



Takoma Park City Council Meeting – June 5, 2024 Agenda Item 5

Work Session

Update on Election Planning and Board of Elections Recommended Code Amendments

Recommended Council Action

Receive presentation and provide direction on recommended amendments to the City Code.

Context with Key Issues

The next City Election is scheduled for November 5, 2024. At the work session on June 5, the Board of Elections will present proposed amendments to the City's election code. The City Clerk and Board members will provide an update on plans for the election.

Council Priority

Advancing a Community of Belonging
Engaged, Responsive, and Service-Oriented Government

Environmental Considerations

N/A

Fiscal Considerations

The budgeted amount for the election is \$100,000. Staff is working to refine estimated costs, which are expected to be under the budgeted amount.

Racial Equity Considerations

A vote by mail election results in increased turnout among all voters. We anticipate doing extensive outreach around the election, including focused outreach to young voters and groups less likely to participate.

Attachments and Links

- Proposed Code Amendments
- Election Calendar

1. Mail-In Ballot Due Date Amendment

Relevant current law:

Takoma Park Code

5.18.090 Tabulation of mail-in ballots.

- A. No mail-in ballots shall be tabulated before the official closing of the polls on election day.
- B. An otherwise legally sufficient mail-in ballot shall be tabulated only if it is:
 - 1. Postmarked with a date that is no later than election day; and
 - 2. Received via mail by the City Clerk before 5:00 p.m. on the fifth business day after election day; or
 - 3. Received by other means established by the City Clerk; provided, that the mail-in ballots received by other means are received prior to the closing of the polls on election day.

A mail-in ballot that does not meet these requirements shall not be counted.

Takoma Park Charter

Section 613 Vote Count

(a) Between the closing of the polls on election day and end of the day on the second Wednesday after the election, the judges of the election shall canvass the voting machines or other voting system, and count any paper ballots, regular and absentee, to determine the vote cast for each candidate or any questions on the ballot.

(b) The judges of the election shall meet the second Wednesday following the election, and shall determine and declare what persons have been elected and the resolution of any ballot question and certify the results to the Council. If this day is Veterans Day or a Council recognized religious holiday, the meeting shall take place on the next day, Thursday.

Problem: The Board does not have enough time to complete its work before the certification deadline.

Discussion: The Board must certify the results of the election to the City Council on the second Wednesday following the election. In practice, that certification occurs in the evening of the 6th business day following the election. Under the current Takoma Park Code, the Board is obligated to accept mail-in ballots that are received by mail by the City Clerk up to the close of business on the 5th business day following the election, which is Tuesday.

Prior to certification, the Board must meet, in full and in-person, to discuss and resolve any potential ballot issues and to determine whether those ballots have been legally cast pursuant to City laws. For ballots that the Board has determined to be legally proper, the Board must process and tabulate those ballots pursuant to established procedures. After resolving all ballot issues, the Board must author an election report, and then meet again to review and vote on that report.

Under current law, the Board has roughly 24 hours between the close of receipt of mail-in ballots and the certification to City Council to accomplish the aforementioned tasks, which places enormous time pressure on the volunteer Board. By amending the code to close the receipt of mail-in ballots to 4 business days, instead of 5 business days, the Board will be afforded an additional day to complete its work. This change will not significantly impact the voters' ability to have their ballots counted. In previous cycles, the number of mail-in ballots received on the 5th business day after the election was *de minimis*, numbering no more than 2 or 3 ballots.

Recommendation: Amend Section 5.18.090(B)(2) to read, "Received via mail by the City Clerk before 5:00 p.m. on the ~~fifth~~ fourth business day after election day;"

2. Postmark Amendment

Relevant current law:

Takoma Park Code

5.18.090 Tabulation of mail-in ballots.

A. No mail-in ballots shall be tabulated before the official closing of the polls on election day.

B. An otherwise legally sufficient mail-in ballot shall be tabulated only if it is:

1. Postmarked with a date that is no later than election day; and
2. Received via mail by the City Clerk before 5:00 p.m. on the fifth business day after election day; or
3. Received by other means established by the City Clerk; provided, that the mail-in ballots received by other means are received prior to the closing of the polls on election day.

A mail-in ballot that does not meet these requirements shall not be counted.

Problem: Many ballots have been disqualified because of missing or incorrect postmarks even though there has been evidence indicating that those ballots may have been mailed prior to election day.

Discussion: In the last two cycles, many mail-in ballots were received with inaccurate or missing postmarks. For all ballots received by mail prior to the close of voting on Election Day, the Board's practice was to accept all ballots regardless of the postmark. For ballots received after the close of voting on Election Day, the Board only accepted ballots which had an appropriate postmark consistent with the City code.

However, given the inconsistent practices of USPS, the Board received many ballots which appear to have been mailed prior to Election Day but which did not have a correct or accurate postmark. The Board contacted USPS officials and determined that such inconsistent postmarking was a common occurrence.

For example, for a voter who dropped their ballot off at a USPS Blue Box, that ballot may be postmarked several days later, depending on where the contents of the Blue Box are first delivered. Furthermore, the Board discovered that different branches in different locations followed different postmarking procedures, and that some locations simply didn't postmark the ballots at all.

The Board has learned that some ballots have other official USPS markings that may provide evidence relating to the date of the mailing. The Board recommends that the code should be amended to give the Board more flexibility when determining whether a ballot was mailed before

the close of voting on Election Day. While this solution is not perfect, such additional discretion would better equip the Board to ensure that more legally cast ballots are counted.

Recommendation: Amend Section 5.18.090(B)(1) to read, "Postmarked with a date that is no later than election day or otherwise contains official data from the USPS that indicates the ballot was mailed no later than election day;"

3. Loan Amendment

Relevant current law:

Takoma Park Code

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:

...

“Contribution” means any gift, subscription, loan, advance, deposit of money, transfer of money, or transfer of anything of value made by any person to any candidate or political committee for the purpose of influencing any election for City office. The term “contribution” does not include the value of services provided without compensation by an individual who volunteers on behalf of a candidate as a campaign worker and it does not include safe harbor events.

...

“Expenditure” means any purchase, payment, distribution, loan, advance, deposit, or gift of money or transfer of anything of value, made by any person for the purpose of influencing any election for City office, including any promise or agreement to make an expenditure.

...

“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.

Problem: The City code is unclear on whether loans are allowed and how they should be handled with respect to campaign finance reporting.

Discussion: Takoma Park does not currently have any laws regarding how loans work. This issue came up in 2022 when one of the mayoral candidates reached out to the City Clerk when they did not find any guidance in the code or Takoma Park website about how to make a personal loan to their campaign.

One reading of the current code is to view it as treating loans as contributions. The Board views this as problematic. Assuming that a "loan" is a "contribution," it would mean that: (1) candidates would not be permitted to take out a loan from a bank, as they are prohibited from accepting or soliciting a contribution from "a corporation," § 5.12.020(D)(2), and (2) even if they were able to take out a loan from a bank, they would be limited to a \$1,000 loan -- however, the whole purpose of a loan is to ensure sufficient cash flow throughout a campaign. While the councilmember campaigns have not raised significant amounts of money, the same cannot be said for the mayoral campaigns, and a \$1,000 limit on loans could easily be insufficient for a mayoral campaign given the shortened election season.

In practice, the Board has allowed personal loans by candidates to their own campaigns. The Board's view is that there is likely a strong First Amendment interest in a candidate's ability to loan their own money to their own campaign. As such, the Board believes that the Council should adopt a framework regulating loans.

The Board believes that such a framework should provide clarity for candidates, so that they understand who they can get loans from, how much, whether they can loan to their campaign themselves, whether those loans are classified as contributions or not, how to repay loans, how to report loans and repayments of loans, and so on.

The Board further believes that a loan framework is necessary to ensure the proper classification of loans as contributions and expenditures. For example, a loan that is obtained in the ordinary course of business from a financial institution, such as a bank, should not be viewed as a contribution. Such loans are not contributions under federal law. 11 CFR § 100.52 (exempting bank loans from definition of contributions); 11 CFR § 100.82 (defining bank loans). This is because these loans are not free. They are more properly viewed as an expenditure made by the campaign and not a contribution to the campaign. The banks are not giving these loans "for the purpose of influencing any election for City office." § 5.04.020. The banks are giving these loans to make money on the interest payments. Such a loan can be distinguished from, say, a zero-interest loan from a candidate's friend or family (or really any loan with an interest below that which the campaign would otherwise get from a lending institution). Such a non-zero interest loan (or say, perhaps, a loan that is endorsed by some person other than the campaign or the candidate), is a contribution as the friend who made the loan isn't giving that loan to make money but rather to help the candidate get elected. As the friend is not receiving any future interest payments on that loan, that friend is essentially contributing that amount to the campaign. Federal regulations treat such loans as contributions until they are paid off. 11 CFR § 100.52.

The Board recommends that the Council adopt similar code provisions as Hyattsville relating to loan provisions.

Recommendation: Amend Section 5.12.022, to add, "(8) The total and individual amounts of all loans the candidate or candidate's treasurer received; and (9) Documentation indicating the nature, terms, and status of each loan;"

Amend Section 5.12.030, to add, "Within 30 days of paying off a campaign loan, a candidate shall cause to be filed an affidavit stating that the loan is paid in full with supporting documentation from the lender."

Amend Section 5.12.020, to add, "Campaign loans."

(1) Except as provided in subsection (B) of this section, the total amount of all loans to a candidate for any election shall not exceed \$5,000, and no one person or entity may loan a candidate more than \$1,000.

(2) A loan to a candidate is considered a contribution unless:

(a) The loan is from a financial institution or other entity in the business of making loans; or

(b) The loan is to the candidate and repayment is personally guaranteed by the candidate and is due within one year of the date of the loan.

(3) If the amount of interest actually charged on a loan to a candidate is less than the prime rate on the day the loan is made, the difference between the actual interest charged and that prime rate shall constitute a contribution.

(4) All campaign loans shall be documented on campaign finance reports in a format provided by the City Clerk.”

**CITY OF TAKOMA PARK, MARYLAND
2024 ELECTION CALENDAR**

Updated 5/14/2024

Date	Time	Event/Description	Computation	Legal Authority
Monday January 31, 2024	4:00 PM	Campaign Finance Annual Report on the retention or disposition of surplus campaign funds	No later than January 31 of each year	City Code 5.12.022(B)(4) City Code 5.12.030(E)
Monday June 10, 2024		First day to register as a candidate or political committee for the City election.	Second Monday in June of an election year.	City Code 5.10.020
Wednesday August 7, 2024		Apartment building access through November 5 for registered City Election candidates.	During the 90-day period preceding the next election.	City Code 6.04.040
Tuesday September 10, 2024	7:30 PM	Nominating Caucus for City election.	Second Tuesday after Labor Day of an election year.	Charter Sec. 604(a)
Friday September 13, 2024	5:00 PM	Deadline for City candidates nominated at Caucus to withdraw. Declination must be filed in writing with the City Clerk's office.	Candidates shall be placed upon the official ballot unless the nominated person files a declination with the City Clerk within 3 days after the nomination	Charter 604(b)
Friday September 13, 2024	5:00 PM	If not already registered, nominated City candidates must complete Candidate Finance Registration by this time.	Within 3 days of nomination.	City Code 5.10.020(C)
Monday September 16, 2024	5:00 PM	City candidates' Financial Disclosure Statements due to City Clerk (if not already filed).	On or before the Monday following the candidate's nomination.	City Code 3.04.080(D) City Code 5.12.040
Monday September 16, 2024	12:00 PM	Deadline to provide City candidate's statement and photo to the City Clerk (via e-mail) for publication in the Takoma Park Newsletter	TBD depending upon schedule for Takoma Park Newsletter.	
Monday September 16, 2024		Any eligible person may preregister as a write-in candidate beginning on September 16 and ending November 1. Such write-in candidate must file a Financial Disclosure Statement and Campaign Finance Registration to complete the preregistration.	Monday after the Nomination Meeting through the Friday before Election Day.	Charter 605 City Code 3.04.080(D)(6)
Monday September 23, 2024	4:00 PM	First Campaign Finance Report Due (post-nomination report)	Second Monday after the Nominating Caucus.	City Code 5.12.022(B)(1)
Wednesday October 2, 2024		Rosh Hashanah (begins at sunset)		

Date	Time	Event/Description	Computation	Legal Authority
Sunday October 6, 2024		First day that mail-in voting ballots may be sent.	Mail-in ballots for an election must be mailed or distributed no more than 30 days and no less than 15 days prior to the election to which they apply.	City Code 5.18.050(A)
Once ballots begin to be received by voters, daily drop box pickups begin and continue until 8:00 p.m. on November 5. Post office box pickup begins and continues until 5:00 p.m. on Wednesday, November 13 (for ballots arriving by mail only).				
Friday, October 11		Yom Kippur begins at sunset.		
Monday October 14, 2024		Columbus Day (Indigenous Peoples Day) – City facilities open. MCBOE is NOT open.		
Monday October 14, 2022	4:00 PM	Second Campaign Finance Report Due (pre-election report).	No later than 4:00 p.m. on the fourth Monday preceding election day.	City Code 5.12.022(B)(2)
Monday October 21, 2024		Last day that mail-in voting ballots may be sent.	Mail-in ballots for an election must be mailed or distributed no more than 30 days and no less than 15 days prior to the election to which they apply.	City Code 5.18.05(A)
Tuesday October 29, 2024	4:00 PM	Last day to request that a City election absentee ballot be mailed.	4:00 PM on the 7th calendar day before the election.	City Code 5.20.020(B)
Thursday October 31, 2024		Last day to mail a requested absentee ballot (local only).		5.20.040(B)(2)
Friday November 1, 2024		Last day for any eligible person to preregister as a write-in candidate beginning on September 16 and ending November 1. Such write-in candidate must file a Financial Disclosure Statement and Campaign Finance Registration to complete the preregistration.	Wednesday after the Nomination Meeting through the Friday before Election Day.	Charter 605 City Code 3.04.080(D)(6)

Date	Time	Event/Description	Computation	Legal Authority
Tuesday November 5, 2024	7:00 AM – 8:00 PM	Takoma Park Election Day The Community Center will be open for voting in the City Election only, from 7:00 AM to 8:00 PM.	First Tuesday after the first Monday in even-numbered years. At least one voting center shall be open from 7:00 AM to 8:00 PM on Election Day.	Charter Sec. 606(a) City Code 5.18.010(C)
Tuesday November 5, 2024	7:00 AM – 8:00 PM	<i>Presidential Election Day. To vote in the presidential general election, voters who have not voted early or by mail should go to their voting precinct to vote in person.</i>	Tuesday after the first Monday in November.	MD Const. Art. XV, § 7; EL § 10-301
Tuesday November 5, 2024	8:00 PM	All Ballot Drop Boxes are closed and sealed at 8:00 PM.		City Code 5.16.050
Wednesday November 6, 2024 – Wednesday November 13, 2024		Canvass and counting of votes.	Between the closing of the polls on election day and end of the day on the second Wednesday after the election, the judges of the election shall canvass . . . , and count any paper ballots, regular and absentee, to determine the vote cast for each candidate or any questions on the ballot.	Charter Sec. 613(a)
Monday November 11, 2024		Veterans Day. City Holiday and Federal Holiday. City Offices Closed.		
Tuesday, November 12, 2024	4:00 PM	Any anonymous contributions received are to be contributed to the City general fund by this date.	No later than 4:00 p.m. of the Monday following the election. Because Monday is a holiday, the deadline is Tuesday.	City Code 5.12.020(D)
Wednesday November 13, 2024	5:00 PM	Deadline for receipt of ballots arriving by U.S. mail. Ballots must be postmarked on or before election day.	5:00 PM on the 5 th business day after the election.	City Code 5.18.090(B) City Code 5.20.060(B)
Wednesday November 13, 2024	TBD	Board of Elections certification meeting	Second Wednesday after the election.	Charter Section 613(b)

Date	Time	Event/Description	Computation	Legal Authority
Wednesday November 13, 2024	7:30 PM	Special meeting of the City Council to receive the certification of the election results.	Second Wednesday after the election.	Charter Sec. 613(b)
Friday November 15, 2024		Deadline for filing City election challenge or appeal.	Two days after certified results presented to Council.	City Code 5.16.070(A)
Monday November 18, 2024	7:30 PM	Swearing-In of the Mayor and Councilmembers	Newly elected Councilmembers and the Mayor take office on the second Monday following their election, but if this day conflicts with Veterans Day or a Council-recognized religious holiday, they shall take office on the next day, Tuesday.	Charter Section 301
Monday November 25, 2024	4:00 PM	Third City Campaign Finance Report (post-election report) due to City Clerk.	No later than 4:00 p.m. on the third Monday following the election.	City Code 5.12.022(B)(3)
Thursday November 28, 2024		Thanksgiving Day. City offices and facilities are closed Thursday, November 28 through Sunday, December 1.		
Friday January 31, 2025	4:00 PM	Annual report on retention or disposition of surplus campaign funds.	No later than January 31	City Code 5.12.022(B)(4) City Code 5.12.030(E)
Wednesday February 5, 2025		Minimum retention for voted paper ballots and printed or electronic voting machine records, and mail in and absentee ballot envelopes.		City Code 5.16.060(D) City Code 5.18.090(E) City Code 5.20.060(E)