

**TO:** Honorable Members, Rules and Elections Committee

**FROM:** Gerry F. Miller  
Chief Legislative Analyst

**SUBJECT:** Public Financing of Elections

**RECOMMENDATIONS:**

1. INSTRUCT the Chief Legislative Analyst , with the assistance of the Ethics Commission, to develop and submit an information package relative to full public financing of City elections to the Department of Neighborhood Empowerment for distribution to the Neighborhood Councils in order to obtain input; and
2. INSTRUCT the Chief Legislative Analyst, the City Ethics Commission and the City Attorney to report to the City Council with a detailed full public financing program to be discussed in the context of the 2007-08 budget hearings to determine if such a program should be financed by the General Fund and options for a Special Tax to provide funding.

**SUMMARY:**

Pursuant to Motion (Garcetti - Rosendahl - Greuel - Cardenas), the City Council instructed the Chief Legislative Analyst (CLA) to report back to the City Council on the feasibility and potential costs of implementing a Clean Money campaign system for all elected offices in the City of Los Angeles. During previous Council discussions, the Council requested that this report include a description of the City's current campaign finance program, other public financing programs throughout the Country and options available to the City for implementing a more comprehensive campaign financing program.

Analysis indicates that it is feasible to establish a program for full public financing of City elections. Such a program would be very costly and would either have to be funded through a General Fund appropriation or special tax requiring a two-thirds vote of the electorate. Additionally, historic data since the imposition of term limits in Los Angeles, as explained more fully in this report, suggest that the policy goals full public financing of elections is seeking to achieve may be difficult to achieve in Los Angeles. Accordingly, while feasible, whether a full public financing program in Los Angeles is advisable requires further public debate relative to whether the substantial required investment would result in achieving the stated goals.

Full public financing systems, sometimes known as "Clean Money" systems, aim to reduce or eliminate real or apparent corruption of special interest money by replacing private campaign

contributions with public financing, and to increase the number and diversity of candidates by providing candidates with sufficient resources to run a viable campaign. By providing public resources, candidates are able to spend less time fundraising and more time communicating their views to the voters. Full public financing programs provide qualified candidates with all of the funding necessary to run a campaign. Candidates voluntarily opt to participate in their jurisdiction's program by agreeing to collect a specified number of qualifying contributions from their respective constituencies to demonstrate a broad base of community support before receiving public money. Once a candidate meets the qualification requirements, the candidate must agree to spending limits, may not accept any private contributions and may not use personal wealth to finance his or her campaign.

### *Description of Full Public Financing Programs*

In 1998, **Arizona** enacted a full public financing program known as the Clean Elections Act. A five-member, non-partisan election commission with authority to enforce election laws administers the system. All statewide races as well as candidates for the state legislature are eligible. The program is funded by a 10% surcharge on all civil and criminal penalties, voluntary donations, qualifying contributions received by participating candidates, and civil penalties assessed against violators.

Candidates who opt to participate in the program must accept a minimum number of \$5 contributions to qualify for public financing. The number of minimum qualifications varies depending on the political office. The State of Arizona also limits the amount of personal contributions that candidates can use to fund their campaigns. Spending limits are imposed on candidates that opt to participate in the program. The spending limit is equal to the amount of public financing available for each candidate. For example, in 2004, a candidate for the Arizona State Legislature must have collected 210, \$5 contributions to qualify for public financing, could not spend more than \$550 in personal funds, and was bound by a spending limit of \$11,320. Matching funds are available for candidates who are outspent by non-participating opponents or targeted by independent expenditures; however, a candidate may only receive up to three times the original campaign allocation. The number and diversity of candidates, as well as voter turnout, have increased in Arizona since the public financing program was implemented. Term limits apply to State Legislators and the Governor.

The **Maine** Clean Election Act (MCEA) established a voluntary program of full public financing for candidates running for Governor, State Senator, and State Representative. Maine voters passed the MCEA as a citizen initiative in 1996. To become eligible, candidates must demonstrate community support by collecting a minimum number of \$5 qualifying contributions. The number of minimum qualifications varies depending on the political office. After a candidate begins to receive MCEA funds from the State, he or she cannot accept private contributions. MCEA candidates may receive matching funds based on their opponents' contributions and expenditures, and independent expenditures made by third-parties. The maximum amount of matching funds a candidate may receive is twice the amount of the initial distribution for the election. For example, if a 2006 candidate for State Representative receives an initial distribution of \$4,362 for the 2006 general election, the maximum amount the candidate could receive in matching funds for the election would be \$8,724. This program is funded by a \$2 million appropriation from the state legislature, fines for violations of the Clean Elections law, taxpayer check-offs and \$5 qualifying contributions. Maine's public

financing program has increased the number and diversity of candidates. Term limits apply to State Legislators and the Governor.

In 1997, the **Vermont** Legislature and Governor passed a new campaign finance law which limits the amounts of contributions that individuals, political parties and political committees may receive from a single source. The limitations for the 2005-06 election cycle are \$400 for the Offices of Governor, Lieutenant Governor, Secretary of State, State Treasurer, Auditor of Accounts, and Attorney General; \$300 for State Senator; \$200 for State Representative; and \$2,000 for a political party or political committee. Vermont also provides full public financing for candidates for Governor and Lieutenant Governor. To qualify, candidates for Governor must raise at least \$35,000 from 1,500 or more individual contributors. Candidates for Lieutenant Governor must raise at least \$17,500 from 750 or more individual contributors. Qualifying contributions may not exceed \$50 each. Candidates for Governor are eligible to receive \$75,000 for the primary election and \$225,000 for the general election in public funds. Candidates for Lieutenant Governor are eligible to receive \$25,000 for primary election and \$75,000 for the general election. This program is funded with fines and penalties for violations of campaign finance laws, 40% of funds from annual fees from domestic corporations and 33% of funds from annual fees from foreign corporations. There are no term limits for State Offices in Vermont.

It should be noted that aspects of Vermont's election law are currently being litigated in court. With the goal of reducing the influence of special interest money, Vermont previously placed expenditures limits on all candidates. In August 2000, a Federal District Court ruled that this portion of the law was unconstitutional. The appeal of that decision was heard by the Second Circuit Court of Appeals and the Supreme Court is expected to rule by June 2006.

In October 2005, voters in **Albuquerque, NM** passed a ballot measure to provide full public financing for all local elections. Participating candidates will voluntarily limit their campaign spending and will not accept or spend private campaign contributions. Candidates are required to gather \$5 donations from 1% of the registered voters in their district to be eligible to receive public financing. Eligible candidates would receive \$1 for every registered voter in their district to fund their campaign for public office. There are term limits for City Councilors in Albuquerque, NM. No elections have been held since the implementation of the full public financing program.

In May 2005, the **City of Portland** enacted a full public financing program which will be in effect for the 2006 and 2008 municipal elections. In 2010, the program will be placed on the ballot for approval by the voters. To be eligible for public funding, a candidate must first demonstrate community support by collecting at least 1,000, \$5 qualifying contributions from City residents. Eligible Mayoral candidates will receive \$200,000 for the primary election and \$250,000 for the general election. Eligible candidates for City Commissions and City Auditor will receive \$150,000 for the primary election and \$200,000 for the general election. Participating candidates may accept contributions of \$100 or less from any source, however, candidates may not accept more than \$15,000 in contributions. Eligible candidates who are outspent by a non-participating opponent or by third party independent expenditures are eligible to receive matching funds up to \$150,000. Primary election matching funds are limited to a maximum of \$150,000 per office and will be divided and distributed equally to all eligible certified candidates for that office. There are no terms limits for City

Offices in Portland. It is too early to assess the effectiveness of this program. The first election with a full public financing option was held in May 2006.

*Overview of Los Angeles City Election Trends and Full Public Financing*

In 1990, voters approved Proposition H which amended the Charter to establish the City Ethics Commission and create a campaign finance system for Los Angeles City elections. Attachment I provides an overview of the City's current campaign finance program.

Candidate participation in the City's program has allowed a greater number and a more diverse group of candidates to run for office. The program has also resulted in candidates relying on contributions from individuals rather than non-individuals such as businesses, unions or other special interest groups. The Ethics Commission reports that open seat campaigns have large numbers of competitive candidates who are able to launch viable campaigns utilizing the City's matching funds program. A sizeable majority of candidates continue to express their support for spending limits and limits on the use of personal funds. The Commission reports that 71% of those elected to office since 1993 have had the advantage of public funding in their campaigns, however, the number of those who qualify to receive matching funds has declined as term limits have tended to produce fewer candidates.

Although the program has had its successes, there are factors that are impeding the success of the program that will likely continue to occur. While public financing aims to restore public trust in government and increase electoral competition to provide voters with a more diverse candidacy pool, the benefit of public financing to encourage more candidates seems to be impeded by term limits. Election data from 1993-2005 suggest that, for the most part, many incumbents run opposed or with no serious opposition for their second, 4 year election. While the intent of term limits was to create a more diverse pool of candidates, it appears that many individuals considering running for City office will postpone running for office until the current officeholder is termed out. Without actually implementing a full public financing system and the lack of data from newly created full public financing programs, it is impossible to determine whether a full public financing system would change this trend.

The Ethics Commission also notes that as candidates running for open seats participate in the City's public financing program, however, the successful candidates in the first election tend to decline public financing for their second, four year term campaign. Whether intentional, when incumbents reject public financing, it diminishes the value of smaller individual contributions and increases the value of private fundraising. When incumbents opt out of the program, in other words, the overall integrity of the program is jeopardized.

One goal of public financing is to reduce the occurrence or influence of independent expenditures by providing candidates with sufficient resources to respond to these expenditures. Independent spending in City elections has risen dramatically since the passage of Proposition H, posing a threat to the City's program. Unlike contributions, courts have ruled that independent spending may not be limited. The Ethics Commission staff report that independent spending is no longer unprecedented, but is now a regular occurrence that has affected a wide range of City offices. Unless candidates are

provided sufficient funding to counter independent expenditures, these expenditures will likely continue to influence the election process.

Recognizing that there is no way to prohibit independent expenditures, a successful full public financing program would need to provide enough funds to ensure that all candidates could respond to these expenditures. If sufficient funding is provided, full public financing may reduce independent spending or at a minimum, reduce its influence in the electoral process. This assumes that special interest groups, unions, businesses, etc. will not invest significant resources to support or oppose a certain candidate if other candidates in the race would benefit from the expenditure by receiving an equal amount of funding.

### *Fiscal Impact and Funding Options*

Should the City choose to pursue a full public financing system, the City should provide sufficient resources to support all potential candidates and sufficient reserve funding to respond to independent expenditures. In full public financing programs, the spending limit is equal to the amount of funding that qualified candidates would receive to fund their campaigns. Additional funding is allocated to candidates, up to a maximum amount, to aid candidates in responding to independent expenditures or non-participating candidates. According to estimates provided by California Clean Money Campaign, the City would need to appropriate \$9 million annually which equates to \$36 million per 4 year election cycle to adequately fund a full public financing program. The \$9 million annual estimate would provide candidates with campaign funds equal to the established spending limits, and provide candidates with up to a total of 4 times the spending limit if candidates were outspent by non-participating candidates or independent expenditures. The \$9 million estimate would provide funding to fully match every race. These estimates are based on election data compiled by the Ethics Commission from 1993-2005. The estimates account for the number of candidates, independent expenditures and actual campaign expenditures. The California Clean Money Campaign also provided a lower funding estimate of \$7 million annually. At this funding level, funds would have matched 96% of council primaries, 90% of council runoffs and would have been reasonably competitive in most, but not all mayoral races. Attachment II provides information relative to the competitiveness of candidates at different funding levels. Attachment III provides funding estimates at different funding levels.

While Arizona finances its program with a 10% surcharge on civil and criminal penalties, the City does not have this authority. The amount the City receives from Municipal and Penal Code violations is not sufficient to finance such a program. In addition, the annual amount that the City receives fluctuates each year based on violators' payments of fines and the amount that the City is assessed for its share of court costs. Of the approximately \$5.5 million received from these fines, only a small portion, \$1 to \$2 million, is from Municipal Code violations. In order to finance such a program, the City would need to increase the penalties of Municipal Code violations at least nine-fold to provide sufficient resources. Since the State sets the penalties on civil and criminal State law violations, the City would need to pursue State legislation to increase these penalties. Pursuing legislation would be time consuming given the two-year legislative sessions and it seems unlikely that the City would be able to gather support for a proposal that would create non-uniform criminal penalties that apply only in the City of Los Angeles. There may be a legal impediment to imposing larger penalties on crimes

committed in the City rather than elsewhere in the State. However, the City also receives approximately \$120 million annually from parking violations. While the City could increase parking penalties to support full public financing, it is likely that this would be interpreted as a special tax which would trigger the voter-approval requirements of Proposition 218, which mandates that all imposed taxes are subject to voter approval.

A full public financing program would have to be funded by the General Fund or a special tax would need to be established to provide sufficient resources. A full public financing program would have to be voluntary and would require a Charter amendment. Any increase in the current level of funding would need to be approved by the voters. Should the Council choose to pursue a full public financing program, it is recommended that the City provide sufficient funding to cover all Citywide and City Council races. While it would be more cost effective to exclude the Citywide races given the high campaign costs, this would undermine the policy goals of full public financing and exclude the most visible City races. Should the Council choose to pursue full public financing, it is recommended that the Chief Legislative Analyst submit an information package relative to full public financing of City elections to the Neighborhood Councils in order to obtain input. It is further recommended the City Ethics Commission and the City Attorney report to the City Council with a detailed full public financing program to be discussed in the context of the 2007-08 budget hearings to determine if such a program should be financed by the General Fund or if a Special Tax should be pursued to provide funding. Subsequently, the City would need to place a measure on the November 2008 ballot to amend the Charter to authorize a full public financing program and the use of the General Fund or a Special Tax to fund this program. According to the recent Proposition K assessment, there are 689,166 residential parcels. If only residential parcels were assessed, it is estimated that each parcel would be assessed \$13 annually to provide \$9 million in funding. It should be noted that the \$13 figure is just an estimate and is only inclusive of residential properties. This figure will decrease significantly if parcels such as commercial and industrial are included in the assessment.

#### *Supporting Arguments*

- Full public financing aims to reduce or eliminate real or apparent corruption of special interest money by replacing private campaign contributions with public financing.
- Clean Money systems also aim to increase the number and diversity of candidates by providing candidates, who would otherwise not have ample funding, with sufficient resources to run a viable campaign.
- Candidates are able to spend less time fundraising and more time communicating their views to the voters.
- If sufficient funding is provided to candidates to respond to independent expenditures, full public financing may reduce independent spending or at a minimum, reduce its influence in the electoral process.

### *Opposing Arguments*

- The City will need to provide sufficient funding to allow all candidates to respond to independent expenditures. These costs will greatly increase as independent expenditures increase.
- The City could place a cap on the amount of funding available to respond to independent expenditures, however, if sufficient funding is not available to fully match the expenditures, the influence of these expenditures will not be minimized.
- Individuals considering running for City office seem to postpone running for office until the current officeholder is termed out, thereby reducing the candidate pool in incumbency elections. In other words, rather than encouraging candidates to run, the City may simply find itself using public money for candidates who would be running anyway.
- Incumbents tend to reject public financing when up for re-election which diminishes the value of smaller individual contributions and increases the value of private fundraising, jeopardizing the overall integrity of the program.

### *Ethics Commission Staff Recommendations to the Commission*

On March 6, 2006, the Ethics Commission released a report relative to Public Campaign Financing. The report outlines several options to enhance the City's existing campaign financing program which aims to (1) provide competitive campaigns that give voters real choices among candidates; (2) provide broad candidate and voter participation; (3) engage voters and promote discussion of issues; and (4) reduce and prevent corruption and the appearance of corruption. The Ethics Commission staff outlined 3 approaches that aim to free candidates from the requirements of excessive fundraising and provide enough incentives for candidates to choose to opt in to a public financing program with enough resources to run a viable campaign and address independent expenditures.

The first proposal would modify the current public matching funds system without having an additional fiscal impact. In this option, only City Council candidates would be eligible for public financing while Citywide candidates would no longer have the option to participate in the program. City Council candidates would continue to raise contributions for matching purposes, and qualifying candidates would have access to increased public funds. In addition to providing more public matching funds, this proposal would provide a reserve of public funds for use in responding to independent spending in run off elections which typically have the largest volumes of independent spending.

The second proposal would expand the existing system by providing \$4 million per fiscal year, rather than \$2 million per fiscal year. The Ethics Commission has proposed 2 scenarios under this option. In the first scenario, only City Council candidates would be eligible to participate in the program. Qualifying candidates would be provided a public funds grant equal to 50% of their primary election spending limit, while fundraising for contributions would make up the balance. In the general election, candidates would receive a grant equivalent to 100% of their spending limit and no fundraising would be needed or allowed. Under this option, a fairly significant reserve of public funds would be

available to help offset independent expenditures. While Citywide races would not be eligible, this scenario provides City Council candidates with sufficient resources to run a viable campaign and increases the ability of candidates to respond to independent expenditures. In the second scenario of this proposal, all City contests would be eligible for public financing, however, funding would only be available for the primary election and candidates would need to raise all funds in the runoff election. The Ethics Commission reports that this option would fund candidates with approximately 40% of their spending limits. The candidates would need to raise the other 60% through campaign contributions.

The third proposal recommends that the City replace the existing system of partial public financing with a full public financing system. Attachment IV is a matrix of these options which details the options, funding levels, and legislative action that would need to be taken to amend the existing campaign finance program. A full public financing program would cost approximately \$9 million annually.

Balancing the intent of the City's campaign finance system and taking into consideration the current fiscal status of the City, staff of the Ethics Commission recommended that the Commission endorse either option in the second proposal; increase public financing for City Council races and discontinue public financing for Citywide races, or provide full public financing for all City races for the primary election and discontinue public financing for runoffs. While retaining public financing for all Citywide contests is ideal, it is imperative that levels of funding be available to candidates to conduct viable campaigns and to enable candidates to respond to independent expenditures or non-participating candidates that have funding to finance their campaigns beyond the spending limits. If independent expenditures are made opposing or supporting another candidate, the influence of those expenditures will be minimized if opponents have access to the same funding levels. This in turn, may discourage independent expenditures; an ongoing issue threatening the integrity of the City's current financing system. Commission staff further recommended that the City explore a more aggressive use of air time on Channel 35 and incorporate opportunities for air time in cable franchise agreements. The City Attorney will be reporting on the legalities of these issues.

On March 14, 2006, the Ethics Commission considered its staff recommendations and recommended that staff explore a full public financing program and report back with a more detailed scope. The Ethics Commission further instructed staff to conduct an aggressive community outreach campaign and seek input from Neighborhood Councils.

#### *AB 583 (Hancock)*

Currently pending in the Senate, AB 583 (Hancock) would amend the Political Reform Act to enact the California Clean Money and Fair Elections Act of 2006. If approved by the Legislature, this bill would place a measure on the June 3, 2008 ballot to establish a voluntary system of public financing of political campaigns for all state elective offices. If approved by voters, AB 583 would provide substantial public financing to state candidates who demonstrate support by collecting numerous small contributions. Beginning on July 1, 2008, AB 583 would provide for the transfer of \$0.01 per day times the number of California residents 18 years of age or older from the General Fund into a specified Fund to support this program. Participating candidates would receive a public financing

grant that pays for virtually all campaign activities. In exchange for receiving the public funds, candidates must agree not to raise any funds privately, with the exception of those small contributions collected to demonstrate support. This bill is sponsored by the California Clean Money Campaign. AB 583 does not impact the City of Los Angeles. This bill passed the Assembly on January 30, 2006 (47-Ayes; 31-Noes), and is currently in the Senate Committee on Elections, Reapportionment and Constitutional Amendments.

## **CONCLUSION**

Candidate participation in the City's program has allowed a greater number and a more diverse group of candidates to run for office. The program has also resulted in candidates relying on contributions from individuals rather than non-individuals such as businesses, unions or other special interest groups. Although the program has had its successes, there are factors such as term limits, rejection of public financing by incumbents and increasing independent expenditures which work against the goals of the City's program. Whether full public financing would materially impact these factors is unclear because the concept is simply too new and has not been undertaken in jurisdictions similar to Los Angeles. While Arizona and Maine have enacted full public financing programs, the demographics and costs of running an election in those states are not comparable to Los Angeles City elections.

Recognizing that there is no way to prohibit independent expenditures, a successful full public financing program would need to provide enough funds to ensure that all candidates could respond to these expenditures. If sufficient funding is provided, full public financing may reduce independent spending or at a minimum, reduce its influence in the electoral process. The California Clean Money Campaign estimates that a full public program would cost approximately \$9 million annually. This estimate would provide funding to fully match every race. It is unknown if such a program would deter independent spending in Los Angeles. If independent spending continues to rise, the City will find itself using an increasing amount of public funds to aid candidates in responding to these expenditures.

While Arizona finances its program with a 10% surcharge on civil and criminal penalties, the City does not have this authority. The City would need to pursue State legislation for the imposition and collection of an additional surcharge for this purpose. Without this authority, a full public financing program would either have to be funded by the General Fund or a special tax, requiring 2/3 voter approval. Any increase in the current level of funding would need to be approved by the voters. Should the Council choose to pursue a full public financing program, a Charter amendment would need to be placed on the ballot.

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Tricia Carey  
Legislative Analyst

- Attachments:
1. Overview of the City's Campaign Finance Program
  2. Competitiveness of Candidates at Different Full Public Financing Funding Levels
  3. Full Public Financing Funding Estimates at Different Funding Levels
  4. Matrix of Ethics Commission Staff Recommendations

