**Portland Elections Commission**

Meeting Agenda

*Nov 16, 2022*

**PEC Members Present:** Amy Sample Ward, Amy Ruiz, Norman Turrill, Jenny Lee, Cristina Nieves, Sabra Purifoy **PEC Members Absent:** Courtney Helstein, Anahi, Berk. **PEC Staff Present:** Director Susan Mottet and Deputy Director Daniel Lewkow

7:00-7:05pm: Housekeeping

* Minutes
* Next month is a week early, reminder

The PEC unanimously approved the September 2022 meeting minutes. The PEC decided to wait until its December meeting to approve the October meeting minutes, pending additional review by Director Mottet.

7:05-7:15pm: Quick program update

* 2022 recap

Director Mottet provided a recap of the 2022 election cycle, which ended earlier in November.

* In total, the program spent $1.4m in matching funds. It is carrying over $1m into the next cycle. However, that might not be sufficient to cover the costs of the 2024 election, since every position is up due to the recently-passed charter amendment (the City will revert to alternating races in subsequent elections). So the program’s budget request will need to be twice as large in 2024, to account for all the matching funds it needs to distribute. Commissioner Nieves asked what the financial climate will be like on the Council when the program makes this request, but Director Mottet said it was unclear at this time.
* The program’s post-election activities will shift to the legally-required audit, a PEC review of the program’s performance and its report, and a memo for the Charter Review Commission staff about how the PEC deliberated on its recommendations to adjust the match caps and rates.
* Program staff will be putting the PEC recommendations before City Council. The hope is that the Council passes them out before the end of December, since the Council members could face conflict-of-interest issues starting in January.
* The Oregonian Editorial Board requested that the PEC provide an op-ed, about how the program worked in the recent election, and what went well vs what needed improvement. Commissioners Sample Ward and Turrill volunteered to join as signers.

7:15-7:25pm - Charter Commission Phase 2:

* Remainder of Charter Commission process:
* Code to make program independent until Charter change

The Charter Review Commission is working on its Phase II recommendations, which if passed will be referred to the 2024 election. Currently, the CRC is collecting public feedback. The CRC will vote on what to recommend in its November 29 and December 3rd meetings. 15 votes will send the recommendation directly to voters, while recommendations that get 11-14 votes will send them to City Council for its consideration. After the CRC votes on these, it will disband.

On the PEC’s recommendation to make both itself and the SDE program independent: Chair Sample Ward and several community-based organizations gave oral or written testimony to the CRC in favor of the recommendation. The City Attorney drafted language for this measure. But even though the language would establish the PEC as an independent body, it does not prevent the SDE program from being reassigned to an office that answers to the Mayor (such as the City Manager or the City Administrative Office). So the program would still live under the threat of political reprisals, which contradicts the purpose of the recommendation. Director Mottet explained that PEC staff is asking the CRC to add language back in to clarify that the program would be “exclusively” implemented by the newly-created Independent Portland Elections Commission, along with language that guarantees the IPEC can only be delegated other elections programs with “appropriate resources”, and that the other bureaus are required to provide technical assistance when a program needs it.

Chair Sample Ward: if the CRC votes to pass the request along to City Council instead of directly to the voters, is it already set which meeting the City Council would consider our recommendation. Director Mottet: that is unclear. But if referred we do know it will go on the November 2024 ballot.

Director Mottet explained that until the voters consider the recommendation in 2024, the SDE program needs a temporary home. Commissioner Rubio hopes to delegate it to the Auditor, since the other elections programs are housed there. Auditor-Elect Rede expressed initial reluctance at the idea, but PEC staff and members are hoping to continue discussing the idea with her and see if there’s a solution that would work, and/or working with Multnomah County to see if we can put together an intergovernmental agreement to be housed with them. If the Auditor-Elect still declines it, then it looks like the Mayor might be planning to keep it with Commissioner Rubio’s office.

7:25-7:35pm: Appeal update:

The State Administrative Law Court heard the Rene for Portland campaign’s appeal of its penalty on October 20th. The City argued that the penalty should be upheld, and it used objective evidence to show that the discounts the Rene for Portland campaign received would not be available to the general public, and thus this would be a prohibited donation. The Rene for Portland campaign presented witness testimony from commercial real estate brokers, who each claimed that the fair market value was indeed $0/month, or was $250/month, or that a 20-30% discount from the listed $6,900 monthly rent—although none could identify a single lease where this happened or a short-term lease they have brokered at all.

On October 27th, the administrative law judge issued a ruling striking down the entire penalty and declaring that the Rene for Portland campaign. Director Mottet explained that it is in City law that the judge should have used the *de novo* standard in deciding the case, which means that the judge should “step in to the director’s shoes” and use a formula to determine the fair market value. Both the City and the campaign argued to the judge assuming this standard of review, since it is required by statute. However, the judge instead used a different standard—called the *preponderance of evidence*—which says that the City (as the respondent in the case) has the burden to provide enough evidence, and if it fails to meet this standard the whole penalty should be dismissed regardless of whether a violation actually occured. Director Mottet stated that this was the wrong standard to use and thus resulted in errors in the decision. This information is public, but Director Mottet explained that staff cannot share analysis from the City’s law firm with the PEC due to attorney-client privilege rules (which she was recently informed by the City Attorney’s office does not extend to the PEC).

The City does have the right to appeal the decision to the Multnomah County Circuit Court and argue that the administrative law judge applied the wrong standard. However, even if the Circuit Court sided with the City, it would almost certainly remand the case back to the same judge. And that judge has signaled in the opinion that he would use the facts to arrive at the same finding, such as a statement about the campaign not using the entire 3,185 square feet it exclusively leased but testifying that it only used 10-66% of it, and indicating willingness to decrease the fair market value accordingly. An appeal has limited benefit since the outcome would likely be the same, though getting rid of a precedent on the standard of review and whether the City should use objective or subjective evidence would have valuebIt was unclear who makes the decision for the City about whether it should appeal.

Commissioners Sample Ward and Ruiz discussed this issue with Commissioner Rubio’s office. It was suggested that the PEC could make the decision whether to appeal, and then the Commissioner in Charge would tell the City Attorney’s Office to follow the PEC recommendation. But if the PEC made the wrong call, who would have the authority to override their recommendation? Comm. Rubio’s office suggested that the full City Council could vote to override the PEC in that case, since it would be a democracy and transparent process. Chair Sample Ward: what would happen if too many City Commissioners are conflicted out of that vote? Director Mottet: then the PEC recommendation would stand. Chair Sample Ward: when we met with Commissioner Rubio’s team, it was discussed that this plan would set a precedent that the elected official has a separation from the PEC and thus the PEC’s independence is protected. Director Mottet: Does the PEC want to recommend that Comm. Rubio’s proposal that Comm. Rubio would follow the PEC’s guidance, but allow for the City Council to vote to override if it feels that is necessary? PEC members agreed with this suggestion. If Commissioner Rubio accepts this option, this must be completed before the December 20th deadline to appeal the decision.

Chair Sample Ward: is this going to create a problematic precedent, if we get caught in this issue again? I’m not concerned about the fine or the program’s reputation here: I’m concerned about the legal precedent. Commissioner Turrill: This issue is likely to come up again around the advertised and negotiated price.

Director Mottet: should the PEC put together a subcommittee to consider whether to appeal, rethink the program’s current rules around the appeals process, and to review the program staff’s conduct during the process? Commissioners Purifoy and Lee agreed with this suggestion. Commissioner Turrill wanted to amend the law so that this situation does not arrive again, and wanted to forgo the appeal. Commissioner Ruiz agreed. Commissioner Nieves: what would be the cost and benefit of each option? Director Mottet: Given the high-profile accusation of impropriety, the PEC should evaluate whether to take action to ensure public confidence in the program’s administration. Director Mottet suggested hiring an outside law firm to investigate the program, so that the PEC and lawmakers could use the investigation’s findings to better understand what, if anything,needs fixing or what worked.

Commissioner Purifoy: I’m concerned about any appeal, especially if we lose the opportunity to explain it in the right context. If we forgo the appeal we can at least explain our reasoning. So I see limited value in an appeal. Chair Sample Ward: I could support either approach. Commissioner Turrill: what are the chances that we could make the needed changes to the appeals process to the City Code? Director Mottet: If the changes are relatively non-controversial then it should not be an issue, and the PEC could just include it in their recommendations. We might be able to just transfer the hearings to the City’s hearing office, since they are more familiar with the proper standard of review than the state administrative judge. That could be a temporary fix.

Director Mottet also explained that the program’s outside counsel could write a letter, explaining why the judge decided the case in that manner, and make recommendations for possible changes to the appeals process. That could ensure that lawmakers are all working with the same analysis. PEC agreed to discuss this overall topic further in its December meeting.

7:35-8:30pm-Amendments to wrap around Charter reform

In the October meeting, the PEC agreed to form a subcommittee, to evaluate potential amendments should the Charter amendment pass in the general election. That amendment did pass, and here are the changes that the PEC subcommittee is recommending:

* Every donation--that meets the program’s requirements--from a city resident is eligible for matching, not just those from the candidate’s district
* Candidates can collect qualifying donations from any city resident
* Mayoral candidates must still collect 750 qualifying donations and candidates for City Council or Auditor must collect 250.
* Using the available data, the subcommittee made a tentative recommendation to establish the contribution limit at $350/donor and the match rate at 10:1 on $25.

Commissioner Ruiz: I personally lean more towards a $500 limit, since that’s closer to the limits established under Honest Elections and for Multnomah County Commission candidates. It’s important that we ensure there are sufficient funds for the candidates to campaign, but also do not bankrupt the program by amping up the matching funds. In the recent Multnomah County Chair race, both candidates had about 230 donors who gave the max of $500 each, or $125k total. So there’s likely around 500 donors citywide who could give $500.

Chair Sample Ward: matching the donations made citywide makes our democracy open and accessible. And increasing the generosity of the matching funds helps too. It is hard to say that small donors will have their voices heard if the limit is $500/person. A $350 limit with a 10:1 on $25 gives the candidate $600, and that means more for candidates without shifting the reliance to big donors.

Commissioners Turrill and Nieves supported $350 or $500. Commissioners Purifoy, Sample Ward, and Lee supported $350 limit with 10:1 matching ratio. Commissioner Ruiz supported $500 and 10:1 on $25. The majority then voted to recommend $350 limit with a 10:1 on $25 matching ratio.

The present PEC members unanimously made these other recommendations:

* Small donor organizations were also limited to $350 donations
* A match cap of $750,000 for mayoral candidates, $100,000 for Auditor candidates, and a tiered range for Council candidates of 250 donations unlocking $100,000, 750 donations unlocking another $100,000, and 1,250 donations unlocking another $100,000 (for a total of $300,000).
* Allowing qualifying organizations to make up to $10,000 in in-kind donations, but contingent on staff asking stakeholder organizations for their input on that number