



## Takoma Park City Council Meeting – November 6, 2019 Agenda Item 6 – revised\*

### Work Session

Continued Discussion of Board of Elections' Recommendations for Changes to the Election Code

\*Revisions since first posting of this cover memo are shown by underlining. Revisions are shown on the attachment in yellow highlighting.

### Recommended Council Action

Review and discuss the proposed revisions to Title 5, Elections. A first reading ordinance amending the Code is scheduled for November 13, 2019.

### Context with Key Issues

The Board of Elections has recommended revisions to the City's Elections Code. The Council heard the Board's recommendations on June 5, 2019 and discussed them on September 18. The text has been further refined since that time. A summary of the proposed amendments follows:

- In Ch. 5.04 General Provisions, the term "political matter" has been changed to "campaign material," and a definition has been added.
- In Ch. 5.08, a sentence is deleted and moved to the Charter: "Each ward shall be compact in form and composed of adjoining territory. The populations of the wards shall be substantially equal."
- Ch. 5.12 Fair Election Practices, covers authority lines on campaign material, campaign sign placement, and reporting of campaign contributions and expenditures.
- The information to be included in the authority line is clarified to include name, title, and address of the person or campaign officer responsible. The address need not be included if already on file with the City Clerk or if the campaign material is too small to include all the information.
- Material published or distributed in support of or opposition to a campaign without being directly authorized should include specified language. (See 5.12.010(C)).
- The text prohibits campaign signs except on private property with permission of the property owner. There are specific exceptions for placement of signs near polling places during early voting or election day.
- A definition of "in-kind contribution" is added: The fair market value for goods, or services for which the contributor normally charges, and payments made on behalf of a candidate, except that volunteering the contributor's own time or use of a personal vehicle or residence to a campaign shall not constitute an in-kind contribution. The fair market value shall be the usual and normal charge for a good or service.
- Campaign contributions from any person or entity are limited to \$1,000 per candidate or political committee in any election cycle. There is no limit on candidates and their spouses or domestic partners donating to their own campaign.
- Names and addresses of those contributing money or other items or services of value (other than volunteer services) must be reported when the contributions reach \$25 or more (changed from \$25.01 or more). Cumulative totals from donors must be shown.
- Anonymous donations are not permitted and shall be donated to the City's general fund.
- The first campaign finance report is due 7 days before the start of early voting. The final report is due Monday after the election.
- Gender binary language is removed throughout the Title.

- In Ch. 5.16 Voting, use of honorifics with names on the ballot is prohibited and the term “specimen ballot” is changed to “sample ballot.”
- The time limit for voting is removed.
- In Ch. 5.20, Absentee Voting, terms are changed so that a voter “requests” an absentee ballot, rather than “applies” for the ballot.
- The 21-day residency certification is no longer required to be included in a request to receive an absentee ballot.
- After the seventh calendar day before election day, voters or a voter’s agent should appear in person to obtain an absentee ballot because there is not time to transmit and receive the ballot by mail.
- Section 5.20.060 Tabulation of absentee ballots, prohibits tabulating of absentee ballots before the polls close, but does not prohibit opening them.
- In Ch. 5.24, adds a requirement that Board of Elections members take an oath of office and removes the requirement that the City Council approve appointment of additional election judges and workers hired for an election.

### **Council Priority**

Engaged, Responsive and Service-Oriented Government

### **Environmental Considerations**

Staff does not believe that there are environmental impacts that would result from adoption of the Board’s recommendations.

### **Fiscal Considerations**

If the Council endorses the payment of return postage for absentee ballots, the increase in cost for postage would be less than \$100 given the current level of ballots cast by mail. As the number increases, associated costs would increase. Other election costs would not be directly impacted by the proposed amendments.

### **Racial Equity Considerations**

The Board of Elections’ recommendations continue the process of expanding opportunities to vote in City elections and eliminating barriers to voting. In preparing for 2020, staff and the Board will be focused on outreach, education, and preparation for residents to vote. For candidates running for office, there would be a new requirement to report expenditures; however, the Board is committed to ensuring that the requirement is not overly burdensome for candidates.

### **Attachments and Links**

- Title 5, Elections showing recommended revisions. (Sections revised since original posting are highlighted.)

**Title 5  
ELECTIONS**

**Chapter 5.04  
GENERAL PROVISIONS**

**5.04.010 Purpose.**

The purpose of the election procedures contained in this title is to provide for the conduct of City elections administered pursuant to the powers granted to the Council to provide for the conduct of registration, nominations and voting in City elections and for the prevention of fraud in connection with such elections. (Ord. 2015-28, 2015/prior code § 4D-1)

**5.04.020 Definitions.**

As used in this title, the following terms shall have the meanings indicated unless a contrary meaning is clearly intended from the context in which the term appears:

“Agent” means any person who represents and acts for another.

“Authorized representative” means any person appointed or designated by a candidate or a political committee to file campaign reports or to be responsible for campaign material~~political matter~~ published or distributed.

“Ballot” is the means by which a vote is cast. “Ballot” or “ballots” include paper ballots, absentee ballots, provisional ballots, or a voting machine ballot, whichever in context is appropriate.

“Campaign material” means any printed or electronic statement or advertisement that contains text, graphics, or other images; relates to or concerns any candidate or prospective candidate or any matter or issue which has been submitted to a vote at an election or is in the process of being petitioned to referendum; and is published or distributed to anyone by, at the request of, or under the authority of, a candidate or political committee.

“Campaign report” means a report of contributions received by any candidate or political committee.

“Candidate” means any person who seeks election as Mayor or Councilmember.

“Contributions” means a gift, loan, transfer of money or other thing of value to any candidate, the candidate~~his or her~~ representative or to a political committee to promote the success or defeat of a candidate or of any matter or issue which has been submitted to a vote at an election or is in the process of being petitioned to referendum.

“Election” means the process by which the voters of the City vote for Mayor or Councilmember, any Charter amendment, proposition or question and, unless otherwise indicated, shall include all elections, general, special, runoff and referendum.

“In-kind contribution” means the fair market value for goods or services for which the contributor normally charges, and payments made on behalf of a candidate, except that volunteering the contributor’s own time or use of a personal vehicle or residence to a campaign shall not constitute an in-kind contribution. The fair market value shall be the usual and normal charge for a good or service.

“Political committee” means any combination of two or more persons which has as one of its purposes to promote the success or defeat of a candidate or of any matter or issue which has been submitted to a vote at an election or is in the process of being petitioned to referendum.

~~“Political matter” means any pamphlet, circular, card, sample ballot, poster, billboard, advertisement, button or any other printed, photographed, typewritten or written material or statement relating to or concerning any candidate or prospective candidate or any matter or issue which has been submitted to a vote at an election or is in the process of being petitioned to referendum.~~

“Provisional ballot” means a ballot that is cast by an individual but not counted until the individual’s qualifications to vote have been confirmed by the Takoma Park Board of Elections.

“Registration” means the act by which a person becomes qualified to vote in any election in the City.

“Surplus campaign funds” means funds left in a candidate’s campaign account after the election is over and all campaign debts (including all loans) have been paid.

“Voting system” means a method of casting and tabulating ballots or votes. (Ord. 2015-28, 2015/Ord. No. 2009-22, 5-18-09/prior code § 4D-2)

**Chapter 5.08**  
**WARDS**

**5.08.010 Description of ward boundaries.**

~~A.—The City is divided into six wards for purposes of City elections. Each ward shall be compact in form and composed of adjoining territory. The populations of the wards shall be substantially equal.~~

~~B.—~~The City is divided into six wards for purposes of City elections. The boundary lines of the ~~six~~ wards shall be as they are shown on the map and accompanying street directory designated “2013 District Plan and Street Directory,” dated December 3, 2012, including any corrections made since that time, incorporated herein, on file and available for inspection in the office of the City Clerk. (Ord. 2015-28, 2015/Ord. 2013-3 § 1, 2013/Ord. 2003-17 § 1, 2003/prior code § 4D-5)

**Chapter 5.12**  
**FAIR ELECTION PRACTICES**

**5.12.010 Campaign material~~Political matter~~ published or distributed.**

~~A. No person, candidate or political committee shall print, publish, distribute or broadcast or cause to be printed, published, distributed or broadcast any political matter unless such political matter includes the name of the person who authorized the publication or distribution of the same.~~

~~B. No person, candidate or political committee shall expend any money for printing, publication or broadcasting of any political matter unless such matter states that it is a paid political advertisement and is printed, published or broadcast by the authority of the person, candidate, political committee or an authorized representative for a candidate or political committee.~~

A. Each item of campaign material shall contain, set apart from any other message, an authority line that states the name, title, and address of the person, treasurer, or campaign manager responsible for the publication or distribution of the same.

B. The authority line need state only the name and title of the responsible person if:

1. The name and address of the responsible person has been filed with the City Clerk; or
2. The campaign material item is too small to include all the information specified in paragraph (A) of this section in a legible form.

C. Any material that is published or distributed in support of or in opposition to a campaign without being directly or indirectly authorized by the campaign should include the following statement: "This message has been authorized and paid for by (name of payer or any organization affiliated with the payer). This message has not been authorized or approved by any candidate or campaign."

D. Campaign signs for city elections shall only be displayed on private property with the permission of the property owner and shall not be displayed in the public right of way. Campaign signs may be displayed on the premises of polling stations outside the limits on electioneering as follows:

1. At early voting polling places, from 5:00 p.m. the day before early voting begins through 8:00 a.m. on the day after the early voting period ends.
2. At election day polling places, from 5:00 p.m. the day before election day through 8:00 a.m. on the day after election day.
3. Signs displayed at polling places shall not interfere with access to polling places or pose a safety hazard to vehicles or pedestrians.

EE. A violation of this section is a Class B offense. (Ord. 2015-28, 2015/prior code § 4D-6)

**5.12.020 Campaign contributions, expenditures, and reports.**

A. Any individual, association, unincorporated association, corporation, or any other entity, either directly or indirectly, may not contribute any money or thing of value greater than one thousand dollars (\$1,000.00) to any single candidate or political committee during a single election cycle. **Candidates and their spouse or domestic partner** may donate unlimited amounts to their own campaign.

B. Candidates or political committees may not retain anonymous donations of any amount for campaign purposes. If a candidate or political committee receives an anonymous donation, the amount shall be declared in campaign reports and contributed to the City general fund.

CA. Each candidate or ~~their~~ ~~his or her~~ authorized representative and each authorized representative of any political committee shall file a report with the City Clerk disclosing the total monetary contributions, as well as the names and addresses of all persons, ~~other than the candidate or members of his or her immediate family,~~ who contribute anything of value, other than volunteer services, of \$25.00~~+~~ or more in an election. All campaign reports filed shall be available for public review during the normal office hours of the City Clerk.

1. An initial report listing contributions ~~received~~ and expenditures since the date of the last preceding election to fill the office for which the candidate or political committee is running shall be filed with the City Clerk no later than the Monday at least seven days preceding the start of early voting~~election~~.
2. A final report of campaign contributions and expenditures not previously reported shall be filed with the City Clerk no later than 4:00 p.m. of the Monday following the election.
3. Even if no contributions have been received or expenditures made since the end of the period for which the last preceding report was filed or due, a statement to that effect must be filed with the City Clerk.

DB. All campaign reports shall be made on the forms designated by the City Clerk. The campaign reports shall contain a certification by the person responsible for filing the report that the contents of the report are true and complete to the best of the reporter's ~~his or her~~ knowledge, information and belief.

EE. There is a late filing fee for each campaign report which is not filed within the time prescribed in this section. The fee is \$10.00 for each day or part of a day, excluding Saturdays, Sundays and holidays, that a report is overdue. The maximum late fee payable with respect to any single report is \$250.00.

1. The City Clerk shall receive an overdue campaign report even if any late filing fee has not been paid, but the report shall not be considered officially filed until all fees have been paid.
2. Upon receipt by the City Clerk of an overdue campaign report, no further late filing fees shall be incurred, notwithstanding the fact that the report is not considered officially filed.
3. It is the personal responsibility of the candidate, if it is the report of a candidate, and of the authorized representative of a political committee to file all reports in complete and accurate detail and to pay all late filing fees. A late filing fee may not be paid, directly or indirectly, from contributions to the candidate or political committee.

FD. A campaign report must be attested to as complete and accurate to be deemed “filed.” If there is a deficiency in a campaign report, the City Clerk will notify the candidate or political committee, in writing, of the deficiency. The candidate or political committee then has two weeks from the date of that notice to file a corrected report. If a corrected report is not filed within two weeks or if a corrected report is not attested to as complete and accurate, then daily late filing fees will be assessed.

GE. If the City Clerk determines that there is a deficiency in a corrected report, then the candidate or political committee must continue to correct and resubmit the campaign report to the City Clerk until such campaign report is accepted. In this case, daily late filing fees will continue to be assessed.

HF. A person may not receive any salary or benefits from the office of the Mayor or Councilmember until all required campaign reports have been attested to as complete and accurate, accepted as filed, and all late filing fees have been paid.

IG. A violation of this section is a Class B offense. (Ord. 2015-28, 2015/prior code § 4D-7)

#### **5.12.030 Surplus campaign funds.**

A. Surplus campaign funds may be used at the discretion of the candidate for any community or political purpose, except:

1. The personal use of the candidate, the treasurer or any member of the candidate’s campaign staff, or the immediate family members of those individuals (however, use of surplus funds to hold a party for campaign supporters is a permitted political purpose); or
2. A transfer to a political committee or a candidate other than the political committee or individual for whom the funds were raised.

B. A violation of this section is a Class B offense. (Ord. 2015-28, 2015/prior code § 4D-8)



**5.12.040 Financial disclosure statements.**

A. Candidates must have timely filed financial disclosure statements in proper form as required by Section 3.04.080 of the ethics title of the Takoma Park Code to be eligible to assume office.

B. If a candidate elected to a position is unable to serve due to failure~~take office because he or she has failed~~ to file a financial disclosure statement as required by Section 3.04.080, then the Clerk shall declare the position to be vacant in accordance with Section 301(b) of the Takoma Park Municipal Charter. (Ord. 2015-28, 2015)

## Chapter 5.16 VOTING

### 5.16.010 Voting systems.

- A. Only one voting system may be used in any City election.
- B. The City Council may purchase, rent, lease or otherwise acquire such voting systems and related equipment as may be required for an election. (Ord. 2015-28, 2015/Ord. No. 2009-22, 5-18-09/prior code § 4D-10)

### 5.16.020 Ballots.

- A. The City Clerk shall provide ballots for all elections which shall contain:
  - 1. The name of every candidate who has been nominated in accordance with the provisions of the Charter and with this title;
  - 2. A description of every question which is to be submitted to a vote.
- B. All ballots shall be ~~printed~~ in plain clear type suitable for in black ink upon material of such size and shape to fit the construction of the voting system.
- C. The form and arrangement of all ballots shall be determined by the City Clerk in accordance with the following requirements:
  - 1. In all elections, the names of candidates shall be arranged alphabetically on the ballots according to their surname, under the designation of office. The names of the candidates for Mayor shall appear first on the ballots, followed by the names of the candidates for Councilmember according to the numeric designation of the ward. Names of candidates shall not include honorifics, such as Dr. or Esq.
  - 2. No ballot shall contain a party designation of a candidate.
  - 3. Each ballot shall contain ~~an appropriate instruction to the voter informing him or her of the offices for which he or she may vote and the number of persons for whom he or she may lawfully vote for each office.~~
  - 4. All ballots shall contain a statement in understandable language of every question to be submitted to a vote at any election.
  - 5. The City Clerk shall prepare and certify the form in which a question shall appear, and each question may be captioned with a descriptive title containing not more than five words.
  - 6. Each ballot question shall appear ~~be printed~~ on the ballots following the name of the candidates and shall be accompanied by the words "For" and "Against."

D. If, because of an error in printing or a change in circumstances, the City Clerk at any time finds it necessary to make a change in a ballot, the City Clerk shall promptly change the ballots by taking the following action:

1. If there is sufficient time for printing or reprinting of the ballot, make the appropriate changes or corrections on the printed ballots;
2. If there is insufficient time for reprinting, and if it is appropriate to the voting system in use, cause to be printed a sufficient number of stickers incorporating the appropriate changes or corrections. The stickers shall be as consistent as possible with the printed ballots and be affixed to the ballots in the appropriate places;
3. If time does not permit the process provided in subsection (D)(2) of this section or if such a process is inappropriate, take all appropriate measures to notify voters of the change and the procedure to be used by each voter to record a vote;
4. After any change on a ballot, the City Clerk shall take all reasonable steps to notify all candidates for the office involved of the change or correction in the ballots.

E. The City Clerk may cause to be printed copies of the form of the ballot to be used for an election, to be in type of suitable size and designated as “sample specimen ballots.” Any such sample specimen ballots shall be conspicuously posted at each polling place and may be distributed to voters. (Ord. 2015-28, 2015/prior code § 4D-11)

#### **5.16.030 Instruction and assistance in voting.**

A. Upon request, election judges or election workers shall instruct a voter regarding the operation of the particular voting system.

B. Any voter who requires assistance in voting by reason of disability, inability to write, or inability to read the ballot may be given assistance by an individual of the voter’s choice. A voter may not choose a candidate or an agent of any candidate in that City election, the voter’s employer or agent of the employer, or an officer or agent of the voter’s union. In the event a voter chooses no one, an election judge or election worker may assist the voter. Any person giving assistance to a voter pursuant to this subsection shall complete an affidavit of assistance to be filed ~~with the Chief Judge~~.

1. After such an affidavit has been made and filed, the voter may enter into a voting machine, booth or other place set aside for voting with the person of the voter’s choice. The person whom the voter has selected or, in the case the voter has selected no one, the election judge shall mark the ballot or operate the voting machine as the voter shall direct.
2. The only assistance which will be lawful for the person whom the voter has selected or for the election judge to give the voter is to mark the ballot or operate the voting machine as the voter shall direct, without prompting or suggestion.

3. A voter may not be accompanied into a voting ~~machine~~, booth or other place set aside for voting by any person 16 years of age or older~~over the age of 15 years~~, unless the affidavit required by subsection (B) of this section has been ~~filed~~accepted by an election judge. (Ord. 2015-28, 2015/Ord. No. 2009-22, 5-19-09/Ord. 2005-34, 2005/prior code § 4D-12)

#### **5.16.040 Time allowed for voting.**

Each voter is expected to mark the ballot or operate the voting machine expeditiously and may be required to leave the voting machine, booth or other place set aside for voting ~~after five minutes~~. (Ord. 2015-28, 2015/Ord. No. 2009-22, 5-19-09/prior code § 4D-13)

#### **5.16.050 Closing of polls.**

A. All qualified voters who are in the process of voting or waiting in line to vote at the time of the scheduled closing of polls shall be permitted to vote.

B. When the last voter in the polling place has voted, the polls shall be officially closed and the election judges shall immediately lock and seal the voting system so that it will be prevented from operating.

C. The election judges shall then record the number of votes cast, and compare the number of votes cast with the number of voters who have checked in to vote. (Ord. 2015-28, 2015/Ord. No. 2009-22, 5-19-09/prior code § 4D-14)

#### **5.16.060 Tabulation of votes.**

A. After the polls have officially closed, the election judges then shall proceed to tabulate the votes cast.

B. The election judges shall tabulate the votes cast as provided in Section 606 of the City Charter, using procedures to ensure the following:

1. The secrecy of the ballot;
2. Correct counting of votes on ballots on which the proper number of votes has been indicated;
3. If the intent of the voter with respect to a particular contest or question is not clearly demonstrated, then only the vote for that contest or question shall be rejected;
4. The tabulating and recording of votes by ward for or against any candidate, candidates or question;
5. Prompt reporting of election returns after the official closing of the polls.

C. The tabulation, release or announcement of election results prior to the official closing of the polls is prohibited.

~~D. All paper ballots and any printed or electronic record from voting machines shall be safely kept by the City Clerk for three months after the date of the election at which the ballots were cast and may then be destroyed, unless prior to that time the City Clerk is ordered by a court of competent jurisdiction to keep the same for any longer period.~~

E. A violation of subsection (B) or (C) of this section is a Class B offense. (Ord. 2015-28, 2015/Ord. No. 2009-22, 5-19-09/prior code § 4D-15)

### **5.16.070 Election challenges and appeals.**

A. Any candidate or voter who wishes to challenge the results of an election or any matter relating to the validity of a ballot shall give written notice to the City Clerk within two business days after the date the results of the election are certified to the Council.

1. The written notice of election challenge shall be made under penalty of perjury and include a complete statement of all facts on which the candidate or voter relies to support ~~their~~his or her election challenge.

2. The City Clerk shall immediately refer the notice of election challenge to the Takoma Park Board of Elections, which shall investigate the facts of the challenge.

3. Within four business days after the City Clerk receives the written notice of election challenge, the Takoma Park Board of Elections shall issue a report of its factual investigation, together with a recommendation for action to the Council.

B. Within 10 business days after an election, the Council shall convene a special meeting to determine all election challenges.

C. The candidate or voter who submitted the election challenge shall be given a reasonable opportunity to be heard at the special meeting of the Council in regard to ~~their~~his or her election challenge.

D. Any candidate or voter aggrieved by any decision or action of the Council on an election challenge shall have the right to appeal to the Circuit Court for Montgomery County.

E. Appeals shall be taken by way of petition filed with the Circuit Court for Montgomery County within five days from the date of the decision of the Council on an election challenge. Appeals shall be heard de novo and without a jury by the Circuit Court as soon as possible. (Ord. 2015-28, 2015/Ord. No. 2009-22, 5-19-09/prior code § 4D-16)

**5.16.080 Inspection of ballots in the event of an election challenge or appeal.**

A. All ballots cast in any election shall remain locked and sealed for three months after the certification of election results or for as long as may be necessary or advisable because of any challenge to a result of an election or the validity of a ballot.

B. As part of the investigation and report of an election challenge or appeal, the ballot storage box or voting machine may be opened and the data and figures examined in order to count or recount the votes cast in the race, referendum question, or election being challenged or to determine any matter related to the validity of a ballot. Such ballot count or examination shall be conducted in response to an order of any court of competent jurisdiction or at the direction of the Takoma Park Board of Elections and in the presence of the principals involved in the election challenge or appeal or their authorized representatives. The Takoma Park Board of Elections or an individual appointed by a court of competent jurisdiction shall make a record of the votes for such challenged office or other matter relating to the validity of ballots or votes cast. (Ord. 2015-28, 2015/Ord. No. 2009-22, 5-19-09/prior code § 4D-17)

**5.16.090 Penalties.**

The following are Class A misdemeanor offenses or Class A municipal infractions:

A. A person who is not a qualified voter of the City voting in a City election.

B. Intentionally allowing a person who is not a qualified voter to vote in a City election.

C. Tampering with, damaging, breaking or attempting to tamper with, damage or break any voting machine, ballot or other voting system or equipment used or to be used in any City election.

D. Any other violation of this title, unless the violation has been designated as a Class B offense. (Ord. 2015-28, 2015/Ord. No. 2009-22, 5-19-09/prior code § 4D-18)

**Chapter 5.20**  
**ABSENTEE VOTING**

**5.20.010 Who may vote.**

Any person who is qualified to vote may vote by absentee ballot in City elections. (Ord. 2015-28, 2015/Ord. No. 2009-22, 5-19-09/prior code § 4D-20)

**5.20.020 Requests~~Applications~~ for absentee ballots.**

A. ~~A request~~an application for absentee ballot, signed by the voter under penalty of perjury, may be made:

1. On a form provided by the City Clerk to the voter upon request; or
2. In a signed, written request that includes:
  - a. The voter's name and home address;
  - b. A certification that the voter is registered to vote and ~~is~~has been or will be a resident of the City ~~for at least 21 days immediately preceding the date of the City election~~; and
  - c. The address to which the absentee ballot is to be mailed or delivered, if different from the voter's home address.

B. ~~Requests~~Applications for mailed absentee ballots must be received by the City Clerk no later than 4:00 p.m. on the seventh calendar day preceding ~~the election day~~. (Ord. 2015-28, 2015/Ord. No. 2009-22, 5-18-09/prior code § 4D-21)

C. \_\_\_\_\_

**5.20.030 ~~Late applications for absentee ballots.~~**

A. ~~After the seventh calendar day preceding an election day~~, through the official closing of the polls ~~on election day~~, a qualified voter or the voter's authorized agent may submit a written request~~apply~~ in person to the City Clerk for an absentee ballot.

B. ~~Late applications for absentee ballots must be delivered to the City Clerk by the applicant, or his or her authorized agent, in writing and include the voter's certification made under penalty of perjury setting forth the following:~~

- ~~1. The voter's name and home address;~~
- ~~2. That the voter is registered to vote and has been or will be a resident of the City for at least 21 days immediately preceding the date of the City election.~~

~~DC.~~ Upon receiving ~~the request~~~~a late application for an absentee ballot~~, the City Clerk, if satisfied that the ~~voter~~~~applicant~~ is a qualified City voter and entitled to vote by absentee ballot, shall give the applicant, or ~~their~~~~his or her~~ authorized agent, an absentee ballot to be marked by the voter, placed in a sealed envelope and returned to the City Clerk. (Ord. 2015-28, 2015/Ord. No. 2009-22, 5-18-09/prior code § 4D-22)

#### **5.20.035 Instruction and assistance in absentee voting.**

A. A voter may authorize an agent to pick up and deliver an absentee ballot.

B. An agent of a voter:

1. Must be at least 16 years of age;
2. Must not be a candidate or an agent of any candidate in that City election;
3. Must not be the voter's employer or an agent of the employer;
4. Must not be an officer or agent of the voter's union;
5. Shall be designated as the agent of the voter in writing signed by the voter under penalty of perjury; and
6. Shall execute a certification under penalty of perjury that the ballot was delivered to the voter who submitted the ~~request~~~~application~~, was marked and placed in a sealed envelope by the voter, or with permitted assistance, in the agent's presence, and was returned to the City Clerk by the agent.

C. Any voter who requires assistance in casting an absentee ballot by reason of disability, inability to write, or inability to read the ballot may be given assistance by an agent of the voter. An agent giving assistance to a voter pursuant to this subsection shall include a certification of assistance to be included with the absentee ballot. (Ord. 2015-28, 2015/Ord. No. 2009-22, 5-18-09)

#### **5.20.040 Determination of absentee voters' eligibility and delivery of ballots.**

A. Upon receipt of a ~~request~~~~in application~~ for an absentee ballot containing a voter's certification, the City Clerk shall determine if the ~~requestor~~~~applicant~~ is qualified to vote in the City election for which the absentee ballot is requested.

B. If the ~~requestor~~~~applicant~~ is a qualified voter in the City, the City Clerk shall promptly deliver or mail the absentee ballot to the ~~requestor~~~~applicant~~.

1. Postage for transmitting and return of the absentee ballot material ~~to the applicant~~ shall be paid by the City and postage for the return of the ballot and related material shall be paid by the voter.



2. The City Clerk shall endeavor to send the absentee ballots (~~except in the case of late applications for absentee ballot~~) to applicants not later than five days before the election date.

C. The City Clerk shall keep a full record of absentee voting, including for each absentee voter:

1. The date ~~and time~~ of receipt of a ~~request~~ application for an absentee ballot;
2. The name and home address of the ~~voter~~ applicant;
3. The action taken with regard to the ~~request~~ application;
4. The date of issuance of an absentee ballot;
5. If mailed, the address to which the ballot is sent;
6. The date and time of the receipt of a voted absentee ballot; and
7. Any other information deemed necessary.

Such absentee voting record shall be available for public review during the normal office hours of the City Clerk.

D. Only one absentee ballot shall be issued to a voter unless the City Clerk has reasonable grounds to believe that the absentee ballot previously issued to the voter has been lost, destroyed or spoiled. (Ord. 2015-28, 2015/Ord. No. 2009-22, 5-18-09/prior code § 4D-23)

#### **5.20.050 Absentee ballots.**

A. Prior to any City election, the City Clerk shall print or cause to be printed an adequate number of ~~request forms~~ applications for absentee ballots, absentee ballots, envelopes and instructions for absentee voters.

B. The form and arrangement of all absentee ballot ~~request forms~~ applications, ~~certification forms~~, absentee ballots, ballot instructions, covering envelopes, ballot envelopes, and return envelopes shall be as determined by the Takoma Park Board of Elections. (Ord. 2015-28, 2015/Ord. No. 2009-22, 5-18-09/prior code § 4D-24)

#### **5.20.060 Tabulation of absentee ballots.**

A. No absentee ballots shall be ~~tabulated~~ opened before the official closing of the polls on election day.

B. ~~Following the official closing of the polls on election day, the election judges shall proceed to open the absentee ballot envelopes and count the absentee ballots.~~

4.—Only absentee ballots received by the City Clerk prior to the official closing of the polls on election day shall be tabulated. An absentee ballot that is received after the official closing of the polls on election day shall not be counted.

C. An absentee ballot shall be rejected if:

1. The election judges determine the voter died before election day;
2. The voter failed to sign the oath on the ballot envelope;
3. More than one absentee ballot was received from the same voter for the same City election in the same ballot envelope; or
4. The election judges determine that an absentee ballot is intentionally marked with an identifying mark that is clearly evident and placed on the ballot for the purpose of identifying the ballot.

D. If more than one legally sufficient absentee ballot is received, in separate envelopes from the same voter, then the election judges shall count only the ballot with the latest properly signed oath and shall reject any other absentee ballot received from the voter.

E. All absentee voters' ~~requests~~ ~~applications~~, ballot envelopes and ballots shall be retained by the City Clerk for three months after the date of the election and may then be destroyed, unless prior to that time the City Clerk is ordered by a court of competent jurisdiction to keep the same for any longer period. (Ord. 2015-28, 2015/Ord. No. 2009-22, 5-18-09/prior code § 4D-25)

#### **5.20.070 Absentee ballot challenges and appeals.**

Election challenges and appeals relating to absentee ballots shall be determined as set forth in Section 5.16.070. (Ord. 2015-28, 2015/Ord. No. 2009-22, 5-18-09/prior code § 4D-26)

#### **5.20.080 Penalties.**

A violation of this chapter is a Class B municipal infraction offense. (Ord. 2015-28, 2015/Ord. No. 2009-22, 5-18-09/prior code § 4D-27)

## Chapter 5.22 PROVISIONAL BALLOTS

### 5.22.010 Casting provisional ballots.

An individual is eligible to cast a provisional ballot in a City election if:

- A. The individual declares in a written affirmation submitted with the provisional ballot that the individual is a qualified voter of the City and is otherwise eligible to vote in that election; and
- B.
  - 1. The individual's name does not appear on ~~either the voter registry list of registered voters in the City provided by the Montgomery County Board of Elections or the supplemental list of non United States citizens who are registered to vote in City elections; and~~ or
  - 2. A City election official asserts that the individual is not eligible to register to vote; or
  - 3. The individual does not have the necessary identification for registration, ~~if any~~. (Ord. 2015-28, 2015/Ord. No. 2009-22, 5-18-09)

### 5.22.020 Provisional ballot application.

- A. Before an individual casts a provisional ballot, the individual shall complete and sign the provisional ballot application prescribed by the Takoma Park Board of Elections.
- B. At the time the provisional ballot is issued, the election official shall give the individual written information advising the individual that, and describing how, the individual will be able to ascertain whether the vote was counted and, if the vote was not counted, the reason it was not. (Ord. 2015-28, 2015/Ord. No. 2009-22, 5-18-09)

### 5.22.030 Assistance casting provisional ballot.

Any voter who requires assistance in casting a provisional ballot by reason of disability, inability to write, or inability to read the ballot may be given assistance by an individual of the voter's choice, not to include any candidate or an agent of any candidate in that City election, the voter's employer or agent of the employer, or an officer or agent of the voter's union. Any person giving assistance to a voter pursuant to this section shall include an affidavit of assistance to be included with the provisional ballot. (Ord. 2015-28, 2015/Ord. No. 2009-22, 5-18-09)

### 5.22.040 Provisional ballots.

- A. Prior to any City election, the City Clerk shall print or cause to be printed an adequate number of applications for provisional ballots, ~~provisional ballots~~, envelopes, and instructions for provisional voters.

B. The form and arrangement of all provisional ballot applications, ~~provisional ballots,~~ instructions, and ballot envelopes shall be as determined by the Takoma Park Board of Elections. (Ord. 2015-28, 2015/Ord. No. 2009-22, 5-18-09)

**5.22.050 Tabulation of provisional ballots.**

A. The Takoma Park Board of Elections shall evaluate provisional ballot applications and include accepted provisional ballot votes in the certified election results presented to the Council.

B. Evaluation of provisional ballot applications shall be conducted by the Takoma Park Board of Elections.

C. The Takoma Park Board of Elections shall open an envelope containing a provisional ballot only after the Board has approved the provisional ballot application.

D. The Takoma Park Board of Elections may not reject a provisional ballot except by majority vote of a ~~panel appointed by the Chairperson of the Board.~~ Grounds for rejection of a provisional ballot include, but are not limited to:

1. The individual who cast the provisional ballot is not a qualified voter in the City.
2. The individual returned a voted absentee ballot in that City election.
3. The individual cast more than one ballot in that City election.
4. The individual failed to sign the oath on the provisional ballot application.
5. The provisional ballot is intentionally marked with an identifying mark that is clearly evident and placed on the ballot for the purpose of identifying the ballot.
6. The individual failed to provide required identification or the identification submitted did not satisfy the identification requirements.
7. The individual provided incomplete or inaccurate information on the provisional ballot application.
8. An identity or residency challenge of the individual was upheld.

~~9. The individual was not eligible to receive a provisional ballot.~~

~~E. If the intent of the provisional voter with respect to a particular contest or question is not clearly demonstrated, then only the vote for that contest or question shall be rejected.~~

EF. The Takoma Park Board of Elections, in coordination with the City Clerk, shall establish a system that any individual who casts a provisional ballot may access without cost to discover whether the ballot was counted and, if not counted, the reason it was not. The system shall ensure

the confidentiality of the individual who accesses the system and the secrecy of each ballot.  
(Ord. 2015-28, 2015/Ord. No. 2009-22, 5-18-09)

## Chapter 5.24 BOARD OF ELECTIONS

### 5.24.010 Establishment of Board of Elections.

The City of Takoma Park Board of Elections is established. The Board of Elections shall be composed of up to seven members who shall be appointed by the Council. The Council shall make every effort to ensure that the Board of Elections includes representatives from each Council ward. (Ord. 2015-28, 2015/Ord. 2007-36 § 1, 2007: Ord. 2006-36 (part), 2006)

### 5.24.020 Membership and term of office.

A. Qualifications. Members of the Board of Elections shall be qualified voters of the City and shall not hold or be a candidate for any elective office in government (Federal, State, County, or local) during their term on the Board. Members of the Board of Elections also shall not serve as the treasurer or campaign manager for any candidate for City elective office or be an advocate for or against any campaign or ballot referendum question in a regular or special City election. Any member who ceases to meet the qualifications for membership on the Board of Elections shall automatically forfeit his or her membership on the Board and the Council may act to fill the vacancy.

B. Term. Members of the Board of Elections shall serve staggered three-year terms. ~~Initial appointments to the Board shall be for one, two or three years.~~ All terms shall begin on July 1st and end on June 30th. Midterm vacancies on the Board of Elections shall be filled by the Council for the remainder of the unexpired term.

C. Oath of office. Members of the Board of Elections shall take an oath of office upon assuming their initial term.

~~D.~~ Removal. Any member of the Board of Elections may be removed by the Council before the member's term has expired if the Council determines that the member has become incapacitated, has failed to reasonably perform ~~their~~~~his or her~~ duties as a member of the Board of Elections, or for other good cause. Before removal, the member of the Board of Elections who is proposed to be removed shall be given written notice of the proposed removal and the reasons for such action. If the Board member requests a public hearing on the proposed removal within 10 days after receipt of the written notice, then the Council shall conduct a hearing before acting on the proposed removal. Any member who fails to attend, without being properly excused by the Chairperson, three or more consecutive meetings of the Board, or a majority of five consecutive meetings, shall be deemed to have provided good cause for removal by the Council. (Ord. 2015-28, 2015/Ord. 2006-36 (part), 2006)

### 5.24.030 Administration.

A. Officers. The Board of Elections shall elect a Chairperson and Vice Chairperson for a one-year term or until a successor is elected.

B. Quorum. A majority of the members of the Board of Elections shall constitute a quorum for the transaction of business.

C. Meetings. The Board of Elections shall meet as required to perform its duties, but at least once a year. Regular or special meetings shall be convened by the Chairperson or by a majority of the members of the Board of Elections.

D. Adoption of Bylaws and Rules of Procedure. The Board of Elections may adopt bylaws and rules of procedure to further regulate the activities of the Board. (Ord. 2015-28, 2015/Ord. 2006-36 (part), 2006)

#### **5.24.040 Duties of the Board of Elections.**

The Board of Elections shall:

A. Plan and conduct regular and special City elections in coordination with the City Clerk;

B. Encourage voter registration in the City;

C. Conduct voter education programs and prepare and distribute voter outreach materials;

D. Recommend to the Council amendments to the City's elections law and regulations when it deems such amendments are necessary and will provide for the improved conduct of elections;

E. Periodically review City elections procedures;

F. Serve as election judges in City elections;

G. ~~Identify~~Recommend additional qualified individuals ~~to the Council~~ for appointment as election judges and workers during a regular or special City election;

H. Perform such other duties as may be assigned to the Board of Elections by Charter, ordinances and resolutions, and by the direction of the Council. (Ord. 2015-28, 2015/Ord. 2006-36 (part), 2006)