

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. Determination by the Auditor that a certified candidate violated any provision of Chapter 2.10 during the qualifying period;
- c. Failure to file a nonparticipating candidate report or filing, or include information required by Code Section 2.10.130; or
- d. 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, Unreported Contributions and Expenditures.

- a. The penalty for the late filing or unreported amounts of contributions and expenditures on a participating candidate ORESTAR filing, nonparticipating candidate 100% or Increment Filing, or City Independent Expenditure Report required by Administrative Rule ARB-ADM-2.13 is equal to the total amount of contributions and expenditures reported late or not reported. No penalty shall be assessed for the first violation unless the total aggregate late reported or unreported contributions and expenditures are greater than \$1,000.

- b. Code Section 2.10.120 requires that a certified candidate report qualifying contributions and seed money contributions on ORESTAR within 14 days of the contribution date. In addition, the nonreporting or late reporting of a qualifying contribution or seed money contribution on ORESTAR is a violation of City Code Chapter 2.10.120 and will disqualify a participating candidate from certification. For qualifying contributions and seed money contributions sent via U.S. Mail from the contributor to the candidate, the date of the postmark will be considered the contribution date for purposes of compliance with Code Section 2.10.120.
- c. Expenditures reported late or unreported in ORESTAR by a participating candidate may subject the candidate to decertification per City Code 2.10.220.
- d. 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.
- e. 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.

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.
- d. If the calculated penalty is under \$50, a violation is found but the penalty is not assessed.
- e. 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 f. below;
- 3) Not make any expenditures that are not directly related to the candidate's campaign for nomination or election to City Office; and
- 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 except when the following conditions are met:

1) The candidate has been found to have committed only one violation of 2.10.090; and

2) It is the candidate's first violation of 2.10.090; and

3) The candidate has not been found to have committed a violation of any other provision of City Code Chapter 2.10.

If the Auditor revokes a certification 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. If a candidate is assessed a penalty and not decertified, as described in (c), the candidate's funding from the Campaign Finance Fund shall be reduced by the amount of the penalty.

e. If it is determined that a certified candidate violated any provision of Chapter 2.10 during the qualification period or after certification, the Auditor has the authority to revoke a candidate's certification.

f. 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 - \$12,000

ii) Commissioner Candidates - \$9,000

iii) Auditor Candidates - \$9,000

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

i) Mayor candidates - \$15,000

ii) Commissioner Candidates - \$12,000

iii) Auditor Candidates - \$12,000

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.

6. 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.

7. 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 written request for a penalty hearing is filed by the 7th day.

8. 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 immediately 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.

9. 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.

10. 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 Qualifying Contributions, Seed Money Contributions, and Campaign Finance Fund Revenues.

2.10.120 Full Disclosure of Campaign Expenditures and Contributions, Including Seed Money, Qualifying Contributions and In-Kind Contributions.

2.10.130 Disclosure Requirements for Nonparticipating Candidates.

2.10.140 Independent Expenditure Disclosure Requirements.

2.10.190 Political Advertisement Disclosure Requirements for Certified Candidates.

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

2.10.230 Hearings.

History

Adopted by the City Auditor August 25, 2005.

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