

**TOWN OF NEW CASTLE, COLORADO  
ORDINANCE NO. 1, SERIES 2021**

AN ORDINANCE OF THE NEW CASTLE TOWN COUNCIL ADDING  
SECTIONS 1.16.050 TO 1.16.070 OF CHAPTER 1.16 TO TITLE 1 OF THE  
NEW CASTLE MUNICIPAL CODE PERTAINING TO ELECTIONS.

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

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

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

**WHEREAS**, under the Colorado Constitution, the SOS is obligated to hear FCPA violations when a municipality has not adopted its own campaign finance ordinance. *See* Colo. Const. Art. XXVIII, § 9(2)(a); and

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

**WHEREAS**, the Town currently does not have any procedures in place for processing municipal campaign finance complaints once they are received, and the attached ordinance establishes such procedures; and

**WHEREAS**, the Town of New Castle wishes to adopt a process for receiving and responding to third-party complaints alleging violations of the municipal campaign finance rules; and

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

**WHEREAS**, the Town of New Castle finds that this Ordinance furthers and is necessary for the promotion of public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF NEW CASTLE, COLORADO the following:

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

**Section 2. Addition of Sections 1.16.050 to 1.16.070 of Chapter 1.16 to Title 1 of the Town of New Castle Municipal Code.** Sections 1.16.050 to 1.16.070 of Chapter 1.16 are added to Title 1, "General Provisions," of the New Castle Municipal Code to read in their entirety as follows:

**1.16.050 VIOLATIONS AND COMPLAINTS**

(a) Any candidate or registered elector of the Town ("complainant") who has reason to believe there has been a violation of municipal campaign finance rules as set forth in the Colorado's Fair Campaign Practices Act ("FCPA"), C.R.S. § 1-45-101 *et seq.*, Article XXVIII of the Colorado constitution ("Article XXVIII"), or other rule promulgated by the Colorado Secretary of State ("Rules") concerning campaign and political finance may file a written complaint ("complaint") with the Town Clerk no later than 60 days after the alleged violation(s) has occurred. The complaint shall include:

- (1) The name, address and signature of the complainant;
- (2) The name and address of each person alleged to have committed a violation; and
- (3) The details of the violation with citations to the election code section(s) or provision(s) allegedly violated.

(b) If the Town Clerk receives a written complaint pursuant to Subsection (c), below, alleging a campaign violation, the Town Clerk shall:

- (1) Provide the person believed to have committed the violation with a copy of the written complaint.
- (2) Allow ten (10) business days for correction of the violation or submission of written statements explaining the reason that support a conclusion that a violation was not committed.
- (3) If the Town Clerk receives a written complaint that is not corrected or otherwise remedied as provided in Section 1.16.050(b)(2) herein, the Town Clerk shall refer the matter to the Town Attorney to review whether, under the circumstances and in

accordance with this Chapter, a complaint in the Municipal Court should be filed with regard to the alleged violation.

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

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

**1.16.060 CRIMINAL PENALTIES.**

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

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

**1.16.070 CIVIL PENALTIES.**

(a) Any person who violates any of the reporting provisions of the FCPA, Article XXVIII, or the Rules shall be liable in any civil action initiated by the Town Attorney or by a person residing within the Town for an amount not more than the amount or value not properly reported.

(b) Notwithstanding the provisions of Subsection 1.16.060(a), any person who makes or receives a contribution or expenditure in violation of the FCPA, Article XXVIII, or the Rules is liable in a civil action initiated by the Town Attorney or by a person residing within the Town for an amount up to five hundred dollars (\$500.00) or three (3) times the amount of the unlawful contribution or expenditure, whichever is greater.

(c) In determining the amount of liability under Subsections 1.16.070(a) and (b), the Court may take into account the seriousness of the violation and the culpability of the defendants. If a judgment is entered against a defendant or defendants in an action under the sections noted above, the plaintiffs, other than the Town, shall receive fifty percent (50%) of the amount recovered. The remaining fifty percent (50%) shall be deposited in the treasury of the Town. In an action initiated by the Town Attorney, the entire amount recovered shall be paid into the treasury of the Town.

**Section 3.**     **Severability.** If any provision of this Ordinance, or the application of such provision to any person or circumstance, is for any reason held to be invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable. The Town Council hereby declares that it would have passed this Ordinance and each provision thereof, even though any one of the provisions might be declared unconstitutional or invalid. As used in this Section, the term “provision” means and includes any part, division, subdivision, section, subsection, sentence, clause or phrase; the term “application” means and includes an application of an ordinance or any part thereof, whether considered or construed alone or together with another ordinance or ordinances, or part thereof, of the Town.

**Section 4.**     **Effective Date.** This Ordinance shall take effect April 1, 2021.

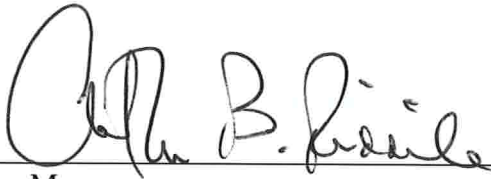
**Section 5.**     **Safety Clause.** The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of New Castle, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

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

**Section 7.**     **Publication.** The Town Clerk is ordered to publish this Ordinance in accordance with Article IV of the Town of New Castle Home Rule Charter.

INTRODUCED on March 2, 2021 at which time copies were available to the Council and to those persons in attendance at the meeting, read by title, passed on first reading, and ordered published in full and posted in at least two public places within the Town as required by the Charter.

INTRODUCED a second time at a regular meeting of the Council of the Town of New Castle, Colorado on March 16, 2021 read by title and number, passed with amendments, approved, and ordered published as required by the Charter.

  
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Mayor

ATTEST:

  
\_\_\_\_\_  
Town Clerk

