



BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY
GOVERNMENT OF THE DISTRICT OF COLUMBIA



February 7, 2025

VIA ELECTRONIC MAIL



RE: Dismissal of Complaint # OOG-2024-0002

Dear 

On March 12, 2024, the Office of Open Government (OOG) received your complaint alleging a violation of the Open Meetings Act (OMA)¹ by the Zoning Commission (ZC). You allege that the ZC did not provide OMA-compliant notice of its November 9, 2023, meeting (the “November meeting”) in the *District of Columbia Register* (“*Register*”).

Pursuant to 3 DCMR § 10400 *et seq.*, I have reviewed your complaint, the ZC’s response, and the controlling law; and I also take notice of the December 16, 2022, issue of the *Register* and the Office of Zoning’s (OZ) website, dcoz.dc.gov, which included your own exhibits submitted to the ZC for the November meeting.

As analyzed in full below, I am dismissing your complaint because it does not establish any cognizable OMA violation. The reasons are as follows: (1) The date/time of the November meeting was published in the ZC’s annual calendar in the *Register* in December 2022; (2) the *Register* entry incorporated the planned agenda uploaded to the OZ’s website; (3) you had actual knowledge that Case # 2325 was on the November 2023 order of business, as reflected in your collection of signatures in advance and submission of exhibits to the ZC; and (4) your complaint against Chairman Hood is without merit.

I. BACKGROUND

A. Your complaint

Your complaint alleges that the ZC violated the OMA on November 9, 2023. In particular, you allege:

On November 9, 2023 the [ZC] . . . held a public meeting . . . to decide whether the Office of Planning (OP) met the requirements to move forward in Case 23-25; and . . . whether Case 23-25 should be . . . a “rulemaking” case or

¹ Title IV of Pub. L. 90–614, added by D.C. Law 18-350, effective Mar. 31, 2011 (D.C. Official Code § 2-571 *et seq.*).

a “contested[”] case. . . . The [ZC] then debated OP’s request and Chairman Hood made a motion to set Case 23-25 down as a “rulemaking” case. . . . The motion passed. . . .

The [ZC] did all of the above . . . without any notice . . . ever being published in the [*Register*]^[2]

B. Secretary Schellin’s response

On March 13, 2024, ZC Secretary Schellin responded on behalf of the ZC, noting page 015291 of December 16, 2022, issue of the *Register*, which announced the November meeting and directed readers to the OZ’s site for the planned agenda.

C. Your participation in the November meeting

As captured in the records of the November meeting available from the OZ’s website, you submitted three exhibits³ before the November meeting, (1) setting out your opposition to Case # 23-25, and (2) including your advance compilation of 150 signatures. Exhibit 5 is a letter that begins:

Zoning Commissioners:

Chevy Chase residents had little warning that this set down meeting would occur ***tomorrow*** 11/9/23, and they have stepped up to protest by signing this letter that ***we sent out last night***. We will send more signatures as we collect them; attached in a pdf are the first 150 signatories with their comments. Please, listen to the voices of the residents of Chevy Chase, over the voices of commercial development proponents who stand to profit mightily and would do irreparable harm to Chevy Chase, DC.

Sincerely,
Chevy Chase Voice^[4]

Exhibits 5A and 5B include names and/or comments of 150 constituents that you had collected.

Below, I will set out my analysis and conclusions.

² (Boldface, underlining, italics, immaterial text, and citations omitted.)

³ app.dcoz.dc.gov/Home/ViewCase?case_id=23-25 (Exhibits 5 (“Ltr. in Opposition to Set Down - Chevy Chase Voice/Sheryl Barnes”), 5A (“Chevy Chase Voice - Part 1 of Signers to Petition”), 5B (“Chevy Chase Voice - Part 2 of Signers to Petition”)).

⁴ (Emphasis added.)

II. ANALYSIS

A. The ZC published notice in the *Register*, of its November meeting.

The OMA requires public bodies to publish “notice of meetings . . . in the [*Register*] as timely as practicable.”⁵ Also, “[a] public body shall establish an annual schedule of its meetings, if feasible, and shall update the schedule throughout the year.”⁶ OOG sends annual reminders to public bodies, suggesting the *Register* as one of the available tools for releasing their annual schedules.

The ZC diligently published its 2023 meetings on December 16, 2022, giving you over ten full months’ notice of the November meeting. The ZC incorporated its agendas by reference, advising readers that “[t]he proposed agenda for each meeting is posted to the [OZ]’s website five . . . days prior to the meeting” and listing the OZ’s address as dcoz.dc.gov.⁷

Publishing dates and times in advance in the *Register*, but also maintaining the planned agenda on a website (cited in the published notice) that can reflect changes between the *Register* issue and the final days before the meeting, is maximally transparent, and patently compliant with the OMA. Here, the ZC’s combination of printing dates and times in the *Register*, while also incorporating its (evolving) agendas by reference to the OZ site, ensures advance awareness of the meeting while also accommodating the reality that the particulars such as the agenda and the weblink/location remain dynamic until closer to the statutory final deadline of “48 hours or 2 business days, whichever is greater, before a meeting.”⁸

Here, in addition to announcing the dates and times of its meetings, the ZC directed the public to the OZ’s website for the full information about each meeting including, in this case, an [interactive calendar](#) including the “ZC Public Meeting” scheduled for November 9, 2023, which listed and linked to a [summary of Case # 23-25](#).

B. Your advance submissions to the ZC concede your actual notice regarding Case # 23-25.

While I cannot directly confirm from this record that the ZC posted the planned agenda of the November meeting far enough in advance to comply with the OMA (“as early as possible, but not less than 48 hours or 2 business days” in advance), your own evidence concedes that you had ample notice of the planned agenda to collect 150 signatures in opposition to the ZC’s anticipated action, type the constituents’ names and their comments together into a memorandum, and submit that memorandum to the ZC even before the date of the November meeting.

In sum, even apart from the ZC’s issuance of constructive notice of the November meeting, you had actual notice, so your contentions are meritless. The ZC, through its advance use of the

⁵ See D.C. Official Code § 2-576(3) (section 406(3) of the OMA).

⁶ See *id.* par. (1).

⁷ 69 D.C. Reg. 015291 (Dec. 16, 2022).

⁸ See D.C. Official Code § 2-576(1). In fact, the ZC’s *Register* notice indicates that it settles the agenda *five* days before meetings. 69 D.C. Reg. at 015291.

Register in tandem with the OZ’s site, is actually among the District’s most organized and comprehensive systems of notice.

C. Complaint Against Chairman Anthony Hood

Your complaint also singles out ZC Chairman Anthony Hood for circumstantial involvement in OMA violations. You allege that: (1) he “made a motion to set Case 23-25 down as a ‘rulemaking’ case”; (2) he “commented recently . . . that he . . . tries to give everyone impacted the opportunity to speak (so a contested hearing is not really needed)”; and (3) he committed “other . . . violations . . . in other cases.”

Holding aside the question of whether Chairman Hood is subject to my enforcement authority for his official actions, your allegations do not rise to an OMA violation. A “recent[.]” “comment” on his permissive pattern of recognizing speakers would seem to enhance rather than suppress access to ZC meetings. Further, this action is, in any case, too attenuated for a cognizable violation. Similarly, a member of a public body who *offers* a motion, even if eventually adopted, is merely proposing consideration of an action by the public body, not compelling an action, let alone one subject to enforcement under the OMA. Finally, it is self-evident that “violations . . . in other cases,” even if they were sufficiently described to establish a violation, do not impute violations in the meeting that is the subject of *this* complaint.

Accordingly, I conclude that your complaint is meritless with respect to Chairman Hood.

III. CONCLUSION

Because your complaint (1) does not establish a violation of the OMA, and (2) concedes that you had not just constructive but *actual* notice of the challenged meeting, I am dismissing it.⁹ Your complaint is attached.

Sincerely,



Niquelle M. Allen, Esq.
Director of Open Government
Board of Ethics and Government Accountability

⁹ 3 D.C.M.R. § 10403.1 (“The Director [of Open Government] may dismiss a complaint on one or more of the following grounds: . . . (b) The action complained of does not violate the [OMA]; [and/or] (e) . . . does not infringe upon the Complainant’s rights under the [OMA] . . .”).

cc:

Zoning Commission

Anthony J. Hood, Chairman

Robert Miller, Vice Chairman

Dr. Joseph S. Imamura, Architect of the Capitol Designee

Tammy Stidham, National Park Service Designee

Office of Zoning

Sharon Schellin, Secretary to the Zoning Commission

Hillary Lovick, Lead Attorney for the Zoning Commission