



May 10, 2021

Mary Hull Caballero
Portland City Auditor
1221 SW Fourth Avenue
Room 130
Portland, OR 97204

DELIVERED ELECTRONICALLY
auditorhullcaballero@portlandoregon.gov

RE: Notice of Violation & Penalty, April 26, 2021, **Request for Reconsideration**

Dear Auditor Hull Caballero,

The Portland City Code Chapter 2.12: Regulation of Lobbying Entities, section 010 (“Purpose”), is as follows: “The City finds that, to preserve the integrity of its decision making processes, lobbying entities that engage in efforts to influence City officials, should report their lobbying efforts to the public” (<https://www.portland.gov/code/2/12>).

The Portland Business Alliance (“the Alliance”) is greater Portland’s Chamber of Commerce and represents the largest, most diverse network of employers in the region. We advocate at all levels of government to create opportunity and advance well-being for all who live and work in our region and to support a healthy and resilient business ecosystem. We represent more than 2000 members, from 27 counties, 13 states and virtually every industry sector. More than 80% of our members are small businesses.

On April 26, 2021, the Alliance received an emailed notice of 25 instances that allegedly violated quarterly reporting as noted in City Code 2.12.040 Quarterly Reporting Requirements for Lobbying Entities (“the violations”). Pursuant to ARA 15.03(H) (Regulation of Lobbying Entities: Enforcement and Civil Penalties), the Alliance requests reconsideration of 23 of the violations. This request is being made within 10 business days pursuant to ARA 15.03(H) (Regulation of Lobbying Entities: Enforcement and Civil Penalties),

In compliance with Portland City Code Chapter 2:12, the Alliance keeps a current list of registered individuals authorized to lobby on behalf of the organization. The Alliance also submits quarterly lobbying reports to the City Auditor’s Office with detailed descriptions of the nature of all reportable communications, as well as a good faith estimate of total moneys (if the total surpasses \$1,000) expended by the Alliance for the purposes of lobbying City officials (<https://www.portland.gov/code/2/12>). In service to the purpose of established City Code Chapter 2.12, the Alliance works diligently to ensure all registered lobbyists are aware of reportable communications and are educated on the rules and regulations around lobbying activity.

Also, according to Portland City Code Chapter 2.12.020: Definitions, section G: “Lobby” or “Lobbying” or “Lobbies” means attempting to influence the official action of City officials. Lobbying includes time spent preparing emails and letters and preparing for oral communication with a City official. Lobbying does not include:

1. Time spent by an individual representing his or her own opinion to a City official.
2. Time spent participating in a board, committee, working group, or commission created by City Council through approval of resolution or ordinance.
3. Time spent by a City official or City employee acting in their official capacity as an official for the City.
4. Time spent submitting a bid, responding to related information requests, and negotiating terms on a competitive bid contract or intergovernmental agreement.
5. Oral or written communication made by a representative of a labor organization that is certified or recognized, pursuant to ORS 243.650 et seq., as the exclusive bargaining representative of employees of the City of Portland, to the extent that such communications do not deal with actual or potential ordinances that are unrelated to the collective bargaining process, or implementation or application of any collective bargaining agreement provision.
6. Formal appearances to give testimony before public hearings or meetings of City Council.
7. Work performed by a contractor or grantee pursuant to a contract with or grant from the City.
8. Time spent by any person holding elected public office, or their specifically authorized representative, acting in their official capacity. (<https://www.portland.gov/code/2/12>).

Also of note, Portland City Code Chapter 2.12.020: Definitions, Section I states: “‘Lobbyist’ means any individual who is authorized to lobby on behalf of a lobbying entity” (<https://www.portland.gov/code/2/12>).

In 2020, the Alliance reported a total of 162 lobbying communications. Of these, your office alleged 25 violations of lobbying rules outlined in the referenced chapter of Portland City Code. As you are aware, our teams worked diligently to answer your questions prior to your April 26 transmission, however in these instances we were not afforded an opportunity to assist your review. After a review of these determinations the Alliance has composed a detailed list of explanations for each finding which are the basis for our request for 23 reconsiderations.

2020 Fourth Quarter Findings

In summary, of the 25 listed:

- Three emails were of administrative nature, providing minutes from a meeting as requested by a city official, finalization of an annual contract that is required by the city, and confirming information.
- Four emails and one meeting were related to service the Portland Business Alliance, along with representatives from several other community stakeholders, provided in participation on a city established stakeholder work group, the City of Portland Economic Task Force.
- Two emails were transmitted by another organization, not the Alliance.
- Five emails were responses to requests for assistance or questions received from city officials. Three of these were follow-up and clarifying questions from meetings that were already included in Alliance lobbying disclosure reports.
- Two emails were internal communications to the Portland Business Alliance Board of Directors that Prosper Portland Executive Director Kimberly Branham receives in her role as an Ex-Officio (nonvoting) Alliance Board member. These communications did not include any

lobbying of any kind. One of these emails was from non-staff and Alliance Board Member Janet Campbell who is not a registered lobbyist. Communicating to and from our board of directors to itself are not required disclosures.

- Two meetings which were reported, did not include City Chief Administrative Officer Tom Rinehart, but did include several other city staff and officials. The Alliance has no record of Mr. Rinehart attending these meetings as is alleged.
- Two of these emails were informing city officials of hazardous conditions in the public right of way.
- Two emails were logistical communications regarding scheduling.
- One communication the Alliance has no record of occurring.

Individual summary of each communication:

RE: 2020 Fourth Quarter Communications by the Alliance – Table 1

Item	Date		Sender	Type	Subject Matter
1	Oct. 6		Ashleen McGirk	Email	Citywide Trash Coalition
<p>Review found that Ashleen McGirk replied via email to a request sent by city employee Shoshanah Oppenheim in the City of Portland Office of Management and Finance. The ask from the city staffer was to reconstitute an informal Citywide Trash Coalition. Alliance staff response included only notes from previous meetings. This communication was administrative in nature with no basis or intent to influence the actions of City officials and does not qualify as lobbying.</p>					
2	Oct. 7		The Alliance	Letter	Housing Supply
<p>Review found that the Alliance did not transmit this communication which was part of a coalition letter. The letter was reported by the transmitter in their respective lobby reporting. It is unreasonable for the Auditor to expect an organization to report communications that were transmitted by an external organization. If logging participation in a coalition letter is the existing standard for all organizations signing on, the Auditor’s Office should clarify it in the current City Code and make it clear to all community-based organizations who are collaborative and participate in such practice.</p>					
3	Oct. 12		Andrew Hoan	Email	Tree Removal
<p>Review found that Andrew Hoan forwarded an email message originally sent to one bureau director to another, in the spirit of informing the appropriate City staff and bureau about a proven hazard in the public right of way on city-owned property. The email was originally sent to Chris Warner, Director of the Portland Bureau of Transportation, who replied that it should be sent to Chief Administrative Officer Tom Rinehart. This email was sent as a public service alert to the city staff responsible and was administrative in nature with no basis or intent to influence the actions of City officials and as such does not qualify as lobbying.</p>					
4	Oct. 28		Jon Isaacs	Text	Downtown Retail Position Funding

<p>Review found that the Alliance no longer has a written record of this text but acknowledges that it qualifies as a reportable communication. The communication asked for a clarification of a dollar figure confirmed by the City in meetings that were included in the lobby report after the amount had been incorrectly stated by the Mayor during a City Council meeting. The error was subsequently corrected.</p>					
5	Nov. 2		Andrew Hoan	Email	Property Damage Cleanup
<p>Review found that Andrew Hoan forwarded an email regarding hazardous trash and damage from violent activity that produced debris in the right of way to City Chief Administrative Officer Tom Rinehart. The communication was sent in the spirit of informing the City about hazardous conditions in the public right of way. This does not qualify as lobbying as the communication was administrative in nature with no basis or intent to influence the actions of City officials.</p>					
6	Nov. 5 – Nov. 9		Amy Rathfelder; Jon Isaacs	Email Chain	Title 11 Updates: Tree Code, Heavy Industrial Zoning
<p>Review found that the initial intention of this communication was scheduling-related. The Alliance reached out to Mayor’s Office staff to organize a call regarding upcoming legislation related to Title 11 proposed updates. The subsequent meeting was included in Alliance lobbying disclosure report. The communication was administrative in nature with no basis or intent to influence the actions of City officials.</p>					
7	Nov. 19		Jon Isaacs	Email	Carbon Fee Proposal
<p>Review found that the communication was an administrative request for review of a city-emanating broader communication to Alliance membership by Mayor’s Office staff to ensure accuracy of factual content only. The communication was administrative in nature with no basis or intent to influence the actions of City officials.</p>					
8	Dec. 8		Janet Campbell	Email	Black Economic Prosperity Agenda Contributions
<p>Review found that this communication was sent from Janet Campbell, who served as a director of the Alliance Board on behalf of her company and is not a registered lobbyist on behalf of the Alliance. The communication was sent to the Alliance Board of Directors regarding funding for the establishment of a program committed to Black Economic Prosperity. All contributions solicited because of this communication were directed to the National Association of Minority Contractors of Oregon (“NAMC-OR”). Prosper Portland Director Kimberly Branam serves on the Alliance Board of Directors and is a recipient of these emails in her capacity as an Ex-Officio Board member and in that status does not vote. This does not qualify as lobbying because of the nature of Director Branam’s role and because there was no basis or intent to influence the actions of City officials present in this communication, nor are the funds intended for the Alliance in anyway.</p>					
9	Dec. 9		Jon Isaacs	Call	Climate Fee Proposal Comment Period

Review found this communication was initiated by the City of Portland asking for input from an Alliance staff member. This does not qualify as lobbying because the City initiated the contact with a request for the Alliance. There was no basis or intent to influence the actions of City officials.					
10	Dec. 18		Amy Rathfelder	Text	Public Comment Extension
Review found this communication sent with the intention of adjusting the deadline for a high-profile legislative item away from the day most individuals and businesses resumed work following the holiday break. This does not qualify as lobbying as the communication was administrative in nature with no basis or intent to influence the actions of City officials.					

RE: All Other Communications by the Alliance – Table 2

Item	Date	Quarter (Q)	Sender/ Participant	Type	Subject Matter
1	March 5	Q1	Maureen Fisher	Email	Houselessness
There is no record of this communication found by the Alliance.					
2	March 17	Q1	Andrew Hoan	Email	COVID-19 Business Needs
<p>Review found this communication sent to the Alliance Board of Directors, concerning organizational plans for business and economic relief at the outset of the COVID-19 pandemic. Once again, Prosper Portland Director Kimberly Branam serves on the Alliance Board of Directors and is a recipient of these emails in her capacity as a Board member in ex-officio status and does not vote. This does not qualify as lobbying because of the nature of Director Branam’s role and because there was no basis or intent to influence the actions of City officials present in this communication.</p> <p>If the auditor is now defining internal communications in the governing structure of nonprofits as lobbying because they include city officials who are serving on these boards, then this needs to be clarified in city code; as well as comprehensive training and disclosures for those officials to be provided to community-based organizations. This would allow those entities to determine if it is in their continued best interests to have internal communications a matter of requiring disclosure or not.</p>					
3	March 20	Q1	Andrew Hoan	Email	Regional Business Relief Coalition
Review found this was a requested communication as part of the Alliance’s invited role to serve and participate on the City of Portland Emergency Economic Recovery Task Force as a community stakeholder. While official city task forces are not required to be reported under city code, the Alliance reported all meetings in the spirit of transparency. This email transmission does not qualify as lobbying as per City Code 2.12.020: Definitions, section G which recognizes that communications in service of or related to a task force or committee					

<p>created by the City of Portland do not qualify as lobbying communications. Additionally, in the spirit of transparency the Alliance’s participation in meetings for this task force were documented in 2020 and 2021 lobby reports.</p>					
4	March 23	Q1	Jon Isaacs	Email	Regional Business Coalition
<p>Review found that this communication was sent as part of the Alliance’s service on the City of Portland’s Economic Recovery Task Force. This is clearly referenced in the communication. This does not qualify as lobbying; City Code 2.12.020: Definitions, section G recognizes that communications in service of or related to a task force or committee created by the City of Portland do not qualify as lobbying communications. Additionally, the Alliance’s participation in meetings for this task force were documented in 2020 and 2021 lobby reports.</p>					
5	April 8	Q2	Jon Isaacs	Email	Housing Investment
<p>Review found that this communication was sent as part of the Alliance’s service on the City of Portland’s Economic Emergency Economic Impact Task Force. This is clearly referenced in the communication. This does not qualify as lobbying; City Code 2.12.020: Definitions, section G recognizes that communications in service of or related to a task force or committee created by the City of Portland do not qualify as lobbying communications. Additionally, the Alliance’s participation in meetings for this task force were documented in 2020 and 2021 lobby reports.</p>					
6	April 15	Q2	Jon Isaacs	Email	Ankeny Food Cart Pod
<p>Review found this communication was sent as a follow up to a meeting with then-Commissioner Eudaly’s Office that were included in the Alliance’s lobby reporting. This does not qualify as lobbying as the communication was administrative in nature with no basis or intent to influence the actions of City officials. The issue referenced in this communication and the meeting itself did not directly benefit the Alliance and as such is not considered lobbying.</p>					
7	April 17	Q2	Jon Isaacs	Meeting	Economic Impact Action Committee (City Official Tom Rinehart not listed)
<p>Review found that this communication was part of the Alliance’s service on the City of Portland’s Emergency Economic Impact Task Force. City Code 2.12.020: Definitions, section G recognizes that communications in service of or related to a task force or committee created by the City of Portland do not qualify as lobbying communications. Additionally, the Alliance’s participation in meetings for this task force were documented in 2020 lobby reports.</p> <p>Additionally, the Alliance participant was unaware the City official in question attended this meeting. In current work from home circumstances, virtual meetings are often attended by a large number of individuals, not all of whom appear on screen. In this environment, it is not</p>					

reasonable for the Auditor to expect a single participant to be able to identify everyone present during a widely attended meeting, especially considering that the platform this meeting is conducted on was not hosted by the Alliance. As such the meeting and attendance notes are not held by Alliance staff nor do we have access to source information.

8	April 28	Q2	Jon Isaacs	Email	Designated Short-Term Parking
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Review found this communication was sent as a follow up to a meeting with then-Commissioner Eudaly’s Office that were included in the Alliance’s lobby reporting. This does not qualify as lobbying as the communication was administrative in nature with no basis or intent to influence the actions of City officials. The issue referenced in this communication and the meeting itself did not directly benefit the Alliance and as such is not considered lobbying.

9	April 30	Q2	Jon Isaacs	Email	Land Use Permitting
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Review found this communication to be initiated by then-Commissioner Eudaly’s Chief of Staff clarifying a permitting process within the Portland Bureau of Transportation. The Alliance responded to the question and issue raised. This does not qualify as lobbying as the communication was administrative in nature with no basis or intent to influence the actions of City officials and as such in not considered lobbying.

10	May 7	Q2	Kiley Wilson	Email	Unreinforced Masonry Buildings Database
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Review found that the Alliance was approached by the Portland Chapter of the NAACP to endorse their effort to have the Unreinforced Masonry Buildings (“URM”) database pulled from the City of Portland website. A high percentage of URM buildings in Portland are owned by Black, Indigenous and people of color, and the City had presented no plan for assisting these property owners with bringing their buildings up to modern seismic standards. The cost of doing so would force most of these owners to sell their buildings, which, in many cases, represents their life savings. The Alliance agreed that publishing this database was an example of modern redlining and agreed to submit a joint letter with the Portland Chapter of the NAACP, requesting the removal of this website. The letter further encouraged the City to engage partners in a solution-oriented process to help these owners get their buildings up to modern seismic standards.

While this communication did not directly benefit the Alliance as suggested in the Auditor’s determination letter, the Alliance acknowledges that this was a lobbying communication that should have been included in 2020 lobbying reports.

11	May 26	Q2	The Alliance	Letter	Local Live Performance Venue Funding
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Review found that the Alliance provided its logo to support a letter being advanced by another organization. This letter was not transmitted by the Alliance. It is unreasonable for the Auditor to expect an organization to report communications that were transmitted by an

external organization. If logging participation in a coalition letter is the existing standard for all organizations signing on, the Auditor’s Office should clarify it in the current City Code and make it clear to all community-based organizations who participate in such practice.

12	June 25	Q2	The Alliance	Meeting	Downtown Issues, Parks Levy Referral (City Official Tom Rinehart not listed)
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Review found that the Alliance reported participation in a Zoom virtual teleconference meeting on June 25, 2020. Reported participants were the Mayor and a former staffer in the Mayor’s Office. The Alliance has no record of Chief Administrative Officer Tom Rinehart attending the meeting and as such should not be penalized for failure to disclose this city official. In current work from home circumstances, virtual meetings are often attended by a large number of individuals, not all of whom appear on screen. In this environment, it is not reasonable for the Auditor to expect a single participant to be able to identify everyone present during the course of the meeting, especially when invitations may be passed along without knowledge to other city officials and staff for participation and considering that the platform this meeting is conducted on was not hosted by the Alliance. As such the meeting and attendance notes are not held by Alliance staff nor do we have access to source information.

13	July 2	Q3	Jon Isaacs	Email	Food Delivery Fee Ordinance
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Review found that this communication was sent at the request of then-Commissioner Eudaly’s Chief of Staff, who reached out to the Alliance staff on a federal holiday to ask for assistance from the Alliance to connect with companies who would be impacted by a policy proposal. This was stated in the initial communication. This does not qualify as lobbying as the communication was administrative in nature with no basis or intent to influence the actions of City officials, in fact the opposite is true that the official who originated the outreach was intending to influence the companies. The Alliance took no official position on the policy proposal in question so there is no influence that to be exerted.

14	Aug. 31 – Sept. 30	Q3	Ashleen McGirk, Maureen Fisher	Email Chain	Downtown Enhanced Service District Management Services Contract
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Review found that this communication was sent as part of a regular annual City of Portland review process coordinated through staff in the Office of Management and Finance.

Communication was then transmitted to Mayor’s staff for a signature from the Mayor on an annualized contract with a 10-year sunset requiring renewal. City of Portland Code Chapter 2.12.020, section G identifies a lobbying exemption as: “Time spent submitting a bid, responding to related information requests, and negotiating terms on a competitively bid contract or intergovernmental agreement” (<https://www.portland.gov/code/2/12>). This does not qualify as lobbying on the basis of this exemption.

15	Sept. 29	Q3	Amy Rathfelder	3 Emails	Title 21 Update: Middle Housing Development Costs, Water Bill Subsidies
<p>Review found communication was logistical in nature (scheduling a meeting with Water Bureau director). Email chain was a response to a City-initiated request for a meeting. This does not qualify as lobbying as the communication was administrative in nature with no basis or intent to influence the actions of City officials. Staff responding to city requests and working to organize a meeting appears consistently in the alleged violations. If the auditor is determining that scheduling is now considered lobbying, then the office should clarify this in city code and make that available to all community-based organizations that schedule meetings with city officials.</p>					

After completing a thorough review of the communications, the auditor’s office has brought into question, it is clear that the majority of the identified communications do not violate existing City Code, nor the spirit of the code as referenced in its “Purpose” section. Had we been afforded the opportunity to work with your office as we did on several other occasions during the review, I am confident we may have collectively avoided the inclusion of these matters into the list of undisclosed communications.

The Alliance is a strong advocate for a transparent and accountable government and does its best to uphold high internal standards with our commitment to those values. The Auditor’s Office has framed these communications as if they were intentionally withheld from regular City reporting as an attempt to exert undue influence on Portland’s legislative process. The reality is that the overwhelming majority of the communications in question were City-generated, clearly not in violation of existing City code, or are precedent setting standards that frame unintentional human error like reporting a virtual meeting on others’ platforms and not listing an individual attendee who may or may not have been there. If the standards are changing, then they should change for all and be done so in a transparent manner with affected community-based organizations and City Council’s engagement.

The Alliance acknowledges two instances where communications should have been included in lobby reporting. Moving forward, the Alliance will continue to work diligently to uphold a high reporting standard and minimize human error. We thank your office for raising these two instances that should have been added to the 162 aforementioned interactions last year. We embrace the opportunity to be better advocates for our members and will strive to do better and hope to do so with your office to the benefit of the community.

The stated mission of the Portland Business Alliance is to create opportunity and advance well-being for all who live and work in the greater Portland and SW Washington region. The Alliance supports a staff that works hard every day to realize this mission for membership that is overwhelmingly made up of regional small business ownership that depends on this advocacy to support their individual and family livelihoods. Within the extraordinary circumstances that the last year has presented, Alliance staff and membership have made every effort to ensure a good faith effort in compliance with quarterly requirements and lobbying reporting, as evidenced by the fact that the Alliance reported far and away the most interactions with City Officials in 2020 of any entity. Moving forward, the Alliance will continue to work to maintain a cooperative, fair, and transparent relationship with

the City of Portland and will to the very best of its abilities comply with these important standards that work to ensure accountability is upheld amongst both public and private partners.

In reviewing the matters your office has alleged were undisclosed lobbying, we proudly note that the majority of content is centered around supporting city official's initiatives, volunteering to improve and bring awareness to basic livability matters such as safety hazards and garbage collection for all Portlanders, helping our economy recover from the devastation of COVID-19, advancing racial equity for Black Portlanders, and building bridges for collaboration at the request of the public sector to the private sector.

- In that spirit we are attaching every communication subject to allegations for the public to be better aware of our activities in the spirit of full transparency.
- We will deposit the \$450.00 fine in escrow or independent account until the matter is resolved to show our good faith in complying with the process that the auditor's office and city code have in place.
- Additionally, we request to establish a training, as suggested by the letter, at your earliest convenience. We would ask that you open this training for not only staff of the Alliance, but our members; and furthermore, we propose that this training be made available and accessible to members of the media to better understand and learn about best practices that your team recommends for engaging in lobbying.

We look forward to hearing from you on the next steps in the process for reconsideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'AH', with a stylized flourish extending to the right.

Andrew Hoan
President & CEO
Portland Business Alliance