

Agenda Item No: GB-C
Meeting Date: 09/28/2020

Subject: Public hearing and approval of Ordinance 895, Amending Chapter 2 of the Dacono Municipal Code to Address Municipal Campaign Finance Violations and Complaints, on Second Reading.

Presenter: Valerie Taylor, City Clerk

Background: During the 2019 legislative session the Colorado General Assembly enacted Senate Bill 19-32 which provided that all complaints related to municipal campaign finance be filed exclusively with the City Clerk. Prior to SB 19-232 municipal finance complaints were filed and resolved by the Colorado Secretary of State. On August 10, 2020 the Secretary of State adopted new campaign finance regulations, which further clarify the City's role in handling complaints. Ordinance 895 will outline the procedure for reviewing and resolving municipal campaign finance complaints.

No changes have been made since first reading

Recommended Action: Staff recommends approval of Ordinance 895, on Second Reading.

ORDINANCE NO. 895

AN ORDINANCE AMENDING CHAPTER 2 OF THE DACONO MUNICIPAL CODE TO ADDRESS MUNICIPAL CAMPAIGN FINANCE VIOLATIONS AND COMPLAINTS

WHEREAS, the City of Dacono is a Colorado home rule municipal corporation duly organized and existing under laws of the State of Colorado and the City Charter; and

WHEREAS, with respect to issues of municipal campaign finance, the City has operated under the provisions of Article XXVIII of the Colorado Constitution, entitled Campaign and Political Finance, and C.R.S. Title 1, Article 45, entitled the Fair Campaign Practices Act (“FCPA”); and

WHEREAS, during the 2019 legislative session, the Colorado General Assembly enacted Senate Bill 19-232, which is codified at C.R.S. § 1-45-111.7 and which amended the FCPA to provide that any complaint arising out of a municipal campaign finance matter must be exclusively filed with the Clerk of the applicable municipality; and

WHEREAS, prior to Senate Bill 19-232, such municipal campaign finance complaints were filed with and resolved by the Colorado Secretary of State; and

WHEREAS, on August 10, 2020, the Secretary of State adopted new campaign finance regulations, which further clarify the City’s role in handling complaints related to municipal campaign finance matters; and

WHEREAS, City Council finds it necessary to adopt amendments to the Dacono Municipal Code to address municipal campaign finance and to adopt a procedure for reviewing and resolving municipal campaign finance complaints; and

WHEREAS, City Council finds and declares that preserving the integrity and openness in the political process is a matter of the highest public interest; that the people of the City can be better served through a more informed electorate; that the trust of the people is essential to representative government; and that public disclosure of campaign contributions and expenditures is necessary to promote public confidence in government and to protect the integrity of the electoral process.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DACONO, COLORADO:

Section 1. The foregoing recitals are hereby affirmed and incorporated herein by this reference as findings of the City Council.

Section 2. Chapter 2 of the Dacono Municipal Code is hereby amended by the addition of a new Article 17 to read as follows:

CHAPTER 2
ARTICLE 17
Municipal Campaign Finance

Sec. 2-350. Definitions.

For the purposes of this Article the following terms, phrases, words, and their derivatives shall have the meanings given in this section:

Article XXVIII shall mean Article XXVIII of the Colorado Constitution, entitled Campaign and Political Finance, as amended from time to time.

City campaign finance matter shall mean any campaign finance matter exclusively related to a City campaign, including: matters involving a candidate for City office; a City ballot issue or ballot question; and contributions or expenditures made by any person, committee or group to support or oppose any candidate for municipal office, municipal ballot issue or ballot question

City Clerk shall mean the City Clerk of the City of Dacono or that person's designee.

FCPA shall mean the Fair Campaign Practices Act, C.R.S. Section 1-45-101, *et seq.*, as amended from time to time.

Sec. 2-351. Applicable law for campaign finance in City elections.

Article XXVIII and the FCPA shall apply to and govern all City elections except to the extent that a direct and irreconcilable conflict with the provisions of this Article exists, in which case the provisions of this Article shall prevail.

Sec. 2-352. Third party complaints.

(a) Any person who believes a violation of Article XXVIII or the FCPA has occurred related to a City campaign finance matter may file a written complaint with the City Clerk.

(b) Complaints must be filed no later than ninety (90) calendar days after the complainant knew or should have known by the exercise of reasonable diligence of the alleged violation.

(c) A written complaint filed with the City Clerk shall include the

following information:

1. The name, address, e-mail address, telephone number and signature of the complainant (if the complainant is represented by counsel, include the counsel's name, address, e-mail address, telephone number and signature).
2. The name and, if known, the telephone number and address of the person alleged to have committed a violation (the "respondent").
3. The particulars of the alleged violation and any available documentation or evidence supporting the allegation.

(d) If an incomplete complaint is received, the date on which the originally filed complaint was received is considered the filed date if a complete copy is received within seven (7) business days of notification from the City Clerk that the complaint was incomplete.

(e) If the City Clerk determines that the complaint was not timely filed, has not specifically identified a violation of Article XXVIII or the FCPA, or that the complainant did not assert facts or provide information sufficient to support the alleged violations, the City Clerk will dismiss the complaint and notify the complainant and respondent of the reasons for dismissal. The City Clerk's dismissal is a final decision, and subject to review under Rule 106 of the Colorado Rules of Civil Procedure.

(f) If the City Clerk determines that additional factual findings or legal interpretation is required in connection with the complaint, the City Clerk may refer the matter to a hearing officer to hear and determine the complaint.

(g) If the complaint is not dismissed or is not referred to a hearing officer, the City Clerk shall issue notice to the respondent by personal service, regular mail or electronic mail. The notice of violation shall:

1. Cite the section or sections of Article XXVIII or the FCPA the person allegedly violated and a general description of the violation.
2. If the complaint alleges a curable violation, allow fourteen (14) business days for the correction of the violation.
3. Set forth the applicable civil fine for each violation, except that no such fine shall be due or payable if the person cures the violation within fourteen (14) business days of the date of the notice of violation.

4. Allow fourteen (14) business days for submission of a written request for an informal hearing before a hearing officer.

(h) In the event the violation cannot be cured by complying with the reporting requirements in Article XXVIII or the FCPA, the person shall propose an alternative resolution to cure the violation to the City Clerk. The City Clerk shall have the discretion to accept, recommend an alternative, or decline the proposed alternative resolution.

(i) If the person fails to cure or otherwise remedy the violation, the person shall within fourteen (14) days of the date of the notice of violation either pay the fine or contest the violation by submitting to the City Clerk a written request for hearing.

(j) Upon timely receipt of a written request for a hearing, the City Clerk shall forward the request to a hearing officer to hear and determine the complaint.

(k) An informal hearing shall be scheduled as soon as practicable but, unless an enlargement of time is granted, the hearing shall be held within thirty (30) days of the referral of the complaint to the hearing officer. Upon written motion, the hearing officer may grant the respondent a continuance upon a showing of good cause.

(l) Notice of the hearing and any applicable rules governing the hearing process shall be sent to the complainant and to the respondent, who shall also receive a copy of the entire complaint received by the City Clerk within five (5) business days of the date of the referral to the hearing office.

(m) Upon the request of either party, the hearing officer may issue an administrative subpoena requiring the attendance of a witness or party in relation to an alleged campaign finance violation, which shall be served on the party to whom it is directed by the requesting party pursuant to the Colorado Rules of Civil Procedure. It shall be unlawful for a witness or party to fail to comply with such subpoena, and any person convicted of a violation hereof shall be punished in accordance with Section 1-70 of this Code.

(n) At the hearing, the complainant and the respondent shall be allowed to be heard. The complainant shall have the burden of proof by proving the alleged violation by a preponderance of the evidence.

(o) Following the hearing, the hearing officer shall issue a decision within thirty (30) business days. The decision may be issued orally at the conclusion

of the hearing or may be issued in writing, at the discretion of the hearing officer.

(p) If the hearing officer determines that a violation has occurred, the hearing officer's decision shall include any appropriate order, sanction or relief authorized hereunder and may include, without limitation, sanctions as follows:

1. Impose the civil penalties set forth in subsection (q); except the hearing officer may increase or reduce the penalties upon a finding of good cause or excusable neglect based on evidence presented at the hearing.

2. Order disclosure of the source and amount of any undisclosed contributions or expenditures.

3. Order the return to the donor of any contribution made which was the subject of the violation.

(q) The civil fines for violations of Article XXVIII or the FCPA shall be in the amounts adopted by the Colorado Secretary of State for violations of campaign finance laws.

(r) If the civil fine is not paid when due or upon entry of a civil judgement by the hearing officer, the City may commence procedures to collect the fine, including commencement of a civil action to collect the fine. A person found to be in violation of this Article shall be responsible for all costs of collection, including reasonable attorney fees.

(s) All decisions by the hearing officer shall be final subject only to judicial review pursuant to Rule 106 of the Colorado Rules of Civil Procedure.

Sec. 2-353. Enforcement by City Clerk.

If the City Clerk believes that a violation of the FCPA or Article XXVIII has occurred, the City Clerk may commence enforcement proceedings in accordance with the procedures set forth in Section 2-531 of this Code.

Sec. 2-534. Rules and regulations.

The City Clerk is authorized to adopt such rules and regulations consistent with the provisions hereof as may be required to implement this Article.

Section 3. If any portion of this ordinance is held to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part hereof irrespective of the fact

that any one part be declared invalid.

Section 4. The repeal or modification of any provision of the Municipal Code of the City of Dacono by this ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

Section 5. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

INTRODUCED, READ, ADOPTED ON FIRST READING, AND ORDERED PUBLISHED BY TITLE AND POSTED IN FULL this 14th day of September, 2020.

PUBLIC HEARING AND SECOND READING WILL BE THE 28th day of September, 2020, AT 6 P.M. AT DACONO CITY HALL, 512 CHERRY STREET, DACONO, CO.

READ, ADOPTED ON SECOND READING, APPROVED, SIGNED, AND ORDERED PUBLISHED BY TITLE ONLY this 28th day of September, 2020.

CITY OF DACONO, COLORADO

Joe Baker, Mayor

ATTEST:

Valerie Taylor, City Clerk

Summary of Ordinance No. 895, **“AN ORDINANCE AMENDING CHAPTER 2 OF THE DACONO MUNICIPAL CODE TO ADDRESS MUNICIPAL CAMPAIGN FINANCE VIOLATIONS AND COMPLAINTS:”** Adopts procedures for receiving and processing complaints related to municipal campaign finance matters in response to recent changes in State law.