

Council of the District of Columbia
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY
MEMORANDUM

1350 Pennsylvania Avenue, NW, Washington, DC 20004

TO: Chairman Phil Mendelson
FROM: Councilmember Charles Allen *CA*
RE: Request to Agendize Measures for the June 29, 2021 Legislative Meeting
DATE: June 24, 2021

I am requesting that you agendize the following measures for the June 29, 2021 Legislative Meeting:

Emergency Legislation

- “Fair Elections Clarification Emergency Declaration Resolution of 2021”
- “Fair Elections Clarification Emergency Amendment Act of 2021”
- “Fair Elections Clarification Temporary Amendment Act of 2021”

This emergency legislation would 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. 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.

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

The intent of the cap is to enable candidates to mount competitive races with the public funds necessary to run an average campaign for a given office, while safeguarding taxpayer dollars. The Office of Campaign Finance (“OCF”) is required to calculate the cap for each office on the ballot based on the formulas provided in D.C. Official Code § 1-1163.32e(d). The formulas

currently calculate the caps for each office at 110% of the average expenditures of the winning candidates in either the prior 2 or 4 election cycles for that *office* (depending on the office) – importantly not the prior 2 or 4 election cycles for the *specific seat for that office that is on the ballot that general election*.

There has been some confusion surrounding the method used by OCF to calculate the cap for the offices of Councilmember elected at-large and by ward, as well as members of the State Board of Education elected at-large and by ward. Current law provides that the cap for candidates for the office of At-Large Councilmember, for example, is set at 110% of the average expenditures of all winning candidates for that office in the prior 2 election cycles, meaning the expenditures of the 4 candidates for At-Large Councilmember who won in the 2020 and 2018 general elections, averaged together (there are 2 winning At-Large Councilmember candidates every general election). This differs from OCF's calculation, which appears to be 110% of the average expenditures of the winning candidates in the prior 2 election cycles *for the 2 specific seats for At-Large Councilmember that will be on the ballot in 2022*. Such an interpretation would require OCF to look to the winning candidates' expenditures in the 2018 and 2014 general elections, rather than the 2020 and 2018 general elections, since the election cycles for those specific At-Large Councilmember seats would be every 4 years to correspond with their terms of office. This interpretation would impose a cap that would forever be determined by the winning candidates for those 2 specific seats, rather than a more realistic and current average of the winning candidates for all 4 At-Large Councilmember seats on the ballot in the last 2 general elections.

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

To resolve this misinterpretation, this emergency legislation provides that, for the offices of At-Large Councilmember, Ward Councilmember, At-Large State Board of Education member, and Ward State Board of Education member, the caps for those offices are set at 110% of the average expenditures per election cycle of all candidates who were elected to each respective office *in the prior 2 general elections for that respective office*, not to the specific seat. This calculation would underscore that, for the At-Large and Ward seats on the ballot in the 2022 general election, OCF should be using the expenditures from the 2020 and 2018 general elections to average the expenditures of all winning candidates for each of those respective offices.

Lastly, the emergency legislation explicitly provides that participating candidates may use campaign funds for their childcare expenses that are incurred for campaign purposes. This clarification aligns with the goal of the Fair Elections Program to enable participation by candidates who might otherwise not have the means or opportunity to run, in this case due to their own childcare obligations. At least 7 other states permit similar expenditures, and, in 2018, the

Federal Elections Commission authorized a congressional candidate to use campaign funds for these purposes.

Draft copies of these measures are attached. Please contact Sonia Weil, Senior Legislative Counsel, at sweil@dccouncil.us, with any questions.

cc: Members, Council of the District of Columbia
Office of the Budget Director
Office of the General Counsel
Office of the Secretary
Mayor's Office of Policy and Legislative Affairs