

ORDINANCE NO. 113, 2018
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CHAPTER 7 OF THE CODE OF THE CITY OF FORT COLLINS
TO AMEND REQUIREMENTS AND PROCEDURES RELATED TO
CAMPAIGNS AND CAMPAIGN FINANCE IN CITY ELECTIONS

WHEREAS, Chapter 7 of the City Code sets out procedures and requirements for redistricting of Council districts, for the conduct of City elections, for disclosure of campaign finance information, and other related matters; and

WHEREAS, in 2015, the City Council formed an ad hoc committee, including Councilmembers Cunniff, Overbeck and Stephens, to review, discuss and recommend the most beneficial changes to the Code and City Charter regarding elections and other related matters; and

WHEREAS, in January 2017, Council made the ad hoc Committee a standing committee of the Council for the purpose of identifying and evaluating ideas for improvements to City election laws and practices and anticipating adjustments that may be needed to adopt to a changing legal and technological environment, for Council consideration; and

WHEREAS, as a result of the Committee's work (as both an ad hoc committee and a standing committee), Ordinance No. 021, 2016, Ordinance No. 005, 2017, Ordinance No. 045, 2018, and Ordinance No. 077, 2018, were considered and adopted by the Council to update various provisions of Chapter 7; and

WHEREAS, the Committee continued to meet in 2017 and 2018, and has recommended additional clarifications and amendments to Chapter 7; and

WHEREAS, the Committee has recommended that the threshold for reporting independent expenditures be raised from \$100 to a higher amount to be determined by City Council; and

WHEREAS, the Committee has recommended the creation of a new requirement that committees otherwise required to register with the City also be required to include disclaimers on campaign communications to identify the committee making the communication, whether the communication is coordinated with a particular committee, and the source of funding for the communication; and

WHEREAS, staff has recommended that the definitions for candidate committee, issue committee, and political committee be changed to require registration and reporting of those persons that at a minimum accept contributions, rather than only applying to those persons that accept contributions and make expenditures; and

WHEREAS, staff has recommended that the citizen complaint process for campaign violations be changed to also apply to violations committed by individual persons, including violations related to independent expenditures; and

WHEREAS, staff has recommended changes to certain definitions in Code Section 7-132 in order to clarify the distinctions between the various types of campaign committees, and to reconcile them with other amendments; and

WHEREAS, these amendments generally improve and clarify the City's campaign finance disclosure and election requirements and processes; and

WHEREAS, these amendments further the City's and the public's interest in shedding light for the public on the expenditure of money to influence the outcome of City elections, while respecting the speakers' interest in freedom of political speech; and

WHEREAS, the Council desires to enact the recommendations of the Committee and staff in order to clarify and improve the various provisions of Chapter 7, as set forth below.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the following definitions contained in Section 7-132 of the Code of the City of Fort Collins are hereby amended to read as follows:

Sec. 7-132. Definitions.

...

Candidate committee shall mean a person, including the candidate, or persons with the common purpose of receiving contributions or making expenditures under the authority of a candidate. A candidate shall have only one (1) candidate committee. A candidate committee shall be considered open and active until the committee has filed a termination report with the City Clerk.

Contribution shall mean:

- (1) The payment, loan, pledge or advance of money, or guarantee of a loan, made to any candidate committee, issue committee or political committee;
- (2) Any payment made to a third party for the benefit of any candidate committee, issue committee or political committee;
- (3) Anything of value given, directly or indirectly, to a candidate committee for the purpose of promoting the candidate's nomination, retention, recall or election; or
- (4) With regard to a contribution for which the contributor receives compensation or consideration of less than equivalent value to such contribution, including, but not limited

to, items of perishable or nonpermanent value, goods, supplies, services or participation in a campaign-related event, an amount equal to the value in excess of such compensation or consideration as determined by the candidate committee, issue committee or political committee.

Contribution shall not include:

- (1) Services provided without compensation by individuals volunteering their time on behalf of a candidate, candidate committee, political committee, issue committee or small-scale issue committee;
- (2) Funds collected subsequent to the election to pay the cost of a requested recount pursuant to 7-46.

Contribution in kind shall mean the fair market value of a gift or loan of any item of real or personal property, other than money, made to or for any candidate committee, issue committee, small-scale issue committee or political committee for the purpose of influencing the passage or defeat of any issue or the nomination, retention, election or defeat of any candidate. Personal services shall be considered a contribution in kind by the person paying compensation therefor. In determining the value to be placed on contributions in kind, a reasonable estimate of fair market value shall be used.

Contribution in kind shall not include an endorsement of a candidate or an issue by any person and shall not include the payment of compensation for legal and accounting services rendered to a candidate, candidate committee, political committee, issue committee or small-scale issue committee if the person paying for the services is the regular employer of the individual rendering the services and the services are solely for the purpose of ensuring compliance with the provisions of this Article.

Expenditure shall mean the payment, distribution, loan or advance of any money by any candidate committee, political committee, issue committee or small-scale issue committee. *Expenditure* shall also include the payment, distribution, loan or advance of any money by a person for the benefit of a candidate committee, political committee, issue committee or small-scale issue committee that is made with the prior knowledge and consent of an agent of the committee. An expenditure occurs when the actual payment is made or when there is a contractual agreement and the amount is determined.

...

Independent expenditure shall mean the payment of money by any person for the purpose of advocating the election, defeat or recall of a candidate, which expenditure is not controlled by, or coordinated with, any candidate or any agent of such candidate. *Independent expenditure* shall include expenditures for political messages which unambiguously refer to any specific public office or candidate for such office. Independent expenditure shall also include the payment of money by any person for supporting or opposing a ballot issue or ballot question that is not controlled by, or

coordinated with, an issue committee or a small-scale issue committee. Independent expenditure shall include, but not be limited to, advertisements placed for a fee on another person's website or advertisement space provided for no fee or a reduced fee where a fee ordinarily would have been charged.

Independent expenditure shall not include:

- (1) Expenditures made by persons in the regular course and scope of their business and political messages sent solely to their members;
- (2) Expenditures made by small-scale issue committees; or
- (3) Any news articles, editorial endorsements, opinion or commentary writings, or letters to the editor printed in a newspaper, magazine or other periodical not owned or controlled by the candidate, or communications other than advertisements posted or published on the internet for no fee.

Issue committee shall mean:

- (1) Two (2) or more persons who are elected, appointed or chosen, or have associated themselves, for the purpose of accepting contributions or making expenditures to support or oppose any ballot issue or ballot question; or
- (2) Any person that has accepted contributions for the purpose of supporting or opposing any ballot issue or ballot question.

Issue committee shall not include small-scale issue committees as otherwise defined in this Section.

...

Political committee shall mean:

- (1) Two (2) or more persons who are elected, appointed or chosen, or have associated themselves, for the purpose of accepting contributions or making expenditures to support or oppose one (1) or more.
- (2) Any person that has accepted contributions for the purpose of supporting or opposing one (1) or more candidates.

Political committee shall not include-candidate committees as otherwise defined in this Section.

...

Unexpended campaign contributions shall mean the balance of funds on hand in any candidate committee, issue committee, political committee or small-scale issue committee following an election, less the amount of all unpaid monetary obligations incurred prior to the election.

Section 3. That Section 7-134 (c) and (d) of the Code of the City of Fort Collins are hereby amended to read as follows:

Sec. 7-134. - Registration of committees; termination.

...

(c) Any candidate committee, political committee, ~~or~~ issue committee or registered small-scale issue committee that has registered with the City Clerk, but has not engaged in any election activities or reported any contributions accepted or expenditures made, may terminate at any time by filing an amended committee registration indicating the nature of the amendment is termination of the committee and verifying that no contributions have been received or expenditures made since registration occurred pursuant to § 7-134. Alternatively, the committee shall file a campaign report indicating no contributions have been received or expenditures made, and indicating it is a termination report.

(d) Any political committee, issue committee or registered small-scale issue committee that has not taken the necessary steps to terminate pursuant to Subsection (c) above must have properly disposed of all funds and must file a termination report no later than seventy (70) days after the election.

Section 4. That Section 7-135(b), (d) and (g) of the Code of the City of Fort Collins are hereby amended to read as follows:

Sec. 7-135. Campaign contributions/expenditures.

...

(b) *Joint contributions.* No person shall make a contribution jointly with another person through the issuance of a check drawn on a jointly owned account unless: (i) the total amount of the joint contribution is less than the maximum amount that can be contributed by one (1) person under the contribution limits established in Subsection (a) of this Section or (ii) the check is signed by all owners of the account, in which event the amount of the total contribution shall be allocated equally among all such persons unless a different allocation is specified on the face of the check. No candidate committee shall knowingly accept a contribution made in violation of this Subsection (b).

...

(d) No candidate committee, issue committee, small-scale issue committee or political committee shall knowingly accept contributions from any person who is not a citizen of

the United States, from a foreign government or from any foreign corporation that does not have authority to transact business in this State pursuant to Article 115 of Title 7, C.R.S.

...

(g) *Reimbursements prohibited.* No person shall make a contribution to a candidate committee, issue committee, small-scale issue committee or political committee with the expectation that some or all of the amounts of such contribution will be reimbursed by another person. No person shall be reimbursed for a contribution made to any candidate committee, issue committee, small-scale issue committee or political committee, nor shall any person make such reimbursement. An unexpended campaign contribution returned to a contributor by a candidate committee pursuant to § 7-135 (c) shall not be considered a reimbursement.

Section 5. That Section 7-135 of the Code of the City of Fort Collins is amended to add a new subsection (h), to read as follows:

Sec. 7-135. Campaign contributions/expenditures.

...

(h) A candidate committee, issue committee, small-scale issue committee or political committee shall not coordinate its expenditures with any other such committee in a manner that circumvents any restrictions or limitations on campaign contributions, expenditures or reporting set forth in this Article.

Section 6. That Section 7-136(g) and (i) of the Code of the City of Fort Collins are hereby amended to read as follows:

Sec. 7-136. Disclosure; filing of reports.

...

(g) Any report that is deemed by the City Clerk to be incomplete or inconsistent with the requirements of this Article shall be accepted on a conditional basis, and the committee's registered agent shall be notified in writing as to any deficiencies found. Such notice may be delivered in person, by mail, by fax, or, if an electronic mail address is on file with the City Clerk, by electronic mail. The committee's registered agent shall have seven (7) business days from the date of delivery of such notice to file an amended report that cures the deficiencies. Any such amended report shall supersede the original report filed for the reporting period.

...

(i) Except as specified in this Subparagraph (i), the disclosure requirements specified in this Section shall not apply to a small-scale issue committee. To the extent there is any

conflict between the small-scale issue committee provisions of Subparagraphs (i), (j), (k), and (l) of this Section 7-136, those Subparagraphs shall control. Any small-scale issue committee shall disclose or file reports about the contributions or expenditures it has made or received or otherwise register as an issue committee in connection with accepting or making such contributions or expenditures in accordance with the following alternative requirements:

Section 7. That Section 7-139 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 7-139. Independent expenditures.

Any person, excluding a committee required to register under this Article, who makes independent expenditures in connection with any particular ballot totaling in the aggregate more than two hundred fifty dollars (\$250.) shall report any such independent expenditures made after that threshold is met to the City Clerk on a form provided by the City Clerk no later than three (3) business days after the day that funds are obligated to pay for said independent expenditure. Said notice shall include the following information, together with any other information required by the City Clerk:

...

Section 8. That a new Section 7-140 of the Code of the City of Fort Collins is hereby adopted, to read as follows:

Sec. 7-140. Responsibility for communications.

(a) Required Statements.

(1) Whenever a candidate, candidate committee, issue committee, political committee or registered small-scale issue committee makes an expenditure for the purpose of financing communications expressly advocating a particular result in an election, or solicits any contribution or contribution in-kind through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing or any other type of general public political advertising, such communication if paid for or authorized by a candidate, candidate committee, issue committee, political committee, registered small-scale issue committee, or any agent for the same, shall clearly state that the communication is paid for by that candidate, candidate committee, issue committee, political committee or registered small-scale issue committee.

(2) Whenever any person makes an independent expenditure in excess of the reporting threshold in § 7-139 for the purpose of financing communications expressly advocating for a particular result in an election, such communication shall clearly state that the communication is paid for by that person.

(b) In regard to the different forms of communication set forth in subsection (a) of this Section 7-140, “communication” shall include, but shall not be limited to:

(1) Websites or social media of a candidate, candidate committee, issue committee, political committee or registered small-scale issue committee available to the general public;

(2) Websites or social media of a person if and to the extent they are financed by independent expenditures in excess of the reporting threshold in § 7-139 and are available to the general public; and

(3) Advertisements placed for a fee on another person’s website or social media.

(c) The statement required by this Section 7-140 must be clear and conspicuous in the communication. The statement required herein shall not apply to communications where including the statement would be impractical, such as:

(1) Bumper stickers, pins, buttons, pens and similar small items upon which the disclaimer cannot be conveniently printed;

(2) Skywriting, water towers, wearing apparel, or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable; or

(3) Checks, receipts, and similar items of minimal value that are used for purely administrative purposes and do not contain a political message.

(d) Nothing herein shall be deemed to alleviate any person from complying with federal campaign finance law, as applicable.

Section 9. That Section 7-141(b) of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 7-141. - Expenditures for political advertising; rates and charges.

...

(b) Any radio or television station, newspaper, internet advertiser or website provider, social media provider or periodical that charges an issue committee, small-scale issue committee or candidate committee a lower rate for use of space, materials or services than the rate such station, newspaper, internet advertiser or website provider, social media provider or periodical or supplier charges another issue committee or candidate committee for the same ballot measure or public office for comparable use of space, materials or services shall report the difference in such rate as a contribution in kind to the committee that is charged such lower rate.

...

Section 10. That Section 7-145 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 7-145. Allegation of campaign violation.

(a) Any candidate or registered elector of the City ("complainant") who has reason to believe a violation of Chapter 7, Article V, of this Code, has occurred by any person, candidate, candidate committee, issue committee, small-scale issue committee or political committee may file a written complaint to the City Clerk, no later than sixty (60) days after the alleged violation has occurred.

...

Introduced, considered favorably on first reading, and ordered published this 21st day of August, A.D. 2018, and to be presented for final passage on the 4th day of September, A.D. 2018.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 4th day of September, A.D. 2018.

Mayor

ATTEST:

City Clerk