

CITY OF OAKLAND  
PUBLIC ETHICS COMMISSION  
SPECIAL MEETING  
One Frank Ogawa Plaza (City Hall)  
Tuesday, August 17, 2010  
Hearing Room One  
6:30 p.m.  
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Commission Membership: Jonathan Stanley (Chair), Barbara Green-Ajufo (Vice-Chair), Alaric Degrafinried, Alex Paul, Ai Mori, Richard Unger, Vacancy (Mayoral)

Staff Members:

Commission Staff:

Daniel Purnell, Executive Director

Tamika Thomas, Executive Assistant

City Attorney Representative:

Alix Rosenthal, Deputy City Attorney

### **SPECIAL MEETING AGENDA**

- A. Roll Call And Determination Of Quorum
- B. Open Forum
- C. A Staff Report And Action To Be Taken Regarding Commission Allocation Of The Election Campaign Fund For Candidates Potentially Eligible To Receive Public Financing In The November 2010 Municipal Election

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

You may speak on any item appearing on the agenda; however, you must fill out a Speaker's Card and give it to a representative of the Public Ethics Commission. All speakers will be allotted three minutes or less unless the Chairperson allots 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) 238-7370. 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](http://www.oaklandnet.com).

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Approved for Distribution

Date

CITY OF OAKLAND  
PUBLIC ETHICS COMMISSION  
RESOLUTION NO. 10-02

**PROPOSED**



**RESOLUTION AUTHORIZING THE ALLOCATION AND DISBURSEMENT OF  
AVAILABLE PUBLIC FINANCING FROM THE ELECTION CAMPAIGN FUND  
FOR THE NOVEMBER 2010 MUNICIPAL ELECTION**

**BY ACTION OF THE OAKLAND PUBLIC ETHICS COMMISSION:**

**WHEREAS**, the Oakland City Council adopted the Limited Public Financing Act of the City of Oakland (the "Act") on December 14, 1999, and which Act took effect on January 1, 2001; and,

**WHEREAS**, Section 3.13.050 of the Act establishes the Election Campaign Fund ("Fund") within the City of Oakland; and,

**WHEREAS**, Section 3.13.060(A) of the Act provides that the Oakland City Council shall appropriate to the Fund, under the City's current two year budget cycle, an "amount sufficient to fund all candidates" for the Office of District City Council eligible to receive financing from the Fund; and,

**WHEREAS**, Section 3.13.060(D) of the Act provides that the Public Ethics Commission ("Commission") may utilize up to 7.5 percent of the amount allocated to the Fund to cover the anticipated costs of administering the provisions of the Act; and,

**WHEREAS**, Section 3.13.065 requires the Commission to determine at a noticed public meeting whether, based on the number of potentially eligible candidates, the amount of money in the Election Campaign Fund is adequate to provide the maximum amount to potentially eligible candidates and, if not, to order the disbursement of available funds on a pro rata or other equitable basis; and

**WHEREAS**, Section 3.13.065 authorizes the Commission to revise the disbursement plan contained in this Resolution; and,

**WHEREAS**, the sum of \$116,387 currently exists in the Fund for use by the Commission in administering the public financing program for the November 2010 election; and,

**WHEREAS**, the Commission anticipates that approximately three percent of the available Fund balance (\$3,492) will be required for costs to administer the program; and,

**WHEREAS**, on August 17, 2010, the Commission determined that the amount of money existing in the Fund will not be adequate to provide the maximum amount of funds to which potentially eligible candidates may be entitled; **therefore be it:**

**RESOLVED:** that the method used to calculate the amount of available financing that eligible candidates may receive in the November 2010 municipal election shall be determined as follows:

1. An amount equal to 3 percent of the total funds allocated to the Fund shall first be deducted and reserved in the Fund for the Commission's anticipated administrative costs.

2. The amount that eligible candidates participating in the matching fund program shall receive shall be determined by dividing the remaining Fund amount (after administrative costs have been deducted) by the number of candidates who have submitted nomination papers to the Office of the City Clerk by the close of business on August 11, 2010.

3. In the event a candidate fails to timely file a Statement Of Acceptance Or Rejection Of Public Financing, or files such Statement expressly rejecting public financing for the November 2010 election, the Executive Director shall apply that candidate's previously allocated share of public financing in equal amounts to each remaining eligible candidate's share of public funds in an amount to be determined by the Commission.

**RESOLVED**, that any unclaimed money existing in the Fund after the November 2010 election shall remain in the Fund pursuant to Section 3.12.060(C) of the Act; and,

**RESOLVED**, that the Commission authorizes the Executive Director to make any changes to draft versions of this Resolution as directed by the Commission and to certify and issue a final version of this Resolution without further approval by the Commission.

#### **CERTIFICATION RE: APPROVAL OF RESOLUTION**

The foregoing Resolution was presented for approval at a duly noticed special meeting of the Oakland Public Ethics Commission ("Commission") held on August 17, 2010. A

quorum of the membership of the Commission was present at the meeting. A motion approving the Resolution was made and seconded, and the motion was adopted by a majority of said quorum.

I hereby certify that the foregoing is true and correct.

Dated:

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Daniel D. Purnell  
Executive Director  
Oakland Public Ethics Commission

**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

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**TO:** Public Ethics Commission  
**FROM:** Daniel Purnell  
**DATE:** August 17, 2010

**RE: A Staff Report And Action To Be Taken Regarding Commission Allocation Of The Election Campaign Fund For Candidates Potentially Eligible To Receive Public Financing In The November 2010 Municipal Election**

**I. BACKGROUND**

The Oakland City Council adopted the Limited Public Financing Act ("Act") in December, 1999. The Commission administered the Act during several special elections and in the City-wide elections of March and November 2002, June 2006, and June and November 2008. (The program was temporarily suspended during the 2004 municipal elections.)

In July 2010, the Oakland City Council adopted a series of amendments to the Act that were developed and proposed by the Commission. The amendments fundamentally alter the manner in which public financing is provided to candidates to assist with election expenses. The amendments essentially eliminate the dollar-for-dollar match of qualified campaign contributions in favor of a system of reimbursement for certain campaign expenses.

**II. NEED TO ALLOCATE MONEY FROM THE ELECTION CAMPAIGN FUND**

**A. Applicable Law**

Section 3.13.110(E) of the Act states:

*"The total amount of public financing allocated to each candidate shall not exceed thirty (30) percent of the voluntary expenditure ceiling per election for the office being sought."*

Section 3.13.065 of the Act states:

*"No later than seven (7) days after the City Clerk has certified the names of all candidates to appear on the ballot, the Public Ethics Commission shall determine at a publicly noticed meeting whether, based on the number of potentially eligible candidates, the amount of money in the Election Campaign Fund is adequate to provide the maximum amount to potentially eligible candidates. If the Commission determines that the Election Campaign Fund will not be adequate to provide the maximum amount of funds to potentially eligible candidates, the Commission shall order the disbursement of available funds on a pro rata or other equitable basis. The Commission may at any time revise the disbursement plan consistent with these rules and prevailing law."*

Section 3.13.060(D) of the Act states:

*"Up to 7.5% of the amount allocated to the Election Campaign Fund. . . may be utilized by the Public Ethics Commission to cover the anticipated cost of administering the provisions of this Act."*

Based on the above provisions, the Commission must 1) determine whether, based on the number of potentially eligible candidates, the money in the Election Campaign Fund is adequate to provide the maximum amount to potentially eligible candidates; and, if not, then 2) order the disbursement of available funds on a pro rata or other equitable basis.

### **1. Adequacy Of The Election Campaign Fund Balance**

According to the City's Budget Office, there is currently a balance of \$116,387 in the Election Campaign Fund. As of August 11, 2010, twelve people have filed nomination papers with the Office of the City Clerk for the office of district City Councilmember in districts two, four and six.<sup>1</sup>

The chart below represents the voluntary expenditure ceiling for each City Council district race, the number of candidates who have filed nomination papers for each district race, and the maximum amount of public funds that would be available to these candidates ***if the program were fully funded:***

<b>DISTRICT</b>	<b>EXPENDITURE CEILING</b>	<b>AMOUNT OF FUNDING NEEDED TO PROVIDE MAXIMUM ALLOCATIONS</b>
Dist. 2 (two candidates)	\$108,000	\$64,800
Dist. 4 (seven candidates)	\$116,000	\$243,600
Dist. 6 (three candidates)	\$114,000	\$102,600

<sup>1</sup> As of the time of this writing, Commission staff could not confirm whether all candidates who had filed nomination papers had been finally certified to appear on the ballot.

Based on the above chart, the program would require a total of \$411,000 to provide all potentially eligible candidates the full amount of public financing for which they may ultimately become eligible to receive. Since the current fund balance totals only \$116,387, the Commission must conclude that the amount in the Election Campaign Fund is not adequate to provide the maximum amount to potentially eligible candidates.

## **2. Proposed Pro Rata Distribution**

A simple pro rata distribution of the current Election Campaign Fund balance can be achieved simply by reserving a percentage of the Election Campaign Fund balance for anticipated administrative expenses and then dividing the remaining amount by the number of candidates who have so far filed nomination papers with the Office of the City Clerk. Commission staff recommends that the Commission reserve three percent (\$3,492) of the available balance to cover printing and mailing expenses and for any costs associated with the City Auditor's required audits of candidates who receive public financing. Thus the proposed per candidate allocation for the November 2010 election is \$9,408 [ $\$116,387$  minus  $\$3,492$  divided by 12 potentially eligible candidates).

The above approach is recommended because of its simplicity and ease of calculation. Candidates will know early in the campaign how much they will be entitled to receive and can plan their campaign budgets accordingly. The above approach is identical to the manner in which the Commission has allocated the Election Campaign Fund in each of the previous years it has administered public financing.

Commission staff considered several alternative approaches to the one discussed above. One potential approach would be to allocate matching funds on a "first-come/first-served basis," with public financing to be distributed to eligible candidates until the Fund is exhausted. Such an approach is not recommended because it would favor candidates who have raised and spent their money early, and would prejudice those whose fundraising and spending efforts progress slowly during the campaign.

Another alternative would be to divide the available money in the Election Campaign Fund by the number of districts (3) and then allocate that amount among the number of candidates within each district. Commission staff does not recommend this approach because it would result in an obvious disparity in the amounts available to individual candidates. For example, a candidate in District Two would be entitled to receive a maximum amount of \$18,816, while a candidate in District Four would be entitled to a maximum amount of \$5,376.

A third alternative would be to set specific reimbursement "targets" during the campaign such that candidates would have to submit for reimbursement a specific amount of authorized expenditures by a certain date or else forfeit the difference between the "target" amount and the amount actually submitted for reimbursement back into the Election Campaign Fund for re-allocation to the other candidates. Such an approach would require frequent re-allocation of money and the imposition of specific "target" amounts that may unintentionally favor or disfavor a candidate's campaign strategy. Commission staff cannot recommend this approach until it can be analyzed in light of actual expenditure patterns from prior elections.

### **III. POSSIBLE NEED FOR SUBSEQUENT ADJUSTMENT OF ALLOCATED SHARES**

Section 3.13.065 requires the Commission to make its allocation of available funds no later than seven days after the City Clerk has certified the names of all candidates to appear on the ballot. The last day for "all" candidates to file their nomination papers was August 11, 2010. According to the Office of the City Clerk, it is expecting the County Registrar of Voters to certify the signatures presented on candidates' nomination papers no later than August 16, 2010. (Only after the County Registrar has certified signatures can a candidate's name appear on the November ballot.) The City Clerk will have likely made its final certification of all candidates by the time the Commission considers this allocation proposal.

In addition, Section 3.13.070(B) provides that candidates must file their Statement Of Acceptance Or Rejection Of Public Financing no later than fourteen days after the City Clerk's certification of candidates. Thus it is possible that some of the certified candidates may choose to reject participation in the program after the Commission makes the proposed allocation of public financing. Any rejection of public financing will result in that candidate's pro rata share to be returned to the Election Campaign Fund and re-allocated among the remaining candidates. The Commission is authorized to make periodic adjustments in its allocation formula and will possibly have to do so at its September 2010 regular meeting.

### **IV. PROPOSED RESOLUTION**

**Attachment 1** is a proposed resolution pursuant to Section 3.13.065. It provides for a simple division of available funds based on the number of candidates who have filed nomination papers as of August 11, 2010, subject to subsequent revision by the Commission.

Commission staff recommends that the Commission adopt the proposed resolution.

Respectfully submitted,

Daniel D. Purnell  
Executive Director