

M(9/1/88)

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL
DISTRICT BUILDING
WASHINGTON, D. C. 20004



IN REPLY REFER TO:
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September 9, 1988

OPINION OF THE CORPORATION COUNSEL

SUBJECT: Whether the Department of Consumer and Regulatory Affairs must obtain the written approval of 90 percent of the neighbors before licensing "Adams-Morgan Day".

Donald G. Murray
Director
Department of Consumer and
Regulatory Affairs
614 H Street, N.W.
Washington, D.C. 20001

Dear Mr. Murray:

This is in reply to Diane Herndon's August 18, 1988, verbal request for legal advice regarding whether the Department of Consumer and Regulatory Affairs must obtain the written approval of 90 percent of the resident housekeepers and occupants of business establishments in the neighborhood before licensing "Adams-Morgan Day".

The consent requirement described above is contained in 19 DCMR § 1301.4, which provides:

No later than ten (10) days prior to the date on which an activity is scheduled to commence, the owner, operator, manager, or other person in charge of the activity shall obtain the consent in writing of ninety percent (90%) of the resident housekeepers and occupants of business establishments within a distance of five hundred feet (500') from the perimeter of the lot(s), reservation(s), or parcel(s) of ground on which the activity is to be conducted.

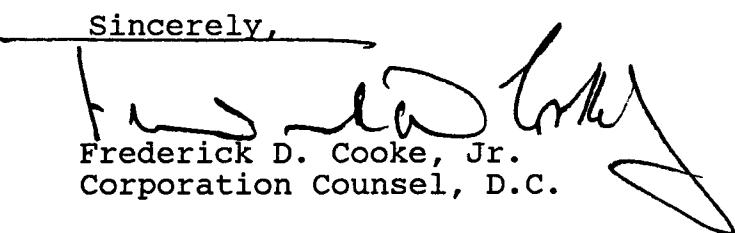
The activities to which this provision applies are set forth in 19 DCMR § 1300.1:

A circus, rodeo, carnival, fair, performance, singing, playing of musical or other instruments, dancing or amusement of any kind, or preaching, exhorting, or lecturing may be conducted or operated in a tent or temporary structure of any kind, on vacant land, or in a yard or area appurtenant to any building, subject to the conditions set forth in this section and § 1301.

If Chapter 13 of Title 19 DCMR applied to the "Adams-Morgan Day" event, DCRA would not be legally free to ignore the consent requirement set forth in § 1301.4. However, the language of § 1300 applies by its terms to the named events as conducted on private property.^{1/} Thus, if the Adams-Morgan Day events are conducted only on public streets and sidewalks, Chapter 13 is inapplicable.

If Adams-Morgan Day will involve the temporary closing of public streets, Title 19 DCMR Chapter 11 applies.^{2/} In this regard, 19 DCMR § 1101.5 requires each street closing application to be accompanied by the "signatures and addresses of at least fifty-one percent (51%) of the adult householders (the head of a household or family) and proprietors of the business establishments occupying the premises abutting the street for which temporary use is requested." There is no provision in the regulations for waiving this requirement.

Sincerely,


Frederick D. Cooke, Jr.
Corporation Counsel, D.C.

1/ The history of Chapter 13 confirms that it applies to private property. As originally written, this provision required "the owner or person in control" of the property to apply for a permit. See Article 6, section 4 of the Police Regulations of the District of Columbia (1925 ed.).

2/ Chapter 11 was originally adopted as Commissioner's Order 67-717 (13 DCR 260, June 5, 1967) to regulate "the temporary use of streets by private persons and organizations for activities of a recreational, educational, civic or charitable nature."