. 109, 2020
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING THE CODE OF THE CITY OF FORT COLLINS TO MODIFY AND UPDATE
REQUIREMENTS AND PROCEDURES FOR CITY ELECTIONS AND
CAMPAIGN FINANCE IN CITY ELECTIONS

WHEREAS, Chapter 7 of the City Code sets out procedures and requirements for redistricting of Council districts, for the conduct of City elections, for disclosure of campaign finance information, and other related matters; and

WHEREAS, in 2015 the City Council formed an ad hoc committee to review, discuss and recommend the most beneficial changes to the Code and City Charter regarding elections and other related matters; and

WHEREAS, in January 2017, Council made the ad hoc Committee a standing committee of Council for the purpose of identifying and evaluating ideas for improvements to City election laws and practices and anticipating adjustments that may be needed to adapt to a changing legal and technological environment, for Council consideration; and

WHEREAS, as a result of the Committee's work (as both an ad hoc committee and a standing committee), Ordinance No. 021, 2016, Ordinance No. 005, 2017, Ordinance No. 045, 2018, Ordinance No. 077, 2018, and Ordinance No. 113, 2018 were considered and adopted by the Council to update various provisions of Chapter 7; and

WHEREAS, the Committee continued to meet in 2018, 2019 and 2020, and has recommended additional clarifications and amendments to Chapter 7; and

WHEREAS, the Committee has recommended that the Code be amended to including new procedures for the handling of complaints filed by candidates or registered electors of the City, including amendments such that a majority of campaign finance violations would be changed from misdemeanor violations to civil infractions; and

WHEREAS, the Committee has recommended that the Code be amended to allow that unexpended campaign contributions may be used for subsequent federal, state, county, local or City elections, to the extent permitted by law; and

WHEREAS, the Committee has recommended that unexpended campaign funds remaining with a candidate committee on the 70th day after the election will be considered contributions to that candidate committee for the next election; and

WHEREAS, the Committee has recommended that the complainant cause of action in Section 7-150 be removed from the Code because recent case law raises substantial concerns about its constitutionality; and

WHEREAS, staff has recommended that the deadline for filing financial disclosures by Councilmembers set out in Chapter 2 of the Code be made uniform for those Councilmembers

sitting on Council and for those newly elected, re-elected, appointed or retained Councilmembers; and

WHEREAS, these amendments generally improve and clarify the City's campaign finance disclosure and election requirements and processes; and

WHEREAS, these amendments further the City's and the public's interest in shedding light for the public on the expenditure of money to influence the outcome of City elections, while respecting the speaker's interest in freedom of political speech; and

WHEREAS, the Council desires to enact the recommendations of the Committee and staff to clarify and improve the various provisions of Chapter 2 and Chapter 7, as set forth below.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That Section 2-636 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 2-636. Required.

Any candidate for the office of City Councilmember shall, at the time of filing his or her acceptance of nomination with the City Clerk, file with the City Clerk a written disclosure statement that conforms to the requirements of § 2-637. Such a written disclosure statement shall also be filed with the City Clerk by the City Manager and the City Attorney not later than thirty (30) days after their appointment or retention in office.-Each member of the City Council who is elected, re-elected, appointed or retained in office shall also file such a written disclosure statement with the City Clerk not later than May 15 of the year in which their election, re-election, appointment or retention in office occurs. However, any City Councilmember who is elected or re-elected and who has, prior to said election or re-election, filed a written disclosure statement within ten (10) days after filing acceptance of nomination, may file an amended statement with the City Clerk or notify the City Clerk in writing that there has been no change in the disclosures made therein, since the date of filing of the same.

Section 3. That Section 7-135 of the Code of the City of Fort Collins is hereby amended to add a new Subsection (f) to read as follows, with subsequent Subsections renumbered accordingly:

Sec. 7-135. Campaign contributions/expenditures.

...

(f) No issue committee, small-scale issue committee or political committee shall make a contribution or contribution in kind to any candidate committee.

(g) *Contributions from one (1) candidate committee to another.*

(1) No candidate committee shall make a contribution or contribution in kind to, or accept a contribution or contribution in kind from, a candidate committee of another candidate.

(2) No candidate committee shall accept a contribution or contribution in kind from a candidate committee of the same candidate that was established or maintained for a federal, state or county election campaign or office.

...

Section 4. That Section 7-136 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 7-136. Disclosure; filing reports.

(a) All candidate committees, political committees and issue committees shall report to the City Clerk their contributions and contributions in kind received, including the name and address of each person who has made a contributions or a contributions in kind; expenditures made; and obligations entered into by the committee.

...

(g) Any report that is deemed by the City Clerk to be incomplete or inconsistent with the requirements of this Article shall be accepted on a conditional basis, and shall be subject to the penalties and process in § 7-143.

...

Section 5. That Section 7-138 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 7-138. Unexpended campaign contributions.

(a) Unexpended campaign contributions to a candidate committee may be:

(1) Contributed to a political party;

(2) Contributed to a candidate committee established by the same candidate for a subsequent campaign in a City election, or to a candidate committee established after January 1, 2021, for a non-City election, to the extent permitted by applicable law. For a City election, such contributions are subject to the limitations set forth in Paragraph 7-135(g)(2);

(3) Donated to a charitable organization recognized by the Internal Revenue Service;

(4) Returned to the contributors;

- (5) Used to pay for the cost of a recount requested by the candidate pursuant to § 7-46. In no event shall contributions to a candidate committee be used for personal purposes not reasonably related to supporting the election or retention of the candidate.
- (b) In addition to any use described in Subsection (a) of this Section, a person elected to the office of Mayor or Councilmember, or retained in office following a recall attempt, may use unexpended campaign contributions held by the person's candidate committee for any of the following purposes:
- (1) Voter registration;
 - (2) Political issue education, which includes obtaining information from or providing information to the electorate;
 - (3) Postsecondary educational scholarships;
 - (4) To defray reasonable and necessary expenses related to mailings and similar communications to constituents;
 - (5) Any expenses that are directly related to such person's official duties as an elected official, including, but not limited to, expenses for the purchase or lease of office equipment and supplies, room rental for public meetings, necessary travel and lodging expenses for legislative education such as seminars, conferences and meetings on legislative issues, and telephone and pager expenses.
- (c) A candidate committee for a former officeholder or a person not elected to office shall expend all of the unexpended campaign contributions retained by such candidate committee, for the purposes specified in Subsection (a) of this Section, no later than five (5) years from the date such officeholder's term expired or from the date of the election at which such person was a candidate for office, whichever is later.
- (d) Unexpended campaign contributions to an issue committee or political committee may be donated to any charitable organization recognized by the Internal Revenue Service, returned to the contributor, or used to pay for the cost of a recount requested by the committee's registered agent pursuant to § 7-46.
- (e) Any unexpended campaign contributions held by a candidate committee subsequent to the date of the election shall, upon the registration of a candidate committee for a City office in a subsequent election, be available for that candidate committee as a beginning fund balance to use in that election. Such carryover funds will not count against any contribution limit attributable to any past contributor in a prior election campaign. Absent the candidate registering a candidate committee for a City office in a subsequent election, the unexpended campaign contributions may be used as otherwise set forth in this Section.

Section 6. That Section 7-143 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 7-143. Violations and penalties.

(a) Except as provided in Subparagraph (e) herein, any person who knowingly violates or fails to comply with the provisions of this Article as set forth in the following schedule commits a civil infraction and is subject to a civil penalty as follows:

Code Section	Penalty Amount
7-134 – Registration of committees; termination.	\$150 first offense; \$300 each subsequent offense
7-135 – Campaign contributions/expenditures.	\$100 first offense; \$200 each subsequent offense
7-136 – Disclosure; filing of reports.	\$100 first offense; \$200 each subsequent offense
7-137(b) – Reports to be public record.	\$50 first offense; \$100 each subsequent offense
7-138 – Unexpended campaign contributions.	\$100 first offense; \$200 each subsequent offense
7-139 – Independent expenditures	\$100 first offense; \$200 each subsequent offense
7-140 – Responsibility for communications.	\$50 first offense; \$100 each subsequent offense
7-141 – Expenditures for political advertising; rates and charges.	\$50 first offense; \$100 each subsequent offense

(b) Any person who undertakes any of the following commits a misdemeanor and is subject to a fine or imprisonment in accordance with § 1-15:

- (1) Knowingly violates § 7-136 with the intent to fraudulently misrepresent campaign contributions or expenditures on a disclosure report;
- (2) Knowingly violates § 7-142; or
- (3) Is found liable for a violation after the person has been found liable for two (2) or more violations under this Article in a single election cycle.

(c) Failure to comply with the provisions of this Article shall have no effect on the validity of any election, except as expressly required by the City Charter.

Section 7. That Section 7-145 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 7-145. Allegation of campaign violation.

...

(c) For complaints that allege a criminal violation as set forth in § 7-143(b), the City Clerk will forward the complaint to the respondent and to the City Attorney, who will evaluate the complaint for probable cause as provided for in this Division 2.

(d) For complaints that do not allege a criminal violation, the complaints shall be subject to a civil infraction process as provided herein:

(1) The City Clerk will forward the complaint to the respondent by electronic mail, notifying the respondent that the alleged violation may be subject to a civil infraction.

(2) The City Clerk will forward the complaint to the City Attorney, who shall review the complaint to determine whether the complaint:

a. Was timely filed under § 7-145(a);

b. Contains the information required by § 7-145(b); and

c. Alleges sufficient facts to support a factual and legal basis for the violations alleged.

(3) If the City Attorney determines that the complaint fails to satisfy any of the three (3) elements in the immediately preceding Subsection (2), the City Attorney shall so notify the City Clerk who will, in turn, notify the complainant and respondent in writing.

(4) If the City Attorney determines that the complaint satisfies the three (3) elements in the immediately preceding Subsection (2), the City Attorney shall notify the City Clerk who will, in turn, notify the respondent in writing of the presumptive penalty in accordance with § 7-143(a) and that the respondent shall have seven (7) days from the date of the notice to submit written evidence of its cure or diligent efforts to cure the violation, including any amendments to any applicable report containing one or more deficiencies, modified campaign materials or other proof that the violation has been corrected. The respondent's written response shall be due to the City Clerk no later than 5:00 p.m. on the seventh (7th) day. In the event the seventh (7th) day is a City holiday, the response shall be due no later than 5:00 p.m. the next business day.

(5) On receipt of the respondent's written response, the City Attorney may, through the City Clerk, ask the respondent to provide more information and may grant the respondent an extension of time of up to seven (7) additional days to file an amended response regarding cure in order to respond to any such request.

(6) After the period for cure has expired, the City Attorney shall determine whether the respondent has cured any violation alleged in the complaint and, if so, whether respondent has substantially complied with its legal obligations under Chapter 7, Article 5, of this Code. In determining whether the respondent has substantially complied with its legal obligations, the City Attorney shall consider:

- c. Whether the noncompliance may properly be viewed as a knowing attempt to mislead the electorate or election officials.

If the City Attorney determines the respondent has cured any violation or otherwise substantially complied with its legal obligations under Chapter 7, Article 5, the City Attorney shall so notify the City Clerk who, in turn, shall notify the complainant and the respondent and no penalty shall apply for the corresponding alleged violation or violations, as applicable.

(7) If the City Attorney determines the respondent has not cured the alleged violation or otherwise substantially complied with its legal obligations, the City Attorney may conduct additional review or investigation of the allegations of the complaint to determine whether to file a complaint with the Municipal Court.

(8) If the City Attorney files a complaint with the Municipal Court, the matter shall be governed by Article V of Chapter 19 of this Code.

(9) A complainant or any other nonrespondent shall not be a party to the City Attorney's initial review, cure proceedings, investigation, or any proceeding in the Municipal Court. A complainant may request permission from the Municipal Judge or their designee to file an amicus curiae brief.

(10) Any person that commits a violation shall be personally liable for the penalties imposed. Any candidate shall be personally liable for penalties imposed upon the candidate or the candidate's committee and may use campaign contributions to pay penalties.

Section 8. That Section 7-146 of the Code of the City of Fort Collins is hereby amended to read as follows:

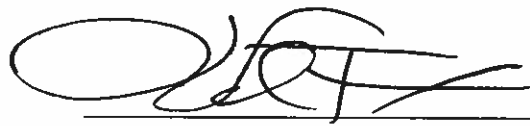
Sec. 7-146. Evaluation of campaign complaint.

- (a) For those complaints that concern a criminal violation pursuant to § 7-143(b), if the City Attorney determines that no probable cause exists, that the complaint fails to allege an enforceable violation, or that the requirements of § 7-145 were not met by the complainant, the City Attorney shall so notify the City Clerk, who will, in turn, notify the complainant and respondent in writing.
- (b) If the City Attorney determines probable cause exists, the City Attorney may notify Fort Collins Police Services, who, in consultation with the City Attorney, may file and serve a summons and complaint to the respondent.
- (c) The City Attorney retains prosecutorial discretion on whether to ultimately file criminal charges. If the City Attorney determines filing a summons and complaint is inappropriate,

- (c) The City Attorney retains prosecutorial discretion on whether to ultimately file criminal charges. If the City Attorney determines filing a summons and complaint is inappropriate, he or she shall so notify the City Clerk, who will, in turn, notify the complainant and respondent in writing.

Section 9. That Section 7-150 of the Code of the City of Fort Collins is hereby deleted in its entirety and held in reserve.

Introduced, considered favorably on first reading, and ordered published this 1st day of September, A.D. 2020, and to be presented for final passage on the 15th day of September, A.D. 2020.

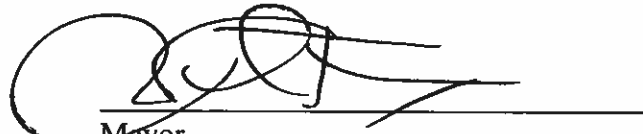


Mayor

ATTEST:


City Clerk

Passed and adopted on final reading on the 15th day of September, A.D. 2020.


Mayor

ATTEST:


City Clerk