

ORDINANCE NO. 2506

INTRODUCED BY: ALLEN-THOMAS, CHACON, DOUGLAS, FORD, HURST,  
HUSEMAN, KIM, MADERA, NOBLE

AN ORDINANCE AMENDING ARTICLE I OF CHAPTER 2 OF THE COMMERCE CITY  
REVISED MUNICIPAL CODE TO PROVIDE FOR CAMPAIGN FINANCE REGULATIONS

WHEREAS, Colorado Revised Statutes (C.R.S.) Title 1, Article 45, known as the “Fair Campaign Practices Act,” (“FCPA”), provides for the laws regulating campaign finance and reporting; and

WHEREAS, C.R.S. 1-45-108(2)(a)(II) provides for the reporting periods for candidates for municipal office to file three times throughout an election cycle. Those three periods are the twenty-first day before, the Friday before, and thirty-five days after the election; and

WHEREAS, C.R.S. 1-45-108(2.5)(a) provides that any committee that receives a contribution of one thousand dollars or more within thirty days of the election must file a report with the municipal clerk within twenty-four hours of receipt of the contribution; and

WHEREAS, C.R.S. 1-45-111.5(1.5)(c) provides that the secretary of state of Colorado may impose a fifty dollar per day fine for each day that a report, statement, or other document required to be filed is not filed by the close of business on the day due; and

WHEREAS, the FCPA allows for home rule municipalities to adopt ordinances with respect to its local elections that are more stringent than those contained within the FCPA; and

WHEREAS, the City Council finds and declares that preserving integrity and openness in the political process is a matter of the highest public interest; that the people of Commerce 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 and regulation of certain campaign contributions are necessary to promote public confidence in government and to protect the integrity of the electoral process; and

WHEREAS, the City Council of Commerce City desires to increase the number of reporting periods for its municipal elections, require reports for any contribution over four-hundred dollars at any point during the election, and establish fines for campaign committees and candidates that violate the regulations within this ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COMMERCE CITY, COLORADO, AS FOLLOWS:

**SECTION 1. Findings.** The recitals to this ordinance are incorporated as findings of the City Council. This ordinance is found to be necessary for the preservation of the public health, safety, and welfare and in the public interest.

**SECTION 2. Amendment.** Article I of Chapter 2 of the Commerce City Revised Municipal Code is hereby repealed and replaced in its entirety as set forth in Exhibit A to this ordinance.

**SECTION 3. Repealer.** 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.

**SECTION 4. Effective Date.** This ordinance shall be effective immediately upon passage on second and final reading.

INTRODUCED, PASSED ON FIRST READING AND PUBLIC NOTICE ORDERED  
THIS 1ST DAY OF MAY 2023.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED  
THIS 15TH DAY OF MAY 2023.

CITY OF COMMERCE CITY, COLORADO

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Benjamin A. Huseman, Mayor

ATTEST

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Dylan A. Gibson, City Clerk

**EXHIBIT A TO ORDINANCE 2506**  
**(CLEAN VERSION)**

**Sec. 2-1005. Campaign finance.**

- (a) Definitions. Unless specifically defined otherwise below, the words and phrases under this section shall have the meanings set forth in Article XXVIII of the Colorado Constitution, the Fair Campaign Practice Act found in Article 45 of Title 1 of the Colorado Revised Statutes, and the Municipal Election Code found in Articles 10 and 11 of Title 31 of the Colorado Revised Statutes.
- (1) Candidate. Any natural person who is eligible to become a candidate who publicly announces their intent to seek nomination to, election or re-election to, or retention in any elected public office of the City of Commerce City and has received a contribution or made an expenditure in support of their candidacy.
  - (2) Candidate Committee. A natural person, including the candidate, or persons authorized by a candidate to receive contributions or making expenditures under the authority of a candidate. Candidates shall only have one (1) candidate committee. Candidate committees shall be considered open and active until affirmatively closed by the candidate or by action of the City Clerk.
  - (3) City Clerk or clerk. The city clerk of the City of Commerce City or their designee.
  - (4) Election Code. The laws, regulations, and rules contained in Article XXVIII of the Colorado Constitution, as amended, The Fair Campaign Practice Act found in Article 45 of Title 1 of the Colorado Revised Statutes, as amended, the Municipal Election Code found in Articles 10 and 11 of Title 31 of the Colorado Revised Statutes, as amended, Article I of Chapter 2 of the City of Commerce City Municipal Code, as amended, and any rules or regulations promulgated thereunder, including but not limited to the Colorado Elections Rules, 8 CCR 1505-1, as amended.
  - (5) Election Cycle. The time period beginning the day following a general or special election ending the day following the next general election or special election.
  - (6) Issue Committee. Any natural person, committee, club, association, corporation, or other group of persons which receives contributions or contributions in-kind during an election cycle and makes expenditures during an election cycle for the major purpose of supporting or opposing one (1) or more ballot issues or ballot questions. Issue committee does not include political parties, political action committees, or candidate committees as otherwise defined in this section.
  - (7) Political Action Committee. shall mean any committee, club, association, local political party, or other group of persons not authorized by a candidate and formed for the major purpose of making contributions to a candidate, issues, or political action committees, which receives contributions or contributions in-kind during an election

cycle and which makes expenditures during an election cycle. Political action committee includes a committee, club, association, or other group which solicits contributions or contributions in-kind and places such contributions or contributions in-kind in its treasury for distribution to candidate, issues, or political action committees. Political action committee does not include a committee, club, association, or other group which solicits individual contributions and passes those contributions along to a candidate, issue, or political action committees without placing the contributions in its own treasury prior to distribution to candidate, issue, or political action committees.

- (8) Public Announcement. Any speech, advertisement, or communication that appears in public media, or in a place accessible to the public, or in a manner that a reasonable person would expect to become public, or the filing of an Affidavit of Intent with the City Clerk's Office.
  - (9) Registered Agent. A natural person appointed within a committee whose responsibilities shall include, but are not limited to, maintaining and balancing the committee's treasury, drafting and submitting the committee's campaign finance disclosures in accord with the Election Code's disclosure requirements, retaining and preserving committee records, cataloguing and tracking the source of all contributions made to the committee, and approving all expenditures made by the committee.
  - (10) Small Donor Committee. Any political committee that has accepted contributions only from natural persons who each contributed less than fifty dollars (\$50) in the aggregate per year. Small donor committee does not include political parties, political action committees, issues committees, or candidate committees.
- (b) Conflict. In the event any portion of the Election Code conflicts with the provisions contained in this code then this code shall prevail. If any portion of the Election Code, including provisions contained in this code, conflict with the Charter then the Charter shall prevail.
  - (c) Candidate Affidavits. Within ten (10) days after becoming a candidate, as defined in this section, each candidate shall file a Candidate Affidavit with the City Clerk's Office. A candidate shall not receive contributions and shall not receive expenditures in support of their candidacy until the Candidate Affidavit has been submitted.
  - (d) Candidates and Candidate Committees.
    - (1) General. Candidates may form a candidate committee in order to solicit contributions and make expenditures in support of their candidacy. A Candidate without a committee and who does not accept contributions but who may make expenditures with personal funds is considered a standalone candidate.
    - (2) Registration. All committees shall register with the City Clerk's Office within ten (10) days after becoming a candidate, issue, or political action committee. A committee

shall not receive contributions and not make expenditures in support of any candidate, ballot issue, or ballot question until the committee has registered with the City Clerk's Office.

- (3) **Registered Agent.** Every committee shall appoint a registered agent. For candidate committees, the candidate shall be the registered agent if no other person is appointed. No expenditure shall be made for or on behalf of a candidate committee without the authorization of the registered agent or the designee of the registered agent.
- (4) **Affirmation of Understanding.** Every candidate and committee registered agent shall certify by affidavit filed with the City Clerk that he or she is familiar with the laws, rules, and regulations contained in the Election Code as defined in this Article within ten (10) days of becoming a candidate, after the formation of the committee, or in the event a registered agent is replaced, the new registered agent shall file an affidavit with the City Clerk no later than ten (10) days after being appointed.
- (5) **Segregation of Funds.** All committee funds shall be segregated from and may not be comingled with the personal funds of any individual. All committee funds shall be deposited in a financial institution in an account whose title shall include the name of the committee. The account shall be used solely by the committee named.
- (6) **Preservation of Records.** The registered agent of a committee shall preserve all records required to be kept by the Election Code and copies of all reports required to be filed by this section.

(e) **Campaign Finance Reporting Requirements.**

- (1) **General.** Every committee registered agent or the registered agent's designee shall file reports in accordance with the provisions of this section. Standalone candidates shall file reports for any reporting period in which they make expenditures in accordance with the provisions of this section. Standalone candidates that do not make any expenditures during a reporting period shall file a statement of non-receipt of contributions and non-expenditure of funds. The committee registered agent, or the registered agent's designee, or standalone candidate shall attest to each report's accuracy. Each report, except the first report, must account for the period of time between the end of the previous reporting period and the end of the current reporting period in accordance with the applicable deadline specified in subsections (b), (c), and (d).
- (2) **Reporting Requirements.** The reporting requirements of this section shall apply to any committee which has a cash balance of contributions, an expenditure deficit, or a standalone candidate regardless if the candidate made any personal expenditures or not. The reporting obligations of this section shall end when:
  - a. The committee's report shows no unexpended balance and no expenditure deficit; or

- b. The committee has not received any contributions or contributions in-kind or made any expenditures during the election cycle, provided all reports of the previous election cycle are complete.
  - c. A standalone candidate need not file after the final reporting period of the election cycle in which they ran.
- (3) Reporting Deadlines. Unless otherwise specified in this section, all campaign finance reports shall be filed with the City Clerk no later than five (5) days after the end of the reporting period. If the filing deadline falls on a weekend or a city holiday the report shall be filed by the end of the next business day.
- (4) Reporting Form. All reports shall be submitted electronically on forms provided by the City Clerk and shall be complete and correct in all aspects. No photographs, scans, or paper copies shall be accepted.
- (5) Reporting Schedule. During any election cycle the committee registered agent or standalone candidate shall file the following reports:
  - a. An initial report covering the time period from the beginning of the election cycle or the date of becoming a candidate, whichever is earlier, until July 31st for general elections of the election year. If a special election is not held on the same date as a general election then the initial report shall cover from the beginning of the special election's election cycle until ninety (90) days prior to the special election or July 31st, whichever is earlier. If a special election is to be held in less than ninety (90) days from the announcement of the special election then the initial reporting period shall start on the date of the special election's announcement and cover until the deadline of the below detailed reporting periods which ends within the special election's election cycle.
  - b. A pre-election report covering from August 1 to August 31 or from the end of the initial reporting period for a special election until sixty (60) days prior to the special election, whichever is earlier.
  - c. A pre-election report covering from September 1 to September 30 or from the end of a special election's previous reporting period until thirty (30) days prior to the special election, whichever is earlier.
  - d. A pre-election report covering from October 1 to October 15 or from the end of a special election's previous reporting period until fifteen (15) days prior to the special election, whichever is earlier. This report shall be filed with the City Clerk's Office no later than five (5) days after the end of the reporting period. If the filing deadline falls on a weekend or a city holiday the report shall be filed by the end of the next business day.

- e. A pre-election report covering October 16 to October 29 or from the end of a special election's previous reporting cycle until seven (7) days prior to the special election, whichever is earlier. This report shall be filed with the City Clerk's Office no later than the Friday before Election Day.
  - f. A post-election report covering October 30 until November 30 or from the end of a special election's previous reporting period until one (1) month from the date of the special election.
  - g. Any committee with an unexpended balance or an expenditure deficit on the post-election report shall remain a committee and shall file a report with the City Clerk annually on the first Monday of November until the reporting requirements of this section no longer apply to the committee.
- (6) **Large Contribution Reports.** Notwithstanding any other report required by this section, a committee registered agent or the registered agent's designee shall file a report for all contributions of \$400 or more from any source that benefits the candidate, issue, or political action committee, whether the contribution is cash or in-kind, or made by natural persons or committees, with the City Clerk no more than forty-eight (48) hours after the committee received or benefited from the contribution, or the closest business day thereafter if the 48th hour falls on a weekend or holiday.
- (7) **Limited Liability Company Contributions.** A limited liability company ("LLC") may make contributions or contributions in kind to a candidate committee subject to all applicable requirements and limits in the Election Code.
- (8) **Defective Reports.** If the City Clerk deems any report filed in accordance with this section to be incomplete or defective, the City Clerk shall accept such report and notify the committee registered agent or standalone candidate by mail, telephone, or e-mail with respect to any deficiencies found and require the committee registered agent or standalone candidate to file an amended report within three (3) business days to correct such deficiencies.
- (9) **Filing of Reports.**
- a. The registered agent of any committee or standalone candidate shall file all reports electronically as required by this section with the City Clerk.
  - b. Reports required by this section shall be deemed timely filed if received by the City Clerk no later than 5:00 p.m. on the designated day.
  - c. All reports required under this section shall be open to inspection by the public during regular business hours. All reports required by this section shall also be posted by the City Clerk on the city's internet website no later than 5:00 p.m. on the next business day following the deadline for submission of the report.

(10) Fines; Late Reports.

- d. The City Clerk shall impose a fifty dollar (\$50) per day fine for any report or amended report not timely filed with the City Clerk. Such report shall be considered a late report.
- e. Committees or standalone candidates may request an extension of three (3) additional business days of a reporting deadline. Such request must be filed with the City Clerk no later than noon the day of the report is due. The City Clerk shall determine whether or not to grant a written extension to the committee or standalone candidate.
- f. Committees or standalone candidates may request a waiver of fine assessed for late reports. Such request must be filed with the City Clerk. The City Clerk shall determine whether or not to waive or limit the amount of the fine assessed on the committee or standalone candidate.
- g. Fines shall be paid by the Candidate with personal funds and candidates shall not use committee funds to pay any fines imposed by the City Clerk.

(f) City Clerk Duties and Powers.

- (1) To properly administer and enforce the provisions of this section the City Clerk shall have the authority to promulgate and amend any rules or procedures, consistent with the Election Code, as the City Clerk deems necessary. Any rules or procedures promulgated by the City Clerk, as amended from time to time, shall be posted on the city's website.
- (2) The City Clerk shall prescribe all forms and provide instructional materials for reports required to be filed by this section.
- (3) The City Clerk shall preserve and maintain all such reports and make them available for inspection and copying under the requirements of the Colorado Open Records Act.
- (4) The City Clerk shall audit reports to ensure that each filing committee or person has fully complied with the provisions of this section.
- (5) Except for late reports, the City Clerk shall notify the committee or person responsible for the filing of the report if the City Clerk makes a determination of an apparent violation of this section. The committee or person responsible for the filing of the report shall have fourteen (14) days from the date of notice of an apparent violation to correct any violation of this section, if the violation can be corrected, including failure to file complete reports. If the committee or person fails to correct the violation, as expressed in section 2-1006(g) of this article, within the fourteen (14) days, the City Clerk shall impose the requirements of section 2-1006(h) of this section.



**Sec. 2-1006. Enforcement of third party campaign finance complaints.**

- (a) Any person who resides in the city who believes a violation of Article XXVIII of the Colorado Constitution or the Fair Campaign Practices Act (C.R.S. § 1-45-101 et seq.), as amended, subject to the modifications made by this Code, has occurred related to a city election may file a written complaint with the city clerk.
- (b) Complaints must be filed no later than thirty (30) 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 city clerk's complaint cover sheet which must include the following information and any other information that the city clerk deems necessary to process the complaint:
  - (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 along with the name, address, e-mail address, telephone number and signature of the complainant);
  - (2) The name and, if known, the telephone number, email address, and mailing address of the respondent(s) (or each person alleged to have committed a violation);
  - (3) The particulars of the violation, including the specific factual and legal basis for the allegation; and
  - (4) Optionally, documentation or other 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 three (3) business days of notification from the city clerk that the complaint was incomplete.
- (e) A complaint may be submitted by fax or electronic mail if a signed original is received by the city clerk no later than three (3) business days thereafter.
- (f) Initial review.
  - (1) The city clerk will review the complaint to determine:
    - a. Whether the complaint was timely filed in accordance with this section;
    - b. Whether the complainant has specifically identified one (1) or more violations of Colorado Constitution Article XXVIII, the Fair Campaign Practices Act, or any rules adopted and promulgated by the city clerk concerning campaign and political finance;

- c. Whether the complainant has alleged sufficient facts and/or provided sufficient information to support a legal and factual basis for the complaint; and
  - d. Whether it is possible through reasonable efforts, to identify the subject of the complaint.
- (2) Within fourteen (14) business days of receiving the complaint, the city clerk must take one (1) or more of the following actions following their initial review:
- a. If the city clerk determines that the complaint fails to satisfy each criteria in subsection (f)(1), the city clerk will dismiss the complaint and notify the complainant and respondent of the reasons for dismissal. The city clerk's determination and dismissal is a final decision.
  - b. If the city clerk determines that the complaint satisfies each criteria in subsection (f)(1), and alleges one (1) or more curable violations as described in subsection (g), the city clerk will notify the respondent(s) and provide an opportunity to cure as described in subsection (g), holding in abeyance any alleged violations that may not be curable.
  - c. If the city clerk determines that the complaint satisfies each criteria in subsection (f)(1), and that none of the alleged violations may be curable as described in subsection (g), the city clerk will take the actions set forth in subsection (h).

(g) Curing violations.

- (1) Upon the city clerk's determination that a complaint alleges a failure to file or otherwise disclose required information, or other curable violation, the city clerk will notify the respondent(s) by email, or by mail if email is unavailable, of the curable deficiencies alleged in the complaint.
- (2) Respondent(s) must provide the city clerk with notice of intent to cure on the form provided by the city clerk and include a copy of any amendments prior to curing the violation in accordance with this subsection.
- (3) Respondents shall have fourteen (14) business days from the date the notice is issued to cure the alleged violation and to notify the city clerk, in writing, of actions taken to cure the alleged violation.
- (4) After the period for cure, the city clerk will determine, within five (5) business days, whether the respondent(s) cured the violation(s), and if so, whether the respondent(s) substantially complied or acted in good faith under subsections (g)(6). The city clerk may ask the respondent to provide additional information and may grant an extension of time to file a notice of intent to cure in order to respond to such a request.

- a. If the city clerk determines that the respondent(s) substantially complied or acted in good faith in curing any alleged violation, the city clerk will dismiss the complaint as to such violation. The clerk's determination and dismissal under this subsection (g)(4)(a) is a final decision.
  - b. If the city clerk determines that the respondent neither substantially complied nor acted in good faith in curing any alleged violation, the city clerk will take the action as set forth in subsection (h) as to such violation.
  - c. The city clerk will take the actions set forth in subsection (h) with respect to any alleged violations held in abeyance pursuant to subsection (f)(2)(b).
- (5) In determining whether an entity "substantially complied" as that term is used in subsection (g)(4), the city clerk must consider:
  - a. The extent of the noncompliance;
  - b. The purpose of the provision violated and whether that purpose was substantially achieved despite the noncompliance; and
  - c. Whether the noncompliance can properly be viewed as an intentional attempt to mislead the electorate or election officials.
- (6) In determining whether an entity registered or disclosed in "good faith" as that term is used in subsection (g)(4), the city clerk may consider whether ten (10) percent or less of either the entity's disclosures or, alternatively, the reported dollar amounts required on the report or appearing on the filed reports at issue in the complaint are out of compliance.
- (h) When the city clerk is required to take further action as set forth in subsections (f)(2)(c), (g)(4)(b), or (g)(4)(c), except for late reports, the city clerk shall notify the city manager of the complaint, and the city manager, in consultation with the city clerk and the city attorney, shall refer the complaint to a hearing officer appointed by city council to hear and determine such complaint. Such referral shall occur within ten (10) business days of the city clerk action as set forth in subsections (f)(2)(c), (g)(4)(b), or (g)(4)(c).
  - (1) The hearing officer shall have all the powers and authorities explicitly granted or reasonably inferred by this code. The hearing authority's powers shall include, but shall not be limited to, the authority to create its own procedural rules, administer oaths, and to issue subpoenas to require the presence of persons or the production of documents, books and records necessary to the determination of any hearing.
- (i) An informal hearing shall be scheduled as soon as practicable with due regard for the convenience and necessity of the parties but, unless an enlargement of time is granted as set forth in subsection (k), the hearing shall be held within fifteen (15) calendar days of referral of the complaint to the hearing officer, or the closest business day thereafter if the 15<sup>th</sup> day

falls on a weekend or holiday. The City will not be a necessary party to the hearing and will not represent either the complainant or respondent, but may intervene as a party on its own behalf.

- (j) Notice of the hearing and any applicable rules governing the hearing process shall be sent to the complainant and to the respondent(s), who shall also receive a copy of the entire complaint received by the city clerk, within two (2) business days of the date of referral of the complete complaint to the hearing officer and may be delivered by electronic mail to the address of the complainant shown on the complaint form and to the respondent(s).
- (k) Upon written motion, the hearing officer may grant the subject of the complaint a continuance of up to thirty (30) calendar days upon a showing of good cause.
- (l) 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 Rule 4, C.R.C.P. 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 the procedures of the municipal court.
- (m) The hearing shall be electronically audibly recorded and held in substantial accordance with the provisions of C.R.S. § 24-4-105 or such other rules as the city clerk may have promulgated, including rules for holding hearings remotely by electronic means when necessary in the opinion of the hearing officer. At the hearing, the complainant and the respondent(s) shall be present and, in accordance with C.R.S. § 24-4-105(7), the complainant shall have the burden of proof in similar manner as the proponent of an order.
- (n) Following the hearing, the hearing officer shall issue a decision in writing within seven (7) business days.
- (o) If the hearing officer determines after a hearing 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) A civil penalty, payable to the city, of at least double and up to five (5) times the amount contributed, received or spent in violation of any contribution prohibition or limitation or in violation of a contribution reporting requirement.
  - (2) An order requiring disclosure of the source and amount of any undisclosed contributions or expenditures.
  - (3) An order requiring the return to the donor of any contribution made which was the subject of the violation.
- (p) A party in a hearing brought pursuant to this chapter, including the city if it intervenes, may request that the hearing officer issue an order requiring one (1) party who has brought or

defended the action, either in whole or in part, to pay another party's reasonable attorney fees and costs. In considering whether to do so, the hearing officer will determine, if relevant, whether:

- (1) the complaint, or any part thereof, lacked substantial justification;
- (2) the complaint, or any part thereof, was interposed for delay or harassment; or
- (3) an attorney or party unnecessarily expanded the proceeding by other improper conduct, including but not limited to abuses of discovery procedures authorized by this article.

Notwithstanding any other provision of this subsection, no attorney fees shall be awarded unless the hearing officer has first considered the provisions of C.R.S. §§ 13-17-102(5) and (6). As used herein, lacked substantial justification means substantially frivolous, substantially groundless or substantially vexatious.

- (q) The hearing officer's decisions as set forth in subsections (n), (o), and (p) are a final decision subject to review under Rule 106, C.R.C.P.
- (r) Candidates shall be personally liable for penalties imposed upon the candidate's committee. Penalties shall be paid by the Candidate with personal funds and candidates shall not use committee funds to pay any penalties imposed by the hearing officer.
- (s) The city may pursue any legal means for the collection of civil penalties imposed under this article. The city manager may also refer the matter for collection by whatever means are available to the city, including by a private collection agency and the party responsible to pay the penalty may be assessed the cost of collection.
- (t) In no event shall the city take any action, including referring the penalty debt to a collection agency as contemplated by subsection (s), but not including action of the collection agency, to collect civil penalties assessed hereunder after the date that is more than one (1) year from the date that the filing was due.

## **EXHIBIT B TO ORDINANCE 2506**

(red strikethrough text indicates deletions; blue underline text indicates additions)

### **Sec. 2-1005. Campaign finance.**

- (a) Definitions. Unless specifically defined otherwise below, the words and phrases under this section shall have the meanings set forth in Article XXVIII of the Colorado Constitution, the Fair Campaign Practice Act found in Article 45 of Title 1 of the Colorado Revised Statutes, and the Municipal Election Code found in Articles 10 and 11 of Title 31 of the Colorado Revised Statutes.
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  - (2) Candidate Committee. A natural person, including the candidate, or persons authorized by a candidate to receive contributions or making expenditures under the authority of a candidate. Candidates shall only have one (1) candidate committee. Candidate committees shall be considered open and active until affirmatively closed by the candidate or by action of the City Clerk.
  - (3) City Clerk or clerk. The city clerk of the City of Commerce City or their designee.
  - (4) Election Code. The laws, regulations, and rules contained in Article XXVIII of the Colorado Constitution, as amended, The Fair Campaign Practice Act found in Article 45 of Title 1 of the Colorado Revised Statutes, as amended, the Municipal Election Code found in Articles 10 and 11 of Title 31 of the Colorado Revised Statutes, as amended, Article I of Chapter 2 of the City of Commerce City Municipal Code, as amended, and any rules or regulations promulgated thereunder, including but not limited to the Colorado Elections Rules, 8 CCR 1505-1, as amended.
  - (5) Election Cycle. The time period beginning the day following a general or special election ending the day following the next general election or special election.
  - (6) Issue Committee. Any natural person, committee, club, association, corporation, or other group of persons which receives contributions or contributions in-kind during an election cycle and makes expenditures during an election cycle for the major purpose of supporting or opposing one (1) or more ballot issues or ballot questions. Issue committee does not include political parties, political action committees, or candidate committees as otherwise defined in this section.
  - (7) Political Action Committee. shall mean any committee, club, association, local political party, or other group of persons not authorized by a candidate and formed for the major purpose of making contributions to a candidate, issues, or political action committees, which receives contributions or contributions in-kind during an election cycle and which makes expenditures during an election cycle. Political action committee includes a committee, club, association, or other group which solicits contributions or contributions in-kind and places such contributions or contributions in-kind in its treasury for distribution to candidate, issues, or political action

committees. Political action committee does not include a committee, club, association, or other group which solicits individual contributions and passes those contributions along to a candidate, issue, or political action committees without placing the contributions in its own treasury prior to distribution to candidate, issue, or political action committees.

- (8) Public Announcement. Any speech, advertisement, or communication that appears in public media, or in a place accessible to the public, or in a manner that a reasonable person would expect to become public, or the filing of an Affidavit of Intent with the City Clerk's Office.
- (9) Registered Agent. A natural person appointed within a committee whose responsibilities shall include, but are not limited to, maintaining and balancing the committee's treasury, drafting and submitting the committee's campaign finance disclosures in accord with the Election Code's disclosure requirements, retaining and preserving committee records, cataloguing and tracking the source of all contributions made to the committee, and approving all expenditures made by the committee.
- (10) Small Donor Committee. Any political committee that has accepted contributions only from natural persons who each contributed less than fifty dollars (\$50) in the aggregate per year. Small donor committee does not include political parties, political action committees, issues committees, or candidate committees.
- (b) Conflict. In the event any portion of the Election Code conflicts with the provisions contained in this code then this code shall prevail. If any portion of the Election Code, including provisions contained in this code, conflict with the Charter then the Charter shall prevail.
- (c) Candidate Affidavits. Within ten (10) days after becoming a candidate, as defined in this section, each candidate shall file a Candidate Affidavit with the City Clerk's Office. A candidate shall receive no contributions and shall make no expenditures in support of their candidacy until the Candidate Affidavit has been submitted.
- (d) Candidates and Candidate Committees.

  - (1) General. Candidates may form a candidate committee in order to solicit contributions and make expenditures in support of their candidacy. A Candidate without a committee and who does not accept contributions but who may make expenditures with personal funds is considered a standalone candidate.
  - (2) Registration. All committees shall register with the City Clerk's Office within ten (10) days after becoming a candidate, issue, or political action committee. A committee shall not receive contributions and not make expenditures in support of any candidate, ballot issue, or ballot question until the committee has registered with the City Clerk's Office.
  - (3) Registered Agent. Every committee shall appoint a registered agent. For candidate committees, the candidate shall be the registered agent if no other person is appointed. No expenditure shall be made for or on behalf of a candidate committee without the authorization of the registered agent or the designee of the registered agent.

- (4) Affirmation of Understanding. Every candidate and committee registered agent shall certify by affidavit filed with the City Clerk that he or she is familiar with the laws, rules, and regulations contained in the Election Code as defined in this Article within ten (10) days of becoming a candidate, after the formation of the committee, or in the event a registered agent is replaced, the new registered agent shall file an affidavit with the City Clerk no later than ten (10) days after being appointed.
- (5) Segregation of Funds. All committee funds shall be segregated from and may not be comingled with the personal funds of any individual. All committee funds shall be deposited in a financial institution in an account whose title shall include the name of the committee. The account shall be used solely by the committee named.
- (6) Preservation of Records. The registered agent of a committee shall preserve all records required to be kept by the Election Code and copies of all reports required to be filed by this section.
- (e) Campaign Finance Reporting Requirements.

  - (1) General. Every committee registered agent or the registered agent's designee shall file reports in accordance with the provisions of this section. Standalone candidates shall file reports for any reporting period in which they make expenditures in accordance with the provisions of this section. Standalone candidates that do not make any expenditures during a reporting period shall file a statement of non-receipt of contributions and non-expenditure of funds. The committee registered agent, or the registered agent's designee, or standalone candidate shall attest to each report's accuracy. Each report, except the first report, must account for the period of time between the end of the previous reporting period and the end of the current reporting period in accordance with the applicable deadline specified in subsections (b), (c), and (d).
  - (2) Reporting Requirements. The reporting requirements of this section shall apply to any committee which has a cash balance of contributions, an expenditure deficit, or a standalone candidate regardless if the candidate made any personal expenditures or not. The reporting obligations of this section shall end when:

    - a. The committee's report shows no unexpended balance and no expenditure deficit; or
    - b. The committee has not received any contributions or contributions in-kind or made any expenditures during the election cycle, provided all reports of the previous election cycle are complete.
    - c. A standalone candidate need not file after the final reporting period of the election cycle in which they ran.
  - (3) Reporting Deadlines. Unless otherwise specified in this section, all campaign finance reports shall be filed with the City Clerk no later than five (5) days after the end of the reporting period. If the filing deadline falls on a weekend or a city holiday the report shall be filed by the end of the next business day.



- (4) Reporting Form. All reports shall be submitted electronically on forms provided by the City Clerk and shall be complete and correct in all aspects. No photographs, scans, or paper copies shall be accepted.
- (5) Reporting Schedule. During any election cycle the committee registered agent or standalone candidate shall file the following reports:
- a. An initial report covering the time period from the beginning of the election cycle or the date of becoming a candidate, whichever is earlier, until July 31st for general elections of the election year. If a special election is not held on the same date as a general election then the initial report shall cover from the beginning of the special election's election cycle until ninety (90) days prior to the special election or July 31st, whichever is earlier. If a special election is to be held in less than ninety (90) days from the announcement of the special election then the initial reporting period shall start on the date of the special election's announcement and cover until the deadline of the below detailed reporting periods which ends within the special election's election cycle.
  - b. A pre-election report covering from August 1 to August 31 or from the end of the initial reporting period for a special election until sixty (60) days prior to the special election, whichever is earlier.
  - c. A pre-election report covering from September 1 to September 30 or from the end of a special election's previous reporting period until thirty (30) days prior to the special election, whichever is earlier.
  - a. A pre-election report covering from October 1 to October 15 or from the end of a special election's previous reporting period until fifteen (15) days prior to the special election, whichever is earlier. This report shall be filed with the City Clerk's Office no later than five (5) days after the end of the reporting period. If the filing deadline falls on a weekend or a city holiday the report shall be filed by the end of the next business day.
  - b. A pre-election report covering October 16 to October 29 or from the end of a special election's previous reporting cycle until seven (7) days prior to the special election, whichever is earlier. This report shall be filed with the City Clerk's Office no later than the Friday before Election Day.
  - c. A post-election report covering October 30 until November 30 or from the end of a special election's previous reporting period until one (1) month from the date of the special election.
  - d. Any committee with an unexpended balance or an expenditure deficit on the post-election report shall remain a committee and shall file a report with the City Clerk annually on the first Monday of November until the reporting requirements of this section no longer apply to the committee.
- (6) Large Contribution Reports. Notwithstanding any other report required by this section, a committee registered agent or the registered agent's designee shall file a report for all contributions of \$400 or more from any source that benefits the candidate, issue, or political action committee, whether the contribution is cash or in-kind, or made by natural persons or committees, with the City Clerk no more than forty-eight (48) hours

after the committee received or benefited from the contribution, or the closest business day thereafter if the 48th hour falls on a weekend or holiday.

- (7) Limited Liability Company Contributions. A limited liability company ("LLC") may make contributions or contributions in kind to a candidate committee subject to all applicable requirements and limits in the Election Code.
- (8) Defective Reports. If the City Clerk deems any report filed in accordance with this section to be incomplete or defective, the City Clerk shall accept such report and notify the committee registered agent or standalone candidate by mail, telephone, or e-mail with respect to any deficiencies found and require the committee registered agent or standalone candidate to file an amended report within three (3) business days to correct such deficiencies.
- (9) Filing of Reports.
  - a. The registered agent of any committee or standalone candidate shall file all reports electronically as required by this section with the City Clerk.
  - b. Reports required by this section shall be deemed timely filed if received by the City Clerk no later than 5:00 p.m. on the designated day.
  - c. All reports required under this section shall be open to inspection by the public during regular business hours. All reports required by this section shall also be posted by the City Clerk on the city's internet website no later than 5:00 p.m. on the next business day following the deadline for submission of the report.
- (10) Fines; Late Reports.
  - a. The City Clerk shall impose a fifty dollar (\$50) per day fine for any report or amended report not timely filed with the City Clerk. Such report shall be considered a late report.
  - b. Committees or standalone candidates may request an extension of three (3) additional business days of a reporting deadline. Such request must be filed with the City Clerk no later than noon the day of the report is due. The City Clerk shall determine whether or not to grant a written extension to the committee or standalone candidate.
  - c. Committees or standalone candidates may request a waiver of fine assessed for late reports. Such request must be filed with the City Clerk. The City Clerk shall determine whether or not to waive or limit the amount of the fine assessed on the committee or standalone candidate.
  - d. Fines shall be paid by the Candidate with personal funds and candidates shall not use committee funds to pay any fines imposed by the City Clerk.

(f) City Clerk Duties and Powers.

- (1) To properly administer and enforce the provisions of this section the City Clerk shall have the authority to promulgate and amend any rules or procedures, consistent with the Election Code, as the City Clerk deems necessary. Any rules or procedures promulgated by the City Clerk, as amended from time to time, shall be posted on the city's website.

- (2) The City Clerk shall prescribe all forms and provide instructional materials for reports required to be filed by this section.
- (3) The City Clerk shall preserve and maintain all such reports and make them available for inspection and copying under the requirements of the Colorado Open Records Act.
- (4) The City Clerk shall audit reports to ensure that each filing committee or person has fully complied with the provisions of this section
- (5) Except for late reports, the City Clerk shall notify the committee or person responsible for the filing of the report if the City Clerk makes a determination of an apparent violation of this section. The committee or person responsible for the filing of the report shall have fourteen (14) days from the date of notice of an apparent violation to correct any violation of this section, if the violation can be corrected, including failure to file complete reports. If the committee or person fails to correct the violation, as expressed in section 2-1006(g) of this article, within the fourteen (14) days, the City Clerk shall impose the requirements of section 2-1006(h) of this section.

**Sec. 2-100~~5~~6. Enforcement of third party campaign finance complaints.**

- (a) Any person who resides in the city who believes a violation of Article XXVIII of the Colorado Constitution or the Fair Campaign Practices Act (C.R.S. § 1-45-101 et seq.), as amended, subject to the modifications made by this Code, has occurred related to a city election may file a written complaint with the city clerk.
- (b) Complaints must be filed no later than thirty (30) 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 city clerk's complaint cover sheet which must include the following information and any other information that the city clerk deems necessary to process the complaint:
  - (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 along with the name, address, e-mail address, telephone number and signature of the complainant);
  - (2) The name and, if known, the telephone number, email address, and mailing address of the respondent(s) (or each person alleged to have committed a violation);
  - (3) The particulars of the violation, including the specific factual and legal basis for the allegation; and
  - (4) Optionally, documentation or other 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 three (3) business days of notification from the city clerk that the complaint was incomplete.
- (e) A complaint may be submitted by fax or electronic mail if a signed original is received by the city clerk no later than three (3) business days thereafter.
- (f) Initial review.
  - (1) The city clerk will review the complaint to determine:

- a. Whether the complaint was timely filed in accordance with this section;
  - b. Whether the complainant has specifically identified one (1) or more violations of Colorado Constitution Article XXVIII, the Fair Campaign Practices Act, or any rules adopted and promulgated by the city clerk concerning campaign and political finance;
  - c. Whether the complainant has alleged sufficient facts and/or provided sufficient information to support a legal and factual basis for the complaint; and
  - d. Whether it is possible through reasonable efforts, to identify the subject of the complaint.
- (2) Within fourteen (14) business days of receiving the complaint, the city clerk must take one (1) or more of the following actions following their initial review:
- a. If the city clerk determines that the complaint fails to satisfy each criteria in subsection (f)(1), the city clerk will dismiss the complaint and notify the complainant and respondent of the reasons for dismissal. The city clerk's determination and dismissal is a final decision.
  - b. If the city clerk determines that the complaint satisfies each criteria in subsection (f)(1), and alleges one (1) or more curable violations as described in subsection (g), the city clerk will notify the respondent(s) and provide an opportunity to cure as described in subsection (g), holding in abeyance any alleged violations that may not be curable.
  - c. If the city clerk determines that the complaint satisfies each criteria in subsection (f)(1), and that none of the alleged violations may be curable as described in subsection (g), the city clerk will take the actions set forth in subsection (h).
- (g) Curing violations.
- (1) Upon the city clerk's determination that a complaint alleges a failure to file or otherwise disclose required information, or other curable violation, the city clerk will notify the respondent(s) by email, or by mail if email is unavailable, of the curable deficiencies alleged in the complaint.
  - (2) Respondent(s) must provide the city clerk with notice of intent to cure on the form provided by the city clerk and include a copy of any amendments prior to curing the violation in accordance with this subsection.
  - (3) Respondents shall have fourteen (14) business days from the date the notice is issued to cure the alleged violation and to notify the city clerk, in writing, of actions taken to cure the alleged violation.
  - (4) After the period for cure, the city clerk will determine, within five (5) business days, whether the respondent(s) cured the violation(s), and if so, whether the respondent(s) substantially complied or acted in good faith under subsections (g)(6). The city clerk may ask the respondent to provide additional information and may grant an extension of time to file a notice of intent to cure in order to respond to such a request.
    - a. If the city clerk determines that the respondent(s) substantially complied or acted in good faith in curing any alleged violation, the city clerk will dismiss the

complaint as to such violation. The clerk's determination and dismissal under this subsection (g)(4)(a) is a final decision.

- b. If the city clerk determines that the respondent neither substantially complied nor acted in good faith in curing any alleged violation, the city clerk will take the action as set forth in subsection (h) as to such violation.
  - c. The city clerk will take the actions set forth in subsection (h) with respect to any alleged violations held in abeyance pursuant to subsection (f)(2)(b).
- (5) In determining whether an entity "substantially complied" as that term is used in subsection (g)(4), the city clerk must consider:
- a. The extent of the noncompliance;
  - b. The purpose of the provision violated and whether that purpose was substantially achieved despite the noncompliance; and
  - c. Whether the noncompliance can properly be viewed as an intentional attempt to mislead the electorate or election officials.
- (6) In determining whether an entity registered or disclosed in "good faith" as that term is used in subsection (g)(4), the city clerk may consider whether ten (10) percent or less of either the entity's disclosures or, alternatively, the reported dollar amounts required on the report or appearing on the filed reports at issue in the complaint are out of compliance.
- (h) When the city clerk is required to take further action as set forth in subsections (f)(2)(c), (g)(4)(b), or (g)(4)(c), except for late reports, the city clerk shall notify the city manager of the complaint, and the city manager, in consultation with the city clerk and the city attorney, shall refer the complaint to a hearing officer appointed by city council to hear and determine such complaint. Such referral shall occur within ten (10) business days of the city clerk action as set forth in subsections (f)(2)(c), (g)(4)(b), or (g)(4)(c).

(1) The hearing officer shall have all the powers and authorities explicitly granted or reasonably inferred by this code. The hearing authority's powers shall include, but shall not be limited to, the authority to create its own procedural rules, administer oaths, and to issue subpoenas to require the presence of persons or the production of documents, books and records necessary to the determination of any hearing

- (i) An informal hearing shall be scheduled as soon as practicable with due regard for the convenience and necessity of the parties but, unless an enlargement of time is granted as set forth in subsection (k), the hearing shall be held within fifteen (15) calendar days of referral of the complaint to the hearing officer, or the closest business day thereafter if the 15<sup>th</sup> day falls on a weekend or holiday. The City will not be a necessary party to the hearing and will not represent either the complainant or respondent, but may intervene as a party on its own behalf.
- (j) Notice of the hearing and any applicable rules governing the hearing process shall be sent to the complainant and to the respondent(s), who shall also receive a copy of the entire complaint received by the city clerk, within two (2) business days of the date of referral of the complete complaint to the hearing officer and may be delivered by electronic mail to the address of the complainant shown on the complaint form and to the respondent(s).

- (k) Upon written motion, the hearing officer may grant the subject of the complaint a continuance of up to thirty (30) calendar days upon a showing of good cause.
- (l) 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 Rule 4, C.R.C.P. 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 the procedures of the municipal court.
- (m) The hearing shall be electronically audibly recorded and held in substantial accordance with the provisions of C.R.S. § 24-4-105 or such other rules as the city clerk may have promulgated, including rules for holding hearings remotely by electronic means when necessary in the opinion of the hearing officer. At the hearing, the complainant and the respondent(s) shall be present and, in accordance with C.R.S. § 24-4-105(7), the complainant shall have the burden of proof in similar manner as the proponent of an order.
- (n) Following the hearing, the hearing officer shall issue a decision in writing within seven (7) business days.
- (o) If the hearing officer determines after a hearing 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) A civil penalty, payable to the city, of at least double and up to five (5) times the amount contributed, received or spent in violation of any contribution prohibition or limitation or in violation of a contribution reporting requirement.
  - ~~(2) A civil penalty, payable to the city, of fifty dollars (\$50.00) per day for each day that a statement or other information required to be filed pursuant to Article XXVIII of the Colorado Constitution or the Fair Campaign Practices Act (C.R.S. § 1-45-101, et seq.), as amended by this code, is not filed by the close of business on the day due.~~
  - ~~(3)~~ (2) An order requiring disclosure of the source and amount of any undisclosed contributions or expenditures.
  - ~~(4)~~ (3) An order requiring the return to the donor of any contribution made which was the subject of the violation.
- (p) A party in a hearing brought pursuant to this chapter, including the city if it intervenes, may request that the hearing officer issue an order requiring one (1) party who has brought or defended the action, either in whole or in part, to pay another party's reasonable attorney fees and costs. In considering whether to do so, the hearing officer will determine, if relevant, whether:
  - (1) the complaint, or any part thereof, lacked substantial justification;
  - (2) the complaint, or any part thereof, was interposed for delay or harassment; or
  - (3) an attorney or party unnecessarily expanded the proceeding by other improper conduct, including but not limited to abuses of discovery procedures authorized by this article.

Notwithstanding any other provision of this subsection, no attorney fees shall be awarded unless the hearing officer has first considered the provisions of C.R.S. §§ 13-17-102(5) and (6). As used

herein, lacked substantial justification means substantially frivolous, substantially groundless or substantially vexatious.

- (q) The hearing officer's decisions as set forth in subsections (n), (o), and (p) are a final decision subject to review under Rule 106, C.R.C.P.
- (r) Candidates shall be personally liable for penalties imposed upon the candidate's committee. Penalties shall be paid by the Candidate with personal funds and candidates shall not use committee funds to pay any penalties imposed by the hearing officer.
- (s) The city may pursue any legal means for the collection of civil penalties imposed under this article. The city manager may also refer the matter for collection by whatever means are available to the city, including by a private collection agency and the party responsible to pay the penalty may be assessed the cost of collection.
- (t) In no event shall the city take any action, including referring the penalty debt to a collection agency as contemplated by subsection (s), but not including action of the collection agency, to collect civil penalties assessed hereunder after the date that is more than one (1) year from the date that the filing was due.