



Independent Expenditures:
Supplemental Report of the
Citizen Campaign Commission
to the City Council
and Citizens of Portland

February 15, 2008

Includes corrected scenarios (February 26, 2008)

Summary

Portland City Council directed the Citizen Campaign Commission to undertake a detailed review of independent expenditures and produce a proposal for revisions to the City Code related to public campaign financing.

Portland's Campaign Finance Fund is intended to reduce the impact of large special interest dollars on the campaigns for City offices. However, independent expenditures by special interests are occurring more frequently in national and state campaigns, and the Commission anticipates that City races could be affected in the future.

Portland's public campaign finance system is intended to "level the playing field" for candidates and provide a means to adjust spending levels through matching funds. However, the current code does not address independent expenditures on behalf of candidates who participate in public campaign financing.

The Commission researched other campaign finance systems for guidance in addressing independent expenditures. In addition, the Auditor and Commission developed and analyzed 14 different scenarios of independent expenditures as a means of crafting a more comprehensive set of rules.

The scenarios, proposed City Code revisions, and additional recommendations are included in this report. The Commission recommends that City Council review and adopt the proposed changes to the code regarding independent expenditures before the campaign season gets fully underway.

City Council Direction

The Citizen Campaign Commission presented its first Biennial Report to City Council in May 2007. During discussions of that report, City Council members raised questions about independent expenditures and adjustments to the threshold for non-participating candidates.

City Council directed the CCC to review current City Code regarding those two topics in order to address various situations that could occur in the course of the coming campaign season. This report was prepared in response to that directive.

Background

Portland's Campaign Finance Fund is intended to reduce the impact of large special interest dollars on the campaigns for City offices. Because of Oregon's Constitution, there are no limits on political contributions in the state, which makes it even more difficult to devise an equitable system of public campaign financing. Independent expenditures by special interests are occurring more frequently in the national and state campaigns, and the Commission anticipates that City races could be affected in the future.

Portland has been successful in reducing campaign spending while attracting new candidates for City offices with its Campaign Finance Fund. Even non-participating candidates have been willing to limit their spending to the levels provided by the Fund (e.g. \$150,000 for a commissioner primary race). Portland's system is intended to "level the playing field" for candidates and provides a means to adjust spending levels.

Independent expenditures add a complexity to campaign financing that can disrupt this tacit balance among candidates. Additional matching funds are made available to participating candidates if a nonparticipating candidate gathers contributions beyond the funding levels. Matching funds can also be triggered if independent expenditures on behalf of a candidate push total campaign spending for that candidate above the funding levels of participating candidates. Current City Code requires Political Action Committees to register and report expenditures on behalf of City candidates.

Commissioner Saltzman raised the possibility of independent expenditures being used to benefit a participating candidate. In this case the "threshold" for nonparticipating candidate should be raised, allowing contributions to be gathered up to the independent expenditure amount without triggering matching funds. Current City Code does not address this possibility, and a more comprehensive analysis was requested to address other possible inequities that could arise in campaign financing.

Citizen Campaign Commission Actions

The Commission researched other campaign finance systems for guidance in addressing independent expenditures. Specifically, Maine and Arizona laws were reviewed and discussed but they lacked the more comprehensive framework that the Commission was seeking.

In proposing any rule changes, the Commission's goal was to provide an even playing field among participating and non-participating candidates in a variety of plausible independent expenditure scenarios, while assuring that public funds are spent prudently and effectively.

Auditor's Office staff suggested a scenario-based approach to gain an understanding of the Commission's judgment and reasoning about matching funds and threshold adjustments. The Commission reviewed 14 different scenarios that represented situations that might be encountered in a campaign period. These scenarios represent different combinations of participating and non-participating candidates, with differing amounts of candidate and independent expenditures.

Each scenario was discussed and the Commission agreed on the appropriate response, whether it was an authorization of matching funds, an adjustment in the threshold, or a combination. Members of the Commission also agreed that some unusual scenarios may arise that were not anticipated and discussed a method for addressing them in a timely manner.

With those scenarios and Commission responses, the Auditor worked with the City Attorney to draft City Code revisions. The Commission reviewed the code language and made recommendations. In addition, the Commission requested the Auditor prepare a first draft of a report for Council which they edited and adopted.

Threshold and Matching Scenarios

The following 14 narratives help explain the calculations on the spreadsheet that follows. Several assumptions were added in the course of discussion among members of the Citizen Campaign Commission. Foremost is that equity of campaign financing is not always possible - a generally level playing field is sometimes the best that can be achieved.

Non-Participating Candidates	Participating Candidates
E.M. Heimo (1913 candidate) Walter Snearly (1926 candidate) Seth Nordling (1934 candidate)	A.W. Gust (1936 candidate) Floyd Ramp (1911 candidate)

Note: Each scenario is a distinct situation.

1. The Prohibition League spends \$10,000 on billboards against A.W. Gust (p-1), while Walter Snearly (np-1) had limited his fundraising to \$150,000.

Proposal: Make \$10,000 in matching funds available to Gust, if requested.

2. The Silver Society produces and airs \$10,000 worth of radio advertising against A.W. Gust (p-1).

Proposal: Make \$10,000 in matching funds available to Gust, if requested.

3. The Anti-Beef Council prints and distributes \$10,000 worth of mailers supporting A.W. Gust (p-1).

Proposal: Increase Snearly's Increment Threshold to \$160,000.

4. The Kite Society spends \$10,000 on television ads denouncing Walter Snearly (np-1).

Proposal: Increase Snearly's Increment Threshold to \$160,000.

5. The Alder Committee spends \$10,000 for printing and distributing door-hangers in support of Walter Snearly (np-1). A few days later, the Order of the Otter spends \$5,000 on billboards in support of Seth Nordling (np-2).

Proposal: Make \$10,000 in matching funds available to Gust (p-1), if requested, and increase Snearly's and Nordling's Increment Thresholds to \$160,000.

6. The Emerald Guild spends \$10,000 for lawn signs to support A.W. Gust (p-1), while the other two candidates (both non-participating) have stayed at the \$150,000 threshold.

Proposal: Increase Snearly's and Nordling's Increment Thresholds to \$160,000.

7. The Espresso Brigade spends \$7,000 on coffee cup sleeve holders with printed ads supporting A.W. Gust (p-1). The Caldera Forum spends \$20,000 on printing and distributing postcards advocating the election of Walter Snearly (np-1).

Proposal: Increase Snearling's (np-1) and Nordling's (np-2) Increment thresholds to \$170,000; make \$13,000 in matching funds available to A.W. Gust (p-1).

8. The Caldera Forum spends \$20,000 on printing and distributing postcards advocating the election of Walter Snearly (np-1). The Espresso Brigade later spends \$7,000 on coffee cup sleeve holders with printed ads supporting A.W. Gust (p-1). (Same as Scenario 7 except change in sequence of IEs.)

Proposal: Increase Snearly's and Nordling's (np-2) Increment thresholds to \$170,000; make \$20,000 in matching funds available to A.W. Gust.

9. The Willamette Electric Car Society spends \$30,000 on producing and airing a television ad supporting Walter Snearly (np-1). The Columbia Smelters Association spends \$20,000 on a targeted broadcast email in support of Seth Nordling (np-2).

Proposal: Raise the Increment Threshold for Nordling and Snearly to \$180,000; make \$30,000 in matching funds available to both A.W. Gust (p-1) and Floyd Ramp (p-2).

10. The Mahonia League spends \$30,000 in newspaper advertisements against A.W. Gust (p-1). Portlanders for Respect spends \$9,000 in radio advertisements expressly advocating the election of Walter Snearly (np-1).

Proposal: Raise the Increment Threshold of Snearly and Nordling to \$159,000. Make \$39,000 in matching funds available to A.W. Gust; make \$9,000 in matching funds available to Floyd Ramp (p-2).

11. Steel Builders United spends \$20,000 in newspaper advertisements against A.W. Gust (p-1). Gust obtains \$20,000 in matching funds. Subsequently, the Confederation of Aluminum Smelters spends \$12,000 in radio advertisements expressly advocating the election of A.W. Gust (p-1).

Proposal: Raise Increment Thresholds for both Walter Snearly (np-1) and Seth Nordling (np-2) to \$162,000 because only the leading fundraiser and all non-participating candidates within 50% of that amount are eligible for an increase in threshold. E.M. Heimo (np-3), with only \$600 in expenditures, was ineligible for a Threshold increase. Make \$20,000 in matching funds available to A.W. Gust (p-1); make \$12,000 in matching funds available to Floyd Ramp (p-2).

12. The Douglas Fir Freedom Project spends \$20,000 on printing and distribution of a slate mailer supporting 4 candidates for various offices, including one Portland participating candidate: A.W. Gust (p-1).

Proposal: Raise Increment Thresholds to \$155,000 for Walter Snearly (np-1) and Seth Nordling (np-2). Again, E.M. Heimo (np-3), who had only \$600 in expenditures at the time, was ineligible for a Threshold increase. Make \$5,000 in matching funds available to Floyd Ramp(p-2).

13. The Anti-Speed Bump Coalition purchases \$25,000 of bus benches in support of Walter Snearly (np-1). Combined with the \$135,000 he had raised, this independent expenditure brought total campaign spending on his behalf to \$160,000.

Proposal: A.W. Gust (p-1) receives \$10,000 in matching funds and the Increment Threshold is raised to \$160,000 for Seth Nordling (np-2) as well as Walter Snearly.

14. The Red Rhododendron Society spends \$20,000 on radio ads to support Walter Snearly (np-1). About the same time, the White Rose Group spends \$5,000 on billboards for their candidate Seth Nordling (np-2). Matching funds are obtained and increment thresholds are raised. A month later, the Azalea Crowd buys bus benches for A.W. Gust (p-1) totaling \$7,000.

Proposal: A.W. Gust (p-1) receives \$20,000 in matching funds and the Increment Threshold is raised to \$170,000 for Seth Nordling (np-2) as well as Walter Snearly. However, the subsequent \$7,000 on behalf of Gust does not require him to return of \$7,000 of the \$20,000 he already received. Instead, the Increment Threshold is raised to \$177,000, allowing the two non-participating candidates to gather additional contributions to reach equity with the campaign funding on behalf of Gust.

Independent Expenditure Scenarios with proposed actions

Scenario 1	Starting Expenditures	<i>Gust</i> P-1	<i>Snearly</i> NP-1			
	IE against P-1 (10,000)	150,000	150,000			
	Net Expenditures Benefitted From	-10,000				
	Matching Funds	150,000	150,000			
		10,000				
Participating candidate gets funds to match IE spending against him/her.						
Scenario 2	Starting Expenditures	<i>Gust</i> P-1	<i>Snearly</i> NP-1			
	IE in favor of NP-1 (10,000)	150,000	150,000			
	Net Expenditures Benefitted From	150,000	160,000			
	Matching Funds	10,000				
Participating candidate gets funds to match IE money spent to support non-participating candidate.						
Scenario 3	Starting Expenditures	<i>Gust</i> P-1	<i>Snearly</i> NP-1			
	IE in favor of P-1 (10,000)	150,000	150,000			
	Net Expenditures Benefitted From	10,000				
	Revised Increment Threshold	160,000				
			160,000			
Raise non-participating candidate threshold.						
Scenario 4	Starting Expenditures	<i>Gust</i> P-1	<i>Snearly</i> NP-1			
	IE against NP-1 (10,000)	150,000	150,000			
	Net Expenditures Benefitted From	-10,000				
	Matching Funds	160,000	150,000			
			160,000			
Threshold for non-participating is raised by amount spent supporting the participating candidate.						
Scenario 5	Starting Expenditures	<i>Gust</i> P-1	<i>Snearly</i> NP-1	<i>Nordling</i> NP-2		
	IE in favor of NP-1 (10,000)	150,000	150,000	150,000		
	IE in favor of NP-2 (5,000)		10,000	5,000		
	Net Expenditures Benefitted From	150,000	160,000	155,000		
	Matching Funds	10,000				
		160,000	160,000			
Participating candidate receives funds to match "higher amount" of independent spending over the threshold. NP thresholds are raised by higher amount also.						
Scenario 6	Starting Expenditures	<i>Gust</i> P-1	<i>Snearly</i> NP-1	<i>Nordling</i> NP-2		
	IE in favor of P-1 (10,000)	150,000	150,000	150,000		
	Net Expenditures Benefitted From	10,000				
	Matching Funds	160,000	150,000	150,000		
		160,000	160,000			
Threshold for each non-participating candidate is raised by amount spent supporting the participating candidate.						
Scenario 7	Starting Expenditures	<i>Gust</i> P-1	<i>Snearly</i> NP-1	<i>Nordling</i> NP-2		
	IE in favor of P-1 (7,000)	150,000	150,000	150,000		
	IE in favor of NP-1 (20,000)	7,000				
	Net Expenditures Benefitted From	157,000	170,000	150,000		
	Matching Funds	13,000				
		170,000	170,000			
IE spending that benefits participating candidates will be netted against IE spending that benefits other candidates.						
Scenario 8	Starting Expenditures	<i>Gust</i> P-1	<i>Snearly</i> NP-1	<i>Nordling</i> NP-2		
	IE in favor of NP-1 (20,000)	150,000	150,000	150,000		
	IE in favor of P-1 (7,000)	7,000	20,000			
	Net Expenditures Benefitted From	157,000	170,000	150,000		
	Matching Funds	20,000				
		170,000	170,000			
Timing issue: same as Scenario 7 except change in order - matching funds for participating candidates can't be withdrawn later if IE occurs on their behalf.						
Scenario 9	Starting Expenditures	<i>Gust</i> P-1	<i>Ramp</i> P-2	<i>Snearly</i> NP-1	<i>Nordling</i> NP-2	
	IE in favor of NP-1 (30,000)	150,000	150,000	150,000	150,000	
	IE in favor of NP-2 (20,000)			30,000	20,000	
	Net Expenditures Benefitted From	150,000	150,000	180,000	170,000	
	Matching Funds	30,000	30,000			
			180,000	180,000		
Participating candidates receive apportioned funds to match "higher amount" of IE spending over the threshold. Thresholds also increased by higher IE.						
Scenario 10	Starting Expenditures	<i>Gust</i> P-1	<i>Ramp</i> P-2	<i>Snearly</i> NP-1	<i>Nordling</i> NP-2	
	IE against P-1 (30,000)	150,000	150,000	150,000	150,000	
	IE in favor of NP-1 (9,000)	-30,000		9,000		
	Net Expenditures Benefitted From	150,000	150,000	159,000	150,000	
	Matching Funds	39,000	9,000			
			159,000	159,000		
NP-2 gets threshold increased because of apportioned IE spending, and matching funds are available to participating candidates.						
Scenario 11	Starting Expenditures	<i>Gust</i> P-1	<i>Ramp</i> P-2	<i>Snearly</i> NP-1	<i>Nordling</i> NP-2	<i>Heimo</i> NP-3
	IE against P-1 (20,000)	150,000	150,000	150,000	112,000	600
	IE in favor of P-1 (12,000)	-20,000				
	Net Expenditures Benefitted From	12,000	150,000	150,000	112,000	600
	Matching Funds	162,000	150,000	150,000	112,000	600
	20,000	12,000		162,000	162,000	162,000
Threshold increases equally among non-participating candidates regardless of funds raised.						
Scenario 12	Starting Expenditures	<i>Gust</i> P-1	<i>Ramp</i> P-2	<i>Snearly</i> NP-1	<i>Nordling</i> NP-2	<i>Heimo</i> NP-3
	IE in favor of P-1 in slate-of-4 (20,000)	150,000	150,000	150,000	112,000	600
	Net Expenditures Benefitted From	5,000	150,000	150,000	112,000	600
	Matching Funds	155,000	150,000	150,000	112,000	600
	Revised Increment Threshold		5,000			
			155,000	155,000	155,000	
Slates: Divide expenditure by number on slate to increase match/threshold among P and NP candidates.						
Scenario 13	Starting Expenditures	<i>Gust</i> P-1	<i>Snearly</i> NP-1	<i>Nordling</i> NP-2		
	IE in favor of NP-1(25,000)	150,000	135,000	112,000		
	Net Expenditures Benefitted From	150,000	160,000	112,000		
	Matching Funds	10,000				
		160,000	160,000			
IE that puts NP candidate over limit triggers matching for the excess amount.						
Scenario 14	Starting Expenditures	<i>Gust</i> P-1	<i>Snearly</i> NP-1	<i>Nordling</i> NP-2		
	IE in favor of NP-1 (20,000)	150,000	150,000	150,000		
	IE in favor of NP-1 (5,000)		20,000	5,000		
	IE in favor of P-1 (7,000)	7,000				
	Net Expenditures Benefitted From	157,000	170,000	170,000		
Matching Funds	20,000					
		177,000	177,000			
If timing causes P candidate to be overpaid, thresholds are increased by amount of overpayment.						

Additional Issues

To assist candidates in understanding the independent expenditure rules, the Citizen Campaign Commission recommends that the Auditor include the 14 scenarios and their explanations in the Administrative Rules.

When situations arise that fall outside the adopted rules, the Commission recommends a provision in the Code allowing the Auditor to confer with the Commission, make an interpretation and create an administrative rule for the future. Some of these rules might be appropriate for later adoption into the code as well.

The Commission also recognized that the extent that some independent expenditure benefit a candidate could be difficult to determine, for purposes of applying the City Code or scenarios. The Commission recommends a quick appeal process. The Code should provide that an affected candidate can appeal the determination of whether an independent expenditure is in support or opposition to a candidate to the auditor who will make a determination after conferring with the Citizen Campaign Commission or a subcommittee of its members.

The Commission believes that the proposed changes in the Code represent the most comprehensive set of rules on independent expenditures to be set forth in local or state public campaign financing. Thus far, independent expenditures have not played a significant role in City elections but, if they occur, these rules will help maintain some equity for candidates who participate in public campaign financing, as well as those candidates who privately finance their campaign.