

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

NOTICE OF FINAL 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 final rulemaking action to adopt the following amendments to 3 DCMR Chapter 1, "Organization of the Board of Elections and Ethics." The Board took final rulemaking action with respect to these amendments at a regular meeting on Wednesday, April 7, 2010.

These amendments represent changes to the Board's regulations as a result of the "Omnibus Election Reform Amendment Act of 2009," effective February 4, 2010 (D.C. Act 18-238, 56 D.C. Reg. 9169 (Dec. 4, 2009)). These amendments: (1) clarify the Board's regular meeting schedule and its ability to reschedule meetings, take administrative action, and call special meetings; (2) establish requirements for posting of meeting minutes and transcripts on the Board's website; (3) clarify the degree of public notice required for Board meetings; and (4) clarify the matters which the Board may discuss in executive session.

A Notice of Proposed Rulemaking with respect to these amendments was published in the D.C. Register on February 12, 2010 at 57 D.C. Reg. 1312. Comments on these proposed rules were received and considered prior to finalizing the regulations. No changes have been made to the substance of the proposed regulations. These final rules will be effective upon publication of this notice in the D.C. Register.

Section 102 of Chapter 1 of 3 DCMR, "Organization of the Board of Elections and Ethics," shall be amended to read as follows:

- "102 ORGANIZATION OF THE BOARD OF ELECTIONS AND ETHICS
- 102.1 Except as provided otherwise by statute, a quorum of the Board shall consist of no less than two (2) members of the Board and shall be necessary to conduct official Board business.
- 102.2 At the beginning of each calendar year, a preliminary schedule of regular meetings for the year, which the Board has discretion to change, will be published in the D.C. Register.
- 102.3 The Board may hold a pre-meeting immediately prior to commencing a regular meeting for the sole purpose of administrative action, which does not include the deliberation or taking of official action.
- 102.4 Regularly scheduled Board meetings shall be held on the first Wednesday of each month, or at least once each month, at a time to be determined by the Board. Additional meetings may be called as needed by the Board.

- 102.5 Notice of all regular and additional meetings of the Board will be published on the Board's web site at least forty-eight (48) hours in advance, except in the case of emergency.
- 102.6 The Board may exercise its discretion and reschedule a regular meeting or call special meetings when necessary with reasonable notice to the public.
- 102.7 The Board encourages comments on any issue under the jurisdiction of the Board at its regular meetings and will provide the public with a reasonable opportunity to appear before the Board and offer such comments.
- 102.8 To ensure the orderly conduct of public Board meetings, public comments may be limited with respect to the number of speakers permitted and the amount of time allotted to each speaker; however, the Board will not discriminate against any speaker on the basis of his or her position on a particular matter.
- 102.9 Any member of the public who intends to comment regarding any agenda item or any issue under the jurisdiction of the Board is encouraged to notify the Board in advance of his or her intent to do so, providing his or her name and the topic on which he or she wishes to speak. Such notification may be provided by e-mail to ogc@dcboee.org, by fax to (202) 741-8774, by telephone at (202) 727-2194, or by mail or in person at the Board's office. No person shall be prevented from speaking at a Board meeting simply because he or she has not provided advance notice of his or her intent to do so.
- 102.10 Members of the public who wish to submit items for consideration by the Board shall do so in writing one (1) week in advance. Failure to submit an item in advance as required may, within the Board's discretion, result in the matter being continued until the next regularly scheduled meeting.
- 102.11 The Chairperson shall conduct the meetings of the Board. In the absence of the Chairperson, the senior member of the Board shall conduct the meeting.
- 102.12 Each meeting shall begin with the adoption of the agenda, followed by the adoption of any outstanding minutes of previously conducted Board meetings.

- 102.13 The Executive Director, General Counsel, and Director of Campaign Finance shall each present a report of the activities of their respective units and such other reports as may be requested by the Board.
- 102.14 Each Board member may properly make any and all motions.
- 102.15 All meetings of the Board, with the exception of meetings for the purpose of taking administrative action and executive sessions (as that term is defined in section 103 of this chapter), shall be open to the public.
- 102.16 The proposed agenda for each Board meeting shall be posted and made available for public inspection in the Board's office and on its website at least twenty-four (24) hours prior to a meeting.
- 102.17 Copies of the agenda shall be available to the public at the meeting.
- 102.18 Nothing in this section shall preclude the Board from amending the agenda at the meeting.
- 102.19 The Board shall keep the minutes of each meeting of the Board, except executive sessions and meetings for the purpose of taking administrative action, and shall make the minutes available for public inspection. The Board shall post the minutes on the Board's website prior to the next regular meeting.
- 102.20 The Board shall make transcripts of its public meetings and post unofficial transcripts on its website when they become available.
- 102.21 Meetings shall be held at the time and place the Board or the Chairman designates.
- 102.22 Meetings may be adjourned from time-to-time.
- 102.23 If the time and place of resumption is publicly announced when the adjournment is ordered, no further notice shall be required.
- 102.24 Any individual who is deemed by the Board Chairman to be disruptive to the meeting may be removed therefrom."

Section 103 of Chapter 1 of 3 DCMR, "Executive Sessions," shall be amended to read as follows:

"103 EXECUTIVE SESSIONS

- 103.1 For the purposes of this chapter, the term "executive session" means a Board meeting where the public, employees of the Board, or any other persons may be excluded.

103.2 The Board may enter into executive session, and discuss any matter upon which it will not vote, make resolutions or rulings, or take action of any kind, including the following:

- (a) Personnel matters, including the recruitment, appointment, employment, assignment, promotion, discipline, compensation, removal, or resignation of employees, or other individuals over whom it has jurisdiction;
- (b) Employee disciplinary actions;
- (c) General Counsel briefings on litigation strategy;
- (d) Confidential proceedings under the Campaign Finance Act;
- (e) Quasi-judicial deliberations;
- (f) Matters which would result in the disclosure of information specifically exempted from disclosure by statute;
- (g) Matters which would result in the disclosure of trade secrets and commercial or financial information;
- (h) Matters which would involve a clear and unwarranted invasion of privacy, an accusation of a crime, or formal censure; and
- (i) Matters which would result in the disclosure investigatory records compiled for law enforcement purposes.”

**DISTRICT OF COLUMBIA
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NOTICE OF FINAL 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 final rulemaking action to adopt the following amendments to 3 DCMR Chapter 5, "Voter Registration." The Board took final rulemaking action with respect to these amendments at a regular meeting on Wednesday, April 7, 2010.

These amendments represent changes to the Board's regulations as a result of the "Omnibus Election Reform Amendment Act of 2009," effective February 4, 2010 (D.C. Act 18-238, 56 D.C. Reg. 9169 (Dec. 4, 2009)). These amendments: (1) redefine who is a "qualified elector" and who may pre-register to vote in the District of Columbia; (2) establish regulations for voter registration during the thirty days that precede an election and voter registration at the polls; (3) clarify the voter registration by-mail process; (4) clarify the process for voter registration at the Board's Office and at a Voter Registration Agency; and (5) clarify how voters change their registration.

A Notice of Proposed Rulemaking with respect to these amendments was published in the D.C. Register on February 12, 2010 at 57 D.C. Reg. 1316. Comments on these proposed rules were received and considered prior to finalizing the regulations. Clarifying changes were made to the regulations which do not substantially alter or change the intent, meaning, or application of the proposed rules. These final rules will be effective upon publication of this notice in the D.C. Register.

Section 500 of Chapter 5 of 3 DCMR, "General Requirements and Qualifications," shall be amended to read as follows:

"500 GENERAL REQUIREMENTS AND QUALIFICATIONS

500.1 No person shall be registered to vote in the District of Columbia unless the following occurs:

- (a) He or she meets the qualifications as a qualified elector as defined by D.C. Code § 1-1001.02(2) (2006 Repl.); and
- (b) He or she executes a voter registration application by signature or mark (unless prevented by disability) on a form approved by the Board or by the Election Assistance Commission attesting that he or she meets the requirements as a qualified elector.

- 500.2 For purposes of this section, the term "qualified elector" means a person who:
- (a) Is at least seventeen (17) years of age and will be eighteen (18) on or before the next general election;
 - (b) Is a citizen of the United States;
 - (c) Is not incarcerated for a crime that is a felony in the District;
 - (d) Has maintained a residence in the District for at least thirty (30) days preceding the next election and does not claim voting residence or the right to vote in any state or territory; and
 - (e) Has not been adjudged legally incompetent to vote by a court of competent jurisdiction.
- 500.3 An applicant shall provide the following information on a voter registration application:
- (a) Applicant's complete name;
 - (b) Applicant's current residence address, which address is the applicant's fixed residence address in the District;
 - (c) Applicant's date of birth;
 - (d) Applicant's original signature; and
 - (e) Applicant's driver's license number in the case of an applicant who has been issued a current and valid driver's license, or the last 4 digits of the applicant's social security number in the case of an applicant who has not. If an applicant for voter registration has not been issued a current and valid drivers license or a social security number, the Board shall assign the applicant's unique identifier which shall serve to identify the applicant for voter registration purposes.
- 500.4 A person who is otherwise qualified to vote may pre-register on or after his or her sixteenth (16th) birthday and may vote in any election

occurring on or after his or her seventeenth (17th) birthday, provided that the person is at least eighteen years of age on or before the next general election.

- 500.5 Unless otherwise specified in §§ 509 - 513, a voter registration application, or a notice of change of name, address, or party, is considered to be received by the Board upon acknowledgement of receipt by the Board's date-stamp.
- 500.6 An applicant designating a mailing address on a voter registration application for official communications shall submit a signed statement specifying that the registration address indicated on a voter registration application constitutes the voter's fixed residence in the District.
- 500.7 The information provided to the Board by the voter, such as that voter's fixed residence, shall be sufficiently precise to enable the Board to assign to the voter, the appropriate Ward, Precinct, and Advisory Neighborhood Commission Single-Member District.
- 500.8 Any applicant who provides on a voter registration application a registration address to which mail cannot be delivered by the U.S. Postal Service shall additionally provide to the Board a designated mailing address, to facilitate the administrative communication required by law.
- 500.9 If an applicant for voter registration fails to properly complete a voter registration application, the Board's registrar shall make reasonable attempts to notify the applicant of the failure and provide the applicant with an opportunity to complete the form in a timely manner to allow for the completion of the registration application prior to the next election.
- 500.10 Any applicant utilizing these procedures to fraudulently attempt to register shall be subject to the same criminal sanctions pursuant to D.C. Code § 1-1001.14 (a) (2006 Repl.).
- 500.11 The terms "registered qualified elector," "qualified registered elector," and "duly registered voter" mean a registered voter who resides at the address listed on the Board's records.
- 500.12 An elector may vote in the primary election of a political party if he or she:
- (a) Is a duly registered voter whose voter registration application indicates an affiliation with the party holding the primary election; and

(b) Has not changed his or her party affiliation during the thirty (30) days preceding a primary election.”

Section 501 of Chapter 5 of 3 DCMR, “Federal Applicants: Domestic,” shall be amended to read as follows:

“501 QUALIFIED FEDERAL ELECTORS

- 501.1 A person who is absent from the District shall qualify as a federal elector, to vote in federal elections conducted in the District of Columbia, under the provisions of the Voting Rights Act of 1965, as set forth in § 501.2.
- 501.2 For purposes of this section, a "qualified federal elector" is a citizen of the United States residing outside of the District of Columbia who meets the following requirements:
- (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 residency requirements of that state or territory;
 - (b) Is at least seventeen (17) years of age and will be eighteen (18) years of age on or before the next general election;
 - (c) Has not been adjudged legally incompetent to vote;
- and
- (d) Is not incarcerated for conviction of a felony in the District.”

Section 502 of Chapter 5 of 3 DCMR, “Federal Applicants: Overseas,” shall be amended to read as follows:

“502 QUALIFIED OVERSEAS ELECTORS

- 502.1 A person who is outside of the United States shall qualify as an overseas elector under the provisions of the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”), to vote in federal elections conducted in the District of Columbia, as set forth in § 502.2.

502.2 For the purposes of this section, a "qualified overseas elector" is a citizen of the United States residing outside of the United States who meets the following requirements:

(a) Is an "overseas voter," as defined in UOCAVA, because he or she is:

(1) A member of the Armed Forces while in active service or a spouse or dependent of a member;

(2) A member of the Merchant Marine or a spouse or dependent of a member; or

(3) A citizen of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia or a spouse or dependent who resides with or accompanies the citizen.

(b) Resided or was domiciled in the District of Columbia immediately prior to departure from the United States and does not claim voting residence or the right to vote in any other state or territory, although he or she may not now qualify as a resident of the District of Columbia;

(c) Is at least seventeen (17) years of age and will be eighteen (18) years of age on or before the next general election;

(d) Has not been adjudged legally incompetent to vote by a court of competent jurisdiction; and

(e) Is not incarcerated for conviction of a felony in the District."

Section 503 of Chapter 5 of 3 DCMR, "Federal Applicants: General," shall be amended to read as follows:

"503 GENERAL OFFICE HOURS

- 503.1 A qualified elector may appear in person at the office of the Board to complete and sign a Voter Registration Application between the hours of 8:30 a.m. and 4:45 p.m., Monday through Friday.
- 503.2 The Executive Director, or his or her designee, may expand the weekly hours, and may specify other days on which the Board may accept voter registration applications, based on the level of registration activity.”

Section 504 of Chapter 5 of 3 DCMR, “General Office Hours,” shall be amended to read as follows:

“504 VOTER REGISTRATION FOR PEOPLE WITH DISABILITIES

- 504.1 An applicant for voter registration who is unable to sign or to make a mark on a voter registration application, due to a disability, may apply with the assistance of another person; provided, that the voter registration application is accompanied with a signed affidavit from the person assisting the applicant which states the following:
- (a) That he or she has provided assistance to the applicant;
 - (b) That the applicant is unable to sign the registration form or to make a mark in the space provided for his or her signature;
 - (c) That he or she has read or explained the information contained in the application and the voter declaration to the applicant, if the applicant cannot read the information; and
 - (d) That he or she has read or explained the penalties for providing false information on the registration application, if the applicant cannot read the information.
- 504.2 If the applicant is unable to sign his or her name, the applicant may place his or her mark in the space provided for his or her signature and have that mark witnessed by the person assisting by having the witness also sign the voter registration application.”

Section 505 of Chapter 5 of 3 DCMR, “Handicapped and Shut-In Voter Registration,” shall be amended to read as follows:

- “505 VOTER REGISTRATION APPLICATION DISTRIBUTION AGENCIES
- 505.1 A qualified elector may obtain a Voter Registration Application from a voter registration application distribution agency.
- 505.2 A voter registration application distribution agency is an agency of the District of Columbia government in whose office(s) Voter Registration Applications are made available for general distribution to the public.
- 505.3 Voter registration application distribution agencies shall include the District of Columbia Public Library, the D.C. Fire and Emergency Medical Services Department, the Metropolitan Police Department, and any other executive agency the Mayor shall designate in writing.
- 505.4 Each voter registration application distribution agency shall request and the Board shall provide sufficient quantities of Voter Registration Applications for distribution to the public.
- 505.5 The Voter Registration Applications shall be placed in each office or substation of the agency in an accessible location in clear view.
- 505.6 Nothing in this subsection shall be deemed to require or permit employees of a voter registration application distribution agency to accept completed voter registration applications for delivery to the Board or to provide assistance in completing any voter registration applications.”

Section 506 of Chapter 5 of 3 DCMR, “Voter Registration Application Distribution Agencies,” shall be amended to read as follows:

- “506 VOTER REGISTRATION AGENCIES
- 506.1 Designated voter registration agencies in the District of Columbia are:
- (a) Department of Motor Vehicles;
 - (b) Department of Corrections;
 - (c) Department of Youth and Rehabilitative Services;
 - (d) Office of Aging;
 - (e) Department of Parks and Recreation; and

(f) Department of Human Services.

506.2 The Mayor of the District of Columbia may designate any other executive branch agency of the District of Columbia government as a voter registration agency by filing written notice of the designation with the Board.”

Section 507 of Chapter 5 of 3 DCMR, “Registration Through the Department of Motor Vehicles,” shall be amended to read as follows:

“507 REGISTRATION THROUGH VOTER REGISTRATION AGENCIES

507.1 Each voter registration agency shall do the following:

- (a) Distribute a voter registration application with each application for service or assistance, and with each recertification, renewal, or change of address form relating to such service or assistance, unless the applicant, in writing, declines to register to vote;
- (b) Provide to each applicant for service or assistance, recertification or renewal, or change of address, information regarding voter registration, pursuant to D.C. Code § 1- 1001.07(d) (3) (2006 Repl.);
- (c) Provide to each applicant who does not decline to register to vote the same degree of assistance with regard to the completion of the registration application form as provided by the office with regard to the completion of its own form, unless the applicant refuses such assistance;
- (d) Indicate on each form, in a consistent manner, the date of acceptance by the voter registration agency; and
- (e) Accept completed voter registration applications and forward the applications to the Board of Elections and Ethics not later than ten (10) days after its acceptance by the agency, except that if a voter registration application is accepted at a voter registration office within five (5) days before the deadline for voter registration-by-mail in any election, the application shall be transmitted by the

agency to the Board not later than five (5) days after the date of acceptance.

- 507.2 If a voter registration agency provides services to a person with a disability at the person's home, the agency shall provide the services required in § 507.1 at the person's home.
- 507.3 The voter registration application provided by each voter registration agency must be approved by the Board.
- 507.4 Each voter registration application shall be considered as updating any previous voter registration by an applicant who is already listed as a registered voter, or whose name appears on the inactive list of registered voters.
- 507.5 If the applicant declines to register to vote, the declination shall be in duplicate as follows:
- (a) The original copy of the declination is provided by the agency to the applicant; and
 - (b) The duplicate copy of the declination is retained by the voter registration agency.
- 507.6 The duplicate copy of the declination shall be retained by the voter registration agency for a period of at least twenty-two (22) months.
- 507.7 The Board shall ensure that the identity of the voter registration agency through which any particular individual is registered to vote is not disclosed to the public.
- 507.8 The chief officer of each voter registration agency shall do the following:
- (a) Ensure that each agency office, site, or substation contains an adequate number of voter registration applications and relative materials necessary to carry out the requirements of D.C. Code § 1-1001.07(d) (2006 Repl.);
 - (b) Ensure that each agency office, site, or substation conforms to the requirements of D.C. Code § 1-1001.07(d) (2006 Repl.);
 - (c) Ensure that each employee at each agency office, site, or substation is adequately trained to carry out

the requirements of D.C. Code § 1-1001.07(d) (2006 Repl.);

- (d) Ensure that voter registration applications are transmitted timely to the Board of Elections, pursuant to D.C. Code § 1-1001.07(d)(8) (2006 Repl.), or if no voter registration applications are received during that time period, provide written notice of such to the Board of Elections;
- (e) Report, at the request of the chief administrative officer of the Board, the number of citizens at each site who decline to register to vote pursuant to D.C. Code § 1-1001.07(d) (2006 Repl.); and
- (f) Submit in writing and answer any questions as the chief administrative officer of the Board of Elections or the Board may prescribe that relate to the administration and enforcement of the National Voter Registration Act of 1993 and of the National Voter Registration Act Conforming Amendment Act of 1994.

Section 508 of Chapter 5 of 3 DCMR, "Voter Registration Agencies," shall be amended to read as follows:

- “508 REGISTRATION THROUGH THE DEPARTMENT OF MOTOR VEHICLES
- 508.1 The Department of Motor Vehicles (DMV) and the Board of Elections and Ethics shall jointly develop a voter registration application that shall allow an applicant who wishes to register to vote to do so by the use of a single form that contains the necessary information required for the issuance, renewal, or correction of the applicant’s driver’s permit or non-driver’s identification card in any motor vehicle services office.
- 508.2 Completion of the voter registration portion of the application form shall not be a requirement of an individual’s application for a driver’s permit or non-driver’s identification card.
- 508.3 Each application form shall automatically serve as an application to register to vote in the District of Columbia, unless the applicant fails to sign the voter registration portion of the form.

- 508.4 A voter registration application shall not be accepted by the Board unless it contains the signature of the applicant.
- 508.5 Each voter registration application shall be considered as updating any previous voter registration by an applicant who is already listed as a registered voter, or whose name appears on the inactive list of registered voters, unless a voter indicates that a change of address is not for voter registration purposes.
- 508.6 Upon the receipt of a voter registration application or a notice of change of address, the DMV shall in a consistent manner indicate the date of its receipt on the portion of the form used by the Board for voter registration and registration update purposes.
- 508.7 A voter registration application or to update information on an existing voter registration shall be considered received by the Board on the date that it was accepted by the DMV.
- 508.8 The DMV shall transmit each completed voter registration application or notice of change of a name, address, or party not later than ten (10) days after the date of acceptance by the DMV, except that if a voter registration application is accepted within five (5) days before the last day for registration-by-mail, the application shall be transmitted to the Board not later than five (5) days after the date of its acceptance.
- 508.9 The Director of the DMV shall do the following:
- (a) Ensure that each agency site is supplied with an adequate number of combined Motor Vehicles/voter registration applications; and
 - (b) Submit in writing and answer any questions as the chief administrative officer of the Board of Elections or the Board may prescribe that relate to the administration and enforcement of the National Voter Registration Act of 1993, the National Voter Registration Act Conforming Amendment Act of 1994, and the Help America Vote Act of 2002.

Section 509 of Chapter 5 of 3 DCMR, "Registration Through Voter Registration Agencies," shall be amended to read as follows:

- "509 VOTER REGISTRATION PROCESSING: BY MAIL
- 509.1 Prior to the thirtieth (30th) day preceding an election, a qualified elector (pursuant to § 500.2), or a person who is qualified to pre-register

(pursuant to D.C. Code § 1-1001.07 (a-2)), may register to vote, or change his or her name, address, or party preference by mailing a complete voter registration application to the Board.

- 509.2 If the registration by-mail deadline falls on a Saturday, Sunday, or holiday, the deadline shall be extended to the next business day.
- 509.3 The Board shall process mailed voter registration applications and registration update notifications received postmarked by not later than the thirtieth (30th) day preceding any election.
- 509.4 Mailed voter registration applications and update notifications considered received during the thirty (30) days that immediately precede and include the date of the election shall be held and processed after the election.
- 509.5 The Board shall process timely completed non-postmarked voter registration applications and registration update notifications mailed and received not later than the twenty-third (23rd) day preceding any election.
- 509.6 A voter registration application, or a notice of change of name, address, or party, which is delivered by mail and postmarked by the United States Postal Service is considered received by the Board on the date of the postmark.
- 509.7 A voter registration application, or a notice of change of name, address, or party, delivered without a postmark by common carrier will be considered received by the Board on the parcel's shipping date.
- 509.8 A voter registration application, or a notice of change of name, address, or party, delivered without a postmark is considered to be received by the Board upon acknowledgement of receipt by an agency date-stamp.
- 509.9 The Board will take steps to reasonably investigate the timely completion of non-postmarked voter registration applications, or notices of change of name, address, or party, by checking tracking numbers, or any other information available.
- 509.10 Individuals who have not previously voted in a federal election in the District and who register to vote by mail shall present, either at the time of registration, at the polling place, or when voting by mail, either a copy of a current and valid government photo identification, a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.

509.11 Subsection 509.10 shall not apply to:

- (a) Individuals whose registration application includes either a driver's license number or at least the last 4 digits of his or her social security number and with respect to whom the Board has been able to match the provided information with an existing identification record bearing the same number, name and date of birth as provided in such registration application; and
- (b) Individuals entitled to vote otherwise than in person under Federal law."

Section 510 of Chapter 5 of 3 DCMR, "Voter Registration Processing," shall be amended to read as follows:

"510 VOTER REGISTRATION PROCESSING: IN-PERSON AT BOARD OF ELECTIONS

510.1 Prior to the thirtieth (30th) day preceding an election, a qualified elector (pursuant to § 500.2), or a person who is qualified to pre-register (pursuant to D.C. Code § 1-1001.07 (a-2)), may, at the Board's office:

- (a) Submit a voter registration application; or
- (b) Submit a notice of a change of name, address, or party.

510.2 On or after the thirtieth (30th) day preceding an election, a qualified elector may, at the Board's office:

- (a) Submit a voter registration application; or
- (b) Submit a notice of change of name or address.

510.3 On or after the thirtieth (30th) day preceding a primary election, a qualified elector shall not change his or her party affiliation. Requests for change of party affiliation received during the thirty (30) days that precede a primary election shall be held and processed after the election.

510.4 Individuals who have not previously voted in a federal election in the District and who register to vote by mail shall present, either at the time of registration, at the polling place, or when voting by mail, either a copy of a current and valid government photo identification, a

copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.

510.5 Subsection 510.4 shall not apply to:

- (a) Individuals whose registration application includes either a driver's license number or at least the last 4 digits of his or her social security number and with respect to whom the Board has been able to match the provided information with an existing identification record bearing the same number, name and date of birth as provided in such registration application; and
- (b) Individuals entitled to vote otherwise than in person under Federal law."

Section 511 of Chapter 5 of 3 DCMR, "Processing of New Voter Registrations," shall be amended to read as follows:

- "511 VOTER REGISTRATION PROCESSING: IN-PERSON AT A VOTER REGISTRATION AGENCY (VRA)
- 511.1 Prior to the thirtieth (30th) day preceding an election, a qualified elector or any individual who will be a qualified elector at the time of the next election may register to vote, or change his or her name, address, or party preference by completing a designated form at a voter registration agency (VRA).
 - 511.2 If the thirtieth (30th) day preceding an election falls on a Saturday, Sunday, or holiday, the deadline shall be extended to the next business day.
 - 511.3 On or after the thirtieth (30th) day preceding an election, a qualified elector may not register to vote, or change his or her name, address, or party preference at a VRA.
 - 511.4 Voter registration applications and update notifications considered received from a VRA during the thirty (30) days that immediately precede and include the date of the election shall be held and processed after the election.
 - 511.5 A voter registration application or a notice of a change of name, address, or party, which is filed at a VRA is considered to be received by the Board on the date that it is filed at the voter registration agency.

- 511.6 Individuals who have not previously voted in a federal election in the District and who register to vote by mail shall present, either at the time of registration, at the polling place, or when voting by mail, either a copy of a current and valid government photo identification, a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.
- 511.7 Subsection 511.6 shall not apply to:
- (a) Individuals whose registration application includes either a driver's license number or at least the last 4 digits of his or her social security number and with respect to whom the Board has been able to match the provided information with an existing identification record bearing the same number, name and date of birth as provided in such registration application; and
 - (b) Individuals entitled to vote otherwise than in person under Federal law."

Section 512 of Chapter 5 of 3 DCMR, "Changes in Registration: Name," shall be amended to read as follows:

- "512 VOTER REGISTRATION PROCESSING: FEDERAL POST CARD APPLICATIONS FOR QUALIFIED OVERSEAS ELECTORS
- 512.1 A qualified overseas elector, as defined by 502.2, who is absent from the District may, pursuant to the Uniformed and Overseas Citizens Absentee Voting Act, obtain from the Board or the federal government a Federal Post Card Application ("FPCA") for:
- (a) Simultaneous voter registration and request for an absentee ballot;
 - (b) A request for an absentee ballot; or
 - (c) Simultaneous registration update notification (changes in name, address, or party preference) and a request for an absentee ballot.
- 512.2 Nothing shall prohibit a qualified overseas elector from registering to vote or updating his or her registration by using the Board's Voter Registration Application pursuant to § 509, or any other voter registration application, and requesting an absentee ballot pursuant to § 717.

- 512.3 The Board shall process FPCAs from persons eligible to vote absentee in federal election in the District pursuant to the Uniformed and Overseas Citizens Absentee Voting Act provided such FPCAs are faxed or mailed prior to the thirtieth (30th) day preceding an election.
- 512.4 The Board shall process mailed FPCAs received postmarked by not later than the thirtieth (30th) day preceding any election.
- 512.5 The Board shall process timely completed non-postmarked FPCAs mailed and received not later than the twenty-third (23rd) day preceding any election.
- 512.6 An FPCA which is delivered by mail and postmarked by the United States Postal Service is considered received by the Board on the date of the postmark.
- 512.7 An FPCA delivered without a postmark by common carrier will be considered received by the Board on the parcel's shipping date.
- 512.8 An FPCA delivered without a postmark is considered to be received by the Board upon acknowledgement of receipt by an agency date-stamp.
- 512.9 The Board will take steps to reasonably investigate the timely completion of non-postmarked FPCAs by checking tracking numbers, or any other information available."

Section 513 of Chapter 5 of 3 DCMR, "Changes in Registration: Address," shall be amended to read as follows:

- "513 VOTER REGISTRATION PROCESSING: AT THE POLLS
- 513.1 A qualified elector may register on election day by appearing in person at the polling place for the precinct in which the individual maintains residence by:
- (a) Completing a voter registration application prescribed by the Board;
 - (b) Taking an oath/affirmation; and
 - (c) Providing proof of residence.
- 513.2 A qualified elector registering on election day must swear or affirm that he or she:

- (a) Is a United States citizen;
 - (b) Has maintained a residence in the District for at least thirty (30) days preceding the election and does not claim voting residence or the right to vote in any state or territory;
 - (c) Is at least seventeen (17) years of age and will be eighteen (18) on or before the next general election;
 - (d) Is not incarcerated for a crime that is a felony in the District; and
 - (e) Has not been adjudged legally incompetent to vote by a court of a competent jurisdiction.
- 513.3 A previously registered elector may not change his or her party affiliation on election day.
- 513.4 Valid proof of residence is either a copy of current and valid government photo identification, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.”

Section 514 of Chapter 5 of 3 DCMR, “Changes in Registration: Political Party,” shall be amended to read as follows:

- “514 NOTIFICATION OF ACCEPTANCE OF REGISTRATION
- 514.1 Within nineteen (19) calendar days after the receipt of a voter registration application, the Board shall mail a non-forwardable voter registration notification to the applicant advising him or her of the acceptance or rejection of the registration application by its chief voter registration official.
- 514.2 If the application is rejected, the notification shall include the reason or reasons for the rejection and shall inform the voter of his or her right to appeal the rejection pursuant to D.C. Code § 1-1001.07(f) (2006 Repl.).
- 514.3 In the event that the notification advising the applicant of acceptance of his or her voter registration is returned to the Board as undeliverable, the Board shall mail the notice provided in D.C. Code § 1-1001.07 (j)(1)(B) (2006 Repl.).

- 514.4 The registration shall be effective on the date the Board determines that the applicant is a qualified elector and eligible to register to vote in the District of Columbia.”

Section 515 of Chapter 5 of 3 DCMR, “Systematic Voter Roll Maintenance Program: Biennial Mail Canvass,” shall be amended to read as follows:

- “515 CHANGES IN REGISTRATION: NAME
- 515.1 A registered voter shall notify the Board, in writing, within thirty (30) days, of a name change due to marriage, divorce or by order of a court.
- 515.2 Prior to the thirtieth (30th) day preceding an election, a registered voter may give notice of change of name by:
- (a) Completing a change of name on a Voter Registration Application;
 - (b) Filing a change of name by signed letter or postal card which includes the following information:
 - (i) Former and current name;
 - (ii) Address; and
 - (iii) Date of birth.
 - (c) Filing a change of name through the DMV or a voter registration agency pursuant to D.C. Code § 1-1001.07(d) (2006 Repl.);
 - (d) Completing any other form prescribed for this purpose by the Board.
- 515.3 On or after the thirtieth (30th) day preceding an election, a registered voter may change his or her name in-person at the Board’s office. Requests for change of name other than those made in-person during the thirty (30) days that immediately precede and include the date of the election shall be held and processed after the election.
- 515.4 The effective date of any change of name, for voter registration purposes, shall be the date that the notice of change is received by the Board, unless the notice of change of name is held and processed after the election, as described in § 515.3.”

Section 516 of Chapter 5 of 3 DCMR, "Voter Roll Maintenance Program," shall be amended to read as follows:

- “516 CHANGES IN REGISTRATION: ADDRESS
- 516.1 A registered voter who moves from the address at which he or she is registered to vote shall notify the Board, in writing, of the current residence address.
- 516.2 Prior to the thirtieth (30th) day preceding an election, a registered voter may give notice of change of address by:
- (a) Completing a change of address on a Voter Registration Application;
 - (b) Filing a change of address by signed letter or postal card which includes the following information:
 - (i) The voter’s name;
 - (ii) Former and current address; and
 - (iii) Date of birth.
 - (c) Filing a change of address through the DMV or a voter registration agency pursuant to D.C. Code § 1-1001.07(d) (2006 Repl.);
 - (d) Completing any other form prescribed for this purpose by the Board.
- 516.3 On or after the thirtieth (30th) day preceding an election, a registered voter may change his or her address in-person at the Board’s office or on election day at the polling place serving the current residence pursuant to D.C. Code § 1-1001.07(i)(4)(A) (2006 Repl.). Requests for change of address other than those made in-person during the thirty (30) days that immediately precede and include the date of the election shall be held and processed after the election.
- 516.4 The effective date of the change of address shall be the date that the change is considered to be received by the Board, unless the notice of change of address is held and processed after the election, as described in § 516.3.”

Section 517 of Chapter 5 of 3 DCMR, "Cancellation of Voter Registration: General Grounds and Procedures," shall be amended to read as follows:

“517 CHANGES IN REGISTRATION: POLITICAL PARTY

517.1 Prior to the thirtieth (30th) day preceding a primary election, a registered voter may give notice of change of party affiliation by:

- (a) Completing a change of party on a Voter Registration Application;
- (b) Filing a change of party by signed letter or postal card which includes the following information:
 - (i) The voter's name;
 - (ii) Former and new political party affiliation;
 - (iii) Address; and
 - (iv) Date of birth.
- (c) Filing a change of political party through the DMV or a voter registration agency pursuant to D.C. Code § 1-1001.07(d) (2006 Repl.); or
- (d) Completing any other form prescribed for this purpose by the Board.

517.2 The effective date of any declaration of party or change of party affiliation shall be the date that the notice is considered to be received by the Board; except that, no declaration of political party or change of party affiliation shall be effective if postmarked or considered received during the thirty (30) day period that immediately precedes any election. Requests for changes to a political party affiliation considered received during the thirty (30) days that immediately precede and include the date of the primary election shall be held and processed after the election.”

Section 518 of Chapter 5 of 3 DCMR, "Cancellation of Voter Registration: Challenge and Request for Additions to Registration Roll," shall be amended to read as follows:

“518 SYSTEMATIC VOTER ROLL MAINTENANCE PROGRAM:
BIENNIAL MAIL CANVASS

- 518.1 In January of each odd-numbered year, the Board shall confirm the residence address of each registered voter who did not confirm his or her address through the voting process or file a change of address at the polls in the preceding general election by mailing a first class non-forwardable canvass postcard to the residence address listed on the Board's records.
- 518.2 If the Postal Service returns the postcard and provides a new address for the registrant that is within the District of Columbia, the Board shall change the address on its records accordingly and then mail to both old and new addresses a forwardable notice advising the registrant that their address in the voter records has been changed to reflect the Postal Service information.
- 518.3 If the Postal Service returns the postcard as undeliverable and provides a new address for the registrant outside the District of Columbia, the Board shall mail a forwardable notice to both the old and new address, informing the registrant how to register to vote in their new jurisdiction or correct the address information obtained from the Postal Service.
- 518.4 If the Postal Service returns the postcard to the Board as undeliverable and indicates that no new address is available, the Board shall mail to the registrant at his or her last known address the forwardable notice specified in § 518.3.
- 518.5 The forwardable notices issued to registrants whose initial non-forwardable mailings were returned by the Postal Service shall include a pre-addressed and postage- paid return notification postcard to enable the registrant to confirm or correct any address information obtained from the Postal Service.
- 518.6 Upon mailing of the forwardable notice to any registrant whose initial mailing the Postal Service returned as undeliverable, either with a new address outside the District or an indication that no new address was available, the Board shall designate the registrant's voter registration status as inactive on the voter roll, effective on the date of the mailing of the notice.
- 518.7 Where a registered voter who has been designated inactive on the voter roll fails to respond to the forwardable notice and fails to vote during the period beginning on the date the notice was mailed and ending on the day after the second subsequent general election for federal office, the registrant's name shall be removed from the voter roll.

- 518.8 Where a registered voter who has been designated inactive on the voter roll provides the Board with a current residence address, or votes in any election, prior to the day following the second general election for federal office occurring thereafter, the inactive designation shall be removed from the registrant's record.
- 518.9 A registrant included in the group defined by § 518.1 who has requested a separate mailing address in their voter record shall be initially mailed a notification addressed to the mailing address, asking the registrant to confirm his or her residence address on the voter roll by not later than thirty (30) days of the date of the mailing of the notice.
- 518.10 Where a registrant who has been mailed the notification in § 518.9 fails to confirm or correct their residence address, in writing, within thirty (30) days of the mailing of the notice, the Board shall issue a non-forwardable canvass postcard to the residence address as provided in § 518.1 of this chapter.
- 518.11 In the event that the Biennial Mail Canvass is delayed, the Board shall conduct the canvass as soon as practicable thereafter.
- 518.12 Consistent with procedures of the Biennial Mail Canvass, the Board shall issue the forwardable notices defined in § 518.5 whenever official mail sent to a registrant in the normal course of business is returned to the Board by the Postal Service.
- 518.13 Consistent with procedures of the Biennial Mail Canvass, the Board shall update a registrant's address or designate a registrant's voter registration status as inactive based on the return to the Board by the Postal Service of official mail sent to a registrant in the normal course of business.
- 518.14 Where the Board learns, or has reason to believe, that a registrant does not reside at the address listed on the voter registration application, the Board may issue the notice defined in § 518.1 to confirm the registrant's address, and proceed accordingly."

Chapter 5, "Voter Registration," shall be amended to include the following new Section to read as follows:

- "519 VOTER ROLL MAINTENANCE PROGRAM
- 519.1 The Board may utilize information obtained from the United States Postal Service, the National Change of Address System (NCOA), and the DMV, which identifies registrants who have moved from the addresses listed on the Board's records.

- 519.2 As part of its systematic voter roll maintenance program, the Board may develop additional procedures to identify and remove from the voter roll registrants who are deceased and no notification was received from the Bureau of Vital Statistics, who have moved from the District and no notification was received from the registrant or the United States Postal Service, or who otherwise no longer meets the qualifications as a duly registered voter.
- 519.3 If the Board learns that a registered voter has changed his or her residence address and has failed to inform the Board, in writing, of his or her current residence address, the registrant shall be mailed a non-forwardable notice, to the address listed on the voter roll.
- 519.4 The Board may utilize information obtained from returned juror summons issued by mail by the District of Columbia Superior Court to identify registrants who no longer meet the qualifications as a duly registered voter.
- 519.5 In the event that a juror summons is returned to the District of Columbia Superior Court by the United States Postal Service as undeliverable, or which provides a new address within or outside the District of Columbia, the Board shall mail a non-forwardable notice to the address to the voter's registration, as provided in § 518 of this chapter.
- 519.6 The Board may use other information provided to the District of Columbia Superior Court by the registrant to identify registrants who no longer meet the qualifications as a registered voter.
- 519.7 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."

Chapter 5, "Voter Registration," shall be amended to include the following new Section to read as follows:

- "520 CANCELLATION OF VOTER REGISTRATION: GENERAL GROUNDS AND PROCEDURES
- 520.1 The grounds for cancellation of registration by the Board shall be the following:
- (a) Death of the voter;
 - (b) Change in residence from the District of Columbia;

- (c) Signed authorization from a voter, or written notification from the voter that he or she is not a qualified elector;
 - (d) Incarceration following a felony conviction;
 - (e) Successful challenge to voter registration;
 - (f) Falsification of information on the voter registration application;
 - (g) Declaration of mental incompetence by a court of competent jurisdiction; and
 - (h) In the case of a registrant whose registration is deemed inactive, failure to provide the Board with a current residence address in the District, in writing, or failure to vote in any election in accordance with D.C. Code § 1-1001.07(i)(4)(B) by not later than the day after the date of the second general election for federal office that occurs after the date of the notice.
- 520.2 Where the Board cancels or proposes to cancel a voter's name from the registration roll, under § 520.1, notification to the person, as applicable to the cause of cancellation, shall be made by first class (forwardable) mail, except where authorization for removal has been provided by signature of the voter, or where the voter's registration is being removed from the list of registrations deemed inactive.
- 520.3 In the event that the Board learns, through the regular course of business, that a voter is otherwise unqualified to be a registered elector in the District of Columbia, the chief registration official shall notify the registrant of this fact.
- 520.4 The notice shall include the information on which the chief registration official bases the decision and shall state that the registrant must respond within fourteen (14) days from the date of the mailing of the notice or be cancelled from the voter roll.
- 520.5 The chief registration official shall make a determination with respect to the elector's eligibility within ten (10) days of receipt of a response from the registrant.
- 520.6 The determination shall be sent by first class mail to the registrant.

- 520.7 Within fourteen (14) days of mailing the notice, the registrant may appeal, in writing, the chief voter registration official's determination to the Board.
- 520.8 The Board shall conduct a hearing and issue a decision within thirty (30) days of receipt of written notice of the appeal."

Chapter 5, "Voter Registration," shall be amended to include the following new Section to read as follows:

- "521 CANCELLATION OF VOTER REGISTRATION: CHALLENGE AND REQUEST FOR ADDITIONS TO REGISTRATION ROLL
- 521.1 Pursuant to D.C. Code § 1-1001.07(e)(5)(A) (2006 Repl.), any duly registered voter may initiate the following changes to the registration roll:
- (a) "Challenge" the registration of any person whom the voter believes is fictitious, deceased, a disqualified person, or otherwise ineligible to vote (except with respect to a change of residence); and
 - (b) "Request" the addition of any person whose name has been erroneously omitted or cancelled from the registration roll.
- 521.2 The Board shall not accept a voter registration challenge or application for correction of the voter roll after the forty-fifth (45th) day preceding an election.
- 521.3 During the period beginning on the ninetieth (90th) day before any election and ending on the forty-fifth (45th) day before an election, the Board shall expedite the process described in this section.
- 521.4 Application for the correction of the voter roll or the challenge of the right to vote of any person named on the voter roll shall be in writing and shall include any evidence in support of the challenge that the registrant is not qualified to be a registered voter.
- 521.5 The Board shall send notice to any person whose registration has been challenged, at the address listed on the Board's record, along with a copy of any evidence filed in support of the challenge.
- 521.6 The notice sent to a person whose registration has been challenged shall be sent to the address listed on the Board's records and shall include a

statement that the registrant must respond to the challenge not later than thirty (30) days from the date of the mailing of the notice or be cancelled from the voter roll.

- 521.7 The Board's chief voter registration official shall make a determination with respect to the challenge, based on any evidence presented, within ten (10) days of receipt of the challenged registrant's response.
- 521.8 After making a determination with respect to the challenge, the Board's chief voter registration official shall notify, by first class mail, both the challenged registrant and the person who filed the challenge.
- 521.9 Within fourteen (14) days of the date that the chief voter registration official's notice is mailed, any aggrieved party may appeal the chief voter registration official's determination to the Board.
- 521.10 The Board shall conduct a hearing and issue a decision within thirty (30) days of receipt of the written appeal notice.
- 521.11 With respect to a request for the addition of a person to the voter roll, if the Board's records do not evidence that the individual named has been erroneously omitted or cancelled, the Board shall send notice of such, by first class (forwardable) mail, to the individual named in the request and the person who filed the request.
- 521.12 The notice shall advise the requestor that the person whose name was allegedly omitted or dropped from the registration roll, shall submit a voter registration application so that the person may be added to the registration roll as a qualified registered elector."

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKINGET00-2, IN THE MATTER OF POTOMAC ELECTRIC POWER COMPANY'S
PUBLIC SPACE OCCUPANCY SURCHARGE ELECTRICITY TARIFF, P.S.C.-
D.C. No. 1

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to Section 2-505 of the District of Columbia Code,¹ of its final rulemaking action taken in the above-captioned proceeding. On April 13, 2010, the Commission released Order No. 15769, approving the Potomac Electric Power Company's ("Pepco or the Company") updated Rider "PSOS" - Public Space Occupancy Surcharge ("Application").²

2. On January 29, 2010, pursuant to D.C. Code Section 10-1141.06,³ Pepco filed with the Commission an updated Rider PSOS. In the filing, Pepco shows the process to be used to recover from its customers the fees paid by Pepco to the District of Columbia Government for the rental of public structures in public space. Pepco proposes to amend the following tariff page, so that it will read:

ELECTRICITY TARIFF, P.S.C.-D.C. No. 1
11th Revised Page No. R-33

3. According to its tariff, Pepco's surcharge rate for its Rider PSOS will be updated annually to be effective March 1 of each year.⁴ In light of its tariff, Pepco states that its "updated Rider PSOS is to become effective with meter readings on and after March 1, 2010."⁵ A Notice of Proposed Rulemaking ("NOPR") was published in the

¹ D.C. Code § 2-505 (2001 Ed.).

² *ET00-2, In The Matter Of Potomac Electric Power Company's Public Occupancy Surcharge Electricity Tariff, P.S.C.-D.C. No. 1*, Letter to Dorothy Wideman, Commission Secretary, from Deborah M. Royster, Deputy General Counsel, re: *Rider "PSOS"*, filed January 29, 2010 (hereinafter referred to as "Application").

³ D.C. Code § 10-1141.06 (2001 Ed.) states that [e]ach public utility company regulated by the Public Service Commission shall recover from its utility customers all lease payments which it pays to the District of Columbia pursuant to this title through a surcharge mechanism applied to each unit of sale and the surcharge amount shall be separately stated on each customer's monthly billing statement.

⁴ *ELECTRICITY TARIFF, P.S.C.- D.C No. 1*, 10th Revised Page No. R-33. The effective date is March 1, 2010.

⁵ *ET00-2*, Application at 1.

D.C. Register on March 5, 2010, inviting public comment on the updated Rider PSOS.⁶ In the NOPR, the Commission stated that it would not bar Pepco from implementing the surcharges but notified the Company that any inaccuracies would be subject to reconciliation. No comments were filed in response to the NOPR and the Commission is satisfied that the surcharge proposed by Pepco complies with D.C. Code Section 10-1141.06. Subsequently, the Commission approved Pepco's Application by Order No. 15769.

⁶ 57 *D.C. Reg.* 1907-1908 (March 5, 2010).

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
AND
Z.C. ORDER NO. 09-13
Z.C. Case No. 09-13
(Text Amendment – 11 DCMR)
BZA Expedited Review Procedures
March 22, 2010

The Zoning Commission for the District of Columbia (the “Commission”), pursuant to its authority under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 799; D.C. Official Code § 6-641.07); hereby gives notice of adoption of the following text amendments to the Board of Zoning Adjustment Rules of Practice and Procedure, Chapter 31 of DCMR Title 11. A Notice of Proposed Rulemaking was published in the *D.C. Register* (“DCR”) on February 5, 2010, at 57 DCR 1270. The amendments shall become effective upon the publication of this notice in the *D.C. Register*.

Description of Amendments

The amendment adds a new § 3118 to allow the Board of Zoning Adjustment (the “Board” or “BZA”) to decide certain types of applications without a hearing, if the applicant waives that right, and if certain persons or entities do not object. A conforming amendment is also made to § 3113.1.

Procedures Leading to Adoption of Amendments

The District of Columbia Office of Planning (“OP”) submitted a memorandum dated July 17, 2009 that served as a petition requesting the amendments. The Commission voted to set down the proposal for hearing at its July 27, 2009 public meeting.

Notice pursuant to § 13 of the Comprehensive Advisory Neighborhood Commissions Reform Act of 2000 (“ANC Act”), effective June 27, 2000 (D.C. Law 13-135, D.C. Official Code § 1-309.10), was given to all Advisory Neighborhood Commissions. The Commission received two ANC reports from ANCs 6B and 6C, which will be discussed *infra*.

A public hearing was scheduled for and held on October 26, 2009, after which the Commission authorized publication of a notice of proposed rulemaking in the *D.C. Register*.

Although the Commission is not required to refer amendments to the BZA’s rules of procedures to the National Capital Planning Commission (“NCPC”), a courtesy referral of the amendment was made and NCPC, through a delegated action dated January 28, 2010, found that the proposed text amendments would not adversely affect the identified federal interests, nor be inconsistent with the Comprehensive Plan for the National Capital. (Exhibit No. 20.)

The Notice of Proposed Rulemaking was published in the *D.C. Register* on February 5, 2010, 57 DCR 1270, for a 30-day notice and comment period. No comments were received.

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At a properly noticed March 22, 2010 public meeting, the Commission took final action to adopt the text amendments, without making any change to the proposed text: Prior to doing so, the Commission, as part of its deliberations, gave great weight to the issues and concerns expressed by ANCs 6B and 6C as required by § 13 (d)(3) of the ANC Act, D.C. Official Code 1-309.10 (d)(3). That provision indicates that great weight “requires acknowledgement of the [Advisory Neighborhood] Commission as the source of the recommendations and explicit reference to each of the Commission's issues and concerns.”

ANC 6B indicated that it supported an expedited review process if it: (1) permitted non-controversial cases to be decided without a hearing; (2) guaranteed that a hearing would be held whenever an affected ANC, Councilmember, abutting resident or other party objected; and (3) provided workable deadlines for such persons and entities to pose objections. ANC 6C requested that ANCs receive notice whenever an expedited application “is posted”.

The Commission indicated that the text, as revised after the hearing, met these concerns. The two types of applications eligible for expedited review are rarely controversial and no other type of applications can be considered unless these rules are amended. Affected ANCs, Councilmembers, and residents will be given an opportunity to object, and a hearing will be held if the BZA Chair determines that the objector's testimony will be relevant. The rules ensure that an affected ANC will receive notice of an expedited review in the same notice that starts its 30-day review period under the ANC Act. The deadline for making objections is the same deadline for requesting party status in an application. A decision to object involves virtually that same considerations as a decision to request party status, and so this timeframe is reasonable.

Having met all of the procedural prerequisites to taking final action, the Commission adopts the following amendments.

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

1. Section 3113, PRE-HEARING PROCEDURES FOR APPLICATIONS, § 3113.1 is amended by inserting the phrase “and to applications processed under the expedited review procedures to the extent specified in § 3118”, so that the subsection will read as follows.

3113.1 The rules of procedure in this section apply to all applications filed with the Board (including applications filed pursuant to §§ 3107 and 3108 in effect prior to October 1, 1999, and §§ 3103 and 3104); provided, however, the provisions of this section only apply to chancery applications to the extent specified in § 3134 and to applications processed under the expedited review procedures to the extent specified in § 3118.

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2. A new § 3118, EXPEDITED REVIEW, is added to read as follows:

3118 EXPEDITED REVIEW

3118.1 The purpose of this section is to create an expedited review process to be followed after an applicant waives its right to a hearing for an eligible application.

3118.2 An eligible application is an application for:

- (a) An addition to one-family dwelling or flat or new or enlarged accessory structures pursuant to § 223; or
- (b) A park, playground, swimming pool, or athletic field pursuant to § 209.1.

3118.3 Subject to the removal process described in §§ 3118.6 and 3118.7, an eligible application that includes a waiver of hearing will be placed on an expedited review calendar and decided without hearing at the Board's next regularly scheduled session after:

- (a) The completion of the public notice procedures set forth in § 3118.4; and
- (b) The completion of the ANC review period of thirty (30) days from the date it receives notice of the application, excluding Saturdays, Sundays, and holidays, plus an additional fourteen (14) calendar days.

3118.4 Notice of expedited review shall be given in the same manner and include the same information as required by §§ 3113.12 through 3113.16, except that references to "public hearing" or "hearing" shall mean "expedited review" and all other requirements of § 3113 shall apply with the same proviso.

3118.5 The public notice of an expedited review and the ANC notice of an application requesting expedited review shall also indicate:

- (a) The procedure for requesting the removal of the application from the expedited review calendar is as described §§ 3118.6 and 3118.7; and
- (b) That the only public notice of the hearing date for a removed application will be the posting of that date in the Office of Zoning beginning on the date that the application was removed and continuing until the date of such hearing.

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- 3118.6 An application tentatively placed on an expedited review calendar will be removed and rescheduled for a hearing:
- (a) At the oral or written request of a Board member made at any time prior to the vote on the application;
 - (b) Upon the receipt of a timely filed request for party status in opposition to the application; or
 - (c) At the written request of the following persons or entities, if filed with the Office of Zoning no later than fourteen (14) days prior to the date that the expedited review is scheduled:
 - (1) The Office of Planning;
 - (2) The affected ANC(s) or affected Single Member District(s);
 - (3) The Councilmember representing the area in which the subject property is located or representing an area located within two-hundred feet (200 ft.) of the subject property; or
 - (4) The owner or occupant of any property located within two-hundred feet (200 ft.) of the subject property.
- 3118.7 A request to remove made pursuant to § 3118.6 (c) (2) through (4) shall be accompanied by a statement indicating that the requester, or the requester's representative, intends to appear as a witness at the hearing and shall also include a summary of the testimony to be given at that time.
- 3118.8 The Chair may deny a request to remove an application if the proffered testimony is irrelevant.
- 3118.9 Orders granting an application approved by expedited review need not contain findings of facts or conclusions of law, but shall reflect the nature of the relief granted and any conditions imposed.

On January 25, 2010, upon motion of Chairman Hood, as seconded by Commissioner May, the Zoning Commission **APPROVED** the petition at the its public meeting by a vote of **5-0-0** (Anthony J. Hood, William W. Keating, III, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to approve).

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On March 22, 2010, upon motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** the Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, William W. Keating, III, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*; that is on April 16, 2010.