

ARA 14.01 POLITICAL CONSULTANT REGISTRATION AND REPORTING

A. Purpose

The City of Portland established a political consultant regulation program in 2016 to improve transparency and allow the public to identify individuals and entities who may have access to and potential influence over the City's decision-makers. The purpose of this rule is to provide additional guidance for the political consultant registration and reporting requirements set forth in Chapter 2.14 of the Portland City Code.

B. Authority

Section 2-506 of the Portland City Charter authorizes the City Auditor to adopt, amend, and repeal administrative rules to carry out the Auditor's Office's duties. In addition, Code Section 2.14.080 authorizes the City Auditor to adopt administrative rules to administer the Political Consultant Reporting Program.

C. Construction and Interpretation

Code Chapter 2.14 was enacted to improve transparency by disclosing relationships between City elected officials and their political consultants. In accordance with Code Section 1.01.060, the provisions of Code Chapter 2.14 must be construed with a view to achieve its objectives and promote justice.

Registering as a political consultant with the City is free. To promote the spirit and intent of the law, all individuals and entities are encouraged to register if they may be subject to the registration requirement, and City elected officials are encouraged to disclose all applicable services.

D. Reporting Requirements

1. The reporting requirements for political consultants are sets forth in Code Section 2.14.030.
2. The reporting requirements for City elected officials (Mayor, Councilors, and City Auditor) are set forth in Code Section 2.14.050.

E. Definitions

The definitions set forth in Code Section 2.14.020 apply to this rule.

1. For purposes of this rule and the Political Consultant Reporting Program:

- a. “Covered client” means a City elected official; a successful candidate for City office or a successful candidate’s principal campaign committee registered with the Oregon Secretary of State; or a person appointed or succeeding to the position of a City elected official pursuant to Charter Section 2-206.
2. Terms not otherwise defined have the meaning given to them in Code Chapter 2.14.
3. According to Code Section 2.14.020 C., the term “political consultant” does not include an individual who does not engage in Political Consulting Services as a trade or profession. An individual “does not engage in Political Consulting Services as a trade or profession” if the person provides political consulting services only occasionally, characterized by occurring on a temporary or intermittent basis, and accounting for less than 50 percent of the person’s actual work or volunteer time on a quarterly basis.

Examples:

- a. A communications firm provides political consulting services to a City elected official’s campaign committee (a covered client), on behalf of the candidate’s campaign. An individual working for the firm spends more than 50 percent of their actual work hours during the calendar quarter providing political consulting services on behalf of the covered client, as well as to other candidates and state and local campaigns. Because the firm’s primary activity is providing political consulting services and the individual provides such services on behalf of a covered client, the firm is required to register with the Auditor’s Office within 15 calendar days of providing political consulting services to the covered client, in accordance with Code Section 2.14.030.
- b. An individual at a firm providing primarily technical communications services is employed to set up a City elected official’s website and maintain it as necessary throughout the year, including providing services that are considered political consulting services. However, in total, the individual spends less than 50 percent of their working hours in a calendar quarter providing political consulting services to the covered client and other candidates and state and local campaigns. As a result, the individual’s services are considered intermittent or occasional, and therefore they are not considered to be a political consultant for purposes of the Political Consultant Reporting Program.

F. Incidental and Unsolicited Political Consulting Services

1. Individuals or entities that provide only incidental or unsolicited political consulting services are not required to register as political consultants, and City elected officials are not required to disclose incidental and unsolicited political consulting services in their quarterly reports. Examples of incidental or unsolicited political consulting services include:

- a. A covered client's interview of a political consultant as part of a hiring process to determine whether or not to obtain services from the political consultant.
- b. Communications between a political consultant and a covered client regarding general topics, including those of a political nature, that do not involve providing political consulting services to or on behalf of the covered client.

Example: A City elected official and a professional political consultant discuss a state ballot measure campaign, but do not discuss the elected official's campaign or political strategy related to it. The conversation does not trigger political consultant registration and reporting requirements because political consulting services were not provided to or on behalf of the covered client.

- c. Unsolicited political consulting services provided by a political consultant outside of a mutually agreed upon professional relationship.

Example: A professional political consultant and a City elected official discuss the elected official's campaign strategy at a social event. The political consultant is not currently and has never been engaged by the elected official to provide political consulting services and the conversation is unsolicited by the elected official. The communication does not trigger political consultant registration and reporting requirements because political consulting services were provided outside of a mutually agreed upon professional relationship.

2. The term "political consultant" does not apply to a person that provides political consulting services to a non-covered client (e.g., a labor organization or other member-based association), but that incidentally, while working on behalf of the non-covered client, discusses political strategy or polling data with a City elected official, a candidate for City office, or a campaign committee for a candidate.

Example: An individual representing a member-based business group discusses polling data and political strategy with a Councilor. The business group provides



services on behalf of its members. The individual is representing the business group and its interests when meeting with the Councilor, and has not been hired to provide political consulting services to the Councilor. Because neither the business group nor the individual is providing political consulting services on behalf of a covered client, neither is required to register as a political consultant. (Note, however, that campaign finance regulations may be implicated. See Code Chapter 2.10 Campaign Finance in Candidate Elections.)

NOTE: A person that communicates with City officials regarding official City actions may be required to register and report under Code Chapter 2.12 Regulation of Lobbying Entities.

G. Online Reporting System and Training

1. The Auditor's Office provides a [Political Consultant Filing Portal](#). Political consultants and City elected officials must use this system to register and file reports required under Code Chapter 2.14. A political consultant without internet access may make arrangements to use a public computer in the Auditor's Office for the purpose of complying with Code Chapter 2.14.
2. The [Auditor's Office](#) provides written training materials with detailed instructions for accessing the portal and filing quarterly reports on the City's website. In-person trainings are also available upon request.

H. Reporting Deadlines: City Elected Officials

1. Every City elected official is required to file a quarterly report each quarter, regardless of whether they used political consulting services. The filing deadline is 5 p.m. on the 15th day after the end of the preceding calendar quarter.
2. Calendar Quarters, Reporting Periods, and Filing Dates:

<u>Q</u>	<u>Reporting Period</u>	<u>Report Due</u>	<u>Last Day for Amendments</u>
1	Jan 1 - Mar 31	April 15	April 25
2	April 1 - June 30	July 15	July 25
3	July 1 - Sept 30	October 15	October 25
4	Oct 1 - Dec 31	January 15	January 25

3. If the deadline falls on a Saturday, Sunday, or official City holiday, the due date is the next business day at 5 p.m.

I. Fees for Late Filing by City Elected Officials

Timely reporting is vital to the administration of the Political Consultant Reporting Program, and helps maintain the reporting cycle and overall availability of information to the public.

1. If a City elected official fails to report as required by Code Chapter 2.14, the Auditor's Office will send the City elected official a warning notice.
2. If a late report is not filed within 24 hours after the filing deadline, the Auditor's Office may assess a late fee of up to \$10 per day, up to a maximum of \$1,000.

J. Investigating and Identifying Violations; Notice

1. Complaints of alleged violations of Code Chapter 2.14 may be filed:
 - a. With the Auditor's Office's [Lobbying Regulations and Political Consultant Reporting Program](#) by email: lobbyist@portlandoregon.gov; or in person at City Hall:: 1221 SW 4th Avenue, Room 130, Portland, OR 97204.
2. The Auditor's Office will conduct an initial review of each complaint received.
3. Following an initial review, the Auditor's Office will take appropriate action to address the complaint, which may include but is not limited to:
 - a. Requesting additional information from the person who filed the complaint.
 - b. Conducting an independent and impartial investigation into the complaint. During an investigation, the Auditor's Office may:
 - i. Take any other action needed to investigate, review, and/or respond to the complaint; or
 - ii. Determine that no further action is required and close the case.
4. The Auditor's Office may also initiate an investigation into possible violations of Code Chapter 2.14 on its own initiative, without receiving a complaint.
5. Following an investigation, the Auditor's Office will issue a written decision, which may be in the form of a warning or violation notice.

- a. The written decision will identify whether a violation of Code Chapter 2.14 occurred and the basis for the decision.
 - b. If the Auditor's Office finds that a violation of Code Chapter 2.14 occurred, the written decision will state whether the Auditor's Office is issuing a civil penalty or other administrative sanction. In lieu of or in conjunction with finding a violation and imposing a civil penalty, the Auditor's Office may issue a written letter of reprimand, a warning, or an explanation, and may suggest training.
 - c. If a civil penalty is imposed, the written decision will provide instructions for paying the civil penalty and for requesting reconsideration.
6. The Auditor does not accept allegations submitted anonymously.
- a. If a complainant requests that their name, contact information, and identifying details be kept confidential, the Elections Office will treat the information as confidential and exempt from public disclosure under ORS 192.355(4) unless ordered to disclose it under the law.
 - b. A complainant may request confidentiality of their identity at any time but, whenever possible, complainants should request confidentiality from the Elections Office at or before the first communication with the Office about the complaint.
 - c. The Elections Office reserves the right to determine which details about a complainant are ones that tend to identify their identity.
7. To protect the integrity of the investigatory process, complaints and information related to complaints, initial reviews, and investigations are confidential and will not be disclosed until the written decision is issued or the case is otherwise closed, except as may be needed to conduct the investigation or unless ordered to disclose it under the law.
8. The Auditor's Office will provide notice of the outcome of any initial review or investigation to the individual or entity investigated and to those individuals that request the information.

K. Civil Penalty Criteria

The City Auditor may assess civil penalties of up to \$1,000 per violation, commensurate with

the severity of the violation.

1. In determining whether to impose a penalty and the amount of any penalty, the Auditor's Office will consider the nature and extent of the violation. In addition, the Auditor's Office may consider the following mitigating or aggravating factors:

a. Whether the violation was repeated and continuous over multiple quarters, or isolated and temporary.

Example: A political consultant fails to register and report political consultant services for a partial quarter, but reports mid-quarter. Violations that occur for partial quarters may be considered temporary, whereas failing to report services in multiple quarters may be considered continuous and an aggravating factor.

b. Whether the violation appears to have been made knowingly. Determinations of whether violations are knowing may be based on relevant circumstances and available records.

c. Whether the City elected official or the political consultant were offered or received training or coaching regarding Political Consultant Reporting Program requirements within the previous year.

d. Level of cooperation during an investigation, including providing relevant and timely information as requested.

e. Any other applicable factors the Auditor's Office deems relevant.

L. Paying Civil Penalties

1. Civil penalties are payable to the City of Portland Auditor's Office and are due no later than 30 days after the decision described in Section J. becomes final.
2. Limits on civil penalties imposed under this rule do not include interest. Civil penalties not paid within 60 days from the payment due date may be subject to 10 percent simple interest per annum.

M. Reconsideration; Appeals; Finality

1. Any person against whom a civil penalty has been assessed under Code Section 2.14.090 and this rule may petition the City Auditor for reconsideration. The petition for reconsideration must be in writing and received by the City Auditor within 10 business

days of the date of the written decision described in Section J. Supporting information may be included with the petition for reconsideration.

2. If a petition for reconsideration is filed by the deadline, the City Auditor will reconsider the decision and/or the amount of the civil penalty. No hearing will be conducted.
3. Upon reconsideration, the City Auditor may affirm, withdraw, or modify the written decision and/or adjust the amount of the civil penalty, in the City Auditor's discretion. The City Auditor will issue a written determination on the petition for reconsideration within 45 calendar days.
4. The City Auditor's decision becomes final, and the final decision of the City, on:
 - a. If a petition for consideration is not filed, after 10 business days elapse following the date the initial written decision is issued;
 - b. If a petition for reconsideration is filed, the day the decision on reconsideration is issued.
5. The final decision may be appealed by writ of review to the Multnomah County Circuit Court, as provided in [ORS 34.010 - 34.100](#).

N. Cost Recovery

Recoverable costs of enforcement of Code Chapter 2.14 to the Auditor's Office may include but are not limited to attorneys' fees, court costs, and administrative costs. All moneys received in civil penalties for violations of Code Chapter 2.14 must be paid to the City Auditor and will be credited to the City's General Fund.

Auditor's Office Administrative Rule Information and History

Questions about this administrative rule may be directed to the Auditor's Office's Operations Management Division.

Adopted by the City Auditor on September 28, 2016 as ADM-15.21 – Political Consultant Interpretation and as ADM 15.20 – Enforcement and Civil Penalties.

ADM-15.20 and ADM-15.21 rescinded by the City Auditor and replaced with adopted ARA 14.01 on June 1, 2021.



Amended by the City Auditor on [DATE], after a minimum 30-day public comment period.

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