

**ORDINANCE No.**

Amend the Open and Accountable Elections Program (Ordinance; amend Code Chapter 2.16)

The City of Portland ordains:

Section 1. The Council finds:

1. Council adopted the Open and Accountable Elections program in December 2016.
2. The intention of the program is to (1) allow candidates to engage with individuals from a variety of backgrounds and neighborhoods, which will ensure that the priorities and concerns of all individuals have the opportunity to be heard, and (2) increase the participation of all Portlanders by increasing the value of small donations.
3. Amendments are necessary to provide (1) clarity regarding the appeals and penalties process for the program and (2) clarify the administration of the program during the process of implementation.
4. Community input is necessary to ensure legitimacy in the City's programs and processes.
5. All substantive amendments have and will receive input from community stakeholders.

NOW, THEREFORE, the Council directs:

- a. City Code Chapter 2.16 is amended as shown in the attached Exhibit A to this ordinance.

Passed by the Council:

Commissioner Amanda Fritz  
Prepared by: Cristina Nieves  
Date Prepared: May 8<sup>th</sup>, 2019

**Mary Hull Caballero**  
Auditor of the City of Portland  
By

Deputy

**CHAPTER 2.16 – OPEN AND  
ACCOUNTABLE ELECTIONS PROGRAM**

**2.16.005 Short Title.**

(Added by Ordinance No. 188853, effective March 8, 2018.) Chapter 2.16 of the Portland City Code shall be known as the Open and Accountable Elections Program.

**2.16.010 Definitions.**

(Amended by Ordinance Nos. 188853 and 189336, effective January 2, 2019.) As used in this Chapter, unless the context requires otherwise:

- A. “Allowable contribution”** means a monetary donation of no more than \$250 in support of a participating or certified candidate that is:
  - 1. Made by an individual; and
  - 2. Made during the election cycle in which the candidate is seeking office;
- B. “Campaign finance entity”** means a principal campaign committee registered with the Oregon Secretary of State.
- C. “Candidate”** means:
  - 1. An individual whose name is printed on a ballot, for whom a declaration of candidacy, nominating petition or certificate of nomination to public office has been filed or whose name is expected to be or has been presented, with the individual’s consent, for nomination or election to public office;
  - 2. An individual who has solicited or received and accepted a contribution, made an expenditure, or given consent to an individual, organization, political party or political committee to solicit or receive and accept a contribution or make an expenditure on the individual’s behalf to secure nomination or election to any public office at any time, whether or not the office for which the individual will seek nomination or election is known when the solicitation is made, the contribution is received and retained or the expenditure is made, and whether or not the name of the individual is printed on a ballot.
- D. “Certified candidate”** means a candidate running for a covered office who is certified as eligible to receive public contribution matching from the Fund.
- E. “Commission”** means the Open and Accountable Elections Commission-
- F. “Contested election”** means an election in which there are at least two candidates for a covered office who have a campaign finance entity. Contested election includes a special election held to fill a vacancy in a covered office.

- G.** “**Contribution**” has the meaning set forth in ORS 260.005 and 260.007 at the time of this Chapter’s adoption.
- H.** “**Covered office**” means the office of Mayor, Commissioner or Auditor.
- I.** “**Director**” means the Open and Accountable Elections Program Director.
- J.** “**Election cycle**” means the primary election period and the general election period for the same term of a covered office. For a special election, it means the special nominating election period and the special runoff election period.
- K.** “**Expenditure**” has the meaning set forth in ORS 260.005 and 260.007 at the time of this Chapter’s adoption.
- L.** “**Fund**” means the Open and Accountable Elections Fund.
- M.** “**General election matching period**” means the period beginning 20 days before the primary election and ending 21 days before the general election. The general election matching period for a special runoff election must be set by administrative rule.
- N.** “**General election period**” means the period beginning the day after the biennial primary election and ending the day of the biennial general Election.
- O.** “**Independent expenditure**” means an expenditure by a person for a communication in support of or in opposition to a clearly identified candidate for City office that is not made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of the candidate. The terms “expenditure”, “clearly identified” and “agent” and the phrases “communication in support of or in opposition to a clearly identified candidate or measure” and “made with the cooperation or with the prior consent of, or in consultation with or at the request or suggestion of, a candidate or any agent or authorized committee of the candidate” shall have the meanings set forth in ORS 260.005 and 260.007 at the time of this Chapter’s adoption.
- P.** “**Individual**” means a natural person.
- Q.** “**In-kind contribution**” has the meaning set forth in the Oregon Administrative Rule 165-012-005 at the time of this Chapter’s adoption.
- R.** “**Matchable contribution**” is an allowable contribution of at least \$5 that is acknowledged by documentation, as specified by administrative rule.
- S.** “**Matchable donor**” means an individual 18 years of age or older who resides within the City limits of the City of Portland, whose residency is verified pursuant to criteria established by the Director, and who can legally contribute to campaigns under state and federal law. The Director may use voter registration as the sole

means of verifying residency if the Director determines other methods are not reliable or expedient. Matchable donors may only have their contributions matched for one candidate in each contested election in each matching period.

- T.** “**Non-participating candidate**” means a person who is running for a covered office who chooses not to apply to be a certified candidate, applies to be a certified candidate but fails to qualify, or a certified candidate who declines to accept a public contribution.
- U.** “**Notice of intent**” means a notice filed with the Director that a candidate intends to seek qualification as a certified candidate.
- V.** “**Participating candidate**” means a person who is a candidate for a covered office and who seeks to be a certified candidate in a primary election or general election. Limitations imposed on a participating candidate apply during the entire election cycle, both before and after filing a notice of intent to participate, whether or not the candidate has announced an intention to seek public contribution matching, and continue to apply once the candidate becomes a certified candidate.
- W.** “**Primary election matching period**” means the period of time beginning July 1 of the year preceding the primary election for the office the candidate seeks and ending 21 days before the date of the primary election. The primary election matching period for a special nominating election must be set by administrative rule.
- X.** “**Primary election period**” means the period beginning on the 45<sup>th</sup> day after the preceding biennial general election and ending the day of the biennial primary election.
- Y.** “**Public contribution**” or “**public contribution matching**” means money disbursed from the Fund to a certified candidate.
- Z.** “**Publicly funded campaign account**” means a campaign finance account established by a candidate for the exclusive purpose of receiving allowable contributions, public contribution matching and seed money contributions and spending funds in accordance with this Chapter.
- AA.** “**Seed money contribution**” means a contribution that is not an allowable contribution or in-kind contribution, which is received by a participating candidate before filing a notice of intent. A loan from the candidate or the candidate’s spouse is considered a seed money contribution.
- BB.** “**Special nominating election**” means a nominating election for a covered office held on any date other than the biennial primary election date when the Primary Election for that office would normally be held pursuant to City Charter Section 3-301.

- CC. **“Special nominating election period”** means the period beginning on the day a vacancy exists or a notice of intent to resign from office is filed with the Auditor and ending the day of the Special Nominating Election.
- DD. **“Special runoff election”** means a runoff election for a covered office held on any date other than the biennial general election date when the General Election for that office would normally be held pursuant to City Charter Section 3-301.
- EE. **“Special runoff election period”** means the period beginning on the day after the special nominating election and ending the day of the special runoff election.

**2.16.020 Open and Accountable Elections Fund Established**

(Amended by Ordinance No. 189336, effective January 2, 2019.)

- A. The Open and Accountable Elections Fund is established, separate from the General Fund. All monies described in Subsection 2.16.020 E. shall be paid and credited to the Fund. Monies in the Fund shall be invested in the same manner as other City monies, and any interest earned shall be credited to the Fund.
- B. The Director shall keep a record of all monies deposited into the Fund and the activity or program against which any withdrawal is charged.
- C. If monies credited to the Fund are withdrawn, transferred, or otherwise used for purposes other than the program or activity for which the Fund is established, interest shall accrue on the amount withdrawn from the date of withdrawal and until the monies are restored.
- D. Monies in the Fund shall provide, and are continuously appropriated for, the financing of election campaigns of certified candidates for nomination or election to City Office, and the payment of administrative, enforcement, and other expenses of the Director in carrying out the Director's functions and duties under this Chapter.
- E. The following will be deposited in the Fund:
  1. All amounts appropriated to it by the City Council. The annual impact of the appropriation on the City general fund is limited to two-tenths of one percent of the general fund without raising any new taxes or fees;
  2. Any unspent money remaining in a certified candidate's publicly funded campaign account after the candidate is no longer a candidate for a covered office that is returned to the Fund as provided in Section 2.16.100;
  3. Any public contribution plus interest returned to the Fund by a participating candidate who withdraws from participation as provided in Section 2.16.110;
  4. All interest earned on money in the Fund;

5. Civil penalties and other monies collected under Sections 2.16.160 and .170; and
6. Voluntary donations made directly to the Fund.

**2.16.030 Administrative Rules, Director’s Duties and Authority.**

(Amended by Ordinance No. 189336, effective January 2, 2019.) Before any administrative rules proposed by the Director may go into effect, the Director must submit the rules to Council for consideration and approval. The rules proposed by the Director must specify:

- A. How and when documentation for allowable contributions from contributors must be submitted to the Director;
- B. The documents that must be filed with the Director for certification;
- C. The allowable uses of money in a publicly funded campaign account; and
- D. Other policies necessary to implement this Chapter, including but not limited to:
  1. Contested elections involving special elections, recounts, vacancies, or withdrawals, including qualification, certification, and disbursement of Open and Accountable Elections Fund revenues and return of unspent revenues;
  2. Obtaining allowable contributions and matchable contributions;
  3. Certification as a certified candidate;
  4. Collection of revenues for the Open and Accountable Elections Fund;
  5. Distribution of Fund revenues to certified candidates;
  6. Investigation and enforcement procedures for misuse of public funds;
  7. Penalty matrix detailing penalties for potential violations of this Chapter;
  8. Return of Fund disbursements, penalties, and other monies to the Fund;
  9. Inspection of reports and documents for compliance with this Chapter; and
  10. Investigation of alleged violations of Chapter 2.16.

**2.16.040 Contribution and Expenditure Requirements for Participating and Certified Candidates.**

- A. Before accepting any allowable, seed money or in-kind contributions governed by this Chapter, a participating candidate must establish a publicly funded campaign

account for the candidate for the purpose of receiving contributions and making expenditures in accordance with this Chapter.

- B.** Before accepting any allowable contribution governed by this Chapter on which a participating candidate intends to rely for certification under Section 2.16.050 and seek a public contribution match, a participating candidate must:

  - 1.** File a notice of intent with the Director after the primary election matching period begins and before the filing deadline for the primary election for the covered office. For a special nominating election, filing deadlines for the notice of intent will be set that seek to provide adequate time for candidates to qualify for public contribution matching; and
  - 2.** Attend mandatory training provided by the City. The candidate's treasurer must also attend the training.
- C.** A participating candidate may accept up to \$5,000 total in seed money contributions before filing a notice of intent. A participating candidate may not accept seed money after filing a notice of intent. Certified candidates may not accept seed money contributions.
- D.** Participating and certified candidates may accept in-kind contributions valued at no more than \$20,000 for the primary election period or special nominating election period and no more than \$20,000 for the general election period or special runoff election period. The contribution of paid time for a supervisor of volunteers does not count toward the \$20,000 limit on in-kind contributions for purposes of this Chapter. However, a participating candidate must provide documentation to the Director for such a contribution and it may be reportable as an in-kind contribution under state law.
- E.** During an election cycle, participating and certified candidates may only accept allowable contributions, public contribution matching from the City, and seed money and in-kind contributions allowed by this Chapter.
- F.** Participating and certified candidates may not accept allowable contributions from any one individual totaling more than \$250 in the primary election period and \$250 in the general election period, except as provided in Section 2.16.150.
- G.** From the date the primary election period begins until filing a notice of intent, a participating candidate may not collect any contributions other than allowable, seed and in-kind contributions allowed by this Chapter and may only make expenditures from such contributions. After filing a notice of intent, participating and certified candidates may not make expenditures from funds other than public contribution matching and allowable, seed money or in-kind contributions, as allowed by this Chapter.
- H.** Participating and certified candidates must deposit all allowable contributions, public contribution matching and seed money contributions received into the

candidate's publicly funded campaign account. Participating and certified candidates must deliver to the Director documentation, as specified by administrative rule, for each allowable contribution, seed money contribution, and in-kind contribution.

- I. A participating or certified candidate may retain a preexisting campaign committee or political activities committee as long as the campaign committee or political activities committee does not accept contributions or make expenditures during the election cycle for which the candidate is seeking a covered office, other than a transfer of seed money to the candidate, consistent with Subsection 2.16.040 C.
- J. Seed money loans from the candidate or candidate's spouse must be repaid with contributions that are not eligible for public contribution matching or for which public contribution matching is not requested.
- K. The total contributions a participating or certified candidate may collect during the primary election period or special nominating election period, consisting of allowable contributions, public contributions, seed money and in-kind contributions, cannot exceed:
  - 1. \$380,000 for a candidate for Mayor; and
  - 2. \$250,000 for a candidate for Commissioner or Auditor.
- L. The total contributions a participating or certified candidate may collect during the general election period or special runoff election period, consisting of allowable contributions, public contributions, seed money and in-kind contributions, cannot exceed:
  - 1. \$570,000 for a candidate for Mayor; and
  - 2. \$300,000 for a candidate for Commissioner or Auditor.

**2.16.050 Requirements for Certification.**

- A. In addition to the requirements of Section 2.16.040 and the limitations in Section 2.16.120, to qualify as a certified candidate:
  - 1. After filing a notice of intent, a candidate for Mayor must collect an aggregate total of at least \$5,000 in allowable contributions from at least 500 matchable donors.
  - 2. After filing a notice of intent, a candidate for Commissioner or Auditor must collect an aggregate total of at least \$2,500 in allowable contributions from at least 250 matchable donors.
  - 3. The participating candidate must have filed for office by petition as provided in Code Section 2.08.080.

- B.** A participating candidate must apply to the Director for certification not later than 28 days before the end of the primary election matching period, or for a special nominating election, 28 days before the election.

**2.16.060 Director Determination.**

- A.** The Director must certify a participating candidate if the Director finds that the election for the covered office is a contested election, the candidate has met the requirements of Sections 2.16.040, .050 and .120, the candidate has received the required aggregate total dollars of allowable contributions from the required number of matching donors for the office and the candidate has submitted all information required by this Code or by administrative rule.
- B.** Before certification, the participating candidate must submit at least the following information to the Director, along with other information as may be required by administrative rule:
  - 1.** A declaration from the candidate agreeing to follow the regulations governing the use of public contribution matching, allowable contributions, seed money and in-kind contributions; and
  - 2.** A campaign finance report that includes:
    - a.** A list of each allowable contribution received;
    - b.** A list of each seed money and in-kind contribution received;
    - c.** A list of each expenditure made by the candidate during the primary election matching period up to the time of filing; and
    - d.** Other documentation required by administrative rule.
- C.** The Director must make a certification determination no later than 10 business days after receiving information from the participating candidate necessary to determine compliance with the requirements of Subsections 2.16.060 A. and B. and Sections 2.16.040, .050 and .120. However, if the covered office is not a contested election at the time the participating candidate applies for certification, the Director will hold the application in abeyance until either the covered office becomes a contested election, in which case the Director will make a certification decision within 10 business days, or the filing deadline for the covered office expires, in which case the Director shall deny certification. Certification decisions may be challenged as provided in Section 2.16.170.
- D.** A candidate may submit only one application for certification for any election.
- E.** If the Director certifies a candidate, the Director will authorize an initial disbursement of a public contribution to the candidate's publicly funded campaign account.

**2.16.070 Distribution of Public Contribution.**

- A.** Public contributions from the Fund will be distributed only in a contested election. The Director must distribute a public contribution from the Fund to each certified candidate in a contested election as follows:
- 1.** For a certified candidate for a covered office, the public contribution matching must equal:
    - a.** \$6 for each dollar of the first \$50 of allowable contributions in aggregate from a matchable donor made after the candidate files a notice of intent;
    - b.** No match for allowable contributions after the first \$50 in aggregate contributed by a matchable donor.
  - 2.** The total public contribution payable to a certified candidate for a primary election or special nominating election may not exceed \$304,000 for a candidate for Mayor and \$200,000 for a candidate for Commissioner or Auditor. The total public contribution payable to a certified candidate for a general election or special runoff election may not exceed \$456,000 for a candidate for Mayor and \$240,000 for a candidate for Commissioner or Auditor.
- B.** The Director must not distribute public contribution matching from the Fund to a certified candidate for:
- 1.** Seed money contributions;
  - 2.** In-kind contributions;
  - 3.** Allowable contributions from matchable donors made before the candidate files a notice of intent;
  - 4.** Allowable contributions from donors who are not matchable donors; or
  - 5.** Allowable contributions from matchable donors whose donations to another candidate for the same contested election during the same election period have resulted in a request for public contribution matching for that other candidate.
- C.** Public contributions from the Fund will be distributed on at least four dates in addition to the initial distribution to each certified candidate upon certification during the primary election period or special nominating election period and on at least four dates during the general election period or special runoff election period. The final distribution for each election period will be 14 days before the election.

- D. A certified candidate may collect allowable contributions, including allowable contributions from matchable donors for which the candidate may seek public contribution matching for the primary or special nominating election, until the end of the primary election matching period. A certified candidate may continue to collect allowable contributions, consistent with Sections 2.16.040 and 2.16.120, between the date the primary election matching period ends until the end of the primary election period or special nominating election period, but allowable contributions from matchable donors collected during this time will only be eligible for public contribution matching for the general or special runoff election if the candidate qualifies for the general or special runoff election, as provided in Subsection 2.16.070 E.
- E. Certified candidates in the primary election or special nominating election who are nominated to the general election or special runoff election ballot in the same election cycle are eligible for public contributions as provided in this Section.
  - 1. Certified candidates who reasonably expect to qualify for the general or special runoff election ballot may begin collecting allowable contributions for the general election or special runoff election on the first day of the general election matching period.
  - 2. After certification of the results of the primary or special nominating election, a certified candidate who qualifies for the general or special runoff ballot may use unspent funds in their publicly funded campaign account and seek public contribution matching for allowable contributions collected from matchable donors during the general election matching period.
  - 3. A certified candidate may continue to collect allowable contributions, consistent with Section 2.16.040, from the end of the general election matching period until the end of the general election period or special runoff election period, but the contributions will not be eligible for public contribution matching.
- F. A certified candidate must submit documentation, as specified by administrative rule, for each allowable contribution from a matchable donor to the Director to receive public contribution matching. The Director must deposit the appropriate public contribution into a certified candidate's publicly funded campaign account on the next distribution date after the Director authorizes the public contribution matching.

**2.16.080 Use of Contributions.**

- A. A participating or certified candidate may only use the seed money, in-kind and allowable contributions and the public contribution matching for direct allowed campaign purposes related to the candidate's campaign for nomination or election to the covered office for which they are eligible to be or have qualified as a

candidate. Guidelines regarding direct allowed campaign expenditures may be established by administrative rule.

- B.** Public contributions distributed to a participating candidate and qualifying, seed money and in-kind contributions may not be:
1. Used to make any expenditures for personal use prohibited by ORS Chapter 260 and Oregon Administrative Rules;
  2. Contributed to, or for the purpose of supporting or opposing, any other candidate, political committee or measure;
  3. Used to make independent expenditures supporting or opposing any candidate, political committee or measure;
  4. Used in connection with the nomination or election of a participating candidate to any office or at any election other than the office or election for which the contributions were given;
  5. Used to pay any loans, debts, fines or penalties, except for penalties permitted or required by administrative rule to be paid from the publicly funded campaign account;
  6. Used to pay for consulting services to an individual, unless the individual is providing bona fide services to the candidate and is compensated at fair market value;
  7. Used for out of state travel;
  8. Certain vehicle-related expenses, including vehicle purchases, leases, rental, insurance, repairs or fuel. Vehicle mileage reimbursement for campaign purposes is allowed, using the standard rate used by the City for mileage reimbursement;
  9. Attorney, accountant and other professional service fees in conjunction with appealing penalties or decertification;
  10. Used for salary or payment, other than reimbursable expenses, to a family member;
  11. Used for gifts, not including campaign brochures, buttons, signs or other printed campaign material;
  12. Used to make payments in cash; or
  13. Used in a manner inconsistent with administrative rules.

- C. Public contributions may not be used for penalties or election night and post-election parties; however, allowable contributions, seed money and in-kind contributions may be used for such events.
- D. Contributions to civic and non-profit organizations from a participating candidate's publicly funded account are permitted only if the payment is for the purpose of attending a specific campaign event open to the public.
- E. A complaint alleging an impermissible receipt or use of funds by a participating candidate must be filed with the Director.
- F. A participating candidate must provide the Director with reasonable access to the financial records of the candidate's publicly funded campaign account, upon request.

**2.16.090 Adequate Funds.**

- A. If the Director determines that the amount deposited in the Fund will be insufficient at any point during the election cycle, the Director shall request the additional amount the Director estimates will be necessary from the City Council, subject to the annual appropriation limit detailed in Section 2.16.020.
- B. If the total amount available for distribution in the Fund is insufficient to meet the allocations required by this Chapter, the Director must reduce each public contribution to a certified candidate by the same percentage of the total public contribution.

**2.16.100 Return of Public Contributions.**

- A. Within 15 days after the results of the primary election or special nominating election are certified, a certified candidate who is elected or is not certified to be on the ballot for the general election or special runoff election must return unspent money in the candidate's publicly funded campaign account to the Fund in proportion to the percentage of public to private contributions collected by the candidate, excluding in-kind contributions.
- B. Within 15 days after the results of the general election or special runoff election are certified, all participating candidates must return unspent money in the candidates' publicly funded campaign accounts to the Fund in proportion to the percentage of public to private contributions collected by the candidate, excluding in-kind contributions.

**2.16.110 Withdrawal.**

(Amended by Ordinance No. 188853, effective March 8, 2018.)

- A. A participating candidate may withdraw an application for a public contribution any time before the public contribution is received by the candidate's publicly funded campaign account.

- B.** A certified candidate may withdraw from participation if the candidate:
  - 1.** Files a statement of withdrawal with the Director on a form prescribed by the Commission; and
  - 2.** Repays to the Fund any remaining funds in their account up to the full amount of the public contribution received, together with the applicable interest established by administrative rule.

**2.16.120 Participating and Certified Candidate Restrictions.**

(Amended by Ordinance No. 189336, effective January 2, 2019.) A participating or certified candidate must not:

- A.** Accept a contribution, other than seed money or in-kind contributions as permitted by this Chapter, from any group or organization, including a political action committee, a corporation, a labor organization, or a State or local central committee of a political party;
- B.** Accept one or more contributions from an individual totaling more than \$250 during the primary election period or special nominating election period and \$250 during the general election period or special runoff election period, other than seed money or in-kind contributions as permitted by this Chapter, except as provided in Section 2.16.150;
- C.** Make an allowable contribution from the candidate's personal funds to the candidate's principal campaign committee.
- D.** Accept seed money or in-kind contributions in excess of the amounts established in Section 2.16.040.
- E.** Expend funds to benefit or advocate for another candidate;
- F.** Accept a loan from anyone for campaign purposes, other than a loan from the candidate or candidate's spouse within seed money limitations; or
- G.** Transfer funds:
  - 1.** To the candidate's publicly funded campaign account from any other campaign finance entity established for the candidate; and
  - 2.** From the candidate's publicly funded campaign account to any other campaign finance entity.
- H.** Solicit for or direct contributions to other campaign finance entities to support their own election.

**2.16.130 Open and Accountable Elections Commission.**

(Amended by Ordinance Nos. 189078 and 189336, effective January 2, 2019.)

**A. Duties.** The Open and Accountable Elections Commission is hereby created. The Commission shall:

1. Provide assistance to the Director and Council in the development and implementation of the Open and Accountable Elections Fund. The Commission may make recommendations to the Director regarding administrative rules necessary to the effective administration of the code.
2. Make recommendations on adjustments to matching ratios, adjustments to contribution limits and other regulations to improve operation of public campaign finance.
3. At the request of the Director, advise the Director on administrative judgments, recommended policy changes, administrative rule development, and operation of the Open and Accountable Elections Fund.
4. Recommend to the Director for appointment hearings officers or an entity to review cases and make determinations under Section 2.16.160.
5. Adopt such operating policies and procedures as necessary to carry out its duties.
6. Prepare and submit to the Council a biennial report which shall contain an overview and evaluation of the Campaign Finance Fund during the previous election period.

**B. Membership.** The Open and Accountable Elections Commission shall consist of nine members who have demonstrated an interest in campaign finance funding and, insofar as possible, represent diverse interests and diverse communities. The Director shall solicit applications from the Office of Community & Civic Life and the general public in order to recommend nominees to Council for appointment.

**C. Appointments and Terms.**

1. Open and Accountable Elections Commission members shall be appointed by Council and serve 4 year terms starting May 1 of odd-numbered years, except that the initial appointments shall be as follows:
  - a. Four of the initial appointees will serve terms from ~~date of appointment~~ January 1, 2019 to April 30, 2021; and
  - b. Five of the initial appointees will serve terms from ~~date of appointment~~ January 1, 2019 to April 30, 2023.
2. ~~Upon expiration of the term, a Commission member shall serve until reappointed or replaced.~~ Members of the Commission are limited to a maximum of two full terms, except that members serving an initial term of less than 4 years may serve two subsequent 4 year terms. If a position is

vacated during a term, it shall be filled for the unexpired term. Council may replace any member of the Commission for due cause, including but not limited to malfeasance, incapacity, conflict of interest or neglect of duties.

**D. Meetings, Officers and Subcommittees.**

1. The Open and Accountable Elections Commission shall meet at least four times per year and may meet more often as otherwise necessary to conduct its business. Meetings shall be conducted in accordance with rules of procedure adopted by the Commission. Five members shall constitute a quorum. A quorum shall be necessary to make decisions that represent the position of the Commission and to conduct any other Commission responsibilities. The election of officers shall take place at the first meeting of each calendar year.
2. The officers of the Commission shall consist of a chairperson and a vice-chairperson. The chairperson shall be responsible for conducting the meetings of the committee. The vice-chairperson shall act as chair when the chairperson is not available.
3. The Commission may form subcommittees comprised of Commission members which are authorized to act on behalf of the Commission for an assigned purpose.

**E. Attendance.** Members of the Open and Accountable Elections Commission are expected to attend each meeting of the Commission. Council may replace any member who accrues unexcused absences from three or more consecutive meetings or more than 50 percent of the meetings in any year.

**F. Compensation.** Open and Accountable Elections Commission members shall serve without compensation.

**2.16.140 Additional Reporting.**

(Amended by Ordinance No. 189336, effective January 2, 2019.)

- A. All candidates and political committees, including non-participating candidates, must report contributions and expenditure transactions electronically in the ORESTAR system in compliance with state law.
- B. Participating and certified candidates must file additional contribution and expenditure reports to the Director as the Director deems necessary to make certification and public contribution matching decisions in a timely manner, as established by administrative rule. For the purposes of Subsection 2.16.140 B., the Director is the City's election officer.
- C. In a contested election in which there is at least one participating or certified candidate, beginning on the 180th day before the election and ending on the 42nd

day before the election, participating and non-participating candidates shall report contribution and expenditure transactions to the Director within 14 days.

- D. In a contested election in which there is at least one participating or certified candidate, beginning on the 180th day before the election and ending on the 42nd day before the election, persons or political committees making an independent expenditure in an amount of \$1,000 or more, or independent expenditures in an aggregate of \$1,000 or more, supporting or opposing a candidate or candidates for nomination or election to City office shall report such expenditures to the Director within 14 days.

**2.16.150 Removal of Certain Contribution Limits.**

If contributions to a non-participating candidate exceed the total contribution amounts in Subsection 2.16.040 K. for a primary election period or special nominating election period or the amounts in Subsection 2.16.040 L. for a general election period or special runoff election period, then any participating candidates for the same covered office may:

- A. Exceed the total contribution amounts in Subsection 2.16.040 K. or L. for the election period in which the non-participating candidate exceeds those amounts; and
- B. Accept up to \$500 in aggregate in allowable contributions from an individual during the relevant election period, notwithstanding the \$250 limit in Subsections 2.16.010 A., 2.16.040 F. and 2.16.120 B.

**2.16.160 Penalties, Revocation of Certification and Repayment of Funds.**

- A. Civil Penalties.
  - 1. The Director may impose a civil penalty as provided in this Section, in addition to any other remedies that are provided by this Code or other law, for:
    - a. Violation of any provision of this chapter by a participating or certified candidate; or
    - b. Failure to timely file a non-participating candidate or independent expenditure report or to include information required by Section 2.16.140.
  - 2. The City may establish a penalty matrix by administrative rule detailing civil penalties for potential violations of this chapter. A civil penalty imposed under this section shall not exceed \$10,000 for any violation except as otherwise provided in this Section. Limits on penalties imposed under this Section do not include interest. Penalties are subject to interest at a rate of 12 percent of the total amount per annum.

3. The Director shall send a notice of proposed penalty to any candidate, person or political committee against whom the Director is imposing a civil penalty.
  - a. The notice shall describe the proposed penalty and outline the procedures for requesting a penalty hearing.
  - b. The notice shall be sent by both certified and regular mail.
  - c. If a penalty hearing is not requested, the proposed penalty shall become final on the date specified in the notice, which date shall be the first day following the last day to file a request for a hearing.
4. If a civil penalty has been imposed under this Section against a candidate or the principal campaign committee of a candidate, the candidate shall be personally liable for the amount to be paid under this Section.
5. If a civil penalty has been imposed under this Section against a political committee other than a principal campaign committee, the directors of the political committee shall be jointly and severally liable for any amount to be paid under this Section.
6. Penalties may be paid from any private source and must be reported as an in-kind contribution unless paid by the candidate or publicly funded campaign account. A penalty may not be paid from a candidate's publicly funded campaign account unless permitted by the administrative rules. Penalties for violating reporting requirements may be paid in excess of contribution limits in this Chapter only if paid by the candidate's treasurer.
7. 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.
8. Penalties imposed under this Section are subject to interest at a rate of 12 percent of the total amount per annum.
9. All moneys received under this Section for violations of any provision of this Chapter shall be paid and credited to the Fund.
10. At the request of the Director, the City Attorney may seek civil penalties and enforcement of any provision of this Chapter, in addition to any other remedies provided by this Code or other law, in Circuit Court or other appropriate venue.

**B. Revocation of Certification.**

1. The certification of a participating or certified candidate against whom a civil penalty has been imposed for violation of Section 2.16.080 shall be

revoked by the Director and the candidate shall not be eligible to receive public contributions from the Fund during the primary and general election periods, or special nominating and special runoff period during which the penalty is imposed. However, revocation of a candidate's certification is permissive, not mandatory, if all of the following conditions are met:

a. The candidate has been found to have committed only one violation of Section 2.16.080; and

b. It is the candidate's first violation of Section 2.16.080.

2. If it is determined that a participating candidate violated any other provision of this Chapter during the primary election matching period or after certification, the Director has the authority to revoke the candidate's certification.

C. Repayment of Funds.

1. A participating candidate against whom a civil penalty has been imposed for violation of Section 2.16.080 shall return to the Director an amount of money equal to all revenues distributed to the candidate from the Fund after the date the candidate was certified, plus interest on the total amount of revenues received at a rate of 12 percent per annum, in addition to the penalty and interest on the penalty.

2. The Director shall seek immediate recovery of public contributions for any violation of this Chapter.

**2.16.170 Hearings.**

(Amended by Ordinance No. 189336, effective January 2, 2019.)

A. Purpose. The purpose of this Section is to provide persons or political committees adversely affected by administrative determinations ~~and decisions~~ made under this Chapter with a timely, effective, and impartial appeal and review of the determination by a Hearings Officer or entity, to be recommended by the Open and Accountable Elections Commission and appointed by the Director.

B. The Director may contract with an entity, including but not limited to a vendor or a government body, to conduct hearings on behalf of the Program.

**BC.** Types of Hearings.

1. Certification Hearings. A candidate who has received a determination denying certification or an opponent of a candidate who has been granted certification may challenge a certification decision with a written request for reconsideration as outlined in Subsection 2.16.170 E. and, if still dissatisfied, by filing a written request for a hearing as outlined in Subsection 2.16.170 DE.

2. Matching Fund Hearings. A candidate who has received a determination granting or denying public contribution matching or an opponent of a candidate who has been granted public contribution matching may challenge the public contribution matching decision by filing a written request for reconsideration as outlined in Subsection 2.16.170 E. and, if still dissatisfied, a written request for a hearing as outlined in Subsection 2.16.170 DC.
3. Penalty Hearings. A candidate, person or political committee who has received a notice of proposed penalty from the Director may challenge the proposed penalty by filing a written request for reconsideration as outlined in Subsection 2.16.170 E. and, if still dissatisfied, a written request for a hearing as outlined in Subsection 2.16.170 DC.

**ED.** Requests for Hearings.

1. The written request for a hearing shall be filed ~~with the Director~~ not later than:
  - a. 7 days after the mailing of the certification reconsideration decision determination for a certification or public contribution matching hearing; or
  - b. 7 days after the mailing of the ~~notice of proposed penalty reconsideration decision for a penalty hearing.~~
  - c. 7 days after the mailing of the notification of the matching reconsideration decision:
    - (1) For an opponent of the candidate who requested the public contributions, 7 calendar days after the mailing of the notification of the reconsideration decision.
    - (2) For an opponent of the candidate who requested the public contributions, 7 calendar days after the mailing information about the matching determination from the Director, which will be provided upon request.
2. The request shall be filed pursuant to forms and procedures ~~recommended by the Commission and adopted by rule~~ published on the Program website. The written request shall contain either a copy of, or a full and complete description of, the decision or determination appealed and a statement of grounds upon which it is contended that the decision or determination is invalid, unauthorized, or otherwise improper, together with such other information as the Director may ~~by~~ require by rule.
3. No person or political committee other than those described in Subsection 2.16.170 ~~BC.~~ may be a party to any hearing conducted under this Section.

**E.** Request for reconsideration.

- 1.** The written request for reconsideration must be filed with the Director not later than:
  - a.** For certification determination, within 7 calendar days after the date of determination by the Director.
  - b.** For a proposed penalty, within 7 calendar days after the date the Director imposes the penalty.
  - c.** For a matching determination,
    - (1)** For the candidate who requested the public contribution, within 7 calendar days of the determination by the Director.
    - (2)** For the opponent of the candidate who requested the public contribution or a member of the public, within 7 calendar days after the date of the determination, which is available upon written request filed with the Director.
  - d.** The Director must provide a final response to the request for reconsideration within 10 business days of receiving the request.

**DE.** Conduct of Hearings.

- 1.** As provided in Section 2.16.130, the Open and Accountable Elections Commission shall recommend to the Director for appointment ~~an outside a~~ panel of hearings officers, or an outside entity to perform the hearings function, to review cases and make determinations under this Section.
- 2.** The Director shall designate and appoint ~~the~~ hearings officers or an entity, including but not limited to a vendor or another government body, based upon the recommendations of the Open and Accountable Elections Commission.
- 3.** Written requests for hearings shall be filed ~~with the Director~~ within the deadlines established in Subsection 2.16.170 ~~ED~~. ~~The Open and Accountable Elections Commission shall coordinate with the hearings officer panel to assign a hearings officer to the case and set a~~ A hearing date must be held within the timelines established in Subsection 2.16.170 ~~DE~~.4.
- 4.** The date set for hearings under this Section shall be:
  - a.** Not later than 7 days after the request for a certification or public contribution matching hearing is filed as outlined in Subsections 2.16.170 ~~ED~~.1.a. and c.; or

- b. Not more than 14 days after the request for a penalty hearing is filed as outlined in Subsection 2.16.170 ~~ED~~.1.b.

5. Notice.

- a. In the case of certification ~~or public contribution matching~~ hearings requested under Subsection 2.16.170 ~~ED~~.1.a.:

- (1) ~~The Director shall give a~~ Notice of receipt of a request for a hearing, together with a copy of the request, shall be given to all other candidates for the same office. The notice shall be sent not later than one business day after the request is filed. ~~with the Director.~~

- (2) ~~The Director shall give a~~ Notice of the hearing, together with a copy of the request for a hearing, shall be given to the Person who requested the hearing and all other candidates for the same office. The notice shall be sent not later than one business day after the date is set for the hearing. The notice shall specify the time, date, and place set for the hearing.

- (3) The notices required in Subsections 2.16.170 ~~DF~~.5.a.(1) and (2) may be combined.

- b. In the case of penalty hearings requested under Subsection 2.16.170 ~~ED~~.1.b., ~~the Director shall give~~ notice shall be given of the hearing to the person or political committee who requested the hearing. The notice shall be sent not later than one business day after the date is set for the hearing under Subsection 2.16.170 ~~DF~~.4. The notice shall specify the time, date, and place set for the hearing.

- c. Notices may be given by any method or combination of methods which, under the circumstances, is reasonably likely to apprise the parties of the hearing. Notice may be given by United States mail, phone, e-mail or other method authorized by rule. If notice is given by mail, such notice shall be deemed given and received three days (Sundays and holidays not included) after the notice is deposited in the United States mail. The failure of any Person to receive actual notice of the proceeding shall not invalidate the hearing or any determination, decision, or order of the hearings officer.

- 6. The hearings shall be conducted in accordance with the provisions of Chapter 22.10, except as otherwise provided in this Section.

**EG.** Order of the Hearings Officer.

1. The hearings officer shall issue an order not later than ~~three~~ 5 business days after a certification public contribution matching or penalty hearing.
2. In the case of a certification hearing, the hearings officer may uphold or revoke the certification.
3. In the case of a public contribution matching hearing, the hearings officer may uphold or revoke public contribution matching, or modify a public contribution matching decision by revoking some or all public contribution matching or granting additional public contribution matching.
4. In the case of a penalty hearing, the hearings officer may uphold, revoke or modify the penalty.
5. The order of the hearings officer is a final decision of the City.
6. Judicial review of an order made under this Section shall be as provided in Title 22.

**FH.** Return of Funds and Payment of Cost of Hearing.

1. If the certification of a candidate is revoked following a hearing under this Section, the candidate shall return to the Director an amount of money equal to all revenues distributed to the candidate from the Open and Accountable Elections Fund after the date the candidate was certified, plus interest on the total amount of revenues received at a rate of 12 percent per annum, in addition to the penalty and interest on the penalty.
2. If public contribution matching is revoked, the candidate shall return to the Director an amount of money equal to the amount of revoked public contribution matching distributed to the candidate from the Open and Accountable Elections Fund, plus interest on the total amount of public contribution matching received at a rate of 12 percent per annum.
3. If the hearings officer or a court finds that a request for a hearing under this Section was made frivolously or to cause delay or hardship, the hearings officer or the court may require the person who filed the request for a hearing to pay costs of the hearings officer, court and opposing parties, and attorney fees of the opposing parties, if any.

**2.16.180 Implementation.**

(Amended by Ordinance No. 189336, effective January 2, 2019.) This Chapter applies to elections after November 1, 2019.

**2.16.190 Program Management.**

(Added by Ordinance No. 188853; amended by Ordinance No. 189336, effective January 2, 2019.) The Commissioner of Public Utilities shall provide oversight to the Open and Accountable Elections Program until ~~July 1, 2019~~ December 31, 2020. ~~Beginning July 1,~~

2019, the program will sit within the Bureau of Revenue and Financial Services. November 30, 2020 the Open and Accountable Elections Commission will make a recommendation regarding where the program should be housed to the Mayor and City Council.

**IMPACT STATEMENT**

**Legislation title:** Amend the Open and Accountable Elections Policy (Ordinance; amend code chapter 2.16)

**Contact name:** Cristina Nieves

**Contact phone:** 503 823 3990

**Presenter name:** Susan Mottet

**Purpose of proposed legislation and background information:**

The purpose of this legislation is to amend Open and Accountable Elections, City Code 2.16.

The amendments proposed clarify that the Commissioner of Public Utilities will continue to provide oversight of the program through the implementation stages of the program; revise the hearings and appeals process, as well as clarify the use of public contributions as they relate to penalties.

**Financial and budgetary impacts:**

This legislation will not impact the City's budget.

**Community impacts and community involvement:**

The creation and implementation process of the Open and Accountable Elections program has involved representatives from community-based organizations which include: Alliance for Democracy, APANO, Basic Rights Oregon, Bernie PDX, Bus Project, Coalition of Communities of Color, Color PAC, Common Cause, CWA Local 790, ENLACE , Every Voice, Latino Network, League of Women Voters, Main Street Alliance, Move to Amend Portland, NAACP Portland Branch, OPAL Environmental Justice, Oregon Education Association, Oregon League of Conservation Voters, Oregon Student Association, Oregon Walks, OSPIRG, PCUN, Portland Forward, Represent.Us Portland, Saint Michaels Church Social Justice Group, Sierra Club, SEIU State Council, UFCW Local 555, Unite Oregon, Working Families Party

**Budgetary Impact Worksheet**

**Does this action change appropriations?**

**YES:** Please complete the information below.

**NO:** Skip this section

Fund	Fund Center	Commitment Item	Functional Area	Funded Program	Grant	Sponsored Program	Amount