

ORDINANCE 8317

AN EMERGENCY ORDINANCE TO REPEAL AND RE-ENACT
TITLE 13, "ELECTIONS AND CAMPAIGN DISCLOSURE,"
B.R.C. 1981; AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER,
COLORADO:

Section 1. Title 13, "Elections and Campaign Disclosure," B.R.C. 1981, is hereby
repealed and reenacted as follows:

Chapter 1 – Elections.

13-1-1. - Legislative Intent.

- (a) The purposes of this chapter are (1) to establish procedures for regular and special elections of the home rule City of Boulder; and (2) to set the date upon which a proposed ballot measure is final for its submission to the voters for purposes of complying with the intent and spirit of § 1-45-117, C.R.S. This chapter does not apply to initiatives concerning the amendment or abolition of the charter.
- (b) The procedures for regular and special elections are intended to be consistent with the Municipal Election Code of 1965 as adopted by the state of Colorado, except as necessary to comply with provisions of the charter or to meet a specific need of the city as determined by the city council.

13-1-2. - General Municipal Elections.

- (a) The Municipal Election Code of 1965, § 31-10-101, *et seq.*, as it may be amended, is adopted by reference and incorporated to have the same force and effect as if printed in full in this code, except as specifically amended by the charter or provisions of this chapter.
- (b) Unless the context or ordinance requires otherwise, general municipal elections as defined in Section 22 of the charter shall be held as specified for regular municipal elections in the Municipal Election Code.

13-1-3. - Responsibility of the City Clerk.

The city clerk shall administer the requirements of this chapter and comply with all laws regulating the conduct of elections.

1 **13-1-4. - Initiative and Referendum.**

2 All aspects of the exercise of the initiative and referendum power reserved to the people by
3 the charter of the city of Boulder shall be governed exclusively by the provisions of the charter,
4 this code, and any other applicable ordinance of the city, and no statute of the state purporting to
5 regulate in any way the exercise of the initiative or referendum shall govern the exercise of the
6 initiative or referendum, except for those criminal provisions of state law not in conflict with any
7 provision of the charter or this code which prohibit fraud or deception in the circulation or signing
8 of initiative or referendum petitions, or respecting affidavits concerning said petitions.

6 **13-1-5. - Special Provisions Concerning Filling Council Vacancies by Special Election.**

- 7 (a) The city council may, in the resolution calling for a special election to fill a council vacancy,
8 specify a number of days before the election that the early voters' polling place shall be open,
9 and may also specify additional hours during which such early voters' polling places shall be
10 open. Such a provision is only effective for a special election which is not conducted as a
11 coordinated election.
- 10 (b) The term of a council member elected in a special election held pursuant to charter section 8
11 to fill a council vacancy shall expire at 10:00 a.m. on the third Tuesday in November
12 following the next general municipal election.

12 **13-1-6. - Fixing of Ballot Title for Purposes of § 1-45-117, C.R.S.**

13 For purposes of § 1-45-117, C.R.S., ballot titles for city ballot measures shall be considered
14 fixed upon the final vote of the council after final reading of a motion, resolution, or ordinance
15 which officially submits a specific ballot measure in the form it is to appear on the ballot for a
16 vote of the electors at the next election. The date the election is called for consideration of city
17 ballot measures shall not change the date upon which the ballot title is fixed as provided in this
18 section.

16 **Chapter 2 – Campaign Finance, Disclosure and Reporting Requirements**

17 **13-2-1. - Legislative Intent.**

- 18 (a) The provisions of this chapter have been modeled on the Federal Election Campaign Act and
19 the Colorado Fair Campaign Practices Act and in accordance with an initiative passed by the
20 people of the city in 1999. Modifications have been made where necessary to meet specific
21 needs of the city, to clarify and make more specific various requirements, and to comply with
22 the evolving law in this area.
- 21 (b) The purposes of this chapter include the following:
- 22 (1) Assisting electors in making informed election decisions by requiring disclosure of
23 information from candidates for city office and from persons supporting or opposing
24 such candidates and/or ballot measures. The purpose of disclosure is to provide for
25 transparency in the collection and disbursement of monies spent on campaigns and not
to regulate speech;
- (2) Limiting contributions to candidates running for city council and committees formed to
support or oppose such candidates. This limit is meant to ensure that large campaign

1 contributions do not cause corruption or the appearance of corruption in the election
2 process, are not used to buy political access or to influence governmental actions, and to
3 ensure that access to large amounts of money will not be a prime requirement for
4 participation in the political process. This chapter does not limit contributions made to
5 committees supporting or opposing ballot measures;

6 (3) Assuring the public that there is transparency of the companies or individuals that are
7 providing financial support or otherwise backing electioneering communications and
8 express advocacy materials, while not putting an onerous burden on contributors;

9 (4) Providing public financing for candidate campaigns that is contingent on candidates who
10 receive public funds complying with expenditure limits. These measures are meant to
11 reduce candidates' need to focus on fundraising and also to reduce the amount of money
12 that is needed to run an effective campaign, which benefits the recipients of matching
13 funds as well as other candidates and the citizens generally; and

14 (5) Providing members of the public with information regarding financial dealings of
15 candidates and council members that might affect their ability to make impartial
16 decisions.

17 (c) The provisions of this chapter are exclusive and supersede any state statute on the subject,
18 whether in conflict herewith or not, including, without limitation, article 1-45, C.R.S., unless
19 the provisions of such statute are expressly made applicable by reference in this chapter.

20 **13-2-2. - Definitions.**

21 The following terms used in this chapter have the following meanings unless the context
22 clearly indicates otherwise:

23 *Advertisement* means any notice, announcement, bulletin, materials, display, handout or
24 similar materials, or radio or video messages, distributed or posted to convey support for or
25 opposition to a candidate or ballot measure.

Ballot measure means any amendment to the city charter, and any initiative, referendum, or
recall for which petitions have been properly certified by the city clerk for submission to the city
council, or any ordinance, issue, or question – put to a vote of the electors of the city of Boulder
under the provisions of the city charter. For purposes of this chapter only, “*ballot measure*” also
includes any initiative, referendum, or recall for which a petition committee has submitted a
proposed petition to the city clerk. Such term does not include any question placed on the ballot
by the United States, the State of Colorado, or any political subdivision thereof other than the city.

Ballot measure committee means any person who accepts contributions, or any two or more
persons who make expenditures, for the purpose of supporting or opposing a ballot measure at a
city election, regardless of whether they have obtained the consent of the proponents of the ballot
measure.

Candidate means any natural person whose petition of nomination for city council, whether at
a regular, special, or recall election, has been certified as sufficient by the city clerk pursuant to
section 26 of the city charter. A person is no longer a *candidate* after the date of the election for
which the person filed a petition.

1 *Candidate committee* means a person, including the candidate, or persons with the common
2 purpose of receiving contributions or making expenditures under the authority of a candidate. The
term official candidate committee is synonymous with *candidate committee*.

3 *Candidate forum* means provisions or broadcasts of a forum for candidates which:

- 4 (a) Is conducted after expiration of the time during which candidates may be certified;
- 5 (b) Is open to all candidates without discrimination;
- 6 (c) Provides all candidates equal time to express their positions;
- (d) Is not sponsored by a committee; and
- (e) If rebroadcasted, includes the full statements of all participants.

7 *Committee* means a candidate committee, an unofficial candidate committee, or a ballot
measure committee, unless the context indicates that it can mean only one or two of these types of
8 committees.

9 *Contribution* means:

- 10 (a) Any payment, loan, pledge, or advance of money, including, without limitation, checks
received but not deposited or payments made by credit card, or guarantee of a loan, made
to or for the benefit of any candidate or committee;
- 11 (b) Any payment made to a third party for the benefit of any candidate or committee, including,
12 without limitation, the use of a credit card to secure such benefit;
- 13 (c) Anything of value given, directly or indirectly, to a candidate for the purpose of promoting
the candidate's election, including, without limitation, commercial services such as
14 banking, printing, and mailing services;
- 15 (d) With regard to a *contribution* for which the contributor receives compensation or
consideration of less than equivalent value to such contribution, including, without
16 limitation, 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; or
- 17 (e) A contribution in kind.

18 *Contribution* does not include services provided without compensation by individuals
volunteering their time on behalf of a candidate or committee.

19 *Contribution in kind* means the fair market value of a gift or loan of any item of real or
20 personal property, other than United States currency, made to or for any candidate or committee
for the purpose of influencing the passage or defeat of any issue or the election or defeat of any
21 candidate. Personal services are 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
22 fair market value shall be used by the candidate or committee. Contributions of foreign currency
or cryptocurrency are contributions in kind. *Contribution in kind* does not include an
23 endorsement of a candidate or an issue by any person, nor does it include the payment of
compensation for legal or accounting services rendered to a candidate if the person paying for
24 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 title.
25

1 *Distributing, distribution, or distributed* refers to any communication broadcast by television,
2 radio, cable or satellite to residents of the city; printed in a newspaper, magazine, or other
3 periodical, or billboard, that reaches residents of the city; directly mailed or delivered by hand to
4 personal residences in the city; or delivered for a fee digitally or by telephone, or similar means
5 or communication targeted to residents of the city.

6 *Election cycle* means the period from the day after an election until the day of the election in
7 the following year.

8 *Electioneering communications* means any communication that is:

- 9 (a) Taken as a whole and in context unambiguously referring, in writing or pictorially, to any
10 candidate;
11 (b) Distributed before the end of the election cycle and after the first date a city council
12 candidate nomination petition could be certified about any candidate; and
13 (c) Distributed to an audience that includes residents of the city;

14 *Electioneering communication* does not include:

- 15 (a) Any communication by persons, other than committees, made in the regular course and
16 scope of their business;
17 (b) Any communication made by a membership organization solely to members or such
18 organization and their families;
19 (c) Any communication that refers to a candidate or ballot measure only as part of the
20 popular name of a bill or statute;
21 (d) The original broadcast or distribution of any news articles, editorial endorsements,
22 opinions, commentary writings, or letters to the editor, through media not owned or
23 controlled by a candidate, committee, or a person contributing over \$1000 towards the
24 original broadcast or printing; or
25 (e) Candidate forums.

Entity means any person or group of persons, other than one natural person, that makes
contributions or expenditures, including without limitation corporations, partnerships, limited
liability companies, limited liability partnerships, commissions, enterprises, or any other formal or
informal associations or organizations.

Excepted investment means a mutual fund, common trust fund of a bank, pension, or deferred
compensation plan, any other investment fund, or a ten percent or less interest in the stock of a
company, which for funds or stocks is widely held; publicly traded (or available) or widely
diversified; and which for funds under circumstances where the investor neither exercises control
over nor has the ability to exercise control over the financial interests held by the fund. A fund is
widely diversified when it holds no more than five percent of the value of its portfolio in the
securities of any one issuer (other than the U.S. Government).

Expenditure means the payment, distribution, loan, or advance of any money, whether in cash,
by check, as a credit card charge, or otherwise. *Expenditure* also includes the payment,
distribution, loan, or advance of any money by a person for the benefit of a candidate or committee
that is made with the prior knowledge and consent of an agent of the candidate or committee. An
expenditure occurs when the actual payment is made or when a contract is agreed upon, whichever
comes first. Consent may be implied from collaboration and need not be express.

1 *Express Advocacy* means any communication that contains words urging election or defeat,
2 such as “vote for,” “support,” “cast your ballot for,” “vote against,” “defeat,” “reject,” “Smith for
3 Congress,” “endorse,” or any communication, by words or symbols, which is the functional
4 equivalent of *express advocacy* because it is susceptible to no other reasonable interpretation than
5 as an appeal to vote for or against a specific candidate or ballot measure.

6 *Fair market value* means the amount a willing buyer and a willing seller would pay for the
7 product or service when neither was under any obligation to do so.

8 *Income* means money received for the provision of goods or services, not including the
9 unrealized appreciation of any asset, *income* from any excepted fund, or interest earned from any
10 commercial bank, savings and loan, or credit union.

11 *Independent expenditure* means an expenditure by any person for the purpose of creating or
12 disseminating express advocacy or electioneering communications, which expenditure is not
13 controlled by, coordinated with, or made upon consultation with any committee or any agent of
14 such committee. *Independent expenditure* does not include expenditures made by persons in the
15 regular course and scope of their business, including political messages sent solely to members.

16 *Loan* means providing something of value, including money, to another, with a promise,
17 express or implied, that money will be paid in the future for the item of value.

18 *Natural person* means a human being.

19 *Official candidate committee* means a person, including the candidate, or persons with the
20 common purpose of receiving contributions or making expenditures under the authority of a
21 candidate.

22 *Other household income* means any income earned by a spouse, domestic partner, or partner
23 in a civil union who resides in the same household as the reporting person that is reportable by a
24 candidate or incumbent for federal or state income tax purposes.

25 *Other household member* means a spouse, domestic partner, or partner in a civil union who
resides in the same household as the reporting person.

Person means the same as the definition in Chapter 1-2-1.

Published means a writing presented for distribution in exchange for money or other item of
value.

Reportable interest means:

(a) In the case of a corporation, either more than ten percent of the total combined voting
power of all classes of stock of the corporation entitled to vote, or more than ten percent of
the capital, profits, or beneficial interest in the voting stock of the corporation;

(b) In the case of a partnership, association, trust, or other entity, more than ten percent of the
capital, profits, or beneficial interest in such partnership, association, trust, or other entity;
or

(c) Any interest in any entity that owns real property, if more than fifty percent of the entity's
holdings are in Boulder County.

Solicitation means a written or oral or other endeavor to obtain, seek or plead for money or
other item of value.

1 *Top contributors* means the persons from whom the ballot measure committee paying for a
2 communication has received its three largest cumulative contributions of \$1000 or more for a
3 communication that includes express advocacy as of the date of the first broadcast or other
4 distribution of the communication.

5 *Unofficial candidate committee* means any natural person who accepts contributions, or any
6 two or more persons who make expenditures, for the purpose of supporting or opposing a candidate
7 for city council. An *unofficial candidate committee* ceases to be independent if its expenditures
8 are in any way, directly or indirectly, controlled by, coordinated with, or made upon consultation
9 with any candidate or candidate committee or agent thereof.

10 **13-2-3. - Participants.**

11 (a) Candidates.

12 (1) Official Candidate Committee. A candidate is deemed to have an official candidate
13 committee even if none has been formed. A candidate may hold any position in the
14 candidate's official campaign committee. No candidate shall have more than one
15 candidate committee. If more than one committee acts under the authority of or in
16 coordination with a candidate, all shall be deemed the candidate's official candidate
17 committee and shall file combined reports as required by this title and all shall jointly be
18 subject to the limitations of this title.

19 (2) Public Matching Funds.

20 (A) Eligibility. A candidate who meets the following requirements shall be eligible to
21 receive matching funds: (1) The candidate raises at least ten percent of the
22 expenditure limit from contributions of no more than \$25; (2) the candidate accepts
23 contributions only from natural persons, and (3) The candidate signs a contract with
24 the city committing that the candidate will:

25 i. Limit his or her expenditures to \$20,740;

 ii. Contribute to his or her campaign no more than twenty percent of the expenditure
 limit from his or her own personal wealth; and

 iii. Return at least fifty percent of any unexpended funds to the city, but not more than
 the matching funds received.

 (B) Match Amount. The city will allocate and provide matching funds, up to fifty
percent of the expenditure limit as herein defined, to any city council candidate who
meets the eligibility requirements set forth above. Only actual currency or its
equivalent shall be matched with public funds. Neither loans nor contributions in
kind or amounts exceeding \$100 from the candidate's personal wealth shall be
eligible for matching funds.

 (C) Disbursements. After meeting the eligibility requirements, any candidate may request
matching funds from the city no more frequently than once per week in amounts no
less than \$500. The final request for matching funds must be submitted to the city no
later than fourteen days before the election and may be for less than \$500.

1 (D) Inflation Adjustment. The city clerk shall adjust the limit set forth in subsection
2 (2)(A) of this section based upon the percentage change over a two-year period in the
3 United States Bureau of Labor Statistics Consumer Price Index for Denver-Boulder-
4 Greeley, all urban consumers, or its successor index, rounded to the nearest dollar.
The first adjustment shall be done in the first quarter of 2021 and then every two
years thereafter.

5 (b) Persons Who Support or Oppose Candidates or Ballot Measures.

6 (1) Unofficial Candidate Committee. Any persons meeting the definition of an unofficial
candidate committee are deemed to have formed a committee and must adhere to the
requirements of this chapter.

7 (2) Ballot Measure Committee. Any persons meeting the definition on a ballot measure
8 committee are deemed to have formed a committee and must adhere to the requirements of
this chapter.

9 (3) Individuals. Any person making an independent expenditure in excess of \$200 to support
10 or oppose one or more candidates, or in excess of \$1000 to support or oppose a ballot
measure, shall be subject to the reporting and disclosure requirements set forth below in
11 this chapter.

12 (4) Coordination. Expenditures by any person or committee on behalf of a candidate that are,
in any way, directly or indirectly, controlled by, coordinated with, or made upon
13 consultation with any candidate or candidate committee or agent thereof shall be
considered a contribution to the candidate and subject the candidate and the contributor to
14 any applicable limitations contained in this chapter. Such expenditures also count toward
the expenditure limit of any candidate who has received public funding under this chapter.

15 **13-2-4. - Campaign Activities.**

16 (a) Contribution Limitations.

17 (1) No person shall make contributions to or for the benefit of any official candidate
committee or unofficial candidate committee that, in the aggregate, exceeds \$100 with
18 respect to any election cycle in which such candidate or committee is participating for a
municipal election. Persons are not limited in the amount that may be contributed to
19 ballot measure committees.

20 (2) Any expenditure that is controlled by, or coordinated with, a committee or agent of a
committee, is deemed to be both a contribution by the maker of the expenditure and an
21 expenditure by the committee.

22 (3) Contributions to unofficial candidate committees are subject to the \$100 limitation per
person per committee regardless of how many candidates the unofficial candidate
23 committee supports or opposes.

24 (4) The recipient of any contribution which would cause the total amount of contributions
from a single person to exceed \$100 per committee limitation shall promptly return any
25 such excess to the donor.

1 (5) No person shall make contributions of coin or paper currency for the benefit of any ballot
2 measure committee that, in the aggregate, exceeds \$100 per election cycle.

3 (6) A committee may not make a contribution to another committee.

4 (b) Contributions in Name of Another Prohibited. No person shall make a contribution in the
5 name of another person or knowingly permit such person's name to be used to effect such a
6 contribution, and no person shall knowingly accept a contribution made by one person in the
7 name of another person.

8 (c) Anonymous Contributions.

9 (1) Anonymous contributions to any official candidate committee or unofficial candidate
10 committee may not be retained or expended by the committee. If anonymous
11 contributions are received by such a committee, they shall be disposed of as follows:

12 (A) If the candidate has accepted public financing under this chapter, all anonymous
13 contributions to the candidate or the candidate's committee shall be forwarded to the
14 city clerk with the next required report, noted in the report, and deposited in the
15 general fund of the city.

16 (B) Unofficial candidate committees and candidate committees of candidates who have
17 not accepted public financing under this chapter shall be allowed to donate
18 anonymous contributions to any charitable organization recognized by the Internal
19 Revenue Service pursuant to section 501(c)(3) of the Internal Revenue Code or to the
20 city, and the distribution of such funds shall be indicated on the next report required
21 to be filed pursuant to section 13-2-6(c)(2).

22 (C) If an anonymous contribution is donated to a charitable organization recognized by
23 the Internal Revenue Service pursuant to section 501(c)(3) of the Internal Revenue
24 Code, the candidate or committee shall retain the envelope or other container in
25 which it arrived, together with any other material which arrived with it, a photocopy
of the contribution itself (showing only the amount and serial number of any bills),
and shall retain such information as candidate or committee records for at least six
months after the election, and shall make such records available to the city clerk upon
request.

(2) If an anonymous contribution is received by a ballot measure committee, the committee
shall retain the envelope or other container in which it arrived, together with any other
material which arrived with it, and a photocopy of the contribution itself (showing the
amount and serial number of any bills) as committee records for at least six months after
the election, and shall make such records available to the city clerk upon request.

(d) Unexpended Campaign Contributions. Candidates receiving matching funds must return at
least fifty percent of any unexpended funds to the city, but not more than the matching funds
received. Any remaining unexpended contributions to candidates or committees may be
donated to any charitable organization recognized by the Internal Revenue Service pursuant
to section 501(c)(3) of the Internal Revenue Code or returned to the contributor, and the
distribution of such funds shall be indicated on the final report of the committee required to
be filed pursuant to section 13-2-6(c)(2).

- 1 (e) Campaign Advertising Requirements. No person who sells space in a newspaper or
2 magazine to a candidate or committee to use in connection with a municipal election may
3 charge an amount for such space which exceeds the amount charged for comparable use of
4 such space for other purposes.
- 5 (f) Misrepresentation of Campaign Authority. No candidate or any agent of a candidate or
6 committee shall make any fraudulent misrepresentation as speaking or writing or otherwise
7 acting for or on behalf of any other candidate or committee on a matter which is damaging to
8 such other candidate or committee; or willfully and knowingly participate in or conspire to
9 participate in any plan, scheme or design to do so.
- 10 (g) No Personal Use. Committee funds shall not be used for personal purposes not reasonably
11 related to supporting or opposing the election of a candidate or the adoption of a ballot
12 measure.
- 13 (h) City Resources. City resources shall not be used to make any contribution to a committee or
14 to fund express advocacy. Nothing in this subsection shall be construed as prohibiting the
15 city from expending city resources to dispense a factual summary, which shall include
16 arguments both for and against the proposal, on any ballot measure. Notwithstanding the
17 foregoing, city council may pass a resolution or take a position of advocacy for or against a
18 ballot measure, and city resources may be used to report city council's action through
19 established, customary means other than paid advertising.

12 **13-2-5. - Disclosure Requirements.**

13 (a) Election Materials and Advertising Contain Sponsor's Name.

- 14 (1) A committee that distributes an advertisement shall include therein the words "Paid for
15 by" followed by the name of the committee. An unofficial candidate committee that
16 distributes an advertisement shall include therein the words "Not affiliated with any
17 candidate or candidate committee."
- 18 (2) A ballot measure committee that distributes an advertisement supporting or opposing a
19 candidate or ballot measure shall include therein the words "Major funding from"
20 followed by the names of the top contributors to the committee paying for the
21 advertisement. If two or more contributors of identical amounts qualify as top
22 contributors, all the contributors of that amount shall be listed.
- 23 (3) A person, other than a committee, who makes an independent expenditure shall include in
24 the advertisement the words "Paid for by" followed by the name of the person.
- 25 (4) An advertisement that is distributed as video shall include the disclosures required by this
section at the beginning or end of the advertisement, displayed for at least five seconds of
a broadcast of thirty seconds or less or for at least ten seconds of a broadcast that lasts
longer than thirty seconds on the entire bottom one-third of the television or video display
screen, with the type size of the smallest letters no less than four percent of the height of
the television or video display screen. The written disclosures shall be underlined, except
for the names of the top contributors.

- 1 (A) The top contributors to a ballot measure committee, if any, shall each be disclosed on
2 a separate horizontal line centered horizontally, in descending order, beginning with
the top contributor who made the largest cumulative contributions on the first line.
- 3 (B) If using a type size of four percent of the height of the television or video display
4 screen causes the name of any of the top contributors to exceed the width of the
5 screen or causes the disclosures to exceed one-third of the television or video display
6 screen, the type size of the name of the contributor shall be reduced until the top
contributor's name fits within one-third of the television or video display screen, but
in no case shall the type size be smaller than two and one half percent of the height of
the screen.
- 7 (5) An advertisement in printed form shall include the required disclosure on a solid
8 background with the words in a contrasting color in an Arial equivalent font within a box
9 and set apart from any other print on the advertisement. Display of the disclosure shall
be in one of the following forms:
- 10 (A) A print advertisement that is distributed shall include the disclosures required by
11 this section, with a type size of at least ten-point; or
- 12 (B) A print advertisement that is larger than those designed to be individually
13 distributed, including, but not limited to, yard signs or billboards, shall display the
14 disclosure with a total height of at least five percent of the height of the
advertisement. The text may be adjusted so it does not appear on separate horizontal
lines, with the top contributors separated by a comma; or
- 15 (C) For a print advertisement of twenty square inches or less paid for by a ballot issue
16 committee, the disclosure is only required to include the single top contributor of
\$1000 or more.
- 17 (6) An advertisement that is distributed by audio shall include the disclosures required by
18 this section at the beginning or end of the advertisement, read in a clearly spoken manner
19 and in a pitch and tone substantially similar to the rest of the advertisement, and shall last
20 no less than three seconds. Notwithstanding the definition of "top contributors," radio and
prerecorded telephonic advertisements made by a ballot measure committee shall disclose
only the top two contributors of \$1000 or more unless the advertisement lasts fifteen
seconds or less or the disclosure statement would last more than eight seconds, in which
case only the single top contributor of \$1000 or more shall be disclosed.
- 21 (b) Solicitation for Candidate Campaign Funds. Whenever any person makes an expenditure for
22 the purpose of soliciting any contribution through any broadcasting station, newspaper,
23 magazine, outdoor advertising facility, direct mailing, or any other type of advertisement,
such communication:
- 24 (1) If authorized by a candidate or committee or any agent thereof, shall clearly state that the
25 communication has been so authorized;

- (2) If not authorized by a candidate or committee, or its agents, shall clearly state the name of the person who paid for the communication and state that the communication is not authorized by any candidate or committee.

13-2-6. - Reporting Requirements.

- (a) Persons required by this chapter to prepare and file statements shall do so on the basis of information that is complete and current at least as of 5:00 p.m. on the calendar day before the filing date. A statement due on a weekend or holiday shall be filed on the next business day.

(b) Committee Statements of Organization.

- (1) Initial Filing. A committee's initial Statement of Organization shall be filed:

(A) No more than three days after a candidate's petition of nomination for city council has been certified as sufficient by the city clerk pursuant to section 26 of the city charter, the candidate shall file a statement of organization of the committee formed to assist the candidate in being elected to city council. This statement shall be filed even if the candidate has not formed a committee and shall be amended later if a committee is formed or the information required changes.

(B) No more than three days after an unofficial candidate committee accepts a contribution or makes or obligates itself to make an expenditure, the committee shall file a statement of organization as set forth below in this chapter.

(C) No more than three days after a ballot measure committee accepts a contribution or makes an expenditure, the committee shall file a statement of organization as set forth below in this chapter. Once a ballot measure committee files a statement of organization, it cannot add or change the ballot measure(s) supported or opposed.

- (2) Information Required. The statement of organization for all committees shall include the name and address of the committee and the names and addresses of all persons acting as officers of the committee, including committee chairperson(s) and treasurer. In addition, statements shall include the following information:

(A) The statement of organization for the official candidate committee shall include the name and address of the candidate.

(B) The statement of organization for an unofficial candidate committee shall include the names of the candidate(s) the committee supports or opposes and a statement of whether the committee supports or opposes each candidate.

(C) The statement of organization for a ballot measure committee shall include the names of all ballot measure(s) the committee supports or opposes and a statement of whether the committee supports or opposes each measure.

- (3) Updates. Committees shall file a statement with any changes to the information required by this section no more than three days after such change occurs.

1 (c) Contributions and Expenditures.

2 (1) Information required. In accordance with the schedule below, committees shall file
3 regular reports from the date of the prior report to the end of the reporting period unless
4 the statement is the first one required containing the following information:

5 (A) The names and addresses of each person making contributions to the treasurer's
6 knowledge, and the amount, dates, and nature of such contributions since the last
7 report required.

8 (B) For anonymous contributions, a statement of all such contributions received together
9 with their disposition.

10 (C) The names and addresses of each person to whom an expenditure has been made and
11 the amount, date, and nature of such expenditure. For expenditures for joint
12 advertising by multiple committees, each committee must disclose the total cost of
13 the joint advertisement along with the amount each paid for its portion of the
14 advertisement. The amount expended must be proportional to the committee's
15 portion of the advertising.

16 (2) Schedule of Reports. All committees shall file Statements of Contributions and
17 Expenditures on the following schedule:

18 (A) Initial submission:

19 (i) Official candidate committees shall file three days after the candidate's petition
20 of nomination for city council has been certified as sufficient by the city clerk
21 pursuant to section 26 of the city charter. This statement shall cover all
22 contributions and expenditures made in anticipation of candidacy.

23 (ii) Unofficial candidate committees and ballot measure committees shall file three
24 days after the committee accepts a contribution or makes or obligates itself to
25 make an expenditure. This statement shall cover all contributions and
expenditures made to date.

(B) Subsequent Reports. Reports are due on the following schedule and shall include all
contributions and expenditures made that were not included in a prior filed report:

(i) On the forty-second day prior to the election.

(ii) On the twenty-eighth day prior to the election.

(iii) On the twenty-first day prior to the election.

(iv) On the fourteenth day prior to the election.

(v) By 5:00 p.m. on the Thursday before the election. This statement shall also
identify anticipated contributions and expenditures for the remainder of the
campaign, if any, before or after the election.

(vi) On or before the thirtieth day after the election: If a balance remains on the
candidate's or committee's books, this statement shall also include the intended
disposition of that balance.

(vii) Not more than sixty days after the election: Committees with a balance remaining on the 30-day report shall file a final statement showing the actual disposition of that balance.

(3) Independent Expenditure Reports of Unofficial Candidate Committees.

If an unofficial candidate committee makes an independent expenditure in excess of \$5000 on or before the twenty-first day prior to the election, the committee shall file a statement of expenditure giving the names and addresses of each person to whom such an expenditure has been made, and the amount, date, and purpose of such expenditure within three business days after obligating funds for the first such expenditure.

(4) Other Independent Expenditure Reports.

If a person, other than an unofficial candidate committee, makes an independent expenditure in excess of \$1000 to support or oppose a ballot measure, or in excess of \$200 to support or oppose the election of a candidate, the person shall file a statement of expenditure giving the names and addresses of each person to whom such an expenditure has been made, and the amount, date, and nature of such expenditure and any other reportable expenditure not previously reported according to the schedule established in section 13-2-6(c).

(d) Interest Disclosure Statement.

(1) Reporting schedule.

(A) On or before September 10, any candidate having filed a petition of nomination shall file a statement of financial disclosure as set forth below. Candidates shall report any changes to the information reported below in subsections (2)(A), (C), and (D), of this provision, within fifteen days after the change has occurred.

(B) On or before April 15 of each year, every member of the city council shall file a statement of financial disclosure as set forth below. Council members shall report any changes to the information reported below in subsections (2)(A), (C), and (D), of this provision, within fifteen days of the end of the calendar quarter in which the change occurred.

(2) Any person required to file a financial disclosure statement required by this chapter shall file a statement on a form provided by the city clerk, that includes the following information:

(A) The reporting person's employer and occupation.

(B) The source of any income in excess of \$1000 per year, including, without limitation, other household income, capital gains, whether or not taxable, dividends, interest, wages, salaries, rents, profits, and retirement accounts.

(C) The name, location, and nature of activity of any business entities or enterprises, with holdings of real or personal property or with business dealings in the area encompassed by the Boulder Valley Comprehensive Plan, in which the reporting person or other household member has any financial interest or is actively engaged as an officer, director, or partner, and the nature of the reporting person's or other

household member's interest or activity. A reporting person or other household member is not required to report any financial interest in any business entity in which the reporting person's or other household member's only interest is through an investment in an excepted investment. A charitable donation is not a financial interest.

(D) The location of any real property within Boulder County in which the reporting person or other household member has an interest or, if the reporting person or other household member has a reportable interest in an entity or enterprise disclosed pursuant to paragraph (b)(3) above, in which the entity or enterprise has any interest and the nature of such interest.

(E) Any other information that the reporting person feels would be helpful or should be disclosed;

(3) Each financial disclosure statement shall include all information current on the date of filing, except for the sources of income required by subsection (d)(2)(B) of this section shall be reported as of the end of the previous calendar year.

(4) When reporting information regarding the activities of a third party, a reporting person is required to report only information about which he or she has actual knowledge. Notwithstanding any other provision of this chapter, no reporting person or other household member is required to disclose any confidential relationship protected by law.

13-2-7. - Filing, Preservation and Public Inspection of Statements.

(a) Recordkeeping.

(1) Copies of documents supporting the contributions and expenditures included in any statements required by this section shall be maintained by the person or committee and provided to the city clerk in the event of an audit.

(2) Individuals and unofficial candidate committees who make an expenditure on behalf of any candidate who has received public funding under this chapter shall keep records of the time, place, and general subject matter of all consultation with any person about the substance, venue, and timing of the expenditure, which records shall be given to the city clerk if the clerk makes a demand for same. The clerk is authorized to make such a demand any time the clerk has a reasonable suspicion that the expenditures were controlled by or coordinated with or made upon consultation with any candidate or candidate's committee or agent thereof.

(b) Persons required by this chapter to file statements or deliver notices shall file such statements or notices with the city clerk on forms that the clerk provides and preserve such records for a period of six months from the date of the election.

(c) The city clerk shall preserve all statements filed under this chapter for a period of six months from the date of the election or, in the case of a successful candidate, until six months after the person finally leaves office, or as specified in the city's Records Retention Schedule, whichever is longer. Such statements constitute a part of the public records of the city and shall be available for public inspection during normal business hours.

Chapter 3 - Compliance and Enforcement for Campaign Violations.

13-3-1. - Legislative Intent.

The provisions of this chapter are intended to assist with the enforcement of the regulatory provisions of chapter 13-2, "Campaign Finance, Disclosure and Reporting Requirements," B.R.C. 1981. The provisions of this chapter (a) provide procedures for citizen enforcement of complaints before the city clerk or a hearing officer and quasi-judicial review of that decision; (b) identify cures, remedial orders, and penalties that may be imposed by the city; and (c) make clear the city retains its power to enforce any code provision in a civil or criminal action. The procedures set forth in this chapter are not exclusive and shall supplement other applicable enforcement provisions, including those in Title 5, B.R.C. 1981.

13-3-2. - Allegation of Election Code Violation by Registered Elector.

(a) A registered elector of the city may file a complaint with the city clerk alleging that any provision of chapter 13-2, "Campaign Finance, Disclosure and Reporting Requirements," B.R.C. 1981, of this title has been violated. The complaint shall be in writing and must be submitted no later than forty-five days following any election in which it is alleged that the violation occurred. The complaint shall:

- (1) Identify the particular provisions of chapter 13-2, "Campaign Finance, Disclosure and Reporting Requirements" that allegedly were violated;
- (2) Identify the person violating the stated provisions (the "respondent");
- (3) State the factual basis for that allegation;
- (3) Identify any relevant documents or other evidence;
- (4) Identify any witnesses or persons with relevant knowledge; and
- (5) State whether the person filing the complaint (the "complainant") is willing to pursue the complaint through a hearing process as provided for in this chapter if the city clerk determines a hearing is necessary.

(b) The city clerk will notify the respondent and may provide the respondent an opportunity to provide information or otherwise respond to the allegations of the complaint.

13-3-3. - Review of Complaint.

The city clerk will evaluate the complaint and all information in the clerk's possession related to the complaint to determine whether there is probable cause to believe that further investigation would disclose a violation by the respondent. The city clerk may, at the clerk's discretion, consult with the city attorney or delegated legal counsel regarding this review. Such determination shall be made based upon the complaint, any information provided by the complainant or the respondent, and upon such additional information as the clerk may determine to be pertinent.

1 **13-3-4. - Action by City Clerk.**

- 2 (a) If the city clerk determines that the violation, if any, can be cured, the city clerk shall provide
3 written notice to the complainant and the respondent of the potential cure. After the cure is
4 implemented in accordance with the direction of the city clerk, the city clerk shall provide
5 written notice that no violation exists to the complainant and the respondent.
- 6 (b) If the city clerk determines that no probable cause exists that further investigation would
7 disclose a violation by the respondent, the city clerk shall close the file with regard to the
8 matter. In that event, the city clerk shall notify both the complainant and the respondent in
9 writing. A determination by the city clerk that there is no probable cause that further
10 investigation would disclose a violation shall be final and no appeal or review from such
11 determination shall be permitted.
- 12 (c) If the city clerk determines that there is probable cause that there may be a violation and can
13 make the decision on the allegation without a hearing, the city clerk shall provide a written
14 determination to the complainant and the respondent.

15 If the city clerk determines that there is probable cause that there may be a violation and
16 additional facts are necessary to make a final determination on the violation, and the complainant
17 is willing to present the case to prove the violation, a hearing shall be held as provided herein.

18 **13-3-5. - Power of City Clerk to Offer Cure or Issue Remedial Order.**

19 At any point prior to or during the investigation of a complaint, if the city clerk determines
20 that an alleged violation can be cured or handled by remedial action, the city clerk may direct the
21 respondent to cure the violation or take remedial action within seventy-two hours, including,
22 without limitation, the following:

- 23 (a) Filing a corrected disclosure form;
- 24 (b) Publishing corrective advertising;
- 25 (c) Refunding any contributions obtained in violation of Chapter 13-2; and
- (d) Refunding to the city any public monies inappropriately obtained for the financing of
election activities.

In the event the respondent timely complies with the cure or remedial action required, any
investigation of a complaint shall be terminated, and the final written decision of the city clerk
shall be provided to the complainant and respondent.

13-3-6. - Hearings on Complaints.

- (a) The purpose of hearings on complaints will be to determine whether sufficient evidence of a
violation by the respondent exists to warrant finding a violation occurred and imposing a
penalty.
- (b) The hearing may be held before the city clerk or a hearing officer appointed by the city
manager who may be a city employee. A hearing officer shall be appointed when the

1 dispute involves the city clerk's decisions regarding the administration or enforcement of
2 this article. Any hearing shall be held in conformance with this chapter.

- 3 (c) The hearing officer has the authority provided in Section 1-3-5, "Hearings and
4 Determinations," to conduct the hearing and any decision shall be in accordance with the
5 intent of Chapter 13-2 and this chapter.

6 **13-3-7. - Remedies Not Exclusive.**

7 The procedures set forth by these provisions shall not impair the right of any interested party,
8 including the city clerk, the city attorney or a complainant, to notify the district attorney or the
9 police of crimes that might be investigated or potentially prosecuted by those agencies, or pursue
10 in municipal or state court such remedies as may be appropriate, including but not limited to
11 prosecution under Title 5, B.R.C. 1981. This chapter shall not be construed as to require
12 administrative proceedings before such criminal or civil action.

13 **13-3-8. - No Appeal to City Council.**

14 No decision by the city clerk made pursuant to this chapter shall be reviewed or reversed by
15 the city council. The city council shall not become involved in the handling of any matter
16 brought or investigated pursuant to these provisions. Nothing in this chapter shall be deemed to
17 create a right of appeal to the city council by a complainant or person named in a complaint.

18 **13-3-9. - Confidentiality of Investigation.**

19 The contents of files relating to pending inquiries or investigations into possible violations of
20 the provisions of chapter 13-2, "Campaign Finance, Disclosure and Reporting Requirements,"
21 and preliminary reports or drafts relating to the results of investigations, shall not be made
22 public. The complaint, any written direction by the city clerk to a respondent to cure a violation,
23 the final results of the clerk's inquiry or investigation, and the clerk's final decision on a
24 complaint shall be made public unless there is a good cause. Good cause shall include but not be
25 limited to interference with pending litigation, criminal prosecution or disclosure of a person's
identity where such disclosure could affect the safety of that person. Any person may appeal to
the municipal court a decision to release or not to release such information. The city council
finds that other disclosures could compromise criminal justice investigations and undermine the
purposes of this title 13 for compliance with the election and campaign disclosure requirements.
Further, the city council finds that such disclosures would be contrary to the public interest
because such disclosures might have the effect of politically damaging a person or interest in a
case in which the final disposition of an investigation would not sustain a finding of misconduct.
The release of interim findings or draft reports might in that manner interfere with the
appropriate workings of the democratic process.

13-3-10. - Campaign Finance Violations and Penalty.

- (a) Criminal Acts and Penalties: It shall be unlawful to:

- (1) File any statement required by chapter 13-2 that the person knows contains false
information;

1 (2) Fail to file a required statement within seventy-two hours of having been notified by the
2 city clerk pursuant to this chapter;

3 (3) Fail to provide required information necessary to complete a required statement within
4 seventy-two hours of having been notified by the city clerk pursuant to this chapter;

5 (4) Knowingly misstate or misrepresent the names of the persons required to be disclosed
6 by chapter 13-2; or

7 (5) Fail to comply with any of the requirements of chapter 13-2.

8 (b) Civil Action by Registered Elector. In lieu of filing a complaint with the city as provided in
9 section 13-3-2 above, any registered elector of the city may bring a civil action including,
10 without limitation, an action for injury, and may sue for injunctive relief to enjoin violations
11 or to compel compliance with chapter 13-2 , provided such person first files with the city
12 attorney a written request for the city attorney to commence action. The request to the city
attorney shall include a statement of grounds for believing a cause of action exists. The city
attorney shall respond within ten days after receipt of the request indicating whether the city
attorney intends to file a civil action. If the city attorney indicates in the affirmative and
files suit within thirty days thereafter, no other civil action for the same violation may be
brought by any registered elector unless the action brought by the city attorney is dismissed
without prejudice.

13 (c) Penalties. In addition to any other applicable remedy at law or in equity, the following shall
14 apply:

15 (1) Any official or unofficial candidate committee that knowingly accepts a contribution in
16 excess of \$100, or exceeds the expenditure limit in violation of chapter 13-2, is liable in
17 a civil action initiated by the city attorney or by a registered elector of the city for an
18 amount up to \$500, or three times the amount by which the contribution or expenditure
limit is exceeded, whichever is greater. In determining the amount of civil liability, the
hearing officer or court may take into account the seriousness of the violation and
culpability of the defendant.

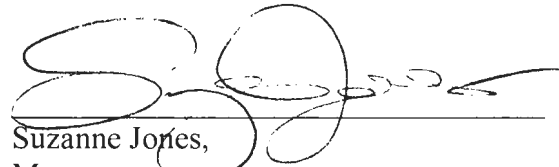
19 (2) The penalties in section 5-2-4, "General Penalties," B.R.C 1981.

20 Section 2. This ordinance is necessary to protect the public health, safety, and welfare of
21 the residents of the city, and covers matters of local concern.


22 Section 3. This ordinance is necessary for the preservation of the public peace, health,
23 and property in order to implement the provisions of this ordinance in anticipation of the 2019
24 election season. Therefore, the council orders that this ordinance be effective immediately upon
25 final passage.

1 Section 4. The city council deems it appropriate that this ordinance be published by title
2 only and orders that copies of this ordinance be made available in the office of the city clerk for
3 public inspection and acquisition.

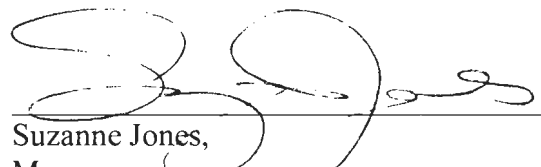
4
5 INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
6 TITLE ONLY this 19th day of February 2019.

7
8 
Suzanne Jones,
Mayor


9 Attest:

10 
11 Lynnette Beck,
12 City Clerk

13 READ ON SECOND READING, AMENDED, PASSED AND ADOPTED AS AN
14 EMERGENCY MEASURE BY TWO-THIRDS COUNCIL MEMBERS PRESENT this 5th day
15 of March 2019.

16
17 
18 Suzanne Jones,
Mayor

19 Attest:

20 
21 Lynnette Beck,
22 City Clerk