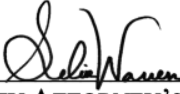


APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCIL PRESIDENT NIKKI FORTUNADTO BAS
AND COUNCILMEMBER CARROLL FIFE


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE _____ C.M.S.

ORDINANCE ADDING CHAPTER 3.13 (THE LIMITED PUBLIC FINANCING ACT OF 2024) TO THE OAKLAND MUNICIPAL CODE TO TEMPORARILY RESTORE PUBLIC FINANCING, OR A SUBSTANTIVELY SIMILAR ORDINANCE

WHEREAS, on November 8, 2022, Oakland voters passed Measure W, which repealed Oakland Municipal Code Chapter 3.13, the “Limited Public Financing Act of the City of Oakland,” and replaced it with Oakland Municipal Code Chapter 3.15, the “Oakland Fair Elections Act,” which establishes the Democracy Dollars Program; and

WHEREAS, Section 3.15.060(E) of the Oakland Fair Elections Act mandates a minimum budget set aside for the Oakland Democracy Dollars Fund (“Fund”) and for non-staff costs for the Public Ethics Commission (“PEC”) to administer the Fund, and allows the City Council to suspend the aforesaid minimum budget set-asides for a fiscal year or two-year budget cycle, upon a finding in the budget resolution that the City is facing an extreme fiscal necessity as defined by City Council resolution, provided that the suspension is part of a general reduction in expenditures across multiple departments; and

WHEREAS, the City of Oakland was experiencing the largest general purpose fund shortfall in its history prior to the balancing actions contained in the Fiscal Years 2023-2025 budget; and

WHEREAS, in light of the extreme fiscal necessity the City was facing, the Council determined it was necessary to suspend the Charter-mandated minimum budget set-asides for the FY 2023-2025 budget cycle for the Democracy Dollars Fund and non-staff costs for the PEC to administer the Democracy Dollars Program; and

WHEREAS, Measure W anticipated that the PEC may not be able to implement the Democracy Dollars Program in the first election cycle following the measure’s passage, and

provided in Section 3.15.050 of the Oakland Fair Elections Act that: “In the first election cycle following voter approval of this ordinance, the Commission may, by a vote of at least five (5) of its members, delay the implementation of the Program in part or in its entirety if the Commission is not able to meet all of the requirements of the Program as provided by this ordinance. In making this determination, the Commission should consider all possible alternatives to avoid delaying Program implementation in its entirety, including but not limited to partial implementation by issuing only mailed Democracy Dollars, or limiting the Program to only certain races, or changing Program components.”; and

WHEREAS, the PEC considered all possible alternatives to avoid delaying Democracy Dollars Program implementation in its entirety, including but not limited to partial implementation by issuing only mailed Democracy Dollars or limiting the Program to only certain races, but determined it could not do even a partial implementation for the 2024 elections. Furthermore, on July 12, 2023, the PEC voted, by a vote of 6-0, to postpone the distribution and use of Democracy Dollars vouchers for the November 2024 election; and

WHEREAS, the PEC is working towards the full implementation of the Democracy Dollars Program for the 2026 elections; and

WHEREAS, Measure W anticipated that amendments to the measure may be appropriate to further the purposes of Democracy Dollars Program if they are recommended by the PEC. Section 3.15.230 of the Oakland Fair Elections Act provides that: “The City Council may make any amendments to this Act that: (1) are consistent with its purpose and approved by a two-thirds vote of the Councilmembers, provided that the Commission has first approved specific findings and recommendations by a two-thirds vote of the Commissioners that the City Council amend the Act”; and

WHEREAS, the City of Oakland has provided public financing to eligible candidates for City Council District office for over two decades; and

WHEREAS, on August 9, 2023, the PEC voted, by a vote of 6-0, to recommend that Council adopt Chapter 3.13, the Limited Public Financing Act of 2024, or a substantially similar ordinance, to restore public financing during the 2024 election cycle; and

WHEREAS, the Council agrees with the PEC and finds that the elimination of all public financing for the 2024 election is contrary to the purposes of the Oakland Fair Elections Act; and

WHEREAS, the Council agrees with the PEC and finds that the temporary restoration of a limited public financing program for the 2024 election furthers the purposes of the Oakland Fair Elections Act by ensuring some type of public financing remains available while the Democracy Dollars Program is being established; and

WHEREAS, the Council agrees with the PEC and finds that the temporary restoration of a limited public financing program for the 2024 election furthers the purposes of building fairer elections, preventing corruption or its appearance, ensuring candidates can focus on communicating with all Oakland residents and considering policy issues rather than devoting

excessive time to fundraising, ensuring that access to networks of wealthy contributors is not a prerequisite for candidates to run a competitive campaign, ensuring candidates participate in public debates, and ensuring candidates raise enough money to communicate their views and positions adequately to the public; now,

THEREFORE, THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Article I: Title 3, Chapter 3.13 of the Oakland Municipal Code is hereby added to read as follows (additions are shown in underline; deletions are shown as ~~strikethrough~~):

Sections:

3.13.010 Title.

This chapter shall be known as the "Limited Public Financing Act of 2024."

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, 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.
- H. To prevent corruption or the appearance of corruption.

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 this Code and in Government Code Sections 81000 et seq. as amended govern the interpretation of this Act.

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.

Article III. Election Campaign Fund

3.13.060 Establishment of public financing program.

- A. The Public Ethics Commission shall establish a public financing program, consistent with this chapter, to fund all candidates eligible to receive public financing running for the office of district city councilmember in the 2024 general election.
- B. The Public Ethics Commission shall finance the public financing program from its discretionary funds in an amount not to exceed \$155,000 over the 2023-2025 fiscal years.
- C. Any unspent funds that the Public Ethics Commission allocated for the public financing program pursuant to subsection (B) at the end of the Fiscal Year 2023-2025 budget cycle shall remain in the Public Ethics Commission fund and accrue for disbursement to candidates eligible for public financing in future elections and for administrative costs.
- D. Up to seven and one-half percent of the amount allocated to the public financing program pursuant to subsection (B) may be utilized by the Public Ethics Commission to cover the anticipated cost of administering the provisions of this Act.

3.13.065 Allocation of election campaign fund.

No later than seven days after the city clerk has certified the names of all candidates to appear on the ballot, the public ethics commission shall determine at a publicly noticed meeting whether, based on the number of potentially eligible candidates, the amount of money in the

election campaign fund is adequate to provide the maximum amount to potentially eligible candidates. If the commission determines that the election campaign fund will not be adequate to provide the maximum amount of funds to potentially eligible candidates, the commission shall order the disbursement of available funds on a pro rata or other equitable basis. The commission may at any time revise the disbursement plan consistent with these rules and prevailing law.

Article IV. Eligibility for Public Financing

3.13.070 Application and withdrawal procedures.

- A. Each candidate for district city council shall file a statement with the Public Ethics Commission on a form approved for such purpose indicating acceptance or rejection of the voluntary expenditure limits pursuant to Section 3.15.140(A).
- B. Each candidate for district city council shall file with the public ethics commission a statement of acceptance or rejection of public financing on a form approved by the public ethics commission no later than 14 calendar days after the date the city clerk has certified the names of candidates to appear on the ballot for the election in which public financing will be sought. The statement of acceptance or rejection of public financing shall advise and require that the candidate's decision to reject public financing is irrevocable for the election in which his or her name appears on the ballot. The failure to timely file a statement of acceptance or rejection of public financing shall constitute a rejection of public financing.
- C. If a candidate declines to accept the voluntary expenditure limits prescribed in Section 3.15.140(A), the candidate shall not be eligible for public financing.
- D. If a candidate agrees to accept the voluntary expenditure limits prescribed in Section 3.15.140(A), the candidate shall be eligible for public financing upon meeting the qualification requirements as provided in this Act.
- E. If a candidate declines to accept voluntary expenditure limits and receives contributions or makes qualified campaign expenditures equal to fifty (50) percent or more of the voluntary expenditure limit, or if any person makes one or more independent expenditures totaling more than \$30,000 on a district city council election, the applicable voluntary expenditure limit shall no longer be binding on any candidate running for the same office.
- F. In the event voluntary expenditure limits are lifted pursuant to Subsection (E), a candidate who accepted the voluntary expenditure limits shall be permitted to receive public financing but shall no longer be subject to the voluntary expenditure limits.

3.13.080 Qualification procedures.

A candidate shall be approved to receive public financing if the candidate meets all of the following requirements:

- A. The candidate has filed a timely statement of acceptance of the voluntary expenditure limits and acceptance of public financing.
- B. The candidate is certified to appear on the ballot for the election for which public financing is sought.
- C. The candidate has (1) received contributions in an aggregate amount of at least five percent of the expenditure limit for the office being sought from contributors whose

principal residence or whose primary place of doing business is located within the city and which residence or business address appears on the written instrument used to make the contribution, and (2) made qualified campaign expenditures in an aggregate amount of at least five percent of the expenditure limit for the office being sought. Contributions from the candidate's own funds shall not be counted towards meeting this five percent requirement. The candidate shall provide copies of the contribution checks received and records of payments made to meet the five percent eligibility requirements.

- D. The candidate is opposed by another candidate for the same office.
- E. The candidate agrees to all conditions and requirements of this Act and to submit to any reasonable audit 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.
- G. The candidate has filed, and completely and accurately executed, all pre-election campaign statements that are due at the time public financing is payable. All candidates receiving public financing shall timely file, and completely and accurately execute, all post-election campaign statements for each election in which they received public financing.
- H. The candidate attests that he or she will personally participate in at least one public debate or forum. Only public debates or forums to which all other candidates accepting public financing for the office sought by the candidate are invited to participate shall be counted for the purposes of this section. Within five days of the candidate's participation in a qualifying public debate or forum, the candidate shall notify the Public Ethics Commission, in writing, of his or her participation in the debate or forum.

3.13.090 Use of personal funds.

A candidate who accepts public financing shall not receive contributions or loans from the candidate's own funds which aggregate total exceeds \$19,000 for the office being sought. If the voluntary expenditure limits for the office being sought are lifted, this provision shall not apply.

Article V. Disbursement of Public Financing

3.13.100 Duties of the public ethics commission and office of the city auditor.

- A. The public ethics commission shall develop any and all forms necessary to carry out the provisions of the Act. 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 review records submitted to determine a candidate's eligibility to receive public financing and requests for reimbursement promptly. For any candidate determined not to be eligible for public financing, the commission or its designee shall inform the candidate of the reasons why the candidate is not eligible and what actions, if any, the candidate may take to correct any insufficiencies.

C. The City Auditor may conduct a discretionary audit of the Public Ethics Commission's disbursement of public financing funds to candidates or may conduct discretionary audits of the campaign committee of any candidate who receives public financing. The audit report shall be a public record and provided to the Public Ethics Commission. The City Auditor shall conduct all audits in accordance with generally accepted government auditing standards.

3.13.110 Requests for public financing.

A. Public financing pursuant to this Act shall be provided solely by reimbursing eligible candidates for certain qualified campaign expenditures lawfully made by the candidate and his or her campaign committee.

B. The qualified campaign expenditures eligible for reimbursement are:

1. Candidate filing and ballot fees;
2. Printed campaign literature and production costs;
3. Postage;
4. Print advertisements;
5. Radio airtime and production costs;
6. Television or cable airtime and production costs; and
7. Website design and maintenance costs.

C. The following conditions and restrictions shall apply to any request for reimbursement:

1. All requests for reimbursement shall be made on a form authorized by the public ethics commission and shall include: (a) a copy of the billing invoice for which reimbursement is sought; (b) a copy of the check(s) by which the candidate's campaign committee made payment on the billing invoice; and (c) a copy, when applicable, of the campaign literature, advertisement, radio or television script, or website configuration.
2. All requests for reimbursement shall include a sworn declaration by the candidate and his or her campaign treasurer that (a) the check(s) used to make payment on the billing invoice represents payment in full of the billing invoice submitted for reimbursement and that sufficient funds exist in the campaign account to provide payment, and (b) any money received from the election campaign fund has not been previously earmarked or specifically encumbered to pay or to secure payment of any loan, return of contribution or of any expenditure other than the one for which reimbursement was sought.

D. Any decision made by the executive director to deny a request for reimbursement may be appealed to the commission whose decision shall be final. A request to agendize an appeal of the executive director's decision shall be made in writing and delivered to the office of the public ethics commission no more than ten calendar days after receiving written notice of the executive director's decision.

E. The total amount of public financing allocated to each candidate shall not exceed 30 percent of the voluntary expenditure limit per election for the office being sought.

3.13.120 Disbursement and deposit of public financing.

- A. A candidate or candidate's controlled committee, certified as eligible to receive public financing, shall submit requests for reimbursement to the public ethics commission in minimum increments of \$1,000.00 or more.
- B. A candidate or candidate's controlled committee, certified as eligible to receive public financing, shall submit requests for reimbursement in minimum increments of \$500.00 or more ten calendar days before the election.
- C. The public ethics commission or its designee shall have ten calendar days to cause the review and approval or denial of the request for reimbursement and disburse funds from the election campaign fund to the candidate or candidate's controlled committee.
- D. All funds disbursed from the election campaign fund shall be made payable to the candidate's controlled committee and shall be deposited directly into the candidate's campaign checking account within thirty (30) calendar days of receipt.

3.13.150 Return of surplus funds.

- A. Surplus campaign funds remaining at the end of the post-election reporting period following the election for which public financing was received shall be returned to the election campaign fund no later than 31 calendar days from the last day of the semi-annual reporting period following the election in an amount specified by this section. A candidate shall not be required to return any surplus funds in an amount greater than the amount of public financing received. The amount of surplus campaign funds to be returned to the election campaign fund shall be calculated by multiplying the amount of surplus campaign funds by the percentage that total public financing received represents of total monetary contributions received for the election period.
- B. For purposes of this Act, campaign funds shall be considered "surplus" campaign funds to the extent that the total amount of contributions (excluding the receipt of public financing) exceed the total financial obligations of the candidate's campaign committee (excluding unlawful or non-qualified campaign expenditures) as of the last day of the semi-annual reporting period following the election. A financial obligation includes (1) accounts payable billed, or (2) accounts payable for which bills may be expected, for goods or services received during the election.
- C. Public financing shall not be disbursed to the certified candidate from the election campaign fund following the day of the election or the candidate's withdrawal from the election, whichever occurs first, except that public financing may be disbursed to a certified candidate after the date of the election or withdrawal provided that the candidate submitted a properly documented request for reimbursement before the date of the election or the date of withdrawal from the 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 public financing, (2) makes a material misrepresentation in connection with a request for reimbursement, or (3) causes, aids or abets any other person to violate the provisions of this Act, is guilty of a misdemeanor. Prosecution shall be commenced within four 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 public financing, (2) makes a material misrepresentation in connection with a request for reimbursement, or (3) causes, aids or abets any other person to violate the provisions of this Act, 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 financing 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 \$1,000.00 per violation and to order the repayment of public financing 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 four 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.

3.13.265 Sunset.

This Chapter shall be operative for the 2024 general election only.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES – FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND
PRESIDENT FORTUNATO BAS

NOES –

ABSENT –

ABSTENTION –

ATTEST:

ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California

NOTICE AND DIGEST

**ORDINANCE ADDING CHAPTER 3.13 TO THE OAKLAND MUNICIPAL
CODE IMPOSING FINES AND PENALTIES AGAINST ORGANIZERS AND
BY-STANDER PARTICIPANTS**

This Ordinance will add Oakland Municipal Code Chapter 3.13 (the Limited Public Financing Act) to provide limited public financing for the 2024 election cycle for the offices described therein.