

**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 7, "Election Procedures."

The proposed amendments: (1) establish regulations for challenging the qualifications of voters who elect to cast an absentee ballot electronically or by mail; (2) clarify the challenge procedures for voters who cast a ballot in-person; (3) clarify the special ballot appeal procedures; (4) relocate existing regulations from Chapter 8 to this chapter; and (5) clarify the process for seeking credentials as a poll watcher or election observer.

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 703 of Chapter 7 of 3 DCMR, "Early Voting Centers," shall be amended to read as follows:**

**703 EARLY VOTING CENTERS**

- 703.1 For each primary and general election, qualified electors may choose to cast a full ballot for their precinct at early voting centers according to procedures established by the Board.
- 703.2 The Board shall designate no fewer than four (4) early voting centers.
- 703.3 Early voting centers shall be equitably distributed geographically throughout the District.
- 703.4 Satellite early voting centers shall be open for no fewer than seven days prior to Election Day, from the hours of 8:30 a.m. to 7 p.m., Monday through Saturday. The Board's office shall serve as the early voting center for the in-person absentee voting period for the hours specified in § 717.13.
- 703.5 All persons standing in line at an early voting center at the time the early voting center closes shall be permitted to vote, if otherwise qualified.
- 703.6 Votes recorded at an early voting center will not be tallied until Election Day. Election results from early voting shall not be released until the polls close on Election Day.

**Section 706 of Chapter 7 of 3 DCMR, “Poll Watchers and Election Observers,” shall be amended to read as follows:**

**706 POLL WATCHERS AND ELECTION OBSERVERS**

706.1 Each qualified candidate, and each proponent or opponent of a proposed ballot measure, who has timely filed a verified statement of contributions with the Office of Campaign Finance may petition the Board for credentials authorizing poll watchers at any:

- (a) Early voting centers;
- (b) Polling places; and/or
- (c) Ballot counting places.

706.2 For purposes of this chapter, a “verified statement of contributions” refers to the following:

- (a) The statement of organization, pursuant to D.C. Official Code § 1-1102.04 (2006 Repl.); and
- (b) The report(s) of receipts and expenditures, pursuant to D.C. Official Code § 1-1102.06 (2006 Repl.).

706.3 Persons who wish to witness the administration of elections, including nonpartisan or bipartisan, domestic or international organizations, who are not affiliated with a candidate or ballot measure may petition the Board for credentials authorizing election observers at any:

- (a) Early voting centers;
- (b) Polling places; and/or
- (c) Ballot counting places.

706.4 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. Less than two (2) weeks before each election, the Board reserves the right to accept additional petitions based upon available space.

706.5 At the time of filing, the poll watcher petition form shall contain the following:

- (a) The name, address, telephone number, and signature of the candidate, organization representative, or ballot measure 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 poll watcher supervisor, if a person is designated by the candidate, organization, proponent, or opponent;
- (c) The locations where access credentials are sought;
- (d) The names, addresses and telephone numbers of at least two (2) and not more than three (3) persons who are authorized to collect the poll watcher badges from the Board on behalf of the candidate, organization representative, or ballot measure proponent or opponent for distribution to the authorized poll watchers; and
- (e) A certificate from the applicant that each proposed poll watcher selected is a qualified elector, and that each poll watcher selected shall conform to the regulations of the Board with respect to poll watchers and the conduct of the election.

706.6 At the time of filing, the election observer petition form shall contain the following:

- (a) The name, address, and telephone number of the organization or individual seeking credentials;
- (b) The name, address, and telephone number of the election observer supervisor, if a person is designated by an organization;
- (c) The names, addresses, and telephone numbers of all observers who will be receiving badges;
- (d) The locations where access credentials are sought;
- (e) The names, addresses, and telephone numbers of at least one (1) and not more than three (3) persons who are authorized to collect the election observer badges from the Board on behalf of the organization or individual seeking credentials for distribution to the authorized election observers; and
- (f) A certificate from the applicant that each election observer selected shall conform to the regulations of the Board with respect to election observers and the conduct of the election.

- 706.7 The Board may limit the number of poll watchers or election observers to ensure that the conduct of the election will not be obstructed or disrupted.
- 706.8 Notwithstanding 706.7:
- (a) Each qualified candidate shall be entitled to one (1) poll watcher in each of the precincts where his or her name appears on the ballot.
  - (b) Each proponent or opponent of a ballot measure who has timely filed a verified statement of contributions with the Office of Campaign Finance shall be entitled to one (1) poll watcher in each precinct where the ballot measure appears on the ballot.
- 706.9 The Board shall make a ruling on poll watcher and election observer petitions not less than ten (10) days prior to an election.
- 706.10 In making a determination of the number of watchers or observers allowed, the Board shall consider the following:
- (a) The number of candidates or requesting organizations;
  - (b) Whether the candidates are 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.
- 706.11 Within twenty-four (24) hours of a denial, the Board shall issue a public notice with respect to any denial of a petition for credentials.
- 706.12 If a place cannot accommodate all those seeking credentials, the Board may grant preference to poll watchers over election observers, and organizations over individuals.
- 706.13 The Board shall issue a badge for each authorized poll watcher or election observer, with space for the watcher's or observer's name and the name of the candidate or party represented by the watcher, or any organization being represented by the observer. Badges shall also be issued for each authorized watcher representing the proponents or opponents of measures or proposed Charter amendments.
- 706.14 Badges shall be numbered consecutively, and consecutive numbers issued to each candidate, organization, proponent, or opponent.

- 706.15 All badges shall be worn by the authorized poll watcher or election observer in plain view at all times when on duty at the polling place or counting place.
- 706.16 An authorized alternate poll watcher or election observer may, in the discretion of the watcher or observer supervisor, be substituted for a watcher or observer at any time; provided, that notice is first given to the designated representative of the Board at the polling place or counting place.
- 706.17 A poll 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 § 708.
- 706.18 An election observer shall be allowed to perform the following acts:
- (a) Observe the count;
  - (b) Unofficially ascertain the identity of persons who have voted; and
  - (c) Report alleged discrepancies to the Precinct Captain.
- 706.19 No poll watcher or election observer shall, at any time, do any of the following:
- (a) Touch any official record, ballot, voting equipment, or counting form;
  - (b) Interfere with the progress of the voting or counting;
  - (c) Assist a voter with the act of voting;
  - (d) 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 or observer may request that a ballot be referred for ruling on its validity to a representative of the Board;
  - (e) In any way obstruct the election process; or
  - (f) Use any video or still cameras inside the polling place while the polls are open for voting, or use any video or still camera inside the counting center

if such use is disruptive or interferes with the administration of the counting process.

- 706.20 Any poll watcher or election observer 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.
- 706.21 If a poll watcher or election observer is requested to leave, that watcher's or observer's authorization to use credentials shall be cancelled, and he or she shall leave the polling place or counting place forthwith.
- 706.22 An authorized alternate poll watcher or election observer may be substituted for a watcher or observer who has been removed.

**Section 708 of Chapter 7 of 3 DCMR, "Challenge to Voter Qualifications: At the Polls or Early Voting Centers," shall be amended to read as follows:**

**708 CHALLENGE TO VOTER QUALIFICATIONS: AT THE POLLS OR EARLY VOTING CENTERS**

- 708.1 Challenges to voter qualifications where the voter is present at the time of the challenge shall be conducted according to the procedures of this section.
- 708.2 Any duly registered voter may challenge the qualifications of a prospective voter in a primary, special, or general election.
- 708.3 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.
- 708.4 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.
- 708.5 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.
- 708.6 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.

- 708.7 The Precinct Captain shall record the decision and the rationale for the decision on a form provided by the Board.
- 708.8 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 rules regarding challenges and appeals to the Board.
- 708.9 Any appeal of the Precinct Captain's decision to deny the challenge shall be made either before the challenged voter casts a ballot, or before either the challenger or the challenged voter leaves the polling place, whichever is earlier.
- 708.10 If the challenger does not appeal the Precinct Captain's decision to deny the challenge, the challenged voter shall cast a regular ballot.
- 708.11 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.
- 708.12 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.
- 708.13 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 §708.7, of the Precinct Captain's initial decision to deny the challenge.
- 708.14 The hearing officer shall take testimony under oath from the challenger, the person challenged, the Precinct Captain, and any witnesses who wish to testify.
- 708.15 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.
- 708.16 The hearing officer shall receive evidence and testimony and shall then close the hearing.
- 708.17 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 § 714.1(i).

708.18 If the Precinct Captain affirms the challenge, 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 § 714.1(i).

**Section 714 of Chapter 7 of 3 DCMR, "Vote Casting Procedures: Special Ballot," shall be amended to read as follows:**

**714 VOTE CASTING PROCEDURES: SPECIAL BALLOT**

- 714.1 Uses for a Special Ballot (or Provisional Ballot) include instances where the voter:
- (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, disability, 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 or supplemental lists 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) Is listed on the alphabetical list of registered voters in the precinct but claims, in a general election, that the ANC Single-Member District indicated on the listing is in error;

- (f) 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;
- (g) 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;
- (h) Has been deemed "inactive" on the voter roll and presents himself or herself to vote at the precinct serving his or her current residence address;
- (i) Has been challenged under § 708, and that challenge is accepted;
- (j) Has been placed on a precinct list of voters deemed "administratively challenged" because his or her voter registration notification card was returned to the Board by the United States Postal Service, indicating that the person does not reside at the address on the voter's registration application;
- (k) 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 poll-closing time that had been in effect, pursuant to statute, ten (10) days before the date of the election;
- (l) 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;
- (m) Resides temporarily at a District of Columbia licensed nursing home or assisted living facility, or at a qualified retirement home;
- (n) Has registered to vote on or after the date that in-person absentee voting begins at the early voting center at the Board's office for an election occurring before December 31, 2010; or
- (o) Has registered to vote on or after the date that in-person absentee voting begins at the early voting center at the Board's office for an election occurring after December 31, 2010, and did not present a valid, government-issued photo identification card showing the individual's address.

- 714.2 An individual whose eligibility to vote in the election cannot be determined at an early voting center or at the polls on election day because of one or more of the reasons cited in § 714.1 shall vote by Special Ballot.
- 714.3 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.
- 714.4 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 to 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 at the residence provided;
  - (d) That the information contained on the outside of the Special Ballot Envelope is truthful and complete; 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.
- 714.5 Before being permitted to vote, the voter shall sign the affirmation printed on the Special Ballot Envelope.
- 714.6 The designated polling place official shall witness the voter signing the affirmation printed on the Special Ballot Envelope.
- 714.7 The Special Ballot Envelope shall also provide space for the following information:
- (a) The name and current residence of the voter;
  - (b) The reason for voting the Special Ballot;
  - (c) The voter's drivers license number or last four digits of the voter's social security number;
  - (d) The voter's date of birth;

- (e) The precinct in which the voter is casting the ballot; and
  - (f) Any other information as may be necessary to determine if the person is qualified to vote.
- 714.8 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.
- 714.9 If a voter has been challenged and that challenge is accepted, the designated polling place officials shall place the word "challenged" on the Special Ballot Envelope.
- 714.10 For each voter that has been administratively challenged, the designated polling place officials shall place the words "administratively challenged" on the Special Ballot Envelope.
- 714.11 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 Special Ballot Box.
- 714.12 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 § 715.
- 714.13 If a duly registered voter casts a Special Ballot in a precinct that does not serve his or her current residence address, the Board shall count that ballot for federal and District-wide election contests.
- 714.14 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.

- 714.15 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.
- 714.16 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 Attorney General of the District of Columbia.

**Section 715 of Chapter 7 of 3 DCMR, "Special Ballot Appeal Rights," shall be amended to read as follows:**

**715 SPECIAL BALLOT APPEAL RIGHTS**

- 715.1 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 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.
- 715.2 The Board shall provide the voter, at the time of voting or after a challenge to an absentee ballot has been upheld pursuant to § 721.18, with written notice that indicates the manner by which he or she may learn whether the Board has decided to count or reject, in whole or in part, 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.
- 715.3 Not later than the Tuesday following each election, the Board shall enable any voter who has voted a special ballot to learn of the Board's preliminary decision to count or reject his or her ballot along with the reason(s) for each decision by accessing either a dedicated section of the Board's website or a telephone service which shall be maintained during regular business hours.
- 715.4 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.
- 715.5 At the hearing, the voter may appear and give testimony on the question of the decision to reject the special ballot.

- 715.6 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.
- 715.7 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."

**Section 717 of Chapter 7 of 3 DCMR, "Absentee Ballots," shall be amended to read as follows:**

**717 ABSENTEE BALLOTS**

- 717.1 Except as provided in this chapter, a duly registered voter may make a written request for an absentee ballot electronically, by mail, or in person at the Board's office.
- 717.2 A duly registered voter may request absentee ballots for all elections in the current calendar year.
- 717.3 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.
- 717.4 A mailed or electronically received request for an absentee ballot shall be received from the registered voter by no later than the seventh (7th) day preceding the date of the election.
- 717.5 A request for an absentee ballot shall include the following:
- (a) The voter's name;
  - (b) Election(s) 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, if applicable;
  - (f) Voter's driver's license number or the last four digits of the voter's social security number;
  - (g) Voter's date of birth; and

- (h) Voter's original signature.
- 717.6 An absentee ballot request sent electronically will be considered to contain an original signature.
- 717.7 A duly registered elector may request an absentee ballot in person not earlier than fifteen (15) days preceding the election, and not later than 4:45 p.m., of the day preceding the election.
- 717.8 If a duly registered voter who requests an absentee ballot 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.
- 717.9 Prior to returning the voted absentee ballot to the Board, a voter shall confirm the accuracy of his or her name, address, party affiliation, and ANC Single-Member District, where applicable, as it appears on the Board's records by signing either the absentee ballot envelope, or if voting an absentee ballot in person, the Master Index or other record prescribed by the Board. Such signature shall be deemed an affirmation that the voter's information is correct as shown on the Board's records.
- 717.10 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 special 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.
- 717.11 All postmarked absentee ballots shall be postmarked not later than the day of the election, and all mailed (postmarked and non-postmarked) absentee ballots shall be received not later than ten (10) days after the election
- 717.12 The Board will take steps to reasonably investigate the timely completion of non-postmarked absentee ballots by checking tracking numbers or any other information available.
- 717.13 During the period for absentee voting in person, the Board shall be open Monday through Saturday, except holidays and the day before the election, from 8:30 a.m. until 7 p.m. The day before the election, the Board shall be open 8:30 a.m. until 4:45 p.m.

- 717.14 A duly registered voter who was mailed an absentee ballot and attempts to vote on election day or at an early voting center shall vote by special ballot.
- 717.15 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.
- 717.16 Pursuant to D.C. Code § 1-1001.09, 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. Any employee who violates this section may, upon conviction, be subject to a \$10,000 fine or imprisonment up to five years, or both, pursuant to § 1-1001.14 (a).

**Section 718 of Chapter 7 of 3 DCMR, “Absentee Ballots for Qualified Overseas Electors,” shall be amended to read as follows:**

**718 ABSENTEE BALLOTS FOR QUALIFIED OVERSEAS ELECTORS**

- 718.1 Qualified overseas electors may request an absentee ballot by using the FPCA as described in § 512, or if already registered, by making a written request to the Board.
- 718.2 A qualified overseas elector’s request for an absentee ballot may be delivered electronically or by mail.
- 718.3 A request for an absentee ballot shall be received by no later than the seventh (7th) day preceding the date of the election.
- 718.4 A request for an absentee ballot from a qualified overseas elector shall include the following:
- (a) The voter’s name;
  - (b) Election(s) 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;
  - (f) Preference of either mail or electronic delivery of ballot;

- (g) Voter's driver's license number, the last four digits of the voter's social security number, or the voter's passport number or identification number issued by the Secretary of State;
  - (h) Voter's date of birth; and
  - (i) Voter's original signature.
- 718.5 A qualified overseas elector may select to have his or her absentee ballot electronically transmitted or delivered by mail. If no preference is given, the absentee ballot shall be delivered by mail.
- 718.6 The Board shall transmit blank absentee ballots by no later than 45 days before the election if the blank absentee ballot application is received at least 45 days before a general election. If the request is received less than 45 days before an election for federal office, the Board shall transmit the blank absentee ballot in accordance with District law in a manner that expedites the transmission of the ballot.
- 718.7 If, after a request for an absentee ballot is made, the qualified overseas elector does not receive an absentee ballot from the Board, the voter may use the Federal Write-In Absentee Ballot, as defined under the Uniformed and Overseas Absentee Citizens Voting Act, as an official ballot.
- 718.8 A qualified overseas elector may return an absentee ballot to the Board electronically or by mail.
- 718.9 Prior to returning the voted absentee ballot to the Board, a qualified overseas elector shall confirm the accuracy of his or her name, address, party affiliation, and ANC Single-Member District, where applicable, as it appears on the Board's records by signing either the absentee ballot envelope, or if the absentee ballot is returned electronically, a separate downloadable attestation form. Such signature shall be deemed an affirmation that the voter's information is correct as shown on the Board's records.
- 718.10 A qualified overseas elector who submits his or her ballot electronically shall provide and sign the following statement on a separate document: "I understand that by electronically submitting my voted ballot I am voluntarily waiving my right to a secret ballot."
- 718.11 All postmarked absentee ballots shall be postmarked not later than the day of the election, and all mailed (postmarked and non-postmarked) absentee ballots shall be received not later than ten (10) days after the election

- 718.12 The Board will take steps to reasonably investigate the timely completion of non-postmarked absentee ballots by checking tracking numbers or any other information available.
- 718.13 If the voter chooses to use the Federal Write-In Absentee Ballot, the Board will accept the ballot for all races in which the voter is eligible to cast votes.

**Section 720 of Chapter 7 of 3 DCMR, "Absentee Federal Ballot," shall be amended to read as follows:**

**720 ABSENTEE FEDERAL BALLOT**

- 720.1 Any qualified federal elector, as defined in § 501, may make a written request to vote an absentee Federal Ballot, as defined in § 700.5. Such request may be made electronically, by mail, or in person at the Board's office, and shall include the following:
- (a) The voter's name;
  - (b) A statement that the applicant requests a ballot for federal offices;
  - (c) Address from which the voter was previously registered to vote in the District;
  - (d) Address to which the absentee ballot shall be delivered, if applicable;
  - (e) The voter's driver's license number or the last four digits of the voter's social security number;
  - (f) The voter's date of birth; and
  - (g) The voter's original signature.
- 720.2 An absentee Federal Ballot request sent electronically will be considered to contain an original signature.
- 720.3 A mailed or electronically received request for an absentee Federal Ballot shall be received from the registered voter by no later than the seventh (7th) day preceding the date of the election.
- 720.4 A qualified federal elector may request an absentee Federal Ballot in person not earlier than fifteen (15) days preceding the election, and not later than 4:45 p.m., on the day preceding the election.
- 720.5 Prior to returning the voted absentee ballot to the Board, a voter shall confirm the accuracy of his or her name, address, party affiliation, and ANC Single-

Member District, where applicable, as it appears on the Board's records by signing either the absentee ballot envelope, or if voting an absentee ballot in person, the Master Index or other record prescribed by the Board. Such signature shall be deemed an affirmation that the voter's information is correct as shown on the Board's records.

- 720.6 An absentee Federal 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 special 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.
- 720.7 All postmarked absentee Federal Ballots shall be postmarked not later than the day of the election, and all mailed (postmarked and non-postmarked) absentee Federal Ballots shall be received not later than ten (10) days after the election.
- 720.8 The Board will take steps to reasonably investigate the timely completion of non-postmarked absentee Federal Ballots by checking tracking numbers or any other information available.

*Section 721 of Chapter 7 of 3 DCMR, "Closing the Polls," shall be amended to read as follows:*

**721 CHALLENGE TO VOTER QUALIFICATIONS: ABSENTEE BALLOTS RECEIVED ELECTRONICALLY OR BY MAIL**

- 721.1 Challenges to voter qualifications where the voter seeks to cast an absentee ballot electronically or by mail shall be conducted according to the procedures of this section. Challenges to emergency absentee ballots, as provided under § 719, are specifically exempted.
- 721.2 The Board shall post in its office and on its website a list of all prospective voters who have submitted requests for absentee ballots electronically or by mail for three (3) days beginning on the seventh (7<sup>th</sup>) day preceding an election.
- 721.3 During the three (3) day posting period, any duly registered voter may challenge the qualifications of any prospective voters who have submitted requests for absentee ballots electronically or by mail.

- 721.4 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. The challenge form shall be submitted in-person at the Board's Office.
- 721.5 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.
- 721.6 The voter's signature on the request for an absentee ballot shall serve as an affidavit from the voter that he or she is a qualified elector of the District.
- 721.7 On the same day that the challenge is submitted at the Board's Office, the absentee ballot official 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.
- 721.8 The absentee ballot official shall record the decision and the rationale for the decision on a form provided by the Board.
- 721.9 If the absentee ballot official denies the challenge, The absentee ballot official shall inform the challenger that the challenger may appeal the decision to the Board and shall give the challenger copies of the rules regarding challenges and appeals to the Board. Any appeal from a decision to deny the challenge must be made immediately.
- 721.10 If the challenger does not appeal the absentee ballot official's decision to deny the challenge, the absentee ballot shall be counted as a regular ballot.
- 721.11 If the challenger appeals the absentee ballot official's decision to deny the challenge, the absentee ballot official shall state the facts of the case to a Board hearing officer authorized to rule on the appeal for the Board.
- 721.12 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.

- 721.13 The hearing shall be recorded and transcribed, and the transcript shall serve as the official case record, along with the written documentation of the absentee ballot official's initial decision to deny the challenge.
- 721.14 The hearing officer shall take testimony under oath from the challenger, the challenged voter (if available), the absentee ballot official, and any witnesses who wish to testify.
- 721.15 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.
- 721.16 The hearing officer shall receive evidence and testimony and shall then close the hearing.
- 721.17 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 absentee ballot official's decision to deny the challenge, in which case the challenged voter's absentee ballot shall be counted as a regular ballot; or
  - (b) Overturn the absentee ballot official's decision to deny the challenge, in which case the challenged voter's absentee ballot and envelope shall be considered a special ballot and envelope
- 721.18 If the absentee ballot official affirms the challenge, or if the Board's hearing officer overturns the decision of the absentee ballot official to deny a challenge, the voter's absentee ballot and envelope shall be considered a special ballot and envelope, marked as such, and handled pursuant to §§ 714 and 715.

**Section 722 of Chapter 7 of 3 DCMR, "Collection and Transfer of Ballots and Other Polling Place Materials," shall be amended to read as follows:**

- 722 PROHIBITION OF LABELS, STICKERS, AND AUTHORIZATION OF HAND STAMPS FOR CASTING WRITE-IN VOTES ON PAPER BALLOTS**
- 722.1 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.

- 722.2 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 paper ballot; and
  - (b) Where the stamp does not affix any adhesive or other foreign material on the voter's ballot.
- 722.3 Any voter may bring into a polling place or early voting center in any election where paper ballots are being cast a stamp for the purpose of exercising the write-in vote option, consistent with § 723.2, for the voter's personal use, provided that the voter must carry the stamp out of the polling place or early voting center with him once he or she has voted. Any stamps left in the polling place or early voting center shall be discarded by election workers.
- 722.4 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 or early voting center where paper ballots are being cast, provided that the distribution shall occur outside the fifty foot (50ft.) line, within which no political activity is permitted.
- 722.5 No one may distribute any stamp device to any voter or any other person within the fifty foot (50 ft.) line from an early voting center or polling place entrance or inside any early voting center or polling place.

**Section 723 of Chapter 7 of 3 DCMR, "Reserved," shall be amended to read as follows:**

**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 OSVE, 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 the OSVE or in an auxiliary ballot box, enter these ballots into the automatic tabulating system, secure these ballots in the transfer case referred to in § 723.1(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 OSVE'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; and
- (f) Place the OSVE's memory card, or other electronic media, and the DRE's tabulation cartridge 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 Upon completion of voting, a summary count of votes (for each contest) at each precinct shall be posted in a conspicuous place that can be seen from the outside of the polling place.

723.5 At each precinct, Precinct Captains shall prepare a report which indicates the numbers of:

- (a) Votes cast;
- (b) Persons who signed in;
- (c) Voter-verifiable records that arrived at the polling place before the polls opened;
- (d) Voter-verifiable records that were used; and
- (e) Unused voter-verifiable records.

- 723.6 The Precinct Captain shall keep a record of the names and addresses of individuals who:
- (a) Attempted to register on election day but could not provide proof of residence; and
  - (b) Successfully registered on election day and voted.
- 723.7 Precinct Captain reports and records shall be made available for public inspection at a reasonable date following an election.
- 723.8 In accordance with directives of the Board, the transfer cases containing the voted ballots, OSVE memory card or other electronic media, and DRE tabulation cartridges shall be returned to the Counting Center promptly following the closing of the polls.
- 723.9 Unvoted ballots and other election materials and paraphernalia shall be returned to the custody of the Board as directed.

**Section 724 of Chapter 7 of 3 DCMR, "Reserved," shall be amended to read as follows:**

**724 COLLECTION AND TRANSFER OF BALLOTS AND OTHER POLLING PLACE MATERIALS**

- 724.1 All ballots cast in any election, as well as the OSVE memory cards or other electronic media, and DRE tabulation cartridges, 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, OSVE memory cards or other electronic media, and DRE tabulation cartridges.
- 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 Master 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.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the D.C. Register. Comments should be filed with the Office of the General Counsel, Board of Elections and Ethics, 441 4<sup>th</sup> Street, N.W., Suite 270N, Washington, D.C. 20001. Copies of the proposed rules may be obtained at cost from the above address, Monday through Friday, between the hours of 9:00 a.m. and 4:00 p.m.

## DEPARTMENT OF EMPLOYMENT SERVICES

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Employment Services, pursuant to the authority set forth in section 110 of the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code § 2-220.10 (2006 Repl.)) (“Living Wage Act” or “Act”), and Mayor’s Order 2006-122, dated September 27, 2006, hereby gives notice of the intent to adopt a new chapter 10, entitled “Living Wage”, to Title 7 (Employment Benefits) of the District of Columbia Municipal Regulations (DCMR).

This rulemaking implements provisions of the Living Wage Act. The Act requires that certain District of Columbia government contractors and certain recipients of District government assistance and their subcontractors pay their affiliated employees, at minimum, the wage specified by the Act.

Proposed Rulemaking was initially published in the D.C. Register (vol. 54, page 2368) on March 16, 2007. Public comments were received. However, section 103 (living wage payment) of the Act (D.C. Official Code § 2-220.03 (2009 Supp.)) was subsequently amended. These proposed rules supersede those published on March 16, 2007.

The Director also gives notice of the intent to take final rulemaking action to adopt these rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

**A new Chapter 10, entitled “Living Wage”, is added to Title 7 (Employment Benefits) of the DCMR, to read as follows:**

**CHAPTER 10 LIVING WAGE****1000 PURPOSE AND SCOPE**

- 1000.1 The purpose of this chapter is to establish principles and guidance for the implementation of the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code § 220.01 *et seq.*) (“Act”).
- 1000.2 Unless otherwise required by law, all matters concerning the implementation and enforcement of the Act shall be decided in accordance with this chapter.
- 1000.3 This chapter shall apply to all contracts or agreements for government assistance entered into after June 8, 2006, if the amount of the contract or assistance meets the requirement for coverage under the Act. A renewal or extension of a contract or an assistance agreement entered into after June 8, 2006 shall be subject to the Act, if the amount of the contract or government assistance meets the requirement for coverage under the Act.

**1001 LIVING WAGE PAYMENT REQUIREMENT**

- 1001.1 All recipients of District of Columbia government contracts in the amount of one hundred thousand dollars (\$100,000) or more, and all recipients of government assistance in the amount of one hundred thousand dollars (\$100,000) or more, shall pay to their affiliated employees, at minimum, the living wage required by the Act. The living wage shall be paid for the duration of the contract or government assistance.
- 1001.2 The living wage shall be paid to employees of the District of Columbia government commencing March 1, 2006, unless the employee's wage is established by a collective bargaining agreement, federal law, or grant, in which case the wage established by the collective bargaining agreement, federal law, or grant shall continue for such time as the collective bargaining agreement, law, or grant remains in effect.
- 1001.3 Subcontractors who receive fifteen thousand dollars (\$15,000) or more from contractors whose contracts are subject to the Act shall pay their affiliated employees, at minimum, the living wage required by the Act.
- 1001.4 Subcontractors who receive fifty thousand dollars (\$50,000) or more from recipients of District of Columbia government assistance funds shall pay their affiliated employees, at minimum, the living wage required by the Act.
- 1001.5 Subcontractors of exempt contractors or exempt recipients shall be exempt from the requirements of the Act.

**1002 AMOUNT OF LIVING WAGE**

- 1002.1 The amount of the living wage shall be eleven dollars and seventy-five cents (\$11.75) per hour, regardless of whether health benefits are provided.
- 1002.2 The amount of the living wage shall be adjusted pursuant to section 103(c) of the Act (D.C. Official Code § 2-220.03(c)).

**1003 NOTICES TO CONTRACTORS AND SUBCONTRACTORS**

- 1003.1 All contracts and agreements for government assistance subject to the Act shall include provisions and language incorporating the requirements of the Act as to coverage (section 103, D.C. Official Code § 2-220.03), notices (section 106, D.C. Official Code § 2-220.06), record keeping (section 107, D.C. Official Code § 2-220.07), and enforcement (section 108, D.C. Official Code § 2-220.08).

1003.2 Each recipient of a District of Columbia government contract or of government assistance subject to the Act shall provide written notification to each of its subcontractors subject to the Act of the requirements of the Act, as to coverage (section 103, D.C. Official Code § 2-220.03) notices (section 106, D.C. Official Code § 2-220.06), record keeping (section 107, D.C. Official Code § 2-220.07), and enforcement (section 108, D.C. Official Code § 2-220.08). The recipient shall provide such written notification no later than the date on which it signs or executes the subcontract with the subcontractor. The recipient shall keep a record of having given the notice required by this subsection and shall maintain such records in the manner required by section 107 of the Act (D.C. Official Code § 2-220.07).

#### **1004 NOTICES TO EMPLOYEES**

1004.1 The Director shall provide a fact sheet and notice to each recipient of a District of Columbia government contract and government assistance subject to the Act.

1004.2 The fact sheet and notice shall contain the following:

- (a) Notice of the living wage rate;
- (b) A summary of requirements under the payment (section 103 of the Act, D.C. Official Code § 2-220.03) and record keeping (section 107 of the Act, D.C. Official Code § 2-220.07) provisions of the Act; and
- (c) Information concerning enforcement (section 108, D.C. Official Code § 2-220.08) of the Act;
- (d) The name, address, and telephone number of the individual or entity to which complaints of non-compliance with the Act may be made.

1004.3 All recipients of District of Columbia government contracts and government assistance subject to the Act, and all subcontractors subject to the Act, shall provide each affiliated employee with the fact sheet provided by the Director no later than the onset of performance of the contract or assistance.

1004.4 All recipients of District of Columbia government contracts and government assistance subject to the Act, and all subcontractors subject to the Act, shall post in a conspicuous place in their places of business, the notice provided by the Director. If the contractor or recipient of government assistance subject to the Act, or subcontractor subject to the Act, establishes an onsite office or separate administrative location from which work subject to the Act is directed, a copy of the notice required by this subsection shall also be conspicuously posted in the onsite office or remote administrative location.

**1005 CREATION AND RETENTION OF RECORDS**

- 1005.1 Each recipient of a District of Columbia government contract or government assistance subject to the Act, and their subcontractors subject to the Act, shall retain payroll records created and maintained in the ordinary course of business pursuant to District of Columbia law for a period of three (3) years from the payroll date for affiliated employees eligible for the living wage, as set forth in section 103 of the Act (D.C. Official Code § 2-220.07). Each recipient shall be responsible for keeping and maintaining records that differentiate between hours paid from the contract or government assistance and other funding sources.
- 1005.2 The director or the chief official of an agency or other entity of the District of Columbia government which issues contracts or government assistance may request from a contractor, recipient, or subcontractor subject to the Act an affirmative statement acknowledging the application of the Act to the contractor, recipient, or subcontractor.
- 1005.3 The director or chief official of an agency or entity of the District of Columbia government which issues contracts or government assistance may request from any contractor, recipient, or subcontractor subject to the Act a list of all affiliated employees of the contractor, recipient, or subcontractor.
- 1005.4 A contractor, recipient, or subcontractor receiving a request under §§ 1005.2 or 1005.3 shall provide the affirmative statement or list of affiliated employees in writing, utilizing a form specified by the Director. The affirmative statement or list of affiliated employees shall be signed by the chief executive officer of the contractor, recipient, or subcontractor, and the signature shall be notarized.

**1006 ENFORCEMENT**

- 1006.1 A complaint concerning the payment of wages required by the Act shall be made in accordance with, and shall be subject to, the provisions of an Act To provide for the payment and collection of wages in the District of Columbia, approved August 3, 1956 (70 Stat. 976; D.C. Official Code § 32-1301 *et seq.*).
- 1006.2 With respect to contracts, a complaint concerning a form of non-compliance with the Act, other than one about the payment of wages, shall be made to the Contracting Officer and decided as provided in section 803 of the District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-308.03).
- 1006.3 With respect to grants of government assistance, a complaint concerning a form of non-compliance with the Act, other than one about the payment of

wages, shall be made to the grant administrator in accordance with the terms of the grant.

## **1007 EXEMPTIONS**

1007.1 The following types of contracts, government assistance, and employment are exempt from the requirements of the Act:

- (a) Contracts or other agreements that are subject to higher wage level determinations required by federal law;
- (b) Existing and future collective bargaining agreements; provided, that the future collective bargaining agreement results in the employee being paid no less than the established living wage;
- (c) Contracts for electricity, telephone, water, sewer, or other services delivered by a regulated utility;
- (d) Contracts for services needed immediately to prevent or respond to a disaster or eminent threat to public health or safety declared by the Mayor;
- (e) Contracts or other agreements awarded to recipients that provide trainees with additional services, including, but not limited to, case management and job readiness services; provided, that the trainees do not replace employees subject to the Act;
- (f) An employee under twenty-two (22) years of age employed during a school vacation period, or enrolled as a full-time student, as defined by the respective institution, who is in high school or at an accredited institution of higher education and who works less than twenty-five (25) hours per week; provided, that he or she does not replace an employee subject to the Act;
- (g) Tenants or retail establishments that occupy property constructed or improved by receipt of government assistance from the District of Columbia government; provided, that the tenant or retail establishment did not receive direct government assistance from the District government;
- (h) Employees of nonprofit organizations that employ not more than fifty (50) full-time equivalent individuals and that qualify for taxation exemption pursuant to section 501(c)(3) of the Internal Revenue Code of 1954, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)(3));

- (i) Medicaid provider agreements for direct care services to Medicaid recipients; provided, that the direct care service is not provided through a home care agency, a community residence facility, or a group home for mentally retarded persons, as those terms are defined in section 2 of the Health-Care and Community Residence Facility, Hospice, and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501); and
- (j) Contracts or other agreements between managed care organizations and the Health Care Safety Net Administration or the Medicaid Assistance Administration to provide health services.

## **1008 WAIVERS**

- 1008.1 The Director may exempt a recipient from the requirements of the Act if the waiver is approved by the Council of the District of Columbia.
- 1008.2 A recipient requesting a waiver shall submit a signed written application to the Director and shall demonstrate that compliance with the Act will constitute a significant financial hardship to the recipient that will result in either:
- (a) A layoff of a significant number of employees; or
  - (b) A substantial downsizing of the recipient's business entity; or
  - (c) The inability of the recipient to meet its payroll.
- 1008.3 All applications for waiver shall include the recipient's name, telephone number, and the identity and authority of the individual requesting the waiver. The application shall also identify the name, address, and telephone number of any individual or entity that prepared any of the financial information submitted in support of the waiver request. The application shall also identify the name, address, and telephone number of any subcontractor of the recipient that is subject to the Act and is involved with the contract or government assistance for which the waiver is sought. The application shall also contain the number of affiliated employees involved with the contract or government assistance.
- 1008.4 The Director may require any recipient applying for a waiver to submit certified financial or other records that the Director believes may be necessary to decide the waiver request, including financial or other records not otherwise required by § 1005.
- 1008.5 The Director shall decide all waiver requests within thirty (30) business days after the submission of the application for waiver or as soon as practicable thereafter. The thirty (30) business day period shall commence on the day of

the submission of the application for waiver or the date on which any final additional requested document is submitted to the Director, whichever occurs later.

- 1008.6 Submission of a request for waiver shall not relieve the recipient from complying with the Act during the time the application for waiver is pending.
- 1008.7 The Director shall issue a written recommendation or decision on all applications which are to be granted. If the Director does not issue a recommendation or decision within the thirty (30) business day period established by § 1008.5, the application shall be considered denied.
- 1008.8 An application for waiver which is granted by the Director shall not be effective unless the waiver is approved by the Council of the District of Columbia, by act, as set forth in section 109 of the Act (D.C. Official Code § 2-220.09).

## 1099 DEFINITIONS

When used in this chapter, the following terms shall have the meanings ascribed:

**Affiliated employee** – an employee of a recipient who receives compensation either directly from the government contract or assistance or from the government funds paid to a subcontractor. The term “affiliated employee” applies to both full-time or part-time employees. The term “affiliated employee” does not apply to employees who perform only intermittent or incidental services for the contract. The term “affiliated employee” does not apply to employees of recipients who do not receive compensation directly from government funds.

**Contract** – a written agreement between a recipient and the District of Columbia government or any entity of the District of Columbia government for the provision of services. Where contractual agreements between the District of Columbia government and recipients are for the provision of services to multiple individuals on an individual basis, and the individual selects the service provider, the payments for each individual shall be treated as a separate contract for purposes of the Act.

**Director** – the Director of the District of Columbia Department of Employment Services.

**Disaster** – a natural disaster such as a tornado, blizzard, flood, fire, earthquake, or epidemic which causes substantial physical damage to the District of Columbia, or an economic disaster which results in a substantial loss of District of Columbia government revenues for at least three (3)

consecutive months due to an economic depression, recession, or other downturn in the national or local economy.

**Government assistance** – a grant, loan, or tax increment financing that is received from an agency, commission, instrumentality or other entity of the District of Columbia government and results in a financial benefit to a recipient.

**Living wage** – the minimum hourly wage rate required under the Act, as set forth in § 1002.

**Mayor** – the Mayor of the District of Columbia.

**Recipient** – an individual, sole proprietorship, partnership, joint venture, limited liability company, corporation, or any other form of business or business entity that enters into a contract with, or receives government assistance from the District of Columbia government.

All persons wishing to comment on these proposed rules shall submit written comments no later than thirty (30) days after the publication of this notice in the *D.C. Register* to Michael Milwee, Senior Assistant Attorney General, Department of Employment Services, 64 New York Avenue, N.E., 3<sup>rd</sup> Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained from the same address between the hours of 9 a.m. and 5 p.m. Monday through Friday, excluding holidays.

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

**Z.C. Case No. 10-05**

**(Map Amendment – 11 DCMR)**

**(Revisions and Additions to Wards 7 and 8 R-5-A Zoning Consistency Map Amendments  
Made in Zoning Commission Order Nos. 07-30, 08-12, and 08-22)**

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, as amended; D.C. Official Code § 6-641.01), hereby gives notice of its intent to amend the Zoning Map as incorporated in the Zoning Regulations (Title 11 DCMR).

The proposed map amendments rezone certain properties within Wards 7 and 8 from or to the R-5-A Zone District. This action is intended to address errors, omissions, and oversights in Zoning Commission Order Nos. 07-30 (Sept 19, 2008); 08-12 (Nov. 14, 2008); and 08-22 (June 26, 2009). The proposed amendments:

1. Rezone lots inadvertently omitted from the original Zoning Commission orders, all of which are within the intended rezone boundary indicated on maps produced by the Office of Planning at the time of the original Zoning Commission cases;
2. Rezone lots that were inadvertently rezoned as part of the original cases; and
3. Rezone lots that were not addressed as part of the original cases.

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

The following rulemaking action is proposed:

<b>Square</b>	<b>Lots</b>	<b>Proposed Amendment</b>
5078	28, 813	Rezone from R-4 to R-5-A
5178	27, 28, 48-51, 800	Rezone from R-2 to R-5-A
5920	93	Rezone from R-5-A to R-3
6240	30	Rezone from R-5-A to R-2
5321	32, 35, 2001-2054	Rezone from R-3 to R-5-A
5322	32, 33, 34, 35	Rezone from R-3 to R-5-A
5087	926	Rezone from R-5-A to R-2
5091	37, 38	Rezone from R-5-A to R-2
5190	40 - 42	Rezone from R-5-A to R-3
5267	19	Rezone from R-5-A to R-3
5327	19	Rezone from R-5-A to R-3
5552	800	Rezone from R-5-A to R-4
5586	55	Rezone from R-5-A to R-4
5636	65	Rezone from R-5-A to R-4
5728	58	Rezone from R-5-A to R-3

Z.C. NOTICE OF PROPOSED RULEMAKING  
 Z.C. CASE NO. 10-05  
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Square	Lots	Proposed Amendment
5729	821-826	Rezone from R-5-A to R-3
5777	625, 626	Rezone from R-5-A to R-3
5778	75	Rezone from R-5-A to R-3
5790	820	Rezone from R-5-A to R-4
5921	939, 938	Rezone from R-5-A to R-3
5928	64	Rezone from R-5-A to R-3
5946	78	Rezone from R-5-A to R-3
5982	804, 805	Rezone from R-5-A to R-3
5983	809, 810, 813, 814	Rezone from R-5-A to R-3
5985	8	Rezone from R-5-A to R-3.
6128	78-80	Rezone from R-5-A to R-3
6153	68, 69, 77	Rezone from R-5-A to R-3
6208	46	Rezone from R-5-A to R-3
6239S	8-12	Rezone from R-5-A to R-3
5264	7	Rezone from R-2 to R-5-A
5450	809	Rezone from R-3 to R-5-A
5586	58	Rezone from R-4 to R-5-A
5740	852	Rezone from R-3 to R-5-A
6163	90	Rezone from R-2 to R-5-A
5172	184-0047	Rezone from R-5-A to R-4
5159	801, 802	Rezone 801 from R-5-A to R-2 Rezone 802 from R-2 to R-5-A
5350	101	Rezone from R-5-A to R-2
5727	801-810	Rezone from R-5-A to R-3
6116	810	Rezone from R-5-A to R-3

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

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

**Z.C. Case No. 10-04**

**(Text Amendment – 11 DCMR)**

**(Text Amendment to the ANC Notification Requirements Under Chapters 30 and 31 of the  
Zoning Regulations)**

The Zoning Commission for the District of Columbia, pursuant to its authority under §§ 1 and 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799 as amended; D.C. Official Code § 6-641.01 and 641.07), hereby gives notice of its intent to amend the §§ 3007 and 3115, of the Zoning Commission Rules of Practice and Procedure, and the Board of Zoning Adjustment Rules of Practice and Procedure, Chapters 30 and 31 (Title 11 DCMR).

The proposed text amendment authorizes the use of electronic mail for providing required notices concerning zoning applications to affected Advisory Neighborhood Commissions, the commissioner representing an affected single member district, and the Office of Advisory Neighborhood Commissions. The Office of Zoning will continue to provide such notices by first class mail until a recipient agrees in writing to receive email notifications. The Council of the District of Columbia recently enacted legislation authorizing the use of electronic mail in these instances, but only required a written agreement for the affected ANC.

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

The following rulemaking action is proposed:

- A. Amend Chapter 30, ZONING COMMISSION PROCEDURES RULES OF PRACTICE AND PROCEDURE, by adding a new § 3007 to read as follows:

3007 NOTICES TO ADVISORY NEIGHBORHOOD COMMISSIONS

3007.1 Any notice required by D.C. Official Code § 1-309.10(c)(4) to be provided to affected Advisory Neighborhood Commissions, the Commissioner representing the affected single member district, and the Office of Advisory Neighborhood Commissions (“notice recipients”) may be provided by electronic or first-class mail; provided, that the notice shall be by first-class mail unless a notice recipient agrees in writing to receive future notifications through electronic mail.

3007.2 A notice of application shall constitute the notice required by D.C. Official Code § 1-309.10(b) and starts the time period for the affected Commission to review the application and submit its written report pursuant to D.C. Official Code § 1-309.10(d).

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Z.C. CASE NO. 10-04  
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B. Amend Chapter 31, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE, § 3115 ADVISORY NEIGHBORHOOD COMMISSIONS, as follows:

- (a) By adding the phrase, “: REPORTS AND NOTICE” to its title so that it reads “ADVISORY NEIGHBORHOOD COMMISSIONS: REPORTS AND NOTICE”.
- (b) By inserting the phrase “prepared in response to a notice of application provided pursuant to § 3115.5” into the introductory text of § 3115.1, so that the provision will read:

3115            ADVISORY NEIGHBORHOOD COMMISSIONS: REPORTS  
AND NOTICE

3115.1        The written report of the ANC prepared in response to a notice of application provided pursuant to § 3115.5 shall be submitted to the Board at least seven (7) days in advance of the hearing and shall contain the following information:

- (a) An identification of the appeal or application;
- (b) When the public meeting of the ANC to consider the appeal or application was held;
- (c) Whether proper notice of that meeting was given by the ANC;
- (d) The number of members of the ANC that constitute a quorum and the number of members present at the meeting;
- (e) The issues and concerns of the ANC about the appeal or application as related to the standards of the Zoning Regulations against which the appeal or application must be judged;
- (f) The recommendation, if any, of the ANC as to the disposition of the appeal or application;
- (g) The vote on the motion to adopt the report to the Board;
- (h) The name of the person authorized by the ANC to present the report; and

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- (i) The signature of the ANC chairperson or vice-chairperson.
- (c) By adding new §§ 3115.4 and 3115.5 to read as follows:

3115.4 Any notice required by D.C. Official Code § 1-309.10(c)(4) to be provided to affected Advisory Neighborhood Commissions, the Commissioner representing the affected single member district, and the Office of Advisory Neighborhood Commissions (“notice recipients”) may be provided by electronic or first-class mail; provided, that the notice shall be by first-class mail unless a notice recipient agrees in writing to receive future notifications through electronic mail.

3115.5 A notice of an application shall constitute the notice required by D.C. Official Code § 1-309.10(b) and starts the time period for the affected Commission to review the application and submit its written report pursuant to D.C. Official Code §1-309.10(d).

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 Schellin, Secretary to the Zoning Commission, Office of Zoning, 441 4<sup>th</sup> 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.