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## ARA 13.03 CAMPAIGN FINANCE: COMPLAINT PROCESS

**Background:** These rules are based on a voter-approved Charter amendment, related City Code, and subsequent court rulings.

### A. Filing a Complaint

1. Complaints alleging violations of the City's campaign finance regulations must be filed in writing with the City Elections Office within the Auditor's Office. Complainants are encouraged to use the City Auditor's [complaint form](#), which indicates the information needed to ensure a comprehensive investigation. Complaints may be filed:

- a. By email to: [elections@portlandoregon.gov](mailto:elections@portlandoregon.gov).
- b. By mail to: City Elections Office, 1221 SW 4th Ave, Room 130, Portland, OR 97204.

A complainant who needs assistance making a complaint should email the [City Elections Office](#).

2. Complaints should include the following information:
  - a. Name(s) and contact information of complainant(s). The City Elections Office does not accept allegations submitted anonymously.
  - b. If a complainant requests that their contact information be kept confidential, the information will be considered exempt from public disclosure under ORS 192.355(4). However, confidentiality is a legal matter that must be evaluated on a case-by-case basis and absolute confidentiality cannot be guaranteed if the District Attorney or a court orders it to be disclosed as a public information.
  - c. The name of the candidate, campaign, political committee, individual, or other entity alleged to have violated the City's campaign finance regulations;
  - d. A description of the alleged violation(s);
    - i. For example, a contribution alleged to have been received or made in violation of the City's campaign finance laws, a communication that lacked the required disclosures, or a private or public employer that failed to permit a contribution to be made by payroll deduction.
    - ii. A complainant may raise more than one allegation per complaint.

- e. The date(s) of the violation(s); and
  - f. Any applicable dollar amount(s) associated with the violation(s), if known.
3. The Auditor's Office may decline to investigate any submissions that do not include the information in Subsection (A)(2).
  4. Complainants are encouraged to include with the complaint all relevant documentation or evidence they may have pertaining to the violation(s).
  5. Duplicative allegations or allegations that are substantially similar to those in an ongoing investigation or a previously rendered decision will not be reinvestigated.

**B. Complaints Involving Open and Accountable Elections Program Participants**

1. Candidates participating in the City's public funding of campaigns program, known as the Open and Accountable Elections ("Public Funding Program"), are eligible to receive any amount of money based on that program's rules.
2. If a complaint is submitted to the Auditor's Office involving alleged violations of both the Public Funding Program and the City's campaign finance regulations, the Auditor's Office may refer the complaint to the Public Funding Program to resolve Public Funding Program issues before receiving the complaint to conduct its own investigation. If the Auditor's Office refers the complaint to the Public Funding Program before initiating an investigation, the Auditor's Office will:
  - a. Notify the complainant and subject(s) of the complaint of the referral.
  - b. Ask the Public Funding Program to notify the Auditor's Office of its determination.
  - c. Within two business days of receiving the Public Funding Program's determination, notify the complainant and subject(s) of the complaint that the Auditor's Office will initiate its investigation.
  - d. After initiation of an investigation, the Auditor's Office will accept relevant, written materials that address complaint allegations for a period of 10 business days following the date of such notification ("material submission period").
  - e. Within 10 business days of the closing of the material submission period, the Auditor's Office will render a decision on the complaint that is separate and independent of the Public Funding Program's determination.

- f. If the Public Funding Program issues its determination within 30 calendar days prior to the date of an election involving the subject(s) of the complaint, the timelines in d. and e. of this Subsection are reduced by one half.

### **C. Complaint Investigations**

1. For complaint investigations of contribution limit violations:
  - a. For allegations pertaining to contributors alleged to have contributed more than the amounts allowed in [Code Section 2.10.010](#):
    - i. Submitted allegations are not considered to be a received complaint until the Auditor's Office obtains contact information – including an email address, physical address, or phone number – of the contributor.
    - ii. The Auditor's Office may request the contributor's contact information from the campaign alleged to have received the unlawful contribution.
2. For investigations, generally:
  - a. Upon receiving or initiating a complaint, the Auditor's Office will follow the notice and investigation procedures prescribed in [Code Subsections 2.10.050 E. – H.](#)
  - b. Written materials and other evidence relevant to the allegations in the complaint:
    - i. May be submitted by email to: [elections@portlandoregon.gov](mailto:elections@portlandoregon.gov) or by mail to: City Elections Office, 1221 SW 4th Ave, Room 130, Portland, OR 97204.
    - ii. May include supporting evidence, such as documents or photographs, attached as exhibits and/or links to relevant electronic media.
    - iii. May be requested by the Auditor's Office, during or after the material submission period.
  - c. The Auditor's Office may issue and seek enforcement of subpoenas requiring the production of any relevant information necessary to determine compliance with the provisions of Code Chapter 2.10.
    - i. Subpoenas will require a response no earlier than seven calendar days after issuance.

- ii. Should a person or entity fail to comply with a subpoena, the Auditor's Office may apply to the Multnomah County Circuit Court for an order to the subpoenaed party mandating compliance with the Auditor's Office subpoena or an appearance set by the court to show cause why they had not complied.
- iii. If the Auditor's Office seeks judicial enforcement of a subpoena, the investigation timeline in [Code Section 2.10.050 E](#). shall be suspended until the subpoena is complied with to the extent ordered by the court.

#### **D. Auditor's Office Decision and Enforcement**

1. The Auditor's Office's decision on the complaint must:
  - a. Be in writing and provided to all interested parties.
  - b. Identify whether a violation of the City's campaign finance regulations occurred and the basis for the decision.
  - c. Include a statement that the complainant or the subject of the complaint may, within 30 calendar days of the issuance of the decision, seek review of the decision in Multnomah County Circuit Court.
2. If the Auditor's Office finds that an entity or individual violated one or more of the City's campaign finance regulations, the Auditor's Office will issue a written decision in the form of a warning and letter of education or notice of violation, which includes the following information:
  - a. The name of the individual or entity found to be in violation of the City's campaign finance regulations.
  - b. For violations of timely disclosure requirements, all available and previously undisclosed information found through the investigation about the involved communication donor(s).
  - c. A brief description of the complaint and the Auditor's Office's findings.
  - d. A statement of the amount due as a civil penalty, if any, and instructions for paying the civil penalty.

### 3. Warning and Letters of Education

- a. Upon finding a violation, if the Auditor's Office finds reason to believe the subject of the complaint put forth a good faith effort to comply with [Code Chapter 2.10](#), the Auditor may for a first-time violation issue a warning and letter of education if there is no mandatory minimum penalty prescribed in the Code.
- b. Once an election date has passed, the values of deterrence and provision of timely information to the electorate are diminished. Therefore, if the Auditor's Office receives a complaint or issues a determination after the relevant election date, the Auditor's Office may issue a warning and letter of education if there is no mandatory minimum penalty prescribed in the Code.

### 4. Civil Penalties

- a. The civil penalty for each contribution or expenditure violation is not less than two nor more than 20 times the amount of the unlawful contribution or expenditure.
- b. If the civil penalty cannot be determined based on an unlawful contribution or expenditure, the Auditor's Office will determine an appropriate civil penalty up to \$3,000 per violation.
- c. In determining the amount of a civil penalty, the Auditor's Office may consider mitigating or aggravating factors, including:
  - i. The overall budget and resources available to the campaign or entity.
  - ii. The number of previous violations by the penalized party within the same election cycle.
  - iii. Whether the violation was repeated and continuous or isolated and infrequent. The Auditor's Office may choose to treat repeated similar actions occurring during the same election cycle as aggravating circumstances under a single violation.
  - iv. Whether the violation appears to have been made knowingly based on relevant circumstances and available records.

- v. The campaign or entity's level of cooperation during the investigation, including providing timely and relevant information as requested.
  - vi. The amount of penalties, if any, previously imposed on the same party or other parties under similar circumstances.
  - vii. *For communications disclosure violations:* The size of the intended audience and the cost of the communication.
  - viii. *For contribution and expenditure violations:* The size of the contribution or expenditure.
  - ix. Whether complaints have been filed in apparent abuse of the complaint process. This can occur, for example, when complaints against a potential competitor are filed repeatedly with similar allegations occurring in a short period, instead of filing all allegations as one complaint.
  - x. Any other applicable factors the Auditor's Office deems relevant.
- d. Civil penalties not paid within 30 days from the payment due date may be subject to a late fee not to exceed \$500.

## 5. Withdrawal and Reconsideration

- a. The Auditor's Office may, on its own discretion or on request of an interested party, withdraw a decision for reconsideration at any time before the decision is final.
- b. Prior to a decision becoming final, the Auditor's Office may consider additional information in deciding whether to withdraw the decision. A decision is final:
  - i. After 30 days from issuance of the Auditor's Office's decision if no appeal is sought; or
  - ii. After entry of a judgment by a court that is not subject to appeal.
- c. Upon withdrawal of a decision, the Auditor's Office may accept additional relevant evidence for consideration.
- d. The Auditor's Office will issue a new written determination to be provided to all interested parties, which shall provide the basis for any new determination.

## 6. Appeal

- a. Decisions may be appealed by the complainant(s) or the subject(s) of the complaint by filing a writ of review with the Multnomah County Circuit Court within 30 days of issuance.
- b. Complainants appealing a decision must provide notice of the appeal to the subject(s) of the complaint.

### **Auditor's Office Administrative Rule Information and History**

Questions about this administrative rule may be directed to the [City Elections Office](#).

Adopted by the City Auditor on April 6, 2020 as an interim rule effective for not more than 180 days. The interim rule was revised by the City Auditor on April 29, 2020, also as an interim rule.

Adopted by the City Auditor on October 3, 2020, following a notice and comment period of at least 30 days.

Amended by the City Auditor on June 1, 2021, following a notice and comment period of at least 30 days.