

**TOWN OF LOCHBUIE
COUNTIES OF WELD AND ADAMS, COLORADO**

ORDINANCE NO. 2020-663

**AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF
LOCHBUIE, COLORADO, ADDING NEW SECTIONS TO ARTICLE 1 OF
CHAPTER 2 OF THE MUNICIPAL CODE, GOVERNING ELECTIONS,
CONCERNING APPLICABILITY AND ENFORCEMENT OF THE FAIR
CAMPAIGN PRACTICES ACT**

WHEREAS, the Town of Lochbuie (the “Town”) is a statutory municipality, governed by its elected Mayor and Board of Trustees; and

WHEREAS, Article 1 of Chapter 2 of the Lochbuie Municipal Code (“Code”) governs elections; and

WHEREAS, as a statutory municipality, campaign finance matters in Town elections are governed by Article XXVIII of the Colorado Constitution, entitled Campaign and Political Finance (“Article XXVIII”), and Title 1, Article 45, C.R.S., also known as the Fair Campaign Practices Act (“FCPA”); and

WHEREAS, 2019 statutory changes to the FCPA and rule changes adopted by the Colorado Secretary of State on August 10, 2020, now provide that the municipal clerk is exclusively responsible for accepting all filings, to include complaints, arising out of a “municipal campaign finance matter;” and

WHEREAS, Colorado Secretary of State Rule 1.12 defines a “municipal campaign finance matter” as “[a]ny campaign finance matter exclusively related to a municipal campaign, including matters involving a candidate for municipal office; a municipal 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, or municipal ballot issue or ballot question;” and

WHEREAS, the Code is currently silent on the process for accepting and hearing complaints by the Town Clerk of municipal campaign finance matters related to Town elections; and

WHEREAS, the Town Board of Trustees desires to amend the Town Code to add provisions governing the acceptance, hearing and processing of filings, to include complaints of violations, for any matter related to a Town campaign, including matters involving a candidate for Town elected office; a Town ballot issue or ballot question; and contributions or expenditures made by any person, committee or group to support or oppose any candidate for Town elected office, or a Town ballot issue or ballot question.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF LOCHBUIE, WELD AND ADAMS COUNTIES, COLORADO, AS FOLLOWS:

Section 1. Incorporation of Recitals. The foregoing recitals are hereby affirmed and incorporated herein by this reference as findings of the Town Board of Trustees.

Section 2. Amendment of Article 1 of Chapter 2 of the Lochbuie Municipal Code.
Article 1 of Chapter 2 of the Lochbuie Municipal Code (“Code”) is hereby amended by the addition of the following new sections:

Sec. 2-1-40. - Applicable law for campaign and political finance in Town elections.

In addition to the provisions set forth herein, Article XXVIII of the Colorado Constitution and the Fair Campaign Practices Act (Section 1-45-101, et seq., C.R.S.), as such provisions shall be amended from time to time and as such provisions are applicable to municipal elections, shall apply to and govern all Town elections.

Sec. 2-1-50. - Filing with Town Clerk.

All filings required to be made in accordance with Article XXVIII of the Colorado Constitution and the Fair Campaign Practices Act (Section 1-45-101, et seq., C.R.S.), to include without limitation, complaints alleging violations, related to a Town municipal campaign finance matter, which includes matters involving a candidate for Town elected office, a Town ballot issue or ballot question, and contributions or expenditures made by any person, committee or group to support or oppose any candidate for Town elected office, or a Town ballot issue or ballot question, shall be made with the Town Clerk.

Sec. 2-1-60. - Late filing penalties; appeal; waiver.

- (a) The Town Clerk has the authority to impose civil penalties on the party responsible for a filing under Article XXVIII of the Colorado Constitution or the Fair Campaign Practices Act (Section 1-45-101, et seq., C.R.S.), as amended by this Code, of fifty dollars (\$50.00) per day for each day that a statement or other information required to be filed is not filed by the close of business on the day due. Penalties shall accrue on a daily basis until paid or the penalty is set aside or reduced in accordance with Subsection (e) below.
- (b) If the Town Clerk knows that a filing was due because the Town Clerk becomes aware that a person has become a candidate or a committee has been formed but such person or committee has failed to file a registration, the Town Clerk shall use reasonable efforts to notify any person against whom penalties for late filings under this Section accrue within four (4) business days from the date the Town Clerk learns that the filing was due.
- (c) If the Town Clerk knows that a filing was due because the person has previously filed a registration or report, the Town Clerk shall notify any person against whom

penalties for late filings under this Section accrue within four (4) business days from the date the filing was due.

- (d) Individuals who have a right to receive notice from the Town Clerk on filings with the Town Clerk must, at the time of the filing, provide the Town Clerk with an address and one (1) electronic mail address at which the individual wishes to receive notices. Notification requirements of the Town Clerk shall be deemed fulfilled if the Town Clerk sends an electronic mail to the designated electronic mail address and also sends written notice to the appropriate individual through certified United States mail addressed to the designated address.
- (e) Any person upon whom a penalty has been imposed pursuant to this Section for a failure to timely file may appeal such penalty by filing a written appeal with the Town Clerk no later than five (5) business days after the date on which notification of the penalty was delivered in accordance with Subsection (d) above.
- (f) Upon receipt by the Town Clerk of a timely filed appeal pursuant to this Section, the Town Clerk shall set aside or reduce the penalty upon a showing of good cause. In accepting the appeal, determining the presence of good cause, issuing a decision and granting a waiver on the appeal, the Town Clerk shall apply the applicable rules and regulations adopted by the Colorado Secretary of State, as may be amended from time to time.
- (g) Candidates shall be personally liable for civil penalties imposed upon the candidate's committee.
- (h) Civil penalties may be collected in any manner as authorized by law, including the use of a private collection agency.
- (i) In no event shall the Town take any action, including referring the penalty debt to a collection agency as contemplated by Subsection (h) above, 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.

Sec. 2-1-70. - Enforcement of third party complaints.

- (a) Any person who believes a violation of Article XXVIII of the Colorado Constitution or the Fair Campaign Practices Act (Section 1-45-101 et seq., C.R.S.), as amended by this Code, has occurred related to a Town election may file a written complaint with the Town Clerk.
- (b) Complaints must be filed no later than ninety (90) calendar days after the date the complainant knew or should have known by the exercise of reasonable diligence of the alleged violation.

- (c) A written complaint filed with the Town Clerk shall include the Town Clerk's complaint form which must 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 along with the name, address, e-mail address, telephone number and signature of the complainant);
 - (2) The name and, if known, the telephone number and address of the respondent(s) (or each person alleged to have committed a violation);
 - (3) The particulars of the violation; and
 - (4) Optionally, documentation or other evidence supporting the allegation.

- (d) If an incomplete complaint is received, the Town Clerk shall notify the filing party. The date on which the originally filed incomplete complaint was received is considered the filed date (for purposes of determining timeliness) if and only if a complete copy is received within three (3) business days of notification from the Town Clerk that the complaint was incomplete.

- (e) A complaint may be submitted by fax or electronic mail.

- (f) Initial review.
 - (1) The Town Clerk will review the complaint to determine:
 - a. Whether the complaint was timely filed under Section 2-1-70(b);
 - b. Whether the complainant has specifically identified one or more violations of Colorado Constitution Article XXVIII, the Fair Campaign Practices Act, or any rules adopted and promulgated by the Town Clerk concerning campaign and political finance; and
 - c. Whether the complainant has alleged sufficient facts and/or provided sufficient information to support a legal and factual basis for the complaint.

 - (2) Within ten (10) business days of receiving the complaint, the Town Clerk must take one (1) or more of the following actions:
 - a. If the Town Clerk determines that the complaint was not timely filed, has not specifically identified one (1) or more violations, or that the complainant did not assert facts or provide information sufficient to support the alleged violations, the Town Clerk will dismiss the complaint and notify the complainant and respondent of the reasons for dismissal. The Town Clerk's dismissal is a final decision, and subject to review under Rule 106, C.R.C.P.

 - b. If the Town Clerk determines that the complaint alleges one (1) or more curable violations as described in Subsection (g), the Town Clerk will notify the respondent(s) and provide an opportunity to cure as described in Subsection (g).

- c. If the Town Clerk determines that the complaint alleges (1) one or more violations, asserts facts or provides information sufficient to support the alleged violations but that may require additional factual finding(s) or legal interpretation, and that the asserted violations may not be curable as described in Subsection (g), the Town Clerk will take the actions set forth in Subsection (h) or (i).

(g) Curing violations.

- (1) Upon the Town Clerk's determination that a complaint alleges a failure to file or otherwise disclose required information, or other curable violation, the Town Clerk will notify the respondent(s) by email, or by mail if email is unavailable, of the curable deficiencies alleged in the complaint.
- (2) Respondents shall have ten (10) business days from the date the notice is mailed to file an amendment to the relevant report or reports that cures any deficiencies specified in the notice.
- (3) Respondent(s) must provide the Town Clerk with notice of intent to cure on the form provided by the Town Clerk and include a copy of any amendments.
- (4) The Town 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.
- (5) After the period for cure, the Town 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) and (g)(7).
 - a. If the Town Clerk determines that the respondent(s) substantially complied or acted in good faith, the Town Clerk will dismiss the complaint.
 - b. If the Town Clerk determines that the respondent neither substantially complied nor acted in good faith, the Town Clerk will take the action as set forth in Subsection (h) or (i).
 - c. The Town Clerk's determination under this Subsection (g)(5) is a final decision subject to review under Rule 106, C.R.C.P.
- (6) In determining whether a respondent "substantially complied" as that term is used in Subsection (g)(5), the Town 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 may properly be viewed as an intentional attempt to mislead the electorate or election officials.
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- (7) In determining whether a respondent registered or disclosed in "good faith" as that term is used in Subsection (g)(5), the Town Clerk may consider whether ten percent (10%) or less of either the respondent'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.
 - (8) If the Town Clerk determines that the respondent failed to cure any alleged deficiency, the Town Clerk shall take such action as set forth in subsection (h) or (i) to determine whether to file a complaint with an independent hearing officer.
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- (h) When the Town Clerk is required to take further action as set forth in Subsections (f)(2)(c) or (g)(5)(b), prior to a complaint being filed with an independent hearing officer, the Town Clerk, in consultation with the Town Attorney, may enter into a settlement agreement with the respondent. In reaching a settlement and determining a penalty amount or other required actions, the Town Clerk will consider all of the penalty options and amounts along with appropriate mitigating and aggravating factors to increase or decrease the monetary civil penalty or terms as set forth in subsection (p) of this Section.
 - (i) When the Town Clerk is required to take further action as set forth in Subsections (g)(2)(c) or (g)(5)(b) and no settlement is reached as set forth in Subsection (h), the Town Clerk shall, in consultation with the Town Attorney, refer the complaint to an independent hearing officer to hear and determine such complaint. Such referral shall occur within ten (10) business days of the Town Clerk action as set forth in Subsections (f)(2)(c) or (g)(5)(b).
 - (j) If an informal hearing is scheduled, it 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 (l), the hearing shall be held within thirty (30) calendar days of referral of the complaint to the hearing officer.
 - (k) 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 Town 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) in accordance with Subsection (d) of Section 2-1-60.

- (l) 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.
- (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 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 any person convicted of a violation hereof shall be punished for a non-criminal violation in accordance with Section 1-4-20(a) of this Code, with each and every day that the violation continues being considered a separate and distinct offense.
- (n) The hearing shall be electronically audibly recorded and held in substantial accordance with the provisions of Section 24-4-105, C.R.S., or such other rules as the Town Clerk may have promulgated. At the hearing, the complainant and the respondent(s) shall be present and, in accordance with Section 24-4-105(7), C.R.S., the complainant shall have the burden of proof in similar manner as the proponent of an order.
- (o) Following hearing, the hearing officer shall issue a decision within seven (7) 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 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) Impose a civil penalty of
 - a. Failure to register a committee:
 - (1) Amount of contributions or donations accepted or expenditures made while out of compliance, outlined below:
 - (A) Less than \$1,000, civil penalty is at least \$150;
 - (B) Between \$1,001 and up to \$5,000, civil penalty is at least \$300;
 - or
 - (C) Greater than \$5,000 the civil penalty 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 civil penalty per report plus 5 percent of the activity not accurately or completely reported;
 - (2) Failure to file, or file an accurate, candidate affidavit
 - (A) If affidavit is submitted within 14 days of registration deadline the civil penalty is at least \$50; or

- (B) If affidavit is submitted after 14 days post deadline, the civil penalty is at least \$100.
- c. Prohibited contributions, donations, and expenditures:
 - (1) For accepting a prohibited contribution, the civil penalty is at least \$100 and 10 percent of the prohibited activity.
 - (2) Prohibited use of unspent campaign funds:
 - (A) A civil penalty of at least \$250 per violation; and
 - (B) A civil penalty that is up to 25 percent of the amount of the prohibited activity.
- d. Disclaimer and electioneering communications:
 - (1) If noncompliant communication is mitigated prior to the election, a civil penalty of at least 5 percent of the cost of the noncompliant communication including cost to broadcast; or
 - (2) If noncompliant communication is not mitigated prior to the election, a civil penalty of at least 10 percent of the cost of the communication including cost to broadcast.
- e. For other violations of campaign and political finance rules and regulations, and/or in addition to monetary penalties, the Town Clerk or independent hearing officer may seek a specific action from the respondent to 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.
- f. The following mitigating and aggravating factors shall be considered to increase or decrease the monetary civil penalty or terms:
 - (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
- (q) The hearing officer's determination is 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.
- (s) Civil penalties may be collected in any manner as authorized by law, including the use of a private collection agency.
- (t) In no event shall the Town 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.
- (u) A party in any action brought pursuant to this Section shall be entitled to recovery of the party's reasonable attorney fees and costs from any attorney or party who has brought or defended the action, either in whole or in part, if the hearing officer finds any of the following:
 - (1) The action, or any part thereof, lacked substantial justification;
 - (2) The action, or any part thereof, was interposed for delay or harassment; or
 - (3) That an attorney or party unnecessarily expanded the proceeding by other improper conduct, including but not limited to abuses of discovery procedures authorized by this Section.

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

Sec. 2-1-80. - Rules and regulations.

The Town Clerk is authorized to adopt such rules and regulations consistent with the provisions hereof as may be required to implement the provisions of Sections 2-1-40 through this Section 2-1-80.

Section 3. Severability. If any provision of this Ordinance, or the application of such provision to any person or circumstance, is for any reason held to be invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable. The Board of Trustees hereby declares that it would have passed this Ordinance and each provision thereof, even though any one of the provisions might be declared unconstitutional or invalid. As used in this Section, the term “provision” means and includes any part, division, subdivision, section, subsection, sentence, clause or phrase; the term “application” means and includes an application of an ordinance or any part thereof, whether considered or construed alone or together with another ordinance or ordinances, or part thereof, of the Town.

Section 4. Safety Clause. The Board of Trustees hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Lochbuie, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Board of Trustees further determines that the Ordinance bears a rational relationship to the proper legislative object sought to be obtained.

Section 5. Repealer. All ordinances or resolutions, or parts thereof, in conflict with this Ordinance are hereby repealed, provided that such repealer shall not repeal the repealer clauses of such ordinance nor revive any ordinance thereby.

Section 6. Effective Date. This Ordinance shall take effect thirty (30) days after publication, as provided by C.R.S. § 31-16-105 and Sections 1-3-60 and 2-2-110 of the Lochbuie Municipal Code.

ADOPTED by a vote of 6 in favor, 0 against and 0 abstaining, AND ORDERED PUBLISHED by title only following public hearing, this 17th day of November, 2020.

TOWN OF LOCHBUIE, COLORADO



Jacob Lofgren, Mayor

I hereby certify that the above Ordinance was adopted by the Board of Trustees of the Town of Lochbuie at its meeting of November 17, 2020, and ordered published by title only one time by *The Brighton Blade* newspaper on December 16, 2020.

[SEAL]



Linda Blackston, Town Clerk

