

Charter 738 News*

**Did you know ANCs were created in Section 738 of the DC Charter?*

Newsletter of the Office of ANCs



Volume 3 / Issue 6 (2024)

Launch of Advisory Group and Financial Working Group

As part of the OANC's ongoing efforts to improve services to ANCs, align our long-term initiatives with growing needs to ANCS, and to strengthen communication between Commissioners and the OANC, we are launching two new groups – an OANC Advisory Board and a smaller working group to focus on OANC/ANC financial processes and challenges encountered by Commissions, and especially by ANC Treasurers. Both groups are composed of Commissioners.

The Advisory Board's initial focus will be on reviewing the ANC Handbook and other materials essential for newly elected Commissioners. The Advisory Board will also assist the OANC in finalizing its strategic plan as well as reviewing and providing recommendations on other system-wide improvements – such as the recommendations from the financial working group.

The inaugural members of the Advisory Board are:

- Anthony Thomas-Davis: 1A06
- Gwen Lohse: 2E06
- Adam Prinzo: 3C02
- Dr. Antoine Kirby: 4C02
- Joe Bishop-Henchman: 5F06
- Davina Carson: 6E07
- Ebony Payne: 7D05
- Dascha Cleckly: 8C03
- Jacque Manning: At-Large – 5C04
- Michael Wray: At-Large – 1E03
- Delia Houseal: At-Large – 7E06

The members of the working group are:

- James Turner: 1A09
- Edward Borrego: 5B01
- Chuck Elkins: 3D01
- Jeremiah Montague, Jr. (former 5C07)

Did You Know that Enrollment in Capital Bikeshare is FREE for ANC Commissioners?

Ready to ride? Here's what you need to do:

1. Go to capitalbikeshare.com and login or sign with your phone number and DC gov email address.
2. Choose Annual Membership.
3. Enter or choose payment option and select **Student or Corporate discount**.
4. Enter program code **DCGBikes2834** into popup.
5. Finish checkout.





Legal Lingo

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This Lingo is highlighting a recent legal opinion the OANC wrote to address a Memorandum of Understanding (MOU) issue. An ANC asked about the interpretation of a section of an MOU which was entered into in a zoning matter. That ANC simultaneously reached out to the Office of the Attorney General (OAG), which, via e-mail, reiterated its position that ANCs cannot enter into MOUs and that such a document also was not enforceable.

In order to provide an answer to the ANC, the OANC first had to examine its authority to issue such an opinion and the ANC's ability to enter into MOUs before it could answer the question about the MOU itself. That attached memorandum addresses how the OANC concluded that the General Counsel to the OANC serves much the same as an agency counsel and that the OAG complements those services. This was supported by language in the ANC statute (D.C. Official Code § 1-309.01 *et seq.*) and the D.C. Council's various committee reports authorizing a General Counsel and a land-use attorney at OANC.

The OANC further concludes that ANCs can enter into MOUs for the same reasons they can enter into contracts. The OAG has expressed concern that MOUs of this nature veer away from the area of contracts and goes instead into the policymaking area. The OANC disagrees. The D.C. Official Code, the D.C. Municipal Regulations (DCMR) and the District's Comprehensive Plan set out the zoning policies, which are upheld by the Board of Zoning Adjustment and the Zoning Commission. An MOU sets out an agreement between two parties, with the ANC advocating for actions by the other party for the benefit of their ANC. Community Benefits Agreements (CBAs) operate in much the same way as MOUs.

The issue of enforcement of these MOUs was raised, since ANCs cannot initiate legal action. Parts of MOUs or CBAs may be incorporated into a zoning order, and would thereby be enforced by the BZA, Zoning Commission or Zoning Administrator at the Department of Buildings (DOB). The OANC also suggested that enforcement could be obtained either by having an arbitration clause in the MOU, or by the ANC withholding approval for further changes in the same project or extensions of time. A final method of enforcement may be that a citizen who benefits from the MOU could sue in court.

Even though the interpretation question was answered, the MOU in this matter had a serious flaw. Specifically, the MOU did not contain a "severability clause," which is a clause that allows the rest of an agreement to remain valid when one portion or paragraph of it is deemed invalid. In this case, the agreement contained a problematic clause but did not have a severability clause that would allow it to survive. The MOU additionally provided that it could only be amended by the BZA, so there was no mechanism for amendment. It should have read instead that it could not be amended except by agreement of both parties and, if necessary, the BZA. In this case, since the BZA had not adopted the whole order, there was no way to amend the MOU.

The MOU is attached [here](#).



You're a Candidate in November, What do You Need to Know?

Many Commissioners have decided to run for another term. Congratulations, we are excited to continue working with you!

As a candidate for an elected office, it is important to remember that your activities as a candidate must be separate and apart from your duties as a Commissioner. This means you are not entitled to use the resources of the District of Columbia government which include, but are not limited to, the personal services of employees during their hours of work and nonpersonal services. Nonpersonal services include, but are not limited to, supplies, materials, equipment, office space, and facilities.

Things to Remember:

- Do not use resources of the District of Columbia government to support or oppose a candidate for elected office.
- Do not use resources of the District of Columbia government to support or oppose an initiative, referendum, or recall measure, or a charter amendment referendum.
- These resources are also prohibited to be used:
 - Your official ANC email account.
 - Telephones purchased with ANC funds for ANC business.
 - The GovDelivery Newsletter tool provided by the OANC; and,
 - The photocopier for ANC business in the Wilson Building.

Meet Up With Mendo!

Chairman Mendelson's next quarterly meeting with ANCs is scheduled for October 30, 2024.

The OANC encourages Commissioners to attend these meetings, when you can, as they are a unique opportunity to provide feedback directly to the Council Chairman. The meetings are structured such that MPD is frequently included as well as two other agency leaders who focus on current issues of interest to ANCs.

Director Boese also attends these meetings to share updates from the OANC and take questions. We look forward to seeing you at one of the upcoming ANC meetings with the Chairman.