

City of Portland

Clean Elections Review Board-May 9, 2024



Thursday, May 9, 2024 at 5:00 PM

To submit written public comment on an agenda item, email [INSERT_EMAIL_ADDRESS_HERE](#). Submissions must be received by 12:00 pm the day before the [COMMITTEE_NAME](#) meeting to guarantee their inclusion in the agenda packet. All submissions must include the commenter's name and legal address. To help ensure your comment is submitted for the correct item, please include the name of the agenda item (see below).

REMOTE ACCESS INFORMATION:

The City Manager Search Subcommittee will conduct this meeting remotely via Zoom pursuant to the Remote Meeting Policy adopted by the Portland City Council. Allow your computer to install the free Zoom app to get the best meeting experience. If you are not able to attend live either in person or via Zoom, a recording will be available in the [Agenda Center](#) following the meeting.

For public comment via Zoom, you will need to use the "raise your hand" feature. To raise your hand via the telephone, please hit *9. You will be unmuted by the host when it is time for public comment.

[INSERT_MEETING_LINK_HERE](#)

1. Zoom Information
2. Roll Call
3. New Business
 - a. A. Discussion & Vote of Committee Rules
4. Adjournment

Qualifying Contributions, and apply to become a
Certified Candidate; and

- (2) Any Candidate in a special Election must otherwise comply with the requirements of this Article, including but not limited to Seed Money Contribution limits and Qualifying Contribution requirements. The City Clerk will notify any Candidates of the opportunity to participate in the Fund and the procedures for compliance with this Article during a special Election.
(Ord. No. 171-22/23, 5-1-2023)

Section 9-70. Clean Elections Review Board.

(a) *Creation; Composition.* There shall be a Clean Elections Review Board of three (3) members. Members of the Clean Elections Review Board shall be residents of the City and shall not be officers or employees of the City or any of its agencies or departments. All members shall be appointed to fill at-large seats, and may reside in any part of the City.

(b) *Appointment; Terms.* For the initial members of the Clean Elections Review Board one member shall be appointed by the City Council for a term of one (1) year, another member for a term of two (2) years, and the third member for a term of three (3) years; thereafter, the City Council shall appoint members for terms of three (3) years. Such members shall serve until their successors are duly appointed and qualified.

(c) *Vacancies.* Permanent vacancies on the Clean Elections Review Board shall be filled by the City Council, in the same manner as other appointments hereunder, for the unexpired term of the former member.

(d) *Removal of Members.* Any member of the Clean Elections Review Board may be removed for cause by the City Council at any time; provided, however, that before any such removal, such member shall be given an opportunity to be heard in his or her own defense at a public hearing.

(e) *Compensation.* Members of the Clean Elections Review Board shall serve without compensation.

(f) *Chair; minutes, public records.* The members of the Clean Elections Review Board shall annually elect one (1) of their members as chair to preside at all meeting and hearings and to fulfill the customary functions of that office.

(g) *Staff Secretary; minutes, public records.* The City Manager shall designate a member of his or her staff to serve as staff secretary of the Clean Elections Review Board and attend all of its proceedings. The staff secretary shall keep the minutes of the proceedings of the Clean Elections Review Board, showing the vote of each member on every question, or his or her absence or failure to vote, and shall maintain the permanent records and decisions of all board meetings, hearings and proceedings, and all correspondence of the Clean Elections Review Board, as required by statute. Such records shall be public records open to inspection during working hours upon reasonable notice.

(h) *Quorum and Necessary Vote.* As to any matter requiring a hearing, no business shall be transacted by the Clean Elections Review Board without a quorum, consisting of two (2) members being present. The concurring vote of at least two (2) members shall be necessary to authorize any action by the Board. If less than a quorum is present, the hearing may be adjourned from time to time for a period not exceeding ten (10) business days at any one time. The staff secretary shall notify in writing all members of the date of the adjourned hearing and shall notify such other interested parties as may be directed in the vote of adjournment.

(i) *Meetings, Hearings, and Procedures.*

- (1) Regular meetings of the Clean Elections Review Board shall be held at the call of the chair or as provided by the rules of the Board. Special meetings shall be called by the chair at the request of any member of the Board or at the request of the City Clerk or City Council. All meetings and hearings of the Board shall be open to the public.

- (2) The Clean Elections Review Board shall adopt its own rules of procedure for the conduct of its business not inconsistent with the statutes of the State of Maine and this Article. Such rules shall be filed with the staff secretary and with the City Clerk. Any rule so adopted which relates to the conduct of hearings, and which is not required by the statutes of the State of Maine or by this Article, may be waived by the Board upon good cause being shown.

(j) *Public Hearings; Standard of Review.*

- (1) A public hearing shall be set, advertised and conducted by the Clean Elections Review Board as required by various state statutes, codes, and ordinances pursuant to which matters are brought before the Clean Elections Review Board and shall be conducted in accordance with relevant State law, the City Code, and the rules of the Board.

- (2) The Board shall hear all appeals *de novo*. The appellant shall bear the burden of proof.

(j) *Record and Decisions.*

- (1) The minutes of the staff secretary, and the transcript, if one is made, and all exhibits, papers, applications, and requests filed in any proceeding before the Clean Elections Review Board, and the decision of the Board shall constitute the record.
- (2) Every final decision of the Clean Elections Review Board shall include written findings of fact, and shall specify the reason or reasons for such decision.
- (3) The staff secretary shall mail notice of any decision of the Clean Elections Review Board to the appellant and any designated interested parties within five (5) days of such decision.

(k) *Conflicts.* No member of the Clean Elections Review Board shall participate in the hearing or disposition of any

matter in which they have an interest, as defined by 30-A M.R.S. §2605, as amended, and common law.

(1) *Appeals to Superior Court.* An appeal from any final decision of the Clean Elections Review Board as to any matter over which it has final authority may be taken by any party or by any authorized officer or agent of the City to the Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure.

(m) *Jurisdiction and Authority.* In addition to the jurisdiction conferred on it by other sections of this Article and in accordance therewith, the Clean Elections Review Board shall have the following jurisdiction and authority:

- (1) To hear, review, and approve or deny a petition by a Participating Candidate who has accepted Contributions or made Expenditures that do not comply with the Seed Money Restrictions or prohibited Expenditures under this Article to remain eligible for certification as a Certified Candidate;
- (2) To hear, review, and approve or deny any appeal by a Candidate who has been denied certification as a Certified Candidate by the City Clerk, the opponent of a Candidate who has been granted certification as a Certified Candidate or other interested persons;
- (3) To hear, review, and approve or deny any appeal by a Certified Candidate or other interested persons regarding the revocation of the certification of a Certified Candidate by the City Clerk;
- (4) To hear, review, and approve or deny any appeal by a Certified Candidate or other interested persons regarding the enforcement of violations pursuant to section 9-71; and
- (5) To require a Candidate whose certification as a Certified Candidate is reversed on appeal or a Candidate whose revocation is upheld on appeal to return to the Fund any unspent Fund revenues distributed.

(Ord. No. 171-22/23, 5-1-2023)

Section 9-71. Violations.

In addition to any other penalties that may be applicable, a person who violates any provision of this Article is subject to a fine not to exceed \$1,000.00 per violation payable to the Fund. In addition to any fine, for good cause shown, a Candidate, treasurer, or consultant or other agent of the Candidate or the political committee authorized by the Candidate found in violation of this Article may be required to return to the Fund all amounts distributed to the Candidate from the Fund or any funds not used for campaign-related purposes. The City Clerk's determination that a violation of this Article has occurred and any fines assessed may be appealed to the Clean Elections Review Board. Fines paid under this Article must be deposited in the Fund. In determining whether or not a Candidate is in violation of the expenditure limits of this Article, the City Clerk may consider as a mitigating factor any circumstances out of the Candidate's control.

(Ord. No. 171-22/23, 5-1-2023)

Section 9-72. Severability.

The provisions of this article and each of its sections, subsections, paragraphs, subparagraphs, sentences and clauses are severable. In the event that any such provision is held to be invalid or unenforceable by any judicial or administrative tribunal, it is the intent of the governing body that all other provisions thereof shall remain in full force and effect.

(Ord. No. 171-22/23, 5-1-2023)

Section 9-73. Effective date.

This ordinance shall go into effect on May 31, 2023.

(Ord. No. 171-22/23, 5-1-2023)

Sections 9-74 to 9-90. Reserved.

ARTICLE VI. CAMPAIGN FINANCE

CITY OF PORTLAND CLEAN ELECTIONS REVIEW BOARD

RULES AND PROCEDURES

SECTION 1. SCOPE

These procedures shall be applicable to hearings before the Portland Clean Elections Review Board which have been called to consider any matter within the Board's authority. They shall be construed to secure the just, speedy and inexpensive determination of such matters in the public interest.

SECTION 2. NOTICE

1. A public hearing shall be set, advertised and conducted by the Clean Elections Review Board as required by various state statutes, codes, and ordinances pursuant to which matters are brought before the Clean Elections Review Board and shall be conducted in accordance with relevant State law, the City Code, and the rules of the Board.
2. The Board shall hear all appeals de novo. The appellant shall bear the burden of proof.

SECTION 3. STAFF SECRETARY

1. The City Manager shall designate a member of his or her staff to serve as staff secretary of the Clean Elections Review Board and attend all of its proceedings. The staff secretary shall keep the minutes of the proceedings of the Clean Elections Review Board, showing the vote of each member on every question, or his or her absence or failure to vote, and shall maintain the permanent records and decisions of all board meetings, hearings and proceedings, and all correspondence of the Clean Elections Review Board, as required by statute. Such records shall be public records open to inspection during working hours upon reasonable notice.

SECTION 4. CHAIR

1. The members of the Clean Elections Review Board shall annually elect one (1) of their members as chair to preside at all meeting and hearings and to fulfill the customary functions of that office.

SECTION 5. CONFLICTS

1.

No member of the Clean Elections Review Board Shall participate in the hearing or disposition of any matter in with they have an interest, as defined by 30-A M.R.S. §2605, as amended, and common law.

SECTION ~~6~~5. JURISDICTION AND AUTHORITY

1. In addition to the jurisdiction conferred on it by other sections of this Article and in accordance therewith, the Clean Elections Review Board shall have the following jurisdiction and authority:

- A. Rule To hear, review, and approve or deny a petition by a Participating Candidate who has accepted Contributions or made Expenditures that allegedly do not comply with the Seed Money Restrictions or prohibited Expenditures under this Article to remain eligible for certification as a Certified Candidate,
- B. To hear, review, and approve or deny any appeal by a Candidate who has been denied certification as a Certified Candidate by the City Clerk, the opponent of a Candidate who has been granted certification as a Certified Candidate or other interested persons
- C. To hear, review, and approve or deny any appeal by a Certified Candidate or other interested persons regarding the revocation of the certification of a Certified Candidate by the City Clerk;
- D. To hear, review, and approve or deny any appeal by a Certified Candidate or other interested persons regarding the enforcement of violations pursuant to Portland City Code Chapter 9, Section 9-71~~e-section 9-71~~ Violations; and
- E. To require a Candidate whose certification as a Certified Candidate is reversed on appeal or a Candidate whose revocation is upheld on appeal to return to the Fund any unspent Fund revenues distributed.

SECTION 76. GENERAL CONDUCT

- 1. **Opening Statement.** The Chair shall open the hearing by describing in general terms the purpose of the hearing and the general procedure governing its conduct.
- 2. **Transcription of TestimonyRecord of Proceedings.** The staff secretary shall keep the minutes of the proceedings of the Clean Elections Review Board, showing the vote of each member on every question, or his or her absence or failure to vote, and shall maintain the permanent records and decisions of all board meetings, hearings and proceedings, and all correspondence of the Clean Elections Review Board, as required by statute. Such records shall be public records open to inspection during working hours upon reasonable notice. At the option of the appellant a transcription can be transcribed at the expense of the appellant or requesting party.
- 3. **Witnesses.** Witnesses shall be sworn. The Clean Elections Review Board may sequester witnesses as it deems necessary.
- 4. **Testimony.** Witnesses shall testify on behalf of or at the invitation or on behalf of the parties to the proceeding.

SECTION 87. CONTINUANCE

All hearings conducted pursuant to these regulations may be continued for reasonable cause and reconvened from time to time and from place to place by the Chair as circumstances require. All orders for continuance shall specify the time and place at which such hearing shall be reconvened. The staff shall notify interested persons of the continuance in such a manner as is appropriate to ensure that reasonable notice will be given of the time and place of such reconvened hearing.

SECTION 98. GENERAL EVIDENCE

- 1. Evidence shall be admitted if it is the kind of evidence upon which reasonable personsIn

the event of a dispute concerning the admissibility of evidence the hearing officers may rely on the main rules of evidences to make their determination.
are accustomed to rely in the conduct of serious affairs.

2. The City Clerk's Office shall provide all documentation related to the Municipal Candidate ~~that has submitted the appeal about whom the appeal has been submitted.~~
3. **Candidate Materials.** The candidate and other interested parties may submit any evidence to the Clerk's Office they wish to submit for Board review. Evidence shall be submitted before final meeting packet is published. Materials included in the meeting packet shall be ruled upon at the hearing for their admissibility.

SECTION ~~109~~. HEARING

1. The Chair shall allow for the Municipal Candidate and other interested parties to present their appeal and submitted evidence.
2. The City Clerk's shall present their supporting documentation.
3. The Chair shall allow for Public Comment. Public Comment is to be limited to 3 minutes per speaker.
 - A. Speaker must be a Portland Resident
 - B. Speaker must identify themselves by stating their name and the address or District they live in.
4. The Chair will allow for discussion from the Review Board.

SECTION ~~114~~. CONCLUSION OF HEARING

At the conclusion of the hearing, no other evidence or testimony will be allowed into the record, except as specified by the Chair.

SECTION ~~121~~. REOPENING THE RECORD

At any time prior to a final decision, the Review Board may reopen the record for further proceedings consistent with these regulations provided, however, that the Commission shall give notice of such further proceeding at least 10 days prior to such proceedings.

SECTION ~~132~~. CLOSE OF HEARING AND DECISION

At the conclusion of the hearing, the Review Board will make a final determination.

SECTION ~~143~~. RECORD AND DECISIONS

1. The minutes of the staff secretary, and the transcript if one (1) is made, and all exhibits, papers, applications and requests filed in any proceeding before the Review Board and the decision of the board shall constitute the record.
2. Every final decision of the Review Board and every recommendation of the Review

Board to the City Clerk shall include written findings of fact, and shall specify the reason or reasons for such decision or recommendation.

3. The City Clerk shall mail notice of any decision of the Review Board to the Candidate in review and any designated interested parties within five (5) business days of the Review Boards decision.

SECTION 154. APPEALS TO SUPERIOR COURT

An appeal from any final decision of the Clean Elections Review Board as to any matter over which it has final authority may be taken by any party or by any authorized officer or agent of the City to the Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure.

SECTION 1. SCOPE

These procedures shall be applicable to hearings before the Maine Commission on Governmental Ethics and Election Practices which have been called to consider any matter within the Commission's statutory authority. They shall be construed to secure the just, speedy and inexpensive determination of such matters in the public interest.

SECTION 2. NOTICE

1. Due notice of public hearings shall be provided as set forth in the *Maine Administrative Procedure Act*, 5 M.R.S. §9052.
2. *[Repealed]*

SECTION 3. PRESIDING OFFICER

1. The presiding officer at any hearing shall be either (1) the Chair, or (2) a member of the Commission selected by those members present at the hearing.
2. The presiding officer shall have the authority to:
 - A. Rule upon issues of evidence,
 - B. Regulate the course of the hearing,
 - C. Rule upon issues of procedure,
 - D. Present questions to the Commission for its determination,
 - E. Take such other action as may be ordered by the Commission or is necessary for the efficient and orderly conduct of the hearing, consistent with these regulations and applicable statutes.
3. In special cases, where good cause appears, the presiding officer may permit deviation from these procedural rules insofar as compliance therewith is found to be impractical or unnecessary.
4. The rulings of the presiding officer shall be subject to change or amendment by the Commission on motion of any Commission member.

SECTION 4. GENERAL CONDUCT

1. **Opening Statement.** The presiding officer shall open the hearing by describing in general terms the purpose of the hearing and the general procedure governing its conduct.
2. **Transcription of Testimony.** All testimony at hearings shall be recorded and, as necessary, transcribed, with the expenses of transcription to be paid by the person requesting the transcription. Requests for transcription must be made within 60 days of the date of the Commission's decision resulting from the hearing.
3. **Witnesses.** Witnesses shall be sworn. The Commission may sequester witnesses as it deems necessary.
4. **Testimony.** Witnesses shall testify on behalf of or at the invitation or subpoena of the Commission or on behalf of the parties to the proceeding.
5. **Ethics Hearings.** In hearings involving legislative ethics, any person whose name is mentioned in an investigation or hearing and who believes that testimony has been given which adversely affects that person shall have the right to testify, or at the discretion of the Commission and under such circumstances as the Commission shall determine to protect the rights of the Legislator under inquiry, to file a statement of facts under oath relating solely to the material relevant to the testimony of which that person complains. Nothing herein shall be construed to prevent the Commission from granting the right of cross-examination.

SECTION 5. CONTINUANCE

All hearings conducted pursuant to these regulations may be continued for reasonable cause and reconvened from time to time and from place to place by the presiding officer as circumstances require. All orders for continuance shall specify the time and place at which such hearing shall be reconvened. The staff shall notify interested persons of the continuance in such a manner as is appropriate to insure that reasonable notice will be given of the time and place of such reconvened hearing.

SECTION 6. GENERAL EVIDENCE

1. Evidence shall be admitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The Commission may exclude irrelevant or unduly repetitious evidence.
2. **Commission Evidence.** Any results of Commission investigations or data gathered during Commission investigations may be introduced into the record by the Commission. The Commission may also present such other evidence as it deems appropriate.
3. **Official Notice.** The Commission may, at any time, take official notice of relevant laws, official regulations and transcripts of other Commission hearings, judicially recognizable facts, generally recognized facts of common knowledge to the general public and physical, technical or scientific facts within its specialized knowledge. The Commission

shall include in any final written decision those facts of which it took official notice unless those facts are included in the transcript of the record.

4. **Documentary and Real Evidence.** All documents, materials and objects offered in evidence as exhibits shall be numbered or otherwise identified. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available.
5. **Objections.** All objections to rulings of the presiding officer regarding evidence or procedure and the grounds therefor shall be timely stated during the course of the hearing. If during the course of or after the close of the hearing and during its deliberations the Commission determines that the ruling of the presiding officer was in error, it may reopen the hearing or take such other action as it deems appropriate to correct such error.
6. **Offer of Proof.** An offer of proof may be made in connection with an objection to a ruling of the presiding officer excluding or rejecting any testimony or question on cross-examination. Such offer of proof shall consist of a statement of the substance of the proffered evidence or that which is expected to be shown by the answer of the witness.

SECTION 7. CROSS-EXAMINATION

All witnesses shall be subject to cross-examination as follows:

1. Commission members, staff and counsel may ask questions at any time.
2. Legislators in proceedings involving ethics and candidates or committees in proceedings involving their campaign reports shall have the right of cross-examination in the order specified by the presiding officer.
3. Any other person whose conduct is under inquiry in a legislative ethics proceeding shall have the right of cross-examination at a point specified by the presiding officer.
4. The presiding officer may permit oral questions outside the regular order where deemed appropriate to gain information for the Commission.

SECTION 8. CONCLUSION OF HEARING

At the conclusion of the hearing, no other evidence or testimony will be allowed into the record, except as specified by the presiding officer.

SECTION 9. REOPENING THE RECORD

At any time prior to a final decision, the Commission may reopen the record for further proceedings consistent with these regulations provided, however, that the Commission shall give notice of such further proceeding at least 10 days prior to such proceedings.

SECTION 10. BRIEFS AND PROPOSED FINDINGS AND SCHEDULE

After close of the record and prior to decision the Commission may order that within a specified time any person who participated in the hearing may file briefs and proposed findings of fact with the Commission.

SECTION 11. REPRESENTATIVES

The first document filed by any person in a proceeding shall designate the name and address of a person on whom service shall be made and to whom all correspondence from the Commission and other participants in the proceeding shall be sent.

STATUTORY AUTHORITY:

1 M.R.S.A. Section 1003

EFFECTIVE DATE:

April 29, 1987 – filing 87-145

REPEALED AND REPLACED:

December 14, 1994 – filing 94-494

EFFECTIVE DATE (ELECTRONIC CONVERSION):

October 30, 1996

REPEALED AND REPLACED:

November 1, 1998; also converted to MS Word 2.0 format – filing 98-447

NON-SUBSTANTIVE CHANGES:

December 3, 1998 - minor grammar and spelling.

AMENDED:

August 27, 2023 – filing 2023-113 (Major substantive)