

INTRODUCED BY COUNCILMEMBER _____

CITY ATTORNEY

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 3.13, THE LIMITED PUBLIC FINANCING ACT OF THE CITY OF OAKLAND, ORIGINALLY ADOPTED DECEMBER 14, 1999

WHEREAS, the Limited Public Financing Act Of The City Of Oakland (hereinafter the "Act") was passed by the City Council on December 14, 1999 and became effective on January 1, 2001; and

WHEREAS, the City Council duly considered and adopted at its regular meeting of _____ (Date), a report from the Oakland Public Ethics Commission proposing various specific amendments to the Act and administrative regulations thereto; and

Deleted: November 28, 2000,

NOW THEREFORE BE IT ORDAINED, that Oakland Municipal Code Chapter 3.13 is amended to read as follows:

Deleted: WHEREAS, the City Council intends for such amendments to the Act to apply to the District Six special election to be held on April 17, 2001; ¶
¶

Article I. Findings and Purpose

3.13.010 Title

This Act shall be known as the "Limited Public Financing Act of the City of Oakland."

3.13.020 Findings and Declarations

The findings of this Act are as follows:

A. The financial strength of certain individuals or organizations should not enable them to exercise a disproportionate or controlling influence on the election of candidates.

B. The rapidly increasing costs of political campaigns have forced many candidates to raise larger and larger percentages of money from interest groups with a specific financial stake in matters under consideration by city government. This has caused the public perception that votes are being improperly influenced by monetary contributions.

C. High campaign costs are forcing officeholders to spend more time on fundraising and less time on the public's business. The constant pressure to raise contributions is distracting officeholders from urgent governmental matters.

3.13.030 Purpose of this 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.

Article II. Definitions

3.13.040 Interpretation of this Act

Unless the term is specifically defined in this Act or the contrary is stated or clearly appears from the text, the definitions set forth in Chapter 3.12 of the Oakland Municipal Code and in Government Code sections 81000 et seq. as amended govern the interpretation of this Act.

For purposes of this Act, contributions shall be "matchable contributions" only if they are: 1) the first \$100 or less of a contribution received and deposited by the candidate for the office being sought from each individual contributor to the candidate or the candidate's controlled committee and 2) received no more than one-hundred eighty (180) days before the date of the election.

COMMENT: The first element of what constitutes a "matchable contribution" is language taken from existing Section 3.13.080 and re-numbered here.

The second element implements one of staff's previous administrative recommendations that eliminates the "floating" 88-day eligibility period during which matchable contributions may be received and substitutes a comparable time period whose starting point can be determined with certainty.

Article III. Election Campaign Fund

3.13.050 Election Campaign Fund

There is hereby established an account within a special revenue fund of the City of Oakland to be known as the "Election Campaign Fund."

3.13.060 Appropriation of Funds

A. The Oakland City Council shall appropriate to the Election Campaign Fund, under the City's current two year budget cycle, an amount sufficient to fund all candidates eligible to receive limited matching funds for the following City offices: Mayor, City Attorney, City Auditor, City Councilmember-at-large, District City Councilmember and School Board Director. Notwithstanding any other provision of law, this Act shall not apply to the elected office of School Board Director for as long as the Oakland Unified School District is under the direction and control of the state-appointed administrator.

Deleted: for city office

Deleted: from the Election Campaign Fund.

COMMENT: The above amendment implements a Commission policy recommendation that suspends the matching fund program for school board candidates for as long as the school district is under the direction and control of the state administrator. (Commission staff may refine this language to achieve greater precision with the state law or the agreement authorizing state administrative control of the school district.)

As mentioned in the accompanying June 7, 2004, staff report, it may not be feasible to fund District City Council races and Citywide races at a 25 percent level. The above amendment can be further modified to reflect the specific offices for which the Commission ultimately decides to recommend funding.

B. The Oakland Public Ethics Commission shall provide in the form and at the time directed by the Mayor and City Manager a written estimate of the amount necessary to be appropriated for any two-year budget cycle according to the provisions of this Act for all eligible candidates. 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 within the account. The amount of funds to be allocated to the Election Campaign Fund shall not exceed \$460,000 for any two-year budget cycle, except that the allocation may exceed \$460,000 to reflect changes in the consumer price index. **The Public Ethics Commission may limit the allocation of funds for any primary election to assure that sufficient funds remain available for the general election.** [NOTE: The status of the existing language (in bold) will depend on whether the Commission decides to recommend funding for run-off elections. See options presented at Section 3.13.110].

C. The Election Campaign Fund shall be established as an interest bearing account. Unspent funds in the Election Campaign Fund at the end of a 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 subsection 3.13.060(d) below. In no event shall additional allocations to the Fund be made to cause the available balance in the Fund to exceed five hundred thousand dollars (\$500,000), to include allocations made to the Public Ethics Commission pursuant to subsection 3.13.060(d) below.

D. Up to 7.5% 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 cost of administering the provisions of this 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.

Article IV. Eligibility for Matching Funds

3.13.070 Application and Withdrawal Procedures

A. Each candidate for city office shall file a statement with the City Clerk on a form approved for such purpose indicating acceptance or rejection of the voluntary spending ceilings pursuant to Oakland Municipal Code Section 3.12.190.

Deleted: no later than the time of filing his or her declaration of candidacy,

Deleted: under

Deleted: section

COMMENT: The above amendment is a technical change that intends only to clarify when candidates must file their form accepting or rejecting voluntary expenditure limits.

B. A candidate who intends to accept public matching funds from the Election Campaign Fund shall sign an oath under penalty of perjury that the candidate and the candidate's controlled committee have, to the best of his or her knowledge, complied with all applicable contribution and expenditure limitations under the Oakland Campaign Reform Act and intends to comply with such contribution and expenditure limitations at all times in which the limitations apply.

C. If a candidate declines to accept the voluntary expenditure ceilings prescribed in Oakland Municipal Code Section 3.12.200, the candidate shall be subject to the contribution limits of Sections 3.12.050(a) and 3.12.060 (a) and shall not be eligible for matching funds.

Deleted: ¶

Deleted: section

D. If a candidate agrees to accept the voluntary expenditure ceilings prescribed in Oakland Municipal Code Section 3.12.200, the candidate shall be subject to the contribution limits of Oakland Municipal Code Sections 3.12.050(c) and 3.12.060(c) as adjusted pursuant to Sections 3.12.050(d) and 3.12.060(d), and shall be eligible for public matching funds upon meeting the qualification requirements as provided in this Act.

Deleted: Code, section

Deleted: sections 3.12.050 (c) and 3.12.060 (c)

Deleted: sections

E. A candidate who agrees to accept the expenditure ceilings in Oakland Municipal Code Section 3.12.200 shall not change the decision, unless an opposing candidate files a statement of rejection, or as otherwise provided in Oakland Municipal Code Section 3.12.220. In the event an opposing candidate files a statement of rejection, any candidate for the same office may rescind his or her acceptance within 10 calendar days of the deadline for filing nomination papers, provided that the candidate has not accepted any contributions in amounts greater than the limitations set forth in Oakland Municipal Code Section 3.12.050 (a) and 3.12.060(a). Any candidate rescinding his or her acceptance of the expenditure ceilings shall not be eligible for public matching funds. In the event expenditures ceilings are lifted pursuant to Oakland Municipal Code Section 3.12.220, a candidate who accepted expenditure ceilings shall be permitted to continue receiving matching public funds but shall no longer be subject to expenditure ceilings.

Deleted: section

Deleted: section

Deleted: section

Deleted: section

3.13.080 Qualification Procedures

An eligible candidate shall be approved to receive public matching funds if the candidate meets all of the following requirements:

A. The candidate has filed a timely statement of acceptance of the voluntary spending ceilings and acceptance of public matching funds.

B. The candidate is certified to appear on the ballot for the election for which matching funds are sought.

C. Any disclosures required by the Public Ethics Commission to be filed by the candidate or candidate's controlled committee indicate that the candidate has received matchable contributions in an aggregate amount of at least 5 percent of the expenditure ceiling for the office being sought.

COMMENT: The deleted language has been moved to Section 3.13.040 and modified as described.

D. The candidate is opposed by another candidate for the same office who has qualified for matching funds, or the candidate is opposed by another candidate for the same office who has received contributions or made expenditures or has cash on hand in an amount of at least 7 percent of the voluntary expenditure ceiling for that office.

E. The candidate agrees to all conditions and requirements of the use of public funds set forth in the Act and submits to any reasonable audits or compliance reviews deemed appropriate by the Public Ethics Commission or other civil authorities.

F. The candidate or his or her campaign treasurer or designee attends a training program conducted or sponsored by the Public Ethics Commission. The Public Ethics Commission shall conduct or sponsor at least three training programs before the nomination period closes in any general municipal election.

G. [Option 1: Any financial instrument submitted for matching funds must contain the name of the donor and the name of the payee and drawn from the account of the donor.]

[Option 2: Any contribution of less than \$100 submitted for matching funds shall, at a minimum, contain the name of the donor, the name of the payee, and be drawn from the account of the donor or drawn from the account of the financial institution to which the donor provided his or her own funds for the purpose of purchasing the financial instrument used to make the contribution. The Public Ethics Commission may require reasonable proof that the donor used his or her own funds to purchase the financial instrument that was used to make a contribution submitted for matching funds.]

COMMENT: Two options are presented regarding the use of money orders or bank checks as an acceptable financial instrument for seeking matching funds. The first option, recommended by Commission staff, would preclude any financial instrument other than a "two party check." State law requires that all contributions of \$100 or more be made on such two party checks.

Deleted: sought. Matchable contributions shall consist of only the first \$100 or less of a contribution or contributions received and deposited by the candidate for the office sought from each individual contributor to the candidate or candidate's controlled committee and do not include any contributions received eighty eight or more days prior to closing of the nomination period for the office

The second option would permit contributions of less than \$100 to be matched on money orders or bank checks provided than the donor used his or her own funds to purchase the financial instrument. Commission staff would have to develop a process or standard of proof to ensure that the donor used his or her own money to purchase the instrument.

3.13.090 Use of Personal Funds

Unless the voluntary expenditure ceilings are lifted in accordance with Oakland Municipal Code Section 3.12.220, a candidate who accepts public matching funds shall not receive contribution(s) or loan(s) from the candidate's own funds that exceed 5 percent of the voluntary expenditure ceiling for the office being sought. If the voluntary expenditure ceilings for the office being sought are lifted, this provision shall not apply.

Deleted: section

Deleted: a contribution or contributions

COMMENT: Under OCRA Section 3.12.090, a "loan" is considered to be a "contribution" from the maker and the guarantor of the loan. The proposed change in this section would clarify current Commission practice that participating candidates not be permitted to contribute or loan their campaigns an amount exceeding five percent of their voluntary expenditure ceiling.

Article V. Disbursement of Public Matching Funds.

3.13.100 Duties of the Public Ethics Commission

A. The Public Ethics Commission shall develop any and all forms necessary to carry out the provisions of the Act, including forms for statements of acceptance or rejection of expenditure ceilings and forms for candidate requests for public matching funds. The Public Ethics Commission may, in its discretion, require any document or form to be filed in an electronic format that is provided by the Public Ethics Commission to the candidates free of charge.

B. The Public Ethics Commission shall cause the review of the statements of acceptance or rejection, nomination papers, requests for public subsidies and other campaign financial reports in a timely fashion to certify a candidate's eligibility to receive public matching funds.

C. The certification of a candidate's eligibility for public matching funds shall provide the reasons why a candidate is or is not eligible, the amount of the public matching funds disbursed, and what actions a candidate may take to correct any insufficiencies.

D. The City Auditor shall conduct mandatory audits or compliance reviews of all candidates accepting public matching funds. Audits or compliance reviews shall be conducted of other candidates only when necessary to determine if compliance with the eligibility requirements of section 3.13.080(d) were met. The results of any audit(s) or compliance review(s) conducted shall be provided to the Public Ethics Commission. The City Auditor shall propose administrative standards for conducting audits and compliance reviews consistent with the requirements of this Act to be duly approved by resolution of the City Council.

3.13.110 Matching Fund Formula

A. A certified candidate shall receive public matching funds according to the following formula:

[Option 1: One dollar of public matching funds for each dollar received and deposited of the first \$100 or less contributed by each individual contributor per election.]

Deleted:

Deleted: A. One

[Option 2: For donors whose principal residence or whose primary place of doing business is located within the City of Oakland and which residence or business address appears on the written instrument used to make the contribution: Two dollars of public matching funds for each dollar received and deposited of the first \$100 or less contributed by each individual contributor per election. For donors whose principal residence or whose primary place of doing business is located outside the City of Oakland as evidenced by the written instrument used to make the contribution: One dollar of public matching funds for each dollar received and deposited of the first \$100 or less contributed by each individual contributor per election.]

[Option 3: One dollar of public matching funds for each dollar received and deposited of the first \$100 or less contributed by each individual contributor per election provided that the contribution is made by donors whose principal residence or whose primary place of doing business is located within the City of Oakland and which residence or business address appears on the written instrument used to make the contribution.]

COMMENT: The above subsection "A" provides three options for the Commission to consider regarding the matching fund formula.

Option 1 retains current law: One dollar of matching funds for each dollar of eligible contributions.

Option 2 would create an incentive for candidates to obtain contributions from sources within the City by matching such contributions at a rate of two dollars of matching funds for each dollar of "Oakland" contributions. Sources of contributions located outside the City would be matched at the existing 1:1 ratio.

Option 3 would only match contributions from sources within the City.

B. The total amount of public funds allocated to each candidate shall not exceed twenty-five (25) percent of the voluntary expenditure ceiling per election for the office being sought.

Deleted: 15

COMMENT: Subsection B would have the effect of increasing the total amount of matching funds a candidate could receive in an election. See the accompanying June 6, 2004, staff memorandum to determine the effect of this percentage increase on the specific amount of matching funds available during 2006 election.

C. In no event shall the Public Ethics Commission match a contribution which it has determined to be aggregated with a previously matched contribution from another person pursuant to Section 3.12.080.

D. Upon certification of a candidate's eligibility, the candidate shall receive an initial lump-sum payment representing twenty percent of the total amount of available matching funds allocated for the office being sought. Thereafter, a certified candidate shall receive matching funds according to the formula contained in Section 3.13.110(A).

COMMENT: Subsection D implements the previous policy recommendation that candidates receive an initial up-front payment upon qualifying for public matching funds. The rationale of such a payment is to provide candidates with money that is often needed at the early stages of a campaign. The amount of 20 percent represents approximately \$16,000 for Mayor; \$12,000 for City Auditor, City Attorney and Councilmember-at-large; and \$5,000 for District Councilmembers, under a 25 percent total matching fund limit.

E. [Option 1: Matching funds shall not be available to candidates during any run-off election.]

[Option 2: Each candidate who qualifies for a run-off election shall receive a payment equal to the amount he or she received pursuant to Section 3.13.110(D). No other matching funds shall be available to a run-off candidate.]

COMMENT: Subsection E presents the Commission with options to determine whether to: 1) cease funding for run-off candidates; or 2) provide run-off candidates with a amount equal to the initial payment they receive upon qualifying for matching funds in the nominating election. The Commission can continue to provide run-off candidates with the full amount of matching funds by deleting proposed subsection E.

3.13.120 Disbursement of Public Funds

A. A candidate or candidate's controlled committee, certified as eligible to receive public matching funds, shall submit a request for public matching funds to the Public Ethics Commission each time a threshold of \$3,000 or more in matchable funds is reached.

B. A candidate or candidate's controlled committee, certified as eligible to receive public matching funds, may submit a request for public matching funds of \$1,000 or more 10 calendar days before the election.

C. The Public Ethics Commission shall have 10 calendar days to cause the review and approval or denial of the request and disburse the public funds to the candidate or candidate's controlled committee.

D. The request for public matching funds shall be made on a form determined by the Commission, and shall include copies of each check eligible to be matched by public funds.

3.13.130 Deposit of Public Funds

All public funds shall be deposited directly into the candidate's campaign checking account.

3.13.140 Use of Matching Funds

Public matching funds may only be used for lawful qualified campaign expenditures incurred by a candidate during the election for which the funds were allocated.

3.13.150 Return of Matching Funds

A. Public matching funds provided by this Act remain the property of the City until disbursed or encumbered for lawful qualified campaign expenditures.

B. Unencumbered matching funds must be returned to the Election Campaign Fund no later than thirty-one (31) calendar days from the earlier of the last day of the semi-annual reporting period following the election, or the candidate's withdrawal from the election. Any unencumbered campaign funds remaining as of the last day of the semi-annual reporting period following the election, or the candidate's withdrawal from the election, shall be considered unencumbered matching funds to be returned to the Election Campaign Fund, up to the amount of matching funds received for that election by the candidate.

Deleted: within thirty (30)

Deleted: day following the defeat, withdrawal or election to office by the certified candidate.

Deleted: after the defeat, withdrawal or election to office by the certified candidate,

Deleted: up to the amount of matching funds received for that election by the candidate,

Deleted: Fund pursuant to this section.¶

COMMENT: The proposed language in subsection B implements a proposal to change the date by which surplus campaign funds must be calculated and returned to the City. Under existing law, any surplus campaign funds must be calculated as of the date of the election. The proposed language would change the date to 31 days after the last day of the semi-annual reporting period following the election (currently June 30 for the March nominating election), or as of the date a candidate withdraws from the election. This proposed amendment conforms the date by which surplus funds are identified and calculated to state filing deadlines.

C. Public matching funds shall not be disbursed to the certified candidate from the Election Campaign Fund to match any contribution following the defeat, withdrawal, or election to office by the candidate except that public matching funds may be disbursed to a certified candidate after the date of the election for which matching funds are sought provided that the candidate submitted a properly documented claim form for public matching funds before the date of the election.

3.13.160 Proof of Payment

A. Each certified candidate or candidate's controlled committee which received public matching funds shall provide to the Public Ethics Commission sufficient proof of all disbursements made from matching funds no later than the due date for the next campaign finance report.

B. The Public Ethics Commission shall determine what constitutes sufficient proof of payment.

3.13.170 Public Debates

While not a condition for receiving matching funds, candidates receiving public matching funds are strongly encouraged to participate in one or more nonpartisan candidate debates for each election.

3.13.180 Enforcement

The Public Ethics Commission is the sole body for civil enforcement of this Act. In the event criminal violations of the Act come to the attention of the Public Ethics Commission, the Commission shall promptly advise in writing the City Attorney and the appropriate prosecuting enforcement agency.

3.13.190 Criminal Misdemeanor Actions

Any person who knowingly or willfully 1) misrepresents his or her eligibility for matching funds, 2) violates sections 3.13.090, 3.13.130, 3.13.140 or 3.13.150(b), or 3) causes, aids or abets any other person to violate the provisions set forth in this section, is guilty of a misdemeanor. Prosecution shall be commenced within four (4) years after the date on which the violation occurred.

3.13.200. Enforcement Actions

A. Any person who intentionally or negligently 1) misrepresents his or her eligibility for matching funds, 2) violates sections 3.13.130, 3.13.140 or 3.13.150(b), or 3) causes, aids or abets any other person to violate the provisions set forth in this section, is subject to enforcement proceedings before the Public Ethics Commission pursuant to the Public Ethics Commission General Rules of Procedure.

B. If two or more persons are responsible for any violation, they shall be jointly and severally liable.

C. Any person alleging a violation of this Act shall first file with the Public Ethics Commission a written complaint on a form approved for such purpose. The complaint shall contain a statement of the grounds for believing a violation has occurred. The Public Ethics Commission shall review, investigate and make determinations regarding any alleged violation consistent with the Public Ethics Commission's General Complaint Procedures.

D. The Commission has full authority to settle any action involving public matching funds in the interest of justice.

E. If the Commission determines a violation has occurred, the Commission is hereby authorized to administer appropriate penalties and fines not to exceed \$1,000 per violation and to order the repayment of matching funds received or expended in violation of law.

F. The Public Ethics Commission may sue for injunctive relief to enjoin violations or to compel compliance with the provisions of this Act.

G. No complaint alleging a violation of any provision of this Act shall be filed more than two (2) years after the date the violation occurred.

3.13.220 Construction

The Act shall be liberally construed to accomplish its purposes.

3.13.240 Applicability of Other Laws

Nothing in this Act shall exempt any person from applicable provisions of any other laws of the city, state or other appropriate jurisdiction.

3.13.260 Severability

If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act to the extent it can be given effect, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this extent the provisions of this Act are severable.

3.13.280 Effective Date

The effective date of this Act shall be January 1, 2001.

In Council, Oakland, California, (date), 2001

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, SPEES. WAN, AND
 PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST:

 CEDA FLOYD
 City Clerk and Clerk of the Council
 of the City of Oakland, California