

Bill No. 31-20
Concerning: Public Campaign Financing
- Amendments
Revised: 10/7/2020 Draft No. 2
Introduced: July 21, 2020
Enacted: October 6, 2020
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Navarro, Council President Katz, and Councilmember Friedson
(Government Operations and Fiscal Policy Committee)

AN ACT to:

- (1) amend the County public campaign financing system;
- (2) alter the maximum contribution limits;
- (3) allow participating candidates to carryover certain funds under certain circumstances;
- (4) require an audit of the public campaign financing system after the general election in an election cycle;
- (5) alter the penalties for willful violations of the public campaign financing system; and
- (6) generally amend the law governing elections for County elective offices.

By amending

Montgomery County Code

Chapter 16, Elections

Sections 16-18, 16-20, 16-21, 16-22, 16-23, 16-24, 16-25, 16-27, 16-28, 16-29, 16-30,

[[and]] 16-31, and 16-32

| | |
|------------------------------|--|
| Boldface | <i>Heading or defined term.</i> |
| <u>Underlining</u> | <i>Added to existing law by original bill.</i> |
| [Single boldface brackets] | <i>Deleted from existing law by original bill.</i> |
| <u>Double underlining</u> | <i>Added by amendment.</i> |
| [[Double boldface brackets]] | <i>Deleted from existing law or the bill by amendment.</i> |
| * * * | <i>Existing law unaffected by bill.</i> |

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Sections 16-18, 16-20, 16-21, 16-22, 16-23, 16-24, 16-25, 16-27, 16-**
2 **28, 16-29, 16-30, [[and]] 16-31, and 16-32 are amended as follows:**

3 **16-18. Definitions.**

4 In this Article, the following terms have the meanings indicated:

5 * * *

6 *Campaign finance entity* means a political committee established under Title 13
7 of the [State] Election Law Article of the Maryland Code [, as amended].

8 * * *

9 [*Committee to Recommend Funding for the Public Election Fund* means the
10 Committee established in Section 16-27.]

11 * * *

12 *Contribution* means the gift or transfer, or promise of gift or transfer, of money
13 or other thing of value to a campaign finance entity to promote or assist in the
14 promotion of the success or defeat of a candidate, political party, or question.
15 *Contribution* includes proceeds from the sale of tickets to a campaign fund-
16 raising event as defined in Section 1-101 of the Election Law Article of the
17 Maryland Code[, as amended].

18 * * *

19 *Distribution period* means the period of time beginning 365 days before the
20 primary election for the office the candidate seeks and ending [15] 30 days after
21 the date of the general election. The distribution period for a special election
22 under Section 16-17 must be set by Council resolution.

23 * * *

24 *Election cycle* means the primary and general election for the same term of a
25 covered office.

26 *Eligible contribution* means an aggregate donation in a 4-year election cycle of
27 [\$150] \$250 or less from an individual, including an individual who does not
28 reside in the County.

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* * *

Publicly funded campaign account means a campaign finance account established by a candidate for the exclusive purpose of receiving eligible contributions and spending funds in accordance with this Article.

Qualifying contribution means an eligible contribution of at least [~~\$5.00~~] \$5 but no more than [~~\$150.00~~] \$250 in support of an applicant candidate that is:

- (1) made by a County resident;
- (2) made after the beginning of the designated qualifying period, but no later than the respective election; and
- (3) acknowledged by a receipt that identifies the contributor’s name and residential address and signed by the contributor directly or by a digital signature using a method approved by the Board.

Qualifying contribution does not include an in-kind contribution of property, goods, or services.

16-20. Collecting qualifying contributions.

- (a) Before raising any contribution governed by this Article, an applicant candidate must:
 - (1) file notice of intent with the Board on or before April 15 of the year of the election on a form prescribed by the Board; and
 - (2) establish a publicly funded campaign account for the candidate for the purpose of receiving eligible contributions and spending funds in accordance with this Article.
- (b) Other than a contribution from an applicant candidate or the candidate’s spouse, an applicant candidate must not accept an eligible contribution from an individual greater than [~~\$150~~] \$250.
- (c) An applicant candidate must not accept a loan from anyone other than the candidate or the candidate’s spouse. An applicant candidate and the

56 candidate's spouse together must not contribute or lend a combined total
 57 of more than \$12,000 to the candidate's publicly funded campaign
 58 account.

59 (d) *Consumer Price Index adjustment.* The Chief Administrative Officer
 60 must adjust the contribution limit established in Subsection (b), effective
 61 July 1, [2018] 2022, and July 1 of each subsequent fourth year, by the
 62 annual average increase, if any, in the Consumer Price Index for the
 63 previous 4 calendar years. The Chief Administrative Officer must
 64 calculate the adjustment to the nearest multiple of [10 dollars] \$10, and
 65 must publish the amount of this adjustment not later than March 1 of each
 66 fourth year.

67 **16-21. Requirements for certification.**

68 * * *

69 [(d) The Executive, after consulting with the Board, must adopt regulations
 70 under Method 1 that specify:

- 71 (1) how and when receipts for qualifying contributions from
- 72 contributors must be submitted to the Board;
- 73 (2) the documents that must be filed with the Board for certification;
- 74 (3) the allowable uses of money in a publicly funded campaign
- 75 account; and
- 76 (4) other policies necessary to implement this Article.]

77 **16-22. Board determination.**

78 (a) The Board must certify an applicant candidate if the Board finds that the
 79 candidate has received the required number of qualifying contributions

80 and the required aggregate total dollars for the office no later than 10
 81 business days after receiving:

- 82 (1) a declaration from the candidate agreeing to follow the regulations
- 83 governing the use of a public contribution;
- 84 (2) a campaign finance report that includes:
 - 85 (A) a list of each qualifying contribution received;
 - 86 (B) a list of each expenditure made by the candidate during the
 - 87 qualifying period; and
 - 88 (C) the receipt associated with each contribution and
 - 89 expenditure; and
- 90 (3) a certificate of candidacy for a covered office.

91 (b) The decision by the Board whether to certify a candidate is final.

92 (c) A candidate may submit only one application for certification for any
 93 election. A candidate may correct any mistakes in the application for
 94 certification or supplement their application with additional qualifying
 95 contributions within the earlier of:

- 96 (1) 10 business days after receiving notice that the Board denied the
- 97 application; or
- 98 (2) the end of the qualifying period.

99 (d) If the Board certifies a candidate, the Board must authorize the Director
 100 to disburse a public contribution to the candidate's publicly funded
 101 campaign account.

102 (e) A candidate that submits a notice of intent under Section 16-20, but fails
 103 to qualify as a certified candidate is deemed a non-participating candidate
 104 and is not bound by the requirements of this Article.

105 **16-23. Distribution of public contribution.**

- 106 (a) Matching amounts. The Director must distribute a public contribution
 107 from the Fund to each certified candidate in a contested election only
 108 during the distribution period as follows:
- 109 (1) for a certified candidate for County Executive, the matching
 110 dollars must equal:
- 111 (A) \$6 for each dollar of a qualifying contribution received for
 112 the first \$50 of each qualifying contribution;
- 113 (B) \$4 for each dollar of a qualifying contribution received for
 114 the second \$50 of each qualifying contribution; ~~[[and]]~~
- 115 (C) \$2 for each dollar of a qualifying contribution received for
 116 the [remainder] third \$50 of each qualifying contribution;
 117 and
- 118 (D) ~~\$\$\$~~ 0 for each dollar of a qualifying contribution received
 119 for the remainder of each qualifying contribution.
- 120 (2) for a certified candidate for County Council, the matching dollars
 121 must equal:
- 122 (A) \$4 for each dollar of a qualifying contribution received for
 123 the first \$50 of each qualifying contribution;
- 124 (B) \$3 for each dollar of a qualifying contribution received for
 125 the second \$50 of each qualifying contribution; ~~[[and]]~~
- 126 (C) \$2 for each dollar of a qualifying contribution received for
 127 the [remainder] third \$50 of each qualifying contribution;
 128 and
- 129 (D) ~~\$\$\$~~ 0 for each dollar of a qualifying contribution received
 130 for the remainder of each qualifying contribution.
- 131 (3) The total public contribution payable to a certified candidate for
 132 either a primary or a general election must not exceed:

- 133 (A) \$750,000 for a candidate for County Executive;
- 134 (B) \$250,000 for a candidate for At Large Councilmember; and
- 135 (C) \$125,000 for a candidate for District Councilmember.
- 136 (b) Non-matchable contributions. The Director must not distribute matching
- 137 dollars from the Fund to a certified candidate for:
- 138 (1) a contribution from the candidate or the candidate’s spouse; or
- 139 (2) an in-kind contribution of property, goods, or services.
- 140 (c) Qualifying contribution limits. A certified candidate may continue to
- 141 collect qualifying contributions and [receive] submit a request for a
- 142 matching public contribution up to, and including, the day of a primary
- 143 or a general election. A qualifying contribution must not exceed [~~\$150~~
- 144 ~~\$250~~] from any individual in the aggregate during a 4-year election cycle.
- 145 (d) Availability of funds for distribution. On or before July 1 of the year
- 146 preceding the primary election, the Director must determine if the amount
- 147 in the Fund is sufficient to meet the maximum public contributions
- 148 reasonably expected to be required during the next election cycle. If the
- 149 Director determines that the total amount available for distribution in the
- 150 Fund is insufficient to meet the allocations required by this Section, the
- 151 Director must reduce each public contribution to a certified candidate by
- 152 the same percentage of the total public contribution.
- 153 (e) General election distributions. Within 3 business days after the County
- 154 Board certifies the results of the primary election, the Board must
- 155 authorize the Director to continue to disburse the appropriate public
- 156 contribution for the general election to each certified candidate who is
- 157 certified to be on the ballot for the general election.
- 158 (f) [Within 30 days after the County Board certifies the results of the primary
- 159 election, a participating candidate who is not certified to be on the ballot

160 for the general election must return any unspent money in the candidate's
 161 publicly funded campaign account to the Fund. Within 30 days after the
 162 County Board certifies the results of the general election, a participating
 163 candidate must return any unspent money in the candidate's publicly
 164 funded campaign account to the Fund.

165 (g) Petition candidates. A certified candidate nominated by petition may
 166 receive a public contribution for the general election if:

- 167 (1) the candidate's nomination is certified by the County Board; and
- 168 (2) the candidate did not participate in a primary election.

169 [(h)] (g) Receipts required. A participating candidate must submit a receipt for
 170 each qualifying contribution to the Board to receive a public contribution.

171 The Director must deposit the appropriate public contribution into a
 172 participating candidate's publicly funded campaign account within 3
 173 business days after the Board authorizes the public contribution.

174 [(i)] (h) General election public contributions. A candidate may receive a
 175 matching public contribution during the general election for an
 176 unmatched qualifying contribution received during the primary election
 177 after the candidate has received the maximum public contribution for the
 178 primary election if the candidate is otherwise eligible to receive matching
 179 public contributions during the general election.

180 [(j)] (i) Mistaken public contributions. If the Director mistakenly distributes a
 181 public contribution to a candidate greater than the candidate was entitled
 182 to receive, the candidate must repay the funds mistakenly distributed
 183 within 5 business days after being notified of the mistake. Any unspent
 184 funds returned to the County after an election may be used as a credit
 185 against any repayment required for a public contribution mistakenly
 186 received.

187 [(k)] (j) *Consumer Price Index adjustment.* The Chief Administrative Officer
 188 must adjust the public contribution limits established in Subsection (a)(3)
 189 and the eligible contribution limit established in Subsection (c), effective
 190 July 1, [2018] 2022, and July 1 of each subsequent fourth year, by the
 191 annual average increase, if any, in the Consumer Price Index for the
 192 previous 4 calendar years. The Chief Administrative Officer must
 193 calculate the adjustment to the nearest multiple of [10 dollars] \$10, and
 194 must publish the amount of this adjustment not later than March 1 of each
 195 fourth year.

196 **16-24. Use of public contribution.**

- 197 (a) [A] Except as provided in Section 16-27, a participating candidate may
 198 only use the eligible contributions and the matching public contribution
 199 for a primary or general election for expenses incurred for the election. A
 200 participating candidate must not pay in advance for goods and services to
 201 be used after certification with non-qualifying contributions received
 202 before applying for certification unless the expenditure is permitted by
 203 Executive regulation adopted under Section 16-21.
- 204 (b) A complaint alleging an impermissible receipt or use of funds by a
 205 participating candidate must be filed with the Board.
- 206 (c) A participating candidate must provide the Board with reasonable access
 207 to the financial records of the candidate's publicly funded campaign
 208 account, upon request.
- 209 [(d)] Within 30 days after the County Board certifies the results of the general
 210 election, a participating candidate must return to the Fund any unspent
 211 money in the candidate's publicly funded campaign account.]

212 **16-25. Withdrawal.**

- 213 (a) A certified candidate may withdraw an application for a public
 214 contribution any time before the public contribution is received by the
 215 candidate’s publicly funded campaign account.
- 216 (b) A participating candidate may withdraw from participation if the
 217 candidate:
- 218 (1) files a statement of withdrawal with the Board on a form prescribed
 219 by the Board; and
- 220 (2) repays to the Fund the full amount of the public contribution
 221 received, together with the applicable interest established by
 222 regulation.

223 **16-27. Return of unspent funds; retention of funds.**

- 224 (a) Except as provided in subsection (b):
- 225 (1) within 90 days after the County Board certifies the results of the
 226 primary election, a participating candidate who is not certified to
 227 be on the ballot for the general election must return any unspent
 228 money in the candidate’s publicly funded campaign account to the
 229 Fund; and
- 230 (2) within 90 days after the County Board certifies the results of the
 231 general election, a participating candidate must return any unspent
 232 money in the candidate’s publicly funded campaign account to the
 233 Fund.
- 234 (b) A certified candidate may retain funds to pay for post-election expenses
 235 if:
- 236 (1) the retained funds do not exceed \$5,000;
- 237 (2) the candidate files a new declaration of intent to participate in the
 238 public campaign financing system for the 4-year next election
 239 cycle by January 31 the year after the election; and

240 (3) keep the same campaign finance entity open.

241 **16-28. Audit.**

242 (a) After a general election in an election cycle, the Executive must conduct
 243 an audit of the financial activity of the public campaign financing system,
 244 including publicly funded campaign accounts, to ensure publicly funded
 245 campaign accounts raised and spent funds in compliance with this
 246 Article.

247 (b) The Executive must adopt regulations that specify the scope of the audit
 248 required by this Section.

249 **16-29. Regulations.**

250 The Executive, after consulting with the Board, must adopt regulations under
 251 Method 1 that specify:

252 (a) how and when receipts for qualifying contributions from contributors
 253 must be submitted to the Board;

254 (b) the documents that must be filed with the Board for certification;

255 (c) the allowable uses of money in a publicly funded campaign account;

256 (d) the scope of the audit required in Section 16-28; and

257 (e) other policies necessary to implement this Article.

258 **[16-28] 16-30. Penalties.**

259 (a) Civil Violations. Any violation of this Article is a Class A civil violation.
 260 Each day a violation exists is a separate offense.

261 (b) Payment. A fine may be paid by the campaign only if all public
 262 contributions have been repaid to the Fund. Otherwise, the candidate or
 263 officer found to be responsible for the violation is personally liable for
 264 the fine.

265 (c) Additional penalties.

266 (1) In addition to the penalty specified in Subsection 16-30(a), a
 267 certified or participating candidate must withdraw from the public
 268 campaign financing system if the candidate intentionally or
 269 knowingly provides falsified information, misrepresents a material
 270 fact, or conceals relevant information to the Board or Director
 271 under this Article.

272 (2) A candidate that must withdraw from the public campaign
 273 financing system under (c)(1) must abide by the withdrawal
 274 requirements in Section 16-25, including the repayment of any
 275 public contribution received.

276 **[16-27. Committee to Recommend Funding for the] 16-31. Public Election Fund**
 277 **Committee; County liaison.**

278 (a) Committee established. The [Committee to Recommend Funding for the]
 279 Public Election Fund Committee [consists of 5] is 7 members appointed
 280 by the County Council for a [four] 4-year term beginning on May 1 of the
 281 first year of the Council’s term of office. A vacancy occurring before the
 282 end of a term must be filled by appointment for the remainder of the term.
 283 The Council must ask the County Executive to recommend within 30
 284 days one or more qualified applicants before making any appointment.

285 (b) Membership; officers.
 286 (1) Each member must be a resident of the County while serving on
 287 the Committee.
 288 (2) No more than 3 members [must be of] may be from the same
 289 political party.
 290 (3) The members should reflect the diversity of the County.
 291 (4) The Council must designate the chair and vice-chair.

292 (c) Compensation. Each member must serve without compensation, but may
 293 be reimbursed for [reasonable expenses] travel and dependent care
 294 expenses.

295 (d) Duties. The Committee must [issue a report to the Council on or before
 296 March 1 of each year estimating];

297 (1) estimate the funds necessary to implement the public campaign
 298 finance system [and recommending an appropriation to the Public
 299 Election Fund for the following fiscal year]; and

300 (2) conduct public outreach and education activities to raise awareness
 301 of the public campaign financing system.

302 (e) Annual report. The Committee must issue a report to the Council on or
 303 before January 30 each year that:

304 (1) identifies the estimated funds necessary to implement the public
 305 campaign financing system;

306 (2) recommends an appropriation to the Public Election Fund for the
 307 following fiscal year; and


308 (3) the public outreach and education activities undertaken in the prior
 309 calendar year.

310 (f) Staff support. The Executive Director of the Office of the County Council
 311 must provide staff support for the Committee.

312 **16-32. County liaison.**

313 The County Executive must designate an employee to serve as a liaison between
 314 County government and the public, candidates, and potential candidates on issues
 315 related to the public campaign finance program.

Approved:



Sidney Katz, President, County Council 10/7/2020
Date

Approved:

Marc Elrich, County Executive Date

This is a correct copy of Council action.

Selena Mendy Singleton, Esq., Clerk of the Council Date