

**CITY OF OAKLAND**  
**Public Ethics Commission**

Victor Ochoa, *Chair*  
Alden Mudge, *Vice-Chair*  
Patrick O'Hern  
Barbara Newcombe  
Peter Reinke  
Lily Kimura  
Jon Sylvester



Daniel D. Purnell, Executive Director

---

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

**TO:** Public Ethics Commission  
**FROM:** Daniel Purnell  
**DATE:** April 7, 2003

**RE: Analysis Of The Limited Public Financing Program During The March, 2002, And November, 2002, Election**

**I. SUMMARY**

The Limited Public Financing Program ("Program") was administered successfully during the 2002 election cycle. During the March and November 2002 City-wide elections, eight eligible candidates received a total of \$147,451.00 in matching funds. Little evidence appears however that the program met its stated policy goals. Concerns exist regarding future program funding and post-election auditing. Amendments to the underlying ordinance may be necessary to achieve a revised set of program goals in future elections.

**II. SIGNIFICANT PROVISIONS OF THE ACT**

The Oakland City Council adopted the Limited Public Financing Act in December, 1999. It was first implemented during a special election in City Council District Six in April, 2001. The following is a summary of the significant provisions of the Act:

**A. Offices Covered**

The matching fund program is available to "all candidates for City office," defined under OCRA Section 3.12.040 as "Mayor, City Attorney, City Auditor, City Councilmembers and School Board Directors." [§3.13.060(A); §3.13.070(A)].

**B. Program Funding**

The Act requires the City Council to establish an "election campaign fund" into which appropriations are made. [§3.13.060(A)]. The Act imposes a maximum

appropriation ceiling of \$460,000 for any two-year budget cycle, adjusted for inflation. [§3.13.060(B)]. Unspent funds are required to remain in the fund to accrue for future elections and administrative costs. [§3.13.060(C)].

### **C. Eligibility**

The following conditions must be met before a candidate may receive matching funds:

- 1) The City Clerk must certify the candidate's name to appear on the ballot [§3.13.080(B)];
- 2) The candidate must agree to accept voluntary expenditure limitations [§3.13.080(A)];
- 3) The candidate or his or her campaign treasurer or designee must attend a training session conducted or sponsored by the Public Ethics Commission [§3.13.080(F)]; and,
- 4) The candidate must be opposed by another candidate for the same office who also qualifies for matching funds, or by another candidate who has received contributions, made expenditures or has cash on hand in an amount of at least seven (7) percent of the voluntary expenditure ceiling for that office [§3.13.080(D)].

### **D. Fundraising Threshold**

A candidate must demonstrate that he or she has received matchable campaign contributions totaling at least five (5) percent of the voluntary expenditure ceiling applicable to the candidate's race. [§3.13.080(C)].

### **E. Matching Fund Formula**

Eligible candidates receive one dollar of matching funds for each dollar received and deposited of the first \$100 or less of a matchable campaign contribution. [§3.13.110(A)]. "Matchable contributions" do not include contributions received more than eighty-eight (88) days before the close of the nomination period. [§3.13.080(C)].

The total amount of matching funds allocated to each candidate shall not exceed fifteen (15) percent of the voluntary expenditure ceiling per election for the office being sought. [§3.13.110(B)].

### **F. Return Of Matching Funds**

Any "unencumbered" campaign funds remaining after the defeat, withdrawal or election to office must be returned to the City within thirty (30) calendar days after the election. The return of unencumbered campaign funds cannot exceed the amount of public matching funds received. [§3.13.150(B)].

## **G. Restriction On Use Of Personal Funds**

Participating candidates may not contribute or loan themselves more than five (5) percent of their own funds unless the voluntary expenditure ceilings are lifted due to independent expenditures pursuant to OCRA Section 3.12.220. [§3.13.090].

## **H. Mandatory Audits**

The City Auditor shall conduct mandatory audits or compliance reviews of all candidates accepting matching funds. [§3.13.100(D)].

## **I. Administration**

The Public Ethics Commission is responsible for the administration and enforcement of the matching fund program. [§3.13.100; §3.13.180]. The Commission is required to determine a candidate's eligibility to receive matching funds in a "timely fashion." [§3.13.100(B)]. The Commission has ten (10) calendar days to cause the review and approval or denial of a request for matching funds and disburse funds to the candidate's committee. [§3.13.120(C)].

The Public Ethics Commission may utilize up to 7.5 percent of the election campaign fund to cover administrative expenses, including costs to the City Auditor to conduct audits or compliance reviews. [§3.13.060(D)].

## **III. IMPLEMENTATION DURING THE CITYWIDE 2002 ELECTIONS**

### **A. Initial Budgeting**

During the 2002 election, the City provided funding for the program through a specific budgetary account on an "as needed" basis. This procedure contrasts with the Act's requirement that the City allocate a fixed amount of money into a specially created "campaign election fund" from which draws are made. Unspent funds are to be "rolled over" for future elections and administrative expenses.

While all participating candidates received the full amount for which they were eligible, the failure to allocate a fixed amount into a campaign election fund could have significantly increased program costs had more candidates run for office due to the lack of a de facto "cap" on available funds.

### **B. Expenditures For The March 2002 Election**

The March, 2002, election involved candidates for the City-wide offices of Mayor and Auditor, as well as City Council and School Board Districts 2, 4 and 6. A total of eight candidates applied for, and were found eligible to receive, public matching funds. (A ninth candidate, Moses Mayne, was found eligible to receive matching funds but disbursement of funds is pending the results of an audit of expenditures made during the April, 2001, special election.)

Total matching funds disbursed during the March 2002 election was \$118,051.00.

The following chart summarizes campaign contributions, expenditures and matching funds received in each of the respective March 2002 races:

<b>Candidate</b>	<b>Office Sought</b>	<b>Total Monetary Contributions (*)</b>	<b>Total Expenditures (*)</b>	<b>Total Public Matching Funds Rec'd</b>	<b>Percent Of Matching Funds Available</b>
Wilson Riles	Mayor	\$134,508	\$138,261	\$37,515.00	78%
David Stein	CC4	\$87,858	\$96,100	\$14,700.00	100%
Melanie Sweeney-Griffith	CC4	\$69,274	\$73,019	\$5,994.00	41%
Nedir Bey	CC4	\$21,487	\$24,884	\$14,178.00	96%
Jean Quan	CC4	\$32,400	\$39,741	\$14,700.00	100%
Gary Yee	SB4	\$47,269	\$83,650	\$9,750.00	100%
Susanne Lea	SB4	\$25,095	\$25,588	\$8,445.00	87%
Desley Brooks	CC6	\$44,355	\$45,000	\$12,769.00	89%

(\*) Unaudited figures based on candidate estimates as of the date of the election.

### **C. Expenditures For The November 2002 Election**

The March election resulted in only one run-off in the November general election: The City Council District Four race involving David Stein and Jean Quan.

Total matching funds disbursed during the November 2002 run-off election was \$29,400.

The following chart summarizes campaign contributions, expenditures and matching funds received in the District Four November run-off election:

<b>Candidate</b>	<b>Office Sought</b>	<b>Total Monetary Contributions (*)</b>	<b>Total Expenditures (*)</b>	<b>Total Public Matching Funds Rec'd</b>	<b>Percent Of Matching Funds Available</b>
David Stein	CC4	\$93,119	\$94,909	\$14,700.00	100%
Jean Quan	CC4	\$74,052	\$88,928	\$14,700.00	100%

(\*) Unaudited figures based on candidate estimates as of the date of the election.

## **IV. ANALYSIS OF THE MATCHING FUND PROGRAM**

### **A. Program Administration**

A significant portion of the Commission's administrative effort was directed to establishing detailed criteria for reviewing completed applications and determining eligibility for matching funds. Commission staff reviewed each check submitted for matching under the following criteria: 1) Did the signature match the printed name on the check? 2) Was the written date within the 88-day eligibility period? 3) Had the Commission already matched more than \$100 from that particular contributor? 4) Was the check reflected on the itemized deposit slips submitted with the claim? 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? and 7) Was the contribution made by a contractor within a period of negotiation with the City?

Commission staff reviewed and processed approximately 3,500 separate checks using the above criteria.

Review and distribution of matching fund checks during the March 2002 election were all accomplished within ten days as specified under the Act. However, the Commission's ability to meet this time limit was greatly affected by the fact that there were several uncontested elections, and races in which there were only two eligible candidates. Had there been greater candidate participation in the election and in the matching fund program, it is questionable whether Commission staff would have been able to process all checks within the ten-day limit. It is significant to note that San Francisco and Los Angeles dedicate full-time positions to administering their matching fund programs.

Commission staff notes the following areas of concern in connection with program administration:

#### **1. Incomplete Applications; Failure To Follow Rules**

Pursuant to Section 3.13.080(F), every candidate, treasurer or designee must attend a training program sponsored by the Public Ethics Commission as a condition of eligibility. Commission staff scheduled three such programs for prospective and declared candidates. In some cases, one-on-one training was provided to candidates who could not attend the scheduled sessions. The Commission also prepared and distributed a detailed package explaining how to submit applications for matching funds. Because of limited staff resources, close compliance with the Commission's application procedures was essential to the timely administration of the program.

While most campaigns submitted their applications with few, if any, problems, some campaigns submitted applications that made it very difficult to determine eligibility for matching funds. In some cases, Commission staff required the complete re-submission of materials. This resulted in needless delay and extra work on the part of the affected campaigns and Commission staff.

## **2. Audit Function**

Program administration requires two levels of review: The first level confirms candidate eligibility and reviews contribution checks as described above. This level of review is performed by commission staff.

The second level of review is more detailed and comprehensive to ensure that: 1) candidates spend their public funds for legitimate campaign purposes; 2) candidates do not exceed OCRA limits on contributions and expenditures; 3) any "surplus" campaign funds are returned to the City; and 4) all contributions and expenditures are cycled through the candidate's single campaign account. This review is performed by the Office of the City Auditor. It is significant to note that the two other cities with active matching fund programs, Los Angeles and San Francisco, have full-time auditors assigned to this function.

Following the March 2002 election, the Office of the City Auditor assigned a senior auditor to perform the compliance audits required under the program. To date, approximately 134 hours has been spent auditing two campaigns. Included in this figure is a one-time research and education component for audit staff to become more accomplished in the field of campaign auditing. According to the City Auditor's Office, the amount of time required to audit financial statements is affected greatly by the quality of campaign record-keeping and reporting.

(Commission staff had hoped to utilize state campaign financial statements ("Form 460s") to assist in reviewing campaign contributions and expenditures. However, after reviewing the campaign statements for the 2002 elections, Commission staff has significant concerns over the reliability and accuracy of campaign statements to serve as a useful basis for analyzing campaign contributions and expenditures. A number of campaign statements were found to be incomplete, late, or facially inaccurate.)

On February 7, 2003, City Auditor Roland Smith advised Commission staff that he was suspending any further audits of participating candidates. He claimed the City was not reimbursing his office for the cost of auditing as permitted in the Act. Commission staff has serious concerns about the City's ability to maintain a public matching fund program in the absence of meaningful and reliable financial review. Efforts are underway to obtain reimbursement for the City Auditor's Office for work performed on behalf of the program.

### **B. Policy Analysis**

The purpose of the limited public financing program is set forth in Section 3.13.020. Among its stated goals are to:

- 1) reduce the influence of large contributors [§3.13.030(B)];
- 2) reduce the pressure on candidates to raise large "war chests" beyond the amount necessary to communicate reasonably with voters [§3.13.030(C)];

- 3) encourage competition for elective office [§3.13.030(D)];
- 4) allow candidates and office holders to spend a smaller proportion of time raising money and more time on public issues [§3.13.030(E)]; and,
- 5) ensure that candidates have enough money to communicate their views to the public [§3.13.030(F)].

Based on the results from the 2002 election, it is difficult to conclude that the matching fund program achieved its stated goals. Generally, the program appears to be immaterial to the goal of "reducing large campaign contributions" (Goal No. 1) -- contributions to candidates are already restricted under the Oakland Campaign Reform Act (OCRA). With the exception of Mayor Jerry Brown, local candidates are not carrying surpluses into future years (so-called "campaign war chests") in excess of the voluntary expenditure limits provided under OCRA (Goal No. 2).

Commission staff also found no evidence that the program encouraged competition for local office (Goal No. 3). In a City-wide election with eight open seats, Commission staff noted a complete lack of competition in three races: The incumbent City Auditor Roland Smith, District 2 City Councilmember Danny Wan, and District 6 School Boardmember Dan Siegal had no challenge to their respective bids for re-election. This lack of competition is consistent with past municipal elections in which there has been at least one uncontested office in every election since 1992. (There was a total of four uncontested races in 1998).

There appears to be no way to establish accurately the degree to which participating candidates spent "less time raising money and more time on public issues" (Goal No. 4). While the current program may reduce marginally the time needed for fundraising, there is no basis to conclude this time savings was devoted to "public issues."

The only goal which the program appears to have achieved in some degree is providing candidates with enough money to communicate with potential voters (Goal No. 5). Commission staff received comments from several participating candidates indicating that the matching funds permitted them to distribute more campaign literature than they would otherwise have been able to afford through conventional fundraising.

In analyzing the above findings, Commission staff believes the goals for the program may be too broadly stated. They appear more relevant to a program of total or near-total public financing than for a program of limited public financing. The amount of public funds currently offered to candidates (15 percent of their voluntary expenditure limit) may be too small to effect the type of change in fundraising behavior contemplated by the program goals. The program may also need to be implemented over a period of time before potential candidates consider the program as a significant factor in their decision whether to run for local office.

## V. RECOMMENDATIONS

Based on the above analysis, it is difficult to recommend that the program continue its existing eligibility and funding levels especially given the possibility of reduced program funding during the 2003-2005 fiscal years. Commission staff believes the program may have to be modified in certain areas to assist in its administration, and to focus its benefits on achievable policy goals. The following are specific proposals the Commission may wish to consider:

### 1) Consider Restrictions On Eligibility And Increasing The Maximum Match For Contributions

The matching fund program is currently available to qualified candidates for the Oakland City Council; the City-wide offices of Mayor, Auditor, elected City Attorney and Councilmember-at-large; and the Oakland School Board. The average maximum amount a candidate may receive under the program (as of January 2002) is as follows:

Mayor	\$48,150.00
City Auditor	\$34,350.00
City Attorney	\$34,350.00
Council-At-Large	\$34,350.00
District City Council	\$14,750.00
District School Board	\$ 9,800.00

One option in light of potential budget restrictions is to limit the application of the program only to Oakland City Offices (i.e., no School Board candidates), or to further limit application to district candidates for the City Council (i.e., no School Board candidates and no City-wide candidates). Chart No. 1 demonstrates the estimated costs of funding the program for the March 2004 election *under existing law* and assuming budget scenarios in which: 1) two candidates for each office each receive 100 percent of their eligible matching funds, and 2) one candidate receives 100 percent and the second candidate only qualifies for 50 percent of eligible funding:

### CHART NO. 1

March 2004 Races	Maximum Matching Funds Available Per Candidate (*)	Cost Assuming 2 Candidates Receive 100% Of Eligible Funds	Cost Assuming 1 Candidate Receives 100% And 1 Candidate Receives 50% Of Eligible Funds
City Attorney	\$34,350.00	\$68,700.00	\$51,525.00
Council At Large	\$34,350.00	\$68,700.00	\$51,525.00
CC Dist 1	\$13,950.00	\$27,900.00	\$20,925.00
CC Dist 3	\$14,850.00	\$29,700.00	\$22,275.00
CC Dist 5	\$15,600.00	\$31,200.00	\$23,400.00
CC Dist 7	\$15,900.00	\$31,800.00	\$23,850.00
School Dist 1	\$9,300.00	\$18,600.00	\$13,950.00

School Dist 3	\$9,900.00	\$19,800.00	\$14,850.00
School Dist 5	\$10,350.00	\$20,700.00	\$15,525.00
School Dist 7	\$10,650.00	\$21,300.00	\$15,975.00
	<b>TOTAL COST</b>	\$338,400.00	\$253,800.00

(\*) Based on January 2002 expenditure ceilings.

Chart No. 2 demonstrates estimated program costs by eliminating School Board offices from eligibility under both of the two budget scenarios:

### **CHART NO. 2**

<b>March 2004 Races (03-04 Budget)</b>	<b>Maximum Public Matching Funds Available (15%)</b>	<b>2 Candidates Receiving 100%</b>	<b>1 Candidate Receiving 100% and 1 receiving 50%</b>
CC Dist 1	\$13,950.00	\$27,900.00	\$20,925.00
CC Dist 3	\$14,850.00	\$29,700.00	\$22,275.00
CC Dist 5	\$15,600.00	\$31,200.00	\$23,400.00
CC Dist 7	\$15,900.00	\$31,800.00	\$23,850.00
Council At Large	\$34,350.00	\$68,700.00	\$51,525.00
City Attorney	\$34,350.00	\$68,700.00	\$51,525.00
	<b>TOTAL COST</b>	\$258,000.00	\$193,500.00

Chart No. 3 demonstrates estimated program costs by eliminating school board offices and City-wide offices under both budget scenarios:

### **CHART NO. 3**

<b>March 2004 Races (03-04 Budget)</b>	<b>Maximum Public Matching Funds Available (15%)</b>	<b>2 Candidates Receiving 100%</b>	<b>1 Candidate Receiving 100% and 1 receiving 50%</b>
CC Dist 1	\$13,950.00	\$27,900.00	\$20,925.00
CC Dist 3	\$14,850.00	\$29,700.00	\$22,275.00
CC Dist 5	\$15,600.00	\$31,200.00	\$23,400.00
CC Dist 7	\$15,900.00	\$31,800.00	\$23,850.00
	<b>TOTAL COST</b>	\$120,600.00	\$90,450.00

As the above data demonstrate, limiting the program's application only to district City Council seats could reduce overall program expenditures by approximately 35 percent. Such changes in program eligibility would require amendments to the Act.

Finally, an additional option presents itself if the program is limited to district City Council seats. With the cost savings realized, the program could match eligible district City Council candidates at an amount greater than is currently provided to determine whether the program is in fact able to achieve its stated goals of influencing campaign

fundraising behavior. Chart No. 4 demonstrates the cost of matching district City Council candidates at 25 percent (versus the current 15 percent) of their voluntary expenditure limit under the same two budget scenarios:

### **CHART NO. 4**

<b>March 2004 Races (03-04 Budget)</b>	<b>Maximum Public Matching Funds Available (25%)</b>	<b>2 Candidates Receiving 100%</b>	<b>1 Candidate Receiving 100% and 1 receiving 50%</b>
CC Dist 1	\$23,250.00	\$46,500.00	\$34,875.00
CC Dist 3	\$24,750.00	\$49,500.00	\$37,125.00
CC Dist 5	\$26,000.00	\$52,000.00	\$39,000.00
CC Dist 7	\$26,500.00	\$53,000.00	\$39,750.00
	<b>TOTAL COST</b>	<b>\$201,000.00</b>	<b>\$150,750.00</b>

It appears that it is possible to match district City Council candidates at a significantly higher amount, and with less projected cost, than under current eligibility and funding scenarios. Commission staff acknowledges that limiting the number of public offices eligible for matching funds may not be optimal for future expansion of the program. However, Commission staff also notes that neither the San Francisco nor Los Angeles matching fund programs are open to school board candidates, and the San Francisco program is further limited to elections to the district-elected board of supervisors and excludes the city/county-wide races for Mayor, City Attorney, District Attorney and Sheriff. Both programs also offer significantly higher amounts of matching funds to eligible district candidates as a percentage of their current voluntary expenditure ceilings (In Los Angeles, matching funds recently totaled 30 percent of expenditure ceilings; In San Francisco, matching funds total 52 percent of expenditure ceilings; and in Oakland, matching funds total 15 percent of expenditure ceilings).

#### **2) All Budgeted Funds Should Be Deposited Into An Election Campaign Account Pursuant To The Act's Requirements**

Any future allocation of City funds to the program should be deposited into a designated "election campaign fund." Such lump-sum allocations create a de facto "cap" on available funds in any given election. Knowing the maximum amount available for funding the program permits the Commission and candidates to budget resources accordingly. It also permits any remaining balance to be "rolled over" into the next election and diminishes the need for future allocations. Finally, having a specified sum allocated into the fund permits the Commission and the Office of the City Auditor to budget for any administrative and auditing services.

#### **3) Consider Making Initial Grants Available To Candidates**

Currently, eligible candidates receive one dollar of public matching funds for each dollar received and deposited of the first \$100 of a matchable contribution.

Once a candidate's name has been certified to appear on the ballot (usually in early to mid-December for March elections), the candidate may begin receiving matching funds based on the contributions they have received during the 88-day period before the close of the nomination period.

For most campaigns, contributions are typically needed early in the campaign process. The matching fund programs in Los Angeles and San Francisco recognize this reality by providing an initial lump-sum grant of public funds once a candidate is found to be eligible.

Providing a percentage of a candidate's available matching funds in the form of an initial grant is a way to provide candidates with more money earlier in the campaign. Providing an initial grant would also reduce significantly the number of individual contribution checks Commission staff must review to administer the program.

#### **4) Consider Restricting Matching Funds During Run-Off Elections**

Between 1992 and 2002, there has been a total of 11 November run-off elections for local office (four for City Council; three for City-wide office; and four for School Board.) Run-off elections create special problems for administering the current program. First, financing run-off elections can create significant and unpredictable budgeting problems. As long as the budget for public financing remains fixed at an amount below that which is necessary to fully fund every eligible candidate, it is almost impossible to determine how much money to allocate for eligible candidates in the March election, and how much to reserve for November run-off elections. Budgeting too much for the March primary election could leave too little for any November run-off election and vice versa.

In light of possible diminished funding for the program, the Commission may wish to consider eliminating funding for run-off elections, or simply provide run-off candidates with a single lump-sum grant shortly after the March election.

#### **5) Consider Matching Contributions Located Within The City Of Oakland**

One of the implied goals of the program is to increase local participation in the election process. This goal is demonstrated and achieved by the existing matching fund formula that matches only the first one-hundred dollars of every contribution. Thus the formula encourages candidates to seek contributions from many small contributors rather than a few large ones.

During the March, 2002, election, Commission staff noted that approximately one-half of all itemized contributions originated from sources outside the City of Oakland. This raises the question of whether the program could do a better job of encouraging more local participation in political fundraising by matching only those contributions which originate from Oakland residents and businesses, and/or by matching such contributions at a higher amount.

## 6) Consider Eliminating The "Floating" 88-Day Eligibility Period

Existing Section 3.13.080(C) states that "matchable" contributions shall not include any contributions received "eighty-eight (88) or more days prior to the closing of the nomination period for the office being sought." The problem with this requirement is that the date the nomination period "closes" depends on whether an incumbent officeholder seeks re-election. If an incumbent does not seek re-election, the nomination period is extended an additional 5 days. This fact may not be known until the very end of the nomination period and could thus inadvertently disqualify some contributions.

Commission staff recommends that the period to receive "matchable contributions" be set at 180 days prior to the date of the election. This number approximates the same amount of time to receive a matchable contribution as under existing law, but provides greater certainty for which contributions will be matched.

## 7) Consider Matching Only Two-Party Checks

Under the Political Reform Act, all contributions in excess of \$100 or more must be made on a written instrument that contains the name of the donor and the payee and which is drawn from the account of the donor. [Government Code §84300(c)]. Contributions of less than \$100 may be made in cash or by money order. While the program does not match cash contributions, there is a question whether the program should match money orders, in which the name of the donor does not appear on the face of the instrument. The Commission may wish to expressly prohibit the match of money orders based on the potential for obscuring the identity of the donor.

## 8) Consider Modifying The "Surplus Funds" Reimbursement Rule

Existing Section 3.13.150 requires the return of "unencumbered" matching funds within thirty days after the election. Existing regulations permit candidates to submit an estimate of campaign contributions and expenditures existing **as of the date of the election** to determine whether any remaining campaign funds are in fact "encumbered" by existing or anticipated expenses.

Calculating a campaign's "surplus" funds as of the date of the election is a complicated matter that cannot be verified in the absence of a financial audit. To comply with the current ordinance, Commission staff must initially rely upon estimates supplied by the campaigns to determine whether there is any "surplus" campaign funds existing as of the date of the election. These estimates cannot be verified against FPPC campaign statements (Form 460s) because the statements do not require disclosure of the date by which a contribution of less than \$100 is received, or the date in which any expenditure is made. The only way to determine and independently verify how much money the campaign possessed as of the date of the election is to undertake a time-consuming post-election audit of candidate contributions and expenditures in order to create a "snapshot" of campaign finances existing on the date of the election.

A far less burdensome requirement for the campaigns and City Auditor's Office would be to determine whether there exists "surplus" campaign funds as of the last day of the semi-annual reporting period following the election, rather than as of the date of the election. For March primary elections, the proposed date would be June 30. The rationale for the proposal is that campaigns are likely to have incurred all their expenses before the election but may not know the final costs until well after the election. As a practical matter, candidates and their treasurers do not typically begin preparing their semi-annual campaign reports until closer to the filing deadline at the end of July. The current law creates an artificial accounting date that imposes additional demands on the campaigns and the City Auditor's Office without a clearly identified benefit.

Finally, a related and confounding issue arises in determining whether "surplus" funds exist whenever candidates are engaged in a November run-off election. It can be very problematic to determine which contributions and expenditures are attributable to the March election and which are attributable to the November election for purposes of determining whether surplus funds exist, and whether the candidates complied with their respective voluntary expenditure ceilings. Subjecting run-off candidates to an audit following the March election can be an ill-timed and burdensome procedure. While this issue arises primarily in the context of OCRA, it does present implications for the matching fund program that can be mitigated if matching funds are restricted during run-off elections (see Recommendation No. 4).

#### **9) Consider Providing Matching Funds To The "Neediest" Campaigns**

One of the troublesome policy questions arising from a program of limited public financing is the fact that public funds flow equally to candidates who arguably require or depend heavily upon public funds, as well as to candidates who would otherwise have little trouble raising money exclusively from private sources. While assisting "needy" or fledgling campaigns, the program also arguably subsidizes well financed and established candidates. How to place limited public funds into the hands of those candidates who have a relatively greater need for the money presents a complicated administrative and legal issue.

One potential approach to address this situation would be to tie eligibility for matching funds to the candidate's ability to raise money throughout the course of the campaign. For example, a candidate who raises private contributions in excess of specific "trigger amounts" at various times before the election could lose his or her eligibility for remaining matching funds. (Exceeding a specific trigger amount during the campaign could be evidence that a particular candidate does not require the additional benefit of matching funds.)

While an arguably worthwhile concept, the implementation and administration of this idea may be problematic. What the "trigger amounts" would be and the dates they become effective will require considerable research into past fund raising practices in order to set the amounts and dates appropriately.

## **10) Consider Requiring A "Seven Percent" Notice By Ordinance**

Existing Section 3.13.080 sets forth the eligibility requirements for candidates seeking to participate in the program. Subsection 3.13.080(D) states that a candidate is eligible to receive matching funds if he or she is opposed by another candidate eligible to receive matching funds, or if the candidate is opposed by another candidate "who has received contributions or made expenditures or has cash on hand in an amount of at least seven percent of the voluntary expenditure ceiling for that office." How the eligible candidate is supposed to learn that his or her opponent has reached the seven percent threshold is not stated in the ordinance.

Because there is no disclosure requirement for candidates reaching the seven percent threshold, and because there can be too much delay between the pre-election filing deadline for state campaign statements, the Commission adopted a regulation requiring candidates to notify the Commission within seven calendar days of reaching any of the seven percent thresholds. Commission staff believes this notification provision would be more enforceable and better known if it were a part of the Act itself.

## **11) Consider Developing A Dedicated Funding Source For The Program**

Like all generally funded programs in the City, the matching fund program may be affected by adverse budget conditions. The Center For Governmental Studies, a non-profit political research organization based in Los Angeles, has recently released a report analyzing potential sources of dedicated revenue for public financing programs. The report's authors argue that securing a dedicated source of revenue for such programs is "critical" to ensuring their success in future years.

Commission staff notes that there are potential political and legal challenges involved in securing a dedicated funding source for specific local programs. Additional legal research is required to determine whether it would be worthwhile to pursue such a proposal.

## **VI. CONCLUSION**

Most of the above recommendations will have to be developed and implemented immediately if they are to become effective during the 2004 elections and influence upcoming budget decisions for the 2003-2005 fiscal years. Other recommendations will clearly require more time to research and develop properly.

Commission staff recommends that the Commission take public comment on this report and policy proposals, and give direction to staff to prepare any specific amendments to the Act and any communications with the City Council regarding the matching fund program.

Respectfully submitted,

Daniel D. Purnell, Executive Director