

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS AND ETHICS**

NOTICE OF PROPOSED RULEMAKING

The District of Columbia Board of Elections and Ethics pursuant to the authority set forth in D.C. Code §1-1001.05 (a) (14) hereby gives notice of proposed rulemaking action to adopt the following amendments to 3 DCMR Chapter 4, "Hearings"; 3 DCMR Chapter 5, "Voter Registration"; and 3 DCMR Chapter 6, "Eligibility of Candidates".

The proposed amendments: 1) ensure that the Board's regulations conform to the District of Columbia Election Code of 1955, as amended, and other federal and local rules and regulations in force and in practice in the District of Columbia; 2) reflect Board policy that Board minutes will be available on the Board's website; 3) correct technical and typographical errors.

The Board gives notice of its intent to take final rulemaking action to adopt these amendments in not less than 30 days from the date of publication of this notice in the D.C. Register.

Section 402 of Chapter 4 of 3 DCMR, "Hearings," shall be amended as follows:

- 1) By deleting the phrase "include the following" in subsection 402.2
- 2) By striking the word "Time" in paragraph 402.2(a) and inserting the phrase "Provide the time" in its place;
- 3) By striking the phrase "References to" in paragraph 402.2(b) and inserting the word "Reference" in its place;
- 4) By striking the phrase "The purpose" in paragraph 402.2(c) and inserting the phrase "State the purpose" in its place;
- 5) By striking the phrase "Advise to" in paragraph 402.2(d) and inserting the word "Advise" in its place; and
- 6) By striking the phrase "Advise to parties" in paragraph 402.2(e) and inserting the phrase "Advise the party or parties" in its place.

Section 405 of Chapter 4 of 3 DCMR, "Hearings," shall be amended as follows:

- 1) By inserting the phrase "and the minutes available on the Board's website" after the word "Counsel" and before the word "." in subsection 405.5.

Section 406 of Chapter 4 of 3 DCMR, "Hearings," shall be amended as follows:

- 1) By striking the phrase "except that a meeting to consider personnel matters, litigation, or other matters that are privileged or sensitive and are not required to be open by applicable law may be closed at the discretion of the Board." in subsection 406.1 and inserting the phrase "with the exception of executive sessions, as that term is defined and explained in Section 103 in Chapter 1 of this title." in its place;

- 2) By striking the phrase “or the schedule for each hearing shall be posted in the office of the Board and available to the public at least twenty-four (24) hours prior to a meeting or hearing” in subsection 406.2 and inserting the phrase “and the minutes from the previous regular Board meeting shall be posted in the office of the Board and on its website at least twenty-four (24) hours prior to a regular Board meeting” in its place; and
- 3) By inserting the phrase “and the minutes from the previous regular Board meeting” after the word “agenda” and before the word “shall” in subsection 406.3.

Section 428 of Chapter 4 of 3 DCMR, “Hearings,” shall be amended as follows:

- 1) By striking the number “431” in subsection 428.9 and inserting the number “432” in its place.

Section 500 of Chapter 5 of 3 DCMR, “Voter Registration,” shall be amended as follows:

- 1) By striking the phrase “Federal Election Commission” in subsection 500.1 and inserting the phrase “Election Assistance Commission” in its place; and
- 2) By adding two new subsections 500.13 and 500.14 to read as follows:

“500.13 An elector may vote in the primary election of a political party only if he or she is a duly registered voter whose voter registration application indicates an affiliation with the party holding the primary election.

500.14 A person who is otherwise qualified to vote may pre-register on or after his or her 17th birthday and may vote in any election occurring on or after his or her 18th birthday.”

Section 503 of Chapter 5 of 3 DCMR, “Voter Registration,” shall be amended as follows:

- 1) By inserting the phrase “, pursuant to the Uniformed and Overseas Citizens Absentee Voting Act of 1986,” after the word “may” and before the word “obtain” in subsection 503.1;
- 3) By striking the phrase “Federal Government Post Card Application” in subsection 503.1 and inserting the phrase “Federal Post Card Application” in its place;
- 4) By inserting the word “or” after the word “;” in paragraph 503.2 (b);
- 5) By striking the phrase “; or” in paragraph 503.2 (c) and inserting the word “.” in its place; and
- 6) By deleting paragraph 503.2(d) in its entirety.

Section 507 of Chapter 5 of 3 DCMR, “Voter Registration,” shall be amended as follows:

- 1) By deleting the phrase “Bureau of Motor Vehicle Services” in the title of subsection 507 and replacing it with the phrase “Department of Motor

- Vehicles”;
- 2) By deleting the phrase “Bureau of Motor Vehicle Services (BMVS)” in subsection 507.1 and inserting the phrase “Department of Motor Vehicles (DMV)” in its place;
 - 3) By deleting the word “original” in subsection 507.4;
 - 4) By deleting the phrase “Bureau of Motor Vehicle Services (BMVS)” in subsection 507.6 and inserting the phrase “DMV” in its place;
 - 5) By deleting the phrase “Bureau of Motor Vehicle Services (BMVS)” in subsection 507.7 and inserting the phrase “DMV” in its place;
 - 6) By deleting the phrase “Bureau of Motor Vehicle Services (BMVS)”;
 - 7) By deleting the phrase “voter registration form” in subsection 507.8 and inserting the phrase “request for voter registration or notice of change of a name, address, or party” in its place;
 - 8) By deleting the phrase “Chief Administrative Officer of the Bureau of Motor Vehicle Services (BMVS)” in subsection 507.9 and inserting the phrase “Director of the DMV” in its place; and
 - 9) By deleting the phrase “and of the National Voter Registration Act Conforming Amendment Act of 1994” in subsection 507.9 and inserting the phrase “, the National Voter Registration Act Conforming Amendment Act of 1994, and the Help America Vote Act of 2002” in its place.

Section 508 of Chapter 5 of 3 DCMR, “Voter Registration,” shall be amended as follows:

- 1) Inserting the phrase “Parks and” after the word “of” and before the word “Recreation”.

Section 509 of Chapter 5 of 3 DCMR, “Voter Registration,” shall be amended as follows:

- 1) By deleting the phrase “Bureau of Motor Vehicle Services” in subsection 509.9 and inserting the phrase “DMV” in its place.

Section 510 of Chapter 5 of 3 DCMR, “Voter Registration,” shall be amended as follows:

- 1) By deleting the phrase “Bureau of Motor Vehicle Services” in subsection 510.6 and inserting the phrase “DMV” in its place.

Section 513 of Chapter 5 of 3 DCMR, “Voter Registration,” shall be amended as follows:

- 1) By deleting the phrase “Bureau of Motor Vehicle Services” in paragraph 513.1 (c) and inserting the phrase “DMV” in its place.

Section 514 of Chapter 5 of 3 DCMR, “Voter Registration,” shall be amended as follows:

- 1) By deleting the phrase “Bureau of Motor Vehicle Services” in paragraph 514.1 (c) and inserting the phrase “DMV” in its place.

Section 516 of Chapter 5 of 3 DCMR, "Voter Registration," shall be amended as follows:

- 1) By deleting the phrase "Bureau of Motor Vehicle Services" in subsection 516.1 and inserting the phrase "DMV" in its place; and
- 2) By adding a new subsection 516.7 to read as follows:

"516.7 The Board's Executive Director may enter into agreements with other Chief State Election Officials for the purpose of verifying information on its statewide voter registration list to ensure the accuracy of the District's voter registry."

Section 604 of Chapter 6 of 3 DCMR, "Eligibility of Candidates," shall be amended as follows:

- 1) By deleting the phrase "not later than twenty-four hours (24 hrs.) following receipt of notice of the election results" in subsection 604.3 and inserting the phrase "not later than 4:45 p.m. on the third (3rd) day immediately following the election" in its place; and
- 2) By deleting the phrase "not later than five (5) days following receipt of notice of election results" in subsection 604.4 and inserting the phrase "not later than 4:45 p.m. on the seventh (7th) day immediately following the election" in its place.

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.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PROPOSED RULEMAKING**

ZC Case No. 09-01

(Text Amendment – 11 DCMR)

**(Text Amendments to Permit Time Extensions for Board of Zoning Adjustment Orders,
to Clarify Procedures for Modification of Approved Plans,
and to Set Filing Fees for Such Requests)**

The Zoning Commission for the District of Columbia, pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, D.C. Official Code 2001 § 6-641.01, hereby gives notice of its intent to amend §§ 3129, 3130, and 3180 of the Zoning Regulations (Title 11 DCMR). Section 3129 currently authorizes the Board of Zoning Adjustment (“BZA”) to consider minor modifications to plans if filed within six (6) months of an issued BZA order. The proposed amendment to that provision would make the time to request minor modifications to approved plans the same as the two year period allowed to file plans for a building permit with the Department of Consumer and Regulatory Affairs. The proposed amendment to § 3130 would codify the Board’s inherent authority to grant a time extension to allow more time to file such plans and establish the standards to be utilized. The proposed amendment to § 3180 sets the filing fee for time extension requests.

Final rulemaking action shall be taken in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The proposed amendments to the Zoning Regulations are as follows, with addition to existing provisions shown in **bold and underlined** text, and deletions to existing provisions shown in ~~strikethrough~~ text:

11 DCMR CHAPTER 31, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE, is amended as follows:

1. By amending § 3129, MODIFICATION OF APPROVED PLANS, to read as follows:

3129 MODIFICATION OF APPROVED PLANS.

3129.1 This section applies to all appeals and applications filed with the Board under this chapter; provided, however, this section only applies to chancery applications to the extent specified in § 3134.

3129.2 The Board shall consider requests to approve **minor** modifications to plans approved by the Board, as set forth in §§ 3125.7 and 3125.8. The request shall be in writing, shall state specifically the modifications requested and the reasons therefore and include a copy of the plans for which approval is now requested.

3129.3 A request for **minor** modification of plans shall be filed with the Board not later than ~~six months~~ **two (2) years** after the date of the final order approving the application.

Z.C. NOTICE OF PROPOSED RULEMAKING
Z.C. CASE NO. 09-01
PAGE 2

3129.4 All requests for **minor** modifications of plans shall be served on all other parties to the original application at the same time as the request is filed with the Board. A party shall have ten (10) days within which to submit written comments that such party may have concerning the requested modification.

3129.5 A decision on a request for **minor** modification of plans shall be made by the Board on the basis of the written request, the plans submitted therewith, and any responses thereto from other parties to the original application.

~~3129.6 No member shall vote on a request for modification of plans unless the member participated in and voted on the original decision or read the record.~~

~~3129.7 Approval of requests for modification of approved plans shall be limited to minor modifications that do not change the material facts the Board relied upon in approving the application.~~

3129.6 Approval of requests for modification of approved plans shall be limited to minor modifications that do not change the material facts upon which the Board based its original approval of the application.

3129.7 A request to modify other aspects of a Board order may be made at anytime, but shall require a hearing.

3129.8 The scope of a hearing conducted pursuant to § 3129.7 shall be limited to impact of the modification on the subject of the original application, and shall not permit the Board to revisit its original decision.

2. By amending § 3130, TIME LIMITS ON BOARD ACTION, as follows:

(a) By amending § 3130.1 to read as follows:

3130.1 No order of the Board authorizing the erection or alteration of a structure shall be valid for a period longer than two (2) years, or one (1) year for an Electronic Equipment Facility, unless, within such period, the plans for the erection or alteration are filed for the purposes of securing a building permit, **except as permitted in § 3130.6.**

(b) By adding new §§ 3130.6 through 3130.10 to read as follows:

3130.6 The Board may grant one extension of the time periods in §§ 3130.1 for good cause shown upon the filing of a written request by the applicant

Z.C. NOTICE OF PROPOSED RULEMAKING
Z.C. CASE NO. 09-01
PAGE 3

before the expiration of the approval; provided, that the Board determines that the following requirements are met:

- (a) The extension request is served on all parties to the application by the applicant, and all parties are allowed thirty (30) days to respond;
- (b) There is no substantial change in any of the material facts upon which the Board based its original approval of the application that would undermine the Board's justification for approving the original application; and
- (c) The applicant demonstrates that there is good cause for such extension, with substantial evidence of one or more of the following criteria:
 - (1) An inability to obtain sufficient project financing due to economic and market conditions beyond the applicant's reasonable control;
 - (2) An inability to secure all required governmental agency approvals by the expiration date of the Board's order because of delays that are beyond the applicant's reasonable control; or
 - (3) The existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control.

3130.7 A time extension granted pursuant to § 3130.6 shall not exceed two (2) years, or one (1) year for an Electronic Equipment Facility.

3130.8 The Board's decision on the request shall be in writing and shall become final and effective upon its filing in the record and service upon the parties.

3130.9 A request for a time extension filed at least thirty (30) days prior to the date upon which an order is due to expire shall toll the expiration date for the sole purpose of allowing the Board to consider the request.

3130.10 If the request is not decided prior to an order's expiration date, no application for a building permit may be filed pursuant to the order

Z.C. NOTICE OF PROPOSED RULEMAKING
Z.C. CASE NO. 09-01
PAGE 4

unless and until a decision granting the request becomes final and effective pursuant to § 3130.8.

3. By amending § 3180, SCHEDULE OF FEES, paragraph 3180.1 (f), read as follows:

- (f) For **a time extension**, a **minor** modification of plans or a modification of conditions of an order of the Board for **an** owner-occupied one-family dwelling, or flat, one hundred dollars (\$100); for all other applicants, twenty percent (20%) of the original filing fee.

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the D.C. Register. Comments should be filed with Sharon S. Schellin, Secretary to the Zoning Commission, Office of Zoning, 441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.