

**ORDINANCE NO. 4963**

**AN ORDINANCE AMENDING TITLE 2, CHAPTER 2.20 OF THE GRAND JUNCTION MUNICIPAL CODE REGARDING CAMPAIGN AND POLITICAL FINANCE VIOLATIONS**

**RECITALS:**

The City of Grand Junction is a home rule municipality, established by Charter in 1909. Article XX of the Colorado Constitution confers upon home rule cities power over all matters pertaining to municipal elections.

The City of Grand Junction has adopted the "Colorado Municipal Election Code of 1965" by reference ("Election Code").

In August 2020, following SB 19-232, the Secretary of State (SOS) adopted new rules and processes (8 CCR 1505-6) for filing complaints related to campaign and political finance. Specifically, Rule 17.6 states that any filing related to a municipal campaign finance matter must be filed with the municipal clerk.

Under the Colorado Constitution, the SOS is obligated to hear Fair Campaign Practices Act (FCPA) violations when a city has not adopted its own campaign finance ordinance (Colorado Constitution, Article XXVIII, Section 9(2)(a)). The adoption of the new SOS rules seems to indicate that the SOS will not be addressing future alleged violations under the FCPA at the municipal level and will instead direct complainants to the municipal clerk.

As such, staff is recommending an amendment to the GJMC to identify a procedure for the filing of an alleged campaign violation.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION:**

That Chapter 2 of the Grand Junction Municipal Code is hereby amended by the addition of a new Section 2.20.040 which reads in its entirety as follows:

**Sec. 2.20.040 - Allegation of Campaign Violation.**

(a) Any candidate or registered elector of the City ("Complainant") who has reason to believe a campaign violation has been committed by any candidate, candidate committee, issue committee, small-scale issue committee or political committee ("Respondent") may file a written complaint ("Complaint") with the City Clerk, no later than sixty (60) days after the alleged violation(s) has occurred.

(b) The Complaint must contain:

1. The name(s) of the alleged violator(s) (Respondent);
2. The Election Code section(s) or provision(s) allegedly violated;
3. A clear and succinct statement or description of the offense allegedly committed and the basis for the allegation;
4. Identification of any relevant document(s) or other evidence;
5. Identification of any witness(es) or person(s) with relevant knowledge of the alleged violation(s); and
6. The name, address, telephone number and e-mail address of the Complainant.

(c) The City Clerk will forward the Complaint to the City Attorney, who will evaluate the complaint for probable cause.

(d) Campaign finance complaints must be filed in writing and can be submitted by hardcopy or electronically. Electronic signatures are permitted for any complaint documentation that requires a signature.

(e) A Complaint must identify both a Respondent and a Complainant. An anonymous Complaint(s) or Complaint(s) that fails to identify a Complainant and Respondent may be rejected by the City Clerk.

(f) Multiple Complaints that arise out of or under a common set of facts will be consolidated when practicable. When consolidation is not practicable and the outcome of one Complaint will be determinative of another Complaint(s), the Complaint(s) will be stayed until a final decision issues on the initial Complaint and any appeals are resolved.

(g) Violations stemming from late or missing filings that have been waived or are pending a waiver are not subject to the complaint process.

(h) A Complaint, charge/declination of charge, motions and orders relating to a Complaint will be publicly available at the time the City Clerk provides the document to the Respondent.

(i) The City may redact any document that it will otherwise make available pursuant to this rule if such redaction is necessary to protect any personal private information or personally identifiable information, is not relevant or material to the determination, or as otherwise required under the Colorado Open Records Act or other applicable law.

(j) Settlement of complaints and fine structure for violations

After a Complaint has been filed with a hearing officer the City Clerk, in consultation with the City Attorney, may enter into a settlement agreement with the Respondent.

**Sec. 2.20.041 - Evaluation of campaign complaint.**

(a) If the City Attorney determines that no probable cause exists, that the complaint fails to allege an actionable violation, or that the requirements of Section 2.20.040 were not met by the Complainant, the City Attorney shall so notify the City Clerk, who will, in turn, notify the complainant in writing.

(b) If the City Attorney determines probable cause exists, the City Attorney may notify Grand Junction Police, which, in consultation with the City Attorney, may serve a summons and complaint to the alleged violator. The City Attorney has and retains prosecutorial discretion, as provided by law and ethical responsibilities, to file or decline prosecution. If the City Attorney determines filing a summons and complaint is unjustified, he or she shall so notify the City Clerk in writing, who will, in turn, notify the Complainant and Respondent in writing.

**Sec. 2.20.042 Conflicts of Interest.**

Notwithstanding the above, nothing in this Article shall be read to preclude the City Attorney from declaring a conflict of interest, and taking appropriate action in accordance with this Code and general practices of the City, including, but not limited to, hiring special counsel, if deemed necessary and advisable under the circumstances.

**Sec. 2.20.043 Complaint not required for City action.**

Nothing in this Article shall preclude the City from pursuing an action, civil or criminal, against any person, candidate, candidate committee, issue committee, small-scale issue committee or political committee for any violation of this Chapter, regardless of whether a complaint had been filed pursuant to this Article.

**Sec. 2.20.044 Administrative Procedures.**

The City Manager is authorized to adopt administrative regulations, including but not limited to appointment of hearing officer and other procedures, consistent with the provisions of this Article.

**Sec. 2. 20.045 Action by Complainant.**

(a) After having received written notification from the City Clerk pursuant to Section 2.20.040 that the City Attorney declined to prosecute, or after one hundred eighty (180) days of filing the Complaint, whichever is first, the Complainant may bring a civil action in District Court.

(b) The Complainant has one (1) year from the date of the alleged violation to bring an action.

(c) The Complainant may seek a court order to compel compliance with this Article, provided however, that Complainant must first file a Complaint with the City Clerk, pursuant to Section 2.20.040 and otherwise exhaust all administrative remedies.

### **Sec. 2. 20.046 Penalties.**

A Respondent that is found to or admits a knowing violation of this Article may be civilly liable in an amount up to two thousand dollars (\$2,000), or, if applicable, three (3) times the amount of the discrepancy, whichever is greater and/or may be required to perform certain specific actions regarding the violation(s) as provided herein.

In reaching a settlement and fine amount, the following shall apply, together with mitigating and aggravating factors found:

(a) Amount of contributions or donations accepted or expenditures made while out of compliance, outlined below:

(1) Less than \$1,000 fine is at least \$150;

(2) Between \$1,001 and up to \$5,000 fine is at least \$300; or

(3) Greater than \$5,000 the fine of at least \$300 plus at least 10 percent of total amount of the contributions and expenditures made.

(b) Failure to file complete and accurate reports

(1) Failure to file complete and accurate reports is a \$100 fine per report plus 5 percent of the activity not accurately or completely reported;

(c) Failure to file, or file an accurate, candidate affidavit

(1) If affidavit is submitted within 14 days of registration deadline the fine is at least \$50; or

(2) If affidavit is submitted after 14 days post deadline, the fine is at least \$100.

(d) Prohibited contributions, donations, and expenditures

(1) For accepting a prohibited contribution including accepting an amount that exceeds a contribution limit or making prohibited expenditures, the fine is at least \$100 and 10 percent of the prohibited activity:

(e) Prohibited use of unspent campaign funds and exceeding voluntary contribution limits

(1) A fine of at least \$250 per violation; and

(2) A fine that is up to 25 percent of the amount of the prohibited activity.

(f) Disclaimer and electioneering communications

(1) If noncompliant communication is mitigated prior to the election: a fine of at least 5 percent cost of the noncompliant communication including cost to broadcast; or

(2) If noncompliant communication is not mitigated prior to the election: a fine of at least 10 percent of the cost of the communication including cost to broadcast.

(g) Other violations of campaign and political finance rules and regulations will be assessed penalties based on the circumstances of the violations.

(h) In addition to monetary fines specific action(s), by/ of/from the Respondent may be required. Specific actions may include:

(1) Registering as a committee or candidate;

(2) Return or donation of prohibited contribution or disgorgement of the value of the improper conduct;

(3) Filing or amending disclosure reports;

(4) Inclusion or correction of disclaimer on the communication; or

(5) Other specific performance or terms that may be warranted.

(i) Mitigating and aggravating factors that may be considered/found to lessen or negate the imposition of fines, specific actions or other penalty(ies) are:

(1) Nature and extent of the violation;

(2) Timing of the violation (including proximity to the election);

(3) Ability or effort to mitigate the violation;

(4) Evidence of an intentional act or a pattern or practice of misconduct;

(5) Extent to which the harm caused by the violation or the value of the violation cannot be reasonably calculated; or

(6) Other aggravating or mitigating factors may be taken into consideration in reaching a just and equitable outcome.

#### Sec. 2. 20.047 Attorney Fees

Each party (Complainant, Respondent and City) shall bear its own attorney's fees and costs.

Introduced on first reading this 7<sup>th</sup> day of October 2020.

PASSED and ADOPTED this 21<sup>st</sup> day of October 2020.

*C.E. Duke Wortmann*

C.E. Duke Wortmann  
Mayor and President of the City Council

ATTEST:

*Selestina Sandoval*  
Selestina Sandoval  
Deputy City Clerk



I HEREBY CERTIFY THAT the foregoing Ordinance, being Ordinance No. 4963 was introduced by the City Council of the City of Grand Junction, Colorado at a regular meeting of said body held on the 7<sup>th</sup> day of October 2020 and the same was published in The Daily Sentinel, a newspaper published and in general circulation in said City, in pamphlet form, at least ten days before its final passage.

I FURTHER CERTIFY THAT a Public Hearing was held on the 21<sup>st</sup> day of October 2020, at which Ordinance No. 4963 was read, considered, adopted and ordered published in pamphlet form by the Grand Junction City Council.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 23<sup>rd</sup> day of October 2020.

  
Deputy City Clerk

Published: October 9, 2020  
Published: October 23, 2020  
Effective: November 22, 2020

