

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL**



Legal Counsel Division

August 31, 2006

Mahdi Leroy Thorpe, Jr.
Secretary, ANC 2C
LeDroit Park Station
P.O. Box 26182
Washington, D.C. 20001

Re: Compliance with Statutory Notice Requirements for ANC Public Meetings

Dear Commissioner Thorpe:

This responds to your query concerning whether Advisory Neighborhood Commission 2C (“ANC 2C”) is in compliance with the requirement to provide notice of meetings to the community, as enumerated in the Advisory Neighborhood Commission Act of 1975, as amended, October 10, 1975, D.C. Law 1-21, D.C. Official Code § 1-309.11(c)(1-4) (2006 Supp.). More specifically, you ask whether the ANC’s second of two required forms of notice, which you refer to as “second hand notice,” meets the requirements under the statute. You include four exhibits, offered as examples of methods employed by ANC 2C, with regard to these second notices. For the reasons that follow, we conclude that only one example you provide (Exhibit 1) meets the statutory standard for notice of public meetings.¹

D.C. Official Code § 1-309.11(c) states that “Each Commission shall give notice of all meetings or convocations to each Commissioner, individuals with official business before the Commission, and residents of the Commission area no less than 7 days prior to the date of such meeting.” The statute then prescribes that notice of meetings must be made in at least two of four defined ways, which according to D.C. Official Code § 1-309.11(c)(1)-(4) are:

- (1) Posting written notices in at least 4 conspicuous places in each single member district within the Commission area;
- (2) Publication in a city or community newspaper;
- (3) Transmitting or distributing notice to a list of residents and other stakeholders in the community; and
- (4) In any other manner approved by the Commission.

¹ The advice provided in this letter should not be construed as findings of fact on any past conduct of ANC 2C. Rather, the advice pertaining to the exhibits provided in this letter is intended to instruct prospective conduct only.

As stated above, there are four exhibits attached to your letter, apparently included to demonstrate the manner in which ANC 2C complies with the notice requirement. The first exhibit (“Exhibit 1”) contains copies of flyers, which announce the date and location of ANC 2C meetings. You indicate that the five flyers are distributed to Commissioners in each of the four Single Member Districts seven days in advance of the planned meetings.

The second exhibit (“Exhibit 2”) contains two items. The first item is a copy of the minutes from an ANC 2C public meeting held on March 5, 2003. The meeting’s minutes describe a motion passed by the Commission in which it approved the “use [of] e-mails, phone calls and in general the ANC Handbook Requirements for Second Notices of ANC Meetings.” (“March 5th 2003 Minutes”.) The second item contained in Exhibit 2 is a print-out of ANC 2C’s website, which displays a regular meeting date and requests that viewers of the page call the provided number to learn the meeting location.

The third exhibit (“Exhibit 3”) contains a list of “residents and other stakeholders in the community” to whom, it is asserted, notice of an ANC 2C meeting was provided by means of a telephone call to each individual on the list and by distributing to each the posted announcement flyers.²

Finally, the fourth exhibit (“Exhibit 4”) is a collection of e-mails, the purpose of which is vague. However, we presume from the description of the exhibit, that the e-mails are meant to demonstrate ANC 2C’s compliance with the notice requirement by conforming to the motion passed during the March 5, 2003 meeting, as previously discussed.

These exhibits are meant to demonstrate the methods by which ANC 2C gives notice of its meetings, namely: 1) distributing printed flyers for posting in each Single Member District of the Commission area (Exhibit 1); 2) providing written and verbal notice to a specific list of individuals (Exhibit 3); and 3) providing notice according to the motion passed at the March 5, 2003 meeting (Exhibits 2 and 4). The first and second methods are clearly permitted under D.C. Official Code § 1-309.11(c)(1) and (2), respectively. Whether the third method, as authorized by the March 5th 2003 Minutes, complies with the statute is less clear.

First, regarding the flyers included as Exhibit 1, we interpret your assertion to be that such flyers are examples of those ANC 2C typically distributes and posts to provide notice of Commission meetings to the community. According to the facts, as you have stated them, and the example of the flyers you include, we conclude that this practice complies with the notice method described in D.C. Official Code § 1-309.11(c)(1)(2006 Supp.). As long as each Commissioner properly posts the flyers in his or her Single Member District area, in a “conspicuous” place, then all the criteria contained within § 1-309.11(c)(1) (2006 Supp.) are satisfied. However, even if your Commission provides

² The list of “residents and other stakeholders in the community,” attached in Exhibit 3 contain four individuals and their respective titles, phone numbers and Single Member District association. We note, however, that two out of the four individuals listed are also ANC 2C Commissioners.

notice in this manner for each meeting, the notice requirement is still not entirely met because the statute requires notice to be provided by at least *two* of the four enumerated methods. And, it is not sufficient merely to duplicate any one of these methods.

The second method of notice, utilized by ANC 2C and contained in Exhibit 3, is individually notifying persons on a list of “residents and other stakeholders in the community” of upcoming Commission meetings. However, two points regarding this method are unclear. First, it is uncertain whether this form of notice is consistently executed and directed to the same individuals listed, or whether this is an example of notice that was given to the listed individuals for one specific meeting date. Secondly, from the exhibit and its description, it is unknown whether you assert that this method complies with D.C. Official Code § 1-309.11(c) because it conforms to the method permitted under § 1-309.11(c)(3) (transmitting notice to a list of residents and other stakeholders), *or* because it purportedly adheres to a form of notice passed in the March 5, 2003 Motion pursuant to D.C. Official Code § 1-309.11(c)(4). Insofar as the description of the exhibit references *both* the D.C. Official Code § 1-309.11 *and* the Minutes from the March 5, 2003 ANC meeting, it is unclear to us by which standard you assert this form of notice shows ANC 2C’s compliance. This, however, is a distinction without a difference. Whether advanced under § 1-309(c)(3) or as a method approved by the ANC under § 1-309(c)(4), Exhibit 3 fails to meet notice requirements.

As noted, Exhibit 3 is nothing more than a list of four (4) individuals to whom notice of the ANC meeting allegedly was given. Although D.C. Official Code § 1-309.11(c)(3) (2006 Supp.) speaks generally of a “list of residents and other stakeholders in the community” and lists no specific number of individuals to whom notice must be given, we conclude that four (4) recipients simply is an insufficient number to meet the purpose and intent of the statute. Under the doctrine *noscitur a sociis* (literally translated to mean “it is known from its associates”) general words that follow specific words in a statute are restricted to the meaning of the more specific words (which meaning should be consistent with legislative intent). J. Singer, *Sutherland Statutory Construction* Vol. 1A, § 47:16 (6th Ed. 2002). In other words, we must look to the other preceding enumerated notice provisions of this subsection for guidance. For instance, both D.C. Official Code § 1-309.11(c)(1) and (2) provide specificity with regard to the other permitted methods of notice – posting notices in at least 4 conspicuous places in each single member district and publishing notice in a newspaper. These narrowly defined methods – consistent with the more expansive subsection (c) requiring notice to “residents of the Commission area” – demonstrate that the various methods approved by the Council were calculated to reach as many people as possible. D.C. Official Code § 1-309.11(c) (2006 Supp.). Concluding that a “list of residents” under § 1-309.11(c)(3) could be comprised of only four individuals out of the many thousands of residents in each ANC area, would not only be contrary to the statute’s other provisions, but the statute’s overall purpose of maximizing notice to the public.³

³ This would be true even if the ANC attempted to adopt a similar provision under its discretionary authority to approve other methods of notice under D.C. Official Code § 1-309.11 (2006 Supp.). As discussed more fully *infra* any such discretion would be limited by certain minimum notice standards.

Exhibits 2 and 4 pertain to the third form of notice described, which is to provide notice according to the motion passed at the March 5, 2003 meeting. We presume that the March 5, 2003 Motion was raised and passed pursuant to D.C. Official Code § 1-309.11(c)(4) (2006 Supp.), which permits a Commission to determine and approve a method to provide notice of ANC meetings to the community. While the section itself is vague, it provides ANCs with the authority to determine their own method of notifying the community of Commission meetings. Once a Commission passes a method of notice, its use is sufficient to “count” as one of the two required ways a Commission must effect notice. But, even here there are limitations to such discretion.

Though recognizing ANC 2C’s authority pursuant to D.C. Official Code § 1-309.11(c)(4) (2006 Supp.) to pass the March 5, 2003 Motion, the meeting minutes describing the passed motion do not precisely state what it is the Commission agreed would be an acceptable form of notice. The minutes state only that the Commission can “use e-mails, phone-calls and in general the ANC Handbook requirements for second notices of ANC Meetings.” It is not clear from that description in what manner the Commission intends to use e-mails, phone-calls and the ANC Handbook to effect notice. Without further clarification as to how these methods are applied, we cannot offer advice concerning whether the ANC’s approved methods, without more, are sufficient under the statute. Instead, our analysis must necessarily be limited to a basic discussion of the fundamental elements of notice, which should be at least instructive to ANC 2C.

According to Black’s Law Dictionary “due notice” is defined as “sufficient and proper notice that is intended to and likely to reach a particular person or the public.” Black’s Law Dictionary, Eighth Edition, 1999. Thus, by definition, it must be at least likely that notice reach an intended recipient. This Office is of the view that any ANC Commission that passes a motion pursuant to D.C. Official Code § 1-309.11(c)(4) (2006 Supp.), is compelled to utilize methods that reasonably conform to the definition of notice. With regard to the March 5, 2003 Motion, the methods ANC 2C intends to employ involving e-mails, phone calls and the ANC Handbook must meet the dual elements of being “intended” and “likely” to reach an intended recipient. Using phone calls, for example, would be an appropriate way to effect notice as long as the Commission (or someone on its behalf) makes the phone calls *to* the public,⁴ but it would not be good notice to require the public to call for information about upcoming public meetings. In the latter situation, requiring people to call would, in our view, fall short of the dual elements because it would neither be intended nor likely to reach the ANC residents. Similarly, regarding the use of e-mail, it would only constitute proper notice for a Commission to send out e-mail to constituents concerning the date and time of public meetings. Requiring the public to contact the Commission via its internet web-page to learn about meetings would not constitute proper notice. As a general rule, passive methods of providing notice would more likely be found insufficient, as opposed to affirmative methods. Applying these standards to the exhibits you provide, the ANC’s methods, at least in application, appear insufficient.

⁴ The issue of how many people would have to be contacted via telephone to meet basic notice requirements is not an issue before us at this time and we decline to set any specific number. We caution the ANC, however, that a small number of individuals likely would not meet the standard.

Though vague, the website print-out in Exhibit 2 and the e-mails contained in Exhibit 4 appear to indicate how, in practice, ANC 2C uses e-mails and phone calls to effect notice. The printout of ANC 2C's web-page directs people to call for the Commission meeting location, thus, "use of...phone calls" to provide notice, appears to mean that constituents must take it upon themselves to find the appropriate telephone number on a website and call to obtain meeting information. As described above, this passive use of phone-calls to bring notice of meetings to the public is not proper notice. By requiring people to telephone the Commission, there is no flow of information outward to the public; without intended recipients, there is little likelihood that notice will reach anyone.

With regard to the e-mails in Exhibit 4, we similarly find that they do not represent adequate notice. Out of approximately twenty-two e-mails that were attached in Exhibit 4, only one refers to the date, time or location of an upcoming Commission meeting. Thus, based on the exhibit and facts as you have presented them, we do not see any examples that show how ANC 2C utilizes e-mail to provide notice under D.C. Official Code § 1-309.11(c) (2006 Supp.).

For these reasons, we conclude that only the example provided in Exhibit 1 (posted fliers stating the date and location of ANC meetings) constitutes proper notice under ANC law. The remaining examples do not.

Sincerely,

ROBERT J. SPAGNOLETTI
Attorney General

/s/

RJS/dps

(AL-06-323)