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Application of the Notice Provisions of
D.C. Law 1-58, the Duties and Responsi-
bilities of the Advisory Neighborhood
Commissions Act of 1975," CCO Nos. 1610
and 1738.

This is in response to your memoranda concerning the right
of Advisory Neighborhood Commissions to receive special notice
respecting the receipt, processing and the disposition of the
numerous types of applications considered by the various licens-
ing entities of the City's government.

The authority to create the Commissions is set forth in
1738(a) of the District of Columbia Self-Government and Govern-
mental Reorganization Act, Pub.L. 93-198, 87 Stat. 824 (the "Act").
which authorizes the Council of the District of Columbia to divide
the City into elected "advisory neighborhood council" areas.^{1/}
87 Stat. 824. The Act contemplates that each Commission shall act
on behalf of the residents of its respective neighborhood by:

•••advise the District government on
matters of public policy including decisions
regarding planning, streets, recreation, social
services programs, health, safety, and sanita-
tion in that neighborhood council area ••• Ibid,
§738(c) (1).

^{1/} To remedy the confusion caused by the use of the term
"council," the Council of the District of Columbia later chose to
designate the advisory neighborhood councils as Commissions. See
D.C. Law 1-58, 22 D.C. Reg. 5453 (April 9, 1976).

It further provides that each Commission "shall have such other powers and duties as may be provided by act of the Council," ibid., §738(c)(3), and allocates a proportion of the City's real property tax revenues to each "council" to pay its expenses. Ibid., §738(e).

Because of the unique participatory "grass roots" role of each Commission, §738 of the Act further provides:

(d) In the manner provided by act of the Council, in addition to any other notice required by law, timely notice shall be given to each advisory neighborhood [Commission] of requested or proposed zoning changes, variances, public improvements, licenses or permits of significance to neighborhood planning and development within its neighborhood [Commission] area for its review, comment, and recommendation. (Emphasis added.) Ibid.-

Thus, the Act, in conferring upon the Commissions a significant advisory role in the conduct of the affairs of the City--subject to the legislative authority of the Council, Ibid., §738(g)--provides for the giving to them of "special notice," i.e., notice "in addition to any other notice required by law." Your specific inquiry raises the issues of whether this special notice must be given with respect to all "licenses or permits" which the City may issue, and when--e.g., at the time of receipt of an application--such notice as may be required iata be given. To fully address it, it is necessary to review the Council's legislation implementing the Act.^{2/}

In 1975, the Council passed, and the Mayor approved the "Advisory Neighborhood Councils Act of 1975," D.C. Law 1-21, 22 D.C. Reg. 2065 (Oct. 28, 1975), establishing the Commission districts and providing for the election of the Commissions. Subsequently, the Council passed, and the Mayor approved the "Duties and Responsibilities of the Advisory Neighborhood Commissions Act of 1975," D.C. Law 1-58, 22 D.C. Reg. 5453 (April

^{2/} The Act explicitly subjects the Commissions to the control of the Council. Ibid., §738(c)(3). (d), (g) •

9, 1976), the "ANC Act." This latter measure was enacted to "further implement section 738 of the .••Act." Ibid. It is the provisions of its §13(a), (b) and (c), and those of §738(c) and (d) of the Act which are of particular significance here.

As I have noted, supra p. 1, §738(c)(1) of the Act provides that the Commissions "may advise the District government on [all] matters of public policy."^{3/} However, there is no provision in the Act which explicitly requires the giving of special notice to the Commissions with respect to every matter of public policy. Instead, the only notice provision in the Act is that contained in §738(d), supra p. 2, which provides that each Commission "in addition to any other notice required by law•••shall be given [special notice) of requested or proposed" District government actions of a specified nature. - The specific "government actions" designated in §738(d) are: - "zoning changes, variances, public improvements, licenses or permits of significance to neighborhood planning and development," that may affect that Commission's respective district.^{4/} Therefore, it cannot be said that the Act, by its terms, requires the giving of special notice to Commissions with respect to all "matters, of public policy" about which they are to advise. See note 3, supra. Instead, the Act does no more than to authorize the Council to require that special notice be given with respect to "requested or proposed" government action of the nature described in §738(d).

^{3/} The Act does not describe with particularity that conduct which may be said to constitute "public policy"; therefore, it is assumed that the phrase refers to any governing principle, plan or course of action. as well as inaction, by entities of the City's government.

^{4/} The use in §738(d) of the qualifying term "of significance" with respect to "licenses and permits" conforms to this construction. Each year, of course, tens of thousands of licenses and permits are granted. Therefore, Congress provided that special notice was to be given of only such "licenses and permits" which are "of signific'anee." On the other hand, while §738(d) just as clearly provides that special notice is to be given not just of proposed, but also of all "requested zoning changes" (emphasis added), zoning change applications number in the hundreds, only.

It is against this background that I turn to §13(a), (b) and (c) of the ANC Act. These provisions were enacted for the explicit purpose of "further implement[ing] the...Act," in particular, §738(d). The first of the subsections provides:

Each Advisory Neighborhood Commission (hereinafter the "Commission") may advise the Council of the District of Columbia, the Mayor and each Executive Agency and all independent agencies, boards and commissions of the government of the District of Columbia with respect to all proposed matters of District government policy including::decisionsregarding planning, streets, recreation, social services programs, education, health, safety and sanitation which affect that Commission area. For the purposes of this act, prposedactions of District government Policy shall be the same as those for which prior notice of proposed rule-making is required pursuant to section Sea) of the District of Columbia Administrative Procedure Act (D.C. Code, §1-1505(a)) or as pertains to the Council of the nistrict of Columbia. (Emphasis added.)

The first sentence of this subsection tracks the language of §738(c)(1) of the Act. It, however, does differ in that unlike §738(c)(1) it includes "education" policy as a matter of comment for the Commissions. But of greater significance is that the second sentence of §13(a), contains a definition of the phrase ftproposed actions [sic] of District Government policy."^{5/} As defined, that phrase refers, in pertinent part, to those actions tlfor which prior notice of proposed rule-making is required pursuant to Section 5(a) of the District of Columbia Administrative

^{5/} The first sentences of both §738(c)(1) of the Act and of §13(a) of the ANC Act use the phrase "matters of...policy," whereas the second and remaining sentences of the ANC Act use-- apparently synonymously--the phrase "actions of...policy." This lack of conformity does not appear significant.

Procedure Act (D.C. Code, §1-1505(a) [the "DCAPA"]).^{6/} Therefore, unlike §738(c)(1) of the Act, which does not require special notice of conduct simply because it involves public policy,¹¹ the ANC Act does require special notice of certain "proposed actions of District government policy," namely those with respect to which prior written notice is required by §5(a) of the DCAPA.^{6/}

Section 5(a) of the DCAPA provides:

The Commissioner and Council and each independent agency shall, prior to the adoption of any rule or the amendment or repeal thereof, publish in the District of Columbia Register (unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law) notice of the intended action so as to afford interested persons opportunity to submit data and views either orally or in writing, as may be specified in such notice. The publication or service required by this subsection of any notice shall be made not less than thirty days prior to the effective date of the proposed adoption, amendment, or repeal, as the case may be, except as otherwise provided by the Commissioner or Council or the agency upon good cause found and published with the notice.

^{6/} Although §5(a) of the DCAPA (as amended by D.C. Law 1-19, 22 D.C. Reg. 2048 (Oct. 28, 1975) which excluded the Council from the scope of the DCAPA) refers only to the duty of the Mayor "and each independent agency" to publish prior notice, the first sentence of §13(c) provides: "Proposed District government actions covered by this Act shall include, but not be limited to, actions of the Executive Branch or independent agency." The reason for this provision is not clear; however, it may be argued that it requires the Council to give each Commission special notice of all contemplated action by the Council.

It, in explicit terms, refers not only to the promulgation of rules following prior written notice to the public-at-large but also contemplates that rules may be promulgated during a "contested case," D.C. Code §1-1502(8). However, it is only to the prior notice to the public-at-large clause that §13(a) of the ANC Act refers. Thus it is clear that the §13(a) special notice required by §13(b)1/ is only that notice which the DCAPA requires the Mayor "and...each independent agency [shall give to the public-at-large) prior to the adoption of any rule or the amendment or repeal thereof." (Emphasis added). D.C. Code §1-1505(a) (See footnote 6, supra).

Subsection 13(c) of the ANC Act supplements §13(b) by specifying additional occasions when the Commissions are entitled to receive special notice. It requires such notice "before the award of any grant funds to a citizen organization or group, or before the formulation of any final policy decision or guideline with respect to ... licenses; or permits affecting said Commission area" Thus, §13(b) and (c) explicitly require notice of more than those types of actions specifically described by way of example, but not of limitation, in §738(d).

Therefore, in summary, the ANC Act must be viewed as legislative which expands the special notice requirement beyond that explicitly provided in §738 of the Act. Yet the ANC Act does not--as the Act does not--require special notice of all District government action. Instead, aside from that conduct explicitly referred to in §13(c), it--in §13(b)--requires special notice to the Commissions of only those "actions of District government policy" referred to in §13(a), i.e., of only those actions where prior notice to the public-at-large is required by §5(a) of the DCAPA; D.C. Code §1-1505(a). And by §13(b), the ANC Act requires that such special notice is to be given in the D.C. Register in

1/ Section 13(b) of the ANC Act provides: "Thirty days written notice of such District government actions or proposed actions shall be given by mail to each Commission affected by said actions..." 22 D.C. Reg. 5454.

does pursuant to its rules. Accordingly, no Commission need fear that it will not have been given prior notice of the application, and each, of course, may attend all hearings respecting each.

Your second inquiry concerns whether vel non special notice must be given of applications for demolition and building permits. Again, ordinarily such applications are acted upon only in accordance with rules previously adopted pursuant to §5(a) of the DCAPA; therefore, in such circumstances no special notice of the thousands of such applications which are received, each year, is required. However, when the processing of such an application portends the formulation, or modification, or the abandonment of policy decisions or guidelines respecting the issuance of such permits, the special notice required by §13(c) of the ANC Act is required.^{8/}

JRR.JR.

cc: The City Administrator
Judith W. Rogers
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^{8/} I appreciate that the question of whether the processing of a particular application falls within §13(c) occasionally may be difficult to determine. Some,--indeed, I suspect the overwhelming majority--e.g., an application for a permit to merely rewire an interior to accommodate a modern stove, obviously do not fall within the provision.