

Item 4 - Staff Memo and Attachments



Ryan Micik, Chair
Francis Upton IV, Vice Chair
Alea Gage
Vincent Steele
Karun Tilak

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Jelani Killings, Ethics Analyst
Nicolas Heidorn, Executive Director
DATE: August 12, 2024
RE: 2024 LPF Program - Distribution of Funds

The Limited Public Financing Act (LPF Act), provides District City Council candidates with some public funds to be used for campaign expenses, with the goal of helping ensure that all individuals have a fair and equal opportunity to participate in the elective and governmental process. The process for applying for LPF funds begins after the City Clerk certifies the names of all candidates to appear on the ballot.

The City Clerk recently certified names of candidates that have qualified for the November 2024 ballot. Attached is the list of certified candidates that was last updated on August 9. The Commission now must determine the following:

- 1) Whether the amount of money in the Election Campaign Fund is adequate to provide the maximum amount of funds allowable by law to each potentially eligible candidate, and
- 2) If the fund is not adequate, how to distribute the funds on either a pro rata or other equitable basis.

This memorandum provides background information and Staff recommendations for Commission consideration.

Background

Oakland Municipal Code Chapter 3.13, as amended in 2024, outlines the current provisions of the Limited Public Finance Act.

O.M.C. Section 3.13.065 of the LPF Act specifies the process for determining how to allocate LPF funds to candidates:

No later than seven days after the city clerk has certified the names of all candidates to appear on the ballot, the public ethics commission shall determine at a publicly noticed meeting whether, based on the number of potentially eligible candidates, the amount of money in the election campaign fund is adequate to provide the maximum amount to potentially eligible candidates. If the commission determines that the election campaign fund will not be adequate to provide the maximum amount of funds to potentially eligible candidates, the commission shall order the disbursement of available funds on a pro rata or other equitable basis. The commission may at any time revise the disbursement plan consistent with these rules and prevailing law.

Section 3.13.110(E) of the LPF Act sets the maximum amount of funds to be allocated to each candidate at 30 percent of the voluntary expenditure ceiling for the office being sought.

Analysis

1. Is the amount of money in the Election Campaign Fund adequate to provide the maximum amount of funds allowable by law to each potentially eligible candidate?

The total amount allocated for the 2024 Limited Public Financing Program is \$155,000 to be available for distribution to the candidates who opt into the program for the November 2024 election.

As of August 9, 2024, the City Clerk’s candidate certification list includes six qualified candidates running for election to the office of District City Councilmember in Districts 1, 3, 5, and 7.

The chart below shows the breakdown of the number of candidates per district race, the voluntary expenditure ceiling and maximum potential LPF amount per candidate for each district, and the total amount of public funds that would be needed in order to offer each candidate the maximum amount of public funds allowable under the LPF Act, if all of the 6 candidates opted into the program.

| District Number | Number of Candidates Qualified for Ballot | Expenditure Ceiling | Maximum Potential LPF Amount for Each Candidate | Total Funds Needed per District to Provide the Maximum Amount | Total Amount Needed in the Fund |
|-----------------|---|---------------------|---|---|---------------------------------|
| 1 | 1 | \$150,000 | \$45,000 | \$45,000 | \$270,000 |
| 3 | 3 | \$150,000 | \$45,000 | \$135,000 | |
| 5 | 2 | \$150,000 | \$45,000 | \$90,000 | |
| 7 | 0 | \$150,000 | \$45,000 | \$0 | |

*As of August 9, 2024, the qualification of four additional candidates is still pending. In addition, the nomination period has been extended to August 14, 2024, for the District 1 and District 7 races since the incumbents will not be seeking re-election.

To offer each candidate the maximum amount of public funds allowable under the LPF Act, the Election Campaign Fund would require a total of **\$270,000** if all six candidates accept LPF program participation.

Because the current fund balance available to candidates is \$155,000, the amount of money in the Election Campaign Fund is *not adequate* to provide the *maximum* amount allowed by law to potentially eligible candidates. Since the fund balance is not adequate to provide the maximum amount to each candidate, the Commission must determine how to distribute the available funds on a pro rata or other equitable basis.

2. How should the available funds be distributed?

A simple distribution of the current Election Campaign Fund balance can be achieved by dividing the balance of \$155,000 by the total number of candidates who have been certified by the City Clerk and who, within 14 days of certification, have submitted their Statement of Acceptance of the LPF program to the Public Ethics Commission. Once the 14-day deadline passes, Commission staff will calculate the total number of candidates who accept participation in the program and then divide the total amount available in the Election Campaign Fund by the number of participating candidates.

3. How will we ensure that all funds are distributed?

The intent of staff in administering the LPFA program is to distribute the full amount allocated in the general election fund of \$155,000. In the 2014 election cycle, the Commission implemented a new process for submission of claims in order to maximize the use of LPF funds by candidates. Under the two-phased approach, candidates are required to file their first reimbursement claim by September 20 in order to confirm that allotted funds will be used. Prior to the 2014 election cycle, substantial funds had gone undistributed, resulting in fewer funds being distributed to each candidate than was available in the fund by the end of the program. This issue resulted from some candidates opting to participate in the LPFA program, essentially reserving the funds for their own use, but never requesting reimbursement.

In 2012, 14 candidates stated they would accept public dollars, but only six submitted and received reimbursements. The table below reflects the LPFA fund allocation from the 2012 election. It shows the initial allocation based upon candidates who filed LPFA Form 1 to accept public financing, the number of candidates that actually filed LPFA Form 3 for reimbursement, and how funds were allocated to participating candidates.

| District | Maximum Potential LPFA Amount for Each Candidate (if fully funded) | Number of Candidates that Filed Form 1 | Number of Candidates that Filed Form 3 | Total Amount Available to Each Candidate in 2012 | Percentage of the Fund that Went Unclaimed |
|----------|--|--|--|--|--|
| 1 | \$33,300 | 4 | 3 | \$8,552.92 | 58 percent |
| 3 | \$35,700 | 5 | 1 | | |
| 5 | \$37,200 | 3 | 1 | | |
| 7 | \$38,100 | 2 | 1 | | |

In 2014, under the new two-phase process, 11 candidates stated they would accept public dollars, but only eight submitted for a reimbursement by the September Phase I deadline. The table below reflects the LPFA fund allocation from the 2014 election. It shows the initial allocation based upon candidates who filed LPFA Form 1 to accept public financing, the number of candidates that filed LPFA Form 3 for reimbursement by the September deadline, and how funds were re-allocated to *participating candidates*, resulting in an increase of \$4,887 to each candidate.

| District | Maximum Potential LPFA Amount for Each Candidate (if fully funded) | Number of Candidates that Filed Form 1 | Number of Candidates that Filed Form 3 | Total Amount Available to Each Candidate in 2014 (before re-distribution) | Total Amount Participating Candidate received upon redistribution |
|----------|--|--|--|---|---|
| 2 | \$38,100 | 4 | 4 | \$13,034 | \$17,921 |
| 4 | \$36,300 | 3 | 2 | | |
| 6 | \$36,300 | 4 | 2 | | |

The new two-phase approach resulted in the Commission distributing 99.9 percent of the Election Campaign Fund in 2014, compared with 67 percent and 42 percent of the total funds being used in 2010 and 2012 respectively. In 2016, seven candidates filed LPF Form 1, but only four submitted for

reimbursement by the Phase I deadline. Seventy-nine percent of the total funds available were used, due to one candidate only submitting for one reimbursement and not utilizing their full allotment, a decrease from 2014 but still yielding a higher allocation rate than previous elections prior to the two-phased approach. The new approach also encouraged candidates to submit their claims earlier, resulting in more claims being submitted and funds being disbursed and used earlier in the campaign. The effectiveness of the two-phase approach continued in the last three elections cycles as the total amount of reimbursement funds distributed to candidates was \$176,489 or 96 percent of the total funds available in 2018; \$137,485 or 90 percent in 2020; and \$159,038 or 90 percent in 2022. For these reasons, Staff plans to continue the two-phase approach in the 2024 election.

Recommendation

Staff recommends that the Commission find that the amount of money in the Election Campaign Fund is not adequate to provide the maximum amount of money to potentially eligible candidates. Secondly, Staff recommends that the balance of \$155,000 be divided equally by the total number of candidates who accept participation in the Limited Public Financing program by the 14-day deadline, subject to the two-phase approach outlined above, in order to ensure full distribution of available funds and to ensure participating candidates receive the maximum possible amount.

Attachments:

1. Qualified Candidate List for the November 5, 2024 Municipal Election, Oakland City Clerk's Office
2. Limited Public Financing Program Guide, 2024



City of Oakland November 2024 Election

CITY COUNCILMEMBER AT-LARGE

| Status | Candidate Name (Last name, First name) |
|--------------|---|
| Qualified | Armstrong, LeRonne |
| Qualified | Brown, Rowena J. |
| Pending | Danino, Shawn B. |
| Pending | Love, Tonya D. |
| Qualified | Matoury, Kanitha |
| Qualified | Pechenuk, Mindy |
| Pending | Robinson, Fabian N. |
| Noms. Issued | Sidebotham, Nancy |
| Pending | Thomas, Selika |
| Qualified | Tostado, Cristina |
| Pending | Wang, Charlene A. |

CITY COUNCILMEMBER DISTRICT 1

| Status | Candidate Name (Last name, First name) |
|--------------|---|
| Noms. Issued | Frank, Edward C. |
| Noms. Issued | Gondelman, Samuel A. |
| Noms. Issued | Raphael, Leonard S. |
| 501 filed | Sherman, Debra B. |
| Qualified | Unger, Zac |

CITY COUNCILMEMBER DISTRICT 3

| Status | Candidate Name (Last name, First name) |
|-------------------|---|
| Pending | Afolabi, Baba A. |
| 501 filed | Dunbar, Donnel C. |
| Pending | Fife, Carroll |
| 501 filed | Fort, Douglas J. |
| Pending | Hailey, Michelle |
| Qualified | Hirsch, Shan M. |
| 501 filed | Ikharo, Tariq E. |
| Noms. Issued | Johnson, Derreck B. |
| Has not qualified | Jordan, Tyron C. |
| 501 filed | Lester, Lewis L. |
| Qualified | Logan, Warren M. |
| Qualified | Semedar, Meron Y. |
| Has not qualified | Taylor, Faye |

CITY COUNCILMEMBER DISTRICT 5

| Status | Candidate Name (Last name, First name) |
|-----------|---|
| Qualified | Armstrong, Erin |
| Qualified | Gallo, Noel |
| Pending | Prado, Dominic L. |

CITY COUNCILMEMBER DISTRICT 7

| Status | Candidate Name (Last name, First name) |
|--------------|---|
| 501 filed | Garrett, Lere L. |
| Noms. Issued | Goolsby, Merika |
| Noms. Issued | Hodge, Marcie |
| Noms. Issued | Reid, Treva |

CITY ATTORNEY

| Status | Candidate Name (Last name, First name) |
|-----------|---|
| Qualified | Harbin-Forte, Brenda |
| Qualified | Richardson, Ryan |

SCHOOLBOARD DIRECTOR DISTRICT 1

| Status | Candidate Name (Last name, First name) |
|---------|---|
| Pending | Latta, Rachel E. |
| Pending | Salop, Benjamin |

SCHOOLBOARD DIRECTOR DISTRICT 3

| Status | Candidate Name (Last name, First name) |
|---------|---|
| Pending | Aikens, Dwayne A. |
| Pending | Williams, VanCedric |

SCHOOLBOARD DIRECTOR DISTRICT 5

| Status | Candidate Name (Last name, First name) |
|--------------|---|
| Noms. Issued | Berry, Patrice A. |
| Pending | Ritzie-Hernandez, Alexandra J. |

SCHOOLBOARD DIRECTOR DISTRICT 7

| Status | Candidate Name (Last name, First name) |
|---------|---|
| Pending | Thompson, Clifford W. |
| Pending | Ware, Dominic J. |

UPDATED

8/9/2024

501 filed =

Candidate has filed a Candidate Intention Statement with Clerk's Office

Noms. Issued =

Candidate was issued nomination documents

Pending =

Candidate has submitted nomination documents; documents are being verified

Has not qualified =

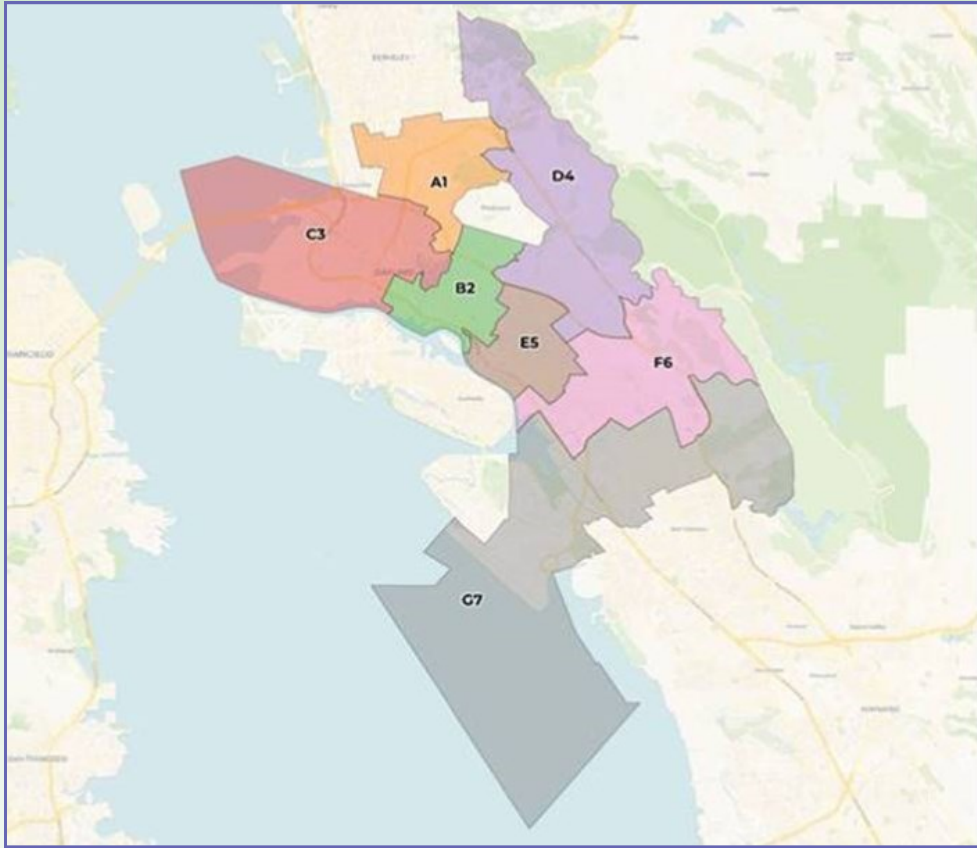
Nomination docs have been verified; candidate has NOT qualified for the ballot

Qualified =

Nomination docs have been verified; candidate has qualified for the ballot

*Nomination papers cannot be issued in advance of the Nomination Period, which opens July 15 2024

City of Oakland Public Ethics Commission



Limited Public Financing Program Guide for City Council District Candidates

NOVEMBER 2024 ELECTION

Public Ethics Commission
1 Frank Ogawa Plaza (City Hall), Ste. 104
Oakland, CA 94612
www.oaklandca.gov/pec
ethicscommission@oaklandca.gov
(510) 238-3593



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INTRODUCTION

The City of Oakland Limited Public Financing Act of 2024 (Act) provides a limited amount of campaign funds for candidates running for Oakland City Council District seats. The purposes of the Act include the following:

1. Ensure that all individuals and interest groups in our city have a fair and equal opportunity to participate in elective and governmental processes;
2. Reduce the influence of large contributors with a specific financial stake in matters under consideration by the City and counter the perception that decisions are influenced more by the size of contributions than by the best interests of the people of Oakland;
3. Reduce the pressure on candidates to raise large campaign war chests for defensive purposes, beyond the amount necessary to communicate reasonably with voters;
4. Encourage competition for elective office;
5. Allow candidates and officeholders 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;
6. 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;
7. Help preserve public trust in governmental and electoral institutions;
8. Prevent corruption or the appearance of corruption. [Oakland Municipal Code (OMC) § 3.13.030]

Campaign Reform Act Compliance

Public financing laws work in coordination with the Oakland Campaign Reform Act (OCRA), which limits contributions, restricts contributions from people doing business with the City, and regulates local campaign finance disclosure as a supplement to state campaign finance laws.

The Commission imposes fines for violations of campaign finance and public financing laws, such as failure to file campaign finance forms or receiving contributions over the limit. For more information about campaign rules and potential fines, see the Commission's Oakland Campaign Reform Act Guide for 2024.

The Public Ethics Commission (Commission) administers the Public Financing Program (Program) and is here to assist you in your application and reimbursement process. The application and reimbursement process is complex, so please contact Commission staff if you are a candidate for a City Council District seat who might be interested in help with financing your campaign.

Oakland Public Ethics Commission

One Frank H. Ogawa Plaza (City Hall), Ste. 104
Oakland, CA 94612
(510) 238-3593

www.oaklandca.gov/pec
ethicscommission@oaklandca.gov

AM I ELIGIBLE FOR PUBLIC FINANCING?

Any candidate who is certified by the City Clerk to appear on the 2024 general election ballot for the office of Oakland City Councilmember in Districts 1 – 7 and who is opposed by another candidate may apply for public financing through the City. Candidates for Citywide offices, such as the office of Mayor, City Auditor, City Attorney, and At-Large Council Member, along with candidates for the Oakland Unified School District Board of Directors, are not eligible. [OMC § 3.13.060]

Application process steps and eligibility requirements include the following:

| Step | Program Requirement | Due Date |
|------|--|--|
| 1 | Submit OCRA Form 301 – Candidate agrees to voluntary spending limit of \$150,000 by submitting signed OCRA Form 301 to the Public Ethics Commission | Any time before opting into the program |
| 2 | Candidate Certified for Ballot – City Clerk certifies candidate to appear on the ballot | City Clerk deadline for certification – 88 days prior to the election. |
| 3 | Candidate Has Opposition – Candidate is opposed by another candidate for the same office | Certification of candidates by City Clerk |
| 4 | Candidate Attends Training – Candidate or their campaign treasurer or designee has attended a PEC LPF training program | August 30, 2024 |
| 5 | Submit LPF Form 1 – Candidate Statement of Acceptance or Rejection submitted to PEC | Within 14 days of certification by City Clerk |
| 6 | Submit LPF Form 2 – Initial Application for Public Financing submitted to PEC | September 20, 2024 |
| 7 | Minimum Campaign Contributions Received – Candidate demonstrates receipt of at least \$7,500 in total contributions from Oakland donors | September 20, 2024 |
| 8 | Minimum Campaign Spending Made – Candidate demonstrates at least \$7,500 total campaign spending | September 20, 2024 |
| 9 | Personal Funding Limit – Contributions or loans from candidate’s personal funds may not exceed \$19,000, unless voluntary spending limits are lifted | Ongoing |
| 10 | Campaign Fundraising Materials Comply with OCRA – All campaign materials include the required text regarding contribution limits and prohibitions on contributions from contractors doing business with the City (See Oakland Campaign Reform Act Section 3.12.140) | Ongoing |
| 11 | Public Debate – Candidate participates in at least one public debate or forum. To count towards the requirement all candidates accepting public financing for the office sought by the candidate must be invited to participate in the debate. | November 5, 2024 |

HOW MUCH MONEY WILL BE AVAILABLE?

The amount of money available to candidates depends on how much money is budgeted by City Council and how many candidates run for City Council Districts 1 – 7 in this election. In past years, the maximum amount that a participating candidate could receive has ranged between \$8,000 and \$35,000. Commission staff will announce the amount available to candidates during the nomination period for candidates to opt in to the program (as detailed below).

Regardless of the amount appropriated for public financing, no candidate may receive more than 30% of Oakland’s voluntary expenditure limit – \$45,000 – for the office being sought.

HOW DO I APPLY?

There are two forms candidates must submit to apply for public financing:

1. **Opt-In** – Complete the **Acceptance/Rejection of Public Financing Form (LPF Form 1)** to accept or reject public financing no later than 14 days after the City Clerk has certified the names of all candidates to appear on the ballot (usually mid-August). [OMC § 3.13.070(B)]
 - Failure to file **LPF Form 1** by the deadline is treated the same as **rejection** of public financing for the upcoming election.
2. **Apply for Program Participation** – Complete the **LPF Application (LPF Form 2)** to officially apply for public financing. **LPF Form 2** requires the following:
 - **Campaign Information** – Be sure campaign contact information is up-to-date as we use this information to communicate with you and your campaign staff regarding all aspects of your public financing participation, including when your check is ready.
 - **Tax ID/EIN Number** – Campaign committees need to obtain a Taxpayer/Employer Identification Number (EIN) from the Internal Revenue Service (IRS) to receive reimbursement payments from the City. You can request an EIN online as a political organization at www.irs.gov. Once you have obtained your EIN from the IRS, submit a completed IRS Form W-9 to the PEC. If you encounter any trouble obtaining your EIN, contact PEC staff for assistance.
 - **Proof of Contributions Received** – The candidate must submit copies of campaign contributions (i.e., contribution checks; not cash) demonstrating that the candidate has received contributions from Oakland donors that total at least \$7,500 (5% of the voluntary spending limit for the office you are running for). The check used to make the contribution must demonstrate an Oakland address. Candidates may submit contributions received electronically from Oakland residents to meet the 5% contribution threshold. In that case, candidates should request that the vendor collecting the online contributions send a CSV (comma separated variable) report directly to the PEC to validate contributor and payment information. PEC staff can assist you with this process. Note that contributions from a candidate’s own funds do not count toward meeting this 5% requirement. [OMC § 3.13.080(C)]
 - **Proof of Expenditures Made** – The candidate must also submit proof in the form of detailed invoices or proof of payments/receipts that he or she has made campaign expenditures totaling at least 5% of the voluntary spending limit for the office being sought, i.e., \$7,500. [OMC § 3.13.080(C)]

- **Debate Participation** – The candidate must attest that he or she will personally participate in at least one public debate or forum.

HOW DO I REQUEST FUNDS?

Funds are provided to candidates as reimbursements for certain types of campaign expenditures (see box on this page). At the start, candidates may apply for reimbursement in increments of \$1,000 or more. In the ten days leading up to the election, candidates may apply for reimbursements in increments of \$500 or more. [OMC § 3.13.120]

To apply for reimbursement candidates submit the **Reimbursement Claim Form (LPF Form 3)**. Reimbursement claims must include copies of the following records for each expense for which reimbursement is requested:

1. Billing invoice;
2. Proof of payment by the campaign committee; and
3. A copy of the campaign literature, advertisement, radio or television script, or webpage, if applicable. [OMC § 3.13.110(C)]

Expenditures Qualifying for Reimbursement

Reimbursement will only be provided for the following campaign expenditures:

- Candidate filing and ballot fees
- Printed campaign literature and production costs
- Postage
- Print advertisements
- Radio airtime and production costs
- Television or cable airtime and production costs
- Website design and maintenance costs

[OMC § 3.13.110(B)]

Reimbursement claims also include a sworn statement by the candidate and their campaign treasurer that (a) the check(s) used to make payment on the billing invoice represents payment in full of the billing invoice submitted for reimbursement and that the campaign account contains enough funds to provide payment, and (b) any money received from the election campaign fund has not been already set aside or specifically used to pay off any loans, return contributions, or cover any expenses other than those for which reimbursement was requested.

All requests for reimbursement must be submitted prior to the date of the election. Claims submitted on or after the date of the election will not be considered.

Commission staff reviews reimbursement claims and works closely with candidates to ensure they are complete. Once the claim is complete, Commission staff will respond with payment or an explanation of denial within two weeks.

Public financing checks are only payable to a candidate's campaign committee account. The check must be deposited into the candidate's campaign account within thirty calendar days of receipt.

A denial or limitation of a request for reimbursement by the Commission's Executive Director may be appealed to the Commission whose decision shall be final. A request to appeal the denial shall be submitted to Commission staff in writing no more than ten calendar days after receiving written notice of the denial. [OMC § 3.13.110(D)]

REALLOCATION OF THE FUND

To ensure that the full amount allocated in the general election fund is distributed to all interested candidates, the Commission conducts a two-phase approach for payment of LPF funds to participants.

Phase I – Once eligible candidates opt in to the LPF program, the PEC determines the amount available to each participant. The **LPF Application** and the first **LPF Reimbursement Claim Form** must be submitted by participating candidates by the Phase II deadline of **September 20**. Failure to submit the **LPF Application** and at least one **LPF Reimbursement Claim Form** by the deadline will disqualify the candidate from receiving public funds for the 2024 election.

Phase II – Candidates who meet the September 20 deadline proceed to Phase II. After the September 20 deadline, the PEC recalculates and then re-allocates funds according to the number of candidates that met the Phase II requirement. The redistribution can potentially increase the maximum allotted amount available to each participant based on the number of qualified candidates.

NEW PUBLIC DEBATE REQUIREMENT

For the 2024 election cycle, the City has adopted a new debate requirement as a condition of participating in the LPF Program. Candidates receiving public financing must agree to participate in at least one public debate or forum that meets the PEC's debate guidelines.

An eligible public debate or forum can be an online or in-person live event where a participating candidate gives a live speech, participates in a panel discussion, or responds to questions. In addition, the event must meet all the following conditions:

1. The event is free and open to the public.
2. The event is held within 120 days of the applicable election.
3. The event is not structured to promote or advance one candidate over another.
4. The following candidates have been invited to participate in the event:
 - a. All candidates for the covered office being sought that have filed a Form 501; or
 - b. All candidates for the covered office being sought that have qualified to participate in the LPF Program or the Democracy Dollars Program or that have pending applications to participate in either program; or
 - c. All candidates for the covered office being sought that have qualified for the ballot.
5. The event host has not already endorsed any of the candidates for the covered office being sought for this election and is not endorsing any of the candidates for the covered office being sought at the event.

Candidates must submit a form notifying the PEC within five days of attending a qualifying debate. Participating candidates must provide event details, organizer info, and confirm that the debate met program requirements.

If the Executive Director decides that an event doesn't qualify, the candidate will be notified with the reasons why. Within 14 days of receiving such notice, the candidate may appeal the Executive Director's decision to the full Commission at its next regular meeting.

Failure to Meet the Debate Requirement: Thirty (30) days before the election, the PEC may require that participating candidates demonstrate that they have met the minimum public debate or forum requirements. ***Candidates failing to meet the debate requirement may face enforcement actions and may have to reimburse all or some of the public funds received.***

See Appendix 2 to read the PEC’s full LPF/Democracy Dollars Debate Guidelines.

POST-ELECTION PROCEDURES

The Act requires that a portion of any leftover campaign funds remaining as of December 31, 2024, be returned to the Election Campaign Fund by January 31, 2025. [OMC § 3.13.150] The refund amount will be determined by multiplying the surplus campaign funds (after subtracting any debts) by the percentage of total public financing received compared to the total monetary contributions for the election.

For example, if a candidate receives \$40,000 in contributions, \$10,000 in public financing, and as of December 31 has a remaining balance of \$14,000, with \$2,000 in debt, the candidate will owe the Election Campaign Fund \$3,000. (Note: The \$40,000 in contributions does not include public financing funds. LPF funds are NOT considered monetary contributions but are listed as “miscellaneous increase to cash” on campaign statements.)

Candidates are not required to return leftover funds that is more than the amount of public financing received. Commission staff can assist you in calculating the amount that must be returned, if any.

ENFORCEMENT AND OVERSIGHT

The Public Ethics Commission is authorized to enforce the provisions of the Limited Public Financing Act, which may include the imposition of fines, penalties and the return of public financing received. [OMC § 3.13.180, 3.13.200] In addition, the City Auditor may audit candidates receiving public financing to ensure compliance with the rules of the program. [OMC § 3.13.100]

APPENDIX 1: OCRA FORM 301

Voluntary Expenditure Limits - OCRA Form 301

My progress: 33%



Candidate Information

Name Required

John Doe

Email Required

john4oakland@gmail.com

Office Sought Required

City Council, District 1

Election Date Required

November 5, 2024

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APPENDIX 2: LPF/Democracy Dollars Program Debate Guidelines

Oakland Public Ethics Commission Limited Public Financing/Democracy Dollars Program Debate Guidelines

- A. **Purpose.** This policy describes:
1. What events qualify as a “public debate or forum” for the purposes of candidate eligibility for the Limited Public Financing Program of 2024 (LPF) or the Democracy Dollars Program;
 2. The process candidates will use for certifying compliance with the minimum debate or forum requirements of these Programs to the Public Ethics Commission (PEC); and
 3. The actions the PEC shall take if the requirement is not met.
- B. **Eligible Debates.** For the purposes of the Oakland Fair Elections Act Democracy Dollars program and the Limited Public Financing Act program, a “public debate or forum” means an online or in-person live event where a participating candidate gives a live speech, participates in a panel discussion, or responds to questions, and that meets all the following conditions:
1. The event is free and open to the public.
 2. The event is held within 120 days of the applicable election.
 3. The event is not structured to promote or advance one candidate over another.
 4. The following candidates have been invited to participate in the event:
 - a) All candidates for the covered office being sought that have filed a Form 501; or
 - b) All candidates for the covered office being sought that have qualified to participate in the LPF Program or the Democracy Dollars Program or that have pending applications to participate in either program; or
 - c) All candidates for the covered office being sought that have qualified for the ballot.
 5. The event host has not already endorsed any of the candidates for the covered office being sought for this election and is not endorsing any of the candidates for the covered office being sought at the event.
- C. **Certifying Debate Attendance.** Within 5 days of attending a qualifying debate or forum, the candidate shall notify the PEC using a form provided by the PEC. The form shall require that the candidate indicate all the following:
1. The date, time, and location of the event.
 2. The name of the person or entity organizing the event.
 3. The contact information for the person or entity organizing the event, including at least an email address or phone number.
 4. A certification that to the best of the candidate’s knowledge, the event met the requirements for being a qualifying public debate or forum and an acknowledgment that failure to meet the debate requirement may result in forfeiture of some or all public financing received by the campaign, in addition to other penalties.
 5. The candidate’s name, contact information, and signature.

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6. Any other information required by the Executive Director to verify compliance with OMC 3.15.080(A)(3), OMC 3.13.080(H), or this Policy.

D. **Demonstrating Compliance.** Thirty (30) days before the election the PEC may require that participating candidates demonstrate that they have met the minimum public debate or forum requirements by either:

1. Submitting certifications for attending the minimum number of qualifying events; or
2. Submitting a form indicating that, prior to the election, they will have met this requirement, along with a list of the date, time, location, host name, and host contact information for the upcoming qualifying event(s) they have committed to attend.

If a candidate does not demonstrate that they have met or will meet the minimum debate or forum requirements with the submissions identified in (1) and/or (2), the PEC may halt distribution of additional public funds to the candidate until the candidate demonstrates they have or will meet this requirement.

E. **Disqualifying a Debate/Forum.** If the Executive Director determines that an event does not qualify as a debate or forum, the Director shall notify the candidate including the reason why. Within 14 days of receiving such notice, the candidate may appeal the Executive Director's decision to the full Commission at its next regular meeting.

F. **Waiver for Good Cause.** The Executive Director may grant a partial or complete waiver of the debate requirement if a candidate shows good cause for not attending the required number of qualifying events and was unable to reasonably attend the necessary number of alternate qualifying events. The Director may require that the candidate provide adequate supporting documentation that good cause exists. The following are examples of reasons that **do constitute good cause** and are eligible for a waiver:

1. **There were insufficient qualifying events for a covered office.**
2. **The candidate had a reasonable and good faith belief that a non-qualifying event was a qualifying event.** Adequate documentation may include a written statement by the event host before the event indicating that the event met the requirements of a qualifying event.
3. **The candidate was incapacitated for medical reasons which prevented the attendance of a qualifying event.** Adequate documentation may include the candidate providing a signed statement by a medical provider, such as a doctor or therapist, on the medical provider's letterhead identifying the candidate, the nature of the candidate's incapacitation, and the date(s) thereof.
4. **The candidate was hospitalized which prevented the attendance of a qualifying event.** Adequate documentation may include the candidate providing a copy of the hospital bill or physician's statement showing the candidate's name and the date(s) of the hospitalization.
5. **The candidate was involved in a serious accident or was the victim of a serious crime which prevented the attendance of a qualifying event.** Adequate documentation may include the candidate providing a copy of a police report showing the candidate's name, the date and time of the accident or incident, and, if applicable, whether the vehicle was disabled, in addition to a written statement by the candidate explaining how the accident prevented them from attending a qualifying event.
6. **The candidate was unable to meet the requirement because they were assisting an immediate family member who was medically incapacitated, hospitalized, or involved in a serious accident or was the victim of a crime.** Adequate documentation may include documents

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described above and documents indicating that the affected person(s) are an immediate family member. Immediate family is defined as the candidate's spouse or registered domestic partner; sibling; sibling's spouse or registered domestic partner; child or stepchild; child or stepchild's spouse or registered domestic partner; grandchild; parent; spouse or registered domestic partner's parent; or grandparent.

7. Other compelling reasons generally beyond the candidate's control.

The Executive Director shall report back to the Commission on any waivers granted or denied pursuant to this Section.

This Section applies to the Democracy Dollars Program only.

- G. **Alternate Qualifying Events in lieu of a Debate/Forum.** If, prior to the election, there will be insufficient qualifying events or if a candidate shows good cause for why they will not be able to attend the required number of qualifying events, the Executive Director may allow a candidate to satisfy the debate requirement by participating in alternate activities aimed at voter education, such as conducting a "Town Hall Meeting."

For the purposes of this policy, a "Town Hall Meeting" means an event conducted by a participating candidate, in-person or online, that meets all the following conditions:

1. The event is open to the public, the media, and other candidates.
2. The event lasts at least 60 minutes.
3. The majority of the event time is focused on the participating candidate responding to questions posed by attendees.
4. The candidate promoted the event in advance to the public, for example by posting information about the event to the candidate's website and social media accounts and alerting media outlets.

This Section applies to the Democracy Dollars Program only.

- H. **Failure to Meet Debate Requirement.** If, after the election, a candidate is determined not to have met the minimum debate or forum requirements, the PEC may bring an enforcement action against the candidate for violating the requirements of the LPF or Oakland Fair Elections Act, and the candidate may be required to reimburse all or some of the public funds previously distributed to that candidate in addition to any other enforcement penalties.
- I. **Optional Event Pre-Qualification.** An organization may register their event as a qualifying debate or forum in advance of the event using a form provided by the PEC which indicates:
1. The name of the organization hosting the event.
 2. The date, time, and location of the event.
 3. The names of the candidates who were or will be invited to participate at the event.
 4. A certification that the event meets the requirements for being a qualifying public debate or forum.
 5. An acknowledgement that the organizer understands that event information may be posted online and/or shared with PEC subscribers to notify the public of the event.

After a registered qualifying event, the organization may provide to the PEC a link to a recording of the full event.

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The PEC will provide participating candidates with a list of registered qualifying debates and may post upcoming registered qualifying debates and/or links to recordings of qualifying debates on its website.

APPENDIX 3: Limited Public Financing Act of 2024

Chapter 3.13 - LIMITED PUBLIC FINANCING ACT OF 2024

Article I. Findings and Purpose

3.13.010 Title.

This chapter shall be known as the "Limited Public Financing Act of 2024."

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, 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.

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- 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.
- H. To prevent corruption or the appearance of corruption.

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 this Code and in Government Code Sections 81000 et seq. as amended govern the interpretation of this Act.

For purposes of this Act, "principal residence" shall mean the place in which a person's habitation is fixed, wherein the person has the intention of remaining, and to which, whenever he or she is absent, the person has the intention of returning.

For purposes of this Act, "primary place of doing business" shall mean the street address of a corporation's or association's principal executive office as filed with the California Secretary of State or the street address of an unincorporated association's principal office as filed with the California Secretary of State.

Article III. Election Campaign Fund

3.13.060 Establishment of public financing program.

- A. The Public Ethics Commission shall establish a public financing program, consistent with this chapter, to fund all candidates eligible to receive public financing running for the office of district city councilmember in the 2024 general election.
- B. The Public Ethics Commission shall allocate a minimum of \$155,000 over the 2023-2025 fiscal years from its discretionary funds to the public financing program.
- C. Any unspent funds that the Public Ethics Commission allocated for the public financing program pursuant to subsection (B) at the end of the Fiscal Year 2023-2025 budget cycle shall remain in the Public Ethics Commission fund and accrue for disbursement to candidates eligible for public financing in future elections and for administrative costs.
- D. Up to seven and one-half percent of the amount allocated to the public financing program pursuant to subsection (B) may be utilized by the Public Ethics Commission to cover the anticipated cost of administering the provisions of this Act.

3.13.065 Allocation of election campaign fund.

No later than seven days after the city clerk has certified the names of all candidates to appear on the ballot, the public ethics commission shall determine at a publicly noticed meeting whether, based on the number of potentially eligible candidates, the amount of money in the election campaign fund is adequate to provide the maximum amount to

potentially eligible candidates. If the commission determines that the election campaign fund will not be adequate to provide the maximum amount of funds to potentially eligible candidates, the commission shall order the disbursement of available funds on a pro rata or other equitable basis. The commission may at any time revise the disbursement plan consistent with these rules and prevailing law.

Article IV. Eligibility for Public Financing

3.13.070 Application and withdrawal procedures.

- A. Each candidate for district city council shall file a statement with the Public Ethics Commission on a form approved for such purpose indicating acceptance or rejection of the voluntary expenditure limits pursuant to Section 3.15.140(A).
- B. 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 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.
- C. If a candidate declines to accept the voluntary expenditure limits prescribed in Section 3.15.140(A), the candidate shall not be eligible for public financing.
- D. If a candidate agrees to accept the voluntary expenditure limits prescribed in Section 3.15.140(A), the candidate shall be eligible for public financing upon meeting the qualification requirements as provided in this Act.
- E. If a candidate declines to accept voluntary expenditure limits and receives contributions or makes qualified campaign expenditures equal to fifty (50) percent or more of the voluntary expenditure limit, or if any person makes one or more independent expenditures totaling more than \$30,000 on a district city council election, the applicable voluntary expenditure limit shall no longer be binding on any candidate running for the same office.
- F. In the event voluntary expenditure limits are lifted pursuant to Subsection (E), a candidate who accepted the voluntary expenditure limits shall be permitted to receive public financing but shall no longer be subject to the voluntary expenditure limits.

3.13.080 Qualification procedures.

A candidate shall be approved to receive public financing if the candidate meets all of the following requirements:

- A. The candidate has filed a timely statement of acceptance of the voluntary expenditure limits and acceptance of public financing.

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- B. The candidate is certified to appear on the ballot for the election for which public financing is sought.
- C. The candidate has (1) received contributions in an aggregate amount of at least five percent of the expenditure limit for the office being sought from contributors whose principal residence or whose primary place of doing business is located within the city and which residence or business address appears on the written instrument used to make the contribution, and (2) made qualified campaign expenditures in an aggregate amount of at least five percent of the expenditure limit for the office being sought. Contributions from the candidate's own funds shall not be counted towards meeting this five percent requirement. The candidate shall provide copies of the contribution checks received and records of payments made to meet the five percent eligibility requirements.
- D. The candidate is opposed by another candidate for the same office.
- E. The candidate agrees to all conditions and requirements of this Act and to submit to any reasonable audit 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.
- G. The candidate has filed, and completely and accurately executed, all pre-election campaign statements that are due at the time public financing is payable. All candidates receiving public financing shall timely file, and completely and accurately execute, all post-election campaign statements for each election in which they received public financing.
- H. The candidate attests that he or she will personally participate in at least one public debate or forum. Only public debates or forums to which all other candidates accepting public financing for the office sought by the candidate are invited to participate shall be counted for the purposes of this section. Within five days of the candidate's participation in a qualifying public debate or forum, the candidate shall notify the Public Ethics Commission, in writing, of his or her participation in the debate or forum.

3.13.090 Use of personal funds.

A candidate who accepts public financing shall not receive contributions or loans from the candidate's own funds which aggregate total exceeds \$19,000 for the office being sought. If the voluntary expenditure limits for the office being sought are lifted, this provision shall not apply.

Article V. Disbursement of Public Financing

3.13.100 Duties of the public ethics commission and office of the city auditor.

- A. The public ethics commission shall develop any and all forms necessary to carry out the provisions of the Act. 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.

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- B. 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.
- C. The City Auditor may conduct a discretionary audit of the Public Ethics Commission's disbursement of public financing funds to candidates or may conduct discretionary audits of the campaign committee of any candidate who receives public financing. The audit report shall be a public record and provided to the Public Ethics Commission. The City Auditor shall conduct all audits in accordance with generally accepted government auditing standards.

3.13.110 Requests for public financing.

- A. Public financing pursuant to this Act shall be provided solely by reimbursing eligible candidates for certain qualified campaign expenditures lawfully made by the candidate and his or her campaign committee.
- B. The qualified campaign expenditures eligible for reimbursement are:
 - 1. Candidate filing and ballot fees;
 - 2. Printed campaign literature and production costs;
 - 3. Postage;
 - 4. Print advertisements;
 - 5. Radio airtime and production costs;
 - 6. Television or cable airtime and production costs; and
 - 7. Website design and maintenance costs.
- C. The following conditions and restrictions shall apply to any request for reimbursement:
 - 1. All requests for reimbursement shall be made on a form authorized by the public ethics commission and shall include: (a) a copy of the billing invoice for which reimbursement is sought; (b) a copy of the check(s) by which the candidate's campaign committee made payment on the billing invoice; and (c) a copy, when applicable, of the campaign literature, advertisement, radio or television script, or website configuration.
 - 2. All requests for reimbursement shall include a sworn declaration by the candidate and his or her campaign treasurer that (a) the check(s) used to make payment on the billing invoice represents payment in full of the billing invoice submitted for reimbursement and that sufficient funds exist in the campaign account to provide payment, and (b) any money received from the election campaign fund has not been previously earmarked or specifically encumbered to pay or to secure payment of any loan, return of contribution or of any expenditure other than the one for which reimbursement was sought.
- D. Any decision made by the executive director to deny a request for reimbursement may be appealed to the commission whose decision shall be final. A request to agendize an appeal of the executive director's decision shall be made in writing and

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delivered to the office of the public ethics commission no more than ten calendar days after receiving written notice of the executive director's decision.

- E. The total amount of public financing allocated to each candidate shall not exceed 30 percent of the voluntary expenditure limit per election for the office being sought.

3.13.120 Disbursement and deposit of public financing.

- A. A candidate or candidate's controlled committee, certified as eligible to receive public financing, shall submit requests for reimbursement to the public ethics commission in minimum increments of \$1,000.00 or more.
- B. A candidate or candidate's controlled committee, certified as eligible to receive public financing, shall submit requests for reimbursement in minimum increments of \$500.00 or more ten calendar days before the election.
- C. The public ethics commission or its designee shall have ten calendar days to cause the review and approval or denial of the request for reimbursement and disburse funds from the election campaign fund to the candidate or candidate's controlled committee.
- D. All funds disbursed from the election campaign fund shall be made payable to the candidate's controlled committee and shall be deposited directly into the candidate's campaign checking account within thirty (30) calendar days of receipt.

3.13.150 Return of surplus funds.

- A. Surplus campaign funds remaining at the end of the post-election reporting period following the election for which public financing was received shall be returned to the election campaign fund no later than 31 calendar days from the last day of the semi-annual reporting period following the election in an amount specified by this section. A candidate shall not be required to return any surplus funds in an amount greater than the amount of public financing received. The amount of surplus campaign funds to be returned to the election campaign fund shall be calculated by multiplying the amount of surplus campaign funds by the percentage that total public financing received represents of total monetary contributions received for the election period.
- B. For purposes of this Act, campaign funds shall be considered "surplus" campaign funds to the extent that the total amount of contributions (excluding the receipt of public financing) exceed the total financial obligations of the candidate's campaign committee (excluding unlawful or non-qualified campaign expenditures) as of the last day of the semi-annual reporting period following the election. A financial obligation includes (1) accounts payable billed, or (2) accounts payable for which bills may be expected, for goods or services received during the election.
- C. Public financing shall not be disbursed to the certified candidate from the election campaign fund following the day of the election or the candidate's withdrawal from the election, whichever occurs first, except that public financing may be disbursed to a certified candidate after the date of the election or withdrawal provided that the candidate submitted a properly documented request for reimbursement before the date of the election or the date of withdrawal from the 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 public financing, (2) makes a material misrepresentation in connection with a request for reimbursement, or (3) causes, aids or abets any other person to violate the provisions of this Act, is guilty of a misdemeanor. Prosecution shall be commenced within four 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 public financing, (2) makes a material misrepresentation in connection with a request for reimbursement, or (3) causes, aids or abets any other person to violate the provisions of this Act, 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 financing 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 \$1,000.00 per violation and to order the repayment of public financing 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 four 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

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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.

3.13.265 Sunset.

This Chapter shall be operative for the 2024 general election only.

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Public Ethics Commission
1 Frank Ogawa Plaza (City Hall), Ste. 104
Oakland, CA 94612
www.oaklandca.gov/pec
ethicscommission@oaklandca.gov
(510) 238-3593