

City of Portland Campaign Finance Regulations Guide 2021-2022







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I. Using This Guide

The information provided in this guide is for informational purposes only and should not be interpreted as legal advice. Information included does not replace or supersede any provisions of City Charter, City Code, Auditor's Office Administrative Rules, or any applicable state law related to campaign finance regulations. In the event of any contradiction or conflict of information, applicable local, state, or federal law takes precedent.

The main authorities that inform the content in this guide include the following:

- <u>City of Portland Charter Chapter 3, Article 3</u> (Campaign Finance in Candidate Elections)
- <u>City of Portland Code Chapter 2.10</u> (Campaign Finance in Candidate Elections)
- Auditor Office Administrative Rules
 - ARA 13.01 (Purpose, Authority, and Construction)
 - ARA 13.02 (Campaign Finance: Definitions)
 - ARA 13.03 (Campaign Finance: Complaint Process)
 - ARA 13.04 (Campaign Finance: Disclosure Requirements)
 - ARA 13.05 (Campaign Finance: Contribution Limits)
 - Appendix A for ARA 13 Campaign Finance (Inflation Table)

This guide is only applicable to City of Portland candidate elections and does not include any state campaign finance regulations. For questions related to state campaign finance requirements:

- Contact the <u>State Elections Division</u> (https://sos.oregon.gov/voting-elections/Pages/default.aspx) or
- Consult the <u>State Campaign Finance Manual</u> (https://sos.oregon.gov/elections/documents/campaign-finance.pdf)

The two main areas of regulation covered in this guide include following:

1. Contribution Limits for City candidates who do not participate in the City's public funding of campaigns program, the <u>Small Donor Elections Program</u> (formerly the Open and Accountable Elections Program or OAE)

AND

2. Disclosure Requirements for City candidates and any organizations, businesses, nonprofits, political committees, or other entities that produce communication that supports or opposes any City candidate(s)

II. Candidates Participating in the Small Donor Elections Program

City candidates who participate in the City's public funding of campaigns program, the <u>Small Donor Elections Program</u> (formerly the Open and Accountable Elections Program or OAE), may accept any contributions that Program allows. For more information on acceptable contribution sources and uses under the Small Donor Elections Program, contact the Program directly:

By email: <u>SmallDonorElections@portlandoregon.gov</u>

■ By phone: (503) 823-4345

By website: https://www.portland.gov/SmallDonorElections

Once a candidate is no longer participating in the Small Donor Elections Program, they become subject to the remaining City campaign contribution limits found in <u>City Charter Chapter 3</u>, <u>Article 3</u>, <u>Section 3-301</u> and <u>City Code Chapter 2.10.010</u>.

Most commonly, a candidate is no longer participating in the Program and is subject to the City's contribution limits starting the day after the relevant election and ending the day after the Auditor's Office certifies election results for the relevant office.

Regulations of the Small Donor Elections Program and its participants are found in <u>City Code</u> <u>Chapter 2.16 Small Donor Elections Program</u> and accompanying administrative rules.

III. City of Portland Contribution Limits

City of Portland Contribution Limits from January 1, 2021 through December 31, 2022:

1. City candidates may accept up to \$508 from any individual contributor or political committee per election cycle.



An election cycle includes both the Primary and General Election and does not "reset" for a candidate who advances from a Primary Election to a General Election. If a candidate advances to the General Election, contributors who contributed the maximum allowable contribution amount to a candidate during the Primary Election period may not contribute additional funds to that same candidate.

- 2. An individual or political committee may contribute to more than one City candidate so long as they do not contribute more than \$508 to any single City candidate during the same election cycle.
- **3.** In the event of a special election to fill a vacancy or a recall election during the same time period, Candidates may be able to accept additional contributions. See sections on Contribution Limits for Special Elections and Contribution Limits for Recall Elections for more information.
- **4.** Contribution limits are adjusted for inflation January 1st of each odd-numbered year.

A. Contribution Limits for Normal Election Cycles

FOR NON-INCUMBENTS: NORMAL ELECTION CYCLE

The election cycle and contribution limits begin for non-incumbent City candidates on the date the individual qualifies as a "candidate," and ends when the City Auditor certifies election results resulting in an elected individual for the seat the candidate was running for.

Generally, an individual qualifies as a "candidate" for contribution limit purposes on the earliest date that the individual:

- Declares they are a candidate on any publicly accessible source, including social media
- Expresses consent to be named as a candidate for nomination or election to City office, including accepting a campaign contribution or agreeing to being a write-in candidate
- Files for candidacy with the City Elections Office by petition or declaration and fee
 OR
- Qualifies as a candidate under the definition provided in ORS 260.005(1)

FOR INCUMBENTS ONLY: NORMAL ELECTION CYCLE

City contribution limits apply to current City elected officials beginning the most recent date the City Auditor certified election results electing that City official to office, regardless of when they become a candidate for re-election. The election cycle ends on the date the City Auditor certifies election results resulting in an elected individual for the seat the candidate was running for.

B. Avoiding Unlawful Contributions

Subject to certain exceptions, City Code and City Charter allow City candidates to receive only the contributions specified in the Code and Charter. To review the contributions allowed for City candidates, see the following:

- City Charter 3-301(b)(1)–(4)
- <u>City Code Section 2.10.010(B)(1)–(4)</u>
- Exceptions to Contribution Limits (next section)
- Contribution Limits for Recall Elections (later section)
- Contribution Limits for Special Elections (later section)

Contributions given and received outside of what is allowed by City Code and City Charter are considered unlawful contributions. Such violations will result in a mandatory fine of at least two (2) times the amount of the unlawful contribution. See <u>City Charter Section 3-305(b)</u> and <u>City Code Section 2.10.050 B.</u>

City candidates may be able to avoid campaign finance violations and corresponding civil penalties if prohibited contributions are timely declined or refunded as described below:

- 1. Prohibited contributions received more than 42 days before the applicable primary election or general election: Refund or decline the contribution <u>no later than 30 calendar days</u> after the contribution was made.
- 2. Prohibited contributions received on or after the 42nd day before the applicable primary election or general election through the night of the applicable primary election or general election: Refund or decline the contribution no later than seven (7) calendar days after the contribution was made.
- **3.** Prohibited contributions received after the night of the applicable primary election or general election through the date of certification of election results: Refund or decline the contribution no later than 30 calendar days after the contribution was made.

C. Exceptions to Contribution Limits

The following types of contributions are exempt from the City's contribution limits:

1. Matching funds provided directly from the Small Donor Elections Program.

- **2.** Allowable contributions under the Small Donor Elections Program for participating candidates in that program.
- **3.** In-kind contributions provided for rooms, phones, and internet access.
- **4.** Contributions received from Small Donor Committees.

Small Donor Committee: A political committee that only accepts contributions from individual donors at a maximum amount of \$101.60 per individual donor during a calendar year.

D. Contribution Limits for Recall Elections

Recall Election: An election where one question is placed on the ballot: whether to recall a specific elected City official from office. If the voters decide through that election that the elected City official should be recalled, a special election will be held after the recall election to determine who the replacement should be.

1. Before Date of Recall Election is Declared

Starting from the day the Auditor's Office certifies election results electing a candidate to City office, that elected City official may not accept more than \$508 into their principal campaign account from any individual or political committee. Before a recall election date is declared by City Council, these contribution limits and regulations remain the same for all elected City officials.



Once a recall election date is declared by City Council, a special intervening recall election cycle begins that day.

2. Once Recall Election Date is Declared

Once City Council declares the date for a recall election, the normal election cycle is paused and a new, intervening recall election cycle begins for the elected City official subject to the recall. The elected City official who is subject to the declared recall election may then collect up to \$508 in campaign contributions from any individual or political committee during the recall election cycle, even if the contributor contributed the maximum amount just previously during the normal election cycle.

The special recall election cycle ends at midnight of the day of the recall election. After midnight, the elected City official's normal election cycle resumes. Contributions received during the special recall election cycle do not count toward the normal election cycle's limits.

See the following chart for examples on how the normal election cycle interacts with a special recall election cycle:

Relationship Between Normal and Recall Election Cycles

	Normal Election Cycle	Recall Election Cycle	Normal Election Cycle Resumes
	Prior to Declaration of Recall Election Date	After Recall Election Date is Declared Through Midnight of Recall Election	After Midnight on Day of Recall Election
Example 1	Candidate receives \$508 from Contributor 1	Candidate may receive up to \$508 from Contributor 1	Candidate may not receive additional contributions from Contributor 1
Example 2	Candidate receives \$250 from Contributor 2	Candidate may receive up to \$508 from Contributor 2	Candidate may receive up to \$258 from Contributor 1
Example 3	Candidate receives \$0 from Contributor 3	Candidate may receive up to \$508 from Contributor 3	Candidate may receive up to \$508 from Contributor 3

E. Contribution Limits for Special Elections

SPECIAL ELECTIONS are generally any elections that do not fall on the May or November even-year, statewide election dates. Unless otherwise provided in City Charter or Code, special elections may occur on any of the following designated days:

- March (second Tuesday)
- May (third Tuesday)
- August (fourth Tuesday)
- November (first Tuesday after the first Monday)

1. Special Election Cycle Start

The election cycle for a special election begins the day City Council declares a date for the special election.



Even if an individual publicly declares their intention to run, accepts a contribution, or makes an expenditure, the election cycle does not begin until the day City Council calls or declares the date of the special election.

2. Special Election Cycle End

The election cycle of a special election ends at midnight of the day of the special election. After midnight, a normal election cycle begins for the newly elected City official and ends the next time the Auditor's Office certifies an election to fill the same seat.

F. Contribution Limits: Enforcement and Civil Penalties

If a contribution violation is found, the City Charter requires a civil penalty to be issued and does not provide any warning alternatives with first offenses. Instead, the City Charter requires that each finding of a contribution violation be assessed a mandatory civil penalty of two (2) to 20 times the amount of unlawful contribution(s).

It is also important to note the following:

- Both candidates AND contributors will be assessed civil penalties for each contribution violation.
- Late payments on civil penalties may result in late fees, up to a maximum of \$500.

Candidates are responsible for ensuring their contributors are aware of the City's campaign contribution limits. To avoid receiving unlawful contributions, candidates are encouraged to provide disclaimers on the contribution section of their campaign website informing potential donors that the aggregate contribution limit is \$508 per individual contributor per election cycle.

REMINDER

Contribution limits apply for the entirety of a candidate's election cycle. It is not an annual limit, and it does not automatically "reset" for a candidate after a Primary Election unless a candidate is declared elected. For more information on the duration of different election cycles, review the following sections of this guide:

- Normal election cycles
- Special election cycles
- Recall election cycles

IV. Required Disclosures on Communications

Communications to voters related to City of Portland elections to select individuals to serve, or cease serving, for City office must prominently disclose certain required information to the public. This requirement applies to communications from candidates and also applies to any of the following entities:

- Candidate committees
- Petition committees
- Political committees
- Nonprofit organizations
- Businesses
- Labor unions
- Any other entities not specifically listed

A. Prominent Disclosure Requirement

To prominently disclose required information, it must be readily comprehensible to a person with average reading, vision, and hearing faculties. In addition:

- **Printed and website disclosures** must be in contrasting colors in a font size that is at least the same size as a majority of text on the material.
- **Video disclosures** must remain on screen for at least four (4) seconds. Closed captioning does not count.
- Auditory disclosures must be spoken at a maximum rate of five (5) words per second.
- **Disclosures on billboard** signs and signs larger than six (6) square feet must be in contrasting colors and at least 10 percent of the height of the sign.

B. Levels of Disclosure

The amount of detail required in communication disclosures will depend on several factors, including the amount of money an entity raises or spends to support or oppose a political party, measure, or candidate within an election cycle. In general, the City's communication disclosure requirements have three levels of disclosures.

1. Level 1: Disclosure of Communicators

Applies to: All political committees and entities that pay to provide or pay to present communication to voters related to an election for City of Portland candidates.

Requirement: All communication related to a City candidate election must disclose the name(s) of any political committees and entities that paid any amount to either provide or present the communication.

Example: "Paid for by Friends of Candidate X," or "Paid for by Business Organization Y."

2. Level 2: Disclosure of Dominant Contributors and Dominant Independent Spenders

Applies to: Any of the political committees and entities identified in Level 1 that have received contributions or made expenditures in the amount of at least \$1,016 for the purpose of supporting or opposing a candidate, measure, or political party.

- Requirement 1: The communication must list the top five independent spenders, and
- **Requirement 2:** The communication must list the top five dominant contributors of each political committee or entity identified in Level 1.
- **Requirement 3:** Dominant contributors and independent spenders must be listed in descending order, with those entities that contribute or spend the most listed first.

A DOMINANT CONTRIBUTOR is an individual, entity, or political committee who contributes more than \$1,016 during the relevant election cycle to a candidate committee or political committee.

A DOMINANT INDEPENDENT SPENDER is an individual or entity that spends more than \$1,016 during the relevant election cycle to support or oppose a particular City candidate.

INDEPENDENT SPENDER ELECTION CYCLES

To calculate the amount of contributions or expenditures during an election cycle for purposes of disclosing independent spenders on communications:

• Communication about one elected City position:

The election cycle starts the day the Auditor's Officer most recently certified election results for the elected position that is the subject of the communication.

The election cycle does not include any intervening primary or special elections and ends the day the Auditor's Office certifies the new election results for the same position.

Communications about more than one elected City position:

The election cycle starts on the earliest date election results were certified by the Auditor's Officer among the elected positions that are the subjects of the communication. The election cycle does not include any intervening primary or special elections and ends the day the Auditor's Office certifies the new election results for the same position.

REMINDER

Contributions are calculated in the aggregate based on amount(s) contributed during the entirety of the relevant election cycle and are NOT based on an annual limit. The relevant election cycle is typically the unique election cycle attached to the candidate that is the subject of the communication. For more information on calculating different election cycles, review the following sections of this guide:

- Normal election cycles
- Special election cycles
- Recall election cycles
- Independent spender election cycles

a) Tiebreakers Between Contributors

In some instances, an entity or political committee may need to decide between or among dominant contributors in choosing which top five should be listed. The following are examples of the order in which dominant contributors should be listed in different scenarios:

- **More than five dominant contributors:** If seven dominant contributors donated the same amount, the five dominant contributors who donated most recently should be listed.
- More than one of the top four dominant contributors contributed the same amount: If two or more of the top four dominant contributors donated the same amount, the contributor of the tied contributors who donated most recently should be listed first.
- More than one dominant contributor ties for fifth highest donation amount: If more than one dominant contributor donates the same amount in fifth place, the contributor who donated most recently must be listed.

b) Candidates Self-Contributing to Campaigns

Candidates contributing **more than \$1,016** to their own campaign must disclose themselves as a dominant contributor.

c) Small Donor Elections Program Contributions

Candidates participating in the Small Donor Elections Program (formerly Open and Accountable Elections Program or OAE) do not need to list the Program as a dominant contributor. However, in-kind contributions and seed money contributions should be disclosed if those contributions **exceed \$1,016** from any single contributor.

3. Level 3: Disclosure of Income Sources

Applies to: The top five dominant contributors identified in Level 2, excluding any Small Donor Committees.

- **Requirement 1:** For each dominant contributor listed, list the type(s) of businesses where each dominant contributor received a majority of its income over the last five years.
- **Requirement 2:** Each identified business type must be listed using an appropriate name from the naming options provided by the <u>North American Industry Classification System</u> (https://www.census.gov/naics/) that also have six-digit codes.
- **Requirement 3:** If a dominant contributor is also a political committee or nonprofit organization, the top three funders for that dominant contributor must also be listed.
- **Requirement 4:** Certain formats of communication also carry timeliness requirements:
 - Printed Material:
 - Disclosures must current to within 10 business days of its printing date
 - Audio and Video:
 - Disclosures must current to within five business days of transmission
 - Internet and Other Electronic Communication (Other than Audio and Video):
 - Disclosures must be current to within 10 business days of transmission

C. Disclosures for Recall Elections

1. Prior to Declaration of Recall Election Date

Before a recall election date is selected and declared by City Council, disclosure requirements on communications related to a recall election are treated the same as the disclosure requirements applying to any other City candidate election. For a refresher, review all of Section IV. Required Disclosures on Communications above.

2. After Date Declared Through Election Night

Once the date for a recall election is declared by City Council, an intervening special recall election cycle begins. During this special recall election cycle, communication disclosures requirements remain the same as for any other City candidate election. However, determination of disclosable dominant contributors and related information should be based on the day City Council declared the date for the recall election.

The special recall election cycle ends at midnight, at the end of the day of the recall election. Once the special recall election cycle ends, the prior interrupted election cycle resumes. Communications presented after midnight of the recall election date should include dominant contributors and related information relevant to the resuming election cycle.



Contributions received during the special recall election cycle do not count toward determining disclosable dominant contributors for communications presented after midnight of the recall election.

Communication Provided or Presented Prior to Declaration of Recall Election Date	Communication Provided or Presented After Declaration of Recall Election Date Through Midnight of Recall Election	Communication Provided or Presented After Midnight of Recall Election
Determine qualifying disclosure information based on the most recent date the Auditor's Office certified election results for the relevant elected position.	Determine qualifying disclosure information based on the date City Council declares the date for the upcoming recall election.	Determine qualifying disclosure information based on the most recent date the Auditor's Office certified election results for the relevant elected position. Do not include contributions received during the special recall election cycle to determine dominant contributors and related information.

D. Disclosures for Special Elections

The election cycle for a special election begins the day City Council declares a date for the special election. Even if an individual publicly declares their intention to run, receives and accepts a contribution, or makes an expenditure, their election cycle will not begin until the date of the City Council's declaration. The election cycle of a special election ends at midnight of the day of the special election.

During the special election cycle, communication disclosures requirements remain the same as for any other City candidate election. However, determination of disclosable dominant contributors and related information should be based on the day City Council declared the date for the special election.

E. Disclosures: Enforcement and Civil Penalties

Each disclosure violation is subject to civil penalties of up to \$3,000 per violation. Upon first offense, the Auditor's Office may elect to issue a warning and letter of education instead of a monetary civil penalty.

If the Auditor's Office either receives a complaint or issues a determination letter after the relevant election has passed, the Auditor's Office may also elect to issue a warning and letter of education for disclosure violations instead of a monetary civil penalty.

V. Additional Regulation Requirements

A. Political Committee Registration Requirements

The City of Portland requires entities to register as political committees with the Oregon Secretary of State within three business days of exceeding aggregate independent expenditures of \$762 in an election cycle. If an entity fails to timely register as required, the entity may be subject to civil penalties of up to \$3,000.

For more on information on registering as a political committee with the state, you may contact the Secretary of State's Office at <u>elections.sos@sos.oregon.gov</u>. The following state manuals may also be helpful:

- ORESTAR User's Manual: Statement of Organization
 (https://sos.oregon.gov/elections/Documents/orestarSOO.pdf)
- Oregon Secretary of State's <u>Campaign Finance Manual</u> (https://sos.oregon.gov/elections/Documents/campaign-finance.pdf)

B. Contributions by Payroll Deduction

Individuals have the right to make monetary contributions to City candidates via payroll deduction if their employer allows for payroll deduction for other purposes or if the employer agrees to allow payroll deduction for contribution purposes. If an employer fails to allow candidates to make campaign contributions through payroll deductions, the employer may be subject to civil penalties of up to \$3,000.

Individuals may contribute up to \$508 to a City candidate during an election cycle via payroll deduction, but may be liable for violations of City contribution limits if their payroll deductions exceed this amount.

C. Complaints, Court Appeals, and Reconsiderations

The Auditor's Office may launch its own investigation if it has reason to believe a violation has occurred. However, any person may also file a complaint in writing to the Auditor's Office alleging violations of any provision of the City's campaign finance regulations. Complaints may be filed by the following:

Submit information directly to the City Elections Office using our online <u>Campaign</u>
 <u>Finance Complaint Form</u> (https://www.research.net/r/campaign-finance-complaint-form)

• Email required complaint information to <u>elections@portlandoregon.gov</u>. For more on what information is required in a complaint, see below.

1. Complaints

a) Required Complaint Information

- 1. Name and contact information of the individual submitting the complaint. Although the City Elections Office does not accept allegations submitted anonymously, individuals may request their contact information be kept confidential. This request must be marked on the online Campaign Finance Complaint Form or submitted in writing to the City Elections Office at elections@portlandoregon.gov.
- **2.** Name(s) of any candidate, entity, or political committee allegedly in violation of the City's <u>campaign finance regulations</u>.
- **3.** Description of the alleged violation, with supporting evidence included if available. Information such as dates, times, amounts of violating contributions, or examples of disclosures may be helpful to include.

b) Timeline for Complaints

(1) Typical Timeline

The total time to complete an investigation and issue a determination under the typical investigation timeline includes the following steps and may take up to 22 business days:

- 1. Auditor's Office notifies the subject(s) of a complaint that a complaint has been filed within two business days of receiving or issuing the complaint.
- 2. The subject(s) of a complaint will then have 10 business days to submit a written statement, and any additional information to support their position, to the Auditor's Office in response to the complaint. This is known as the material submission period.
- **3.** The Auditor's Office will then issue a determination within 10 business days of the closing of the material submission period.

(2) Abbreviated Timeline

If the Auditor's Office receives a complaint or issues its own complaint within 30 days of the date of the election, then the timeline is shortened. The total time to complete an investigation and issue a determination under the shortened timeline includes the following steps and may take up to 12 business days:

- 1. Auditor's Office notifies the subject(s) of a complaint that a complaint has been filed within two business days of receiving or issuing the complaint.
- 2. The subject(s) of a complaint will then have five business days to submit a written statement, and any additional information to support their position, to the Auditor's Office in response to the complaint. This is known as the material submission period.
- **3.** The Auditor's Office will then issue a determination within five business days of the closing of the material submission period.

(3) Small Donor Elections Program Complaints

If the City Elections Office receives an allegation involving contribution violations against a City candidate participating in the Small Donor Elections Program (formerly known as the Open and Accountable Elections Program or OAE), the Auditor's Office investigation timeline is suspended while the Small Donor Elections Program completes its own investigation of the allegation.

After receiving a determination from the Small Donor Elections Program at the conclusion of its investigation, the City Elections Office will resume its investigation and issue an independent determination within the remaining timeline.

2. Court Appeals

Under <u>Portland City Charter Section 3-305(i)</u>, complainant(s) or subject(s) of a complaint may appeal a complaint determination within 30 days of the Auditor's Office's issuance of the decision. Such appeals must be filed with the Multnomah County Circuit Court.

3. Reconsiderations

The Auditor's Office may, at its own discretion or at the request of an interested party, withdraw a decision for reconsideration at any time before the decision becomes final. If the Auditor's Office elects to take a decision under reconsideration, it may accept additional relevant evidence for consideration.



A decision becomes final after 30 days from the issuance of the decision if an appeal is not sought. If an appeal is filed, the decision becomes final after entry of the court judgement (not subject to appeal).

VI. Resources

Portland City Charter

<u>Portland City Charter Chapter 3, Article 3: Campaign Finance in Candidate Elections</u> (https://www.portland.gov/charter/3/3)

Portland City Code

<u>Portland City Code Chapter 2.10: Campaign Finance in Candidate Elections</u> (https://www.portland.gov/code/2/10)

<u>City Code Chapter 2.16 Small Donor Elections Program</u> (https://www.portland.gov/code/2/16)

Auditor Office Campaign Finance Administrative Rules

ARA-13.01: Purpose, Authority, and Construction

(https://www.portland.gov/policies/adopted-rules-auditors-office/campaign-finance/ara-1301-purpose-authority-and-construction)

ARA-13.02: Campaign Finance: Definitions

(https://www.portland.gov/policies/adopted-rules-auditors-office/campaign-finance/ara-1302-campaign-finance-definitions)

ARA-13.03: Campaign Finance: Complaint Process

(https://www.portland.gov/policies/adopted-rules-auditors-office/campaign-finance/ara-1303-campaign-finance-complaint-process)

ARA-13.04: Campaign Finance: Disclosure Requirements

(https://www.portland.gov/policies/adopted-rules-auditors-office/campaign-finance/ara-1304-campaign-finance-disclosure)

ARA-13.05: Campaign Finance: Contribution Limits

(https://www.portland.gov/policies/adopted-rules-auditors-office/campaign-finance/ara-1305-campaign-finance-contribution)

ARA-13 Appendix A: Inflation Chart Update

(https://www.portland.gov/sites/default/files/policies/ara-appendix-a-adopted-6.1.21.pdf)

Helpful City Webpage Resources

City of Portland Campaign Finance Landing Page

(https://www.portland.gov/elections/campaign-finance)

City of Portland Frequently Asked Questions Webpage

(https://www.portland.gov/elections/question-categorie)

Small Donor Elections Program

(https://www.portland.gov/SmallDonorElections)