

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL  
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April 14, 2022

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Interim Executive Director  
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1350 Pennsylvania Ave., N.W., Ste. 11  
Washington, D.C. 20004

**Re: Seasoned Settlers Grant and Grants Generally**

Director Grant:

You asked us to advise on whether a proposed Advisory Neighborhood Commission (“ANC”) grant to Seasoned Settlers would be permissible. Along the way, you asked us to summarize our guidance on grants more generally. This letter responds to your request. We start by summarizing the requirements and limits that apply to ANC grants. We then apply that discussion to the proposed Seasoned Settlers grant, explaining that, in our view, it raises significant concerns.

**Background on ANC Grants**

An ANC’s power to issue grants flows out of the District of Columbia Home Rule Act.<sup>1</sup> When Congress directed the Council to establish ANCs,<sup>2</sup> it authorized each ANC to “expend, for public purposes within its neighborhood area, public funds and other funds donated to it.”<sup>3</sup> Congress also directed the Council to allot funding to ANCs so that they could, among other things, “conduct programs for the welfare of the people in a neighborhood commission area.”<sup>4</sup> And it authorized the Council to “legislate with respect to the [ANCs] established in this section.”<sup>5</sup> The Council then adopted the Advisory Neighborhood Commissions Act of 1975 (“ANC Act”),<sup>6</sup> section 16 of which<sup>7</sup> governs grants and other ANC expenditures.

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<sup>1</sup> Approved December 24, 1973 (87 Stat. 777; D.C. Official Code § 1-201.01 *et seq.*).

<sup>2</sup> Interestingly, ANCs were originally called “advisory neighborhood councils” until the Council renamed them in 1975. *See* Advisory Neighborhood Commissions Act, effective October 30, 1975 (D.C. Law 1-27; 22 DCR 2472).

<sup>3</sup> D.C. Official Code § 1-207.38(c)(2).

<sup>4</sup> *Id.* § 1-207.38(e).

<sup>5</sup> *Id.* § 1-207.38(g).

<sup>6</sup> Effective October 10, 1975 (D.C. Law 1-21; D.C. Official Code § 1-309.01 *et seq.*).

<sup>7</sup> Section 16 of the ANC Act is codified as D.C. Official Code § 1-309.13.

Section 16 sets out the process an ANC must follow before issuing a grant. The grant applicant must “submit an application in writing to the Commission and to the OANC” (the Office of Advisory Neighborhood Commissions), using a template designed by the OANC.<sup>8</sup> The application must describe the proposed project and its benefits, identify the cost of the project, and identify any overhead the applicant would incur in carrying out the project.<sup>9</sup> If the ANC awards the grant (by vote at a public meeting), the grant recipient must report on how the funds have been spent (with receipts), starting 60 days after the award of the grant and then every 90 days thereafter.<sup>10</sup> This process is designed to make sure that, when someone requests a grant from an ANC, the ANC can determine whether that grant would meet the requirements of section 16 – both its specific requirements for grants and the more general requirements that apply to all ANC expenditures.

Our prior letters have pinpointed 5 specific requirements for grants:

- (1) **Public Purpose:** ANC grants, like other expenditures not for the maintenance of the ANC office, must be for “public purposes within the Commission area.”<sup>11</sup> A public purpose is one “that benefits the community as a whole and is not done for the primary purpose of benefitting a private entity.”<sup>12</sup> We have explained that this does not preclude a grantee organization from receiving some indirect benefit from the grant, as long as the public is the grant’s primary beneficiary.<sup>13</sup>
- (2) **Local Benefit:** A grant must “benefit persons who work or reside in the Commission area.”<sup>14</sup> This does not mean the grant may only benefit Commission residents; it simply means the grant’s benefits should be focused on those residents.<sup>15</sup>
- (3) **Proposed Project:** A grant must be for a “proposed project.”<sup>16</sup> The word “project” means a grant must be for a specific undertaking, not for general support

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<sup>8</sup> D.C. Official Code § 1-309.13(m)(2).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* § 1-309.13(m)(3).

<sup>11</sup> *Id.* § 1-309.13(l)(1).

<sup>12</sup> *Id.*

<sup>13</sup> See Letter to Shane Anthony, Dec. 10, 2008, at 2, available at <https://oag.dc.gov/sites/default/files/2018-02/ANC-4-C-07-December-10-2008-Purchase-of-Electronic-Communication-Equipment.pdf> (citing Letter to Philip C. Spalding, July 13, 2005, at 2) (all internet sites last visited April 13, 2022).

<sup>14</sup> D.C. Official Code § 1-309.13(m)(1).

<sup>15</sup> See Letter to Deborah K. Nichols, Nov. 9, 2006, at 2 n.2 (on file) (ANC 4C grant was permissible where “[b]enefit to other ANCs would be incidental to the benefit conferred on ANC 4C residents,” because a grant’s benefits need not “be exclusive to the ANC that gives the grant funds”); see Letter to Comm’r Fletcher, Mar. 15, 2022, at 2, available at <https://oag.dc.gov/sites/default/files/2022-03/ANC-7E-Letter-to-Commissioner-Fletcher-Re-Public-Purposes-Within-the-Commission-Area-.pdf> (making the same point with respect to the public-purpose requirement).

<sup>16</sup> See D.C. Official Code § 1-309.13(m)(2)(A).

of an organization, and the word “proposed” means that a grant cannot reimburse an organization for expenses connected to an existing or completed project.<sup>17</sup>

- (4) **Organization:** A grant must be to an “organization,” not an individual or a government entity,<sup>18</sup> although the organization need not be incorporated.<sup>19</sup>
- (5) **Non-Duplication:** A grant must be for services that are not “duplicative of any that are already performed by the District government.”<sup>20</sup> An ANC grant thus cannot fund services that the District government already provides.

Grants must also abide by the limits applicable to ANC expenditures more generally. They thus cannot be for “any purpose that involves partisan political activity, legal expenses other than for Commission representation before an agency, board, or commission of the District government, or travel outside of the Washington metropolitan area.”<sup>21</sup>

### The Seasoned Settlers Grant

The Seasoned Settlers grant, which to our knowledge has not yet been awarded, would be for a project called Operation: Safe Streets. This project was slated to begin on April 1, 2022 and conclude on June 1, 2022.<sup>22</sup> As the organization’s March 8, 2022 grant application puts it, ANC grant funds would:

provide Seasoned Settlers the opportunity to jumpstart a 10-week campaign to amplify safety awareness incorporating traffic safety fundamentals that focus on pedestrian, automotive, substance prevention, and cycling safety.<sup>23</sup>

There were 3 parts to this grant proposal, all of which the application asks the ANC to fund: signage, an educational performance, and free bike rides. The first part runs during the 10-week campaign. Seasoned Settlers said it would “work towards injury reduction to ultimately incident prevention by purchasing signage which will be displayed during peak traffic hours” at an intersection near H.D. Cooke Elementary School.<sup>24</sup> (The application does not say what the form or content of these signs would be.) The second and third parts (the performance and bike rides)

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<sup>17</sup> See Letter to Comm’r Varzi, Dec. 3, 2019, available at <https://oag.dc.gov/sites/default/files/2019-12/ANC-4C-After-the-Fact-Grant.pdf>.

<sup>18</sup> D.C. Official Code § 1-309.13(m)(1); see Letter to Deborah K. Nichols, Jan. 14, 2010, at 4, available at <https://oag.dc.gov/sites/default/files/2018-02/ANC-January-14-2010-Guidelines-for-Use-of-ANC-Funds.pdf> (a public school is not an “organization” and therefore cannot receive ANC grants).

<sup>19</sup> See Letter to Deborah K. Nichols, Aug., 4, 2000 at 3, available at <https://oag.dc.gov/sites/default/files/2018-02/ANC-August-4-2000-Grants-by-ANCs-Public-Purpose-and-Corporate-Status-of-Recipients.pdf> (“The plain meaning of the term ‘organization’ includes unincorporated associations”).

<sup>20</sup> D.C. Official Code § 1-309.13(m)(1). The ANC Act does not apply this same restriction to non-grant expenditures. See *id.* § 1-309.13(1).

<sup>21</sup> *Id.* § 1-309.13(1)(2).

<sup>22</sup> ANC Grant Application for Operation: Safe Streets (“Grant Application”) at 1.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

would come after this 10-week campaign ends. At that point, Seasoned Settlers will “provide H.D. Cooke Elementary students with an educational performance geared towards Health and Safety,”<sup>25</sup> and then “distribute safety gloves to participants to assist with safely crossing the street.”<sup>26</sup> It would also “offer seniors of Sarah’s Circle complimentary bike-rides with Seasoned Settlers Trishaw one warm afternoon around the community.”<sup>27</sup> Seasoned Settlers sought approximately \$4,000 of ANC funding for this project.<sup>28</sup>

This grant proposal raises 3 significant concerns: (1) it is not clear whether or to what extent it would be for a “proposed project”; (2) the bike-ride and in-school-performance components of the grant do not appear to serve a public purpose; and (3) it is not clear whether any component of the grant impermissibly duplicates District government functions.

**(1) It is not clear whether the grant would be for a “proposed project”**

It is not clear that this grant, if issued now, would be for a “proposed project.” The 10-week campaign has already begun, which means Seasoned Settlers has likely already spent funds for the signage it intended to put up during the campaign. It is similarly not clear whether Seasoned Settlers has already spent funds for the upcoming educational performance (including the gloves), or the upcoming bike rides. To the extent that granting funds to Seasoned Settlers would mean reimbursing it for expenses that it has already accrued, this would be impermissible.

We explained this point in a December 3, 2019 letter to Commissioner Kim Varzi.<sup>29</sup> There, as here, “[a]n organization planning an event requested funding from your ANC to pay certain costs of the event.”<sup>30</sup> They submitted the application before the event was scheduled to take place, but “for various reasons,” the ANC “did not vote on the grant request before the date of the event.”<sup>31</sup> We explained that the ANC could not “approve this grant request after the fact, effectively reimbursing the applicant for expenses it has already incurred.”<sup>32</sup> The same is true here: the ANC cannot reimburse Seasoned Settlers for any expenses it has already incurred.

**(2) The bike rides, and the in-school performances coupled with safety gloves, do not appear to serve a public purpose**

As discussed above, ANC grants must be for “public purposes within the Commission area,” meaning that they must “benefit[] the community as a whole” and not be “done for the primary purpose of benefitting a private entity.”<sup>33</sup> The signage prong of the grant satisfies this requirement, which means that the ANC could lawfully grant funds for the signage to the extent

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 4.

<sup>27</sup> *Id.* at 1.

<sup>28</sup> *Id.* at 4.

<sup>29</sup> Letter to Comm’r Varzi, Dec. 3, 2019, available at <https://oag.dc.gov/sites/default/files/2019-12/ANC-4C-After-the-Fact-Grant.pdf>.

<sup>30</sup> *Id.* at 1.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> D.C. Official Code § 1-309.13(1)(1).

that it does not run afoul of other statutory requirements. The bike rides, on the other hand, do not serve a public purpose. Giving a select group of seniors bike rides around the community may reasonably benefit those seniors, but that benefit does not translate to a benefit for the community at large.

The same appears to be true about the in-school educational performance to a select group of elementary-school students. This kind of performance might have served a public purpose under earlier versions of the ANC statute, but it does not appear to serve one under current law. Until the ANC Act was amended in 2016, one could make a reasonable argument that, as long as a performance like this would serve an educational function, it would serve a public purpose. This was because a grant served a “public purpose” in the ordinary sense of that phrase if it conferred a “direct public benefit of a reasonably general character, that is to say, to a significant part of the public.”<sup>34</sup> In-school performances to a large enough group of elementary school students might be enough to meet this threshold, just as a large enough block party could.<sup>35</sup> But the law now sets out a stricter (and clearer) test: a grant does not serve a public purpose unless it benefits the community “as a whole.”<sup>36</sup> A performance like this one that is limited to a select group of elementary students cannot meet this stricter standard.

The post-performance safety gloves might be impermissible for the same reason. They are made available, not to the general public, but only to participants in the elementary-school performance – which includes, at most, students and teachers at H.D. Cooke Elementary School. In order for these gloves to be permissible grant expenditures, they would need to be given out for the good of the whole community. Nothing in the application, however, demonstrates that this will be the case.<sup>37</sup>

Our reasoning here echoes our reasoning in a July 20, 2021 letter to Commissioner Randy Speck.<sup>38</sup> There, the question was whether an ANC could grant funds to an organization to buy a refrigerator and cooler, so that the organization could “provide fresh food to individuals in need.”<sup>39</sup> We explained that it was no longer enough for a grant to benefit a significant part of the community; it needed to “benefit the community as a whole.”<sup>40</sup> In that case, the grant met this tougher test because the food made available by the refrigerator and cooler would be “broadly available to needy residents across the community.”<sup>41</sup> Here, by contrast, the proposed performance would not be available to the community at large, or even to students at large; it

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<sup>34</sup> Letter to Comm’rs Teutch and Martin, June 30, 2017, at 1, *available at* <https://oag.dc.gov/sites/default/files/2018-02/ANC-4-C-June-30-2017-Block-Grants-and-Public-Purpose-Requirement.pdf> (quoting earlier letters).

<sup>35</sup> *See id.* at 1-2.

<sup>36</sup> D.C. Official Code § 1-309.13(1)(1).

<sup>37</sup> Our answer might be different if, for example, students and teachers were given safety gloves in order to serve as crossing guards for the good of the overall community. That would serve a public purpose, in much the same way that a grant to 5 young adults to beautify their community did. *See* Letter to Deborah K. Nichols, Aug., 4, 2000 at 2, *available at* <https://oag.dc.gov/sites/default/files/2018-02/ANC-August-4-2000-Grants-by-ANCs-Public-Purpose-and-Corporate-Status-of-Recipients.pdf>.

<sup>38</sup> This letter is available at <https://oag.dc.gov/sites/default/files/2022-03/ANC-3G03-Letter-to-Commissioner-Speck-Re-Grant-to-Food-the-Family-Pantry-.pdf>.

<sup>39</sup> Letter to Comm’r Speck at 1.

<sup>40</sup> *Id.* at 2.

<sup>41</sup> *Id.*

would be open only to students of a specific age group at a specific school. Nothing in the application suggests, nor is it apparent, how offering this performance would benefit the wider community.

### **(3) It is not clear whether the grant would involve impermissible duplication**

This grant raises questions about impermissible duplication of District government services. Accordingly, we start by clarifying what constitutes impermissible duplication. As we noted above, what the ANC Act prohibits is providing a grant for services that would be “duplicative of any that are already performed by the District government.”<sup>42</sup> As we put it in one past letter, this is a straightforward inquiry: would the grant “fund services that are already being provided by the District”?<sup>43</sup> If the services in question fall within the scope of a District agency’s authority, the ANC should confirm whether the agency is in fact performing those services. Likewise, a grant applicant should confirm in its application that it is not seeking funding for something that the District government is already doing.

Troublingly, however, the Seasoned Settlers grant application does not confirm this. Although the grant involves a subject (traffic safety) that falls squarely within the ambit of the Department of Transportation (“DDOT”) and the Metropolitan Police Department (“MPD”),<sup>44</sup> the grant application does not show, or even say, that the services the grantee would provide would not overlap with District government functions. The applicant’s only response to the question of whether the “services/benefits proposed” under the grant “duplicate those that are already performed by the District Government” is the following: “What makes this project unique is that Seasoned Settlers will deliver this campaign with support from ANC1C.”<sup>45</sup> It is not possible to tell from this language, or from the remainder of the grant application, whether the grant would involve impermissible duplication. For example, it is not possible to tell whether any of the grantee’s contemplated signage will overlap with road signage that DDOT already provides and governs,<sup>46</sup> or whether the elementary-school performance the grantee will hold or the gloves it will hand out duplicate any functions already performed by DDOT, MPD, or H.D. Cooke Elementary School.<sup>47</sup>

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<sup>42</sup> D.C. Official Code § 1-309.13(m)(1).

<sup>43</sup> Letter to Shane Anthony, Dec. 10, 2008, at 2, available at <https://oag.dc.gov/sites/default/files/2018-02/ANC-4-C-07-December-10-2008-Purchase-of-Electronic-Communication-Equipment.pdf>.

<sup>44</sup> See, e.g., D.C. Official Code § 50-2201.03(b) (DDOT authority concerning traffic); Press Release, Executive Office of the Mayor, Mayor Bowser Announces New Traffic Safety Enhancements Around Schools (Nov. 29, 2021), <https://mayor.dc.gov/release/mayor-bowser-announces-new-traffic-safety-enhancements-around-schools>.

<sup>45</sup> Grant Application at 4. The other two sentences of the applicant’s answer to this question expound on the intended benefits of the program rather than addressing duplication. They state that the program “builds the community,” “creates a safe space and hub for people to positively voice concern and publicly advocate for change,” and is “[f]ollowed by two celebratory events that’s intergenerational engaging youth and seniors.” *Id.*

<sup>46</sup> See D.C. Official Code § 50-2201.03(b).

<sup>47</sup> See, e.g., DDOT, School Crossing Guard Program, <https://ddot.dc.gov/node/481172>.

Sincerely,

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