



Agenda Report



TO:	Honorable Mayor, City Council & Members of the Public	FROM:	Nikki Fortunato Bas Council President Councilmember, District 2
			Nicolas Heidorn Executive Director Public Ethics Commission
SUBJECT:	Limited Public Financing Act of 2024	DATE:	September 14, 2023

RECOMMENDATION

To ensure that public financing will remain available to eligible candidates running for City Council District Office in 2024, Council President Bas and the Public Ethics Commission recommend that the City Council approve an ordinance establishing a limited public financing program for City Council District offices for the 2024 election cycle only using discretionary funding already budgeted to the PEC.

EXECUTIVE SUMMARY

Since 2001, the City of Oakland has provided public financing to eligible candidates running for City Council District office. The Limited Public Financing Program (LPF) was a reimbursement-based public financing program administered by the Public Ethics Commission (PEC). In November 2022, Oakland voters passed Measure W, which repealed the LPF and replaced it with a more robust, voucher-based public financing system called the Democracy Dollar Program, also administered by the PEC, which was set to take effect in the 2024 election cycle. However, due to a severe fiscal necessity facing the City, the implementation of the Democracy Dollars Program was delayed to 2026. With the prior LPF repealed and the new Democracy Dollars Program delayed, the 2024 election cycle will be the first election in over twenty years without public financing being available for candidates running for Council District office.

In the absence of any public financing, candidates may have to rely more on wealthy donors to fund their campaigns, creating the risk or perception that candidates are more responsive and accountable to those interests than other Oaklanders, and making it more difficult for candidates who are not wealthy or connected to networks of wealth to run for office, deepening racial and class inequity in the City's democratic process.

This proposal, adopted by the PEC as a recommendation to the City Council at its August 2023 meeting, would re-establish, for the 2024 election cycle only, a limited public financing program similar to the LPF program in effect in 2022, but incorporating some revisions to the City's public financing program proposed in Measure W. The proposed 2024 LPF Program would be funded using \$155,000 in discretionary funds already budgeted to the PEC in Fiscal Years 2023-2025 Budget.

BACKGROUND / LEGISLATIVE HISTORY

Limited Public Financing Program. The Limited Public Financing (LPF) Program was enacted by the City Council in 1999 and has been in continuous use, with amendments and revisions, through the 2022 elections. Prior to its recent repeal, the LPF was a voluntary, reimbursement-based program applying to candidates running for City Council District office that opted-in by agreeing to or meeting certain program conditions.

To qualify for the LPF Program, a candidate had to accept voluntary expenditure limits calculated as a dollar multiple of the district's underlying population, which, as adjusted for inflation for 2023, would be between \$183,000 to \$192,000 depending on the district. (However, under that Program, the expenditure limits would be lifted if a non-participating candidate raised more than 50% of the expenditure limit, \$91,500 to \$96,000 today, or if independent expenditures in the race exceeded \$30,000.) The candidate also had to raise funds from Oakland residents and businesses equal to at least 5% of the expenditure limits, i.e., between \$9,150 to \$9,600, and expend an amount equal to or greater than the 5% threshold. Other qualifying requirements included the candidate filing a statement accepting public financing; being certified to appear on the ballot; being opposed by another candidate; agreeing to conditions of the Program and agreeing to submit to a reasonable audit; filing campaign statements; and not contributing or loaning more than 10% of the expenditure limit (\$18,300 to \$19,200) to their campaign.

Once a candidate qualified for the Program, they could request reimbursement of certain enumerated types of campaign expenses, like campaign mailers, from the PEC in minimum increments of \$1,000 or more (or \$500 or more ten days before the election). The PEC had 10 days to review and approve or deny the reimbursement request and disburse the funds to the candidate. Candidates could not receive reimbursements totaling more than 30% of the expenditure limit, or \$54,900 to \$57,600 in 2023, or a lesser amount if there were insufficient public funds for every candidate to receive the maximum.

In most elections, due to insufficient funding, the upper cap was not used. In the 2022 election, public financing reimbursements were capped at \$35,400. Five candidates received public financing in that election, including four who received or nearly received that maximum amount. All three candidates who won district office that election cycle received public financing. In the 2020 election, the maximum

amount was \$21,857. Six candidates received public financing, including five who received the maximum. Three of the four winning candidates received public financing.

Measure W. In 2022, the City Council placed Measure W on the ballot to expand and strengthen public financing in Oakland by adopting the voucher model of public financing, which was pioneered in Seattle. Under Measure W, the existing LPF program would be repealed and replaced with the Democracy Dollars Program, where every eligible Oakland resident would receive four \$25 vouchers which they could assign to any eligible candidate running for an Oakland City or school district office. Measure W also made other changes to Oakland's campaign finance laws, like lowering campaign contribution limits and requiring more transparency around independent expenditures. Measure W was approved by 73.9% of Oakland voters.

Measure W sets minimum staffing and funding requirements for the Democracy Dollars Program, which was set to begin with the 2024 election cycle. However, Measure W permits the City Council to reduce these budget and staffing minimums if the City is facing an "extreme fiscal necessity" and authorizes the Public Ethics Commission, which is responsible for administering the Program, to delay implementation after exploring all possible alternatives for partial implementation. This past June, with the City facing a \$360 million deficit, the City Council adopted a resolution declaring that the City was facing an extreme fiscal necessity and passed a two-year budget which reduced staffing and funding for the Program, including eliminating funding for vouchers for the 2024 election cycle. After considering all possible alternatives, the PEC voted at its July 2023 meeting to postpone implementation for the 2024 cycle. With the Democracy Dollars Program postponed, and the prior LPF program repealed, 2024 will be the first election in more than 20 years where no public financing is available for candidates running for a Council District office.

This proposal. This proposed ordinance, which is recommended by Council President Bas and the PEC, would reinstate a limited public financing program, similar to the LPF Program in effect in 2022, for the 2024 election cycle only. Because Measure W repealed the prior LPF, this proposal is an amendment to the Democracy Dollars Program. Under Oakland Municipal Code Section 3.15.230, added by Measure W, the City Council may amend the Democracy Dollars Program if the amendments "are consistent with its purpose and approved by a two-thirds ($\frac{2}{3}$) vote of the Councilmembers, provided that the [Public Ethics] Commission has first approved specific findings and recommendations by a two-thirds ($\frac{2}{3}$) vote of the Commissioners that the City Council amend the Act."

At its August 2023 meeting, the PEC voted unanimously to recommend this proposal to the City Council. The PEC found that "the temporary restoration of a limited public financing program for the 2024 election furthers the purposes of [Measure W] by ensuring some type of public financing remains available while the Democracy Dollars Program is being established" and furthers many of the express purposes of Measure W including:

"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.”

The attached ordinance, which must be passed by a two-thirds vote of the City Council, makes similar findings that the proposal would further Measure W’s purposes. Under Measure W, the proposed ordinance cannot be substantively amended by the City Council without returning to the PEC for review and approval.

ANALYSIS AND POLICY ALTERNATIVES

This proposal provides a one-time extension of an LPF-style program to ensure there is no break in the availability of public financing in Oakland until the launch of the full Democracy Dollars Program in the 2026 election cycle. Because the LPF is significantly less complex and costly to administer than the Democracy Dollars Program, PEC staff could implement a version of that program for the 2024 election cycle using existing staff and fiscal resources. The proposed ordinance therefore largely re-establishes the LPF Program as it existed in 2022, except that some Measure W policy changes to the public financing program were incorporated where it was administratively simple or easy to do so. The prior LPF ordinance language is attached to this memo with redlines indicating the amendments being proposed for the 2024 Program.

Overview. Key elements of the proposed program include:

- **Eligibility:** To qualify for the Program, a candidate must:
 - Accept voluntary expenditure limits of \$150,000;
 - Raise contributions of at least \$7,500 (5% of the expenditure limit) from Oakland residents or businesses;
 - Make qualifying campaign expenditures of at least \$7,500 (5% of the expenditure limit);
 - Be opposed by another candidate for the same office; and
 - Agree to participate in at least one debate or forum.
- **Personal spending limit:** Participating candidates agree not to spend more than \$19,000 on their campaign, unless the expenditure limits are lifted.
- **Public Funding:** Participating candidates may have their eligible campaign expenses reimbursed in minimum increments of \$1,000 or more (or \$500 or more nearer to the election) up to a cumulative maximum of 30% of the expenditure limits (\$45,000), or a smaller amount if the PEC determines there is insufficient funding to provide the maximum amount to all participating candidates.
- **Expenditure Limit Release:** Participating candidates are released from the expenditure limits if either:

- A non-participating opposing candidate receives contributions or makes expenditures equal to \$75,000 or more (50%+ of the expenditure limit); or
 - A person makes an independent expenditure of \$30,000 or more on the election.
- **Program Budget:** The Program is funded with \$155,000 in discretionary funding already budgeted to the PEC. Up to \$11,250 (7.5% of the appropriation) may be used for administrative expenses.

The sections that follow compare key program elements of the prior LPF and Measure W, explaining which of those policy alternatives were included in this proposal and why.

Covered Offices. Under the prior LPF, only candidates running for City Council District office were eligible to receive public financing. Under Measure W, public financing will be available to any candidate for a City office (Mayor, Auditor, City Attorney, At-Large Councilmember, District Councilmember) or the Oakland School Board.

This proposal provides public financing only for Council District Office, like the prior LPF. The PEC has \$155,000 in discretionary funding available for public financing, which is the same amount that was previously appropriated for the LPF just for Council District elections. Adding additional offices beyond City Council Districts would significantly decrease the amount of public funds available to each office, reducing the value and effectiveness of public financing, and increase the administrative complexity of the program.

Expenditure Limits. Under the prior LPF, participating City Council District candidates had to agree to limit their expenditures to the product of \$1.50 + CPI multiplied by the population of their district, which today would be between \$183,000 and \$192,000, depending on the district. Under Measure W, the expenditure limit for participating City Council District candidates, for all districts, is set at \$150,000 for the 2024 election cycle.

This proposal uses the Measure W expenditure limits for the 2024 Program. The variable expenditure limit for each district under the prior LPF could be confusing and made the program more complicated to administer and explain. Measure W’s lower expenditure limit was proposed by the City Council, adopted by the voters, and can be easily administered by the PEC. The \$150,000 expenditure limit was set based on prior competitive candidate spending for City Council District offices. While there have been candidates who exceeded \$150,000 in expenditures in the last two election cycles (see chart below), in all but one of those contests the expenditure limits had been lifted due to the independent expenditure threshold being met.

2020 Election	Avg. Winner Expenditures	\$180,589
	Avg. Runner-Up Expenditures	\$166,747
	Candidates Spending More than the Expenditure Limit (limits lifted)	6

	Candidates Spending More than \$150,000 but less than the Expenditure Limit	0
2022 Election	Avg. Winner Expenditures	\$148,747
	Avg. Runner-Up Expenditures	\$116,381
	Candidates Spending More than the Expenditure Limits (limits lifted)	1
	Candidates Spending More than \$150,000 but less than the Expenditure Limit	1

Fundraising Requirement. Under the LPF, candidates had to raise and spend the equivalent of 5% of the expenditure limit to qualify for public financing. With the prior LPF expenditure limits, that would be between \$9,150 and \$9,600 today. Under Measure W, City Council District candidates will have to collect 125 qualifying contributions (i.e., a \$10 to \$600 contribution by an eligible resident), including 25 qualifying contributions from within the candidate’s district.

This proposal continues the prior LPF fundraising requirement for the 2024 Program, which would require that candidates raise and spend \$7,500 if Measure W’s lower expenditure limits are adopted. Verifying 125 qualifying contributions per candidate would require significantly more administrative effort than the prior LPF and would divert PEC staff from providing other core services. In addition, using the Measure W fundraising requirements would make qualifying for the 2024 Program far more difficult for candidates, for far less public funds than will be available under Measure W, which would likely deter candidate participation in the 2024 Program.

Self-Funding Limits. Under the prior LPF, participating candidates could not contribute or loan more than 10% of the expenditure limits to their campaigns, which would be between \$18,300 to \$19,000 had that program still been in effect. Under Measure W, participating City Council District candidates’ personal contributions and loans will be capped at 8% of the expenditure limit, or \$12,000.

This proposal would establish a \$19,000 personal contribution limit for the 2024 Program, which is approximately the amount that would have been available under the prior LPF. Maintaining the higher personal contribution limits are appropriate for the 2024 cycle since the amount of public financing available is similar to prior elections, and significantly less than what Measure W will provide.

Trigger to Lift Expenditure Limits: Under the prior LPF, participating candidates were no longer required to abide by the expenditure limits if a non-participating candidate spent more than 50% of the expenditure limits (\$91,500-\$96,000 in 2023) or if independent expenditures in the contest exceeded \$15,000 + CPI (\$30,000 in 2023). Under Measure W, a participating candidate will have to petition for the expenditure limits to be lifted for that candidate. The petitioning candidate must show that the sum of contributions and public funding received by an opposing candidate, plus independent expenditures supporting an opposing candidate, plus independent expenditures opposing the petitioning candidate, together exceed the expenditure limits.

This proposal uses the prior LPF trigger (i.e., either \$75,000 in opposing candidate spending, with the adjusted expenditure limits, or \$30,000 in independent expenditures) for lifting the expenditure limits. The Measure W trigger is far more complex to calculate and administer, and may require the PEC to adopt additional disclosure rules to properly implement.

Debate Requirement. Under the prior LPF, participating candidates were encouraged but not required to participate in candidate debates. Under Measure W, participating candidates will have to agree to personally attend three debates or forums.

Under this proposal, participating candidates must personally attend one debate or forum, rather than none under the LPF and three under Measure W. A one debate/forum requirement is not onerous on candidates, furthers the voters' intent with Measure W, and will provide the PEC with a valuable opportunity to pilot how to administer this requirement.

FISCAL IMPACT

There are no additional costs imposed on the City or Commission from the adoption of this proposed ordinance, as it is a one-time program which will be administered using existing PEC staff and funded out of the PEC's discretionary budget. In the Fiscal Years 2023-2025 Budget, the City Council provided \$155,000 in discretionary funding to the PEC, which is the same amount that was budgeted to the PEC in the last budget cycle for the prior program. Under the proposed ordinance, as with the prior LPF, the PEC may allocate up to 7.5% of that amount for administrative costs.

PUBLIC OUTREACH / INTEREST

The Public Ethics Commission held several public meetings where the one-time reinstatement of a limited public financing program was discussed, including June 14, 2023; July 12, 2023; and August 9, 2023. Prior to its August 9, 2023 meeting, the Public Ethics Commission notified its campaign finance and Measure W listserv subscribers that the Commission would be considering a proposal to reinstate a LPF-style program for the 2024 election. At that meeting, a representative of the BayPEC coalition members, which were the primary organizational supporters of Measure W, indicated that coalition's support for this proposal.

COORDINATION

This legislative proposal was recommended by the Public Ethics Commission at its August 9, 2023 meeting.

SUSTAINABLE OPPORTUNITIES

Economic: There are no direct economic impacts associated with this proposed legislation.

Environmental: There are no direct environmental impacts associated with this proposed legislation.

Race & Equity: By helping offset some campaign costs for participating candidates, this legislation will better enable candidates who are not wealthy, or connected to networks of wealth, to run for office. The proposal increases racial equity in Oakland as people of color, due to present or historical discrimination, are less likely to be wealthy or connected to such wealth networks. Moreover, as the PEC documented in its 2020 report, “Race for Power: How Money in Oakland Politics Creates and Perpetuates Disparities Across Income and Race,” local campaign contributions in Oakland elections come disproportionately from residents of Oakland’s whiter and wealthier areas. Eliminating all public financing for the 2024 election cycle would therefore disproportionately disadvantage candidates whose base of support comes primarily from more racially diverse and lower income areas of the City.

ACTION REQUESTED OF THE CITY COUNCIL

Council President Bas and Director Heidorn respectfully request that the City Council: **Approve An Ordinance Establishing the Limited Public Financing Act of 2024**, as attached to this report.

For questions regarding this report, please contact Nicolas Heidorn, Executive Director of the Public Ethics Commission at nheidorn@oaklandca.gov or Cinthya Munoz-Ramos, Chief of Staff to Council President Nikki Fortunato Bas, District 2 at cmunozramos@oaklandca.gov.

Respectfully submitted,



Nikki Fortunato Bas
Council President, District 2



Nicolas Heidorn
Executive Director, Public Ethics Commission

Prepared by:
Nicolas Heidorn
Executive Director, Public Ethics Commission

Attachments:

- Legislation
- Redline of prior LPF