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# Going It Alone: Handling Complaints under the FCPA

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# Why Are We Here

- August 10, 2020 SOS adopts new temporary rules
- Importance to municipalities-especially statutory,
  - All FCPA complaints now to be handled at the local level
  - Can't rely on the SoS and need to get a process in place





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# What We're Talking About

- Legal Background on Municipal Handling of FCPA Complaints
  - Constitution
  - Statutes
  - Rules
    - New rules
- Recommendations for Process
- Denver experience



# Colorado Laws

## Article XXVIII of the Colorado Constitution (Amendment 27)

Section 9. Duties of the SoS

(1)(b) shall promulgate rules

(2)(a) any person who believes a violation of the operative sections has occurred *may file* a written complaint with SoS within 180 days. SoS *shall* refer it to an ALJ, who *shall* hold a hearing

## Title 1, Article 45, Part 1 of the Colorado Revised Statutes

1-45-116. Home rule counties and municipalities. Authority to adopt local provisions that are more stringent.

Article XXVIII and the FCPA shall not apply to such municipalities that have adopted provisions “that address” the matters covered by Title 1, Article 45, Part 1 of the Colorado Revised Statutes



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**Many, if not all, home rules  
have been going it alone**

***In re complaint filed by  
Colorado Springs***  
**77 P.3d 937, 2012 COA 55**





# Statutory municipalities

1-45-112 Duties of municipal clerk.

(1)(e) The municipal clerk SHALL notify any person under their jurisdiction who has failed to fully comply with the provisions of this article *and notify any person if a complaint has been filed with the SoS alleging a violation of this article.*



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# **2019 Campaign Enforcement Act**

## **SB 19-232**

Adds 1-45-111.7

(9)(b) Any Complaint arising out of a municipal campaign finance matter must be exclusively filed with the Clerk of the applicable municipality.



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Colorado  
**Secretary of State**

# **August 10, 2020 New Rules**





# Amendments to Rule 17.6

“any filing related to a municipal campaign finance matter must be filed with the municipal clerk”

Rule 1.12 defines “municipal campaign finance matter”

Any campaign finance 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. This definition is not limited to home rule municipalities that have adopted their own campaign finance rules or regulations, but applies to all municipalities.”



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# Do We Really Have to Do This?

- Fight It
- Adopt Local Regulations





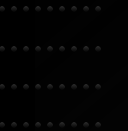
# Considerations

## Local enforcement regulations

*Holland v. Williams*

3 Takeaways:

1. Left state temporarily without enforcement mechanism.
2. Need to review any existing local codes allowing citizens to file campaign finance complaints, especially without a screening system.
3. Another example in a pattern of courts striking down citizen-initiated campaign finance and government ethics reforms.



# Centennial Enforcement Ordinance

Who?	Any person
When?	90 days
How?	On City form to include particulars of violation and support
Next?	City Clerk review
Then?	Dismiss, cure, or hearing
Sanctions?	Differ from state (lower) (home rule)
Unjustified?	Recover fees (HO decision)



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# Denver Enforcement Ordinance





# Denver Revised Municipal Code

- Resident of the City and County of Denver
- Within 30 days of the violation being discoverable
- Clerk sends notice of complaint to the respondent
  - 30 days to respond or cure allegations
  - If no response or cure, the clerk appoints a hearing officer



# Clerk's Election Rules

**3.8 Complaints.** The clerk and recorder shall review each complaint for completeness. If the clerk determines that the complainant is not a resident of the City and County of Denver or that the complaint was not filed timely in accordance with D.R.M.C. § 15-40(a), the clerk will dismiss the complaint and not send any notice to the respondent.



# Denver's Timeline

- CB 18-747 passed by Council on July 30, 2018
- Rule 3.8 adopted January 4, 2019
- Hire two on-call hearing officers in February 2019
- Municipal Election: May 7, 2019
- Runoff Election: June 4, 2019





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# Complaints in Denver

- 2018
  - 2 complaints
  - Easy cures
  - No hearings
- 2019
  - 12 complaints
  - Various lessons learned

Denver Elections Division  
200 W 14th Ave, Ste 100  
Denver, CO 80204



Hon. Paul D. López  
Denver Clerk & Recorder  
Public Trustee



## Campaign Finance Complaint Form

A resident of the City and County of Denver who believes a violation of [D.R.M.C. Chapter 15, Article III - Campaign Finances](#) has occurred may file a written complaint with the Clerk and Recorder no later than thirty (30) days after the violation is discoverable. Please use this form to submit a complaint to the Denver Clerk and Recorder. If you have questions or concerns, please contact our office at 720-913-VOTE (8683) or at [electionscomm@denvergov.org](mailto:electionscomm@denvergov.org).

### Submitter's Name

First Name \*

Last Name \*



# Lesson: What is a “cure”?








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# Lesson: Unnamed respondent

Denverite

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**ELECTION**

## Racist flier hits District 9 runoff race



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# Lesson: Complaint against the boss





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# Political lesson: be prepared for the media



## Campaign finance complaint filed against Denver Councilwoman Candi CdeBaca

Alayna Alvarez, Colorado Politics Sep 8, 2020 Updated Sep 14, 2020  0



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**The screening and cure process can work, but it is not without traps and sticky situations.**





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## **We're here to help**

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