

**TOWN OF MORRISON, COLORADO
BOARD OF TRUSTEES**

ORDINANCE NO. 499

AN ORDINANCE CONCERNING ELECTIONS, AND IN CONNECTION THEREWITH, AMENDING THE MORRISON MUNICIPAL CODE TO CREATE A PROCESS FOR ADDRESSING COMPLAINTS ALLEGING VIOLATIONS OF ARTICLE XXVIII OF THE COLORADO CONSTITUTION OR THE FAIR CAMPAIGN PRACTICES ACT IN TOWN ELECTIONS, AND TO CLARIFY WHICH LAWS APPLY TO TOWN ELECTIONS.

WHEREAS, the Town of Morrison is a Colorado home rule municipality operating under a Charter approved by the electorate pursuant to Article XX of the Colorado Constitution and governed by its elected Board of Trustees; and

WHEREAS, the Board of Trustees has authority pursuant to the Home Rule Charter and C.R.S. §31-16-101, *et seq.* to adopt and enforce all ordinances; and

WHEREAS, in its 2019 Regular Session, the Colorado General Assembly adopted SB19-232, which provides, *inter alia*, that “any complaint arising out of a municipal campaign finance matter must be exclusively filed with the clerk of the ...municipality”; and

WHEREAS, the 2019 legislation necessitates creation of a process by which the Town of Morrison may address complaints alleging violation campaign finance laws applicable in Town elections, and also presents an opportunity to clarify which laws govern Town elections.

NOW, THEREFORE, BE IT ORDAINED by the board of trustees of the Town of Morrison, Colorado

Section 1. The Morrison Municipal Code is amended by the addition of the following new Section 1-9-4, as follows:

Section 1-9-4. State election codes adopted.

EXCEPT AS OTHERWISE PROVIDED BY CHARTER OR ORDINANCE, INCLUDING THE PROVISIONS OF THIS CHAPTER, THE FOLLOWING STATUTES, AS THE SAME PRESENTLY EXIST OR AS THEY MAY BE IN THE FUTURE AMENDED, ARE HEREBY ADOPTED BY THE TOWN AND SHALL GOVERN THE CONDUCT OF ALL ELECTIONS HELD WITHIN THE TOWN:

- A. C.R.S. 31-10-101 *ET SEQ.*, ALSO KNOWN AS THE "COLORADO MUNICIPAL ELECTION CODE,"
- B. C.R.S. 1-1-102 *ET SEQ.*, ALSO KNOWN AS THE "UNIFORM ELECTION CODE," AND

- C. C.R.S. 1-45-101 *ET SEQ.*, ALSO KNOWN AS THE "FAIR CAMPAIGN PRACTICES ACT."
- D. C.R.S. 31-11-101 *ET SEQ.*, THE LAW GOVERNING MUNICIPAL INITIATIVES, REFERENDA AND REFERRED MEASURES,
- E. C.R.S. 31-4-501, *ET SEQ.*, THE LAW GOVERNING MUNICIPAL RECALLS, AND,
- F. C.R.S. 31-2-201, *ET SEQ.*, THE LAW GOVERNING THE ADOPTION AND AMENDMENT OF THE HOME RULE CHARTER.

Section 2. The Morrison Municipal Code is amended by the addition of a new Section 1-9-5, as follows:

Section 1-9-5. Complaints.

- A. ANY PERSON WHO BELIEVES A VIOLATION OF ARTICLE XXVIII OF THE COLORADO CONSTITUTION OR THE FAIR CAMPAIGN PRACTICES ACT (C.R.S.1-45-101 *ET SEQ.*, AS AMENDED BY THIS CODE, HAS OCCURRED RELATED TO A TOWN ELECTION MAY FILE A WRITTEN COMPLAINT WITH THE TOWN CLERK.
- B. COMPLAINTS MUST BE FILED NO LATER THAN NINETY (90) CALENDAR DAYS AFTER THE COMPLAINANT KNEW OR SHOULD HAVE KNOWN BY THE EXERCISE OF REASONABLE DILIGENCE OF THE ALLEGED VIOLATION.
- C. A WRITTEN COMPLAINT FILED WITH THE TOWN CLERK SHALL INCLUDE THE TOWN CLERK'S COMPLAINT COVER SHEET WHICH MUST INCLUDE THE FOLLOWING INFORMATION:
 - 1. THE NAME, ADDRESS, E-MAIL ADDRESS, TELEPHONE NUMBER AND SIGNATURE OF THE COMPLAINANT (IF THE COMPLAINANT IS REPRESENTED BY COUNSEL, INCLUDE THE COUNSEL'S NAME, ADDRESS, E-MAIL ADDRESS, TELEPHONE NUMBER AND SIGNATURE ALONG WITH THE NAME, ADDRESS, E-MAIL ADDRESS, TELEPHONE NUMBER AND SIGNATURE OF THE COMPLAINANT);
 - 2. THE NAME AND, IF KNOWN, THE TELEPHONE NUMBER AND ADDRESS OF THE RESPONDENT(S) (OR EACH PERSON ALLEGED TO HAVE COMMITTED A VIOLATION);
 - 3. THE PARTICULARS OF THE VIOLATION; AND

4. OPTIONALLY, DOCUMENTATION OR OTHER EVIDENCE SUPPORTING THE ALLEGATION.
- D. IF AN INCOMPLETE COMPLAINT IS RECEIVED, THE DATE ON WHICH THE ORIGINALLY FILED COMPLAINT WAS RECEIVED IS CONSIDERED THE FILED DATE IF A COMPLETE COPY IS RECEIVED WITHIN THREE (3) BUSINESS DAYS OF NOTIFICATION FROM THE TOWN CLERK THAT THE COMPLAINT WAS INCOMPLETE.
 - E. A COMPLAINT MAY BE SUBMITTED BY FAX OR ELECTRONIC MAIL IF A SIGNED ORIGINAL IS RECEIVED BY THE TOWN CLERK NO LATER THAN THREE (3) BUSINESS DAYS THEREAFTER.
 - F. INITIAL REVIEW.
 1. THE TOWN CLERK WILL REVIEW THE COMPLAINT TO DETERMINE:
 - a. WHETHER THE COMPLAINT WAS TIMELY FILED; AND
 - b. WHETHER THE COMPLAINANT HAS SPECIFICALLY IDENTIFIED ONE OR MORE VIOLATIONS OF ARTICLE XXVIII OF THE COLORADO CONSTITUTION OR THE FAIR CAMPAIGN PRACTICES ACT (C.R.S.1-45-101, *ET SEQ*) OR ANY RULES ADOPTED AND PROMULGATED BY THE TOWN CLERK.
 2. WITHIN TEN (10) BUSINESS DAYS OF RECEIVING THE COMPLAINT, THE TOWN CLERK MUST TAKE ONE (1) OR MORE OF THE FOLLOWING ACTIONS:
 - a. IF THE TOWN CLERK DETERMINES THAT THE COMPLAINT WAS NOT TIMELY FILED, OR HAS NOT SPECIFICALLY IDENTIFIED ONE (1) OR MORE VIOLATIONS OF ARTICLE XXVIII OF THE COLORADO CONSTITUTION OR THE FAIR CAMPAIGN PRACTICES ACT (C.R.S.1-45-101 *ET SEQ*), THE TOWN CLERK WILL DISMISS THE COMPLAINT AND NOTIFY THE COMPLAINANT AND RESPONDENT OF THE REASONS FOR DISMISSAL. THE TOWN CLERK'S DISMISSAL IS A FINAL DECISION, AND SUBJECT TO REVIEW UNDER RULE 106, C.R.C.P.
 - b. IF THE TOWN CLERK DETERMINES THAT THE COMPLAINT ALLEGES ONE (1) OR MORE CURABLE VIOLATIONS AS DESCRIBED IN SUBSECTION (G), THE TOWN CLERK WILL NOTIFY THE RESPONDENT(S) AND PROVIDE AN OPPORTUNITY TO CURE AS DESCRIBED IN SUBSECTION (G).

- c. IF THE TOWN CLERK DETERMINES THAT THE COMPLAINT ALLEGES (1) ONE OR MORE VIOLATIONS AND THAT THE ASSERTED VIOLATIONS MAY NOT BE CURABLE AS DESCRIBED IN SUBSECTION (G), THE TOWN CLERK WILL TAKE THE ACTIONS SET FORTH IN SUBSECTION (H).

G. CURING VIOLATIONS.

- 1. UPON THE TOWN CLERK'S DETERMINATION THAT A COMPLAINT ALLEGES A FAILURE TO FILE OR OTHERWISE DISCLOSE REQUIRED INFORMATION, OR OTHER CURABLE VIOLATION OF AN OBLIGATION UNDER ARTICLE XXVIII OF THE COLORADO CONSTITUTION OR THE FAIR CAMPAIGN PRACTICES ACT (C.R.S. 1-45-101 ET SEQ.), THE TOWN CLERK WILL NOTIFY THE RESPONDENT(S) BY EMAIL, OR BY UNITED STATES MAIL IF EMAIL IS UNAVAILABLE, OF THE CURABLE DEFICIENCIES ALLEGED IN THE COMPLAINT.
- 2. RESPONDENTS SHALL HAVE TEN (10) BUSINESS DAYS FROM THE DATE THE NOTICE IS MAILED TO FILE AN AMENDMENT TO THE RELEVANT REPORT OR REPORTS THAT CURES ANY DEFICIENCIES SPECIFIED IN THE NOTICE.
- 3. AFTER THE PERIOD FOR CURE, THE TOWN CLERK WILL DETERMINE, WITHIN FIVE (5) BUSINESS DAYS, WHETHER THE RESPONDENT(S) CURED THE VIOLATION(S).
 - a. IF THE CLERK DETERMINES THAT RESPONDENT CURED THE VIOLATIONS, THE CLERK SHALL DISMISS THE COMPLAINT AND NOTIFY COMPLAINANT AND RESPONDENT OF SUCH DISMISSAL.
 - b. IF THE CLERK DETERMINES THAT RESPONDENT FAILED TO CURE THE VIOLATION, THE CLERK SHALL NOTIFY RESPONDENT OF SUCH DETERMINATION, TOGETHER WITH THE FINE OR OTHER PENALTY IMPOSED.
 - c. THE RESPONDENT SHALL HAVE TEN (10) BUSINESS DAYS FROM THE DATE OF THE CLERK'S NOTICE OF DETERMINATION TO EITHER PAY THE FINE AND ACCEPT ANY PENALTY IMPOSED OR CONTEST THE VIOLATION BY SUBMITTING TO THE CLERK A REQUEST FOR A HEARING.

- H. UPON RECEIPT OF A REQUEST FOR A HEARING UNDER SUBSECTION (G)(3)C., OR UPON THE CLERK'S DETERMINATION THAT THE COMPLAINT FALLS UNDER SUBSECTION (F)(2)C., THE TOWN CLERK SHALL NOTIFY THE TOWN MANAGER OF THE COMPLAINT, AND THE TOWN MANAGER, IN CONSULTATION WITH THE TOWN CLERK AND

THE TOWN ATTORNEY, SHALL REFER THE COMPLAINT TO AN INDEPENDENT HEARING OFFICER TO HEAR AND DETERMINE SUCH

- I. AN INFORMAL HEARING SHALL BE SCHEDULED AS SOON AS PRACTICABLE WITH DUE REGARD FOR THE CONVENIENCE AND NECESSITY OF THE PARTIES BUT, UNLESS AN ENLARGEMENT OF TIME IS GRANTED AS SET FORTH IN SUBSECTION (K), THE HEARING SHALL BE HELD WITHIN FIFTEEN (15) CALENDAR DAYS OF REFERRAL OF THE COMPLAINT TO THE HEARING OFFICER.
- J. NOTICE OF THE HEARING AND ANY APPLICABLE RULES GOVERNING THE HEARING PROCESS SHALL BE SENT TO THE COMPLAINANT AND TO THE RESPONDENT(S), WHO SHALL ALSO RECEIVE A COPY OF THE ENTIRE COMPLAINT RECEIVED BY THE TOWN CLERK, WITHIN TWO (2) BUSINESS DAYS OF THE DATE OF REFERRAL OF THE COMPLETE COMPLAINT TO THE HEARING OFFICER AND MAY BE DELIVERED BY ELECTRONIC MAIL, OR BY UNITED STATES MAIL IF EMAIL IS UNAVAILABLE TO THE ADDRESS OF THE COMPLAINANT SHOWN ON THE COMPLAINT FORM AND TO THE RESPONDENT(S).
- K. UPON WRITTEN MOTION, THE HEARING OFFICER MAY GRANT THE SUBJECT OF THE COMPLAINT A CONTINUANCE OF THE HEARING OF UP TO THIRTY (30) CALENDAR DAYS UPON A SHOWING OF GOOD CAUSE.
- L. UPON THE REQUEST OF EITHER PARTY, THE HEARING OFFICER MAY ISSUE AN ADMINISTRATIVE SUBPOENA REQUIRING THE ATTENDANCE OF A WITNESS OR PARTY IN RELATION TO AN ALLEGED CAMPAIGN FINANCE VIOLATION, WHICH SHALL BE SERVED ON THE PARTY TO WHOM IT IS DIRECTED BY THE REQUESTING PARTY PURSUANT TO RULE 4 OF THE COLORADO RULES OF CIVIL PROCEDURE. IT SHALL BE UNLAWFUL FOR A WITNESS OR PARTY TO FAIL TO COMPLY WITH SUCH SUBPOENA, AND ANY PERSON CONVICTED OF A VIOLATION HEREOF SHALL BE PUNISHED IN ACCORDANCE WITH SECTION 1-5 OF THE CODE, PROVIDED, HOWEVER, THAT THE MUNICIPAL JUDGE SHALL NOT HAVE AUTHORITY TO IMPOSE ANY FORM OF IMPRISONMENT FOR THE SAME.
- M. THE HEARING SHALL BE ELECTRONICALLY AUDIBLY RECORDED AND HELD IN SUBSTANTIAL ACCORDANCE WITH THE PROVISIONS OF SECTION 24-4-105, C.R.S., OR SUCH OTHER RULES AS THE TOWN CLERK MAY HAVE PROMULGATED. THE HEARING MAY BE HELD VIRTUALLY, IN THE DISCRETION OF THE HEARING OFFICER. AT THE HEARING, THE COMPLAINANT AND THE RESPONDENT(S) SHALL BE PRESENT AND, IN ACCORDANCE WITH SECTION 24-4-105(7), C.R.S.,

THE COMPLAINANT SHALL HAVE THE BURDEN OF PROOF IN SIMILAR MANNER AS THE PROPONENT OF AN ORDER.

- N. FOLLOWING HEARING, THE HEARING OFFICER SHALL ISSUE A DECISION WITHIN SEVEN (7) BUSINESS DAYS. THE DECISION MAY BE ISSUED ORALLY AT THE CONCLUSION OF THE HEARING OR MAY BE ISSUED IN WRITING, AT THE DISCRETION OF THE HEARING OFFICER.
- O. IF THE HEARING OFFICER DETERMINES AFTER A HEARING THAT A VIOLATION HAS OCCURRED, THE HEARING OFFICER'S DECISION SHALL INCLUDE ANY APPROPRIATE ORDER, SANCTION OR RELIEF AUTHORIZED HEREUNDER AND MAY INCLUDE, WITHOUT LIMITATION, SANCTIONS AS FOLLOWS:
 - 1. IMPOSE A CIVIL PENALTY OF AT LEAST DOUBLE AND UP TO FIVE (5) TIMES THE AMOUNT CONTRIBUTED, RECEIVED OR SPENT IN VIOLATION OF ANY CONTRIBUTION PROHIBITION OR LIMITATION OR IN VIOLATION OF A CONTRIBUTION REPORTING REQUIREMENT.
 - 2. IMPOSE A CIVIL PENALTY OF TWENTY-FIVE DOLLARS (\$25.00) PER DAY FOR EACH DAY THAT A STATEMENT OR OTHER INFORMATION REQUIRED TO BE FILED PURSUANT TO ARTICLE XXVIII OF THE COLORADO CONSTITUTION OR THE FAIR CAMPAIGN PRACTICES ACT (SECTION 1-45-101, ET SEQ., C.R.S.), AS AMENDED BY THIS CODE, IS NOT FILED BY THE CLOSE OF BUSINESS ON THE DAY DUE.
 - 3. ORDER DISCLOSURE OF THE SOURCE AND AMOUNT OF ANY UNDISCLOSED CONTRIBUTIONS OR EXPENDITURES.
 - 4. ORDER THE RETURN TO THE DONOR OF ANY CONTRIBUTION MADE WHICH WAS THE SUBJECT OF THE VIOLATION.
- P. THE HEARING OFFICER'S DETERMINATION UNDER SUBSECTIONS (O) AND (P) IS A FINAL DECISION SUBJECT TO REVIEW UNDER RULE 106, C.R.C.P.
- Q. CANDIDATES SHALL BE PERSONALLY LIABLE FOR PENALTIES IMPOSED UPON THE CANDIDATE'S COMMITTEE.
- R. CIVIL PENALTIES MAY BE COLLECTED IN THE SIMILAR MANNER AS A MUNICIPAL COURT JUDGMENT UNDER THIS CODE, INCLUDING THE USE OF A PRIVATE COLLECTION AGENCY.
- S. IN NO EVENT SHALL THE TOWN TAKE ANY ACTION, INCLUDING REFERRING THE PENALTY DEBT TO A COLLECTION AGENCY AS CONTEMPLATED BY SUBSECTION (R), BUT NOT INCLUDING ACTION

OF THE COLLECTION AGENCY, TO COLLECT CIVIL PENALTIES ASSESSED HEREUNDER AFTER THE DATE THAT IS MORE THAN ONE (1) YEAR FROM THE DATE THAT THE FILING WAS DUE.

- T. A PARTY IN ANY ACTION BROUGHT PURSUANT TO THIS SECTION SHALL BE ENTITLED TO RECOVERY OF THE PARTY'S REASONABLE ATTORNEY FEES AND COSTS FROM ANY ATTORNEY OR PARTY WHO HAS BROUGHT OR DEFENDED THE ACTION, EITHER IN WHOLE OR IN PART, IF THE HEARING OFFICER FINDS ANY OF THE FOLLOWING:
1. THE ACTION, OR ANY PART THEREOF, LACKED SUBSTANTIAL JUSTIFICATION;
 2. THE ACTION, OR ANY PART THEREOF, WAS INTERPOSED FOR DELAY OR HARASSMENT; OR
 3. THAT AN ATTORNEY OR PARTY UNNECESSARILY EXPANDED THE PROCEEDING BY OTHER IMPROPER CONDUCT, INCLUDING BUT NOT LIMITED TO ABUSES OF DISCOVERY PROCEDURES AUTHORIZED BY THIS SECTION.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBSECTION, NO ATTORNEY FEES SHALL BE AWARDED UNLESS THE HEARING OFFICER HAS FIRST CONSIDERED THE PROVISIONS OF SECTIONS 13-17-102(5) AND (6), C.R.S. AS USED HEREIN, *LACKED SUBSTANTIAL JUSTIFICATION* MEANS SUBSTANTIALLY FRIVOLOUS, SUBSTANTIALLY GROUNDLESS OR SUBSTANTIALLY VEXATIOUS.

Section 3. Severability. If any article, section, paragraph, sentence, clause or phrase of this ordinance, or the standards adopted herein is held to be unconstitutional or invalid for any reason, such decision will not affect the validity or constitutionality of the remaining portions of this ordinance. The Board of Trustees hereby declares that it would have passed this ordinance and each part hereof irrespective of the fact that any one part or parts are declared unconstitutional or invalid.

Section 4. Effective Date. This ordinance shall take effect fifteen (15) days after adoption and publication as provided by Section 3.14 of the Home Rule Charter.

INTRODUCED, READ, PASSED AND ADOPTED this 20th day of October, 2020, by a vote of _____ ayes and _____ nays.

TOWN OF MORRISON:

Sean K. Forey, Mayor

ATTEST:

Lyndsey Paavilainen, Town Clerk