

# Government of the District of Columbia


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## 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 31st 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