

CITY OF OAKLAND
AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2008 JAN 10 PM 6:00

To: Office of the City Administrator
Attn: Deborah A. Edgerly
From: Executive Director, Public Ethics Commission
Date: January 24, 2008

Re: Required Transmission Of Adopted Regulations Administering and Interpreting Chapter 3.13 Of The Oakland Municipal Code (aka "The Limited Public Financing Act")

SUMMARY

The Oakland City Council adopted the Limited Public Financing Act ("Act") in December, 1999. The Act provides eligible candidates a limited amount of public funds ("matching funds") to assist their campaigns. In October, 2000, the Public Ethics Commission adopted a set of administrative regulations to assist in the administration and interpretation of the Act. The City Council subsequently amended the Act in 2003 and in 2005.

On January 7, 2008, the Commission amended its administrative regulations to achieve consistency with the amended Act and to memorialize established procedures for administering the matching fund program.

In summary, the Commission's recent regulations conform to the current Act's requirements for 1) submitting application forms; 2) obtaining matching fund grants in the event of a run-off election; 3) lending personal funds to one's own campaign; 4) the distribution of matching fund checks; and, 5) the refund of unencumbered matching funds to the City.

O.M.C. Section 2.24.060 requires the Public Ethics Commission to transmit to the City Council within seven (7) calendar days any regulations adopted by the Commission. Such regulations shall become effective sixty (60) days after adoption unless the City Council, by a 2/3 vote of all its members, vote to veto the regulations within the sixty day period.

An annotated "redline" version of the adopted regulations is attached as **Exhibit 1**.

FISCAL IMPACT

There are no fiscal or administrative impacts associated with the adopted regulations.

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BACKGROUND

Under current law, the City of Oakland will match the first \$100 of every qualified campaign contribution received and deposited within 180 days before the election. Eligible contributions must originate from donors whose residence or business is located within the City of Oakland. The maximum amount a candidate can receive in matching funds is 30 percent of Oakland's voluntary expenditure ceiling for the office being sought. Candidates must first raise in Oakland campaign contributions an amount at least equal to 5 percent of the voluntary expenditure ceiling for the office being sought to become eligible to receive matching funds.

KEY ISSUES AND RATIONALE

The newly adopted regulations are essentially ministerial in nature. They address themselves to 1) eliminating inconsistent or redundant language due to subsequent amendments of the Act; 2) establishing procedures for submitting claims for matching funds; and 3) interpreting existing provisions contained in the Act. The annotated comments in **Exhibit 1** identify the relevant issues and provide a rationale for the newly adopted regulations.

SUSTAINABLE OPPORTUNITIES

Not applicable.

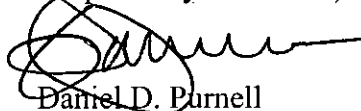
DISABILITY AND SENIOR CITIZEN ACCESS

Not applicable.

RECOMMENDATION AND ACTION REQUESTED

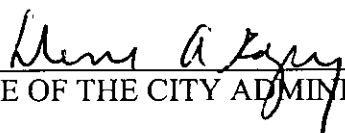
The regulations adopted by the Commission on January 7, 2008, shall take effect within sixty (60) days unless the City Council, by a 2/3 vote of all its members, vote to veto the regulations within the sixty day period. The Public Ethics Commission recommends that these adopted procedures be permitted to take effect.

Respectfully submitted,



Daniel D. Purnell
Executive Director
Public Ethics Commission

FORWARDED TO THE RULES AND LEGISLATION COMMITTEE

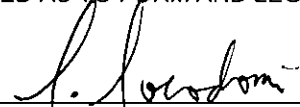

OFFICE OF THE CITY ADMINISTRATOR

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APPROVED AS TO FORM AND LEGALITY


CITY ATTORNEY

CITY OF OAKLAND

PUBLIC ETHICS COMMISSION

**ADMINISTRATIVE REGULATIONS IMPLEMENTING
OAKLAND MUNICIPAL CODE, CHAPTER 3.13, THE
LIMITED PUBLIC FINANCING ACT**

Effective December 1, 2000 March 7, 2008



LPF A. R. NO. 13.060(a): RESERVED

LPF A. R. NO. 13.060(b):

No later than ten days after the City Clerk certifies the final candidate to appear on the primary election ballot, the Executive Director shall determine, based on the final number of candidates appearing on the ballot and the number of candidates eligible or potentially eligible to receive public matching funds, whether the amount of money in the Election Campaign Fund is adequate to provide the maximum amount of public matching funds to the participants. If the Executive Director determines that the Election Campaign ~~Election~~ Fund will not be adequate to provide the maximum amount of funds to all participants, the Executive Director shall prepare a resolution for approval by the Public Ethics Commission at its next regularly scheduled or specially scheduled meeting for the disbursement of funds on a pro rata or other equitable basis. The revised disbursement plan shall also provide that a portion of the funds will be reserved for disbursement in the general or runoff election. The Ethics Commission may at any time revise the estimates and disbursement plan consistent with these rules and prevailing law.

LPF A. R. NO. 13.060(c): RESERVED

LPF A. R. NO. 13.060(d): RESERVED

LPF A. R. NO. 13.070(a): RESERVED

LPF A. R. NO. 13.070(b): RESERVED

LPF A. R. NO. 13.070(c): RESERVED

LPF A. R. NO. 13.070(d): RESERVED

LPF A. R. NO. 13.070(e):

Upon receipt of any statement of rejection, the City Clerk shall immediately notify all candidates for the same office and advise them of their right to rescind their acceptance of expenditure ceilings within the requisite period. Candidates choosing to rescind their agreement must deliver to the City Clerk no later than ten calendar days from the deadline for filing nomination papers written confirmation of their recession for such ~~recession~~rescission to be effective.

LPF A. R. NO. 13.080(a):

The Public Ethics Commission shall adopt and make available to all candidates a "Statement Of Acceptance And Application For Public Matching Funds" which shall contain all information, representations and disclosures required under ~~this section~~the Limited Public Financing Act. The Statement Of Acceptance And Application For Public Matching Funds" shall be signed by the candidate and verified under penalty of perjury.

- ***COMMENT: Commission staff developed and continues to use a Statement Of Acceptance And Application For Public Matching Funds. (See Attachment 2.) This rule change merely memorializes ongoing administration of the matching fund program.***

LPF A. R. NO. 13.080(b):

Any candidate determined to be eligible to receive public matching funds but who is later disqualified from the ballot or withdraws from the election will be suspended from receiving public matching funds. A candidate who is disqualified or who withdraws shall not spend public matching funds received prior to the disqualification or withdrawal and must repay to the Public Ethics Commission all unencumbered public matching funds within ten days of the disqualification or withdrawal.

LPF A. R. NO. 13.080(c): RESERVED

~~No public matching funds shall be issued for a candidate in a general (runoff) election any earlier than eighty-eight (88) days before the general election.~~

- ***COMMENT: Prior to the 2005 amendments to the LPFA, eligible candidates were entitled to receive public matching funds in the event they were involved in a run-off election. When the nominating election took place in March and the***

general (run-off) election taking place in November, the above rule created a "black-out period" within which no matching fund checks could be distributed to run-off candidates.

Under the 2005 amendments, eligible run-off candidates are now only entitled to receive a one-time grant of public funds upon qualifying for the run-off election. [LPFA §3.13.110(E)] Since the grants were expressly intended to accelerate the distribution of public funds to candidates, the current "black-out" period is not consistent with §3.13.110(E).

LPF A. R. NO. 13.080(d):

Any candidate or candidate's controlled committee that 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 the election for which public matching funds are sought shall notify in writing, by personal delivery, facsimile or overnight mail, the Executive Director of the Public Ethics Commission within seven (7) calendar days of such threshold(s) being reached. The Executive Director shall immediately notify all other candidates whose eligibility for matching funds may be affected by such disclosure.

LPF A. R. NO. 13.080(e): RESERVED

LPF A. R. NO. 13.090:

~~A candidate will not be disqualified from receiving public matching funds by accepting a loan from his or her own funds, except that no~~ No portion of any personal loan shall be considered as a contribution pursuant to Section 3.13.040, or for the purpose of determining the amount of public matching funds available to a candidate's eligibility to receive public matching funds pursuant to Section 3.13.080(c), ~~candidate, nor shall any portion of the personal loan be used to determine whether any public matching funds are encumbered pursuant to section 3.13.150.~~

- ***COMMENT: Prior to the 2005 amendments to the LPFA, §3.13.090 stated that candidates were not entitled to receive "contributions" from their personal funds greater than 5 percent of their respective voluntary expenditure ceilings. The issue of whether that restriction applied to personal "loans" from a candidate to his or her committee was clarified in the 2005 amendments when §3.13.090 was amended also to preclude personal loans in excess of the 5 percent limit.***

Because of the 2005 amendment, it is no longer necessary to state that a candidate "will not be disqualified" from receiving matching funds on account of a personal loan to his or her campaign. The above-proposed rule change clarifies that a personal loan shall not constitute a "matchable contribution" under §3.13.040 nor be used to calculate whether a candidate has raised the required threshold amount of contributions to become eligible to receive matching funds under §3.13.080(c). Commission staff recommends that the reference to §3.13.150 be deleted as redundant to the existing language found in LPF A.R. Rule No. 13.150.

LPF A. R. NO. 13.100(a): RESERVED

LPF A. R. NO. 13.100(b): RESERVED

LPF A. R. NO. 13.100(c):

The Executive Director shall provide any candidate with a certificate letter of eligibility or non-eligibility within ~~three~~ five (5) business days of receipt of the candidate's "Statement And Application For Matching Funds". The Executive Director shall provide any candidate who submits a "Matching Funds Claim Form" of the reasons why any item appearing on the claim form has been rejected and what actions the candidate may take to correct any insufficiencies. Any candidate may re-apply for matching funds as to any rejected item on a Matching Funds Claim Form only when the next aggregated threshold set forth in subsection 3.13.120(a) or (b) has been reached.

LPF A. R. NO. 13.100(d): RESERVED

LPF A. R. NO. 13.120(a): RESERVED

LPF A. R. NO. 13.120(b): RESERVED

LPF A. R. NO. 13.120(c):

The Executive Director shall notify each candidate when matching funds checks are available for disbursement. Matching funds checks shall be available for distribution at the office of the Public Ethics Commission during regular business hours. Matching fund checks shall only be disbursed in person to the candidate, his or her campaign treasurer, or to an individual previously designated by the candidate in writing to receive a matching fund check.

➤ ***COMMENT: The above-proposed change merely memorializes current administrative practice.***

LPF A. R. NO. 13.120(d): RESERVED

All requests for matching funds shall be made on a form entitled "Matching Funds Claim Form." The Matching Funds Claim Form shall be signed and verified under penalty of perjury by the candidate and the candidate's treasurer (if any). For each check submitted for matching funds, the candidate shall enter on an electronic matchable contributions list provided or approved by the Executive Director the following information for each check: The contributor's full name and address; the date the candidate received the contribution; the occupation and employer of the contributor (if applicable and if the aggregate amount of contributions from that contributor totals \$100 or more); and, the amount of the contribution seeking to be matched. The order of the check copies submitted for matching funds shall be identical to the order the contributions are listed on the electronic matchable contributions list. Copies of each check submitted for matching funds shall be submitted on a separate page.

- **COMMENT: The above-proposed change merely memorializes current administrative practice.**

LPF A. R. NO. 13.130:

Matching funds checks will only be made payable to the candidate's campaign committee. The candidate shall deliver to the Executive Director a copy of the deposit receipt within three (3) business days of deposit of the matching funds checks into the campaign account.

LPF A. R. NO. 13.140:

Public matching funds may not be used to pay any indebtedness incurred by any candidate on account of a personal loan to the campaign committee.

LPF A. R. NO. 13.150(a):

Public matching funds shall generally be considered "encumbered" to the extent the total financial obligations of the candidate's campaign committee (excluding personal loans, ~~loans and~~ unlawful or non-qualified campaign expenditures), exceed the total amount of contributions ~~(excluding~~ including the receipt of public matching funds), actually received by the campaign committee ~~by the date of defeat, withdrawal or election to office by the certified candidate committee, as of~~ the earlier of the last day of the semi-annual reporting period following the election or the candidate's withdrawal from the election. Public matching funds shall generally be considered "encumbered" if they are required for 1) accounts payable billed, or, 2) accounts payable for which bills may be expected, for goods or services received during the election period ended with the defeat, withdrawal or election to office by the certified candidate.

- **COMMENT:** Section 3.13.150 has always provided that "unencumbered" matching funds must be returned to the Election Campaign Fund. The 2005 amendments now specify that the date by which campaign funds shall be determined to be "encumbered" is the earlier of the last day of the semi-annual reporting period following the election (typically June 30), or the date a candidate withdraws from the election. The previous date for determining the amount of unencumbered funds (as reflected in the current rule language), was the date of the election itself. Thus the above-proposed rule change is necessary to achieve consistency with the 2005 amendments. The above-proposed change from "excluding" the receipt of matching funds to "including" the receipt of matching funds in determining whether campaign funds are encumbered ensures that any unencumbered money remaining in a candidate's campaign account as of the end of the semi-annual reporting period shall be paid back to the City up to the amount of matching funds received.

LPF A. R. NO. 13.150(b):

~~The Public Ethics Commission shall adopt and make available to all candidates a form entitled, "Estimate Of Encumbered Matching Funds". Candidates shall submit to the Public Ethics Commission within thirty days after the defeat, withdrawal or election to office by the candidate an "Estimate Of Encumbered Matching Funds" setting forth the extent to which any public matching funds are encumbered or unencumbered.~~

~~In the event the candidate's "Estimate Of Encumbered Matching Funds" form indicates that there are unencumbered campaign funds to be returned to the Election Campaign Fund, the candidate~~Any candidate whose campaign account contains unencumbered matching funds pursuant to Section 3.13.150(b) shall submit to the Executive Director a check made payable to the "City of Oakland Election Campaign Fund" in an amount equal to the ~~estimated~~ unencumbered campaign funds indicated ~~on said form, less an amount not to exceed \$200.00 for costs reasonably related to maintaining the candidate's campaign checking account. The candidate shall indicate on the form~~ in writing how much is being withheld for campaign checking account costs. ~~Any unused portion of any money withheld for maintaining the candidate's campaign checking account shall be submitted to the Executive Director no later than the due date for the next campaign finance report following the election for which public matching funds are sought.~~

- **COMMENT:** As stated earlier, previous §3.13.150 provided that unencumbered matching funds existing as of the date of the election had to be returned to the City up to the amount of

matching funds received. Current §3.13.150 provides that unencumbered matching funds existing as of the last day of the semi-annual reporting period (i.e., June 30) must be returned to the City. One of the reasons for amending §3.13.150 was that it was extremely difficult to determine campaign account balances as of the date of the election. To help implement the previous requirement, the Commission adopted a form entitled "Estimate of Encumbered Matching Funds" that participating candidates were required to complete within the time specified under the old LPFA deadlines. Because of the 2005 amendments, candidates no longer have to estimate campaign account balances as of the date of the election and thus the current language in LPF A.R. No. 13.150(b) is no longer necessary.

LPF A. R. NO. 13.150(c): RESERVED

LPF A. R. NO. 13.160(a): RESERVED

LPF A. R. NO. 13.160(b):

Sufficient proof of payments shall generally be satisfied by providing copies of all invoices, receipts, bills, or other written demands for payment that specifically set forth the items of service or goods provided. The Executive Director shall be authorized to demand additional information in connection with any document submitted as proof of any disbursement made from public matching funds within the scope of Generally Accepted Auditing Standards.

Each certified candidate or candidate's committee shall have and maintain for a period of four (4) years from receipt of public matching funds the originally received documents substantiating expenditures and shall make them available to the Public Ethics Commission and/or the City Auditor for inspection or audit upon request. Nothing in the foregoing shall modify the right of a candidate or a candidate's controlled committee to maintain possession of any records during an inspection or audit, nor shall modify the right of the Public Ethics Commission or City Auditor to subpoena any document.

~~The Executive Director shall be authorized to adjust any payment or reimbursement of public matching funds in the event of a computational error or discrepancy between the amounts submitted on the "Estimate Of Encumbered Matching Funds" and the final submission of proof of payments.~~

- ***COMMENT: See comments to LPF A.R. NO. 13.150(b), above (language referring to estimates of encumbered matching funds is no longer necessary.)***