

Item #5 - Auditor's Report



**CITY OF
OAKLAND**
Office of the City Auditor

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Courtney A. Ruby, CPA, CFE
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October 28, 2021

Whitney Barazoto, Executive Director
Public Ethics Commission
City of Oakland
1 Frank Ogawa Plaza, 11th Floor
Oakland, California 94612

RE: AUDIT OF THE LIMITED PUBLIC FINANCING ACT – NOVEMBER 2020 ELECTION

Dear Director, Barazoto:

The Office of the City Auditor (Office) completed an audit of the Limited Public Financing Program (LPFA or Program) as mandated by the Oakland Municipal Code (Municipal Code).

The objective of the audit was to determine whether candidates who received public financing during the November 2020 election cycle complied with the objectives established in the Program (Municipal Code Section 3.13).

The audit found the Oakland Public Ethics Commission's (PEC) overall systems and internal controls are adequate to ensure proper administration of the Program. All candidates were properly deemed eligible for the Program and expenditure reimbursements were appropriate.

In fact, in recent years, the biennial audits of the LPFA have not found any major deficiencies or misuse of funds. The risk of misuse was dramatically reduced when the Program began reimbursing candidates for valid expenditures in 2010 instead of advancing funds, as had occurred previously.

Given the reduction in risk, and consecutive audits demonstrating the PEC's systems are working effectively, our Office recommended the PEC consider drafting an amendment to Oakland's Municipal Code, for the City Council's consideration, to eliminate the requirement of biennial post-election audits of the LPFA.

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If such an amendment is proposed, my office will stand behind the amendment and provide a letter of support or issue a joint statement with the PEC to the City Council.

I want to express our appreciation to the Public Ethics Commission's management and staff for their cooperation during this audit.

Sincerely,

A handwritten signature in black ink, appearing to read "Courtney Ruby", with a stylized flourish at the end.

COURTNEY A. RUBY, CPA, CFE
City Auditor

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Oakland's City Auditor is an elected official and works for, and reports to, the residents of Oakland. The Auditor's job is to provide oversight to the City's activities. The Auditor has the authority to access and audit City financial and administrative records, plus the policies and procedures of all City agencies and departments.

To make sure this work is done objectively and without bias, the City Auditor is not connected to any other City department and has no day-to-day financial management or accounting duties for the City of Oakland. This autonomy allows for independent analyses, ensuring tax dollars and other resources serve the public interest.

Office of the City Auditor

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AUDIT TEAM

Michael Houston MPP, CIA
Assistant City Auditor

Alessia Dempsey, MSA, CIA
Performance Audit Manager

Mark Carnes, CFP
Senior Performance Auditor



CITY OF OAKLAND
Office of the City Auditor

M E M O R A N D U M

DATE: October 28, 2021

TO: City of Oakland Public Ethics Commissioners, Executive Director Barazoto, Mayor Schaaf, President Bas, Members of the City Council, City Administrator Reiskin, City Attorney Parker, and Oakland Residents

FROM: City Auditor, Courtney Ruby, CPA, CFE

SUBJECT: **Performance Audit of the Limited Public Financing Act - November 2020 Election**

SUMMARY

This audit was conducted pursuant to Oakland Municipal Code 3.13.100 (C), which directs the City Auditor to conduct mandatory post-election audits of all candidates receiving public financing. The Office of the City Auditor conducted a post-election mandated audit of the Limited Public Financing Act for the November 2020 election.

BACKGROUND

The City of Oakland's Limited Public Finance Act (LPFA or Program) provides limited public funding to candidates running for elected public office. The Oakland Public Ethics Commission (PEC) – an independent City board made up of Oakland residents charged with ensuring fairness, openness, honesty and integrity in Oakland City government – oversees the LPFA.¹

¹ The PEC has seven Commissioners. The Mayor, City Attorney, and City Auditor appoint one Commissioner each and the remaining four are selected by the PEC through a public recruitment process. The PEC's staff – who are City employees – administer the LPFA.

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The Program was adopted in 1999 and is defined in Oakland Municipal Code Section 3.13. LPFA funding is available only to the City's seven district City Council seats, as a result of a 2010 amendment to the Program.

The LPFA'S public funding is intended to

- Ensure equal opportunity to participate in elections,
- Even the funding base among participants,
- Encourage competition in elections,
- Allow candidates to spend less time on fundraising,
- Reduce the pressure on candidates to raise enough money to effectively communicate with voters,
- Promote public discussion of important issues, and
- Help preserve public trust in government and elections.

Candidates must meet certain requirements to qualify for public funding through the LPFA. Specifically, participating candidates must

- Be certified to appear on the ballot,
- Be opposed by another candidate for the same office,
- Accept the voluntary expenditure ceiling,²
- Attend training (candidate or designee),
- Submit an opt-in form,
- Receive campaign contributions from Oakland residents and/or businesses totaling at least 5 percent of the expenditure ceiling,
- Make qualified campaign expenditures in an aggregate amount of at least 5 percent of the voluntary spending limit for the office being sought,
- Limit contributions to their own campaign to 10 percent or less of the expenditure ceiling,
- Commit to filing all pre- and post-election campaign statements,
- Provide copies of contribution checks, proof of deposit, and/or proof of electronic contributions,
- Provide invoices, proof of payment, and receipt for expenditures, and
- Agree to return any surplus funds after the election.

Since 2010, public funding through the LPFA has been in the form of reimbursements to participating candidates for certain campaign expenditures, including: print advertisements,

² A voluntary expenditure ceiling limits the amount of qualified expenditures a candidate can make. Specifically, Council District candidates cannot make qualified expenditures exceeding one dollar and fifty cents (\$1.50) per resident in the electoral district for each election in which the candidate is seeking elective office.

website design and maintenance costs, television, cable, and radio airtime and production costs.

The source of the LPFA's public funding is the Election Campaign Fund (Fund). The Oakland City Council (Council) appropriated \$155,000 to the Fund for the November 2020 election cycle. There was an additional \$10,230 in the Fund carried over from the previous election. The PEC received \$11,625 or 7.5 percent of funds appropriated for administrative costs and \$153,605 was available to participants,³ of which \$137,485 was claimed. Seventeen City Council district candidates qualified to appear on the ballot and fifteen of those opted to receive public campaign funding. Seven of the fifteen candidates qualified to receive public campaign financing, and each one was eligible to receive up to \$21,857. Of the seven candidates who received public funds, one stopped their participation in the Program and returned the funds before the election.⁴

AUDIT OBJECTIVE AND SCOPE

The objective of this audit was to determine whether the PEC has developed and implemented adequate systems to ensure candidates who received public funds complied with the requirements of the LPFA. The following are sub-objectives of this audit.

1. To determine if the PEC's policies and procedures address the provisions of the LPFA for the November 2020 election.
2. To determine if the PEC properly determined candidate eligibility for the LPFA for the November 2020 election.
3. To determine if the PEC properly reimbursed candidates for the November 2020 election.
4. To determine if the PEC complied with its procedures to ensure all candidates properly closed out their election campaign for the November 2020 election.

METHODOLOGY

In conducting this audit, we

- Assessed internal controls for reviewing, approving, and denying candidates' eligibility for public financing.
- Reviewed the LPFA Candidate Guide and the PEC Staff Manual.
- Interviewed PEC staff and management.

³ Participants are City Council district candidates who have opted into the public campaign funding program.

⁴ The candidate raised adequate funds on their own and did not need the financing.

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- Conducted a walkthrough of the PEC program procedures.
- Tested a sample of 15 reimbursement requests totaling approximately \$118,000 (or 85% of reimbursements based on value).⁵
- Verified the sampled reimbursements were approved prior to the issuance of the reimbursement, supporting documentation was sufficient, and the reimbursement calculations were accurate.
- Confirmed any surplus funds were returned prior to deadline of January 31, 2021.
- Confirmed the candidate who stopped participating in the Program returned all reimbursements before the election.

STATEMENT OF COMPLIANCE WITH AUDITING STANDARDS

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

AUDIT RESULTS

The audit found no instances of candidate non-compliance with the LPFA and found that the PEC has implemented an effective process for administering and ensuring compliance with LPFA requirements. Specifically,

1. All candidates received appropriate reimbursements and met key LPFA requirements, including eligibility and post-election requirements, and
2. Overall, policies and procedures address the provisions of the LPFA.

AUDITOR'S CONCLUSION

In recent years, these post-election audits have not been an effective use of the Office of the City Auditor's limited resources, as the biennial audits of the LPFA have not found any major deficiencies or misuse of funds. Additionally, the risk of misuse was dramatically reduced when the Program began reimbursing candidates for valid expenditures in 2010 instead of advancing funds, as had occurred previously.

⁵ There was a total of 78 reimbursement requests totaling \$139,235. We selected the 15 largest reimbursements totaling approximately \$118,000.

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Section 403 of Oakland's City Charter provides the City Auditor with authority to conduct surveys, reviews, and audits deemed to be in the public interest, and allows the City Auditor to audit the books, accounts, money and securities of all departments and agencies of the City. Pursuant to this provision, even if the requirement for post-election audits of the LPFA was eliminated, the City Auditor would retain the authority to audit the LPFA based on a risk assessment of the Program. This assessment would include consultation with the PEC.

RECOMMENDATION

The PEC should consider drafting an amendment for the City Council's consideration that amends the Oakland Municipal Code to eliminate the requirement of biennial post-election audits of the LPFA.

PUBLIC ETHICS COMMISSION'S RESPONSE

The PEC's Executive Director agreed with the audit results and the recommendation. The PEC Executive Director's written response to the audit follows this memo.

ACKNOWLEDGMENT

I want to express our appreciation to the Executive Director of the PEC and her staff for their prompt cooperation during this audit and their commitment to maintaining strong practices in the PEC.

CITY OF OAKLAND

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Public Ethics Commission

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September 17, 2021

Courtney A. Ruby
City Auditor
City of Oakland
1 Frank Ogawa Plaza, 4th Floor
Oakland, CA 94612

Dear Auditor Ruby,

Thank you for your audit of the Public Ethics Commission's administration of the Limited Public Financing Act (LPFA) program for the 2020 election.

As always, we appreciate working with your office in the review of our LPFA implementation. We are pleased to hear that the results of the audit indicate that "[t]he audit found no instances of candidate non-compliance with the LPFA and found that the PEC has implemented an effective process for administering and ensuring compliance with LPFA requirements."

I would like to specifically note the work of my team members, Jelani Killings and Ana Lara, for their dedication to this program and their assistance to all the candidates who participated in the program as they campaigned for the office of district City Councilmember. Mr. Killings and Ms. Lara continued to provide exceptional customer service to candidates in this program during the 2020 election cycle, even while transitioning the program to an all-electronic submission and disbursement process within the COVID-19 shelter-in-place environment. My appreciation to each of them for their ongoing excellence in public service.

We further appreciate your additional suggestion to amend the LPFA to eliminate the audit requirement. I concur with your assessment that this program no longer needs annual auditing and should instead be subject to discretionary audits as you deem necessary. I will add this to our list of potential legislative changes being considered by the Public Ethics Commissioners in the coming months; the decision to pursue the change will depend on Commission priorities as well as other factors, such as potential legislative measures that may be coming forward to change public financing of elections in Oakland.

As you know, our Commission reviewed Oakland's broader system of campaign finance, noting how money in Oakland politics creates and perpetuates disparities across income and race, in its [Race for Power](#) report published in September 2020. That report evaluated outcomes from Oakland's existing public financing program and overall campaign finance system and articulated the ways in which some Oaklanders lack political power. It recommended a new approach for

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Oakland to expand and diversify participation and influence in the campaign process by disassembling its current public financing program and instituting a new system, such as one in place in Seattle that gives every resident \$100 in campaign "cash" to give to candidates of their choosing. Such a system shows the most promise for bringing equity to the campaign finance process since it equips all voters with funds to contribute to candidates, while incentivizing candidates to engage with constituents across demographics to solicit the campaign "cash" regardless of wealth or history of prior participation as a voter or campaign funder.

The Commission's report further notes that a new public financing system must also be accompanied by broad public engagement infrastructure-building efforts, similar to those created in Seattle, to ensure a fertile ecosystem of candidates and community leaders, connections between City liaisons and communities, effective communications and outreach, and other elements needed for successful integration of a new system of broader and more diverse participation.

If the Commission pursues such broader legislation to make the above systems changes, then the current LPFA ordinance would be entirely replaced, including the annual audit requirement. I will keep your office updated as the Commission makes decisions regarding its legislative program going forward.

Again, my thanks to you and your team for your review of the Limited Public Financing Act program as implemented in the 2020 election cycle.

Sincerely,



Whitney Barazoto
Executive Director



CITY OF OAKLAND

Office of the City Auditor

Performance Audit of the Limited Public Financing Act - November 2020 Election

Public Ethics Commission's Recommendation Implementation Plan

City Auditor's Recommendation	Management Action Plan	Responsible Party	Target Date of Completion
<p>The PEC should consider drafting an amendment for the City Council's consideration that amends the Oakland Municipal Code to eliminate the requirement of biennial post-election audits of the LPFA.</p>	<p>The Executive Director will consult with the Public Ethics Commissioners regarding legislative changes to Oakland's public financing system; changes may be an entire redesign of public financing or amendments to the LPFA to eliminate the audit requirement and make other cleanup changes.</p>	<p>Whitney Barazoto, Executive Director</p>	<p>December 31, 2021</p>