

Memo

To: Commission

From: Wayne Barnett

Date: March 4, 2013

Re: Public Financing Proposal

Over the course of January and February, Commissioners Axel, Carter and Yamaguchi met several times to discuss the efficacy of public financing programs. The commissioners (i) reviewed the literature on public financing programs; (ii) reviewed data on recent election results from Seattle and other cities; (iii) met with a panel of program administrators from Los Angeles and San Francisco as well as an individual familiar with Portland's now-defunct program; (iv) met with Professor Ken Mayer of the University of Wisconsin-Madison, the nation's leading expert on public financing, and David Earley from the Brennan Center for Justice, an expert on New York City's matching funds program; and (v) used the knowledge they had gleaned from this effort to craft a proposal for the Commission's consideration.

The small working group undertook this effort with an eye toward the goals outlined by the City Council members in their December request to the Commission for advice.

The City Council members articulated their goals as follows:

1. Increase electoral competitiveness. The proposed public financing system should help increase the number of candidates running for local office. Given the electorate more choices is a positive outcome for the democratic process.

2. Reduce financial barriers to entry for candidates. A corollary to goal one, the public financing model should reduce the current perception that it "costs too much" to run for office. The model should provide for a reasonable financial path to running a competitive campaign.

3. Increase the role and emphasis of small donors participating in the electoral process. As stated in SMC 2.04.400, "the City finds it is in the public interest to encourage the widest participation of the public in the electoral process, to reduce the dependence of candidates on large contributions..." The public

financing proposal should create an incentive for candidates to pursue small contributions from Seattle's residents.

Based on its review, the small working group offers the following comments on the ability of public financing to serve the goals outlined by the Council members:

1. **There is little academic support for the proposition that public financing increases competitiveness.** Professor Mayer's research evidenced initial increases in competitiveness under public financing, with the effect dissipating over time. While there is evidence that public financing can attract more candidates, the races themselves do not appear to become more competitive. (Much of the literature on these programs characterizes a race as "competitive" when the successful candidate wins by fewer than 20 percentage points.)
2. **Public financing reduces barriers to entry.** As noted in the preceding paragraph, public financing does appear to lead to more candidates. In fact, the administrator of San Francisco's program cautioned against making funds too easy to obtain, lest public funds be spent on marginal candidates. The group expects that enabling candidates to compete while raising \$50,000 instead of \$250,000 will alter the decision-making of some prospective candidates.
3. **Public financing can draw new contributors into the political process.** Perhaps more than any other factor, the small working group was impressed by the potential for public financing, properly designed, to involve Seattlites in the political process who might otherwise not participate. There is research out of New York City showing that that City's matching program is leading to contributions from individuals in different areas of the City – areas both more diverse and less wealthy – than existed prior to the introduction of that City's 6:1 matching program. See Michael Malbin et al., *Donor Diversity Through Public Matching Funds*, available at <http://www.cfinst.org/pdf/state/NY/DonorDiversity.pdf>. According to Professor Mayer, contributing to a candidate correlates with other indicia of civic involvement, such as volunteering for that candidate and ultimately voting in the election.

Based on its research, the small working group structured its proposal as follows:

1. **Eligibility for the program is contingent on candidates receiving a substantial number of contributions.** In order to qualify for the program, candidates will need to collect a minimum of \$15,000 in contributions of more than \$10, with amounts of up to \$25 counting towards the \$15,000 threshold. That translates into a range of between 600 and 1,500 contributors. New York, Los Angeles and San Francisco make it possible for candidates to qualify with far fewer contributors. Portland's program required City Commission candidates to collect \$5 contributions from 1,000 individuals. The working group's goal in crafting the eligibility threshold was to enable candidates who showed the ability to garner many small contributions to participate in the program, thus serving the goals of (1) reducing barriers to entry, and (2) potentially increasing the role of small donors in the electoral process. The proposal also would appear likely to increase the number of candidates seeking Council seats, although after

reviewing the data and hearing from Professor Ken Mayer from the University of Wisconsin-Madison, there is no evidence that it would materially affect the competitiveness of races.

2. **Once a candidate qualifies for the program, the City will match up to \$50 of each contribution with \$200, with up to \$60,000 available to candidates in the primary election and up to \$65,000 available to candidates in the general election.** A significant match is designed to create incentives, or at a minimum reduce barriers, to candidates actively seeking small contributions. A fundraiser that costs \$200 to stage and garners only \$300 is of questionable value, while a fundraiser that costs \$200 to stage and garners \$1,500 seems a better investment of a campaign's time and energy. There is evidence that New York City's 6:1 match is changing the pool of contributors to New York City campaigns. See Michael Malbin et al., *Donor Diversity Through Public Matching Funds*, available at <http://www.cfinst.org/pdf/state/NY/DonorDiversity.pdf>.

Other considerations and open questions:

1. **Publicly fund only races for City Council.** There is evidence that the number of candidates per City Council seat is declining, which dovetails with the first goal articulated by the City Council members. In contrast, the number of candidates vying to become the City's mayor remains high. There were 11 candidates for mayor in 1997, 13 in 2001, 8 in 2009 and already 8 in 2013. In 2001 and 2009, the winning candidate was outspent by his general election opponent. Funding mayoral campaigns would add significantly to the cost of the program, while delivering benefits of questionable value. Races for City Attorney have traditionally not been as expensive to wage as races for Mayor or City Council.
2. **Three questions: (a) how much time will candidates have to collect qualifying contributions, (b) whose contributions qualify for the program, (c) what happens to the \$250,000 spending cap when contributions to, or spending on behalf of, one's opponent exceeds that cap, and (d) when should funds be disbursed?**
 - a. Portland gave candidates 140 days to collect the 1,000 contributions necessary to qualify. It does not appear that New York City, San Francisco or Los Angeles place any temporal limits on qualifying for the program. Should Seattle? Requiring candidates to qualify for the program in some limited time frame would reward better-organized candidates, but limiting the window for fundraising was not universally embraced when the Council enacted that change last year.
 - b. There does seem to be consensus around the idea that only contributions from individuals who live in the City should qualify for the match. A representative from the Portland League of Women Voters, though, recommended that Seattle require that contributions come from registered voters in the City, since the identity of those contributors can be verified by the County. Staff has solicited input from officials from Los Angeles and San Francisco on how they verify the identity of contributors.
 - c. In *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*, 131 S.Ct. 2806 (2011), the Supreme Court held unconstitutional a provision of Arizona's public financing program that made additional public dollars available to participating

candidates when spending by their opponent, or on their opponent's behalf, exceeded the program's spending cap. In the wake of that decision, some public financing programs lift the cap entirely once it has been exceeded, others lift it incrementally, and others keep the cap in place. There is currently litigation pending in federal court in New York that includes a claim that even lifting the cap is unconstitutional under *Arizona Free Enterprise*. Keeping a cap in place could discourage candidates from participating, and could alter the behavior of those attempting to ensure that their favored candidate is elected. Lifting it, though, would subject the program to legal challenge, and could lead to caps that exist only on paper.

- d. There is consensus around the idea that candidates who are running unopposed should not be entitled to public funds. If public funds are disbursed prior to the close of the filing period for office, it could be difficult to get those funds back if a candidate turns out to be running unopposed. At the same time, requiring a candidate to wait until May to receive any public funds could discourage participation in the program.

I look forward to a robust discussion at this week's meeting.