

NOTICE OF (SECOND) EMERGENCY AND PROPOSED RULEMAKING
Z.C. Case No. 20-11
(Text Amendment – Subtitles Y and Z of Title 11 DCMR)
(Virtual Public Hearing and Meeting Procedures)
July 30, 2020

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Repl.)), and pursuant to § 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c) (2016 Repl.)), hereby gives notice of its amendment on an emergency basis, as well as its intent to amend on a permanent basis, the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations [Zoning Regulations of 2016], to which all references are made unless otherwise specified) as summarized below (specific text at end of this notice):

Subtitle Y, Board of Zoning Adjustment Rules of Practice and Procedure

Chapter 1, Administration

§§ 103.12 and 103.13 – rules for virtual public hearings and meetings

Chapter 2, Public Participation

§§ 206.3 and 206.7 – electronic submission of comments and exhibits required at least 24 hours prior to the start of the public hearing or meeting

Chapter 4, Pre-Hearing and Hearing Procedures: Contested Cases

§§ 401.4 and 401.6 – updated ANC notice and posting requirements for expedited review applications

Subtitle Z, Zoning Commission Rules of Practice and Procedure

Chapter 1, Administration

§§ 103.12 and 103.13 – rules for virtual public hearings and meetings

Chapter 2, Public Participation

§§ 206.3 and 206.7 – electronic submission of comments and exhibits required at least 24 hours prior to the start of the public hearing or meeting

Setdown

On May 11, 2020, the Office of Zoning (OZ) filed a petition to the Commission proposing these amendments to clarify the procedural rules for virtual public hearings and meeting due to the suspension of in-person public hearings and meetings caused by the ongoing COVID-19 pandemic and resulting modifications of District government operations. OZ requested that the Commission:

- Set the petition down for a public hearing;
- Consider taking emergency action to adopt the text amendment; and
- Authorize an immediate publication of proposed rulemaking for the text amendment.

Emergency & Proposed Action

At its May 11, 2020, public meeting, the Commission asked OZ to work with the Office of the Attorney General (OAG) to revise the proposed text to clarify the rules for virtual submission of oral testimony and exhibits at a public hearing and voted to grant OZ's request, as modified pursuant to the Commission's request, to:

- Take emergency action to adopt the text amendment;
- Set the petition down for a public hearing; and
- Authorize an immediate publication of proposed rulemaking for the text amendment.

The Commission concluded that taking emergency action to adopt the proposed text amendment is necessary for the “immediate preservation of the public ... welfare,” as authorized by § 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c) (2012 Repl.)), in order to allow the continuation of public hearings and meetings despite the suspension of in-person public hearings and meetings due to the ongoing COVID-19 pandemic, with the attendant risk to the District’s economic condition.

VOTE (May 11, 2020): **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to **APPROVE**)

The Commission published a Notice of Emergency and Proposed Rulemaking (NOEPR) in the May 29, 2020, *D.C. Register* (67 DCR 5603).

The Commission received one comment to the NOEPR – a July 2, 2020, letter from the Committee of 100 on the Federal City (C100). The C100 letter acknowledged the need for virtual public meetings and hearings, but raised the following issues:

- Equal access to the public, some of whom may not have access to internet or sufficient bandwidth to stream virtual public meetings and hearings -
 - Recommended that virtual public hearing notices and meetings include statement that case files available online at public libraries and that public may participate through terminals at public libraries; and
 - Recommended that the Commission consider the hours of service of public libraries when scheduling virtual public meetings and hearings;
- Ease of public participation -
 - Recommended additional notice to owners of property within 200 feet of a property for which a zoning case is proposed to be considered at a virtual public hearing;
 - Agreed with the current text allowing public witnesses to sign up at any time before the conclusion of the public testimony portion of a virtual public meeting or hearing, which reflects the current practice for in-person public meeting or hearings of allowing “walk-ins” (public witnesses signing up during the public witness testimony portion of an in-person public meeting or hearing); and
 - Recommended making automatic, instead of at the Commission’s or Board’s discretion, the text amendment’s permission for public witnesses who were unable to testify due to technical difficulties to request to reopen the record to include a written version of their planned oral testimony; and
- Sufficient time for parties to respond to exhibits introduced just before or at a virtual public meeting or hearing -
 - Recommended requiring exhibits to be submitted earlier than prior to the start of a virtual public meeting or hearing; and

- Recommended making automatic, instead of at the discretion of the Board or Commission, providing additional time for parties to respond to exhibits introduced just before or at a virtual public meeting or hearing; and
- Procedures for “hybrid,” or part in-person/part virtual, public meetings and hearings -
 - Recommended that these should be considered in a separate text amendment, after the Commission and Board have experience with virtual public meetings and hearings.

2nd Emergency & Proposed Action

OZ filed a July 29, 2020 memo, based on consultation with OAG, proposing revisions to the original text amendment based on the experience of holding virtual public hearings and meetings in the period following the Commission’s May 11, 2020, original emergency action in this case. OZ requested that the Commission:

- Take emergency action to adopt the revised version of the text amendment to completely supersede the prior adopted version; and
- Authorize an immediate publication of a 2nd proposed rulemaking for the complete text amendment.

Public Hearing

At its July 30, 2020 public meeting, OZ and OAG testified and responded to questions and concerns raised by the Commission. No public testimony was offered.

“Great Weight” to the Recommendations of OP

The Commission must give “great weight” to the recommendations of the Office of Planning (OP) pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990. ((D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.) and Subtitle Z § 405.8. *Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)

Since OP did not file a report responding to OZ’s petition¹, the Commission has nothing to which it may give great weight.

“Great Weight” to the Written Report of the ANCs

The Commission must give great weight to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.) and Subtitle Z § 406.2.) To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)

¹ Although OP did not file a report, the Commission proceeded with the public hearing after 45 days following the submission of the petition, pursuant to Subtitle Z § 504.5.

Since no ANC filed a response to either the original and 2nd Notice of Emergency and Proposed Rulemaking, the Commission has nothing to which it may give great weight.

After closing the hearing, the Commission voted to grant OZ's request to:

- Take emergency action to adopt the revised text amendment to completely supersede the prior adopted and published version; and
- Authorize immediate publication of a 2nd proposed rulemaking for the complete revised text amendment.

In taking these actions, the Commission granted flexibility to OAG and OZ to revise the text to address the issues raised by the Commission, including:

- Allowing applicants and parties to cases to request to participate at the hearing in an in-person or online virtual mode; and
- Defining "live video" to not include pre-recorded video, whether introduced prior to a hearing or at the hearing, or live video testimony only showing the witness(es) testifying.

The Commission concludes that taking emergency action to adopt the proposed text amendment is necessary for the "immediate preservation of the public ... welfare," as authorized by § 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c) (2012 Repl.)), in order to allow the continuation of public hearings and meetings despite the suspension of in-person public hearings and meetings due to the ongoing COVID-19 pandemic, with the attendant risk to the District's economic condition.

VOTE (July 30, 2020): **4-0-1** (Robert E. Miller, Peter A. Shapiro, Anthony J. Hood, and Michael G. Turnbull to **APPROVE**; Peter G. May not present, not voting)

Emergency Action

The emergency rule is effective as of the Commission's July 30, 2020 vote and will expire on November 27, 2020, which is the one hundred-twentieth (120th) day after the adoption of this rule, unless this date falls on a Saturday, Sunday, or legal holiday in which the last day is extended to the next business day, or upon publication of a Notice of Final Rulemaking in the *D.C. Register* that supersedes this emergency rule, whichever occurs first.

Proposed Action

The Commission hereby also gives notice of its intent to adopt on a permanent basis the following text amendment to the Zoning Regulations in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*, provided that if the last day of the comment period falls on a Saturday, Sunday, or legal holiday, the last day is extended to the next business day. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, through the Interactive Zoning Information System (IZIS) at <https://app.dcoz.dc.gov/Login.aspx>; however, written

statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Ms. Schellin may be contacted by telephone at (202) 727-6311 or by email at Sharon.Schellin@dc.gov. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.

The complete record in the case, including the OP report and the transcript of the public meeting, can be viewed online at the Office of Zoning website, through the Interactive Zoning Information System (IZIS), at <https://app.dcoz.dc.gov/Content/Search/Search.aspx>.

EMERGENCY / PROPOSED TEXT AMENDMENT

The following amendments to the Zoning Regulations, which completely supersede the prior version adopted by the Commission and published in the May 29, 2020, *D.C. Register* (67 DCR 5603), are adopted on an emergency basis, and are proposed for the Commission's final consideration (additions are shown in **bold** and **underlined** text and deletions are shown in **bold** and **~~strikethrough~~** text):

I. Amendments to Subtitle Y, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE

Section 103, MEETINGS AND HEARINGS, of Chapter 1, ADMINISTRATION, of Subtitle Y, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE, is amended by revising § 103.12 and by adding a new § 103.13, to read as follows:

103.12 If the time and place of resumption is publicly announced when a postponement, continuance, or adjournment is ordered, no further notice shall be required. For the purposes of this section, the form of the public announcement **shall be on the website of the Office of Zoning and** may ~~be~~ **include** a sign placed at the entrance to the Board's hearing room.

103.13 **The Board may hold its meetings and hearings in a partially or completely online virtual mode, through video conference, teleconference, or other electronic means identified by the Board for this purpose, as authorized by, and in compliance with, the Open Meetings Act, effective March 31, 2011 (D.C. Law 18-350; D.C. Official Code § 2-577), subject to the provisions of this subtitle, as modified by the following:**

(a) An applicant or appellant, as part of its application or appeal, may request to present its case and participate at the public hearing as in an online virtual or in-person-mode; provided that:

(1) The request:

(A) Explains the specific reasons why the applicant or appellant can only participate in its chosen mode;

- (B) Proposes potential accommodations that might resolve the concerns underlying the request to participate in its chosen mode; and**
- (C) Demonstrates that its participation in the requested mode will not unreasonably prejudice any party;**
- (2) A party, as part of its party status request, or the first filing by an affected ANC, may request to present and participate in the case in an online virtual or in-person mode, provided the request:**

 - (A) Explains the specific reasons why the party can only participate in its chosen mode;**
 - (B) Proposes potential accommodations that might resolve the concerns underlying the request to participate in its chosen mode; and**
 - (C) Demonstrates that its participation in the requested mode will not unreasonably prejudice any party;**
- (3) The Board, based on the request(s) and in its sole discretion, shall schedule the public hearing to be partially or completely in an online virtual or in-person mode;**
- (b) The posting of the public hearing notice for each public hearing or meeting on the website of the Office of Zoning shall be deemed to comply with the requirement of Subtitle Y § 103.6 to be “available at” the public hearing or meeting;**
- (c) Members, whether present physically or remotely, shall be counted for determination of a quorum;**
- (d) A party, witness, agency representative, or party status requestor shall be deemed to “appear” or to be “present” if available for testimony, questioning, and cross-examination during the applicable hearing or meeting by the videoconference, teleconference, or other electronic means identified by the Board;**
- (e) The Board may question parties and witnesses by videoconference, teleconference, or other electronic means identified by the Board;**
- (f) Cross-examination may be performed by videoconference, teleconference, or other electronic means identified by the Board;**

- (g) Exhibits, other than live video as defined in Subtitle Y § 103.13(h), may be entered into evidence at an online virtual public hearing; provided that:**
- (1) The person making the request to enter an exhibit explains:**
- (A) How the proposed exhibit is relevant;**
- (B) The good cause that justifies allowing the exhibit into the record, including an explanation of why the requester did not file the exhibit prior to the hearing pursuant to Subtitle Y § 206; and**
- (C) How the proposed exhibit would not unreasonably prejudice any party;**
- (2) Parties shall simultaneously serve exhibits proposed to be entered into the record on all other parties by email;**
- (3) The Board determines that the proposed exhibit is relevant and that the requester demonstrated good cause to enter the exhibit and no unreasonable prejudice to any party would occur thereby; and**
- (4) If the Office of Zoning is unable to display an exhibit publicly during the online virtual public hearing, the Board may keep the record open for submission of the exhibit or provide other accommodations the Board deems appropriate; and**
- (h) Live video, defined as the simultaneous online streaming transmission of video that shows anything other than a witness testifying in a fixed location and excluding pre-recorded video, may not be presented as part of the testimony of an individual or party at a virtual public hearing;**
- (i) The Board may provide parties additional time to respond to exhibits introduced at an online virtual public hearing or other accommodations the Board deems appropriate;**
- (j) Notice of online virtual public hearings shall include instructions for participation by the videoconference, teleconference, or other electronic means identified by the Board, the details of which shall be provided on the Office of Zoning website;**

- (k) Any person desiring to testify in an online virtual public hearing shall sign up with the Office of Zoning prior to the conclusion of public testimony at the online virtual public hearing in accordance with the instructions provided on the Office of Zoning website;**
- (l) As part of signing up to testify:**
- (1) All persons shall perform the required oath or affirmation, provided that a witness that was unable to do so prior to testifying may be sworn in at the virtual hearing; and**
- (2) The Office of Zoning shall provide the opportunity for the witness to submit a written version of the planned oral testimony to the record if filed at least 24 hours before the start of the public hearing as established by Subtitle Y § 206;**
- (m) An individual or organization representative who is unable to testify at a public hearing due to technical issues out of the requester's control may file a request to reopen the record to submit a separate written version of the planned oral testimony in accordance with the time limits for testimony; provided that:**
- (1) The written version of the planned oral testimony is included as a separate document;**
- (2) The request demonstrates good cause for the submission and that granting the request would not unreasonably prejudice a party, including:**
- (A) An explanation of the specific technical issues that prevented the testimony during the public hearing;**
- (B) How these issues were out of the control of the requester; and**
- (C) How the planned oral testimony differed from the written version submitted to the record prior to the start of the public hearing or why the requester did not submit a written version to the record prior to the public hearing; and**
- (3) The request is submitted to the record within the twenty-four (24) hours following the conclusion of public testimony in the hearing;**

- (n) If the Presiding Officer grants a request filed under Subtitle Y § 103.13(m), the Presiding Officer shall establish a reasonable time within which parties may respond and the Director shall enter the written version of the planned oral testimony into the record and notify the parties of the deadline to respond;
- (o) The Board shall not issue an order in a case with a virtual public hearing until at least forty-eight (48) hours after the conclusion of the public hearing;
- (p) All votes shall be taken by roll call as required by § 2 of the Open Meetings Act, effective March 31, 2011 (D.C. Law 18-350; D.C. Official Code § 2-577(a)(3)); and
- (q) In the event that an online virtual public hearing or meeting is interrupted by technical difficulties such as the loss of the internet connectivity, the presiding officer, or if no member is present, the Secretary of the Board or Office of Zoning staff, may suspend the hearing or meeting; provided that notice of the suspension and of the date and time of the continued hearing or meeting shall be posted on the Office of Zoning website and e-mailed to the parties within twenty-four (24) hours of the suspension or as soon as is technically feasible.

Subsections 206.3 and 206.7 of § 206, SUBMITTING COMMENTS OR FILING DOCUMENTS ELECTRONICALLY OR BY E-MAIL, of Chapter 2, PUBLIC PARTICIPATION, of Subtitle Y, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE, are amended to read as follows:

206.3 Comments may be submitted electronically through IZIS or by e-mail; except that no comments shall be ~~submitted~~ accepted into the record electronically ~~after 9:00 a.m. on the day if submitted or e-mailed less than twenty-four (24) hours prior to the start of the a public hearing or meeting at which the Board will consider the applicable case, except for exhibits to be introduced at a public hearing or meeting under Subtitle Y § 103.13(g).~~

206.7 All documents to be filed electronically through IZIS or by e-mail shall be in portable document format (PDF), except for pre-recorded video that shall be submitted as a digital file by e-mail, and shall not be ~~filed after 9:00 a.m. on the day accepted into the record if filed or e-mailed less than twenty-four (24) hours prior to the start of the a public hearing or meeting at which the Board will consider the applicable case except for exhibits proposed to be introduced at a public hearing or meeting under Subtitle Y § 103.13(g).~~

Subsections 401.4 and 401.6 of § 401, EXPEDITED REVIEW, of Chapter 4, PRE-HEARING AND HEARING PROCEDURES: CONTESTED CASES, of Subtitle Y, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE, are amended to read as follows:

401.4 Subject to the removal process described in Subtitle Y §§ 401.7 and 401.8, an eligible application that includes a waiver of hearing will be placed on an expedited review calendar and decided without hearing at the Board's next regularly scheduled session after:

- (a) The completion of the public notice procedures set forth in Subtitle Y § 402; and
- (b) The completion of the affected ANC review period of thirty (30) days, **as may be extended pursuant to the Advisory Neighborhood Commission Act (D.C. Law 1-21; D.C. Official Code § 1-309.10)**, from the date it receives notice of the application, excluding Saturdays, Sundays, and holidays, plus an additional fourteen (14) days.

401.6 The public notice of an expedited review and the affected ANC notice of an application requesting expedited review shall also indicate:

- (a) The procedure for requesting the removal of the application from the expedited review calendar is as described in Subtitle Y §§ 401.7 and 401.8; and
- (b) That the only public notice of the hearing date for a removed application will be the posting of that date **in on the website of** the Office of Zoning **and may include posting on at the entrance to that office** beginning on the date that the application was removed and continuing until the date of such hearing.

II. Amendments to Subtitle Z, ZONING COMMISSION RULES OF PRACTICE AND PROCEDURE

Section 103, MEETINGS AND HEARINGS, of Chapter 1, ADMINISTRATION, of Subtitle Z, ZONING COMMISSION RULES OF PRACTICE AND PROCEDURE, is amended by revising § 103.12 and by adding a new § 103.13, to read as follows:

103.12 If the time and place of resumption is publicly announced when a postponement, continuance, or adjournment is ordered, no further notice shall be required. For the purposes of this section, the form of the public announcement **shall be on the website of the Office of Zoning and** may **be include** a sign placed at the entrance to the Commission's hearing room.

103.13 **The Commission may hold its meetings and hearings in a partially or completely online virtual mode, through video conference, teleconference, or other electronic means identified by the Commission for this purpose, as authorized by, and in compliance with, the Open Meetings Act, effective March 31, 2011 (D.C. Law 18-350; D.C. Official Code § 2-577), subject to the provisions of this subtitle, as modified by the following:**

(a) An applicant, as part of its application, may request to present its case and participate at the public hearing in an online virtual or in-person mode; provided that:

(1) The request:

(A) Explains the specific reasons why the applicant or appellant can only participate in its chosen mode;

(B) Proposes potential accommodations that might resolve the concerns underlying the request to participate in its chosen mode; and

(C) Demonstrates that its participation in the requested mode will not unreasonably prejudice any party;

(2) A party, as part of its party status request, or the first filing by an affected ANC, may request to present and participate in the case in an online virtual or in-person mode, provided the request

(A) Explains the specific reasons why the party can only participate in its chosen mode;

(B) Proposes potential accommodations that might resolve the concerns underlying the request to participate in its chosen mode; and

(C) Demonstrates that its participation in the requested mode will not unreasonably prejudice any party;

(3) The Commission, based on the request(s) and in its sole discretion, shall schedule the public hearing to be partially or completely in an online virtual or in-person mode;

(b) The posting of the public hearing notice for each public hearing or meeting on the website of the Office of Zoning shall be deemed to comply with the requirement of Subtitle Z § 103.6 to be “available at” the public hearing or meeting;

- (c) Members, whether present physically or remotely, shall be counted for determination of a quorum;**
- (d) A party, witness, agency representative, or party status requestor shall be deemed to “appear” or to be “present” if available for questioning and cross-examination during the applicable hearing or meeting by the videoconference, teleconference, or other electronic means identified by the Commission;**
- (e) The Commission may question parties and witnesses by videoconference, teleconference, or other electronic means identified by the Commission;**
- (f) Cross-examination may be performed by videoconference, teleconference, or other electronic means identified by the Commission;**
- (g) Exhibits, other than live video as defined in Subtitle Z § 103.13(h), may be entered into evidence at an online virtual public hearing; provided that:**
- (1) The person making the request to enter an exhibit explains:**
 - (A) How the proposed exhibit is relevant;**
 - (B) The good cause that justifies allowing the exhibit into the record, including an explanation of why the requester did not file the exhibit prior to the hearing pursuant to Subtitle Z § 206; and**
 - (C) How the proposed exhibit would not unreasonably prejudice any party;**
 - (2) Parties shall be simultaneously serve exhibits proposed to be entered into the record on all other parties by email;**
 - (3) The Commission determines that the proposed exhibit is relevant and that the requester demonstrated good cause to enter the exhibit and no unreasonable prejudice to any party would occur thereby; and**
 - (4) If the Office of Zoning is unable to display an exhibit publicly during the online virtual public hearing, the Commission may keep the record open for submission of the exhibits or provide other accommodations the Commission deems appropriate; and**

- (h) Live video, defined as the simultaneous online streaming transmission of video that shows anything other than a witness testifying in a fixed location and excluding pre-recorded video, may not be presented as part of the testimony of an individual or party at a virtual public hearing;**
- (i) The Commission may provide parties additional time to respond to exhibits introduced at an online virtual public hearing or other accommodations the Commission deems appropriate;**
- (j) Notice of online virtual public hearings shall include instructions for participation by the videoconference, teleconference, or other electronic means identified by the Commission, the details of which shall be provided on the Office of Zoning website;**
- (k) Any person desiring to testify in an online virtual public hearing shall sign up with the Office of Zoning prior to the conclusion of public testimony at the online virtual public hearing in accordance with the instructions provided on the Office of Zoning website;**
- (l) As part of signing up to testify:**
- (1) All persons shall perform the required oath or affirmation, provided that a witness that was unable to do so prior to testifying may be sworn in at the virtual hearing; and**
- (2) The Office of Zoning shall provide the opportunity for the witness to submit a written version of the planned oral testimony to the record if filed at least 24 hours before the start of the public hearing as established by Subtitle Z § 206;**
- (m) An individual or organization representative who is unable to testify at a public hearing due to technical issues out of the requester's control may file a request to reopen the record to submit a separate written version of the planned oral testimony in accordance with the time limits for testimony; provided that:**
- (1) The written version of the planned oral testimony is included as a separate document;**
- (2) The request demonstrates good cause for the submission and that granting the request would not unreasonably prejudice a party, including:**
- (A) An explanation of the specific technical issues that prevented the testimony during the public hearing;**

- (B) How these issues were out of the control of the requester; and**
- (C) How the planned oral testimony differed from the written version submitted to the record prior to the start of the public hearing or why the requester did not submit a written version to the record prior to the public hearing; and**
- (3) The request is submitted to the record within twenty-four (24) hours following the conclusion of public testimony in the hearing;**
- (n) If the Presiding Officer grants a request filed under Subtitle Z § 103.13(m), the Presiding Officer shall establish a reasonable time within which parties may respond and the Director shall enter the written version of the planned oral testimony into the record and notify the parties of the deadline to respond;**
- (o) The Commission shall not issue an order in a case with a virtual public hearing until at least forty-eight (48) hours after the conclusion of the public hearing;**
- (p) All votes shall be taken by roll call as required by § 2 of the Open Meetings Act, effective March 31, 2011 (D.C. Law 18-350; D.C. Official Code § 2-577(a)(3)); and**
- (q) In the event that an online virtual public hearing or meeting is interrupted by technical difficulties such as the loss of the internet connectivity, the presiding officer, or if no member is present, the Secretary of the Commission or Office of Zoning staff, may suspend the hearing or meeting; provided that notice of the suspension and of the date and time of the continued hearing or meeting shall be posted on the Office of Zoning website and e-mailed to the parties within twenty-four (24) hours of the suspension or as soon as is technically feasible.**

Subsections 206.3 and 206.7 of § 206, SUBMITTING COMMENTS OR FILING DOCUMENTS ELECTRONICALLY OR BY E-MAIL, of Chapter 2, PUBLIC PARTICIPATION, of Subtitle Z, ZONING COMMISSION RULES OF PRACTICE AND PROCEDURE, are amended to read as follows:

206.3 Comments may be submitted electronically through IZIS or by e-mail; except that no comments shall be ~~submitted~~ **accepted** into the record electronically ~~after 5:00 p.m. on the day~~ **if submitted or e-mailed less than twenty-four (24) hours prior**

to the start of the a public hearing or meeting at which the Commission will consider the applicable case, other than except for exhibits to be introduced at a public hearing or meeting under Subtitle Z § 103.13(g).

206.7

All documents to be filed electronically through IZIS or by e-mail shall be in portable document format (PDF), **except for pre-recorded video that shall be submitted as a digital file by e-mail**, and shall not be ~~filed after 9:00 p.m. on the day~~ **accepted into the record if filed or e-mailed less than twenty-four (24) hours prior to the start of the a public hearing or meeting at which the Commission will consider the applicable case except for exhibits proposed to be introduced at a public hearing or meeting under Subtitle Z § 103.13(g).**