

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Commission Meeting
Tuesday, September 3, 2013
Sgt. Mark Dunakin, Hearing Room 1
6:30 p.m.



Commissioners: Lloyd Farnham (Chair), Aspen Baker (Vice-Chair), Roberta Johnson, Benjamin Kimberley, Monique Rivera, Eddie Tejada, Jenna Whitman

Commission Staff: Whitney Barazoto, Executive Director
City Attorney Staff: Kathleen Salem-Boyd, Deputy City Attorney

MEETING AGENDA

- 1. Roll Call and Determination of Quorum.**
- 2. Staff and Commission Announcements.**
- 3. Open Forum.**

CONSENT ITEMS¹

- 4. Approval of Commission Draft Minutes.**
 - a. June 3, 2013, Regular Meeting Minutes (Attachment 1)
 - b. June 25, 2013, Special Meeting Minutes (Attachment 2)
 - c. July 24, 2013, Special Meeting Minutes (Attachment 3)

ACTION ITEMS

- 5. Correction of Agenda Materials from the July 24, 2013 Public Ethics Commission Meeting.** At the Public Ethics Commission's July 24, 2013, meeting, Commission staff presented PowerPoint slides that were not previously included in the agenda materials. Although the Commission received no challenge to the showing of the slides, the Commission is correcting the omission by attaching them to this agenda and will provide an opportunity for the public to comment on the materials. (Attachment 4)
- 6. Letter to City Council Regarding Public Ethics Commission Authority.** The Commission will review, edit, and vote to approve a letter to City Council outlining the Commission's requests for a City ethics ordinance, enhanced Commission authority, and more resources. (Attachment 5)
- 7. Commission Vacancies in 2014.** In January 2014, three Commission seats will be vacant due to three Commissioner terms coming to an end. Two vacancies will be Commission-appointed positions, and the other vacancy is for a Mayoral-appointed term. The Commission will discuss Commissioner recruitment, review the 2013 Commissioner

¹ Consent items will be voted on all at once, unless a Commissioner requests removal of an item from consent prior to the vote.

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Application, and form a subcommittee of three Commissioners to review and interview applicants for two of the three seats in October and November. (Attachment 6)

8. Complaint/Enforcement Program. An updated list of pending cases is included. Commissioners may discuss the complaint process in general and may discuss any of the complaints listed in the attached spreadsheet. (Attachment 7)

a. **Dismissal of Complaints Not in Commission Jurisdiction.** Staff recommends dismissing the following cases on the grounds that they are outside of the Commission's jurisdiction:

- i. **Complaint No. 13-07** (Public Works), alleging that the Parking Enforcement division issued citations on the official street sweeping day even though no street sweeping was actually conducted on that day.
- ii. **Complaint No. 12-14** (Brunner), alleging that Councilmember Brunner violated conflict-of-interest laws by participating in negotiations regarding a Safeway store in her district.

DISCUSSION ITEMS

9. Limited Public Financing Program Policy Review. The Commission will receive a written report by Greg Gonzales, graduate student at the U.C. Berkeley Goldman School of Public Policy, who conducted a policy review of the City of Oakland's Limited Public Financing Program. (Attachment 8)

The meeting will adjourn upon the completion of the Commission's business.

A member of the public may speak on any item appearing on the agenda. All speakers will be allotted a maximum of three minutes unless the Chairperson allocates additional time.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in the meetings of the Public Ethics Commission or its Committees, please contact the Office of the City Clerk (510) 238-3611. Notification two full business days prior to the meeting will enable the City of Oakland to make reasonable arrangements to ensure accessibility.

Should you have questions or concerns regarding this agenda, or wish to review any agenda-related materials, please contact the Public Ethics Commission at (510) 238-3593 or visit our webpage at www.oaklandnet.com/pec.

Approved for Distribution

Date

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6:30 p.m.

DRAFT



Commissioners: Lloyd Farnham (Chair), Aspen Baker (Vice-Chair), Roberta Johnson, Benjamin Kimberley, Eddie Tejada, and Jenna Whitman

Commission Staff: Whitney Barazoto, Executive Director

MEETING MINUTES

1. Roll Call and Determination of Quorum.

The meeting was called to order at 6:30 p.m.

Members present: Commissioners Farnham, Baker, Johnson, Kimberley, Tejada, and Whitman

Staff present: Whitney Barazoto

2. Staff and Commission Announcements.

Executive Director Whitney Barazoto announced that all of Oakland's elected officials are now compliant with the state law AB 1234 ethics training requirement.

Additionally, Ms. Barazoto announced that the Commission has planned an informational hearing on Transparency to be held on June 25, 2013, and that the Sunlight Foundation has confirmed that they will participate in the hearing.

3. Open Forum.

There were no speakers.

CONSENT ITEMS¹

4. Approval of Commission Draft Minutes.

The Commission approved 6-0 the April 9, 2013 and May 13, 2013 Meeting Minutes.

GUEST PRESENTATIONS

5. City Council Code of Conduct Video Project.

¹ Consent items will be voted on all at once, unless a Commissioner requests removal of an item from consent prior to the vote.

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Ms. Barazoto introduced Commission staff Lauren Angius, who served as a mentor to 7th grader Akira Rodgers as part of the SPARK Apprenticeship program with Frick Middle School in East Oakland.

Ms. Angius gave a brief overview of the SPARK program and the project that she and Akira Rodgers developed together. The project consisted of creating a video to raise awareness of the City Council Code of Conduct. Ms. Rodgers then showed the video that she created with the help of Commission staff and KTOP.

Commissioners asked questions of Ms. Rodgers and thanked her for her contributions. Ms. Barazoto thanked Ms. Angius, Ms. Rodgers, and KTOP staff led by Michael Munson for creating the video, which will be put on the Commission's website.

6. Limited Public Financing Program Policy Review.

Ms. Barazoto introduced Greg Gonzales, graduate student at the U.C. Berkeley Goldman School of Public Policy, who gave a presentation outlining his review of Oakland's Limited Public Financing Act and program.

Commissioners asked questions of Mr. Gonzales, and Ms. Barazoto thanked him for his service to the Commission and the City of Oakland.

ACTION ITEMS

7. City Council Salary Adjustment Required by Law.

The Commission discussed a resolution to approve the required increase in City Council salaries according to the increase in the Consumer Price Index. The Commission approved the resolution 7-0, with an amendment to add a line recommending that the City Council members decline the increase due to the current budget environment.

DISCUSSION ITEMS

8. Records Management Policy.

Deidre Scott of the City Clerk's office provided an update on the status of the City's Records Management Policy. She indicated that policy is in development and that the Clerk's office will return to the Commission with a Records Management Policy in the future.

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9. Subcommittee Reports.

Access to Public Records Subcommittee Chair Baker announced the upcoming Transparency Hearing scheduled for June 25.

Complaint Procedures Subcommittee Chair Farnham updated the Commission on the progress made in the subcommittee's latest meeting on May 20.

10. Complaint/Enforcement Program.

The Commission took the complaint log under advisement.

INFORMATION ITEMS

11. Commission Publications.

The Commission received the latest updates to Commission publications: Handbook for Board and Commission Members and the Ethics Resource Guide.

The meeting adjourned at 9:04 p.m.

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Commission Meeting
Tuesday, June 25, 2013
City Council Chambers
6:30 p.m.

DRAFT



Commissioners: Lloyd Farnham (Chair), Aspen Baker (Vice-Chair), Roberta Johnson, Benjamin Kimberley, Eddie Tejada, and Jenna Whitman

Commission Staff: Whitney Barazoto, Executive Director

SPECIAL MEETING MINUTES

1. Roll Call and Determination of Quorum.

The meeting was called to order at 6:40 p.m.

Members present: Commissioners Farnham, Baker, Johnson, Kimberley, Tejada, and Whitman

Staff present: Whitney Barazoto

2. Staff and Commission Announcements.

Subcommittee Chair Aspen Baker provided an introduction and overview of the goals of the informational hearing.

Executive Director Whitney Barazoto encouraged public participation throughout the hearing through multiple platforms including: texting using Textizen, online live-streaming video and commenting, Twitter #pecmtg, question/comment cards, and open forum.

3. Open Forum.

There were six speakers during open forum: David Cruise, Ralph Kanz, Max Alstadt, Jim Dexter, Troy Massey, and Esther Goolsby.

GUEST PRESENTATIONS

4. The following speakers provided oral testimony at the hearing, and some showed power point slides that can be accessed on our website on the Transparency Project page:

- a. Tim O'Reilly, O'Reilly Media – Government as a Platform
- b. Laurenellen McCann, Sunlight Foundation – Transparency 101
- c. Caroline Bruister, California Forward – The State of Transparency in California
- d. Greg Greenway, Davenport Institute – Public Participation
- e. Nicole Neditch, Oakland City Administrator's Office – Oakland Innovations
- f. Steve Spiker, OpenOakland – Community Partners

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Adam Stiles, of Open Oakland, Sheila Dugan, of Code for America, and Mikko Jarvenpaa, of Vuact, summarized public comment that came in through Textizen, Twitter, and Vuact during the break between each speaker.

5. Public Comment

There were three speakers who commented publicly at the end of the meeting: Barbara Newcombe, Katherine Gavzy, and Gen Katz.

The meeting adjourned at 10:18 p.m.

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Commission Meeting
Wednesday, July 24, 2013
City Council Chambers
6:30 p.m.

DRAFT



Commissioners: Lloyd Farnham (Chair), Aspen Baker (Vice-Chair), Roberta Johnson, Benjamin Kimberley, Monique Rivera, Eddie Tejada, and Jenna Whitman
Commission Staff: Whitney Barazoto, Executive Director
City Attorney Staff: Kathleen Salem-Boyd, Deputy City Attorney

SPECIAL MEETING MINUTES

1. Roll Call and Determination of Quorum.

The meeting was called to order at 6:32 p.m.

Members present: Commissioners Farnham, Baker, Johnson, Kimberley, Rivera, Tejada, and Whitman (Commissioner Rivera left at 7:00 p.m.)

Staff present: Whitney Barazoto

2. Staff and Commission Announcements.

Ms. Barazoto announced that the City Council passed the City budget for FY 2013-15 on June 27, 2013, which added one additional full-time staff member to the Commission.

Ms. Barazoto also advised that an item on the agenda for the City Council Meeting on Thursday, July 25, 2013, included a discussion of the Council's response to the Grand Jury report regarding non-interference in administrative affairs, as well as the possible censure of Councilmember Brooks.

Commissioner Tejada said that Oaklanders perceived June's Transparency Hearing as a huge success. He further discussed his public records requests research and experiment with various cities across the state. In addition, Commissioner Tejada announced that a recent judgment ruled GIS geographical data is considered a public record and, therefore, can be requested by a member of the public.

3. Open Forum

There were no speakers.

DISCUSSION ITEM

4. Public Ethics Commission Enforcement Authority

Ms. Barazoto provided an overview of the Commission's current enforcement authority. The Commission discussed various options to enhance its ability to enforce existing

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jurisdictional laws as well as the possibility of expanding its jurisdiction by drafting a new ethics ordinance. The Commission identified its top priorities as creating a new ethics ordinance, acquiring staff positions needed to implement the law, and enhancing the Commission's penalty authority. The Commission asked staff to prepare a letter to City Council outlining these priorities and requesting staffing to support the Commission's work on these issues.

There were six speakers: Councilman Dan Kalb, Max Alstadt, Katherine Gavzy, Ralph Kanz, Daniel Shulman, and Barbara Newcombe.

The meeting adjourned at 9:46 p.m.

CITY OF OAKLAND

Public Ethics Commission

Llyod Farnham, Chair
Aspen Baker, Vice Chair
Roberta Ann Johnson
Benjamin Kimberley
Monique Rivera
Eddie Tejeda
Jenna Whitman



Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Whitney Barazoto, Executive Director
DATE: August 22, 2013
RE: Correction of Agenda Materials for the Public Ethics Commission's
July 24, 2013, Special Meeting

The Public Ethics Commission is including in this agenda packet a copy of Commission staff's PowerPoint presentation given at the July 24, 2013, special meeting. These materials were distributed at and after the meeting, and were posted online following the meeting; however, they were not included with the agenda as posted in advance of the meeting. In the event that a member of the public did not have proper notice of the materials before the meeting, the Commission is attaching the materials here and will provide an opportunity for the public to comment on the materials at the September 3, 2013, Commission meeting.

Background

At the Public Ethics Commission's special meeting on July 24, 2013, Commission staff provided a PowerPoint presentation to the Commission at the beginning of the discussion of item number 4, relating to the Commission's enforcement authority. The item was listed on the agenda for the July, 24 special meeting, posted on July 11, 2013; however, the PowerPoint slides presented by staff at the meeting were not attached to the agenda upon posting. No formal action was taken at the meeting.

The Sunshine Ordinance requires all agendas and "agenda related materials" to be publicly posted with the agenda for regular and special meetings by a local body. (OMC 2.20.070 and 2.20.080) "Agenda related materials" is defined as "the agenda, all reports, correspondence and any other document prepared and forwarded by staff to any local body, and other documents forwarded to the local body, which provide background information or recommendations concerning the subject matter of any agenda item." The definition goes on to state that "agenda related materials shall not include... [t]he written text or visual aids for any oral presentation so long as such text or aids are not substituted for, or submitted in lieu of, a written report that would otherwise be required to meet the filing deadlines of this chapter." (OMC 2.20.030)

The City Attorney's Office informed Commission staff on Tuesday, August 20, 2013, that staff's PowerPoint presentation on July 24, 2013, should have been included in the agenda as agenda related materials. The City Attorney's Office advised that the PowerPoint slides were agenda

related materials because the agenda included no written staff report and the PowerPoint presentation showed written background information as well as a staff recommendation and was therefore a substitute for, or in lieu of, a written report.

Correction

The Oakland Sunshine Ordinance section 2.20.270(D) further states the following:

D. Cure and Correction.

1. Nothing in this ordinance shall prevent a local body from curing or correcting an action challenged on grounds that a local body violated any material provision of this chapter. A local body shall cure and correct an action by placing the challenged action on a subsequent meeting agenda for separate determinations of whether to cure and correct the challenged action and, if so, whether to affirm or supersede the challenged action after first taking any new public testimony.

The Oakland Sunshine Ordinance outlines the above process to “cure and correct” a challenged action. Here, the Commission has not been challenged on an action, but in the spirit of correcting an omission of agenda related materials, the Commission could follow procedures similar to the “cure and correct” process by posting the materials and offering an opportunity for public comment.

Recommendation

Commission staff included a copy of the PowerPoint slides in the September 3, 2013, meeting agenda and recommends that the Commission provide an opportunity for the public to comment on the materials.



Public Ethics Commission Role and Authority

Whitney Barazoto, Executive Director
July 24, 2013



City Charter – Creates PEC

Public Ethics Commission = created by City Charter to ensure compliance with City laws and policies seeking fairness, openness, honesty and integrity in City government, including the following:

- Oakland's Campaign Finance Reform Ord.
- Conflict of Interest Code
- Code of Ethics
- Brown Act/PRA supplement (Sunshine Ordinance)

(City Charter, Sec. 202)

City Charter – PEC Powers

"The City [Council] shall by ordinance prescribe the function, duties, powers, jurisdiction and the terms of members of the Commission..."

(City Charter, Sec. 202)

City Ordinance – Outlines Duties

Per Ordinance, PEC duties include: (OMC 2.24.020)

- Oversee compliance with the laws mentioned above (and Lobbyist Registration, False Endorsement...)
- Review policies/programs re: elections/campaigns
- Recommend amendments to law to City Council
- Set and adjust compensation for City Councilmember
- Assess PEC staff and budget needs, report to City Council
- Recommend imposition of fees to enforce local ordinances
- Recommend additional penalty provisions to City Council
- Issue advice and written opinions
- Prescribe forms, conduct trainings

City Ordinance – Grants Authority

To further the duties listed above, the Public Ethics Commission is authorized to:

1. Conduct investigations
2. Perform audits
3. Hold public hearings
4. Issue subpoenas to compel papers or testimony
5. Impose penalties and fines as provided for by ordinance

(OMC 2.24.030)

Penalties by Ordinance – Oakland Campaign Reform Act

OCRA: Regulates local campaign activities and imposes contribution and expenditure limits, expenditure ceilings, campaign finance disclosure requirements, and contractor contribution restrictions

Penalties:

- Criminal – DA or City Attorney may prosecute
- Civil – PEC may fine up to 3 times the amount of the unlawful contribution or expenditure
- Injunctive relief – PEC can sue to compel compliance

Sunshine Ordinance

Oakland Sunshine Ordinance: Reiterates the California Ralph M. Brown Act (open meetings) and CA Public Records Act and adds stricter requirements for open meetings and public records access

Penalties: No criminal or civil penalties, however:

- PEC can require “Cure and Correct” procedure for open meeting violation
- PEC can mediate between a complainant and respondent on a public records issue

Limited Public Financing Act

LPFA: Provides a limited amount of funding to a District City Council candidate for certain campaign expenditures

Penalties: apply to program participants only

- Criminal – DA or City Attorney may prosecute
- Civil – PEC can issue fines of up to \$1000 per violation

Lobbyist Registration

Lobbyist Registration Act: Requires professional lobbyists to register with the City before attempting to influence local government action and to file quarterly activity reports

Penalties:

- Criminal – DA or City Attorney may prosecute
- Civil – PEC may impose fines up to \$1000 per violation, may also bar lobbyist from lobbying

Conflicts of Interest

Conflict of Interest Code/Ordinance: sets forth the list of positions required to file a Form 700 – Statement of Economic Interests

Penalties: None

- PEC has no penalty authority, may refer to FPPC

False Endorsement in Campaign Literature

False Endorsement in Campaign Literature:
restricts a person from distributing campaign literature that contains a false endorsement

Penalties:

- Criminal – PEC may forward complaints to DA
- PEC has no penalty authority

Code of Conduct – City Council

- City Council Rules of Procedure includes a Code of Conduct to guide Councilmember behavior (Resolution 82580)
- Examples:
 1. Respect and adhere to the American ideals of government, the rule of law, the principles of public administration and high ethical conduct in the performance of public duties.
 2. Represent and work for the common good of the City and not for any private interest.
 3. Refrain from accepting gifts or favors or promises of future benefits which might compromise or tend to impair independence of judgment or action.
 4. Provide fair and equal treatment for all persons and matters coming before the Council
- Enforced by City Council censure
- PEC has no penalty authority, though this code is mentioned in City Charter



PEC has no authority over...

PEC has no authority to issue penalties for:

- Violations of City Charter section 218
 - (City Council Non-Interference in Admin Affairs)
- Violation of government ethics policies or laws such as the following:
 - Use of public funds/position for personal gain or campaign purposes
 - Gifts, Conflicts of interest
 - Economic interest disclosure (Form 700 violations)
 - Incompatible employment/activities
 - Soliciting political contributions by public officials
 - Competitive bidding on contracts

Achieving our Ethics Goals Depends on 3 P's:

People
(Staff/Leadership/
Culture/Knowledge)



Paper
(Laws/Policies)



Process
(System/Structure/Ops)





Paper – Laws/Policies

Campaign Finance

OCRA
Limited PEC penalties

Limited Public Financing Act
Penalties for participants

Transparency

Sunshine Ordinance
No PEC penalties

Lobbyist Registration Act
Penalties for lobbyists

Ethics

Conflict of Interest Code
No PEC penalties

Code of Ethics
No PEC penalties (no ordinance)

Process – Structure



PEC oversees compliance... by the City of Oakland, its elected officials, officers, employees, boards and commissions.

City Attorney

City Council

Boards & Comms.

City Auditor

Public Ethics Commission

Mayor

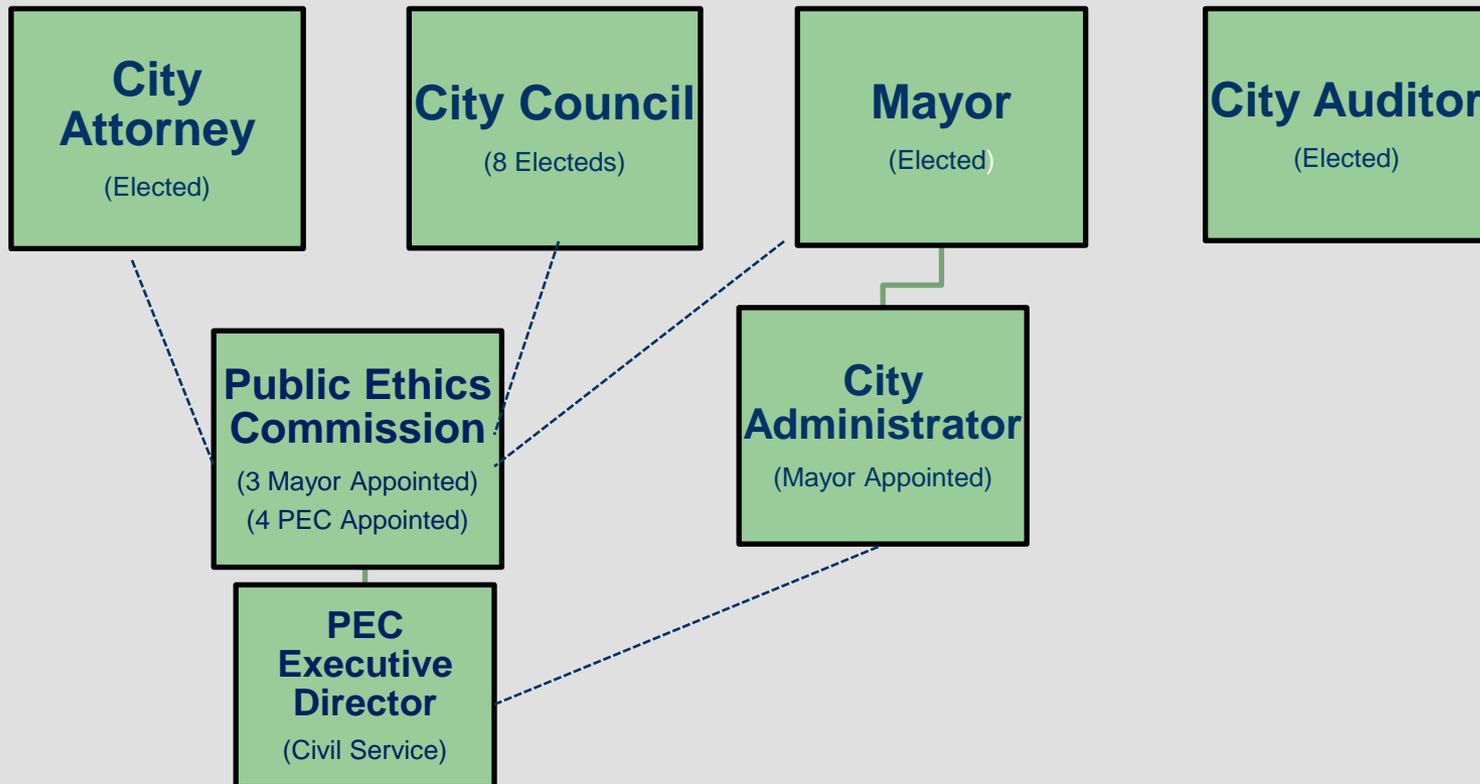
City Administrator

Administrative/ Department Staff

...with regard to compliance with City laws and policies intended to assure fairness, openness, honesty, and integrity in City government.



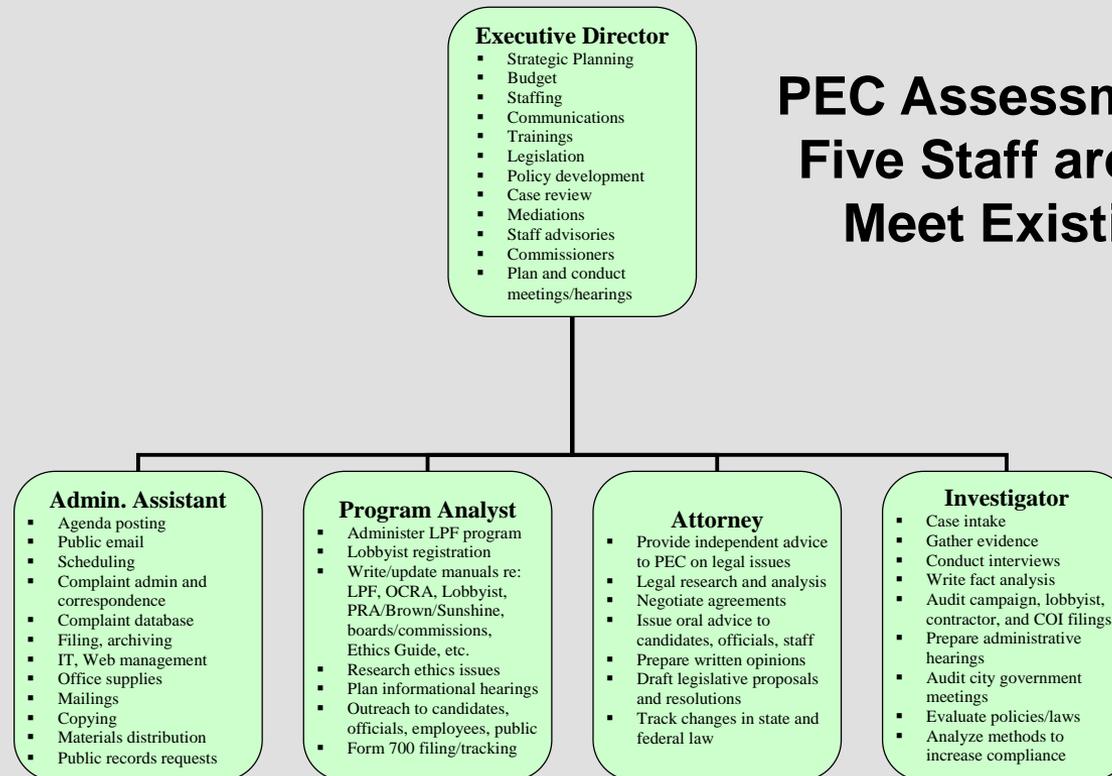
Current Structure





People – Staffing

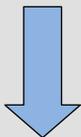
PEC Assessment in 2012: Five Staff are Needed to Meet Existing Needs





2013 Budgeted Staffing

One Program Analyst (FTE) position was added in the 2013-14 Budget passed by City Council in June 2013.

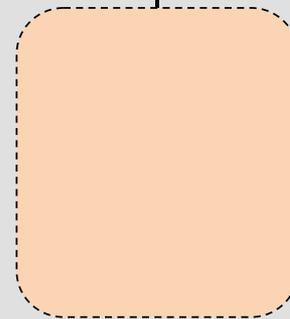
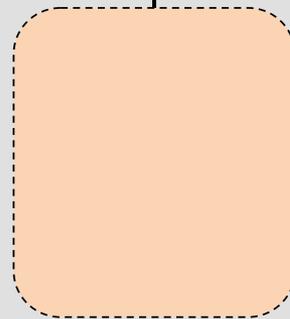
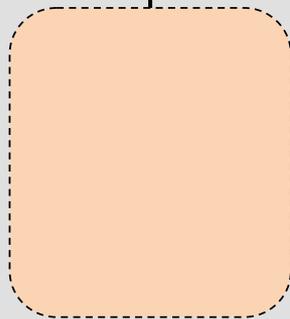


Executive Director

- Strategic Planning, Budget, Staffing
- Communications
- Plan meetings/hearings
- Commissioner liaison
- Lead projects to increase compliance with laws
- Legal research/analysis
- Education/advice to candidates/officials/staff
- Evaluate policies, systems
- Investigate complaints
- Leg/policy development

Program Analyst

- Administer LPF program
- Lobbyist registration
- Update educational materials
- Conduct research
- IT, Web, Social media, Outreach
- Agenda posting
- Complaint administration and correspondence
- Public assistance
- Administrative duties
- Special Projects
- Assist in investigations



How to Enhance PEC Authority and Effectiveness

1. What **penalties** are appropriate?
2. What kind of **independence** should the PEC have?
3. What should the **substantive laws** require and which laws should PEC oversee?
4. What PEC **staffing** is necessary?

Penalty Options to Consider

1. Resignation, Compensatory Action, Apology
2. PEC Advisory Letter
3. PEC Warning Letter
4. Disciplinary Action – reprimand, suspension, removal from position
5. Administrative Fine
6. Civil Forfeiture
7. Debarment from contracting in the future
8. Remedial Action
9. Public Censure
10. Removal for Official Misconduct
11. Other penalties?

How to Proceed

Staff Recommendation: Discuss conceptual changes now, return in September with a specific proposal and recommendation to City Council

Suggested Process:

1. Determine framework/questions to address
2. Brainstorm issues, concepts
3. Prioritize

September 3, 2013

DRAFT

President Kernighan and Council Members
Oakland City Council
1 Frank Ogawa Plaza
Oakland, CA 94612

Dear City Council Members,

Over the course of the past year, the Oakland Public Ethics Commission (PEC) has devoted attention to building the Commission's capacity: assessing staffing needs, prioritizing activities to achieve the most effective outcomes with limited resources, evaluating the Commission's jurisdiction, and identifying gaps in the law and the need for new or amended ordinances. At the PEC's March 2013 retreat, Commissioners discussed the need for enhanced authority on campaign finance, transparency, and ethics issues while brainstorming ways to use the Commission's existing platform to achieve desired outcomes in the area of enforcement, prevention, and collaboration. One of these outcomes was the PEC achieving 100% compliance by local elected officials with state-ethics training requirements and publicly posting the list on the Commission's website in May 2013. Continuing the dialogue around ethics enforcement, the Commission hosted a public discussion on July 24, 2013, to outline priority areas that must be addressed in order to create an effective ethics program in Oakland City government.

This letter communicates the PEC's recommendations for a comprehensive ethics program in the City of Oakland. In doing so, it does not address reforms needed in other subject-matter areas such as campaign finance disclosure, public financing of campaigns, lobbyist registration, and transparency laws.

Commission Created for Fairness, Openness, Honesty, and Integrity

The Public Ethics Commission was created by City Charter in 1996 to ensure compliance with City laws and policies seeking *fairness, openness, honesty, and integrity* in City government. While the Charter sets forth this broad mandate, the Commission's actual authority to take action is dictated by City ordinance, such as the Oakland Campaign Reform Act and the Oakland Sunshine Ordinance. Contrary to our Commission's name, there is no ethics-related City ordinance that gives the PEC the authority to act upon ethics-related violations such as voting when one has a conflict of interest, using public resources for private or campaign purposes, or accepting inappropriate gifts. Instead, as it relates to ethics, the PEC is authorized only to

conduct trainings and develop educational materials, issue advice and formal written opinions with the assistance of the City Attorney's office, and recommend changes to local laws to the City Council.

While training and advice are key elements of an ethics compliance program, they represent only a few of the tools that can be deployed in an ethics program toolbox. After all, ethics in government is not about merely adopting a Code of Ethics and imposing penalties for violation of the code; rather, government ethics is about limiting the ways in which *improper influence* can weave its way through our institution to *weaken the effectiveness of the organization* and *weaken the public's trust in our service*.¹ We believe that limiting improper influence takes a comprehensive approach that appropriately blends prevention, collaboration and enforcement by an ethics commission with the capacity – authority, resources, and independence – to act in each of these three areas.

PEC has no Authority to Enforce Ethics Laws

Oakland has no local ethics ordinance. In order to investigate and enforce ethics laws, the PEC must be given the specific authority under a local ordinance to investigate and enforce violations of the local law. Generally, state laws and entities govern ethics behavior. The PEC may develop trainings and publications to guide ethical conduct but has no authority to enforce the state laws. These laws include rules prohibiting the following:

- Use of public resources for private or political purposes
- Conflicts of interest in decision-making
- Leaving public office to work for a company doing business with the City (“Revolving door” rules)
- Bias, Nepotism, Cronyism
- Incompatible offices or employment
- Political activities by public officials in their public service roles
- Bribery
- Embezzlement
- Competitive bidding on contracts

By way of comparison, other cities have adopted a local ethics ordinance that consolidates the patchwork of state and common laws locally, facilitating local enforcement of the law and making it easier for staff and public officials to understand the rules. In California, the three established ethics commissions – San Francisco, Los Angeles, and San Diego – each are charged with enforcement of their respective city's ethics ordinance, with the ability to issue administrative fines of up to \$5,000 per violation.

¹ Lessig, Lawrence. Director. Edmond J. Safra Center for Ethics. Harvard University. Comments made during the launch of the Research Lab on Institutional Corruption, October 8, 2009.

An ethics ordinance in Oakland would locally codify state laws and give the PEC the authority to enforce them through a multi-tiered system of penalties that could include some or all of the following: advisory letters, warning letters, remedial action, compensatory action, debarment (prohibition from contracting), administrative fine, public censure, or disciplinary action.

With Authority Must Come Resources

While the PEC welcomes the authority to enforce ethics violations, as a practical matter, the Commission would be limited in its ability to act on ethics issues without additional staffing. In December 2012, the PEC conducted a comprehensive assessment of staffing needed to implement existing local campaign finance and transparency provisions. Attached is a spreadsheet that outlines the PEC's current duties per City Charter and related ordinances, showing what can and cannot be accomplished within the Commission's resources as of December 2012. (Attachment A) Also attached is a proposed organizational chart that identifies how the duties in the staffing assessment would be distributed among potential staff positions, as well as the PEC's Annual Report for 2012 to provide an overall picture of the Commission's recent work. (Attachments B and C) The City Council in June 2013 authorized an additional Program Analyst I position, which was filled as of September 2, 2013. Going forward, this will help accomplish roughly one-quarter more of what was listed in the staffing assessment from December.

Along with the adoption of an ethics ordinance, the Commission will need one additional full-time staff position to implement an ethics program that effectively incorporates outreach, training, advice, and enforcement. At this time, what is needed most is a staff attorney to carry a full-time load of legal research, analysis, and immediate advice on ethics as well as campaign finance and transparency laws.

Independent Commission a Core Issue

A discussion of authority and resources is incomplete without also dealing with the issue of Commission independence. Leaders in the municipal ethics industry agree that a city ethics commission must be independent, with Commissioners, Commission staff, and legal assistance serving only the Commission and no other City official, and with a budget that is not under the direct control of City officials. This is because, in most cases, the subjects of a potential ethics commission investigation are City officials or City employees. If such officials have control over the commission's staffing, budget, or legal advice, this creates an inherent structural conflict of interest, which diminishes the Commission's effectiveness as well as the public's perception of the fairness and neutrality of the process.

As the City moves forward in a dialogue about the PEC's authority and resources, we believe it is essential to also evaluate the structure of the Commission to ensure that it has all of the elements for an effective, neutral, and independently accountable oversight agency.

Moving Forward

In light of the needs and concerns outlined above, the Commission urges City Council to provide the Commission with an additional staff position to assist in the creation of a local ethics ordinance and to provide the necessary training, advice, and legal support needed to make an effective ethics program a reality in Oakland.

Sincerely,

Chairman Lloyd Farnham

Vice-Chair Aspen Baker

Commissioner Roberta Johnson

Commissioner Benjamin Kimberley

Commissioner Monique Rivera

Commissioner Eddie Tejada

Commissioner Jenna Whitman

Attachments:

- A. PEC Staffing Assessment
- B. Proposed PEC Organizational Chart
- C. 2012 PEC Annual Report

Public Ethics Commission

Assessment of Current Capacity to Implement Charter-Required Duties

Oakland City Charter created the Public Ethics Commission in 1996 to “be responsible for responding to issues with regard to compliance by the City of Oakland, its elected officials, officers, employees, boards and commissions with regard to compliance with City regulations and policies intended to assure fairness, openness, honesty and integrity in City government including, Oakland’s Campaign Finance Reform Ordinance, conflict of interest code, code of ethics and any ordinance intended to supplement the Brown Act, and to make recommendations to the City Council on matter relating thereto, and it shall set City Councilmember compensation...” (Oakland City Charter Sec. 202)

The Oakland Municipal Code of Ordinances outlines the functions and duties of the Commission, for and on behalf of the City, its elected officials, officers, employees, boards and commissions. (OMC Chapter 2.24) These functions are enumerated in the left-hand column below:

Commission Duties Mandated by Ordinance:

Item	Commission Duty	Staff Work Required	Comments About Capacity
A.	Oversee Compliance with the Oakland Campaign Reform Act.	<ul style="list-style-type: none"> ▪ Casework: receive complaints, investigate potential violations, conduct hearings, issue subpoenas, conduct interviews, prepare factual and legal analysis, and make recommendations to the Commission for case closure ▪ Conduct trainings ▪ Provide oral advice and written opinions to candidates ▪ Respond to questions from the public ▪ Conduct hearings ▪ Audit campaign forms for prohibited or restricted activities ▪ Recommend legislative amendments 	
B.	Oversee compliance with the city	<ul style="list-style-type: none"> ▪ Respond to staff inquiries regarding potentially 	

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	Code of Ethics.	<p>inappropriate behavior</p> <ul style="list-style-type: none"> ▪ Casework: receive complaints, investigate potential violations, conduct hearings, issue subpoenas, conduct interviews, prepare factual and legal analysis, and make recommendations to the Commission for case closure ▪ Provide oral advice and written opinions to Councilmembers and staff ▪ Conduct trainings 	
C.	Oversee compliance with conflict of interest regulations as they pertain to city elected officials, officers, employees, and members of boards and commissions.	<ul style="list-style-type: none"> ▪ Casework: receive complaints, investigate potential violations, conduct hearings, issue subpoenas, conduct interviews, prepare factual and legal analysis, and make recommendations to the Commission for case closure ▪ Provide oral advice and written opinions to city staff, public officials, and board and commission members ▪ Research and stay abreast of changes in state conflict of interest laws ▪ Create, maintain, and distribute an information booklet for all new board/commission members (Handbook) ▪ Assist with preparing the City's conflict of interest code ▪ Help in maintaining a master list of Form 700 filers ▪ Assist in ensuring that all required filers receive and submit their Form 700s ▪ Track public officials' compliance with AB 1234 ▪ Conduct trainings 	
D.	Oversee the registration of lobbyists in the city	<ul style="list-style-type: none"> ▪ Create and maintain a database of registered lobbyists ▪ Educate lobbyists regarding their obligation to register and report their activities ▪ Collect, track, and maintain lobbyist reports ▪ Post lobbyist registration information and quarterly 	

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		<ul style="list-style-type: none"> reports online ▪ Audit lobbyist registration filings and activities ▪ Casework: receive complaints, investigate potential violations, conduct hearings, issue subpoenas, conduct interviews, prepare factual and legal analysis, and make recommendations to the Commission for case closure ▪ Respond to inquiries about lobbyist filings from the public and the press ▪ Formulate and propose amendments to the Lobbyist Registration Ordinance, draft legislation and carry it through the process 	
E.	Oversee compliance with [the Oakland Sunshine Ordinance].	<ul style="list-style-type: none"> ▪ Assist City staff in complying with the law ▪ Help develop policies, protocol, and process to ensure accessibility of public records and meetings ▪ Conduct trainings ▪ Create and distribute written materials to help staff comply with the law ▪ Casework: receive complaints, investigate potential violations, conduct hearings, issue subpoenas, conduct interviews, prepare factual and legal analysis, and make recommendations to the Commission for case closure 	
F.	Review all policies and programs which relate to elections and campaigns in Oakland, and report to the City Council regarding the impact of such policies and programs on City elections and campaigns.	<ul style="list-style-type: none"> ▪ Evaluate existing laws, policies and programs to determine effectiveness ▪ Collect and compile information ▪ Prepare a report for City Council 	
G.	Make recommendations to the City Council regarding amendments to the City Code of	<ul style="list-style-type: none"> ▪ Analyze current laws, policies, and programs ▪ Research best practices in other jurisdictions ▪ Prepare information for City Council 	

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	Ethics, Campaign Reform Act, Conflict of Interest Code, [the Sunshine Ordinance], and lobbyist registration requirements, and submit a formal report to the City Council every two years.	<ul style="list-style-type: none"> ▪ Draft recommendations for improvements to the law, policy, or program ▪ Write legislation to implement the Commission's recommendations ▪ Attend City Council meetings as necessary 	
H.	Set compensation for the office of City Councilmember and adjust every odd-numbered year.	<ul style="list-style-type: none"> ▪ Research the cost-of-living index for the San Francisco Bay Area ▪ Research current city councilmember salary information ▪ Prepare memoranda, staff analysis, and Commission resolution to make the salary adjustment 	
I.	Provide the City Council with an assessment of the Commission's staffing and budgetary needs.	<ul style="list-style-type: none"> ▪ Determine staffing needs based on mandated duties ▪ Prepare staffing plan ▪ Draft requests for positions and funding 	
J.	Make recommendations to the City Council regarding the imposition of fees to administer and enforce local ordinances and local regulations related to campaign financing, conflict of interest, registration of lobbyists, supplementation of the Brown Act and Public Records Act and public ethics.	<ul style="list-style-type: none"> ▪ Research potential fee structures in other jurisdictions ▪ Prepare a report and draft recommendations ▪ Write legislation 	
K.	Make recommendations to the City Council regarding the adoption of additional penalty provisions for violation of local	<ul style="list-style-type: none"> ▪ Research potential penalties that could be added ▪ Prepare a report and draft recommendations ▪ Write legislation 	

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	ordinances and local regulations related to campaign financing, conflict of interest, registration of lobbyists, and public ethics.		
L.	Issue oral advice and formal written opinions with respect to a person's duties pursuant to applicable campaign financing, conflict of interest, lobbying, and public ethics laws.	<ul style="list-style-type: none"> ▪ Gather factual information from person seeking advice ▪ Research the law ▪ Formulate a verbal response, track verbal advice given ▪ Draft written legal opinion, maintain searchable database of written opinions ▪ Stay current on changes in state law 	
M.	Prescribe forms for reports, statements, notices, and other documents related to campaign financing, conflict of interest, lobbying, and public ethics.	<ul style="list-style-type: none"> ▪ Create and update forms and materials for all programs 	
N.	Develop campaign financing, conflict of interest, lobbying, Brown Act, Public Records Act and public ethics informational and training programs.	<p>Law says this includes:</p> <ol style="list-style-type: none"> 1. Seminars for newly elected and appointed officers and employees, candidates and treasurers, lobbyists, and government officials, with City, state and federal laws related to campaign financing, conflicts of interest, the Public Records Act, the Brown Act, lobbying, and public ethics. 2. Preparation and distribution of manuals to include summaries of ethics laws and reporting requirements applicable to city officers, members of boards and commissions, and city employees, methods of bookkeeping and records retention, instructions for completing required forms, questions and answers regarding sources of assistance in resolving questions. Update as necessary when city, state and federal laws change. 	<p>Trainings</p> <ul style="list-style-type: none"> ▪ New Councilmember ethics overview training ▪ Limited Public Financing Program training ▪ New Board/Commission member training ▪ Candidate/Treasurer training ▪ COI training for Form 700 filers ▪ Lobbyist training ▪ PRA training for city employees ▪ Brown Act training for board/commission staff

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		<p>These duties require the following staff work:</p> <ul style="list-style-type: none"> ▪ Conduct individual, group, department, and board and commission member trainings ▪ Draft manuals, training videos, and PowerPoint presentations ▪ Research changes in city, state, and federal laws to ensure trainings and materials are current 	<p>Manuals</p> <ul style="list-style-type: none"> ▪ OCRA Manual (2008) ▪ Lobbyist Reg Manual (2007) ▪ Board/Commission Member Handbook (2007) ▪ Limited Public Financing Program Manual (2010) ▪ Ethics Resources Guide (?) ▪ Campaign-Related Information for Candidates ▪ Q and A for common questions
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Additional Duties

Item	Commission Duty	Staff Work Required	Comments About Capacity
	PEC Administration	<ul style="list-style-type: none"> ▪ Commission – communicate with Commissioners, facilitate new member recruitment and selection, participate in applicant interviews, prepare orientation materials, maintain commissioner information, keep commissioners informed and updated on city and PEC-related news and information. ▪ Meetings – establish meeting schedule, reserve hearing rooms, coordinate video-recording with KTOP, prepare agenda and related materials, write meeting minutes, maintain/update agenda subscriber list, post meeting agendas (email, mail, submit to clerk, and post on the Commission’s website). ▪ Assist City officials and staff in drafting policies related to government integrity 	

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		<ul style="list-style-type: none"> ▪ Prepare annual report ▪ Suggest and facilitate amendments to Commission by-laws ▪ Respond to public and press inquiries ▪ Create and maintain Commission website, organize information, scan documents and upload them to web, ensure website materials are current ▪ Establish intranet page for the Commission to provide ethics and open government information to city employees ▪ Attend meetings on behalf of the Commission ▪ Hire and manage PEC staff ▪ Facilitate intern assistance ▪ Represent the Commission before city and other entities 	
	<p>Limited Public Financing Act (adopted in 1999) (allows PEC to retain up to 7.5% of the LPF program funds to cover the costs of administering the program)</p>	<ul style="list-style-type: none"> ▪ Administer the public financing program ▪ Reach out to candidates and provide information ▪ Conduct trainings ▪ Respond to questions from the public ▪ Create and update forms and LPF program manual ▪ Collect signed forms and requests for reimbursement ▪ Track information for each candidate ▪ Verify candidate eligibility and qualifying contributions and expenditures ▪ Confirm requirements are met by candidate ▪ Process payments through the city's accounting department ▪ Maintain accounting of reimbursement requests and payments ▪ Facilitate reimbursements for candidates ▪ Review campaign forms 	

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		<ul style="list-style-type: none"> ▪ Assist auditor in auditing candidates who received public financing ▪ Evaluate program effectiveness ▪ Recommend legislative amendments 	
	False Endorsement in Campaign Literature Act (adopted in 2003)	<ul style="list-style-type: none"> ▪ Casework: receive complaints, investigate potential violations, conduct hearings, issue subpoenas, conduct interviews, prepare factual and legal analysis, and make recommendations to the Commission regarding whether to request the District Attorney to prosecute an alleged misdemeanor violation 	
	Enforcement/Complaint Process	<ul style="list-style-type: none"> ▪ Enforcement/complaint administration – maintain/update complaint database and status report, follow complaint procedures and timelines, communicate with complainants and respondents, create and maintain case files, and draft and send correspondence. ▪ Review complaint procedures, facilitate subcommittee meetings to amend procedures, draft amendments, solicit input, and submit legislative amendments to City Council ▪ Complete casework and close cases in a timely manner 	The Commission had 19 open cases as of 11/20/12, 15 of which pre-dated current staff. Current staff cannot keep up with incoming cases, let alone reviewing old cases.

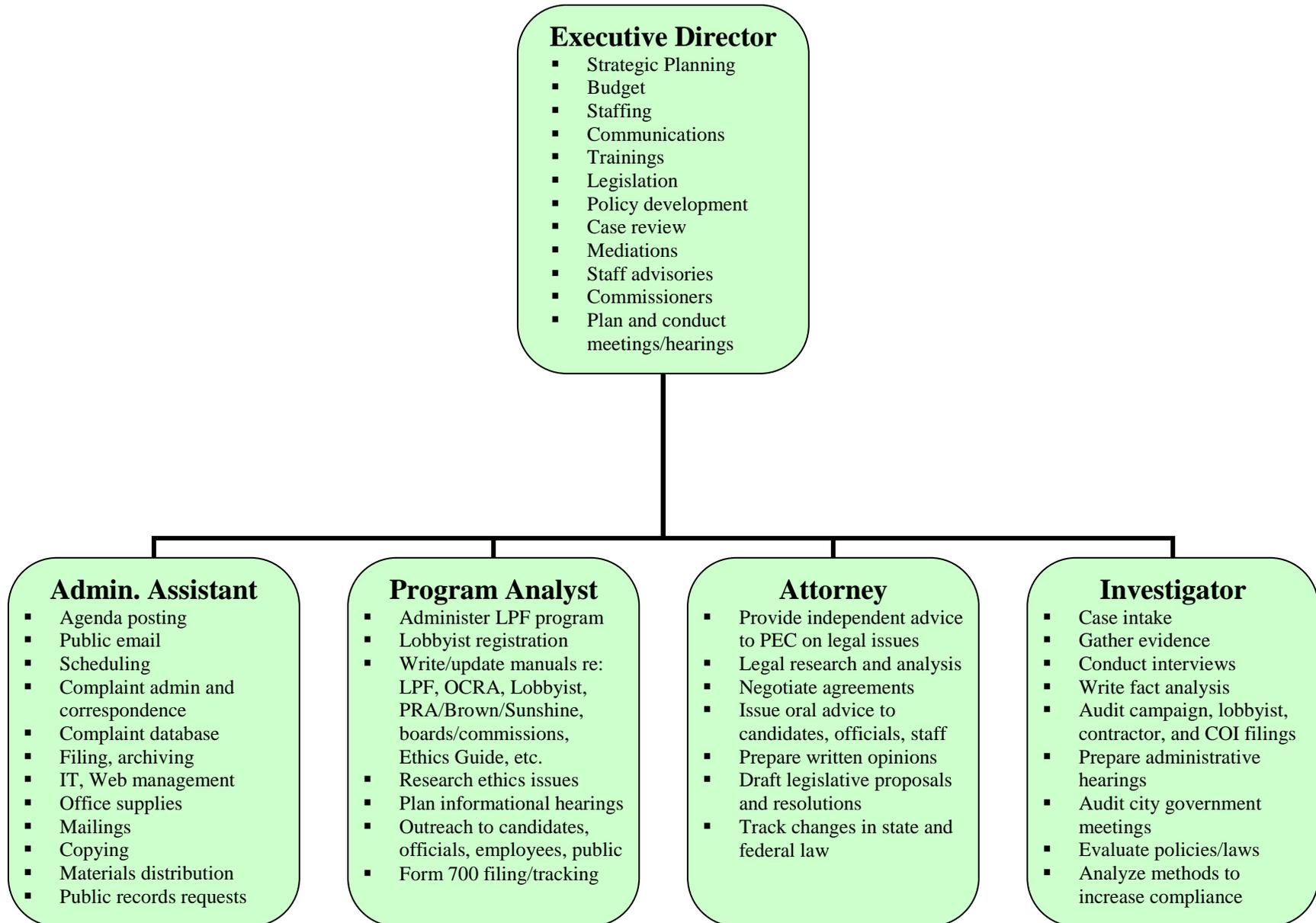
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Public Ethics Commission – Proposed Organizational Chart

FTE Positions Needed to Meet All Mandated Services



City of Oakland Public Ethics Commission



ANNUAL REPORT 2012



Public Ethics Commission
1 Frank Ogawa Plaza (City Hall), 11th Floor
Oakland, CA 94612
www.oaklandnet.com/pec
ethicscommission@oaklandnet.com
(510) 238-3593



BUILDING CAPACITY

The Public Ethics Commission is charged with ensuring fairness, openness, honesty and integrity in City government and is equipped with the authority to oversee compliance with certain local ordinances aimed to achieve these broad goals. In April 2012, after not operating for almost a year due to budget reductions and the retirement of the one remaining staff, the Commission hired an executive director and began to lay the foundation for new and collaborative approaches toward enhancing integrity in City government. The Commission's initial work in 2012 shows the beginning of what is to come, and this report seeks to highlight that work as the Commission continues to build its capacity to effectively fulfill its mission.

After stepping into 2012 with no staff and a displaced office, the Commission devoted considerable attention to rebuilding Commission staffing and moving into new office space while also working to establish priorities and determine how best to carry out its duty to ensure compliance with ethics-related laws. The Commission's priorities, adopted in August, 2012, reflect a desire to focus on ensuring compliance through outreach, enforcement, and systems reform.

Highlights from 2012 include providing political candidates, public officials, and City employees with information about campaign finance laws, ethics concepts, and restrictions on the use of public funds for campaign or personal purposes. The Commission began to update its website and publications as part of a broad project to transform the Commission's web-based information to better share information and engage candidates, officials and employees around ethics and transparency issues. The Commission also reached out through social media, and its entry onto Facebook and Twitter are just a glimpse of how the Commission will incorporate broader social media into its communications and public information strategy. The Commission closed a total of 19 cases alleging violations of various campaign finance, conflict of interest, and open government laws; and on the staffing front, the Commission is pleased to report that it began 2013 with a full 7-member board, one full-time director, a part-time employee, and four interns.

The Public Ethics Commission continued to face significant challenges in 2012 in meeting expectations set by law and accomplishing the goals for which it was established. Staff conducted a comprehensive analysis of the Commission's responsibilities under the law and determined that a total of 5 staff are needed to fulfill the legal mandate. The Commission is heading into the 2013-14 budget cycle with only one full-time position; the part-time position that was in place during the second half of 2012 will no longer exist by July, 2013. The Commission will need the additional position in order to continue the intern support and momentum that developed by the end of 2012 and has carried into 2013.

While the Commission's energy and focus continues to swell, much work remains. Staff and Commissioners want to revamp the Commission's website to serve as a hub for information and links about all things ethics and campaign-related, and to be a forum for City staff, public

officials, citizens, and others to engage with each other around these issues. The Commission needs to enforce the law through routine audit reviews and investigations of campaign finance laws, and it needs a complaint process that facilitates streamlined and effective enforcement. The Commission must work with City staff to ensure appropriate policies and systems are in place to achieve greater compliance with Sunshine and other laws. And the Commission needs to communicate with the City and the public in a way that reinforces and bolsters the attention given to ensuring that all stakeholders comply with government integrity laws. As a practical matter, at least one full-time position is needed in each of these separate areas, yet the Commission has only one staff. Despite the shortage, the Commission will continue to prioritize goals and complete projects that seek to make the greatest impact for the City of Oakland and its citizens.

ENSURING COMPLIANCE

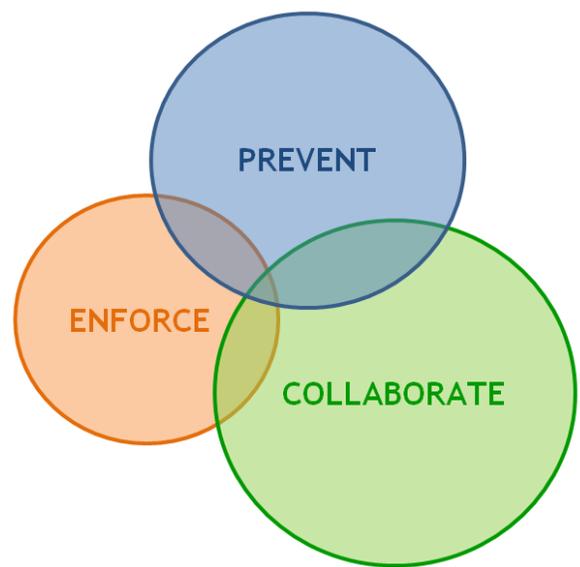
The Public Ethics Commission fosters transparency, promotes open government, and ensures compliance with ethics laws through a comprehensive approach that emphasizes prevention, enforcement, and collaboration.

PREVENTION

Prevention activities consist of education, outreach, and information to help Commission clients comply with government integrity laws. Commission clients include candidates for local elective office, elected officials, public officials, City staff, Lobbyists, contractors doing business with Oakland, City residents, businesses, and organizations.

In summer 2012, the Commission published its first-ever **Local Candidate Information Packet**, with comprehensive information about state and local laws governing campaign finance activities and conflicts of interest rules for candidates. The packet was published on the Commission's website, and a summary overview of the laws, along with website hyperlinks for more information, was included in the election packet distributed to each candidate by the City Clerk's office.

The Commission joined **Facebook** and **Twitter** to enhance its outreach capacity and made some initial improvements to its **Website** to make it easier to find information about Commissioners, meetings, agendas, subcommittee activities and documents, and lobbyist registration and activities. These improvements will continue into 2013. The Commission also acquired a



shorter URL/Website address, now consisting of www.oaklandnet.com/pec, to allow for easier sharing. The Website continues to offer the following **Commission publications**:

- How To Notice A Public Meeting And Respond To Requests For Public Information
- Handling Public Records Requests
- A Guide To Lobbyist Registration (updated in 2012)
- How To Apply For Public Financing
- A Guide To Oakland's Campaign Reform Act
- A Handbook For Members Of Oakland Boards And Commissions

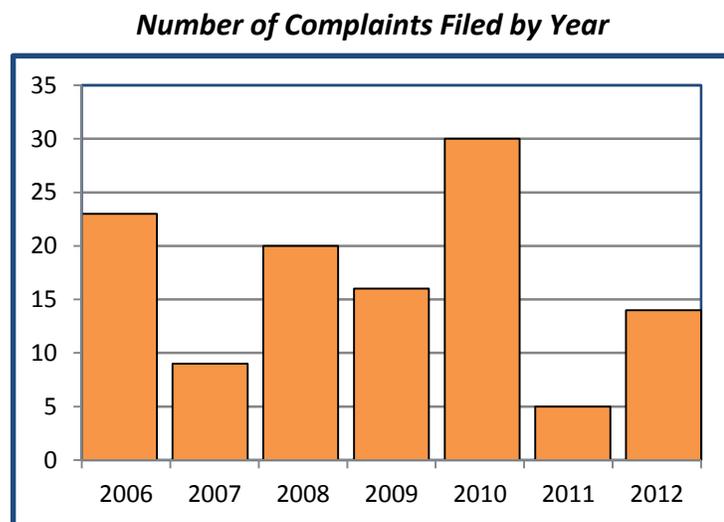
During the second half of 2012, Commission staff assisted roughly two-dozen individuals seeking **advice** on campaign finance, conflicts of interest, and lobbyist registration laws. The Commission compiled and distributed an introductory packet of **Ethics and Transparency materials for incoming City Council Members** and provided them with an overview of the Commission and its laws in December 2012 as they prepared to take office.

ENFORCEMENT

The Public Ethics Commission has the authority to conduct investigations, perform audits, hold public hearings, issue subpoenas, and impose fines and penalties for certain types of violations. The Commission also ensures compliance through alternative enforcement strategies, such as sharing information publicly and referring issues to another enforcement entity where appropriate.

The Commission received a total of **14 complaints in 2012** alleging violations of campaigns finance, conflicts of interest, open meetings, public records, and other ethics-related laws. This is up from 5 complaints in 2011, and compares to 30 complaints in 2010, 16 in 2009, 20 in 2008, 9 in 2007, and 23 in 2006.

During 2012, the Commission **closed 19 cases**, 11 of which had been filed in 2011 or earlier. Of these 19 cases, 8 complaints alleged violations of the Oakland Sunshine Ordinance, 3 complaints alleged violations of state laws regarding misuse of public resources, 1 complaint alleged a conflict of interest violation, 1 complaint alleged a ballot measure misidentification of a person's title, 1 alleged violation of campaign sign placement rules, and the rest consisted of allegations on issues wholly outside of the Commission's reach, such as real estate fraud and City government mismanagement.



Given its limited resources, the Commission focused its efforts on assessing its enforcement abilities, prioritizing cases based on level of importance and staff work required, closing the highest priority cases, and identifying ways to streamline the process. Nevertheless, the Commission ended 2012 with a total of 16 open cases, only 6 of which were opened in 2012. The remaining 10 cases were filed in 2011 or earlier, including 6 cases that were filed in 2010 and 2 that were filed in 2009.

In addition to the 3 complaints mentioned above regarding misuse of public resources, Commission staff was contacted informally by City staff and public officials on multiple occasions about the rules restricting the use of public funds for campaign or personal purposes. In response to the number of inquiries on this issue, the Commission hosted an **informational hearing on the misuse of public funds laws** in December to review and highlight the state laws restricting the use of City funds.

To ensure compliance with lobbyist reporting rules and to share information about lobbyist activities, the Commission publishes **lobbyist registration and reports of activities** on its Web site. The Oakland Lobbyist Registration Act requires all professional lobbyists to register with the City before attempting to influence a local governmental action on behalf of another person. It requires paid, professional lobbyists to file initial and quarterly reports with the City Clerk disclosing the lobbyist's clients or employer, as well as the subject of any lobbying. The Commission publishes these reports online to disclose the lobbyists' clients, the subject of governmental action lobbied upon, who was lobbied, the client's position on the item being lobbied, campaign contributions solicited by a lobbyist, and employment opportunities arranged by a lobbyist.

COLLABORATION

Beyond prevention and enforcement, the Public Ethics Commission enhances government integrity through collaborative approaches that leverage the efforts of City and community partners working on similar or overlapping initiatives. A collaborative approach recognizes that lasting results in transparency and accountability are achieved not through enforcement alone, but through a comprehensive strategy that aligns all points in the administration of City government – including clear policies and process, effective management and provision of staff resources, technology that facilitates the process, and an understanding of citizen expectations. In addition, the Commission serves as a trusted entity to take the lead on certain issues, such as setting the salary for City Council Members and distributing public funds to candidates under the City's campaign financing law.

As part of the Commission's responsibility to oversee compliance with the Oakland Sunshine Ordinance, Commission staff in 2012 conducted an initial **assessment of the City's access to public records system** and began to suggest changes that would lead to greater public access to City records. The Commission **co-sponsored and participated in CityCamp Oakland**, hosted by OpenOakland, to discuss open government and technology with City and community members.



The Commission revved up the project going into 2013 by creating a Commission subcommittee on access to public records and teaming with City staff on specific systems changes that will lead to greater accessibility of public records.

For the 2012 election, the Commission administered the **Oakland Limited Public Financing program**, in which candidates for district City Council seats could apply for and receive public money to assist them in their campaigns. Commission staff **distributed roughly \$60,000 in public funds** to eligible candidates. Staff also made significant changes to the tracking and administrative oversight of the processing of Limited Public Financing program payments, resolving all of the City Auditor's concerns in an audit of the program as it had been administered in 2010.

Pursuant to Measure P, adopted by Oakland voters in 2004, the **Oakland City Charter requires the Public Ethics Commission to annually adjust City Council salaries** by the increase in the consumer price index over the preceding year. In June, 2012, the Commission approved a 2.8 percent salary increase – the minimum required by law – for City Council Members, putting the total salary at \$76,172.62 effective for FY 2012-13.

Commission staff **consulted with City officials on issues** such as City Council non-interference in City administration, use of public funds for campaign or personal purposes, electronic filing of campaign statements, City administrative management review, and the Zero-Waste contract procurement process integrity measures.

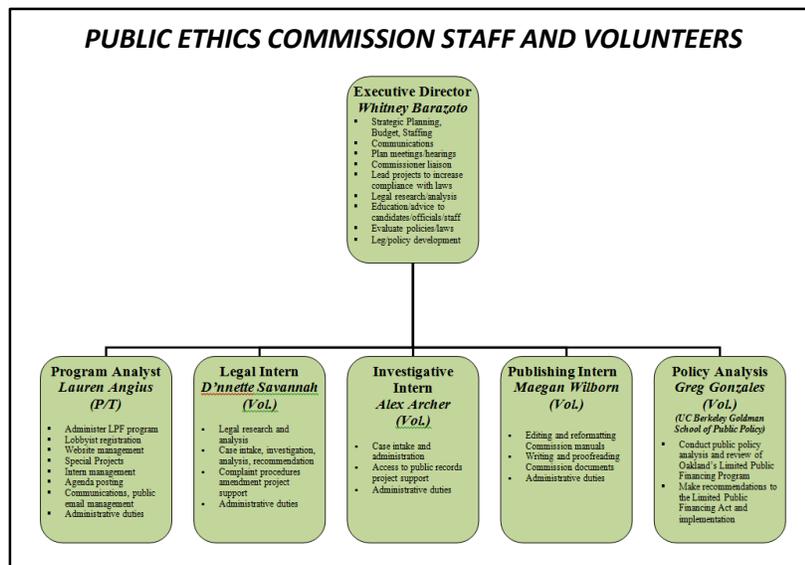
Staff also conducted a **seminar on Oakland's government integrity laws and institutions** for a visiting delegation from China in late 2012.



STAFFING UP

At the beginning of 2012, the Commission had no staff and had not been operating since June 2011, when it was last staffed by an Executive Director and an Administrative Assistant with a total budget of \$265,750 for FY 2010-11. In FY 2011-12, the City eliminated one FTE (full-time equivalent) position and reduced Commission funding by 43%, leaving only \$152,724 for the year. Budget amendments in January 2012 provided an increase to the Commission’s budget, resulting in a total budget of \$186,336 for FY 2011-12, but still only one FTE position. The Commission’s budget for FY 2012-13 was the same, with an increase of roughly \$9700 from the Election Campaign fund to cover administrative costs of the Limited Public Financing program as it was administered in 2012.

The Commission currently has one full-time position, filled by an Executive Director who joined the Commission in April 2012. City administrators provided the Commission with a part-time Program Analyst to assist the Commission, along with the ability to request some administrative assistance from staff that support other City programs. Given these limited resources, the Commission assessed needs and established a list of priorities in summer 2012 to accomplish the duties it deemed most important and valuable to the City. Commission staff worked to streamline assignments, partner with other City programs, and recruit part-time and volunteer workers. The Commission now retains four volunteers, in addition to one part-time employee, to support the work of the Executive Director and the Commission.



In December 2012, the Commission conducted a comprehensive analysis of its mandated duties and determined which activities could not be completed within existing resources. The assessment made clear that the Commission cannot meet its full mandate with only one FTE; rather, 5 staff are needed to accomplish all that is required under the law. The Commission communicated its staffing and budgetary needs to the City Administrator in advance of the 2013-15 budget process, specifically requesting two additional positions – a program analyst and an investigator – for FY 2013-14.

CURRENT COMMISSIONERS

Lloyd Farnham, Chair

Lloyd Farnham has served as an attorney with the Enforcement Division of the U.S. Securities and Exchange Commission since 2003. During his time with the SEC, Mr. Farnham has investigated and litigated cases involving securities fraud, insider trading, and violations of corporate disclosure rules.

Mr. Farnham earned his undergraduate degree from Occidental College, and his law degree from the UC Berkeley School of Law. Prior to joining the staff of the SEC, Mr. Farnham clerked for a federal district judge and spent four years practicing law at a San Francisco law firm. He and his family have lived in Oakland since 2004. Mr. Farnham is a Commission appointee serving his term from 1/22/2011 – 1/21/2014.



Aspen Baker, Vice-Chair

Aspen Baker is the founder and executive director of Exhale, an award-winning, national, nonprofit organization that has been operating out of downtown Oakland since its founding in 2000. An Oakland resident for over ten years, Ms. Baker was named a "Local Hero" by San Francisco's KQED for Women's History Month in 2009 and "Young Executive Director of the Year" by the Bay Area's Young Non-Profit Professional Network in 2005. She is a 2011 Emerge California Fellow, a former member of the Women's Health Leadership Network of the Center for American Progress, and a 2004 Fellow with the Women's Policy Institute of the Women's Foundation of California. Ms. Baker, who has been featured on T.V., radio, blogs and in print media, including *CNN Headline News*, *Fox National News*, *Ladies Home Journal*, *New York Times Magazine*, *National Public Radio*, *Oakland Local*, *Oakland Magazine*, and the *Oakland Tribune*, among many others.

Born in a trailer on the beach in Southern California, this U.C. Berkeley graduate holds a degree in Peace and Conflict Studies, is a former bartender and a one-time Alaska resident who can land a bush plane on a glacier. Ms. Baker is a Mayoral appointee for the term from 1/22/11 – 1/21/2014.



Ben Kimberley

Ben Kimberley is an attorney at the law firm of Winston & Strawn LLP. Over the last four years, Mr. Kimberley has investigated and litigated a number of cases involving relationships of trust and confidence. He has chaired the Ethics Subcommittee and Alternative Dispute Resolution Subcommittee of the American Bar Association's Litigation Section's Commercial & Business Litigation Committee. Mr. Kimberley currently serves on the Executive Board of the Young Lawyers Association and previously served as the American Bar Association's Young Lawyers Division's Northern California District Representative, where he was responsible for coordinating with the Federal Emergency Management Agency to provide legal services to victims of disaster in northern California. Mr. Kimberley has provided pro bono legal service to senior citizens, veterans, and the wrongly incarcerated, and he has lived in the Bay Area since 2005.

Mr. Kimberley received a B.A. in Political Science and International Studies from Northwestern University and a J.D. from the University of California, Boalt School of Law. Mr. Kimberley is a Commission appointee for the term from 6/11/2012 – 1/21/2015.



Roberta Ann Johnson

Roberta Ann Johnson was Professor of Politics at the University of San Francisco from 1985 to 2008. Specializing in American politics she also raised ethical issues particularly related to corruption, whistleblowing, and social justice, Dr. Johnson has published numerous journal articles and authored three books, *The Struggle Against Corruption: A Comparative Study*, *Puerto Rico: Commonwealth or Colony?*, and *Whistleblowing: When It Works – And Why*. Traveling extensively to lecture and present papers at international ethics conferences during her tenure, Dr. Johnson also served as a Fulbright Professor in Jakarta, Indonesia in 1992 and a Fulbright Senior Specialist in São Paulo, Brazil in 2008. Dr. Johnson's academic achievements and contributions to education have been recognized by awards from the California State Senate, the San Francisco Bay Area Federal Executive Board and the University of San Francisco.



Dr. Johnson earned her undergraduate degree from Brooklyn College and her Masters and PhD in political science from Harvard University. Dr. Johnson has climbed Mt. Kilimanjaro, has been a competitive open water Masters swimmer with the Oakland Temescal Aquatic Masters, and has competed in, and continues to win, hula hoop contests. Dr. Johnson is a Commission appointee for the term from 6/11/2012 – 1/21/2014.

Monique Rivera

Monique Rivera is a community activist and currently manages complex projects for Kaiser Permanente. She is a former business manager for Mustang Engineers & Constructors and has extensive financial and project management experience in the construction industry. Ms. Rivera is active in the Oakland Community Action Program, Big Brothers Big Sisters, the Hispanic Employee Association, and the Hispanic Chamber of Commerce. In addition, she served as the City of Oakland Mayor's Ambassador Coordinator. Ms. Rivera also is a member of the Professional Women in Construction and Construction Management Association of America.



Ms. Rivera earned her undergraduate degree from University of California, Berkeley, in Ethnic Studies and Biology. Currently, she is completing her Masters of Business Administration at Golden Gate University. Ms. Rivera is a Mayoral appointee for the term from 1/22/2012 – 1/21/2015.

Jenna Whitman

Jenna Whitman is a legal research attorney at the Alameda County Superior Court, where she advises judges on law and motion matters in civil litigation, serving one of the court's two complex litigation departments that handle class actions and other lawsuits requiring exceptional judicial management. Before that, Ms. Whitman represented both corporate clients and class action plaintiffs in a wide variety of complex civil disputes. She has provided pro bono representation to low-income clients, and for three years served on the board of the AIDS Legal Referral Panel, a non-profit legal services organization. While in law school, Ms. Whitman clerked in the U.S. Department of Justice, Criminal Division, Economic Crimes Unit, and participated in the U.S. Department of Defense, General Counsel's Office Summer Honors Program, where she provided analysis and counsel on issues relating to ethics and conflicts of interest.



Ms. Whitman is a bay area native who earned her undergraduate degree at Yale College (where she majored in American Studies, studied Russian, and competed for the varsity swimming squad) and her law degree at Georgetown University Law Center. Ms. Whitman is a Commission appointee for the term from 1/22/2013 – 1/21/2016.

Eddie Tejada

Eddie Tejada is a self-described civic technologist who has devoted his career to building technologies to help civic institutions become more transparent, ethical, and efficient. Mr. Tejada recently co-founded OpenOakland, a group of developers, designers, and organizers working to bring innovative solutions to Oakland governance. Serving as a 2012 Code for America fellow in New Orleans, his focus as a fellow was on building tools that encouraged civic participation. His team most recently led a successful collaboration with the City of New Orleans to develop and launch BlightStatus. Previously, Mr. Tejada co-founded Digress.IT, a paragraph-level commenting system used by local governments and universities around the world. He also led the development of Regulation Room, a project led by Cornell University in collaboration with the Department of Transportation, aimed at increasing public participation in federal rule making. Mr. Tejada worked at the Institute for the Future of the Book, a small publishing think-tank working on innovative publishing projects and developed LittleSis.org, a free database detailing the connections between powerful people and organizations.



Mr. Tejada earned his B.A. from Hampshire College with a focus on the digital divide and wrote his senior thesis on power efficient microprocessors. He is a Mayoral appointee for the term from 1/22/2013 - 1/21/2016.

PREVIOUS COMMISSIONERS WHO SERVED IN 2012

Richard Unger

Richard Unger has lived in the Bay Area since 1966. He has been a home owner and with his wife has raised a family in Oakland since 1978. Dr. Unger practices psychiatry with an emphasis on psychotherapy and consultation to non-medical practitioners and their patients about psychopharmacological treatment. He has worked in both public and private sectors and is a founding member of Bay Psychiatric Associates, a group practice in the East Bay providing inpatient psychiatric care. He is a member of the Board of Directors and has been the CFO of that organization for 14 years. He has been a consultant for psychiatric patient advocacy organizations.

Dr. Unger has an undergraduate degree from the University of Pennsylvania, a Master's degree in Bacteriology from the University of Wisconsin, a Ph.D. in Molecular Biology from the University of California at Berkeley, and an M.D. at the University of California, San Francisco. Dr. Unger was a Commission appointee for the term from 1/22/10 – 1/21/13 and was Chair of the Commission in 2011 and 2012.

Amy Dunning

Amy Dunning serves as the Regional Director/Chief Administrative Judge of the Western Regional Office of the U.S. Merit Systems Protection Board. She previously served as Counsel to the Commander, U.S. Naval Forces Europe, in London, United Kingdom. As the senior Navy Office of the General Counsel attorney in Europe, she provided legal services throughout Europe as well as in Bahrain. Prior to working in London, Ms. Dunning served on the legal staff of the Deputy Assistant Secretary of the Navy, as Counsel to the Director, Human Resources Operations Center. Ms. Dunning served 8 years on active duty as a Judge Advocate with the U.S. Marine Corps, including time spent mobilized for Operation Enduring Freedom. She retired as a Colonel from the U.S. Marine Corps Reserve in January 2009.

Ms. Dunning has an undergraduate degree in Political Science from the University of Missouri, a J.D. from Southern Illinois University, and an L.L.M in Labor Law from Georgetown University. She is admitted to practice law in California, Illinois, and the District of Columbia. Ms. Dunning was a Mayoral appointee for the term 1/22/10 – 1/21/13.

COMMISSION CHARGE

The Public Ethics Commission is a **seven-member board of Oakland residents** who volunteer their time to participate on the Commission. Three members are appointed by the Mayor and confirmed by the City Council, and four members are recruited and selected by the Commission itself. Each Commissioner may serve no more than one consecutive **three-year term**. During the tenure and for one year thereafter, no member of the Commission may do the following:

- Be employed by the City or have any direct and substantial financial interest in any work or business or official action by the City;
- Seek election to any other public office; participate in, or contribute to, an Oakland municipal campaign; or
- Endorse, support, oppose or work on behalf of any candidate or measure in an Oakland election.

The Commission was created in 1996 with the goal of ensuring "**fairness, openness, honesty and integrity**" in City government and specifically charged with overseeing compliance with the following laws and policies:

- Oakland's Campaign Reform Act (OCRA)
- Conflict of Interest Code
- City Council Code of Conduct
- Sunshine Ordinance
- Limited Public Financing Act
- Lobbyist Registration Act
- Oakland's False Endorsement in Campaign Literature Act

Some of these ordinances grant the Commission specific powers of administration and enforcement. The citizens of Oakland have also entrusted the Commission with the authority to set the salary for Oakland City Council Members and the duty to adjust the salary by the Consumer Price Index annually. The Commission administers compliance programs, educates citizens and City staff on ethics-related issues, and works with City staff to ensure policies are in place and are being followed. The Commission also is authorized to conduct investigations, audits and public hearings, issue subpoenas, and impose fines and penalties to assist with its compliance responsibilities.

The Commission meets on the first Monday of every month at 6:30 p.m. in City Hall, and meetings are open to the public and broadcast locally by KTOP, Oakland's cable television station.

PUBLIC ETHICS COMMISSION RESPONSIBILITIES

Oakland Municipal Code section 2.24.020 enumerates the following functions and duties of the Public Ethics Commission:

- A. Oversee compliance with the city Campaign Reform Ordinance.
- B. Oversee compliance with the city Code of Ethics.
- C. Oversee compliance with conflict of interest regulations as they pertain to city elected officials, officers, employees, and members of boards and commissions.
- D. Oversee the registration of lobbyists in the city should the City Council adopt legislation requiring the registration of lobbyists.
- E. Oversee compliance with any ordinance intended to supplement the Brown Act or Public Records Act.
- F. Review all policies and programs which relate to elections and campaigns in Oakland, and report to the City Council regarding the impact of such policies and programs on city elections and campaigns.
- G. Make recommendations to the City Council regarding amendments to the city Code of Ethics, Campaign Reform Ordinance, Conflict of Interest Code, any ordinance intended to supplement the Brown Act or Public Records Act, and lobbyist registration requirements should the City Council adopt lobbyist registration legislation, and submit a formal report to the City Council every two years concerning the effectiveness of all local regulations and local ordinances related to campaign financing, conflict of interest, lobbying, the Brown Act, the Public Records Act, and public ethics.
- H. Set compensation for the office of City Councilmember which shall be reviewed by the Commission and adjusted as appropriate, in odd-numbered years. In 1997, the Commission shall first establish a base salary for the Office of Councilmember at a level which shall be the same or greater than that which is currently received. Thereafter, the Commission shall fix City Councilmember compensation at a level not to exceed ten percent above the base salary as adjusted.
- I. Each year, and within the time period for submission of such information for the timely completion of the city's annual budget, provide the City Council with an assessment of the Commission's staffing and budgetary needs.
- J. Make recommendations to the City Council regarding the imposition of fees to administer and enforce local ordinances and local regulations related to campaign financing, conflict of interest, registration of lobbyists, supplementation of the Brown Act and Public Records Act and public ethics.
- K. Make recommendations to the City Council regarding the adoption of additional penalty provisions for violation of local ordinances and local regulations related to campaign financing, conflict of interest, registration of lobbyists, and public ethics.
- L. Issue oral advice and formal written opinions, in consultation with the City Attorney when necessary, with respect to a person's duties pursuant to applicable campaign financing, conflict of interest, lobbying, and public ethics laws.
- M. Prescribe forms for reports, statements, notices, and other documents related to campaign financing, conflict of interest, lobbying, and public ethics.
- N. Develop campaign financing, conflict of interest, lobbying, Brown Act, Public Records Act and public ethics informational and training programs, including but not limited to:
 - 1. Seminars, when appropriate, to familiarize newly elected and appointed officers and employees, candidates for elective office and their campaign treasurers, lobbyists, and government officials, with city, state and federal laws related to campaign financing, conflicts of interest, the Public Records Act, the Brown Act, lobbying, and public ethics.
 - 2. Preparation and distribution of manuals to include summaries of ethics laws and reporting requirements applicable to city officers, members of boards and commissions, and city employees, methods of bookkeeping and records retention, instructions for completing required forms, questions and answers regarding common problems and situations, and information regarding sources of assistance in resolving questions. The manual shall be updated when necessary to reflect changes in applicable city, state and federal laws related to campaign financing, conflicts of interest, lobbying, and public ethics.
- O. Perform such other functions and duties as may be prescribed by the Oakland Code of Ethics, conflict of interest regulations, ordinances as they may be adopted to supplement the Brown Act and the Public Records Act or to require the registration of lobbyists in the city and Campaign Reform Ordinance.

Public Ethics Commission

At a Glance

Commission Meetings

The Commission meets regularly on the first Monday of every month at 6:30 p.m. and may hold additional meetings as necessary throughout the year. Meetings generally are held in Hearing Room 1 of City Hall.

Commission Office

1 Frank H. Ogawa Plaza (City Hall), 11th Floor
Oakland, CA 94612
phone: (510) 238-3593
fax: (510) 238-3315
email: ethicscommission@oaklandnet.com

Current Commissioners

Lloyd Farnham (Chair)
Aspen Baker (Vice-Chair)
Roberta Johnson
Benjamin Kimberley
Monique Rivera
Jenna Whitman
Eddie Tejada

Commission Staff

Whitney Barazoto, Executive Director
Lauren Angius, Program Analyst (P/T)

Subscribe for Information

To receive meeting notices and other Commission announcements, please email the Commission at ethicscommission@oaklandnet.com or subscribe on the Commission's Web page at www.oaklandnet.com/pec.

CITY OF OAKLAND

Public Ethics Commission

Lloyd Farnham, Chair
Aspen Baker, Vice-Chair
Roberta Ann Johnson
Benjamin Kimberley
Monique Rivera
Eddie Tejada
Jenna Whitman



Whitney Barazoto, Executive Director

Public Ethics Commission

Commissioner Vacancy Announcement

September 6, 2013

The City of Oakland Public Ethics Commission (PEC) will have two PEC-appointed vacancies on its seven-member board beginning in January 2014. The PEC is now accepting applications to fill these two Commission seats. Applications are due by Thursday, October 31, 2013.

Background

The Public Ethics Commission is a seven-member board of volunteers dedicated to the City Charter goal of ensuring **fairness, openness, honesty, and integrity** in City government. Guided by duties and authority set out by City ordinance, the Commission works to achieve its goals through a three-pronged approach that focuses on prevention, enforcement, and collaboration. Specifically, the following local laws and policies are the foundation of the Commission's responsibilities in three general program areas – campaign finance, ethics, and transparency:

- Oakland's Campaign Reform Act
- Conflict of Interest Code
- City Council Code of Conduct
- Sunshine Ordinance
- Limited Public Financing Act
- Lobbyist Registration Act
- Oakland's False Endorsement in Campaign Literature Act

Commission Members

Each member of the Commission must be an Oakland resident who is registered to vote in Oakland. Three Commissioners are appointed by the Mayor, and four are appointed by the full Commission on a rotating schedule. Once appointed, a Commissioner is expected to participate in monthly meetings and occasional subcommittee meetings to deliberate and provide guidance to staff in the conduct of the Commission's business.

Commissioners are appointed for a term of 3 years, and during his or her tenure and for one year after leaving the Commission, a Commissioner may not do any of the following:

1. Be employed by the City or have any direct and substantial financial interest in any work or business or official action by the City;
2. Seek election to any other public office; participate in, or contribute to, an Oakland municipal campaign; or
3. Endorse, support, oppose, or work on behalf of any candidate or measure in an Oakland election. [Oakland Municipal Code §2.24.050]

Commissioners receive no compensation and may serve no more than one consecutive three-year term.

Selection Process

The Commission is currently seeking applications to fill two of the Commission-selected seats. Following the application deadline, a subcommittee of three Commissioners will review applications and conduct oral interviews of candidates in mid-November. The subcommittee will select the top three or four candidates who will be introduced and briefly interviewed by the full Commission at a meeting in December. The terms will begin on January 22, 2014, and will expire on January 21, 2017.

Desired Skills and Abilities

Commissioners should represent a variety of backgrounds and professions so that the Commission as a whole provides a well-rounded perspective on Oakland City government, law, community building and engagement, leadership, program administration, enforcement, and policies related to campaign finance, ethics or transparency. Qualities that will be helpful in serving as a Commissioner include the following abilities:

- Read, analyze, and understand written information and make decisions based on the information
- Listen to public input, assess community needs, and make decisions about how to best accomplish the Commission's goals
- Understand the context in which the Commission operates within City government and the broader community
- Communicate orally during a public, televised meeting
- Collaborate effectively with other Commissioners, the public, City officials, and staff
- Interpret rules, laws and policies and objectively apply a rule to a particular set of facts
- Identify personal conflicts of interest or other factors that could lead to actual or perceived improper influence
- Serve with fairness, openness, honesty, and integrity
- Complete a Form 700 – Statement of Economic Interests annually, disclosing information such as one's financial interests in investments, property, income, and gifts (to view a copy of a Form 700, contact Commission staff)

For More PEC Information

You are encouraged to find out more about the Public Ethics Commission online at www.oaklandnet.com/pec and to watch a monthly Commission meeting and a City Council meeting in person or on local television (Channel 10). For more information about the Commission or this announcement, contact Whitney Barazoto at wbarazoto@oaklandnet.com or (510) 238-6620.

**City of Oakland
PUBLIC ETHICS COMMISSION**



Commissioner Application

Name: _____

Mailing Address: _____

Daytime Phone: _____ Evening Phone: _____

Email: _____

Are you an Oakland resident? _____ Years of Residency in Oakland: _____

List any other City Boards or Commissions on which you currently or have previously served:

Please answer yes or no to the following questions:

1. Are you currently employed by the City or have any direct and substantial financial interest in any work, business, or official action by the City? _____
2. Are you currently or planning to seek election to any other public office, participate in, or contribute to an Oakland municipal campaign? _____
3. Are you currently or planning to endorse, support, oppose, or work on behalf of any candidate or measure in an Oakland election? _____

List the names, addresses and telephone numbers of two references:

Name: _____

Address: _____

Daytime Phone: _____ Evening Phone: _____

Name: _____

Address: _____

Daytime Phone: _____ Evening Phone: _____

By signing below, I certify that all of the information included in this application and supporting materials is true to the best of my knowledge. I also understand that this application packet is a public record, subject to public inspection, and that if I proceed to the final interview with the Commission, the packet will be distributed publicly as part of the selection process.

Signature: _____ Date: _____

See Supplemental Questions on next page →

Supplemental Questions

On a separate page, please answer the following four questions:

- 1. Why do you want to serve on the Public Ethics Commission?**
- 2. What skills and experience will you bring to the Commission?** (Include any governmental experience, activities with civic and business organizations, neighborhood groups, or any other experience that would contribute to your effectiveness as a Commissioner.)
- 3. What issues, projects, or goals would you like to pursue while serving on the Commission?**
- 4. What else would you like the subcommittee to know as your application is considered?**

Application packets are due by 5:00 p.m. on Thursday, October 31, 2013, and must include the following materials:

1. Signed Application
2. Answers to the Supplemental Questions
3. Your resume

Applications may be submitted by mail, email or fax to PEC staff:

Whitney Barazoto
Public Ethics Commission
1 Frank Ogawa Plaza, Eleventh Floor
Oakland, CA 94612
wbarazoto@oaklandnet.com
Fax: (510) 238-3315

For questions, please call (510) 238-6620.
Web: www.oaklandnet.com/pec

Public Ethics Commission Pending Complaints

Date Rec'd	Case #	Complainant	Respondents	Date of Alleged Violation	Alleged Violation	Status	Priority*
8/9/2013	13-7	H. Quan	Public Works & Parking Enforcement	June 17, 2013	Alleges Parking Enforcement gave out citations on street sweeping day despite being certain that no street sweeping would be conducted on that date.	Pending Dismissal at September 3, 2013 PEC Meeting – Staff referred complainant to appropriate Department	
8/1/2013	13-6	Miguel Vargas	City Council	July 30, 2013	Alleges a violation of the Ralph M. Brown Act by the City Council in structuring the agenda to limit public comment.	Staff is reviewing	
7/23/2013	13-5	John Klein	Office of the Mayor	June 25, 2013 to present	Alleges a violation of the California Public Records Act by the Office of the Mayor in not responding to a public records request.	Staff is reviewing	
7/15/2013	13-4	Retired Oakland Police Officers Association	Police & Fire Retirement System Board	6/19/2013	Alleges a violation of the Oakland Sunshine Ordinance and the Ralph M. Brown Act by holding a closed session meeting on June 19, 2013.	Staff is reviewing	
6/10/2013	13-3	Ralph Kanz	City Council Members: Brooks, Reid, Gallo, Kalb & Gibson-McElhaney.	6/10/2013	Alleges a violation of the Oakland Sunshine Ordinance and the Ralph M. Brown Act by five Councilmembers meeting to agree to hold a special meeting on June 13, 2013.	Staff is reviewing	

* Priority code is based on a dual determination: 1) level of priority (**H**igh, **M**edium or **L**ow, based on criteria such as public interest, complainant interest, timing of complaint, statute of limitations, and impact of Commission decision), and 2) amount of staff time likely needed (**S**mall, **M**edium, or **L**arge amount of time).

Date Rec'd	Case #	Complainant	Respondents	Date of Alleged Violation	Alleged Violation	Status	Priority*
2/8/2013	13-2	Marleen Sacks	City Attorney's Office	1/24/2013	Alleges a violation of the California Public Records Act and Oakland's Sunshine Ordinance.	Staff is investigating	H/M 3
11/21/12	12-14	Avram Gur Arye	Jane Brunner	11/8/2012	Alleges respondent violated the City of Oakland's Conflict of Interest regulations in their involvement with the proposed Safeway on College Avenue.	Pending Dismissal at September 3, 2013 PEC Meeting	H/S 2
11/1/12	12-13	Judith Cox and Pamela Drake	Ignacio De La Fuente	9/28/2012	Alleges respondent violated Oakland's Campaign Reform Act by accepting campaign contributions in violation of the \$700 contribution limit.	Staff is reviewing	H/M 3
11/1/12	12-12	Okhoo and Ernest Hanes	Mitch Thomson (City Arborist, Tree Section, Public Works Agency) and Camille Rodgers (Vegetation Management Inspector - Oakland Fire Department)	3/20/2009 - 3/29/2012	Alleges respondents abused their City authority and misused public funds.	Staff is reviewing	H/M 3
10/18/12	12-11	Scott Alonso	Ignacio De La Fuente	July 26, 2012	Alleges respondent used his Councilman elected position and City resources for a campaign press conference.	Staff is reviewing	H/S 2
4/26/12	12-04	City Auditor/ Anonymous	City Council Member Ignacio De La Fuente		Alleges respondent failed to report \$37,500 in payments from a campaign group tied to a lobbyist for a group competing for the Coliseum mgmt contract (alleges failure to report payment and a COI issue)	Staff is reviewing	H/L 4
4/4/12	12-03	City Auditor/ Anonymous	Downtown Oakland Association and Lake Merritt/Uptown District Assoc.	Dec 2009 and annually thereafter	Alleges respondents failed to provide adequate public notice about discussions and decisions related to the payment of "holiday bonuses," adds that discussion of bonuses was never put on open session agenda	Staff is reviewing	M/M 4

Date Rec'd	Case #	Complainant	Respondents	Date of Alleged Violation	Alleged Violation	Status	Priority*
8/23/11	11-03	City Auditor/ Anonymous	City Council Member Ignacio De La Fuente	June 2011	Complaint expresses concerns about the source of concert tickets allegedly in the possession of respondent	Staff is reviewing	H/L 4
4-4-11	11-01	PEC initiated	ABC Security and/or Ana Chretien; Marina Security and/or Sam Tadesse	Various; approx. betw 3/1/10/7/10 and 7/27/10	Complaint alleges two contractors made impermissible campaign contributions to candidates in the Nov 2010 election (OCRA; §3.12.140)	Staff is investigating	H/L 4
11-1-10	10-28	Ralph Kanz	Ala. Demo. Central Comm.; OakPAC	October 29, 2010	OCRA; §3.12.230 – Alleges 1) failure to include written disclosure required by OCRA and 2) failure to file late contribution and independent expenditure reports	Staff is investigating	H/M 3
10-13-10	10-26	Ralph Kanz	Jean Quan Floyd Huen	June 30, 2010 and ongoing	OCRA; §3.12.050; 3.12.090 – Alleges failure to report and include information regarding respondent's loans to own campaign	Staff is investigating	H/M 3
10-13-10	10-25	Ralph Kanz	Don Perata	June 30, 2010 and ongoing	OCRA; §3.12.090(A)(D) – Alleges campaign was given extension of credit of over \$1500 for more than 90 days	Staff is investigating	H/M 3
9/14/10	10-21	Jean Quan	Don Perata, Paul Kinney; California Correctional Peace Officers Association; Ronald T. Dreisback; T. Gary Rogers; Ed DeSilva; Richard Lee	Ongoing	OCRA violations – Alleges respondent campaign exceeded the voluntary expenditure limit during the November 2010 election	Staff is investigating	H/L 4
3/23/10	10-07	Sanjiv Handa	Victor Uno, Joseph Haraburda, Scott Peterson, Sharon Cornu, Barry Luboviski, Phil Tagami	January 1, 2007 to present	Lobbyist Registration Act – Alleges respondents failed to register as lobbyists	Staff is investigating	H/L 4

Date Rec'd	Case #	Complainant	Respondents	Date of Alleged Violation	Alleged Violation	Status	Priority*
3/3/10	10-05	David Mix	Oakland City Council	3/2/10	Oakland Sunshine Ordinance – Alleges City Council Rules Committee failed to make an “urgency finding” to schedule a decision (per Section 2.20.080)	Staff was directed to explore settlement in lieu of hearing.	M/M 4
09/16/09	09-12	Marleen Sacks	Office of the City Attorney (Mark Morodomi)	ongoing	Sunshine Ordinance; Public Records Act – Alleges failure to provide multiple public records upon request	Awaiting hearing re: Records Management Policy	M/M 5
2/7/09	09-03	John Klein	City Council President Jane Brunner	February 3, 2009	Sunshine Ordinance -- Allocation of speaker time – Alleges City Council 15-minute total time limit on Open Forum comments is inconsistent with the Sunshine Ordinance, which authorizes 2 minutes per person	Staff is investigating	M/M 4

Evaluating Oakland's Limited Public Financing Act

Greg Gonzales
Goldman School of Public Policy
University of California, Berkeley
E-mail: gregorio@berkeley.edu

May 2013

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Executive Summary

Oakland's Limited Public Financing Act (LPFA) provides limited public funds in the form of reimbursements to qualified candidates running for District City Council seats. It has been implemented in seven elections, and has distributed \$271,494.40 to 29 candidates.

This report relied on academic studies, quantitative analysis of election data, and interviews with 17 candidates and experts in order to ascertain whether the LPFA has achieved its intended goals, and whether the ordinance should ultimately be repealed, repealed and replaced, or amended.

No evidence was found to suggest that the LPFA has diluted the influence of public dollars in local elections, or that it has reduced the immense pressure faced by candidates to fundraise. Nor does evidence exist that the ordinance has led to an increase in voter turnout or an increase in the number of candidates who pursue local office.

However, since the passage of the LPFA, and its companion, the Oakland Campaign Reform Act (OCRA), District City Council races have become markedly more competitive in terms of the number of contested races, and incumbent margin of victory. Further, non-incumbent candidates with public financing do better than non-incumbent candidates without public financing across the board. Additionally, there is evidence to suggest that voter outreach has increased as candidates utilize their reimbursements to purchase more media communication than they could have otherwise.

The program faces many challenges. Many candidates elect to decline public funding because of the audit requirement, minuscule funding, lack of information, and/or a lack of faith in the program. In the last three elections, only 33% of candidates accepted public funds.

The program is not perfect, but it should not be repealed as it does provide some benefits to Oakland residents at little cost. Instead, the City of Oakland should focus on tweaking the administrative process and increasing funding by a modest amount and then re-asses 5 to 10 from now. When it was passed in 1999, former Councilmember Russo called the ordinance, "a first step (Purnell D. D.). Since that time, it has been amended around 28 times in order to hone its performance. The City of Oakland should continue in this vein of amending and evaluating.

The recommendations presented in this report are presented as 4 packages, each more ambitious than the last:

Package 1 – Process Improvements

- Public Ethics Commission (PEC) staff should front-load the LPFA information campaign early in the election cycle in order to ensure candidates are fully informed regarding the program, and as a means to allocate more time to administrative duties later in the process.
 - The PEC should verbally inform every potential candidate about the availability of public funds, and how he or she may acquire them, during the Nominating Period Phase between July and August.
 - The PEC should also conduct the LPFA mandatory training seminars during the Nominating Period Phase so that candidates may be fully informed well before declaring intent to participate. Further, this will allow PEC staff more time to review statements of intent and claims for reimbursement in the busiest months, administratively, of August and September.
- PEC staff should work to shorten reimbursement turn-around time. The average amount of time it took a candidate to receive reimbursement in 2012, after filing a claim, was 15 days. A shorter wait period would render the program more user-friendly, and thus more attractive.
- The PEC should implement a deadline to file LPFA Forms 2 and 3, those required to claim reimbursement, in mid-September, and determine ultimate allocation shares based on the number of candidates who meet this deadline. Currently, the program determines candidate shares by number of candidates who file LPFA Form 1, which simply states intent to participate. However, historically, many candidates who state they will participate never submit claims for reimbursement. As a result, significant funds are unallocated, and participating candidates are left with smaller shares.

Package 2 – Process Improvements + Community Engagement

- Package 1 Recommendations

- The PEC should require participating candidates to attend a, “Clean Campaign Debate.” A debate is a cost-effective strategy for promoting candidates and voter awareness. For this reason, jurisdictions such as San Francisco, Los Angeles, and New York City require multiple debates for their publicly funded candidates.
 - If legally permissible, the Public Ethics Commission should organize, promote, and manage the debate in order to build stronger ties with the community.
 - The Public Ethics Commission internship team should be in charge of the debate as a reward for their hard work. Such an event would be a resume building activity for capable interns, and placing interns in charge would lower administrative costs.

Package 3 – Process Improvements + Community Engagement + Increased Funding

- Package 1 Recommendations
- Package 2 Recommendations
- The City Council should ensure the Election Campaign Fund contains at least \$250,000 per election cycle. This amount would significantly increase the likelihood that participating candidates receive approx. 30% of the voluntary expenditure limit in public funds, the maximum amount delineated by law. Increased candidate shares will improve the efficacy of the program across the board, especially in terms of electoral competitiveness.

Package 4 – Process Improvements + Community Engagement + Increased Funding + OCRA

- Package 1 Recommendations
- Package 2 Recommendations
- Package 3 Recommendations
- The City Council should lower OCRA’s voluntary expenditure limits by \$10,000 - \$15,000 per cycle until candidates begin to opt out of the program. Currently, all candidates participate in OCRA because the expenditure limits are so high they do not serve as a significant deterrent. Expenditure limits are \$30,000 - \$40,000 higher than the average cost of winning a District City

Council seat, rendering these limits effectively meaningless. In lowering expenditure limits incrementally, Oakland can gauge how truly constraining they are via candidates' reactions.

Recommendations are presented in four packages so that policy makers are allowed maximum leeway in addressing a complex political issue. However, each package is conservative in that none calls for the overhaul of the current program, and each takes an incremental approach to strengthening the ordinance. It should be noted that many of those interviewed desire an even more robust program, such as full public financing, but this analysis seeks to present policy options that are achievable in the current economic climate.

Thus, while Package 4 is the most ambitious, its implementation is also a manageable and realistic endeavor. LPFA funding is simply too low, and OCRA expenditure limits are simply too high, enough so that opposing improvements along these lines may be politically unpopular. Further, most academic evidence concludes that the surest way to achieve, at least partially, the goals of campaign finance legislation, is increased funding and stricter contribution and expenditure limits.

The City of Oakland should implement Package 4 if it deems campaign finance reform a worthy cause.

Introduction

This report examines the effectiveness of Oakland's Limited Public Financing Act (LPFA), since its implementation in 2001.

This report will evaluate to what extent, if any, the ordinance has achieved its original goals. These goals include limiting the power of special interests, increasing the competitiveness of Oakland's District City Council races, reducing the time candidates spend fundraising so that they may spend more time interacting with voters, and increasing faith in government, among many others. Alternatives to the current ordinance will also be evaluated in order to ascertain whether they might be more effective.

This report is organized into 7 main sections. The first provides an overview of Oakland's Limited Public Financing Act, including its mechanics, administration, and legislative and political history. The second introduces the report's methodology and the third outlines the criteria by which the LPFA will be evaluated. The fourth section constitutes the bulk of the report, evaluating how the LPFA performs in accordance with each criterion. The fifth section presents a series of recommendations for improving the ordinances' efficacy, from which policy makers may select. Finally, the report's conclusion presents the author's preferred recommendation.

This report was written by a graduate student, in UC Berkeley's Goldman School of Public Policy, solicited by the Oakland Public Ethics Commission to conduct an independent review of the LPFA. It represents the views of the author alone, and not those of any employee of the City of Oakland.

Background: The Limited Public Financing Act (LPFA)

The Limited Public Financing Act (LPFA) was unanimously adopted by the Oakland City Council in December of 1999, and has since been implemented in seven city elections. Its ostensible goal, although not overtly stated, is to curtail the power of special interests, real and perceived, in local elections and government. The mechanism the ordinance employs in this effort is the partial subsidization of *qualified* candidates' campaigns for Oakland District City Council seats.

The Current Program

Table 1 -Main LPFA Provisions

Appropriation	Qualification	Disbursement	Reimbursement
<ul style="list-style-type: none"> ■ Creation of Election Campaign Fund (ECF) ■ City Council appropriates to ECF every 2 years based on anticipated needs. ■ ECF limited to \$500,000 <ul style="list-style-type: none"> – Avg. ECF = \$122,041.84 	<ul style="list-style-type: none"> ■ Accept OCRA expenditure and contribution limits. ■ 5% viability threshold (based on expenditure limit). ■ File acceptance of public financing within 14 days after certified to appear on ballot. ■ Attend LPFA training seminar. ■ Race must be contested. 	<ul style="list-style-type: none"> ■ 30% maximum subsidy (based on expenditure limit). <ul style="list-style-type: none"> – Avg. subsidy= 10% ■ If ECF cannot provide every eligible candidate the maximum subsidy, funds are distributed equitably. ■ 7.5% to cover PEC administrative costs (optional). 	<ul style="list-style-type: none"> ■ Candidates may only be reimbursed for: <ul style="list-style-type: none"> – Candidate filing and ballot fees. – Printed campaign literature and production costs. – Postage. – Print advertisement. – Radio and cable television airtime and production costs. – Website design and production costs. ■ Reimbursed in increments of \$1000 and \$500.

Although originally implemented as a matching fund program, which matched dollar-for-dollar the first \$100 of every Oakland-based contribution, the LPFA was rewritten in 2010 as a reimbursement program. Today, participating candidates may file for reimbursement up until the last Monday before the Election for *certain, qualified* campaign expenditures. Permissible campaign expenditures include:

- Candidate filing and ballot fees
- Printed campaign literature and production costs
- Postage
- Print advertisements
- Radio airtime and production costs
- Television or cable airtime and production costs
- Website design and maintenance costs

In order to receive reimbursement, the candidates must provide copies of their invoices, check(s) used to make payment, and copies of the communication purchased.

With a reimbursement program, the City exercises greater control over how public dollars are ultimately spent than other jurisdictions may with the more commonly utilized matching program. As may be gleaned by reviewing expenditure categories two through seven above, the City focuses its dollars almost exclusively on voter outreach.

LPFA funding is appropriated every two years by the City Council to the Election Campaign Fund (ECF). This fund cannot legally exceed \$500,000, and faces little risk of doing so. The average size of the Election Campaign Fund for the past seven elections was approx. \$120,000. However, as only an average of approx. \$50,000 has been disbursed per election, and the remaining funds usually carry over into the next cycle, the City Council appropriates less money than meets the eye.

Participating candidates may not receive total reimbursement in excess of 30% of the expenditure limit, delineated in OCRA. However, primarily due to limited program funding, only one candidate in LPFA's history has ever been granted the opportunity to receive the 30% maximum. This anomaly was due to the fact that she was the only participating candidate that year. Instead, funds are normally prorated based on the total amount in the Election Campaign Fund, and the number of candidates who declare intent to participate in the program.

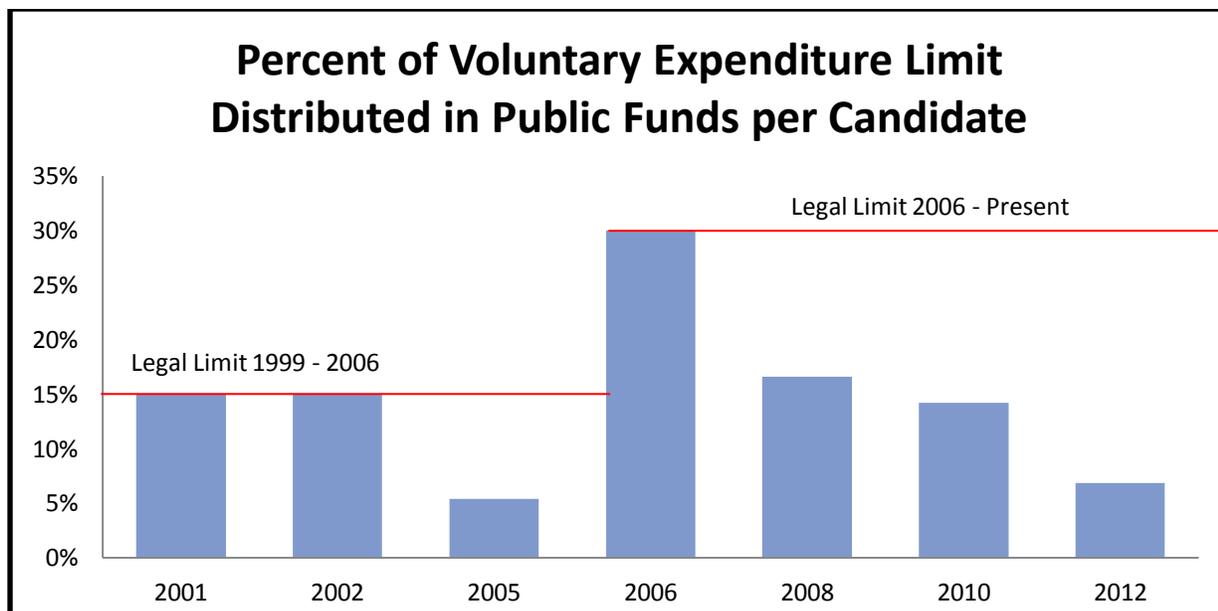


Figure 1

As shown in Figure 1, the 30% maximum subsidy was only allocated once, in 2006. In the first two years of the program, 2001 and 2002, participating candidates also received the legal maximum; however at the time the maximum was only 15%.

In order to qualify for reimbursements under the LPFA, a candidate must:

- Accept the expenditure and contribution limits delineated in the Oakland Campaign Reform Act (OCRA).
- File an acceptance of public financing within 14 days after being certified to appear on the ballot.
- Meet the 5% qualification threshold. This requires that the candidate both receive contributions from Oakland residents and expend an amount equal to 5% of the expenditure limit delineated in OCRA.
- Attend a 1-hour LPFA training seminar.
- Submit to an audit by the City Auditor's Office at campaign's end.
- Agree not to contribute more than 10% of the expenditure limit in personal funds to his or her campaign.

Finally, following the election, participating candidates must return to the Election Campaign Fund any surplus funds equal to the proportion of public funds received to total contributions.

Since the adoption of the LPFA, a total of \$271,494.40 has been disbursed to 29 candidates.

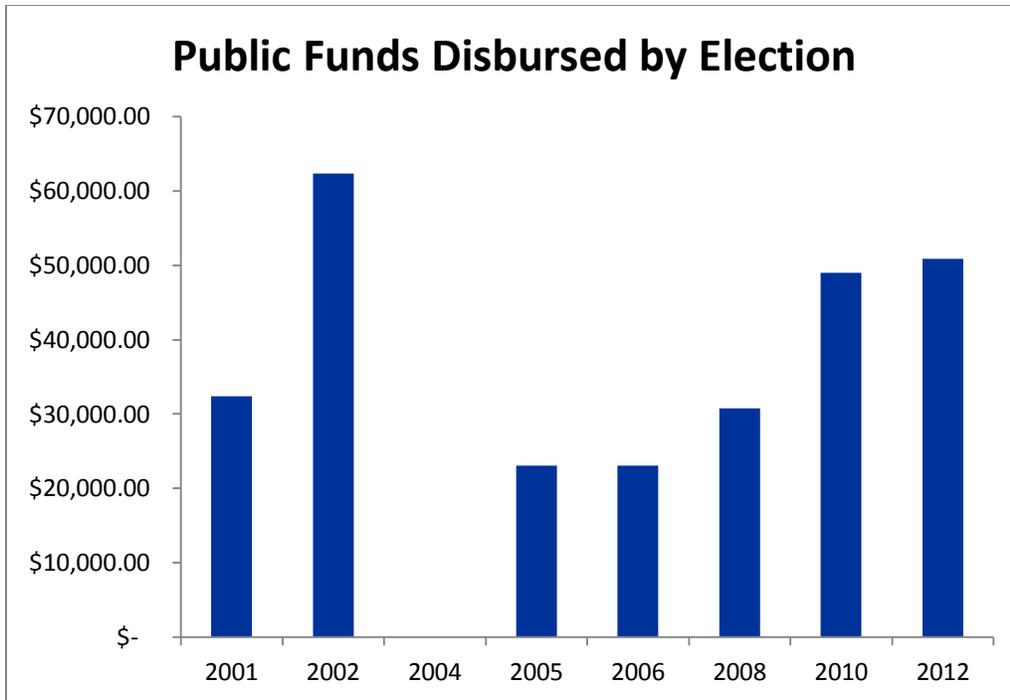


Figure 2

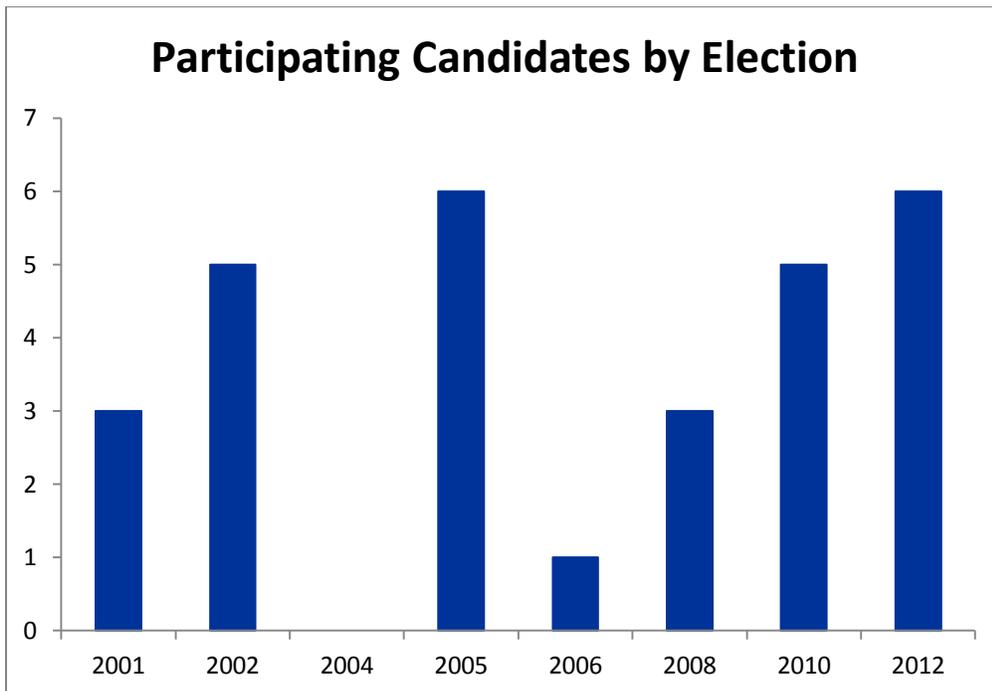


Figure 3

Of the 29 candidates who participated in Oakland’s public financing program, 2 were incumbents, and the remaining 27 were non-incumbents. Of the latter group,

6 won their elections, and 21 lost. Only 1 incumbent has been defeated since the LPFA's implementation.

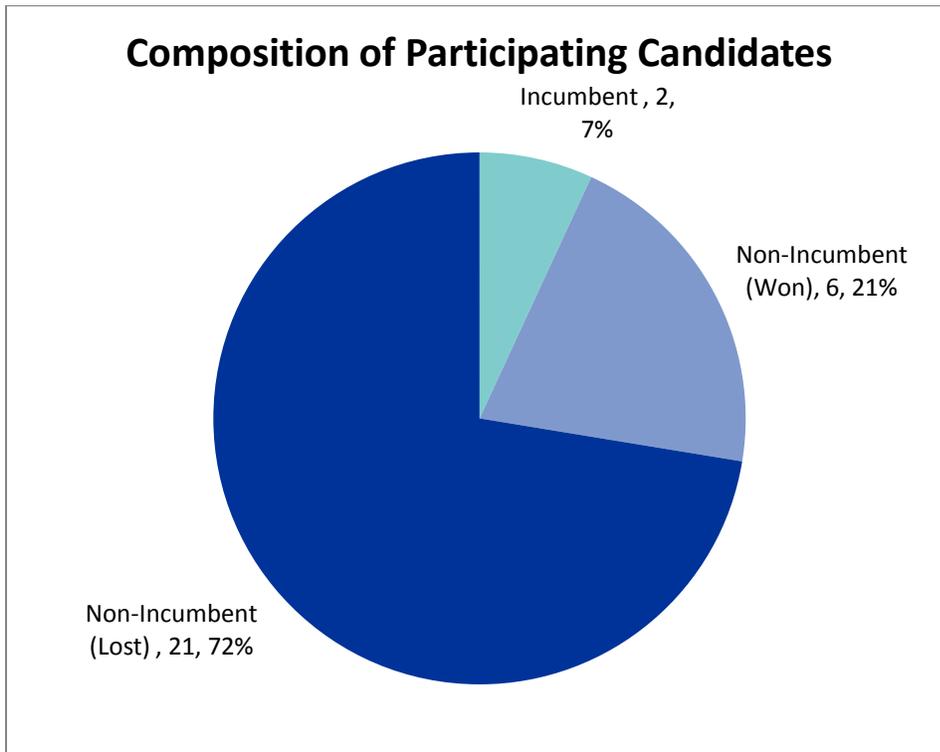


Figure 4

Political History

The LPFA was introduced by Councilmember Dick Spees on July 20, 1999. At this meeting Councilmember Russo suggested the proposed ordinance was a, “small change for the better, but stronger legislation should be placed on the ballot.” (Purnell) The other councilmembers consented at this time that the measure should go before the voters to avoid the suspicion of self-interest.

At a second council meeting on September 23, 1999, Councilmember Spees argued that the LPFA should be passed as an ordinance so that it would be easier to amend in the future. Councilmember Russo suggested that the LPFA is only a, “beginning step (Purnell),” and that the City Council should aim to strengthen it over time. Other councilmembers were concerned as to whether evidence existed if similar ordinances had increased voter participation in other jurisdictions.

After working with the City Attorney and City Auditor to finalize its provisions, the LPFA was passed unanimously as an ordinance on December 14, 1999 (Purnell). Of

the 8 councilmembers that voted that day, only Councilmember Larry Reid remains in office.

During its consideration by the City Council, Common Cause, the League of Women Voters, and ACORN lobbied in its favor. As these organizations were also important in orchestrating the formation of the Public Ethics Commission and the Oakland Campaign Reform Act, it is possible that at least one of them was the main impetus for the legislation. The Oakland Chamber of Commerce voiced opposition to the LPFA (Purnell).

It is difficult to ascertain intent from the limited political history available, but it appears to be the case that the council intended for the LPFA to be a work in progress, one of the main motives for passing it legislatively rather than through the ballot box. It was intended to be perfected over time based on real world feedback. It is also evident that one of the goals of the program the council had in mind was increased voter participation.

Legislative History

Since its implementation in 2001, the council has thus far stayed true to the idea of the LPFA as a work in progress. A former official with close ties to the ordinance, referred to the amendment process it has undergone as, “experimenting.” This notion goes hand-in-hand with the belief that local governments should be the, “laboratories of democracy.”

In 14 years, the LPFA has been amended about 28 times. Some of these amendments were technical in nature, meant to clarify legal language, while some were radical. For example, in 2005, the City Council voted to restrict the program to only those candidates running for District City Council seats. Thus, any candidates running at-large or for the school board are not eligible for public funds. This amendment was adopted to address the early and persistent issue of under-funding (Purnell D. , 2005).

Further, as mentioned previously, the LPFA was altered in 2010 from a 1:1 matching program to a reimbursement program. The motivation for this change was to reduce administrative costs – it is much easier to review 30 checks for reimbursement rather than 300 checks to be matched – and to exercise greater control over how candidates spend public dollars. In 2002, an incident occurred where a minor candidate paid a campaign consultant, also a family member, with public funds. The reimbursement program aims to avoid such controversies.

Further, the personal contribution limit was increased from 5% of the Voluntary Expenditure Limit, to the 10% figure it is today. This amendment was adopted in order to encourage candidate utilization (Purnell D. , 2008).

As shown in Table 2, 61% of amendments were aimed at either reducing administrative costs or increasing candidate utilization. The remaining 39% of amendments addressed gamesmanship, enforcement, and technical issues. And of course, as stated above, the reimbursement program was also adopted to reduce perception of misuse or corruption. The legislative history thus informs the priorities of the Public Ethics Commission and the City Council with regards to the LPFA: cost, utilization, and perception of corruption.

Table 2 -LPFA Legislative History 1999 -2013

Purpose of Amendments	# Amendments	% Amendments
Reduce Administrative Costs	9	32%
Increase Candidate Utilization	8	29%
Prevent Gamesmanship	4	14%
Strengthen Enforcement	4	14%
Clarify Legal Language	3	11%
Transfer Money from ECF to GF*	1	4%
Total	28**	100%

*General Fund. **One amendment counted twice.

Administration

The LPFA was adopted as part of a broader push to reform Oakland’s government in the late 90’s. These reforms, championed by organizations such as Common Cause and the League of Women Voters, also led to the creation of the Oakland Public Ethics Commission (PEC) in 1996, and the passage of the Oakland Campaign Reform Act (OCRA) in 1999. The PEC is charged with, among other duties, the implementation and enforcement of the LPFA.

The Commission is comprised of 7 volunteer members, 3 of whom are appointed by the Mayor and confirmed by the City Council. The remaining 4 members are recruited and selected by the Commission itself. Each Commissioner may serve no more than one consecutive three-year term.

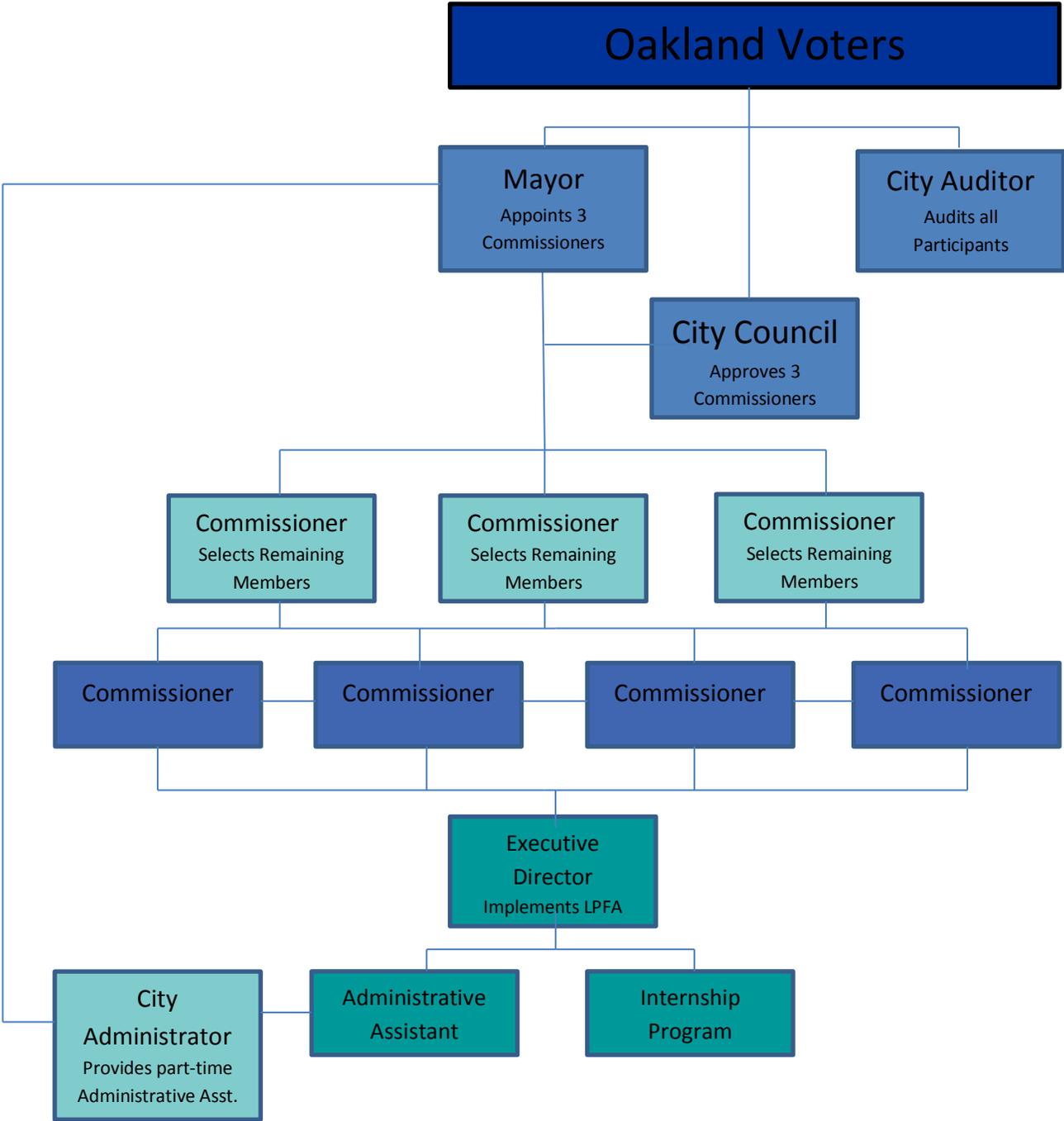
“During the tenure and one year thereafter, no member may do the following:

- **Be employed by the City or have any direct and substantial financial interest in any work or business or official action by the City.**
- **Seek election to any public office; participate in, or contribute to, and Oakland municipal campaign.**
- **Endorse, support, oppose or work on behalf of any candidate or measure in an Oakland election (Barazoto, 2011).”**

In past years, the PEC has operated with two full-time staffers – an Executive Director, and an Administrative Assistant. However, in FY 2011-12, the Commission’s budget was reduced 43% and the Administrative Assistant position was eliminated. The City has since partially compensated the Commission with a part-time Program Analyst (Barazoto, 2011). The PEC is reliant on these staff members, and a small internship program to fulfill its duties.

Most of the administrative work is performed by Commission staff. With Commission approval and oversight, the Executive Director develops the administrative regulations of the program, develops necessary forms, requests appropriations for the Election Campaign Fund based on anticipated need, determines candidate eligibility for public funds, and disbursement allocations. Further, the majority of the LPFA’s amendments were first developed and recommended by an Executive Director. The Commission itself is responsible for administering penalties, up to \$1,000 per violation.

LPFA Administrative Hierarchy



2012 Administrative Process Overview

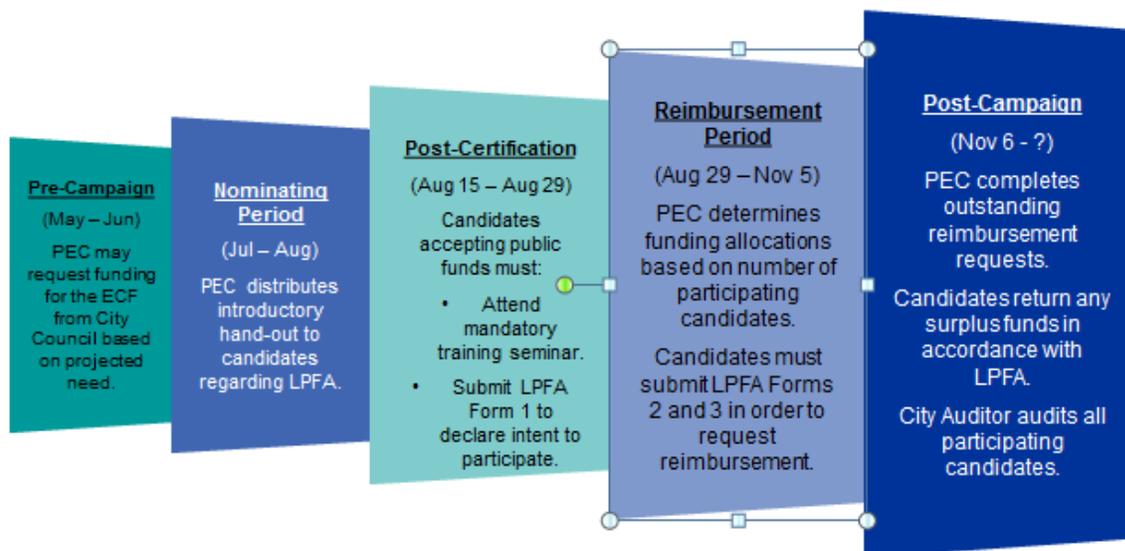


Figure 5

In 2012, the LPFA's reimbursement program was administered in 5 phases:

- Pre-Campaign Phase
- Nominating Period Phase
- Post-Certification Phase
- Reimbursement Period Phase
- Post-Campaign Phase

The Pre-Campaign Phase occurred between the months of May and June, about 6 months prior to Election Day. During this phase, the PEC confirmed the amount of funding in the Election Campaign Fund, and had the option to request additional funding.

During the Nominating Period Phase, which in 2012 ran between July and August, PEC staff created and distributed an introductory handout to the LPFA, and provided a copy of this handout to the City Clerk, so that it could be included in the candidate nomination packets. This introductory handout serves to inform candidates as to the availability of public funds, and how they may acquire them.

The Post-Certification Phase was a short and intensive period in 2012 that ran the course of 14 August days, only 10 of which were work days. During this time, PEC staff confirmed all candidates certified to appear on the ballot, reminded them of the availability of public funds, and informed them that they have 14 days from their nomination to declare intent to participate. Candidates declare their intent by submitting LPFA Form 1. The PEC also conducted two, one-hour LPFA training seminars during this time.

The Reimbursement Period Phase is likely the most intensive administrative period. In 2012, it spanned the period of August 29th (the deadline to submit LPFA Form 1) to November 5th (the last Monday before the election, and the deadline to file for reimbursement). During this time, the PEC first determined prorated shares based on the number of candidates who stated their willingness to participate in the program. Then PEC staff reviewed and fulfilled individual requests for reimbursement.

In order to receive reimbursement, a candidate must first submit LPFA Form 2, with contribution checks and expenditure receipts in order to prove that he has met the 5% qualification threshold. After PEC Staff confirm the threshold has been met, candidates submit LPFA Form 3 in order to request reimbursement. Form 3 may be filed multiple times for each reimbursement request (Makalani, 2012).

The Post-Campaign Phase consists of fulfilling outstanding reimbursements, and reclaiming any excess funds owed to the Election Campaign Fund. Further, this is the period in which the City Auditor's Office conducts mandatory reviews of all participating candidates. The audit requirement can extend this period to a year or more post-election.

LPFA vs. OCRA

As previously mentioned, the Oakland Campaign Reform Act (OCRA) and the LPFA were both adopted in 1999 as part of a broad government reform movement at the time. While both ordinances attempt to address the role of special interests in politics, they address the problem from different angles. Whereas the LPFA provides public funds to qualified candidates for local office, OCRA sets contribution and expenditure limits.

The main incentive candidates face to accept OCRA's voluntary expenditure limits are more flexible contribution limits. For example, a candidate for office in 2012 who agreed to abide by OCRA's expenditure limits was able to receive up to \$700 in

individual contributions vs. \$100 for a candidate who did not agree to abide by OCRA's limits (How to Apply for Public Financing, 2012).

It is important to recognize the shared goals and overlap of these two ordinances, and that this report is primarily concerned with evaluating the effectiveness of the LPFA alone. Thus, this analysis will attempt to differentiate the effects of the ordinances along the same dimensions. Further, while a candidate can accept OCRA without accepting public funds, any candidate desiring public funds **must** also agree to abide by OCRA.

Figure 6 provides a summary of the relationship between the LPFA and OCRA:

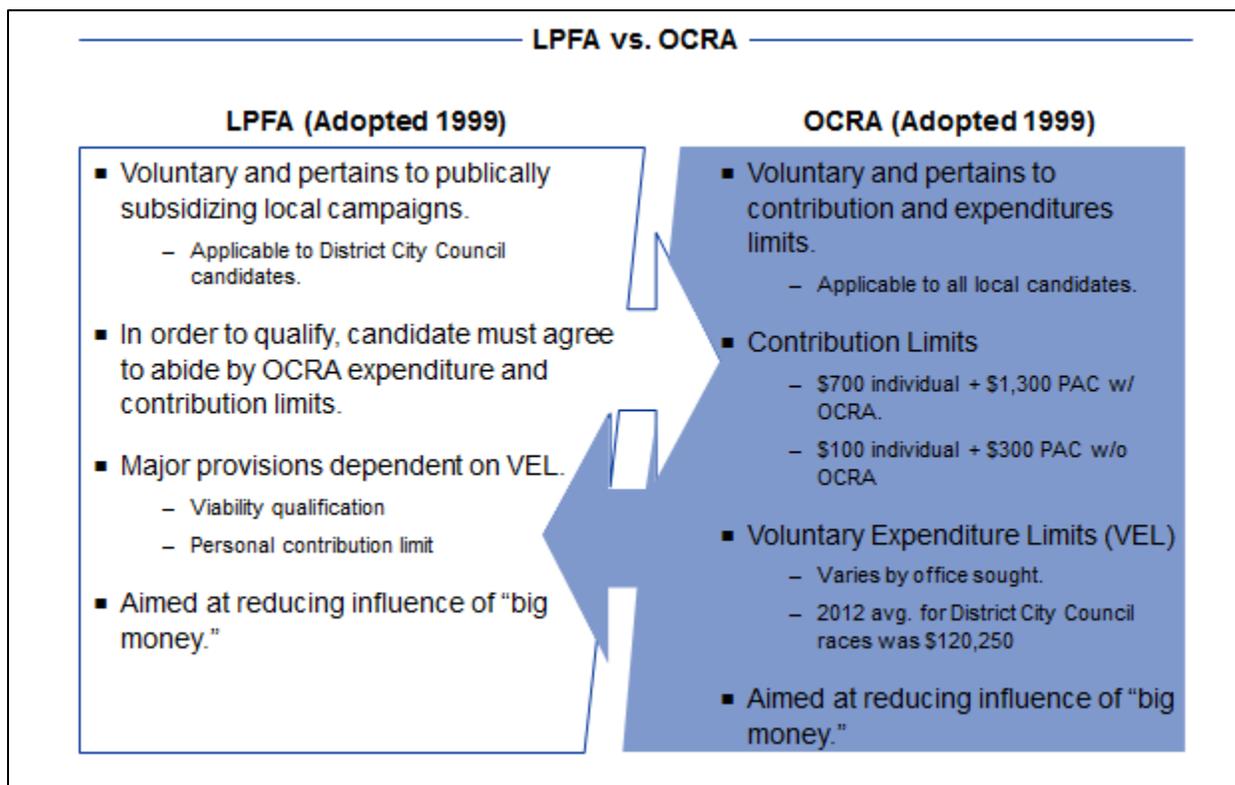


Figure 6

Methodology

Literature Review

In the course of this analysis, scholarly work addressing the various potential effects of campaign finance reform was reviewed. This work evaluated full and partial public financing systems at the local and state levels, and measured outcomes in terms of competitiveness, expenditures, contributions, and time spent fundraising vs. other campaign activities. Academic findings will be communicated in this analysis when appropriate, in order to buttress quantitative and qualitative findings.

Quantitative Analysis

Electoral data in terms of vote shares, voter participation, and candidate participation was compiled over the past 12 Oakland City Council elections. Further, data was gathered with respect to the appropriations to the Election Campaign Fund, the distribution of public funds, and the amount of hours spent administering the program. Additionally, data was attained on candidate contributions and expenditures between 2001 and 2012. However, as these records are incomplete, or inappropriately filed by candidates, analysis based on this data is limited.

Qualitative Analysis

During the course of this analysis, 12 former candidates, 2 high-ranking campaign staffers, 2 key interest group representatives, and 1 former member of the Oakland Public Ethics Commission were interviewed. Of the candidates, or candidate representatives, 3 interviewees were involved with winning campaigns, and 8 had accepted public financing in at least one election.

The interviews were provided as background information in order to inform the analysis and ascertain a sense of the aggregate view of the success, or lack thereof, of Oakland's LPFA. As such, this report will shy away from specific and attributable quotes.

Criteria

The LPFA has a broad set of goals aimed at curtailing the power of special interests, real and perceived, in local elections and government. These goals, as stated in the ordinance, are listed in the box below:

LPFA Chapter 3.13.030: “Purpose of this Act”

- 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 of Oakland, 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 pressures 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 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 trust in governmental and electoral institutions.

As this report is conducted on behalf of Oakland’s Public Ethics Commission, the analysis will concentrate on determining to what extent the LPFA is achieving the City’s stated goals. Further, these goals constitute the generally accepted purposes of campaign finance reform.

Goals A – G, in aggregate, speak to the four main dimensions by which campaign finance reform aims to reduce the influence of special interests. These 4 dimensions are:

- **Money in Politics**
- **Competition**
- **Access and Good Governance**
- **Participation**

An additional important dimension is not captured in the Act itself:

- **Feasibility**

This analysis employs 9 criteria by which to evaluate the LPFA along these dimensions:

Money in Politics
Criterion 1: Dilute the Influence of Large Contributors
Criterion 2: Reduce Pressure to Fundraise
Competition
Criterion 3: Increase Electoral Competition
Access and Good Governance
Criterion 4: Increase Interaction between Candidates and Voters
Criterion 5: Reduce Perception of Corruption
Participation
Criterion 6: Increase Voter Participation
Criterion 7: Increase Candidate Participation
Feasibility
Criterion 8: Incentive to Utilize Program
Criterion 9: Low Cost

Analysis

The previous section listed the criteria by which this report evaluates the LPFA. This section will summarize the importance of each criterion, highlighting why it was selected, and then proceed to determine how the LPFA fares in accordance with each criterion.

Though imprecise, the ordinance will receive a grade based on how well it addresses each criterion. When presented in the summary at the conclusion of this section, the grading will provide a snapshot of the LPFA's success, which will inform how it might be improved.

The grading scheme is as follows:

- **A** – LPFA satisfies criterion to a high degree.
- **B** – LPFA satisfies criterion to a modest degree.
- **C** – LPFA satisfies criterion to a minimal degree.
- **D** – Some evidence to suggest LPFA may satisfy criterion to a minimal degree (Or the potential clearly exists).
- **F** – LPFA fails to satisfy criterion or no evidence exists.

Money in Politics

Criterion 1: Dilute the Influence of Large Contributors

“...reduce the influence of large contributors with a special stake in matters under consideration by the City of Oakland...”

A basic tenet of campaign finance reform, and public financing in particular, is that the more a candidate relies on public funds to win an election, the less reliant she is on private funds, and less likely to serve special interests while in office.

Further, given the importance of money in elections, wealthier donors tend to be overrepresented. As one former candidate noted:

“Two candidates may have the same size base of support, but one candidate’s base may be significantly wealthier than the other’s. One candidate could thus end up with a significantly larger war chest with which to campaign, even though his initial base of support represents the same number of people.”

A good public financing program must aim to dilute the influence of large contributors, in relation to smaller contributors, in order to level the playing field and ensure future elected officials are not beholden to special interests.

LPFA Does Not Increase the Proportion of Small Contributions

Since the LPFA was transformed from a matching fund program into a reimbursement program in 2010, its mechanics no longer encourage participating candidates to seek small contributions.

As a matching fund program, the LPFA matched 1:1 the first \$100 of every individual contribution. This, in effect, doubled the value of donations \$100 or less, increasing the contributing power of small donors, and encouraging candidates to seek them out. Such is the main justification for a matching fund program, and the reason why so many jurisdictions utilize one. New York City's matching formula has been shown to increase the proportion of small contributions that City Council candidates receive (Migally & Liss, 2010).

However, as a reimbursement program, the LPFA does not encourage candidates to seek small contributions. This is because candidates are not required to raise money from small donors in order to be reimbursed. Even to qualify for public funds, no such stipulation exists. The candidates only need to raise from Oakland residents or those whose primary place of doing business is in Oakland up to 5% of the qualification threshold. These contributions can be up to \$700 each, the personal contribution limit for all candidates who accept OCRA (How to Apply for Public Financing, 2012).

Thus, while it is possible that the LPFA increased the number and power of small donors when it was a matching fund program, it no longer provides that incentive as a reimbursement program.

LPFA Does Not Decrease Independent Expenditures

The LPFA does not address independent expenditures in Oakland elections, nor does it prevent powerful interests such as labor unions from organizing on behalf of their preferred candidates. After *Citizens United v Federal Election Commission*, businesses and unions are allowed to expend unlimited funds in independent expenditures (Citizens United v. Federal Elections Commission, 2010).

Independent expenditures and organizing for candidates are two of the main ways big interests exert their influence on government. They can exert this influence with or without the LPFA.

Interviews

Interviewees do not believe that the LPFA dilutes the influence of large contributors largely for the reasons stated above. As a reimbursement program, the ordinance simply does not address the issue.

Many candidates felt overwhelmed by the power of special interests, especially that of local unions, during their campaigns. Skepticism was expressed as to the effectiveness of any campaign finance reform in the wake of the *Citizens United* decision.

Others pointed out that Oakland's contribution limits are already very low compared to other jurisdictions, so the criterion itself is not very important in measuring the LPFA's success. Personal contribution limits are \$700 for those who accept OCRA and \$100 for those who do not. Many candidates indicated that it was a very rare occurrence that an individual wanted to donate over the limit. Thus, the argument is that Oakland does not face a crisis of large contributions. Special interests exert most of their influence outside of the fundraising system.

Some candidates do believe that these contribution and expenditure limits delineated in OCRA, not the LPFA, reduce the influence of large contributors to a degree.

Grade

There is no evidence that the LPFA dilutes the influence of large contributors. Therefore it receives an **F**.

Note: Due to time constraints, and trouble collecting the data, no analysis was performed as to whether publically financed candidates relied on small donations more than non-publically financed candidates, either during the reimbursement phase, or the matching fund phase of the LPFA's history. Future researches may wish to seek out and evaluate this data. However, it is unlikely to be very informative as the LPFA does not encourage small contributions.

Criterion 2: Reduce Pressure to Fundraise

"...reduce pressures on candidates to raise large campaign war chests... [and]...spend a smaller proportion of their time on fundraising..."

Another important goal of campaign finance reform is to reduce the time candidates spend fundraising, and thus increase the time candidates spend interacting with

voters. This criterion may be included under both, “Money in Politics,” and, “Access and Good Governance.” The reason it is included here is due to its potential to delve deeper into the financial effects of the LPFA. The public subsidy may be too small to be captured by Criterion 1, but if participating candidates feel less pressure to fundraise, it can be argued that, “big money,” is weakened.

Further, a candidate’s fundraising constituency and a candidate’s district constituency may differ dramatically:

“Candidates wage two distinct campaigns—a campaign for votes and a campaign for resources. The time that candidates devote to one campaign inevitably affects the time they can devote to the other. This has important implications for representation because the two campaigns have markedly different constituencies (Francia & Herrnson, 2003).”

Publicly Financed Candidates in Oakland Do Not Spend Less Time Fundrasing

There is no evidence to suggest that publicly funded candidates in Oakland spend less time fundraising than their non-publicly funded counterparts. This is, perhaps, largely due to the fact that Oakland only offers partial public financing.

Studies have shown that full public financing systems can reduce time spent fundraising.

“Candidates who accepted public funding spent less time raising money than other candidates *including those who accepted partial public funding.*” [italics added] (Francia & Herrnson, 2003)

This study’s nationwide survey found no significant difference in time spent fundraising between candidates with partial public funding and candidates with no public funding, but candidates who received full public funds campaigned 16% less time than their counterparts (Francia & Herrnson, 2003).

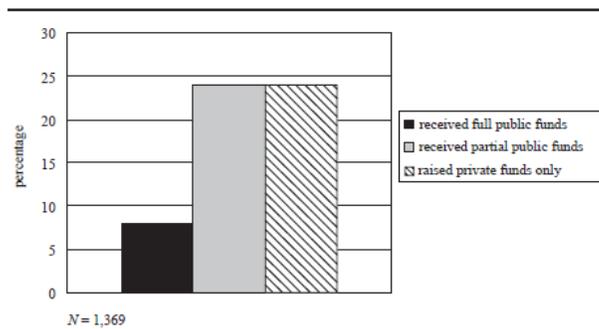


Figure 1: The Percentage of Time State Legislative Candidates Devote to Fundraising

Further, candidates who received public funds in Arizona and Maine, both states with full public funding systems, also campaigned less than their counterparts (Miller, 2008).

When candidates are only partially subsidized, they still face pressure to close the funding gap between them and their most well-funded opponent:

“Even when the subsidy covers half of the funding level allowed under the spending cap, the challenger’s strategic considerations relative to those in privately funded elections are largely unchanged, and a large spending gap between challengers and incumbents is likely to persist (Miller, 2008).”

Interviews

Every candidate interviewed expressed that the pressure to fundraise during their campaigns was immense and burdensome, and that the presence of public dollars did nothing to alleviate it. Some candidates suggested the case might be different if more public dollars were distributed, while others claimed that they would attempt to maximize fundraising in any scenario. One campaign official suggested that she might have allocated less time to fundraising if she had access to public dollars. Another campaign official stated that uncertainty surrounding the reimbursement program, in terms of the amount of funds available and when reimbursements would be made, prevented planning campaign decisions around the availability of public funds.

Grade

There is no evidence that the LPFA reduces pressure to fundraise, and thus the ordinance receives an **F**.

Competition

Criterion 3: Increase Electoral Competition

“...encourage competition for elective office...”

Another important goal of public financing programs is to increase electoral competition. Many incumbents are career politicians, who seemingly serve for life, and while some are certainly quality representatives, their high re-election rate is problematic for democracy. If an incumbent doesn't fear electoral defeat, he or she may be less responsive to the will of the voters. Further, incumbency advantage may prevent the best woman (or man) for the job from attaining office – that is, unless one measures a politician's worth solely on her ability to raise large sums of money. Advocates of public finance believe otherwise, and thus aim to promote competition by targeting a main source of incumbency advantage - the ability to fundraise.

Academic Findings

Various academic studies have concluded that full public financing systems increase electoral competition, but that partial public financing systems show mixed results.

Under Minnesota's partial public financing program between the years 1966 and 1990 competition actually decreased, as the winning candidates' average vote share went up. However, the study also found that challenger spending had a strong, negative effect on incumbent vote share, and thus concluded that the right public financing program could potentially increase competition (Donnay & Ramsden, 1995).

A similar analysis of Wisconsin's partial public financing system found that incumbent reelection rates remained high, and that their average margin of victory increased post-reform. On a positive note, the expenditure gap between the incumbent and his closest challenger decreased. However, this might be due to the state's expenditure limit, rather than the distribution of public funds (Mayer, Werner, & Williams, 2004).

A 2009 Brennan Center study found that states with partial public financing coupled with contribution limits saw a decline in the mean incumbent margin of victory (Stratmann, Torres-Spelliscy, & Williams, 2009). This suggests that Oakland's combination of OCRA and the LPFA may be leading to more competitive elections.

More recently, many studies have evaluated the full public financing systems of states like Maine and Arizona. In 2003, a GAO study concluded that the number of candidates running in these states increased, but found no evidence for increased competitiveness (Office, 2003). Mayer et al, however, found a dramatic increase in competitiveness in terms of the number of races contested and incumbent margin of victory (Mayer, Werner, & Williams, 2004). In his 2008 study, Neil Malhorta also found that Arizona and Maine’s public financing system boosted competitiveness (Malhorta, 2008).

In his 2009 Follow the Money Report, Gleason et al found that full public financing boosted competitiveness in Maine, Arizona and Connecticut in terms of races contested, races competitive, and the contribution gap (Elections and Public Financing, 2009).

Publicly Financed Candidates Perform Better than Non-Publicly Financed Candidates across the Board

Since the LPFA’s implementation in 2001, publicly financed candidates have earned a greater vote share, on average, than their non-publicly financed counterparts. Critically, incumbents received the largest vote share average at 70.5%. However, when comparing non-incumbents, those with public financing performed better than those without by 18.2%. This figure applies to races in which an incumbent was running.

In open-seat races, publicly financed candidates outperformed their non-publicly financed counterparts by 7.3%. However, it is possible that the victors in these races, who accept public financing, are heir apparent candidates – those that have held previous office or worked in politics before deciding to run, and thus they are inherently more competitive. When removing the victor, and examining the runner-ups in open-seat contests, publically financed candidates only outperform their counterparts by 2.5%.

Table 3

	PF Candidate	N-PF Candidate	Diff.
Incumbent in Race	35.8%	17.6%	18.2%
Open-Seat	25.9%	18.6%	7.3%
Open-Seat (Runner-ups Only)	18.0%	15.5%	2.5%

In all cases, publicly financed, non-incumbents garner a larger vote share than non-publicly financed, non-incumbents. However, it is possible that Oakland’s LPFA program selects the most competitive challengers. A combination of the 5% viability

threshold and the reporting requirements requires information and resources only a more organized campaign can bring to the table.

The Incumbent Re-Election Rate has Not Decreased Post-LPFA

If the rate at which incumbents are re-elected to office decreases significantly post-LPFA, then the Act may increase competition.

This analysis compared elections without public financing to elections with public financing between the years 1980 – 2012. Interestingly, a greater percentage of incumbents were defeated in elections without public financing, meaning races have actually become less competitive in this regard. However, this effect is largely due to 1992, an outlier year, in which 3 of 4 incumbents lost their races. Further, the difference is small and it cannot be confidently stated whether the incumbent re-election rate has changed at all.

Table 4

	PF	N-PF	Diff.
Incumbent Re-election Rate	85.7%	84%	+1.7%

The Incumbent Margin of Victory has Decreased Post-LPFA

It is possible that the incumbent re-election rate remains similar, but the average incumbent margin of victory has decreased post-LPFA, which would constitute a positive sign that public dollars are making Oakland races more competitive.

In the 18 election years examined, this analysis compared the mean incumbent margin of victory in races in which at least one publicly financed challenger was running to races in which no publicly financed challengers were running.

Uncontested races were excluded from the analysis.

The average incumbent margin of victory is 8.1% less in races with at least one publicly financed challenger. While other variables may be responsible for this finding, it is clear that the incumbent margin of victory is lower when public financing enters the equation.

Table 5

	PF	N-PF	Diff.
Incumbent Margin Victory	19.7%	27.8%	-8.1%

The Percentage of Contested Races has Decreased Post-LPFA

If the number of contested races increase post-LPFA, then it is possible the availability of public funds has contributed to a candidate's willingness to challenge a powerful incumbent.

This analysis looked at the number of times an incumbent faced a challenger before and after the implementation of public financing. It found that the percentage of contested races increased 17.7% after public funds became available to candidates.

Table 6

	PF	N-PF	Diff.
Contested Races	89.5%	71.8%	+17.7%

Interviews

Over 90% of interviewees believe that any increase in funding makes a campaign more competitive. Candidates who accepted public funds claimed they made their campaigns more competitive, and candidates who did not accept funds claimed their opponents who did were more competitive as a result.

Nonetheless, a few of these same individuals suggested that the transaction costs of acquiring public funds are too high. They argued that the mandatory audit in combination with the limited funds available meant that the costs of participation outweighed the benefits.

Grade

Academia has been unable to show an increase in competitiveness following the adoption of a partial public financing system, with the exception of Dr. Stratman's study which requires the presence of both public funding and contribution limits. However, the quantitative and qualitative analysis of Oakland's past 18 elections demonstrates that District City Council races have grown more competitive post-LPFA, and that publicly financed non-incumbents tend to do better than their counterparts. Further, those interviewed overwhelmingly believe that public dollars increase the competitiveness of a campaign.

Because other factors besides the LPFA, such as social media, rank choice voting, and OCRA may be contributing to increased competitiveness, the LPFA will receive a conservative grade of **B** for Criterion 3. Races have become more competitive, but it cannot be definitively stated why.

Criterion 4: Increase Interaction between Candidates and Voters

“...allow candidates...a greater proportion of their time dealing with issues of importance to their constituents...thereby promoting public discussion of important issues...”

This criterion is, in part, the flipside to Criterion 2: Reduce Pressure to Fundraise. If candidates feel less pressure to fundraise, they are more likely to spend time connecting with voters.

However, voter outreach may also be determined by the amount of public funds distributed. For example, if a candidate, as a result of public funds, spends more money than he otherwise would have, that increase in expenditures constitutes an increase in interaction, assuming that the additional products purchased involve voter outreach.

Advocates believe this increased interaction between candidates and voters can improve the relationship between constituents and their government, increase voter education, and potentially promote the discussion of issues that would not otherwise be brought to the forefront.

The Availability of Public Funds Leads to More Voter Outreach

Presumably, the more money at a campaign’s disposal, the more money that campaign will spend to win votes. Not every campaign expenditure constitutes voter outreach, but 6 out of 7 expenditures that qualify for reimbursements under the LPFA do achieve this end. Those are reimbursements for:

- Printed campaign literature and production costs
- Postage
- Print advertisements
- Radio airtime and production costs
- Television or cable airtime and production costs
- Website design and maintenance costs

All of these activities involve communicating with voters, and thus constitute voter outreach. Only filing and ballot fees do not constitute voter outreach, but these fees constitute an insignificant percentage of all reimbursements. In 2012, over \$50,000 in reimbursements was spent as follows:

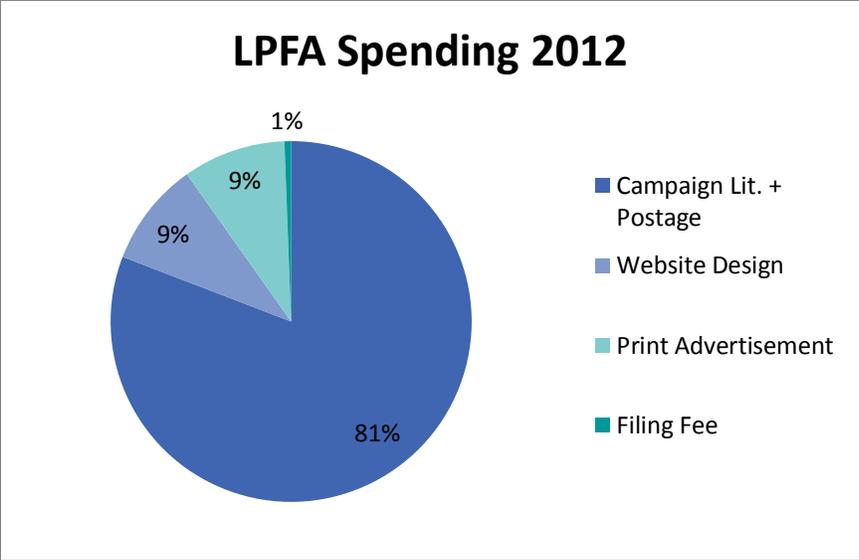


Figure 7

It is Unclear whether Total Expenditures have Increased Due to Availability of Public Funds

If the availability of public funds did not lead to an increase in expenditures, then the previous findings above may be meaningless. This would be the case if a campaign, in the absence of receiving \$5,000 in public funds, had made up the difference in fundraising and proceeded to spend the \$5,000 in the exact same manner. In such a scenario, voter outreach would remain exactly the same.

This might be true if the influx of public funds led to a decrease in fundraising, but in that analysis, it was determined that no such evidence existed. If it is assumed that every candidate is maximizing fundraising, then a candidate who can amass \$50,000 in contributions without public funding, will amass \$50,000 + the public subsidy with public funding. This will naturally lead to an increase in expenditures.

Further, given the restrictions on reimbursements, the subsidy functions as a categorical grant. The effect of categorical grants is that the individual or agency that receives the grant will spend more money on permissible expenditures than would have been the case with a block grant. Therefore, even if a candidate were to expend the same amount of money with or without public funds, it is reasonable to conclude that with public funds, money is more likely to be spent on voter outreach, rather than on other expenses, such as paying campaign staff.

Interviews

However, in order for candidates to plan expenditure decisions around public funds, they must understand how much in public funds they have access to, and be secure in the belief that they will ultimately be reimbursed.

Some candidates expressed skepticism in this regard. One former campaign staffer, who handled his candidate's finances, stated that he did not plan expenditures around the availability of public funds for precisely these reasons. He was skeptical as to when the reimbursements would arrive, if ever, and how much his campaign would be reimbursed.

Other candidates did claim that public dollars did allow them to spend more on voter outreach, and one candidate asserted that had he received public funds, he would have purchased one more direct mail piece towards the end of his campaign.

In 2012, nine reimbursements were distributed to six candidates throughout the election, totaling over \$50,000. Sixty percent of those funds were distributed in October, in the last 4 weeks of the election, the period in which expenditures are at their highest points of the campaign, and contributions are near the lowest, suggesting that these campaigns made the strategic decision to utilize their public dollars when most needed. This phenomenon is shown in Figure 9.

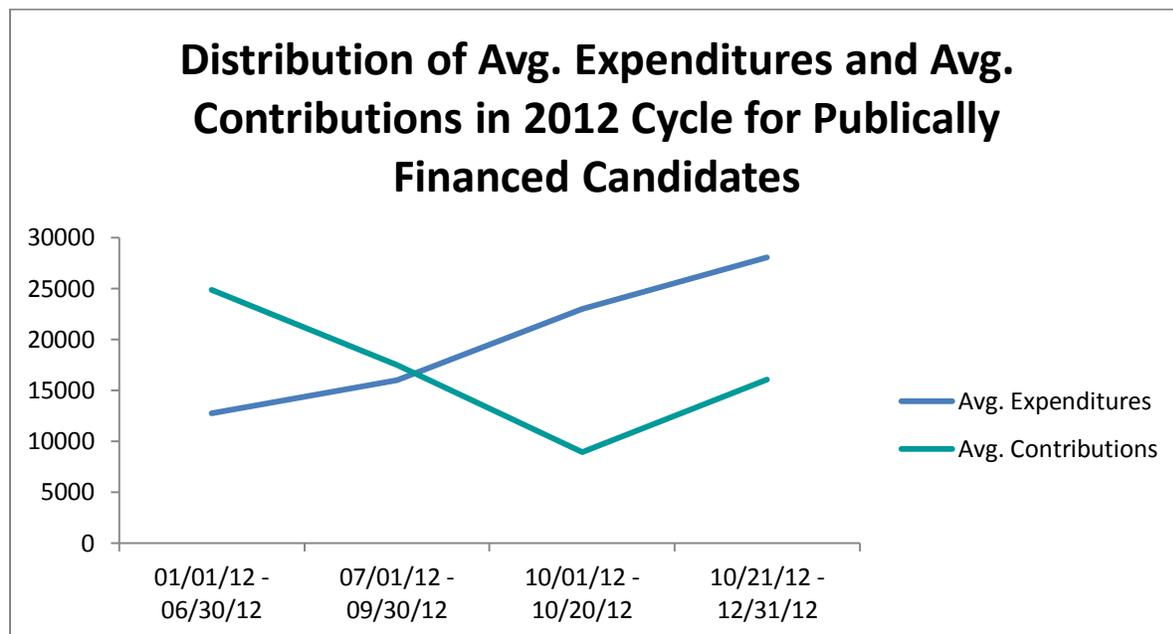


Figure 8

Of course, 40% of funds were ultimately distributed on Election Day or later, which may contribute to the argument that candidates are limited in their ability to plan expenditure decisions around the availability of public funds.

Grade

Based on the evidence, it is reasonable to assume that the LPFA leads to an increase in the interaction between candidates and voters. However, due to limited funding, and the uncertainty surrounding the program, the impact is not as large as it could be.

The LPFA will receive a grade of **C** for Criterion 4.

Criterion 5: Reduce Perception of Corruption

“..counter the perception that decisions are influenced more by the size of contributions than by the best interests of the people of Oakland...[and]...to help preserve trust in governmental and electoral institutions...”

Ranking perception over reality is not intended to be cynical. A government must be effective and trustworthy, but its constituents most also believe it is effective and trustworthy. In daily life, we often see that these two notions are not always aligned. As a result, any government program must take steps to address the issue of perception, especially in regard to how public officials are nominated, and taxpayer dollars are expended.

It is entirely possible that two alternatives are equally effective, but that one is perceived as more effective by the people. All else being equal, a policy maker will rightly implement the latter. Of course, *ceteris paribus* is not a reality, and the tradeoff between popularity and effectiveness can complicate a policy maker's life.

Candidate Audits have Increased Slightly Post-LPFA

The main mechanism the LPFA utilizes to prevent malpractice is the audit requirement. If audits have increased, post-LPFA, it may be argued that the ordinance reduces the perception of corruption.

Prior to the introduction of the LPFA, candidates were seldom, if ever, audited. Since the LPFA's introduction, 9 candidates have undergone an audit or performance review. This figure includes the candidates from the '06 – '10 elections. The '12 audit of participating LPFA candidates remains outstanding as of June 2013, which highlights its lack of priority relative to other important duties of

the Auditor's Office. Although required by law, audits were not conducted between '01 – '06, when the previous City Auditor held office.

Voter Perception

During the course of this analysis, there was no time available to engage with voters on their perception of public financing programs and the LPFA in particular. The Public Ethics Commission way wish to engage with voters in a town hall meeting or via a survey in order to solicit their feedback.

Grade

The fact that more candidates are audited than were in the past is good; however this group of candidates is very small. Further, the audit process has an incredibly slow turn-around time, and it is unlikely the public is paying attention.

However, because audits are performed, and they may at least deter some participating candidates from breaking the rules, the LPFA will receive a **D** for Criterion 5. The audit has the potential to have a larger impact if scaled up, and communicated more vigorously to the voters.

Participation

Criterion 6: Increase Voter Participation

“...all individuals...have a fair and equal opportunity to participate in elective...processes...”

The councilmembers who originally passed the LPFA were concerned as to whether or not it might increase voter participation. Advocates of public financing believe that increased funding allows candidates to engage more voters, and ultimately bring them to the polls on Election Day.

Voter Participation has Not Increased due to LPFA

Oakland’s District City Councilmembers are elected to staggered four-year terms, every two years. Seats 1, 3, 5, and 7 are elected on presidential years, and Seats 2, 4, and 6 are elected on midterm years. However, their elections are not always on the November ballots. The number of council races, the number of open-seats, and whether the races are on a November presidential or midterm ballot all affect voter turnout.

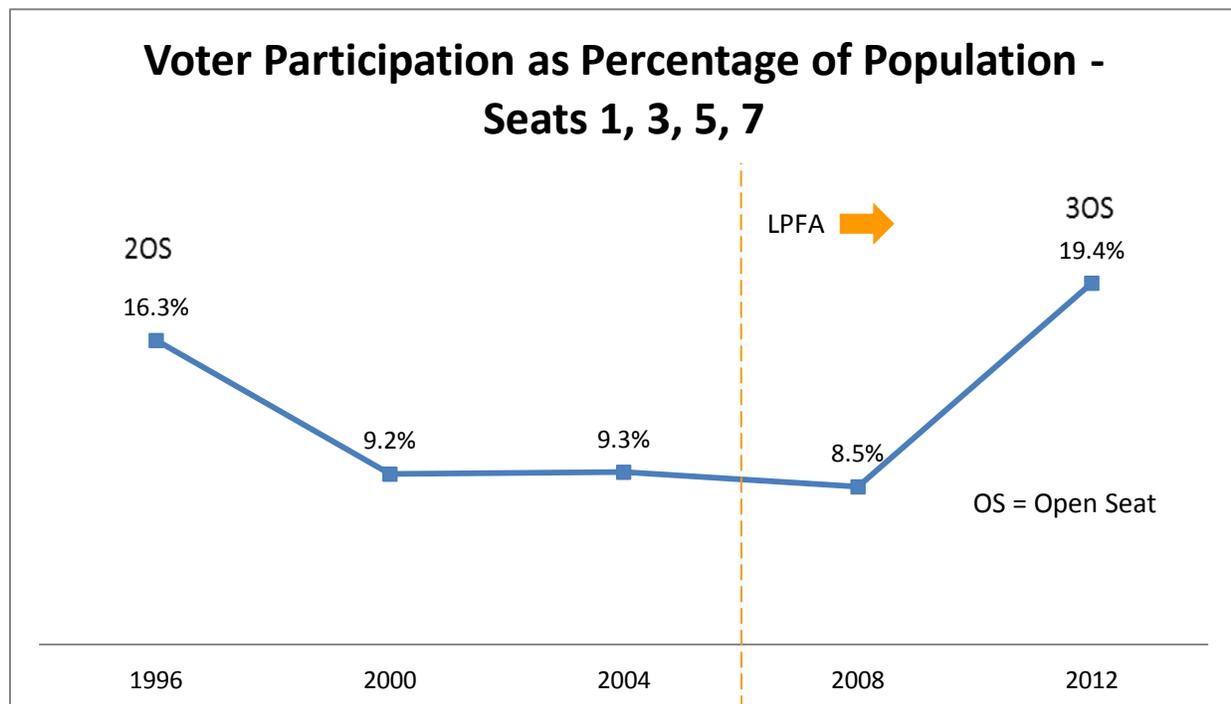


Figure 9

Unfortunately, for District City Council Seats 1, 3, 5, and 7, public funding has only been available for two elections. This is because the program was temporarily suspended in 2004. From the data in Figure 10, it appears that voter participation hovered around 9% when no seats were open. However, there was a spike in participation in '96 and '12, when two and three seats were open respectively. Further, in '00, '04, and '08, contests were decided in primary elections in the late spring or early summer, meaning these races had lower participation rates due to not being on the November ballot. The '96 and '12 races both appeared on the November ballot, which likely contributed to their increased participation.

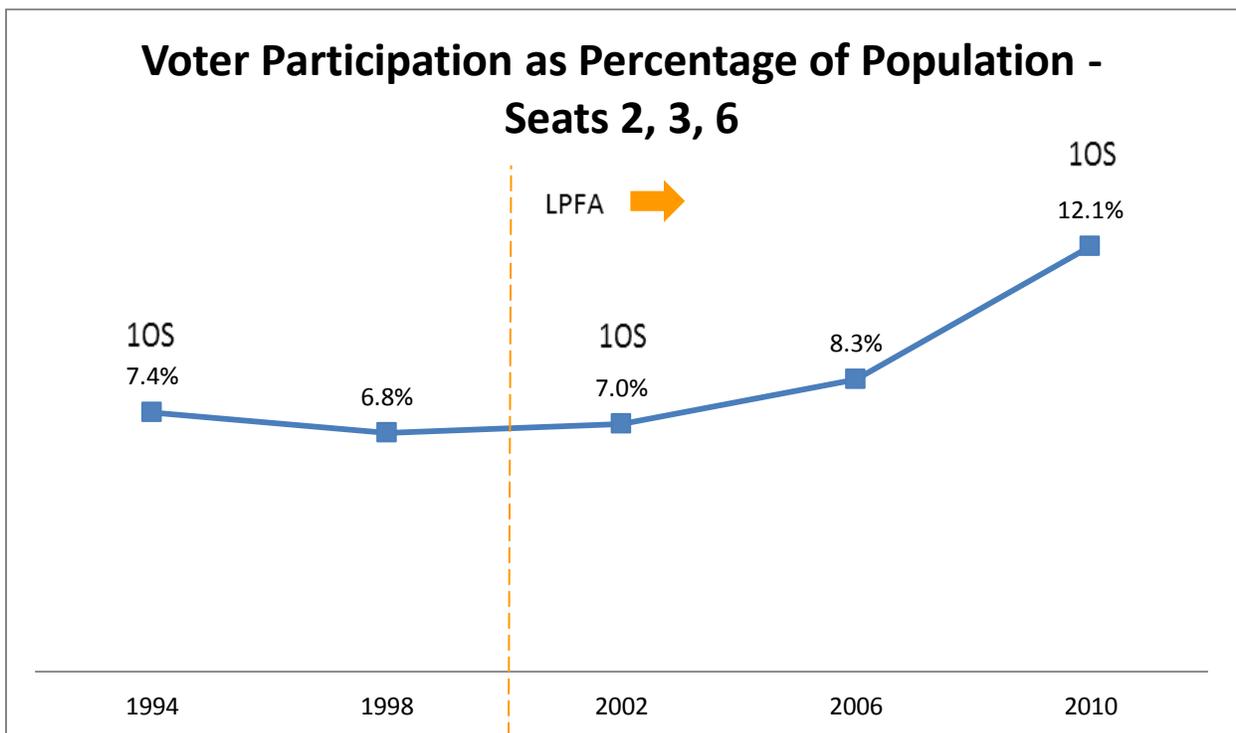


Figure 10

Districts 2, 3, and 6 consistently saw lower rates of participation, likely due to the fact that these elections were held in non-presidential years, and because only three seats were up for grabs. The graph does suggest a trend of increasing participation post-LPFA. In '94 and '98, the elections were decided during primary season, and thus these seats were not on the November ballot. '02 and '06 saw one seat each appear on the November ballot, leading to a slight increase in participation. Since the elimination of primaries with the adoption of Ranked Choice Voting, all city council races now appear on the November ballot, which is likely responsible for the significant increase in participation.

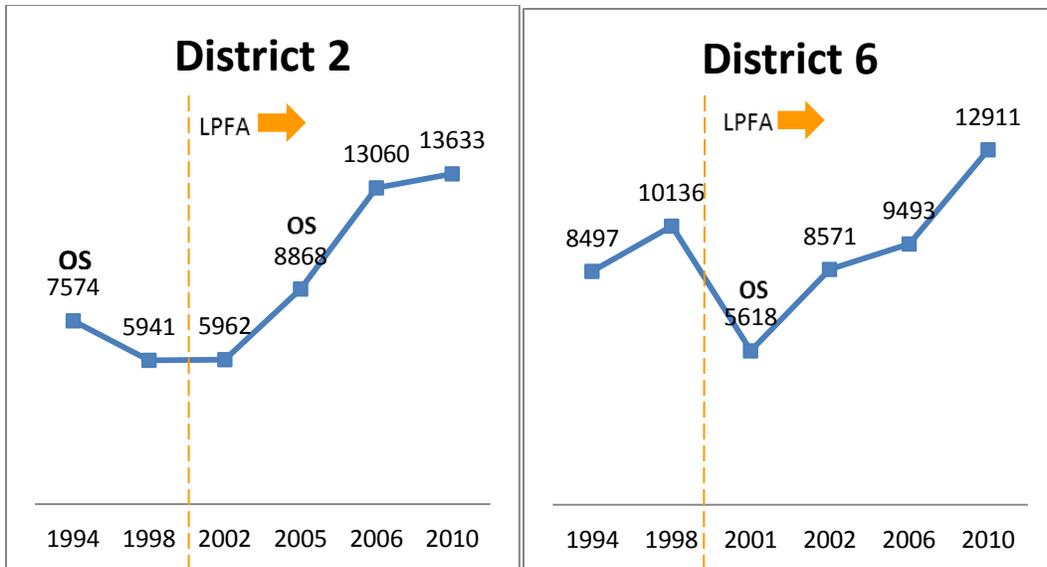


Figure 11

Districts 2 and 6 are examined independently as they each had a special election post-LPFA, in 2005 and 2001 respectively.

District 2 has seen a steady rise in participation post-LPFA, however that rise can be explained for reasons other than the LPFA. In '05, the district had an open-seat race in which nine candidates participated. In '06, it had another hotly contested race that carried over onto the November ballot. However, it should be noted that the challenger in that race received the most money in public funds in LPFA's history. In '10, the race was also featured on the November ballot, though it was not as contested as before.

District 6 presents a mixed picture. Its three elections immediately following the availability of public financing saw less participation than at least one of the races pre-LPFA. However, there was a spike in 2010 perhaps coinciding with Ranked Choice Voting and its appearance on the ballot.

Interviews

The majority of candidates interviewed believed that their candidacy brought new and/or infrequent voters to the polls. Challengers, especially, talked of campaigning in neighborhoods with low voting rates in their attempts to activate new voters. However, both candidates who accepted and declined public financing made these claims. One candidate predicted that turnout in '12 was so high because President Obama shared the ballot.

Grade

There is little evidence that voter participation has increased post-LPFA. While public dollars may “purchase” voters, it is possible that candidates are competing with total dollars over a pre-existing pool of frequent voters. Even if some new voters are being activated, the public subsidy is so low that an effect is unlikely to register. Other factors appear to contribute more to voter turnout.

The LPFA will receive an **F** for Criterion 6.

Criterion 7: Increase Candidate Participation

“...all individuals...have a fair and equal opportunity to participate in elective...processes...”

If the availability of public funding leads to more candidates running for office, then it is possible races are becoming more competitive, more qualified candidates are pursuing office, and that voters are given greater choice.

Candidate Participation has Not Increased Due to LPFA

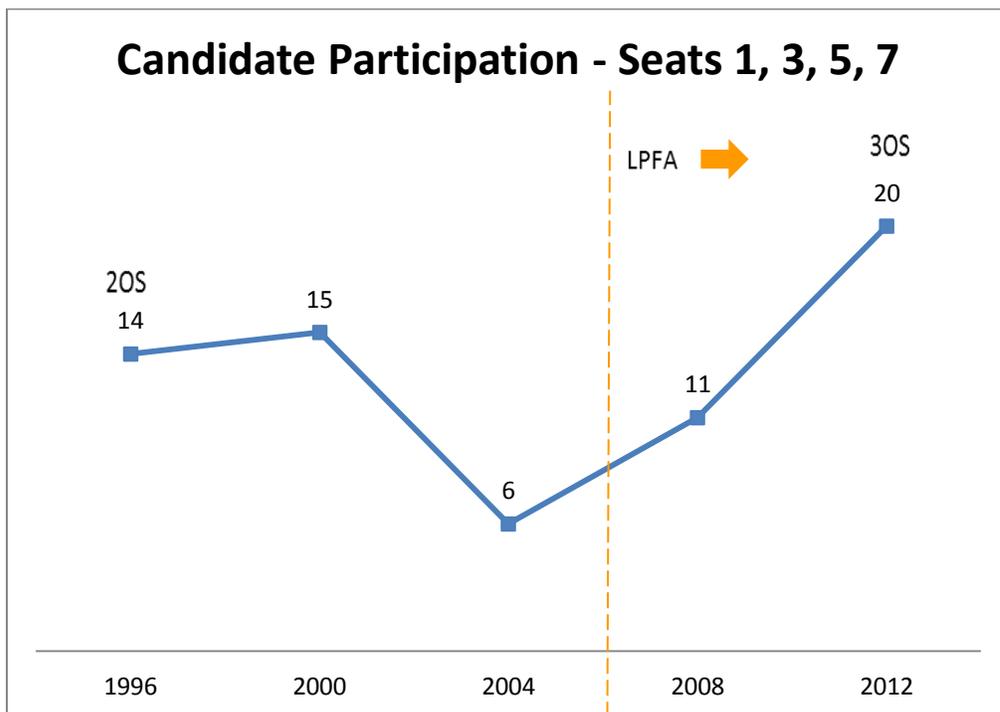


Figure 12

The number of candidates that participate in a given election appears to be based on the number of open-seat races, with the exception of '00, which saw high participation despite no open seats. This graph shows no pattern as the elections

with the 2nd or 3rd highest number of candidates both occurred prior to LPFA. It is likely '12 saw an increase in candidates due to the number of open-seats and the novelty of ranked choice voting.

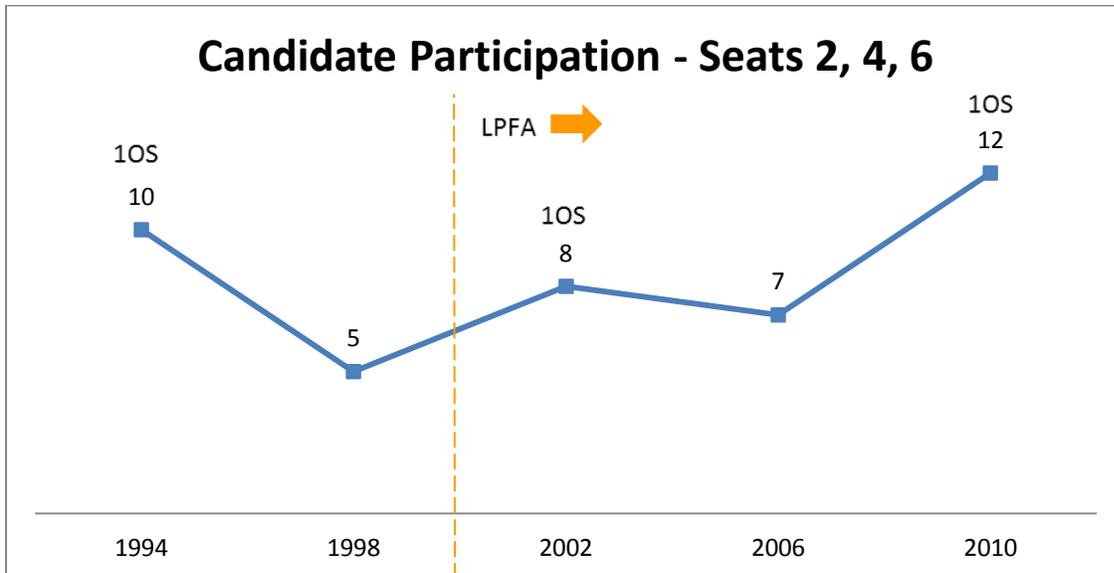


Figure 13

An analysis of the elections for Districts 2, 4, and 6 tell a similar story. Candidate participation was highest in those years in which there was an open-seat race. The high participation in '10 may be due to ranked choice voting, although only two more candidates participated this year than in '94.

There is no real evidence more candidates are running post-LPFA.

Availability of Public Funds does Not Influence Decision to Pursue Office

Of the candidates interviewed, none made the decision to run on the basis of public fund availability. Only one candidate indicated that public funds may have influenced her decision to run, and that is likely because the individual allocations were higher than average that cycle.

Grade

There is no evidence that the LPFA has led more candidates to pursue office. The LPFA will receive an **F** for Criterion 7.

Feasibility

Criterion 8: Incentive to Utilize Program

Increasing the number of candidates who participate in the LPFA program has been a persistent concern of the Public Ethics Commission. Underutilization may be a sign that the program is not achieving its intended purpose.

Underutilization might also follow from poor advertisement, and thus, even though the program is working, it is not achieving its maximum potential because participation rates are too low.

How many candidates take advantage of LPFA?

Since the LPFA's implementation in 2001, approx. 45% of candidates seeking election to one of Oakland's District City Council seats have accepted public funding. This average, however, is a little misleading as utilization slumped with time. The average utilization for '08, '10, and '12 was 33%.

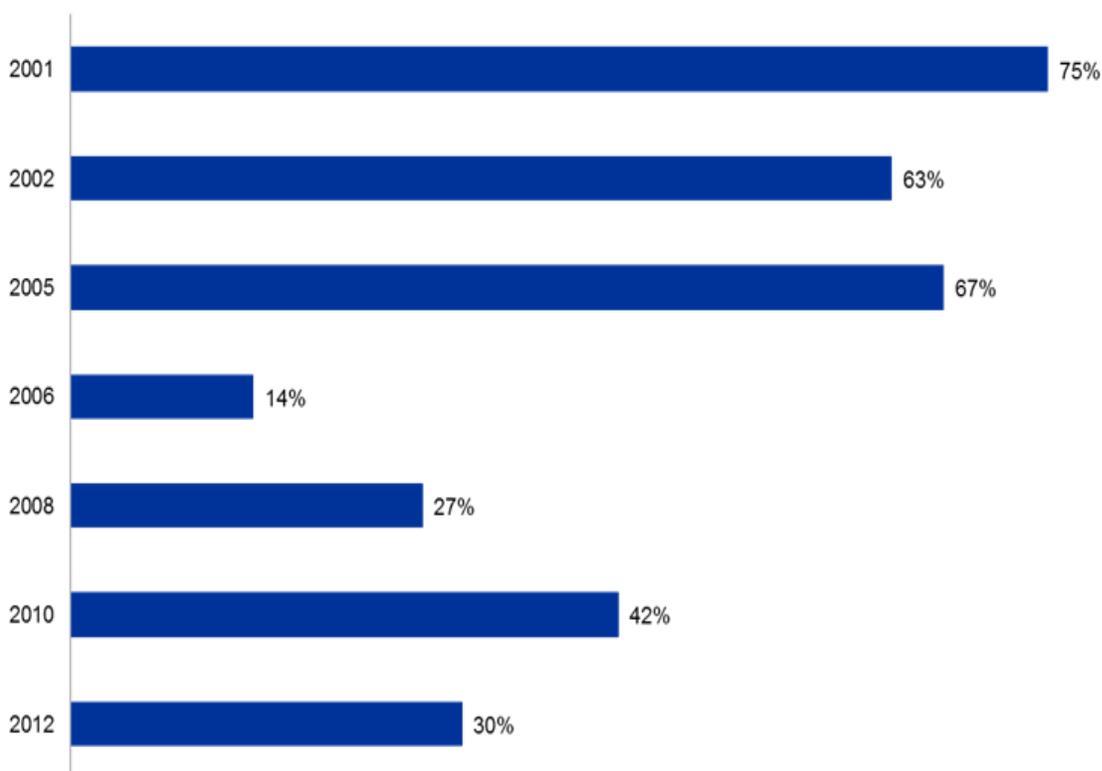


Figure 14

Further, the majority of publically financed candidates, 69%, ran in open-seat elections.

What aspects of the LPFA deter candidates from accepting public funds?

According to interviews, the main reasons candidates elect to decline public funds are:

- The mandatory audit
- Lack of information
- 10% personal contribution limit
- Uncertainty
- Limited funding

Every candidate who accepts public funding must submit to an audit. There is a perception amongst the candidates that the audit is a costly and dangerous process that may outweigh the benefits of public funds. Candidates expect the audit to turn up a violation, and they fear the bad press. Further the audit may be performed months after the date of the election. Two candidates suggested that the auditing process was used to impede their campaigns. Finally, some candidates think their volunteer treasurers do not have the necessary experience to prepare for the audit, and the cost of hiring an experienced treasurer would exceed the cost of public funds received. Other candidates argued in favor of the audit, suggesting some candidates exaggerate the costs of compliance. Regardless of the reality, the audit is a definite deterrent.

Further, many candidates did not accept public funding because they did not fully understand the program. A few candidates had contributed more than the 10% maximum to their campaigns before they knew this would disqualify them for public funds. These candidates claimed that if they had known better, they would not have surpassed the 10% personal contribution limit.

A few other candidates knowingly violated the 10% limit, believing that they could comfortably donate more to their campaigns than they could receive in public funds. These candidates might have participated in the program if the personal contribution limit was a little higher.

Other candidates felt too much uncertainty regarding the amount of public dollars that would be available to them, and when and whether they would receive their reimbursements. They perceived participation in the program as a risk not worth taking.

Finally, there is the issue of funding itself. The amount of public funds disbursed per candidate in 2012 was approx. \$8,500, only about 7% of the expenditure limit, 23% less than the legal maximum. In 2010, candidates were eligible to receive 14% of the expenditure limit, and 16% in 2008. If candidates were able to receive funds closer to the legal limit, utilization would likely increase despite the other deterrents. Under such a scenario, the benefits received would more clearly outweigh the transaction costs of participation.

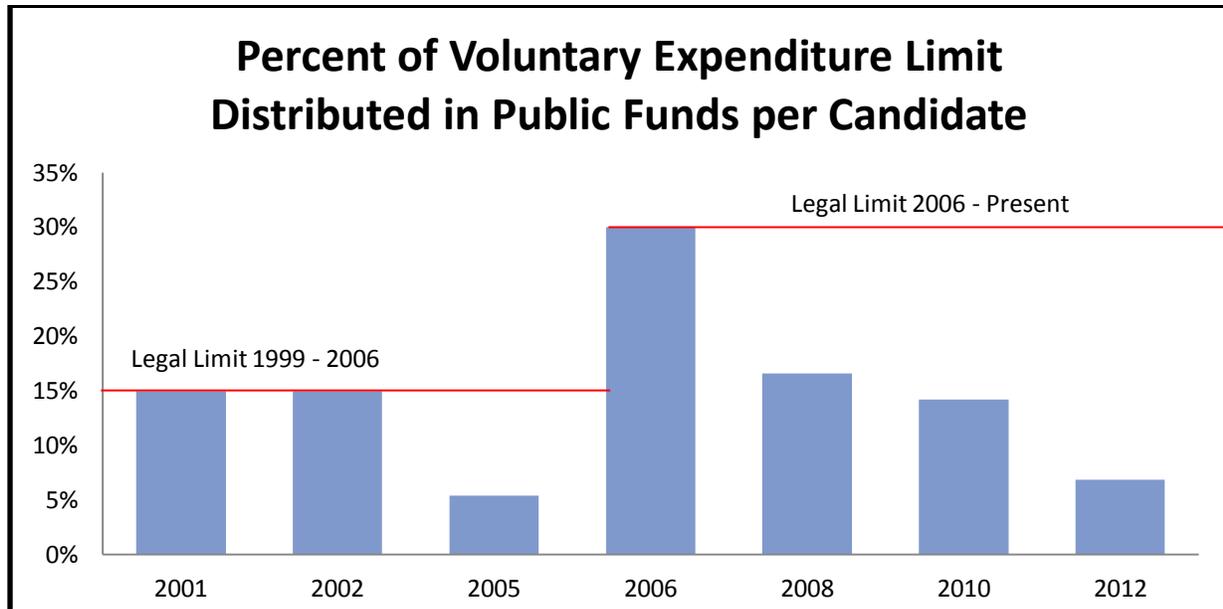


Figure 15

Grade

Because LPFA utilization has been 33% over the past 3 Elections, less than ½ of all candidates, the program will receive a **C** for Criterion 8. Fifty percent utilization and greater would be awarded a B, and 75% utilization or greater would be awarded an A.

Criterion 9: Low Cost

Another persistent concern of the Public Ethics Commission over the years has been cost. One of the main motivations for changing the LPFA from a matching fund program into a reimbursement program was to reduce high administrative costs.

The price tag of the program increased in relevancy over the past two years, as the Public Ethics Commission recently underwent a 43% budget cut and suffered the loss of a full-time employee (Barazoto, 2011).

The LPFA has a Low Administrative Cost

An average of \$38,784.91 has been disbursed per election since the implementation of the LPFA.

In 2012, Public Ethics Commission staff spent a total of 520 hours administering the program over a period of 5 months. 320 hours were part-time work at \$27.39 an hour, and 200 hours were performed by a salaried employee. The total estimated cost of this time in wages was \$18,564.80.

This analysis was unable to ascertain an estimate for the average cost of an audit, but this figure should be added to the administrative costs of the program, for each candidate audited.

Thus, the average cost of the LPFA, as a reimbursement program, should be between \$55,000 - \$75,000 per cycle, if present trends continue. The range takes into account the variation distributed funds per cycle.

It should be noted that administrative costs have decreased dramatically for PEC staff since the LPFA became a reimbursement program.

In 2008, the last year of the matching fund program, the PEC processed about 325 individual checks, of \$100 dollars or less in order to confirm:

- 1) **“Did the signature match the printed name on the check?**
- 2) **Was the written date within the 180-day eligibility period?**
- 3) **Was the contribution made from a source located in the City of Oakland?**
- 4) **Had the Commission already matched more than \$100 from that particular contributor?**
- 5) **Did the candidate identify the occupation and employer of each contributor giving \$100 or more?**
- 6) **Could the contribution be aggregated with any previously matched contribution? (Purnell D. , 2008)”**

This intensive review constituted a significant amount of staff hours. If the matching program had continued, the PEC would have had to conduct a similar review of 760 checks in 2010 and 500 checks in 2012. Instead, in 2012, the PEC reviewed a total of 37 checks for reimbursement, and 92.6% decrease.

Score

At less than \$100,000 a year, the LPFA is a relatively cheap public financing program. Though San Francisco Board of Supervisor races are more expensive, the San Francisco Ethics Commission distributed \$1.2 million in public funds to BOS

candidates in 2012 (Shaikh, 2012), and this figure does not include the administrative costs of certifying contributions to receive matching funds.

The LPFA will receive an **A** for Criterion 9, as it is relatively inexpensive for a public-financing program.

LPFA Evaluation – Summary

Table 7

Criteria	Score
C1: Dilute Influence Large Contributors	F
C2: Reduce Pressure Fundraise	F
C3: Increase Electoral Competition	B
C4: Increase Interaction Candidates Voters	C
C5: Reduce Perception Corruption	D
C6: Increase Voter Participation	F
C7: Increase Candidate Participation	F
C8: Incentive Utilize Program	C
C9: Low Cost	A

The LPFA scores moderately well in terms of increasing electoral competition and increasing interaction between candidates and voters. It has been utilized by around 33% of candidates in the most recent elections, and is a relatively low cost program.

There is no evidence that it dilutes the influence of large contributors, reduces the pressure to fundraise, or increases voter or candidate participation.

The City of Oakland might better achieve the goals of the LPFA by means addressed in the following section.

Recommendations

Given the complexity of the LPFA and its implementation, as well as political and cost concerns that will invariably affect the policy maker’s ultimate decision, this report provides 4 recommendation packages, each more ambitious than the last. Policy makers may decide which one is the most desirable in the current climate.

The description of each package below includes a bulleted summary of its recommendations, a table detailing how each recommendation is expected to alter the effectiveness of the LPFA, and finally, a detailed analysis of each recommendation.

Package 1 – Process Improvements

- Font-load Information Campaign
 - o Verbally check in with each candidate regarding the LPFA during the Nominating Period Phase.
 - o Offer LPFA training seminars during the Nominating Period Phase
- Improve Reimbursement Turn-around Time
- Implement Deadline to File LPFA Forms 2 and 3 in mid-September, and determine ultimate allocation shares based on the number of candidates who meet this deadline.

Table 8

Criteria	Form 2/3 Deadline	Reimbursement Turn-Around	Info Campaign
C2: Reduce Pressure Fundraise	?	N/A	N/A
C3: Increase Electoral Competition	↑	N/A	N/A
C4: Increase Interaction Candidates Voters	↑	↑	N/A
C5: Reduce Perception Corruption	?	N/A	N/A
C6: Increase Voter Participation	?	N/A	N/A
C8: Incentive to Utilize Program	↑	↑	↑
C9: Cost	↑	N/A	N/A

Front-load Information Campaign

Some candidates did not utilize public funds because they were simply uninformed regarding the program, and exceeded the personal contribution limit before understanding that such a limitation existed. Or, on the other hand, candidates felt

too overwhelmed post-nomination to fill out all the paperwork and attend the mandatory training.

In order to address this issue, PEC staff should front-load their information campaign into the Nominating Period Phase, from July – August. Currently, PEC staff includes an introductory handout to the LPFA in the nominating packet that the City Clerk’s Office distributes to all candidates. Given that an average of 10 candidates have run per election, for District City Council, it would not take long for PEC staff to personally call each candidate to ensure that they have read the introductory handout and that they understand it.

PEC staff should also offer the mandatory training seminar during this time for candidates who are certain that they want to accept public funds, and are interested in attending training while campaign activity is relatively low.

Further, pushing the administrative schedule forward a little, would lessen the intensity of the Nominating Period Phase, and likely ensure that candidates are more prepared to file their paperwork accurately and in a timely manner.

Reimbursement Turn-around Time

The City can potentially increase candidate utilization, and interaction between candidates and voters by ensuring there is a faster turn-around on reimbursement requests.

In 2012, the average wait time for a reimbursement was 15 work days. The shortest turn-around was 2 work days, and the longest was 31 work days. Further, 2 reimbursement requests filed in October, were not reimbursed until after the election.

The long wait and potential uncertainty surrounding reimbursements makes it difficult for candidates to plan expenditures around the availability of public funds, and as a result, they may not expend as much as they would have otherwise.

The Ethics Commission should consider finding ways to shorten the time it takes for a reimbursement to be approved and deposited.

LPFA Form 2/3 Deadline

The greatest flaw of the LPFA since its implementation has been the manner in which public funds have been prorated and disbursed to participating candidates. Every cycle, significant sums of money in the Election Campaign Fund go unspent, even though only one candidate in history has been eligible to receive the 30% maximum subsidy.

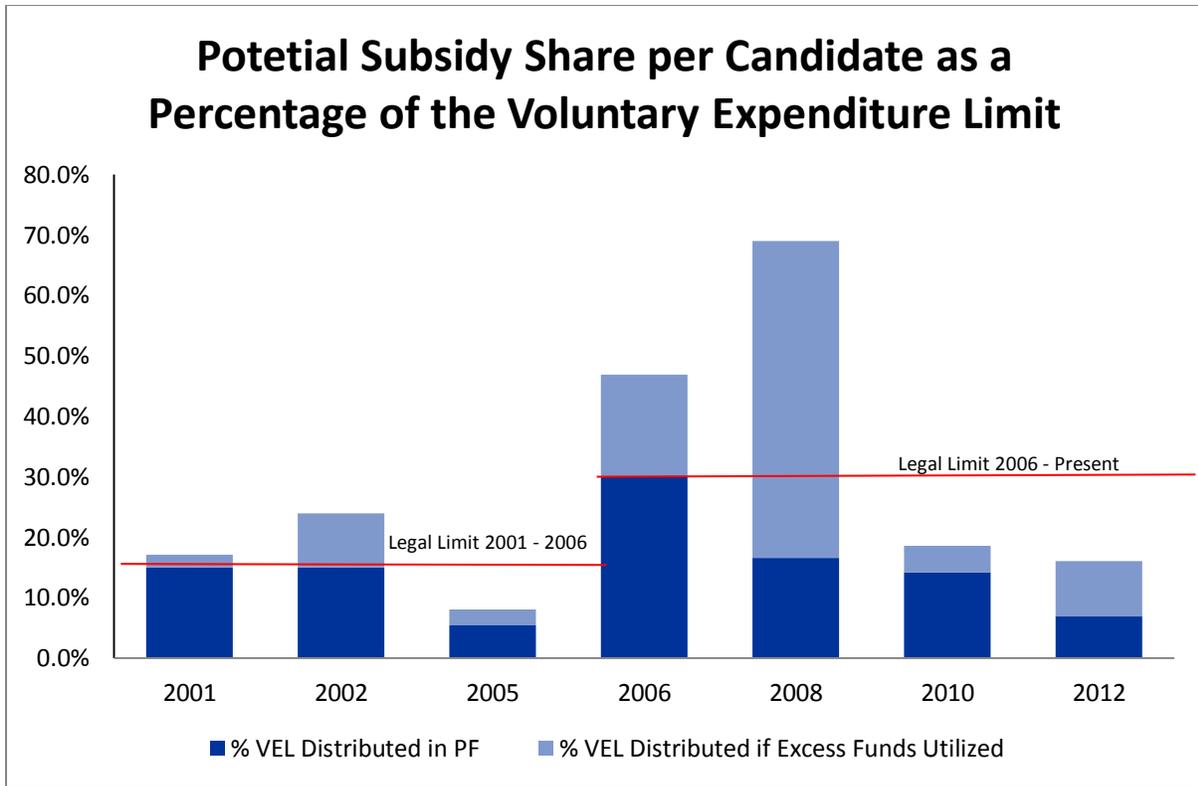


Figure 16

In 4 elections, candidates could have legally received more public dollars than they were allocated. In '08, the 3 participating candidates could have received the maximum subsidy, and still left over 50% of total funds in the ECF unutilized. In '12, candidates could have increased their subsidy by 57%, from \$8,552.92 per candidate to \$19,956.83 per candidate. Figure 19 indicates the total funds in the ECF each cycle, vs. the amount of funds distributed to candidates.

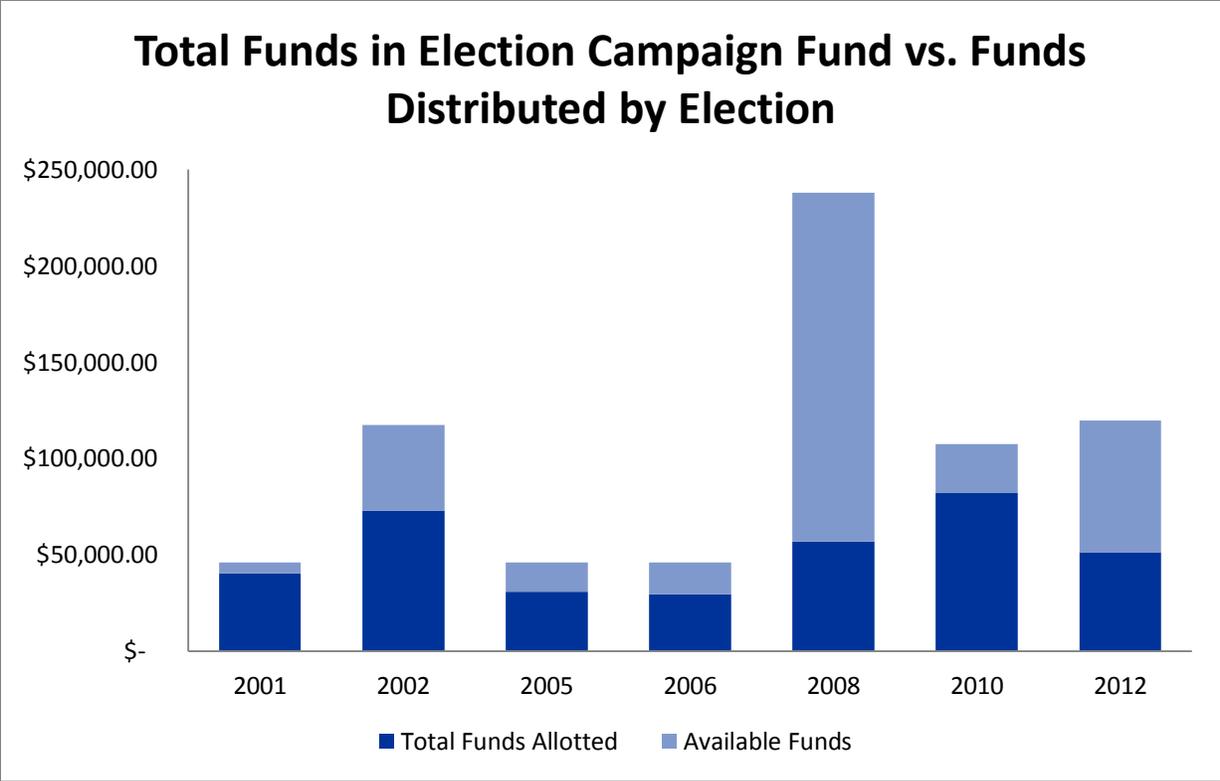


Figure 17

The reason that so many funds go undistributed each cycle is due to the formula for determining candidate allocations. From 2001 – 2008, candidate shares were allocated based on the number of candidates eligible to receive public dollars, rather than the number of candidates who apply. This is because, before 2010, candidates could apply for funds up until Election Day. Thus, in 2008, allocations were determined by dividing the total funds in the ECF by the 11 candidates pursuing office, rather than the 3 who ultimately participated in the program.

In 2010, the PEC attempted to address this issue by requiring candidates to make an irrevocable decision as to whether or not they would participate in the program. Candidates must do so by submitting LPFA Form 1 within 14 days after they are certified to appear on the ballot. Then public funding shares are allocated on the basis of the number of candidates who declare their intent to participate.

However, this did not fully resolve the issue. In 2010, and 2012, candidates stated that they would participate in the program, but never filed claims for reimbursement. This was especially problematic in 2012, when 14 candidates indicated they would accept public dollars, but only 6 filed for reimbursement.

The City can attempt to resolve this problem by requiring a deadline to file LPFA Form 2 and the first LPFA Form 3. LPFA Form 2 proves that the candidate is eligible to receive public funds by demonstrating that he or she has met the 5% entry threshold, and LPFA Form 3 is used to claim reimbursement. Candidate allocations can then be allocated based on the number of candidates who meet this deadline, and are, in fact, certified to receive reimbursement. This will ensure that no funds go unallocated.

Given the tight and busy campaign schedule, this deadline should be early in the Reimbursement Period Phase, mid-September if it is a November election, so that it follows the busy Post-Nomination Phase in August. The requirement to prove that the 5% entry threshold has been met, and to file for an initial reimbursement of \$1,000 should not overly burden candidates. By September of 2102, all publically financed candidates had raised and expended significant sums of money.

By simply implementing a deadline for LPFA Forms 2 and 3, the City can significantly increase the public subsidy each candidate is eligible to receive. This should lead to increased competitiveness, and increased interaction between candidates and voters. Increased shares would also boost utilization, increasing the percentage of total candidates that receive an audit, and the additional dollars may lead to increased voter turnout. However, if the City Council desires that the Election Campaign Fund contains at least \$120,000 per cycle, total costs of the program can increase up to 60%

Package 2 – Process Improvements + Community Engagement

- Package 1 Recommendations
- Require Participating Candidates to Attend a, “Clean Campaign Debate.”
 - o The Public Ethics Commission can organize, promote, and manage the debate in order to build stronger ties with the community.
 - o The Public Ethics Commission internship team can be in charge of the debate as a reward for their hard work.

Table 9

Criteria	Form 2/3 Deadline	Reimbursement Turn-Around	Info Campaign	Debate
C2: Reduce Pressure Fundraise	?	N/A	N/A	N/A
C3: Increase Electoral Competition	↑	N/A	N/A	N/A
C4: Increase Interaction Candidates Voters	↑	↑	N/A	↑
C5: Reduce Perception Corruption	?	N/A	N/A	N/A
C6: Increase Voter Participation	?	N/A	N/A	N/A
C8: Incentive to Utilize Program	↑	↑	↑	↑
C9: Cost	↑	N/A	N/A	↑

Mandatory Debates

Other interviewees proposed requiring that candidates attend debates as a stipulation of receiving public funds. Arguably, this would promote interaction between the candidates and voters in a cost-effective manner

New York, Los Angeles, and San Francisco all require public fund recipients to attend at least one debate during their campaigns.

If legally permissible, the Public Ethics Commission should organize, promote, and host a debate for all the publically funded candidates, called the, “Clean Campaign Debate.” This event would simultaneously promote publically funded candidates, the LPFA itself, and Oakland’s Public Ethics Commission, which seeks to build closer ties to the community.

Social media and the internship program may be utilized in order to keep costs low. The opportunity to organize a City Council debate would constitute a positive learning experience for interns and serve as an incentive to work for the Ethics Commission on more tedious matters, such as reviewing reimbursement claims.

Package 3 – Process Improvements + Community Engagement + Increased Funding

- Package 1 Recommendations
- Package 2 Recommendations
- Fund the ECF at least \$250,000 per election cycle.

Table 10

Criteria	Form 2/3 Deadline	Reimburse Period	Info Campaign	Debate	Increase Funding
C1: Dilute Influence Large Contributors	N/A	N/A	N/A	N/A	?
C2: Reduce Pressure Fundraise	?	N/A	N/A	N/A	?
C3: Increase Electoral Competition	↑	N/A	N/A	N/A	↑
C4: Increase Interaction Candidates Voters	↑	↑	N/A	↑	↑
C5: Reduce Perception Corruption	?	N/A	N/A	N/A	↑
C6: Increase Voter Participation	?	N/A	N/A	N/A	?
C7: Increase Candidate Participation	?	N/A	N/A	N/A	?
C8: Incentive Utilize Program	↑	↑	↑	↑	↑
C9: Cost	↑	N/A	N/A	↑	↑

Increase Funding

The City should also consider increasing appropriations to the Election Campaign Fund, so that participating candidates are more likely to receive the maximum subsidy under the law.

More funding will improve the effectiveness of the program across the board, especially if candidates receive the 30% maximum which is equivalent to approx. \$35,000. While this figure constitutes only 30% of the expenditure limit, it constitutes almost 50% of the average campaign expenditures of victorious candidates, and thus should significantly increase completion. Many more candidates will utilize the program as well, if they know such a large subsidy is available, despite the unpopular audit.

Table 11 – Amount of Funds Necessary to Fund Participating Candidates at the 15%, 20%, 25%, and 30% Expenditure Levels

Year	Participants	15	20	25	30
2001	3	\$ 40,500.00	\$ 54,000.00	\$ 67,500.00	\$ 81,000.00
2002	5	\$ 72,987.00	\$ 97,316.00	\$ 121,645.00	\$ 145,974.00
2005	6	\$ 85,650.00	\$ 114,200.00	\$ 142,750.00	\$ 171,300.00
2006	1	\$ 14,780.77	\$ 19,707.69	\$ 24,634.62	\$ 29,561.54
2008	3	\$ 52,800.00	\$ 70,400.00	\$ 88,000.00	\$ 105,600.00
2010	5	\$ 84,300.00	\$ 112,400.00	\$ 140,500.00	\$ 168,600.00
2012	6	\$ 105,450.00	\$ 140,600.00	\$ 175,750.00	\$ 210,900.00

< \$100,000
 \$100,000 - \$150,000
 \$150,000 - \$200,000
 \$200,000 - \$250,000

Table 17 demonstrates that if the Election Campaign Fund contained at least \$250,000 per cycle, every participating candidate in the past 7 elections would have been eligible for the 30% maximum subsidy. At \$200,000, every participating candidate would have been eligible for the maximum subsidy, save those candidates who participated in 2012, although they would have still received over 25% of the expenditure limit.

Of course, if there are more funds available, candidate participation in the program should rise, though it is unclear by how much, as there has been no correlation between the ECF funds and the number of participating candidates to date. However, even if candidate participation increases, \$250,000 per cycle should still be able to fund these candidates at between 15 – 20% of the expenditure limit, which is still a marked improvement over the current system.

Table 12 – Amount of Funds Necessary to Fund All Candidates at the 15%, 20%, 25%, and 30% Expenditure Levels

Year	Candidates	15	20	25	30
2001	4	\$ 54,000.00	\$ 72,000.00	\$ 90,000.00	\$ 108,000.00
2002	8	\$ 116,063.34	\$ 154,751.12	\$ 193,438.90	\$ 232,126.68
2005	9	\$ 128,475.00	\$ 171,300.00	\$ 214,125.00	\$ 256,950.00
2006	7	\$ 103,465.39	\$ 137,953.85	\$ 172,442.32	\$ 206,930.78
2008	11	\$ 192,450.00	\$ 256,600.00	\$ 320,750.00	\$ 384,900.00
2010	12	\$ 205,500.00	\$ 274,000.00	\$ 342,500.00	\$ 411,000.00
2012	20	\$ 307,350.00	\$ 409,800.00	\$ 512,250.00	\$ 614,700.00

< \$100,000
 \$100,000 - \$150,000
 \$150,000 - \$200,000
 \$200,000 - \$250,000

Table 18 demonstrates the level of funding required to provide every candidate that ran in the past 7 elections with the maximum subsidy. Even if every candidate applied for public funds, which is an unlikely event, \$250,000 would have still funded all candidates at least 15% of the voluntary expenditure limit in 6 out of 7 elections.

Of course, in order to this alternative to be successful, it must be coupled with setting a deadline to file for reimbursement, in order to ensure that all funds in the Election Campaign Fund are utilized.

Package 4 – Process Improvements + Community Engagement + Increased Funding + OCRA

- Package 1 Recommendations
- Package 2 Recommendations
- Package 3 Recommendations
- Lower OCRA’s voluntary expenditure limits by \$10,000 - \$15,000 per cycle until candidates being to opt out of the program, and then re-evaluate.

Table 13

Criteria	Form 2/3 Deadline	Reimburse Period	Info Campaign	Debate	Increase Funding	OCRA
C1: Dilute Influence Large Contributors	N/A	N/A	N/A	N/A	?	↑
C2: Reduce Pressure Fundraise	?	N/A	N/A	N/A	?	↑
C3: Increase Electoral Competition	↑	N/A	N/A	N/A	↑	?
C4: Increase Interaction Candidates Voters	↑	↑	N/A	↑	↑	N/A
C5: Reduce Perception Corruption	?	N/A	N/A	N/A	↑	↑
C6: Increase Voter Participation	?	N/A	N/A	N/A	?	N/A
C7: Increase Candidate Participation	?	N/A	N/A	N/A	?	N/A
C8: Incentive Utilize Program	↑	↑	↑	↑	↑	↓
C9: Cost	↑	N/A	N/A	↑	↑	N/A

Strengthen OCRA

As mentioned previously, OCRA was passed into law along with the LPFA in 1999. Both ordinances have the same goals, but take different approaches in their effort to achieve those goals. OCRA attempts to reduce the power of special interests, and increase electoral competition by setting contribution and expenditure limits for candidates pursuing local office.

In an analysis of 26 states, it was demonstrated that the lower the contribution limits, the more competitive the election. Further, states with a combination of public financing and contribution limits saw a decline in incumbent margin of victory (Stratmann, Torres-Spelliscy, & Williams, 2009). There is also a significant correlation between contribution limits and contestedness (Hamm & Hoan, 2008).

The evidence suggests that OCRA's contribution limits may be part of the reason why Oakland District City Council races have become more competitive in the last decade. However, it also suggests that contribution limits and public funding may best work in conjunction. By setting expenditure and contribution limits, OCRA constrains the influence of big contributors.

However, some, although appreciative of OCRA, question the effectiveness of its limits. Since its adoption, 100% of District City Council candidates have agreed to abide by OCRA's expenditure limits in order to utilize its more generous contribution limits. Further, there is no evidence that any candidate exceeded the expenditure limit. Most candidates, even those that won their races, indicated that they did not fear encroaching on the limit. Further, candidates did not perceive the \$700 personal contribution limit as too restrictive, as only a few donors indicated a desire to exceed that limit. Finally, no candidate felt that OCRA's expenditure limits were too low, but only a couple suggested they were too high.

The fact that OCRA is universally utilized may be a sign that its limitations are not limiting in the context of Oakland District City Council races. Thus strengthening OCRA would necessitate lowering expenditure ceilings, perhaps by \$30,000 or \$40,000 just to come in line with the average cost of winning a District City Council seat in Oakland, approx. \$80,000. This report recommends that the council lower the expenditure limit incrementally by cycle, and reevaluate once candidates begin to opt out of, or seriously challenge, the ordinance. Oakland can only gain with lower expenditure limits, and politicians will likely refuse to publicly challenge this action until it becomes too burdensome, by which point the City will have made large advances in campaign finance reform.

Conclusion

The future Oakland's Limited Public Financing Act is ultimately in the hands of the policy makers in the Public Ethics Commission and City Council, and the constituents. The political climate and city priorities are ever shifting, so this analysis has presented four packages of varying complexity from which policy makers may select.

However, it is the belief of the author that each package is ultimately a conservative option. None recommend an overhaul of the program, a shift to the costly, yet popular, matching fund formula, nor do they address the sources of funding, i.e. taxation. The packages constitute a realistic, incremental approach to improving city government that responds to real world evidence, and is in line with the City's treatment of the LPFA in the past.

The author believes, therefore, that Package 4 should be adopted and implemented, and that this is a realistic, manageable request. Increasing appropriations to the Election Campaign Fund and reducing the expenditure limits in the Oakland Campaign Reform Act will encounter the most resistance, but will likely be popular with the public and key interest groups. Further, oppositional political actors will be hesitant to publicly challenge reducing expenditure limits for fear of appearing self-serving.

Study after study have demonstrated that robust public financing programs coupled with meaningful expenditure and contribution limits make political races more competitive. If Oakland is serious about achieving the goals laid out in the LPFA, it must increase funding to the program and tighten expenditure limits.

Appendix A: Other Alternatives Considered

The following are other alternatives this analysis considered, but for varying reasons, ultimately did not recommended.

Repeal LPFA

While the LPFA has its weaknesses, it still serves to increase competition for District City Council seats at a relatively low cost. Simply repealing the program, without adopting a replacement, of some form, to address its goals, would result in a small loss to the City of Oakland, without the potential to save much government money.

Table 14

Criteria	Repeal
C1: Dilute Influence Large Contributors	
C2: Reduce Pressure Fundraise	
C3: Increase Electoral Competition	↓
C4: Increase Interaction Candidates Voters	↓
C5: Reduce Perception Corruption	↓
C6: Increase Voter Participation	
C7: Increase Candidate Participation	
C8: Incentive Utilize Program	
C9: Admin Cost	↓

Adopt New Program Model

Models

This analysis reviewed the campaign finance programs in San Francisco, Los Angeles, and New York City in order to ascertain whether any of these varying approaches are transferable to Oakland. While these cities also offer public funds to candidates running at-large, only their city council programs are considered in this analysis.

Unlike the LPFA, the distribution of public funds in these 3 cities is based on a matching formula. San Francisco matches 2:1 the first \$50,000 raised (Shaikh, 2012); Los Angeles matches 2:1 during the primary and 4:1 during the general the first \$250 of every personal contribution (Candidate Guide: Running for Office, 2013); and New York City matches 6:1 the first \$175 of every personal contribution (New York City Campaign Finance Board, 2010).

For the reasons outlined in this paper, matching formulas are costly, especially those as generous as these jurisdictions offer. However, there is also evidence that they dilute the influence of large contributors. In a 2009 Brennan Center Study, it was found that candidates participating in New York City’s public financing program received significantly more donations of \$250 or less (Elections and Public Financing, 2009).

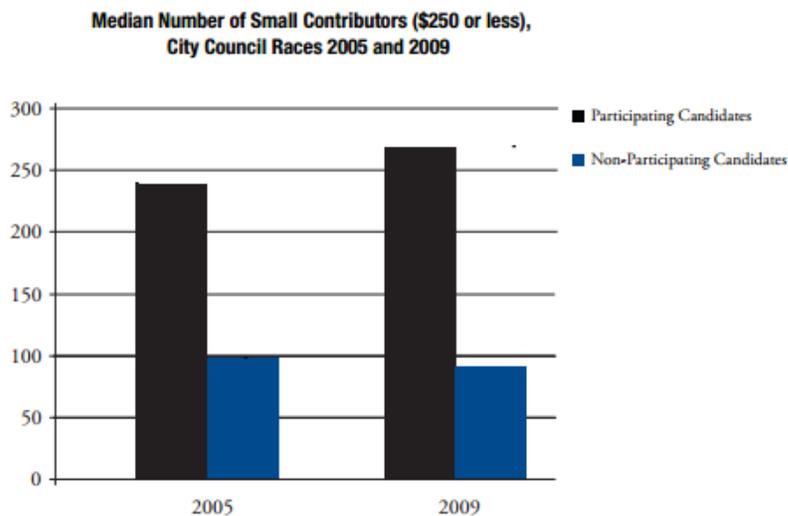


Figure 18

Further, these programs receive significantly more funding. Non-incumbent candidates in San Francisco may receive up to \$155,000 in public funds, or 62% of the expenditure limit (Shaikh, 2012). Candidates for Los Angeles City Council can receive up to \$225,000 each or approx. 25% of the city’s expenditure limit (Candidate Guide: Running for Office, 2013). City Council candidates in New York City may receive up to \$177,100, or 55% of the Voluntary Expenditure Limit (New York City Campaign Finance Board, 2010).

Because these jurisdictions sometimes allow matching fund and expenditure limits to be waived in response to high independent expenditures and/or spending above

the expenditure limit by an opposition candidate, candidates sometimes receive an even larger share of public funds.

In 2012, San Francisco distributed \$1.2 million in public dollars to its Board of Supervisor candidates (Shaikh, 2012), Los Angeles distributed \$2.8 million to its City Council candidates in 2013 (Los Angeles Public Ethics Commission, 2103), and New York City distributed \$11.4 million in 2009 (New York City Campaign Finance Board, 2013).

Finally, San Francisco utilizes a formula to fund its Election Campaign Fund (ECF) in order to remove political actors from the appropriations process. San Francisco's ECF receives \$2.75 per resident each fiscal year. The City's fund cannot, at any time, exceed \$7 million, a cap over 90% larger than Oakland's (Shaikh, 2012).

Analysis

There are clear benefits to these models. A matching fund formula, of even only 1:1 or 2:1, could potentially dilute the influence of large contributors and reduce the pressure to fundraise, though only New York City's extremely generous 6:1 ratio has been shown to do the former (Migally & Liss, 2010). However, Oakland changed its program from a matching fund in order to avoid the high administrative costs associated with reviewing and certifying individual contributions to be matched. Between 2008 and 2012, the amount of checks Oakland Ethics Commission staff had to review decreased by 92% due to the elimination of the matching fund.

Further, a matching formula would give the City less control over how public dollars are spent, which could negatively impact the perception of corruption, especially when such large funds are distributed.

A larger and more reliable source of funding for the LPFA would also likely increase competition, interaction, and candidate utilization. However, Oakland has only offered a candidate public funds equal to 30% of the expenditure limit once in its history. It is unlikely the City will begin to offer up to 55% or 62% of the limit.

Finally, Oakland's Election Campaign Fund receives approx. \$50,000 a year in appropriations. If San Francisco's \$2.75 per resident scheme were adopted, Oakland would have to appropriate over \$1 million to its fund, a 95% increase.

Table 15

Criteria	Other Program
C1: Dilute Influence Large Contributors	↑
C2: Reduce Pressure Fundraise	↑
C3: Increase Electoral Competition	↑
C4: Increase Interaction Candidates Voters	↑
C5: Reduce Perception Corruption	?
C6: Increase Voter Participation	?
C7: Increase Candidate Participation	?
C8: Incentive Utilize Program	↑
C9: Cost	↑↑↑

Audit

The mandatory audit is a major disincentive to accepting public funds, and is unpopular with candidates. Utilization might increase if the audit were done more infrequently, perhaps on a random percentage of candidates per cycle.

However, such a formula would likely open up the auditing process to more charges of corruption and malpractice, as candidates may suspect whether they were truly randomly selected.

Further, there should be some transaction costs to receiving public funds. If a candidate is receiving tax payer dollars with which to run his or her campaign, the City has a right, and perhaps a duty, to ensure that funds are properly spent.

The audit only becomes more important the more funds are allocated to the LPFA, as the incentive for malpractice will increase.

Table 16

Criteria	Audit
C5: Reduce Perception of Corruption	↓
C8: Incentive Utilize Program	↑
C9: Cost	↓

Increase Personal Contribution Limit

The Public Ethics Commission may want to consider increasing the personal contribution limit from 10% to 15 – 20%, if increasing utilization is a priority.

A handful of candidates would have participated in the program had this limit been higher. Because 15 – 20% of the Voluntary Expenditure Limit is only between \$15,000 - \$25,000 dollars, there is little risk in raising it. The purpose of the personal contribution limit is to keep wealthy candidates, who are able to comfortably self-finance their campaign, from taking advantage of public funds. It is arguable that a candidate who donates up to \$25,000 to his own campaign is not equivalent to a Michael Bloomberg.

Table 17

Criteria	Personal Contribution Limit
C8: Incentive Utilize Program	

Appendix B: Interview Questions

Topic Questions for Candidates (Accepted Public Funds)

1. How familiar are you with the Oakland Limited Public Financing Act (LPFA)? Oakland Campaign Reform Act (OCRA)?
2. What was your calculus in electing to accept public funds during the course of your election?
3. What effect, if any, did the LPFA have on your decision to run and the outcome of the election?
4. How did the LPFA affect your fundraising and expenditure decisions?
5. In the absence of OCRA's voluntary expenditure limit, would you have raised or spent more during the course of your campaign?
6. Do you believe public financing made you more or less competitive?
7. Do you believe OCRA made you more or less competitive?
8. Do you believe your candidacy brought any first time or sporadic voters to the table?
9. In general, how do you feel about public financing of campaigns?
 - o In your opinion, what are the most important goals of a public financing program? What must such a program accomplish in order for you to perceive it as worthwhile?
10. Do you believe that other policies, apart from public financing, might better accomplish these goals?
11. Theoretically, if the LPFA achieved 99% of its goals, how much should the city be willing to pay for it?

Topic Questions for Candidates (Declined Public Funds)

1. How familiar are you with the Oakland Limited Public Financing Act (LPFA)?
Oakland Campaign Reform Act (OCRA)?
2. What was your calculus in electing to decline public funds during the course of your election?
3. Would you have raised and/or expended less money if you had accepted public financing?
4. In the absence of OCRA's voluntary expenditure limit, would you have raised and/or spent more during the course of your election?
5. Do you believe the LPFA made any of your opponents more or less competitive?
6. Do you believe OCRA made you more or less competitive?
7. Do you believe your candidacy brought any first time or sporadic voters to the table?
8. In general, how do you feel about public financing of campaigns?
 - o In your opinion, what are the most important goals of a public financing program? What must such a program accomplish in order for you to perceive it as worthwhile?
9. Do you believe that other policies, apart from public financing, might better accomplish these goals?
10. Theoretically, if the LPFA achieved 99% of its goals, how much should the city be willing to pay for it?

Topic Questions for Interest Groups

1. How familiar are you with the Oakland Limited Public Financing Act (LPFA)? Oakland Campaign Reform Act (OCRA)?
2. Do you believe the LPFA has reduced the role of “big money” in Oakland politics?
3. Do you believe the LPFA has increased competition in Oakland’s district city council races? (Leveled Playing Field)
4. Do you believe the LPFA has brought new voters and/or types of candidates to the table?
5. In your mind, should the LPFA be amended, replaced, or repealed?
6. In general, how do you feel about public financing of campaigns?
 - In your opinion, what are the most important goals of a public financing program? What must such a program accomplish in order for you to perceive it as worthwhile?
7. Do you believe that other policies, apart from public financing, might better accomplish these goals?
8. Theoretically, if the LPFA achieved 99% of its goals, how much should the city be willing to pay for it?\

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