
Are ANCs Given Great Weight?

April 24, 2020

A report by the Office of the District of Columbia Auditor



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Executive Summary

Why ODCA Did This Audit

ANCs serve as a neighborhood's official voice in advising the District government on actions that affect each neighborhood. This discretionary audit was conducted to determine whether recommendations provided to the District government by the ANCs—the voice of the community—were given great weight.

What ODCA Found

We conducted a review of the great weight process as applied by three District government entities: the Alcoholic Beverage Regulation Administration (ABRA); DC Office of Zoning (DCOZ), which includes the Board of Zoning Adjustment (BZA) and the Zoning Commission (ZC); and the District Department of Transportation (DDOT).

Our audit found that that ABRA, BZA, and ZC gave Advisory Neighborhood Commissions (ANCs) great weight by considering ANC recommendations and articulated their decision in writing. In four out of 10 cases reviewed, the proposed District action was changed based on an ANC's recommendation. We found, as noted below, that DDOT did not give ANCs great weight as required by D.C. Code § 1-309.10.

The audit resulted in the following findings:

1. The ANCs did not consider the proposed District government action in a meeting, as required by law, in almost half of the cases reviewed.
2. The Office of the Advisory Neighborhood Commissions (OANC) had not maintained a central repository of all great weight notices provided from District agencies.
3. BZA and DDOT did not in all cases provide proper notification of the proposed District action to the OANC or the affected ward Councilmember.
4. DDOT did not give ANCs great weight as required by the law.
5. D.C. Code § 1-309.10 lacks a clear and concise reference to District actions that require notice to ANCs.

What ODCA Recommends

1. OANC should develop written guidelines and provide training for all ANCs on the requirements of the ANC great weight Code provisions, including formally documenting meetings held to consider proposed District action and proper record retention. The guidelines should be maintained on the anc.dc.gov website.
2. OANC should design and implement policies and procedures to maintain both electronic and hard copy notices received, and maintain all notices received in accordance with the policy developed.
3. BZA should design and implement internal policies and procedures to ensure that all notices are provided to the OANC.
4. DDOT should design and implement internal policies and procedures to provide written notice to the OANC, each affected ward Councilmember, and the ANC, and implement a process to maintain evidence to support proper notification to the OANC.
5. DDOT should design and implement policies and procedures to comply with the great weight requirements of the law including, consideration of ANC issues/concerns and issuing a written final decision to the ANC based on recommendations provided.
6. The D.C. Council should amend D.C. Code § 1-309.10 (b) and (c) to identify a limited and manageable number of specific government actions that must be the subject of notice to the ANCs and on which ANC views are to be given great weight.

Background

D.C. Code provides for the establishment of District of Columbia Advisory Neighborhood Commission (ANC) areas.¹ D.C. Code also provides that the Council shall establish single-member districts (SMDs) for each of the ANCs.² There are 40 ANCs comprised of 296 SMDs. Each SMD has a population of approximately 2,000 residents represented by an elected Commissioner.

ANCs are a unique feature of the District's Home Rule Charter and have operated since 1976.³ They are non-partisan and composed of locally elected representatives called Advisory Neighborhood Commissioners. The ANCs were established to bring government closer to the people, and to bring the people closer to government. They serve as a neighborhood's official voice in advising the District government (and Federal agencies) on actions that affect their neighborhoods.

The ANCs are empowered to advise the District government "with respect to all proposed matters of District government policy including, but not limited to, decisions regarding planning, streets, recreation, social services programs, education, health, safety, budget, and sanitation which affect that Commission area."⁴ The law gives ANCs the power of "great weight."⁵

To give ANCs great weight the Executive Branch and any independent agency, board, or commission is required to give 30-day written notice of certain proposed District government actions to the Office of Advisory Neighborhood Commissions (OANC), each affected ANC, the Commissioner representing an SMD affected by said actions, and to each affected ward Councilmember.⁶ The OANC is responsible for maintaining a central record of all notices⁷ and the ANC is required to consider each proposed action. Consideration is given when the proposed District government action is discussed and voted on in a meeting which is open to the public. The recommendations of the ANC, if any, must be in writing and articulate the basis for the ANC's decision.⁸

The issues and concerns raised in the recommendations of the ANC must receive great weight from the government entity. Great weight requires written acknowledgement of the ANC's recommendations and explicit reference to each issue and concern from the government entity.⁹

ODCA conducted a survey of a sample of Commissioners and District government agencies to gain an understanding of their awareness of great weight.¹⁰ Of the 296 Commissioners surveyed 66 responded, and of the 16 District agencies and boards surveyed, four responded.

1 See D.C. Code § 1-309.02

2 See D.C. Code § 1-309.03

3 <https://anc.dc.gov/page/about-ancs>

4 See D.C. Code § 1-309.10(a).

5 See generally D.C. Code § 1-309.10

6 See D.C. Code § 1-309.10(b)

7 See D.C. Code 10309.10(b).

8 See D.C. Code 10309.10(d)(1).

9 See D.C. Code 10309.10(d)(3)

10 ODCA conducted a survey of all ANC Commissioners in September 2017, therefore the survey responses were received from the ANC Commissioners in office September 2017.

Although the survey responses were limited, the following information was obtained:

- Three of the agencies and 53 of the ANCs have an understanding of the great weight provision.
- One of the agencies and 31 of the ANCs said they understand which District actions require notification to ANCs. The remaining three agencies responded that they partially understand which District actions require notification to ANCs. The remaining 34 ANCs said they do not understand which District action requires notification to ANCs.
- Twenty-three of the ANCs stated that they receive notices 30 days prior to hearings/decision making.

While the survey results demonstrate that agencies and commissioners are aware of the great weight provision, the responses show additional clarification is needed to ensure that proper and timely notice is given by District agencies to ANCs as required by the law.

Objective, Scope and Methodology

Objective

The objective of this audit was to assess compliance with the great weight provisions found in D.C. Code § 1-309.10 by determining whether:

- DC government entities provided notices as required.
- The Office of Advisory Neighborhood Commissions (OANC) maintains a central record of notices as required.
- Advisory Neighborhood Commissions (ANC) considered District government actions.
- The District government considered ANC recommendations, articulated their decision in writing, and changed a proposed action based on ANC views.

To test our audit objective, we reviewed three District government entities: the Alcoholic Beverage Regulation Administration (ABRA); DC Office of Zoning (DCOZ), which includes the Board of Zoning Adjustment (BZA) and the Zoning Commission (ZC); and the District Department of Transportation (DDOT).

Scope

The audit scope was FY 2017 through FY 2018.

Methodology

To complete the audit, we surveyed ANC Commissioners and a sample of D.C. agencies, commissions, and boards to obtain their understanding of great weight. We reviewed D.C. Code § 1-309.10 and interviewed ABRA, DDOT, DCOZ, and OANC staff and ANC Commissioners¹¹ to gain an understanding of the great weight process and internal controls as applied for each entity. We reviewed a sample of notices issued by ABRA, DDOT, and DCOZ (BZA and ZC) to determine if proper notification was provided to ANCs, if ANCs considered all notices, if great weight was given by the District entity, and if the OANC maintained all notices as required.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

¹¹ We interviewed seven ANC Commissioners, one Commissioner from each Ward with the exception of Ward 6.

Audit Results

Overall, we found that ABRA, BZA and ZC gave ANC's great weight. Out of 70 cases reviewed, the ANC expressed a concern or made a recommendation in 10 cases. We found that the ANC recommendations were addressed by the District agency in all 10 cases and the District agency made a change based on the ANC recommendation in four cases.¹² Although great weight was given to the ANC's by three of the four agencies reviewed, we found instances of non-compliance with the great weight law that are outlined in the findings below.

Finding 1: The ANC's did not consider the proposed District government action in a meeting, as required by law, in almost half of the cases reviewed.

The law requires ANC's to consider all notices received from District government agencies, commissions and boards. To consider a notice the ANC must hear the views of residents within the Commission area and other affected persons at a regularly scheduled meeting that is open to the public.¹³ To determine if proper consideration was given by the ANC, we reviewed ANC meeting minutes. ANC's are required to keep appropriate minutes of Commission meetings.¹⁴

For 33 of 70 notices reviewed we found that the ANC did not consider the proposed action provided by District government agencies as required by the law. Specifically, the ANC did not provide meeting notes or their written response to the noticing agency as evidence of proper consideration of the proposed District action. In interviews, ANC officers indicated that greater focus was placed on notices where Commissioners foresaw issues or concerns and did not necessarily bring all notices before the commission for a vote. The law's requirement to consider all notices in a meeting was often overlooked.

We also found that most ANC's have a process in place for submitting recommendations, but the process does not include a requirement to maintain a record of when notices are received and responded to. D.C. Code § 1-309.10(b) requires agencies to give ANC's 30 days written notice of proposed District action. We were unable to conduct testing to determine if the ANC's were given the 30-day notice for 36 of 70 sampled cases primarily due to a lack of response from the ANC's and poor documentation. Due to the lack of records maintained by some of the ANC's, the current ANC Commissioner was unable to provide the date the ANC received the notice from the agency. Without the date we were unable to determine if the ANC's were given proper 30-day notice.

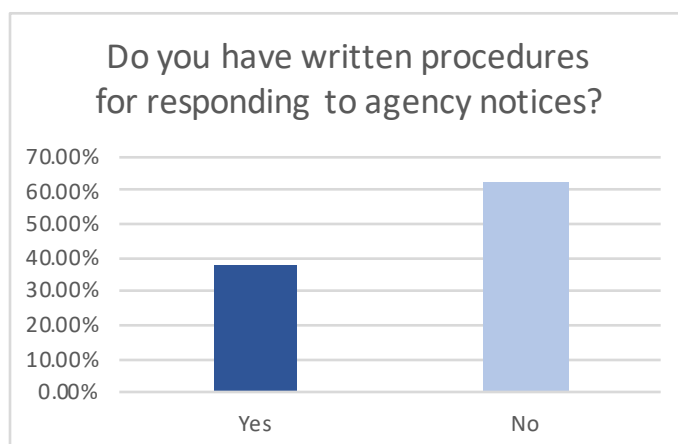
The OANC informs ANC Commissioners of the great weight provision during an annual training for ANC Commissioners. However, more than 60% of the Commissioners who responded to our survey stated that they do not have written procedures to respond to notices. Two Commissioners responded that additional training is needed.

¹² See Appendix A for additional information on the testing conducted to evaluate great weight.

¹³ See D.C. Code 10309.10(bd).

¹⁴ See DC Code § 1-309.11(e)(1A)(C)

Figure 1: ANC Commissioner Survey Response



Source: ANC Survey on Great Weight conducted September 2017

We met with seven ANCs to gain a knowledge of their process for addressing great weight. Each had a somewhat different process for acknowledging and responding to notices received. With a total of 40 ANCs the formalization of one policy for all ANCs to follow would be beneficial. All Commissioners would know the proper way to receive, acknowledge, and address each notice. In addition, having a formalized process to maintain evidence would contribute to proper record retention, despite turnover of officers elected each year.

Recommendation

1. OANC should develop written guidelines and provide training for all ANCs on the requirements of the ANC great weight Code provisions including formally documenting meetings held to consider proposed District action and proper record retention. The guidelines should be maintained on the anc.dc.gov website.

Finding 2: The OANC has not maintained a central repository of all great weight notices provided from District agencies.

DC Code 1-309.10 (b) requires that the OANC maintain a central record of certain great weight notices. In addition, D.C. Code § 2-1706 relates to the maintenance of public records and prohibits the destruction or disposal of records, subject to very limited exceptions. We found that the OANC does not have a policy in place to ensure that notices received are maintained in a centralized location. When we requested a copy of the notices for the sample cases, OANC staff did not provide any of the requested notices. OANC staff stated that they did not receive any of the notices. ODCA requested confirmation from each agency that notification was provided to the OANC and received confirmation that 44 of the 70 notices had been provided to the OANC.

Recommendation

2. OANC should design and implement policies and procedures to maintain both electronic and hard copy notices received, and maintain all notices received in accordance with the policy developed.

Finding 3: The BZA and DDOT did not in all cases provide proper notification of the proposed District action to the OANC or the affected ward Councilmember.

The law requires the executive branch and any independent agency, board, or commission to provide written notice to each affected ANC, the affected Commissioner representing a single-member district, the OANC and each affected ward Councilmember.

For nine of the 17 BZA notices reviewed we found that BZA inconsistently complied with policies and procedures to ensure that all notices were provided to the OANC. We found that proper notification was provided to the ANC and Council.

For DDOT we reviewed 15 cases and found that DDOT provided notices to the Secretary of the Council for five cases and notice to the affected ward Councilmember for one case. DDOT's notification to the Secretary of the Council was not consistent with the requirements of the law, as the law requires the agency to provide notice to the affected ward councilmember. In addition, we found that notice was not provided to the OANC for all cases in our sample. We found that notification was provided to the ANC for the 15 cases in which a Notice of Intent (NOI) was required, but DDOT did not provide notification to ANCs for the capital project cases reviewed.

Recommendations

3. BZA should design and implement internal policies and procedures to ensure that all notices are provided to the OANC.
4. DDOT should design and implement internal policies and procedures to provide written notice to the OANC, each affected ward Councilmember, and the ANC, and implement a process to maintain evidence to support proper notification to the OANC.

Finding 4: The DDOT did not give ANCs great weight as required by the law.

We reviewed two types of cases in our DDOT sample—NOIs and capital projects—and found that DDOT failed to give great weight in either process. DDOT is required to provide written notice in a form of a NOI to modify traffic and/or parking requirements for the purpose of notification and solicitation of comments on their intent to implement modifications within the District. During our review of the NOI process, DDOT staff provided an overview of meetings conducted with ANCs. DDOT conducts periodic meetings with the ANC and the community to provide information and updates on proposed and current projects within their purview. These meetings are a key part of DDOT's internal great weight process. However, we found that DDOT's process did not encompass critical requirements of great weight. The law requires the agency to provide written notification to the ANC of proposed District action and give 30-day notice and respond to each concern and/or issue in writing.

We sampled 15 NOI cases and DDOT did not receive a response from an ANC for any of the sampled cases. The only formal documentation provided to ANCs from DDOT is the NOI. In conjunction with the NOI, DDOT conducts an on-site investigation to determine whether any traffic and parking related revisions are necessary. The NOI is provided to the ANC after the investigation is complete and informs the ANC of the decision made by the agency. For example, language such as “an independent determination has been made by DDOT...(and) Therefore, DDOT has approved...” was included in NOIs reviewed by ODCA. Because this wording is more suggestive of a conclusion not a plan for future action requesting concerns of the ANC, it is not consistent with the overall objective of great weight. It may be that the ANC interprets some NOIs in the same manner.

For capital projects DDOT did not have a process in place to give the ANCs great weight. DDOT maintains a Public Involvement Guide which provides DDOT project managers with guidance on navigating public involvement and outlines the role the public plays in DDOT projects. While the guide identifies ANCs as a group that DDOT should seek to engage, it did not include all of the requirements stipulated by D.C. Code 1-309.10(b).

DDOT has a process in place to conduct meetings to discuss projects with the community but specific requirements are missing. Therefore, we conclude that DDOT did not give great weight to the ANCs as required.

The following email from ANC 3G Commissioner Randy Speck demonstrates the importance for District agencies to provide notice to ANCs as required.

*“I just received (and completed) the Auditor’s survey on the “great weight” that agencies are to give to ANC’s views. **A key concern among many ANCs is agency’s failure to give us the required 30-day notice of possible agency action.** The email below describes my most recent frustration with lack of notice of an application for a public space permit. **In this case, the Public Space Committee (part of DDOT) issued a permit for a retaining wall but never notified me or my ANC that the application was pending.** One of my constituents reported that a Public Space inspector at the sight told her that he was unaware of any requirement to notify the ANC before issuing the permit. Whether this is a lack of training, poor administrative procedures, or a disregard for legal requirements, the failure to give notice makes it impossible for ANCs to do their jobs.”*

Although this was not one of the cases sampled for testing, it supports the need for DDOT to have proper procedures in place to appropriately give ANCs great weight. This is just one of many issues described by the ANC Commissioners surveyed and demonstrates the importance of the great weight process by providing the opportunity for ANCs to voice their concerns.

Recommendation

5. DDOT should design and implement policies and procedures to comply with the great weight requirements of the law including, consideration of ANC issues/concerns and issuing a written final decision to the ANC based on recommendations provided.

Finding 5

D.C. Code § 1-309.10 lacks a clean and concise reference to District actions that require notice to ANCs.

The Advisory Neighborhood Commissions Omnibus Amendment Act of 2016 (Act) provides guidance to the executive branch and any independent agency, board, and commission on the requirement to accord great weight to ANCs. The Act references three District agencies and provides a list of distinct actions that require notice to the ANCs. During our audit we found that the great weight process was inconsistently applied by District agencies at least in part because the law does not clearly state which District agencies should comply. Categorizing a list of all agencies required to comply with the law was an issue identified during the initial phase of the audit when the team attempted to identify the total population of the agencies required to give ANCs great weight according to D.C. Code § 1-309.10(b) and (c).

Our audit reviewed the great weight process for three District agencies, two agencies that were specifically referenced in the law and one agency that was not. We found greater compliance with the great weight provisions of the law for the two agencies specifically referenced. The legislation as introduced listed each District agency and their responsibility under the great weight provision. However, the D.C. Council committee with jurisdiction at the time indicated that the agency-specific great weight requirements in the omnibus bill were determined to be too cumbersome to implement. Therefore, the agency-specific requirements were removed from the bill and not included in the final legislation. Absent specific reference to all applicable agencies in the legislation, additional guidance is still needed to help inform ANCs of which agencies are required to provide notice. Some additional guidance is provided in D.C. Code § 1-309.10(c), but it remains difficult to identify the agency responsible for the District actions listed.

In the 2016 committee hearing for the Omnibus bill, testimony was given to support changes and improvements to the law. According to the committee report,

Lisa Mallory, CEO, District of Columbia Building Industry Association, “expressed support for the ANC process and the venue it offers to their members to engage the community on development projects. She stated that ANCs require additional guidelines to improve the process for not only the development community, but for constituents and the overall well-being and growth of the city as well. DCBIA recommends the Committee review thoroughly the timeline requirements for both government entities and ANCs and to legislate specific deadlines for both parties.”

Further, according to the hearing committee report, ANC 2A recommended an “enforcement mechanism for failures on the part of the government to provide notice to affected Commissions when required by law.” ANC 3D submitted comments which state...“the language related to “great weight” sufficiently defines the term to make agencies accountable for compliance. The Commission suggested that additional language be included that would give the Office of the Attorney General authority both to evaluate compliance of agencies and to file lawsuits against agencies on behalf of ANCs.” The Council Committee report stated that “the bill collects into one subsection and clearly states the types of actions that require government entities to provide 30-day notice to an affected Commission”.¹⁵

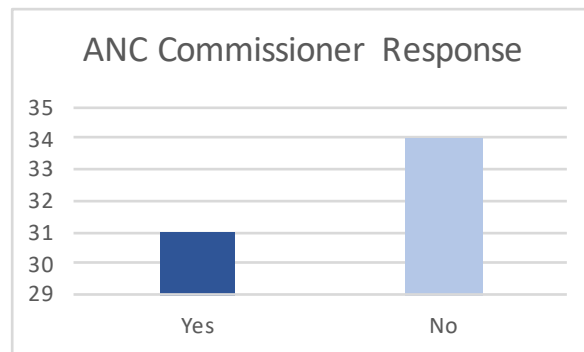
¹⁵ Committee on Housing and Community Development Committee Report on B21-0697, the Advisory Neighborhood Commissions Omnibus Amendment Act of 2016 dated October 24, 2016

Currently, D.C. Code § 1-309.10 (c)(1), the subsection the Committee report is referring to states,

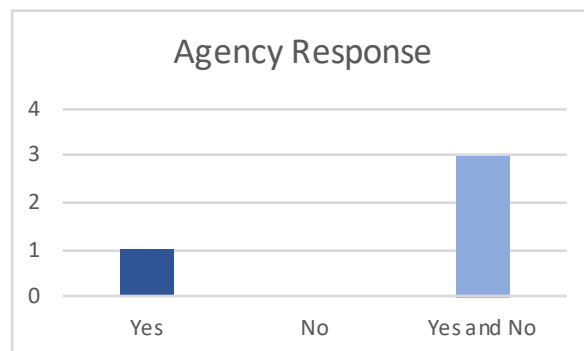
“In addition to those notices required in subsection (b) of this section, each agency, board and commission shall, before the award of any grant funds to a citizen organization or group, before the transmission to the Council of a proposed revenue bond issuance, or before the formulation of any final policy decision or guideline with respect to grant 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, provide to each affected Commission notice of the proposed action as required by subsection (b) of this section.”

We find this language to be unwieldy and therefore not conducive to effective implementation. This is supported by the survey responses received from the ANCs and District agencies. We received the following responses when we asked Commissioners and agencies if it is clear what District actions require notification to ANCs.

Figure 2: ANC Commissioner and Agency Survey Response to the Question, “Is It Clear What District Actions Require Notification to ANCs?”



Source: ANC Survey on great weight conducted September 2017



Source: Agency Survey on great weight conducted September 2017

Recommendation

6. The D.C. Council should amend D.C. Code § 1-309.10 (b) and (c) to identify a limited and manageable number of specific government actions that must be the subject of notice to the ANCs and on which ANC views are to be given great weight.

Conclusion

Great weight ensures that the voice of the community is heard by the District government and that a response to that voice is articulated back to the ANCs and the community. We found through our surveys and interviews, as well as the D.C. Council record, that ANCs and District residents are concerned that their voice is not being heard.

We found that the sampled agencies and the ANCs have a working relationship and that all parties are aware to some extent of the requirements of the law, but the requirements are not always met. For example, DDOT conducts meetings with the public on proposed actions, but they do not have procedures in place to give great weight as required by the law. From meetings held with ANC Commissioners and agency staff we found that there are various interpretations of what the law requires.

We found that the sampled agencies considered ANC recommendations and articulated their decisions in writing, and that a proposed action was changed based on ANC views in four of 10 cases. We found that ABRA, ZC, and BZA considered ANC recommendations and articulated that decision in writing. However as outlined in Finding 4, we found that DDOT did not give ANCs great weight.

Our findings suggest that there are additional steps that the ANC, District agencies, the OANC and the Council can take to ensure that the law is properly carried out and the community's voice is heard.

Agency Comments

On March 12, 2020, we sent a draft of this report to ABRA, DCOZ, OANC, and DDOT for review and written comment. DCOZ responded on March 27, 2020, OANC responded on April 13, 2020, and DDOT responded on April 23, 2020. ABRA responded on March 19, 2020, stating in an email that it agrees with the report's finding that ABRA gave ANCs great weight by considering ANC recommendations and articulating its decision in writing. The DCOZ, OANC, and DDOT comments and ABRA email are included here followed by ODCA's response to the comments.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



March 27, 2020

Kathleen Patterson
District of Columbia Auditor
717 14th Street, N.W., Suite 900
Washington, D.C. 20005

Dear Ms. Patterson:

This letter is in response to the **Are ANC's Given "Great Weight?"** draft report dated March 12, 2020.

After carefully reviewing the report, the Office of Zoning (OZ) submits the following response to recommendation #3:

3. *BZA should design and implement internal policies and procedures to ensure that all notices are provided to the OANC.*

Implementation of this recommendation would ensure that all entities; the OANC, each affected Commission, and each affected Ward Councilmember receives proper notification of District proposed actions.

OZ Response: OZ notes that it has updated its policies as of January 2018 to provide notice of all cases to the Office of the ANC (OANC). The cases identified in the study where notice was not sent to the OANC were noticed before this date.

OZ appreciates the opportunity to respond to the audits recommendations and it looks forward to continued compliance with the requirements of the law.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Sara Bardin', with a long horizontal flourish extending to the right.

Sara Bardin
Director
Office of Zoning

Comments of the Office of Advisory Neighborhood Commissions (OANC) on the ODCA Draft Report, "Are ANCs Given Great Weight?"

We find that the Draft Report conflates notification to ANCs with great weight. The two requirements are related but not interchangeable. An agency may provide notice without providing great weight, and may provide great weight even though it failed to provide proper notification. As currently drafted, the Report may be better to said to answer the question, Are ANCs Given Proper Notification? than whether they are given great weight.

It would be helpful to readers, therefore, if the final Report included the definition of great weight. According to the DC Official Code, great weight means that an agency must provide an ANC with a written response that includes three elements: 1) identification of an ANC's issues or concerns, 2) attribution of the those issues and concerns to the ANC(s) in particular, and 3) why the agency was, or was not, persuaded by the ANC. Whether or not an agency accepted an ANC's recommendations or changed its position in response to the ANC's concerns, is not a test of whether the ANC has been granted great weight. (Indeed, if an agency merely changed its position, but did not acknowledge the ANC's concerns in its decision or explained why it found the ANC's position persuasive it would not have met the statutory requirement for providing great weight). An agency is not required to change its position in response to ANC advice, but rather to demonstrated that it has "heard" the ANC and given it thoughtful consideration. Accordingly, the OANC has offered an alternate name for the

process required by great weight. We call it "Guaranteed Meaningful Consideration" abbreviated as GMC.

It may also be helpful to note that using the statutory definition of great weight, it is possible for multiple ANCs to simultaneously receive great weight even though their advice is incompatible. An agency is not required to find a position that accommodates conflicting concerns. It is only required to demonstrate that it heard the concerns and issues of each ANC and considered all of them before arriving at its decision. This means that the number of times that an agency changes its position in response to ANC advice, or whether its decision comports with the ANCs' advice, is independent of whether the ANCs have been granted great weight.

Consideration, therefore, should be given to expanding or supplementing the chart in Appendix A, on p. 16, to provide information on whether the agency's written decisions satisfied all three components of great weight: 1) identification of ANC issues and concerns 2) attribution of the issues to the ANC, and 3) discussion of the ANC's persuasiveness. As currently drafted, the Report does not demonstrate that the written decisions were evaluated to determine if they met the three requirements for giving great weight.

Enforcement. The Draft Report mentions that one of the long-standing difficulties faced by ANCs is the lack of an enforcement mechanism to ensure that ANCs receive both timely notice of matters that are significant for neighborhood planning and development, as required by the Home Rule Charter, as well as great weight when they comment on those matters. The OANC at the hearing on the "Advisory Neighborhood

Commission Omnibus Amendment Act of 2016” (cited in the Draft Report) and at other hearings has advocated that the Council recognize the right of a “private attorney general” to enforce the ANC law. Such legislation would grant affected neighbors legal standing to sue when their ANC’s rights were violated, since ANCs themselves cannot go to court. Such legislation would also provide for attorney fees.

Recommendation #1: Guidelines. The Draft Report recommends that the OANC develop written guidelines on how ANCs should document how they considered the notices they received of proposed District action pursuant to ANC law. If an ANC takes official action, it may do so only at a properly noticed ANC meeting. The minutes of the meeting will, therefore, provide documentation of the ANC having considered the matter. As the Draft Report itself notes, ANCs often do not bring up a matter at a meeting unless they have a concern about the proposed action or they have a special desire to demonstrate their support for it. The actions that are referenced in the law encompass a long list of actions including a comprehensive list of “applications for construction, demolition, raze, and public space permits.” To suggest that ANCs spend time recording things that they didn’t think needed to be discussed at a meeting is an idea not likely to win many ANC friends. Indeed, it is likely to be seen as an unnecessary waste of energy and diversion of finite volunteer time. We suggest that this recommendation be reconsidered or that an explanation be provided on how its implementation would improve ANC operations and increase their ability to voice neighborhood concerns and seek solutions for constituent problems. Alternatively, the final Report might want to suggest that the Council amend the law to make Commission

review of agency notices discretionary rather than mandatory so that it reflects current practice and also good practice.

Recommendation #2: Repository. Please revise the Draft Report to show that the OANC does have a central repository and received at least 26 of the 55 electronic notices that ODCA tested. (See the attached spreadsheet). We have not reviewed the notices that were mailed to the OANC as they remain in the Executive Director's office and are not readily available at this time. Regrettably, due to internal miscommunication, this information was not previously relayed to the ODCA. It should be noted that except for the present review, no one has ever requested such information since the establishment of the OANC. No one from the public, from government agencies, or from the ANCs has ever requested a copy of a notice sent to the OANC or even if a copy was received. We conclude, therefore, that the repository serves no identifiable purpose. It does not support or enhance the ANCs' awareness of agency actions or facilitate their receipt of great weight, and its absence would not impede or reduce their opportunity to receive proper notice or great weight. History has demonstrated that is has no functional relationship or instrumental value to either notice or great weight. Rather than invest additional time or energy designing "policies and procedures" for processing the receipt of such notices, we believe, unless ODCA has uncovered a function not discussed in the Draft Report, that a more appropriate recommendation would be for the Council to delete the provision for a central repository from the current law.

Other. There is a reference to “ANC staff” on p 5. Should that be “OANC staff”?

On page 7 the Draft mentions “We met with seven ANCs . . .” Is that a reference to seven Commissions or seven Commissioners?

The Excel spreadsheet listing the notices that were subject of the Report included Zion Kitchen and Trading twice. Was the final number of study notices 70 or 69?

Finally, We recognize it may be difficult to generalize the responses statistically given that only 22% of the 296 SMDs surveyed responded to the ODCA questionnaire.

Nevertheless, it might be helpful to include the questionnaire with the final Report.


Government of the District of Columbia

Department of Transportation



Office of the Director

TO: Kathleen Patterson
D.C. Auditor; Office of the D.C. Auditor

FROM: Jeff Marootian
Director; District Department of Transportation 

DATE: April 23, 2020

RE: Response to the "Are ANCs Given "Great Weight?" Report

Thank you for the opportunity to submit comments on the report titled "Are ANCs Given "Great Weight?". DDOT was pleased to work with the staff at the Office of the D.C. Auditor during this process and appreciates the opportunity to respond to the findings and recommendations.

Unfortunately, the timing of the release of this report has prevented DDOT from providing a more thorough response to the findings and recommendations. As you know, DDOT has devoted a great deal of its resources to ensuring the public can navigate through the District safely and in accordance with Mayor's Order 2020-045, dated March 11, 2020. The agency has provided a brief response to this report highlighting the steps the agency has taken since the audit was conducted. However, DDOT will respectfully reserve the right to provide additional information in response to this report on its website.

DDOT has taken several key steps since the conclusion of this audit period that are consistent with the recommendations of the report. DDOT would like to specifically respond to recommendations #4 and #5 which pertain to DDOT's process. Please see below for our responses:

ODCA Recommendation #4 – DDOT should design and implement internal policies and procedures to provide written notice to the OANC, each affected ward Councilmember, and the ANC, and implement a process to maintain evidence to support proper notification to the OANC.

DDOT Response: DDOT has and will continue to include community input into the decisions it makes throughout the District of Columbia. DDOT proactively began to implement improvements to the notice of intent (NOI) process and public website prior to the start of the audit. During the audit process, DDOT:

1. Launched a new web site to provide a more detailed explanation of the NOI process - <https://ddot.dc.gov/service/ddot-notice-intent>;
2. Finalized the new NOI procedures in December 2018 to ensure that all administrations within DDOT are following the same procedures to contact affected ANCs, the OANC, the affected Councilmember when required; and
3. Created a public facing web-based tool for ANCs, Councilmembers, OANC, and the general public to review projects and provide comments - <https://wiki.ddot.dc.gov/display/NOI>.

DDOT is in the process of updating the NOI Procedures to include OANC notifications and to reflect additional improvements made to the NOI website tool since the procedures were issued. Some results of DDOT's efforts to improve the NOI procedures can be seen in the agency's efforts to reach out to those interested parties. For example, during the audit period DDOT also created a community engagement team and hired nine (9) community engagement staff to facilitate this process for the agency.

Recommendation #5 – DDOT should design and implement policies and procedures to comply with the great weight requirements of the law including, consideration of ANC issues/concerns and issuing a written final decision to the ANC based on recommendations provided.

DDOT Response: DDOT has and will continue to give great weight to ANC recommendations when required. And in circumstances when ANC notice and great weight is not required, DDOT will continue to work with ANCs, reviewing comments that they do present to the agency and incorporate their suggestions or provide an explanation for not doing so. In addition, DDOT works on projects that require more stringent reporting requirements, such as capital projects subject to federal funding. For these projects, the notice requirement and great weight consideration requirement specified in DC Code 1-309.10 are incorporated in federal reporting requirements. Consistent with DDOT's response to Recommendation #4, the agency's NOI procedures, updated in December 2018, include the process to provide great weight consideration to ANC input when required. And the community engagement staff referenced in DDOT's response to Recommendation #4 will help DDOT staff provide great weight in responses to ANCs.

RE: A draft report from the Office of the D.C. Auditor



Moosally, Fred (ABRA)

To: Shinn, Diane (ODCA)

Cc: Patterson, Kathy (ODCA); Lebowitz, Julie (ODCA); Shaw, Fredericka (ODCA); Harris, Toya (ODCA); Bellanca, Amy (ODCA); Pittell, Stacie (ODCA)

 Reply

 Reply All

 Forward



Thu 3/19/2020 6:42 PM

Diane,

I wanted to get back to you regarding the draft report from the Office of the D.C. Auditor entitled "Are ANCs given Great Weight?" ABRA has no additional comments regarding the report. ABRA agrees with the report's finding that ABRA gave ANCs great weight by considering ANC recommendations and articulating its decision in writing.

Thank you for the Office of the D.C. Auditor's work on this important issue.

FRED MOOSALLY (HE, HIM, HIS) · DIRECTOR · ABRA

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ODCA Response to Agency Comments

We greatly appreciate the responses to the draft report provided by the Alcoholic Beverage Regulation Administration (ABRA), the Office of Zoning (Board of Zoning and the Zoning Commission) (OZ), the Office of the Advisory Neighborhood Commission (OANC) and the Department of Transportation (DDOT).

We are pleased that the ABRA agrees with our report and the OZ agrees with the recommendation to ensure that all notices are provided to the OANC. We are also pleased that the agency implemented the recommendation prior to the release of this report. We appreciate the updates provided by DDOT in their comments and the steps they have taken to improve communication with the community. We appreciate their stated intent to comply with statutory great weight requirements as well as public comment requirements of federal transportation programs.

We appreciate OANC's thorough review of the report. After reviewing the issues raised, we believe that no additional definitions or explanations are needed to support our methodology. The background section of this report outlines the requirements of great weight and those requirements were applied to this audit to determine if great weight was granted by each agency.

With regard to Recommendation 1, the law requires ANCs to consider all notices. We appreciate the OANC perspective on the impact this would have on ANC operations and suggest the OANC may want to take up the issue with the D.C. Council given the office's perspective on this requirement.

While we also appreciate the additional information the OANC provided for Recommendation 2, it does not change the outcome of the analysis. We made several attempts during the audit period to obtain the sampled notices from OANC and to discuss our findings. The Executive Director was aware of these meetings and declined to attend. With regard to the recommendation, the OANC response states that "the repository serves no identifiable purpose." We nevertheless recommend that the OANC comply with legal requirements to serve as the central repository of notices, while noting that the OANC can also discuss concerns with this provision of the law with the D.C. Council.

In response to the OANC's comments we updated the report to more clearly reflect who we interviewed for this report.

Summary of Report Recommendations

The recommendations in this report can be implemented without any additional costs to the agency/entity and help to advance the goals of Office of the Advisory Neighborhood Commissions (OANC), Board of Zoning Adjustments (BZA), District Department of Transportation (DDOT) and the D.C. Council, as seen below.

Recommendation	Is There a Cost to the Agency/ Entity to Implement?	Potential to Generate Revenue or Savings to the District?	Specific Agency/Entity or District-Wide Goal Advanced by Recommendation
<p>1. OANC should develop written guidelines and provide training for all ANCs on the requirements of the ANC great weight Code provisions, including formally documenting meetings held to consider proposed District action and proper record retention. The guidelines should be maintained on the anc.dc.gov website.</p>	No	No	<p>The OANC's mission is directed primarily toward assisting ANCs. Providing on-going assistance to Commissions and individual Commissioners regarding ANC administrative processes and internal ANC operations.</p>
<p>2. OANC should design and implement policies and procedures to maintain both electronic and hard copy notices received, and maintain all notices received in accordance with the policy developed.</p>	No	Yes	<p>The OANC's mission is directed primarily toward assisting ANCs. Compliance with this recommendation will allow the OANC to assist ANCs and provide an additional resource for ANCs to obtain notices.</p>
<p>3. BZA should design and implement internal policies and procedures to ensure that all notices are provided to the OANC.</p>	No	No	<p>Implementation of this recommendation would ensure that all entities; the OANC, each affected Commission, and each affected Ward Councilmember receives proper notification of District proposed actions.</p>

Recommendation	Is There a Cost to the Agency/ Entity to Implement?	Potential to Generate Revenue or Savings to the District?	Specific Agency/Entity or District-Wide Goal Advanced by Recommendation
<p>4. DDOT should design and implement internal policies and procedures to provide written notice to the OANC, each affected ward Councilmember, and the ANC and implement a process to maintain evidence to support proper notification to the OANC.</p>	No	No	According to the DDOT Public Involvement Guide, “projects should be partnerships between the Agency and the public.”
<p>5. DDOT should design and implement policies and procedures to comply with the great weight requirements of the law including, consideration of ANC issues/concerns and issuing a written final decision to the ANC based on recommendations provided.</p>	No	No	Implementation of this recommendation would improve DDOTs public involvement process as outlined in their Public Involvement Guide and improve compliance with the requirements of great weight.
<p>6. The D.C. Council should amend D.C. Code § 1-309.10 (b) and (c) to identify a limited and manageable number of specific government actions that must be the subject of notice to the ANCs and on which ANC views are to be given great weight.</p>	No	No	The Council’s central role as a legislative body is to make laws, adding additional information to the law will help improve agency compliance and implementation of great weight requirements.

Appendix A

Testing Conducted to Evaluate Great Weight

Appendix A: Testing Conducted to Evaluate Great Weight

One of our audit objectives was to determine if the Alcoholic Beverage Regulation Administration (ABRA), the Board of Zoning Adjustment (BZA), the Zoning Commission (ZC) and the District Department of Transportation considered the recommendations provided by the ANC and to determine the extent to which a proposed District action was changed based on the recommendations provided.

The written response from the ANC to the agency is the source of the ANCS’s recommendation. In order to determine if the agency responded to each recommendation provided by the ANC, we reviewed each recommendation and the written response provided by the agency. As detailed in the chart below for the 70 cases sampled, the ANCs responded to 32 notices.¹⁶ As a result, our evaluation of “great weight” was limited to the review of the 32 written responses provided by the ANCs. Although not required we found that for 22 of the 32 responses reviewed the ANC provided a response indicating acceptance of the proposed District action, without a recommendation.

Summary of Great Weight

Agency Reviewed	Notices Reviewed	Notices to Which ANC Responded	ANC Expressed Concerns in Response to Notice Received	# of Times ANC’s Concerns Resulted in a Change to Proposed Action	When ANC Concerns Did Not Result in Change, Did the Agency Provide an Explanation?
ABRA	35	14	6*	2	Yes
BZA	7	15	3	1	Yes
ZC	3	3	1	1	N/A
DDOT	15	0	0	0	N/A
TOTAL	70	32	10	4	N/A

* The remaining four cases were dismissed, cancelled or withdrawn by the applicant therefore a final order was not issued by ABRA.

As noted in the chart, we reviewed a total of 10 responses where the ANC expressed a concern or recommendation. ABRA requires/requests that the applicant and the ANC work together to develop a settlement agreement to address the concerns or recommendations of the ANC. The Office of Zoning provided a written response to the ANC which addressed each recommendation. For DDOT we did not have a response from the ANC to review and DDOT indicated that the only written communication that was provided to the ANC was the Notice of Intent (NOI). We only noticed a change to the proposed District action for a total of four of the 10 cases reviewed. In the cases where the ANC recommendations did not result in change to the proposed District action an explanation of why was provided by the agency to the ANC.

16 Per the code ANCs are not required to respond to all proposed District actions. D.C. Code § 1-309.10 (c)(4)(d)(1) only requires the ANC to respond to District actions for which the ANC has a recommendation. The recommendation, if any, must be communicated in writing and articulate the basis for its decision.

About ODCA

The mission of the Office of the District of Columbia Auditor (ODCA) is to support the Council of the District of Columbia by making sound recommendations that improve the effectiveness, efficiency, and accountability of the District government.

To fulfill our mission, we conduct performance audits, non-audit reviews, and revenue certifications. The residents of the District of Columbia are one of our primary customers and we strive to keep the residents of the District of Columbia informed on how their government is operating and how their tax money is being spent.

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