



October 10, 2022

Dear Mr. Gonzalez and Mr. Smith:

The Small Donor Elections program is temporarily suspending matching payments to the Rene for Portland campaign. Once the campaign pays the penalty and remedies the contribution, or the appeal is resolved in a manner that does not require payment, the program will approve for immediately payment the entire amount in matching funds that have been temporarily withheld.

If the campaign pays the penalty now and remedies the prohibited contribution, the program will resume matching payments immediately. The City will not interpret doing so as foreclosing your appeal or any argument it wishes to assert in the appeal process. If the appeals judge determines less than the full penalty was owed, I will facilitate an immediate refund of the appropriate amount, and even hand deliver a check to your campaign so that the funds are available to the campaign as quickly as possible.

The program's authority to suspend matching payments can be found in Small Donor Elections Administrative Rules 18Q and 3D:

- *18.Q. The Director may, in the case of high outstanding penalty amounts or egregious violations, withhold city matching funds from a campaign until penalties are paid and any other required remedies are carried out.*
- *3.D. "Egregious" means conspicuously, glaringly, or flagrantly bad, which includes conduct that would conceal an instance of committing fraud against the program or conduct that would conceal an instance of violating a requirement or prohibition of the program.*

While the penalty is not due to the City until the appeals process is complete, the campaign has failed to meet other deadlines relating to this violation:

- The campaign has not reported curing the prohibited in-kind contribution for September's rent by the October 7 deadline, which would have reduced the prohibited contribution penalty total from \$33,250 to \$26,600 (as outlined in both the September 20 Penalty Notice letter and the September 29 Response to the Request for Reconsideration), and
- The campaign has failed to report the prohibited in-kind contributions to the program immediately, which would prevent the \$665 penalty for failing to report the in-kind contribution of a discount on August's rent from continuing to accrue (also outlined in both the September 20 Penalty Notice Letter and the September 29 Response to the Request for Reconsideration).

The campaign could have remedied both of these while asserting that doing so does not waive your right to argue in the appeals process that no violation occurred.

The campaign should set aside at least \$77,140 to pay the penalty and repay the prohibited contribution to Schnitzer Property Management LLC, in case the appeals judge upholds all or some of the City's penalty. As such, the temporary withholding of matching payments should not harm the campaign. The City can withhold no more than \$71,055 in matching payments (the difference between the general



election match cap of \$240,000 and what the program has paid the campaign to date for the general election), which is less than the total amount the campaign should be setting aside.

The program's rationale for temporarily suspending matching payments to the campaign is as follows:

- **Withholding matching funds helps ensure the penalty is paid.** If the campaign does not pay the penalty, the City may pursue payment from the candidate, but might never recover payment. A large penalty in the prior program, Voter Owned Elections, was never recovered. As a result, a provision to withhold matching payments was included in the Small Donor Elections law to avoid repeating this problem. Further, program requirements are only as effective as they are enforceable. Ensuring payment of penalties is critical to even and effective enforcement of the law.
- **Withholding matching funds ensures the penalty is paid in the prescribed manner.** The Portland Elections Commission prescribes which types of penalties are paid with campaign account funds versus the candidate's personal funds. Policy principles drive those prescriptions. The penalty that has been issued to your campaign is required to be paid from the campaign account. If your campaign does not pay the penalty and instead the City recovers payment from the candidate after the election, the remedy will not be in alignment with the letter or the spirit of the law. By withholding matching funds until the campaign account pays the penalty, the program can ensure enforcement is being carried out in a manner consistent with the plain language of the rules as well as the principles behind them.
- **Ensuring the law is enforced in an equal and politically neutral manner.** Ensuring the campaign pays the penalty in a timely manner prevents a City bureau that sits under an elected official from having to try to collect the penalty from another sitting elected official, if Mr. Gonzalez wins the election. City bureaus sometimes do not carry out enforcement actions against sitting elected officials, in order to avoid thorny political implications. By withholding matching funds now, the penalty is likely to be paid before the election, avoiding potentially uneven application of City enforcement actions.

Please contact me if you have any questions, to arrange payment of the penalty, or if there is any way in which the program can help the campaign handle this matter.

Kind regards,

Susan

Susan Mottet
Director | Small Donor Elections

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