



1 limits established by Measure 26-200 and has received seven such contributions  
2 from one entity. The total of such contributions exceeding the applicable limits is  
3 29. Seven of these contributions exceed the applicable limit by a factor of 10. The  
4 offending contributions reported by the Wheeler campaign to date are listed in  
5 Exhibit 1 to this Complaint.

6 Defendant Mary Hull Caballero [hereinafter "City Auditor"] has refused to  
7 enforce the contribution limits enacted by Portland voters.

## 8 **JURISDICTION AND VENUE**

9 2.  
10

11 This court's jurisdiction is invoked by Portland City Charter, Article 3,  
12 Section 3-305(i), and by Portland City Code § 2.10.050. This court has plenary  
13 jurisdiction over the subject matter and to hear claims brought under ORS 28.010  
14 for declaratory relief. Relief is available pursuant to ORS 28.010 to 28.160 and in  
15 equity. This court has additional jurisdiction under ORS 246.910(1), and ORS  
16 246.910(4) suggests to courts that "precedence on their dockets to appeals under  
17 this section" is called for.

## 18 **THE PARTIES**

19 3.

20 Plaintiff Ronald A. Buel is an elector of Oregon residing at 1810 N.E. 70th  
21 Avenue in Portland, Oregon 97213. On December 19, 2019, he filed a Complaint

1 with Defendant City Auditor (Exhibit 4 to this Complaint), documenting the excess  
2 campaign contributions received as of that date by the Friends of Ted Wheeler.

3 4.

4 Defendant Mary Hull Caballero is Auditor of the City of Portland and is  
5 charged with implementing the Portland City Charter and laws pertaining to the  
6 operation of city government. Those charter provisions include those added by  
7 Measure 26-200 (2018) and codified at City of Portland Home Rule Charter  
8 [hereinafter "Portland City Charter"], Chapter 3, Article 3 (Exhibit 2 to this  
9 Complaint). Those laws include those Portland City Code Chapter 2.10, adopted  
10 by the Portland City Council as Ordinance No. 189348 (Exhibit 3 to this  
11 Complaint).

## 12 GENERAL ALLEGATIONS

13 5.

14 Portland Charter § 3-301 provides:

### 15 **3-301 Contributions in City of Portland Candidate Elections.**

- 16
- 17 1. An Individual or Entity may make Contributions only as  
18 specifically allowed to be received in this Article.
- 19
- 20 2. A Candidate or Candidate Committee may receive only the  
21 following Contributions during any Election Cycle:
- 22
- 23 1. Not more than five hundred dollars (\$500) from an  
24 Individual or a Political Committee other than a Small  
25 Donor Committee;
- 26
- 27 2. Any amount from a qualified Small Donor Committee;



1  
2  
3  
4  
5 9.

6 No court has enjoined the implementation of the Portland Campaign  
7 Contribution Limits. No party has sought any injunction preventing the  
8 enforcement of the Portland Campaign Contribution Limits.

9 10.

11 The Multnomah County Circuit Court (Judge Eric Bloch) on June 10, 2019,  
12 issued an Opinion and Order in No. 19CV06544, stating that the Portland  
13 Campaign Contribution Limits did not comply with Article I, § 8, of the Oregon  
14 Constitution. No party sought injunctive relief, and none was granted. All parties  
15 before the Multnomah County Circuit Court appealed that decision to the Oregon  
16 Court of Appeals, where the case sits in abatement (No. A171435) awaiting the  
17 outcome of the Oregon Supreme Court's review of the Multnomah County Circuit  
18 Court decision on the validity of the similar campaign contribution limits adopted  
19 by the voters of Multnomah County in 2016 (No. S066445, reviewing No.  
20 17CV18006).

11.

17 In its review of the very similar Multnomah County contribution limits, the  
18 Multnomah County Circuit Court (Judge Eric Bloch) on March 3, 2018, issued an  
19 Order regarding the Multnomah County contribution limits that was very similar to  
20 the order later issued in No. 19CV06544. The Order in No. 17CV18006 stated:

1 Perhaps with the passage of time and the occurrence of one election  
2 cycle under the requirements imposed by Multnomah County's charter  
3 and ordinance provisions, a further factual record can be provided for  
4 this or some future case that can further illuminate the speech and  
5 governance issues implicated by the ongoing effort to regulate the  
6 conduct of elections with respect to contributions and expenditures.  
7

8 This indicates that Judge Bloch did not regard the Multnomah County contribution  
9 limits to have been enjoined but instead recognized that they would be in effect and  
10 that experience in the first "election cycle under the requirements imposed by  
11 Multnomah County's charter and ordinance provisions" may provide "a further  
12 factual record." There is no reason to believe that Judge Bloch intended to enjoin  
13 the application of the Multnomah County contribution limits or the Portland  
14 Campaign Contribution Limits.

15 12.

16 On December 19, 2019, Plaintiff Buel filed a Complaint with Defendant City  
17 Auditor (Exhibit 4 to this Complaint), documenting the excess campaign  
18 contributions received as of that date by the Friends of Ted Wheeler and requesting  
19 that "the City Auditor apply the fines required by Portland Charter § 3-305(b): 'a  
20 civil fine which is not less than two nor more than twenty times the amount of the  
21 unlawful Contribution or Expenditure or Independent Expenditure at issue.'"

1 13.

2 Defendant sent to Plaintiff Buel a letter dated January 17, 2020 (Exhibit 5 to  
3 this Complaint), dismissing the Complaint and refusing to enforce the Portland  
4 Campaign Contribution Limits for the sole reason the limits "were struck down as  
5 unconstitutional by the most recent court order issued on June 10, 2019."

6 14.

7 Plaintiff and all electors of the City of Portland are adversely affected and  
8 aggrieved by refusal of Defendant City Auditor to enforce the Portland Campaign  
9 Contribution Limits. Such refusal completely defeats the purposes of Measure 26-  
10 200, enacted with an 87.4% "yes" vote in November 2018. Those purposes include  
11 "avoid[ing] the reality and appearance of corruption, including *quid pro quo*  
12 corruption," in City of Portland elections.

13 15.

14 Plaintiff is seeking to (1) defend the rights of all City of Portland electors to  
15 have the Portland City Charter and laws correctly implemented, (2) vindicate the  
16 rights of all electors to the implementation of laws that have not been judicially  
17 enjoined. Thus, Plaintiff seeks to benefit all City of Portland electors and residents  
18 and not to benefit himself as an individual and not for any personal or pecuniary  
19 gain.  
20





1 20.

2 No court has enjoined the Portland Campaign Contribution Limits. The  
3 previous orders of Judge Bloch clearly indicate that those orders did not enjoin the  
4 campaign contribution limits recently adopted by the voters in Multnomah County  
5 or Portland.

6 21.

7 Plaintiff is entitled to a injunction ordering Defendant City Auditor to enforce  
8 the Portland Campaign Contribution Limits as of September 1, 2019, as specified in  
9 Portland City Charter, Article 3, Section 3-305.

10  
11 **PRAYER FOR RELIEF**

12  
13 WHEREFORE, Plaintiff prays for an order of the Court:

- 14  
15 1. On his First Claim for Relief: declaring that the Portland Campaign  
16 Contribution Limits have been in effect since September 1, 2019.  
17  
18 2. On his Second Claim for Relief: directing Defendant City Auditor to enforce  
19 the Portland Campaign Contribution Limits as of September 1, 2019.  
20  
21 3. Awarding Plaintiff his costs and reasonable attorney fees, pursuant to:  
22  
23 a. The public benefit doctrine, exemplified by *Deras v. Myers*, 272 Or 47,  
24 66-67, 535 P2d 541 (1975), *Leppanen v. Lane Transit District*, 181  
25 OrApp 136, 149, 45 P3d 501 (2002), *Swett v. Bradbury*, 335 Or 378, 67  
26 P3d 391 (2003), and *Kerr v. Bradbury*, 194 Or App 133, 93 P3d 841  
27 (2004); and/or  
28  
29 b. The substantial benefit doctrine, exemplified by *Crandon Capital*



# Ted Wheeler Large Contributors

Date	Amount	Contributor	Business
12/09/2019	\$2500	<b>Robert Walsh</b>	Walsh Construction, Inc.
12/08/2019	\$1000	<b>Philip Kalberer</b>	commercial real estate
12/08/2019	\$5000	<b>Robert Warren</b>	manufacturing of forklifts
12/06/2019	\$2000	<b>Mike Golub</b>	Portland Timbers soccer team
12/06/2019	\$5000	<b>Noydena Brix</b>	wife of barge company owner
12/05/2019	\$2500	<b>Mark C. Edlen</b>	real estate development
12/03/2019	\$1000	<b>Thomas Cody</b>	real estate development
various	\$8600	<b>Melvin Mark Co.</b>	commercial real estate
11/26/2019	\$2500	<b>John Andrews</b>	export soda ash (ANSAC, Inc.)
11/22/2019	\$5000	<b>Peter Brix</b>	owner of barge company
11/21/2019	\$2500	<b>William R Swindells</b>	timber company heir
11/14/2019	\$5000	<b>Mark Madden</b>	real estate development

50

Date	Amount	Contributor	Business
11/14/2019	\$5000	<b>Mark Madden</b>	real estate development
12/27/2019	\$5000	<b>American Beverage Assn</b>	trade assn for soft drinks
12/27/2019	\$5000	<b>Kroger, Inc.</b>	retail merchandise
12/27/2019	\$1000	<b>Kenneth Thrasher</b>	former CEO, Fred Meyer's
12/12/2019	\$2500	<b>Capstone Partners LLC</b>	real estate development
12/11/2019	\$2500	<b>The Standard, Inc.</b>	insurance company
12/10/2019	\$2500	<b>Vanessa Sturgeon</b>	real estate development
12/10/2019	\$1000	<b>Robert Briscoe</b>	real estate development
01/02/2020	\$1000	<b>William Dickey</b>	co-owner of Morel Ink
01/07/2020	\$2500	<b>Frank Foti</b>	CEO shipbuilding company
01/07/2020	\$5000	<b>Charles Swindells</b>	timber company heir

# Article 3 Campaign Finance in Candidate Elections

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## -Article 3 note

[Article added November 6, 2018, effective December 5, 2018.]

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## Section 3-301 Contributions in City of Portland Candidate Elections

- (a) An Individual or Entity may make Contributions only as specifically allowed to be received in this Article.
  - (b) A Candidate or Candidate Committee may receive only the following Contributions during any Election Cycle:
    - (1) Not more than five hundred dollars (\$500) from an Individual or a Political Committee other than a Small Donor Committee;
    - (2) Any amount from a qualified Small Donor Committee;
    - (3) A loan balance of not more than five thousand dollars (\$5,000) from the candidate;
    - (4) No amount from any other Entity, except as provided in Section 3-304 below.
  - (c) Individuals shall have the right to make Contributions by payroll deduction by any private or public employer upon the employer's agreement or if such deduction is available to the employees for any other purpose.
- 

## Section 3-302 Expenditures in City of Portland Candidate Elections.

- (a) No Individual or Entity shall expend funds to support or oppose a Candidate, except those collected from the sources and under the Contribution limits set forth in this Article.
  - (b) An Entity shall register as a Political Committee under Oregon law within three (3) business days of making aggregate Independent Expenditures exceeding \$750 in any Election Cycle to support or oppose one or more Candidates in any City of Portland Candidate Election.
  - (c) Only the following Independent Expenditures are allowed per Election Cycle to support or oppose one or more Candidates in any particular City of Portland Candidate Election:
    - (1) An Individual may make aggregate Independent Expenditures of not more than five thousand dollars (\$5,000).
    - (2) A Small Donor Committee may make Independent Expenditures in any amounts from funds contributed in compliance with Section 3-301 above.
    - (3) A Political Committee may make aggregate Independent Expenditures of not more than ten thousand dollars (\$10,000), provided that the Independent Expenditures are funded by means of Contributions to the Political Committee by Individuals in amounts not exceeding five hundred dollars (\$500) per Individual per year.
-

## Section 3-303 Timely Disclosure of Large Contributions and Expenditures.

(a) Each Communication to voters related to a City of Portland Candidate Election shall Prominently Disclose the true original sources of the Contributions and/or Independent Expenditures used to fund the Communication, including:

- (1) The names of any Political Committees and other Entities that have paid to provide or present it; and
  - (2) For each of the five Dominant Contributors providing the largest amounts of funding to each such Political Committee or Entity in the current Election Cycle:
    - a) The name of the Individual or Entity providing the Contribution.
    - b) The types of businesses from which the maker of the Contribution has obtained a majority of income over the previous 5 years, with each business identified by the name associated with its 6-digit code of the North American Industry Classification System (NAICS).
  - (3) For each of the largest five Dominant Independent Spenders paying to provide or present it:
    - a) The name of the Individual or Entity providing the Independent Expenditure.
    - b) The types of businesses from which the maker of the Independent Expenditure has obtained a majority of income over the previous 5 years, with each business identified by the name associated with its 6-digit code of the North American Industry Classification System (NAICS).
- (b) If any of the five largest Dominant Contributors or Dominant Independent Spenders is a Political Committee (other than a Small Donor Committee) or nonprofit organization, the prominent disclosure shall include its top three funders during the current Election Cycle.
- (c) The disclosure shall be current to within ten (10) days of the printing of printed material or within five (5) days of the transmitting of a video or audio communication.
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## Section 3-304 Coordination with Public Funding of Campaigns.

A candidate participating in a government system of public funding of campaigns (including the Public Election Fund established under Portland City Code Chapter 2.16) may receive any amount that such system allows a participating candidate to receive.

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## Section 3-305 Implementation and Enforcement.

- (a) The provisions of this Article shall be implemented by ordinance to be operative not later than September 1, 2019.
- (b) Each violation of any provision in this Article shall be punishable by imposition of a civil fine which is not less than two nor more than twenty times the amount of the unlawful Contribution or Expenditure or Independent Expenditure at issue.
- (c) Any person may file a written complaint of a violation of any of the Provisions with the City Auditor.
- (d) The City Auditor, otherwise having reason to believe that a violation of any provision has occurred, shall issue a complaint regarding such violation.
- (e) Upon receipt or issuance of a complaint, the City Auditor:

- (1) Shall examine the complaint to determine whether a violation has occurred and shall make any investigation necessary.
- (2) Within two business days of receiving or issuing a complaint, shall issue a notification, including a copy of the complaint, to every person who is the object of the complaint.
- (3) Shall accept written materials supporting or opposing the complaint for a period of 10 business days following any such notification.
- (4) Shall render a decision on the complaint within 10 business days of the close of the material submission period.

(f) If the complaint is received or issued within 30 days of the date of the election involving the object of the complaint, then all time periods stated in subsections (e)(3) and (e)(4) above shall be reduced by one-half.

(g) The City Auditor may issue subpoenas to compel the production of records, documents, books, papers, memoranda or other information necessary to determine compliance with the provisions of this Article.

(h) Upon finding a violation of the requirement for timely disclosure set forth in Section 3-303 above, the City Auditor shall determine the true original sources of the Contributions and/or Independent Expenditures used to fund the Communication at issue and shall immediately issue a statement to all interested parties and news organizations containing all of the information about the involved donor(s) required by Section 3-303 above.

(i) The complainant or any person who is the object of the complaint may, within 30 days of the issuance of the decision, appeal that order to the appropriate Circuit Court as an agency order in other than a contested case.

(j) The decision in the matter shall be deemed final, following completion of any judicial review. Such decision shall be enforced by the City of Portland. If the decision is not enforced within thirty (30) days of the decision becoming final, the complainant may bring a civil action in a representative capacity for the collection of the applicable civil penalty, payable to the City of Portland, and for any appropriate equitable relief.

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## **Section 3-306 Adjustments.**

All dollar amounts shall be adjusted on January 1 of each odd-numbered year to reflect an appropriate measure of price inflation, rounded to the nearest dollar.

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## **Section 3-307 Severability.**

For the purpose of determining constitutionality, every section, subsection, and subdivision thereof of this Section, at any level of subdivision, shall be evaluated separately. If any section, subsection or subdivision at any level is held invalid, the remaining sections, subsections and subdivisions shall not be affected and shall remain in full force and effect. The courts shall sever those sections, subsections, and subdivisions necessary to render this Section consistent with the United States Constitution and with the Oregon Constitution. Each section, subsection, and subdivision thereof, at any level of subdivision, shall be considered severable, individually or in any combination.

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## **Section 3-308 Definitions.**

Unless otherwise indicated by the text or context of this Article, all terms shall have the definitions at Chapter 260 of Oregon Revised Statutes, as of January 1, 2018. Terms found therein or defined below are capitalized in this Article.

- (a)** "Candidate" has the meaning set forth at ORS 260.005(1).
- (b)** "Candidate Committee" has the meaning set forth at ORS 260.039 - 260.041, as of November 8, 2016, for the term "principal campaign committee."
- (c)** "City of Portland Candidate Election" means an election, including a primary election, to select persons to serve (or cease serving) in public offices of City of Portland.
- (d)** "Communication" means any written, printed, digital, electronic or broadcast communications but does not include communication by means of small items worn or carried by Individuals, bumper stickers, Small Signs, or a distribution of five hundred (500) or fewer substantially similar pieces of literature within any 10-day period.
- (e)** "Contribution" has the meaning set forth at ORS 260.005(3) and 260.007, as of November 8, 2016, except it does not include
- (1)** funds provided by government systems of public funding of campaigns or
  - (2)** providing rooms, phones, and internet access for use by a candidate committee free or at a reduced charge.
- (f)** "Dominant Contributor" means any Individual or Entity which contributes more than one thousand dollars (\$1,000) during an Election Cycle to a Candidate Committee or Political Committee.
- (g)** "Dominant Independent Spender" means any Individual or Entity which expends more than one thousand dollars (\$1,000) during an Election Cycle to support or oppose a particular Candidate.
- (h)** "Election cycle" means:
- (1)** Generally, the period between an election at which a candidate is elected and the next election for that same office, disregarding any intervening primary or nominating election, any recall election, or any special election called to fill a vacancy.
  - (2)** For any recall election: the period beginning the day that the recall election is called or declared and ending at midnight of the day of the recall election.
  - (3)** For any special election called to fill a vacancy: the period beginning the day that the special election is called or declared and ending at midnight of the day of the election.
- (i)** "Entity" means any corporation, partnership, limited liability company, proprietorship, Candidate Committee, Political Committee, or other form of organization which creates an entity which is legally separate from an Individual.
- (j)** "Expenditure" has the meaning set forth at ORS 260.005(8) and ORS 260.007, as of January 1, 2018, except that:
- (1)** It does not include a Communication to its members, and not to the public, by a Membership Organization not organized primarily for the purpose of influencing an election.
  - (2)** The exception in ORS 260.007(7) does not apply.
- (k)** "General Election Period" means the period beginning the day after the biennial primary election and ending the day of the biennial general election.
- (l)** "Individual" means a citizen or resident alien of the United States entitled to vote in federal elections; however, when this Article expresses a limitation or prohibition, "Individual" means any human being.
- (m)** "Membership Organization" means a nonprofit organization, not formed or operated for the purpose of conducting or promoting commercial enterprise, which has Individual members who have taken action to join

the organization and have made a payment of money or volunteer time to maintain membership in the organization.

**(1)** It cannot have commercial enterprises as members.

**(2)** It can transfer to one and only one small donor committee not more than forty percent (40%) of the amount paid to the organization by each Individual member, with a limit of one hundred dollars (\$100) transferred per Individual member per calendar year.

**(3)** It shall within thirty (30) days of any such transfer notify each paying member of the amount transferred, expressed in dollars or as a percentage of the member's amount paid to the organization. Such notice may be provided by regular mail or electronic mail to each affected member or by posting the information on the organization's main website. If the amount transferred is the same for each member or category of members (in dollars or in percentage of amount paid), the posting may state that amount or percentage without identifying Individual members.

**(n)** "Primary Election Period" means the period beginning on the 21st day after the preceding biennial general election and ending the day of the biennial primary election.

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

**(1)** any printed disclosure appearing in a type of contrasting color and in the same or larger font size as used for the majority of text in the printed material;

**(2)** any video disclosure remaining readable on the regular screen (not closed captioning) for a not less than 4 seconds;

**(3)** any auditory disclosure spoken at a maximum rate of five words per second;

**(4)** any website or email message in type of a contrasting color in the same or larger font size as used for the majority of text in the message;

**(5)** any billboard or sign other than a Small Sign: in type of a contrasting color and not smaller than 10 percent of the height of the billboard or sign.

**(p)** "Small Donor Committee" means a Political Committee which has never accepted any Contributions except from Individuals in amounts limited to one hundred dollars (\$100) per Individual contributor per calendar year.

**(q)** "Small Sign" means a sign smaller than six (6) square feet.



# Chapter 2.10 Campaign Finance in Candidate Elections

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## - Note

(Chapter added by Ordinance No. 189348, effective January 16, 2019.)

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### 2.10.010 Contributions in City of Portland Candidate Elections.

- A.** An Individual or Entity may make Contributions only as specifically allowed to be received in this Chapter.
- B.** A Candidate or Candidate Committee may receive only the following Contributions during any Election Cycle:
1. Not more than \$500 from an Individual or a Political Committee other than a Small Donor Committee;
  2. Any amount from a qualified Small Donor Committee;
  3. A loan balance of not more than \$5,000 from the Candidate;
  4. No amount from any other Entity, except as provided in Section 2.10.040.
- C.** Individuals shall have the right to make Contributions by payroll deduction by any private or public employer upon the employer's agreement or if such deduction is available to the employees for any other purpose.
- 

### 2.10.020 Expenditures in City of Portland Candidate Elections.

- A.** No Individual or Entity shall expend funds to support or oppose a Candidate, except those collected from the sources and under the Contribution limits set forth in this Chapter.
- B.** An Entity shall register with the Oregon Secretary of State as a Political Committee under Oregon law within 3 business days of making aggregate Independent Expenditures exceeding \$750 in any Election Cycle to support or oppose one or more Candidates in any City of Portland Candidate Election.
- C.** Only the following Independent Expenditures are allowed per Election Cycle to support or oppose one or more Candidates in any particular City of Portland Candidate Election:
1. An Individual may make aggregate Independent Expenditures of not more than \$5,000.
  2. A Small Donor Committee may make Independent Expenditures in any amounts from funds contributed in compliance with Section 2.10.010.
  3. A Political Committee may make aggregate Independent Expenditures of not more than \$10,000, provided that the Independent Expenditures are funded by means of Contributions to the Political Committee by Individuals in amounts not exceeding \$500 per Individual per year.
-

## **2.10.030 Timely Disclosure of Large Contributions and Expenditures.**

**A.** Each Communication to voters related to a City of Portland Candidate Election shall Prominently Disclose the true original sources of the Contributions and/or Independent Expenditures used to fund the Communication, including:

1. The names of any Political Committees and other Entities that have paid to provide or present it; and
2. For each of the five Dominant Contributors providing the largest amounts of funding to each such Political Committee or Entity in the current Election Cycle:
  - a. The name of the Individual or Entity providing the Contribution.
  - b. The types of businesses from which the maker of the Contribution has obtained a majority of income over the previous 5 years, with each business identified by the name associated with its 6-digit code of the North American Industry Classification System (NAICS).
3. For each of the largest five Dominant Independent Spenders paying to provide or present it:
  - a. The name of the Individual or Entity providing the Independent Expenditure.
  - b. The types of businesses from which the maker of the Independent Expenditure has obtained a majority of income over the previous 5 years, with each business identified by the name associated with its 6-digit code of the NAICS.

**B.** If any of the five largest Dominant Contributors or Dominant Independent Spenders is a Political Committee (other than a Small Donor Committee) or nonprofit organization, the prominent disclosure shall include its top three funders during the current Election Cycle.

**C.** The disclosure shall be current to within 10 business days of the printing of printed material or within 5 business days of the transmitting of a video or audio communication.

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## **2.10.040 Coordination with Public Funding of Campaigns.**

A Candidate participating in a government system of public funding of campaigns (including the Open and Accountable Elections Fund established under Portland City Code Chapter 2.16) may receive any amount that such system allows a participating candidate to receive.

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## **2.10.050 Implementation and Enforcement.**

- A.** The provisions of this Chapter shall take effect on September 1, 2019.
- B.** Each violation of any provision in this Chapter shall be punishable by imposition of a civil fine which is not less than 2 nor more than 20 times the amount of the unlawful Contribution or Expenditure or Independent Expenditure at issue.
- C.** Any person may file a written complaint of a violation of any provision in this Chapter with the City Auditor.
- D.** The City Auditor, otherwise having reason to believe that a violation of any provision has occurred,

shall issue a complaint regarding such violation.

**E.** Upon receipt or issuance of a complaint, the City Auditor:

1. Shall examine the complaint to determine whether a violation has occurred and shall make any investigation necessary.
2. Within 2 business days of receiving or issuing a complaint, shall issue a notification, including a copy of the complaint, to every person who is the object of the complaint.
3. Shall accept written materials supporting or opposing the complaint for a period of 10 business days following any such notification.
4. Shall render a decision on the complaint within 10 business days of the close of the material submission period.

**F.** If the complaint is received or issued within 30 calendar days of the date of the election involving the object of the complaint, then all time periods stated in Subsections 2.10.050 E.3. and 2.10.050 E.4. shall be reduced by one-half.

**G.** The City Auditor may issue subpoenas to compel the production of records, documents, books, papers, memoranda or other information necessary to determine compliance with the provisions of this Chapter.

**H.** Upon finding a violation of the requirement for timely disclosure set forth in Section 2.10.030, the City Auditor shall determine the true original sources of the Contributions and/or Independent Expenditures used to fund the Communication at issue and shall immediately issue a statement to all interested parties and news organizations containing all of the information about the involved donor(s) required by Section 2.10.030.

**I.** The complainant or any person who is the object of the complaint may, within 30 calendar days of the issuance of the decision, appeal that order to the appropriate Circuit Court as an agency order in other than a contested case.

**J.** The decision in the matter shall be deemed final, following completion of any judicial review. Such decision shall be enforced by the City of Portland. If the decision is not enforced within 30 calendar days of the decision becoming final, the complainant may bring a civil action in a representative capacity for the collection of the applicable civil penalty, payable to the City of Portland, and for any appropriate equitable relief.

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## **2.10.060 Adjustments.**

All dollar amounts shall be adjusted on January 1 of each odd-numbered year to reflect an appropriate measure of price inflation, rounded to the nearest dollar.

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## **2.10.070 Severability.**

For the purpose of determining constitutionality, every section, subsection and subdivision thereof of this Section, at any level of subdivision, shall be evaluated separately. If any section, subsection or subdivision at any level is held invalid, the remaining sections, subsections and subdivisions shall not be affected and shall remain in full force and effect. The courts shall sever those sections, subsections and subdivisions necessary to render this Section consistent with the United States Constitution and with the Oregon Constitution. Each section, subsection and subdivision thereof, at any level of subdivision, shall be considered severable, individually or in any combination.

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## 2.10.080 Definitions.

Unless otherwise indicated by the text or context of this Chapter, all terms shall have the definitions at Chapter 260 of Oregon Revised Statutes, as of January 1, 2018. Terms found therein or defined below are capitalized in this Chapter.

- A.** “Candidate” has the meaning set forth at ORS 260.005(1).
- B.** “Candidate Committee” has the meaning set forth at ORS 260.039 - 260.041, as of November 8, 2016, for the term “principal campaign committee.”
- C.** “City of Portland Candidate Election” means an election, including a primary election, to select persons to serve (or cease serving) in public offices of City of Portland.
- D.** “Communication” means any written, printed, digital, electronic or broadcast communications but does not include communication by means of small items worn or carried by Individuals, bumper stickers, Small Signs, or a distribution of 500 or fewer substantially similar pieces of literature within any 10 business-day period.
- E.** “Contribution” has the meaning set forth at ORS 260.005(3) and 260.007, as of November 8, 2016, except it does not include:
1. Funds provided by government systems of public funding of campaigns; or
  2. Providing rooms, phones, and internet access for use by a candidate committee free or at a reduced charge.
- F.** “Dominant Contributor” means any Individual or Entity which contributes more than \$1,000 during an Election Cycle to a Candidate Committee or Political Committee.
- G.** “Dominant Independent Spender” means any Individual or Entity which expends more than \$1,000 during an Election Cycle to support or oppose a particular Candidate.
- H.** “Election Cycle” means:
1. Generally, the period between an election at which a Candidate is elected and the next election for that same office, disregarding any intervening primary or nominating election, any recall election, or any special election called to fill a vacancy.
  2. For any recall election: the period beginning the day that the recall election is called or declared and ending at midnight of the day of the recall election.
  3. For any special election called to fill a vacancy: the period beginning the day that the special election is called or declared and ending at midnight of the day of the election.
- I.** “Entity” means any corporation, partnership, limited liability company, proprietorship, Candidate Committee, Political Committee, or other form of organization which creates an entity which is legally separate from an Individual.
- J.** “Expenditure” has the meaning set forth at ORS 260.005(8) and ORS 260.007, as of January 1, 2018, except that:
1. It does not include a Communication to its members, and not to the public, by a Membership Organization not organized primarily for the purpose of influencing an election.
  2. The exception in ORS 260.007(7) does not apply.

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

**L.** “Individual” means a citizen or resident alien of the United States entitled to vote in federal elections; however, when this Chapter expresses a limitation or prohibition, “Individual” means any human being.

**M.** “Membership Organization” means a nonprofit organization, not formed or operated for the purpose of conducting or promoting commercial enterprise, which has Individual members who have taken action to join the organization and have made a payment of money or volunteer time to maintain membership in the organization.

1. It cannot have commercial enterprises as members.

2. It can transfer to one and only one Small Donor Committee not more than 40 percent of the amount paid to the organization by each Individual member, with a limit of \$100 transferred per Individual member per calendar year.

3. It shall within 30 calendar days of any such transfer notify each paying member of the amount transferred, expressed in dollars or as a percentage of the member’s amount paid to the organization. Such notice may be provided by regular mail or electronic mail to each affected member or by posting the information on the organization’s main website. If the amount transferred is the same for each member or category of members (in dollars or in percentage of amount paid), the posting may state that amount or percentage without identifying individual members.

**N.** “Primary Election Period” means the period beginning on the 21st day after the preceding biennial general election and ending the day of the biennial primary election.

**O.** “Prominently Disclose” means that the disclosure shall be readily comprehensible to a person with average reading, vision, and hearing faculties, with:

1. any printed disclosure appearing in a type of contrasting color and in the same or larger font size as used for the majority of text in the printed material;

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

3. any auditory disclosure spoken at a maximum rate of 5 words per second;

4. any website or email message in type of a contrasting color in the same or larger font size as used for the majority of text in the message;

5. any billboard or sign other than a Small Sign: in type of a contrasting color and not smaller than 10 percent of the height of the billboard or sign.

**P.** “Small Donor Committee” means a Political Committee which has never accepted any Contributions except from Individuals in amounts limited to \$100 per Individual contributor per calendar year.

**Q.** “Small Sign” means a sign smaller than 6 square feet.

## CITY OF PORTLAND

In the Matter of: Violations of Campaign Contribution Limits of Portland Charter Chapter 3, Article 3, and Portland City Code Chapter 2.10

No. \_\_\_\_\_

### COMPLAINT

#### Violations of Contribution Limits by Campaign of Ted Wheeler

1. Ron Buel, a resident of Portland, hereby files this Complaint alleging violations of the campaign contribution limits of Portland Charter Chapter 3, Article 3, and Portland City Code Chapter 2.10 ("Portland Campaign Contribution Limits") by Friends of Ted Wheeler, the principal campaign committee of his campaign for Mayor of Portland.
2. This Complaint is pursuant to Portland Charter § 3-305.
3. Portland Charter § 3-302 provides:

#### **3-302 Contributions in City of Portland Candidate Elections.**

- (a) An Individual or Entity may make Contributions only as specifically allowed to be received in this Article.
- (b) A Candidate or Candidate Committee may receive only the following Contributions during any Election Cycle:
  - (1) Not more than five hundred dollars (\$500) from an Individual or a Political Committee other than a Small Donor Committee;
  - (2) Any amount from a qualified Small Donor Committee;

- (3) A loan balance of not more than five thousand dollars (\$5,000) from the candidate;
  - (4) No amount from any other Entity, except as provided in Section 3-304 below.
4. These contribution limits went into effect on September 1, 2019, pursuant to Portland Charter § 3-305(a).
  5. Since September 1, 2019, Friends of Ted Wheeler has received the following contributions in apparent violation of the contribution limits:

<b>Tran Id</b>	<b>Date</b>	<b>Contributor/Payee</b>	<b>SubType</b>	<b>Amount</b>
3305873	12/09/2019	Robert Walsh	Cash	\$ 2,500
3305831	12/08/2019	Philip Kalberer	Cash	\$ 1,000
3305832	12/08/2019	Robert Warren	Cash	\$ 5,000
3305825	12/06/2019	Mike Golub	Cash	\$ 2,000
3305830	12/06/2019	Noydena Brix	Cash	\$ 5,000
3305824	12/05/2019	Mark C. Edlen	Cash	\$ 2,500
3305835	12/03/2019	Thomas Cody	Cash	\$ 1,000
3303569	12/01/2019	Melvin Mark Brokerage Co.	In-Kind	\$ 1,278
3305833	11/26/2019	John Andrews	Cash	\$ 2,500
3294168	11/22/2019	Peter Brix	Cash	\$ 5,000
3294165	11/21/2019	William R Swindells	Cash	\$ 2,500
3289621	11/14/2019	Mark Madden	Cash	\$ 5,000
3282206	11/01/2019	Melvin Mark Brokerage Co.	In-Kind	\$ 1,278
3261443	10/01/2019	Melvin Mark Brokerage Co.	In-Kind	\$ 1,278
3248929	09/13/2019	Melvin Mark Brokerage Co.	In-Kind	\$ 2,210.94

6. The above-listed contributions by individuals are in excess of the \$500 per individual per election cycle limit.
7. The above-listed contributions by corporations violate the prohibition on contributions by all entities other than Political Committees and Small Donor Committees.
8. Friends of Ted Wheeler was notified of these violations on December 11, 2019. It was notified of the need to comply with the Portland Campaign Contribution Limits on November 1, 2019.

9. No court has enjoined the implementation of the Portland Campaign Contribution Limits.
10. Ronald Buel requests that the City Auditor apply the fines required by Portland Charter § 3-305(b): "a civil fine which is not less than two nor more than twenty times the amount of the unlawful Contribution or Expenditure or Independent Expenditure at issue."
11. Ronald Buel requests that the City Auditor conduct an audit of all contributions of \$100 or less received by Friends of Ted Wheeler to ensure that only qualified contributions are being reported under that label.
12. Ronald Buel requests that all correspondence to him in this matter be addressed to buel@honest-elections.com.

Dated: December 19, 2019

*/s/ Ronald Buel*

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Ronald Buel





P O R T L A N D  
CITY AUDITOR  
**Elections**

January 17, 2020

Ted Wheeler  
2028 SW Jackson St.  
Portland, OR 97201

**SENT VIA EMAIL and USPS**

Re: Dismissal of Campaign Finance Complaint: 2020-01-TW

Dear Ted Wheeler,

On December 19, 2019, the City of Portland Auditor's Office received a complaint alleging violations by your campaign. The complaint references Portland City Charter sections regarding campaign finance restrictions. This letter shall act as a decision on the complaint and no further action will be taken regarding this matter.

As previously noted, the complaint alleges violations of provisions which fall under Portland Charter Section 3-301 (a) and (b) "Contributions in City of Portland Candidate Elections" [note: the complaint erroneously cites Charter Section 3-302], which were struck down as unconstitutional by the most recent court order issued on June 10, 2019<sup>1</sup>. The case is currently pending appeal.

**Complaint Decision:** The complaint is dismissed.

**Appeals Process:** The complainant or anyone who is the object of the complaint may appeal to the Multnomah Circuit Court, per Portland City Code Section 2.10.050 I.

The Auditor's Office intends to uphold the will and intent of the voters in implementing campaign finance restrictions. However, we will not be enforcing, investigating, or acting on complaints regarding provisions of the Charter that are currently being litigated and have been held unconstitutional.

If you have any questions, please be in touch directly.

Sincerely,

Deborah Scroggin  
City Elections Officer

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<sup>1</sup> [See *In re. Validation Proceeding to Determine the Legality of City of Portland Charter Chapter 3, Article 3 and Portland City Code Chapter 2.10 Regulating Campaign Finance and Disclosure* (Multnomah County Circuit Court Case No. 19CV06544). The City has appealed from that determination in a case now pending in the Oregon Court of Appeals. See *City of Portland and Trojan et al.* (Court of Appeals Case No. A171435). The decision of the Multnomah County Circuit Court has not been stayed while the case is on appeal.]

**Exhibit 5**  
**Buel v. Caballero**

