

**TOWN OF BOW MAR, COLORADO  
ORDINANCE NO. 335**

**AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF BOW MAR  
AMENDING ARTICLE I OF CHAPTER 2 OF THE BOW MAR MUNICIPAL CODE,  
ENTITLED “ELECTIONS,” TO ESTABLISH A PROCESS TO ADDRESS  
COMPLAINTS ARISING OUT OF MUNICIPAL CAMPAIGN FINANCE MATTERS**

WHEREAS, the Town of Bow Mar (the “Town”) is a statutory municipality organized under the laws of the State of Colorado, and the statutes of the State of Colorado governing statutory towns apply to the Town; and

WHEREAS, the Town is subject to and has operated under the applicable provisions of Article XXVIII of the Colorado Constitution, entitled Campaign and Political Finance (“Article XXVIII”) and Title 1, Article 45, C.R.S., known as the Fair Campaign Practices Act (“FCPA”); and

WHEREAS, the FCPA previously required complaints regarding municipal campaign finance violations to be filed with and resolved by the Colorado Secretary of State; and

WHEREAS, Senate Bill 19-232 amended the FCPA by adding Section 1-45-111.7, C.R.S., which now requires that any complaint arising out of a municipal campaign finance matter must be exclusively filed with the clerk of the applicable municipality; and

WHEREAS, pursuant to Colorado regulations concerning campaign and political finance, 8 CCR 1505-6, “municipal campaign finance matter” as used in section 1-45-111.7(9)(b), C.R.S., means any campaign finance matter exclusively related to a municipal campaign, including matters involving a candidate for a municipal office; a municipal ballot issue or ballot question; and contributions or expenditures made by any person, committee, or group to support or oppose any candidate for municipal office, or municipal ballot issue or ballot question, which definition applies to all municipalities; and

WHEREAS, to comply with Colorado law and regulations, the Town Board of Trustees desires to establish a process to address complaints arising out of Town campaign finance matters.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF BOW MAR, COLORADO:

Section 1. Repeal and Re-enactment of Section 2-4. Article I, Chapter 2 of the Bow Mar Municipal Code, titled “Elections”, is hereby repealed and re-enacted to read in full as follows:

**Sec. 2-4. - Municipal campaign finance enforcement.**

- (a) Any person who believes that a municipal campaign finance violation under Article XXVIII of the Colorado Constitution or under Article 45 of Title 1, C.R.S., commonly known as the “Fair Campaign Practices Act” or “FCPA,” has occurred in a Town election may file a written complaint with the Town Clerk in conformance with

subsection (b) below. A written complaint shall be filed with the Town Clerk no later than thirty (30) days after the person knew or should have known, by the exercise of reasonable diligence, of the alleged violation. This Section 2-4 shall apply to violations arising out of a municipal campaign finance matter, which refers to any matter exclusively related to a municipal campaign, including matters involving a candidate for municipal office; a municipal ballot issue or ballot question; and contributions or expenditures made by any person, committee, or group to support or oppose any candidate for municipal office, or municipal ballot issue or ballot question.

- (b) Written complaints shall be filed on a form provided by the Town Clerk and shall include the following:
  - (1) The name, address, e-mail address, telephone number, and signature of the complainant (and, if complainant is represented by legal counsel, legal counsel's name, address, e-mail address, telephone number, and signature);
  - (2) The name and, if known, the telephone number, e-mail address, and address of the person alleged to have committed a violation (the "respondent"); and
  - (3) The particulars of the violation and any available documentation or evidence supporting the allegation.
- (c) 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.
- (d) Initial Review. The Town Clerk shall review the complaint within fifteen (15) business days of receipt and within such timeframe shall take one (1) or more of the following actions:
  - (1) The Town Clerk shall dismiss a complaint if the Town Clerk determines, upon consultation with the Town Attorney, that the complaint:
    - (i) was not timely filed under Section 2-4(a);
    - (ii) has not identified one or more specific violations of Article XXVIII of the Colorado Constitution or the FCPA pertaining to a municipal campaign finance matter, or any rules promulgated by the Town Clerk concerning municipal campaign finance matters; or
    - (iii) does not allege specific facts or provide information sufficient to support a legal and factual basis for the complaint.

In the case of dismissal, the Town Clerk shall notify the complainant and respondent of the reasons for dismissal in writing. The Town Clerk's dismissal is a

final decision, and subject to review under Rule 106 of the Colorado Rules of Civil Procedure.

- (2) If the Town Clerk determines that the complaint alleges one (1) or more curable violations, the Town Clerk will notify the respondent and provide an opportunity to cure in accordance with Subsection (e).
- (3) If the Town Clerk determines that the complaint alleges one (1) or more violations, asserts facts, or provides information sufficient to support the alleged violations but that may require additional factual finding(s) or legal interpretation, and that the asserted violations may not be curable as described in Subsection (e), the Town Clerk will take the actions set forth in Subsection (f).

(e) 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, the Town Clerk will notify the respondent by e-mail, or by registered mail or certified mail, return receipt requested, if e-mail is unavailable, of the curable deficiencies alleged in the complaint.
- (2) Respondent shall have ten (10) business days from the date the notice is mailed to cure any deficiencies specified in the notice.
- (3) The Town Clerk may ask the respondent to provide additional information and may grant extension(s) of time upon written request by respondent.
- (4) After the period for cure has expired, the Town Clerk will determine, within five (5) business days, whether the respondent cured the violation(s), and if so, whether the respondent substantially complied with respondent's legal obligations under Article XXVIII of the Colorado Constitution or the FCPA pertaining to municipal campaign finance matters ("legal requirements").
  - (i) If the Town Clerk determines that the respondent substantially complied with the legal requirements, the Town Clerk will dismiss the complaint.
  - (ii) If the Town Clerk determines that the respondent did not substantially comply with the legal requirements, the Town Clerk will take action as set forth in Subsection (f).
  - (iii) The Town Clerk's determination under this Subsection (e)(4) is a final decision and subject to review under Rule 106 of the Colorado Rules of Civil Procedure.
- (5) In determining whether respondent "substantially complied" pursuant to this Subsection (e), the Town Clerk shall consider:

- (i) The extent of the noncompliance;
  - (ii) The purpose of the provision violated and whether that purpose was substantially achieved despite the noncompliance;
  - (iii) Whether the noncompliance can properly be viewed as an intentional attempt to mislead the electorate or election officials.
- (f) Hearing officer, hearing, and determination.
- (1) When the Town Clerk is required to take further action as set forth in Subsections (d)(3) or (e)(4)(ii), the Town Clerk shall, following consultation with the Town Attorney, refer the complaint to an independent hearing officer to hear and determine such complaint. Such referral shall occur within ten (10) business days of the Town Clerk's determination pursuant to Subsections (d)(3) or (e)(4)(ii).
  - (2) The hearing officer shall schedule a hearing to be held within fifteen (15) calendar days of referral of the complaint to the hearing officer.
  - (3) The Town Clerk shall send notice of the hearing and any applicable rules governing the hearing process to the complainant and to the respondent, who shall also receive a copy of the complaint received by the Town Clerk, within two (2) business days of the date of referral of the complaint to the hearing officer. The Town Clerk may send notice by e-mail to the address of the complainant shown on the complaint form and to the respondent at the address provided by respondent. If e-mail is unavailable, the Town Clerk shall send notice by registered mail or certified mail, return receipt requested.
  - (4) 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 municipal 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 a subpoena, and any person convicted of a violation hereof shall be punished in accordance with Article IV of Chapter 1 of this Code.
  - (5) The hearing officer may grant the respondent a continuance of up to thirty (30) calendar days upon a showing of good cause.
  - (6) The hearing shall be electronically audibly recorded and held in substantial accordance with Section 24-4-105, C.R.S., or such other rules as the Town Clerk may have promulgated. At the hearing, complainant shall have the burden of proof to establish that a violation occurred under a preponderance of the evidence standard. Respondent and complainant may present evidence to the hearing officer

in the form of testimony, documents, rebuttal testimony, and opening and closing statements.

- (7) Following the hearing, the hearing officer shall issue a written decision within seven (7) business days.
- (8) If the hearing officer determines that respondent violated Article XXVIII of the Colorado Constitution or the FCPA, the hearing officer's order shall include any appropriate order, sanction, or relief authorized hereunder and may include, without limitation, sanctions as follows:
  - (i) 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.
  - (ii) 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 FCPA is not filed by the close of business on the day due.
  - (iii) Order disclosure of the source and amount of any undisclosed contributions or expenditures.
  - (iv) Order the return to the donor of any contribution made that was the subject of the violation.
- (9) The hearing officer's determination is a final decision subject to review under Rule 106 of the Colorado Rules of Civil Procedure.
- (g) Personal liability. Candidates shall be personally liable for penalties imposed upon the candidate's committee.
- (h) Collection of penalties. The Town may collect civil penalties in accordance with applicable law and may engage the use of a private collection agency.
- (i) Rules and regulations. The Town Clerk, in consultation with the Town Attorney, shall be authorized to adopt rules and regulations as may be required to implement the provisions of this Section 2-4.

Section 2.     Safety Clause. The Board of Trustees hereby finds, determines, and declares that this ordinance is necessary and proper for the health, safety, and welfare of the Town and its residents.

Section 3.     Severability. If any part, section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining sections of the ordinance. The Board of Trustees hereby declares that it would have

passed the ordinance including each part, section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more part, section, subsection, sentence, clause, or phrase is declared invalid.

Section 4.        Repealer. All ordinances or resolutions, or parts thereof, in conflict with this ordinance are hereby repealed, provided that such repealer shall not repeal the repealer clauses of such ordinance nor revive any ordinance thereby.

Section 5.        Codification Amendments. The codifier of the Town's Municipal Code, Municipal Code Corporation, is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of this Ordinance within the Bow Mar Municipal Code.

INTRODUCED, READ, APPROVED, AND ORDERED PUBLISHED this 21<sup>st</sup> day of June, 2021.

**ATTEST:**

**TOWN OF BOW MAR:**

By:  \_\_\_\_\_  
Sue Blair, Town Clerk

By:  \_\_\_\_\_  
Thomas Feldkamp, Mayor

Compliance with Section 1-46 of the Bow Mar Municipal Code:

INTRODUCED BY TRUSTEE HINTON

SECONDED BY TRUSTEE RAMSDEN