Small Donor Elections Administrative Rules, Portland City Code 2.16

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1. Authority. The City Administrator or their designee is authorized by Portland City Code (PCC) 2.16.030 to adopt rules necessary to implement the Small Donor Elections program (program).

2. Purpose. The program's purpose is to prevent corruption or the appearance of corruption caused by the real or imagined coercive influence of large financial contributions on candidates' positions and on their actions if elected to office and the related goals listed in the legislative findings when the Small Donor Elections Code was passed. These Administrative Rules provide further detail to implement the program and will be broadly interpreted to effectuate the program's purpose.

3. Definitions.

A. "Allowable contribution" means a contribution of no more than $350 in support of a participating or certified candidate that is:

1. Made by an individual or a small donor organization;

2. Made during the election cycle in which the candidate is seeking office;

3. Not eligible to be matched with city matching funds; and

4. Includes the fair market value of proceeds from selling campaign merchandise.

B. **"Approximate date of sale"** means a similar time period that is relevant to determining a probable price. The following factors support the relevance of a selected approximate date of sale:

1. The amount of time from the approximate date of sale and the actual date of sale;

2. If the approximate date of sale reflects any applicable predictable, time- bound differences in pricing, such as seasonal pricing; and

3. If the approximate date of sale reflects economic conditions that are not drastically different from the actual date of sale, such as differences in pricing before and after an economic crash.

C. A **"consumer"** is a member of the general public who is not a member of a class that could confer certain privileges or advantages to its members, such as a reason for sellers to seek influence with or provide favors for members of such a class or because the consumer has a personal relationship with the seller. Persons who are not members of the general public for these purposes include elected officials, candidates, government officials, government offices, nonprofit organizations, as well as relatives, friends, business associates or others for whom a seller may wish to seek influence or perform a favor.

D. **"Contributions"** do not include services an individual provides without compensation while volunteering their time to the candidate or campaign committee.

E. A "**coordinated expenditure"** refers to any payment or in-kind contribution made by a person, group, or entity for the purpose of influencing a candidate's election, where the expenditure is made in cooperation, consultation, or concert with, or at the request or suggestion of, the candidate, the candidate's authorized committee, or agents thereof.

1. The republication of a candidate's campaign materials, unless:

   a. Such republication is used to oppose the candidate that created the materials;

   b. The republished material is the candidate's 'head shot' photograph;

   c. The republished material is a short excerpt for the purpose of educating the public about the candidate and/or the candidate's policy positions;

2. An expenditure, as described in section (6)(I) and regardless of whether it meets a "conduct" standard as described in section (6)(H), that is materially consistent with instructions, directions, or suggestions from a candidate regarding the making of expenditures, regardless of whether the instructions, directions, or suggestions are publicly available. The factors the Director shall consider in determining whether an expenditure is consistent with instructions, directions, or suggestions from a candidate under this paragraph include, but are not limited to:

   a. Noticeable placement of instructions, directions or suggestions, such as on a discrete webpage or portion of a webpage containing one or more other factors identified in this paragraph;

   b. Whether the instructions, directions, or suggestions include language indicating that information should be communicated to others, such as "voters need to know"

c. Whether the instructions, directions, or suggestions include targeted audience information, such as specific demographics or the location of intended or suggested recipients; and

d. Whether the instructions, directions, or suggestions include suggested methods of communication, such as indicating that recipients need to "see," "hear," or "see on the go" information; or

3. An expenditure that meets at least one "conduct" standard as described in section (6)(H) and one "content" standard as described in subsection 6(I).

4. "Coordinated expenditure" does not include—

a. A communication that appears in a news story, commentary, or editorial; and

b. An expenditure for a candidate debate or forum conducted pursuant to Oregon Revised Statutes 260.007(10).

5. For purposes of defining coordinated expenditures—

a. "Candidate" includes any person who is a candidate at the time of the expenditure, regardless of whether that person was a candidate at the time the conduct constituting coordination took place; and

b. References to candidates or parties include agents, executives, or managers who worked for such persons during the two years preceding the expenditure.

F. **"Democracy building activities"** are the following activities as carried out by a political committee or a 501(c)(4), 501(c)(5), 501(c)(6) nonprofit organization:

1. Paid staff time and related goods or use of real or personal property for canvassing, phone banking, and text banking, provided that the majority of the canvassers and phone bankers and text bankers are volunteers;

2. Providing participating candidates with a list of individuals from the contributors contact list for campaigns to contact directly; and

3. Paid staff time providing the following services to participating candidates:
   A. Creating and sharing messaging on issues that are part of the contributor organization's mission;

   B. Identifying voter models for campaign communications;

   C. Increasing voter engagement;

   D. Security planning; and

   E. Campaign planning.

G. **"Egregious"** means conspicuously, glaringly, or flagrantly bad, which includes fraud, conduct that would conceal an instance of committing fraud against the program, accepting a large contribution significantly over contribution limits, or conduct that would conceal an instance of violating a requirement or prohibition of the program.

H. **"Fair market value"** means the most probable price in cash or its equivalent, as of the actual or approximate date of a sale, transaction, or transfer, for which property, goods, or services would sell or be provided after reasonable exposure in the market under conditions requisite to fair pricing, with the consumer – who is a member of the general public – and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under duress. In appropriate circumstances, fair market value can be assessed as a range of prices and need not be a single price.

I. For the purpose of Administrative Rule 20, **"family"** includes a spouse, child, parent or step-parent, domestic partners, parents-in-law, grandparents or grandchildren, and household members.

J. "Fraud" is knowingly, recklessly, or negligently misrepresenting and/or withholding a material fact for the purpose of or resulting in deceiving the Program. Examples include, but are not limited to, reporting fabricated or falsified contributions, contributions which conceal the true source, or submitting falsified documents (for example, documents attesting that a donor made a cash contribution when no such contribution was made). An unintentional error while exercising a reasonable level of care, such as a typo in reporting contribution data to the program, is not fraud.

K. **"In-kind contribution"** means real or personal property, good, or service that has monetary value, other than money, that is provided directly by a contributor to a participating or certified candidate without equivalent compensation or consideration. In-kind contributions that increase language inclusivity or accessibility for people with disabilities may be provided directly or indirectly to a participating or certified candidate. "In-kind contribution" does not include refreshments served at no charge, if they are incidental to the event at which they are provided.

L. **"Loan" and "debt"** do not mean:

1. The campaign's use of a credit card;

2. Payment for property, goods, or services that is made:

    a. More than 120 days before the election: 120 days; or

    b. Within 120 days of the election: 90 days;

3. The candidate, campaign staff, or campaign volunteers being reimbursed by the campaign for campaign expenses provided that the expenses being reimbursed are either:

    a. Under $500; or

    b. Reimbursed within 10 business days of the expenditure being paid.

M. **"Matchable contribution"** means contributions of up to $350 in aggregate per donor per election period.

N. **"Match rate"** means the rate at which a particular dollar amount per contributor is matched.

O. **" Publicly neutral"** means someone who has not, in relation to a race covered by this program:

1. Made a contribution;

2. Endorsed a candidate;

3. Carried out work for a campaign directly or for an employer or for an entity that endorses, contributes to, or makes independent expenditures for or against a candidate; or

4. Engaged in any other conduct that would cast reasonable doubt, if known to the public, that they can make unbiased decisions.

P. **"Seed money contribution"** means a contribution that is received before the candidate is certified that is not a matchable or allowable or in-kind contribution within program limits. The limit for a seed money contribution is based on a formula published by the program director for each election cycle. The formula is the dominant contributor amount, as adjusted for inflation and published by the Auditor's office, minus the individual contribution limit in the Small Donor Elections program, rounded down to the nearest $5.

Q. **"Small donor political committee"** is any political committee or a 501(c)(4), 501(c)(5), or 501(c)(6) nonprofit organization that has accepted at least ninety percent (90%) of its current funds from contributions of $250 or less per donor per year. Small donor organizations are not required to apply for a small donor organization designation but may apply for the designation using the form provided on the program website and by submitting all documents required on the application form. If an organization that fits the definition of a small donor organization transfers funds to a political committee, the political committee qualifies as a small donor organization if 90% of the funds it collects directly and from organizations that qualify as small donor organizations collectively meet the financial threshold for small donor organizations, provided that the small donor organizations that made the transfers to the political committee provide sufficient documentation of their contributions that the Director can determine that they qualify as small donor organizations.

R. **"Violation"** means each instance of failing to comply with the PCC 2.16 or these Administrative Rules.

4. Small Donor Elections Fund

A. The following will be deposited in the Small Donor Elections Fund (Fund):

1. All amounts appropriated to the Fund by the City Council;

2. Any unspent City matching funds remaining in a candidate's campaign account after the candidate is no longer a candidate for a covered office that is returned to the Fund as provided in PCC 2.16.100;

3. All civil penalties issued for violating a provision of the program;

4. All interest earned on money in the Fund; and

5. Voluntary contributions to the Fund:

a. Voluntary contributions may be in any amount.

b. Payment may be made in the form of cash, check, money order, credit card, or electronic check.

b. Contributors may make voluntary contributions directly to the City, either in person, via United States Mail, or on the program website.

d. The Director will publish on the program website an address to which voluntary contributions may be sent to via United States Mail.

e. Contributors may request a receipt from the Director.

f. Contributors and contribution amounts will be disclosed publicly.

B. The Fund may allocate up to $10,000 total per election cycle to assist in ensuring that public candidate debates and forums are accessible to all Portlanders.

C. Hosts of a public candidate debate or public candidate forum, or a candidate invited to one, may apply for financial assistance from the Fund to completely or partially cover the cost of ensuring that the debate or forum is accessible to those with disabilities. Applicants must use the application form provided on the program website.

5. Certification and Qualification

A. A Candidate who has fulfilled the following conditions may apply for Certification:

1. Has filed a Notice of Intent to participate in the program by the deadline published by the Director;

2. Has completed a mandatory training;

3. Whose Treasurer has completed a mandatory training;

4. Has submitted a complete certification application; and

5.Has filed all required reports of contributions and expenditures and any documentation required or requested by the Director;

B. If the Director determines a candidate has engaged in any of the following, such actions will be grounds for denial of certification or decertification:

1. Failing to meet certification requirements;

2. Submitting falsified documentation;

3. Intentionally, knowingly, recklessly, or negligently reporting to the program contributions that were not made by the reported contributor in this or one of the four prior election cycles; or

4. In the current or one of the four prior election cycles, committing a single egregious violation of a program requirement or rule that the Director determines undermines the purpose of the program, or committing repeated violations of requirements or rules of the program that the Director determines collectively undermine the purpose of the program; provided, however, that the Director's determination may not be arbitrary and capricious. .

5. Has been denied certification or decertified due to fraud in the current election cycle;

6. Has been denied certification or decertified due to fraud in any of the four prior election cycles, unless:

    a. The determination was reversed after submitting a Request for Consideration or appeal;

    b. During the election cycle in which the fraud occurred, the Director determined and notified the candidate in writing that the candidate appeared to neither be aware of the fraud nor should have been aware of the fraud, because the candidate and campaign:

        i. The candidate and campaign fully cooperated with the investigation;

        ii. The candidate and campaign took recommended measures to help identify instances of fraud if suggested by the Director;

        iii. The candidate and campaign answered program questions and requests with answers and information that aligned with the evidence the program collected; and

        iv. The evidence is not suggestive of the candidate having knowledge of the fraud, or having conducted themselves or the allowed campaign's related activities to be conducted with recklessness, negligence, or willful blindness.

7. Has been denied certification or decertified due to fraud in any of the two prior election cycles and received notice from the Director pursuant (B)(6)(b).

8. Committing a violation that was not fully resolved by curing it and paying any applicable penalty by the deadline.

C. The Director shall have the authority to certify candidates who have submitted applications containing minor or technical errors, provided that such errors are corrected within seven (7) calendar days following the application deadline. This provision applies solely to non-substantive defects and does not extend to material omissions or failures to meet eligibility requirements.

D. Candidate to Candidate Contributions

1. Contributions made by one candidate to another candidate will not be counted toward certification thresholds.

E. Qualification Deadline for Council Candidates

1. Council campaigns must meet the requirements to qualify for Tiers 2 or 3 described in City Code Subsection 2.16.070.A.2.c. no later than 21 calendar days before the election.

6. Contributions

A. Participating candidates must collect at least the following documentation for all contributions made with cash or a money order, if it is to be matched: an attestation signed by the donor, as published by the Director on the program website;

B. Seed money contributions may be collected from the first day of the election cycle until the day a candidate is certified.

C. Participating and certified candidates may accept in-kind contributions valued at no more than $10,000 per election per donor from a small donor organization or in the form of democracy building activities.

D. Candidates may take loans of up to a maximum of $5,000 total at any point during the election cycle.

E. Candidates may make allowable or matchable contributions to their own campaign.

F. Differentiating Discounts from In-Kind Contributions: If property, goods, or services are sold or provided for an amount less than their fair market value, then regardless of the form of the sale, transaction, or transfer, the difference between the amount paid and the fair market value shall be considered an in-kind contribution. If a discount from the fair market value is negotiated or otherwise provided, regardless of whether any price or discount was advertised, the discount shall be disregarded in calculating the amount of the in-kind contribution unless the same discount is or would be available to all similarly situated purchasers who are members of the general public.

G. Establishing Fair Market Value and Penalty Amounts for Violations:

1. Establishing Fair Market Value. Any of the following, to the extent that it is relevant to the definition of fair market value for that property, good, or service, may be accepted as evidence fair market value:

    a. A contract, invoice, or rate sheet with clear pricing or a publicly- listed price that shows the vendor, or a similar vendor provides the same or similar property, good, or service to members of the general public.

    b. If there is an advertised price and the candidate did not provide evidence or sufficient evidence of the same or similar discounts being given to members of the general public by the same vendor or a similar vendor, the Director may set the fair market value at the advertised price.

    c. If there is no advertised price and the candidate did not provide evidence or sufficient evidence of the same price being given to members of the general public by the same vendor or a similar vendor, the Director may determine the fair market value using a contract, invoice, or rate sheet with clear pricing or a publicly-listed price from the vendor or a similar vendor on the same property, good, or service, if available, or for a similar property, good, or service.

    d. Where the price is the cost to the seller plus a markup, clear evidence of the actual cost to the vendor and the vendor's (or in lieu of evidence from the vendor, a similar vendor's) standard markup is evidence of fair market value.

    e. If the vendor does not provide this service to members of the general public, a contract, invoice, or rate sheet with clear pricing used with the majority of clients is evidence of fair market value.

2. Responding to a complaint relating to in-kind contributions:

    a. If the Director receives a complaint alleging or is in possession of evidence that suggests an impermissible receipt or use of an in- kind contribution, the Director will inform the candidate of the complaint or information.

    b. The candidate will have 7 calendar days to provide the Director with evidence establishing the fair market value that supports the candidate's estimate of the fair market value of the property, good, or service at issue.

    c. The Director will review the evidence provided by the candidate and may conduct an investigation to determine whether the evidence provided by the candidate supports the candidate's fair market value estimate.

    d. Within 10 business days of receiving the evidence from the candidate, the Director will send a written determination to the candidate with the Director's findings, including the Director's estimate of the fair market value of the property, good, or service at issue and the basis for that estimate.

    e. If the Director penalized the candidate in relation to accepting of an in-kind contribution and the candidate disagrees with the Director's written determination, the candidate may request a reconsideration of the determination within 7 calendar days after the date of the determination by the Director. The candidate may provide the Director with additional supporting evidence of the candidate's basis for the candidate's estimated fair market value for the Director to consider.

    f. If the candidate does not request a reconsideration, the Director's determination of the fair market value becomes final, and the Director may assess penalties based on the difference between the maximum allowable amount of an in-kind contribution and the fair market value of the in-kind contribution at issue. If the candidate does request a reconsideration, any penalty the Director issued will be final.

    g. A candidate may appeal the Director's decision regarding the determination of the fair market by filing a written request for a hearing no later than 7 calendar days after the mailing of the reconsideration decision. A candidate may appeal the Director's determination of a penalty as set forth in PCC 2.16.170.E., following the procedures for requesting a hearing on penalties.

3. Range of prices: If the fair market value is established as a range of prices instead of a single price or rate, the violation amount the City determines is valid if it is within the range of prices.

4. The Director shall determine an appropriate penalty based in part on the difference between the fair market value and the amount paid by the campaign.

H. Conduct constitutes a "Coordinated Expenditure" as defined by Section 3.E of these Rules whenever—

1. An expenditure is not made totally independently of a candidate;

2. During the two years preceding the expenditure, the candidate (including immediate family members) directly or indirectly established, maintained, controlled, or principally funded the spender;

3. During the two years preceding the expenditure, a candidate solicited funds for the spender, provided fundraising information to the spender, appeared as a speaker at a fundraiser for the spender, or gave permission to be featured in the spender's fundraising efforts;

4. The expenditure is based on information about the candidate's campaign needs that the candidate provided to the spender; or

5. During the two years preceding the expenditure, the spender employed the services of a person who, during the same period, had executive or managerial authority for the candidate, was authorized to raise or expend funds for the candidate, or provided the candidate with professional services (other than accounting or legal services) related to campaign or fundraising strategy.

I. A coordinated expenditure constitutes funds spent for the purpose of influencing an election whenever the expenditure is for—

1. A public communication that expressly advocates for or against the nomination or election of a candidate; that supports a candidate's election or opposes a candidate's opponent; or refers to a clearly-identified candidate at any time from 180 days before the election through the election;

2. Partisan voter activity (such as voter registration, get-out-the-vote activity, phone banking, or generic campaign activity) in the jurisdiction where the candidate is seeking election; or

3. Research, design or production costs, polling expenses, data analytics, creating or purchasing mailing or social media lists, or other activities related to those defined in subparagraphs (1) or (2) of this Section.

J. Notwithstanding subsection (H)(5), expenditures involving former employees or common agents of a candidate will not be deemed coordinated expenditures if the spender implements an effective firewall. A person who relies upon a firewall bears the burden of proof to show that the firewall was effective. A firewall must—

1. Separate staff who provide a service to the spender in relation to its covered expenditures from other staff who provide services to a candidate supported by the spender's expenditures;

2. Forbid an organization's owners, executives, managers, and supervisors from simultaneously overseeing the work of staff separated by a firewall;

3. Prohibit the flow of strategic non-public information between the spender and the candidate supported by the covered expenditure, and between specific staff who are separated by the firewall;

4. Provide for physical and technological separation to ensure that strategic non-public information does not flow between the spender and the candidate, and between the specific staff separated by the firewall; and

5. Be in writing and distributed to all relevant employees and consultants before any relevant work is performed regarding both the general firewall policy and any specific firewall created pursuant to such a policy, and provided to the Director upon request.

7. City Matching Funds

A. Matchable donors may only have their contributions matched up to the match rate per candidate in each contested election.

B. Until 42 days before the election, the City will distribute City matching funds to campaigns at least every month provided the amount owed is at least $1,000. Beginning 42 days before the election, the City will distribute City matching funds at least every 7 calendar days.

C. The City will distribute City matching funds only once a contribution reported is validated as matchable by the City.

D. A participating candidate may not offer items of value in exchange for a contribution that is submitted for City matching funds, other than items of de minimis value. Participating candidates may sell items of value at or over fair market value but may only submit as a matchable contribution the amount paid for the items of value that is over the fair market value.

E. Match rate: Starting in the 2026 election cycle, certified candidates will receive a match rate of 10 dollars for every 1 dollar in matchable contributions received in aggregate, per donor, per candidate, per election, up to the first $25 per candidate per election cycle.

F. Disbursement of public matching funds shall be suspended for any certified candidate who does not submit and receive approval of form AUD 120 (Declaration of Candidacy) to the City Elections Office within twenty-one (21) calendar days from the commencement of the official ballot filing period and will resume when the candidate's filing has been approved.

8. Use of Contributions

A. City Matching Funds may not be used to pay:

1. Any loans, debts, fines or penalties exceeding $5,000 total per election;

2. For travel outside of the counties adjacent to the tri-county area, defined as Multnomah, Washington, and Clackamas Counties;

3. For certain vehicle-related expenses, such as vehicle purchases, leases, rental, insurance, and repairs.

B. Campaign funds may not be used to pay:

1. The candidate in consideration for the rendering of professional services by the candidate.

2. A business that the candidate is a whole or part owner of or receive a financial benefit directly related to the campaign's purchase of the use of property, goods, or services, unless they ask the Director for and are granted an exception for special circumstances, such as there being no other business that offers this type of property, good, or service.

C. City matching funds may be used to pay:

1. Attorney, accountant and other professional service fees, except as prohibited by state law;

2. Parking expenses related to the campaign, vehicle mileage reimbursement for campaign purposes using the standard rate used by the City for mileage reimbursement, reimbursement for taxis or car-sharing companies for campaign purposes, fuel expended for campaign purposes;

3. Reasonably-priced tickets to events attended for campaign purposes;

4. Penalties as outlined in section 18 of these rules; and

5. Election night and post-election parties.

D. Campaign funds may be used to reimburse a business as described in Rule 8(B)(2) for the actual cost to that business for legitimate campaign expenses.

E. Campaigns may transfer campaign funds to another candidate campaign account or political committee for legitimate campaign expenses.

F. Prior to filing a Notice of Intent, campaign funds may be used for a non-covered office that the candidate was registered to run for with the Secretary of State's office

9. Contested Elections

A. For Mayor and Auditor, if all of a participating candidate's opponents withdraw from running for office, the seat will become uncontested. For Councilor, if all but two of a participating candidate's opponents withdraw from running for office, the seat will become uncontested.

B. The program will stop distributing City matching funds for matchable contributions submitted after the Director notifies the candidate that the candidate has become uncontested and will not distribute City matching funds to the candidate as long as the candidate remains uncontested.

C. Matchable contributions collected before a candidate is contested will be matched once the candidate is contested

10. Special Elections

A. The Director will publish on the program website a calendar of the following dates within 3 business days of special election dates being announced:

1. First and last day of the election cycle;

2. First day the Notice of Intent can be filed;

3. Deadline to file for certification; and

4. Deadlines to return unspent City matching funds.

11. Inadequate Funds

A. If there is a significant risk that the amount in the Small Donor Elections Fund is insufficient to provide the full amount of City matching funds to participating candidates:

1. The Director may reduce the total City matching funds cap in a regularly scheduled election, special election, or both.

2. The Director may reduce the match rate or total City matching funds cap in different amounts for different covered offices in order to minimize the impact of the reduction on participating candidates who are facing non-participating candidates.

B. If the Director reduces the match rate or total City matching funds cap due to a potential budget shortfall, the Director may increase the amount each donor may give each candidate in a race affected by the reduction from $350 to up to $500, in proportion to the reduction in the match rate or total City matching funds cap.

12. Recounts

A. Certified candidates may raise allowable and in-kind contributions to pay for recounts and related expenses.

13. Changing Office Sought

A. A participating candidate may change which office they are seeking as follows:

1. The candidate must withdraw from the office sought with the City Elections Office and file successfully with the City Elections Office for the new office sought; and

2. The candidate must submit an amendment to the Notice of Intent with the program with all required documentation.

3. If the participating candidate was not certified prior to changing the office sought, the candidate must fulfill all requirements for certification by the certification application deadline for the newly sought office, including collecting the number of matchable contributions required to be certified in the newly sought office.

4. The candidate may use matchable contributions collected prior to changing the office sought toward the number of matchable contributions they are required to collect for certification for the new office they are seeking only if the contributor provides their written permission to switch the contribution to the newly sought office. If the participating candidate was certified prior to changing the office sought, the candidate's certification status will be temporarily suspended and distribution of City matching funds will cease until the candidate successfully completes all requirements for certification by the certification application deadline for the newly sought office, including collecting the number of matchable contributions required to be certified in the newly sought office. The candidate may use matchable contributions collected prior to changing the office sought toward the number of matchable contributions they are required to collect for certification for the new office they are seeking only if the contributor provides their written permission to switch the contribution to the

newly sought office. If the candidate does not get certified for the program by the deadline, the candidate must return all unspent City matching funds to the program.

B. Matchable contributions collected prior to changing the office sought will be matched with City matching funds only if the contributor provides their written permission to switch the contribution to the newly sought office.

C. Written permission may not be collected when the contribution is originally collected from the contributor, such as inclusion in language on the remit documentation for contributions.

14. Reporting Requirements

A. For Participating candidates:

1. Reporting schedule: Participating candidates will report all contributions and expenditures to the program on the same schedule as required by the state. In the first report since turning in a Notice of Intent, the contributions and expenditures reported must include all contributions and expenditures since the first day of the election cycle. Participating candidates will continue to report all contributions and expenditures until the candidate has returned all funds to the program.

2. Reporting Mechanism

    a. Participating campaigns must report all contributions and expenditures and other related required documentation of contributions and expenditures to the online Small Donor Elections application, as published on the program website or provided to campaigns by the Director.

    b. When directed by the Director, participating campaigns must report all contributions and expenditures and other related required documentation of contributions and expenditures using a form, as published on the program website or provided to campaigns by the Director.

    c. Participating campaigns must report all conversions of a contribution to a loan, and all conversations of a loan to a contribution using the same reporting schedule as used for contributions.

3. Reporting combined expenditures: When an expenditure of over $100 to one vendor covers more than one type of expense (such as polling, advertising, mail, consulting), the campaign must itemize what portion of the expenditure was paid for each type of expense.

4. Except as provided in subsection 5 of this section, a candidate must report all contributions received by the candidate, including contributions in the form of coordinated expenditures.

5. For coordinated expenditures, as defined by Section 3.F. of these Rules, a candidate must report all coordinated expenditures benefiting that candidate that the candidate or the candidate's committee has knowledge of. There is a rebuttable presumption that a candidate and that candidate's committee has knowledge of all coordinated expenditures benefiting that candidate.

B. Reporting requirements for non-participating candidates:

1. Within 14 days after the election, all non-participating candidates must provide to the Small Donor Elections program on the spreadsheet form provided by the program, or another spreadsheet if approved by the Director, the following information for all contributions collected during the election cycle:

    a. Date of contribution

    b. Amount of contribution

    c. Name of contributor

    d. Aggregate from that contributor

    e. Address of contributor

2. The names and addresses of the reported contributors who contributed less than $100 in aggregate during the election cycle must be kept confidential by the program per state law and is not subject to public records requests.

15. Complaints

A. Complaints:

1. Must be filed using the form provided on the program website;

2. May be filed only by a candidate for City office; and

3. May not be filed anonymously.

B. Anyone can provide a tip to the program of a possible violation by calling or emailing the program at the phone number and email address published on the program website. Tips may be provided to the program anonymously.

C. The Small Donor Elections program will be the ultimate arbiter at the City of Portland of whether a participating candidate violated the requirements or rules of the Small Donor Elections program.

D. Upon receipt of a complaint, the program will determine whether the complaint requires an investigation. Complaints about conduct that has already been investigated and frivolous complaints are not required to be investigated.

E. If a complaint requires an investigation, the program must complete the investigation and make a determination withing the following timeline:

1. If it is more than 42 days prior to an election, within 10 business days of receiving all requested information and documentation requested from the subject of the complaint, unless the Director requests an additional 5 business days to carry out additional investigatory activities; or

2. If it is 42 or fewer days prior to an election, within 3 business days of receiving all requested information and documentation requested from the subject of the complaint, unless the Director requests an additional 3 business days to carry out additional investigatory activities.

16. Return of City Matching Funds

A. By the date a campaign is due to return unspent City matching funds, the campaign must send the Director:

1. A report showing the total amount in funds collected other than City matching funds, the total amount of City matching funds collected, a calculation of the percent of contributions that were public, the total amount spent on the campaign, and the total amount remaining in the account; and

2. A payment equal to the percent of City matching funds collected multiplied by the amount remaining in the account by the deadline to be deposited in the Small Donor Elections Fund.

B. The Director will determine whether the amount each campaign returned is accurate. If the Director determines the amount returned by a campaign is not accurate, the Director will notify the campaign of the correct amount due. The campaign must send any additional owed funds within 7 business days.

C. Upon expulsion from the program:

1. A participating candidate against whom a civil penalty has been imposed for violation of the program must return to the Director an amount of money equal to all revenues distributed to the candidate from the Fund after the date the candidate was certified.
a. The Director will seek immediate recovery of City matching funds for any violation of this rule.

2. Expelled candidates must also pay the Fund for interest on the total amount of revenues received at a rate of 10 percent per annum, in addition to the penalty and interest on the penalty.

17. Documentation, Audits, and Investigations

A. Record retention: Candidates must keep all documents submitted to the Director, financial records, and supporting documentation - including without limitation the original signed attestations received by the campaign - related to campaign expenditures and contributions for inspection by the Director from the first day of the election cycle until 6 months after the election.

B. Records requests: Candidates must provide any records or documentation the Director requests relating to ensuring compliance with the program and cooperate with any investigatory measures deemed relevant to the potential violation by the Director or anybody to which Director refers the matter. The Director or the Director's designee may conduct unannounced site visits to campaigns to inspect documents.

1. Record inspections may be conducted through electronic means, including but not limited to videoconferencing platforms such as Zoom.

2. The Director will ensure that method of records inspections conducted using videoconferencing platforms ensure the appropriate amount of security and confidentiality of the records being reviewed.

C. The Director may engage a vendor or governmental body to administer or enforce any provision of the program, including without limitation conducting inspection of documentation, conducting investigations, or taking enforcement actions.

18. Violations and Penalties

A. General. The Director has authority to assess civil penalties for violation of the program or these rules. The purpose of this section is to discourage and deter the intentional or negligent violation of program requirements or prohibitions, ensure the proper stewardship of public funds, and encourage accurate reporting of contributions and expenditures for the purpose of public transparency in campaign finance. It is not the intent of this section to discourage participating in the program through excessive penalties for mistakes that do not harm the purpose of this section or the purpose of the program.

B. Maximum penalty.

1. No penalty imposed under the program, or these rules will exceed $10,000 (ten thousand dollars) for any violation except where the amount of the violation exceeds $10,000 or as otherwise provided in PCC 2.16.150 and these rules.

2. Limits on penalties do not include interest or repayment of City matching funds. Penalties are subject to interest at a rate of 10 percent of the total amount per annum.

C. Violations may be cured without penalty within calendar 7 days of the reporting deadline for the contribution or expenditure that was in violation if the conduct that was a violation has a related reporting period. Other violations may be cured without penalty if corrected prior to the program sending the party a penalty notice, or as otherwise provided in these Administrative Rules.

D. Late filings.

1. A late filing is one that is remedied before the subsequent reporting deadline.

2. The penalty for the late filing or unreported amounts of contributions and expenditures on a participating candidate filing and non-participating candidate filing is half a percent of the transaction amount(s) per calendar day.

E. Insufficient filings.

1. An insufficient filing is when an entry on a report is missing one or more fields of required information, or an item of information provided is not accurate or adequate.

a. Missing or inadequate information:

i. If there are entries listed that do not include all of the required information, a notification will be sent to the person the campaign or political committee designates to receive notifications about program determinations.

ii. If all the requested information is provided by the amendment deadline provided in the notice, the report is considered sufficient and there is no penalty.

iii. If the campaign or political committee is unable to secure the missing information by the amendment deadline, they may submit a filing showing that the contribution or expenditure has been returned.

I. This must be done within the amendment deadline.

II. If the Director determines the return filing to be sufficient, penalties will be waived.

b. Inaccurate information: If required information reported is inaccurate, it is subject to a penalty.

i. The penalty for reporting an item of value exchanged for a contribution as a matchable contribution is three times the match rate of the item of value.

2. The penalty for an insufficient filing is half a percent of the transaction amount(s) per calendar day, subject to a cap of twenty-five (25 percent) of the transaction amount.

F. Fully omitted contributions and expenditures.

1. A fully omitted filing of a contribution or expenditure is one that is not remedied before the subsequent reporting deadline.

2. The penalty for a fully omitted filing of a contribution or expenditure is one percent of the transaction amount(s) per calendar day, subject to a cap of 50 percent of the transaction amount.

G. Prohibited contributions.

1. If a campaign accepts a prohibited contribution, it may cure the violation by returning the prohibited amount prior to the transaction's reporting deadline and reporting the contribution as refunded at the next reporting deadline. If a campaign cures a prohibited contribution on time, no penalty will be assessed. If a campaign cannot repay a contribution to the contributor, paying the same amount to the Fund within the cure period is an effective cure.

2. The penalty for prohibited contributions as set out in 02.06.040 is two times the amount of the prohibited contribution. The penalty will be waived if the campaign pays back the prohibited contribution within the cure period.

H. Prohibited Expenditures.

1. A prohibited expenditure includes expenditures in violation of PCC 2.16.080.

2. The penalty for a prohibited expenditure by a candidate who is not certified is to make a personal contribution to the Fund in the same amount as the prohibited expenditure and to pay a penalty of 10 percent of the prohibited expenditure amount to the Fund.

I. For violations that do not have a related reporting deadline and do not relate to fraud or document falsification, the Director will notify a campaign of a potential violation and give the campaign 7 calendar days to explain why the expenditure was not prohibited or to cure it. If

the Director determines the expenditure was not prohibited or was effectively cured, the campaign will not be penalized. If the campaign does not explain or cure the expenditure within 7 days or if the Director determines the expenditure was prohibited, the campaign will be subject to the penalty.

J. In-kind contribution violations.

1. The first $1,000, calculated to accrue cumulatively, of prohibited in-kind contributions can be cured by paying an amount equal to the prohibited amount to the Fund within the reporting period.

2. In-kind contributions which exceed the total limit per donor by more than $1,000, calculated to accrue cumulatively, are subject to a penalty of twice the amount of the violation.

K. Campaign Account Violations.

1. A candidate with a campaign account that is not designated as the candidate's campaign account may transfer the funds in the account to a savings account associated with the candidate's campaign account.

   a. Except as provided in (b), the savings account must be inactive for the duration of the relevant election cycle once created. It will be treated as separate from the designated campaign account and subject to the provisions in this section.

   b. Campaigns may use the savings account to make a seed money contribution within the rules and limits of the program, cure violations described in Section 18(U)(3) of this Rule, for de minimis transactions as stated in PCC Section 2.16.040, or to make temporary transfers to or from the campaign checking account for the purpose of accepting or making a payment related to a prior campaign.

2. Campaign account violations include without limitation:

   a. Depositing campaign contributions or matching funds into or making expenditures from an account other than the designated campaign account reported to the Director, other than expenditures permitted by these rules;

   b. Having more than one active campaign account, including an associated savings account as described in subsection 1 of this section;

   c. Having a campaign account other than the candidate's campaign account that has not been reported to the Director; and

   d. Failure to return City matching funds erroneously distributed to a campaign account by the deadline in the notification sent by the Director.

3. Violations of campaign account requirements set out in PCC 2.16.040 will be assigned a penalty as follows:

   a. Minor violations will be required to be cured by paying the Fund an amount no more than equal to the amount of the violation.

   b. Serious violations will be subject to a penalty of no less than equal to the amount of the violation and no more than triple the violation.

c. The determination of whether a violation is minor or serious is at the discretion of the Director. The Director will weigh the following factors to determine whether a violation is minor or serious:

i. Whether the violation occurred prior to the candidate filing a Notice of Intent with the Director;

ii. Whether the violation requires a recent proactive action to occur;

iii. The amount of the transaction that was in violation; and

iv. Whether the candidate reasonably would have known of the violation prior to it occurring and been able to prevent the violation.

L. Soliciting or directing contributions to other campaign finance entities to support a participating or certified candidate's own election, in violation of PCC 2.16.120 H, will result in a penalty of up to $10,000 at the Director's discretion.

M. Misrepresentation of Program Status: Any candidate, campaign staff, or campaign surrogate found to have misrepresented that a candidate is participating in this Program and that contributions being solicited at the moment of the misrepresentation will be matchable when they have not filed a Notice of Intent, have been notified of rejection from certification, have passed the certification deadline and not been certified, or have been decertified will be subject to a penalty of $1,000 for each incident with a maximum of $5,000.

N. Fraud: A campaign that is subject a penalty of up to $10,000 and denial of certification if they are not yet certified and decertification and repayment of all City matching funds plus 10 percent interest per annum if they are certified, unless it is cured within the cure period. The cure period end 7 calendar days after the campaign learns of the fraud from a source not linked to a program investigation.

O. Any other violations: Any other violation of the program or these rules may result in a penalty, denial of certification, decertification per PCC 2.16.160 B, and repayment of public funds, including interest.

P. An egregious violation, or multiple violations which together are egregious, by a participating candidate may subject the candidate to tripling of the penalty imposed, denial of certification, or decertification per PCC 2.16.160(B), or a combination of these. Egregious violations include without limitation failures to timely and accurately report expenditures or contributions that violate program requirements, failure to remedy a violation within a reasonable time period, and failure to pay penalties totaling a large percentage of privately raised funds within a reasonable time period.

Q. Withholding City matching funds:

1. The Director may withhold City matching funds from a campaign:

a. In the case of high outstanding penalty amounts or egregious violations, until penalties are paid, and any other required remedies are carried out; or

b. In the case that a campaign does not answer program questions or provide requested documentation during a program investigation, until questions are answered, and documentation is provided.

2. A candidate from whom City matching funds have been withheld may appeal the decision according to process outlined in PCC 2.16.170(D)(2).

R. Exceptions:

1. If there is written evidence that any violation is made as a result of an error by the Director, the violation is waived and no penalty is assessed.

2. Multiple like instances in one reporting period of de minimis impact may be combined when calculating the penalty at the discretion of the Director.

S. Payment of penalties.

1. No penalty may be paid using City matching funds, except as permitted or required in these Administrative Rules or the published Penalty Matrix.

2. If a civil penalty has been imposed against a candidate or the campaign committee of a candidate, the candidate will be personally liable for the amount to be paid.

3. If a civil penalty has been imposed against a political committee other than a campaign committee of a candidate, the directors of the political committee will be jointly and severally liable for the amount to be paid.

4. The following penalties must be paid from the candidate's campaign account:

   a. Reporting penalties in Subsections D, E, and F;

   b. Prohibited contributions in Subsection G;

   c. Prohibited expenditures in Subsection H;

   d. In-kind contributions in Subsection J; and

   e. Other violations as described in Subsection O only if the penalty notice specifies that the penalty may be paid from the candidate's campaign account.

5. The following penalties must be paid by the candidate from personal funds:

   a. Campaign account violations in Subsection K;

   b. Soliciting or directing contributions as described in Subsection J;

   c. Misrepresentation of program status in Subsection M;

   d. Other violations as described in Subsection O, if the penalty notice specifies that the penalty may not be paid from the candidate's campaign account.

6. Civil penalties may be paid at any time after receiving the notice of proposed penalty, but are due within 7 business days of the penalty becoming final.

7. Penalties imposed under this Section are subject to interest at a rate of 10 percent of the total amount per annum.

8. All moneys received for violations of any provision of the program must be paid and credited to the Fund.

T. Failure to pay penalties: At the request of the Director, the City Attorney may seek civil penalties and enforcement of any provision of the program, in addition to any other remedies provided by law, in Circuit Court or other appropriate venue.

U. Violations and Certification.

1. Candidates who collect contributions from a prohibited source or in a prohibited amount for a covered office or make a prohibited expenditure prior to filing a Notice of Intent to participate in the program and cure any prohibited contributions and prohibited expenditures within 30 days of filing the Notice of Intent are subject to a penalty of 25 percent of the total amount of prohibited contributions or expenditures. The penalty will be waived if the campaign cures the prohibited contribution or expenditure prior to receiving notice of the penalty from the Program. A candidate may not be certified until all prohibited contributions and expenditures are cured, and any applicable penalty is paid. A candidate may cure the violation by:

    a. Returning a prohibited contribution to the contributor;

    c. Getting a prohibited expenditure refunded by the payee;

    d. Transferring the violation amount to a frozen account associated with the candidate's campaign account;

    e. Donating the violation amount to the Small Donor Elections Fund, if permitted by state law; or

    f. Donating the violation amount to any organization described in section 170(c) of Title 26 of the Internal Revenue Code or to any charitable organization defined in ORS 128.620, if permitted by state law.

2. Candidates who collect contributions from a prohibited source or in a prohibited amount for an office other than a covered office or make a prohibited expenditure prior to filing a Notice of Intent to participate in the program and cure any prohibited contributions and prohibited expenditures within 30 days of filing the Notice of Intent are subject to a penalty of 25 percent of the total amount of prohibited expenditures. The penalty will be waived if the campaign cures the prohibited contribution or prohibited expenditure prior to receiving notice of the penalty from the program. A candidate may not be certified until all prohibited contributions and prohibited expenditures are cured, and any owed penalty is paid. If, on the day the candidate updates their Statement of Organization with the Secretary of State's office to a covered office, the amount in the candidate's campaign account is less than the total violation amount, the total violation will be considered cured, if the total amount in the candidate's campaign account on the day the Statement of Organization is updated, is:

    a. Transferred to a frozen account associated with the candidate's campaign account;

    b. Donated to the Small Donor Elections Fund, if permitted by state law; or

    c. Donated to any organization described in section 170(c) of Title 26 of the Internal Revenue Code or to any charitable organization defined in ORS 128.620, if permitted by state law.

3. A candidate who collects up to the contribution limit from the same contributor whose contribution was cured in alignment with subparagraph 2 will not be penalized.

4. Candidates who collect contributions from a prohibited source or in a prohibited amount or make a prohibited expenditure prior to filing a Notice of Intent to participate in the program and do not cure any prohibited contributions and prohibited expenditures within 30 days of filing the Notice of Intent will not be certified to use the program unless fully resolved as determined by the Director.

5. Any candidate who refuses to comply with a duly authorized records inspection may be denied initial certification or, if already certified, may be subject to decertification.

19. Appeals

A. Purpose: The Request for Reconsideration and appeals processes have multiple purposes which are in the interest of the appellant and provides voters with information regarding a candidate that may impact how they vote. These purposes and the interests of these parties must be taken into consideration when implementing the Request for Reconsideration and appeals processes.

1. The purposes of the Request for Reconsideration process are:

a. For the appellant: to receive a timely resolution to a program determination they believe is in error;

b. For the program: to be alerted to a potential error in a program determination in a timely manner without the expense of legal representation and conducting a full appeal process.

2. The purposes of the appeal hearings process are to:

a. For the appellant: to receive a determination from a third party whether the program determination was in error for the reasons they assert it was in error;

b. For the program: to have a process in place for a third party to review a party's rationale and evidence that a program decision was in error as well as the program's rationale and evidence that it was accurate, as an additional protection to ensure that program determinations are being made in a manner that is legally sound and politically neutral.

B. Appeals are limited to issues raised and facts asserted in the Request for Reconsideration: An appellant may not raise an issue or assert a fact in the appeal process that they did not raise or assert in their Request for Reconsideration.

C. Appeals by a candidate follow the procedures set forth in PCC 2.16.170 and these rules.

D. Appeal by the program of the Hearing Officer's decision: If a program determination or penalty is overturned in whole or in part by a hearings officer, whether the program appeals the hearings officer's decision will be determined using the following process:

1. The Portland Elections Commission will form a subcommittee to recommend whether to appeal the hearings officer's decision. Only Portland Elections

Commissioners who are publicly neutral on the outcome of the appellant's race may serve on the subcommittee.

2. Attorney advice:

   a. If the City Attorney's office represented the program before the hearings officer, the Director will solicit the advice of the City Attorney's office whether to appeal the hearings officer's decision and if doing so would serve program objectives.

   b. If external counsel represented the program before the hearings officer, the Director will solicit the advice of the same external counsel about whether to appeal the hearings officer's decision and if doing so would serve program objectives.

3. The Director will share as much of the advice from the attorney with the subcommittee of the Portland Elections Commission as can be shared without jeopardizing confidentiality or attorney-client privilege, if those are implicated.

4. The subcommittee will share with the Director their recommendation whether to appeal the hearings officer's decision and rationale.

5. The Director will make the final decision whether to appeal the hearings officer's decision.

20. Mitigating Circumstances and Personal Emergencies

A. The Director may reconsider a proposed penalty imposed or repayment determination made under the provisions of PCC 2.16.160 or these rules if the person, candidate or committee provides evidence of a valid mitigating circumstance or personal emergency that caused the initial violation or insufficient filing.

B. The only mitigating circumstances that the Director may consider in a late or insufficient filing case are:

   1. The lateness or insufficiency of a report is the direct result of clearly- established fraud, embezzlement, or other criminal activity against the committee, committee treasurer or candidate, as determined in a criminal or civil action in a court of law or independently corroborated by a report of a law enforcement agency or insurer or the sworn testimony or affidavit of an accountant or bookkeeper or the person who actually engaged in the criminal activity. This mitigating circumstance is not available to the candidate or treasurer who was the perpetrator of the wrongdoing described above;

   2. The lateness or insufficiency of a report is the direct result of fire, flood or other calamitous event, resulting in physical destruction of, or inaccessibility to, committee records ("Calamitous event" means a phenomenon of an exceptional character, the effects of which could not have been reasonably prevented or avoided by the exercise of due care or foresight); or

   3. There is written evidence that the lateness or insufficiency of a report is the direct result of an error by the Director.

C. Personal Emergency.

1. A valid personal emergency is an emergency, such as a serious personal illness or injury or death in the family of the candidate or treasurer which:

    a. Caused a report to be late; or

    b. Caused a candidate to withdraw as a candidate for office.

2. Personal emergency does not include illness such as a common cold or flu. In the case of a late report, personal emergency also does not include a long-term illness where other arrangements could have been made.

D. Request for reconsideration. A person, candidate or committee may request a reconsideration of a proposed penalty or a repayment determination due to mitigating circumstances or a personal emergency. The request must be in writing and must detail the mitigating circumstances or personal emergency. The request must be filed with the Director no later than the date the penalty or repayment is due to be paid.

21. Withdrawal

4. A certified candidate may withdraw from the program by:

    1. Submitting to the Director a Notice of Intent form with withdrawal indicated; and

    2. Repaying to the Fund any remaining funds in their account up to the full amount of the City matching funds received.

22. Interpretation

A. If a question arises on which Portland City Code Chapter 2.16 and these Administrative Rules are silent, guidance in resolving the question may be found in the laws of the State of Oregon, provided that: (1) the determination under state law is not in conflict with any provision of Portland City Code Chapter 2.16 or these Administrative Rules; and (2) the state law is not otherwise inapplicable.

23. Rulemaking

A. The Portland Elections Commission may, at any time, recommend amendments to these rules. The City Administrator or designee may, at any time, amend these rules.

B. Amendments do not take effect until the process outlined in Portland City Code Chapter 1.05 has been completed.

C. The Director must provide notice of amendments to all candidates subject to the rule. This notice must include the rule change and, when possible, the rationale for the amendment.