



Item 5 - Debate Policy

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TO: Public Ethics Commission
FROM: Nicolas Heidorn, Executive Director
Suzanne Doran, Program Manager
DATE: May 3, 2024
RE: Proposed Debate Guidelines for the Special Public Ethics Commission meeting to be held May 22, 2024

Under both the Oakland Fair Elections Act (OFEA) and Limited Public Financing Act (LPF) of 2024, candidates must participate in a number of public debates or forums to qualify to receive public funds. To provide clarity for candidates and ensure smooth operations as staff implement the new policy for 2024 LPF participants, staff developed proposed guidelines to define: 1) What events will 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; and 3) The actions the PEC will take if the requirement is not met.

Staff is recommending that the PEC adopt the attached “Oakland Public Ethics Commission Debate Guidelines.” This report provides a summary and explanation of the guidelines.

Background

The Oakland Fair Elections Act requires that, to be eligible to participate in the Democracy Dollars public financing program, candidates must “personally participate” in at least 5 (Mayor) or 3 (other offices) “public debates or forums.” OMC 3.15.080(A) specifies that:

To become certified in the program, a candidate for a covered office must file with the Commission a notice of intent to apply for certification in the program, signed by the candidate and the candidate's treasurer, during the qualifying period. On the notice of intent, the candidate must attest to all of the following: ...

(3) Candidates for Mayor will personally participate in at least five (5) public debates or forums; candidates for any office other than Mayor will participate in at least three (3) public debates or forums. Only public debates or forums to which all other applicants or certified candidates for the covered office sought by the candidate are invited to participate shall be counted for the purposes of this Section. Within five (5) days of the candidate's participation, in each public debate or forum required under this Section, the candidate must notify the Commission, in writing, of their participation in the debate or forum.

Because there were insufficient funds in the Adopted Budget to implement the Democracy Dollars Program in the 2024 election cycle, the PEC proposed that the City Council adopt the Limited Public Financing Act of 2024, modeled on programs implemented in prior years. The LPF includes a single debate requirement that is substantively the same as the Democracy Dollars requirement. OMC 3.13.080 provides:

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

(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.

Other Jurisdictions' Guidelines

Staff surveyed policies from a number of jurisdictions that have adopted debate requirements for candidates to qualify for public financing. As noted above, the OFEA specifies that candidate debates or forums must be open to the public, and all applicants for public financing, or candidates certified for public financing, for the covered office must be invited to participate for the event to be counted towards the requirement. Other jurisdictions with debate requirements also specify that debate sponsors do not endorse, support, or oppose candidates and events cannot favor one candidate over others (see [Federal Elections Commission \(FEC\) regulations](#), for example). [New York's](#) program has the most requirements for qualifying debates, including that debate sponsors apply in advance to be certified. Some jurisdictions, such as [San Francisco](#) and [Los Angeles](#), simply require that candidates attest that they will participate in debates when they apply for public financing, whereas [Seattle](#) candidates must additionally submit a form listing the events attended within 14 days of the election date. Program staff from other cities also noted that sometimes there are not enough qualifying events, which is outside candidates' control. [Los Angeles](#) includes an option for candidates to conduct a "Town Hall Meeting" to provide an alternative when there are not enough sponsored events. None of the jurisdictions surveyed investigated events or verified candidates' documentation unless they received complaints or evidence that a candidate did not attend the requisite number of debates or that a debate did not meet the qualifying criteria.

Proposed Oakland PEC Guidelines

The proposed PEC Debate guidelines define what events qualify as a "public debate or forum" for the purposes of candidate eligibility for public financing. In addition to the OFEA requirement that the event be open to the public and invite all candidates participating in public financing for a particular office, the guidelines further specify the event must be free, held within 120 days of the election, and not structured to promote any candidate(s) over others. Hosting organizations for qualifying events may not have endorsed any of the candidates or endorse one at the event. In addition, the guidelines provide an optional process for host organizations to pre-qualify events, so that candidates may have greater certainty that an event meets Program qualifications and so that the PEC may inform the public of debates they may wish to attend.

The guidelines also address the process candidates will use for certifying compliance with the minimum debate or forum requirements. In addition to the OFEA requirement that candidates report qualifying debates within five days of the event, the guidelines specify the event details that must be provided to the PEC including a certification by the candidate that to the best of their knowledge the

event met program requirements 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.

To help avoid a circumstance where substantial public funds are disbursed to a candidate who is later determined not to have met the debate requirement, the guidelines include the ability for program staff to require 30 days before the election that participating candidates demonstrate that they have met or will meet the debate requirements by documenting qualifying events attended and upcoming qualifying events they have committed to attend. In the event a candidate fails to demonstrate a good faith effort to meet the requirement, the PEC may halt distribution of additional public funds to the candidate until they do so. If PEC staff determine that an event did not qualify, the Executive Director shall notify the candidate including the reason why, and the candidate will have an opportunity to appeal the Director's decision to the Commission at its next regular meeting.

Given the number of qualifying events required for candidates to be certified to receive Democracy Dollars, the policy includes provisions to address election years when there are not enough qualifying events for candidates to attend. Under the policy, the Executive Director may permit alternate qualifying events in lieu of a candidate debate, such as a "Town Hall Meeting." The guidelines also allow the Director to grant a good cause waiver when a candidate cannot attend the number of required events for reasons beyond their control. Examples of good cause, such as if the candidate or their immediate family are medically incapacitated, hospitalized, or involved in a serious accident or are a victim of a serious crime that prevents them from attending an event, or if there were insufficient qualifying events for a covered office, are included.

The guidelines also make clear that the PEC may bring an enforcement action against a candidate who violates the requirements of the LPF or OFEA, including requiring the reimbursement of all or some of the public funds distributed to the candidate in addition to any other enforcement penalties.

Adopting Debate Guidelines

Under OMC 2.24.020, the PEC's adoption of "policies, procedures, and regulations for the conduct of its business" must be transmitted to the City Council within seven days of adoption. Within 60 days of adoption, the City Council may, by a two-thirds vote, veto those policies, procedures, and regulations. It is unclear if this requirement applies to regulations adopted by the Commission to implement Measure W; however, to avoid ambiguity as to the status of these guidelines, staff shall submit them to the City Council consistent with OMC 2.24.020.

Staff Recommendation

Staff recommends that the Commission adopt the attached "Oakland Public Ethics Commission Debate Guidelines."

Attachment: Oakland Public Ethics Commission 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 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.
 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:

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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. 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 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.***

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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.

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.