

March 9, 2014

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Office of Advisory Neighborhood Commissions
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***RE: The Legality of Official Actions
Taken at the February 17, 2014 Meeting of ANC2B
Held Without the Required Public Notice***

Dear Mr. Nathan and Mr. Simon:

We, residents of ANC2B, are writing to you concerning the legality official actions taken by ANC2B at a February 17, 2014 Meeting ("February 17 Meeting"). We allege that this February 17 Meeting was held without the required notice to the public. We are concerned that other District of Columbia public agencies may be legally required to give "great weight" to the official actions of ANC2B taken on February 17, 2014, when, in fact, those actions are very likely invalid and void.

As you know, D.C. Code § 1-309.11(c) (Section 14(c) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976, and as subsequently amended) ("ANC Act") requires that notice of regular and emergency meetings of ANCs must be given by at least two of four ways:

- 1) Posting of written notices in four conspicuous areas within each single member district;
- 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 prescribed by the Commission.

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D.C. Code § 1-309.11(c) also requires

"Each Commission shall give notice of all meetings or convocations to each Commissioner, individuals with official business before the Commission, and residents of the Commission area **no less than 7 days prior to the date** of such

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meeting. Shorter notice may be given in the case of an emergency or for other good cause." (Emphasis added)

In an advice letter dated August 26, 2011 to Vaughn Bennett, Commissioner, ANC 5B04, Attorney General Nathan wrote:

"If you are correct that proper notice was not given for meetings of your Commission, we have previously advised that in such circumstances, any meetings held are not public meetings, and therefore no official action may validly be taken by the ANC. (Letter to Dorothy Miller, April 17, 1996.) Our letter to Ms. Miller relied in part on D.C. Official Code § 1-309.11(g) (2011 Supp.), which incorporates the District's first open meetings law, known as the "Sunshine Act," into the requirements for ANC operations. The Sunshine Act, enacted by Congress through section 742 of the District of Columbia Home Rule Act, approved December 24, 1973, Pub. L. 93-198, 87 Stat. 831, D.C. Official Code § 1-207.42 (2006 Repl.), states, in pertinent part, that "[a]ll meetings (including hearings) of any ... commission of the District government. .. at which official action of any kind is taken shall be open to the public. No resolution, rule, act, regulation, or any other official action shall be effective unless taken, made, or enacted at such meeting. "

In a subsequent letter to Ms. Miller, **we reiterated that any purported action taken at a meeting not properly noticed under the ANC Act was not legally valid.** Letter to Dorothy Miller, September 24, 1996.)" (Emphasis added)

Section V of the Bylaws of ANC2B states:

Section 4 — The Commission shall meet no less than nine times annually and shall normally meet the second Wednesday of each month at 7:00 p.m. at a place to be determined and publicly posted.

Section 6 — Special public meetings of the Commission may be called by the Chairperson to address issues that must be considered between regularly scheduled public meetings. Special public meetings may also be called at the written request of two Commissioners. The purpose of the special public meeting shall be stated in the request. Commissioners shall receive at least two days notice for duly called special public meetings. Reasonable public notice shall also be provided for special public meetings.

The February 2014 Regular Monthly meeting of ANC2B was scheduled for the second Wednesday of February, February 12, 2014. Notice of this meeting was posted on the public meeting CALENDAR page of ANC2B's website. See Exhibit No. 1 No other ANC meeting is listed on the February 2014 CALENDAR. Id.

ANC2B's Home Page also has the following permanent Notice to the public:

Monthly Meetings

Date: 2nd Wednesday of each month

Time: 7:00 PM - 9:50 PM

Location: Brookings Institution, 1775 Massachusetts Avenue,
NW

Nevertheless, ANC2B's Chair decided on February 12, 2014 to hold ANC2B's Regular Monthly Meeting on Monday, February 17, 2014 at a time (6pm) and at a location (a hotel meeting room) different from the time and location posted on ANC2B's Home page for Monthly Meetings.

Thus, the date, time and place of the Regular Monthly Meeting were all changed without giving the public notice "*no less than 7 days prior* to the date of such meeting" as required by the ANC Act. Even if ANC2B had otherwise attempted on February 12, 2014 to give notice by a least two of the four required methods of the February 17 Meeting, such Notice would only, at best, had been four days prior to the scheduled date of the February 17 Meeting.

Further, holding the Regular Monthly Meeting on February 17 was also inconsistent with the intent of the Bylaws which state ANC2B "shall normally meet the *second Wednesday* of each month at 7:00 p.m." While the term in the Bylaws is "normally" , the language of the Bylaws would not give the public notice that both the date and time of February's monthly meeting had changed.

While the February 17 Meeting is styled a "Make-Up" Meeting, it is specifically not styled, called, announced, published or otherwise purported to be a Special Meeting or an Emergency Meeting. Nowhere in the published Minutes of the February 17 Meeting is there any reference whatsoever that the February 17 Meeting had been called as either a "Special Meeting" or an "Emergency Meeting." The Order of Business of the February 17 Meeting is exactly the same as that of any ANC2B Regular Monthly Meeting.

No justification is found in the Minutes of the February 17 Meeting for that meeting to be held on less than seven days Notice prior to the date of the meeting.

Further, the Bylaws of ANC2B do not contain any additional means or methods for giving Notice to the public of meetings other than that which is contained in the ANC Act.

ANC2B having responded to several Freedom of Information requests, it is clear ANC2B did not give Notice to the public of the February 17 Meeting by "Posting of written notices in four conspicuous areas within each single member district" or by "Publication in a city or community newspaper." While ANC2B provided some proof that some very limited communication to a *minority* of citizens of ANC2B was done via "tweets" and some possible use of Facebook and "MailChimp" messaging, it went to a *very small minority, only hundreds*

of people out of thousands in the ANC2B district and even some of this very limited communication would have required password access.

The only other notice to be found anywhere was not on the ANC2B official CALENDAR posted on its website but only with an entry on February 12, 2014 on the "news/blog" page, not the Home page of ANC2B and not on ANC2B published CALENDAR page.

Further, the Agenda for the February 17 Meeting was not posted on the Meeting Agenda page of ANC2B's website until *more than one hour after the February 17 Meeting was scheduled to begin*. See Exhibit No. 3

Given all the above, we ask for a full review of the actions of ANC2B with respect to the February 17 Meeting it held and the official actions which ANC2B took at this February 17 Meeting. We believe that all official actions which ANC2B took that day are void. We believe that serious harm before the public agencies of the District of Columbia is being done not only to our interests but to the interests of many other members of the public who were affected by the official actions of ANC2B on February 17, 2014.

If you have any questions, please contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward V. Hanlon", with a stylized, cursive script.

Edward V. Hanlon
1523 Swann Street NW
Washington, DC 20009

A handwritten signature in black ink, appearing to read "J. P. Hill", with a stylized, cursive script.

James P. Hill
1538 T Street NW
Washington, DC 20009

cc: Will Stephens, Chair ANC2B

Enclosures:

Exhibit No. 1: ANC2B Calendar of Events February 2014

Exhibit No. 2: ANC2B Home Page

Exhibit No. 3: February 17, 2014 Meeting Agenda with original document properties