

ANC 3/4G's Comments on the Advisory Neighborhood  
Commissions Omnibus Amendment Act of 2016

ANC 3/4G commends Councilmembers Bonds and Grasso for introducing the Advisory Neighborhood Commissions Omnibus Amendment Act of 2016 (B21-0697) (the "Bill"). Improvements to the ANC statute are certainly warranted, and we appreciate the diligent work that you and your staffs did in gathering information from the ANCs and proposing important changes. We have reviewed the draft and participated in discussions with other ANC commissioners about the proposed changes, most of which will make our work more effective and productive.

Nevertheless, we do recommend some modifications to the Bill so that it will better address the issues that ANC's across the District face. Please accept the following comments as constructive ways to improve this Bill. All references are to the Bill introduced on April 5, 2016.

1. The 45-day written notice for proposed governmental actions (page 4, line 110) is an excellent step, and most agency actions are covered expressly by the Bill. One agency that appears to be missing, however, is action by the Public Space Committee on applications for public space permits. Our ANC has had repeated problems with failure to receive proper, timely notice from the Public Space Committee, and that agency should certainly be included specifically.
  
2. There are several instances when the term "resolution" is used in the Bill when it should refer to a "motion" passed by a Commission (e.g., page 19, line 471, page 21, line 516, page 22, line 520). Under Robert's Rules (which apply to ANC meetings), a "resolution" is merely a formal, written motion. A verbal motion passed by the Commission and reflected in its minutes or a letter has exactly the same force and effect. The bill should be amended to reference a motion passed by a majority of the Commission at a duly noticed meeting and with a quorum present.
  
3. One instance when the Bill recognizes that Commission action need not be in the form of a resolution mistakenly suggests that a letter approved by the Commission must be "signed by a majority of Commissioners at a public Commission meeting" (page 14, lines 347-348). We suggest the following inserted phrase: "shall be in the form of a resolution, or in the form of a letter approved by a majority of Commissioners at a public Commission meeting and signed by an authorized officer, and shall articulate . . . ."
  
4. The Notice of Infraction provisions (page 15, line 364) is quite weak and will not be effective. Under this provision of the Bill, the only consequence of any agency's three-time failure to give the required great weight is that the responsible staff undergo training. We are convinced that the only way to make this provision effective is to provide a substantive consequence for failure to give great weight in every instance -- e.g., for any failure to give great weight, the affected decision should be vacated and the agency should be required to conduct further proceedings and issue a new decision. Whatever influence the ANCs have depends on agencies giving ANC's views great weight, and a violation of that fundamental requirement should not be treated so lightly.

5. We are concerned about the requirement for a performance plan and a self-evaluation report (page 16, lines 387 through page 17, line 403). This provision will be burdensome on ANC commissioners and is unlikely to produce productive improvements. Because this provision will be unduly burdensome, Commissions are likely to simply go through the motions without providing any useful new information.

6. The reference to the agenda that the Commission shall publish seven days before any public meeting (page 18, lines 433-434) should be to a "proposed" or "draft" agenda since the actual agenda will not be final until approved by a majority vote of the Commission at the relevant meeting (page 18, lines 428-429).

7. The mandatory requirement ("shall give") for 14-days individualized notice to each person, business, or organization specifically named on the ANC's agenda (page 18, lines 441-444) will be impossible for our ANC (and undoubtedly for others) because we meet twice monthly with only 14 days between many of our meetings. This requirement should be no more than a 7-day notice and should only require best efforts. The same applies at page 20, line 475.

8. The provision requiring that "a Commissioner must be physically present at a public meeting in order to participate in the meeting including . . . voting on matters before the Commission" (page 20, lines 481-483), may be construed to preclude legitimate proxy votes. Robert's Rules provides for written proxy votes, and we see no reason why a properly documented proxy vote that the Commission determines is valid under its bylaws should be disallowed. Of course, even under Robert's Rules, a non-present Commissioner may not be counted toward a quorum.

9. The Bill only addresses some of the instances when the vice-chair shall fulfill the obligations of the Chair (page 21, lines 511-512). We suggest that this provision read something like the following: "The vice-chairperson shall fulfill the obligations of the Chairperson upon the death, incapacitation, or resignation of the Chairperson or, on a temporary basis, if the Chairperson is absent from a Commission meeting."

10. The requirement to provide "translation, interpretation, and language access services" (page 22, lines 536-539) does not specify who will pay for such services. In our Commission's experience, the cost of these services can be substantial, and the individual Commission should not be required to bear those cost. This should not be an unfunded obligation imposed on the ANCs without some method for compensation.

11. The Bill should include the District's provision of office space or supplemental funds to rent office space within the boundaries of the ANC. It is crucial that the ANC have a physical presence within the ANC, and the single "hub" space shared with all of the other ANCs in the Ward will not be sufficient. One of the singular values of the ANC is its tie to the local neighborhoods that they serve. Constituents should not be expected to go to the Ward hub if they have a local ANC concern.

12. The OANC should be required in the Bill to maintain a current list of Advisory Neighborhood Commission Liaisons (page 25, lines 593-594). The OANC's lists are chronically out of date.

13. The funding for the three ward-wide ANC staff members should be paid directly from General Funds, not from individual Commission's allocations. (See page 26, lines 628-632.) This would be a funding obligation that individual ANCs could not control or supervise. To the extent that they are needed, they should be funded by a separate appropriation, not from ANC allocations. If these costs are to be allocated among the Commissions within the Ward, however, they should be allocated on same basis as the allocations are determined for a Commission -- i.e., based on the number of Commissioners in the Commission. Because the size of Commissions varies, it would be inequitable to allocate staff costs based on "the same percentage or the same total amount as one another."

14. If Commission's are not permitted to maintain savings accounts (page 27, lines 639-642) -- and we agree that they should not -- they should not be permitted to accumulate a large amount of unexpended funds. For instance, if an ANC has excess funds at year-end over a specified amount (e.g., \$10,000), those funds should be redistributed to other ANCs, either within the same Ward or District-wide. (See a comparable provision at page 29, lines 683-684.)

15. We believe that it is unwise to encourage spending up to \$100 on food and nonalcoholic beverages at each public meeting. Such refreshments are not necessary and will not further the purposes of the ANC. We see no reason why a Commission should spend \$1000 to \$2000 a year on such non-productive activities.

16. The provision eliminating reference to "personal subsistence expenses" (page 29, lines 6905-696) is appropriate and an improvement over the existing law, as it has been interpreted by the Office of the Attorney General. Our ANC, in particular, has been penalized for giving grants to the homeless for socks and gloves in the winter that were deemed "personal subsistence expenses" and disallowed by the Auditor. Commissions should be permitted to award precisely these types of grants.

17. We oppose any stipend payment to ANC Commissioners (page 31, lines 732-735). We believe that ANC commissioners are better off as purely volunteers, and we fear that any payment will be construed by some as justification to exert even further demands on Commissioners. While the opt-out provision (page 31, lines 741-743) gives Commissioners an option to remain as volunteers, it is completely inappropriate for the opt-out stipend funds to revert back to the General Fund (page 31, line 742). If a Commissioner chooses to opt out, those stipend funds should be paid to the Commission for use in the neighborhood as the Commission determines. This could be a way to fund chronically underfunded Commissions (like ours). If the Council determines to provide any stipend payments, it should be made abundantly clear that funding for that stipend will be separate from and in addition to the ANC's allocations.

18. We believe that the increase in the maximum amount of contribution to an ANC Commissioner's campaign to \$100 is not necessary or useful. It is more appropriate that campaigns for this volunteer position be supported by a broader base of small contributions.

19. Section 6 of the bill (page 36, lines 848-853) would exempt ANCs from the requirements of the District of Columbia Administrative Procedures Act by declaring that ANCs "shall not be considered to be an agency, an independent agency, or a subordinate agency." This provision would preclude Freedom of Information Act requests to ANCs. We do not believe such an exemption is warranted, and it could create an inaccurate perception that ANCs may take secret actions that are not subject to public scrutiny. ANCs should be held accountable for their actions, like other District agencies. ANCs should conduct their business transparently, and the public has a right to know how and why decisions are made. We are nevertheless concerned about the costs that are often necessary to respond to FOIA requests (e.g., extensive email and document searches, duplicating, etc.). ANCs do not have the staff to accommodate such requests and typically cannot cover these unanticipated costs from their normal allocations. Thus, the statute should provide that, when responding to FOIA requests, the ANC will be fully reimbursed for its costs from General Funds and will not be required to pay for FOIA-associated costs from its quarterly allocations.

20. Some have suggested that that ANCs should be subject to the Open Meetings Act. We believe the same objective is achieved more specifically for ANCs in the current DC Code Section 1-309.11(b) and (c) and through the amendments proposed in the Omnibus bill. If ANCs were placed under the Open Meetings Act, it could create conflicts with the notice provisions tailored specifically to the nature of ANCs and their needs. There could also be unintended consequences by placing ANCs fully under the Open Meetings Act. For that reason, we suggest that any specifically identified deficiencies in meeting notices be addressed directly in Section 1-309.11.

ANC 3/4G adopted these comments at its duly noticed meeting on July 11, 2016 by a vote of 6 to 0, a quorum being four. The Chair is authorized to represent the Commission with respect to these matters.

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Randy Speck, Chair

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Chanda Tuck-Garfield, Secretary