

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2018

COUNCIL BILL NO. CB18-0747
COMMITTEE OF REFERENCE:

A BILL

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

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

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

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

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

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

(2) Referred measure; or

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

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

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

(2) Referred measure; or

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

(c) Nothing in subsections (a) or (b) prohibits a city agency, department, board, division, commission, council, or elected or appointed official from responding to questions about an issue, question, or measure described in subsections (a) and (b) if an appointed official, member or

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

6 (d) Nothing in subsection (a) prohibits a city agency, department, board, division, commission, or
7 council from expending public moneys to provide the language of the ballot title, to provide the text of
8 the measure, or to dispense a factual summary that includes arguments both for and against the
9 proposal, on an issue of official concern before the electorate in the city. The summary may not
10 contain a conclusion or opinion for or against an issue. As used in this subsection (d), "an issue of
11 official concern" means an issue that will appear on a municipal election ballot.

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

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

16 (g) Nothing in subsection (a) prohibits a city agency, department, board, division, commission, or
17 council from:

18 (1) Passing a resolution or analyzing and commenting on an issue described in subsection
19 (a); or

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

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

27 (i) If a candidate who is also an incumbent inadvertently or unavoidably expends public moneys
28 for campaign purposes, the candidate must reimburse the city for the amount of money spent for
29 campaign purposes.

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

1 enjoining the continuance of the violation.

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

3 The clerk and recorder shall:

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

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

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

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

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

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

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

26 (b) ~~If the hearing officer determines there is probable cause that a violation has occurred, the~~
27 ~~hearing officer shall so notify the city attorney, who shall determine whether to institute legal~~
28 ~~proceedings~~ Upon receipt of a complaint, the clerk and recorder must send notice to the respondent.
29 The respondent has 30 days from the date of the notice to cure the allegations in the complaint or to
30 respond to the complaint. In responding to the complaint, the respondent may request that the hearing
31 officer dismiss the complaint for one or more of the reasons listed in this subsection (b). If the
32 respondent neither cures the allegations during the 30-day cure period nor requests that the complaint
33 be dismissed, the clerk and recorder must appoint a hearing officer who is not an officer, employee, or
34 agent of the city. The hearing officer may dismiss, in his or her discretion, a complaint that does not

1 specifically identify the section of this article that the respondent allegedly violated or a complaint that
2 does not assert facts sufficient to support the alleged violations. The dismissal is final and subject to
3 review by the district court. If the hearing officer does not dismiss the complaint, the clerk and recorder
4 must fix a date for the hearing, which must be concluded no later than 30 days from the date the cure
5 period concluded.

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

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

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

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

24 **Section 4. Sec. 15-41. - Penalties.**

25 (a) Except as provided in this section, failure to comply with the provisions of this article shall
26 have no effect on the validity of any election, issue, or bonds issued pursuant to law.

27 (b) Upon determination by a court of competent jurisdiction, any violation of sections 15-35,
28 15-36, and 15-37 of the Revised Municipal Code shall be considered a violation of section 8.1.5 of the
29 Charter. The candidate shall forfeit his or her right to assume office to which he or she may have been
30 elected. If the person has already assumed office, the office shall be vacated as provided under
31 Charter section 8.2.15. Any vacancy created by the operation of this subsection shall be filled as
32 provided in section 8.2.15 of the Charter.

33 (c) Any person who knowingly violates any provision of this article or who gives or accepts
34 any contribution or contribution in-kind in such a way as to hinder or prevent identification of the true

1 donor, in addition to any other penalties provided by law, shall be subject to the penalty in section 1-13
2 of the Revised Municipal Code.

3 ~~(d) The statute of limitations applicable to violations of this article except for fines imposed~~
4 ~~under section 15-40.5 shall be three (3) years.~~

5 COMMITTEE APPROVAL DATE: July 17, 2018

6 MAYOR-COUNCIL DATE: N/A

7 PASSED BY THE COUNCIL _____

8 _____ - PRESIDENT

9 APPROVED: _____ - MAYOR _____

10 ATTEST: _____ - CLERK AND RECORDER,
11 EX-OFFICIO CLERK OF THE
12 CITY AND COUNTY OF DENVER
13

14 NOTICE PUBLISHED IN THE DAILY JOURNAL _____; _____

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16 PREPARED BY: Troy Bratton, Assistant City Attorney DATE: July 18, 2018

17 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the
18 City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
19 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to §
20 3.2.6 of the Charter.

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22 Kristin M. Bronson, Denver City Attorney

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24 BY: _____, Assistant City Attorney DATE: _____

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