



August 12, 2020

Loretta Smith
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DELIVERED ELECTRONICALLY

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Committee to Elect Loretta Smith
3321 SE 20th Avenue
Portland, OR 97202

NOTICE OF DETERMINATION

Campaign Regulations Complaint Nos.: 2020-24-LS and 2020-25-LS
- Letter of Warning and Education for Violations -

Dear Loretta Smith and Committee to Elect Loretta Smith,

On July 27, 2020, the City of Portland Auditor's Office received the two complaints named above, alleging campaign disclosure violations of Portland City Charter section 3-303 and corresponding Portland City Code (PCC) chapter 2.10. Specifically, the complaints alleged a lack of prominent disclosure of contributors and campaign contributions in a mailer sent out by the campaign, Committee to Elect Loretta Smith.

After an investigation, I have identified three violations of City campaign regulations and I am issuing this letter of warning and education. The violations result from a failure to prominently disclose required campaign contribution information on a July 2020 mailer sent to voters by the Committee to Elect Loretta Smith.

I also find no violation for the allegation that a \$6,000 contribution labeled as "Anonymous" should have been included as a disclosable dominant contributor on the mailer mentioned above.

I am issuing this letter of warning and education, pending remedy of the required disclosures as specified on pages 2 and 3, within ten (10) business days or by August 26, 2020. Failure to provide this information by August 26, 2020 may result in civil penalties of up to \$3,000 for each violation.

In summary, the three violations are as follows:

City of Portland
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www.portlandoregon.gov/auditor/elections



- 1) **Violation of Portland City Charter section 3-303(a); PCC 2.10.030 A.:** The required disclosure was not in a font size that was either the same as or larger than the majority of text in the mailer;
- 2) **Violation of Portland City Charter section 3-303(a)(2); PCC 2.10.030 A. 2. b.:** Required dominant contributor information did not include the types of businesses from which a majority of income was obtained; and
- 3) **Violation of Portland City Charter section 3-303(b); PCC 2.10.030 B.:** Required nonprofit dominant contributor information did not include top three funders for the current election cycle.

1. Violation of City Campaign Regulations

Mailer's campaign funding information font size did not meet prominent disclosure requirements

On July 10, 2020, as confirmed by Committee to Elect Loretta Smith, a mailer was printed for distribution to over 500 Portland voters. Complaint No. 2020-24-LS alleged that the disclosure information on the mailer was printed in small font that was smaller than the remainder of the text in the communication. The City Elections Office finds that there was a lack of prominent disclosure, in that the disclosure information provided on the mailer was in a font significantly smaller than the majority of the remaining text in the printed material. The lack of prominent disclosure constitutes a violation of Portland City Charter section 3-303 and PCC 2.10.030.

2. and 3. Violations of City Campaign Regulations

*Mailer lacked required disclosure information on business types contributing to majority of income
Mailer lacked required disclosure for nonprofit dominant contributors*

Although the mailer printed on July 10, 2020, did list disclosable dominant contributors, the City Elections Office finds it did not include required disclosure information regarding the following: 1) the types of businesses contributors have obtained a majority of income over the past five years, and 2) additional funder information for disclosable, nonprofit dominant contributors. **I find that these omissions constitute violations of City Charter section 3-303(a)(2), (b) and PCC 2.10.030 A. 2. b., B.**

Original Sources of Campaign Communication Funding

Oregon Elections System for Tracking and Reporting (ORESTAR) records reflect that as of July 10, 2020, the disclosable dominant contributors and funder information for the Committee to Elect Loretta Smith were as follows:

- Dominant Contributor #1: City of Portland Open and Accountable Elections
- Dominant Contributor #2: United Food and Commercial Workers, Local 555
- Dominant Contributor #3: Local 48 Electricians PAC
 - Top Funder #1: Darren Chapman
 - Top Funder #2: Timothy Hayes
 - Top Funder #3: Richard Blair
- Dominant Contributor #4: Naral Pro-Choice Oregon PAC
 - Top Funder #1: Harold Demarest

- Top Funder #2: Nancy Ponzi
- Top Funder #3: Debra George

Additional Follow Up Required

In order to meet the requirements for prominent disclosure and avoid penalties up to \$3,000 per violation, the Committee to Elect Loretta Smith must provide the following information to the Elections Office by 5:00 PM on August 26, 2020:

- 1) Confirmation on whether or not Dominant Contributor #2 is a political committee or nonprofit organization, and if it is either one of those entities then provide its top three funders for this election cycle; and
- 2) The types of business from which Dominant Contributors #1-4 have obtained a majority of income over the previous five years.

4. No Violation of City Campaign Regulations

Mailer did not erroneously exclude "Anonymous" contributor information

Complaint No. 2020-25-LS alleged that the same mailer printed on July 10, 2020, failed to include the listing of "Anonymous" as a dominant contributor in its campaign mailer. The evidence provided supported that the "Anonymous" contribution was a collection of individual contributions, each within the \$250 limit, for Open and Accountable Elections matching contributions, or less. As such, none of the individual contributions reached the threshold of \$1,000 required to be considered a dominant contributor requiring disclosure on campaign communications. **Therefore, I find no violation of City Charter section 3-303 for the exclusion of "Anonymous" in the list of dominant contributors included in the mailer.**

The Committee to Elect Loretta Smith provided a response to the complaint allegation and explained the following: The "Anonymous" contribution was not a single contribution, but a collection of contributions from individuals. The individual contributions were each under the \$250 limit and were deposited as a \$6,000 lump sum. The cash donations were separated from the envelopes they arrived in and the envelopes were lost. There was no documentation of the cash contributions related to the "Anonymous" contribution aside from the envelopes. The campaign provided bank statements supporting that it made a deposit of \$6,000 on April 21, 2020. The campaign stated the \$6,000 cash deposit was never utilized and no Open and Accountable Elections matching funds were received related to this deposit. It also explained the \$6,000 were donated to the Oregon Food Bank in order to comply with state regulations regarding anonymous donations. The City Elections Office did not discover evidence disputing the campaign's assertions.

City Campaign Regulation Background & Education

City Campaign Regulations

Portland Charter Chapter 3, Article 3 and City Code Chapter 2.10 (collectively, the "City Campaign Regulations" or "regulations") were passed by voters in November 2018 and are administered and

enforced by the City Auditor's Office. The regulations require certain campaign contributors and their respective sources of income be prominently listed on campaign communications, including mailers to voters. PCC 2.10.030. The regulations also specifically require disclosures for printed communications.

Provisions regarding campaign disclosures were upheld and have been in effect and enforceable for all candidates as of September 1, 2019.¹

Candidates qualified to appear on the ballot for the May 19, 2020, Primary Election were given notice of the City Campaign Regulations and guidance at the time of candidacy determination.²

City Campaign Regulations require disclosures on communications as follows (in relevant part):

A. Each Communication to voters related to a City of Portland Candidate Election shall Prominently Disclose the true original sources of the Contributions and/or Independent Expenditures used to fund the Communication, including:

1. The names of any Political Committees and other Entities that have paid to provide or present it; and
2. For each of the five Dominant Contributors providing the largest amounts of funding to each such Political Committee or Entity in the current Election Cycle:
 - a. The name of the Individual or Entity providing the Contribution.
 - b. The types of businesses from which the maker of the Contribution has obtained a majority of income over the previous 5 years, with each business identified by the name associated with its 6-digit code of the North American Industry Classification System (NAICS).

....

B. If any of the five largest Dominant Contributors or Dominant Independent Spenders is a Political Committee (other than a Small Donor Committee) or nonprofit organization, the prominent disclosure shall include its top three funders during the current Election Cycle.

C. The disclosure shall be current to within ten (10) days of the printing of printed material or within five (5) days of the transmitting of a video or audio communication. PCC 2.10.030. A. 1.–2., B.

City Campaign Regulations define "communications" needing disclosures, "dominant contributors" that must be disclosed, and what it means to "prominently disclose," as follows:

D. "Communication" means any written, printed, digital, electronic or broadcast communications[.] PCC 2.10.080 D.

F. "Dominant Contributor" means any Individual or Entity which contributes more than \$1,000 during an Election Cycle to a Candidate Committee or Political Committee. PCC 2.10.080 F.

O. "Prominently Disclose" means that the disclosure shall be readily comprehensible to a person with average reading, vision, and hearing faculties, with:

¹ See *In re. Validation Proceeding to Determine the Legality of City of Portland Charter Chapter 3, Article 3 and Portland City Code Chapter 2.10 Regulating Campaign Finance and Disclosure* (Multnomah County Circuit Court Case No. 19CV06544).

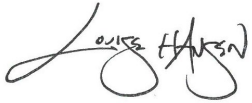
² See email and letter including guidance on the City Campaign Regulations sent by the City Elections Office to candidate Loretta Smith on January 31, 2020 (Candidacy Determination: Smith).

1. any printed disclosure appearing in a type of contrasting color and in the same or larger font size as used for the majority of text in the printed material[.] PCC 2.10.080 O.

Appeals

Pursuant to PCC 2.10.050 I., an appeal may be filed with the Multnomah County Circuit Court within 30 days of the issuance of a decision.

Sincerely,

A handwritten signature in black ink that reads "Louise Hansen". The signature is written in a cursive style with a large, looping initial "L".

Louise Hansen
City Elections Officer