

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
SPECIAL MEETING
One Frank Ogawa Plaza (City Hall)
Tuesday, October 19, 2010
Hearing Room Three
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 Relating To The Eligibility Of District Two Candidate Pat Kernighan To Receive Public Financing In The November 2010 Election; Potential Re-Allocation Of The Election Campaign Fund To Candidate Kernighan

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 www.oaklandnet.com.

Approved for Distribution

Date

(NOTE: A meeting of the Ethics Commission's "Sunshine Ordinance Committee" will convene at 7 p.m. in Hearing Room Three after adjournment of this special Commission meeting.)

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
REGULAR MEETING
One Frank Ogawa Plaza (City Hall)
Monday, November 3, 2008
Hearing Room One
6:30 p.m.
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**"STATEMENT OF ACCEPTANCE OR REJECTION
OF PUBLIC FINANCING"**

I, PATRICIA A. KERNIGHAN (print name), declare that I am a candidate for the Office of City Council District 2 (state district number) in the November 2, 2010, municipal election.

I hereby agree to Accept (state preference) public financing
Accept/Reject
pursuant to the laws and rules of the Limited Public Financing Act (O.M.C. Chapter 3.13) during the November 2, 2010, election.

I understand that if I choose to **reject** public financing for the November 2, 2010, election that my decision is irrevocable and I will not be eligible to apply for or receive public financing at a later time for the November 2, 2010, election.

I further understand that if I fail to file this "Statement Of Acceptance Or Rejection Of Public Financing" by the deadline specified in O.M.C. §3.13.070(B) that my failure to do so will constitute an irrevocable rejection of public financing for the November 2, 2010, election.

I hereby certify that the above statement is true and correct.

Executed on this 24th day of August, 2010.

Signature: Patricia Kernighan (candidate must sign here)

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
RESOLUTION NO. 10-05

PROPOSED



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

BY ACTION OF THE OAKLAND PUBLIC ETHICS COMMISSION:

WHEREAS, Section 3.13.065 of the Limited Public Financing Act (Act) 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 3.13.060(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, On August 17, 2010, the Commission adopted Resolution 10-02 allocating from the Election Campaign Fund a total of \$9,408 for each of the 12 potentially eligible candidates for district City Council elections in November 2010; and,

WHEREAS, On September 8, 2010, the Commission adopted Resolution 10-03 re-allocating the per candidate share of money in the Election Campaign Fund among five candidates who timely filed their respective "Statements Of Acceptance" of public financing with the Public Ethics Commission by the deadline of August 26, 2010, for a total maximum allocation of \$22,579 per participating candidate; and,

WHEREAS, On September 22, 2010, the Commission adopted Resolution 10-04 to determine that the "Statements Of Acceptance" filed by candidates Libby Schaaf and Clinton Killian were timely filed and to re-allocate the per candidate share of money in the Election Campaign Fund among seven candidates for a total maximum allocation of \$16,128 per participating candidate; and,

WHEREAS, On October 5, 2010, Commission staff learned that district City Council candidate Pat Kernighan filed a "Statement Of Acceptance" with the Office of the City Clerk on August 26; and,

WHEREAS, Section 3.13.100(B) provides that the Commission shall review records submitted to determine a candidate's eligibility to receive public financing; and,

WHEREAS, Section 3.13.220 provides that the Act shall be "liberally construed" to accomplish its stated purposes which include, but are not limited to, ensuring that all individuals have a fair and equal opportunity to participate in elective and governmental processes; encouraging competition for elective office; and ensuring that serious candidates are able to raise enough money to communicate their views and positions adequately to the public; and,

WHEREAS, Section 3.13.065 authorizes the Commission to revise the initial disbursement plans contained in Resolution 10-02; **therefore be it:**

RESOLVED: That the Statement of Acceptance by candidate Pat Kernighan is deemed to have been timely filed for purposes of determining her respective eligibility for public financing in the November 2010 election; and,

RESOLVED: that the allocated shares for all eight candidates who have timely filed a "Statement Of Acceptance" shall be re-allocated in the following manner:

1. After the deduction of an amount equal to 3 percent of the total funds existing in the Election Campaign Fund (\$116,387 - \$3,492), the difference (\$112,895) shall be allocated equally among eight participating candidates for a maximum total allotment of \$14,111 that each participating candidate may ultimately be entitled to receive; and,

RESOLVED, that any unclaimed money existing in the Election Campaign 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 October 18, 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:

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

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

TO: Public Ethics Commission
FROM: Daniel Purnell
DATE: October 18, 2010

RE: A Staff Report And Action To Be Taken Relating To The Eligibility Of District Two Candidate Pat Kernighan To Receive Public Financing In The November 2010 Election; Potential Re-Allocation Of The Election Campaign Fund To Include Ms. Kernighan

I. BACKGROUND

On July 27, 2010, the Oakland City Council adopted a broad set of amendments to the Limited Public Financing Act (LPFA), O.M.C. Chapter 3.13. The amendments revised the manner in which candidates for district City Council can apply for and receive public financing to assist in their campaigns. The program now permits eligible candidates to seek reimbursement of specified campaign expenses.

Following the City Council's adoption of the amendments, Commission staff sent a series of announcements to potentially eligible district City Council candidates advising them of the availability of public financing, and reminding them of the August 26, 2010, deadline by which their "Statement of Acceptance or Rejection of Public Financing" ("Statement") would be due. On or about August 6, 2010, all potentially eligible candidates also received a copy of the Commission's guide, "How To Apply For Public Financing." In the deadline announcements and in the relevant portions of the handbook, Commission staff advised that the Statements should be filed with the Public Ethics Commission.

By the close of business on August 26, 2010, a total of five candidates for district City Council had filed their respective Statements with the Commission. On that basis, Commission staff prepared and submitted for Commission approval a proposed re-allocation of the money existing in the Election Campaign Fund among the five candidates. The Commission approved the proposed re-allocation at its meeting of September 8, 2010.

On September 13, 2010, Commission staff learned that two district City Council candidates, Libby Schaaf and Clinton Killian, had filed their respective Statements with the Office of the City Clerk instead of with the Commission. City Clerk records indicate that Ms. Schaaf filed her Statement on August 18, 2010. Mr. Killian filed his statement with the City Clerk on August 26, 2010, at 3:50 p.m. The Office of the City Clerk never apprised the Commission that these Statements had been filed by the candidates. Commission staff reviewed the election files of all other remaining City Council candidates but did not find any other filings for public financing.

At a special meeting on September 22, 2010, the Commission unanimously approved PEC Resolution 10-04 to determine that the Statements from Ms. Schaaf and Mr. Killian were timely filed and to re-allocate the per-candidate shares from the Election Campaign Fund from \$22,579 per eligible candidate to \$16,128 per eligible candidate.

On October 5, 2010, a representative for District Two candidate Pat Kernighan called to inquire about the status of her public financing request. He stated that Ms. Kernighan timely filed a Statement (of Acceptance) with the Office of the City Clerk and subsequently produced a file-stamped copy demonstrating a filing date of August 26, 2010. **Attachment 1.** The Clerk's Office initially advised Commission staff that it had no record of the original filing but the original Statement was subsequently located in a separate file containing Ms. Kernighan's campaign statements (Form 460s). Similar to Ms. Schaaf and Mr. Killian, Ms. Kernighan is seeking a Commission determination that her Statement was timely filed and that the per-candidate shares of the Election Campaign Fund be re-allocated to include her.

II. ELIGIBILITY TO RECEIVE PUBLIC FINANCING

Section 3.13.070(B) provides that the Statements shall be filed with the Commission:

*"Each candidate for District City Council shall file **with the Public Ethics Commission** a Statement of Acceptance or Rejection of Public Financing on a form approved by the Public Ethics Commission no later than fourteen (14) calendar days after the date the City Clerk has certified the names of candidates to appear on the ballot for the election in which public financing will be sought. The Statement of Acceptance or Rejection of Public Financing shall advise and require that the candidate's decision to reject public financing is irrevocable for the election in which his or her name appears on the ballot. The failure to timely file a Statement of Acceptance or Rejection of Public Financing shall constitute a rejection of public financing." [Emphasis added.]*

Section 3.13.100(B) authorizes the Commission to determine candidate eligibility:

"The Public Ethics Commission shall review records submitted to determine a candidate's eligibility to receive public financing and requests for reimbursement promptly. For any candidate determined not to be eligible for public financing, the Commission or its designee shall inform the candidate of the reasons why the

candidate is not eligible and what actions, if any, the candidate may take to correct any insufficiencies."

Section 3.13.220 states "The act shall be liberally construed to accomplish its purposes."

Section 3.13.030 sets forth the "purposes" of the Act:

"The purpose of this act is to accomplish the objectives stated in Oakland's Campaign Reform Act as follows:

- 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 the pressure 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 the 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 public trust in governmental and electoral institutions."*

In light of the broad legislative purposes of the LPFA, its requirement for a "liberal construction" to accomplish those purposes, and the Commission's previous determination on an almost identical situation involving candidates Schaaf and Killian, Commission staff recommends that the Commission determine that Ms. Kernighan's Statement of Acceptance was timely filed for purposes of determining eligibility. As the proposed Resolution 10-05 demonstrates, a re-allocation of available funds to include Ms. Kernighan will result in a revised pro rata allocation of \$14,111. **Attachment 2.** At the time of this writing, only one candidate has filed a claim for reimbursement in an amount totaling \$5,672. While it does not appear that any candidate will be prejudiced from a possible reduction in the maximum amount to which he or she may ultimately be entitled to receive, the Commission should consider any claim of material hardship or prejudice from other participating candidates after

they receive notice of this proposed action.

Respectfully submitted,

Daniel D. Purnell
Executive Director