

City Finance Director Administrative Policy

Date: September 28, 2020
To: Jeff Towery, City Manager
From: Jennifer Cuellar, Finance Director
Subject: Campaign Finance Laws: Implementation and Enforcement Policies

The following provides an Administrative Policy (AP) created to guide the City of McMinnville (“City”) Finance Director in the implementation and enforcement of Chapter 2.10 of the McMinnville Municipal Code (MMC) regarding campaign finance laws. The policies are comprised from the City of Portland Auditor Administrative Rules (ARA), Chapter 2.10 of the MMC, and the documents created by the City Finance Director including the complaint form, the FAQ document, and the excel sheet of checklists and timelines.

AP 13.01 Campaign Finance: Complaint Process

A. Purpose

In 2019, McMinnville passed an ordinance to regulate campaign contributions and expenditures in City candidate elections. Chapter 2.10 of the McMinnville Municipal Code require certain campaign communication disclosures, the registration of certain expenditures with the Secretary of State, and employee political deductions via payroll.

Any person may file a complaint with the City Finance Director alleging a violation of the City’s campaign finance laws, and the City Finance Director may initiate a complaint when there is reason to believe that a violation has occurred. This policy sets forth additional guidance regarding the filing of complaints and the City Finance Director

B. Construction

These policies are created to comply and conform with the McMinnville Municipal Code, specifically Ordinance No. 5096, and with applicable state and federal laws, rules, and regulations. These policies are not binding on the City Financial Director and operate only as general guidelines to follow in order to implement and enforce City Ordinance No. 5096.

C. Definitions

For purposes of this policy, the definitions set forth in City Code Section 2.10.080 apply, and:

1. “Complainant” means any person who has filed a complaint with the City Finance Director alleging a violation of the City’s campaign finance laws.

2. “Complaint” means a written statement, filed with the City Finance Director in accordance with this rule, alleging one or more violations of the City’s campaign finance laws, provided that the alleged violation(s) were subject to investigation and enforcement by the City Finance Director at the time of the alleged violation(s). Alleged violations are subject to investigation and enforcement by the City Finance Director.
3. “Good faith effort” means what a reasonable person would determine is a diligent and honest effort under the same set of facts or circumstances.
4. “Interested parties” means the subject(s) of the complaint, the complainant, and anyone who has previously requested notice of the complaint outcome.
5. Prominent disclosure in print and requirement to utilize contrasting colors is defined to include black and reverse white type, but not shades of grey scale. Examples of permitted contrasting color in black and white:

Hello Goodbye
Hello Goodbye

D. Filing a Complaint

1. Any person may file a written complaint of a violation of any provision within Chapter 2.10 with the City Finance Director.
2. Complaints must be filed by filling out the complaint form on the City website. A complainant who needs assistance making a complaint should contact the City Finance Director.
3. Pursuant to the complaint form provided on the City website, complaints must contain:
 - a. The complainant’s name, email, phone number, and address;
 - b. The name of the candidate or candidate committee (subject of complaint) alleged to have violated the City’s campaign finance laws. Complainants may raise allegations against more than one candidate, campaign, or political committee; and
 - c. A description of the alleged violation(s), including:
 - i. A description of the violation(s) (for example, the communication that lacked the required disclosures or the private or public employer that failed to permit a contribution to be made by payroll deduction); and
 - ii. The date(s) of the violation(s).
4. Complainants are encouraged to submit all documentation or evidence relevant to the alleged violation with the complaint.

5. If a complainant requests that their name and contact information be kept confidential, the City Finance Director is committed to treating the identifying information as confidential and will protect it to the greatest extent of the law. However, absolute confidentiality cannot be guaranteed, and the City will comply with applicable state public records laws.

E. Complaint Investigation

1. Upon receipt or issuance of a complaint, the City Finance Director:
 - a. Shall examine the complaint to determine whether a violation has occurred and shall make any investigation necessary.
 - i. The investigatory measures taken by the City Finance Director may include:
 1. Reviewing the complaint and any documents included with the complaint;
 2. Contacting the complainant if more information is necessary or if clarifications need to be made;
 3. Contacting the subject of the complaint regarding the communication in question and whether they have any further information to aid in the determination; and
 4. Pulling information from the campaign reporting system provided by the Secretary of State.
 - b. Shall issue a notification, including a copy of the complaint, to every person who is the subject of the complaint within 2 business days of receipt or issuance of a complaint.
 - c. Shall accept written materials supporting or opposing the complaint for a period of 10 business days following any such notification.
 - i. These materials shall be submitted to the City Finance Director in the format provided by the notification.
 - d. Shall render a decision on the complaint within 10 business days of the close of the material submission period.
2. If the complaint is received or issued within 30 calendar days of the date of the election involving the subject of the complaint, then all time periods stated in Subsection 2.10.050 E(3) and 2.10.050 E(4) shall be reduced by one-half.
3. The City Finance Director may issue subpoenas to compel the production of records, documents, books, papers, memoranda or other information necessary to determine compliance with the provisions of this Chapter.
4. Upon finding a violation of the requirement for timely disclosure set forth in Section 2.10.030, the City Finance Director shall determine the true original sources of the Contributions and/or Independent Expenditures used to fund the Communication at issue and shall immediately issue a statement to all interested parties and news organizations containing all of the information about the involved donor(s) required by Section 2.10.030, and will post the statement on the City's website.

F. City Finance Director's Decision

1. The decision on the complaint must:
 - a. Be in writing and provided to all interested parties;
 - b. Identify whether a violation of the City's campaign finance laws occurred and the basis for the decision; and
 - c. Include a statement that the complainant or the subject of the complaint may, within 30 calendar days of the issuance of the decision, appeal the decision to the appropriate Circuit Court.

2. If a violation has occurred, the City Finance Director shall contain a notice of violation in the written decision. The notice shall include:
 - a. The name of the individual or entity found to be in violation of the City's campaign finance laws;
 - b. A brief description of the findings from the investigation; and
 - c. Whether a civil penalty or warning letter will be issued.
 - i. **Civil Penalty:** If the City Finance Director issues a civil penalty, the fine must be in an amount not exceeding more than 20 times the amount of the unlawful Expenditure or Independent Expenditure at issue.
 1. In determining the specific amount due as a civil fine, the City Finance Director will consider the following factors:
 - a. The overall budget and resources available to the campaign or entity;
 - b. The number of previous violations within the same election cycle;
 - c. Whether the violation was repeated and continuous, or isolated and temporary (the City Finance Director may choose to treat repeated, similar actions occurring during the same election cycle, which would otherwise be considered distinct violations, as aggravating circumstances under a single violation);
 - d. Whether the violation appears to be willful;
 - e. The campaign or entity's level of cooperation during the investigation, including providing relevant and timely information as requested;
 - f. The amount of penalties, if any, previously imposed under similar circumstances;
 - g. The size of the intended audience and the costs associated with producing and/or managing the communication; and
 - h. Any other applicable factors the City Finance Director deems relevant.
 2. All civil penalties must be paid within 30 calendar days of issuance by the City Finance Director unless the civil penalty has been

challenged under AP 13.01(F)(3), at which point the payment of the civil penalty will be stayed pending the outcome of the judicial review.

- ii. **Warning letter:** If the City Finance Director has reasons to believe the subjects of the complaint put forth a good faith effort to comply with the ordinance, the City Finance Director may issue a warning letter upon first offence.
3. The decision in the matter shall be deemed final, following completion of any judicial review. Such decision shall be enforced by the City of McMinnville. If the decision is not enforced within 30 calendar days of the decision becoming final, the complainant may bring a civil action in a representative capacity for the collection of the applicable civil penalty, payable to the City of McMinnville, and for any appropriate equitable relief.