



**Portland  
City Auditor**  
Chief Deputy



October 15, 2024

Carmen Rubio

**Delivered Electronically**

carmen@carmenforportland.com

cr@carmenforportland.com

**Notice of Determination**  
Complaint No. 2024-03-CR

Dear Carmen Rubio:

**I. Introduction and Overview**

On September 20, 2024, the Elections Office, a Division within the Auditor's Office, received a complaint alleging that Carmen Rubio had violated the City's campaign finance law, which is enforced by the Auditor's Office. For avoidance of confusion, this is referred to as the "Rubio Complaint."

Rubio is both a current City commissioner and a candidate for mayor in the November 2024 election. The primary allegation of the Rubio Complaint is that Rubio "regularly touts her accomplishments on platforms supported by city staff or use [sic] city resources in the months leading up to the election. She has sent no fewer than eight city email newsletter using city resources since announcing her run for mayor." This is alleged to be a violation of the City's campaign finance law.

Rubio is running against, among others, Rene Gonzalez, who is also a current City commissioner. In addition, Gonzalez is the subject of a campaign finance complaint that contends he misused City resources (funds and staff time to burnish his Wikipedia page) in his capacity as a candidate. This will be referred to as the "Gonzalez Complaint." With the exception of a few sentences, the Rubio Complaint is copied

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directly from the formal response that the Auditor’s Office received from Rene Gonzalez in response to the Gonzalez Complaint.<sup>1</sup>

The Auditor’s Office has already addressed the majority of the contentions in the Rubio Complaint in its September 16, 2024, initial determination with respect to the Gonzalez Complaint (the “Gonzalez Initial Determination”). In the Gonzalez Initial Determination, the Auditor’s Office determined that Gonzalez’s (and now the complainant’s) attempt to draw an equivalency between Rubio’s conduct and Gonzalez’s conduct fell flat.<sup>2</sup> Nonetheless, as the Auditor’s Office is required under City Charter and its administrative rules to do, the Auditor’s Office opened an investigation into this matter.

The Auditor’s Office has reviewed the complaint and the materials it refers to and has no evidence to believe that a violation of the City’s campaign finance law occurred as a result of Rubio’s use of City resources. A review of the newsletters published by Rubio’s City staff show they are reports of City business, and do not contain information related to Rubio’s campaign. The Auditor’s Office therefore issues a finding of **no violation**.

In addition, the sentences of the Rubio complaint that are not a copy and paste from the Gonzalez response to the Gonzalez Complaint allege that a staffer in Rubio’s office tagged Rubio’s campaign page on their personal social media account during City work hours. The Auditor’s Office has referred allegations about the staffer to the **Bureau of Human Resources for further investigation**.

## **II. Investigation and Findings**

The Auditor’s Office sent Notice of Complaint No. 2024-03-CR to Carmen Rubio and Carmen for Portland on September 25, 2024. (Ex. 1.) Rubio’s campaign manager provided a response to the complaint on October 1, 2024. (Ex. 2.) The Auditor’s Office found the following in the course of its investigation:

1. Rubio is a current City commissioner and a candidate for mayor in the November 2024 election.
2. Commissioner Rubio’s office issues periodic newsletters, published here: <https://commrubio.substack.com/>.

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<sup>1</sup> The complainant in the Rubio Complaint has asked for their identity to remain confidential, but the Auditor’s Office clarifies that Rene Gonzalez did not make the complaint against Carmen Rubio.

<sup>2</sup> See 2024-01-RG Initial Notice of Determination issued on September 16, 2024, available at <https://www.portland.gov/elections/documents/2024-01-rg-determination-corrected/download>.

3. Commissioner Rubio’s newsletters include statements about Commissioner Rubio’s work as a City commissioner. They include the following statements referenced in Gonzalez’s response to the Gonzalez Complaint and in the Rubio Complaint:
  - “Under my direction, Prosper Portland and the Portland Housing Bureau have been exploring new Tax Increment Financing (TIF) districts in East Portland and the Central City.” (Ex. 3.)
  - “Due to the foresight of the changes I passed at City Council in November 2022 and the thoughtful work of the PCEF Committee, PCEF was able to step in and fund climate work across the entire city enterprise.” (Ex. 4.)
4. The Auditor’s Office has unearthed no newsletters issued by Commissioner Rubio that contain information about her candidacy for mayor or issues unrelated on their face to City business. (This is in contrast to the issues under consideration in the Gonzalez Initial Determination, which included Gonzalez’s use of City funds to pay a third-party consultant to assist Gonzalez’s (City) staff in revising the Rene Gonzalez Wikipedia page to include information about Gonzalez’s mayoral platform and other items unrelated to Gonzalez’s work as a City commissioner.)
5. At least some of Rubio’s staff, like the staff of other City commissioners, engage in communications work.

### **III. Analysis and Determination**

The Auditor’s Office has no evidence to believe that a violation of the Portland City Charter’s campaign finance law occurred with respect to Rubio’s newsletters. Specifically, there is no evidence Rubio received a “contribution,” and therefore her office’s expenditures are not regulated under the City’s campaign finance law.

City Charter provides that a candidate may receive only the following contributions:

- \$500 — adjusted by inflation to be \$579 for the current election cycle — from any individual or political committee other than a “Small Donor Committee;”
- Any amount from a qualified “Small Donor Committee;” and
  - For candidates participating in the Small Donor Elections program (like Rubio), any amount permitted by the Small Donor Elections program.<sup>3</sup>

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<sup>3</sup> City Charter Sections 3-301, 3-304.

There are several forms a “contribution” can take. For purposes of this determination, it suffices to say a “contribution” includes both the payment of money to or on behalf of a candidate and also the furnishing, without equivalent compensation or consideration, of services or any other thing of value to or on behalf of a candidate.<sup>4</sup>

As the Auditor’s Office stated explicitly in the Gonzalez Initial Determination, which bears repeating here: The Auditor’s Office does not view an elected official’s communications that are limited to discussion of the elected official’s acts in office as a “contribution” to the elected official in their capacity as a candidate. It would unduly chill speech for a communication from an elected official to their constituents about the official’s actions and accomplishments in office to be considered campaign activity.

However, the Auditor’s Office also clarified in the Gonzalez Initial Determination that if an elected official running for office uses the resources and money of the City at the official’s disposal to issue communications that are unrelated to City business, and instead are campaign communications, this could (depending on the facts and circumstances) constitute an unlawful contribution from the City to the elected official that violates campaign finance law.

The communications by Commissioner Rubio fall squarely into the category of an elected official communicating to their constituents about their actions in office. There is therefore no contribution to Rubio as a candidate, and spending City resources on the newsletters is not a campaign finance violation.

The Rubio Complaint also makes three additional allegations beyond what was in the Gonzalez response. First, the Rubio Complaint claims that Rubio’s newsletters failed to include disclaimer information required under the City Charter’s campaign finance law. Because Rubio’s communications are not campaign communications and are instead those of an elected official communicating about their actions while in office, no disclaimer information was required on the newsletters.

Second, the Rubio Complaint alleges Rubio doubled the size of her communications staff in the run-up to the mayoral election, which could be characterized as benefiting her campaign. (Ex. 5.) The Auditor’s Office is unclear what the complainant is relying on for this assertion, but in any event, a commissioner’s decision to hire staff to perform City business is well within their discretion as an elected official and not regulated by the City’s campaign finance law.

Finally, the Rubio Complaint contends that a staffer in Rubio’s office tagged Rubio’s campaign page during work hours. The complainant indicated they provided an

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<sup>4</sup> Portland City Charter Section 3-308, Intro & (a); Auditor’s Office Administrative Rule 13, Appx. B(A).

attachment showing this, but the only attachment provided was one newsletter that included no tags. (Exs. 3, 5.) The Auditor's Office followed up with the complainant by email asking for the attachment but was told that the complainant only meant to attach the one newsletter — which does not contain any screenshot or other evidence of a staffer tagging Rubio's campaign. (Exs. 6, 7.)

Nonetheless, the Auditor's Office's investigation found a handful of instances of the referenced staffer tagging Rubio's mayoral accounts on their own personal social media during non-holiday weekdays. It is possible that this staffer did so during work hours (not during vacation, lunch, breaks, hours not scheduled to work, etc.), but there is no evidence that this was at the direction of Rubio, part of a policy in Rubio's office, or involved any City resources. The alleged use of public resources for political activities by the personal staff of an elected official is outside of the jurisdiction of the Auditor's Office to investigate, and the Auditor's Office refers this matter to the Bureau of Human Resources to determine if it violates the City's political activity policy.<sup>5</sup>

#### **IV. Additional Authority and Appeals**

This Notice of Determination is issued pursuant to the Auditor's authority under City Charter Section 3-305 (Implementation and Enforcement). That section sets forth the process for implementation and enforcement of the provisions of City Charter Article 3 (Campaign Finance in Candidate Elections), including the recipient's appeal rights. (See also Auditor's Office Administrative Rule 13.03(C) (requiring in part that decisions on complaints be in writing, identify whether a violation occurred, and state the basis for the decision).)

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<sup>5</sup> Given the complainant's attempt to draw parallels between Rubio and Gonzalez's offices, the Auditor's Office wishes to clarify that, unlike in the Gonzalez Initial Determination (which included a referral to the Secretary of State to investigate possible violations of ORS 260.432), the Auditor's Office does not believe the allegations against the Rubio staffer rise to the level of a referral to the Secretary of State's Office for an investigation of a possible violation of ORS 260.432, at least at this time. (ORS 260.432 prohibits, among other things, persons from coercing, commanding, or requiring a public employee to influence, give money, service or thing of value to promote or oppose the election of a candidate, and also prohibits public employees from promoting or opposing the election of a candidate while on the job during working hours.) Unlike in the Gonzalez case, where it was undisputed that Gonzalez was involved in the conduct at issue, and that his staff worked under his direction using City resources, including City time, to update his Wikipedia page, there is no evidence that Rubio directed her staffer to engage in this conduct, that the staffer did so on City time (that is an issue the Auditor's Office leaves to the Bureau of Human Resources to determine), or that the staffer inappropriately made use of any City resources. The Auditor's Office leaves the determination of whether a referral to the Secretary of State is appropriate to the Bureau of Human Resources.

As described by City Charter Section 3-305(i) and Auditor's Office Administrative Rule ("ARA") [13.03\(D\)\(5\)-\(6\)](#), the complainant and the subject of the complaint may seek judicial review of the decision in Multnomah County Circuit Court. In addition, the Auditor's Office may, on its own discretion or on request of an interested party, withdraw a decision for reconsideration within the earlier of 30 days from issuance of the decision or until the decision is appealed.

As set out in ARA 13.03(D)(6), decisions of the Auditor's Office can be appealed to the Circuit Court within the following timelines:

- For decisions that are not withdrawn for reconsideration, within 60 days from the issuance of a decision; and
- For decisions that are withdrawn for reconsideration, within 60 days from the issuance of the reissued decision.

Sincerely,

A handwritten signature in cursive script, appearing to read "Reed Brodersen", followed by a horizontal line extending to the right.

Reed Brodersen  
Chief Deputy Auditor

cc: Complainant