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Public Ethics Commission

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TO: Public Ethics Commission
FROM: Daniel Purnell
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**RE: Commission Allocation Of Limited Public Matching Funds Among
Candidates During The 2005 District Two Special Election**

I. BACKGROUND

The Oakland City Council adopted the Limited Public Financing Act ("Act") in December, 1999. The Commission administered the matching fund program during a special election in April, 2001 and in the City-wide election of March, 2002. The program was temporarily suspended during the 2004 municipal elections but is now in effect.

Under current law, the matching fund program provides a limited amount of funds to eligible candidates to assist them in running for elective office. The City currently matches the first \$100 of every qualified campaign contribution received and deposited between eighty-eight (88) days before the close of the nomination period and the day of the election. The maximum a candidate can receive is 15 percent of Oakland's voluntary expenditure ceiling for the office being sought. Candidates must first raise in campaign contributions an amount equal to at least 5 percent of their voluntary expenditure ceiling to become eligible to receive public matching funds. Candidates can submit claims for matching funds up to and including election day.

In January, 2005, the City Council called a special election in City Council District Two after the resignation of City Councilmember Danny Wan. That election will take place on May 17, 2005. At the time of this writing, ten people have obtained nomination papers from the Office of the City Clerk. The nomination period closes on Friday, February 18, 2005.

During the District Two special election, the voluntary expenditure ceiling will be \$96,000 for candidates eligible to participate in the matching fund program. Thus qualified candidates could expect to receive up to \$14,400 in matching funds (15 percent of \$96,000) if the program were fully funded.

On February 1, 2005, the City Council authorized \$50,000 to the program's Election Campaign Fund ("Fund") from which matching fund disbursements will be made. The money was requested before the nomination period opened and the relatively large number of potential candidates emerged. While it is unknown at the time of this writing how many people will actually file their nomination papers and of those, who will qualify for matching funds, there is a possibility that there may not be sufficient money in the fund to provide all eligible candidates the full amount to which they may be entitled under the current program.

How the Commission should allocate available matching funds among eligible District Two candidates is the subject of this memorandum and the action being requested of the Commission.

II. APPLICABLE LAW

Section 3.13.060(B) of the Act states in relevant part:

"The amount of funds to be allocated to the Election Campaign Fund shall be based on a consideration of anticipated campaign activity, anticipated administrative costs, and existing unspent funds in the account. . ."

Section 3.13.060(C) of the Act states in relevant part:

"Unspent funds in the Election Campaign Fund at the end of the two-year budget cycle shall remain in the Fund and accrue for disbursement to candidates eligible for matching funds in future elections and for administrative costs pursuant to Section 3.13.060(D) below. "

Section 3.13.060(D) of the Act states in relevant part:

"Up to 7.5 percent of the amount allocated to the Election Campaign Fund pursuant to subsections 3.13.060(A) and (B) may be utilized by the Public Ethics Commission to cover the anticipated costs of administering the provisions of the Act. The Public Ethics Commission shall make a sufficient proportion of such funds available to the City Auditor to conduct compliance reviews as provided in Section 3.13.100."

LPF Administrative Regulation No. 13.060(b) states:

"No later than ten days after the City Clerk certifies the final candidate to appear on the primary election ballot, the Executive Director shall determine, based on the final number of candidates appearing on the ballot and the number of candidates eligible or potentially eligible to receive public matching funds, whether the amount of money in the Election Campaign Fund is adequate to provide the maximum

amount of public matching funds to the participants. If the Executive Director determines that the Election Campaign Fund will not be adequate to provide the maximum amount of funds to all participants, the Executive Director shall prepare a resolution for approval by the Public Ethics Commission at its next regularly scheduled or specially scheduled meeting for the disbursement of funds on a pro rata or other equitable basis. The revised disbursement plan shall also provide that a portion of the funds will be reserved for disbursement in the general or runoff election. The Ethics Commission may at any time revise the estimates and disbursement plan consistent with these rules and prevailing law."

Based on the above law and the possibility that there may not be enough money to fully fund eligible candidates, the Commission will need to adopt a resolution that articulates how available matching funds will be distributed in the District Two special election.

III. PROPOSED PRO RATA DISTRIBUTION FORMULA

Regulation 13.060(b) states that the distribution shall be on a "pro rata or other equitable basis." A simple pro rata distribution could be achieved by dividing the amount of available matching funds (after first deducting the Commission's 7.5 percent administrative cost) by the number of eligible and potentially eligible candidates.¹ All candidates would be entitled to receive up to their pro rata share for the District Two special election.

For example, under the above approach, if there were eight eligible and potentially eligible candidates after the City Clerk makes her final certification, each eligible candidate would be entitled to receive \$5,781.25 during the special election [$\$50,000$ minus $3,750$ (7.5 percent administrative cost) divided by 8 candidates].

The above approach is attractive 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 similar to the manner in which the San Francisco matching fund program allocates funds when insufficient funds exist.

A. Other Alternatives Considered

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 matching funds 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 many contributions early, and prejudice those whose fundraising efforts progress slowly during the campaign. Another approach is to withhold matching funds during the campaign and distribute them to candidates proportionally based on their submissions during the entire campaign. Such an approach may not be authorized under current law and would defeat a main

¹ The term "eligible candidate" refers to candidates who have met all the requirements of participating in the program and are ready to receive money. A "potentially eligible candidate" refers to candidates who have met some but not all requirements of participation and who have not made themselves ineligible, for example, by rejecting the voluntary expenditure ceilings.

objective of the matching fund program by failing to get money to candidates early in the campaign when it is needed the most.

B. Additional Issues With the Proposed Pro Rata Approach

1. Should unclaimed funds be re-allocated among candidates?

A policy question arises whether to "re-allocate" any unclaimed matching funds after the election is over, or simply retain them in the Fund for use in future elections. For example, some candidates will easily qualify for and receive their pro rata share during the election. Other candidates may not. For those that do not, there will exist in the Fund an unclaimed amount of money after the election is over.

There are several concerns raised by a proposal to re-allocate unclaimed matching funds. One concern is that candidates eligible for more than their pro rata share would have to keep submitting claims for matching funds even after they have obtained their pro rata share. There would be no guarantee that these candidates would receive any significant money for their efforts should the amount of unclaimed funds turn out to be small. Assuming candidates were willing to take on this risk and extra effort, there arises the question of how to allocate any unclaimed matching funds to candidates who have submitted claims for more than their pro rata share. Should the unclaimed funds be allocated equally among these candidates? Or should any unclaimed funds be distributed proportionately based on the additional claims they submit?

As a practical matter, Commission staff has reservations about establishing a system that encourages candidates to keep filing claims for unclaimed matching funds that may not exist or exist in significant amounts. The application process is somewhat time and labor intensive and justified largely by the dollar-for-dollar reimbursement under the program. Given the relatively low amount of anticipated pro rata shares in the District Two election, there may not be sufficient unclaimed funds to justify such a re-allocation scheme.

2. What if pro rata shares are not claimed?

A second issue is whether to allocate the pro rata share of a potentially eligible candidate who, despite his or her potential eligibility, chooses not to participate in the program. Unlike the above situation of unclaimed funds by participating candidates, this amount of funds may be significant and would likely become available sooner rather than later in the process. Commission staff recommends that such "relinquished" funds be allocated in equal shares to the other eligible and potentially eligible candidates provided that Commission staff obtains a written statement from the candidate that he or she has decided not to participate in the matching fund program.

3. What if there are additional appropriations to the fund?

Finally, there is a possibility that the City Council may consider a supplemental appropriation to the Fund for the District Two special election. Should that occur,

Commission staff recommends that the same recommended pro rata approach be used for the allocation of any supplemental appropriations to the Fund.

IV. PROPOSED RESOLUTION

Attachment 1 is a proposed resolution pursuant to A.R. No. 13.060(b). It provides for a simple division of available matching funds based on the number of eligible and potentially eligible candidates after first deducting the 7.5 percent share for the Commission's administrative expenses. It specifies who shall be considered as an "eligible candidate" and a "potentially eligible candidate" for purposes of the allocation formula. It further provides that: 1) any unclaimed matching funds shall remain in the Fund for use in future elections; 2) the Executive Director may make a distribution of any candidate's pro rata share of matching funds upon receipt of a written statement that the candidate has made an irrevocable decision not to seek matching funds for the District Two special election; and 3) any supplemental appropriation of money into the Fund shall be allocated in the same manner as the initial pro rata allocation.

Commission staff recommends that the Commission adopt this proposed resolution at its regular meeting of March 7, 2005.

Respectfully submitted,

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Executive Director