

1 BY AUTHORITY

2 ORDINANCE NO. _____
3 SERIES OF 2018

COUNCIL BILL NO. 18-0747
COMMITTEE OF REFERENCE:
FINANCE & GOVERNANCE

6 A BILL

8 For an ordinance codifying a local home rule option governing certain campaign finance
9 complaints previously governed by state law and simplifying the campaign finance
10 complaint process.

11
12 **BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

13 **Section 1.** That article III of chapter 15, D.R.M.C. shall be amended by deleting the language
14 stricken and adding the language underlined, to read as follows:

15 **Section. 15-47. - Municipal elections activity—Limitations on municipal officers and elected**
16 **officials.**

17 (a) No city agency, department, board, division, bureau, commission, or council may make a
18 contribution in a campaign for the nomination, retention, election, or recall of a person to a public
19 office in an election, nor may such entity expend public moneys from any source, or make a
20 contribution, to urge electors to vote for or against a:

21 (1) Ballot issue or ballot question, after the clerk and recorder has approved the contents of
22 the affidavit, ballot title, and petition sample, as specified in section 8.3.2 of the Charter;

23 (2) Referred measure; or

24 (3) Measure for the recall of an elected officer, after the clerk and recorder has approved the
25 contents of the affidavit, ballot title, and petition sample, as specified in section 8.3.2 of the Charter.

26 (b) No incumbent candidate or city employee may use city time, resources, or monies in
27 furtherance of a campaign for the nomination, retention, election, or recall of a person to a public
28 office in a municipal election, nor may such entity expend public moneys from any source, or make a
29 contribution, to urge electors to vote for or against a:

30 (1) Ballot issue or ballot question that has been submitted and has had a title fixed;

31 (2) Referred measure; or

32 (3) Measure for the recall of an elected officer, upon the final determination of sufficiency.

33 (c) Nothing in subsections (a) or (b) prohibits a city agency, department, board, division, bureau,

1 commission, council, or elected or appointed official from responding to questions about an issue,
2 question, or measure described in subsections (a) and (b) if an appointed official, member or
3 employee of the public entity, or public entity did not solicit the question. An elected or appointed
4 official, member or employee of any such agency, department, board, division, bureau, commission, or
5 council who has policy-making responsibilities may expend \$50.00 or less of public moneys in the
6 form of letters, telephone calls, or other activities incidental to expressing his or her opinion on any
7 such issue described in subsection (a).

8 (d) Nothing in subsection (a) prohibits a city agency, department, board, division, bureau,
9 commission, or council from expending public moneys or making contributions to dispense a factual
10 summary, which must include arguments both for and against the proposal, on an issue of official
11 concern before the electorate in the city. The summary may not contain a conclusion or opinion for or
12 against an issue. As used in this subsection (d), "an issue of official concern" means an issue that will
13 appear on a municipal election ballot.

14 (e) Nothing in subsection (a) prohibits city council from expending public moneys or resources in
15 accordance with section 15-11 (e) (5) (b), D.R.M.C.

16 (f) Nothing in subsection (b) prohibits an elected official from expressing a personal opinion on an
17 issue.

18 (g) Nothing in subsection (a) prohibits a city agency, department, board, division, bureau,
19 commission, or council from:

20 (1) Passing a resolution or taking a position of advocacy on an issue described in subsection
21 (a); or

22 (2) Reporting the passage of or distributing such resolution through established, customary
23 means, other than paid advertising, by which information about other proceedings of the city agency,
24 department, board, division, bureau, commission, or council is regularly provided to the public.

25 (h) Nothing in subsection (b) prohibits a member or an employee of a city agency, department,
26 board, division, bureau, commission, or council from expending personal funds, making a contribution,
27 or using personal time to urge electors to vote for or against an issue, question, or measure described
28 in subsection (b).

29 (i) If a candidate who is also an incumbent inadvertently or unavoidably makes or authorizes any
30 expenditure that involves campaign expenses and official expenses, such expenditures will be
31 deemed a campaign expense only, unless the candidate, not more than ten working days after the
32 expenditure, files with the clerk and recorder information to differentiate between campaign expenses
33 and official expenses. The clerk and recorder may provide a form for such information. If the candidate
34 expends public moneys for campaign purposes, the candidate must reimburse the city for the amount

1 of money spent for campaign purposes.

2 (i) A resident of the City and County of Denver who believes there has been a violation of this
3 section may file a complaint with the clerk and recorder in accordance with section 15-40. Appropriate
4 relief shall be an order from the hearing officer directing the person who made or caused to be made
5 the contribution or expenditure in violation of this section to reimburse the fund of the city from which
6 the moneys were diverted for the amount of the contribution or expenditure or injunctive relief
7 enjoining the continuance of the violation.

8 **Section 2. Sec. 15-39. - Duties of the clerk and recorder.**

9 The clerk and recorder shall:

10 (1) Prescribe forms and provide instructional materials for reports required to be filed by this article.

11 (2) Preserve and maintain all such reports and make them available for inspection and copying
12 under the requirements of the state Public Records Act.

13 (3) Except for late reports subject to section 15-40.5, notify the committee or person involved if the
14 clerk and recorder makes a determination of an apparent violation. ~~or if a written complaint about a~~
15 ~~committee or person is filed with the clerk and recorder pursuant to section 15-40.~~ The receiving
16 committee or person will have ten (10) days from the date of notice of an apparent violation ~~or a~~
17 ~~complaint~~ to correct any violation of this article, including failure to file complete reports as required
18 by section 15-35; except when any violation concerning deadlines for reports during special elections
19 occurs, then the clerk and recorder will allow the committee or person two (2) days in which to correct
20 the deficiency. If the committee or person fails to correct the violation within the preceding timeframes,
21 the clerk and recorder shall appoint a hearing officer to investigate the apparent violation or complaint
22 in accordance with the procedure provided in section 15-40.

23 (4) Audit reports to ensure that each filing committee or person has fully complied with the
24 provisions of this article.

25 (5) Except for late reports subject to section 15-40.5, if any apparent violation of this article is not
26 corrected within ten (10) days as provided in paragraph (3) above, the clerk and recorder shall
27 proceed as provided in section 15-40.

28

29 **Section 3. Sec. 15-40. - Complaints; duties of clerk and recorder.**

30 (a) A resident of the City and County of Denver who believes a violation of this article has occurred
31 may file a written complaint with the clerk and recorder ~~who shall in turn appoint a hearing officer to~~
32 ~~investigate the complaint~~ no later than 30 days after the date of alleged violation.

33 (b) ~~If the hearing officer determines there is probable cause that a violation has occurred, the~~
34 ~~hearing officer shall so notify the city attorney, who shall determine whether to institute legal~~

1 ~~proceedings~~ Upon receipt of a complaint, the clerk and recorder must send notice to the respondent.
2 The respondent has 30 days from the date of the notice to cure the allegations in the complaint. If the
3 respondent does not cure the allegations during the 30-day cure period, the clerk and recorder must
4 appoint a hearing officer who is not an officer, employee, or agent of the city. The hearing officer may
5 dismiss, in his or her discretion, a complaint that does not specifically identify the section of this article
6 that the respondent allegedly violated or a complaint that does not assert facts sufficient to support the
7 alleged violations. The dismissal is final and subject to review by the district court. If the hearing officer
8 does not dismiss the complaint, the clerk and recorder must fix a date for the hearing, which must be
9 concluded no later than 30 days from the date the cure period concluded.

10 (c) ~~In conducting an investigation pursuant to this section,~~ The hearing officer shall have ~~has~~ has the
11 authority and ability to issue subpoenas as it ~~deems~~ deems necessary. ~~to complete its investigation.~~ Any
12 subpoena issued ~~hereunder shall be~~ is enforceable in the county court.

13 (d) ~~If requested to do so by the candidate involved, the hearing officer shall keep an investigation~~
14 ~~pursuant to this section confidential; provided, however, that if probable cause is found, the~~
15 ~~investigation shall be made public notwithstanding any request by the candidate.~~ The respondent and
16 complainant may present evidence to the hearing officer in the form of testimony, documents, rebuttal
17 testimony, and opening and closing statements. The hearing officer is entitled to examine any witness
18 and request the submission of additional evidence and arguments.

19 (e) The hearing officer must determine by a preponderance of the evidence if a violation of this
20 article has been committed. Upon a finding against a respondent, the hearing officer must enter a
21 decision and order any necessary relief, if applicable. The decision of the hearing officer is final and
22 subject to review by the district court. The clerk and recorder and the hearing officer are not necessary
23 parties to the review

24 (f) The clerk and recorder may promulgate any rules necessary for the proper administration of
25 campaign finance complaints, cures, and hearings including, but not limited to, any rules necessary to
26 ensure the complaint, cure, and hearing process is a simplified and scalable process designed to
27 enhance the just, speedy, and efficient determination of complaints.

28
29 COMMITTEE APPROVAL DATE: _____, 2018.

30 MAYOR-COUNCIL DATE: _____, 2018.

31 PASSED BY THE COUNCIL _____ 2018

32 _____ - PRESIDENT

33 APPROVED: _____ - MAYOR _____ 2018

34 ATTEST: _____ - CLERK AND RECORDER,

EX-OFFICIO CLERK OF THE
CITY AND COUNTY OF DENVER

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NOTICE PUBLISHED IN THE DAILY JOURNAL _____ 2018; _____ 2018

PREPARED BY: _____ Troy Bratton _____; DATE: ____ 5/29/18 ____

Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed ordinance. The proposed ordinance _____ **is/** _____ **is not** submitted to the City Council for approval pursuant to § 3.2.6 of the Charter.

Kristin M. Bronson
City Attorney

BY: _____, _____ City Attorney

DATE: _____