



# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

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JOHN ST. CROIX  
EXECUTIVE DIRECTOR

Date: September 9, 2010  
To: Members, Ethics Commission  
From: John St. Croix, Executive Director  
By: Shaista Shaikh, Asst. Deputy Executive Director  
Re: Appeal to the Ethics Commission of the Executive  
Director's Decision Not to Certify Candidates as Eligible to Receive Public  
Financing

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### **I. Introduction**

Under S.F. Campaign and Governmental Conduct Code ("S.F. C&GC Code") section 1.142(g), when the Executive Director has declined to certify a candidate as eligible to receive public financing, the candidate may appeal the Executive Director's determination to the Ethics Commission ("Commission"). I have declined to certify Matt Drake, a candidate for Board of Supervisors, District 6, and Edward Donaldson, a candidate for Board of Supervisors, District 10, as eligible to receive public financing. Mr. Drake and Mr. Donaldson have appealed these decisions to the Commission, and the Commission will consider their appeals at its meeting on September 13, 2010.

This memorandum sets forth the reasons for my decisions not to certify Mr. Drake and Mr. Donaldson. In summary, they have not met the legal requirements of eligibility to receive public financing. Specifically, Mr. Drake and Mr. Donaldson failed to submit a Statement of Participation (Form SFEC-142(a)) by August 6, 2010 indicating an intent to participate in the public financing program. Because they have not met the legal requirements to receive public funds, the Commission should dismiss their appeals.

### **II. Discussion**

#### **A. Requirements for Qualifying for Public Financing**

Section 1.140(b) of the S.F. C&GC Code requires candidates to meet certain criteria in order to be eligible to receive public financing. To be eligible, a candidate must:

- Be seeking election to the office of Board of Supervisors and be eligible to hold the office sought;
- Have filed a statement no later than the deadline for filing nomination papers (i.e., August 6, 2010) indicating that he or she intends to participate in the public financing program;

- Have received at least \$5,000 in qualifying contributions<sup>1</sup> from at least 75 contributors before the 70<sup>th</sup> day before the election;<sup>2</sup>
- Be opposed by another candidate who has either established eligibility to receive public financing, or received contributions or made expenditures which in the aggregate equal or exceed \$5,000;
- Agree to limit spending to the candidate's Individual Expenditure Ceiling of \$143,000, or as adjusted under section 1.134.5 of the Campaign Finance Reform Ordinance, C&GC Code § 1.100 et seq. (CFRO);
- Agree to bear the burden of proving that each contribution that the candidate relies upon to establish eligibility is a qualifying contribution;
- Agree to bear the burden of proving that expenditures made with public funds provided comply with section 1.148 of the CFRO;
- Agree not to make any payments to a contractor or vendor in return for the contractor or vendor making a campaign contribution to the candidate or make more than a total of 50 payments, other than the return of a contribution, to contractor or vendors that have made contributions to the candidate;
- Agree not to loan or donate more than \$15,000 of his or her own money to the campaign;
- Agree not to accept any loans to his or her campaign with the exception of a candidate's loan to his or her own campaign;
- Agree to participate in at least three (3) debates with the candidate's opponents;
- Have paid any outstanding late fines or penalties, owed to the City by the candidate or any of the candidate's previous campaign committees, which were imposed for violations of campaign finance requirements, provided that the Ethics Commission had notified the candidate of such fines or penalties by the time of certification;
- Have filed any outstanding forms, owed to the City by the candidate or any of the candidate's previous campaign committees, which were required to be filed, provided that the Ethics Commission had notified the candidate of such outstanding forms by the time of certification; and
- Have no finding by a court within the prior five years that the candidate knowingly, willfully, or intentionally violated the campaign finance provisions of the California Political Reform Act or of the CFRO.

To establish eligibility for public financing, candidates must submit the following items to the Ethics Commission:

- Form SFEC-142(a): Statement of Participation or Non-Participation in the Public Financing Program, indicating an intent to participate, no later than August 6, 2010;
- Form SFEC-142(b)-1: Declaration for Public Funds;
- Form SFEC-142(c)-1: Qualifying Contributions List in both paper and electronic format;
- Supporting documentation that establishes the existence of contributions and S.F. residency (i.e., copies of contributor checks; contributor cards, documentation from credit card merchants, deposit slips, deposit receipts, and any other relevant documentation).

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<sup>1</sup>A qualifying contribution is a contribution of not less than \$10 and not more than \$100 that is made by an individual who is a resident of San Francisco and that complies with all requirements of the CFRO and its regulations.

<sup>2</sup> For the November 2, 2010 election, the 70<sup>th</sup> day before the election fell on August 24. That is, all qualifying contributions must have been received no later than August 23.

B. Process for Certifying a Candidate as Eligible for Public Funds

The Executive Director may not certify a candidate as eligible to receive public financing if the candidate's declaration or supporting material is incomplete or otherwise inadequate to establish eligibility. *See* S.F. C&GC Code § 1.142(e). If the Executive Director notifies a candidate that he or she is ineligible to receive public financing, the candidate may, within five business days of the date of the notification, resubmit the declaration and supporting material. If the candidate does not timely resubmit, the Executive Director's determination is final. If, after viewing resubmitted material, the Executive Director declines to certify that a candidate is eligible to receive public financing, the Executive Director may use his discretion to permit additional resubmissions. If no further resubmissions are permitted, the Executive Director's determination is final. Thereafter, the candidate may appeal the Executive Director's decision to the Ethics Commission within five calendar days of the date of notification of the Executive Director's determination. *See* S.F. C&GC Code § 1.142(e), (f) and (g).

C. Summary of Mr. Drake's and Mr. Donaldson's Submissions and Appeals

As explained above, I declined to certify Mr. Drake and Mr. Donaldson because they failed to file Form SFEC-142(a) by the August 6 deadline indicating an intent to participate in the public financing program. While the non-filing of this statement by August 6 may appear to some as "form over substance," it is important to note that the filing of this statement by August 6 is a requirement set forth in the law. To conclude at this time that Mr. Drake and Mr. Donaldson may qualify to receive public funds even though they failed to meet this requirement would be unfair to other candidates who complied with the requirements and unfair to candidates who may not have submitted an application for public funds by the August 24 deadline because they knew they failed to file a Statement of Participation by August 6. Below is a summary of Mr. Drake's and Mr. Donaldson's submissions.

*1. Mr. Drake's Submission*

Mr. Drake submitted his Declaration for Public Funds to the Ethics Commission on August 24, 2010. At the same time, Mr. Drake submitted Form SFEC-142(a) indicating an intent to participate in the public financing program. Because one of the requirements for establishing eligibility is that the candidate must have filed a statement (Form SFEC-142(a)) no later than August 6, 2010 indicating intent to participate in the public financing program and Mr. Drake failed to satisfy this requirement, I declined to certify him. *See* S.F. C&GC Code §§ 1.140(a)(1) and 1.142(a). On September 3, Mr. Drake requested an appeal of my determination.

*2. Mr. Donaldson's Submission*

Mr. Donaldson submitted his Declaration for Public Funds to the Ethics Commission on August 24, 2010. At the same time, Mr. Donaldson submitted Form SFEC-142(a) indicating an intent to participate in the public financing program. Because one of the requirements for establishing eligibility is that the candidate must have filed a statement (Form SFEC-142(a)) no later than August 6, 2010 indicating intent to participate in the public financing program and Mr. Donaldson failed to satisfy this requirement, I declined to certify him. *See* S.F. C&GC Code §§ 1.140(a)(1) and 1.142(a). On September 07, Mr. Donaldson requested an appeal of my determination.

**III. Conclusion**

Staff takes very seriously its duties to ensure that only qualified candidates are certified to receive public funds. Staff has reviewed Mr. Drake's and Mr. Donaldson's filings and performed its duties to verify whether each of them is eligible to receive public financing. Because they failed to satisfy one of the legal requirements to establish eligibility, staff believes that neither Mr. Drake nor Mr. Donaldson has met the eligibility requirements. Therefore, I have declined to certify either Mr. Drake or Mr. Donaldson as eligible to receive public funds. I believe that the law compels the Commission to reach a similar conclusion and I respectfully request that the Commission dismiss these appeals.

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