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February 11, 2021

M E M O R A N D U M

TO: Delta City Council

FROM: David McConaughy, *City Attorney*
Andrea Bryan, *Assistant City Attorney*

RE: Ordinance #3, 2021 Enacting Campaign Finance Regulations

Included in this packet is Ordinance #3, 2021, which enacts campaign finance regulations and a procedure for hearing third-party complaints for violations of municipal campaign finance rules. The ordinance is modeled after a campaign finance ordinance recently adopted by the Town of Avon.

Colorado's Fair Campaign Practices Act ("FCPA") is found at C.R.S. §§ 1-45-101 *et seq.*, and campaign finance restrictions are found in Article XXVIII of the Colorado Constitution. Both Article XXVIII and the FCPA refer to and cross-reference each other. These laws govern the amounts of campaign contributions, who can make contributions, how contributions may be spent and disclosure of contributions at all election levels within the State.

C.R.S § 1-45-116 states that any home rule municipality may adopt ordinances or charter provisions with respect to its local elections that are more stringent than any of the provisions contained in the Fair Campaign Practices Act. The requirements of Colo. Const. Article XXVIII and the FCPA do not apply to home rule municipalities that have adopted charters, ordinance, or resolutions that address any of the matters covered by Colo. Const. Article XXVIII or the FCPA.

Several municipalities across Colorado have adopted their own campaign finance regulations. Some of them have enacted a limits on individual campaign contributions. While the attached proposed Ordinance does not enact campaign contribution limits at this time, it does contain reporting requirements for contributions over \$20 and prohibits certain contributions, such as contributions from any person who is not a legal resident of the United States.

The proposed ordinance also responds to a July 2019 amendment to the FCPA requiring that "any complaint arising out of a municipal campaign finance matter. . . must be *exclusively* filed with the clerk of the applicable municipality." C.R.S. § 1-45-111.7(9)(b). The City of Delta currently does not have any procedures in place for processing complaints once they are received, and the attached ordinance establishes such a procedure.

In its current form, the proposed Ordinance, if enacted, would:

- Require all candidates for the office of City Council to certify by affidavit that they are familiar with the provisions of the Chapter.
- Require all candidate committees, political committees and issue committees to register with the Town Clerk before accepting or making any contributions.
- Require all candidate committees, political committees and issue committees to report to the City Clerk their contributions and contributions in kind received that are \$20.00 or more, expenditures made, and obligations entered into by the committee.
- Prohibit contributions from any person who is not a legal permanent resident of the United States, or from a foreign government, corporation, labor union, or political party.
- Establish regulations for unexpended campaign contributions.
- Establish procedures for hearing third-party complaints related to municipal campaign finance violations.
- Establish both civil and criminal penalties for violations of the Chapter.

ATTACHMENT: Ordinance #3, 2021

**CITY OF DELTA, COLORADO
ORDINANCE NO. 3, SERIES 2021**

AN ORDINANCE OF THE DELTA CITY COUNCIL ADDING CHAPTER 2.70
OF TITLE 2 OF THE DELTA MUNICIPAL CODE PERTAINING TO
CAMPAIGN FINANCE.

WHEREAS, the City of Delta is a home rule municipality existing pursuant to the laws of the Colorado Constitution, the Colorado Revised Statutes and the City's Home Rule Charter;

WHEREAS, various efforts have been made to enact valid campaign financing and disclosure regulations and reforms at all levels of government; and

WHEREAS, §1-45-116, C.R.S., of the Colorado Fair Campaign Practices Act (“FCPA”), states, in pertinent part: “Any home rule county or municipality may adopt ordinances or charter provisions with respect to its local elections that are more stringent than any of the provisions contained in this act;” and

WHEREAS, the manner of electing City officers and of financing political campaigns supporting or opposing candidates for City office and ballot issues and ballot questions referred to or initiated by City electors for a vote of the entire City electorate, are matters affecting the organization and structure of City government and are matters affecting the elective franchise and potential abuses of the elective franchise; and therefore are within the constitutional and statutory authority of City electors and the governing board to regulate by duly adopted home rule charter or ordinance; and

WHEREAS, as a result of its status as a home rule City, the City of Delta acknowledges the value and importance of transparency and disclosure in the financing of campaigns in local elections; and

WHEREAS, the FCPA provides, in pertinent part, that “any complaint arising out of a municipal campaign finance matter. . . must be *exclusively* filed with the clerk of the applicable municipality.” C.R.S. § 1-45-111.7(9)(b). However, The FCPA is silent as to what the Clerk is supposed to do after filing of such a complaint; and

WHEREAS, the City of Delta wishes to adopt campaign finance rules as well as a process for receiving and responding to third-party complaints alleging violations of the municipal campaign finance rules; and

WHEREAS, by adopting such rules, the City does not acknowledge or admit the constitutionality of C.R.S. § 1-45-111.7(9)(b) and reserves the right to forward all complaints alleging violation of municipal campaign finance rules to the secretary of state as provided by the Colorado Constitution Art. XXVIII Sec. 9; and

WHEREAS, the City of Delta finds that this Ordinance furthers and is necessary for the promotion of public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DELTA, COLORADO the following:

Section 1. Recitals Incorporated. The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the City Council.

Section 2. Addition of Chapter 2.70 to Title 2 of the City of Delta Municipal Code. Chapter 2.70, “Campaign Finance” is added to Title 2, “Administrative and Personnel,” of the Delta Municipal Code to read as set forth in **Exhibit A: Addition of Chapter 2.70 to Title 2 of the City of Delta Municipal Code**, attached hereto.

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 City Council 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 City.

Section 4. Effective Date. This Ordinance shall take effect thirty (30) days after final adoption in accordance with Section 6.4 of the Delta Home Rule Charter.

Section 5. Safety Clause. The City Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the City of Delta, 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 City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 6. No Existing Violation Affected. Nothing in this Ordinance shall be construed to release, extinguish, alter, modify, or change in whole or in part any penalty, liability or right or affect any audit, suit, or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing which may have been incurred or obtained under any ordinance or provision hereby repealed or amended by this Ordinance. Any such ordinance or provision thereof so amended, repealed, or superseded by this Ordinance shall be treated and held as remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions, for the enforcement of such penalty, liability, or right, and for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered, or made in such actions, suits or proceedings, or prosecutions imposing, inflicting, or declaring such penalty or liability or enforcing such right, and shall be treated and held as remaining in force

for the purpose of sustaining any and all proceedings, actions, hearings, and appeals pending before any court or administrative tribunal.

Section 7. Publication. The City Clerk is ordered to publish this Ordinance in accordance with the City Charter.

INTRODUCED on _____, 2021 at which time copies were available to the Council and to those persons in attendance at the meeting, read by title, passed on first reading, and ordered published as required by the Charter.

Mayor

ATTEST:

City Clerk

INTRODUCED a second time at a regular meeting of the Council of the City of Delta, Colorado on _____, 2021 read by title and number, passed with amendments, approved, and ordered published as required by the Charter.

Mayor

ATTEST:

City Clerk

**EXHIBIT A: ADDITION OF CHAPTER 2.70 TO TITLE 2 OF THE CITY OF DELTA
MUNICIPAL CODE**

**CHAPTER 2.70
CAMPAIGN FINANCE**

- Section 2.70.010 Legislative declaration.**
- Section 2.70.020 Definitions.**
- Section 2.70.030 Candidate affidavit; failure to file.**
- Section 2.70.040 Registration of committees.**
- Section 2.70.050 Campaign contributions.**
- Section 2.70.060 Disclosure; filing of reports.**
- Section 2.70.070 Reports to be public record.**
- Section 2.70.080 Unexpended campaign contributions.**
- Section 2.70.090 Independent expenditures.**
- Section 2.70.100 Electioneering communications.**
- Section 2.70.110 Duties of City clerk.**
- Section 2.70.120 Violations and complaints**
- Section 2.70.130 Criminal penalties.**
- Section 2.70.140 Civil penalties.**
- Section 2.70.150 Immunity from penalty**
- Section 2.70.160 Severability.**

2.70.010 LEGISLATIVE DECLARATION.

The Delta City Council hereby finds and declares that the manner of electing City officers and of financing political campaigns supporting or opposing candidates for City office and ballot issues and ballot questions referred to or initiated by City electors for a vote of the entire City electorate, are matters affecting the organization and structure of City government and are matters affecting the elective franchise and potential abuses of the elective franchise; that the interests of the public are best served by full and timely disclosure of campaign contributions, strong enforcement of campaign laws, and that the City is a home rule municipality and this Chapter shall supersede any and all conflicting constitutional provisions, state statutes and rules promulgated thereunder by the Secretary of State and Fair Campaign Practices Act, 1-45-101, et seq., C.R.S., as now enacted or as it may from time to time be amended.

2.70.020 DEFINITIONS.

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Section:

(a) Ballot issue, ballot question or issue shall mean any measure put to a vote of the registered electors of the City by the City Council at any election held under the provisions of the City

Charter. For purposes of this Chapter, ballot issue, ballot question or issue shall also mean any measure for which recall, initiative or referendum proceedings have been commenced. As used in this Section, commenced shall mean the date upon which the petition is first circulated for signatures.

(b) *Candidate* shall mean any person who seeks nomination or election to the office of City Council at any City election. A person is a candidate if the person has publicly announced an intention to seek such election, has accepted a contribution in any amount, or has filed a nominating petition for the office of City Council. Candidate shall also mean any elected official who is the subject of recall proceedings pursuant to the Charter and this Chapter.

(c) *Candidate committee* shall mean a person, including the candidate, or persons with the common purpose of receiving contributions and 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.

(d) *Committee* shall mean, collectively, candidate committees, issues committees and political committees.

(e) *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 services provided without compensation by individuals volunteering their time on behalf of a candidate, candidate committee, political committee or issue committee.

(f) *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 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 therefore, if any. 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 or uncompensated services and shall not include the payment of compensation for legal and accounting services rendered to a candidate, candidate committee, political committee or 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 Chapter or other county state or federal requirements.

(g) *Electioneering communication* means any communication broadcasted by television, internet, social media platforms or radio, printed in a newspaper or on a billboard, directly mailed, directly emailed or delivered by hand to personal residences or otherwise distributed that:

- (1) Unambiguously refers to any candidate;
- (2) Is broadcasted, printed, mailed, delivered, or distributed 90 days prior to an election; and
- (3) Is broadcasted to, printed in a newspaper distributed to, mailed to, emailed to, delivered by hand to, or otherwise distributed to an audience that includes members of the electorate for such public office.

Electioneering communication does not include:

- (1) 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 a candidate, issue committee or political party;
- (2) Any editorial endorsements or opinions aired by a broadcast facility not owned or controlled by a candidate, issue committee or political party; and
- (3) Any communication by persons made in the regular course and scope of their business or any communication made by a membership organization solely to members of such organization and their families.

(h) *Expenditure* shall mean the payment, distribution, loan or advance of any money by any candidate committee, political committee or 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 or 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.

(i) *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.

(j) *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 and making expenditures to support or oppose any ballot issue or ballot question; or
- (2) Any partnership, committee, association, corporation, labor organization or other organization or group of persons that has accepted contributions or made expenditures to support or oppose any ballot issue or ballot question. For purposes of this Paragraph (2), the term expenditure shall not include expenditures made by persons in the regular course and scope of their business or in connection with communications sent solely to their members. The term expenditure also does not include a contribution, as defined in this Chapter.

Issue committee shall not include political committees or candidate committees as otherwise defined in this Section.

(k) *Person* shall mean any individual, partnership, committee, association, issue committee, political committee or other organization or group of persons. Person shall not include corporations, labor unions or political parties.

(l) *Political committee* shall mean two (2) or more persons who are elected, appointed or chosen, or have associated themselves, for the purpose of making contributions to candidate committees, issue committees or other political committees, or for the purpose of making independent expenditures. Political committee shall not include:

- (1) Issue committees or candidate committees as otherwise defined in this Section; or
- (2) Any partnership, committee, association, corporation, labor organization or other organization or group of persons previously established for a primary purpose outside of the scope of this Chapter.

(m) *Termination report* shall mean a final report prepared by a candidate committee or issue committee and filed with the City Clerk that discloses the committee's contributions received, expenditures made and obligations entered into, when the committee no longer intends to receive contributions or make expenditures and a zero balance exists in any account established and maintained by the committee, and the committee has no outstanding debts or obligations.

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

2.70.030 CANDIDATE AFFIDAVIT; FAILURE TO FILE.

(a) When any individual becomes a candidate, such individual shall certify, by affidavit filed with the City Clerk within ten (10) days, that the candidate is familiar with the provisions of this Chapter.

(b) Failure of any person to file the affidavit required under this Section shall result in the disqualification of such person as a candidate for the office being sought. Disqualification shall occur only after the City Clerk has sent a notice to the person by certified mail, return receipt requested, addressed to the person's last known residence address. The notice shall state that the person will be disqualified as a candidate if the person fails to file the appropriate document within five (5) business days of receipt of the notice.

(c) The requirements of this Section shall not apply to any elected official who is the subject of recall proceedings pursuant to Article IX of the Charter.

2.70.040 REGISTRATION OF COMMITTEES.

All candidate committees, political committees and issue committees shall register with the City Clerk before accepting or making any contributions. Such registrations may be amended as necessary. Registration shall include a statement listing:

- (a) The committee's full name, spelling out any acronyms used therein;
- (b) A natural person authorized to act as a registered agent;
- (c) A street address and telephone number for the principal place of operations; and
- (d) All affiliated candidates and committees;
- (e) The purpose or nature of interest of the committee.

2.70.050 CAMPAIGN CONTRIBUTIONS.

(a) *Prohibited contributors.* No candidate committee or political committee shall knowingly accept contributions from any person who is not a legal permanent resident of the United States, or from a foreign government, corporation, labor union, or political party.

(b) Contributions from one (1) Committee to another.

(1) No Committee shall make a contribution or contribution in kind to, or accept a contribution or contribution in kind from, a Committee of another candidate.

(2) No Committee shall accept a contribution or contribution in kind from a Committee that was established or maintained for a federal, state or county election campaign or office.

(c) *Recordkeeping.* All contributions received by a candidate committee, issue committee or political committee shall be deposited and maintained in a financial institution in a separate account whose title shall include the name of the committee. All records pertaining to such accounts shall be maintained by the Committee for ninety (90) days following any election in which the Committee received contributions unless a complaint has been filed under Section

2.70.120 alleging a violation of the provisions of this Chapter, in which case they shall be maintained until final disposition of the complaint and any consequent court proceedings. Such records shall be subject to inspection at any hearing held pursuant to this Chapter.

(d) *Reimbursements prohibited.* No person shall make a contribution to a candidate committee, 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 or political committee, nor shall any person make such reimbursement. An unexpended campaign contribution returned to a contributor by a candidate committee pursuant to Section 2.70.080(a)(4) shall not be considered a reimbursement.

2.70.060 DISCLOSURE; FILING OF REPORTS.

(a) All candidate committees, political committees and issue committees shall report to the City Clerk their contributions and contributions in kind received, including the name, address, occupation and employer of each person who has made contributions or contributions in kind in the amount equal to or greater than twenty dollars (\$20.00) or more; expenditures made; and obligations entered into by the Committee.

(b) For purposes of complying with the requirements of this Section, an issue committee consisting of an organization whose primary purpose is not to support or oppose ballot issues shall report only those contributions accepted, expenditures made and obligations entered into for the purpose of supporting or opposing a ballot issue or ballot question. Such issue committee shall not be required to report donations, membership dues or any other payments received unless such amounts are used or to be used for the purpose of supporting or opposing a ballot issue or ballot question.

(c) Reports shall be filed with the City Clerk on the twenty-first day, fourteenth day, and on the Friday before the election, thirty (30) days after the election, and annually on the first day of the month in which the anniversary of the election occurs until such time as a termination report is filed. If the reporting day falls on a weekend or legal holiday, the report shall be filed by the close of the next business day.

(d) The reports required by this Section shall include the balance of funds at the beginning of the reporting period, the total of contributions received, the total of expenditures made during the reporting period and the name and address of the financial institution used by the committee or party.

(e) All reports shall be submitted on forms provided by the City Clerk and shall be complete in all respects. Reports shall be current in all respects as of two (2) days prior to the date upon which each such report is to be filed.

(f) A report required to be filed by this Section is timely if the original report is received by the City Clerk not later than the close of business on the due date or if a copy of the report is filed by fax on or before the date due and the original report is filed not later than the close of business on

the next business day. For the purpose of this provision, the original report shall mean a copy containing an original signature of the person completing the report.

(g) Any report that is deemed by the City Clerk to be incomplete or inconsistent with the requirements of this Section shall be accepted on a conditional basis, and the committee treasurer shall be notified in writing as to any deficiencies found. Such notice may be delivered in person, by mail, or by electronic mail. The committee treasurer 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.

(h) Any candidate committee, political committee or issue committee which has not accepted any contributions or contributions in kind, made any expenditures, or entered into any obligations during a reporting period, shall file a report with the City Clerk on the days specified in Subparagraph (c) above certifying that the committee has not accepted any contributions or contributions in kind, made any expenditures or entered into any obligations during the relevant reporting period.

2.70.070 REPORTS TO BE PUBLIC RECORD.

(a) Upon receipt of any campaign report submitted pursuant to this Chapter, the City Clerk shall make available such report for public inspection. The campaign report filed with the City Clerk fourteen (14) days prior to the election pursuant to Section 2.70.060 above shall be posted by the City Clerk on the City's official website in a manner that makes it easily identifiable, which posting shall occur no less than seven (7) days prior to the election. The campaign report filed with the City Clerk thirty (30) days after the election pursuant to Section 2.70.060 above shall also be posted on the City's official website by the City Clerk, which publication shall occur no more than seven (7) days after the City Clerk's receipt of the report.

(b) No information contained in any campaign report submitted pursuant to this Chapter shall be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose.

2.70.080 UNEXPENDED CAMPAIGN CONTRIBUTIONS.

(a) Unexpended campaign contributions to a candidate committee may be:

- (1) Contributed to a candidate committee established by the same candidate for a subsequent campaign for the same office, subject to the limitations set forth in Section 2.70.050(e), if the candidate committee making such a contribution is affirmatively closed by the candidate no later than ten (10) days after the date such a contribution is made;
- (2) Donated to a charitable organization recognized by the Internal Revenue Service; or
- (3) Returned to the contributors.

In no event shall contributions to a candidate committee be used for personal purposes not reasonably related to supporting the election or retention of the candidate.

(b) A candidate committee for a former officeholder or a person not elected to office shall expend all of the unexpended campaign contributions retained by such candidate committee, for the purposes specified in Subsection (a) of this Section, no later than one (1) year from the date such officeholder's term expired or from the date of the election at which such person was a candidate for office, whichever is later.

(c) Unexpended contributions to an issue committee or political committee may be donated to any charitable organization recognized by the Internal Revenue Service or returned to the contributor.

2.70.090 INDEPENDENT EXPENDITURES.

Any person or political committee making independent expenditures totaling more than one hundred dollars (\$100.00) shall deliver notice in writing of such independent expenditures to the City Clerk no later than three (3) business days after the day that such funds are obligated. Said notice shall include the following information:

(a) The name, address, telephone number, occupation and employer of the person making the independent expenditures;

(b) The name of the candidate(s) whom the independent expenditures are intended to support or oppose;

(c) The name and address of the vendor(s) providing the property, materials or services;

(d) A detailed description of the independent expenditures;

(e) The amount of the independent expenditures; and

(f) The date the funds were obligated.

For the purposes of this provision, funds shall be considered to have been obligated as soon as an agreement is reached for the provision of the property, materials or services in question, regardless of when payment is to be made for such property or services.

2.70.100 ELECTIONEERING COMMUNICATIONS.

Any person or Committee who expends one hundred dollars (\$100) or more per calendar year on electioneering communications shall state in the communication the name of the person or Committee making the communication.

2.70.110 DUTIES OF CITY CLERK.

The City Clerk shall:

- (a) Prepare forms and instructions to assist candidates and the public in complying with the reporting requirements of this Chapter;
- (b) Develop a filing and indexing system consistent with the purposes of this Chapter;
- (c) Keep a copy of any report or statement required to be filed by this Chapter for a period of one year from the date of filing. In the case of candidates who were elected, those candidate's reports and filings shall be kept for one (1) year after the candidate leaves office;
- (d) Make reports and statements filed under this Chapter available for public inspection and copying no later than the end of the next business day after the date of filing;
- (e) Upon request by the Secretary of State, transmit records and statements filed under this Chapter to the Secretary of State;
- (f) Notify any person who has failed to fully comply with the provisions of this Chapter; and
- (g) Report apparent violations of this Chapter to the City Manager.

2.70.120 VIOLATIONS AND COMPLAINTS

(a) Any qualified elector may file a written complaint with the City Clerk regarding a possible violation of this Chapter. The complaint shall include:

- (1) The name, address and signature of the complainant;
- (2) The name and address of each person alleged to have committed a violation; and
- (3) The details of the violation with citations to the Chapter.

(b) If the City Clerk receives a written complaint pursuant to Subsection (c), below, alleging a violation of this Article, the City Clerk shall:

- (1) Provide the person believed to have committed the violation with a copy of the written complaint.
- (2) Allow ten (10) business days for correction of the violation or submission of written statements explaining the reason that support a conclusion that a violation was not committed.
- (3) If the City Clerk receives a written complaint that is not corrected or otherwise remedied as provided in Section 2.70.120(b)(2) herein, the City Clerk shall refer the

matter to the City Attorney to review whether, under the circumstances and in accordance with this Chapter, a complaint in the Municipal Court should be filed with regard to the alleged violation.

(c) Within ten (10) days of receipt of a complaint referred by the City Clerk, the City Attorney shall respond within ten (10) days indicating whether he or she intends to file a civil or criminal action. If the City Attorney indicates in the affirmative and files suit within thirty (30) days thereafter, no other action may be brought unless the action brought by the City Attorney is dismissed without prejudice.

(d) In the event any person residing within the City shall bring a civil action for injunction or to otherwise enforce this Chapter and such person shall prevail in such action, then he or she shall be awarded a reasonable attorney's fee and costs of the action to be paid by the defendant.

2.70.130 CRIMINAL PENALTIES.

(a) Any person who knowingly violates any provision of this Chapter is guilty of a misdemeanor and shall be punished by a fine not exceeding three hundred dollars (\$300.00) or imprisonment for a period of not more than ninety (90) days or both such fine and imprisonment.

(b) Any candidate who knowingly violates any provision of this Chapter shall, in addition to any other penalties provided for herein, be denied his or her right to take oath for the office to which he or she was elected unless he or she has already taken said oath, in which event, the office shall be deemed vacant and shall be filled as otherwise provided by law.

2.70.140 CIVIL PENALTIES.

(a) Any person who violates any of the reporting provisions of this Chapter shall be liable in any civil action initiated by the City Attorney or by a person residing within the City for an amount not more than the amount or value not properly reported.

(b) Notwithstanding the provisions of Subsection 2.70.140(a), any person who makes or receives a contribution or expenditure in violation of this Chapter is liable in a civil action initiated by the City Attorney or by a person residing within the City for an amount up to five hundred dollars (\$500.00) or three (3) times the amount of the unlawful contribution or expenditure, whichever is greater.

(c) In determining the amount of liability under Subsections 2.70.140(a) and (b), the Court may take into account the seriousness of the violation and the culpability of the defendants. If a judgment is entered against a defendant or defendants in an action under the sections noted above, the plaintiffs, other than the City, shall receive fifty percent (50%) of the amount recovered. The remaining fifty percent (50%) shall be deposited in the treasury of the City. In an action initiated by the City Attorney, the entire amount recovered shall be paid into the treasury of the City.

2.70.150 IMMUNITY FROM PENALTY.

(a) Any individual volunteering his or her time on behalf of a candidate or issue committee shall be immune from any liability for a penalty imposed if:

- (1) The volunteer was acting in good faith and within the scope of such volunteer's functions and duties for the candidate or issue committee; and
- (2) The violation was not caused by willful and intentional misconduct by such volunteer.

2.70.160 SEVERABILITY.

If any provision of this Chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared to be severable.