



P O R T L A N D  
CITY AUDITOR  
**Elections**

October 6, 2020

Loretta Smith  
PO Box 42307  
Portland, OR 97242

**DELIVERED ELECTRONICALLY**  
sloretta407@aol.com  
info@votelorettasmith.com

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

### **NOTICE OF DETERMINATION**

Campaign Regulations Complaint No.: 2020-40-LS  
**- Letter of Warning and Education for Violation -**

Dear Loretta Smith and Committee to Elect Loretta Smith,

On September 8, 2020, the City of Portland Auditor's Office issued the complaint named above, alleging campaign disclosure violations of [Portland City Charter Section 3-303](#) and corresponding [Portland City Code \(PCC\) Section 2.10.030](#). Specifically, the complaint alleged a lack of prominent disclosure of campaign contributors in a mailer sent out by the campaign, Committee to Elect Loretta Smith.

**After further investigation, I find one violation of City campaign regulations based on a failure to timely and prominently disclose required funding information on an April 2020 mailer sent to Portland voters by Committee to Elect Loretta Smith.**

**Accordingly, I am issuing this Letter of Warning and Education for Violation with no additional civil penalty based on factors and considerations described in Section 3 below.**

#### **1. Violation of City Campaign Regulations**

*Mailer lacked required disclosure of communication funding information*

Loretta Smith, a participant in the Open and Accountable Elections (OAE) Program, was a City candidate for Commissioner Position No. 2 in the City of Portland's May 19, 2020 Primary Election and the August 11, 2020 Special Election. Committee to Elect Loretta Smith was the political committee for City candidate Loretta Smith.

Complaint 2020-40-LS alleged Committee to Elect Loretta Smith distributed a campaign-related mailer to Portland voters that did not include required funding information. As confirmed by



the campaign and from findings in a prior investigation,<sup>1</sup> the mailer at issue was printed in mid-April 2020 and sent to over 500 recipient on April 21 and 22, 2020. The mailer listed Committee to Elect Loretta Smith in the return mailing address and included the statement, “Paid for by the Committee to Elect Loretta Smith.” No additional campaign funding information was disclosed on the mailer. As discussed in more detail below, the Auditor’s Office finds the OAE Program was a disclosable dominant contributor not included on the mailer in question. **I find the lack of this required disclosure constitutes one violation of the City’s campaign regulations.**

## **2. Original Sources of Campaign Communication Funding**

*Funding original sources for campaign mailer*

Based on the relevant election cycle and timing of the communication at issue,<sup>2</sup> Oregon Elections System for Tracking and Reporting (ORESTAR) records reflect Committee to Elect Loretta Smith received over \$1,000 from the following undisclosed dominant contributor:

- Dominant Contributor: City of Portland Open and Accountable Elections

## **3. Additional Findings and Consideration Factors**

The Auditor’s Office finds that although the OAE Program was a disclosable dominant contributor, Committee to Elect Loretta Smith followed guidance on required disclosures provided by the OAE Program at the time. In an email dated May 1, 2020, the OAE Program notified City candidates of a change in interpretation and the need to include the OAE Program as a dominant contributor in campaign materials going forward. The OAE Program’s notification was contrary to guidance previously provided by the Program to campaigns. However, Committee to Elect Loretta Smith did not receive the OAE Program’s notification until after the mailer at issue was distributed on April 21 and 22, 2020.

In consideration of this fact and in addition to the fact that the current Notice of Determination is issued after the election date relevant to City candidate Loretta Smith,<sup>3</sup> the Auditor’s Office elects to issue this Letter of Warning and Education for Violation.

## **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.

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<sup>1</sup> See [2020-28-LS Final Determination](#), issued on August 20, 2020.

<sup>2</sup> The Auditor’s Office assessed eligible dominant contributors using the relevant time period of January 23, 2020 through April 21, 2020. According to ORESTAR, January 23, 2020 was the earliest date Committee to Elect Loretta Smith made a campaign-related expenditure within the relevant election cycle (see ORESTAR Transaction ID: 3376005). April 21, 2020 was the first date the mailer at issue was sent out to Portland voters by mail.

<sup>3</sup> See [Auditor Administrative Rule \(ARA\) 13.03\(D\)\(2\)\(c\)\(iv\)\(B\)](#), adopted October 3, 2020.

Provisions regarding campaign disclosures were upheld and have been in effect and enforceable for all candidates as of September 1, 2019.<sup>4</sup> 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.<sup>5</sup>

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.

....

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., C. [bold added for emphasis].

*NOTE: Since the City Charter and City Code require disclosure of dominant contributors providing the largest amounts of "funding" to the political committee or entity, the OAE Program may qualify as a dominant contributor based on matching funds in excess of \$1,000.*

"Communications" and "dominant contributors" are also defined 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.

### **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,



Louise Hansen  
City Elections Officer

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<sup>4</sup> 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).

<sup>5</sup> 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).