

CITY OF OAKLAND

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SUPPLEMENTAL

AGENDA REPORT

To: Oakland City Council
From: Public Ethics Commission
Attn: Daniel Purnell 238-3593
Date: January 4, 2005

Re: A Report and Recommendation From the Public Ethics Commission To Amend Chapter 3.13 Of The Oakland Municipal Code (aka "The Limited Public Financing Act") To Provide, Among Other Things, That 1) Matching Funds Be Available Only To Candidates For City Council And The Oakland School Board; 2) The Maximum Amount Which A Candidate May Receive In Matching Funds Be Raised From 15 percent to 25 Percent Of The Voluntary Expenditure Limit; 3) Require Candidates To Collect Eligible Contributions Only From Sources Located Within The City Of Oakland; 4) Candidates May Receive An Initial Grant Of Matching Funds Upon A Determination Of Eligibility; And 5) Run-off Candidates Shall Be Limited In The Receipt Of Matching Funds.

SUMMARY

At its regular meeting of November 18, 2004, the City Council Rules and Legislation Committee considered a series of proposed amendments from the Oakland Public Ethics Commission ("Commission") pertaining to the Limited Public Financing Act. A copy of the November 18 staff report and "redline" version of the proposed amendments are attached to this supplemental report as exhibits.

At the November 18 meeting, the Rules Committee voted to forward the Commission's proposed amendments to the City Council. The Rules Committee also directed Commission staff to draft several alternative amendments for the City Council to consider in addition to those proposed by the Commission. Those alternative amendments would:

- 1) make matching funds available only to candidates for district City Council races (and to candidates for the Oakland School Board only after the state terminates its administration of the Oakland Unified School District)

- 2) raise the maximum amount a district candidate can receive in matching funds to 30 percent of the candidate's voluntary expenditure ceiling
- 3) require candidates to file completed campaign statements as a condition of eligibility
- 4) permit candidates to receive lump-sum payments of matching funds upon reaching specific contribution thresholds
- 5) prohibit candidates from submitting cash, money orders or bank checks as matchable contributions
- 6) require candidates to return any matching funds that were received from a contribution that was later returned to the original donor
- 7) provide specific definitions for contributions originating from within the City of Oakland

FISCAL IMPACT

Under current law, the City will be required to appropriate into a special fund an amount of money sufficient to fund all candidates for city office eligible to receive public matching funds for the 2006 election cycle. The City offices involved in the next election will be the offices of Mayor, City Auditor, City Council districts 2, 4 and 6, and School Board districts 2, 4 and 6.

Under current law, total program costs for the June, 2006, election are expected to range between \$398,625 and \$239,175, depending on the funding scenarios selected. These figures do not include money for any run-off races which are currently funded under the program. See Chart No. 1 in the attached November 18 staff report.

Under the Commission's proposal to fund only City Council candidates, including the at-large seat, at 25 percent of the candidate's voluntary expenditure ceiling, costs for the June, 2006, election are anticipated to range between \$185,626 and \$111,375. See Chart No. 2 in the attached November 18 staff report.

Under the alternative proposal from the Rules Committee, in which the at-large seat would not be eligible for matching funds and district candidates would be entitled to receive 30 percent of their voluntary expenditure ceiling in matching funds, costs are anticipated to range between \$222,750 and \$178,200. See following Chart No. 3:

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**CHART NO. 3
 FUNDING SCENARIOS UNDER RULES COMMITTEE PROPOSAL**

JUNE 2006 RACES (05-06 Budget)	Maximum Public Matching Funds Available (30%)	2 Candidates Receiving 100% & 1 Candidate receiving 50%	2 Candidates Receiving 100%	1 Candidate Receiving 100% and 1 receiving 50%
CC Dist 2	\$28,500.00	\$71,250.00	\$57,000.00	\$42,750.00
CC Dist 4	\$30,600.00	\$76,500.00	\$61,200.00	\$45,900.00
CC Dist 6	\$30,000.00	\$75,000.00	\$60,000.00	\$45,000.00
	TOTAL COST	\$222,750.00	\$178,200.00	\$133,650.00

(*) Based on January 2004 expenditure ceilings.

The fiscal impact of the Rules Committee proposal would reduce general fund expenditures by approximately 44 percent of forecasts under current law. All amounts discussed above will need to be applied to the FY 2005-07 Budget Development Process within the General Purpose Fund.

KEY ISSUES AND IMPACTS OF RULES COMMITTEE PROPOSALS

A. Proposal To Limit Public Matching Funds To Candidates For District City Council And The Oakland School Board

The Commission's proposed amendment would limit eligibility to those candidates running for City Council, including the at-large seat. It would permit candidates for the Oakland School Board to become eligible once the state ends its administration of the Oakland school district pursuant to the conditions specified in SB 39. See "redline" Section 3.13.060(A).

Under the alternative proposed by the Rules Committee, only district City Council candidates would be eligible for matching funds. (School Board candidates would still be eligible after the state ends its administration of the school district.) The text of the Rules Committee proposal is as follows:

Section 3.13.060(A): The Oakland City Council shall appropriate to the Election Campaign Fund, under the City's current two year budget cycle, an amount sufficient to fund all candidates eligible to receive limited matching funds for the following City offices: ~~City Councilmember at-large~~, District City Councilmember and School Board Director. Notwithstanding this or any other provision of law, this Act shall not apply to

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the elected office of School Board Director until the first election after the Oakland Unified School district regains all of its rights, duties and powers upon the completion of the conditions set forth in 2003 Cal. Stats., Chapter 14, Section 5(e).

B. Proposal to Raise The Maximum Amount A District Candidate May Receive In Matching Funds To 30 Percent Of A Candidate's Voluntary Expenditure Ceiling

The Commission's proposed amendment would raise the maximum amount a candidate could receive in matching funds from 15 percent to 25 percent of the voluntary expenditure ceiling. See "redline" Section 3.13.110(B).

The Rules Committee proposes that by eliminating the at-large seat, the available amount of matching funds could be increased from the proposed 25 percent of a candidate's voluntary expenditure ceiling to 30 percent. The text of the Rules Committee proposal is as follows:

Section 3.13.110(B): The total amount of public funds allocated to each candidate shall not exceed ~~twenty five (25)~~ thirty (30) percent of the voluntary expenditure ceiling per election for the office being sought.

C. Proposal To Require Candidates To File Completed Campaign Statements As A Condition Of Eligibility

The Rules Committee expressed a desire that all candidates file completed campaign statements as a condition of receiving matching funds. The text of the Rules Committee proposal is as follows:

Section 3.13.080(G): The candidate has filed, and completely and accurately executed, all pre-election campaign statements that are due at the time matching funds are payable. All candidates receiving matching funds shall timely file, and completely and accurately execute, all post-election campaign statements for each election in which they received matching funds.

D. Proposal To Permit Candidates To Receive Lump-Sum Payments Of Matching Funds Upon Reaching Specific Contribution Thresholds

The Commission's proposed amendment would provide eligible candidates with an initial lump-sum grant totaling 20 percent of the amount they are ultimately allocated

to receive immediately upon their certification of eligibility. Thereafter a candidate would receive matching funds according to the existing dollar-for-dollar formula. The grants represent an accelerated payment of matching funds and do not represent a new or additional grant of money. See redline Section 3.13.110(D).

The Rules Committee expressed concern that a 20 percent grant represented too much money for candidates who had only collected the minimum 5 percent threshold amount in contributions in order to qualify for matching funds. The Rules Committee proposes that district candidates receive half of the proposed grant (approximately \$2,500) upon meeting the minimum 5 percent eligibility threshold and the second half of the proposed grant upon receiving contributions totaling 10 percent of the candidate's voluntary expenditure ceiling. The text of the Rules Committee's proposal is as follows:

Section 3.13.110(E): ~~D.~~E. Upon certification of a candidate's eligibility, the candidate shall receive an initial lump-sum payment representing ~~twenty~~ten percent of the total amount of available matching funds for which he or she is allocated to receive. ~~Thereafter, a certified~~An eligible candidate shall receive ~~matching funds~~a second lump-sum payment in ~~according to the formula contained in Section 3.13.110(A).~~an amount equal to the initial lump-sum payment upon demonstration that he or she has received and deposited contributions totaling at least ten percent of the expenditure ceiling for the office being sought and which contributions originate from donors whose principal residence or primary place of doing business is located within the City of Oakland. Any lump-sum payment made pursuant to this section shall be inclusive of, and shall not cause a candidate to exceed, the total amount of available matching funds he or she is allocated to receive.

E. Proposal To Prohibit Candidates From Submitting Cash, Money Orders Or Bank Checks As Matchable Contributions

The Commission proposes that matching funds be issued for contributions made with a money order or bank check if the contribution is less than \$100 and the candidate provides reasonable proof that the contributor used his or her own funds to purchase the financial instrument. See redline Section 3.13.080(G).

The Rules Committee expressed concern over matching potentially fraudulent contributions, especially for contributions made by money orders or bank checks in which the name of the donor is not indicated on the check and whose funds are not drawn from the account of the donor. The Rules Committee proposes to delete the Commission's proposal in redline Section 3.13.080(G) and alternatively provide that

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only contributions made with so-called "two party" checks be eligible for matching funds. The text of the Rules Committee proposal is as follows:

Section 3.13.040: For purposes of this Act, contributions shall be "matchable contributions" only if they are: 1) the first \$100 or less of a contribution received and deposited by the candidate for the office being sought from each contributor to the candidate or the candidate's controlled ~~committee and~~ committee, 2) received no more than one-hundred eighty (180) days before the date of the election, and 3) made on a financial instrument containing the name of the donor, the name of the payee and drawn on the account of the donor.

F. Proposal To Require Candidates To Return Any Matching Funds That Were Based On A Returned Contribution

The Rules Committee sought a provision that would prohibit a candidate from obtaining matching funds from contributions that were later returned to the donor. The text of the Rules Committee's proposal is as follows:

Section 3.13.110(D): D. In the event matching funds are paid to a candidate based on a contribution that is returned to the donor for any reason, the candidate shall return to the Public Ethics Commission the amount received in matching funds based on the returned contribution no later than seven business days after the contribution is returned to the donor.

G. Proposal To Further Define "Principal Residence" And "Primary Place Of Doing Business"

The Rules Committee sought further clarification of the Commission's proposal that matchable campaign contributions originate from donors whose "principal residence" or "primary place of doing business" is located within the City of Oakland. See redline Sections 3.13.080(C) and 3.13.110(A).

The terms "principal residence" and "primary place of doing business" are terms used by the California Political Reform Act but which the Act does not specifically define. Commission staff notes that the term "principal residence" has a corresponding definition under the California Elections Code and that the term "primary place of doing business" is defined for both incorporated and non-incorporated entities in the California Code of Civil Procedure and Corporations Code. The proposed text of these two definitions are taken closely from the relevant Elections and Corporations Code:

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Section 3.13.040: For purposes of this Act, "principal residence" shall mean the place in which a person's habitation is fixed, wherein the person has the intention of remaining, and to which, whenever he or she is absent, the person has the intention of returning.

For purposes of this Act, "primary place of doing business" shall mean the street address of a corporation's or association's principal executive office as filed with the California Secretary of State or the street address of an unincorporated association's principal office as filed with the California Secretary of State.

SUSTAINABLE OPPORTUNITIES

Not applicable.

DISABILITY AND SENIOR CITIZEN ACCESS

Not applicable.

RECOMMENDATION AND ACTION REQUESTED:

The Oakland Public Ethics Commission recommends that the City Council adopt the amendments it initially proposed to the Limited Public Financing Act as contained in the attached redline. The City Council Rules and Legislation Committee recommends that the City Council consider the alternative proposals contained in this staff report.

Respectfully submitted,

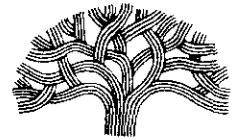


Daniel D. Purnell, Executive Director
Public Ethics Commission

FORWARDED TO THE OAKLAND CITY COUNCIL


OFFICE OF THE CITY ADMINISTRATOR

CITY OF OAKLAND



ONE FRANK H. OGAWA PLAZA • FOURTH FLOOR • OAKLAND, CALIFORNIA 94612-2031

Public Ethics Commission

(510) 238-3593
FAX (510) 238-3315
TDD (510) 238-3724

CITY OF OAKLAND
AGENDA REPORT

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Re: A Report and Recommendation From the Public Ethics Commission To Amend Chapter 3.13 Of The Oakland Municipal Code (aka "The Limited Public Financing Act") To Provide, Among Other Things, That 1) Matching Funds Be Available Only To Candidates For City Council And The Oakland School Board; 2) The Maximum Amount Which A Candidate May Receive In Matching Funds Be Raised From 15 percent to 25 Percent Of The Voluntary Expenditure Limit; 3) Require Candidates To Collect Eligible Contributions Only From Sources Located Within The City Of Oakland; 4) Candidates May Receive An Initial Grant Of Matching Funds Upon A Determination Of Eligibility; And 5) Run-off Candidates Shall Be Limited In The Receipt Of Matching Funds.

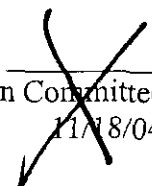
SUMMARY

The Oakland City Council adopted the Limited Public Financing Act in 1999. The Act provides matching campaign funds to qualified candidates for city and school board offices. The Public Ethics Commission ("Commission") oversees and administers the matching fund program.

The attached "redline" version of the Act highlights the proposed amendments. If adopted, the proposed amendments would:

- make matching funds available only to candidates for City Council. Candidates for School Board would become eligible only after the state terminates its administration of the Oakland Unified School District

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- raise the maximum amount a candidate may receive in matching funds from 15 percent to 25 percent of the candidate's voluntary expenditure ceiling
- match only those contributions whose sources are located within the City of Oakland
- provide an initial grant of matching funds as soon as a candidate is eligible to participate in the program
- reduce the allocation of matching funds to run-off candidates

FISCAL IMPACT

Under current law, the City will be required to appropriate into a special fund an amount of money sufficient to fund all candidates for city office eligible to receive public matching funds for the 2006 election cycle. The City offices involved in the next election will be the offices of Mayor, City Auditor, City Council districts 2, 4 and 6, and School Board districts 2, 4 and 6.

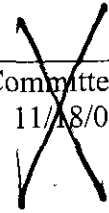
Chart No. 1 is an estimate of the amounts necessary to fund eligible candidates in the June, 2006, election under three different funding scenarios:

**CHART NO. 1
 FUNDING SCENARIOS UNDER CURRENT LAW**

June 2006 Races	Maximum Matching Funds Available Per Candidate (*) (15%)	Cost Assuming 2 Candidates Receive 100% & 1 Candidate Receives 50% Of Eligible Funds	Cost Assuming 2 Candidates Receive 100% Of Eligible Funds	Cost Assuming 1 Candidate Receives 100% And 1 Candidate Receives 50% Of Eligible Funds
Mayor	\$49,800.00	\$124,500.00	\$99,600.00	\$74,700.00
City Auditor	\$35,550.00	\$88,875.00	\$71,100.00	\$53,325.00
CC Dist 2	\$14,250.00	\$35,625.00	\$28,500.00	\$21,375.00
CC Dist 4	\$15,300.00	\$38,250.00	\$30,600.00	\$22,950.00
CC Dist 6	\$15,000.00	\$37,500.00	\$30,000.00	\$22,500.00
School Dist 2	\$ 9,450.00	\$23,625.00	\$18,900.00	\$14,175.00
School Dist 4	\$10,200.00	\$25,500.00	\$20,400.00	\$15,300.00
School Dist 6	\$ 9,900.00	\$24,750.00	\$19,800.00	\$14,850.00
	TOTAL COST	\$398,625.00	\$318,900.00	\$239,175.00

(*) Based on January 2004 expenditure ceilings.

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Under current law, total program costs for the June, 2006, election are expected to range between \$398,625 and \$239,175, depending on the funding scenarios selected. These figures do not include money for any run-off races which are currently funded under the program.

The Commission proposes to fund only City Council races in June, 2006, and to use part of the cost savings to fund such races at a maximum of 25 percent of the voluntary expenditure ceiling versus the current 15 percent. (School board candidates would become eligible to participate in the program only after the state ends its administration of the school district.)

Chart No. 2 is an estimate of program costs if the Commission's proposals are adopted:

**CHART NO. 2
 FUNDING SCENARIOS UNDER COMMISSION PROPOSAL**

June 2006 Races	Maximum Matching Funds Available Per Candidate(*) (25%)	Cost Assuming 2 Candidates Receive 100% & 1 Candidate Receives 50% Of Eligible Funds	Cost Assuming 2 Candidates Receive 100% Of Eligible Funds	Cost Assuming 1 Candidate Receives 100% And 1 Candidate Receives 50% Of Eligible Funds
CC Dist 2	\$23,750.00	\$59,375.00	\$47,500.00	\$35,625.00
CC Dist 4	\$25,500.00	\$63,750.00	\$51,000.00	\$38,250.00
CC Dist 6	\$25,000.00	\$62,500.00	\$50,000.00	\$37,500.00
	TOTAL COST	\$185,625.00	\$148,500.00	\$111,375.00

(*) Based on January 2004 expenditure ceilings.

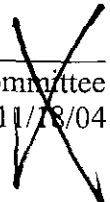
Based on the proposed changes, the budget amounts are significantly lower, ranging between \$185,625 and \$111,375.

The fiscal impact of the proposed amendments could reduce general fund expenditures between by approximately 53 percent of current forecasts, depending on the funding scenario selected. The amounts discussed above would need to be applied to the FY 2005-07 Budget Development Process within the General Purpose Fund.

BACKGROUND

Under current law, the matching fund program provides a limited amount of funds to eligible candidates to assist them in running for elective office. The City currently matches the first \$100 of every qualified campaign contribution received and deposited between eighty-eight (88) days before the close of the nomination period and the day of

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the election. The maximum a candidate can receive is 15 percent of Oakland's voluntary expenditure ceiling for the office being sought.

Candidates must first raise in campaign contributions an amount equal to at least 5 percent of the voluntary expenditure ceiling for the office being sought to become *eligible to receive public matching funds*.

The matching fund program was first implemented in the April, 2001, special election in District Six and in the City-wide election in March, 2002. In June, 2003, the City Council adopted an ordinance suspending the matching fund program during the 2004 election cycle.

KEY ISSUES AND IMPACTS

A. Proposal To Limit Public Matching Funds To Candidates For City Council And The Oakland School Board [Proposed Section 3.13.060]

Under current law, the program requires the City to appropriate an amount sufficient to fund all eligible candidates for Mayor, City Attorney, City Auditor, City Councilmember (including at-large), and School Board Director.

The Commission's proposed amendment to Section 3.13.060 would limit eligibility only to those candidates running for City Council, including the at-large seat. It would permit candidates for the Oakland School board to become eligible once the state ends its administration of the Oakland school district pursuant to the conditions specified in SB 39.

The Commission noted that the public financing programs in Los Angeles and San Francisco do not fund school board candidates. The San Francisco program also does not fund city/county-wide candidates such as mayor, district attorney, city attorney and sheriff. The Commission noted that approximately 46 percent of the available funds for the Oakland matching fund program are directed to City-wide races even though such City-wide races comprise just 4 out of 18 available elective offices. The Commission concluded that the limited amount of available matching funds would be best targeted to smaller district elections than to City-wide races.

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B. Proposal To Raise The Maximum Amount A Candidate May Receive In Matching Funds From 15 Percent To 25 Percent Of The Candidate's Voluntary Expenditure Ceiling [Proposed Section 3.13.110(B)]

Candidates are currently entitled to receive matching funds in an amount not to exceed 15 percent of their respective voluntary expenditure ceiling. Candidates must agree to accept the expenditure ceilings as a condition of eligibility in the program.

The proposed amendment to Section 3.13.110(B) would raise the maximum amount a candidate could receive in matching funds from 15 percent to 25 percent of the voluntary expenditure ceiling. As demonstrated in Chart No. 2 above, the savings realized by limiting matching funds to City Council elections more than offsets the marginal, additional cost of raising the maximum limit from 15 to 25 percent.

In reviewing the program in the context of the 2002 election, the Commission could not conclude that the current 15 percent funding limit was sufficient to achieve the stated goals of the matching fund program, such as reducing the amount of time candidates spent fundraising, reducing the influence of contributors, and encouraging competition for elective office. The Commission noted that the Los Angeles program provides candidates with 30 percent of their spending limit ceilings; San Francisco provides 52 percent of the spending ceiling. The Commission concluded the Oakland program could better achieve its stated goals if matching funds represented a larger percentage of available campaign funds.

C. Proposal To Restrict Matchable Contributions Only To Sources Located Within The City Of Oakland [Proposed Sections 3.13.110(A); 3.13.080(C)]

Existing law establishes a formula that matches the first \$100 of any eligible campaign contribution, regardless of where the source of the contribution is located. Existing law also requires a candidate to raise contributions totaling more than five percent of his or her voluntary expenditure ceiling as a condition of eligibility (the so-called "candidate viability test.")

The proposed amendment to Section 3.13.110(A) would provide that the program only match contributions from donors whose principal residence or primary place of doing business is located within the City of Oakland, and whose residence or business address appears on the check used to make the contribution. The proposed amendment to Section 3.13.080(C) would require that candidates meet their five percent viability test only from contribution sources located within the City of Oakland.

The Commission noted that approximately one-half of all itemized contributions made during the March, 2002, election came from sources located outside the City.

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The Commission concluded that by matching and recognizing only those contributions originating from within the City the program will encourage greater participation from, and engagement by, local residents and businesses. (The proposal does NOT prohibit candidates from receiving contributions from sources outside the City -- such contributions will continue to be permitted but would no longer be matched.)

D. Proposal To Provide An Initial Grant Of Matching Funds Once A Candidate Is Determined To Be Eligible To Participate In The Program [Proposed Section 3.13.110(D)]

Candidates are eligible to receive matching funds only after they collect matchable contributions totaling five percent of the expenditure ceiling for the office being sought. Candidates receive one dollar of matching funds for each dollar received and deposited of the first \$100 or less contributed by each donor.

The proposed amendment to Section 3.13.110(D) would provide eligible candidates with an initial lump-sum grant totaling 20 percent of the amount they are ultimately allocated to receive immediately upon their certification of eligibility. Thereafter candidates would receive matching funds according to the existing dollar-for-dollar formula. The 20 percent grant represents an accelerated payment of the amount candidates will ultimately receive and does not represent a new or additional grant of money.

The Commission noted that both the Los Angeles and San Francisco programs provide initial lump-sum grants. These grants are intended to provide candidates with money that is typically needed early in the campaign process.

E. Proposal To Limit Matching Funds To Run-off Candidates [Proposed Section 3.13.100(E)]

Under existing law, the Commission is required to estimate the amount of money needed for the matching fund program. This amount must be based on "anticipated campaign activity, anticipated administrative costs and existing unspent funds within the [election campaign] account." The Commission is authorized to limit the allocation of funds for any primary election to assure that "sufficient funds remain available for the general election."

The proposed amendment to Section 3.13.110(E) would limit run-off candidates to a lump-sum grant of matching funds equal to the amount they received as an initial grant in the primary election. Other than this initial grant of money, no other matching funds would be available to run-off candidates.

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The Commission noted that it is extremely difficult to predict and budget the amount of matching funds necessary to finance run-off campaigns. If too much money is reserved for run-off campaigns, there may be an insufficient amount to provide candidates in the primary election. Budgeting too little could short-change run-off candidates. The Commission concluded that run-off candidates will be assisted in their private fund-raising efforts by a narrower field and greater candidate recognition, thus limiting the need for matching funds. Providing a lump-sum grant would assist run-off candidates by providing money shortly after the primary election at a time when existing funds will likely be limited or exhausted.

F. Proposed Administrative Changes

In addition to the above-described proposals, the Commission is proposing several administrative changes to the program:

1. Elimination of the "floating" 88-day eligibility period [Proposed Section 3.13.080(C)]

Existing Section 3.13.080(C) states that "matchable" contributions shall not include any contributions received "eighty-eight (88) or more days prior to the closing of the nomination period for the office being sought." The problem with this requirement is that the date the nomination period "closes" depends on whether an incumbent officeholder seeks re-election. If an incumbent does not seek re-election, the nomination period is extended an additional 5 days. This fact may not be known until the very end of the nomination period and thus could inadvertently disqualify some contributions.

The Commission proposes that the period to receive "matchable contributions" be set at 180 days prior to the date of the election. This number approximates the same amount of time to receive a matchable contribution as under existing law, but provides greater certainty in determining which contributions will be matched.

2. Match of money orders and bank checks if the donor used his or her own funds to purchase these instruments [Proposed Section 3.13.080(G)]

Under California law, all contributions of \$100 or more must be made on a written instrument that contains the name of the donor and drawn on the account of the donor. Contributions of less than \$100 can be made in cash or by bank check or money order. The matching fund program does not match cash contributions but is silent on whether to match contributions made by bank check or money order.

The Commission proposes to match contributions totaling less than \$100 if the donor uses his or her own personal funds to purchase the instrument. The Commission may demand reasonable proof that the instrument was purchased by the donor and to verify that the donor resides or does business within the City.

The Commission noted that a number of persons do not maintain private checking accounts and use money orders and bank checks for their financial transactions. The Commission concluded that such contributions should be matched as long as there is reasonable proof that the donor used his or her own funds to purchase the instrument.

3. Return of matching funds [Proposed Section 3.13.150(B)]

Existing Section 3.13.150(B) requires the return of "unencumbered" matching funds within thirty days after the election. Existing regulations require candidates to submit an estimate of campaign contributions and expenditures **existing as of the date of the election** to determine whether any remaining campaign funds are in fact "encumbered" by existing or anticipated expenses.

The Commission proposes that any unencumbered matching funds be returned to the City by the deadline for filing post-election campaign statements. This deadline would be July 31 for the June primary election and December 31 for the November general election. The Commission also proposes that the date on which any surplus campaign funds is calculated be changed from the date of the election to the last day of the reporting period following the election.

The Commission noted that calculating a campaign's "surplus" funds as of the date of the election is a complicated matter for campaign treasurers and cannot be verified in the absence of a financial audit. Campaigns are not required to provide the state with such an accounting until the semi-annual campaign statements are due. The Commission concluded it would be far less burdensome on campaigns to have the date they must calculate and return surplus campaign funds coincide with existing FPPC filing deadlines.

SUSTAINABLE OPPORTUNITIES

Not applicable.

DISABILITY AND SENIOR CITIZEN ACCESS

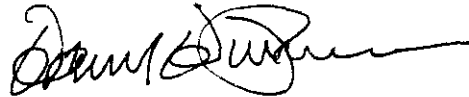
Not applicable.

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RECOMMENDATION AND ACTION REQUESTED

The Oakland Public Ethics Commission recommends that the City Council adopt the proposed amendments to the Limited Public Financing Act.

Respectfully submitted,



Daniel D. Purnell, Executive Director
Public Ethics Commission

FORWARDED TO THE RULES AND LEGISLATION COMMITTEE

OFFICE OF THE CITY ADMINISTRATOR

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Approved As To form And Legality



Office Of The City Attorney

NOTICE AND DIGEST

This ordinance amends the Oakland Limited Public Financing Act, Oakland Municipal Code Chapter 3.13, pertaining to the partial public financing of political campaigns. Specifically the proposed amendments would: 1) make matching funds available only to candidates for City Council (candidates for School Board would become eligible only after the state terminates its administration of the Oakland Unified School District); 2) raise the maximum amount a candidate may receive in matching funds from 15 percent to 25 percent of the candidate's voluntary expenditure ceiling; 3) match only those contributions whose sources are located within the City of Oakland; 4) provide an initial grant of matching funds as soon as a candidate is eligible to participate in the program; 5) reduce the allocation of matching funds to run-off candidates.

A. [Signature]
CITY ATTORNEY

INTRODUCED BY COUNCILMEMBER _____

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 3.13, THE LIMITED PUBLIC FINANCING ACT OF THE CITY OF OAKLAND, ORIGINALLY ADOPTED DECEMBER 14, 1999

Article I. Findings and Purpose

3.13.010 Title

This Act shall be known as the "Limited Public Financing Act of the City of Oakland."

3.13.020 Findings and Declarations

The findings of this Act are as follows:

- A. The financial strength of certain individuals or organizations should not enable them to exercise a disproportionate or controlling influence on the election of candidates.
- B. The rapidly increasing costs of political campaigns have forced many candidates to raise larger and larger percentages of money from interest groups with a specific financial stake in matters under consideration by city government. This has caused the public perception that votes are being improperly influenced by monetary contributions.
- C. High campaign costs are forcing officeholders to spend more time on fundraising and less time on the public's business. The constant pressure to raise contributions is distracting officeholders from urgent governmental matters.

3.13.030 Purpose of this Act

The purpose of this act is to accomplish the objectives stated in Oakland's Campaign Reform Act as follows:

- A. To ensure that all individuals and interest groups in our city have a fair and equal opportunity to participate in elective and governmental processes.
- B. To reduce the influence of large contributors with a specific financial stake in matters

under consideration by the City of Oakland, and to counter the perception that decisions are influenced more by the size of contributions than by the best interests of the people of Oakland.

C. To reduce the pressure on candidates to raise large campaign war chests for defensive purposes, beyond the amount necessary to communicate reasonably with voters.

D. To encourage competition for elective office.

E. To allow candidates and office holders to spend a smaller proportion of their time on fundraising and a greater proportion of their time dealing with issues of importance to their constituents and the community.

F. To ensure that serious candidates are able to raise enough money to communicate their views and positions adequately to the public, thereby promoting public discussion of important issues involved in political campaigns.

G. To help preserve public trust in governmental and electoral institutions.

Article II. Definitions

3.13.040 Interpretation of this Act

Unless the term is specifically defined in this Act or the contrary is stated or clearly appears from the text, the definitions set forth in Chapter 3.12 of the Oakland Municipal Code and in *Government Code sections 81000 et seq. as amended* govern the interpretation of this Act.

For purposes of this Act, contributions shall be "matchable contributions" only if they are: 1) the first \$100 or less of a contribution received and deposited by the candidate for the office being sought from each contributor to the candidate or the candidate's controlled committee and 2) received no more than one-hundred eighty (180) days before the date of the election.

Article III. Election Campaign Fund

3.13.050 Election Campaign Fund

There is hereby established an account within a special revenue fund of the City of Oakland to be known as the "Election Campaign Fund."

3.13.060 Appropriation of Funds

A. The Oakland City Council shall appropriate to the Election Campaign Fund, under the City's current two year budget cycle, an amount sufficient to fund all candidates for city office eligible to receive limited matching funds for the following City offices: City Councilmember-at-large, District City Councilmember and School Board Director. Notwithstanding this or any other provision of law, this Act shall not apply to the elected office of School Board Director until the first election after the Oakland Unified School district regains all of its rights, duties and powers upon

the completion of the from the Election Campaign Fund conditions set forth in 2003 Cal. Stats., Chapter 14, Section 5.

B. The Oakland Public Ethics Commission shall provide in the form and at the time directed by the Mayor and City Manager a written estimate of the amount necessary to be appropriated for any two-year budget cycle according to the provisions of this Act for all eligible candidates. The amount of funds to be allocated to the Election Campaign Fund shall be based on a consideration of anticipated campaign activity, anticipated administrative costs, and existing unspent funds within the account. The amount of funds to be allocated to the Election Campaign Fund shall not exceed \$460,000 for any two-year budget cycle, except that the allocation may exceed \$460,000 to reflect changes in the consumer price index. The Public Ethics Commission may limit the allocation of funds for any primary election to assure that sufficient funds remain available for the general election.

C. The Election Campaign Fund shall be established as an interest bearing account. Unspent funds in the Election Campaign Fund at the end of a two year budget cycle shall remain in the Fund and accrue for disbursement to candidates eligible for matching funds in future elections and for administrative costs pursuant to subsection 3.13.060(d) below. In no event shall additional allocations to the Fund be made to cause the available balance in the Fund to exceed five hundred thousand dollars (\$500,000), to include allocations made to the Public Ethics Commission pursuant to subsection 3.13.060(d) below.

D. Up to 7.5% of the amount allocated to the Election Campaign Fund pursuant to subsections 3.13.060 (a) and (b) may be utilized by the Public Ethics Commission to cover the anticipated cost of administering the provisions of this Act. The Public Ethics Commission shall make a sufficient proportion of such funds available to the City Auditor to conduct compliance reviews as provided in section 3.13.100.

Article IV. Eligibility for Matching Funds

3.13.070 Application and Withdrawal Procedures

A. Each candidate for city officeno later than the time of filing his or her declaration of candidaey, shall file a statement with the City Clerk on a form approved for such purpose indicating acceptance or rejection of the voluntary spending ceilings underpursuant to Oakland Municipal Code sectionSection 3.12.190.

B. A candidate who intends to accept public matching funds from the Election Campaign Fund shall sign an oath under penalty of perjury that the candidate and the candidate's controlled committee have, to the best of his or her knowledge, complied with all applicable contribution and expenditure limitations under the Oakland Campaign Reform Act and intends to comply with such contribution and expenditure limitations at all times in which the limitations apply.

C. If a candidate declines to accept the voluntary expenditure ceilings prescribed in Oakland Municipal Code sectionSection 3.12.200, the candidate shall be subject to the contribution limits of Sections 3.12.050(a) and 3.12.060 (a) and shall not be eligible for matching funds.

D. If a candidate agrees to accept the voluntary expenditure ceilings prescribed in Oakland Municipal Code ~~section~~Code Section 3.12.200, the candidate shall be subject to the contribution limits of Oakland Municipal Code ~~sections 3.12.050 (c) and 3.12.060 (c)~~Sections 3.12.050(c) and 3.12.060(c) as adjusted pursuant to ~~sections~~Sections 3.12.050(d) and 3.12.060(d), and shall be eligible for public matching funds upon meeting the qualification requirements as provided in this Act.

E. A candidate who agrees to accept the expenditure ceilings in Oakland Municipal Code ~~section~~Section 3.12.200 shall not change the decision, unless an opposing candidate files a statement of rejection, or as otherwise provided in Oakland Municipal Code ~~section~~Section 3.12.220. In the event an opposing candidate files a statement of rejection, any candidate for the same office may rescind his or her acceptance within 10 calendar days of the deadline for filing nomination papers, provided that the candidate has not accepted any contributions in amounts greater than the limitations set forth in Oakland Municipal Code ~~section~~Section 3.12.050 (a) and 3.12.060(a). Any candidate rescinding his or her acceptance of the expenditure ceilings shall not be eligible for public matching funds. In the event expenditures ceilings are lifted pursuant to Oakland Municipal Code ~~section~~Section 3.12.220, a candidate who accepted expenditure ceilings shall be permitted to continue receiving matching public funds but shall no longer be subject to expenditure ceilings.

3.13.080 Qualification Procedures

An eligible candidate shall be approved to receive public matching funds if the candidate meets all of the following requirements:

A. The candidate has filed a timely statement of acceptance of the voluntary spending ceilings and acceptance of public matching funds.

B. The candidate is certified to appear on the ballot for the election for which matching funds are sought.

C. ~~Any disclosures required by the Public Ethics Commission to be filed by the candidate or candidate's controlled committee indicate that the~~The candidate has received matchable contributions in an aggregate amount of at least 5 percent of the expenditure ceiling for the office being sought from contributors whose principal residence or whose primary place of doing business is located within the City of Oakland and which residence sought. Matchable contributions shall consist of only the first \$100 or less of a contribution or contributions received and deposited by the candidate for the office sought from each individual contributor to the candidate or candidate's controlled committee and do not include any contributions received eighty-eight or more days prior to closing of the nomination period for the office sought or business address appears on the written instrument used to make the contribution. Contributions from the candidate's own funds shall not be counted towards meeting this 5 percent threshold.

D. The candidate is opposed by another candidate for the same office who has qualified for matching funds, or the candidate is opposed by another candidate for the same office who has received contributions or made expenditures or has cash on hand in an amount of at least 7 percent of the voluntary expenditure ceiling for that office.

E. The candidate agrees to all conditions and requirements of the use of public funds set forth in the Act and submits to any reasonable audits or compliance reviews deemed appropriate by the Public Ethics Commission or other civil authorities.

F. The candidate or his or her campaign treasurer or designee attends a training program conducted or sponsored by the Public Ethics Commission. The Public Ethics Commission shall conduct or sponsor at least three training programs before the nomination period closes in any general municipal election.

G. Any contribution of less than \$100 submitted for matching funds shall, at a minimum, contain the name of the donor, the name of the payee, and be drawn from the account of the donor or drawn from the account of the financial institution to which the donor provided his or her own funds for the purpose of purchasing the financial instrument used to make the contribution. The Public Ethics Commission may require any reasonable proof that the donor used his or her own funds to purchase the financial instrument that was used to make a contribution submitted for matching funds and to verify residency or business location for purposes of Section 3.13.110(A).

3.13.090 Use of Personal Funds

Unless the voluntary expenditure ceilings are lifted in accordance with Oakland Municipal Code ~~section~~Section 3.12.220, a candidate who accepts public matching funds shall not receive a ~~contribution or contributions~~ or loans from the candidate's own funds ~~that exceed~~which aggregate total exceeds 5 percent of the voluntary expenditure ceiling for the office being sought. If the voluntary expenditure ceilings for the office being sought are lifted, this provision shall not apply.

Article V. Disbursement of Public Matching Funds.

3.13.100 Duties of the Public Ethics Commission

A. The Public Ethics Commission shall develop any and all forms necessary to carry out the provisions of the Act, including forms for statements of acceptance or rejection of expenditure ceilings and forms for candidate requests for public matching funds. The Public Ethics Commission may, in its discretion, require any document or form to be filed in an electronic format that is provided by the Public Ethics Commission to the candidates free of charge.

B. The Public Ethics Commission shall cause the review of the statements of acceptance or rejection, nomination papers, requests for public subsidies and other campaign financial reports in a timely fashion to certify a candidate's eligibility to receive public matching funds.

C. The certification of a candidate's eligibility for public matching funds shall provide the reasons why a candidate is or is not eligible, the amount of the public matching funds disbursed, and what actions a candidate may take to correct any insufficiencies.

D. The City Auditor shall conduct mandatory audits or compliance reviews of all candidates accepting public matching funds. Audits or compliance reviews shall be conducted of other candidates only when necessary to determine if compliance with the eligibility requirements

of section 3.13.080(d) were met. The results of any audit(s) or compliance review(s) conducted shall be provided to the Public Ethics Commission. The City Auditor shall propose administrative standards for conducting audits and compliance reviews consistent with the requirements of this Act to be duly approved by resolution of the City Council.

3.13.110 Matching Fund Formula

A. A certified candidate shall receive public matching funds according to the following formula:

A. — One formula: One dollar of public matching funds for each dollar received and deposited of the first \$100 or less contributed by each individual contributor per election, provided that the contribution is made by contributors whose principal residence or whose primary place of doing business is located within the City of Oakland and which residence or business address appears on the written instrument used to make the contribution.

B. The total amount of public funds allocated to each candidate shall not exceed 15~~twenty-five~~ (25) percent of the voluntary expenditure ceiling per election for the office being sought.

C. In no event shall the Public Ethics Commission match a contribution which it has determined to be aggregated with a previously matched contribution from another person pursuant to Section 3.12.080.

D. Upon certification of a candidate's eligibility, the candidate shall receive an initial lump-sum payment representing twenty percent of the total amount of available matching funds for which he or she is allocated to receive. Thereafter, a certified candidate shall receive matching funds according to the formula contained in Section 3.13.110(A).

E. Each candidate who qualifies for a run-off election shall receive a payment equal to the amount he or she received pursuant to Section 3.13.110(D). No other matching funds shall be available to a run-off candidate.

3.13.120 Disbursement of Public Funds

A. A candidate or candidate's controlled committee, certified as eligible to receive public matching funds, shall submit a request for public matching funds to the Public Ethics Commission each time a threshold of \$3,000 or more in matchable funds is reached.

B. A candidate or candidate's controlled committee, certified as eligible to receive public matching funds, may submit a request for public matching funds of \$1,000 or more 10 calendar days before the election.

C. The Public Ethics Commission shall have 10 calendar days to cause the review and approval or denial of the request and disburse the public funds to the candidate or candidate's controlled committee.

D. The request for public matching funds shall be made on a form determined by the Commission, and shall include copies of each check eligible to be matched by public funds.

3.13.130 Deposit of Public Funds

All public funds shall be deposited directly into the candidate's campaign checking account.

3.13.140 Use of Matching Funds

Public matching funds may only be used for lawful qualified campaign expenditures incurred by a candidate during the election for which the funds were allocated.

3.13.150 Return of Matching Funds

A. Public matching funds provided by this Act remain the property of the City until disbursed or encumbered for lawful qualified campaign expenditures.

B. Unencumbered matching funds must be returned to the Election Campaign Fund ~~within thirty (30) no later than thirty-one (31) calendar days from the day following the defeat, withdrawal or election to office by the certified candidate earlier of the last day of the semi-annual reporting period following the election, or the candidate's withdrawal from the election.~~ Any unencumbered campaign funds remaining after the defeat, withdrawal or election to office by the certified candidate, as of the last day of the semi-annual reporting period following the up to the amount of matching funds received for that election by the candidate, election, or the candidate's withdrawal from the election, shall be considered unencumbered matching funds to be returned to the Election Campaign Fund pursuant to this section. Fund, up to the amount of matching funds received for that election by the candidate.

C. Public matching funds shall not be disbursed to the certified candidate from the Election Campaign Fund to match any contribution following the defeat, withdrawal, or election to office by the candidate except that public matching funds may be disbursed to a certified candidate after the date of the election for which matching funds are sought provided that the candidate submitted a properly documented claim form for public matching funds before the date of the election.

3.13.160 Proof of Payment

A. Each certified candidate or candidate's controlled committee which received public matching funds shall provide to the Public Ethics Commission sufficient proof of all disbursements made from matching funds no later than the due date for the next campaign finance report.

B. The Public Ethics Commission shall determine what constitutes sufficient proof of payment.

3.13.170 Public Debates

While not a condition for receiving matching funds, candidates receiving public matching funds are strongly encouraged to participate in one or more nonpartisan candidate debates for each election.

3.13.180 Enforcement

The Public Ethics Commission is the sole body for civil enforcement of this Act. In the event criminal violations of the Act come to the attention of the Public Ethics Commission, the Commission shall promptly advise in writing the City Attorney and the appropriate prosecuting enforcement agency.

3.13.190 Criminal Misdemeanor Actions

Any person who knowingly or willfully 1) misrepresents his or her eligibility for matching funds, 2) violates sections 3.13.090, 3.13.130, 3.13.140 or 3.13.150(b), or 3) causes, aids or abets any other person to violate the provisions set forth in this section, is guilty of a misdemeanor. Prosecution shall be commenced within four (4) years after the date on which the violation occurred.

3.13.200. Enforcement Actions

A. Any person who intentionally or negligently 1) misrepresents his or her eligibility for matching funds, 2) violates sections 3.13.130, 3.13.140 or 3.13.150(b), or 3) causes, aids or abets any other person to violate the provisions set forth in this section, is subject to enforcement proceedings before the Public Ethics Commission pursuant to the Public Ethics Commission General Rules of Procedure.

B. If two or more persons are responsible for any violation, they shall be jointly and severally liable.

C. Any person alleging a violation of this Act shall first file with the Public Ethics Commission a written complaint on a form approved for such purpose. The complaint shall contain a statement of the grounds for believing a violation has occurred. The Public Ethics Commission shall review, investigate and make determinations regarding any alleged violation consistent with the Public Ethics Commission's General Complaint Procedures.

D. The Commission has full authority to settle any action involving public matching funds in the interest of justice.

E. If the Commission determines a violation has occurred, the Commission is hereby authorized to administer appropriate penalties and fines not to exceed \$1,000 per violation and to order the repayment of matching funds received or expended in violation of law.

F. The Public Ethics Commission may sue for injunctive relief to enjoin violations or to compel compliance with the provisions of this Act.

G. No complaint alleging a violation of any provision of this Act shall be filed more than two (2) years after the date the violation occurred.

3.13.220 Construction

The Act shall be liberally construed to accomplish its purposes.

3.13.240 Applicability of Other Laws

Nothing in this Act shall exempt any person from applicable provisions of any other laws of the city, state or other appropriate jurisdiction.

3.13.260 Severability

If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act to the extent it can be given effect, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this extent the provisions of this Act are severable.

3.13.270 Effective Date

The effective date of this Act shall be January 1, 2001.

3.13.280 Effect On Run-Off Municipal Elections.

Chapter 3.13 of this Code (Sections 3.13.010 - 3.13.260, inclusive) shall have no effect for the 2004 general and runoff municipal elections.

IN COUNCIL, OAKLAND, CALIFORNIA, (DATE), 2001

PASSED BY THE FOLLOWING VOTE:

AYES- BRUNNER, CHANG, BROOKS, NADEL, REID, WAN, QUAN, AND PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST:

CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California