



P O R T L A N D
CITY AUDITOR
Elections

May 27, 2020

Ted Wheeler
PO Box 42307
Portland OR 97242

DELIVERED ELECTRONICALLY
campaign@tedwheeler.com
amy@tedwheeler.com

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

**RE: City Campaign Regulation Violations (2020-12-TW)
Warning and Education Letter**

Dear Ted Wheeler and Friends of Ted Wheeler,

Complaint and Determination

On May 8, 2020, the City Elections Office received a complaint alleging violations of City campaign regulations by your campaign. Specifically, the complaint claims:

- (1) a lack of campaign contribution disclosures on social media accounts;
- (2) campaign contribution disclosures on the campaign's website appearing in a small font and contrast in violation of campaign regulations; and
- (2) Insufficient disclosures on a campaign video posted on the campaign's social media accounts.

After an investigation, I have identified one violation of City Campaign Finance Regulations. Specifically, the required disclosures on the campaign video did not appear on screen for the required length of time. I am issuing this letter of warning and education as a result of the above violation.

Please note that further disclosure violations (as required by PCC 2.10.030), within the current elections cycle and regardless of the format or communication channel, are likely to result in civil penalties.

City Campaign Regulations

Portland Charter Chapter 3, Article 3 and City Code Chapter 2.10 (collectively, the "City Campaign Finance Regulations" or "Regulations") were passed by voters in November 2018 and are administered and enforced by the City Auditor's Office. The City Campaign Finance Regulations require certain campaign contributions and their respective sources of income to be prominently listed on campaign communications. Portland City Code (PCC) 2.10.030 (Timely Disclosure of Large



Contribution and Expenditures). The regulations specifically require disclosures for video communications to voters.

Provisions regarding campaign disclosures were upheld and have been in effect and enforceable for all candidates as of September 1, 2019.¹

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.²

Duplicative Complaint (Social Media Accounts Lacking Disclosures: Facebook.com and Twitter.com): No New Violations

Complaint 2020-12-TW alleges that each post from your campaign's Facebook and Twitter accounts is a voter communication subject to the Regulations, resulting in more than one hundred violations of PCC 2.10.030. However, prominently disclosing campaign contributors on a biographical and static "About" section complies with PCC 2.10.030 (see the Auditor's Office Administrative Rules 13.01³). I accordingly consolidated the allegations into one alleged violation.

The complaint is duplicative of a preexisting complaint (2020-04-TW), in which I ruled that your campaign's social media accounts did violate PCC 2.10.030. Subsequent to my finding, your campaign added disclosures in the biographical character-limited static profile sections, as required by administrative rule. Consequently, these alleged violations have been remedied and are in accordance with administrative rules regarding this requirement, and I find no new violation.

Disclosures not on Instagram account: Information Provided as Required, No Violation

Complaint 2020-12-TW alleges each individual Instagram post from your campaign's Instagram account is a voter communication subject to the Regulations, resulting in multiple violations of PCC 2.10.030. However, prominently disclosing campaign contributors on a biographical and static "About" section complies with PCC 2.10.030 (see the Auditor's Office Administrative Rules 13.01²) and I accordingly consolidated the allegations into one. I find that the campaign's Instagram account includes disclosures in the biographical character-limited static profile sections, as required. Therefore, I find no violation has occurred.

Campaign Website lacking Prominent Disclosure: No Violation

Complaint 2020-12-TW alleges that the font type and contrast of your campaign website's funding disclosures was not prominently disclosed. The Regulations define the term "Prominently Disclose to mean "readily comprehensible to a person with average reading, vision, and hearing faculties...with a type of contrasting color in the same or larger font size as used for the majority of the text in the message"(PCC 2.10.080.O.1.).

¹ 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).

² See email and letter including guidance on the City Campaign Regulations sent by the City Elections Office to candidate Ted Wheeler on November 26, 2019 (Candidacy Determination: Wheeler).

³ See Auditor's Office Administrative Rule (ARA) 13.01 Campaign Finance: Disclosure Requirements: <https://www.portlandoregon.gov/auditor/article/758638>.

I find that, as of the date of the complaint, the funding disclosure was comprehensible to a person of average reading and vision faculties and the funding disclosure used a contrasting color in the same or very similar font that appears on the website and its other subsections. In addition, the complaint is duplicative of a preexisting complaint (2020-09-TW), in which the same or similar disclosures did not result in a violation.

Campaign Video lacking Prominent Disclosures: Violation

Complaint 2020-12-TW alleges that a campaign video posted to social media accounts on May 4, 2020, included campaign disclosures that only appear on screen for two to three seconds, in violation of PCC 2.10.030.

Video voter communications requiring disclosure of political committees that paid to provide or present the communication and their top dominant contributors and associated sources of income, are required to be prominently disclosed, as follows (in relevant part):

(O) "Prominently Disclose" means that the disclosure shall be readily comprehensible to a person with average reading, vision, and hearing faculties, with:

2. any video disclosure remaining reading on the regular screen (not closed captioning) for not less than 4 seconds; (PCC 2.10.080.O.2.).

After reviewing the video, I find the disclosures were on screen for less than the required four seconds and is therefore in violation of the Campaign Finance Regulations.

In determining appropriate penalties for this complaint, our office considered that the campaign corrected the issue when notified of the complaint in question by adding additional disclaimers and this was the first violation of new disclosure requirements for the elections cycle for a video campaign communication. As a result, this letter constitutes a warning and letter of education.

Note that further violations of any full and prominent disclosure required by PCC 2.10.030 will likely result in civil penalties.

Appeals

Appeals for this decision can be made to the Multnomah County Circuit Court within 30 days, as provided by PCC 2.10.050. I.

Sincerely,



Deborah Scroggin
City Elections Officer