

ADM-2.19 - Penalty Matrix and Interest Calculations

PENALTY MATRIX AND INTEREST CALCULATIONS

Administrative Rule Adopted by the City Auditor Pursuant to Rule-Making Authority

ARB-ADM-2.19

A. Purpose

To provide a process and procedure for the imposition of penalties for violation of provisions of the Campaign Finance Fund and the calculation of interest due for delinquent penalties.

B. Authority

Code Section 2.10.020 authorizes the Auditor to adopt rules to ensure effective administration of the Campaign Finance Fund, including penalties and interest calculations.

C. Rules

1. General. The Auditor has the authority to assess civil penalties for

- a. Violation of any provision of Chapter 2.10 by a certified candidate;
- b. Failure to file a nonparticipating candidate report or include information required by Code Section 2.10.130; or
- c. Failure to file a report of independent expenditures or include information required by Code Section 2.10.140.

2. Maximum Penalty.

- a. No penalty imposed under Code Chapter 2.10 or this rule shall exceed \$10,000 for any violation except as otherwise provided in Code Section 2.10.220 and this rule.
- b. Limits on penalties do not include interest. Penalties are subject to interest at a rate of 12 percent of the total amount per annum.

3. Late Filings.

- a. The penalty for the late filing of a 100% Report, Increment Report, or City Independent Expenditure Report required by Administrative Rule ARB-ADM-2.13 is based on a percentage of the total contributions or total expenditures required to be included in the report (whichever is greater) multiplied times the number of business days late.

- 1) First violation by the candidate, person or political committee - 1% per business day late
- 2) Second violation by the candidate, person or political committee - 3% per business day late. The minimum penalty for a second violation is \$50.
- 3) Third or subsequent violation by the candidate, person or political committee - 5% per business day late. The minimum penalty for a third or subsequent violation is \$100.

b. If the calculated penalty is under \$50, a violation is found but the penalty is not assessed.

c. If the report is late as a direct result of an error by the Auditor, the violation is waived and no penalty is assessed. See Administrative Rule ARB-ADM-2.23.

d. The maximum penalty for reports is calculated based on the total contributions or total expenditures required to be included in the report (whichever is greater).

- 1) Greater of total contributions or expenditures is between \$0 and \$2,000 - \$100.
- 2) Greater of total contributions or expenditures is between \$2,000 and \$10,000 - \$1,000.
- 3) Greater of total contributions or expenditures is more than \$10,000 - \$10,000.

e. If a report is not filed by the 90th day after the filing deadline, the maximum penalty for that report will be assessed. If the report is subsequently filed prior to the deadline for a candidate or treasurer to request a hearing or by the day of the hearing if a hearing is requested, the penalty will be calculated based on the committee's activity, the lateness of the report, and the number of prior violations.

f. If a report is faxed, the entire report must be received by 5:00 p.m. on the deadline or it is considered late. A fax transmittal confirmation indicating a successful transmission does not guarantee or prove a report was filed timely.

g. A report may be considered late even if it is otherwise filed timely if it contains little or no reported activity and subsequent amendments show that substantial activity occurred during the applicable accounting period.

4. Insufficient Filings.

- a. An insufficiency results when an entry on a report is missing one of the items of required information or an item of information provided is not adequate.
- b. After the filing deadline for a report or after a report is filed, the Auditor has 10 business days to review the report. If there are entries listed that do not include all of the required information, an exam letter identifying the insufficient items will be sent to the treasurer. If all the requested information is provided by the amendment deadline provided in the exam letter, the report is considered sufficient and there is no penalty. If the treasurer fails to provide the information requested in the exam letter by the amendment deadline, the committee will be subject to a penalty for an insufficient report.
- c. The penalty for all missing or insufficient items is based on a per item charge.
 - 1) First violation by the candidate, person or political committee - \$10/insufficient item.
 - 2) Second violation by the candidate, person or political committee - \$15 per insufficient item.
 - 3) Third or subsequent violation by the candidate, person or political committee - \$20 per insufficient item.
- b. If the calculated penalty is under \$50, a violation is found but the penalty is not assessed.
- c. If the report is late as a direct result of an error by the Auditor, the violation is waived and no penalty is assessed. See Administrative Rule ARB-ADM-2.23.

5. Prohibited Contributions and Expenditures.

- a. Per Code Section 2.10.090, after becoming a certified candidate, a candidate shall:
 - 1) Limit the candidate's expenditures to revenues distributed from the Campaign Finance Fund and to remaining qualifying and seed money contributions;
 - 2) Not accept further contributions except for in-kind contributions and volunteer services described in d. below.
 - 3) Not make any expenditures that are not directly related to the candidate's campaign for nomination or election to City Office.
 - 4) Not make any expenditures that are prohibited uses as described in Code

Section 2.10.090 and Administrative Rule ARB-ADM-2.22.

b. The penalty for prohibited contributions and expenditures by a certified candidate is 2 times the amount of the prohibited contribution or expenditure. The minimum penalty is \$1,000 per violation.

c. Per City Code Section 2.10.220 and Administrative Rule ARB-ADM-2.17, the Auditor shall revoke the certification of a candidate against whom a penalty has been imposed for violation of Code Section 2.10.090. The candidate shall also return to the Auditor an amount of money equal to all revenues distributed to the candidate from the campaign finance fund after the date the candidate was certified, plus 12 percent interest per annum.

d. In addition to revenues distributed from the Campaign Finance Fund, a certified candidate may accept:

1) In-Kind contributions subject to the following limitations

a) For the primary election period, including the exploratory and qualifying periods, the aggregate amount shall not exceed:

i) Mayor candidates - \$10,000

ii) Commissioner Candidates - \$7,500

iii) Auditor Candidates - \$7,500

b) For the general election period, the aggregate amount shall not exceed:

i) Mayor candidates - \$12,500

ii) Commissioner Candidates - \$10,000

iii) Auditor Candidates - \$10,000

2) Volunteer personal services are non-reportable other receipts and shall not count against the applicable limit on in-kind contributions. An individual may volunteer personal services to a candidate or political committee without making a contribution as long as the volunteer is not compensated by anyone for the services. However, if an individual provides services to a candidate or political committee during working hours paid by a third-party employer or the candidate, the employer thereby makes an in-kind contribution to the candidate or political

committee.

5. Political Advertisement Disclosure.

- a. The penalty for the failure of a certified candidate to include the disclosure statement required by City Code Section 2.10.190 on political advertisements is equal to the cost of the advertisement in violation.
- b. Per City Code Section 2.10.220 and Administrative Rule ARB-ADM-2.17, the Auditor shall revoke the certification of a candidate against whom a penalty has been imposed three or more times for violation of Code Section 2.10.190. The candidate shall also return to the Auditor an amount of money equal to all revenues distributed to the candidate from the campaign finance fund after the date the candidate was certified, plus 12 percent interest per annum.

6. Notice of Proposed Penalty. The Auditor shall send a notice of proposed penalty to any person, candidate or political committee determined to be in violation of Code Chapter 2.10.

- a) The notice shall describe the proposed penalty and outline the procedures for requesting a penalty hearing under Code Section 2.10.230 and Administrative Rule ARB-ADM-2.21.
- b) The notice shall be sent by both certified and regular mail.
- c) The notice shall specify the date the penalty will become final. Penalties are final 15 days after the mailing of the notice, unless a request for a penalty hearing is filed by the 14th day.

7. Payment of Penalties.

- a. If a civil penalty is imposed against a candidate or the principal campaign committee of a candidate, the candidate shall be personally liable for the amount to be paid.
- b. If a civil penalty is imposed against a political committee other than a principal campaign committee, the directors of the political committee shall be jointly and severally liable for the amount to be paid.
- c. Penalties may be paid from any private source. A penalty may be paid from committee funds and reported as an expenditure on the committee's appropriate contribution and expenditure report. A penalty may not be paid from Campaign Finance Fund revenues.
- d. Civil penalties may be paid at any time after receiving the notice of proposed penalty,

but are due no later than 60 days after the penalty has become final.

e. All moneys received in civil penalties for violations of Code Chapter 2.10 shall be paid to the Auditor and credited to the Campaign Finance Fund.

8. Failure to Pay. At the request of the Auditor, the City Attorney may seek civil penalties and enforcement in Circuit Court or other appropriate venue.

9. Interest Calculation.

a. Civil penalties imposed for violation of Code Chapter 2.10 are subject to interest at a rate of 12 percent simple interest of the total amount per annum.

b. The interest shall be calculated on the unpaid balance from the date the penalty became final.

D. City Code References

2.10.090 Limitations on Use of Campaign Finance Fund Revenues.

2.10.190 Political Advertisement Disclosure Requirements for Certified Candidates.

2.10.220 Civil Penalties, Revocation of Certification and Repayment of Funds.

History

Adopted by the City Auditor August 25, 2005.

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