



AGENDA REPORT

TO: City Councilmembers,
City Administrator Ed Reiskin

FROM: Whitney Barazoto, Director
Public Ethics Commission

SUBJECT: Amendments to the Limited Public Financing Act

DATE: March 1, 2022

RECOMMENDATION

The Public Ethics Commission recommends that the City Council adopt an ordinance amending Oakland Municipal Code section 3.13, the Limited Public Financing Act, to extend the deadline for candidates to deposit disbursement checks and to delete the mandatory audit requirement and replace it with a discretionary audit provision.

EXECUTIVE SUMMARY

The Public Ethics Commission (PEC or Commission) proposes amendments to the Limited Public Financing Act Ordinance (O.M.C. Chapter 3.13) in response to recommendations made by the City Auditor in her 2018 and 2020 audits of the program. The amendments include two minor changes:

- 1) extend the deadline for candidates to deposit disbursement checks from the City from 3 business days to 30 calendar days, and
- 2) delete the requirement that the City Auditor conduct mandatory audits of all candidates who participate in the program every election cycle and replace it with a discretionary audit option.

The Public Ethics Commission recommends adoption of the amendments, drafted by the PEC at the recommendation of the City Auditor with input from commissioners and staff, the City Attorney's office, and members of the public through the PEC's public meeting process.

BACKGROUND AND ANALYSIS

The Limited Public Financing Act (LPFA), enacted in 1999 and last amended in 2010, provides District City Council candidates with some public funds by way of reimbursements for certain qualified expenditures, to be used for campaign expenses with the goal of encouraging equity, ensuring a more fair chance at competition for candidates new to the process, reducing the influence of money in politics, and helping candidates spend less time fundraising and more time talking with voters.

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The LPFA establishes myriad requirements for candidates to meet in order to participate in and receive public funding for their campaigns. These requirements ensure that City money goes to candidates who provide a certain minimum threshold level of support by Oakland residents or businesses. For example, as part of the process of applying for public funds, candidates must show that they received a certain amount of money in contributions and have made expenditures for specific campaign purposes. LPFA requirements also help to ensure that candidates are using the money as intended and not depositing the payments into any personal accounts. For example, one requirement of the LPFA is that, when a candidate receives a reimbursement check from the City, the candidate must deposit the check into the campaign account within 3 days of receipt.

In 2018 and earlier audits, the City Auditor noted as part of her audit that not all candidates were complying with this 3-day requirement and that there did not appear to be any specific reason for the deposit being made so soon after receipt of the check. The Auditor noted that 3 of the 10 candidates made their deposits within 5-17 days of receiving the check, and that perhaps more time could be given for candidates to deposit these checks. Often, checks are issue to candidates just days before the election, and they may be consumed with final election-related activities rather than administrative LPFA requirements. In the 2018 audit, the City Auditor recommended that the PEC consider proposing and amendment to LPFA to extend the deadline to allow more time for check deposits. Thus, the draft amendments delete the “3 business days” deadline and replace that with a “30 calendar day” deadline. (See OMC 3.13.120D)

The LPFA further includes a provision requiring mandatory post-election audits of all candidates accepting public financing. This requirement was in place before the Commission was strengthened and provided with stronger authority and staffing to effectively conduct its own investigations and audits.

In her 2020 audit, the City Auditor stated the following in her audit report letter to the Commission:

The audit found the Oakland Public Ethics Commission’s (PEC) overall systems and internal controls are adequate to ensure proper administration of the Program. All candidates were properly deemed eligible for the Program and expenditure reimbursements were appropriate.

In fact, in recent years, the biennial audits of the LPFA have not found any major deficiencies or misuse of funds. The risk of misuse was dramatically reduced when the Program began reimbursing candidates for valid expenditures in 2010 instead of advancing funds, as had occurred previously.

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Given the reduction in risk, and consecutive audits demonstrating the PEC's systems are working effectively, our Office recommended the PEC consider drafting an amendment to Oakland's Municipal Code, for the City Council's consideration, to eliminate the requirement of biennial post-election audits of the LPFA.

The original mandatory audit requirement focused on auditing candidates rather than the PEC. However, now that the Commission has its own staff to both assist candidates with meeting state and local requirements and investigate and enforce noncompliance, there is no need for the Auditor to serve in this capacity. In addition, the Auditor already has discretion under general City Charter provisions, outside of this ordinance, to conduct audits of all City programs and departments. Thus, the draft amendments delete the mandatory biennial requirement and instead replace the language with a discretionary audit option for the City Auditor.

RECOMMENDATION

To resolve the above issues, the Public Ethics Commission recommends the City Council adopt the attached proposed amendments to the Limited Public Financing Act Ordinance (O.M.C. Chapter 3.13).

FISCAL IMPACT

There are no additional costs imposed on the City or Commission. There are potential cost savings from deleting the mandatory audit requirement, depending on whether the City Auditor decides to pursue a discretionary audit of the program each election cycle.

SUSTAINABLE OPPORTUNITIES

Economic: There are no economic opportunities.

Environmental: There are no environmental opportunities.

Race & Equity: Social equity depends on a political and governmental system that ensures a fair and equal opportunity for all individuals of all racial and socio-economic groups to participate meaningfully in the governmental process. The Limited Public Financing Act aims to create more equity in the campaign finance system; these amendments do not change any substantive provisions of the program.

ACTION REQUESTED OF THE CITY COUNCIL

The Public Ethics Commission recommends City Council adopt the attached proposed amendments to the Limited Public Financing Act ordinance, to become effective upon adoption.

For questions regarding this report, please contact Whitney Barazoto, Executive Director of the PEC, at (510) 238-6620.

Respectfully submitted,



WHITNEY BARAZOTO

Executive Director, Public Ethics Commission

Attachment:

- A. Draft Proposed Amendments to the Limited Public Financing Act Ordinance