

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 § 1-1001.01 *et seq.*), hereby gives notice of proposed rulemaking action to adopt amendments to Chapter 1 (Organization of the Board of Elections), Chapter 4 (Hearings), Chapter 5 (Voter Registration), Chapter 13 (Advisory Neighborhood Commission Vacancies), Chapter 7 (Election Procedure), Chapter 14 (Candidate Nominations: Political Party Primaries for Presidential Preference and Convention Delegates), Chapter 15 (Candidate Nominations: Electors of President and Vice President of the United States), Chapter 16 “Candidate Nomination: Delegate to The U.S. House of Representatives, Mayor, Chairman and Members of the Council of the District of Columbia, Attorney General, U.S. Senator, U.S. Representative, Members of The State Board of Education, and Advisory Neighborhood Commissioner), and Chapter 17 (Candidates: Members and Officials of Local Committees of Political Parties and National Committee Persons) of Title 3 (Elections and Ethics) of the District of Columbia Municipal Regulations (DCMR).

The purpose of the amendments to these regulations is to conform the Board’s regulations to the Elections Modernization Amendment Act of 2022, provide for consistency between Board regulations, provide clarity regarding the commencement of the appeal period for Board decisions, adopt rules of conduct for attendees in the Board’s offices and at Board meetings, and make other non-substantive housekeeping updates and corrections of typographical errors.

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 *District of Columbia Register*.

CHAPTER 1, ORGANIZATION OF THE BOARD OF ELECTIONS, of Title 3 DCMR, ELECTIONS AND ETHICS, is amended as follows:

Section 102, MEETINGS, is amended to read as follows:

102 MEETINGS

- 102.1 Board members are charged with providing ultimate oversight over the activities and affairs of the agency. Members should make every effort to ensure their participation in all Board activities.
- 102.2 Board attendance is directly correlated to Board participation and thereby to the success of the agency and its mission. All Board members are expected to be physically present at all scheduled meetings unless some other form of attendance has been approved by the Chair.
- 102.3 Except as provided otherwise by statute, a quorum of the Board shall consist of no fewer than two (2) members of the Board and shall be necessary to conduct official

Board business. At the discretion of the Chairperson, any member may participate in a meeting of the Board by means of a video conference, telephone conference, or by any means of communication by which all persons participating in the meeting are able to hear one another, and such participation shall constitute presence in person at the meeting.

- 102.4 At the beginning of each calendar year, a preliminary schedule of regular meetings for the year, which the Board has discretion to change, shall be published in the *District of Columbia Register*. The publication of this schedule shall serve as proper legal notice of all of the Board's regular meetings. Regularly scheduled Board meetings shall be held on the first Wednesday of each month at a time and place or manner to be determined by the Board and may be rescheduled as necessary. Additional meetings may be called as needed by the Board. Notice of additional meetings or notice of changes to regularly scheduled meetings shall be published on the Board's website as early as possible, but not less than forty-eight (48) hours or two business days in advance, whichever is greater, except in the case of emergency.
- 102.5 In addition to the publication of the preliminary schedule of regular meetings for the year in the *District of Columbia Register*, the Board shall provide notice of each regular meeting, which shall include the planned agenda for such meeting, on its website as early as possible, but not less than forty-eight (48) hours or two business days in advance of such meeting, whichever is greater. Copies of the agenda shall be available to the public at the meeting. Nothing in this section shall preclude the Board from amending the agenda at the meeting.
- 102.6 The meetings of the Board shall be open to the public, with the exception of executive sessions entered into pursuant to D.C. Official Code § 2-575(b).
- 102.7 Meeting minutes are a matter of public record and shall include the vote of each member on each action. A preliminary, pre-approval draft copy of the minutes from each Board meeting shall be posted on the Board's website within three (3) business days after the meeting. A final version of the minutes from each Board meeting shall be posted on the Board's website no later than the next regular meeting of the Board. Electronic and hard copies of the final version of the minutes shall be made available upon request to the Office of the General Counsel.
- 102.8 Meeting transcripts shall be recorded stenographically under the supervision of the Office of General Counsel, or by other means, by an official reporter who may be designated from time-to-time by the Board. Transcripts shall be open for inspection in the Office of the General Counsel and on the Board's website. Paper copies of the official transcript shall be available upon payment to the Board of the charges fixed for copies otherwise provided through information requests except that the Office of General Counsel may waive the fee for parties appearing at a meeting in a contested matter.

- 102.9 All attendees at Board meetings, including Board members and election officials, shall refrain from engaging in any conduct that is unsafe or disruptive to the orderly conduct of a meeting. The presiding Board member at a meeting or his or her designee may take appropriate remedial action consistent with the Open Meetings Act and other pertinent rules and regulations to ensure the orderly conduct of a meeting, including but not limited to removing from the meeting any individual who is acting in a manner that is unsafe or disruptive to the orderly conduct of the meeting. Any individual removed from a meeting shall not be re-admitted unless permission is granted upon motion adopted by a majority vote of the Board.
- 102.10 If counsel to a party in a contested case hearing is removed from a meeting pursuant to this Chapter, the Board may either proceed with the hearing if consistent with the due process rights of the party or parties or adjourn the hearing to give the party or parties represented by such counsel a reasonable opportunity to secure new representation expeditiously.
- 102.11 Members of the public who are attending in-person meetings shall only be permitted to access the Board's meeting room and may not loiter or move unescorted through the Board's offices. Attendees who arrive early may wait in the building's lobby or the Board's main reception area until the meeting commences. Attendees must vacate the Board's offices promptly after the meeting has adjourned. If an attendee has additional business at the Board, they must exit the meeting room and re-enter the Board's offices through the main entrance.
- 102.12 Attendees at virtual meetings must stay muted when not speaking and are responsible for unmuting themselves upon being recognized to comment by the presiding Board member. Attendees at virtual meetings may only use the chat function for official business.
- 102.13 The Board encourages comments on any issue under the jurisdiction of the Board. The Board shall permit the submission of written comments either in advance or within a time set after the regular meeting. The Board may also, in its discretion, provide the public with a reasonable opportunity to offer such comments at its regular meetings. Any public comment period offered shall be the only opportunity at a meeting for a member of the public to provide comment unless they are participating in a hearing or other agendaized proceeding being held before the Board (for e.g., as parties, counsel, witnesses, etc.) or are expressly permitted by the Board to provide comment outside of the public comment period.
- 102.14 For meetings that include a public comment period, the following rules shall apply to such period:
- (a) Priority will be given first to registered voters and then to residents of the District of Columbia;
 - (b) Priority will be given to individuals who have notified the Board in advance of their desire to provide comment by providing their names and the topics

on which they wish to speak to the Office of the General Counsel by noon on the day before the meeting;

- (c) Public comments may be limited with respect to the number of speakers permitted. Each speaker shall be limited to three (3) minutes per speaker, and such time may not be given to or traded with other speakers;
- (d) The Board shall not discriminate against any speaker on the basis of his or her position on a particular matter;
- (e) Speakers must seek recognition by the presiding Board Member by raising a hand or, if meeting virtually, through a hand “emoji”, chat function, or other method appropriate to the format or platform of the virtual meeting. The presiding Board member may decline to recognize any meeting attendee who seeks recognition by shouting out or through similar disruptive means;
- (f) Once recognized by the presiding Board member, the speaker shall first state their name, address, and the subject matter upon which they wish to speak, and then proceed with the entirety of their comment(s) and/or question(s); and
- (g) Any comments or questions presented may, in the Board’s discretion, be addressed on-the-record during the meeting or after the meeting as appropriate. If comments or questions are answered on-the-record during the meeting, no follow-up comments or questions will be permitted at the meeting absent express permission by the presiding Board member.

102.15 Any member of the public who intends to comment regarding any agenda item or any issue under the jurisdiction of the Board is encouraged to notify the Board in advance of his or her intent to do so, providing his or her name and the topic on which he or she wishes to speak. Such notification may be provided to the Office of the General Counsel. No person shall be prevented from speaking at a Board meeting simply because he or she has not provided advance notice of his or her intent to do so.

102.16 Members of the public who wish to submit items for consideration by the Board shall do so in writing one (1) week in advance. Failure to submit an item in advance as required may, within the Board’s discretion, result in the matter being continued until the next regularly scheduled meeting.

102.17 Meetings may be adjourned from time-to-time. If the time and place of resumption is publicly announced when the adjournment is ordered, no further notice shall be required.

102.18 Any remedy for an allegedly improperly closed meeting or a defect in notice shall be limited to that provided in D.C. Official Code § 2-579.

A new Subsection 106, BARRING PROCEDURES, is added to read as follows:

106 BARRING PROCEDURES

- 106.1 These procedures are intended: (1) to protect the rights and safety of Board members and election officials; (2) to ensure that the Board's office space, facilities, election equipment, and election software and proprietary data are protected from compromise, damage, misuse, and/or theft; and (3) to ensure that Board members and election officials can perform their election administration duties free from disruption, interference, intimidation, and harassment.
- 106.2 Conduct by the public that disrupts or interferes with the normal operations of the Board and is otherwise prohibited ("Prohibited Activity" or "Prohibited Activities") includes but is not limited to the following:
- (a) harassment, abusive, or threatening language or gestures, bullying, and/or creating unreasonable noise;
 - (b) destroying, abusing, or damaging, or threatening to destroy, abuse, or damage BOE equipment and facilities;
 - (c) behavior likely to cause personal or property injury;
 - (d) failing to comply with the reasonable direction of Board members, election officials, and/or law enforcement personnel;
 - (e) committing or attempting to commit illegal activity;
 - (f) creating a nuisance; and
 - (g) soliciting, petitioning, or distributing written materials or canvassing for political, charitable, or religious purposes on the premises.
- 106.3 Board members and election officials, Metropolitan Police Department officers, Special Police Officers, or any duly authorized law enforcement official may direct members of the public to cease and desist from engaging in Prohibited Activities. Failure to comply with such a directive may result in the issuance of a Barring Notice prohibiting the presence of the target of such notice from entering Board facilities for a period of up to three (3) years. If a Barring Notice issues, it shall apply to all Board facilities specified in the Notice and shall result in the suspension of privileges offered to the public at Board facilities, provided however that the barred party may access early voting and election day vote centers to exercise his or her right to vote or may access the Board's facilities where he or she cannot comply with ballot access regulations without appearing in person. Targets of barring notices may have their photographs or video captured by Board members and election officials to enforce the bar.
- 106.4 Board facilities that may be covered by a Barring Notice includes all buildings and all grounds controlled and operated by the Board (including but not limited to the Board's offices and warehouse facilities) and early voting and election day vote centers (collectively, "Premises") except to the extent that a barred party may need to access early voting and election day vote centers to exercise his or her right to vote or where he or she cannot comply with ballot access regulations without appearing in person.
- 106.5 Barring Notices shall be set forth in a form that shall:

- (a) Inform the target of such notice that:
 - (1) He or she must immediately leave the Board’s facilities and not return to such property for the period that the Barring Notice remains in effect;
 - (2) He or she may be arrested for “unlawful entry” pursuant to D.C. Official Code § 22-3302 should he or she (1) fail to leave the premises described in the Barring Notice, or (2) return to such premises after such person has been served with the Barring Notice, the person; and
 - (3) He or she may seek administrative review of the bar if it exceeds seven (7) days;
- (b) Be presented in person to the target, although not necessarily while that person is on Board premises;
- (c) Be read to the target;
- (d) Be offered in hard copy to the target;
- (e) Identify the basis for the bar;
- (f) State the time period for which the person is barred from Board premises;
- (g) Provide for the party delivering the notice to attest on the form to the date, method and manner of delivery upon the barred person (including whether person refused to accept the notice when presented or refused to listen to the reading of the notice).

106.6 Where reasonably practical, a written request for a Barring Notice with supporting attestations of the Prohibited Activity, the identity of the target, and necessary duration of the bar should be submitted to the General Counsel for review and approval of the Barring Notice language. In emergency situations, the General Counsel may be contacted informally, provided that supporting documentation for the request to issue a Barring Notice is provided as soon as reasonably practical to the General Counsel. The Board’s Office of General Counsel shall keep copies of all Barring Notices and related documentation for at least the duration of the barring period.

106.7 An individual who receives a Barring Notice may request an administrative review by the Board if the bar is greater than seven (7) days. This request must be received by the Board’s General Counsel within ten (10) business days of the date on the barring notice. A request for review should be submitted in writing via email to the Board’s General Counsel at ogc@dcboe.org or by mailing the request in sufficient time to be received by the deadline to:

D.C. Board of Elections

c/o Office of the General Counsel
Suite 750
1015 Half Street, SE
Washington, D.C. 20003

- 106.8 The Board shall issue a final decision on the administrative review of the bar within thirty (30) calendar days after the request for review is received by the Board's General Counsel. The barred individual may appeal the final decision to the District of Columbia Superior Court's Civil Division within thirty (30) days of the date of the notice of final decision.
- 106.9 An individual who has been barred from Board facilities pursuant to a Barring Notice shall not be permitted to attend an in-person Board meeting. Should a barred individual attempt to enter a meeting, Board staff shall follow Barring Policy procedures for securing law enforcement assistance and prosecution for unlawful entry (see D.C. Code § 22-3302). Individuals barred from Board facilities may observe meetings virtually or obtain a link to a recording or transcript of the meeting. Barred individuals may submit comments on a rulemaking either through virtual attendance, if applicable, at a rulemaking hearing or electronically in writing within the rulemaking comment period.

**CHAPTER 4, HEARINGS, of Title 3 DCMR, ELECTIONS AND ETHICS,
is amended as follows:**

Section 428, FINAL DECISION, is amended as follows:

Subsection 428.5 is amended to read as follows:

- 428.5 The decision shall be served promptly on all parties or their representatives. The date of the written decision shall commence any period for seeking judicial review unless the statute prescribes a deadline for Board action; in which case, the presiding Board member may specify at the time that the decision is announced that the appeal period shall commence upon such announcement.

**CHAPTER 5, VOTER REGISTRATION, of Title 3 DCMR, ELECTIONS AND ETHICS,
is amended as follows:**

Section 510, VOTER REGISTRATION INFORMATION, is amended as follows:

Subsection 510.10 is amended to read as follows:

- 510.10 If a registered qualified elector's address is made confidential upon the showing of an Address Confidentiality Program authorization card, his or her entire registration record shall be removed from all voter records available for public inspection, including poll books available in any voting place. If a registered qualified elector's address is made confidential upon the showing of any other document or reason authorized by this section, the elector's address shall be removed from all voter

records available for public inspection, including poll books available in any voting place.

CHAPTER 7, ELECTION PROCEDURE, of Title 3 DCMR, ELECTIONS AND ETHICS, is amended as follows:

Section 720, ABSENTEE VOTING, is amended to read as follows:

Paragraph 720.12(a) is amended to read as follows:

- (a) Mail, provided it is postmarked or otherwise demonstrated to have been sent on or before the day of the election and received by no later than the 10th day after Election Day;

Chapter 13, ADVISORY NEIGHBORHOOD COMMISSION VACANCIES, of Title 3 DCMR, ELECTIONS AND ETHICS, is amended as follows:

Section 1303, CERTIFICATION OF VACANCY AND PETITIONS, is amended as follows:

Subsection 1303.2 is amended to read as follows:

1303.2 All rules established in Chapter 16 of this title shall apply, except that:

- (a) The candidate's petition, affidavits, and supplements, if any, shall be filed with the Board at its office not later than 4:45 p.m. within twenty-one (21) days after the date on which the Executive Director makes the petitions available;
- (b) The candidate's Declaration of Candidacy shall be filed before the Registrar will issue the nominating petition for the particular office sought; and
- (c) The Executive Director or his or her designee shall post nominating petitions, or facsimiles thereof, in the Board's office for public inspection for five (5) working days beginning on the third (3rd) business day after the filing deadline.

Chapter 14, CANDIDATE NOMINATIONS: POLITICAL PARTY PRIMARIES FOR PRESIDENTIAL PREFERENCE AND CONVENTION DELEGATES, of Title 3 DCMR, ELECTIONS AND ETHICS, is amended as follows:

Section 1405, FILING PETITIONS, is amended as follows:

Subsection 1405.3 is amended to read as follows:

1405.3 The nominating petition and supporting affidavits shall be filed in person at the Board's office no later than 5:00 p.m. on the 90th day preceding the election ("petition filing deadline"). The Declaration of Candidacy required pursuant to Chapter 6 of this title must be filed before the Registrar will issue the nominating petition for the particular office sought. Any candidate may file petition supplements prior to the petition filing deadline. All petitions and supplements shall be received by the Executive Director or his or her designee if filed on or before the petition filing deadline. All petitions and supplements shall be accompanied by an affidavit executed by the person filing the petition or supplement attesting that to the best of his or her knowledge, the petition is complete and contains the legally required number of valid signatures.

CHAPTER 15, CANDIDATE NOMINATIONS: ELECTORS OF PRESIDENT AND VICE PRESIDENT OF THE UNITED STATES, is amended as follows:

Section 1500, GENERAL PROVISIONS, is amended to read as follows:

1500 GENERAL PROVISIONS

1500.1 This chapter governs the process for obtaining ballot access and the process by which candidates seek nomination to the office of elector of President and Vice President of the United States (hereinafter, "presidential electors").

1500.2 For purposes of this chapter, unless otherwise provided, the following terms shall be defined as follows:

- (a) The term "ballot access" means the process by which the names of candidates for President and Vice President are placed on the general election ballot.
- (b) The term "authorized political party" means a political party that was organized prior to and continuously from the passage of the District of Columbia Election Code of 1955, approved August 12, 1955 (69 Stat. 699; D.C. Official Code § 1-1001.01 *et seq.*), or whose name has been approved by the Board pursuant to the rules of this chapter;
- (c) The term "qualified petition circulator" means an individual who is:
 - (1) At least 17 years of age and who will be 18 years of age on or before the next general election; and
 - (2) 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.

- 1500.3 To obtain ballot access, presidential electors shall be nominated in either of the following manners:
- (a) By message; or
 - (b) By nominating petition.
- 1500.4 Each authorized political party which had in the next preceding election year at least seven thousand five hundred (7,500) votes cast in the general election for a candidate of the party to the office of Delegate, Mayor, Chairman of the Council, or member of the Council may obtain ballot access and nominate presidential electors by message pursuant to the provisions of D.C. Official Code § 1-1001.10 (2011 Repl.). Nominations made by message shall be in writing, signed by the chairperson or other duly authorized official of the party's executive committee in the District of Columbia, and shall contain the following information:
- (a) The name of the political party;
 - (b) The names of the party's candidates for President and Vice President; and
 - (c) The names, addresses and registration numbers of the three candidates for presidential electors of that party.
- 1500.5 Each authorized political party which is ineligible to nominate presidential electors by message shall obtain ballot access by nominating presidential electors by petition pursuant to the rules of this chapter. Candidates without a party affiliation ("independents") shall also obtain ballot access by nominating presidential electors by petition.
- 1500.6 In addition to the filing of either the nomination by message or nomination by petition, the following affidavits and declarations shall also be filed on forms prescribed by the Board:
- (a) An affidavit from each of the three (3) candidates for presidential electors ("Affidavit of Presidential Elector Candidate") stating that:
 - (1) The candidate meets all the legal requirements for office;
 - (2) The nomination as a candidate for presidential elector is filed with the nominee's knowledge and consent;
 - (3) If elected as a presidential elector, the candidate shall vote in the electoral college for the presidential and vice presidential candidates nominated by the designated political party or whose nomination the accompanying petition was filed in support of; and

- (4) The candidate acknowledges that, in accordance with D.C. Official Code § 1-1001.08(g)(3), his or her presidential elector ballot shall not be accepted if he or she does not vote for the candidate of the party he or she was elected to represent, and that if he or she refuses to present a ballot, presents an unmarked ballot, or refuses to vote for the candidate of the party whom the elector has been selected to represent, he or she shall vacate the office of the elector.
- (b) An affidavit executed personally by the presidential and vice presidential candidates (“Affidavit of Presidential and Vice Presidential Candidate”), stating their consent to the following:
 - (1) The appearance of their names on the general election ballot; and
 - (2) Representation in the electoral college by each of the three (3) named presidential electors, in the event that their presidential electors are elected in the District of Columbia; and
- (c) A Declaration of Candidacy for each candidate for presidential elector, executed in accordance with Chapter 6 of this title.

1500.7 Nominations by message and supporting affidavits and Declarations of Candidacy shall be filed with the Board not later than 5:00 p.m. on September 1st of each presidential election year, unless the deadline for these documents has been waived for good cause following the executive committee’s written request for such waiver to the Board.

1500.8 In the case of a nomination by petition, the Declaration of Candidacy must be filed before the Registrar will issue the nominating petition.

1500.9 Each person elected as elector of President and Vice President shall, in the presence of the Board, take an oath or solemnly affirm that the person will vote for the candidates of the party the person has been nominated to represent, and it shall be the person’s duty to vote in such manner in the electoral college.

Section 1505, FILING PETITIONS, is amended to read as follows:

Section 1505.2 is amended to read as follows:

1505.2 The nominating petition and supporting affidavits shall be filed in person at the Board’s office no later than 5:00 p.m. on the 90th day preceding the election (“petition filing deadline”). The Declaration of Candidacy required pursuant to Chapter 6 of this title must be filed before the Registrar will issue the nominating petition. Any candidate may file petition supplements prior to the petition filing deadline, provided that the supplements are accompanied by an affidavit executed by the person filing them attesting that to the best of his or her knowledge, the

petition is complete and contains the legally required number of valid signatures. All petitions and supplements shall be received by the Executive Director or his or her designee if filed on or before the petition filing deadline.

CHAPTER 16, CANDIDATE NOMINATION: DELEGATE TO THE U.S. HOUSE OF REPRESENTATIVES, MAYOR, CHAIRMAN AND MEMBERS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA, ATTORNEY GENERAL, U.S. SENATOR, U.S. REPRESENTATIVE, MEMBERS OF THE STATE BOARD OF EDUCATION, AND ADVISORY NEIGHBORHOOD COMMISSIONER, is amended to read as follows:

Section 1605, FILING PETITIONS, is amended to read as follows:

Subsection 1605.2 is amended to read as follows:

1605.2 The nominating petition and supporting affidavits shall be filed in person at the Board's office no later than 5:00 p.m. on the 90th day preceding the election ("petition filing deadline"). The Declaration of Candidacy required pursuant to Chapter 6 of this title must be filed before the Registrar will issue the nominating petition for the particular office sought. Any candidate may file petition supplements prior to the petition filing deadline, provided that the supplements are accompanied by an affidavit executed by the person filing them attesting that to the best of his or her knowledge, the petition is complete and contains the legally required number of valid signatures. All petitions and supplements shall be received by the Executive Director or his or her designee if filed on or before the petition filing deadline.

CHAPTER 17, CANDIDATES: MEMBERS AND OFFICIALS OF LOCAL COMMITTEES OF POLITICAL PARTIES AND NATIONAL COMMITTEE PERSONS, is amended to read as follows:

Section 1705, FILING PETITIONS, is amended to read as follows:

Subsection 1705.2 is amended to read as follows:

1705.2 The nominating petition and supporting affidavits shall be filed in person at the Board's office no later than 5:00 p.m. on the 90th day preceding the election ("petition filing deadline"). The Declaration of Candidacy required pursuant to Chapter 6 of this title must be filed before the Registrar will issue the nominating petition for the particular office sought. Any candidate may file petition supplements prior to the petition filing deadline, provided that the supplements are accompanied by an affidavit executed by the person filing them attesting that to the best of his or her knowledge, the petition is complete and contains the legally required number of valid signatures. All petitions and supplements shall be received by the Executive Director or his or her designee if filed on or before the petition filing deadline.

All persons desiring to comment on the subject matter of this rulemaking should file written comments by no later than thirty (30) days after the date of publication of this notice in the *District of Columbia Register*. Comments should be filed with the Office of the General Counsel, Board of Elections, 1015 Half Street S.E., Suite 750, 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. 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.