

STUDY SESSION AGENDA
CITY COUNCIL
CITY OF WHEAT RIDGE, COLORADO
October 19, 2020
6:30 p.m.

**This meeting will be conducted as a VIRTUAL MEETING.
No members of the Council or City staff will be physically present at the Municipal building for this meeting; the public may not attend in person. The public may participate in these ways:**

1. Provide comment in advance at www.wheatridgespeaks.org (comment by noon on October 19, 2020)
2. Virtually attend and participate in the meeting through a device or phone:
 - [Click here to join and provide public comment](#)
 - Or call +1-669-900-6833 with Access Code: 914 3194 5391
3. View the meeting live or later at www.wheatridgespeaks.org, Channel 8, or YouTube Live at <https://www.ci.wheatridge.co.us/view>
4. Individuals who, due to technology limitations, are unable to participate in the meeting virtually (via the Zoom platform) or by calling in on the telephone may contact Danitza Sosa, Assistant to the Mayor and City Council, at 303-235-2977 by noon on the day of the meeting. Arrangements will be made for those individuals to access City Hall during the meeting to view the meeting and provide public comment if desired. These comments will be heard and seen in real time by members of Council and City staff. Individuals accessing City Hall must practice social distancing, wear a mask or other facial covering and be free of COVID-19 symptoms.

Individuals with disabilities are encouraged to participate in all public meetings sponsored by the City of Wheat Ridge. Contact the Public Information Officer at 303-235-2877 or wrpio@ci.wheatridge.co.us with as much notice as possible if you are interested in participating in a meeting and need inclusion assistance.


Citizen Comment on Agenda Items

1. Staff Report(s)
 - a. Cordico Wellness Grant application
2. Ordinances addressing the unlawful removal of notices, no trespassing on private and public land and pedestrian safety along roadways
3. Ordinance establishing local system for reviewing campaign finance complaints
4. Elected Officials' Report(s)

ADJOURNMENT

Memorandum

TO: Mayor and City Council

THROUGH: Chain of Command
Patrick Goff, City Manager 

FROM: Shellie Salser, Commander
Patrol Operations Division

DATE: October 6, 2020 (for Study Session of October 19)

SUBJECT: Peace Officers Mental Health Grant

ISSUE:

Employee wellness is a crucial focus as law enforcement is under ever increasing amounts of stress and pressure. Wheat Ridge Police Department (WRPD) has made employee wellness a top priority and has the opportunity to pursue a grant to support employee wellness through the State of Colorado under the DOLA - Peace Officers Mental Health Grant. This grant will allow WRPD to provide a wellness app (smartphone app) that can provide in-hand, on-demand, easy to access wellness tools and resources.

As part of the grant application process, DOLA requires the application to “provide the date the city/town/county board, council or trustees authorized the submittal of the grant application.”

BACKGROUND:

Law enforcement personnel are tasked with handling the most high-risk, urgent, and dangerous events in our communities on a daily basis. These men and women respond routinely to events that most people never experience firsthand including suicides, murders, horrific accident scenes, violence committed against children, sexual offenses, families torn apart by death, violent individuals, noncompliant suspects, and the constant potential for violence, injury, and risk to safety and security. Non-sworn law enforcement employees share in this stress as they support sworn officers in their duties. In late 2018, a survey of 8,000 law enforcement across the United States revealed that officers nationwide overwhelmingly report that stress on the job has impacted their mental health. Furthermore, there is a stigma associated with seeking help in the first responder cultures, which creates a barrier to most seeking help and results in emotional and behavioral issues going unacknowledged and untreated, thus driving heightened risk for responders and the community.

Acquiring a smartphone app provides a safe and private way for employees to seek out mental health resources at any time of day or night. Providing a resource like this could also save the city money by heading off some issues in the near term instead of allowing them to become bigger issues in the long term.

The purpose of this grant is to provide financial assistance to law enforcement agencies for mental health services such as:

- On-scene response services to support peace officers' handling of persons with mental health disorders
- Counseling services to peace officers
- Assistance for development and implementation of policies to support peace officers who are involved in shootings or a fatal use of force
- Training and education programs that teach the symptoms of job-related mental trauma and how to prevent and treat such trauma
- Peer support programs

Other similar apps have been researched and none offer the same benefits as this app. WRPD Chaplain Scott Moore has gone to great lengths in this process and his research has shown this app is the best fit for WRPD.

FINANCIAL IMPACT:


There will be no direct financial impact to the city. Grant funds, if awarded, will be received by the City from the State of Colorado through the Peace Officer Mental Health Grant to then acquire the CordicoShield Wellness app. This award will consist of approximately \$100,000 over a term of four (4) years of unlimited access to the wellness application by police personnel.

RECOMMENDATION:

Staff recommends City Council provide consensus to support the application for the Peace Officers Mental Health Grant to acquire the CordicoShield Wellness smartphone app.

Memorandum

TO: Mayor and City Council

FROM: Jerry Dahl, City Attorney
Patrick Goff, City Manager 

DATE: October 15, 2020 (for Study Session of October 19, 2020)

SUBJECT: Ordinances addressing the unlawful removal of notices, no trespassing on private and public land and pedestrian safety along roadways

ISSUE:

Over the past few years, and recently exacerbated by the COVID-19 pandemic, there has been a significant increase in the number of homeless or transient people throughout Jefferson County, the Denver-Metro Area, and the state of Colorado. While homelessness has been viewed as traditionally a big city challenge, the suburbs and areas outside of the large urban centers have experienced an increase in homeless and transient issues.

While many people look to law enforcement to address these issues, the answers to addressing the varied issues specific to this problem are much broader and complicated than enforcing laws. Changes in laws regarding the rights of persons experiencing homelessness as a result of court decisions related to the First Amendment have resulted in a more visible presence of homeless or transient people along the I-70 corridor, intersections and shopping centers. Since panhandling is seen by the courts as a First Amendment right, the ability of the police has been restricted to enforcing only aggressive panhandling.

PRIOR ACTIONS:

None

FINANCIAL IMPACT:

Enacting these ordinances is not expected to have any significant fiscal impact.

BACKGROUND:

Staff researched ordinances from other communities that have been adopted to help mitigate some of the negative impacts caused by homelessness. Following are three proposed ordinances for City Council's consideration.

1. Ordinance concerning trespassing:

The purpose of this ordinance is to place on notice those who enter or remain upon the premises of another, including premises owned by private entities, public entities, or individuals, that doing so without the proper license or authority, or after that license or authority has been revoked, may result in criminal activity. This ordinance amends and significantly enhances the

City's current Code 16-46 on trespassing, including posting of notices prohibiting trespassing.

2. Ordinance concerning unlawful removal of notices:

Some City processes (Board of Adjustment procedures, Planning Commission processes, clean-ups of City owned property) require that a notice or notices be placed or posted upon the affected property in order to ensure that those impacted by an impending action or other activity are notified of it. City staff have reported that these notices are sometimes altered, moved, or removed from the posted property altogether; this subverts a significant governmental interest in ensuring that necessary governmental operations are carried out in an effective and efficient manner. Just as importantly, this deprives those affected by the impending action or activity, and the general public, of fair notice of the action or activity. This ordinance creates a new Code Section 16-47, making it a violation to remove signage, and in particular the no trespassing signs authorized by the (revised) Code 16-46

3. Ordinance concerning pedestrians hindering the flow of traffic and pedestrian use of roadway center medians:

The ordinance is intended to reduce auto/pedestrian accidents by regulating center medians that are unsafe for occupation by pedestrians and other pedestrian behaviors that interfere with traffic, including entering the roadway in a way that obstructs or hinders traffic flow, and soliciting in areas that are unsafe for such activity. The ordinance adopts two new sections of the Code governing pedestrian and traffic safety and amending the current section on solicitation activities to add a legislative declaration.

RECOMMENDATIONS:

Staff is asking City Council for consensus on the three proposed draft ordinances to address the impacts of homelessness on the Wheat Ridge community.

ATTACHMENTS:

1. Draft ordinance concerning trespassing
2. Draft ordinance concerning unlawful removal of notices
3. Draft ordinance concerning pedestrians hindering the flow of traffic and pedestrian use of roadway center medians

CITY OF WHEAT RIDGE, COLORADO
INTRODUCED BY COUNCIL MEMBER _____
COUNCIL BILL NO. _____
ORDINANCE NO. _____
Series 2020

TITLE: AN ORDINANCE REPEALING, RETITLING AND REENACTING SECTION 16-46 OF THE WHEAT RIDGE CODE OF LAWS CONCERNING TRESPASS AND ESTABLISHING PENALTIES FOR VIOLATION OF THE SAME

WHEREAS, the City of Wheat Ridge is a home rule municipality having all powers conferred by Article XX of the Colorado Constitution; and

WHEREAS, pursuant to its home rule authority and C.R.S. § 31-23-101, the City, acting through its City Council (the "Council"), is authorized to adopt ordinances for the protection of the public health, safety or welfare; and

WHEREAS, the City Council finds that repealing and reenacting the City's trespass ordinance is necessary to protect the rights of both private and public property owners, and the health, safety, and welfare of the public.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHEAT RIDGE, COLORADO:

Section 1. Section 16-46, Trespassing, of the Wheat Ridge Code of Laws is hereby repealed, retitled, and reenacted to read as follows:

"Sec. 16-46. Criminal trespass on private or public property.

- (a) Legislative declaration; purpose. The City Council recognizes that owners of both private and public property have the right to limit, restrict, or prohibit access to that property. The City Council has determined that property owners are best situated to determine whether the property is suitable for access, use, or occupation by members of the public or by those who do not own the property. The purpose of this section is to place on notice those who enter or remain upon the premises of another, including premises owned by private entities, public entities, or individuals, that doing so without the proper license or authority, or after that license or authority has been revoked, may result in criminal liability.
- (b) Definitions. As used in this section, unless the context requires otherwise:

Premises means real property, buildings, and other improvements thereon, and the stream banks and beds of any non-navigable fresh water stream flowing through such property.

Sign or signage means any announcement or communication that is produced in whole or in part by the construction, erection, affixing, or placing of a placard or structure or produced by painting on or posting or placing any printed, lettered, pictured, figured, or colored material on any building, structure, or surface.
- (c) Unlawful entry.
 - (1) *Enclosed or fenced premises.* It shall be unlawful for any person to enter or remain upon the premises of another if the premises are enclosed in a manner

designed to exclude intruders or are fenced.

- (2) *Common areas.* It shall be unlawful for any person, having previously been advised not to enter, to knowingly and unlawfully enter upon the common areas of a hotel, motel, condominium, or apartment building.
- (d) *Unlawful remaining.* It shall be unlawful for any person to remain in or upon the premises of another after permission, license, or authority has been terminated or revoked and the person has been notified of the termination or revocation verbally, through signage, or otherwise in writing.
- (e) *Failure to obey no trespassing sign - posted premises.* It shall be unlawful for any person to enter or remain in or upon the premises of another contrary to, or in violation of, any sign limiting, restricting, or prohibiting access to, use of, or occupation of the premises.
 - (1) *Posting of a no trespassing sign.* A sign that is posted or placed at the entry to or upon a premises that gives notice of a limitation, restriction, or prohibition on the access to, use of, or occupation of the premises shall be deemed a no trespassing sign. Examples of no trespassing signs that give notice of a limitation, restriction, or prohibition on the access to, use of, or occupation of a premises include, but are not limited to, signs that read "parking lot open only to customers," "area closed," "area closed to the public between 2:00 a.m. and 6:00 a.m.," "area closed except to residents and authorized guests," "keep out," "no overnight occupancy," "no trespassing," "private property -- keep out," or that contain similar language.
 - (2) *No trespassing sign constitutes prima facie evidence of notice.* The posting or placement of a no trespassing sign that is reasonably calculated to provide notice to an ordinarily observant person entering in or upon the premises shall be prima facie evidence that notice was sufficient. The prosecution is not required to prove that a no trespassing sign was visible from every location in, upon, or about the premises at the time of the alleged violation.
- (f) *Penalty.* Criminal trespass shall be punishable by a fine or imprisonment not to exceed the limits established in section 1-5 of this Code.

Section 2. Severability, Conflicting Ordinances Repealed. If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 3. Effective Date. This Ordinance shall take effect fifteen (15) days after final publication, as provided by Section 5.11 of the Charter.

INTRODUCED, READ, AND ADOPTED on first reading by a vote of ___ to ___ on this ___ day of _____, 2020, ordered published in full in a newspaper of general circulation in the City of Wheat Ridge, and Public Hearing and consideration on final passage set for

_____, 2020 at 7:00 p.m., in the Council Chambers, 7500 West 29th Avenue, Wheat Ridge, Colorado.

READ, ADOPTED AND ORDERED PUBLISHED on second and final reading by a vote of ___ to ___, this _____ day of _____, 2020.

SIGNED by the Mayor on this _____ day of _____, 2020

Bud Starker, Mayor

ATTEST:

Steve Kirkpatrick, City Clerk

APPROVED AS TO FORM:

Gerald E. Dahl, City Attorney

First Publication:
Second Publication:
Wheat Ridge Transcript
Effective Date:_____

Published:
Wheat Ridge Transcript and www.ci.wheatridge.co.us

CITY OF WHEAT RIDGE, COLORADO
INTRODUCED BY COUNCIL MEMBER _____
COUNCIL BILL NO. _____
ORDINANCE NO. _____
Series 2020

TITLE: AN ORDINANCE ADOPTING SECTION 16-47 OF THE WHEAT RIDGE CODE OF LAWS CONCERNING UNLAWFUL REMOVAL OF NOTICES AND ESTABLISHING PENALTIES FOR VIOLATION OF THE SAME

WHEREAS, the City of Wheat Ridge is a home rule municipality having all powers conferred by Article XX of the Colorado Constitution; and

WHEREAS, pursuant to its home rule authority and C.R.S. § 31-23-101, the City, acting through its City Council (the “Council”), is authorized to adopt ordinances for the protection of the public health, safety or welfare; and

WHEREAS, the Council finds that the City has an interest in ensuring that a notice posted on or upon a property in the course of implementing or effectuating a City ordinance, policy, rule, procedure, or order remain legible and in place; and

WHEREAS, the City Council has determined that it is in the best interests of the health, safety, and welfare of the public that such a notice be maintained and preserved to ensure that any individual who may be affected by a City action or activity receive proper notice of that action or activity.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHEAT RIDGE, COLORADO:

Section 1. Section 16-47, Unlawful to Remove Notice, is hereby enacted within Chapter 16 of the Wheat Ridge Code of Laws, to read as follows:

Sec. 16-47. - Unlawful to Remove Notice.

- (a) *Legislative declaration.* The Wheat Ridge City Council finds that the City has a compelling interest in ensuring that members of the public receive proper notice of City actions or activities on or related to property within its jurisdiction. The City Council also finds that in order to ensure members of the public are properly notified of these actions or activities, the City or an authorized third party must sometimes post a notice or notices relating to the impending action or activity on or upon a particular property. In order to balance the rights of all citizens, and especially to protect the rights of individuals who may be affected by the impending action or activity, it is essential that these notices be legible and they remain in place.
- (b) *Definitions.* The following words, terms, and phrases, when used in this section, shall have the meaning ascribed to them in this subsection, except where the context clearly indicates a different meaning:

City employee means an employee of the City of Wheat Ridge or a contractor designated by the City to carry out duties associated with or relating to a City

ordinance, policy, rule, procedure, or order.

Notice means a sign or placard conveying information that is placed or posted on or upon property within the jurisdiction of the City by a City employee while carrying out duties associated with or relating to a City ordinance or policy, or a rule, procedure, or order of a City board, commission, or council. It also means a sign or placard placed or posted on or upon private property by a third party as mandated by a City ordinance or by a rule, procedure, or order of a City board, commission, or council.

Tamper means to alter, damage, deface, destroy, move, or render illegible a notice.

- (c) *Unlawful act.* It shall be unlawful for any person to remove or tamper with a notice.

Exception 1: A City employee carrying out duties associated with or relating to a City ordinance or policy, or a rule, procedure, or order of a City board, commission, or council may move, remove, or destroy a notice.

Exception 2: In the case of a notice placed or posted on or upon private property by an authorized third party as mandated by a City ordinance, or by a rule, procedure, or order of a City board, commission, or council, the third party may move, remove, or destroy the notice in accordance with the applicable ordinance, rule, procedure, or order.

- (d) *Strict liability.* A violation of this section is entirely strict liability in nature. No culpable mental state or *mens rea* of any type or degree shall be required to prove a violation of this section.
- (e) *Penalty.* Any violation of this section shall be punished by a fine not to exceed the limits established in section 1-5 of this Code.

Section 2. Severability, Conflicting Ordinances Repealed. If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 3. Effective Date. This Ordinance shall take effect fifteen (15) days after final publication, as provided by Section 5.11 of the Charter.

INTRODUCED, READ, AND ADOPTED on first reading by a vote of ___ to ___ on this ___ day of _____, 2020, ordered published in full in a newspaper of general circulation in the City of Wheat Ridge, and Public Hearing and consideration on final passage set for _____, 2020 at 7:00 p.m., in the Council Chambers, 7500 West 29th Avenue, Wheat Ridge, Colorado.

READ, ADOPTED AND ORDERED PUBLISHED on second and final reading by a vote of ___ to ___, this ___ day of _____, 2020.

SIGNED by the Mayor on this ___ day of _____, 2020

Bud Starker, Mayor

ATTEST:

Steve Kirkpatrick, City Clerk

APPROVED AS TO FORM:

Gerald E. Dahl, City Attorney

First Publication:
Second Publication:
Wheat Ridge Transcript
Effective Date:

Published:
Wheat Ridge Transcript and www.ci.wheatridge.co.us

CITY OF WHEAT RIDGE, COLORADO
INTRODUCED BY COUNCIL MEMBER _____
COUNCIL BILL NO. _____
ORDINANCE NO. _____
Series 2020

TITLE: AN ORDINANCE ADOPTING SECTIONS 16-69 AND 16-70 OF THE
WHEAT RIDGE CODE OF LAWS CONCERNING PEDESTRIAN
HINDERING THE FLOW OF TRAFFIC AND PEDESTRIAN USE OF
ROADWAY CENTER MEDIANS, AND AMENDING SECTION 16-113,
SALES AND SOLICITATION IN CERTAIN PLACES PROHIBITED

WHEREAS, the City of Wheat Ridge is a home rule municipality having all powers conferred by Article XX of the Colorado Constitution; and

WHEREAS, pursuant to its home rule authority and C.R.S. § 31-23-101, the City, acting through its City Council (the “Council”), is authorized to adopt ordinances for the protection of the public health, safety or welfare; and

WHEREAS, traffic safety statistics for the City demonstrate the year _____, traffic crashes involving pedestrians have increased significantly; and

WHEREAS, traffic safety statistics for the City also demonstrate that traffic crashes resulting in pedestrian fatalities occur along roadways that carry higher volumes of vehicles or that are posted with higher speed limits; and

WHEREAS, conduct by a pedestrian that distracts a driver’s attention from a roadway, that hinders traffic, or that otherwise obstructs a roadway, increases the dangers to both pedestrians and to those traveling in vehicles; and

WHEREAS, the dangers associated with interactions between vehicles and pedestrians increase the government’s interest in controlling pedestrian interactions with vehicles in the traveled portion of a roadway; and

WHEREAS, working to maximize the distance between the traveled portion of a roadway and pedestrians will increase pedestrian and traffic safety; and

WHEREAS, the primary purpose of a roadway center median is to enhance the safety of and ensure the free flow of traffic on roadways by separating opposing lanes of vehicular traffic, channeling traffic for turning purposes, and, within designated areas, to provide a temporary refuge for pedestrians crossing busy or wide roadways; and

WHEREAS, an individual who occupies or uses a roadway center median area that is not designed or suitable for pedestrian use creates a safety hazard danger for himself or herself and for traffic in the adjacent roadway; and

WHEREAS, working to reduce the circumstances and minimize the time during which pedestrians are in close proximity to traffic will increase pedestrian and traffic safety; and

WHEREAS, the use by pedestrians of entry and exit ramps along Interstate highways for sales or collection transactions with passing motorists poses a special safety hazard to the pedestrians where no safe pull-out or parking areas exist, and also creates a distraction for passing motorists which can inhibit the free flow of traffic; and

WHEREAS, alternative means and locations for the sales and solicitation are available elsewhere throughout the City; and

WHEREAS, prohibiting the use of certain areas along certain highways for sales or solicitations will directly advance the safety and welfare of the public; and

WHEREAS, the City Council finds that adoption of laws relating to the regulation of pedestrians who are in close proximity to roadways within the City is necessary to protect the health, safety, and welfare of the public.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHEAT RIDGE, COLORADO:

Section 1. Section 16-69, Pedestrian Hindering the Flow of Traffic is hereby adopted within Chapter 16, Miscellaneous Offenses, of the Wheat Ridge Code of Laws, to read as follows:

Sec. 16-69. Pedestrian hindering the flow of traffic.

- a. Legislative declaration; purpose. The city council hereby finds that collisions between pedestrians and vehicles in Wheat Ridge have increased significantly and declares it necessary to clearly delineate the responsibilities of pedestrians to allow for safer pedestrian and vehicle interactions throughout the city. The purpose of this ordinance is to reduce dangers to persons and property, to prevent traffic delays, and to avoid interference with traffic. Efforts to reduce the possibility that pedestrians may interfere with vehicular traffic are key to promoting pedestrian and traffic safety. The city council finds that this ordinance is necessary to protect the health, safety, and welfare of the public.
- b. Definition. The following word, when used in this section, shall have the meaning ascribed to it in this section, except where the context clearly indicates otherwise:
 - *Obstruct* means to render impassable or to render passage unreasonably inconvenient or hazardous, and includes but is not limited to, conduct such as extending objects into the traveled portion of a roadway.
- c. Unlawful act. It shall be unlawful for any person to willfully and unnecessarily hinder, obstruct, or delay traffic, or to willfully and unnecessarily attempt to hinder, obstruct, or delay any other person who is lawfully driving or traveling along or upon any roadway so as to interfere with the effective movement of traffic.
- d. Exception: This section shall not apply to any person within a crosswalk who lawfully entered the crosswalk and is crossing from one side of the traveled portion of the roadway for that period of time reasonably necessary to cross over the roadway.
- e. Penalty. Any violation of this section shall be punished by a fine not to exceed the limits established in section 1-5 of this Code.

Section 2. Section 16-70, Pedestrian Use of Roadway Center Medians, is adopted within Chapter 16 of the Wheat Ridge Code of Laws, to read as follows:

Sec. 16-70. Pedestrian use of roadway center medians.

- a. Legislative declaration; purpose. The city council hereby finds that collisions between pedestrians and vehicles in Wheat Ridge have increased and declares it necessary to clearly delineate the responsibilities of pedestrians to allow for safer pedestrian and vehicle interactions throughout the city. Certain higher speed roadways in Wheat Ridge have center medians that are designed to separate traffic and channel the flow of traffic through turns and intersections. Except for crosswalk refuge areas, such center medians were not designed and are not suitable for access, occupation, or use by pedestrians. Pedestrians who use center medians not designed for pedestrian use may distract or even startle drivers, especially along higher speed roadways. This endangers the pedestrian as well as drivers and their passengers. The purpose of this section is to reduce the number of situations during which pedestrians are in close proximity to the traveled portion of a higher speed roadway. The city council finds this ordinance will promote pedestrian and traffic safety and is necessary to protect the health, safety, and welfare of the public.
- b. Definitions. The following words or phrases, when used in this section, shall have the meaning ascribed to them in this section, except where the context clearly indicates otherwise:

Higher speed roadway means a roadway within the city with a posted speed limit greater than 30 miles per hour.

Center median means the raised area that divides a roadway carrying traffic in opposite directions, and which is defined by curbing, landscaping, or other obstacles. Center median not designed or suitable for pedestrian use means a center median that is located on any higher speed roadway within the city.

Temporary pedestrian refuge area means that part of a crosswalk that is located within or at the end of a center median that is designed to allow a pedestrian to safely pause before continuing to cross from one side of a roadway to the other.

- c. Unlawful act. It shall be unlawful for any person to access, occupy, use, assemble or congregate on or about any center median not designed or suitable for pedestrian use that has been posted, either on such center median not designed or suitable for pedestrian use or at the crosswalk access points to such center median, with a sign pursuant to this section prohibiting such access, occupancy, use, assembly, or congregation.

Exceptions: This section shall not apply to:

1. A person using that portion of a center median designed as a temporary pedestrian refuge along a crosswalk if the person was not able to safely cross the entire roadway during the traffic signal pedestrian phase or green light signal phase. This exception allows a person to occupy the pedestrian refuge area for the duration of one traffic signal cycle before crossing the entire roadway;
2. A local, state, or federal law enforcement officer or authorized first

responder engaged in the performance of his or her official duties;

3. A city or state employee or contractor authorized by the city manager or designee thereof, or by the state, to access the center median to perform construction, landscaping, maintenance, repair, or similar duties thereon; or
 4. An employee or contractor of a utility company authorized by the city or the state to access the center median to perform construction, landscaping, maintenance, repair, or similar duties thereon.
- d. Determination. The traffic engineer may prohibit pedestrian access, occupancy, use, assembly, or congregation on or about any center median not designed or suitable for pedestrian use by having posted or placed upon, or at the crosswalk access points to, such center median not designed or suitable for pedestrian use a sign that reads “unlawful to occupy center median,” or that contains similar language. Only a raised center median that lies along a higher speed roadway may be posted under this section. A sign posted or placed under this section must be posted or placed in a way that is reasonably calculated to provide effective notice to an ordinarily observant person entering upon the center median. However, there is no requirement that the sign be visible from every position on or about the center median or from every position at or about the crosswalk access points to such center median.
- e. Sign constitutes prima facie evidence of notice. The posting or placement of a sign reading “unlawful to occupy center median” or similar language upon a center median or at the crosswalk access points to such center median shall be prima facie evidence that the notice was sufficient. The prosecution is not required to prove that the sign was visible from every position on or about the center median or at the crosswalk access points to such center median.
- f. Strict liability. A violation of any provision of this section is strict liability in nature. No culpable mental state or *mens rea* of any type or degree shall be required to prove a violation of this section.
- g. Penalty. Any violation of this section shall be punished by a fine not to exceed the limits in section 1-5 of this Code.

Section 3. Section 16-113, Sales and solicitation in certain places prohibited, of the Wheat Ridge Code of Laws is hereby amended as follows:

Sec. 16-113. Sales and solicitation in certain places prohibited.

- a. LEGISLATIVE DECLARATION; PURPOSE. UNDER CERTAIN CIRCUMSTANCES, PEDESTRIAN SOLICITATION DIRECTED AT VEHICLES OPERATING ON A ROADWAY CREATES SAFETY HAZARDS TO THE PUBLIC. IN ADDITION, THE PRESENCE OF PEDESTRIANS ON INTERSTATES 70 AND 76, ON OTHER CONTROLLED ACCESS OR BELTWAY HIGHWAYS, AND ON ENTRANCE AND EXIT RAMPS THERETO CAUSES SAFETY CONCERNS AS A RESULT OF THE HIGH RATES OF SPEED PERMITTED AND THE LACK OF PULL-OFF LOCATIONS OR VEHICLE PARKING AREAS THAT

WOULD OTHERWISE FACILITATE TRANSACTIONS IN THESE AREAS. THE PURPOSE OF THIS SECTION IS TO PROVIDE FOR THE SAFETY OF THE PUBLIC RELATED TO SOLICITATION ACTIVITY AS DESCRIBED BELOW. THE CITY COUNCIL FINDS THIS ORDINANCE WILL PROMOTE PEDESTRIAN AND TRAFFIC SAFETY AND IS NECESSARY TO PROTECT THE HEALTH, SAFETY, AND WELFARE OF THE PUBLIC.

- b. It shall be unlawful for any person to solicit employment, business, contributions, or sales of any kind, or collect monies for same, from the occupant of any vehicle traveling upon any street or highway or entrance to or exit from any highway included in the interstate highway system within the city when such solicitation or collection:
 - (1) causes the person performing the activity to enter onto the traveled portion of a street or highway; or
 - (2) Involves the person performing the activity to be located upon any median area which separates traffic lanes for vehicular travel in opposite directions; or
 - (3) The person performing the activity is located such that vehicles cannot move into a legal parking area to safely conduct the transaction.
- c. No person shall solicit on private property if the owner, tenant, or person in lawful control of the property has asked the person to leave or has asked the person to refrain from soliciting on the property, or has posted a sign clearly indicating that solicitations are not welcome on the property.
- d. The words and phrases used herein, unless the context otherwise indicates, shall have the following meaning:

Soliciting shall mean any solicitation made in person requesting an immediate donation of money or other thing of value. Purchase of an item for an amount far exceeding its value, under circumstances where a reasonable person would understand that the purchase is in substance a donation, is a donation for the purpose of this section.

Traveled portion of the street or highway shall mean that portion of the road normally used by moving motor vehicle traffic.

INTERSTATE HIGHWAY MEANS ANY PORTION OF A ROADWAY WITHIN THE CITY THAT HAS BEEN DESIGNATED BY THE FEDERAL GOVERNMENT AS PART OF THE INTERSTATE HIGHWAY SYSTEM, OR THAT IS A CONTROLLED ACCESS HIGHWAY OR BELTWAY, AND INCLUDES ANY ENTRANCE TO OR EXIT FROM THAT ROADWAY.

- e. Penalty. Any violation of this section shall be punished by a fine not to exceed the limits established in section 1-5 of this Code.

Section 3. Severability, Conflicting Ordinances Repealed. If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected

thereby. All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 4. Effective Date. This Ordinance shall take effect fifteen (15) days after final publication, as provided by Section 5.11 of the Charter.

INTRODUCED, READ, AND ADOPTED on first reading by a vote of ___ to ___ on this ___ day of _____, 2020, ordered published in full in a newspaper of general circulation in the City of Wheat Ridge, and Public Hearing and consideration on final passage set for _____, 2020 at 7:00 p.m., in the Council Chambers, 7500 West 29th Avenue, Wheat Ridge, Colorado.

READ, ADOPTED AND ORDERED PUBLISHED on second and final reading by a vote of ___ to ___, this _____ day of _____, 2020.

SIGNED by the Mayor on this _____ day of _____, 2020

Bud Starker, Mayor

ATTEST:

Steve Kirkpatrick, City Clerk

APPROVED AS TO FORM

Gerald E. Dahl, City Attorney

First Publication:

Second Publication:

Wheat Ridge Transcript

Effective Date:

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MEMORANDUM

TO: Wheat Ridge City Council

FROM: Geoffrey Wilson, Special Counsel

CC: Gerald Dahl, City Attorney

DATE: October 9, 2020

RE: Complaint and hearing process for election complaints

Introduction

The attached draft ordinance substantially revises and updates the City's process for reviewing and conducting hearings on complaints alleging violation of the campaign finance laws in City elections

Prior to 2019, complaints alleging violations of Art XXVIII of the Colorado Constitution or the State Fair Campaign Practices Act (FCPA) in municipal elections were filed with the Secretary of State. During its 2019 regular session, the Colorado General Assembly enacted SB19-232, which changed this process, providing instead that "any complaint arising out of a municipal campaign finance matter must be exclusively filed with the clerk of the ...municipality." (codified at C.R.S. 1-45-111.7(9)(b))

The passage of SB19-232 has resulted in municipalities across Colorado adopting local complaint procedures, in order to address campaign finance complaints that may arise in their local elections. Many of these ordinances adopt a procedure similar to that set forth by the General Assembly in SB19-232 for processing such complaints in State elections.

Current Code

The City Code presently contains, at Sec 7-6, a process for handling complaints arising under the Municipal Election Code (Art. 10 of Title 31, C.R.S.), the Uniform Election Code (Arts. 1-13 of Title 1, C.R.S.; this code applies in City elections coordinated with the county clerk), and the Fair Campaign Practices Act (Art, 45 of Title 1, C.R.S.). Sec 7-6, which pre-dates SB19-232, does not contain many of the elements of the complaint process set forth in the State legislation, such as provisions for initial review of the complaint, a cure period, an independent hearing officer and a detailed timeline for the complaint process.

Proposed Code Amendment

The proposed amendment to the Code is modeled after the complaint process set forth in SB19-232 for complaints filed with the State, as well as various municipal ordinances implementing local complaint processes in the wake of the State legislation. This complaint process will address alleged violations of the campaign finance laws; complaints alleging violations of other election codes governing City elections will be pursued under those Codes, the City Charter and applicable City ordinances. The proposed ordinance includes the following elements:

- Amends Section 7-1 to clarify that the municipal initiative and referendum law, the municipal recall law and the law concerning amendment of the City Charter apply to City elections, in addition to the laws described under “*Current Code*”, above
- A detailed process for filing a complaint in writing, followed by initial review by the municipal clerk.
- Authority of the clerk to dismiss the complaint, provide an opportunity to cure deficiencies in the complaint, or set the complaint for a hearing.
- A process for the conduct of a hearing by an independent hearing officer.
- Authority of the hearing officer to impose penalties of at least twice the amount contributed, received or spent unlawfully, a daily civil penalty for delinquent filings, as well as other penalties.

ATTACHMENT:

1. Draft ordinance

CITY OF WHEAT RIDGE, COLORADO
INTRODUCED BY COUNCIL MEMBER _____
COUNCIL BILL NO. _____
ORDINANCE NO. _____
Series 2020

TITLE: AN ORDINANCE CONCERNING ELECTIONS, AND IN CONNECTION THEREWITH, REPEALING AND REENACTING SECTION 7-6 OF THE WHEAT RIDGE CODE OF LAWS TO CREATE A PROCESS FOR ADDRESSING COMPLAINTS ALLEGING CAMPAIGN FINANCE LAW VIOLATIONS, AND AMENDING SECTION 7-1 TO CLARIFY WHICH LAWS APPLY TO CITY ELECTIONS.

WHEREAS, the City of Wheat Ridge is a home rule municipality having all powers conferred by Article XX of the Colorado Constitution; and

WHEREAS, pursuant to its home rule authority, the City, acting through its City Council (the "Council"), is authorized to adopt ordinances regulating matters concerning campaign finance in municipal elections, including the provision of a complaint process relating thereto; and

WHEREAS, in the exercise of this authority, the Council has previously enacted section 7-6 of the Code of Laws (the "Code"), concerning election hearing procedures; 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 an update to the process by which the City may address complaints alleging violation the campaign finance laws applicable in City elections, which update also presents an opportunity to clarify which laws govern City elections.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHEAT RIDGE, COLORADO:

Section 1. Section 7-1 of the Wheat Ridge Code of Laws is amended by the addition of the following subsections, as follows:

Sec. 7-1. 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 City and shall govern the conduct of all elections held within the City:

- (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. Section 7-6 of the Wheat Ridge Code of Laws is repealed and reenacted, to read in its entirety as follows:

SEC. 7-6 ENFORCEMENT OF THIRD-PARTY COMPLAINTS.

- (a) ANY PERSON WHO BELIEVES A VIOLATION OF ARTICLE XXVIII OF THE COLORADO CONSTITUTION, THE FAIR CAMPAIGN PRACTICES ACT (SECTION 1-45-101 ET SEQ., C.R.S.), AS AMENDED BY THIS CODE, HAS OCCURRED RELATED TO A CITY ELECTION MAY FILE A WRITTEN COMPLAINT WITH THE CITY 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 CITY CLERK SHALL INCLUDE THE CITY 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 CITY 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 CITY CLERK NO LATER THAN THREE (3) BUSINESS DAYS THEREAFTER.
- (f) INITIAL REVIEW.
- (1) THE CITY 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 (SECTION 1-45-101 ET SEQ., C.R.S.), AS AMENDED, OR ANY RULES ADOPTED AND PROMULGATED BY THE CITY CLERK CONCERNING CAMPAIGN AND POLITICAL FINANCE.
 - (2) WITHIN TEN (10) BUSINESS DAYS OF RECEIVING THE COMPLAINT, THE CITY CLERK MUST TAKE ONE (1) OR MORE OF THE FOLLOWING ACTIONS:
 - a. IF THE CITY 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 (SECTION 1-45-101 ET SEQ., C.R.S.), AS AMENDED, THE CITY CLERK WILL DISMISS THE COMPLAINT AND NOTIFY THE COMPLAINANT AND RESPONDENT OF THE REASONS FOR DISMISSAL. THE CITY CLERK'S DISMISSAL IS A FINAL DECISION, AND SUBJECT TO REVIEW UNDER RULE 106, C.R.C.P.

- b. IF THE CITY CLERK DETERMINES THAT THE COMPLAINT ALLEGES ONE (1) OR MORE CURABLE VIOLATIONS AS DESCRIBED IN SUBSECTION (G), THE CITY CLERK WILL NOTIFY THE RESPONDENT(S) AND PROVIDE AN OPPORTUNITY TO CURE AS DESCRIBED IN SUBSECTION (G).
- c. IF THE CITY 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 CITY CLERK WILL TAKE THE ACTIONS SET FORTH IN SUBSECTION (H).

(g) CURING VIOLATIONS.

- (1) UPON THE CITY 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 CITY 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 CITY 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 CITY CLERK SHALL NOTIFY THE CITY MANAGER OF THE COMPLAINT, AND THE CITY MANAGER, IN CONSULTATION WITH THE CITY CLERK AND THE CITY ATTORNEY, SHALL REFER THE COMPLAINT TO AN INDEPENDENT HEARING OFFICER TO HEAR AND DETERMINE SUCH COMPLAINT.
- (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 CITY 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 CITY 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) IT SHALL BE AN AFFIRMATIVE DEFENSE TO A PROSECUTION UNDER THIS SECTION THAT THE OFFENDER DID NOT HAVE ACTUAL KNOWLEDGE OF HIS RESPONSIBILITY UNDER THIS CHAPTER AND WAS AN UNCOMPENSATED VOLUNTEER. THIS AFFIRMATIVE DEFENSE SHALL NOT BE AVAILABLE FOR USE AS A DEFENSE BY ANY PERSON WHO HAS FILED AN AFFIDAVIT PURSUANT TO C.R.S. 1-45-110, AS SUCH SECTION PRESENTLY EXISTS OR IS HEREAFTER AMENDED.
- (o) 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.
- (p) 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.
- (q) THE HEARING OFFICER'S DETERMINATION UNDER SUBSECTIONS (O) AND (P) IS A FINAL DECISION SUBJECT TO REVIEW UNDER RULE 106, C.R.C.P.
- (r) CANDIDATES SHALL BE PERSONALLY LIABLE FOR PENALTIES IMPOSED UPON THE CANDIDATE'S COMMITTEE.
- (s) 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.
- (t) IN NO EVENT SHALL THE CITY 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.
- (u) 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 2. Severability, Conflicting Ordinances Repealed. If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 3. Effective Date. This Ordinance shall take effect fifteen (15) days after final publication, as provided by Section 5.11 of the Charter.

INTRODUCED, READ, AND ADOPTED on first reading by a vote of ___ to ___ on this ___ day of _____, 2020, ordered published in full in a newspaper of general circulation in the City of Wheat Ridge, and Public Hearing and consideration on final passage set for _____, 2020 at 7:00 p.m., in the Council Chambers, 7500 West 29th Avenue, Wheat Ridge, Colorado.

READ, ADOPTED AND ORDERED PUBLISHED on second and final reading by a vote of ___ to ___, this ___ day of _____, 2020.

SIGNED by the Mayor on this ___ day of _____, 2020.

Bud Starker, Mayor

ATTEST:

Steve Kirkpatrick, City Clerk

Approved as to Form

Gerald E. Dahl, City Attorney

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