

October 6, 2022

By Hand Delivery and By Email to
SmallDonorElections@portlandoregon.gov

Small Donor Elections Appeals
1120 SW 5th Ave.
Portland, OR 97204

**Re: Addendum to Appeal/Request for Hearing
Rene for Portland**

Rene for Portland respectfully submits its single page Appeals Form and this corresponding Addendum (collectively “Appeal”) under Section 2.16.170 of the Portland City Code (the “Code”). Under Section 2.16.170.D.3, it appears that Rene for Portland is requesting a penalty hearing.

I. Background

On Tuesday, September 20, 2022, the Small Donor Elections Program (the “Program”) proposed a \$77,140 fine (the September 20 Proposed Penalty Letter”) to Rene for Portland relating to Rene for Portland’s lease of approximately 3,185 square feet of office space at 1010 SW 11th (the “Space”) from Schnitzer Property Management (“SPM”). On Tuesday, September 27, Rene for Portland timely filed its Request for Reconsideration (the “September 27 Reconsideration Request”).

Two days later, on Thursday, September 29, the Director rejected each of Rene for Portland’s various arguments (the “September 29 Response”), effectively doubling down on the massive fine. The primary basis for this calculation is the Director’s decision to equate “fair market value” to the asking price, despite the Space having been vacant for two years.

This calculation is completely flawed. For that reason and many others articulated below and in the September 27 Reconsideration Request, Rene for Portland appeals.

II. Timeliness

This Appeal is timely submitted on October 6, 2022, as directed in the September 29 Response.

III. Mitigation

It is important to note at the outset of this appeal that Rene for Portland has contacted the Director to mitigate the Director's concerns. Rene for Portland will significantly reduce the square footage that it leases from SPM and will pay SPM the per square foot value that the Director believes is appropriate for October and November.¹

Please note that Rene for Portland continues to vehemently disagree with the Director's calculation of fair market value for a downtown space that has been vacant for two years (and vandalized repeatedly) and will continue to appeal that determination. Should Rene for Portland prevail as to the appropriate calculation of fair market value, then SPM will refund the difference in rent to Rene for Portland. Should the Director's interpretation prevail, then there will be no refund.

IV. Argument

A. This appeal process is not impartial.

Section 2.16.170 of the Code provides in relevant part:

“The purpose of this Section is to provide persons or political committees adversely affected by administrative determinations made under this Chapter with a timely, effective, and *impartial* appeal and review of the determination by a Hearings Officer or entity, to be recommended by the Portland Elections Commission and appointed by the Director.” (Emphasis added.).

So the officer or entity that is considering this appeal is appointed by the Director, who authored the September 29 Response that Rene for Portland is appealing? If that interpretation is correct, there is a serious question as to whether this process is indeed “impartial” as promised by the Code.

This concern is not meant to impugn the integrity of the officer or entity considering this appeal. But with respect to impartiality, appearances matter greatly, and separation between the Director and the appeal process is imperative for fairness and impartiality.

This issue is one of several procedural concerns that Rene for Portland has articulated about this process. Whatever the ultimate result here, the Program

¹ Rene for Portland will also lease only one parking space rather than two.

warrants a significant review and reconsideration for fairness and due process alone.

B. The “available to the general public” standard adopted by the Director is unwritten and, under the present circumstances, nonsensical.

Throughout the September 20 Proposed Penalty Letter and the September 29 Response, the Director makes repeated reference to whether something is “available to the general public.” This is clearly the determination that is of paramount importance to the Director. But where is that standard written anywhere in either the Code or the corresponding Rules? It is not. Enforcing an unwritten standard is grossly unfair and inappropriate (see the articulation of serious procedural concerns in Part IV.A).

Further, the standard makes no sense under the present circumstances involving a short-term political campaign. The Director writes:

“The program did not find discounted rent for short term leases available to the general public in its market research ***.

With no evidence of discounts on the rent owed being available to members of the general public renting for less than year ***.”

It should not be a surprise that the Director found no such evidence. What tenant other than a political campaign would possibly want space for less than a year? The Director compares apples to oranges and punishes the orange for not being red like an apple.

Enforcing unwritten standards leads to unjust results.

C. The Director unfairly dismisses Jordan Schnitzer’s public statement about offering similar rent to others.

In the September 20 Proposed Penalty Letter, the Director identifies the scope of review as follows:

“If you [Rene for Portland] can provide evidence that Schnitzer Property Management has offered members of the general public (to whom no special favor was being granted) discounted rent in similar circumstances to

yours, I would be happy to review the evidence and, if appropriate, reduce the amount of the penalty.²

Rene for Portland did just that. Mr. Schnitzer and SPM could not have been clearer that they are indeed offering discounted rent much more generally:

“I’m saying now publicly, you can put this on the air, if there are nonprofits or political candidates or for-profit businesses that want to get some space at bargain rents, we’ve got some space.”³

How does this statement by SPM not end the issue? Nonprofits, political candidates, for-profit businesses can get space at “bargain rents” from SPM. In furtherance of her fine, the Director unfairly ignores Mr. Schnitzer’s actual words.

D. It is certainly relevant that the Multnomah County District Attorney gets a massive discount on rent.

The Director is similarly dismissive of Rene for Portland’s accurate contention that that the Multnomah County District Attorney gets a massive discount on downtown office rent. The Director explains that “[t]he Multnomah County District Attorney is not a member of the general public.”⁴ Confusingly, the Director then adds:

“It is a fact that some people or entities are offered free or deeply discounted goods or services that not [sic] available to the general public. There are many reasons special favors are granted:

- ***
- the hope or expectation that the recipient of the discounts would grant special favors to the provider of the discount (e.g. *providing something to the elected official so the provider can have special access to the elected official or get special*

² Proposed Penalty Letter at 5.

³ Watson, Evan. “‘He did us a favor’ Schnitzer says the Rene Gonzalez campaign fine is a product of downtown Portland vacancies.” *The Oregonian/Oregonlive.com*, September 22, 2022.

⁴ September 29 Response at 4.

consideration of the policies or decisions that affect their interests).” (Emphasis added.)⁵

How is *that* okay? Stated differently, it would be perfectly fine for Rene’s opponent to have deeply discounted downtown office space with the hope or expectation of special favors? Because she is not a member of the general public?

This makes no sense. And, yet again, the Director bases her argument on the completely unwritten “member of the general public” standard.

If discounted rent is available to the Multnomah County District Attorney, then it should similarly be available to others, even Rene for Portland’s opponent.

E. Rene for Portland never received notice or opportunity to cure the alleged violations.

The Director writes that “[t]here is no legal obligation for the program to inform the campaign of the specific focus of an investigation or even that an investigation is underway.”⁶ The Director then similarly adds that, “[t]here is no legal obligation for the program to alert campaigns of violations so that they can cure them.”⁷

Rene for Portland respectfully disagrees. There is such a legal obligation because the Code imposes it⁸ and due process requires it.

F. That the Director is threatening to impose more fines on Rene for Portland for having to deal with repeated vandalism is beyond the pale.

Rather than express any sympathy or frustration that Rene for Portland has twice dealt with vandalism, including the morning of the September 27 Reconsideration Request, the Director instead rattles a saber:

“The program has not received any reports from the campaign of expenditures related to repairing vandalism to date. Failure to report is subject to a penalty of one-half to one percent per day after the reporting deadline has passed.”⁹

⁵ September 29 Response at 4.

⁶ September 29 Response at 10.

⁷ September 29 Response at 11.

⁸ Section 2.16.120.

⁹ September 29 Response at 6.

As a factual matter, SPM has not yet invoiced Rene for Portland for either set of glass repairs, because SPM is waiting on such repair invoices. So there is nothing for Rene for Portland to report until it is invoiced by SPM.

The Director incorrectly asserts,

“Nowhere in the lease agreement is it mentioned that the discounted rent is offered in exchange for the campaign covering the cost of repairs after vandalism.”¹⁰

But Section 8 of the lease agreement between Rene for Portland and SPM makes it clear that Rene for Portland is in fact responsible for broken glass:

“Notwithstanding the fact that Landlord maintains insurance on the Building, in the event the storefront glass is broken, cracked or damaged during the Term of the Lease, regardless of cause, Tenant shall be solely responsible to repair the glass of as good or better quality than that in use as of the Commencement Date.” (Emphasis added.).

How many downtown Portland landlords would not love to have had a tenant bear such responsibility over the last two years, regardless of the base rent?

Threatening to fine Rene for Portland for something that is not even reportable yet adds fuel to the fire that this entire process continues to be tainted by a lack of impartiality.

G. Rene for Portland incorporates its arguments from the September 27 Reconsideration Request in full into this appeal.

In the September 27 Reconsideration Request, Rene for Portland advanced several arguments. Each of these are incorporated in their entirety into this appeal as if stated fully below.

V. Conclusion

Rene for Portland remains optimistic that it will receive a fair review of its arguments about unfairness, enforcement of unwritten standards, and improper calculations of fair market value by a truly impartial reviewer and in accordance with a process that honors due process.

¹⁰ September 29 Response at 6.