



November 5, 2020

Next Up Action Fund  
dba Next Up Oregon  
333 SE 2nd Ave  
Portland, OR 97214

**DELIVERED ELECTRONICALLY**  
samantha@nextuporegon.org

### **NOTICE OF DETERMINATION**

Campaign Regulation Complaint No.: 2020-46-NU  
**- Letter of Warning and Education -**

Dear Next Up Action Fund,

On October 22, 2020, the City of Portland Auditor's Office received 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](#). The complaint also alleged a failure to register in the Oregon Elections System for Tracking and Reporting (ORESTAR) in violation of [City Charter Section 3-302](#) and corresponding [PCC 2.10.20](#).

**After an investigation, I have identified one violation of City campaign finance regulations. I am issuing Next Up Action Fund this Letter of Warning and Education. The violation results from a failure to disclose required funding information on its communication to voters.**

I am issuing this Letter of Warning and Education, pending remedy of disclosure information as specified on page 3, within **ten (10) business days** or by **November 20, 2020**. Failure to provide the disclosure information by the deadline may result in a civil penalty of up to \$3,000 for the violation.



## **1. No Violation of City ORESTAR Registration Requirements**

### *Next Up Action Fund Did Not Fail to Complete Required ORESTAR Registration*

Complaint 2020-46-NU alleged Next Up Action Fund<sup>1</sup> dba Next Up Oregon failed to register itself in ORESTAR despite allegedly receiving contributions and making expenditures in support of candidate Teressa Raiford. City Charter Section 3-302(b) requires an entity to register as a political committee in ORESTAR within three business days of exceeding \$750 in aggregate independent expenditures<sup>2</sup> to support or oppose a candidate.

Next Up Action Fund stated it did not have contributions or expenditures to report during the time period leading up to issuance of this complaint. However, Next Up Action Fund admitted that on October 25, 2020, after this complaint was issued, it made an in-kind contribution of \$1,233.10 to the Chloe for Portland campaign for staff time and technology.<sup>3</sup> However, this in-kind contribution does not qualify as an independent expenditure for purposes of registering as a political committee in ORESTAR.<sup>4</sup> **Therefore, I find no violation.**

## **2. Violation of City Funding Disclosure Regulations**

### *Next Up Action Fund Failed to Disclose Required Funding Information on Social Media and Website; Next Up Did Not Fail to Disclose Required Funding Information on Text*

This complaint also alleged a lack of required funding disclosures on a text message and other communications alleged to have been sent by Next Up Action Fund.

The text message at issue stated it was from "Emily with the Write in Teressa Raiford Campaign," and included no indication it was from Next Up Action Fund. In its response to this complaint, Next Up Action Fund also denied it sent the text message at issue. The evidence provided supports Next Up Action Fund was not responsible for the text or the text's funding disclosures.

As for the additional communications, [City Charter Section 3-303](#) (Disclosure Provisions) requires funding disclosures for each communication to voters that is related to a City of Portland candidate election. The Auditor's Office finds the following: Next Up Action Fund endorsed City candidates Teressa Raiford and Chloe Eudaly on its website and on social media, as well as opposed mayoral candidate Ted Wheeler on social media by calling for his resignation. Those announcements

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<sup>1</sup> Registry Number 1564676-99 in the Oregon Secretary of State Business Registration database reflects Next Up Action Fund is legally registered as New Progressive Network dba Next Up Action Fund.

<sup>2</sup> For the definition of "independent expenditure," see ORS 260.005(10).

<sup>3</sup> Chloe for Portland also reported Next Up Action Fund's \$1,133.10 in-kind contribution for staff time and technology in ORESTAR (See Transaction ID: 3663952).

<sup>4</sup> See Elections Division, Oregon Secretary of State, [2020 Campaign Finance Manual](#) 13 (Mar. 2020) (adopted by Oregon Administrative Rule 165-012-0005), which specifies that an Independent Expenditure excludes "an expenditure reported as an in-kind contribution by a committee[.]" See also ORS 260.005(18)(b)(A), which excludes expenditures required to be reported by a candidate or political committee. Independent Expenditures also must be expended for a communication in support or opposition to a clearly identified candidate or measure, which is not the case here. See ORS 260.005(10) for definition of "independent expenditure."

qualified as communications to voters. Furthermore, Next Up Action Fund qualifies as an entity<sup>5</sup> and did disclose itself on those communications.

The Disclosure Provisions also require political committees to additionally disclose dominant contributors on communications to voters. The Auditor's Office finds the following: On March 11, 2020, Next Up Action Fund expended staff time posting an endorsement of City candidates on its website. From the available information, the Auditor's Office finds at that point in time Next Up Action Fund became a political committee.<sup>6</sup> The next communications to voters included website and Instagram posts, and occurred from March 19, 2020 through August 31, 2020. Therefore, political committee Next Up Action Fund was obligated to disclose any of its top five dominant contributors<sup>7</sup> that made contributions<sup>8</sup> from March 11 through August 17, 2020.

When asked for additional information, Next Up Action Fund stated the Auditor's Office could assume Next Up Action Fund had funders that paid more than \$1,000 during the March 11 through August 17, 2020 timeframe. **Therefore, the Auditor's Office finds one violation for failure of Next Up Action Fund to disclose dominant contributor information on its communication to voters.**

### **3. FOLLOW UP REQUIRED: Original Sources of Campaign Communication Funding**

In order to meet the requirements for prominent disclosure and avoid penalties up to \$3,000 per violation, Next Up Action Fund must provide the following information to the Elections Office by 5:00 PM on November 20, 2020:

1. The names of Next Up Action Fund's top five dominant contributors, current to within 10 business days of each of the following communications:
  - March 19, 2020 (Instagram post in support of candidates Candace Avalos and Teresa Raiford)
  - April 16, 2020 (Instagram post in support of candidate Teresa Raiford)
  - April 30, 2020 (Instagram post in support of candidate Candace Avalos)
  - August 31, 2020 (website post in support of candidates Chloe Eudaly and Teresa Raiford)
  - August 31, 2020 (Instagram post in opposition of candidate Ted Wheeler)

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<sup>5</sup> "Entity" is defined as "any corporation, partnership, limited liability company, proprietorship, Candidate Committee, Political Committee, or other form of organization which creates an entity which is legally separate from an Individual." [City Charter Section 3-308\(i\)](#).

<sup>6</sup> "Political committee" includes a "combination of two or more individuals, or a person other than an individual that has...[m]ade an expenditure for the purpose of supporting or opposing a candidate[.]" ORS 260.005(18)(b).

<sup>7</sup> "Dominant Contributor" is defined as "any Individual or Entity which contributes more than one thousand dollars (\$1,000) during an Election Cycle to a Candidate Committee or Political Committee." [City Charter Section 3-308\(f\)](#).

<sup>8</sup> "Contribution" includes "[t]he payment, loan, gift...services...or any other thing of value...to or on behalf of [a]...political committee or measure[.]" ORS 260.005(3)(a).

2. For each of the dominant contributors above, the types of businesses from which the dominant contributor has obtained a majority of its income over the previous five years (according to the North American Industry Classification System categories).

### **City Campaign Regulation Background & Education**

#### City Campaign Regulations

Portland Charter Chapter 3, Article 3 and PCC 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 to voters. Provisions regarding campaign disclosures were upheld and have been in effect and enforceable as of September 1, 2019.<sup>9</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.
      - 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., C.

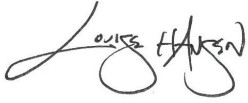
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<sup>9</sup> See *In re. Validation Proceeding to Determine the Legality of City of Portland Charter Chapter 3, Article 3 and Portland City Code Chapter 2.10 Regulating Campaign Finance and Disclosure* (Multnomah County Circuit Court Case No. 19CV06544).

**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" and "H".

Louise Hansen  
City Elections Officer