

DIRECTOR, BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY

NOTICE OF FINAL RULEMAKING

The Board of Ethics and Government Accountability (Board), pursuant to the authority set forth in section 209 of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1161.01 *et seq.*) (2012 Supp.), hereby gives notice of final rulemaking action to add new Chapters 51 and 52 (Board of Ethics and Government Accountability and Political and Ethical Conduct of the Board) of Title 3 (Elections and Ethics) of the District of Columbia Municipal Regulations (DCMR). The rulemaking will establish the organization of the Board, meeting procedures, notice requirements, and requirements for political and ethical conduct of the Board and its employees.

The emergency and proposed rulemaking was adopted by the Board on September 25, 2012, and became effective immediately, published in the *D.C. Register* on September 28, 2012 at 59 DCR 011194. No written comments were received and no changes have been made to the text of the proposed rules. The Board adopted the rulemaking as final on January 10, 2013. These rules shall become effective on the date of publication of this notice in the *D.C. Register*.

Title 3, ELECTIONS AND ETHICS, of the DCMR is amended by adding new Chapters 51 and 52 to read as follows:

**CHAPTER 51 BOARD OF ETHICS AND GOVERNMENT
ACCOUNTABILITY**

5100 ESTABLISHMENT AND AUTHORITY OF THE BOARD

- 5100.1 The Board of Ethics and Government Accountability (Board) is established pursuant to the authority and purposes set forth in the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011(Act), effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1161.01 *et seq.*) (2012 Supp.).
- 5100.2 The Board is vested with authority to administer and enforce the provisions of the Government Ethics Act of 2011, Title II of the Act.
- 5100.3 The Board is composed of three (3) members, no more than two (2) of whom shall be members of the same political party, who are appointed by the Mayor and confirmed by the Council of the District of Columbia.
- 5100.4 The Mayor shall designate the Chairperson of the Board.

5100.5 The Board shall act by affirmative action of a majority of members present.

5100.6 In the event of a tie vote by the Board on a proposed action, including any proposed enforcement action, the proposed action will not take effect unless the tie vote can be resolved pursuant to the procedures of §§ 5506.6 or 5506.7.

5101 DIRECTOR OF GOVERNMENT ETHICS

5101.1 There is established the position of Director of Government Ethics pursuant to section 206 of the Act.

5101.2 The Board shall select, employ, and fix the compensation of the Director of Government Ethics (Director) and such staff as the Board considers necessary to carry out the powers and duties assigned to the Director pursuant to subtitle B of Title II of the Act.

5101.3 The Director shall serve at the pleasure of the Board.

5102 BOARD MEETINGS

5102.1 Except as provided otherwise by the Act, a quorum of the Board shall consist of no less than two (2) members of the Board and shall be necessary to conduct official Board business.

5102.2 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 D.C. Register.

5102.3 Regularly scheduled Board meetings shall be held on the first Thursday of each month, or at least once each month, at a time to be determined by the Board. Additional meetings may be called as needed by the Board.

5102.4 Notice of all regular and additional meetings of the Board shall be published on the Board's web site at least forty-eight (48) hours, or two (2) business days, in advance, whichever is greater, except in the case of emergency.

5102.5 The Board may exercise its discretion and reschedule a regular meeting or call special meetings when necessary with reasonable notice to the public.

5102.6 The Board encourages comments on any issue under the jurisdiction of the Board that is considered at its regular meetings. 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 provide the public with a reasonable opportunity to appear before the Board and offer such comments. No public comment will be accepted when the Board is considering enforcement actions or is conducting an adversarial hearing.

- 5102.7 To ensure the orderly conduct of public Board meetings, public comments may be limited with respect to the number of speakers permitted and the amount of time allotted to each speaker; however, the Board shall not discriminate against any speaker on the basis of his or her position on a particular matter.
- 5102.8 Any member of the public who intends to comment regarding any agenda item or any issue under the jurisdiction of the Board is encouraged to notify the Board in advance of his or her intent to do so, providing his or her name and the topic on which he or she wishes to speak. Such notification may be provided by e-mail to the Board's email address, by telephone, or by mail or in person at the Board's office. No person shall be prevented from speaking at a Board meeting simply because he or she has not provided advance notice of his or her intent to do so.
- 5102.9 Members of the public who wish to submit items for consideration by the Board shall do so in writing one (1) week in advance and the Board may in its discretion include the submitted items on the agenda if it determines that the items' subject matter is within the Board's jurisdiction and there is sufficient time to address the item at the meeting. Any item that was properly submitted to the Board but was not included on the agenda shall be included on the agenda of the next regularly scheduled meeting. 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.
- 5102.10 The Chairperson shall conduct the meetings of the Board. In the absence of the Chairperson, the senior member of the Board shall conduct the meeting.
- 5102.11 Each meeting shall begin with the adoption of the agenda, followed by the adoption of any outstanding minutes of previously conducted Board meetings.
- 5102.12 The Director of Government Ethics shall present a report of the activities of that position at each regularly scheduled meeting.
- 5102.13 Each Board member may properly make any and all motions.
- 5102.14 All meetings of the Board shall be open to the public and conducted in compliance with the Open Meetings Act (Open Meetings Act), effective March 31, 2011 (D.C. Law 18-350; D.C. Official Code § 2-571 *et seq.*) (2011 Repl.), unless governed by section 405(b) and 406 of the Open Meetings Act (permissible closed meetings).
- 5102.15 The proposed agenda for each Board meeting shall be posted and made available for public inspection in the Board's office and on its website at least twenty-four (24) hours prior to a meeting.
- 5102.16 Copies of the agenda shall be available to the public at the meeting.

5102.17 Nothing in this section shall preclude the Board from amending the agenda at the meeting.

5102.18 Meetings may be adjourned from time to time and resumed at the Board's discretion so long as the time of resumption is announced to the public. Where the meeting is adjourned and resumed in less than forty-eight (48) hours or two (2) business days, the Board will provide notice of the date and time of its resumption on its website and by posting notice in the Board's office. Where a meeting is adjourned to a time longer than forty-eight (48) hours or two (2) business days, the Board shall provide notice of the new day and time as required by the Open Meetings Act.

5102.19 Any individual who is deemed by the Board Chairman to be disruptive to the meeting may be removed therefrom.

5103 CLOSED MEETINGS

5103.1 The Board may conduct closed meetings for the purposes described in section 405(b) of the Open Meetings Act, including the following:

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

5104 ORDERS OF THE BOARD

5104.1 The Board shall issue all final orders in writing, signed manually or electronically by each member of the Board participating in the final order.

5104.2 Any Board member participating in a final order may issue a concurring or dissenting opinion to the final order, and such opinion shall be attached to the Board's final order.

5105 MINUTES OF MEETINGS AND OTHER BOARD RECORDS

5105.1 Pursuant to the Open Meetings Act, D.C. Official Code § 2-578, all meetings of the Board, whether open or closed, shall be recorded by electronic means; provided that if a recording is not feasible, detailed minutes of the meeting shall be kept.

5105.2 Copies of meeting records shall be made available for public inspection according to the following schedule; provided, that a record, or a portion of a record, may be withheld under the standard established for closed meetings pursuant to D.C. Official Code § 2-575(b):

(a) A copy of the minutes of a meeting shall be made available for public inspection as soon as practicable, but no later than three (3) business days after the meeting.

(b) A copy of the full record, including any recording or transcript, shall be made available for public inspection as soon as practicable, but no later than seven (7) business days after the meeting.

5105.3 Disclosure of all Board records, including meeting minutes or transcripts, shall be governed by the District of Columbia Freedom of Information Act, D.C. Official Code § 2-531 et seq. The Board shall, by Office Order, issue a schedule of fees, not to exceed the actual cost of searching for, reviewing, and making copies of records, consistent with the provisions of D.C. Official Code § 2-532(b-1) through (b-3).

CHAPTER 52 POLITICAL AND ETHICAL CONDUCT OF THE BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY

5200 PURPOSE AND SCOPE

5200.1 The purpose of this chapter is to establish standards of conduct for members and employees of the Board of Ethics and Government Accountability (Board) for their official activities in order to maintain public confidence in the integrity of those persons responsible for the administration of the ethics laws and the Code of Conduct, as that term is defined in section 101(7) of the Act.

5200.2 The provisions of this chapter shall solely govern the political and ethical conduct of the members and employees of the Board and are not intended to be exclusive of rules governing the ethical conduct of all District of Columbia Government employees.

5201 POLITICAL ACTIVITY OF MEMBERS OF THE BOARD

5201.1 Except as provided in this section, nothing in this chapter shall be construed as prohibiting the members or employees of the Board from doing any of the following:

- (a) Exercising the right to vote at any election conducted in the District of Columbia or elsewhere;
- (b) Signing any nominating, initiative, referendum, or recall petition; or
- (c) Attending candidate forums.

5201.2 No member of the Board shall do any of the following:

- (a) Act as a leader or hold any office in a District political organization;
- (b) Make speeches for a District political organization or candidate, or publicly endorse or oppose a District of Columbia candidate for public office;
- (c) Solicit funds for, pay an assessment to, or make a contribution to a District political organization or candidate, or attend or purchase a ticket for a dinner or other event sponsored by a District of Columbia political organization or candidate; or
- (d) Be a lobbyist.

5202 ETHICAL CONDUCT

5202.1 A member or employee of the Board shall not directly or indirectly give any person who is not a member or employee of the Board access to official information obtained through or in connection with his or her employment which has not been released to the general public or which is not a matter of public record.

5202.2 A member or employee of the Board shall not solicit or accept, either directly or through the intercession of others, any fee, gift, gratuity, favor, loan, entertainment, or other thing of monetary value from any person, organization or entity which has done or is doing any of the following:

- (a) Has obtained, or is seeking to obtain, contractual or other business or financial relationships with the Board;
- (b) Conducts operations or activities that are regulated or examined by the Board; or
- (c) Has interests that may be favorably affected by the action or inaction of the member employee in the performance of his or her official duties.

5202.3 The restrictions set forth in § 5202.2 shall not apply to any of the following:

- (a) Bona fide personal relationships, such as those that exist between an employee or member and his or her parents, children, or spouse;
- (b) The acceptance of loans from financial institutions on customary terms to finance the acquisition of a car, home, appliance, or other personal items; or
- (c) The acceptance of unsolicited advertising or promotional materials such as pens, pencils, note pads, calendars, and like items of nominal intrinsic value.

5202.4 A member or employee of the Board shall not use his or her status as a member to directly or indirectly attempt to influence any decision of the District government relating to any action that is not within the Board's purview.

5202.5 A member or employee of the Board shall not directly or indirectly use or allow the use of government property of any kind, including office machines, motor vehicles, materials, supplies, or funds, for other than officially approved activities.

5202.6 Without prior approval of the Board, a member or employee of the Board shall not accept any reimbursement for expenses or receive any other honorarium or fee for any service, speech, or other activity which is rendered as a result of his or her official duties with the Board, whether or not such activities were performed during official working hours.

5202.7 Board members and employees shall not engage in any employment or outside activity which is incompatible with the full and proper discharge of their government responsibilities.

5202.8 No Board member or employee shall do indirectly (by, through, or with other persons) those acts or actions which the Board member or employee are prohibited from doing directly under the restrictions set forth in this chapter.

- 5202.9 No Board member may serve if, during the member's tenure on the Board, he or she is convicted of having committed a felony in the District of Columbia, or if the crime is committed elsewhere, convicted of an offense that would have been a felony if it had been committed in the District of Columbia.
- 5202.10 An employee shall promptly report to his or her immediate supervisor any attempt to direct or otherwise unlawfully influence the discharge of that employee's official duties.
- 5202.11 A member of the Board or employee of the Board must refrain from acting on or discussing, formally or informally, a matter before the Board if the matter relates to, or may personally or financially benefit, that Board member or employee, their immediate family, or a business with which they are associated.
- 5202.12 A member of the Board or employee of the Board must refrain from acting on or discussing, formally or informally, a matter before the Board if his or her impartiality might reasonably be questioned, including but not limited to circumstances where the Board member or employee:
- (a) Personally and substantially participated in the matter;
 - (b) Is a material witness concerning the matter;
 - (c) Has material, personal knowledge about the matter;
 - (d) Has a personal bias or prejudice concerning a party or party's lawyer or representative; or
 - (e) Has made a public statement, other than in a Board proceeding or opinion, that commits or appears to commit the Board member or employee to reach a particular result or rule in a particular way in the matter.
- 5202.13 If a member of the Board must withdraw from a matter before the Board, that member shall make a statement at a public meeting of the Board identifying the reason or reasons for the withdrawal. If the matter relates to a preliminary investigation, the name of the individual who is the subject of the investigation shall not be disclosed without the individual's consent.
- 5202.14 If an employee of the Board must withdraw from a matter before the Board, that employee shall notify the Director of Government Ethics, in writing, of the reason or reasons for the withdrawal.
- 5202.15 If the Director of Government Ethics must withdraw from a matter before the Board, the Director shall notify the Chairman of the Board, in writing, of the reason or reasons for the withdrawal.