

BEFORE THE ADMINISTRATIVE HEARING OFFICER, CITY OF LAKEWOOD,
COLORADO

ORDER

In re: Complaint filed by CITY OF LAKEWOOD, STATE OF COLORADO, Complainant,
against LAKEWOOD CITIZENS WATCHDOG GROUP, Respondent.

THIS MATTER comes before the undersigned, a duly appointed administrative hearing officer for the City of Lakewood, on Complaint filed by Tom Keefe, an individual ("Complainant"), against Lakewood Citizens Watchdog Group ("Respondent") on October 23, 2019. Having considered the Complaint and the testimony and evidence presented at a hearing on January 7, 2020 and February 25, 2020, and being otherwise advised in the premises, the undersigned finds and orders as follows:

1. In the Complaint, Complainant presented two alleged violations of Chapter 2.54 of the Lakewood Municipal Code (the "Code"), which is the City's campaign finance ordinance. The City Clerk determined that the Complaint was not frivolous, and set the Complaint for hearing.
2. At the hearing, Lauren Stanek represented the City and appeared with Michele Millard, City Clerk. Scott Gessler represented Respondent. The undersigned admitted City's Exhibits 1-6 and Respondent's Exhibits A-C.
3. Respondent is a nonprofit corporation registered with the Colorado Secretary of State. On a quarterly basis (approximately), Respondent publishes a document entitled "The Whole Story." On or about October 1, 2019, which was within 60 days of the City's November election, Respondent published the October 1st edition of The Whole Story, and distributed that publication to more than 100 registered electors of the City through the United States mail. *See* Respondent's Exhibit C.
4. The Complaint alleges that the October 1, 2019 edition of The Whole Story contained electioneering communications, but that Respondent failed to file any reports with the City as required by Code § 2.54.070(1). In addition, the Complaint alleges that Respondent violated Code § 2.54.030(F)(3)(a) (erroneously cited in the Complaint as § 2.54.030(3)(a)), because the October 1, 2019 edition of The Whole Story did not contain the required disclaimers.
5. At the hearing, Respondent admitted that it failed to file any expenditure reports with the City, and the undisputed evidence also revealed that the October 1st edition of The Whole Story did not contain the disclaimer required by Code § 2.54.030(F)(3)(a).
6. Respondent argues that the October 1st edition of The Whole Story is not an electioneering communication, so neither the reporting requirements nor the disclaimer requirement applies in this case. The basis for Respondent's argument is that The Whole Story is a newspaper, and that newspapers are exempt from campaign finance laws. The City disagrees.

7. At the hearing, Respondent presented no evidence that The Whole Story is a newspaper. City's Exhibit 3 is a true and correct copy of the publication, and nowhere on the publication does it indicate any type of periodicals mailing privileges. Moreover, in an email dated October 28, 2019, Respondent admitted that the publication was a "newsletter", which is quite different than a newspaper. *See* City's Exhibit 4. Even if a media exemption existed in the Lakewood Municipal Code, Respondent failed to demonstrate that The Whole Story constitutes media that would be entitled to such an exemption. As such, the undersigned rejects Respondent's first argument.

8. Respondent's second argument is that The Whole Story is not an electioneering communication, because the communications in The Whole Story are not the functional equivalent of express advocacy. However, it is clear that the October 1, 2019 edition of The Whole Story was intended to advocate against particular candidates. The various stories included in the October 1, 2019 edition focused on the campaigns of Adam Paul, Kyra deGruy and Dana Gutwein. On page 3, the publication listed "special interest donors" to all three campaigns. Also on page 3, the publication implicates the relationship of deGruy and Gutwein. On page 4, the publication discusses the merits of deGruy's challenger, and derides Gutwein's prior candidacy. Page 5 describes Paul as a "career politician," in contrast to his opponent, and then notes his "heavy reliance on special interest donors." Page 7 goes on to imply that Paul's acceptance of donations from trash haulers was akin to corruption. All of these articles clearly and unequivocally favored certain candidates over other candidates. As such, the undersigned finds that the October 1, 2019 edition of The Whole Story was an electioneering communication.

9. Because Respondent failed to file any reports with the City, Respondent violated Code § 2.54.070(1). In addition, because the October 1, 2019 edition of The Whole Story did not contain the required disclaimers, Respondent violated Code § 2.54.030(F)(3)(a) (erroneously cited in the Complaint as § 2.54.030(3)(a)).

WHEREFORE, for the failure to file reports, Respondent is ordered to pay \$500 to the City of Lakewood pursuant to Code § 2.54.050(C)(2)(b); and for the missing disclaimers, Respondent is ordered to pay \$2,500 to the City of Lakewood pursuant to Code § 2.54.050(C)(2.2)(a); and the City Clerk shall provide notice of such penalties by certified mail pursuant to Code § 2.54.050(C)(3), in addition to the notice provided by the undersigned below; and

SO ORDERED this 14th day of September, 2020.

CITY OF LAKEWOOD, COLORADO



By

Kendra L. Carberry, Hearing Officer
Hoffmann, Parker, Wilson & Carberry, P.C.
511 16th Street, Suite 610
Denver, CO 80202

CERTIFICATE OF SERVICE

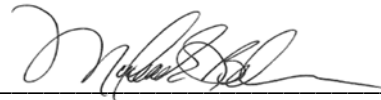
I hereby certify that a true copy of the foregoing Order was sent via electronic mail this 14th day of September, 2020, addressed to:

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