

Government of the District of Columbia



Office of Advisory Neighborhood Commissions
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MEMORANDUM

TO: Kent Boese, Executive Director - OANC

FR: Denise Wiktor, General Counsel OANC

DT: August 10, 2023

RE: Sufficiency of ANC 1E Meeting Notice

You presented the question of whether a new ANC that notices its meetings via its website and a listserv that was created by going to the website and signing up was sufficient notice under the Advisory Neighborhood Commissions Act of 1975¹ (Act). If it is non-compliant, would the ANC have to reaffirm the actions it took while in non-compliance? I find based on the facts of this case it is not compliant with the Act and the actions during that period should be re-affirmed for legal sufficiency.

Advisory Neighborhood Commission (ANC) 1E is a new ANC that came into existence and held its first meetings as of January 2023. Prior to that Ward 1 only had ANC's 1A, 1B, 1C, and 1D for at least the previous 30 years². ANC1E gave notice of its meetings from January 2023 through May 2023 using its website and a listserv. One subscribed to the listserv by visiting the ANC website and signing up. In May 2023, the listserv had 156 individuals on it. The population of ANC 1E is 14,112 individuals.³ On May 17th ANC 1E signed up to be part of a neighborhood listserv that has 453 individuals⁴. It is unclear whether the ANC voted to approve the website as a manner of notice.

¹ Effective October 10, 1975 (DC Law 1-21; D.C. Official Code § 1.309.01 *et. Seq.*)

² See *Advisory Neighborhood Commissions Boundaries Act of 2001*, D.C. Law 14-133 Effective May 10, 2002, *Advisory Neighborhood Commission Boundaries Act of 2011*, D.C. Law 19-0364 effective July 13, 2012, and *Advisory Neighborhood Commissions Boundaries Act of 2022*, D.C. Law 24-0148 effective August 10, 2022

³ According to the 2020 census [2023 Advisory Neighborhood Commissions by 2020 Census Population.xlsx \(live.com\)](#)

⁴ [ParkViewDC@groups.io | Home](#)

The D.C. Official Code addresses public notice by Advisory Neighborhood Commissions meetings in two parts of Section 1-309.11.

D.C. Official Code section 1-309.11(b)(3) provides that:

Each Commission shall set aside a portion of each public meeting to hear the views of residents within the Commission area and other affected persons on problems or issues of concern within the Commission area and on proposed District government actions that affect the Commission area. Community views shall be adequately considered in positions taken by the Commission. ***Each Commission shall establish mechanisms to ensure the broadest dissemination of information with respect to Commission meetings, positions, and actions.*** (Emphasis added)

It further provides in section 1-309.11(c) that the

Notice of regular and emergency meetings must include, but is not limited to, at least 2 of the following:

- (1) Posting written notices in at least 4 conspicuous places in each single-member district within the Commission area;
- (2) Publication in a city or community newspaper;
- (3) Transmitting or distributing notice to a list of residents and other stakeholders in the community; and
- (4) In any other manner approved by the Commission.

The Office of the Attorney General (OAG) has determined that a combination of a listserv and notice on the website met the mandates of D.C. Official Code 1-309.11(c) if the ANC had voted to approve the website as a method of notice.⁵ Specific to ANC 1E the OAG stated that the “ANC Act does not establish a numerical threshold for a ‘list of residents and other stakeholders in the community...’”⁶ and found the website with the website listserv to be sufficient notice. The OAG opinion letters did not consider the mandate of D.C. Official Code section 1-309(b)(3) to “ensure the broadest dissemination possible” especially in the light that this was a new ANC. The reasoning of the OAG letter would allow for a listserv of 1 or 10 to be sufficient because it does not read the two sections of the statute together in a holistic way. Section 309.11(c) is read in conjunction with the mandate in 1-309.11(b)(3) because “we do not read statutory words in isolation; the language of surrounding and related paragraphs may be instrumental to understanding them.” *Tippett v. Daly*, 10 A.3d 1123, 1127 (D.C. 2010).

⁵ See Advisory *Letter to Commissioner Jacobson*, June 13, 2023 available at [ANC 1E: Letter to Commissioner Jacobson Re Lawfulness of ANC 1E Notice Methods | Attorney General Brian Schwalb \(dc.gov\)](#) and *Letter to Commissioner Henderson*, June 6, 2017 available at [ANC-5-D-June-19-2017-Supplementary-Question-Concerning-Meeting-Notice.pdf \(dc.gov\)](#)

⁶ See Advisory *Letter to Commissioner Jacobson*, June 13, 2023 available at [ANC 1E: Letter to Commissioner Jacobson Re Lawfulness of ANC 1E Notice Methods | Attorney General Brian Schwalb \(dc.gov\)](#) page 2.

To do otherwise is contrary to a basic tenant of statutory interpretation that “each provision of the statute should be construed so as to give effect to all of its provisions, not rendering any provision superfluous”, *Animal Legal Def. Fund v. Hormel Foods Corp.*, 258 A.3d 174, 183 (D.C. 2021) (brackets and internal quotation marks omitted).

Read together, the statute requires each Commission to “ensure the broadest dissemination of information” and use at least two of the four methods in 1-309(11)(c).

For at least 30 years the majority of the residents of this area were part of ANC 1A. A resident would have to have known about the creation of ANC 1E to find the ANC 1E website and then subsequently sign up for the listserv to be able to get notice of the meetings. While one of the two notice methods being derivative of the other may not present a problem in a well-established ANC that the community knows about, it is a very limited means of communication in a newly established ANC that residents may not know exists.

D.C. Official Code 1-309(b)(3) requires the “broadest dissemination possible.” As of May 2023, the ANC’s listserv had 156 subscribers, or 1.07% of the population, and the existing Park View listserv had 453 subscribers, or 3.2% of the population. It is very likely that the ANC listserv in the early months had an even smaller subscription. The listserv created by the ANC is not, on its face, the broadest dissemination possible. There were readily available free alternatives to the ANC that had a wider audience.⁷

For these reasons it is recommended that the ANC properly notice and reaffirm the actions it took between January 1, 2023, and May 17, 2023, to ensure they meet the legal requirements set forth in the D.C. Official Code and make their actions legally sufficient. This is critically important in regard to the bylaws, security fund, and the budget. The notice for this action should use the broadest forms of dissemination available to the ANC. Additionally, if the ANC has not approved the website as one of its means of notice, it should do so and document this decision in its meeting minutes.

⁷ See [ParkViewDC@groups.io | Home](https://ParkViewDC@groups.io) with 453 members, [Nextdoor](#) with 2,522 members from Park View DC and, [\(20+\) Park View Beautification Crew | Facebook](#) with 852 members. This does not include listservs that may serve Howard University or the southern part of the ANC.