

Resolution No.:	19-949
Introduced:	July 20, 2021
Adopted:	July 20, 2021

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: Council President on behalf of the County Executive

SUBJECT: Approval of Executive Regulation 2-21, Procedures for Administration of the Public Elections Fund

Background

1. On May 19, 2021, the County Council received Executive Regulation 2-21, Procedures for Administration of the Public Elections Fund.
2. This regulation implements the requirements for how and when receipts for qualifying contributions from contributors must be submitted to the Board of Elections, the documents that must be filed with the Board for certification, the allowable uses of money in a publicly funded campaign account, the scope of post-election audits, and other policies related to the administration of the Public Elections Fund that were enacted in Bill 31-20.
3. The Council must review the regulation under Method (1) of Section 2A-15 of the County Code.
4. Under Method (1), the Council must approve the regulation before it takes effect.
5. At the request of the GO Committee Chair, this regulation was not reviewed at Committee and is going directly to Council for action.
6. ER 2-21 was advertised in the March 2021 issue of the Montgomery County Register. The Executive received no comments during the advertising period.

Action

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

Executive Regulation 2-21, Procedures for Administration of the Public Elections Fund.

This is a correct copy of Council action.


Selena Mendy Singleton, Esq.
Clerk of the Council



MONTGOMERY COUNTY EXECUTIVE REGULATION

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Subject Public Election Fund	Number 2-21
Originating Department Department of Finance	Effective Date July 20, 2021

Montgomery County Regulation on:

PUBLIC ELECTION FUND

Issued by: Department of Finance
Issued by: County Executive
Regulation No. 2-21

COMCOR No. 16.00.04

Authority: Montgomery County Code, Chapter 16, Article IV

Supersedes: Executive Regulation No. 12-15

Council Review: Method (1) under Code Section 2A-15
Register Vol. 38, Issue 3

Comment Deadline: March 31, 2021

Effective Date: July 20, 2021

Sunset Date: None

SUMMARY: This regulation establishes the procedure to administer and implement the Public Election Fund pursuant to adoption of Bill 31-20 and specifies (a) how and when receipts for qualifying contributions from contributors must be submitted to the Board; (b) the documents that must be filed with the Board for certification; (c) the allowable uses of money in a publicly funded campaign account; (d) the scope of the audit required in Section 16-28; and (e) other policies necessary to implement Article IV, Public Campaign Financing.

ADDRESS: Written comments on this regulation should be sent to:
David Crow, Fiscal Project Manager
Division of Fiscal Management
Department of Finance
101 Monroe Street, 15th Floor
Rockville, MD 20850

STAFF CONTACT: For further information or to obtain a copy of this regulation, please contact David Crow at (240) 777-8859

BACKGROUND:



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16.00.04.01 General Provisions

- A. Authority. In accordance with the authority conferred under Chapter 16, Article IV, Public Campaign Financing of the Montgomery County Code, the County Executive hereby promulgates this regulation to administer and implement the Public Election Fund (“Fund”) in Montgomery County, Maryland.
- B. Applicability. The Fund provides public campaign financing to a candidate for a County elective office. The legislation establishing the Fund regulates certain campaign finance activity of a candidate for County elective office who voluntarily accepts public campaign financing; authorizes the Maryland State Board of Elections (“Board”) to administer and enforce the public campaign financing system; and provides for penalties for violations of the public campaign financing system.

16.00.04.02 Definitions

For purposes of this regulation, the following words and phrases have the following meanings unless the context clearly indicated otherwise:

- A. Distribution period is the period during which the County distributes a public contribution from the Fund to a certified candidate and begins 365 days before the primary election and ends 30 days after the date of the general election.
- B. Interest on distributions returned to the Fund must be computed using the prime lending rate as of January 1 in the year in which the distribution is repaid to the Fund. The prime lending rate is published by the Federal Reserve Board and is the rate posted by a majority of top 25 insured U.S. chartered commercial banks.
- C. Notification period is the period during which the Board may notify the Director that a distribution must be made from the Fund to an eligible candidate and begins 365 days before the primary election and ends 10 days after the general election.
- D. Public Election Fund is administered by the Director of Finance (“Director”).
- E. Qualifying period is the period during which candidates may submit Receipts to become a certified candidate and begins on January 1 following the last election and ends 45 days before the date of the primary election. Receipts must be submitted to the Board with any regularly scheduled campaign finance report or may be submitted to the Board on the first



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and third Tuesday of each month during the Qualifying period, except if the required campaign finance report is due within 7 days prior to the first or third Tuesday.

- F. Receipts (“Receipts”) are a documented acknowledgment of a contribution that must identify the full name of the candidate for a County elective office, the contributor’s name and residential property address in Montgomery County, Maryland, amount of the contribution, date of receipt, and be signed by the contributor directly or by a digital signature using a method approved by the Board.
- G. Receipts submission period is the period during which certified candidates may submit receipts for qualifying contributions to receive public contributions from the Fund[,] and begins 365 days before the primary election and ends the date of either the primary election or the general election. Receipts must be submitted to the Board with any regularly scheduled campaign finance report or may be submitted to the Board on the first and third Tuesday of each month during the Receipts submission period, except if the required campaign finance report is due within 7 days prior to the first or third Tuesday.

16.00.04.03 How and When Receipts Must be Submitted

- A. Receipts for qualifying contributions from contributors must be submitted to the Board.
- B. Receipts must be submitted with a summary sheet made available by the Board that lists each receipt by contributor name, property address of the contributor, date of receipt, and amount of the contribution. The summary sheet must show the name of the candidate, elective office, date of submission to the Board, and both total number and total amount of Receipts.
- C. Receipts and accompanying summary sheet may be submitted either in person or electronically via the Board’s electronic submission platform.
- D. To qualify as a certified candidate, the submission of Receipts must show a sufficient number and aggregate amount of qualifying contributions based on the formula for the respective County elective office: County Executive and either At-Large or District County Councilmember.
- E. To qualify as a certified candidate, Receipts must be submitted during the qualifying period.



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- F. For certified candidates, Receipts may only be submitted during the receipts submission period which begins 365 days before the primary election and ends the date of either the primary or the general election.

16.00.04.04 Documents for Certification

- A. All documents to determine certification of a participating candidate for a County elective office must be filed with the Board.
- B. Receipts must be the original signed documented acknowledgement of a contribution.

16.00.04.05 Allowable Uses of Money

- A. The allowable uses of money in a publicly funded campaign account are limited to expenses directly related to election campaign related activities and incurred during the specific time period for either the primary or general election.
- B. Expenses incurred prior to the time that the candidate was certified by the Board as a participating candidate are not permissible and therefore not allowable uses of public funds.
- C. Prohibited expenses of public campaign funds include, but are not limited to, personal use or expenses related to holding office; paying for a personal endorsement; and paying late filing fees.
- D. Prohibited expenses include contributions to current or future candidates for any elective office different than the one the participating candidate is currently seeking, and contributions to any entity or organization, such as a political party.
- E. Under all circumstances pertaining to questions and disputes of permissible campaign expenditures, the Board determines which expenses are permissible and which expenses are not permissible, and that determination is final.
- F. Upon the Board's determination that an expense is not permissible for campaign financing, the prohibited expense may not be paid by the participating candidate from the public campaign fund and, if already made, the public campaign fund must be repaid, with interest, within 10 business days from the date of notification by the Board.



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- G. The participating candidate must submit documentation to the Board within 15 business days from the date of notification that the prohibited expense was repaid to the public campaign fund within the time required.
- H. As a final remedy, if the prohibited expense is not repaid to the public campaign fund within the required time, the Board shall notify the Director that, until further notice from the Board, no distributions from the Fund will be made to the participating candidate.
- I. If the Board's decision regarding the prohibited expense is not accepted by the participating candidate and the public campaign fund is not repaid in full for the prohibited expense, the participating candidate must be de-certified by the Board as a participating candidate and all distributions made during either the primary or general election from the Fund must be repaid by the participating candidate within 30 days of notification by the Board.
- J. If, after de-certification of the participating candidate, the repayment of all distributions to the Fund is not made within 30 days of notification by the Board, the delinquency accrues interest charges as of the date of notification by the Board.

16.00.04.06 Scope of Audit

After the certification of the results of a general election, the County Executive or their designee will perform an audit to ensure that all candidates that participated in the public campaign finance program, and receiving public funds in their publicly funded campaign accounts, were in compliance with Chapter 16, Article IV of the Montgomery County Code, as amended.

- A. The audit will only apply to candidates who filed an intent to participate in the program and filed for certification to become qualified to receive public contribution from the Fund.
- B. The audit must occur within a year of the certification of the results of the general election.
- C. The results and findings of the audit must be sent to the Director and the Board before being posted to the program website or other public facing medium upon the conclusion of the audit.



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D. The audit of campaign account transactions will be performed on a sample basis for each publicly funded campaign account. The following types of transactions will be reviewed for compliance purposes:

1. *Eligible Contributions.* For eligible contributions, the audit must verify that the sample contributions were:
 - a. not matched with public funds,
 - b. not included in qualifying contribution amount,
 - c. from an individual and not a source prohibited by the program, and
 - d. not in excess of the aggregate individual contribution limit.
2. *Qualifying Contributions.* For qualifying contributions, the audit must verify that the sample contributions were:
 - a. made by a County resident,
 - b. made after the beginning of the qualifying period, but no later than the respective election,
 - c. acknowledged by a receipt that identifies the contributor's name and residential address and is signed by the contributor directly or by a digital signature using a method approved by the Board, and
 - d. not in excess of the aggregate individual contribution limit.
3. *Campaign Expenditures.* For campaign expenditures, the audit must verify that the sample expenditures were:
 - a. paid for a primary or general election expense incurred that election, and
 - b. not paid in advance for goods or services used after certification with non-qualifying contributions received prior to applying for certification.



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4. *Distributions of Public Contributions.* For distribution of public contributions, the audit must verify that the contributions were:
 - a. deposited into the candidate's publicly funded campaign account for the amount authorized by the Board, and
 - b. deposited during the distribution period while the candidate was in a contested election and within 3 business days after the Board authorized the public contribution.
- E. For all certified candidates, the audit must include a review of the candidate's Board certification report to confirm that the candidate received the required number of qualifying contributions and the required aggregate total dollars in qualifying contributions for the office.
- F. For all participating candidates who filed for certification but did not receive it, the audit must include a review of the candidate's Board certification report to confirm that the candidate did not receive the required number of qualifying contributions or the required aggregate total dollars in qualifying contributions for the office.
- G. The audit must verify that any unspent funds, other than funds retained for post-election expenses, are returned within 90 days after the County Board certifies the results of the election. Retained funds for post-election expenses must not exceed \$5,000. In order to retain these funds in their campaign account, the candidate must file a new declaration of intent to participate in the public campaign financing system for the next 4-year election cycle by January 31 of the year after the election, and must keep the same campaign finance entity open during such time.
- H. Candidates are required to respond to all audit requests for information and documentation during the audit process. Failure to respond in a timely manner can result in penalties being assessed.
- I. Candidates will be allowed opportunity to respond or contest audit findings that are found during the audit.



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- J. Penalties related to findings and violations as a result of these audit procedures will be handled under Article IV, Section 16-30 of the Montgomery County Code.

16.00.04.07 Other Policies

- A. Distributions from the Fund will be made only during the distribution period which begins 365 days before the primary election and ends 30 days after the date of the general election.
- B. The Board must notify the Director within 5 business days from the date that the Board determines that a participating candidate is no longer in a contested election due to the other candidate or all other candidates withdrawing from the election.
- C. A participating candidate who withdraws from an election must repay to the Director all distributions from the Fund received during the election cycle plus interest computed from the date of the distribution(s).
- D. If a participating candidate is no longer in a contested election, no further distributions to the participating candidate from the Fund can be made starting with the date the Board determined that there is no longer a contested election for that County elective office for either the primary or general election. Any distribution from the Fund that was made for a contribution after the Board determined that the election is no longer contested must be repaid by the participating candidate to the Director.
- E. Within 90 days after the County Board certifies the results of the general election, a participating candidate must repay to the Fund any unspent money in the candidate's publicly funded campaign account. If a candidate does not repay the unspent money to the Fund as specified, the delinquency accrues interest charges from the date the County Board certified the results of the general election.
- F. If a participating candidate seeks a County elective office different from the one the candidate was certified for during the same election cycle, that candidate must withdraw from the election, must repay to the Director all distributions from the Fund received during the election cycle plus interest computed from the date of the distribution(s), and apply for certification by the Board for the new County elective office. The Board's previously approved contributions for the County elective office from which the candidate has withdrawn can be used towards the certification for the new County elective office.



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- G. The Board must determine the amount of a public contribution that each participating candidate is eligible for, based on the amount reflected on the Receipts as presented to the Board and the formula for the respective County elective office: County Executive and either At-Large or District County Councilmember.
- H. The Board must compute and authorize the amount of public contribution, notify the Director of the amount of public contribution for each participating candidate in writing, and the Director must process the authorized public contributions and deposit the amount into a participating candidate's publicly funded campaign account within 3 business days from the date the Director receives notification that the Board authorized the public contribution if there are sufficient funds in the Fund for a full distribution.
- I. If the Director determines that there are insufficient funds in the Fund for the full distribution authorized by the Board, the Director must deposit the adjusted amount of authorized public contributions into a participating candidate's publicly funded campaign account within 5 business days from the date the Director receives notification that the Board authorized the public contribution.
- J. Payments will be made as direct deposit to the candidate's bank checking account through Automated Clearing House (ACH) and all candidates must furnish certain banking information to the Director at the time of filing notice of intent with the Board.
- K. The Director must process all authorized public contributions by date and in the order of the earliest date first to the latest date last and based on the date they were authorized by the Board. After the Director processed and deposited all authorized public contributions for the earliest date, the Director must process and deposit all authorized public contributions for any subsequent date authorized by the Board.
- L. The Board must not authorize the Director to distribute a public contribution from the Fund to a participating candidate that in aggregate would exceed the public contribution limit for either a primary or general election for that County elective office as authorized in Bill 16-14 and as amended by Bill 31-20.
- M. In the event that the Board authorized and the Director distributed a public contribution that exceeded the public contribution limit for that County elective office, the Board must notify the participating candidate within 5 business days from the date of that determination in writing, and the participating candidate must repay the Fund within 5 business days from the date of the notification letter.



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- N. If, after notification by the Board to the participating candidate of an erroneous public contribution, the amount is not repaid to the Fund within 5 business days, the delinquency accrues interest charges as of the date of notification by the Board.
- O. If the Director determined that the amount of the Fund is insufficient to distribute the public contributions authorized by the Board for that date, each public contribution to a participating candidate must be reduced by the same percentage of the total public contribution authorized by the Board on that date.
- P. After the Director determines that the Fund is insufficient to distribute any or all public contributions authorized by the Board, no subsequent claim may be made by a participating candidate based on a public contribution authorized by the Board on a date prior to the determination of Fund insufficiency but not received by the Director until after the date of determination of Fund insufficiency.
- Q. If the Director determined that the Fund has a zero balance, the Director must notify the County Executive, County Council President, and Board within 3 business days from the date of that determination.
- R. If the Director determined that the Fund has a zero balance but the Board determined that the public contribution limits for the respective County elective offices have not been reached, the Board may continue to authorize public contributions and notify the Director, and the Director must hold these authorized public contribution notifications until such time that the Fund has a balance greater than zero. At such time, the Director must process authorized public contributions in the following order: (1) in the event that a portion of previously authorized public contributions was not paid due to insufficient funds, and (2) authorized public contributions that were held must be processed by date and in the order of the earliest date first to the latest date last and based on the date they were authorized by the Board.
- S. If the Director determined that the Fund has a zero balance on the day following the end of the Distribution period, but holds authorized public contributions that were not processed due to insufficient funds, the Director must notify the Board detailing the amounts not paid by date authorized and by candidate.
- T. The Board, upon notification from the Director that certain authorized public contributions have not and will not be remitted to the public campaign funds and that the distribution period is closed, must notify the participating candidate(s) within 10 business days from the date of notification from the Director in writing.



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16.00.04.08 Severability

If a court holds that a portion of this regulation is invalid, the other portions remain in effect.

16.00.04.09 Effective Date

This regulation must be submitted to the Council and takes effect upon approval by the County Council.

A handwritten signature in cursive script, reading "Marc Elrich".

Marc Elrich,
County Executive

Approved as to Form and Legality
Office of the County Attorney

By: Taggart Hutchinson

Date: February 17, 2021