



CITY OF

PORTLAND, OREGON

OFFICE OF THE CITY AUDITOR

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MEMORANDUM

Date: March 5, 2008

To: Sho Dozono

From: Gary Blackmer, City Auditor

Re: Final Certification Determination Letter

Cc: Vicki Tagliafico, Treasurer, Sho Dozono for Mayor

The Auditor has reviewed your Request for Certification as a Campaign Finance Fund candidate, received January 31, 2008. An initial determination letter was issued to you on February 14, 2008 (the "Initial Determination Letter"). Since then, you have submitted the following documentation relating to issues identified in the Initial Determination Letter:

- Seed Money Report (AUD 210-S);
- Request To Remain Eligible (AUD 210-R) forms (2), as well as a spreadsheet documenting all Prohibited and Non-Qualifying Five-Dollar Contributions;
- ORESTAR Amendments and resubmitted export spreadsheets of all transactions;

The Auditor has reviewed your request and supporting documentation. Based on the information provided to the Auditor to date, the Auditor finds that you meet the certification requirements of Portland City Code Sections 2.10.080 B.1 through 7 and the administrative rules implementing those requirements. Thus, the Auditor has determined that you:

- Are granted certification as a Campaign Finance Fund Candidate.

Please see the attached document for the payment calculation and schedule.

I. Findings of Compliance with Code Section 2.10.080

The criteria to be used by the Auditor in making a certification decision are set forth in Code Section 2.10.080 B. These criteria make reference to and require compliance with applicable portions of Code Sections 2.10.050, 2.10.060 and 2.10.070. The Auditor's findings on each of the criteria are set forth below.

A. Code Section 2.10.080 B.1: The Auditor must determine that the Candidate has “[s]igned, filed and complied with the provisions of a Declaration of Intent to seek certification described in Section 2.10.060.”

You submitted a Declaration of Intent on January 7, 2008. This form was filed during the applicable Qualifying Period pursuant to the Auditor’s forms and procedures. Your signed Declaration of Intent includes your agreement to the terms of Code Section 2.10.060 B. The documentation you have submitted demonstrates that you have complied with the provision of the Declaration of Intent by only accepting Qualifying Contributions, Seed Money Contributions and In-Kind Contributions and by only making Expenditures from Qualifying and Seed Money Contributions. Further findings on compliance with Contribution and Expenditure limitations are included in the findings under Code Sections 2.10.080 B.4, 5 and 6.

Based on the information you have submitted, the Auditor has determined that you satisfy the requirement of Code Section 2.10.080 B.1.

B. Code Section 2.10.080 B.2: The Auditor must determine that the Candidate has “[r]eceived the minimum number of valid Qualifying Contributions described in 2.10.070 D.1 during the Qualifying Period.”

Code Section 2.10.070 D.1 provides that a Candidate for Mayor must obtain a minimum of 1,500 valid Qualifying Contributions to qualify for certification. As discussed in the Initial Determination Letter, after conducting verification on all of the \$5.00 Qualifying Contribution Receipt (AUD 210-Q) forms you have submitted prior to certification, the Auditor has determined that you have achieved 3,766 valid Qualifying Contributions, exceeding the minimum 1,500 needed for certification by candidates for Mayor.

C. Code Section 2.10.080 B.3: The Auditor must determine that the Candidate has “[q]ualified as a Candidate for City Office by nominating petition, declaration of candidacy, or other means.”

You filed a declaration of candidacy with the Auditor on January 31, 2008. As a result, the Auditor finds that you satisfy the requirement of Code Section 2.10.080 B.3.

D. Code Section 2.10.080 B.4: The Auditor must determinate that the Candidate has “[c]omplied with all requirements applicable to Qualifying Contributions and Seed Money Contributions.”

According to the ORESTAR spreadsheets submitted to the Auditor, your first contribution as a Candidate was received on January 8, 2008. As discussed in the Initial Determination Letter and in conformance with Code Section 2.10.080 E, the Auditor stated the reasons you were not able to be certified at that time and identified the actions you were required to take to become certified. Specifically, the Auditor identified issues related to Prohibited Contributions, Non-Qualifying Contributions, contributions requiring new AUD 210-Q forms, required amendments to ORESTAR entries and a new Seed Money report (AUD 210-S). Between February 19 and March 5, 2008, you submitted documentation to verify that these issues had been addressed. Specifically, you submitted: a new Seed Money

Report; two Request to Remain Eligible (AUD 210-R) forms; documentation on Non-Qualifying and Prohibited Contributions; checks of \$410.00 and \$25.00 for disposal of 87 Non-Qualifying Contributions; and six ORESTAR export spreadsheets. In addition, you completed information on the Candidate Training Form (AUD 210-T). As a result, the Auditor finds that you satisfy the requirement of Code Section 2.10.080 B.4.

E. Code Section 2.10.080 B.5: The Auditor must determine that the Candidate has “[a]ccepted no Contributions, except for Contributions intended to be Qualifying Contributions as described in Section 2.10.070 or Seed Money and In-Kind Contributions as described in Section 2.10.050 during the applicable Qualifying Period. If a Contribution intended to be a Qualifying Contribution is determined not to have been made by a City Elector, the Candidate has complied with 2.10.080 C.”

(1) General Findings

The required ORESTAR filings detail Contributions to your campaign. The filings show no Contributions other than Qualifying, Seed Money and In-Kind Contributions. After making corrections based on the Initial Determination Letter and complying with Code Section 2.10.080 C, the Auditor finds that you have satisfied this criterion.

(2) Findings Regarding December Poll

In the Initial Determination Letter, the Auditor discussed a poll that was conducted in December 2007. In your sworn declaration submitted to the Auditor on February 29, 2008, you stated that you received the poll results on December 21, 2008, and that the poll had been conducted on December 17 – 20, 2007. An invoice for the poll, dated December 18, 2007, and addressed to Len Bergstein, was submitted to the Auditor. The invoice states that the cost of the poll was \$27,295.

Given questions raised about the effect of this poll on your eligibility to become a Certified Candidate, the Auditor believes that the poll merits further discussion under this criterion.

a. Receipt of Poll results

Because Code Section 2.10.050 C.1 limits the aggregate value of In-Kind Contributions that may be received by a mayoral Candidate to \$12,000 for the Primary Election Period and because the cost of the December 2007 poll exceeds that limit, the Auditor had to determine whether you were a Candidate as defined by City Code when you received the poll results. If you were not a Candidate when you received the poll results, the value of the poll would not be counted against the In-Kind limits. Code Section 2.10.050 C.1 limits acceptance of In-Kind Contributions by a Candidate:

In addition to Seed Money, a **Candidate** seeking certification may accept In-Kind Contributions...The aggregate amount of In-Kind Contributions **received under this Section** shall not exceed an amount equal to six percent of:

1. The applicable Primary Election Period spending limit described in Section 2.10.110 A.1 during the Primary Election Period, including the Qualifying and Exploratory Periods;...(emphasis added.)

These In-Kind limits expressly apply to receipt of an In-Kind Contribution by someone who is a Candidate. They do not apply to In-Kind Contributions received before a person is a Candidate under City Code.

The Initial Determination Letter reached the preliminary conclusion that, for purposes of the Campaign Finance Fund, you were not a Candidate under City Code when you received the poll results. Afterward, questions were raised in local media and from other sources. On February 26, 2008, the Auditor requested additional written information from you. On February 29, 2008, Michael Simon of Perkins Coie submitted a sworn declaration signed by you and dated February 28, 2008.

The Initial Determination Letter stated:

You have acknowledged receiving, at some time during the last weeks of December, the results of a poll conducted earlier that month. The Auditor has determined that you received the poll results before you were a Candidate as defined by City Code; thus, you were not a Candidate for purposes of the Campaign Finance Fund. This determination is an interpretation of Portland City Code Chapter 2.10, and is independent of any determination the Secretary of State may have in regards to State reporting requirements of the receipt of the poll results.

City Code Section 2.10.010 D:

D. "Candidate" means an individual whose name is or is expected to be printed on the official ballot.

The definition of "Candidate" for purposes of eligibility for certification under the Campaign Finance Fund (City Code Chapter 2.10) is not identical to the definition of "candidate" as applied by the Secretary of State for purposes of campaign finance reporting.

The Initial Determination Letter stated:

Given the elements of this definition, candidacy for City elected office should be determined based upon overt, objective factors, not a person's mental state or internalized intentions. Factors indicating objective expressions of intent to be a Candidate for elected City office should include:

- *Filing a Declaration of Candidacy;*
- *Filing a Declaration of Intent to Participate; or*
- *Statements or actions intended to inform the public of candidacy.*

In determining whether you were a candidate as provided within the meaning of Section 2.10.010.D, the following facts have been established:

- *You filed a declaration of Candidacy on January 31, 2008.*
- *You filed a Declaration of Intent on January 7, 2008.*
- *On Sunday, January 6, 2008, you communicated to The Oregonian that you would announce your candidacy for Mayor on Monday, January 7, 2008. This communication was published in The Oregonian on January 7, 2008.*

Each of these overt, objective actions and statements occurred after the poll results were provided to you. Since there was no overt, objective action establishing that your name was or was expected to be on the official ballot as a Candidate as defined in City Code Section 2.10.010 D on the date you received the poll results, your receipt of an in-kind contribution (poll results) prior to your becoming a Candidate does not count against the \$12,000 in-kind contribution limit for the Primary Election Period as described in City Code Section 2.10.050 C.

On January 4, 2008, you signed a distribution form for, and were issued, 1,000 blank \$5.00 Qualifying Contribution Receipt (AUD 210-Q) forms. As evidenced by the ORESTAR export spreadsheets submitted to the Auditor, your first contribution as a Candidate was received on January 8, 2008, the day after you signed a declaration of intent. The Auditor finds no evidence that your activities and statements prior to January 2008 were anything more than those of a private individual gathering information and conferring with others to help decide whether to undertake a mayoral campaign. Thus, based on the factors and reasoning set forth in the Initial Determination Letter, the Auditor finds that your name was not expected to be on the ballot and you were not a Candidate under City Code until January 2008.

Upon examination of the additional documentation you submitted on February 29, 2008, the Auditor further finds that the following documents do not establish that your name was or was expected to be on the ballot on December 21, 2007, the date you have attested that you received the poll results:

- Email from Sho Dozono to Odis Avritt, et al, December 15, 2007: Based on the Auditor's review of the content of this e-mail, the Auditor concludes that it was intended to solicit comments and encouragement regarding a possible candidacy. The Auditor is persuaded by language in the e-mail stating that "If there is [sic] enough people who encourage him to run then I think we will have another candidate for Portland's next Mayor!" Although the e-mail uses the term "grassroots campaign," as you explain in your sworn statement, it is used in the context of "...an organic effort to test support for a potential candidacy..." The Auditor finds that this e-mail was not intended to inform the public of a candidacy and therefore that you were not expected to be on the ballot at that time.
- Poll questions, as read to the Auditor over the phone by legal counsel Elisa Dozono on February 13, 2008 (included in file notes): The Auditor requested that you provide a copy of the poll questions, as provided to you, with the results redacted. You declined

this request. Because the City Code provides no means for the Auditor to compel production, the Auditor relied on the oral description of the poll questions in evaluating whether you were a candidate. The Auditor's review of the content of the poll questions as characterized by your legal counsel indicates that the poll was intended to gauge potential support for a candidacy and inform your decision whether or not to run for office, not to inform the public of a candidacy. To the Auditor's knowledge, the poll did not include any overt, objective statements that you were a candidate for office or that your name was expected to be on the ballot. Instead the poll questions appeared to be intended to solicit information regarding opinions about the current council and council members, issues of concern to potential voters, the potential success of any opponent to another candidate for Mayor, and the public's awareness and opinion of you. The Auditor finds that the poll was not intended to inform the public of a candidacy and therefore that you were not expected to be on the ballot at the time of the poll.

- Web site, www.showyoursupportforsho.com: The Auditor concludes that the content and creation of the website indicates that it was not intended to inform the public of a candidacy, but rather to assess whether there was enough support for you among the general public to decide to run for Mayor. Thus, the Auditor finds that you were not expected to be on the ballot at that time.
- Website domain registrations for shoformayor.com and dozonofmayor.com. Based on your sworn statement, the Auditor concludes that creation of these two websites was for the purpose of reserving sites if you decided to run for office, not to inform the public of a candidacy. Thus, the Auditor finds that you were not expected to be on the ballot at that time.
- News reports: The Auditor is not aware of and does not believe that there are any news reports prior to January 2008 that contained overt statements declaring your candidacy for Mayor. While there was intense interest in late December in early January, none of the stories reported anything more than speculation about your candidacy presumably, because they could not obtain any objective facts.

In conclusion, the Auditor has determined that for purposes of City Code, you were not expected to be on the ballot, and thus were not a Candidate, on or prior to December 21, 2007, when you received the poll results.

As discussed above, while the City Code explicitly provides an In-Kind cap for the entire Primary Election Period, the In-Kind cap applies only to a "Candidate" as provided for in City Code Section 2.10.010 D. Again, I am satisfied by the information that has been provided to me that you were not a candidate for purposes of the Campaign Finance Fund on December 21, 2007, the date you received the poll results. I have previously described overt, objective actions that will be used by this office to consider whether a person is a "Candidate" for purposes of the Campaign Finance Fund. Receipt of the poll results, even if reported late, will not be counted toward the \$12,000 In-Kind Contribution limit, as you were not a "Candidate" on the date you received the results.

The In-Kind Contribution for receipt of the poll results, although reported late to the Secretary of State, is not a disqualifying action for certification under the Campaign

Finance Fund. The receipt of an In-Kind Contribution of \$27,295 (poll results) from the person who commissioned the poll (Len Bergstein) will not count towards the \$12,000 In-Kind Contribution limit for a Certified Candidate.

b. Payment and ORESTAR Reporting of the Poll

In a telephone conversation on or about February 13, 2008, the Auditor mistakenly told you that it would be permissible for you to pay for the poll. In a February 15, 2008, article in the Portland Tribune, you were quoted as saying that you intended to pay for the poll. Also on February 15, 2008: Sho Dozono for Mayor reported an In-Kind Contribution on ORESTAR in the amount of \$27,295, from Sho Dozono, for “In-kind contribution for Goodwin Simon Victoria Research.” On February 17, 2008, the Auditor spoke with you regarding payment for the poll, to notify you that the previous directions were in error. During this conversation, you stated that you had not yet paid for the poll and that, given the corrected information, would not do so.

In the sworn declaration received by the Auditor on February 29, 2008, you attested that “While I would prefer to pay for the poll to avoid the appearance of being beholden to anyone, Bergstein, as the commissioner of the poll has agreed to pay for the poll.” Mr. Bergstein submitted a letter on March 4, 2008, confirming that his firm has agreed to pay for the poll.

You have amended ORESTAR transaction ID 217207 to clarify that you were reporting the receipt of poll results, not payment of the poll and that Mr. Bergstein’s firm is the payor. The invoice for the poll was submitted to Mr. Bergstein and the obligation to pay for the poll was incurred on or before December 18, 2007, before you were a Candidate. Furthermore, Mr. Bergstein has acknowledged his responsibility for paying this obligation. The Auditor is satisfied that you have made no payments for the poll, and therefore, have nothing to report in terms of payments for the poll.

F. Code Section 2.10.080 B.6: The Auditor must determine that the Candidate “[m]ade no Expenditures, except for Qualifying Contributions, Seed Money Contributions and and In-Kind Contributions during the applicable Qualifying Period. A Candidate may incur Accounts Payable only as provided in 2.10.070 G.2.”

Your reports and documentation show that as of January 31, 2008, the end of the Qualifying Period, you had received valid Qualifying Contributions in the amount of \$18,830, Seed Money Contributions in the amount of \$19,999 and In-Kind Contributions in the amount of \$3,298.35. Your expenditures during the same period totaled \$50.00. According the information reported in your ORESTAR filings, you complied with Code Section 2.10.070 G.2 by having sufficient Qualifying and Seed Money Contributions to repay any Accounts Payable throughout the applicable Qualifying Period.

G. Code Section 2.10.080 B.7: The Auditor must determine that the Candidate has “[n]o unresolved outstanding Money Judgments against the Candidate.”

Based on a judgment search and the information provided by you to date, the Auditor has determined that there are no outstanding Money Judgments against you. Therefore, you have satisfied the requirements of Code Section 2.10.080 B.7.

II. Conclusion

Based on the information you have submitted to date, the Auditor has determined that you have complied with the applicable provisions of Code Section 2.10.080, and as contained within the requirements of Code Section 2.10.080, the applicable requirements of Code Sections 2.10.050, 2.10.060 and 2.10.070. As a result, the Auditor certifies you as eligible to participate in the Campaign Finance Fund.

Please note that certification determinations may be appealed to a Hearings Officer per Code Section 2.10.230 and City Administrative Rule ADM-2.21. Decisions to grant certification may be challenged by an opponent of a candidate who has been granted certification. **The deadline to request such a hearing is not later than seven days after the mailing of the determination letter. The date of this letter is the mailing date.**

If the certification of a Candidate is revoked following a hearing, the Candidate must return to the Auditor an amount of money equal to all revenues distributed to the Candidate from the Campaign Finance Fund after the date the Candidate was certified, plus interest on the total amount of revenues received at a rate of 12 percent per annum, in addition to the penalty and interest on the penalty.

The Auditor maintains a file containing documentation submitted and collected in making this determination. In any appeal, this file will be included in the record of this proceeding.