THE DISTRICT OF COLUMBIA HOUSING AUTHORITY

NOTICE OF PROPOSED RULEMAKING

The Board of Commissioners of the District of Columbia Housing Authority ("DCHA") gives notice of its intent to adopt the following amendment to Chapter 62 of Title 14 DCMR, "Low Rent Housing: Rent and Lease," in not less than fifteen (15) days from the date of publication of this notice in the D.C. Register. The shorter comment period is based on the fact that the regulation have already been presented to our constituents and their advocates and we have incorporated their comments.

The proposed regulation concerning rent charges is to offer public housing residents an option of rent charges. The proposed regulation will provide an option of either an income-based rent or a market-based rent. The remaining portion of the proposed regulation is merely a renumbering of the existing sections of the regulation.

The District of Columbia Municipal Regulations, Chapter 62, Low Rent Housing: Rent and Lease, Section 6200, is amended to read as follows:

"6200 RENT CALCULATIONS

6200.1 Each tenant shall pay, as tenant rent, one of the following:

(a) Income-based rent as the greater of one twelfth (1/12) of thirty percent (30%) of adjusted income or one twelfth (1/12) of ten percent (10%) of annual income;

(b) Market-based rent, if less than income-based rent, as determined by DCHA;

(c) If the family is determined by DCHA to have no adjusted income, the family will pay minimum rent as provided in §6210; or

(d) If the family is receiving welfare assistance from a public agency and a portion of the assistance is specifically designated to meet the family's housing costs, then tenant rent is equal to the portion of the assistance which is so designated. However, the designated portion of the assistance must be adjusted in accordance with the family's actual housing costs and must be designated for housing costs by the public agency.

6200.2 Any changes in tenant rent shall be stated in a special supplement to the lease, which shall, upon issuance, become a part of the dwelling lease. The family shall be provided a copy of the special supplement to the lease.

6200.3 The market-based rent is an estimate by DCHA of the market rent charged for comparable units in the private, unassisted market.

(a) DCHA shall determine the market-based rent by considering factors including, but not limited to:

(1) the location, quality, size, unit type, and age of the unit, and

(2) any amenities, housing services, maintenance, and utilities provided by DCHA.

(b) The market-based rent will be equal to the estimated rent for which DCHA could lease the unit after preparation for occupancy. The market-based rent is not based on actual monthly costs to DCHA attributable to providing and operating the unit.

6200.4 DCHA shall create a schedule of market-based rents for each property by bedroom type.

(a) The schedule of market-based rents for all properties will be reviewed and revised at least every three years.

(b) DCHA may adjust the market-based rents for any particular property or unit if DCHA determines that the scheduled market-based rent is in excess of the amount necessary in order to lease a dwelling unit.

(c) A copy of the market-based rent schedule for a property will be available at each property management office or can be requested from the Client Placement Division, 1133 North Capitol Street, N.E. Suite 178, Washington, D.C. 20002-7599.

6200.5 At initial lease-up and with each recertification or interim recertification, DCHA will calculate the family's income-based rent. If the market-based rent, as listed in the current market-based rent schedule for the property, is less than the family's income-based rent, the family will be changed to market-based rent.

6200.6 If a tenant is paying a market-based rent, the tenant shall:

(a) submit an interim recertification in accordance with §6117 for any change in family circumstances except increases in family income. Change in family circumstances may include, but shall not be limited to, loss or reduction in income, employment, or other assistance; or increase in expenses for medical costs, child care, transportation, or education.

(b) provide DCHA with a completed application for continued occupancy, in accordance with §6116 once every three (3) years or upon request by DCHA.

6200.7 All changes in tenant rent, both income-based and market-based and whether after an interim or regular recertification, shall be implemented in accordance with §6116.10.

6200.8 In properties where utilities and other essential services are supplied to the tenant by DCHA, tenant rent payable to DCHA under the dwelling lease shall be the same as total tenant payment.

6200.9 In properties where tenants are responsible for paying for their own utility bills, the utility allowance shall be subtracted from the total tenant payment to determine that tenant rent payable to DCHA. If the tenant rent resulting from the subtraction of the utility allowance from the total payment is negative, DCHA shall send a monthly check in the amount of the difference to the tenant.

6200.10 Tenant shall be given a thirty (30) day written notice of an increase in contract rent.

6200.11 Tenant rent shall be computed after both annual income and adjusted income have been verified

6200.12 Any changes in tenant rent shall be stated in a special supplement to the lease, which shall upon issuance, become a part of the dwelling lease. The tenant shall be provided a copy of the special supplement.

6200.13 The tenant shall receive retroactive credit to credit an administrative error.

6200.14 Tenants occupying property for a portion of a month at the time of move-in shall be charged a pro-rata share of the full monthly rate determined by DCHA."

All persons desiring to comment on these proposed rules must submit comments in writing, no later than fifteen (15) days after the date of publication of this notice in the D.C. Register, to the following: District of Columbia Housing Authority, Office of the General Counsel, 1133 North Capitol Street, N.E., Suite 210, Washington, D.C. 20002-7599. Copies of these proposed regulations may be obtained without charge at the above-described address.

DISTRICT OF COLUMBIA
BOARD OF ELECTIONS

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The District of Columbia Board of Elections and Ethics hereby gives notice of emergency rulemaking action to adopt the following amendments to 3 DCMR Chapter 7, "Election Procedures," and Chapter 8, "Tabulation and Certification of Election Results."

The proposed amendments: 1) reflect that the Board's election, tabulation, and certification procedures have changed as a result of the Board's use of the optical scan and direct recording electronic vote tabulation systems; 2) situate in the Board's regulations the circumstances specified in the Help America Vote Act of 2002 which would require an individual to vote by special ballot, as well as the procedures by which to appeal the Board's special ballot determinations, and; 3) outline the procedures to be followed in the event of the inoperability of either the optical scan or direct recording electronic vote tabulation systems on election day.

In order for these amendments to be in place and applicable not only in time for upcoming elections, but also for the planning stages which precede such elections, it was necessary to adopt the following emergency amendments to the rules. These amendments were adopted on an emergency basis at a regular Board meeting on Wednesday, May 5, 2004 and became effective upon adoption.

The Board hereby gives notice of its intent to take final rulemaking action to adopt these amendments in no less than 30 days from the date of publication of this notice in the D.C. Register.

The emergency amendments to the rules will expire on Thursday, September 2, 2004 (one hundred twenty (120) days after the emergency rulemaking took effect), or upon publication of the Notice of Final Rulemaking in the D.C. Register, whichever occurs first.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments no later than thirty (30) days after the publication of this notice in the D.C. Register. Comments should be sent to Kenneth J. McGhie, General Counsel, D.C. Board of Elections and Ethics, 441 4th Street, NW, Suite 270N, Washington, DC 20001. Copies of the proposed rules may be obtained at cost from the Board at the same address between the hours of 9:00 a.m. and 4:45 p.m.

CHAPTER 7 ELECTION PROCEDURES

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700 Types of Ballots
701 Forms of Ballots
702 Candidates Names on Ballots
703 Opening and Closing of Polls
704 Polling Place Officials
705 Poll Watchers and Vote Counting Watchers
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720 Voting the Absentee Ballot: Federal Voter
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723 Closing the Polls
724 Collection and Transfer of Ballots and Other Polling Place Materials
725 Special Election Procedures: Advisory Neighborhood Commission Members

700 TYPES OF BALLOTS

700.1 The Board shall publish a fictitious name sample design and layout of the ballot (also called a "fictitious ballot") to be used in each election in the *D.C. Register* not later than forty-five (45) days before the election.

700.2 The Board shall publish a sample copy of the official ballot to be used in each election (except the official ballot to be used in the Advisory Neighborhood Commissions elections) in one or more newspapers of general circulation in the District not more than seven (7) days before each election.

700.3 The Board shall permit the preparation and distribution of sample ballots, subject to the following requirements:

(a) Sample ballots shall be printed or reproduced on a white color of paper; and

(b) Sample ballots shall be prominently marked on the front with the word(s) "Sample" or "Sample Ballot."

700.4 The Board shall provide test ballots during the testing of the programs and equipment used to count votes before any election.

700.5 The Board shall provide official ballots to absentee voters and to voters on election day to be used by the voter for indicating candidate or measure preference in any contest.

700.6 The Board shall accept the qualified "Federal Write-In Ballot," as defined under the Uniformed and Overseas Citizens Voting Rights Act of 1986, as an official ballot.

701 FORMS OF BALLOTS

701.1 In primary elections, the Board shall provide separate and color-coded ballots for the candidates of each political party qualified to participate in the election **(PRIMARY BALLOTS)**.

701.2 In city-wide general elections, the Board shall supply ballots listing the offices to be

filled and candidates for each office to be filled **(GENERAL ELECTION BALLOTS).**

701.3 In special elections, the Board shall furnish ballots listing the following:

(a) The offices to be filled and candidates for each office to be filled; and

(b) The short title and summary statement of any proposed referendum or recall measure; or

(c) Any proposed Charter amendment.

701.4 In any primary, general or special election, in which the office of President of the United States, Vice President of the United States, or Delegate to the House of Representatives, appears on the ballot, the Board shall provide absentee ballots listing the office or offices to be filled and the candidates for each office **(FEDERAL BALLOTS).** Federal Ballots shall be restricted to qualified federal electors as defined in § 501.2.

701.5 Initiative, Referendum and Recall measures and proposed Charter amendments may appear on a separate ballot in any election.

702 CANDIDATES NAMES ON BALLOTS

702.1 The name of a candidate for election shall appear on the ballot in the form designated on the Declaration of Candidacy and Affidavit of Qualifications executed and filed by the candidate in accordance with the provisions of chapter 6 of this title; Provided, that the name conforms to the following:

(a) The use of titles, degrees and prefixes on the ballot is prohibited; and

(b) The candidate shall designate the listing of his or her name on the ballot by specifying the given name or names, or the initial letter of a given name, if any, and surname.

702.2 The Board may permit a candidate to specify a modified form of his or her given name or names on the ballot if the Board finds that the change shall not confuse or mislead the voters and is legally acceptable.

702.3 The Board shall arrange the names of the candidates on each ballot, and for each office, so that a voter may vote for as many candidates as there are offices to be filled.

702.4 In any election, the order in which the names and slates of the candidates for office appear on the ballot shall be determined by lot, upon a date and in a manner prescribed by the Board.

702.5 If there is a successful petition challenge, the position of the remaining candidates' names shall be advanced accordingly.

702.6 Except where otherwise specified, the names of candidates nominated as a slate shall be

listed on the ballot in the same order in which their names appear on the first page of their nominating petition.

703 OPENING AND CLOSING OF POLLS

703.1 Polling places in which elections are to be held shall be opened at 7:00 a.m. on the date required by law for the election and shall remain open for voting until 8:00 p.m., except in instances when the time established for closing the polls is extended pursuant to a Federal or District of Columbia court order or any other order.

703.2 All persons standing in line at a polling place at the close of polls shall be permitted to vote, if otherwise qualified.

703.3 At the close of polls, a member of the Polling Team shall take a position at the end of any existing line of prospective voters, and only persons standing in front of the official at that time shall be permitted to vote.

704 POLLING PLACE OFFICIALS

704.1 The operations of polling places and ballot counting places shall be conducted by officials designated by the Board.

704.2 The official in charge of each polling place shall be known as the Precinct Captain.

704.3 The duties of the Precinct Captain may be delegated by the Board or by the Precinct Captain to another official, who shall be known as the Alternate Precinct Captain.

705 POLL WATCHERS AND VOTE COUNTING WATCHERS

705.1 Each qualified candidate and the proponents and opponents of proposed initiative, referendum and recall measures, and Charter amendments, may petition the Board for credentials authorizing watchers at one or more polling places or counting places.

705.2 Each petition shall be filed with the Board, not less than two (2) weeks before each election and shall be on a form furnished by the Board.

705.3 At the time of filing, the petition form shall contain the following:

(a) The name, address, telephone number, and signature of the candidate, proponent, or opponent with the office for which he or she is a candidate, and a short title, if any, of the measure or proposed Charter amendment which he or she supports or opposes;

(b) The name, address, and telephone number of the watcher supervisor, if a person is designated by the candidate, proponent, or opponent;

(c) The names, addresses and telephone numbers of at least two (2) and not more than three (3) persons, authorized to represent the candidate, proponent, or opponent on election day and receive the badges from the Board; and

(d) A certificate that each proposed watcher selected, is a qualified elector, and that he or she shall conform to the regulations of the Board with respect to watchers and the conduct of the election.

705.4 The Board may limit the number of watchers to ensure that the conduct of the election will not be unreasonably obstructed.

705.5 The number of watchers allowed by each qualified candidate, proponent, or opponent at each polling place and at each counting place, shall be determined by the Board not less than two (2) weeks prior to an election.

705.6 In making a determination of the number of watchers allowed, the Board shall consider the following:

(a) The number of candidates;

(b) The candidates running as a slate;

(c) The number of proponents and opponents of measures and proposed Charter amendments;

(d) The physical limitations of the polling places and counting place; and

(e) Any other relevant factors.

705.7 The Board shall issue a badge for each authorized watcher, with space for the watcher's name and the name of the candidate or party represented by the watcher. Badges shall also be issued for each authorized watcher representing the proponents or opponents of measures or proposed Charter amendments.

705.8 Badges shall be numbered consecutively, and consecutive numbers issued to each candidate, proponent, or opponent.

705.9 All badges shall be worn in plain view by the authorized watcher at all times when on duty at the polling place or counting place.

705.10 An authorized alternate watcher may, in the discretion of the watcher supervisor, be substituted for a watcher at any time; provided, that notice is first given to the designated representative of the Board at the polling place or counting place.

705.11 A watcher shall be allowed to perform the following acts:

(a) Observe the count;

(b) Unofficially ascertain the identity of persons who have voted;

(c) Report alleged discrepancies to the Precinct Captain; and

(d) Challenge voters in accordance with the procedures specified in § 707.

705.12 No watcher shall, at any time, do any of the following:

(a) Touch any official record, ballot, ballot box, or counting form;

(b) Interfere with the progress of the voting or counting;

(c) Talk to any voter while the voter is in the process of voting, or to any counter while the count is underway; provided, that a watcher may request that a ballot be referred for ruling on its validity to a representative of the Board; or

(d) In any way obstruct the election process.

705.13 Any watcher who, in the judgment of the Board or its designated representative, has failed to comply with any of the rules contained in this section, may be requested to leave the polling place or the Counting Center.

705.14 If a watcher is requested to leave, that watcher's credentials shall be deemed cancelled, and he or she shall leave the polling place or Counting Center forthwith.

705.15 An authorized alternate watcher may be substituted for a watcher who has been removed.

706 ELECTION OFFICIALS LIAISON WITH WATCHERS

706.1 Election officials shall act as liaison with watchers, as provided in this section.

706.2 The Precinct Captain at each polling place shall be the representative of the Board to whom the watchers shall direct all questions and comments.

706.3 Prior to the commencement of counting, the Board shall identify those representatives to whom watchers shall direct all questions and comments.

706.4 If a watcher has any question, or claims any discrepancy or error in the voting or the counting of the vote, the watcher shall direct the question or complaint to the election official in charge.

707 CHALLENGES TO VOTER QUALIFICATIONS

707.1 Any duly registered voter may challenge the qualifications of a prospective voter in a primary, special or general election.

707.2 Any challenge to the qualifications of a prospective voter shall be in writing on a form provided by the Board, and shall indicate the name of the person challenged, the basis for the challenge, and the evidence provided to support the challenge.

707.3 The challenger shall also sign an affidavit declaring under penalty of perjury that the challenge is based upon substantial evidence which he or she believes in good faith shows that the person challenged is not a qualified elector of the District.

707.4 After receiving a challenge or making a challenge on his or her own initiative, the

Precinct Captain shall give the challenged voter an opportunity to respond.

707.5 The Precinct Captain shall review the evidence presented and shall:

(a) Affirm the challenge upon a finding that it is based on substantial evidence specific to the voter being challenged and probative of the challenged voter's status as a qualified elector, or;

(b) Deny the challenge upon a finding that it is not based on substantial evidence specific to the voter being challenged and probative of the challenged voter's status as a qualified elector.

707.6 The Precinct Captain shall record the decision and the rationale for the decision on a form provided by the Board.

707.7 If the Precinct Captain denies the challenge, he or she shall inform the challenger that the challenger may appeal the decision to the Board and shall give the challenger copies of the regarding challenges and appeals to the Board.

707.8 Any appeal of the Precinct Captain's decision to deny the challenge shall be made either before the challenged voter casts a regular ballot, or before either the challenger or the challenged voter leaves the polling place, whichever is earlier.

707.9 If the challenger does not appeal the Precinct Captain's decision to deny the challenge, the challenged voter shall cast a regular ballot.

707.10 If the challenger appeals the Precinct Captain's decision to deny the challenge, the Precinct Captain shall state, over the telephone, the facts of the case to a Board hearing officer authorized to rule on the appeal for the Board.

707.11 Either a Board member, the Board's Executive Director, or the Board's chief voter registration official may serve as the Board's hearing officer for the appeal.

707.12 The hearing shall be recorded and transcribed, and the transcript shall serve as the official case record, along with the written documentation, as specified in § 707.6, of the Precinct Captain's initial decision to deny the challenge.

707.13 The hearing officer shall take testimony under oath from the challenger, the person challenged, the Precinct Captain, and any witnesses who wish to testify.

707.14 Each person who testifies before the hearing officer shall state for the record their name as recorded on the Board's voter registration list, their residence address, mailing address and telephone number, and their role in the challenge.

707.15 The hearing officer shall receive evidence and testimony and shall then close the hearing.

707.16 After reviewing all evidence pertaining to the challenge and making a decision based upon his or her determination of whether the challenger has presented substantial evidence that is specific to the voter being challenged and probative of the challenged

voter's status as a qualified elector, the hearing officer shall either:

(a) Affirm the Precinct Captain's decision to deny the challenge, in which case the challenged voter shall cast a regular ballot, or;

(b) Overturn the Precinct Captain's decision to deny the challenge, in which case the challenged voter shall cast a "challenged" special ballot, pursuant to § 710.4(h).

707.17 If the Precinct Captain affirms the challenge made at the polling place, or if the Board's hearing officer overturns the decision of the Precinct Captain to deny a challenge, the Precinct Captain shall allow the challenged voter to cast a "challenged" special ballot, pursuant to § 710.4(h).

708 CONTROL OF ACTIVITY AT POLLING AND COUNTING PLACES

708.1 The Precinct Captain shall have full authority to maintain order, pursuant to the Election Act and the regulations contained in this section, including full authority to request police officials to enforce lawful orders of the Precinct Captain.

708.2 The only activity which shall be permitted in the portion of any building used as a polling or vote counting place shall be the conduct of the election.

708.3 The only persons who shall be permitted to be present in polling or counting places are the following:

(a) Designated representatives of the Board;

(b) Police officers;

(c) Duly qualified election watchers;

(d) Persons actually engaged in voting; and

(e) Other persons authorized by the Board.

708.4 No partisan or nonpartisan political activity, or any other activity which, in the judgment of the Precinct Captain, may directly or indirectly interfere with the orderly conduct of the election, shall be permitted in, on, or within a reasonable distance outside the building used as a polling or vote counting place.

708.5 The distance deemed "reasonable" shall be approximately fifty feet (50 ft.) from any door used to enter the building for voting.

708.6 The exact distance shall be determined by the Precinct Captain, depending on the physical features of the building and surrounding area.

708.7 Wherever possible, the limits shall be indicated by a chalk line, or by some other physical marker, at the polling place.

708.8 For the purposes of this section, the term "political activity" shall include without

limitation, any activity intended to persuade a person to vote for or against any candidate or measure or to desist from voting.

708.9 A person shall be warned to cease and desist his or her conduct upon any instance of the following:

(a) Violation of the Election Act or regulations contained in this section;

(b) Failure to obey any reasonable order of the Board, or its representative(s); or

(c) Acting in a disorderly manner in, or within a reasonable distance outside the building used as a polling or counting place.

708.10 If the person committing the violation(s) fails to cease and desist the conduct specified in § 708.9, a member of the Metropolitan Police Department of the District of Columbia shall be requested to evict the person or take other appropriate action.

709 ASSISTANCE TO VOTERS AT THE POLLS

709.1 Any voter who requires assistance in voting may be given assistance by a person of the voter's choice.

709.2 The Board shall ensure that capable assistance shall be made available to any requesting voter at the polls.

709.3 The Board shall provide in each precinct one (1) or more polling place officials specifically trained to assist voters upon their request.

709.4 A polling place official, a person of the voter's choice, or both, shall assist a voter upon the request of the voter and in accordance with the wishes of the voter.

709.5 The Precinct Captain shall ensure that a record is made of the provision of such assistance to the voter and the nature of the voter's need for assistance.

709.6 Assistance provided to a voter may include, though not necessarily be limited to, the following:

(a) Marking the ballot in accordance with the voter's expressed wishes;

(b) Reading the ballot to a voter whose vision is impaired or who cannot read;

(c) Recording a write-in vote as designated by the voter; and

(d) Completing a form for the voter who cannot do so because of physical disability, advanced age, handicap, or illiteracy.

709.7 No person or official providing voter assistance shall in any way influence or attempt to influence a voter's choice in voting, nor shall the person or official disclose to anyone how the voter voted.

709.8 Written instructions on the operation of the voting process shall be available to all voters. A trained polling place official shall also be available to explain the voting process.

709.9 All voters shall have the opportunity, if desired, to mark a demonstration ballot prior to entering the voting booth.

710 TYPES OF VOTERS

710.1 In any election held in the District of Columbia, there shall be the following types of voters:

(a) Duly registered voter;

(b) Absentee voter;

(c) Special voter; and

(d) Federal voter.

710.2 A "duly registered voter" is a person who meets the following requirements:

(a) He or she is a "qualified elector," under § 500.3;

(b) He or she registers to vote by no later than thirty (30) days prior to the election; and

(c) He or she resides at the residence address as that address appears on the Board's records.

710.3 An "absentee voter" is a duly registered voter who qualifies to vote absentee under the following conditions:

(a) He or she has requested an absentee ballot under § 716, 717, 718, or 719, and;

(b) He or she qualifies to cast an absentee ballot for at least one (1) of the reasons specified in § 715.2.

710.4 A "special voter" is a person who may qualify to vote by special ballot, or provisional ballot, as it is termed in the "Help America Vote Act of 2002," because he or she:

(a) Is employed by the Board or employed by the District performing election duties which prevent the voter from voting the ballot in the voting precinct serving the voter's current residence address;

(b) Wishes to vote in a precinct other than that serving the voter's address because of age, handicap, or limitation of health; provided, that where the vote is to be cast outside the voter ward or single member district, written notice from the voter shall be received by the Board prior to election day, so that the person may be provided with a complete ballot;

(c) Is listed as an absentee voter on the alphabetical list of registered voters in the precinct but claims that he or she has not voted by absentee ballot;

(d) Is listed on the alphabetical list of registered voters in the precinct but claims, in a primary election, that the party affiliation indicated on the listing is in error;

(e) Alleges that his or her name has been erroneously omitted from the list of registered voters, or alleges that his or her name or address is erroneously printed on the list of registered voters;

(f) Has moved from the address as listed on the Board's registration records and presents himself or herself to vote at the precinct serving his or her current residence address;

(g) Has been deemed "inactive" on the voter roll and presents him or herself to vote at the address serving his or her current residence address;

(h) Has been challenged under § 707, and that challenge is accepted, in which case the ballot shall be designated as "challenged" on the special ballot envelope;

(i) Has been challenged under § 710.7, in which case the ballot shall be designated as "administratively challenged" on the special ballot envelope;

(j) Votes in an election for Federal office as a result of a Federal or District of Columbia court order or any other order extending the time established for closing the polls by a District law in effect 10 days before the date of that election; or

(k) Has not previously voted in a Federal election in the District and who registers to vote by mail and fails to present, either at the time of registration, at the polling place, or when voting by mail, either a copy of a current and valid photo identification, a copy of a current utility bill, bank statement, government check, paycheck, or other document that shows his or her name and address.

710.5 A "federal voter" is a person who:

(a) Resided or was domiciled in the District of Columbia who has moved into another state or territory and does not meet the voter registration residence requirements of that state or territory; or resided or was domiciled in the District of Columbia immediately prior to departure from the United States and does not claim voting residence in any other state or territory;

(b) Is or will be eighteen (18) years old by the date of the next primary or general election in which a federal office appears on the ballot;

(c) Has not been adjudged mentally incompetent and is not incarcerated for conviction of a felony; and

(d) Has requested a "federal ballot" under § 720 by not later than the 23rd day preceding the date of the election.

710.6 Except as provided in this section, the vote of a person who is a duly registered voter of the District of Columbia shall be valid only if cast in the voting precinct serving the registrant's current residence address.

710.7 In the event that the voter registration notification sent to a new registrant by the Board of Elections is returned by the United States Postal Service during the thirty (30) day period immediately preceding the date of any election indicating that the person does not reside at the address of voter registration, the vote of such person shall be deemed "administratively challenged" and that person shall cast his or her vote by special ballot.

710.8 The Board shall place a list of voters deemed "administratively challenged" in each precinct which includes newly-registered voters whose voter registration notification is returned by the United States Postal Service under § 710.7.

711 VOTING BOOTH

711.1 Except as provided in this chapter, a voter shall enter a voting booth alone to mark his or her ballot.

711.2 A voter may take sample ballots and any other materials as he or she may desire into the voting booth.

711.3 No voter shall go into a booth that is already occupied, nor shall anyone communicate with or disturb the occupant of any booth.

711.4 Each voter shall mark the ballot promptly and shall leave the booth.

711.5 No person may occupy a voting booth except for the purpose of voting or for the purpose of rendering assistance to a voter, pursuant to the D.C. Election Act and the provisions of § 709.

711.6 Voting booths shall provide privacy for the voter while voting.

712 SECRECY OF THE BALLOT

712.1 Before any ballot box is used for deposit of voted ballots, the Precinct Captain shall:

(a) Inspect the interior of the ballot box to show any voters and/or watchers that all ballot receiving areas are empty;

(b) Secure and lock the ballot receiving areas of the ballot box;

(c) Produce a zero-printout and, after ascertaining that vote totals opposite all voting positions are set at zero (0000), sign said printout;

(d) Inspect ballot box counter display to insure that it reads zero (0000).

712.2 From the time of the procedure specified in § 712.1 until the close of the polls, the polling official attending the box shall ascertain the following:

(a) Only official ballots are deposited in the box;

(b) Nothing is removed from the box; and

(c) Preservation of the secrecy of each voter's ballot.

712.3 Each voter shall deposit his or her official ballot in the ballot box before leaving the polling place.

712.4 Provision shall be made for maintaining the secrecy of the voted ballot while the voter carries it from voting booth to ballot box.

712.5 The ballot box(es) shall, at all times from the opening of the polls until the ballots and memory packs are returned to the counting center, be attended by a Precinct Captain or other official.

713 VOTE CASTING PROCEDURES: REGULAR BALLOT

713.1 Only duly registered voters shall be permitted to cast a regular ballot.

713.2 Each duly registered voter shall cast a ballot at the polling place serving the residence address of the registered voter.

713.3 During the hours of voting, the Board shall place in each polling place an alphabetical list (Master Index) of all persons registered in that precinct and eligible to vote in the election (Duly Registered Voters).

713.4 A listing of the registrants contained in the Master Index shall be available for public inspection.

713.5 The information printed on the Master Index in each polling place shall include the name, address, party affiliation (where applicable), and single member district (where applicable) of each duly registered voter residing in the precinct.

713.6 When a duly registered voter appears at the polling place to vote, the designated election official shall locate and read aloud the voter's name, address, and party affiliation (where applicable) from the Master Index.

713.7 The voter shall confirm the accuracy of the name, address, and party affiliation, where applicable, before signing the Master Index.

713.8 The act of signing the Master Index shall be deemed confirmation that the voter's name, address, and party affiliation are correct as shown on the Board's records.

713.9 After the voter has signed the Master Index, the polling official shall perform the following duties:

(a) Issue a Voter Card to the voter;

(b) Require that the voter's full name be printed on the Voter Card; and

(c) Direct the voter to the appropriate polling place official to obtain a ballot.

713.10 The designated polling official shall be responsible for the following:

(a) Receiving the Voter Card;

(b) Twice announcing clearly and publicly the name, and in a primary election, the party on the Voter Card;

(c) Ascertaining whether the voter will vote using the optical scan voting equipment or the direct recording electronic (DRE) voting equipment;

(d) Issuing to voters selecting the optical scan voting equipment the ballots to which they are entitled, and issuing to voters selecting the DRE voting equipment the electronic voter cards to which they are entitled; and

(e) Depositing the Voter Card in a container provided for that purpose.

713.11 In the event that a voter chooses to use the Board's optical scan voting machines, the voter will complete his or her ballot and submit such ballot according to instructions which will be provided at the polling place.

713.12 In the event that the optical scan machine becomes inoperable for any reason during the election process, voters will place voted ballots into the auxiliary bin ballot slot of the ballot box. All ballots deposited in this auxiliary slot will be tabulated at the close of polls, either at the polling place if the machine regains operability, or at the Board's counting center, if not.

713.13 In the event that a voter chooses to use the Board's direct recording electronic (DRE) voting equipment, the voter will be given an electronic voting card for the purpose of voting and will complete his or her ballot according to instructions which will be provided at the polling place.

713.14 In the event that the DRE voting equipment becomes inoperable for any reason during the election process voters will be directed to use the optical scan voting equipment and submit their ballots in the manner prescribed in subsection 713.11 or, if applicable, 713.12.

713.15 Any repairs conducted on either the optical scan voting equipment or DRE equipment will be performed in the presence and view of:

(a) an election official who shall note in writing all repair activity, and;

(b) designated poll watchers who will be provided with any available information pertaining to system activity.

714 SPOILED BALLOTS

714.1 If a voter makes a mistake in marking a ballot or erroneously defaces or tears a ballot, he or she may surrender the spoiled ballot to a polling official, who shall furnish the voter with another ballot.

714.2 The polling official shall request the voter to place the spoiled ballots into the spoiled ballot envelope.

714.3 The voter shall seal the envelope and shall return it to the polling official before an additional ballot can be issued.

715 VOTING THE ABSENTEE BALLOT: GENERAL REQUIREMENTS

715.1 Except as provided in this chapter, a duly registered elector may apply for an absentee ballot by mailing a written request to the Board or by appearing in person to apply in writing at the office of the Board.

715.2 A registered voter may cast an absentee ballot, by mail or in person, for any of the following reasons:

(a) The voter is temporarily outside the territorial limits of the District;

(b) The voter is unable to vote at the regular polling place due to a permanent or temporary physical handicap, disability, or illness;

(c) The voter is confined in an institution for mental treatment within or outside the District, but not judicially declared incompetent;

(d) The voter is incarcerated in an institution, but not for conviction of a felony;

(e) The voter is a Board employee who is necessarily absent for the precinct of registration on election day;

(f) The voter resides outside the United States, and has registered to vote pursuant to the Uniformed and Overseas Citizens Absentee Voting Act, but only for candidates for federal offices;

(g) The voter expects to be absent from the District of Columbia on election day;

(h) The voter expects to be hospitalized on election day; or

(i) The voter declares personal religious tenets prevent the voter from voting on election day.

715.3 Except as provided in § 719, no person shall be permitted to obtain an absentee ballot or execute an application for an absentee ballot for another registered voter.

715.4 An absentee ballot may be returned to the Board by any of the following ways:

(a) Mail;

(b) Brought to any polling place for deposit in the ballot box on election day; or

(c) Delivered to the Board's office at any time before the close of the polls on election day.

715.5 A voter who was mailed or personally handed an absentee ballot is entitled to vote in the election only by that absentee ballot.

715.6 The absentee ballot shall be counted as being cast in the ward and precinct where the voter resides; provided, that the voter signs the absentee ballot envelope to certify that the voter has voted the ballot and has not voted in any other jurisdiction or in any other manner in the election.

715.7 No employee of the Board shall reveal the name(s) of the candidate(s) for whom an individual has voted or whether an individual voted for or against any initiative, referendum or recall measure, or Charter amendment.

716 VOTING THE ABSENTEE BALLOT: BY MAIL

716.1 A written request for a mail absentee ballot shall be received from the registered voter by no later than the seventh (7th) day preceding the day of the election and shall include the following:

(a) Election(s) for which the absentee ballot is requested;

(b) Reason for which the absentee ballot is requested;

(c) Address from which the voter is registered to vote;

(d) Voter's current residence address, if different from the address listed on the Board's records;

(e) Address to which the absentee ballot shall be delivered; and

(f) Voter's original signature.

716.2 If an applicant qualified to vote by absentee mail provides a residence address that is different from the residence address listed on the Board's records, the application to vote absentee shall be considered a request for a change of address to the Board and the voter shall be issued a ballot for the current residence address.

716.3 All mailed absentee ballots shall be postmarked not later than the day of the election; provided, that ballots received from overseas in franked envelopes need not be postmarked.

716.4 All mailed absentee ballots shall be received by the Board not later than ten (10) days after the day of the election in order for the absentee ballot to be counted.

716.5 A registered voter may request absentee ballots, by mail, for all elections in the current calendar year.

717 VOTING THE ABSENTEE BALLOT: BY FAX

717.1 A registered voter may electronically submit (FAX) an application to vote absentee not earlier than three (3) days prior to the deadline for submitting requests for absentee ballots by mail.

717.2 An electronically transmitted (FAXed) application to vote absentee shall contain the same information as required in § 716.1.

717.3 A registered voter who electronically submits (FAXes) an application to vote by absentee ballot shall return, along with his or her voted ballot, the original absentee ballot application in order for the ballot to be counted.

718 VOTING THE ABSENTEE BALLOT: IN PERSON

718.1 A duly registered elector may request an absentee ballot in person not earlier that fifteen (15) days preceding the election and not later than 4:45 p.m., of the day preceding the election.

718.2 A duly registered elector who requests in absentee ballot in person shall apply to the Board in writing, which application shall include the following:

(a) Election(s) for which the absentee ballot is requested;

(b) Reason for which the absentee ballot is requested;

(c) Voter's current residence address;

(d) Address to which the absentee ballot shall be delivered; and

(e) Voter's original signature.

718.3 If an applicant qualified to vote by absentee in person provides a residence address that is different from the residence address listed on the Board's records, the application to vote absentee shall be considered a request for a change of address to the Board and the voter shall be issued a ballot for the current residence address; provided, that the applicant provides identification which establishes identity and current residence address.

718.4 A registered voter who votes by absentee ballot in person shall do the following:

(a) Cast the absentee ballot in the office of the Board, and;

(b) Place the voted ballot in an envelope, seal the envelope, and deposit the sealed envelope in the absentee ballot box.

718.5 During the period for absentee voting in person, the Board shall be open Monday through Saturday, except holidays, from 8:30 a.m. until 4:45 p.m.

719 VOTING THE ABSENTEE BALLOT: IN EMERGENCY

719.1 A registered voter may apply for an emergency absentee ballot, through a duly authorized agent at the office of the Board from the sixth (6th) day prior to any election to the time the polls close on election day, under the following circumstances:

(a) The voter is physically unable to be present at the polls as the result of an illness or accident occurring after the deadline for requesting to vote absentee by mail; or

(b) The voter, having expected to recover from an illness by election day and voting at the polls, finds that after the deadline for requesting an absentee ballot by mail, he or she is physically unable to vote at the poll on election day.

719.2 A registered voter shall apply to vote by emergency absentee ballot according to the following procedure:

(a) The registered voter shall, by signed affidavit on a form provided by the Board, set forth the reason why he or she is unable to be present at the polls on the day of the election and designate a voter registered in the District of Columbia to serve as agent for the purpose of delivering the absentee ballot to the voter;

(b) Upon receipt of the application, the Executive Director, or his or her designee, if satisfied that the person cannot, in fact, be present at the polling place on the day of the election shall issue to the voter through the voter's duly authorized agent an absentee ballot which shall be marked by the voter, placed in a sealed envelope and returned to the Board before the close of the polls on election day; and

(c) The person designated as agent shall, by signed affidavit on a form prescribed by the Board, state the following:

(1) That the ballot will be delivered by the voter who submitted the application for the ballot; and

(2) That the ballot shall be marked by the voter and placed in a sealed envelope in the agent's presence, and returned, under seal to the Board by the agent.

719.3 A registered voter serving on a sequestered jury on election day may vote by absentee ballot.

719.4 An officer of the court in charge of a jury sequestered on election day may act as agent for any registered voter sequestered and shall do the following:

(a) Deliver an application to vote by absentee ballot to the applicant;

(b) Deliver the absentee ballot to the applicant; and

(c) Return the voted ballot to the Board before the close of the polls on election day.

719.5 The Board shall advise all agents, in writing, that pursuant to D.C. Code §§ 1-1001.12 and 1-1001.14 (2001 ed.), it is unlawful to do any of the following:

(a) Vote or attempt to vote more than once in any election; or

(b) Purloin or secret any of the votes cast in any election.

720 VOTING THE ABSENTEE BALLOT: FEDERAL VOTER

720.1 In order to vote by absentee ballot, a citizen of the United States who meets the requirements of § 710.1(d) as a "Federal Voter" shall execute an application which includes the following:

(a) A statement that the applicant requests a ballot for federal offices;

(b) The last address in the District at which the applicant resided; and

(c) The signature of the applicant, which must be an original signature.

720.2 A request for a Federal Ballot shall be received by the Board not later than twenty-three (23) days preceding the date of the election.

720.3 Notwithstanding § 717.1, a registered voter serving on active duty in the armed forces of the United States may apply to have his or her absentee ballot electronically transmitted (FAXed) through the voting system instituted by the Federal Voting Assistance Office of the Department of Defense if an unexpected necessity of military service prevents the applicant from receiving the ballot and returning the voted ballot to the Board within the forty-five (45) day absentee balloting guideline period established by the Federal Voting Assistance Office.

720.4 An application to electronically transmit (FAX) an absentee ballot shall contain, in addition to the information required in § 717.1, the reason that the applicant's military service prevents the applicant for receiving the ballot and returning the voted ballot to the Board within the forty-five (45) day absentee ballot guideline period established by the Federal Voting Assistance Office.

720.5 Upon approval of an application for electronic transmission (FAX) of an absentee ballot, the Board shall assign a FAX authorization number to the registered voter.

720.6 A voter who returns his or her ballot by electronic transmission (FAX) shall provide on the return transmittal cover his or her FAX authorization number and sign the following statement:

I understand that by faxing my voted ballot I am voluntarily waiving my right to a secret ballot.

721 VOTE CASTING PROCEDURES: SPECIAL BALLOT

721.1 An individual whose eligibility to vote in the election cannot be determined at the polls on election day because of one or more of the reasons cited in § 710.4 shall vote by special ballot.

721.2 A registered voter who files an election day change of address at the precinct of current residence shall, by written affirmation, establish identity and current residence within the precinct at the time of voting.

721.3 The outside of the special ballot envelope shall contain a statement warning the voter of the criminal penalties for making a false representation as to his or her qualifications for voting and an affirmation signed by the voter attesting the following:

(a) That to the best of his or her knowledge and belief, he or she is a registered voter in the District of Columbia;

(b) If he or she is not registered to vote, that he or she meets the qualifications for voter registration;

(c) That he or she resides in the precinct where voting at the address provided;

(d) His or her date of birth; and

(e) Any other information as the Board deems necessary for its chief registration official to determine that the individual is qualified to have the ballot counted.

721.4 Before being permitted to vote, the voter shall sign the affirmation printed on the Special Ballot Envelope.

721.5 The designated polling place official shall witness the voter signing the affirmation printed on the Special Ballot Envelope.

721.6 The Special Ballot Envelope shall also provide the following:

(a) Space for the name and current residence of the voter;

(b) Space for the election worker to indicate the reason for voting the Special Ballot;

(c) The number of the precinct in which the voter is casting the ballot; and

(d) Any other information as may be necessary to determine if the person is qualified to vote.

721.7 Designated polling officials shall place the word "**SPECIAL**" upon each ballot card which the voter will receive, and shall issue the following:

(a) Ballots;

(b) An inner envelope to ensure the secrecy of the ballot; and

(c) Written notification of appeal rights to the voter if the Board's chief registration official decides not to count the Special Ballot.

721.8 Designated polling officials shall instruct the voter on the following:

(a) Designating choices on the ballot;

(b) Placing the voted ballot in the inner envelope;

(c) Placing the inner envelope containing the voted ballot inside the Special Ballot Envelope; and

(d) Depositing the sealed envelope in the ballot box.

721.9 The Board shall review the information provided on the Special Ballot Envelope, as well as all other available evidence pertaining to the eligibility of each voter casting a special ballot, and shall make a decision about whether to count or reject each special ballot in a manner consistent with the procedures set forth in § 722.

721.12 The tabulation of votes recorded on all Special Ballots approved for counting by the chief registration official or the Board shall be conducted on the tenth (10th) day following the election, along with all remaining absentee ballots approved for counting; provided, that those absentee ballots which are received sufficiently in advance of the election may be counted on election day.

721.13 As soon as practicable after the election, the Board shall mail each registered voter who filed a change of address at the polls on election day a non-forwardable address confirmation notice to the address provided in the written affirmation on the Special Ballot Envelope.

721.14 Where the United States Postal Service returns the address confirmation notification as "undeliverable" or indicating that the registrant does not live at the address provided in the written affirmation on the Special Ballot Envelope, the Board shall notify the Corporation Counsel of the District of Columbia.

722 SPECIAL BALLOT APPEAL RIGHTS

722.1 A voter's act of signing a challenged or special ballot envelope shall be deemed the filing of an appeal by the voter of the refusal by the Board's chief voter registration official to permit the voter to vote on election day by regular ballot, and a waiver of personal notice from the Board of any denial or refusal to a later count of the challenged or special ballot.

722.2 At the time of voting, the Board shall provide the voter with written notice that indicates the manner by which he or she may learn whether the Board has decided to count or reject the voter's special ballot, and of the dates scheduled for hearings for voters whose special ballots are rejected to contest the Board's preliminary determination if they petition to do so.

722.3 Not later than the Tuesday following each election, the Board shall during regular business hours maintain a telephone service by which any voter who has voted a special ballot may learn of the Board's preliminary decision to count or reject his or her ballot along with the reason(s) for each decision.

722.4 Not earlier than eight (8) days and not later than ten (10) days after the date of any election, the Board shall, upon petition of the voter, conduct a hearing for the voter to contest the Board's preliminary determination to reject the voter's special ballot.

722.5 At the hearing, the voter may appear and give testimony on the question of the decision to reject the special ballot.

722.6 The Board shall make a final determination to either count or reject the voter's special ballot within two (2) days after the date of the hearing.

722.7 The voter may appeal an adverse decision of the Board to the Superior Court of the District of Columbia within three (3) days after the date of the Board's decision. The decision of the court shall be final and not appealable.

723 CLOSING THE POLLS

723.1 Immediately after the last voter has voted, the Precinct Captain or his or her designee(s) shall in the presence and view of designated poll watchers:

(a) Remove all voted ballots from the ballot box, and secure them in a transfer case for delivery to the Counting Center;

(b) Remove any ballots that have been deposited either in the emergency ballot entry slot in front of the ballot box or in an auxiliary ballot box, enter these ballots into the automatic tabulating system, secure these ballots in the transfer case referred to in § 724.1(a), and seal the transfer case with a signed certificate;

(c) Request and confirm the close of polls and produce the total vote count tape for all contests on the ballot in that precinct;

(d) Enter the reading from the automatic tabulating system's public counter onto the total vote count tape;

(e) Remove and sign the total vote count tape, and seal it for delivery to the counting center;

(f) Place the automatic tabulating system's memory pack into a transfer case which shall be sealed with a signed certificate for delivery to the Counting Center.

723.2 The Precinct Captain shall then prepare a complete accounting of ballots issued to that polling place, in accordance with and on forms provided by the Board.

723.3 The accounting of ballots shall include the following numbers of ballots:

(a) Voted;

(b) Spoiled;

(c) Not used; and

(d) Received.

723.4 In accordance with directives of the Board, the transfer cases containing the voted ballots and the memory packs shall be returned to the Counting Center promptly following the closing of the polls.

723.5 Unvoted ballots and other election materials and paraphernalia shall be returned to the custody of the Board as directed.

724 COLLECTION AND TRANSFER OF BALLOTS AND OTHER POLLING PLACE MATERIALS

724.1 All ballots cast in any election, as well as the automatic tabulating system's memory pack, shall be collected and transferred from precincts to the Counting Center by designated transport teams.

724.2 The transport team shall issue a receipt to the Precinct Captain for all items.

724.3 The reception team at the Counting Center shall issue to the transport team a receipt for the transfer cases containing voted ballots and memory packs.

724.4 Other polling place materials shall be transferred from precincts to a place designated by the Board.

724.5 Unused or spoiled ballots, the Roster Index Lists, and all other materials relating to voting and which are required for the official canvass, shall be placed in secured storage.

724.6 The official designated to receive the other polling place materials shall issue a receipt for same to the transport team.

724.7 The seal of each transfer case shall be inspected and certified as to its condition.

724.8 Inspection and certification of the seal shall be performed twice by the following:

(a) The first time by the transport team upon receipt of transfer cases at the polling place; and

(b) The second time by the reception team upon receipt of transfer cases at the Counting Center.

724.9 The certification shall include the following:

(a) Precinct number;

(b) Ballot box number;

(c) Condition of seal; and

(d) Any defects observed.

724.10 The certification shall be signed by members of the team making the certification.

724.11 At the Counting Center, each transfer case shall be marked as inspected before being delivered to a ballot inspection team or sorting team.

724.12 If there is more than one (1) transfer case for a single polling place, all cases shall be delivered to one (1) inspection or sorting team.

725 SPECIAL ELECTION PROCEDURES: ADVISORY NEIGHBORHOOD COMMISSION MEMBERS

725.1 The Board may exercise its discretion and conduct a special election to fill a vacancy in a Single-Member District of an Advisory Neighborhood Commission by postal ballot, pursuant to D.C. Code §§ 1-309.06(d) and 1-1001.17(h) (2001 ed.)

725.2 Procedures for conducting special elections to fill a vacancy in a Single-Member District of an Advisory Neighborhood Commission shall be in accordance with this chapter and chapter 13 of this title.

CHAPTER 8 TABULATION AND CERTIFICATION OF ELECTION RESULTS

Secs.

800 Pre-Election Testing of the Voting System
801 Public Testing of Programs and Equipment
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804 Ballot Inspection
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800 PRE-ELECTION TESTING OF THE AUTOMATIC VOTE TABULATING SYSTEM

800.1 Complete testing of the automatic tabulating system shall be conducted before the use of the system in an election.

800.2 Not more then ten (10) days before election day, the Board shall have the automatic tabulating programs tested to ascertain that the system will count properly the votes cast for all offices, measures, and proposed Charter amendments.

800.3 The test shall be conducted by processing a pre-audited group of ballots (the "certification deck") so as to record a pre-determined number of valid votes for each candidate, measure, and proposed Charter amendment.

800.4 The test shall include for each office one or more ballots which have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating programs to reject the votes.

800.5 If any error is detected, the cause of the error shall be ascertained and corrected and an errorless count shall be made before the automatic tabulating system is approved for use in the count of actual ballots.

800.6 The certification deck used to test the automatic tabulating system shall be for the ballot style for the precinct in which that precinct tabulator will be used on election day.

800.7 Following the pre-election logic and accuracy testing, the certification deck shall be taken into custody by the Board and locked in secure storage until the time, following the assembly of the actual ballots, that the public testing of the system is conducted.

801 PUBLIC TESTING OF PROGRAMS

801.1 A public test of the programs to count votes by machines shall be held within the four (4) days before the election.

801.2 All programs shall be tested with equipment used for counting purposes in the election.

801.3 Notice of the test shall be given to candidates, proponents and opponents of measures, party officials, the news media, and to any other public representatives the Board deems appropriate, at least seven (7) days before the test.

801.4 The test procedure shall demonstrate to the reasonable satisfaction of the Board that the system is operating accurately and in accordance with the programs instituted by the Board.

802 VOTE COUNTING BY HAND

802.1 Whenever votes are counted by hand, the votes on ballots shall be counted and the validity of ballots shall be determined by persons designated by the Board for that purpose.

802.2 The counting shall be conducted by counting teams of two (2) or more officials.

802.3 An official known as the "Counting Team Captain" shall be designated as being in charge of one or more counting teams as determined by the Executive Director, or his or her designee.

803 VOTE COUNTING BY MACHINE

803.1 Whenever votes are counted by machines, such as an automatic vote tabulating system, the Board shall utilize personnel qualified to operate the system.

803.2 Additional personnel may be employed to perform such tasks as may be deemed necessary by the Board.

804 BALLOT INSPECTION

804.1 A ballot inspection team shall perform the following functions for the ballots of each precinct:

(a) Open a transfer case and remove all ballots;

(b) Assemble all ballots for a single precinct; and

(c) Visually review all ballots for tabulating acceptability.

804.2 Any ballots which are to be rejected (for such reasons as defacement or revealed identity of voter) shall be set aside in a clearly marked container or envelope.

804.3 Any valid ballot which, because its physical condition is unreadable by automatic tabulation, shall be deemed a "damaged ballot."

804.4 All ballots to be counted shall be inspected for automatic tabulating acceptability. Any ballot determined to be unacceptable for machine tabulation shall be set aside as damaged and tabulated in accordance with the provisions of § 808.

804.5 All rejections shall be made by the Executive Director, or his or her designee.

804.6 Review and inspection of absentee ballots shall be made separately from the review and inspection of ballots from polling places. This review and inspection shall begin at the time designated by the Board and shall be the same as for ballots cast in polling places, insofar as those procedures are appropriate.

804.7 Absentee and special ballots shall be tabulated separately from polling place ballots.

804.8 All damaged ballots shall be tabulated at the date and time set for the counting of absentee and special ballots.

805 VALIDITY OF BALLOTS AND VOTES

805.1 The following procedures shall be used to determine whether or not a ballot is valid:

(a) If any official who is counting ballot is uncertain whether a ballot is partially or totally invalid, he or she shall refer the ballot to a representative designated by the Board to decide these questions; or

(b) Any watcher who is uncertain whether a ballot is partially or totally invalid may refer the ballot to a representative designated by the Board to decide these questions.

805.2 If a ballot marked "Challenged" or "Special" is placed in a ballot box and received at the counting place other than in a Special Ballot Envelope, it shall be deemed invalid.

805.3 Members of counting teams shall not open Special Ballot Envelopes; but shall deliver them unopened to the Counting Team Captain, who shall deliver them unopened to a representative designated by the Board.

805.4 A write-in vote shall not be adjudged valid, and shall not be tallied and recorded, unless the voter has written in the name of the person for whom the write-in vote is cast on a blank line provided for write-in voting and has not marked the voting position on another line for the same office.

806 PROHIBITION OF LABELS, STICKERS, AND AUTHORIZATION OF HAND STAMPS FOR CASTING WRITE-IN VOTES

806.1 The use of stickers and adhesive labels as a way of exercising the write-in method of voting is prohibited. Any write-in vote cast in this manner shall be deemed invalid.

806.2 The use of a stamp by a voter to imprint the name of a write-in candidate in the appropriate space on the voter's ballot shall be permitted under the following circumstances:

(a) Where the stamp serves only to print the name of the write-in candidate on the voter's ballot; and

(b) Where the stamp does not affix any adhesive or other foreign material on the voter's ballot.

806.3 Any voter may bring into the polling place in any election a stamp for the purpose of exercising the write-in vote option, consistent with § 806.2, for the voter's personal use; Provided, that the voter must carry the stamp out of the polling place with him once he or she has voted. Any stamps left in the polling place shall be discarded by election workers.

806.4 Any candidate, campaign organization, or individual may provide or distribute a stamp to voters for their use in exercising their write-in option in any election by any means including the distribution of a stamp outside of a polling place on election day; Provided, that the distribution shall occur outside the fifty foot (50 ft.) line, marked by the Precinct Captain, within which no political activity is permitted.

806.5 No voter, watcher, or other individual may distribute any stamp device to any voter or any other person within the fifty foot (50 ft.) line from a polling place entrance or inside any polling place on election day.

807 MARKING OF BALLOTS BY ELECTION OFFICIALS

807.1 No election official shall make any mark on a ballot, except for the following reason:

(a) To note whether a ballot is partially or totally invalid; or

(b) To facilitate vote counting procedures, when authorized by the Executive Director or his or her designee.

807.2 The notations of validity or invalidity shall be made by methods approved by the Board.

808 COUNTING CENTER OPERATIONS: AUTOMATIC TABULATION

808.1 The canvass of votes shall be started immediately on election day after the close of polls and shall be conducted under the direct supervision of the Board or its designee.

808.2 Special ballots, together with any damaged ballots received from the polling places, shall be tabulated separately at a time designated by the Board or its designee.

808.3 The Board or its designee shall appoint the required special teams to perform certain steps in the canvass.

808.4 The special teams shall include, but not be limited to, the reception team, ballot inspection team, and ballot sorting team.

808.5 The responsibilities of each special team and specific instructions to carry out those responsibilities shall be detailed in writing.

808.6 Only those persons authorized by the Board shall be admitted to the Counting Center while the canvass is in progress.

808.7 All valid ballots shall be counted by automatic tabulation unless otherwise decided by the Board.

808.8 No votes will be counted which have been overvoted or otherwise improperly voted.

808.9 Any overvote or misvote in one or more contests shall not invalidate the entire ballot but only the votes cast in that contest. All correctly cast votes on such a ballot shall be counted. The number of votes rejected because of overvote or misvote shall be reported.

808.10 The votes recorded on damaged ballots shall be reproduced on duplicate ballots, in the presence of watchers, with the original (damaged) and the reproduced (duplicate) ballots marked for identification with corresponding serial numbers.

808.11 The reproduced duplicate ballots, which have converted the votes on the damaged ballots to a machine readable form, shall be tabulated by machine.

808.12 Federal write-in ballots shall be reproduced and tabulated in the same manner as damaged ballots, in accordance with §§ 808.10 – 808.11.

808.13 A count of the number of ballots tallied for a precinct, ballots tallied by groups of precincts and city-wide, shall be accumulated.

808.14 The total of votes cast for each candidate whose name appears pre-printed on the ballot shall be calculated by precinct and city-wide.

808.15 The total number of write-in votes marked by voters shall be reported for each contest.

808.16 The total of votes cast for each write-in candidate shall be calculated only in contests where there is no candidate printed on the ballot in order to determine a winner, or where the total number of write-ins reported, under § 808.15, is sufficient to elect a write-in candidate.

809 DISCRETIONARY MANUAL TABULATION

809.1 If a recount petition is filed, the Board may order that ballots be manually inspected and tabulated when it appears that a disproportionate number of potential undervotes or overvotes have occurred in a particular precinct, or to determine whether write-in votes have been cast that affect vote totals for candidates whose names are pre-printed on the ballot.

809.2 When tabulation is done manually under this section, only the ballots for those precincts and contests designated by the Board shall be manually tabulated.

809.3 In all cases where manual tabulation is ordered, the Board shall direct that the tabulation be conducted at a time that is practicable.

809.4 In all cases where ballots are manually tabulated, the procedures set forth in this section shall be followed.

809.5 A ballot cast without any marks shall not be counted.

809.6 When a voter fails to mark only one portion (contest) of his or her ballot, only that portion shall not be counted.

809.7 When a voter marks more votes than he or she is entitled to in a particular contest, all his or her votes for that office (contest) only shall be rejected.

809.8 If a voter draws an arrow pointing to a candidate's name, circles the broken arrow to the right of the candidate's name, uses a check, asterisk, or any other mark in a manner that clearly indicates his or her intended choice, the ballot shall count as a vote for that candidate; Provided, that the mark is not a distinguishing mark as defined in § 809.10

809.9 A ballot properly marked by filling in the broken arrow to the right of the candidate or proposition is valid even though it contains an additional mark; Provided that the additional mark is not a distinguishing mark as defined in § 809.10.

809.10 A distinguishing mark is a mark (whether a letter, figure, or character) that serves to separate and distinguish a particular ballot from other ballots cast at the election. The mark itself shall be to furnish evidence of an unlawful intention on the part of the voter to identify the ballot after the vote has been cast, such as the voter's initials, or a mark known to belong to the voter.

810 MANUAL TABULATION OF WRITE-IN VOTES

810.1 The following procedures shall govern the manual tabulation of write-in votes when a discretionary manual tabulation is ordered under § 809 or when write-in votes are tallied under § 808.15.

810.2 When a voter writes a person's name in the proper space for write-ins for an office, it is a vote for that person, notwithstanding:

(a) the appearance of that person's name in pre-printed form on the ballot as a candidate for the same office;

(b) the voter's failure to fill in the broken arrow which appears to the right of the candidate's pre-printed name, or;

(c) the voter's failure to fill in the broken arrow which appears to the right of the space designated for write-in candidates.

810.3 In the case of a write-in vote, no ballot should be regarded as defective due to unclear writing, misspelling of a candidates name, or by abbreviation, addition, omission or use of a wrong initial in the name.

810.4 Every ballot shall be counted for the candidate for whom it was intended, if the elector's intent can be ascertained from the ballot itself.

811 CONSOLIDATED BALLOT REPORT

811.1 Following tabulation of all ballots, a consolidated report shall be produced showing the total vote cast for all offices.

811.2 Unless otherwise mandated by the Board, the consolidated ballot report shall be made by precinct.

812 BALLOT ACCOUNTING

812.1 Following the tabulation of all votes, a full accounting of official ballots shall be made prior to certification of the official election results.

812.2 The accounting of official ballots shall include the following:

(a) For each precinct, and for each party in a primary election, the sum of the number of ballots issued to the voters, less the number of spoiled ballots, should equal the total number of ballots cast in the precinct;

(b) For each precinct, and for each party in a primary election, the sum of the number of cards issued to voters and exchanged for ballots, plus the number of special ballots, should equal the total number of voters;

(c) For each precinct, and for each party in a primary election, upon completion of the election day count and exclusive of special and absentee ballots, the sum of the number of polling place ballots counted plus the number of special ballots cast should equal the totals from §§ 812.2(a) and (b);

(d) For each entire selection and for each type of ballot used in it, the sum of the number of absentee ballots issued to voters by mail, in person, by affidavit (emergency), or utilized for any miscellaneous purpose, plus the number of absentee ballots remaining unused, should equal the total number of absentee ballots;

(e) For each entire election and for each type of ballot used in it, the sum of the number of absentee ballots case, absentee ballots spoiled, and absentee ballots not returned, should equal the total number of absentee ballots issued to voters; and

(f) For each Single-Member District, the total number of Single-Member District ballots cast should equal the sum of the ballots cast in each precinct servicing that Single-Member District.

812.3 Following tabulation, the ballots for each precinct shall be transferred to a secure and locked storage location where they shall remain secured for twelve (12)

months for purely local elections and twenty-two (22) months for elections containing federal contests; thereafter, if no election contest or other proceeding is pending in which the ballots may be needed as evidence, the ballots may be destroyed.

812.4 The Board should also make provision, in writing, for retention and storage of data processing materials related to the vote counting from the time the canvass is completed until the expiration of the period for challenging elections.

813 CERTIFICATION OF ELECTION RESULTS

813.1 The Board shall certify the results of each election.

813.2 The Board shall publish the results of each election and the nominees or winners in the D.C. Register.

814 PETITIONS FOR RECOUNT

814.1 Any qualified candidate in any election may, within seven (7) days after the Board certifies the election results, petition the Board for a recount of the ballots cast in that election. Such petition shall be in writing and shall specify the precincts in which the recount shall be conducted.

814.2 The petition shall be accompanied by a deposit of fifty dollars ($50.00) for each precinct included in the recount. This deposit shall be refunded if the recount changes the result of the election.

814.3 Deposits shall be paid by check or money order made payable to the order of the "D.C. Treasurer." No cash will be accepted.

814.4 A candidate may, at any time, request in writing that the recount be terminated and the Board shall refund the deposit remaining for any uncounted precincts.

815 AUTOMATIC RECOUNT

815.1 The Board shall conduct an automatic recount:

(a) If, in any election for President and Vice-President of the United States, Delegate to the House of Representatives, Mayor, Chairman of the Council, member of the Council, President of the Board of Education, or member of the Board of Education, the certified election results show a margin of victory for a candidate that is less than 1% of the total votes cast for that office. The cost of such recount shall not be charged to any candidate;

(b) If, in any contest involving an initiative, referendum, or recall measure, the difference between the number of votes for and against the measure is less than 1% of the total votes cast in that content, or;

(c) If so ordered by the D.C. Court of Appeals pursuant to a petition to review an election, whether or not a recount has been previously conducted or requested.

816 RECOUNT PROCEDURES

816.1 The Board shall conduct recount proceedings in accordance with provisions of this section.

816.2 The validity of ballots recounted shall be determined in accordance with the provisions of this chapter.

816.3 Each candidate in a contested election petitioned to be recounted shall be permitted to have watchers in accordance with the provisions of Chapter 7 of this title.

816.4 In the event a recount is made of less than all precincts in District, the Board shall, upon the basis of that recount, preliminary determine the total number of votes received by each candidate involved in the recount by adding the votes tallied in the recount to the votes originally tallied in the precinct not recounted.

816.5 If all candidates certified by the Board as winners appear to be winners in the recount, the preliminary determination of Board shall become final.

816.6 The Board shall determine the number votes received by each candidate as a result of the recount, but shall not make a new certification of the results of the election.

817 VOTING SYSTEM STANDARDS

817.1 All voting systems offered to the Board and used in the District of Columbia by the Board shall meet or exceed the minimum requirements of the Federal Election Commission Voting System Standards. Where there is a conflict between those standards and these regulations, such voting systems must test to the higher standard.

DISTRICT OF COLUMBIA
BOARD OF ELECTIONS AND ETHICS

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The District of Columbia Board of Elections and Ethics hereby gives notice of proposed rulemaking action to adopt the following amendments to 3 DCMR Chapter 16, "Candidates: Delegate U.S. House of Representatives, Mayor, Chairman, and Members of the Council of District of Columbia, U.S. Senator, U.S. Representative, Members of the Board of Education and Advisory Neighborhood Commissions."

The proposed amendments would bring the Board's regulations with respect to Advisory Neighborhood Commissions into compliance with D.C. Law 14-43, the "Nominating Petitions Signature Amendment Act of 2001," which became effective on October 26, 2001. This law amends the D.C. Code to provide, among other things, that the signatures of non-duly registered electors will be deemed valid provided that the signatories' addresses are within the single member district for an Advisory Neighborhood Commission election and the signatories file change of address forms with the Board during the first 10 days of the petition challenge period.

To ensure that the regulations are in place in a timely fashion, it was necessary to adopt the amendments to the rules on an emergency basis at a regular Board meeting on Wednesday, May 5, 2004 so that they would become effective upon adoption.

The Board hereby gives notice of its intent to take final rulemaking action to adopt these amendments in no less than 30 days from the date of publication of this notice in the D.C. Register.

The emergency amendments to the rules will expire on Thursday, September 2, 2004 (one hundred twenty (120) days after the emergency rulemaking took effect), or upon publication of the Notice of Final Rulemaking in the D.C. Register, whichever occurs first.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments no later than thirty (30) days after the publication of this notice in the D.C. Register. Comments should be sent to Kenneth J. McGhie, General Counsel, D.C. Board of Elections and Ethics, 441 4th Street, NW, Suite 270N, Washington, DC 20001. Copies of the proposed rules may be obtained at cost from the Board at the same address between the hours of 9:00 a.m. and 4:45 p.m.

Amend Chapter 16, "Candidates: Delegate U.S. House of Representatives, Mayor, Chairman, and Members of the Council of District of Columbia, U.S. Senator, U.S. Representative, Members of the Board of Education and Advisory Neighborhood Commissions," as follows:

1) By amending Subsection 1607.8 to read as follows:

"1607.8 An address on a petition which is different than the address which appears on the Board's records shall be deemed valid if the

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signer's current address is within the single member district for an Advisory Neighborhood Commission election, within the school district for a district wide school board election, within the ward for a ward-wide election, or within the District of Columbia for an at-large election, and the signer files a change of address form with the Board during the first 10 days of the period designated for resolving challenges to petitions."