

CITY OF OAKLAND
Public Ethics Commission

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Daniel D. Purnell, Executive Director

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TO: Public Ethics Commission
FROM: Daniel Purnell
DATE: January 19, 2011

RE: A Staff Report And Action To Be Taken Regarding A Request By Jill Broadhurst To Be Declared Eligible To Receive Public Financing In Connection With Expenditures She Incurred During The November 2010 Election

I. BACKGROUND

On July 27, 2010, the Oakland City Council adopted a broad set of amendments to the Limited Public Financing Act (LPFA), O.M.C. Chapter 3.13. The amendments revised the manner in which candidates for district City Council can apply for and receive public financing to assist in their campaigns. The program now permits eligible candidates to seek reimbursement for specified campaign expenses.

Following the City Council's adoption of the amendments, Commission staff sent a series of announcements to all potentially eligible district City Council candidates advising them of the availability of public financing, and reminding them of the August 26, 2010, deadline by which their "Statement of Acceptance or Rejection of Public Financing" ("Statement") would be due. On or about August 6, 2010, Commission staff sent to all potentially eligible candidates a copy of the Commission's guide, "How To Apply For Public Financing." At a special meeting on August 17, 2010, the Commission established the amount of \$9,408 that each of the 12 potentially eligible candidates for district City Council could receive in the November 2010 election and communicated that amount to the candidates.

As of the August 26, 2010 deadline, a total of five candidates for district City Council had filed their respective Statements with the Commission. On that basis, Commission staff prepared and submitted for Commission approval a proposed re-allocation of the money existing in the Election Campaign Fund among the five candidates. At its meeting of September 8, 2010, the Commission approved the proposed re-allocation of money in the

Election Campaign fund to provide a maximum allocation of \$22,579 that the five participating candidates could potentially receive.

On September 13, 2010, Commission staff learned that two district City Council candidates, Libby Schaaf and Clinton Killian, had timely filed their respective Statements with the Office of the City Clerk instead of with the Commission. At a special meeting held on October 19, 2010, the Commission approved a request by candidates Schaaf and Killian to determine that their Statements were timely filed for purposes of determining their eligibility to participate in the public financing program and to re-allocate the total maximum amount which the now-seven participating candidates could ultimately obtain to \$16,128.

On October 5, 2010, a representative for District Two candidate Pat Kernighan called to inquire about the status of her public financing request. He stated that Ms. Kernighan timely filed a Statement (of Acceptance) with the Office of the City Clerk and subsequently produced a file-stamped copy demonstrating a filing date of August 26, 2010. The Clerk's Office initially advised Commission staff that it had no record of the original filing but the original Statement was subsequently located in a separate file containing Ms. Kernighan's campaign statements (Form 460s). Similar to Ms. Schaaf and Mr. Killian, the Commission approved a determination that Ms. Kernighan had timely filed her Statement (of Acceptance) and, at a special meeting on October 19, 2010, re-allocated the maximum per-candidate shares to include Ms. Kernighan at an amount of \$14,111 per candidate.

About a week after the November 2 election, Commission staff received a telephone call from District Four candidate Jill Broadhurst inquiring whether it was too late to apply for public financing. Ms. Broadhurst indicated that she had received the initial Commission announcements but considered the initial allocation of \$9,408 to be too little in light of the program's restriction on personal loans and contributions by participating candidates.¹ Commission staff later met with Ms. Broadhurst and advised her to submit her request in writing to the Commission. Ms. Broadhurst submitted her written request to Commission staff on December 17, 2010. **Attachment 1.**

Ms. Broadhurst is requesting the Commission to determine her to be eligible to receive public financing for expenditures she incurred during the November 2010 election.

II. ANALYSIS

LPF Section 3.13.070(B) provides:

"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 fourteen (14) calendar days after the date the City Clerk has certified the names of candidates to appear

¹ LPF Section 3.13.090 restricts participating candidates from lending or contributing to their campaigns more than 10 percent of the voluntary expenditure ceiling applicable to their election. In the case of candidates for City Council District Four in November 2010, the maximum participating candidates could contribute or lend to their campaigns was \$11,600.

*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.*** [Emphasis added.]

LPF Section 3.13.080(A) provides in relevant part:

"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 spending ceilings and acceptance of public financing."

LPF Section 3.13.030 sets forth the "purposes" of the Act:

"The purpose of this act is to accomplish the objectives stated in Oakland's Campaign Reform Act as follows:

- A. To ensure that all individuals and interest groups in our city have a fair and equal opportunity to participate in elective and governmental processes.*
- B. To reduce the influence of large contributors with a specific financial stake in matters under consideration by the City of Oakland, and to counter the perception that decisions are influenced more by the size of contributions than by the best interests of the people of Oakland.*
- C. To reduce the pressure on candidates to raise large campaign war chests for defensive purposes, beyond the amount necessary to communicate reasonably with voters.*
- D. To encourage competition for elective office.*
- E. To allow candidates and office holders to spend a smaller proportion of their time on fundraising and a greater proportion of their time dealing with issues of importance to their constituents and the community.*
- F. To ensure that serious candidates are able to raise enough money to communicate their views and positions adequately to the public, thereby promoting public discussion of important issues involved in political campaigns.*
- G. To help preserve public trust in governmental and electoral institutions."*

Finally, LPF Section 3.13.220 provides:

"The act shall be liberally construed to accomplish its purposes."

Ms. Broadhurst does not deny that she received the Commission's initial announcements regarding the public financing program and the August 26 deadline by which Statements (of Acceptance) had to be filed. Ms. Broadhurst states she made the decision not to apply based on the relatively low amount of available funds in relation to the restriction on personal contributions and loans for candidates participating in the program. She states she changed her mind based on two developments: 1) the subsequent re-allocation of available matching funds by the Commission that increased the candidate pro rata shares, and 2) an October 26 notice Commission staff sent to all candidates in the District Four City Council race advising that the voluntary expenditure ceilings had been lifted due to a report of independent expenditures occurring in that election. **Attachment 2.** (Commission staff notes that the independent expenditures causing the voluntary expenditure limitation to be lifted in the District Four election were made by a committee formed expressly to support the candidacy of Ms. Broadhurst.)

Commission staff further notes that the Commission previously took action to approve the eligibility of candidates Schaaf, Killian and Kernighan upon a showing that they had actually filed a Statement (of Acceptance) before the August 26 deadline. This is distinguished from the situation here in which Ms. Broadhurst made a decision not to participate in the program, however understandable her reasons. LPF Section 3.13.070(B) expressly provides that the "failure to timely file a Statement of Acceptance or Rejection of Public Financing shall constitute a rejection of public financing" and that a candidate's decision to reject public financing is "irrevocable." Commission staff questions whether even a "liberal construction" of the LPFA to achieve its stated goals would permit the Commission to waive this condition of eligibility.

Respectfully submitted,

Daniel D. Purnell
Executive Director