

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Office of Zoning



MEMORANDUM

**TO:** Zoning Commission for the District of Columbia

**FROM:** Sharon S. Schellin <sup>B</sup>  
Secretary to the Zoning Commission

**SUBJECT:** Proposed revisions to text amendment proposed in Z.C. Case No. 20-11 (Text Amendment to Subtitles Y and Z, Rule of Practice and Procedure – Virtual Public Hearing Regulations)

**DATE:** July 29, 2020

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In consultation with the Office of the Attorney General (“OAG”), the D.C. Office of Zoning (“OZ”) proposes the following changes to the text amendment proposed in Z.C. Case No. 20-11 to adopt rules for virtual public hearings and meetings to allow the Zoning Commission (the “Commission”) and Board of Zoning Adjustment (the “Board”) to continue to hold public hearings and meetings during the public health emergency caused by the COVID-19 pandemic. In order to understand the proposed revisions, the complete current proposed text with all of the proposed revisions shown in red (text to be deleted is marked in ~~bold and strikethrough~~ text; new text is shown in **bold and underline** text).

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  
revisions proposed to § 103.13(a), (g)-(q)

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  
revisions proposed to § 103.13(a), (g)-(q)

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

Explanation of proposed revisions:

- § 103.13(g)-(h) - To clarify the process for submitting exhibits, excluding live video, at a virtual public hearing.
- § 103.13(m) - To clarify the procedure for requesting to submit a written version of planned oral testimony that was prevented by technical issues.
- § 103.13(n) - To clarify the procedure for inclusion in the record if the Commission/Board grants a request to reopen the record to allow a written version of planned testimony that had been prevented by technical issues.
- § 103.13(o) - To require that at least 48 hours pass from the close of a public hearing before the Commission/Board issues an order instead of the current requirement that this same time period pass before the Commission/Board decides a case. OAG believes that the intent of the current rule – to ensure that any testimony that the Commission/Board determines was prevented by legitimate technical issues and for which a request was filed within 24 hours of the close of public testimony be included in the record and considered by the Commission/Board. Since a decision of the Commission/Board is only final upon the issuance of an order, this revision would allow the Commission/Board to deliberate following the close of a hearing when the testimony and issues are fresh, but still maintain the ability for the Commission/Board to reconsider that decision based on the additional testimony the Commission/Board deems appropriate to be added due to technical difficulties in testifying.
- § 103.13(p) - To include citation to the requirement for roll call votes.
- § 103.13(q) - To provide for suspension of a virtual public hearing or meeting in the event of technical difficulties.

**PROPOSED TEXT AMENDMENT**

The proposed amendments to the text of the Zoning Regulations are as follows (text to be deleted is marked in ~~bold and strikethrough~~ text; new text is shown in **bold and underline** 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) A party to a case may request the Board not to hold the public hearing as an online virtual hearing but instead postpone the public hearing until the next available in-person public hearing; provided that the request includes:**

**(1) States the specific reasons for the postponement;**

**(2) and any Proposes potential accommodations that might resolve the concerns underlying the postponement request; and**

**(3) Demonstrates that the proposed postponement will not unreasonably prejudice any party;**

**(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 questioning and cross-examination during the hearing 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, may be offered entered into evidence at an online virtual public hearing; provided that:**

**~~(1)~~ An exhibit is submitted to the Office of Zoning by the Interactive Zoning Information System (IZIS) or by email to bzasubmissions@dc.gov prior to the start of the hearing in which the exhibit will be used; except as allowed by the Board as relevant and not prejudicial to a party;**

**(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)~~ Exhibits submitted by parties shall be simultaneously served by email serve exhibits proposed to be entered into the record on all other parties by e-mail;**

**(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**

**~~(3)~~ (4) If the Office of Zoning is unable to display the exhibits an exhibit publicly during the online virtual public hearing, the Board may keep the record open for submission of the exhibits or provide other accommodations the Board deems appropriate; and**

**(h) Live video may not be presented as part of the testimony of an individual or party at a virtual public hearing;**

**~~(4)~~ (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;**

**~~(4)~~ (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;**

~~(i) (k)~~ Any individual or organization representative person desiring to participate testify in an online virtual public hearing shall sign up to testify with the Office of Zoning prior to the conclusion of public testimony at the online virtual public hearing per in accordance with the instructions provided on the Office of Zoning website;

~~(j) (l)~~ All individuals or organization representative persons 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 when signing up; 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 twenty-four (24) hours before the start of the public hearing as established by Subtitle Y § 206;

~~(k) (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 for leave to file to reopen the record to submit a separate written version of the planned oral testimony to the record 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 includes an explanation of 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 timely testimony during the public hearing,;

(B) How these issues were out of the control of the requester;

(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

~~(2)~~ **(3) The request is submitted to the record within the twenty-four (24) hours following the conclusion of public testimony in the hearing, and**

~~(3)~~ **parties are allowed a reasonable time to respond;**

**(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;**

~~(l)~~ **A party that is unable to raise a legal objection in a public hearing may file a request for leave to file a written version of the objection, explaining how the party attempted to raise an objection during the public hearing and why that attempt was unsuccessful; provided that**

~~(1)~~ **the request is submitted to the record within twenty-four (24) hours of the conclusion of the hearing session in which the party attempted to raise the objection;**

~~(m)~~ **(o) The Board shall not deliberate 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; and**

~~(n)~~ **(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** **Other than written comments to be introduced at a public hearing,** comments may be submitted electronically through IZIS or by e-mail; except that no

comments shall be submitted into the record electronically ~~after 9:00 a.m. on the day~~ **less than twenty-four (24) hours prior to the start** of the hearing **or meeting**.

**206.7** **Other than exhibits to be introduced at a public hearing**, all documents to be filed electronically through IZIS or by e-mail **prior to the hearing or meeting** shall be in portable document format (PDF) and shall not be filed ~~after 9:00 a.m. on the day~~ **less than twenty-four (24) hours prior to the start** of the hearing **or meeting**.

**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 following:

(a) A party to a case may request the Commission not to hold the public hearing as an online virtual hearing but instead postpone the public hearing until the next available in-person public hearing; provided that the request includes:

(1) States the specific reasons for the postponement;

(2) and any Proposes potential accommodations that might resolve the concerns underlying the postponement request; and

(3) Demonstrates that the proposed postponement will not unreasonably prejudice any party;

(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 hearing 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, may be offered entered into evidence at an online virtual public hearing; provided that:

~~(1) An exhibit is submitted to the Office of Zoning by the Interactive Zoning Information System (IZIS) or by email to bzasubmissions@dc.gov prior to the start of the hearing in which the exhibit will be used; except as allowed by the Commission as relevant and not prejudicial to a party;~~

(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) Exhibits submitted by parties shall be simultaneously served by email serve exhibits proposed to be entered into the record on all other parties by e-mail;~~

~~(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~~

~~(3) (4) If the Office of Zoning is unable to display the exhibits 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 may only be presented as part of the testimony of an individual or party at a virtual public hearing under the following circumstances:

(1) The individual or party proposing to show the live video first provides the Commission with the scope and purpose of the proposed live video;

(2) All parties are given the opportunity to state any objections to the proposed live video;

(3) The Commission determines that the live video is relevant and that the requester has demonstrated good cause to allow the live video as testimony and that doing so will not unreasonably prejudice a party;

(4) Immediately preceding the start of the live video, the Office of Zoning assigns the live video an exhibit number for the record; and

(5) Following the completion of the live video, the Office of Zoning files a memo to the record under the assigned exhibit number that states the witness' name and includes the start and end times of the live video based on the official video of the public hearing;

(4) (i) The Commission may provide parties additional time to respond to exhibits or live video introduced at an online virtual public hearing or other accommodations the Commission deems appropriate;

(h) (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;

(i) (k) Any individual or organization representative person desiring to participate testify in an online virtual public hearing shall sign up to testify with the Office of Zoning prior to the conclusion of public testimony at the online virtual public hearing per in accordance with the instructions provided on the Office of Zoning website;

(j) (l) All individuals or organization representative persons 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 when signing up; 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 twenty-four (24) hours before the start of the public hearing as established by Subtitle Z § 206;

~~(k)~~ (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 for leave to file to reopen the record to submit a separate written version of the planned oral testimony to the record 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 includes an explanation of demonstrate 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 timely testimony during the public hearing;

(B) How these issues were out of the control of the requester;

(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

~~(2)~~ (3) The request is submitted to the record within the twenty-four (24) hours following the conclusion of public testimony in the hearing, and

~~(3) parties are allowed a reasonable time to respond;~~

(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;

- ~~(l) — A party that is unable to raise a legal objection in a public hearing may file a request for leave to file a written version of the objection, explaining how the party attempted to raise an objection during the public hearing and why that attempt was unsuccessful; provided that~~
- ~~(1) — the request is submitted to the record within twenty-four (24) hours of the conclusion of the hearing session in which the party attempted to raise the objection;~~
- ~~(m) (o) The Commission shall not deliberate 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; and~~
- ~~(n) (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 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** Other than written comments to be introduced at a public hearing, comments may be submitted electronically through IZIS or by e-mail; except that no comments shall be submitted into the record electronically ~~after 5:00 p.m. on the day~~ less than twenty-four (24) hours prior to the start of the hearing or meeting.
- 206.7** Other than exhibits to be introduced at a public hearing, all documents to be filed electronically through IZIS or by e-mail prior to the hearing or meeting shall be in portable document format (PDF) and shall not be filed ~~after 9:00 a.m. on the day~~ less than twenty-four (24) hours prior to the start of the hearing or meeting.