



Portland City Auditor

Chief Deputy



October 31, 2024

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Notice of Determination Complaint No. 2024-08-CC

Dear City Club of Portland et al.:

I. Introduction and Overview

On October 17, 2024, the Elections Division, within the Auditor's Office, received a complaint alleging that the City Club of Portland (the "City Club") and five mayoral candidates (Rene Gonzalez, Mingus Mapps, Liv Osthus, Carmen Rubio, and Keith Wilson, referred to collectively with their candidate committees as the "Candidates"), violated Portland's campaign finance law. (Ex. 1.) The complaint can be construed as

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raising two issues: 1) whether the City Club made an in-kind contribution to the Candidates, in the form of a candidate forum, that is valued at an amount that exceeds what is permitted under the City's campaign finance law; and 2) whether the City Club's promotional materials for the candidate forum lacked disclaimer information required by Portland's campaign finance law.¹

After receiving the complaint, the Auditor's Office conducted an investigation, as detailed below. The Auditor's Office concludes that the City Club did not make an unlawful contribution to the Candidates and that the City Club did not violate City law by omitting any necessary disclaimers from issued communications. The Auditor's Office therefore issues a **finding of no violation** of the City's campaign finance law.

II. The Auditor's Office conducted a complete investigation of this matter and the City Club cooperated in the investigation.

Under City Charter, the Auditor is required to take written complaints of campaign finance violations from any person. (Charter Section 3-305(c).) Upon receipt of a complaint, the Auditor is required, by law, to do the following: examine the complaint, make any investigation necessary, issue a notification of the complaint to every person who is an object of the complaint, accept written materials supporting or opposing the complaint, and render a decision on the complaint. (Charter Section 3-305(e).)

The Auditor's Office provided the complaint in this matter to the City Club and the Candidates on October 21, 2024. The City Club and Carmen for Portland responded on October 28, 2024, and October 25, 2024, respectively. (Exs. 2, 3.) Gonzalez, Mapps, Osthus, and Wilson did not respond. The Auditor's Office also made requests for information to the City Club, which responded in a timely fashion. (Ex. 2 at 2-4.)

III. Factual Background

The Auditor's Office's investigation revealed the following relevant facts:

¹ The complaint also alleged that "communications with value of \$250 must be declared cost as a campaign donation." (Ex. 1 at 1.) This appears to be conflating the threshold for disclaimers regarding the sources of funds on communications to voters and a requirement to report contributions. City law sets limits on contributions to City candidates; the Auditor's Office enforces this law. State law requires reporting of contributions in certain instances; the Secretary of State enforces this law. To the extent the complainant wished to raise a concern with respect to reporting contributions in the state's database of campaign finance transactions, the Auditor's Office suggests the complainant direct that to the Secretary of State's Office.

- According to its website, the City Club of Portland is a 501(c)(3) membership organization. (Ex. 4 at 1.) The City Club states that its mission is to “inform our members and the community in public matters and to arouse in them a realization of the obligations of citizenship.” (Ex. 2 at 1.) It further describes itself as “a nonpartisan, honest broker of information.”
- During 2024, the City Club held a series of “candidate forums.” (Ex. 5.) The City Club marketed these as free, public, and nonpartisan. (Ex. 5 at 2.)
- The City Club does not endorse candidates. (Ex. 2 at 1.)
- This matter relates to the City Club’s October 8, 2024, forum related to Portland’s mayoral election (the “Candidate Forum”).
- The City Club invited the five mayoral candidates who qualified for the City of Portland’s Small Donor Elections program (each of the Candidates) to participate in the Candidate Forum. (Ex. 6 at 3.) This is a fraction of the candidates who have qualified for the ballot.
- To qualify in the Small Donor Elections program, each mayoral candidate must have collected donations from at least 750 matchable donors. (City Code Section 2.16.050 A.1.)
- The Candidates all participated in the Candidate Forum. (Ex. 7 at 2.)
- The City Club promoted the Candidate Forum through a number of means, including by email, on Instagram, on Facebook, on LinkedIn, on the City Club website, and via EventBrite (which was the platform on which people could register to attend). (E.g., Exs. 5-11.)
- All of the promotional materials reviewed by the Auditor’s Office make it clear that City Club was issuing the communication. (See, e.g., Ex. 1 at 2-16; Exs. 5-11.)
 - Some of the promotional materials simply referenced the event. (See, e.g., Ex. 12.) Others included the names of the Candidates, their photos, and their current occupation. (See, e.g., Ex. 8.)
 - The text in the promotional materials was relatively light.
 - However, at least one of City Club’s Instagram posts described the purpose of the candidate forum as: “With significant changes coming to the mayoral role starting January 2025, it’s essential for voters to

understand candidates' unique qualifications and visions for Portland.”
(Ex. 8.)

- And at least one of the City Club's emails described the purpose as “help[ing] voters explore” the “qualities [that] will be key for effective leadership” with the mayor's shift in responsibilities in the City's new form of government beginning January 1, 2025. (Ex. 6.)
- City Club estimates that it spent \$937 in staff time to create the promotional communications. (Ex. 2 at 3.)

IV. Determination

The Auditor's Office has determined that there has been no violation of the Portland City Charter's campaign finance regulations by City Club or the Candidates.

The questions before the Auditor's Office are whether: 1) the Candidate Forum, including related promotional materials, was an “in-kind” contribution from the City Club to the Candidates that was not permissible for the City Club to have made or the Candidates to have received under the City's campaign finance law, and 2) whether the City Club violated the City's campaign finance law because it failed to include required disclaimers on promotional communications about the event regarding the sources of contributions used to fund the communications.

The Auditor's Office concludes that the answer to both questions is “no” and issues this finding of no violation.

A. City Charter contains both contribution limits and disclaimer requirements.

1. City Charter limits the amounts and sources of candidate contributions.

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 (which all of the Candidates are), any amount permitted by the Small Donor Elections program.²

There are several forms a “contribution” can take. For purposes of this determination, it suffices to say that a “contribution” includes anything of value given to or on behalf of a candidate or political committee, that is not excluded from the definition of “contribution.”³ A contribution does not need to be cash. Instead, a wide variety of “in-kind” contributions that are provided to candidates qualify as regulated contributions.

2. City Charter requires disclaimers on certain communications to voters.

City Charter requires that each “Communication” to voters related to a City candidate election “Prominently Disclose” the true original sources of contributions or independent expenditures used to fund the communication.⁴ Promotional materials featuring mayoral candidates’ names, photos, and occupations could, depending on the specific circumstances, qualify as a “Communication.”⁵ Among the things that a communication that is funded by contributions or independent expenditures must include is “the names of any Political Committees and other Entities that have paid to provide or present it.”⁶

Such a communication must also list the top five “dominant” contributors or independent spenders.⁷ A “dominant contributor” is any individual or entity that contributes more than \$1,158 during an election cycle to a candidate committee or a political committee.⁸

B. All of the Candidates participate in the Small Donor Elections program, which has determined Candidates’ participation in the event was permissible.

The Auditor’s Office finds that the City Club did not make, and the Candidates did not receive, an unlawful contribution.

² Charter Sections 3-301, 3-304.

³ Charter Section 3-308, Intro & (a); Auditor’s Office Administrative Rule 13, Appx. B(A).

⁴ Charter Section 3-303(a); see also Charter Section 3-308 (defining terms).

⁵ See Charter Section 3-308(d) (defining “Communication”).

⁶ Charter Section 3-303(a)(1).

⁷ Charter Section 3-303(a)(2), (a)(3).

⁸ Charter Section 3-308(f) (defining “Dominant Contributor”); see also Auditor’s Office Administrative Rule 13, Appx. A (adjusting amount for inflation).

The City's campaign finance law allows a candidate participating in the Small Donor Elections program to receive any amount that the Program allows a participating candidate to receive. (See above.) In a separate determination, the Small Donor Election program has determined that the Candidates did not violate the rules of the program in participating in the Candidate Forum or in being named in promotional materials related to the Candidate Forum. The Auditor's Office generally defers to the Small Donor Elections program to interpret its own rules. The Auditor's Office does so here and therefore finds no violation of the City's contribution limits.

Nonetheless, the Auditor's Office cautions that it is not making a pronouncement on candidate forums in general, or what it would conclude if asked to consider a situation where candidates who are not participants in the Small Donor Elections program appear in a candidate debate or forum. The Auditor's Office notes that the state law definition of "contribution" (which the City's definition largely parallels)⁹ appears to recognize that a candidate forum can, at least in certain circumstances, be an in-kind contribution to a candidate—a result that would be consistent with how other jurisdictions have considered this issue. This is in part because the state law definition of contribution contains an express carve-out for candidate forums and debates for state office (in certain circumstances), but the state legislature did not extend that carve-out to forums for local office.¹⁰ On the other hand, it may be the case that some candidate forums could be carved out of the state and local law definitions of contribution on the grounds that they are a form of nonpartisan activity designed to encourage individuals to vote (or to register to vote).¹¹ In other words, the particular facts and circumstances of an event will dictate any future determinations related to candidate forums.

⁹ Compare ORS 260.005, as further modified by ORS 260.007, with Charter Section 3-308(e), as detailed in Auditor's Office Administrative Rule 13, Appx. B(C).

¹⁰ ORS 260.007(10) (list of carve-outs from definition of "contribution") (excluding from definition of contribution "[a] candidate debate or forum for a state office, or a communication publicizing a candidate debate or forum for a state office, when candidates for the state office are invited to participate in the candidate debate or forum based on neutral criteria that are publicized in advance of the invitation") (emphasis added); see also ORS 260.005 (defining "state office" as the office of Governor, Secretary of State, State Treasurer, Attorney General, Commissioner of the Bureau of Labor and Industries, state Senator, state Representative, judge or district attorney).

¹¹ See ORS 260.007(10) (excluding from the definition of contribution "[n]onpartisan activity designed to encourage individuals to vote or to register to vote, including but not limited to activity that is allowed for a not-for-profit corporation that is tax exempt under section 501(c)(3) of the Internal Revenue Code"). Providing voters information in a nonpartisan setting that would allow them to assess how to cast their ballot could, in some scenarios, be a potentially applicable exclusion from the definition of "contribution" and thus not subject to campaign

C. The City Club did not violate the City’s disclaimer provisions.

The disclaimer provisions in the City’s campaign finance law provide that communications to voters related to a City of Portland candidate election must prominently disclose the true original sources of the contributions and/or independent expenditures used to fund the communication.¹² The content that must be shown (i.e., the required disclaimers) includes: (1) the names of any political committees or other entities that paid to provide or present the communication; and (2) further information about “dominant contributors” or “dominant independent spenders,”¹³ if applicable. Only communications that cost \$250 or more to create are subject to the disclaimer requirements.¹⁴

Here, even assuming the communications are of the type covered under the disclaimer provisions of the City’s campaign finance law, the communications only need to include disclaimers revealing sources of “contributions” and “independent expenditures” used to fund the communication.

The communications issued by the City Club related to the Candidate Forum are plainly not funded by “independent expenditures.” Independent expenditures are, generally speaking, funds spent on communications in support of or in opposition to a candidate where the communication is made without coordination with the candidate or an agent of the candidate.¹⁵ The promotional communications at issue were funded (indirectly, through compensation to staff) by the City Club, which developed the Candidate Forum in association with the Candidates. In addition, the communications were neither in support of, nor in opposition to, a candidate and the City Club does not endorse or otherwise take stances in support of, or in opposition to, candidates, or raise money from others for that purpose.

It is a more complex question whether the communications were funded by “contributions.” A communication does not need to be a contribution itself to be funded by contributions. For example, a candidate committee needs to include disclaimers on certain communications it issues—but a candidate committee is not making a contribution to itself when it makes an ad buy. Instead, its disclaimer obligation stems

finance limits. The Auditor’s Office does not assess that here, however, as the City Club expressly contended that was not the purpose of the Candidate Forum.

¹² Charter Section 3-303(a).

¹³ Charter Section 3-303(a).

¹⁴ Auditor’s Office Administrative Rule 13.04(A)(2)(b).

¹⁵ See Charter Section 3-308(intro); see also Auditor’s Office Administrative Rule 13, Appx. B(E) (definition of independent expenditure).

from the fact that the committee funds the communication from contributions. On the other hand, a communication that costs money to create and that is itself a contribution (e.g., a coordinated communication between a political committee and a candidate that is funded and issued by the political committee) will also necessarily be “funded by” contributions. In other words, there are two paths to a disclaimer obligation, assuming the communication costs \$250 or more to create: 1) the communication is a contribution; and 2) the communication is not itself a contribution but is funded by contributions.

The Auditor’s Office has deferred to the Small Donor Elections determination that, to the extent that the Candidates received a benefit, it was an allowable amount under the Small Donor Elections program’s rules (and hence, allowable under the City Charter’s campaign finance provisions). But the Auditor’s Office must do its own analysis as to whether the communications are funded by a contribution.

There are arguments that the communications, particularly the ones that highlight the Candidate names, photos, and occupations, are a form of contribution, and that their value included increasing candidate name recognition. There are also arguments that the communications are a contribution because they relate to promoting a candidate forum that may be a type of in-kind contribution (see above). Ultimately, however, whether these communications were or were not contributions does not need to be determined because even if the communications were contributions, the source of any “contributions” used to fund the communications was prominently disclosed.

Assuming (without deciding) that the communications could be contributions, the name of the entity who paid to provide or present the communication would be required to be disclosed, and only the City Club’s name would need to be prominently disclosed on the communications. The City Club does not have dominant contributors. Therefore, even if the communications were contributions, there was no secondary level of disclosure—i.e., about the City Club’s donors—required here.

One key function of the City’s disclaimer requirements is to lift the veil to allow voters to receive real-time information about the identity of “dominant contributors” behind the top-line entity (often a political committee or candidate committee) that paid for a communication. But that second-level of disclosure only applies to persons or entities that meet the legal definition of “dominant contributors” (or “dominant independent spenders”).

Here, even assuming the City Club communications could be contributions, there were no “dominant contributors” to disclose for at least two reasons. First, a dominant

contributor is one who gives to a candidate committee or a political committee.¹⁶ The City Club is neither, and hence its donors are not “dominant contributors.” Second, a person or entity must “contribute” to the candidate or political committee to become a “dominant contributor.”¹⁷ As discussed above, “contribute” in the context of the City’s campaign finance law has a particular meaning. There is no evidence whatsoever that the City Club’s donors are making “contributions” as that term is defined in City Charter (their donations are not contributions to or on behalf of a candidate or for the purpose of influencing an election).¹⁸

Taken together, what this means is that, at most, the City Club’s communications would only be required to contain a prominent disclosure that the City Club is the one who paid to provide or present the communication. All communications that the Auditor’s Office reviewed show, clearly and prominently, that they were issued by City Club and there is no room for voter confusion on who was behind them. While communications to voters related to candidate elections typically contain language such as “paid for by,” and the Auditor’s Office recommends this as best practice, this is not required by City law.

Therefore, even if the communications at issue are “contributions,” they prominently disclosed all required information.¹⁹

V. Conclusion

For the reasons discussed above, the Auditor’s Office finds no violations in this matter.

VI. 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 recipients’ appeal rights. (See also Auditor’s Office Administrative Rule 13.03(C) (requiring in part that decisions

¹⁶ Charter Section 3-308(f).

¹⁷ Charter Section 3-308(f).

¹⁸ Charter Section 3-308(e); see also Auditor’s Office Administrative Rule 13, Appx. B(C)

¹⁹ This result is the same whether it is argued the communications were contributions or were not themselves contributions but were funded by contributions. If the former were true, the City Club satisfied its obligation by prominently disclosing its name on communications. In the latter were the contention here, because there are no “contributions” to the entity that issued the communications (the City Club), no disclaimers would be required at all.

on complaints be in writing, identify whether a violation occurred, and state the basis for the decision).)

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 subjects 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 that reads "Reed Brodersen". The signature is written in black ink and includes a long horizontal flourish extending to the right.

Reed Brodersen
Chief Deputy Auditor

CC: Sharon Nasset, complainant