

A PROPOSED RESOLUTION

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To declare the existence of an emergency with respect to the need to amend the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 to clarify the maximum amount participating candidates may receive in matching payments under the Fair Elections Program, and to explicitly provide that participating candidates may make expenditures for childcare expenses.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Fair Elections Clarification Emergency Declaration Resolution of 2021”.

Sec. 2. (a) In 2018, the Council passed the Fair Elections Amendment Act of 2018, effective May 5, 2018 (D.C. Law 22-94; D.C. Official Code § 1-1161.01 *et seq.*), which created a voluntary public financing program for candidates running for the offices of Mayor, Council Chairman, At-Large Councilmember, Ward Councilmember, At-Large State Board of Education member, and Ward State Board of Education member (“Fair Elections Program”). The Fair Elections Program provides base grants and matching funds to diversify the ballot by supporting prospective candidates who may not otherwise have the means to run, while amplifying the voices of small-dollar individual donors in the elections process.

(b) Candidates successfully participated in the Fair Elections Program for the first time in the 2020 election cycle, and the day after the 2020 General Election, the 2022 election cycle

35 began. As the District quickly approaches the first Fair Elections Program filing date for
36 candidates seeking certification in July 2021, there exists an immediate need to clarify how the
37 maximum amount of matching payments that participating candidates may receive per election
38 cycle (the “cap”) is properly calculated and what expenditures are authorized for participating
39 candidates. These clarifications must be made expediently to realize the intent behind the Fair
40 Elections Program and allow prospective candidates and candidates seeking Fair Elections
41 Program certification to make informed decisions about their participation.

42 (c) The intent of the cap is to enable candidates to mount competitive races with the
43 public funds necessary to run an average campaign for a given office, while safeguarding
44 taxpayer dollars. The Office of Campaign Finance (“OCF”) is required to calculate the cap for
45 each office on the ballot based on the formulas provided in D.C. Official Code § 1–1163.32e(d).
46 The formulas currently calculate the caps for each office at 110% of the average expenditures of
47 the winning candidates in either the prior 2 or 4 election cycles for that *office* (depending on the
48 office) – importantly not the prior 2 or 4 election cycles for the *specific seat for that office that is*
49 *on the ballot that general election.*

50 (d) There has been some confusion surrounding the method used by OCF to calculate the
51 cap for the offices of Councilmember elected at-large and by ward, as well as members of the
52 State Board of Education elected at-large and by ward. Current law provides that the cap for
53 candidates for the office of At-Large Councilmember, for example, is set at 110% of the average
54 expenditures of all winning candidates for that office in the prior 2 election cycles, meaning the
55 expenditures of the 4 candidates for At-Large Councilmember who won in the 2020 and 2018
56 general elections, averaged together (there are 2 winning At-Large Councilmember candidates
57 every general election). This differs from OCF’s calculation, which appears to be 110% of the

58 average expenditures of the winning candidates in the prior 2 election cycles *for the 2 specific*
59 *seats for At-Large Councilmember that will be on the ballot in 2022*. Such an interpretation
60 would require OCF to look to the winning candidates' expenditures in the 2018 and 2014 general
61 elections, rather than the 2020 and 2018 general elections, since the election cycles for those
62 specific At-Large Councilmember seats would be every 4 years to correspond with their terms of
63 office. This interpretation would impose a cap that would forever be determined by the winning
64 candidates for those 2 specific seats, rather than a more realistic and current average of the
65 winning candidates for all 4 At-Large Councilmember seats on the ballot in the last 2 general
66 elections.

67 (e) Similarly, current law for the office of Ward Councilmember provides that OCF
68 should calculate the cap for that office at 110% of the average expenditures of all winning
69 candidates *for that office* in the prior 2 election cycles, meaning the average of the 8 candidates
70 for Ward Councilmember who won in the 2020 and 2018 general elections (there are 4 winning
71 Ward Councilmember candidates per general election). This differs from a calculation based on
72 110% of the average expenditures in the prior 2 election cycles *for the 4 specific seats for Ward*
73 *Councilmember that will be on the ballot in 2022*, which would require OCF to look to the
74 winning candidates' expenditures in the 2018 and 2014 general elections, since the election
75 cycles for those specific seats would be every 4 years.

76 (f) To resolve this misinterpretation, this emergency legislation provides that, for the
77 offices of At-Large Councilmember, Ward Councilmember, At-Large State Board of Education
78 member, and Ward State Board of Education member, the caps for those offices are set at 110%
79 of the average expenditures per election cycle of all candidates who were elected to each
80 respective office *in the prior 2 general elections for that respective office*, not to the specific seat.

81 This calculation would underscore that, for the At-Large and Ward seats on the ballot in the 2022
82 general election, OCF should be using the expenditures from the 2020 and 2018 general
83 elections to average the expenditures of all winning candidates for each of those respective
84 offices.

85 (g) The caps for the offices of Mayor and Council Chairman – also on the ballot in 2022
86 – are determined by the expenditures of the candidates who were elected to those offices in the
87 prior 4 general elections *for those offices* (which also have 4-year terms) – so the 2018, 2014,
88 2010, and 2008 general elections – not the 4 immediately prior general elections, as Mayor and
89 Council Chairman were not on the ballot in either 2020 or 2016.

90 (h) Lastly, the emergency legislation explicitly provides that participating candidates may
91 use campaign funds for their childcare expenses that are incurred for campaign purposes. This
92 clarification aligns with the goal of the Fair Elections Program to enable participation by
93 candidates who might otherwise not have the means or opportunity to run, in this case due to
94 their own childcare obligations. At least 7 other states permit similar expenditures, and, in 2018,
95 the Federal Elections Commission authorized a congressional candidate to use campaign funds
96 for these purposes.

97 Sec. 3. The Council of the District of Columbia determines that the circumstances
98 enumerated in section 2 constitute emergency circumstances making it necessary that the Fair
99 Elections Clarification Emergency Amendment Act of 2021 be adopted after a single reading.

100 Sec. 4. This resolution shall take effect immediately.