CITY OF OAKLAND
Public Ethics Commission

Jonathan Stanley, *Chair*
Barbara Green-Ajufo, *Vice-Chair*
Alaric Degrafinried
Alex Paul
Ai Mori
Richard Unger
Vacancy (Mayoral)

Daniel D. Purnell, Executive Director

One Frank Ogawa Plaza, 4th Floor, Oakland, CA 94612 (510) 238-3593 Fax: (510) 238-3315

TO: Campaign Finance And Lobbyist Registration Committee
FROM: Daniel Purnell
DATE: May 10, 2010

RE: A Staff Report And Action To Be Taken Regarding A Proposal To Amend The Limited Public Financing Act To Provide Partial Public Financing Based On The Reimbursement Of Certain Lawful Campaign Expenditures

I. INTRODUCTION

The Oakland City Council adopted the Limited Public Financing Act (LPFA) in December, 1999. The program was first implemented during a special election in City Council District Six in April, 2001, and during the general election cycle in 2002. The program was suspended during the 2004 election cycle and implemented with limited funds during a special election in City Council District Two in 2005. Since then it has been implemented during the municipal elections of 2006 and 2008.

The matching fund program provides a limited amount of funds to eligible candidates for district City Council races to assist them in running for office. The program matches the first $100 of every qualified campaign contribution received and deposited within 180 days before the day of the election. Contributions submitted for matching funds must originate from donors whose residence or business is located within the City of Oakland. The maximum a candidate can receive is 30 percent of Oakland's voluntary expenditure ceiling for the office being sought. Eligible candidates are entitled to receive "lump sum grants" equaling 20 percent of the amount they are ultimately allocated to receive in matching funds. (The grants represent an accelerated payment of the total amount a candidate is allocated to receive and do not represent additional funding.) Candidates must agree to accept the voluntary expenditure ceilings and raise in Oakland campaign contributions an amount equal to at least 5 percent of their voluntary expenditure ceiling to become eligible to receive public matching funds.

At the time of this writing, the City Council is considering a proposal to remove approximately $100,000 from the Election Campaign Fund to finance voter outreach for the Ranked Choice Voting system during the November 2010 election. Approximately $110,000 would remain in the Fund for future application.

II. ASSESSMENT OF THE CURRENT PROGRAM

There is little question that the matching fund program has been under-utilized in past elections. The chart at Attachment 1 demonstrates the number of candidates who actually participated in the matching fund program since its initial implementation in 2001. ***Attachment 1.*** In an effort to better understand why the program has been under-subscribed, Commission staff interviewed candidates and distributed a questionnaire following the June 2008 election. The findings were generally mixed on what parts of the program should be changed but Commission staff noted the following areas of concern:

A. Restriction On Personal Contributions And Loans

Existing law prohibits a participating candidate from making contributions or loans from his or her personal funds in an amount greater than 5 percent of the voluntary expenditure limit (between approximately $5,300 to $6,000 per election). The primary rationale for this limitation is to "level the playing field" among the candidates who choose to participate in the program. Candidates have expressed reservations over participating in the program because of the 5 percent limit. They said that it might be necessary to contribute or loan personal funds due to a last-minute need for money, such as the need to respond to a "hit piece" just before the election. Candidates say they want to maintain the ability to give or loan their campaign money if it became necessary to do so.

B. Excessive "Threshold" Requirement

Current law requires candidates to raise in local contributions (excluding personal sources) an amount equal to 5 percent of the voluntary expenditure ceiling as a condition of eligibility. This threshold requirement is a test of a candidate's "viability" -- Those candidates who can raise this amount (between $5,300 and $6,000) are probably "significant" candidates to whom public funds should be directed. There were several candidates who expressed an interest in participating in the program who did not meet the 5 percent contribution requirement. This becomes a concern, especially when one of the objectives of the program is to encourage and assist candidates new to the political process.

C. Opposition Requirement

Current law requires that an eligible candidate be opposed by 1) a candidate who also qualifies for matching funds, or 2) a candidate who has raised or spent more than 7 percent of the voluntary expenditure ceiling (approximately $5,350 to $6,100). An occasional problem arises when a candidate may wish to receive public funds but is ineligible because his or her opponent either refused or is not qualified for matching funds, or has not raised or spent more than 7 percent of the voluntary expenditure ceiling. The "7 percent" requirement was instituted

to ensure that matching funds would flow into "competitive" races, defined as at least two relatively well financed campaigns. However a situation can occur in which a candidate seeking matching funds is opposed by a candidate who is running a lean "grassroots" campaign and/or whose campaign is being promoted by independent expenditures. Lowering or eliminating the "7 percent" requirement would arguably make it easier for more candidates to qualify for public funding.

D. Return Of Unencumbered ("Surplus") Campaign Funds

Participating candidates are required to return any "unencumbered" matching funds received. Up until the advent of Ranked Choice Voting (RCV), some candidates and treasurers argued that the program provides little benefit to them if they must return any unencumbered (i.e., "surplus") campaign funds if there is a prospect of a second run-off election. Even with RCV, the requirement to reimburse the Election Campaign Fund up to the amount of matching funds received encourages a "use it or lose it" spending philosophy and, to the extent matching funds are returned, means that the program is providing its assistance in terms of cash flow rather than net monetary benefit. A policy question is therefore raised whether candidates should be entitled to retain at least a portion of any surplus campaign funds.

E. Unclaimed Allocations Of Matching Funds

The Commission is authorized to "pro rate" the available amount of matching funds whenever the total amount that all candidates can potentially receive under the program exceeds the existing balance in the Election Campaign Fund. One of the drawbacks with this provision is that a candidate may qualify to receive more public funds than his or her pro rata share. In every election that matching funds have been available, some candidates have chosen not to participate in the program. Since candidates can apply to receive matching funds up to the day before the election, this causes some pro rata allocations to be "frozen" and unavailable to other candidates if a candidate never applies for public funding.
Adopting some way to "release" these unclaimed allocations could make more money available to participating candidates.

F. Time And Cost Of Participation And Administration

A persistent and significant complaint is the amount of time and energy required to comply with the requirements of the matching fund program. Candidates are required to submit a copy of each check they wish to have matched, together with a spread-sheet listing of each contributor, their address, occupation and employer, and contribution amount. This typically requires the copying and hand-entry of hundreds of checks and contributor information per candidate. The information is necessary so that Commission staff can determine whether 1) the check has previously been submitted for matching funds, and 2) the check constitutes a "matchable" contribution insofar as it complies with the Oakland Campaign Reform Act and the Limited Public Financing Act.

Candidates have complained that the administrative burden these requirements have placed on campaigns have deterred them from participating. In addition, implementation of

the current program places a significant strain on Commission resources as each check must be separately verified before matching funds can be issued. Commission staff has literally reviewed thousands of checks under this system, representing a significant commitment of time and resources to administer the program.

III. AN ALTERNATIVE PROPOSAL

In light of the above challenges with the current program, Commission staff has developed a alternative model for financing District City Council campaigns. Rather than a dollar-for-dollar "match" for contributions received, Commission staff proposes that the program instead reimburse candidates for certain authorized expenditures they have already incurred and paid. As proposed, the public financing program would:

- Continue to be limited to candidates for District City Council (candidates for the Oakland School Board of Directors would not be funded)

- Require candidates to decide whether or not to participate in the public financing program within seven days after the City Clerk has certified their name to appear on the ballot

- Continue to require candidates to agree to accept voluntary expenditure ceilings as a condition of receiving public financing

- Limit candidates from making contributions or loans from their personal funds to no more than 10 percent of the voluntary expenditure limit (current limit is 5 percent)

- Reduce the "viability threshold" from 5 percent of the voluntary expenditure ceiling to 3 percent

- Provide that public financing shall be provided solely by reimbursing candidates for certain lawful campaign expenditures which would be limited to:

    1. candidate filing and ballot fees
    2. printed campaign literature and production costs
    3. postage
    4. print advertisements
    5. radio and cable television airtime and production costs
    6. website design and production costs

- Provide that none of the reimbursed communications may refer to any candidate other than the candidate seeking reimbursement (i.e., no "attack ads")

- Require that requests for reimbursement include a copy of the billing invoice, the check used to pay the invoice, and a copy of the campaign literature, advertisement radio or television script, or website configuration for which reimbursement is sought

- Permit candidates to appeal to the Commission for any request for reimbursement denied by Commission staff

- Require candidates to repay the Election Campaign Fund from any surplus campaign funds in an amount not to exceed the percentage that public financing represents of total contributions received. (For example, if a candidate receives $40,000 in contributions, $10,000 in public financing, and claims a surplus of $5,000, the candidate would owe the Election Campaign Fund $2,500.)

The text of the proposed amendments is attached in "redline" format. ***Attachment 2.***

A final argument in favor of the proposed "reimbursement" approach is that it could mitigate the taint of improper expenditures that is possible under the current system. The California Political Reform Act requires that candidates maintain only one campaign account from which all expenditures must be made. Any public money deposited into a candidate's account potentially becomes a perceived "source of funds" for any questionable campaign activity. Limiting public financing to the reimbursement of expenditures authorized under the Limited Public Financing Act should help avoid this problem.

IV. STAFF RECOMMENDATION

Commission staff recommends that the Committee consider the proposed amendments and, if acceptable, forward them to the full Commission for consideration together with any further recommendations or modifications. Commission staff hopes to receive comments from other key City stakeholders in the public financing program, particularly the Offices of the City Attorney and City Auditor, before the item is agendized for Commission consideration.

Respectfully submitted,

Daniel D. Purnell
Executive Director