



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

November 3, 2020

Ted Wheeler  
PO Box 42307  
Portland, OR 97242

Friends of Ted Wheeler  
3321 SE 20th Avenue  
Portland, OR 97202

**DELIVERED ELECTRONICALLY**

campaign@tedwheeler.com  
danny@tedwheeler.com  
j.green@c-systems.com

**NOTICE OF DETERMINATION**

Campaign Regulation Complaint No.: 2020-47-TW  
**- No Violation, No Action -**

Dear Ted Wheeler and Friends of Ted Wheeler,

The Auditor complied with an Oct. 23, 2020 court order to issue the complaint named above.<sup>1</sup> The complaint alleges candidate Ted Wheeler and the campaign Friends of Ted Wheeler violated [Portland City Charter Section 3-301\(b\)\(3\)](#) and [Portland City Code Section 2.10.010\(B\)\(3\)](#) (together, the Self-Funding Limit) when the candidate gave his own campaign a loan of \$150,000.

**After an examination, I find no violation for either Ted Wheeler or Friends of Ted Wheeler, and the Auditor's Office takes no further action for the reasons stated below.**

Complaint No. 2020-47-TW alleges Ted Wheeler's \$150,000 loan to Friends of Ted Wheeler violated the Self-Funding Limit, which sets \$5,000 as the maximum amount a candidate may loan the candidate's campaign.

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<sup>1</sup> Because several provisions of Portland's campaign finance regulations conflict with the Oregon and federal constitutions, the Auditor's Office defined "complaint" in its Administrative Rules to exclude complaints that allege violations of provisions that are unenforceable because they clearly conflict with constitutional law. See [ARA 13.02\(B\)](#). Accordingly, the present complaint does not meet the Auditor's definition of complaint, and the Auditor closed it without investigation. However, a court ordered the Auditor to more thoroughly comply with the complaint process, and the Auditor complied by initiating an examination and issuing the current Notice of Determination. The court did not reach the merits of whether the Self-Funding Limit is constitutional.



I find candidate Ted Wheeler did loan \$150,000 to his candidate committee, Friends of Ted Wheeler, on September 18, 2020.<sup>2</sup> I also find Friends of Ted Wheeler accepted the loan. However, I find the Self-Funding Limit is unenforceable.

The First Amendment of the U.S. Constitution guarantees candidates "the unfettered right to make unlimited personal expenditures"<sup>3</sup> on behalf of the candidate's own campaign. Because it is impossible for a candidate to retain this constitutional right and comply with the Self-Funding Limit, the Supremacy Clause operates to preempt the Self-Funding Limit.<sup>4</sup> The U.S. Supreme Court has consistently held that the only government interest significant enough to infringe political free speech is the prevention of corruption, or the appearance of corruption, in politics. Significantly, the Court has found that the government's interest is insufficient where, as here, "use of personal funds reduces the candidate's dependence on outside contributions and thereby counteracts the coercive pressures and attendant risk of abuse[.]"<sup>5</sup>

Because candidates have a clear First Amendment right to self-fund, enforcement of the Self-Funding Limit would be unconstitutional.

**Therefore, I take no further action and find no violations because the Charter and Code sections on which the Self-Funding Limit is based are unconstitutional.**<sup>6</sup>

### **Appeals**

Pursuant to Portland City Code 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>2</sup> See ORESTAR Transaction IDs 3579438 (original filing) and 3605574 (amended filing).

<sup>3</sup> Davis v. Fed. Election Comm'n, 554 U.S. 724, 743–44 (2008).

<sup>4</sup> Willis v. Winters, 350 Or 299, 307–08 (2011) (The laws of the United States are the "supreme laws of the land," and state courts "shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.").

<sup>5</sup> Buckley v. Valeo, 424 U.S. 1, 53 (1976).

<sup>6</sup> Li v. State, 338 Or. 376, 396–97 (2005).