



Takoma Park City Council Meeting – July 10, 2024 Agenda Item 5

Voting Session

Second Reading Ordinance Amending Takoma Park Code, Title 5, Chapter 5.04 General Provisions, Chapter 5.18 Mail-In Ballot Voting, and Chapter 5.12 Fair Election Practices

Recommended Council Action

Approve the ordinance at first reading.

Context with Key Issues

At the work session on June 5, 2024, the Takoma Park Board of Elections presented several recommended amendments to Title 5, Elections. The amendments address the following three areas.

- The final date to accept ballots mailed on or before election day will be reduced from five business days to four business days after the election. This change is intended to allow the Board one more day to complete the canvass and prepare the certified results for the Council. Certified results are presented to the City Council on the second Wednesday after the election.
- The City Code currently refers to a postmark as the determining factor for the Board when deciding if a ballot was mailed on or before election day and is eligible to be counted. The amended language allows the Board to use either a postmark or other official data from the USPS to determine that the ballot was mailed in time.
- As currently written, the City Code only refers to loans as contributions to a candidate. The amendment clarifies that loans are permissible and sets a framework for reporting loans and loan repayments as contributions or expenditures, depending on the circumstances.

Council Priority

Engaged, responsive, and service-oriented government.

Environmental Considerations

N/A

Fiscal Considerations

N/A

Racial Equity Considerations

N/A

Attachments and Links

- Second Reading Ordinance
- Board of Elections Recommended Code Amendments (presented on June 5, 2024)

1 Introduced by: Councilmember Dyballa

First Reading: July 1, 2024

2 Second Reading:

3 Effective Date:

4
5 **CITY OF TAKOMA PARK, MARYLAND**
6 **ORDINANCE 2024-19**

7
8 **AMENDING THE CITY OF TAKOMA PARK CODE, TITLE 5, ELECTIONS**
9

10 **WHEREAS,** Article XI–E of the Constitution of Maryland grants the City the authority to hold
11 municipal elections;

12
13 **WHEREAS,** the Maryland Code, Local Government Article, Section 5–202, as amended,
14 authorizes the legislative body of each municipal corporation in the State of
15 Maryland to pass ordinances that such legislative body deems necessary to assure
16 the good government of the municipality, to protect and preserve the municipality’s
17 rights, property and privileges, to preserve peace and good order, to secure persons
18 and property from danger and destruction, and to protect the health, comfort, and
19 convenience of the citizens of the municipality;

20
21 **WHEREAS,** Section 607 of the City Charter states that the Council has the power to provide by
22 Ordinance for the conduct of City elections generally and shall designate a
23 convenient polling place, the manner of holding City elections, and the voting
24 system to be used for the City election;

25
26 **WHEREAS,** Section 5.24.040(D) of the City Code charges the Takoma Park Board of Elections
27 with recommending to the Council amendments to the City’s election laws and
28 regulations when it deems such amendments are necessary and will provide for the
29 improved conduct of elections;

30
31 **WHEREAS,** the Takoma Park Board of Elections has recommended adoption of certain
32 amendments prior to the November 5, 2024, City Election;

33
34 **WHEREAS,** the Council last amended Takoma Park Code, Title 5, Elections on July 27, 2022,
35 by Ordinance No. 2022-30; and

36
37 **WHEREAS,** the Council, after having reviewed the proposed revisions, desires to amend Title 5
38 of the City Code.

39
40 **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF**
41 **TAKOMA PARK, MARYLAND,** that

42
43 SECTION 1: Title 5, Elections, of the City of Takoma Park Code is hereby amended as follows:
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45

1

Title 5

2

ELECTIONS

3

Chapters:

4

5.04 General Provisions

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5.08 Wards

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5.10 Registration and Campaign Finance Limitations

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5.12 Fair Election Practices

8

5.16 Voting

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5.18 Mail-In Ballot Voting

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5.20 Absentee Voting

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5.22 Provisional Ballots

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5.24 Board of Elections

Chapter 5.04
GENERAL PROVISIONS

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Sections:

5.04.010

5.04.020

5.04.030

5.04.020 Definitions

* * *

“Contribution” means any gift, subscription, loan - subject to exceptions set forth elsewhere in this Title, 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.

* * *

1 **Chapter 5.12**

2 **FAIR ELECTION PRACTICES**

3 **Sections:**

- 4 5.12.010 Campaign material published or distributed.
- 5 5.12.020 Campaign contributions and expenditures.
- 6 5.12.021 Use of contributed amounts for certain purposes.
- 7 5.12.022 Campaign finance reports.
- 8 5.12.030 Surplus campaign funds, dispositions, and reports.
- 9 5.12.040 Financial disclosure statements.

10 * * *

11 **5.12.020 Campaign contributions and expenditures.**

12 A. Except as provided in subsection (B) of this section, no person shall make contributions, either
13 directly or indirectly, including in-kind contributions, to any candidate or political committee with
14 respect to any election for City office which, in the aggregate, exceed \$1,000.00 during a single
15 election cycle.

16 B. Contributions made by a candidate from their personal funds, or from assets jointly owned
17 with their spouse or domestic partner, are not subject to any limits on the amount contributed.

18 C. For purposes of this section:

19 1. Contributions to a named candidate or political committee made to any person authorized
20 by such candidate or political committee to accept contributions on the candidate's or political
21 committee's behalf shall be considered to be contributions made to such candidate or political
22 committee;

23 2. Expenditures made by any person in cooperation, consultation, or concert with, or at the
24 request or suggestion of, a candidate, political committee, or their agents shall be considered
25 to be a contribution to such candidate or political committee; and

26 3. All contributions made by a person, either directly or indirectly, on behalf of a particular
27 candidate or political committee, including contributions which are in any way earmarked or
28 otherwise directed through an intermediary or conduit to said candidate or political committee,
29 shall be treated as contributions from such person to said candidate or political committee, and
30 the intermediary or conduit shall report the original source and the amount contributed to said
31 candidate or political committee.

32 D. No candidate or political committee shall knowingly accept or solicit a contribution from:

- 33 1. An anonymous contributor;
- 34 2. A corporation, including labor unions and political committees;
- 35 3. A person making a contribution in the name of another; or

- 1 4. A foreign national, which includes:
- 2 a. A person outside of the United States who is not a citizen of the United States;
- 3 b. An individual within the United States who is not a citizen of the United States and
- 4 who is not lawfully admitted for permanent residence;
- 5 c. A government of a foreign country;
- 6 d. A political party of a foreign country;
- 7 e. Any partnership, association, corporation, organization, or other combination of
- 8 persons organized under the laws of, or having its principal place of business in, a foreign
- 9 country; or
- 10 f. Any other foreign person that is prohibited from making contributions by Federal law,
- 11 including 52 U.S.C. § 30121 and 11 C.F.R. § 110.20, which may be amended from time
- 12 to time.

13 E. If a candidate receives an anonymous contribution, the amount shall be declared in campaign

14 reports and contributed to the City's general fund no later than 4:00 p.m. on the Monday following

15 the election.

16 F. An expenditure is made on behalf of a candidate or political committee if it is made by:

- 17 1. Any other agent of the candidate for purposes of making any expenditure; or
- 18 2. Any person authorized or requested by the candidate or an agent of the candidate to make
- 19 the expenditure.

20 G. A candidate may make unlimited expenditures from the candidate's personal funds, or from

21 assets jointly owned with their spouse or domestic partner.

22 H. No candidate or political committee shall knowingly accept any contribution or make any

23 expenditure in violation of the provisions of this section. No officer, agent or employee of a

24 candidate or political committee shall knowingly accept a contribution made for the benefit or use

25 of a candidate or political committee, or knowingly make any expenditure on behalf of a candidate

26 or political committee, in violation of any limitation imposed on contributions and expenditures

27 under this section.

28 I. Campaign Loans.

29 1. Except as provided in subsection (B) of this section, the total amount of all loans to a

30 candidate for any election shall not exceed \$5,000, and no one person or entity may loan a

31 candidate more than \$1,000.

32 2. A loan to a candidate is considered a contribution unless:

- 33 a. The loan is from a financial institution or other entity in the business of making
- 34 loans; or

1 3. The identification of each person who makes a contribution to the candidate during the
2 reporting period;

3 4. The amount contributed by each person who makes a contribution to the candidate during
4 the reporting period;

5 5. The total amount of all disbursements, including all expenditures, for the reporting period
6 and the election cycle;

7 6. The name and address of each person to whom a disbursement or expenditure in an
8 aggregate amount or value in excess of \$50.00 within the election cycle is made by the
9 reporting candidate, together with the date, amount, and nature or purpose of such operating
10 expenditure; ~~and~~

11 7. The date, location, and nature of any safe harbor events and a certification by the candidate
12 that all reported safe harbor events comply with the City's election code.;

13 8. The total and individual amounts of all loans the candidate or candidate's treasurer
14 received; and

15 9. Documentation indicating the nature, terms, and status of each loan.

16 * * *

17
18 **5.12.030 Surplus campaign funds, dispositions, and reports.**

19 A. Surplus campaign funds may be retained after an election and used by the candidate to
20 support that same candidate's election or reelection to any City office or any other elected office.

21 B. Surplus campaign funds of a candidate or political committee, which are not retained in
22 accordance with this section, shall be disposed of in accordance with subsection (C) of this
23 section.

24 C. A candidate or political committee may dispose of surplus campaign funds by:

25 1. Returning the funds, pro rata, to the contributors; or

26 2. Donating the funds to the City's general fund; or

27 3. Donating the funds to an organization that is classified as a 501(c)(3) nonprofit
28 organization under 26 U.S.C § 501 or to an organization which has received City grant
29 funding within the last two years. In the event a candidate determines to donate surplus funds
30 to an organization meeting the criteria in Section 5.12.021(A)(3), preference for the donation
31 should be given to an organization providing services in the City of Takoma Park or to an
32 organization providing services in the City of Takoma Park metropolitan area.

33 D. Prohibited uses of surplus campaign funds include:

34 1. The personal use of the candidate, the treasurer or any member of the candidate's or
35 political committee's staff, or the immediate family members of those individuals (however,

1 use of surplus funds to hold a party for campaign supporters is a permitted political purpose);
2 or

3 2. A transfer to a political committee or a candidate other than the political committee or
4 candidate for whom the funds were raised.

5 E. A candidate or political committee, or any individual who previously was a candidate and
6 has retained surplus campaign funds, shall report annually, no later than January 31st, on the
7 retention or disposition of surplus campaign funds until all such funds are depleted.

8 F. Within 30 days of paying off a campaign loan, a candidate shall cause to be filed an affidavit
9 stating that the loan is paid in full with supporting documentation from the lender.

10 G. A violation of this section is a Class B offense. (Ord. 2022-30 § 1, 2022/Ord. 2020-7,
11 2020/Ord. 2015-28, 2015/prior code § 4D-8)

12 * * *

13

1 **Chapter 5.18**

2 **MAIL-IN BALLOT VOTING**

3 Sections:

- 4 5.18.010 Mail-in ballot voting.
- 5 5.18.020 Mail-in ballots.
- 6 5.18.030 Regular participation by mail-in ballot.
- 7 5.18.040 Mail-in ballot elections.
- 8 5.18.050 Distribution of mail-in ballots and notices and reminders.
- 9 5.18.060 Replacement mail-in ballots.
- 10 5.18.065 Improper use of mail-in ballots prohibited.
- 11 5.18.070 Voter assistance for mail-in ballot voting.
- 12 5.18.080 Absentee voting and provisional voting.
- 13 5.18.090 Tabulation of mail-in ballots.
- 14 5.18.100 Mail-in ballot challenges and appeals.
- 15 5.18.110 Penalties.

16 ***

17 **5.18.090 Tabulation of mail-in ballots.**

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

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

20 1. Postmarked with a date that is no later than election day or otherwise contains official data
21 from the United States Postal Service that allows the Board to determine that the ballot was
22 mailed no later than election day; and

23 2. Received via mail by the City Clerk before 5:00 p.m. on the ~~fifth~~ fourth business day after
24 election day; or

25 3. Received by other means established by the City Clerk; provided, that the mail-in ballots
26 received by other means are received prior to the closing of the polls on election day.

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

28 C. A mail-in ballot shall be rejected if:

29 1. The election judges determine the voter died before election day;

30 2. The voter failed to sign the oath on the ballot envelope;

31 3. More than one ballot was received from the same voter for the same City election in the
32 same ballot envelope;

33 4. The election judges determine that the ballot is intentionally marked with an identifying
34 mark that is clearly evident and placed on the ballot for the purpose of identifying the ballot;
35 or

1 5. Election judges determine the mail-in ballot was issued to a person other than the person
2 utilizing it to cast a vote.

3 D. If more than one legally sufficient mail-in ballot is received in separate envelopes from the
4 same voter, then the election judges shall count only the first legally sufficient ballot received and
5 shall reject any other mail-in ballot received from the voter.

6 E. All mail-in ballot envelopes and mail-in ballots shall be retained by the City Clerk for three
7 months after the date of the election and may then be destroyed, unless prior to that time the City
8 Clerk is ordered by a court of competent jurisdiction to keep the same for any longer period. (Ord.
9 2022-30 § 1, 2022/Ord. 2020-20, 2020)

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11 * * *
12

13 SECTION 2. This ordinance shall be effective upon adoption.

14 THIS ORDINANCE IS ADOPTED BY THE COUNCIL OF THE CITY OF TAKOMA PARK,
15 MARYLAND, THIS _____ DAY OF JULY, 2024, BY ROLL-CALL VOTE AS FOLLOWS:

- 16
17 AYE:
18 NAY:
19 ABSENT:
20 ABSTAIN:

21 **Explanatory Note**

- 22 1. Underlining indicates language being added to the Code.
23 2. ~~Strikethrough~~ indicates language being deleted from the Code.
24 3. *** Asterisks indicate language contained in the existing law that remains unchanged that
25 is not reproduced in this ordinance as it is not substantively relevant to the changes being
26 made and including it would make the ordinance overly long.
27

28 Link to Title 5 (last visited June 14, 2024):
29 <https://www.codepublishing.com/MD/TakomaPark/#!/TakomaPark05/TakomaPark05.html>

30

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.”