

**DISTRICT OF COLUMBIA  
OPEN GOVERNMENT OFFICE**

**NOTICE OF PROPOSED RULEMAKING**

The Director of the Open Government Office, pursuant to the authority set forth in § 503(a)(4) of the District of Columbia Administrative Procedure Act, effective March 31, 2011 (D.C. Law 18-350; D.C. Official Code § 2-593 (2014)), hereby gives notice of the intent to adopt new rules under Title 3 (Elections and Ethics) of the District of Columbia Municipal Regulations (DCMR).

The proposed rulemaking creates a new Chapter 104, entitled Office of Open Government, that establishes procedures for enforcing the Open Meetings Act (D.C. Law 18-350; D.C. Official Code §§ 2-571 *et seq.* (2014)).<sup>1</sup>

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

**Title 3 (Elections and Ethics) of the DCMR is amended as follows:**

**New Chapter 104 is added to read as follows:**

**CHAPTER 104      OFFICE OF OPEN GOVERNMENT**

**10400      FILING AND PRESENTATION OF COMPLAINTS**

10400.1      Any person who does not receive proper notice of any meeting and or records of meetings of a public body in accordance with the provisions of the Open Meetings Act (D.C. Law 18-350; D.C. Official Code §§ 2-571 *et seq.* (2014)), may submit a complaint under the provisions of this Chapter. A public body shall be presumed to have given proper notice of any meeting, if a meeting is timely published and posted at set forth in the Open Meeting Act (D.C. Law 18-350; D.C. Official Code §§ 2-571 *et seq.* (2014)).

10400.2      A complaint shall be submitted by the complainant to the Director within sixty (60) days following the date that the complainant knew or reasonably should have known of the alleged violation.

10400.3      A complaint that a Public Body has violated the Open Meetings Act in a past meeting (or, in a Prospective Complaint, may do so at a future meeting) may be submitted to the Director. A complaint may refer to one or more meetings.

10400.4      Complaints may be submitted in writing or in person at the Office of Open Government, Board of Ethics and Government Accountability at 441 4<sup>th</sup> Street,

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<sup>1</sup> D.C. Official Code §§ 2-574 (3)(F) *et seq.* (2014)) excludes Advisory Neighborhood Commissions as Public Bodies.

NW, Suite 830 South; by U.S. Postal; or by electronic means. Complaints submitted by mail should be marked on the outside envelope “Open Meetings Complaint.” Complaints may be submitted by email at [opengovoffice@dc.gov](mailto:opengovoffice@dc.gov), and should state “Open Meetings Complaint” in the subject line or heading of the communication. A complaint form may be accessed and submitted on the Office of Open Government Website at: [OPEN-DC.gov](http://OPEN-DC.gov). The submission of complaints via the Office of Open Government Website is encouraged so that information is complete, but is not required.

10400.5 Complaints should include the complainant’s name, and at least one of the following: mailing address, email address, or phone number.

10400.6 Complaints should include details of the meeting complained of, including the Public Body, the date, and to the extent possible the specific provision(s) of the Open Meetings Act alleged to have been violated. If record(s) could substantiate the complaint, the complaint should identify the supporting record(s); including the location of the record(s). Audio and video records should be accompanied by relevant timestamp information.

10400.7 The Director will confirm receipt of a complaint within five (5) businesses days upon receipt of the complaint.

10401 **PROCESSING OF COMPLAINTS**

10401.1 The Director will review a complaint within fourteen (14) business days and take one or more of the following actions:

- a) Request additional information from the complainant or Public Body;
- b) Dismiss the complaint;
- c) Issue an Advisory Opinion;
- d) Attempt to conciliate the complaint.

10401.2 A complainant may request at any time prior to any of the above actions being taken by the Director, that his/her request be withdrawn from further review. Any such request to withdraw the complaint must be made in writing with “Open Meetings Complaint Withdrawal” on the envelope or in the subject line or heading of electronic correspondence sent to [opengovoffice@dc.gov](mailto:opengovoffice@dc.gov).

10402 **DISMISSAL OF COMPLAINTS**

10402.1 The Director may dismiss a complaint on one or more of the following grounds:

- a) The complaint does not raise issues within the Director’s authority under the Open Meetings Act;
- b) The action complained of does not violate the Open Meetings Act;

- c) The complainant declined to provide information the Director reasonably believed necessary to evaluate the complaint (or failed to respond in thirty (30) days to such a request);
- d) The complaint becomes moot due to action taken by the Public Body.

10402.2 The Director will return a dismissed complaint to the requestor with an explanation of the reason(s) for dismissal.

10403 **REVIEW OF COMPLAINTS**

10403.1 In making findings and determinations under this Chapter, the Director, or designee, shall consider the alleged violation; and including, but not limited to the following factors:

- a) The nature, content, language or subject matter of the complaint;
- b) The nature, content, language or subject matter of prior or contemporaneous complaints by the person making the complaint; and
- c) The nature, content, language or subject matter of other verbal and written communications to any Public Body or any official of a Public Body from the person making the complaint.

10403.2 Upon review of the complaint, the Director may confirm the action of the public body, and settle the complaint without issuing a written advisory opinion if after construing all allegations most favorably to the complainant, that (a) the Public Body has not violated the Open Meetings Act; or (b) the Public Body has committed a technical violation of the Open Meetings Act that constitutes a harmless error that does not infringe the complainant's rights under the Open Meetings Act.

10404 **CONCILIATION OF COMPLAINTS**

10404.1 Upon receipt of complaint, the Director will first seek to resolve disputes through conciliation.

10404.2 The goal of conciliation is to arrive at an acceptable resolution of the complaint through discussion and exchange of views. The Director will not issue an Advisory Opinion on a complaint resolved through conciliation.

10404.3 In the conciliation discussion, the Director (or the Director's designee) serves as facilitator.

10404.4 If conciliation is not successful, the Director may dismiss the complaint, investigate further, issue an Advisory Opinion or take any other step permitted in these regulations.

10405 **INVESTIGATION OF COMPLAINTS**

- 10405.1 The Director will complete the investigation of a complaint as quickly as possible.
- 10405.2 The Director may transmit a complaint to the Public Body complained of. The Public Body shall, in good faith, make every effort to respond within thirty (30) days. If the Public Body does not respond within 30 days, the Director may issue an Advisory Opinion based on the information available from the complaint and any other relevant sources. In the case of Prospective Complaints, the Director may request a reasonable earlier deadline for a response from the Public Body.
- 10405.3 The Director may grant the Public Body one extension of up to five (5) business days in which to respond to the complaint. Any subsequent extensions may only be granted with the agreement of the complainant.
- 10405.4 The response from the Public Body must address the complaint and any other questions raised by the Director. A response that denies one or more violations of the Open Meetings Act should include an explanation. A response that admits one or more violations of the Open Meetings Act should include a plan of corrective action. The response must be signed by an individual (officer, counsel, staff) authorized to represent the Public Body.
- 10405.5 The Director will maintain the confidentiality of records of a closed meeting of a Public Body, providing they are submitted with clear markings of the portions to be kept sealed.
- 10405.6 The Public Body must provide a copy of its response at the same time to the Director and the complainant. The complainant's copy may omit records of a closed meeting.
- 10405.7 The Director may request further information from either the Public Body or the complainant, to be provided within a reasonable time, and in no event less than five (5) business days. The Director may request representatives of the Public Body and the complainant to attend an informal conference to discuss the complaint.
- 10405.8 The Director may dismiss a complaint for lack of cooperation in the investigation of the complaint by the complainant.

10406 **ADVISORY OPINIONS**

- 10406.1 Based on results of investigation, the Director will issue an Advisory Opinion addressing the complaint that a Public Body violated the Open Meetings Act. An Advisory Opinion explains the Director's findings of fact and understanding of the law. Where the Director concludes there was a violation, the Advisory

Opinion will explain corrective actions completed or a schedule for completion. The advisory opinion is binding.

10406.2 The Director will issue an Advisory Opinion within thirty (30) days of the later of the following: receipt of the response from the Public Body; the last due date for any additional information requested; or the date of any informal conference.

10406.3 The Director will send the Advisory Opinion to the complainant and the Public Body, and will make it available to the public by posting on the Office of Open Government Website.

10406.4 If it is determined after investigation that a Public Body has willfully disregarded the provisions of the Open Meetings Act and or the requirements of this Chapter, the Director shall bring suit in the Superior Court of the District of Columbia as provided under D.C. Official Code § 2-579 (2014).

10407 **PROSPECTIVE COMPLAINT PROCEDURES**

10407.1 The Director may accept a complaint that a Public Body appears likely to take an action that will violate the Open Meetings Act.

10407.2 Prospective Complaints should be submitted in the same manner as indicated in section 10400, and will be processed in general in the same manner as, other complaints, with reasonable modifications of deadlines so as to provide a timely response.

10407.3 The Director will take reasonable steps to reach prompt conclusions that may resolve the complaint and minimize future violations of the Open Meetings Act.

10408 **PUBLIC BODY REQUESTS FOR ADVISORY OPINIONS**

10408.1 The Director may issue an Advisory Opinion on the application of the Open Meetings Act at the request of a Public Body, as provided in D.C. Official Code § 2-579(g) (2014).

10408.2 A request for an Advisory Opinion by a Public Body or member may be submitted in writing to the Office of Open Government, Board of Ethics and Government Accountability at 441 4<sup>th</sup> Street, NW, Suite 830 South; by U.S. Postal; or by electronic means. Requests for Advisory Opinions submitted by mail should be marked on the outside envelope “Advisory Opinion Request”. Requests may be submitted by email at [opengovoffice@dc.gov](mailto:opengovoffice@dc.gov), and should state “Advisory Opinion Request” in the subject line or heading of the communication.

10408.3 The Director will issue a written Advisory Opinion, and may upon approval of the requesting Public Body, post the opinion with the appropriate redactions to ensure confidentiality.

10408.4 The Director will review requests from Public Bodies as promptly as possible, and issue Advisory Opinions within 30 days.

10409 **TRAINING**

10409.1 The Office of Boards and Commissions shall refer all Public Body members and administrative points of contact for public bodies to the Office of Open Government for annual mandatory training on the requirements of the Open Meetings Act and related regulations.

10409.2 As required by D.C. Official Code § 2-580 (2014), the Director, together with the Office of Boards and Commissions, shall implement processes to ensure Public Bodies and staff complete annual training.

10409.3 The Director will establish procedures for assuring completion of training by members of Public Bodies and assigned staff subject to the Open Meetings Act within 60 (sixty) days of initially assuming relevant responsibilities.

104.99 **DEFINITIONS**

10499.1 “Advisory Opinion” means (i) an opinion issued by the Director upon investigation of a complaint alleging violation of the Open Meetings Act or (ii) an opinion issued by the Director following a request from a Public Body regarding its compliance with the Open Meetings Act.

10499.2 “Director” means the head of the Open Government Office as provided in D.C. Code § 2-594.

10499.3 “Prospective Complaint” means a complaint about a future action of a Public Body that appears, to a complainant, likely to violate the Open Meetings Act.

10499.4 “Public Body” has the meaning given in D.C. Code § 2-574(3).

All persons interested in commenting on the subject matter in this proposed rulemaking action may file comments in writing, not later than thirty (30) days after the publication of this notice in the *D.C. Register*, with Traci Hughes, Director of the Office of Open Government, Board of Ethics and Government Accountability, One Judiciary Square 441 4th Street, N.W., 830 South, Washington, DC 20001. Comments may also be sent electronically to [bega@dc.gov](mailto:bega@dc.gov). Please include “RULEMAKING COMMENT” in the subject line.