



Item 6a - Staff Memo LPF Report

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TO: Public Ethics Commission
FROM: Nicolas Heidorn, Executive Director
DATE: July 28, 2023
RE: Establishing the Limited Public Financing Act of 2024

At its July 2023 meeting, the Public Ethics Commission (PEC or Commission) voted to postpone the distribution and use of Democracy Dollars for the 2024 election cycle due to a lack of sufficient funding and staff in the Fiscal Years 2023-2025 Adopted Budget. At the same meeting, the PEC directed staff to return with options for establishing a limited public financing program for the 2024 election cycle only, similar to the Limited Public Financing Act (LPF) Program used in 2022.

Because the LPF is significantly less complex and costly to administer than the Democracy Dollars Program, PEC staff believes an LPF-like program could be implemented for the 2024 election cycle using existing staff resources and the \$155,000 in discretionary funding budgeted to the PEC for Fiscal Years 2023-2025. This memorandum provides an overview of the LPF Program rules, as they existed in the 2022 election cycle but with any dollar amounts or thresholds adjusted for inflation to 2023, and identifies several policy choices relating to candidate eligibility for public financing or conditions of candidate participation where the LPF Program diverges from the Democracy Dollars Program enacted by Measure W. For each policy choice, staff provides a recommendation as to whether the prior LPF policy should be continued, or whether the new Measure W policy should instead be required. Generally, to ensure there is sufficient staff capacity and funding to administer the 2024 Program, staff recommends continuing the LPF requirements and conditions except where Measure W provides a simpler or easy to manage alternative.

Staff also recommends that the PEC be authorized to create a digital or paper candidate voter guide in future elections using Democracy Dollars, and to pilot creating this voter guide for the 2024 election cycle. A voter guide would further one of the goals of Measure W, ensuring that voters understand the views and priorities of candidates, and assist voters in assigning their vouchers, likely increasing program participation. Seattle, which is the first and to date only jurisdiction to implement a vouchers public financing program, also produces a candidate guide on its Democracy Vouchers website.

The attached resolution makes findings that enacting a limited public financing program for 2024 only would further the purposes of Measure W and proposes draft ordinance language, the Limited Public Financing Act of 2024, that implements the recommendations in this memorandum. The PEC would need to recommend this proposed ordinance by a 2/3 vote and the City Council would need to pass the PEC's proposed ordinance by a 2/3 vote for it to become law.

Staff recommends that the Commission pass the attached resolution and forward the proposed Limited Public Financing Act of 2024 legislation to Council for its review and passage, without any introduced legislation needing to return to the PEC for review and approval unless substantive changes are made to the PEC's proposal.

Background

In November 2022, the voters passed Measure W, which repealed and replaced Oakland's Limited Public Financing Act (LPF) Program with the Democracy Dollars Program, a voucher-based public financing program administered by the Public Ethics Commission (PEC or Commission). Under Measure W, Democracy Dollars were supposed to be first used in the November 2024 City Elections. However, due to the fiscal shortfall the City was facing, the City Council did not appropriate any money for Democracy Dollars in the Fiscal Years 2023-2025 Budget; however, the Council did appropriate \$155,000 in discretionary funding to the PEC, the same amount as had previously been appropriated for the LPF. Because the LPF was repealed by Measure W and the Adopted Budget provides no funding for Democracy Dollars, the 2024 election cycle is set to be the first election in more than two decades where there will be no public financing to support candidates running for City office.

Without sufficient funding or staffing to administer the Democracy Dollars Program, which would require the distribution and processing of over 1 million vouchers, the PEC voted at its July 2023 meeting to postpone the distribution and use of Democracy Dollars vouchers for the 2024 cycle. At the same meeting, the Commission directed PEC Staff to return with options for re-establishing a limited public financing program for the 2024 election cycle only, similar to the program in effect for the 2022 elections.

Overview of the 2022 LPF

The LPF was a reimbursement-based public financing program that applied to City Council District elections only and was administered by the PEC. The goals of the LPF, as articulated in the ordinance, included reducing the influence of large contributors, encouraging competition for elective office, decreasing the amount of time officeholders spend fundraising, and preserving public trust in government. To be eligible for the LPF program, a candidate had to accept voluntary expenditure limits which, as adjusted for inflation for 2023, would be between \$183,000 to \$192,000 – the expenditure limits differed between districts because they were set based on each district's population – and raise funds from Oakland residents and businesses equal to at least 5% of the expenditure limits, i.e., between \$9,150 to \$9,600, and expend an amount equal to the 5% threshold. Once a candidate qualified for the Program, they could request reimbursement of certain enumerated types of campaign expenses, like campaign mailers, from the PEC in \$1,000 increments. The PEC had 10 days to review and approve or deny the reimbursement request and disburse the funds to the candidate.

Candidates could not receive reimbursements totaling more than 30% of the expenditure limit, or \$54,900 to \$57,600 in 2023, or a lesser amount if there were insufficient public funds for every candidate to receive the maximum. In most elections, the upper cap was not used. In the 2022 election, public financing reimbursements were capped at \$35,400. Five candidates received public financing in that election, including four who received or nearly received that maximum amount. All three candidates who won district office that election cycle received public financing. In the 2020 election, the maximum amount was \$21,857. Six candidates received public financing, including five who received the maximum. Three of the four winning candidates received public financing.

The LPF had relatively low administrative costs. Among the more significant tasks, staff had to receive and process candidates' pledges to accept the expenditure limits and agree to other qualification requirements; verify that candidates received contributions from Oakland residents or businesses equal to the qualifying thresholds; and review and process reimbursement requests. By ordinance, the administrative costs were capped at 7.5% of the total amount allocated to the LPF Program.

Options for Adjusting the 2022 LPF & Staff Recommendation

Following the Commission’s direction from its July meeting, the attached draft ordinance language uses the rules from the 2022 LPF as the baseline for re-establishing a one-time public financing program in 2024. There are several policy choices concerning candidate qualification for public financing and candidate participation requirements where the LPF and Measure W’s Democracy Dollar programs diverge, and where the Commission might choose to update the LPF rule with Measure W’s, while keeping the overall program structure. The different policy choices are explained below, along with staff’s recommendation as to which option to follow if a limited public financing program is re-established for 2024.

In addition, to facilitate comparison, the prior LPF ordinance language is attached to this memo with redlines indicating the amendments staff is proposing for the 2024 Program.

Covered Offices. Under the LPF, only candidates running for City Council District office were eligible to receive public financing. Under Measure W, public financing will be available to any candidate for a City office (Mayor, Auditor, City Attorney, At-Large Councilmember, District Councilmember) or the Oakland School Board.

Staff recommends using the LPF covered offices for the 2024 Program. The PEC only has \$155,000 in public funds to distribute, the same as was previously appropriated for the LPF for Council District elections. Adding additional offices beyond City Council Districts will significantly decrease the amount of public funds available to each office, reducing the value and effectiveness of public financing, and would increase the administrative cost and complexity for the PEC to administer the 2024 Program over prior years.

Expenditure Limits. Under the LPF, participating City Council District candidates had to agree to limit their expenditures to $\$1.50 + \text{CPI} \times \text{the population of their district}$, which today would be between \$183,000 and \$192,000, depending on the district. Under Measure W, the expenditure limit for participating City Council District candidates, for all districts, is set at \$150,000 for the 2024 election cycle.

Staff recommends using the Measure W expenditure limits for the 2024 Program. The variable expenditure limit for each district under the LPF can be confusing and makes the program more complicated to administer and explain. Measure W’s lower expenditure limit was proposed by the City Council, adopted by the voters, and can be easily administered by the PEC. The \$150,000 expenditure limit was set based on prior competitive candidate spending for City Council District offices. While there have been candidates who exceeded \$150,000 in expenditures in the last two election cycles (see chart below), in all but one of those contests the expenditure limits had been lifted due to the independent expenditure threshold being met.

2020 Election	Avg. Winner Expenditures	\$180,589
	Avg. Runner-Up Expenditures	\$166,747
	Candidates Spending More than the Expenditure Limits (limits lifted)	6 of 14
	Candidates Spending More than \$150,000	6 of 14
2022	Avg. Winner Expenditures	\$148,747
	Avg. Runner-Up Expenditures	\$116,381

Election	Candidates Spending More than the Expenditure Limits (limits lifted)	1 of 5
	Candidates Spending More than \$150,000	2 of 5

Fundraising Requirement. Under the LPF, candidates had to raise the equivalent of 5% of the expenditure limit to qualify for public financing. With the LPF expenditure limits, that would be between \$9,150 and \$9,600. Under Measure W, City Council District candidates will have to collect 125 qualifying contributions (i.e., a \$10 to \$600 contribution by an eligible resident), including 25 qualifying contributions from within the candidate’s district.

Staff recommends using the LPF fundraising requirement for the 2024 Program, which would require that candidates raise \$7,500 if Measure W’s expenditure limits are adopted. Verifying 125 qualifying contributions per candidate would require significantly more administrative effort than the prior LPF and would divert PEC staff from providing other core services. In addition, using the Measure W fundraising requirements will make qualifying for the 2024 Program far more difficult for candidates, for far less public funds than will be available under Measure W, which could deter candidate participation in the 2024 Program.

Self-Funding Limits. Under the LPF, participating candidates may not contribute or loan more than 10% of the expenditure limits to their campaigns, which would be between \$18,300 to \$19,000. Under Measure W, participating City Council District candidates’ personal contributions and loans will be capped at 8% of the expenditure limit, or \$12,000.

Staff recommends using a \$19,000 personal contribution limit for the 2024 Program, which is approximately the amount that would have been available under the LPF. Because Measure W decreased individual contribution limits to candidates from \$900 in 2022 to \$600 in 2023-24 with the expectation that more public financing would be available, maintaining the higher personal contribution limits are appropriate for the 2024 cycle since the amount of available public financing is similar to prior elections. A uniform amount for all districts, rather than an amount that varies by district, would be simpler for staff to administer.

Trigger to Lift Expenditure Limits: Under the LPF, participating candidates were no longer required to abide by the expenditure limits if a non-participating candidate spent more than 50% of the expenditure limits (\$91,500-\$96,000 in 2023) or if independent expenditures in the contest exceeded \$15,000 + CPI (\$30,000 in 2023). Under Measure W, a participating candidate must petition for the expenditure limits to be lifted for that candidate. The petitioning candidate must show that the sum of contributions and public funding received by an opposing candidate, plus independent expenditures supporting an opposing candidate, plus independent expenditures opposing the petitioning candidate, together exceed the expenditure limits.

Staff recommends using the LPF trigger for lifting the expenditure limits. The Measure W trigger is more complex to calculate and administer, and may require the PEC to adopt additional disclosure rules to properly implement. The Measure W trigger is also significantly higher than the LPF trigger, so this requirement may best be implemented with the full Democracy Dollars Program. The expenditure limits were lifted for the District 1 and District 3 council races in 2020 and the District 4 council race in 2022, in each case because of independent expenditures exceeding the threshold.

Debate Requirement. Under the LPF, participating candidates were encouraged but not required to participate in candidate debates. Under Measure W, participating candidates must personally attend three debates or forums.

Staff recommends that participating candidates be required to personally attend one debate or forum, rather than none under the LPF and three under Measure W. A one debate/forum requirement is not onerous on candidates, furthers the voters’ intent with Measure W, and will provide the PEC with a valuable opportunity to pilot how to administer this requirement.

Overview of Policy Options and Staff Recommendations

	2022 Limited Public Financing Act Rules	Measure W - Democracy Dollars	Staff Recommendation
Covered Offices	<ul style="list-style-type: none"> ▪ District Councilmembers 	<ul style="list-style-type: none"> ▪ All City offices (Mayor, City Attorney, City Auditor, At-Large Councilmember, District Councilmembers) ▪ OUSD School Board Members 	LPF
Fundraising Requirement	<ul style="list-style-type: none"> ▪ Candidate receives contributions from Oakland residents or businesses equal to 5% of the expenditure ceiling (\$9,150 - \$9,600) 	<ul style="list-style-type: none"> ▪ Candidate receives 125 qualifying contributions (\$10 to \$600 contributions by an eligible resident), including 25 from within the district 	LPF Note: Would require only \$7,500 in contributions if Measure W expenditure limits are used
Voluntary Expenditure Limit	<ul style="list-style-type: none"> ▪ D1: \$185,000 ▪ D3: \$192,000 ▪ D5: \$183,000 ▪ D7: \$185,000 	<ul style="list-style-type: none"> ▪ District Councilmembers: \$150,000 	Measure W
Self-Funding Contribution Limit	<ul style="list-style-type: none"> ▪ 10% of the expenditure limit (\$18,300 - \$19,200) 	<ul style="list-style-type: none"> ▪ 8% of the expenditure limit (\$12,000) 	\$19,000 (Approximately the prior LPF limit)
Trigger to Lift Expenditure Limits	<ul style="list-style-type: none"> ▪ Non-participating candidates spends 50% of Expenditure Limit (\$91,500-\$96,000); OR ▪ Independent expenditure spending exceeds \$30,000 from one entity 	<ul style="list-style-type: none"> ▪ A candidate may petition to have the limits raised if the SUM of the following expenditures exceed the expenditure limits: <ul style="list-style-type: none"> ▪ Another candidates’ contributions + vouchers ▪ Independent spending for other candidates ▪ Independent spending against petitioning candidate 	LPF Note: Would require only \$75,000 in non-participating candidate spending to lift the expenditure limits if the Measure W limits are used
Debate Requirement	<ul style="list-style-type: none"> ▪ None, but candidates encouraged to debate 	<ul style="list-style-type: none"> ▪ District Councilmembers: personally attend 3 debates or forums 	Require attending 1 debate

Candidate Voter Guide

Staff also recommends that the PEC be authorized to create a paper or digital candidate voter guide to educate Oakland residents on the candidates running for office, which may encourage more residents to assign their Democracy Dollar vouchers in future elections. While Democracy Dollars will not be distributed or used in the 2024 elections, staff recommends that the PEC begin developing the guide for the 2024 election as a pilot project, which would help the PEC develop best practices for administering and presenting the guide when Democracy Dollars will be used in 2026.

The PEC will be mailing vouchers out to Oakland registered voters more than seven months before election day. Many voters will not know who the candidates are or what are their priorities this early. By the time campaigns begin sending out mailers and the official county voter information guide comes out six months later, many voters will have lost or forgotten about their vouchers.

A basic voter guide, with candidate-provided information on each candidate's priorities, qualifications, and supporters would help candidates get their message out to voters, which would likely increase participation in the Democracy Dollars Program. There is a substantial body of research showing that well-designed voter guides can increase voter participation in local elections, and particularly help less politically-engaged voters. For example, a 2021 survey research study of San Francisco voters found that providing low-information voters with an issue-based voter guide increased the likelihood that the voter would rank at least one local candidate in a ranked choice voting election by 7%, and that the voter would rank multiple candidates by almost 8.5%.¹

Seattle, which pioneered the voucher public financing system, includes a "[Candidate Introductions](#)" guide on the Democracy Vouchers webpage where voters can assign their vouchers. According to a post-election survey, 33% of Seattle voucher-users reported consulting this resource.² In a separate survey of candidates running for office, the candidate guide was ranked as the most helpful resource produced by the Seattle Ethics Commission, with every candidate saying it was either "very" or "somewhat" helpful.³

Amending Measure W

If the PEC approves a proposal to re-instate a limited public financing program for the 2024 election, and to authorize the creation of a voter guide, PEC staff will request that the City Council agendaize and pass the proposal as an ordinance amending the Municipal Code. Measure W, which repealed the LPF and established the Democracy Dollars Program, provides that the City Council may:

"make any amendments to this Act that: (1) are consistent with its purpose and approved by a two-thirds vote of the Councilmembers, provided that the Commission has first approved specific findings and recommendations by a two-thirds vote of the Commissioners that the City Council amend the Act; or (2) the Council determines are required by law."

(OMC 3.15.230.) The purposes of the Democracy Dollars Program are to "build fair elections," "expand public participation," "empower all Oakland residents ... to engage meaningfully in the campaign process," and "prevent corruption and its appearance." Measure W also enumerates 11 specific Program goals furthering these purposes. (OMC 3.15.030.)

The attached PEC resolution makes findings that the proposed policies further these purposes. Re-establishing a limited public financing program for the 2024 election cycle, in lieu of having no public financing program at all, furthers many of the same broader purposes as the Democracy Dollars

¹ Cheryl Boudreau, Jonathan Colner, and Scott MacKenzie, "Ranked-Choice Voting and Political Expression," *New America* (Mar. 1, 2021), <https://www.newamerica.org/political-reform/reports/ranked-choice-voting-and-political-expression/>.

² Kevin Ramsey et al., "2019 Election Cycle Evaluation," *BERK* (Jul. 23, 2020), 16, https://www.seattle.gov/documents/Departments/EthicsElections/DemocracyVoucher/Biennial%20Reports/Final%20DVP%20Evaluation%20Report%20July23_2020.pdf.

³ *Id.* at 16.

Program, such as building fairer elections and preventing corruption or its appearance, and several of the Program's specific goals, including: ensuring candidates can focus on communicating with Oakland residents instead of "devoting excessive time to fundraising;" ensuring that "access to networks of wealthy contributors" is not a prerequisite for running a competitive campaign; ensuring that candidates "participate in public debates;" and ensuring candidates "raise enough money to communicate" their views to the public.

Establishing a voter guide similarly furthers many of the broader purposes of the Democracy Dollars Program, including expanding public participation and empowering Oakland residents with the opportunity to engage meaningfully in the campaign process, as well as several of the Program's specific goals, including enabling candidates to "communicate their views and positions adequately to the public" and to "assist residents with making an informed decision about each candidate."

Because this proposal originates with the PEC, the City Council could adopt the draft language without further review by the PEC. However, if the City Council makes substantive amendments to the PEC's proposal that differ from what the PEC has recommended, the amended proposed ordinance would need to return to the PEC for review and approval prior to enactment.

Additional Attachments: Redline of the 2022 LPF; Draft Resolution 23-06; Exhibit A to Draft Resolution 23-06