

ADOPTION OF RULES AND PROCEDURE FOR HANDLING THIRD PARTY COMPLAINTS ALLEGING VIOLATIONS OF CAMPAIGN FINANCE LAWS RELATING TO MUNICIPAL ELECTIONS.

WHEREAS, the Town of Telluride has not exercised its home rule authority to address matters covered by the Colorado Constitution Article XXVIII or the Colorado Fair Campaign Practices Act, C.R.S. §§ 1-45-101 *et. seq.* relating to municipal campaign finance;

WHEREAS, on May 29, 2019, the Governor signed SB 19-232, which amends C.R.S. § 1-45-117(9)(b) of the Colorado Fair Campaign Practices Act and provides that any Complaint arising out of a municipal campaign finance matter be exclusively filed with the clerk of the applicable municipality;

WHEREAS, prior to the enactment of SB 19-232, all complaints concerning campaign finance violations were handled by the Colorado Secretary and State;

WHEREAS, while the Colorado Constitution, Article XXVIII, provides that the Colorado Secretary of State handle third party complaints alleging violations of campaign finance laws, the Secretary of State may no longer accept filings of complaints concerning municipal campaign finance matters; and

WHEREAS, it is prudent to establish a process for review of municipal campaign finance complaints in order to ensure that such matters are addressed.

NOW, THEREFORE, the following Rules And Procedure For Adjudication Of Alleged Violations Of Campaign Finance Laws Relating To Municipal Elections (“**Policy**”) are proposed and posted this 18th day of August, 2021 and will be adopted following the ten day comment period pursuant to Telluride Municipal Code Section 2-1-120:

TOWN OF TELLURIDE RULES AND PROCEDURE FOR ADJUDICATION OF ALLEGED VIOLATIONS OF CAMPAIGN FINANCE LAWS RELATING TO MUNICIPAL ELECTIONS

1. Any registered elector of the Town of Telluride 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, the Fair Campaign Practices Act, or any rules adopted and promulgated by the town clerk concerning campaign and political finance has been committed by any candidate or committee in a municipal election may file a written Complaint (“**Complaint**”) with the town clerk.
2. Complaints must be filed no later than sixty (60) calendar days after the alleged violation has occurred by the registered elector or electors alleging the violation (“**Complainant**”), and must provide adequate information to identify, through reasonable efforts, those alleged to have committed the violation (“**Respondent**”).
3. **Complaints.**
 - A. Complaints shall include the following information and any other information the town clerk deems necessary to adjudicate the Complaint:
 - i. Complainant. The name, mailing and physical addresses, e-mail address, telephone number and signature of each Complainant;

- ii. Respondent. The candidate, committee and/or committee member names, telephone numbers, email addresses, and mailing addresses for each person or entity alleged to have committed the violation if known, or adequate information for the town clerk, through reasonable efforts, to identify the subject of the Complaint;
 - iii. Violation. Details of the alleged violation, including the specific factual and legal basis for the allegation and any details that may assist in identifying any unknown Respondent;
 - iv. Evidence. Documentation or other evidence supporting the allegation; and
 - v. Witnesses. The name and contact information of any witness or person with relevant knowledge of the alleged violation.
 - B. The date on which an incomplete Complaint is filed will be considered the filing date only if supplemental information required or requested by the town clerk is received within three (3) business days of written notification to the Complainant.
 - C. A Complaint may be submitted by fax or electronic mail if a signed original is received by the town clerk no later than three (3) business days thereafter, in which case the filing date shall be the date first faxed or emailed.
- 4. **Initial Review**. The town clerk shall review the Complaint to determine if the Complaint:
 - A. was timely filed;
 - B. specifically identifies one or more alleged violation 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;
 - C. provides sufficient facts and/or information to support a legal and factual basis for the Complaint; and
 - D. provides sufficient detail to, through reasonable efforts, identify the subject of the Complaint.
- 5. **Action After Initial Review**. Within fifteen (15) business days of the filing of a Complaint, the town clerk must take one or more of the following actions:
 - A. Dismiss. If the town clerk determines the Complaint fails to satisfy the criteria in Section 3 (A), the town clerk will dismiss the Complaint and notify the Complainant and Respondent of the reason for dismissal in writing.
 - B. Issue a Notice to Cure or Dispute - If the town clerk determines the Complaint is complete alleging one (1) or more violation with adequate information to support the alleged violations, written notice shall be sent to the Respondent by email or mail if email is unavailable.
 - i. Respondents shall have fifteen (15) business days from the date of the notice (“**Cure Period**”) to either cure violations or to present a written dispute of the alleged violations.
 - ii. The town clerk may ask both the Complainant and the Respondent to provide additional information and may grant an extension of time to respond to such requests.
 - iii. Within five (5) business days after the Cure Period the town clerk shall make a determination to:
 - (1) dismiss the complaint if it is determined the Respondent substantially complied and acted in good faith in curing all violations; or
 - (2) to refer the matter to a hearing as set forth in Section 6 if it is determined that:
 - (a) further investigation or legal interpretation is needed to ascertain the merits of any alleged violations;

- (b) the Complaint alleges one or more violations that have not been cured; or
- (c) the Respondent has not substantially complied and/or has not acted in good faith.

6. Referral to Hearing. When the town clerk determines after the Cure Period that the Complaint has alleged sufficient facts and/or provided sufficient information to support alleged violations, or that the Respondent did not substantially comply or act in good faith, the town clerk shall refer the matter to hearing.

- A.** The town manager, in consultation with the town clerk and the town attorney, shall identify a hearing officer to hear and rule on the matter.
- B.** A hearing shall be scheduled as soon as practicable, but no later than thirty (30) days after referral, unless the parties request an enlargement of time.
- C.** Within ten (10) business days of the date of referral to a hearing the town clerk shall provide Complainant and Respondent notice of the hearing date, applicable rules governing the hearing process, and a copy of the Complaint in full by email or by mail if email is not available.
- D.** Upon written motion and a showing of good cause, the hearing officer may grant a continuance of up to thirty (30) calendar days.
- E.** 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 violation, which shall be served on the party to whom it is directed by the requesting party pursuant to Rule 4, 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 the procedures of the municipal court.
- F.** 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 town clerk may have promulgated, including rules for holding hearings remotely by electronic means when necessary in the opinion of the hearing officer.
- G.** The Complainant and the Respondent shall be present at the hearing and, in accordance with C.R.S. § 24-4-105(7), the Complainant shall have the burden of proof.
- H.** Upon conclusion of the hearing, the hearing officer may, at the hearing officer's sole discretion, render a decision orally on the record or may render a decision in writing within ten (10) business days.
- I.** The hearing officer's determination shall be a final determination subject to review under Rule 106, Colorado Rules of Civil Procedure.

7. Sanctions and Penalties

- A.** If the hearing officer determines a violation has occurred, the hearing officer's decision shall include any appropriate order, penalty, sanction or relief authorized hereunder and may include any of the following without limitation:
 - i.** A civil penalty, payable to the town, 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;
 - ii.** A civil penalty, payable to the town, 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 is not filed by the close of business on the day due;

