

ORDINANCE No.

Amend the Open and Accountable Elections Program to eliminate the election matching periods and maintain the program's oversight with the Commissioner of Public Utilities through 2022 (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 Open and Accountable Elections program provides candidates, who demonstrate broad community support by collecting many small qualifying contributions from Portland residents, with matching dollars from the City's Open and Accountable Elections Fund if the candidates agree to follow program rules, including contribution limits.
3. 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.
4. Consistent feedback after the first election cycle of the Open and Accountable Elections program is to simplify the program to make compliance easier. Differing rules that applied to the matching periods and elections periods created confusion for program participants. Eliminating the matching periods will help simplify the program.
5. The program's 2022 election cycle begins on December 18, 2020, at which point the program timeline will be published for candidates' convenience. A simpler timeline can be published if the present amendment is passed prior to December 18, 2020.
6. The Open and Accountable Elections Code requires the Open and Accountable Elections Commission to recommend short- and long- term oversight for the Open and Accountable Elections program. The Open and Accountable Elections Commission recommends that the program's oversight remain with the Commissioner of Public Utilities through 2022 while a Charter amendment is considered to create an independent commission to oversee the program in the long term.
7. Community input was solicited and received from the public, candidates, the Open and Accountable Elections Commission, and the Voice for All Portland coalition.

NOW, THEREFORE, the Council directs:

- a. Portland City Code Chapter 2.16 is amended as shown in the attached Exhibits A-G.

Passed by the Council:

Commissioner Amanda Fritz

Prepared by: Susan Mottet

Date Prepared: November 23, 2020

Mary Hull Caballero

Auditor of the City of Portland

By

Deputy

~~957~~ 1006
 Agenda No.
ORDINANCE NO.
 Title

Amend the Open and Accountable Elections Program to eliminate the election matching periods and maintain the program's oversight with the Commissioner of Public Utilities through 2022 (Ordinance)

INTRODUCED BY Commissioner/Auditor: Commissioner Fritz	CLERK USE: DATE FILED <u>December 1, 2020</u>
COMMISSIONER APPROVAL Mayor—Finance & Administration - Wheeler Position 1/Utilities - Fritz <i>Tim Coail</i> Position 2/Works - Ryan Position 3/Affairs - Hardesty Position 4/Safety - Eudaly	Mary Hull Caballero Auditor of the City of Portland <i>Keelan McClymont</i> By: _____ Deputy ACTION TAKEN: December 9, 2020 Passed to Second Reading December 16, 2020 at 9:30 am
BUREAU APPROVAL Bureau: Bureau Head:	
Prepared by: Susan Mottet Date Prepared: 11/23/2020	
Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/>	
Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
City Auditor Office Approval: required for Code Ordinances	
City Attorney Approval: /s/ MKH 11/30/2020 required for contract, code, easement, franchise, comp plan, charter	
Council Meeting Date December 9, 2020	

AGENDA
TIME CERTAIN <input type="checkbox"/> Start time: _____ Total amount of time needed: _____ (for presentation, testimony and discussion)
CONSENT <input type="checkbox"/>
REGULAR <input checked="" type="checkbox"/> Total amount of time needed: <u>10 min</u> (for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
	YEAS	NAYS
1. Fritz	1. Fritz	
2. Ryan	2. Ryan	
3. Hardesty	3. Hardesty	
4. Eudaly	4. Eudaly	
Wheeler	Wheeler	

Exhibit A

2.16.010 Definitions

As used in this Chapter, unless the context requires otherwise:

A. – L. [unchanged]

~~**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.~~

MN. “General election period” means the period beginning the day after the biennial primary election and ending the day of the biennial general Election.

NO. “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.

OP. “Individual” means a natural person.

PQ. “In-kind contribution” has the meaning set forth in the Oregon Administrative Rule 165-012-005 at the time of this Chapter’s adoption.

QR. “Matchable contribution” is an allowable contribution of at least \$5 that is acknowledged by documentation, as specified by administrative rule.

RS. “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 election matching period.

SF. “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.

TU. “Notice of intent” means a notice filed with the Director that a candidate intends to seek qualification as a certified candidate.

UV. “**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.~~

VX. “**Primary election period**” means the period beginning on the 45th day after the preceding biennial general election and ending the day of the biennial primary election.

WY. “**Public contribution**” or “**public contribution matching**” means money disbursed from the Fund to a certified candidate.

XZ. “**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.

YAA. “**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.

ZBB. “**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.

AACC. “**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.

BBDD. “**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.

CCEE. “**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.

Exhibit B

2.16.040 Contribution and Expenditure Requirements for Participating and Certified Candidates.

A. [unchanged]

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.

[Remainder of Section unchanged].

Exhibit C

2.16.050 Requirements for Certification.

A. [unchanged]

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.

Exhibit D

2.16.060 Director Determination.

A. [unchanged]

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~~ cycle up to the time of filing; and
 - d.** Other documentation required by administrative rule.

[Remainder of Section unchanged].

Exhibit E

2.16.070 Distribution of Public Contribution.

A. – C. [unchanged]

~~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 a~~Allowable contributions from matchable donors collected during this time 10 calendar days prior to a primary or special nominating election 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. Allowable contributions from matchable donors collected 10 calendar days prior to a general or special runoff election will not be eligible for public contribution matching.

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 10 calendar days prior to the primary or special nominating 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 beginning 10 calendar days prior to the primary or special nominating election 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.~~

[Remainder of Section unchanged].

Exhibit F

2.16.160 Penalties, Revocation of Certification and Repayment of Funds.

A. [unchanged]

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.

[Remainder of Section unchanged].

Exhibit G

2.16.190 Program Management.

The Commissioner of Public Utilities shall provide oversight to the Open and Accountable Elections Program until December 31, 2020~~2~~. ~~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 Program to eliminate the election matching periods and maintain the program’s oversight with the Commissioner of Public Utilities through 2022 (Ordinance; amend Code Chapter 2.16)

Contact name: Susan Mottet
Contact phone: 503 823 4345
Presenter name: Susan Mottet

Purpose of proposed legislation and background information:
The purpose of this legislation is to amend the Open and Accountable Elections, Portland City Code Chapter 2.16.

This will simplify program compliance by eliminating the matching periods so that all program requirements tied to either matching periods or election periods are aligned in being tied only to election periods. It also keeps the oversight of the program under the Commissioner of Public Utilities through 2022, as recommended by the Open and Accountable Elections Commission.

Financial and budgetary impacts:
This legislation will not affect the program or City budget.

Community impacts and community involvement:
This was sent out for public comment as well as discussed by the Open and Accountable Elections Commission and a Voice for All Portlanders Coalition.

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

Open and Accountable Elections

Update - 2020 Election Cycle

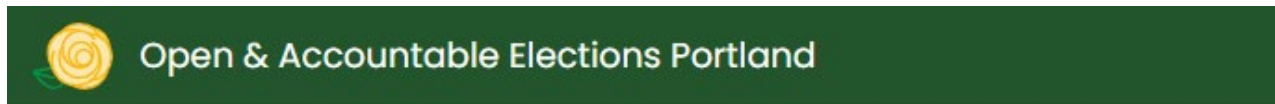
December 9, 2020

Susan Mottet, Director of Open & Accountable Elections

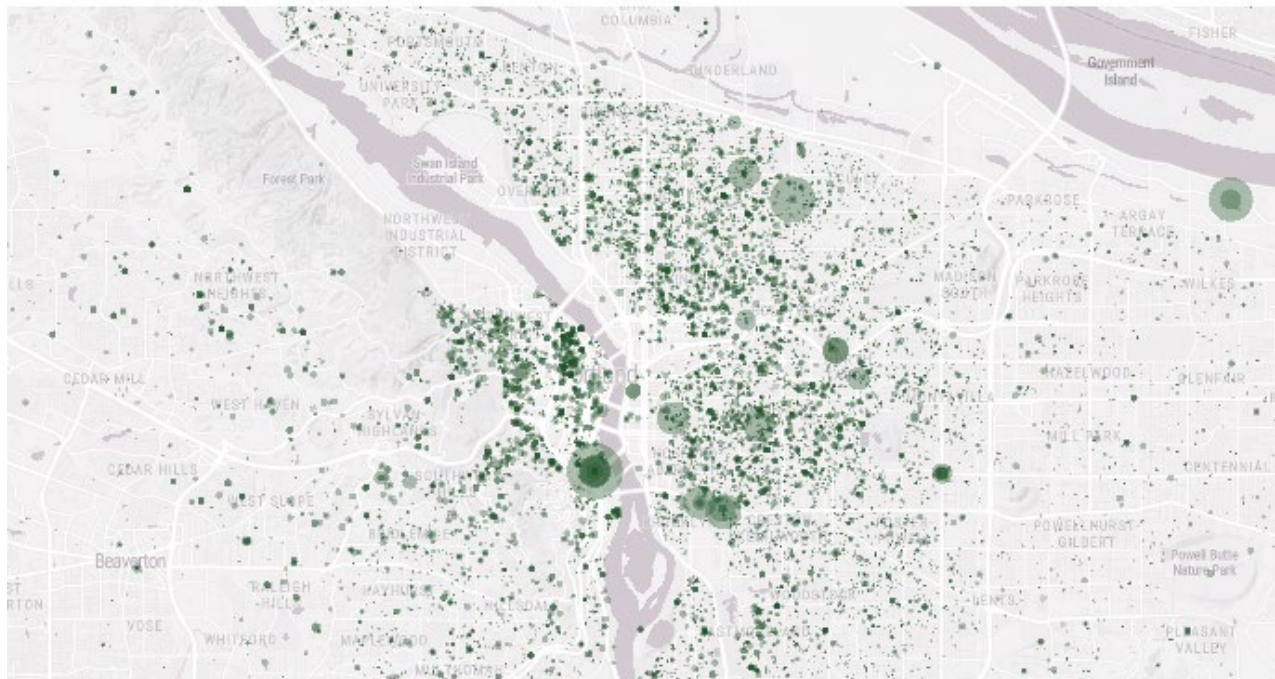
Amanda Fritz, Commissioner in Charge

OAE Performance - 2020 election cycle

- ▶ Program launched in time for 2020 elections
- ▶ Software launched in time - thanks to Civic Software Foundation



Smaller Contributions ••••• Larger Contributions



Total contribution amount by ORESTAR contributor type



By Contribution Size

Total contribution amount by size

• <\$25 • \$25-\$100 • \$100-\$250 • \$250-\$1000 • >\$1000



By Contributor Location

Total contribution amount by location



OAE Performance - 2020 election cycle

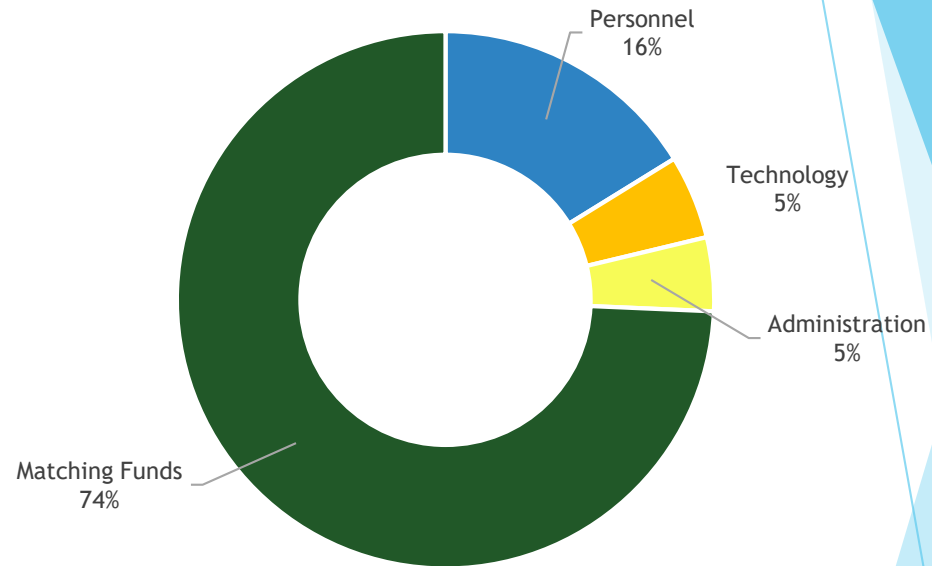
▶ Weathered challenges

- ▶ Special election: doubled certified candidates from 8 to 16
- ▶ Honest Elections: sudden legal changes to campaign finance climate -contribution limits applied shortly before primary
- ▶ Legal: no lawsuits or appeals of program determinations
- ▶ Program integrity: protocols were successful

OAE Budget 2020 Election Cycle (July 1, 2018 - December 31, 2020)

2020 ELECTION CYCLE BUDGET

Personnel	\$605,790
Technology	\$188,721
Administration	\$165,815
Matching Funds	\$2,778,668
TOTAL	\$3,738,993

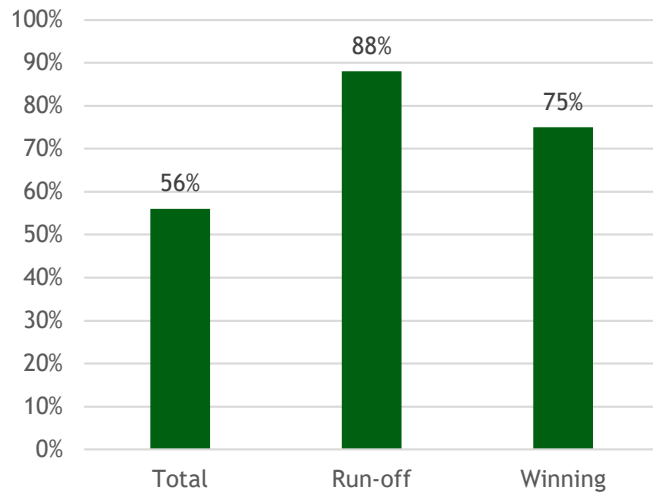


- Open & Accountable Elections had sufficient funds for 2020 election cycle.
- Vast majority of funds dedicated to matching dollars.
- The technology project enables the program to keep personnel costs low through efficient administration.
- The newly-enforceable contribution limits are anticipated to result in more candidates opting into OAE in future election cycles, leading to higher expenditures in matching funds.

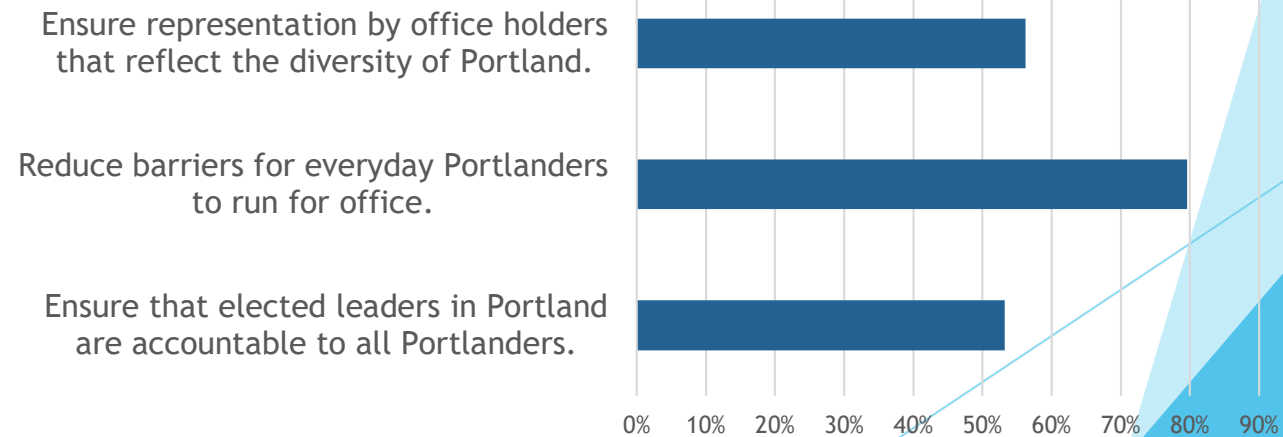
Initial OAE Performance Metrics

- Most candidates opted in
 - 23 of 41 candidates (with political committees)
 - 7 of 8 candidates in run offs
 - 3 of 4 winning candidates
- Small donor participation broadened:
 - 55% said they had never given to a City candidate before
 - Initial data suggests OAE participants collected 2x as much from zip codes that contributed little in previous election cycles, showing broader and more even engagement across the city.
- Over half of small donors felt the program was achieving goals in 2020 cycle.

Candidate Participation Rate



Small Donor Impressions of what OAE achieved in 2020 election cycle



OAE Performance - Upcoming Reports

- ▶ User Experience Research report - anticipated early 2021
- ▶ OAE Commission Report - anticipated early Spring 2021
 - ▶ Qualitative and quantitative metrics of program performance
 - ▶ Highlights from user experience research
 - ▶ Results of internal audit
 - ▶ Recommendations to improve program - Code, Rules, internal policies and practices