


RE: ADMINISTRATIVE PROCEDURES AND REGULATION NO. 01-21

Process for Addressing Campaign Violations

City of Grand Junction

ISSUED BY:  \_\_\_\_\_ 1/26/2021

Date

*Wanda Winkelmann, City Clerk* \_\_\_\_\_ 01/26/2021

Date

 \_\_\_\_\_ 26 Jan. 2021

Date

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This administrative regulation and procedures is for and establishes processes to address alleged campaign violations. These regulations and procedures are intended to construe, clarify and apply Grand Junction Municipal Code (GJMC) 2.20.040 et. seq. as authorized by GJMC 2.20.044 and 2.12.010.

In October of 2020 the Grand Junction City Council adopted Ordinance 4963. The Ordinance is in response to and follows SB 19-232 under which the Colorado 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)). With the adoption of the new SOS rules the SOS will not be addressing future alleged violations under the FCPA at the municipal level and will instead direct complainants to the City Clerk as provided in the GJMC and this regulation.

The City Council amended the GJMC to provide procedures for the filing of an alleged campaign violation. The regulations and procedures established for alleged municipal campaign violations are as follows.

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### **RECEIPT OF COMPLAINT**

Complaints regarding violations of municipal campaign activities must be made in writing and filed with the City Clerk.

Upon receipt of any written complaint, the City Clerk will forward the complaint(s) to the City Manager and City Attorney.

### **COMPLAINT EVALUATED FOR CONFLICT OF INTEREST AND PROBABLE CAUSE**

The City Attorney will first evaluate the complaint for conflict of interest/an allegation of a campaign violation by the City Attorney. If a violation is alleged against the City Attorney, the City Attorney will refer any credible complaint(s) filed against him/her to outside counsel employed for the purpose of discharging the duties of this regulation and applicable law. Any investigation conducted by outside counsel shall be in accord with the provisions of Colorado Rules of Professional Conduct and GJMC §2.20.042.

If a violation is alleged against the City Clerk and/or the City Manager, the City Attorney will advise the same in writing of the allegation(s) and furthermore of his/her/their right to consult with personal counsel.

If the alleged campaign violation is not against the City Clerk, City Manager or City Attorney then the City Attorney will review the allegation(s) for probable cause.

Any complaint must be filed in writing and signed by the Complainant on the form provided by the City. The complaint must identify one or more respondents and include the information required to be provided on the form.

Upon receipt of a complaint for which probable cause is found, the City Attorney shall notify the respondent by e-mail or by regular mail if e-mail is unavailable of the filing of the complaint.

The City Attorney will process the complaint in accordance with applicable requirements of the GJMC, this regulation and other relevant law.

The City Attorney shall conduct an initial investigation, including but not limited to by the hiring of a special investigator, into the allegations of the complaint(s) to determine whether the complaint:

(i) was timely filed;

(ii) specifically and credibly identifies one or more violations of the GJMC or other City law/matters within the City's jurisdiction; and,

(iii) credibly alleges sufficient facts to support a factual and legal basis for the complaint(s).

### **BASIS FOR THE VIOLATIONS OF LAW ALLEGED IN THE COMPLAINT**

If the City Attorney determines that no probable cause exists, that the complaint fails to allege an actionable violation, or that the requirements of GJMC §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.

After having received written notification from the City Clerk pursuant to GJMC §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. The Complainant has one (1) year from the date of the alleged violation to bring an action.

The Complainant may seek a court order, from the Grand Junction Municipal Court or any other court of competent jurisdiction, to compel compliance with the law, provided however, that Complainant must first file a Complaint with the City Clerk, pursuant to GJMC §2.20.040 and otherwise exhaust all administrative remedies.

If the complaint alleges a curable violation, such as failure to comply with reporting requirements of the FCPA, fifteen business days will be allowed for the correction of the violation.

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.
- Forward the complaint to an independent Hearing Officer.

## **HEARING PROCEDURE**

When a complaint has been forwarded to a Hearing Officer, an informal hearing will be scheduled as soon as practicable, but no later than thirty (30) days after referral, unless the parties request an enlargement of time. The hearing officer, may determine the means and manner of the/any hearing. In person or virtual hearings may be held so long as Due Process is afforded.

Notice of the hearing and any applicable procedures governing the hearing process will be sent to the complainant and respondent, who shall also receive a copy of the entire complaint received by the city clerk, within ten (10) business days of the referral to the Hearing Officer and may be sent via email.

Upon the request of either party, the Hearing Officer may issue an administrative subpoena requiring the attendance of a witness or party or documents, which shall be served on the party to whom it is directed by the requesting party pursuant to Rule 4 of the Colorado Rules of Civil Procedure. It shall be unlawful for a witness or party to fail to comply with such subpoena and may be prosecuted in municipal court with all penalties available in GJMC §2.20.046 Penalties.

The hearing shall be electronically recorded. The complainant and respondent must be present. The complainant shall have the burden of proof. The parties may question witnesses.

### **Hearing Officer Decision**

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

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

A 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. The Hearing Officer's determination is a final decision subject to review under Rule 106, C.R.C.P.

Civil penalties may be collected in any manner authorized by law, including filing a civil action in state court or using a private collection agency. The City Attorney shall be authorized to proceed with all judgment execution and collection procedures authorized by law, including interest if not paid within sixty (60) days of the Hearing Officer's decision.

### **Attorney Fees**

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