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LEEANN PELHAM
EXECUTIVE DIRECTOR

Date: July 16, 2018
To: Members of the Ethics Commission
From: Pat Ford, Senior Policy Analyst
Re: **Agenda Item 6 – Appeals Regarding Ineligibility for Participation in Public Financing Program in November 2018 Election**

Summary: This memo provides legal and factual background for the Commission's consideration of four separate appeals in connection with the November 2018 election regarding ineligibility for participation in the City's public campaign financing program.

Any candidate who wishes to participate in the City's program of public campaign financing must submit a Statement of Participation or Non-Participation to declare their intention to participate in the program. There is a deadline for filing this form. Four candidates for supervisor in the November 2018 election, all of whom failed to file this statement before the deadline, are appealing their resulting ineligibility to participate in the program.

Section I of this memo explains the applicable law that governs eligibility for the public financing program. Section II provides factual background about Staff's administration of the program, communications and resources that explain the filing requirements, and the relevant filings and communications made by the four candidates. Section III provides Staff's recommendation as to how the Commission might address any perceived deficiencies in City laws governing the public financing program.

I. Applicable Law

The Commission administers a program of public financing in which any candidate for mayor or supervisor may choose to participate. The Campaign and Governmental Conduct Code (the "Code") sets forth the minimum requirements that a candidate must meet to be eligible to participate in the program and receive public funds. To participate in the program, supervisorial candidates must:

- Formally indicate that they intend to participate in the program by filing a Statement of Participation or Non-Participation;
- Be opposed by at least one opponent who has raised \$10,000 or more in contributions;

- Have received at least \$10,000 in qualifying contributions from at least one hundred distinct contributors;¹
- Agree to limit total campaign expenditures to a fixed amount;
- Pay any late fines or penalties and file any outstanding forms that are owed to the City under the Code;
- Have no recent finding of a willful, knowing, or intentional violation of the Code or of the California Political Reform Act; and
- Agree to certain conditions, including limitations on payments to contractors, limitations on the candidate's personal contributions and loans, and participation in public debates.²

Most of these requirements exist to ensure that public funds are made accessible only to candidates who have a demonstrated base of support in the community and are likely to use the funds to mount a competitive campaign. Considering that the program is funded with taxpayer dollars, operates within a defined budget, and may have many candidates participating in any given year, it is imperative that a system exist to administer the funds in way that objectively and fairly allocates them to candidates positioned to use the funds to run a competitive campaign. The program furthers the purposes of the Code to “[e]nsure that serious candidates are able to raise enough money to communicate their views and positions adequately to the public” and to “[e]nsure that all individuals and interest groups in our city have a fair opportunity to participate in elective and governmental processes.”³ The program does not seek to certify as many candidates as possible for public financing or to certify any candidate merely for being a candidate for public office.

Section 1.142 of the Code sets forth the process that candidates must follow in order to demonstrate that they meet all of the eligibility requirements. The first step is filing the Statement of Participation or Non-Participation (“Statement of Participation”).⁴ This form serves the purpose of public disclosure by making it clear to the public, at the time that entry into a given race is closed, which candidates will be seeking to participate in the public financing program. This is an important piece of information for voters as they consider their choices, as well as for electoral opponents as they formulate their campaign strategy. It also provides notice to Commission Staff that is useful in their administration of the public financing program. This form must be filed no later than the deadline for filing nomination papers for the election, which is 147 days before the election, unless postponed under state law.⁵ A Statement of Participation cannot be amended after the deadline, and there is no provision in the Code or supporting regulations for extending the deadline beyond the day on which nomination papers must be filed. It has been standard practice to deny public financing to any candidate who fails to file the Statement of Participation by the deadline. For example, in 2010 the Commission denied the appeals of two supervisorial candidates who failed to file the Statement of Participation before the deadline. These

¹ A qualifying contribution must be \$10-100 in size, made by a San Francisco resident, and received between eighteen months and seventy days before the election. Campaign & Gov. Conduct Code § 1.104.

² *Id.* at § 1.140(a)–(b).

³ *Id.* at 1.100(b)(2); (6) (stating the purposes and intent of the Code).

⁴ A copy of a blank Statement of Participation or Non-Participation is attached here as Attachment 16.

⁵ *Id.* at § 1.142(a).

candidates were therefore not able to participate in the public financing program. A copy of the minutes from the meeting in which the Commission considered these appeals is attached here as Attachment 1.

The second step in establishing eligibility for public financing is to file a Qualifying Request (also referred to as a Declaration). On this form, candidates state under penalty of perjury that they satisfy all of the program requirements listed at the beginning of this Section I.⁶ Candidates must attach supporting documentation to their Qualifying Requests that demonstrates that they have received the required level of qualifying contributions. The deadline for filing a Qualifying Request is the seventieth day before the election. Candidates may not submit a Qualifying Request more than nine months before an election.

It is important to note that candidates may submit a Qualifying Request up to nine months before the election, making it possible for a candidate to submit a Qualifying Request before they have submitted a Statement of Participation. There is no requirement that the two filings be made sequentially, with the Statement of Participation being filed before the Qualifying Request. The only requirement is that both forms be filed before their respective deadlines.

II. Facts

The Statement of Participation and the Qualifying Request are the only forms that must be filed by a candidate in order to establish eligibility in the public financing program.⁷ These requirements are stated on the Commission's webpage for the public financing program, an image of which is attached here as Attachment 2.⁸ The requirements are further stated in the *Supplemental Guide for Board of Supervisors Candidates Seeking Public Financing*, an excerpt of which is attached here as Attachment 3.⁹ Additionally, on June 4th, an email reminder was sent to all declared candidates reminding them of the deadline for filing the Statement of Participation on June 12th. A copy of this email is attached as Attachment 4. When the deadline for filing nomination papers for District 4 and District 8 candidates was extended to June 18th, a separate reminder (Attachment 5) was sent to all declared District 4 and District 8 candidates on June 13th notifying them that the deadline for filing the Statement of Participation would also be extended to June 18th.¹⁰ Additionally, Staff provided an in-person training for

⁶ *Id.* at § 1.142(b).

⁷ There are other filing requirements that apply to all candidates for City elective office, and failure to make such filings could result in a candidate being ineligible for public financing until the filings are made. However, such filings are not formally part of the public-financing qualification process.

⁸ Available at <https://sfethics.org/compliance/campaigns/candidates/public-financing-program>.

⁹ Available at <https://sfethics.org/wp-content/uploads/2018/01/Supplemental-Guide-for-Candidates-for-the-Board-of-Supervisors-2018.pdf>.

¹⁰ The deadlines for filing nomination papers for Districts 4 and 8 were extended under state law after the incumbents, Supervisors Katy Tang and Jeff Sheehy, respectively, announced that they would not run in the November election. See SAN FRANCISCO DEPARTMENT OF ELECTIONS, *November 6, 2018, Consolidated General Election: Extension of Candidate Nomination Deadline for Board of Supervisors Candidates in Districts 4 and 8*, available at <https://sfelections.sfgov.org/article/november-6-2018-consolidated-general-election-extension-candidate-nomination-deadline-board>.

candidates and treasurers on June 12th at which Staff reiterated the deadline for filing the Statement of Participation.

The following subsections provide factual background for each candidate who is appealing their ineligibility for public financing. Each of the four candidates is ineligible for failure to file the Statement of Participation by the deadline and was notified as such in writing.

A. Sonja Truss – Candidate for Supervisor, District 6

Sonja Trauss, a candidate for supervisor in District 6, has filed six Qualifying Requests for participation in the public financing program. The first request was filed on February 8, 2018, and each request was determined by Commission auditors to be insufficient to establish Ms. Trauss's eligibility for public funds because none included supporting documentation establishing that the minimum amount of Qualifying Contributions had been raised. As discussed above, it is permissible for a candidate to file a Qualifying Request before filing a Statement of Participation, since the periods during which these filings can be made overlap.

Ms. Trauss did not file a Statement of Participation by June 12th, the last day for candidates to have filed their nominating petitions with the Department of Elections and the statutory deadline for filing that form. Consequently, Staff notified Ms. Trauss (via the letter attached here as Attachment 6) that Ms. Trauss would not be eligible for public financing. Ms. Trauss subsequently filed a Statement of Participation on June 14th (Attachment 7) and, via letter dated June 15th (Attachment 8(a)) notified Staff that she intended to appeal her ineligibility to the Commission. On July 13th, Staff received materials from Jesse Mainardi, Ms. Trauss's attorney, in support of her appeal (Attachment 8(b)).

B. Trevor McNeil – Candidate for Supervisor, District 4

Trevor McNeil, a candidate for supervisor in District 4, did not file a Statement of Participation by the June 18th statutory deadline. Mr. McNeil subsequently filed a Statement of Participation on June 25th (Attachment 9). He was notified via email on June 26th (Attachment 10) that his failure to timely file the Statement of Participation rendered him ineligible for public financing.¹¹ On July 2nd, Staff received a letter from Mr. McNeil (Attachment 11) stating his desire to appeal his ineligibility.

C. Arthur Tom – Candidate for Supervisor, District 4

Arthur Tom, a candidate for supervisor in District 4, did not file a Statement of Participation by the June 18th statutory deadline. Mr. Tom subsequently filed a Statement of Participation on June 20th (Attachment 12). He was notified via email on June 26th (Attachment 10) that his failure to timely file the Statement of Participation rendered him ineligible for public financing. On July 10th, Staff received a letter from Mr. Tom (Attachment 13) stating his desire to appeal his ineligibility.

¹¹ This notice was sent to all candidates who failed to file the Statement of Participation before the deadline.

D. Uzuri Pease-Greene – Candidate for Supervisor, District 10

Uzuri Pease-Greene, a candidate for supervisor in District 10, did not file a Statement of Participation by the June 12th statutory deadline. Ms. Pease-Greene subsequently filed a Statement of Participation on June 20th (Attachment 14). She was notified via email on June 26th (Attachment 10) that her failure to timely file the Statement of Participation rendered her ineligible for public financing. On July 12th, Staff received an email from Kim Lutz, an associate of Ms. Pease-Greene's treasurer, Shawnda Deane, stating Ms. Pease-Greene's desire to appeal her ineligibility. Attached to the email was a letter from Ms. Deane in support of Ms. Pease-Greene's appeal (Attachment 15).

III. Conclusion

Based on the relevant laws described in Section I and the events described in Section II, Ms. Trauss, Mr. McNeil, Mr. Tom, and Ms. Pease-Greene are not eligible to participate in the City's public financing program, and the Commission should deny their appeals. Allowing some candidates to bypass mandatory deadlines, rather than equalizing the field, would in reality give those candidates preferential treatment over others. There may be candidates who, realizing that they missed the deadline, did not submit a late statement of participation, assuming that the deadline would be enforced. With the interests of equity and the program's policy goals in mind, the Commission should apply the rules predictably, uniformly, and in accordance with applicable statutes. This is the fairest way to administer the program and will avoid the perception that the Commission is giving preferential treatment to certain candidates over others.

If the Commission were to conclude that this outcome does not properly achieve the policy goals of the public financing program as it sees them, Staff would recommend that the Commission, rather than granting the appeals, consider adopting revised provisions of the Code as part of its review of the public financing program, which is currently underway and planned for further discussion beginning in September.