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September 20, 2010

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The Honorable Mary Cheh
Chairperson
Committee on Government Operations and the Environment
DC Council
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Council Chairperson Cheh:

ANC 6B strongly opposes Bill 18-716 entitled "Open Government is Good Government Act of 2010". ANC 6B's Executive Committee at its regularly scheduled meeting on August 31, 2010, authorized the Chair to send your Committee this letter of opposition to the bill.

COMMISSIONERS

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It is hard to know where to begin in listing the reasons why this bill would devastate the normal functioning of most if not all of the Advisory Neighborhood Commissions in this city. As the Committee knows, ANCs are made up of volunteers who give considerably of their time each month to carry out the responsibilities of Commissioners as set forth in the ANC statute. That law already determines what the rules are that govern the operation of each ANC, including requirements that we hold our monthly commission and committee meetings in public and that we provide adequate notice of the time, place and agenda for these meetings. Our Commission takes those requirements seriously. And we are careful that all Commission decisions are voted on at our regular public monthly meetings. The proposed bill would substantially complicate, confuse and suddenly make perilous the process we follow so far as we can determine and for no good reason.

Our Commission now sets its agenda two-weeks prior to its regular monthly meeting, the earliest we can make a determination of the cases before us given the dockets of the HPRB, BZA, and ABRA -- the three agencies whose caseload determines most of our agenda. We make that agenda public in several ways per the ANC statute and our bylaws. The bill would require that we also notify the Mayor each month of our agenda and that we publish the agenda in the DC Register. Why? What would the Mayor do with this information that would provide more notice to the community than what we already do?

How would a notice in the DC Register that the bill also requires be useful to the public, especially knowing that the Register would almost certainly not get the information into the public domain until after our committee meetings and perhaps after our monthly Commission meeting?

In our process, at the conclusion of our committee meetings on pending applications headed for the BZA, HPRB, the ABC Board, or the Office of Public Space, the Commissioners who participate in the committee meeting sort out the written version of the committee recommendation language via email. The bill includes “electronic communication” in its definition of the term “meeting”, except apparently in the case of an emergency meeting. If a quorum (six in our Commission’s case) of the Commission participates in an email exchange about the draft language for a committee report, they would appear to have violated the open meeting rule the bill proposes. As a result, these Commissioners would be subject to civil fines. Is that sensible? So long as formal Commission actions are not taken via email except in emergency circumstances as provided for in our bylaws, why should our Commission be denied the use of electronic means to facilitate getting the basic business of the Commission ready for decision? Indeed, without recourse to email, it is hard to imagine how we would get our work done nowadays.

What about the minutes of our monthly meetings? Our Secretary now drafts these minutes and circulates them for comment via email. Since all of our Commissioners receive this email note, would this mean that all would have violated the open meeting rule in the bill? Would we instead have to set aside time on the Commission’s monthly agenda for the Commission to go through the draft minutes line by line, taking formal amendments as we go, before then taking a final vote on the minutes? Our monthly dockets are already crowded with cases and our meetings often extend for three hours or more. How would we be expected to accommodate this additional chore within the confines of our monthly meetings?

There are times when a number of our Commissioners join together in meetings with a Council Member or an agency or board official. By way of example, recently a delegation of Commissioners from 6B met with the new chair of the ABC Board. If we have six Commissioners at such sessions, would that mean we were violating the bill’s open meeting rule? Does this mean that Council Members or agency or board officials may not meet with Commissioners from an ANC if a quorum of the Commission might be present? Is that a wise rule?

Perhaps most importantly, why would people even volunteer to run for an ANC position knowing that even a technical slipup in process could place them in jeopardy of being sued and fined? Your bill would permit anyone, regardless of whether they were a party in interest on a matter before an ANC, to sue that Commission alleging a violation of the open meeting rule the bill envisions. The Commission would have to fund its own litigation costs since the Attorney General would not represent them, and individual Commissioners would also likely have to hire their own attorneys. Would this not

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encourage frivolous suits that could quickly bankrupt Commissions as well as drive well intended people for becoming Commissioners in the first place?

The adoption of this bill would substantially change the operating rules for ANCs in negative ways and quickly result in many good, committed people dropping out of service in these positions. None of these results would benefit the people we represent. We urge the committee, at a minimum, to exempt ANCs completely from this legislation on the grounds that we already have adequate rules governing how we function.

Sincerely,

David F. Garrison
Commissioner, ANC 6B01
Chair, ANC 6B

CC: Council Members Bowser, Wells, Brown, Catania and Thomas