

Item 8- Staff Memorandum



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Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Whitney Barazoto, Executive Director
DATE: December 27, 2021
RE: Proposed Amendments to the Limited Public Financing Program

This memorandum provides background information regarding the attached proposed draft amendments to the Limited Public Financing Program 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. If approved by the Commission, staff will pursue legislative approval of these amendments through City Council. The revisions are intended to implement two minor changes recommended by the City Auditor:

- 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.

Attached are the draft proposed amendments, and below is a summary of the changes.

Background

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.

The Commission has previously reviewed LPFA performance and made recommendations to redesign the program into a public financing system currently in place in Seattle, where each city resident would receive \$100 in campaign contributions to give to candidates of their choice. While outside organizations currently are working to bring such a City measure to the ballot in 2022, the PEC meanwhile should consider proposing the above two changes to City Council to be adopted in advance of the 2022 election.

Proposed Changes

The LPFA establishes myriad requirements for candidates to meet in order to participate in and received public funding for their campaigns. These requirements ensure that City money is not issued to candidates who do not provide a showing of a minimum level of support by people in their district. 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

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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 seem to be a need 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 issued 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.

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 bi-ennial requirement and instead replace the language with a discretionary audit option for the City Auditor.

Recommendation

Commission staff recommends the PEC review and approve the proposed amendments to the Limited Public Financing Ordinance (O.M.C. Chapter 3.13) so that staff can submit them to City Council for consideration.