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Testimony of
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On behalf of the D.C. Open Government Coalition
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Before the Committee on Government Operations and Facilities
Of the Council of the District of Columbia

Performance Oversight Hearing — Office of Advisory Neighborhood Commissions

On behalf of the D.C. Open Government Coalition, thank you for giving us the opportunity to provide our assessment of the Office of Advisory Neighborhood Commissions (OANC) in the past year. I am a member of the Coalition board, and a Ward 4 resident.

Advisory Neighborhood Commissions (ANCs) are the most grass-roots elected bodies in the District of Columbia, charged with advising the Council and executive agencies on a broad range of issues that directly affect the lives and livelihoods of city residents and businesses. Gottlieb Simon's resignation after 20 years as OANC executive director, presents the Council an opportunity to greatly improve District residents' engagement with their ANCs.

The OANC website describes ANCs as:

a unique feature of the District's Home Rule Charter ... established to bring government closer to the people, and to bring the people closer to government.

...

The ANCs' main job is to be their neighborhood's official voice in advising the District government (and Federal agencies) on things that affect their neighborhoods.

Long before the coronavirus pandemic shut down in-person engagement, several ANCs demonstrated their strong commitment to bringing government closer to constituents and bringing constituents closer to government. Although ANCs are excluded from the Open

Meetings Act (OMA), these commissions fully comply with it,¹ in addition to fulfilling their obligations under the Freedom of Information Act (FOIA), which does apply to ANCs. They live-stream meetings; operate robust, content-rich websites; and use social media to inform and gather input.

After the pandemic forced cancellation of in-person meetings, the Council created a Technical Support Fund administered by the OANC for “[p]lanning, development, or procurement of a mobile or computer application to assist [commissioners] with outreach and engagement with their constituents,” to supplement existing funding for “communications access services,” and to provide remote meeting, audio-visual, printing and website services for ANCs. *See* D.C. Code § 1-309.13a(c), enacted in D.C. Law 23-149, the Fiscal Year 2021 Budget Support Act of 2020.²

Two years into the pandemic, several ANCs still lack the technologies the fund is supposed to provide to facilitate neighborhood engagement. Because there are 39 ANCs comprised of 299 commissioners, generalizations about ANC transparency are meaningless. But glaring deficiencies abound. For example, all five ANCs in Ward 8 and two in Ward 5 do not have websites that can be reached from the OANC website, do not publish meeting agendas through the central event calendar, and do not provide online access to minutes or electronic recordings of past meetings. Other ANCs across the city have only rudimentary websites that provide minimal content, lack archives of past recorded meetings, and fail to provide the public information all government entities must publish. *See* D.C. Code § 1-309.11(g) and D.C. Code §2-536.³

¹ The Office of Open Government (OOG) strongly supports making the OMA applicable to ANCs. 2021 BEST PRACTICES REPORT, 18, Board of Ethics and Government Accountability, <https://bega.dc.gov/publication/2021-best-practices-report>.

² The OANC hired a technical support specialist in January 2021 to perform tasks mandated by § 1-309.13, and

We have reviewed a variety of mobile apps ... and have discussed the features that might be required to be in a new app with several of the witnesses who testified in support of the idea. We’ve also interviewed an interested local developer and consulted with OCP on the procedures necessary to [] carry out the procurement process. While the intent and philosophy behind the app, to enhance outreach and engagement with constituents, remain clear, the specific features and operation of an app ... are not. [W]e intend to plan a systematic survey of Commissioners to determine more specifically what is required in a new application.

Pre-Hearing Questions Of the Committee on Government Operations and Facilities [2021] and the Answers of the Office of Advisory Neighborhood Commissions (OANC), 11, 13, <https://dccouncil.us/wp-content/uploads/2021/02/2.5.2021-OANC-Pre-Hearing-Responses.pdf>.

³ It is unclear whether and to what extent these ANCs comply with the notice and public access provisions of D.C. Code § 1-309.11. The OANC received annual reports from only nine ANCs (less than 25 %) before the 2021 performance oversight hearing.

Section 1-309.13a directs the OANC to provide technical support “at the request of” ANCs. In response to questions this committee posed before the 2021 performance oversight hearing, Mr. Simon said,

I will be working with the [technical support specialist] to develop a plan and criteria for determining how the fund can be best deployed. Accordingly, no funds have yet been expended. The availability of the funds will be announced by email and in meetings with Commissioners. Many Commissioners, however, have indicated they are aware of its existence and some have made inquiries about it.

Pre-Hearing Questions, at 13.

It is unclear to us whether the OANC carried through on Mr. Simon’s pledge, whether the ANCs cited above failed to avail themselves of proffered assistance, or whether the OANC failed to implement Council-mandated technical assistance. Asked to list the OANC’s top priorities for FY 2021, and to explain how it would address them, Mr. Simon made a vague reference to the Technical Support Fund, but said nothing about actually helping ANCs use technology to engage with District residents. *Id.* at 2 – 3.

I have worked since 1999 to increase D.C. government transparency, including helping to draft major amendments to the FOI Act enacted in 2000, and an overhaul of the OMA enacted in 2010. Every time such legislation was up for consideration, the OANC and some commissioners opposed application of the FOIA and OMA to ANCs, and in 2010 they won exclusion from the latter. Along with other members of the Open Government Coalition board, I met with Mr. Simon to discuss ways to improve ANC transparency and to offer assistance. Noting his opposition to both laws, Mr. Simon listened politely, but rejected our offer.

The OANC’s long-standing refusal to engage productively on commission transparency has very significant consequences, even for the ANCs that have made transparency a guiding principle. The first problem is that because no D.C. government platform existed to host their websites, they obtained .org, .com, .net or .us domain names, and contracted with commercial internet service providers (ISPs) for hosting and live-streaming services. Some other ANCs that do not have websites operate blogs on commercial ISPs as well.

As a result, it is impossible to ensure that content created at taxpayer expense — agendas, minutes, meeting videos, reports submitted to the Council and executive agencies, financial statements — are secure and will be retained in compliance with District records retention regulations; or that they can be located in searches conducted in response to FOIA requests. Digital content on non-governmental servers may be deleted inadvertently or deliberately; may not be transferred to a new host if an ANC changes service providers; may be deemed too costly to migrate if an ANC redesigns its website; or may be unrecoverable after a server malfunction or malware attack.

The second problem is ANC email. Each ANC commissioner is assigned a government email address, and a Board of Ethics and Government Accountability (BEGA) training document posted on the OANC website briefly instructs commissioners always to use those accounts when

conducting ANC business. But it is probable that some ANC commissioners and staff use personal accounts for official communications, and take no precautions to preserve those messages or to search them in response to FOIA requests.⁴

The Council has the opportunity this year to substantially improve ANC transparency

Over the past two decades, the Council and executive agencies have leveraged technology to improve government operations and transparency. Claiming that ANC commissioners are unpaid volunteers who lack adequate staff support, Mr. Simon went in the opposite direction, resisting commissioners' efforts to use technology to engage with constituents. He succeeded, in part because ANCs and the OANC do not fit comfortably in either the executive or legislative branch of the D.C. government, each of which employs information technology and records management personnel to ensure the integrity and accessibility of their information.⁵

Beginning next fiscal year, the District needs to make a significant investment in infrastructure, personnel and training to modernize the operations of ANCs and the OANC. Mr. Simon's resignation presents the Council with the opportunity to appoint a new executive director to lead that effort, one who can apply technology creatively to facilitate citizen engagement, and who understand the role transparency plays in building community trust.

ANCs are D.C. government bodies, subject to the same security threats, technological glitches and human errors that plague every other government entity. Their data should be subject to the same retention rules, security and accessibility parameters applicable to all other government data. But, their data — documents they generate, documents obtained from other government entities, and emails — are spread over the internet, in locations that may not have been recorded for posterity, and that are subject to varying degrees of security and permanence. That should be unacceptable to this Council.

To protect the integrity of ANCs' information, to facilitate compliance with the FOI Act, and to ensure public access to meetings, the Council should direct the OANC, in consultation with the Office of Open Government (OOG), to

- Establish a common platform to host all ANCs' websites;
- Establish a common electronic records management system to store all documents, emails and other data ANCs create or obtain from within or outside the D.C. government.
- Acquire audio-visual equipment ANCs need to live-stream meetings;

⁴ Failure to manage commissioners' official email has proven costly for the District. According to court records, the Superior Court awarded attorney's fees of more than \$140,000 in a case where a commissioner failed to disclose emails in a personal account that were related to official business. *Vining v. District of Columbia* (ANC 5E), Dkt. No. 2013 CA 8189, *order filed*, March 31, 2021.

⁵ The Office of the Chief Technology Officer (OCTO) provides services to executive agencies, but the OANC is not part of the executive. The OANC is a subordinate of the Council, but the Council's IT department is not structured to support non-Council functions.

- Formulate policies for managing records complying with the FOI Act, and the OMA; and provide ANC's staff support to implement those policies; and
- Train ANC commissioners and support staff to use the new technology.

The Council should provide capital funds to purchase or develop both platforms, operating funds for personnel to run them, and it should set a deadline for completion of the work.

Modernizing OANC systems will likely be a multi-year effort. We have one more request that is straightforward, can be accomplished quickly, and is long overdue.

Include ANCs under the Open Meetings Act

For years, several ANCs have fully complied with the OMA without difficulty. The pandemic forced others to become more transparent, but they still do not fully comply with less stringent requirements of § 1-309.11.

Every year, the OOG receives complaints that ANCs met without giving adequate notice, held secret meetings, or failed to make recordings of meetings or minutes publicly available. In response to each complaint, the OOG must tell a District resident it cannot help because it lacks jurisdiction. It must tell the resident his or her only recourse is to sue the ANC in Superior Court, and there is no remedy unless the ANC voted on a matter in a meeting from which the public was excluded. *See* D.C. Code § 1-207.42.

The OMA's requirements are not burdensome, and there is no rational justification for excluding ANCs from a statute to which every other elected and appointed public body must comply. Nor is there a rational justification for preventing the OOG from assisting residents when ANCs violate transparency laws.

We look forward to working with this committee to confirm a new executive director for the OANC and to formulate a plan to modernize the Office and ANC operations. Thank you.

Formed in March 2009, the D.C. Open Government Coalition seeks to enhance public access to government information and transparency of government operations of the District. We believe transparency promotes civic engagement and is critical to a responsive and accountable government. We strive to improve the processes by which the public gains access to government records and proceedings, and to educate the public and government officials about the principles and benefits of open government. Visit our website, www.dco.org.

For additional information call Robert Becker, 202 306-2276..