

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



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NOTICE AND GREAT WEIGHT FOR ADVISORY NEIGHBORHOOD COMMISSIONS
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In some instances, before a District agency acts, it must notify affected Advisory Neighborhood Commissions (“ANCs”) of its proposed action and give great weight to any pertinent issues and concerns those ANCs raise. This white paper provides guidance on these requirements.

ANCs are a neighborhood-based part of the District’s local government. The Home Rule Act directed the Council to divide the District into neighborhoods and establish an elected ANC in each neighborhood that petitioned for one.¹ Notice and great weight are connected to one of the functions Congress gave each ANC: to “advise the District government on matters of public policy” related to its ANC area.² Congress required that each ANC receive “timely notice,” in a “manner provided by act of the Council,” 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.³

The notice and great-weight requirements in the Advisory Neighborhood Commissions Act of 1975 (“ANC Act”)⁴ implement this provision.

Notice

The Home Rule Act requires District agencies to notify ANCs of “requested or proposed zoning changes, variances, public improvements, licenses, or permits of significance to neighborhood planning and development.”⁵ Section 13 of the ANC Act (D.C. Official Code § 1-309.10), in turn, specifies the types of decisions that District government bodies must give advance notice (usually

¹ D.C. Official Code § 1-207.38(a).

² *Id.* § 1-207.38(c)(1).

³ *Id.* § 1-207.38(d).

⁴ Effective Oct. 10, 1975 (D.C. Law 1-21; D.C. Official Code § 1-309.01 *et seq.*).

⁵ *Id.* § 1-207.38(d); *see Kopff v. Alcoholic Beverage Control Bd.*, 381 A.2d 1372, 1381 (D.C. 1977).

30 days) of.⁶ The executive branch and any independent agency, board, or commission must give an affected ANC advance notice of an array of proposed actions, including “[t]he award of any grant funds to a citizen organization or group,” “requested or proposed zoning changes,” “public improvements,” and “proposed changes in District government service delivery.”⁷ A District government body must also give notice if it intends to “acquire an interest in real property, either through purchase or lease” or to “change the use of property owned or leased by or on behalf of the government.”⁸ And three District government bodies – the Alcoholic Beverage and Cannabis Board, the Department of Buildings, and the Office of Zoning – must provide additional notice of specified matters pending before them.⁹

A District government body that wants to know whether it must give affected ANCs notice of a proposed action should ask two questions. The first is whether the action falls under the general types described in the Home Rule Act or ANC Act. *See Office of People’s Counsel v. Pub. Serv. Comm’n*, 630 A.2d 692, 697 (D.C. 1993). The second is whether the action is “of significance to neighborhood planning and development.” *See Kopff v. Alcoholic Beverage Control Bd.*, 381 A.2d 1372, 1381 (D.C. 1977). To be “of significance,” the action must either require a public hearing (*see id.*) or be specifically mentioned in the ANC Act (such as a raze permit, *see Shiflett v. Bd. of Appeals and Review*, 431 A.2d 9, 10 (D.C. 1981)). Moreover, as we have explained in a previous letter, the “statutory duty to provide notice and great weight applies in the context of an actual decision that will affect neighborhood planning and development,” so the duty to provide notice “rests with the government body that actually makes the decision.”¹⁰ So, for example, our Office has advised that the Historic Preservation Review Board is not required to give ANCs notice and great weight concerning its review of work affecting historic landmarks and districts.¹¹

Great Weight

When an ANC receives the type of advance notice described above, it “shall consider” the proposed action “in a meeting with notice given according to” other provisions of the ANC Act.¹² If it wants to adopt recommendations that will be entitled to great weight, those recommendations must “be in writing and articulate the basis for its decision.”¹³ Once an ANC does that, “[t]he

⁶ *See* D.C. Official Code § 1-309.10(b) and (c). This notice may be sent by email “unless otherwise provided by law, or unless the party to be noticed” requests notice by first-class mail. *Id.* § 1-309.10(c)(1A). Shorter notice is permissible when the agency has good cause that it publishes alongside the notice. *See id.* § 1-309.10(b).

⁷ *Id.* § 1-309.10(c)(1)(A).

⁸ *Id.* § 1-309.10(b).

⁹ *See id.* § 1-309.10(c)(2)-(4). We note that the provisions applicable to the Alcoholic Beverage and Cannabis Board and the Department of Buildings still contain outdated references to the Alcoholic Beverage Control Board and the Department of Consumer and Regulatory Affairs.

¹⁰ Letter to Comm’r Kupcinski, Feb. 21, 2017, at 2, available at <https://oag.dc.gov/sites/default/files/2018-02/ANC-2-B-February-21-2017-Historic-Preservation-Review-Board.pdf>.

¹¹ *Id.* at 1. We note one important exception: notice to ANCs is required prior to “[t]he transmission to the Council of a proposed revenue bond issuance, comprehensive plan, amendment to a comprehensive plan, or element of a comprehensive plan.” D.C. Official Code § 1-309.10(c)(1)(A)(ii).

¹² D.C. Official Code § 1-309.10(d)(1).

¹³ *Id.*

issues and concerns raised” in those recommendations “shall be given great weight during the deliberations by the government entity.”¹⁴

Giving great weight means that the government entity making the decision must “articulate its decision in writing.”¹⁵ It must acknowledge the ANC as the source of the recommendations and explicitly reference each of the ANC’s issues and concerns.¹⁶ Although the agency is not “obliged to follow the ANC’s recommendations or adopt its views,”¹⁷ its written decision must explain “with particularity and precision the reasons why the Commission does or does not offer persuasive advice under the circumstances,” accompanying that explanation with “specific findings and conclusions with respect to each issue and concern” the ANC has raised.¹⁸

Our Office has previously confronted questions about whether and how notice and great weight apply in different contexts.¹⁹ Letters on this and other ANC-related subjects can be found on OAG’s website, at <https://oag.dc.gov/about-oag/laws-and-legal-opinions/legal-advice-ancs>. Any Commissioner or other District officer or employee with questions about this paper should feel free to contact Assistant Attorney General Joshua Turner at Joshua.Turner3@dc.gov, or Deputy Attorney General Megan D. Browder at Megan.Browder@dc.gov.

¹⁴ *Id.* § 1-309.10(d)(3)(A).

¹⁵ *Id.* § 1-309.10(d)(3)(B).

¹⁶ *Id.* § 1-309.10(d)(3)(A).

¹⁷ *Draude v. Bd. of Zoning Adjustment*, 582 A.2d 949, 953 (D.C. 1990) (quoting *Upper Georgia Ave. Planning Comm. v. Alcoholic Beverage Control Bd.*, 500 A.2d 987, 993 (D.C. 1985)).

¹⁸ D.C. Official Code § 1-309.10(d)(3)(B).

¹⁹ *See, e.g.*, Letter to Comm’r Jayaraman, Apr. 29, 2019, available at <https://tinyurl.com/5mbsyv7s>; Letter to Comm’r Brannum, June 20, 2005, available at <https://tinyurl.com/ycx6pwpX>.