

## DISTRICT OF COLUMBIA BOARD OF ELECTIONS

### NOTICE OF PROPOSED RULEMAKING

The District of Columbia Board of Elections, pursuant to the authority set forth in The District of Columbia Election Code of 1955, approved August 12, 1955, as amended (69 Stat. 699; D.C. Official Code § 1-1001.05(a)(14) (2014 Repl.)), hereby gives notice of proposed rulemaking action to adopt amendments to Chapter 10, “Initiative and Referendum,” of Title 3 (Elections and Ethics) of the District of Columbia Municipal Regulations (DCMR).

These amendments clarify the various filing requirements at multiple stages of the initiative and referendum process; specify the Board’s notice requirements for the proper subject matter review hearing for both initiatives and referenda; expand the types of documents that non-resident circulators may submit as valid proof of residence when registering with the Board; and clarify the rules concerning signature defects on initiative or referendum petitions. This rulemaking is necessary to ensure the fair and efficient processing of initiative and referendum measures.

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

#### **Chapter 10, INITIATIVE AND REFERENDUM, of Title 3 DCMR, ELECTIONS AND ETHICS, is amended as follows:**

##### **Section 1000, GENERAL PROVISIONS, is amended to read as follows:**

#### **1000 GENERAL PROVISIONS**

1000.1 This chapter governs the process by which registered qualified elector(s) of the District of Columbia may present initiative or referendum measures to the electorate for their approval or disapproval.

1000.2 For purposes of this chapter, unless otherwise provided, the following terms shall be defined as follows:

- (a) The term “Home Rule Act” means the “District of Columbia Self Government and Governmental Reorganization Act”, Public Law 93-198 (codified at D.C. Official Code § 1-201.01 *et seq.*), and any subsequent amendments.
- (b) The term “qualified petition circulator” means any individual who is:
  - (i) At least 18 years of age; and
  - (ii) Either a resident of the District of Columbia, or a resident of another jurisdiction who has registered as a petition circulator with the Board in accordance with this chapter.

- (c) The term “initiative” means the process by which the electors of the District of Columbia may propose laws (except laws appropriating funds) and present such proposed laws directly to the registered qualified electors of the District of Columbia for their approval or disapproval.
- (d) The term “referendum” means the process by which the registered qualified electors of the District of Columbia may suspend acts of the Council of the District of Columbia (except emergency acts, acts levying taxes, or acts appropriating funds for the general operation budget) until such acts have been presented to the registered qualified electors of the District of Columbia for their approval or rejection, provided that the Chairman of the Council has transmitted the Act to the Speaker of the House of Representatives, and the President of the Senate, under D.C. Official Code § 1-206.02(c)(1) (2006 Repl.).

1000.3 In order to commence the initiative or referendum process, a registered qualified elector(s) shall file the following documents with the Board:

- (a) Five (5) hand-written or word processed copies printed on paper of good writing quality, as well as the word processor document electronic file, of the full legislative text of the initiative or referendum measure; a summary statement not exceeding one hundred (100) words; and a short title of the initiative or of the act or part of the act to be referred not exceeding fifteen (15) words;
- (b) An affidavit under oath containing the name, telephone number, and residence address of the proposer, and a statement that the proposer is a registered qualified elector of the District of Columbia; and
- (c) A copy of the statement of organization and report(s) of receipts and expenditures filed with the Office of Campaign Finance.

1000.4 If the initiative or referendum measure received does not conform to the minimum filing requirements of this section, the General Counsel, on behalf of the Board, shall refuse to accept the measure and no further action shall be taken on the measure.

1000.5 If the measure received meets the minimum filing requirements and if the measure is an initiative, the General Counsel shall provide notice in the *D.C. Register* of the measure’s receipt and the Board’s intent to review the measure at a public hearing to determine whether it presents a proper subject for initiative ("Notice of Receipt and Intent to Review"). If the measure received meets the minimum filing requirements and is a referendum, the Notice of Receipt and Intent to Review shall be posted on the Board’s website not less than 48 hours in advance of the hearing.

- 1000.6 Pursuant to D.C. Official Code § 1-1001.16(b), the Board shall refuse to accept any measure which is not a proper subject of initiative or referendum.
- 1000.7 If the Board determines that the initiative or referendum measure presents a proper subject, or if the Superior Court of the District of Columbia grants a writ in the nature of mandamus compelling the Board to accept the measure, the Board shall accept the initiative or referendum measure and shall assign a serial number to the measure.
- 1000.8 The first initiative measure shall be numbered one (1) in numerals. Succeeding measures shall be numbered consecutively 2, 3, 4, and so on ad infinitum.
- 1000.9 The first referendum measure shall be numbered 001 in numerals. Succeeding measures shall be numbered 002, 003, 004, and so on ad infinitum.
- 1000.10 Once assigned a serial number, an initiative or referendum measure shall be known and designated on all petitions, election ballots, and proceedings as "Initiative Measure No. " or "Referendum Measure No. ."

**Section 1001, ADOPTION OF BALLOT LANGUAGE, is amended to read as follows:**

**1001 ADOPTION OF BALLOT LANGUAGE**

- 1001.1 Within twenty (20) calendar days of the date on which the Board accepts the initiative or referendum measure, the Board shall prepare and formally adopt the following at a public meeting:
- (a) An abbreviated and impartial summary statement not exceeding one hundred (100) words in length expressing the chief purpose of the proposed measure;
  - (b) A short title for the measure not exceeding fifteen (15) words in length by which it will be readily identifiable and distinguishable from other measures which may appear on the ballot; and
  - (c) The proper legislative form of the initiative or referendum measure, where applicable, similar to the form of an act that has completed the course of the legislative process within the District of Columbia government before transmittal to Congress.
- 1001.2 For the purposes of this section, the following rules shall apply to the counting of words in the summary statement and short title:
- (a) Punctuation is not counted;

- (b) Each word shall be counted as one (1) word except as specified in this subsection;
- (c) All geographical names shall be considered as one (1) word; for example, "District of Columbia" shall be counted as one (1) word;
- (d) Each abbreviation for a word, phrase, or expression shall be counted as one (1) word;
- (e) Hyphenated words that appear in any generally available dictionary shall be considered as one (1) word. Each part of all other hyphenated words shall be counted as a separate word;
- (f) Dates consisting of a combination of words and digits shall be counted as two (2) words. Dates consisting only of a combination of digits shall be counted as one (1) word; and
- (g) Any number consisting of a digit or digits shall be considered as one (1) word. Any number which is spelled, such as "one," shall be considered as a separate word or words. "One" shall be counted as one (1) word whereas "one hundred" shall be counted as two (2) words. The number one hundred "100," shall be counted as one (1) word.

1001.3 Within five (5) days of formally adopting the summary statement, short title, and legislative text (“the adopted language”), the General Counsel shall do the following:

- (a) Notify the proposer of the measure of the adopted language;
- (b) Submit the adopted language to the *D.C. Register* for publication; and
- (c) If the measure is a referendum, submit the adopted language to one newspaper of general circulation for publication.

1001.4 If no review of the adopted language is sought in the Superior Court pursuant to D.C. Official Code §1-1001.16(e), the adopted language shall be considered to be certified at the expiration of the ten (10) day period for review. If the Court orders revision to the adopted language, the revised adopted language shall be considered to be certified on the date of the court order or at the expiration of the ten (10) day period for review, whichever is later.

1001.5 The certified short title shall be the title of the measure furnished with the petition, the title printed on the ballot, and the title used in any other proceedings relating to the measure.

**Section 1003, SIGNATURE REQUIREMENTS, is amended to read as follows:**

**1003 SIGNATURE REQUIREMENTS**

- 1003.1 In order for an initiative or referendum measure to obtain ballot access, it must be supported by a petition filed with the Board that contains the valid signatures of at least five percent (5%) of the registered qualified electors of the District of Columbia, provided that the total number of signatures submitted shall include at least five percent (5%) of the registered qualified electors in at least five (5) of the eight (8) election wards.
- 1003.2 The maximum number of signatures that the Board will accept for filing is two (2) times the minimum number of signatures as required by this section. Working from the first page of a petition that has been serially numbered pursuant to Subsection 1005.2 of this chapter, the Board shall only accept for filing the maximum number of signatures that may be filed pursuant to this section.
- 1003.3 The Board shall use the end-of-month official count of registered qualified electors made at least thirty (30) days prior to submission of the signatures for the particular initiative or referendum measure to determine the minimum number of signatures required for ballot access.

**Section 1004, NON-RESIDENT CIRCULATORS, is amended to read as follows:**

**1004 NON-RESIDENT CIRCULATORS**

- 1004.1 Each petition circulator who is not a resident of the District of Columbia shall, prior to circulating a petition, complete and file in-person at the Board's office a Non-Resident Petition Circulator Registration Form in which he or she:
- (a) Provides the name of the measure in support of which he or she will circulate the petition;
  - (b) Provides his or her name, residential address, telephone number, and email address;
  - (c) Swears under oath or affirms that he or she is at least eighteen (18) years of age;
  - (d) Acknowledges that he or she has received from the Board information regarding the rules and regulations governing the applicable petition circulation process, and that he or she will adhere to such rules and regulations;
  - (e) Consents to submit to the Board's subpoena power and to the jurisdiction of the Superior Court of the District of Columbia for the enforcement of Board subpoenas.

- 1004.2 Each non-resident petition circulator shall present valid proof of residence to the Board at the time he or she files the Non-Resident Petition Circulator Registration Form. Valid proof of residence is any official document showing the circulator's name and residence address. Valid proof of residence shall include the following:
- (a) A copy of current and valid government-issued photo identification;
  - (b) A utility bill for water, gas, electricity, cable, internet, telephone, or cellular phone service issued within the last ninety (90) days;
  - (c) A savings, checking, credit, or money market account statement from a bank or credit union issued within the last ninety (90) days;
  - (d) A paycheck, stub, or earning statement that includes the employer's name, address, and telephone number and was issued within the last ninety (90) days;
  - (e) A government-issued document or check from a federal or state agency, issued within the last ninety (90) days;
  - (f) A current residential lease or rental agreement;
  - (g) An occupancy statement from a homeless shelter issued within the last ninety (90) days; or
  - (h) A tuition or housing bill from a college or university issued for the current academic or housing term.

1004.3 Only upon the filing of the Non-Resident Petition Circulator Registration Form and presentation of valid proof of residence shall a non-resident be a qualified petition circulator in the District of Columbia. The non-resident's status as a qualified petition circulator shall be valid only for the circulation of the specific ballot measure petition listed on the Registration Form, provided that the information that the non-resident circulator records in the circulator's affidavit of the petition sheets he or she circulates conforms to the information on his or her Registration Form.

**Section 1005, FILING PETITIONS, is amended to read as follows:**

**1005 FILING PETITIONS**

- 1005.1 Before the petition is submitted, any petition pages circulated in an electronic format shall be printed at the Board's office and signed by the individual circulator who collected the signatures.
- 1005.2 At the time of submission, the proposers shall organize all petitions sheets pursuant to the rules of this subsection. The petition shall not be received by the

Executive Director if the proposer's submission does not conform to the following:

- (a) Petition sheets shall be organized alphabetically by the circulator's last name; and
- (b) All petition sheets shall be serially numbered with numerals, beginning with the numeral "1".

1005.3 A petition, or any sheet comprising the petition shall be timely submitted. All pages of an initiative petition shall be submitted for filing no later than 4:45 p.m. on the one hundred and eightieth (180th) calendar day following the date upon which the Board provided the original petition form. All pages of a referendum petition shall be submitted for filing no later than 4:45 p.m. on the last business day before the act, or any part of the act, which is the subject of the referendum has become law. A petition, or any sheet comprising the petition, that is not timely submitted shall not be received..

1005.4 All timely submitted petitions shall be received by the Executive Director or his or her designee. When a petition is received, the Executive Director shall:

- (a) Count the petition pages and issue a receipt for the total number of petition pages submitted;
- (b) Request that the custodian of the act return it to the Chairman of the Council of the District of Columbia, if the received petition is for a referendum measure;
- (a) Obliterate any blank lines appearing on each petition page; and
- (c) Prepare an initial total count of the signatures submitted pursuant to the rules of this section.

1005.5 A signature shall not be accepted, and shall not be included in the Executive Director's initial total count, if it:

- (a) Appears on a page that is not a proper reproduction of the paper form provided by the Board;
- (b) Appears on a page which does not have a completed circulator affidavit;
- (c) Appears on a page that was circulated by an individual who is not a qualified petition circulator; or
- (d) Is the signature of a registered voter who submitted a notarized request to disallow his or her signature from being counted on the petition, provided

that the request was received prior to the time the petition is filed.

- 1005.6 If the initial total count indicates that a petition contains at least five percent (5%) of registered qualified electors in the District, the Executive Director shall accept the petition, post the petition for public inspection and challenge, and proceed with registration verification of petition signers in accordance with the rules of this chapter. If the petition does not contain at least five percent (5%) of registered qualified electors in the District, the Executive Director shall refuse to accept the petition and shall notify the proposer(s) in writing of the refusal.

**Section 1006, PETITION CHALLENGES, is amended to read as follows:**

**1006 PETITION CHALLENGES**

- 1006.1 The Executive Director or his or her designee shall post all accepted petitions, or facsimiles thereof, in the Board's office for public inspection and opportunity for challenge for ten (10) days, including Saturdays, Sundays, and holidays, beginning on the third (3rd) calendar day after the petitions are filed.
- 1006.2 Except as provided in this section, the Board shall adjudicate the validity of each properly filed challenge in accordance with the procedures prescribed in chapter 4 of this title. A challenge is properly filed if it:
- (a) Cites the alleged signature or circulator requirement defects, as set forth in the signature validity rules of this chapter, by line and page;
  - (b) Is signed and submitted in-person at the Board's office by a qualified elector within the ten (10)-day posting period; and
  - (c) Alleges the minimum number of signature defects which, if valid, would render the proposed measure ineligible for ballot access.
- 1006.3 Within three (3) working days of receipt of a properly filed challenge, the General Counsel or his or her designee shall serve a copy of the challenge upon the proposer by first-class mail or email.
- 1006.4 After receipt of a properly filed challenge, the Board's staff shall search the Board's registration records to prepare a recommendation to the Board as to the validity of the challenge.
- 1006.5 The Board shall receive evidence in support of and in opposition to the challenge and shall rule on the validity of the challenge no more than twenty (20) days after the challenge has been filed. The Board shall consider any other evidence as may be submitted, including but not limited to, documentary evidence, affidavits, and oral testimony.

- 1006.6 The Board, in view of the fact that it shall hear and determine the validity of the challenge within a limited time, may limit examination and cross-examination of witnesses to the following:
- (a) Objections and specifications of such objections, if any, to the petition; and
  - (b) Objections and specifications of such objections, if any, to the petition challenge.
- 1006.7 Based upon the evidence received, the Board shall either reject or uphold the challenge, and accordingly grant or deny ballot access to the proposed measure whose petition was challenged.
- 1006.8 If a one (1)-member Board panel makes a determination on the validity of a challenge, either the challenger or the proposer may apply to either the full Board or the District of Columbia Court of Appeals for a review of such determination within three (3) days after the announcement of the one (1)-member panel determination; provided that any appeal to the full Board must be made in time to permit the Board to resolve the matter by no later than twenty (20) days after the challenge has been filed. An appeal from a full Board determination to the Court of Appeals shall be made within three (3) days.

**Section 1007, VALIDITY OF SIGNATURES, is amended to read as follows:**

**1007 VALIDITY OF SIGNATURES**

- 1007.1 After receipt of a properly filed challenge, the Executive Director or his or her designee shall search the Board's registration records to prepare a recommendation to the Board as to the validity of the challenge based upon the signature validity rules of this section. In the Executive Director's review of the signatures and recommendation, a signature shall not be counted as valid if it contains any of the following defects:
- (a) The signer is not a registered voter;
  - (b) The signer's voter registration was designated as inactive on the voter roll at the time the petition was signed;
  - (c) The signer, according to the Board's records, is not registered to vote at the address listed on the petition at the time the petition was signed and has failed to file a change of address form that is received by the Board on or before the date that the petition is filed;
  - (d) The signature is a duplicate of a valid signature;
  - (e) The signature is not dated;

- (f) The petition does not include the address of the signer;
- (g) The petition does not include the name of the signer where the signature is not sufficiently legible for identification;
- (h) The circulator of the petition sheet was not a qualified petition circulator at the time the petition was signed;
- (i) The circulator of the petition failed to complete all required information in the circulator's affidavit;
- (j) The signature is not made by the person whose signature it purports to be, provided that registered voters who are unable to sign their names may make their marks in the space for signature;
- (k) The signature was obtained outside of the presence of the circulator; or
- (l) The signature was obtained on a petition sheet that was submitted on behalf of a previously filed petition that was rejected or found to be numerically insufficient.

**Section 1008, WATCHERS, is amended to read as follows:**

**1008 WATCHERS**

- 1008.1 Two (2) persons representing the proposer(s) and two (2) persons representing any political committee or committees registered with the Office of Campaign Finance and organized in opposition to a proposed initiative or referendum measure may be present during the counting and validation procedures and shall be deemed watchers.
- 1008.2 To secure the presence of watchers, the proposer, or any committee registered in opposition, shall file a petition for credentials for watchers. Each petition for credentials shall be on a form furnished by the Board and shall contain the following:
- (a) The name, address, telephone number, and signature of the proposer(s) or the committee(s), together with the title of the proposed measure and its serial number;
  - (b) The names, addresses, and telephone numbers of the persons authorized to represent the proposer(s) or the committee(s) and receive the badges from the Board; and
  - (c) A certificate that each proposed watcher shall conform to the regulations of the Board concerning watchers and the conduct of the counting and validation process.

- 1008.3 The Board shall issue a badge for each authorized watcher, with space for the watcher's name, the serial number of the measure, and the name of the proposer(s) or political committee(s) represented by the watcher. Badges shall be worn by the authorized watcher at all times when observing the counting and validation process.
- 1008.4 An authorized alternate watcher may, in the discretion of the proposer(s) or the political committee(s), be substituted for a watcher at any time during the counting and validation process; provided, that notice is first given to the designated representative of the Board who is present.
- 1008.5 No watcher shall at any time during the counting and validation process do the following:
- (a) Touch any official record of the Board; or
  - (b) Interfere with the progress of the counting and validation process or obstruct in any way the process.
- 1008.6 If a watcher has any questions or claims any discrepancy, inaccuracy, or error in the conduct of the procedures, he or she shall direct his or her question or complaint to the Board designee in charge.
- 1008.7 Any watcher who, in the judgment of the Board or its designated representative, has failed to comply with any of the rules in this section may be requested to leave the area where the verification process is being conducted, and the watcher's credentials shall be deemed canceled. An authorized alternate watcher may be substituted.

**Section 1009, PETITION CERTIFICATION, is amended to read as follows:**

**1009 PETITION CERTIFICATION**

- 1009.1 Within thirty (30) calendar days after the acceptance of an initiative or referendum petition for filing, the Board shall determine whether the petition contains the number of valid signatures necessary, in terms of percentage and ward distribution requirements, to be certified for ballot access.
- 1009.2 Upon the acceptance of a petition, the Executive Director or his or her designee shall:
- (a) Verify the registration of each petition signer; and
  - (b) Determine the number of signatures of verified registrants.

1009.3 The signatures of the verified registrants shall comprise the universe of signatures from which a random sample will be drawn for purposes of verifying the signatures' authenticity ("random sample universe").

1009.4 A signature will not be counted and included in the random sample universe if:

- (a) The signer is not a registered voter;
- (b) The signer's voter registration was designated as inactive on the voter roll at the time the petition was signed;
- (c) The signer, according to the Board's records, is not registered to vote at the address listed on the petition at the time the petition was signed, except that, if the Board's records indicate that the voter filed a change of address after the date on which the petition was signed but that was received on or before the petition was submitted, the signature shall be included in the random sample universe;
- (d) The signature is a duplicate of a valid signature;
- (e) The signature is not dated;
- (f) The petition does not include the printed or typed address of the signer;
- (g) The petition does not include the printed or typed name of the signer where the signature is not sufficiently legible for identification;
- (h) The circulator of the petition sheet was not a qualified petition circulator at the time the petition was signed;
- (i) The circulator of the petition failed to complete all required information in the circulator's affidavit;
- (j) Reserved;
- (k) Reserved; or
- (l) The signature was obtained on a petition sheet that was submitted on behalf of a previously filed initiative or referendum petition that was rejected or found to be numerically insufficient.

1009.5 Each signature in the random sample universe shall be ascribed to the ward in which the signer was a duly registered voter on the date the petition was signed, except that if the Board's records indicate that the voter filed a change of address after the date on which the petition was signed, but that was received on or before the petition

was submitted, the signature shall be included in the ward of the voter's new address.

1009.6 If the number of signatures in the random sample universe does not meet or exceed the established ward and District-wide requirements, the Board shall reject the petition as numerically insufficient.

1009.7 If the number of signatures in the random sample universe meets or exceeds the established minimum ward and District-wide requirements, the Board shall supply the Data Management Division of the Office of Planning with the signatures in the random sample universe, broken down by ward. The Data Management Division shall draw and identify for the Board a sample of one hundred (100) signatures from each ward to be verified, except where:

- (a) The Data Management Division determines that sampling the signatures of a given ward would not be necessary for the Board to make a determination to accept or reject the petition; or
- (b) The Data Management Division determines that a sample larger than one hundred (100) must be drawn in order for the Board to make a determination to accept or reject the petition, and thus draws and identifies an appropriate sample size.

1009.8 In making the determination as to the authenticity of a signature, the Board shall disqualify a signature if the signature appearing on the petition does not reasonably resemble the signature on file in the Board's records.

1009.9 The Board shall report the number of authentic signatures in each ward sample ("random sample results") to the Data Management Division. Using the random sample results, the Data Management Division shall employ formulas from the fields of probability and statistics to determine the following:

- (a) Whether a ward equals or exceeds the required number of authentic signatures with ninety-five percent (95%) confidence, and should thus be accepted;
- (b) Whether a ward does not equal or exceed the required number of authentic signatures with ninety-five percent (95%) confidence, and should thus be rejected; or
- (c) Whether a larger sample should be drawn since no decision could be made with ninety-five percent (95%) confidence from the sample used.

1009.10 If is the Data Management Division determines that at least five (5) of the eight (8) election wards have the required number of valid signatures, then it shall use a stratified random sampling formula to combine the figures from all wards which

were sampled to determine whether the entire number of authentic signatures appearing on the petition is equal in number to five percent (5%) of the registered electors in the District of Columbia with ninety-five percent (95%) confidence. The Data Management Division shall request that the Board verify additional signatures for authenticity if a larger sample is needed to make a determination.

- 1009.11 If the total number of authentic signatures equals or exceeds the ward and District-wide signature requirements with ninety-five percent (95%) confidence, the Board shall certify the petition as numerically sufficient for ballot access.
- 1009.12 If the total number of authentic signatures fails to equal or exceed the ward and District-wide signature requirements with ninety-five percent (95%) confidence, the Board shall certify the petition as numerically insufficient to qualify for ballot access.

All persons desiring to comment on the subject matter of this proposed rulemaking should file written comments by no 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, 1015 Half Street S.E., Washington D.C. 20003. Please direct any questions or concerns to the Office of the General Counsel at 202-727-2194 or [ogc@dcboe.org](mailto:ogc@dcboe.org). 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.