

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

JUDICIARY SQUARE

441 FOURTH ST., N.W.


WASHINGTON, D. C. 20001



IN REPLY REFER TO:

MEMORANDUM

To: All District Agencies, Boards, and Commissions
Prepared by: LCD:ABE:ae
File Number: AL-98-466

From: John M. Ferren
Corporation Counsel 
Date: February 22, 1999

Subject: ANC participation in governmental decisions; the "great weight" requirement

Dear Colleagues:

With the beginning of a new administration and the inauguration of new Advisory Neighborhood Commissioners, it is an opportune time to review the requirements relating to Advisory Neighborhood Commissions ("ANCs"). Mayor's Order 94-175, dated July 29, 1994, details the requirements of both section 738 of the Home Rule Act, approved December 24, 1973, (87 Stat. 824, D.C. Code § 1-251) and section 13 of the Advisory Neighborhood Commission Act, effective March 26, 1976, (D.C. Law 1-58, D.C. Code § 1-261). These statutes provide for two essential requirements with regard to ANCs: 1) that they be given notice of proposed government actions enumerated in the statutes; and 2) that ANC recommendations resulting from such notice be given "great weight" by the agency, board or commission ("agency") in making its decision. There have been allegations by various ANC Commissioners that D.C. agencies fail to give "great weight" to their recommendations. I believe that there have been instances when both the ANCs and the agencies themselves have misunderstood the "great weight" requirement. Therefore, a review of the "great weight" requirement is appropriate.

D.C. Code § 1-261(d) provides:

Each Commission so notified pursuant to subsections (b) and (c) of this section of proposed District government action or actions shall consider each such action or actions in a meeting with notice given [to the public]. At the close of business from the 31 st day of mailing of such written notice or earlier if such limited publication has been provided, the affected District government entity may proceed to make its decision. The issues and concerns raised in the recommendations of the Commission shall be

given great weight during the deliberations by the government agency and those issues shall be discussed in the written rationale for the governmental decision taken. "Great weight" requires acknowledgment of the Commission as the source of the recommendations, and requires explicit reference to each ANC issue and concern as such as well as specific findings and conclusions with respect to each.

The following important aspects of the great weight requirement should be noted:

1. The great weight requirement applies only to ANC recommendations which are the result of an agency notice. The great weight requirement is tied to the statutory notice requirement. D.C. Code § 1-261(d); Office of People's Counsel v. PSC, 630 A.2d 692, 698 (D.C. 1993).
2. Great weight applies only to recommendations which come formally from the ANC, and not to recommendations of individual commissioners who are not authorized to speak on behalf of the ANC.
3. The statute requires that only written ANC recommendations be given great weight; it does not require that oral testimony of an ANC commissioner be afforded great weight. Friendship Neighborhood Coalition v. District of Columbia, Board of Zoning Adjustment, 403 A.2d 291, 294 (D.C. 1979).
4. The agency may proceed to make its decision on the 31st day after the mailing of notice to the ANC. If the agency receives the ANC recommendations at any time prior to its decision, those recommendations must be given great weight. If the agency does not receive the ANC recommendations, it may proceed to make a decision without the recommendation as long as it is at least the 31st day after notice is mailed to the ANC.
5. The factors that the agency may consider in making its decision on the proposed government action must be legally relevant. Thus, an ANC in making a recommendation to the agency is limited to discussion of factors that the agency lawfully may consider in making its decision. Friendship Neighborhood Coalition v. District of Columbia Board of Zoning Adjustment, 403 A.2d 291, 294 (D.C. 1979). If an ANC raises factors outside the scope of the agency's lawful consideration, the agency should state such in its decision, citing the specific recommendation and the limitations on its authority to lawfully consider the issue.
6. The agency decision must be written.
7. The ANC recommendation is not binding on the agency; ANCs are advisory only. Kopff v. Dist. of Columbia Alcoholic Beverage Control Board, 381 A.2d 1373, 1384 (D.C. 1977). But this limitation makes all the more important that great weight is carefully and thoroughly given to the recommendation. More specifically, great weight

\, means that an agency must elaborate, with precision, its written response to the ANC issues and concerns. The agency must focus not only on the issues raised by the ANC but also on the fact that the ANC, as a representative body, is the group making the recommendation. The agency must articulate why the ANC does or does not offer persuasive advice under the circumstances. In short, the agency must pay specific attention to the source as well as the content of ANC recommendations, giving them whatever deference they merit in context with the entire proceeding, including the evidence and views presented by others. Kopff v. Dist. of Columbia Alcoholic Beverage Control Board, 381 A.2d 1373, 1384 (D.C. 1977).

8. Great weight requires specific findings and conclusions with respect to each ANC recommendation in the agency's written rationale of its decision. Failure to so enumerate the agency's evaluation of the ANC recommendations opens the agency to a charge upon judicial review that it failed to give the ANC recommendations great weight. Kopff v. Dist. of Columbia Alcoholic Beverage Control Board, 381 A.2d 1373, 1384 (D.C. 1977).

If you have any questions about the application of the notice or great weight requirements to specific decisions of your agency, please do not hesitate to contact Wayne Witkowski, of my staff, at 724-6527.

Attachment: Mayor's Order 94-175

cc: Agency General Counsels

Advisory Neighborhood Commissions

The Honorable David A. Catania
Chairman
Committee on Local and Regional Affairs
Council of the District of Columbia

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 94- 175
July 29, 1994

SUBJECT: Application of the "Timely Notice" and "Great Weight" Requirements to Advisory Neighborhood Commissions

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422 of the District of Columbia Self-Government and Governmental Reorganization Act of 1973, D.C. Code § 1-242 it is hereby ORDERED that:

1. All heads of departments and agencies and chairs of District of Columbia boards and commissions are directed to ensure strict adherence to the requirements of the Home Rule Act pertaining to Advisory Neighborhood commissions, and the "timely notice" and "great weight" provisions of the Advisory Neighborhood Commissions Act.

2. Section 738(d) of the District of Columbia Self Government and Governmental Reorganization Act of 1973 (the "Home Rule Act"), D.C. Code § 1-231(d), states, "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 commissioner of requested or proposed zoning changes, variance, public improvements, licenses or permits of significance to neighborhood planning and development within its commission area for its review, comments and recommendation."

3. The Advisory Neighborhood commissions Act, D.C. Code § 1-261(b), requires that thirty (30) days written notice of District Government actions or proposed actions shall be given by mail to each commissioner affected by these actions (except where shorter notice on good cause made and published with the notice. may be provided or in the case of an emergency) and such notice shall be published in the D.C. Register.

4. The head of each department and agency and the chair of each board and commission are directed to give timely notice to affected Advisory Neighborhood Commissions regarding all proposed matters of District Government policy including, but not limited to: decisions regarding planning, streets, recreation, social services programs, education, social services programs, education, health, safety and sanitation which affect that commission area. Timely notice shall also be given to each affected commissioner 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 grant

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applications, comprehensive plans, requested or proposed zoning changes, variances, public improvements, licenses, or permits affecting said commission area, the District budget and city goals and priorities, proposed changes in District Government service delivery, and the opening of any proposed facility systems.

5. The Advisory Neighborhood commissions Act, D.C. Code § 1-261(d), also requires that District Government departments, agencies, and boards and commissions give great weight during their deliberations to the issues and concerns raised in the recommendations of an affected Advisory Neighborhood Commission. That section further provides that the issues raised by an affected Commission be discussed in the written rationale for the government decisions taken.

6. The head of each department and agency and the chair of each board and commission are directed, as part of the requirement to give great weight to the issues and recommendations of affected commissions, to acknowledge said Commissions as the source of any issues and recommendations raised by them, and to make specific findings, and conclusions regarding each such recommendation.

7. This Order shall be come effective immediately.


SHARON PRATT KELLY
MAYOR

ATTEST: 
STEPHANIE GREENE
SECRETARY OF THE DISTRICT OF COLUMBIA