

# Government of the District of Columbia



Office of Advisory Neighborhood Commissions  
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## MEMORANDUM

To: Dave Wethington, Chair ANC 6A  
Roberta Shapiro, Treasurer ANC 6A  
From: Kent Boese, Executive Director  
Date: 3/25/2025  
Re: Request for Reconsideration of Guerilla Gardens Grant Disallowance

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By a vote of 5-0-0 taken on March 13, 2025, ANC 6A resolved to ask the Director of the OANC “for reconsideration of the denial of ANC 6A’s 2024 grant of \$1,000 to Guerilla Gardeners.” The Commission also requested that their request receive great weight. While great weight does not apply to the financial review of ANC expenditures, Advisory Neighborhood Commissions may request reconsideration of OANC determinations related to an ANC grant at any time, though OANC determinations are not subject to appeal.

It is also important to note that ANCs neither need permission from the OANC to spend their funds nor does the OANC grant permission. In this example, the ANC did not need the permission of the OANC to grant \$1,000.00 to Guerilla Gardens for the purpose of planting tulip bulbs. Similarly, the OANC did not deny the grant application, which is not within the authority of the OANC. However, when an ANC’s expenditure does not meet the legal requirements of permissible uses of public funds, the OANC is legally required to disallow such expenditures and deduct them from future quarterly allotments.

In this case a review of the application determined that the planting of tulip bulbs occurred on privately controlled “public parking”, which is a subcategory of public space. For this reason, the prior determination that the Guerilla Gardens Grant was an impermissible expenditure stands.

### Public parking

As shared by Commissioner Shapiro via email to the OANC on February 27, 2025, the legal requirements of public parking date to 1872 and have not changed materially since.<sup>1</sup> Specifically, key concepts of the 1872 public parking law that continue to be true include:

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<sup>1</sup> See: *Laws of the District of Columbia 1871-1872*. (Washington, D.C.: Chronicle Pub. Co., 1872).

- The public parking area is “under the immediate care and keeping of the owners or occupants of the [abutting] lots.”<sup>2</sup>
- It is unlawful for “persons who are not the owners or occupants of the [abutting] lots . . . to enter, walk, or trespass” on the public parking<sup>3</sup>; and,
- “That any person offending against the provision of [the] act shall be punished by a fine.”

These conditions remain true today with the following language found in the *District of Columbia Municipal Regulations*.

- “Public parking” means the area of public space devoted to open space, greenery, parks, or parking that lies between the property line . . . and the edge of the actual or planned sidewalk (See: 24 DCMR § 102.8).
- “The Public parking . . . shall be under the immediate care and keeping of the owners or occupants of the premises abutting on the public parking.” (See: 24 DCMR § 102.1).
- “After obtaining a permit from the District, the owners or occupants of land abutting a public parking may enclose the parking” with walls wooden fences, and open fences. (See: 24 DCMR § 103.1).
- Private property owners can and do get fined for failure to properly maintain the public parking abutting their property. The relevant fine schedule is below (see: 24 DCMR § 1380).

Failure to maintain the abutting public space & causing a nuisance (21 DCMR § 702.1)	1st violation within 60-day period	\$ 150	16
	2nd violation within 60-day period	\$ 300	32
	3rd violation within 60-day period	\$ 600	64
	4th violation within 60-day period	\$ 2000	200
Failure to maintain the abutting public space (21 DCMR § 702.1)	1st violation within 60-day period	\$ 150	16
	2nd violation within 60-day period	\$ 300	32
	3rd violation within 60-day period	\$ 600	64
	4th violation within 60-day period	\$ 2000	200

Both Guerrilla Gardeners and ANC 6A acknowledged in the grant application and subsequent emails that approval and permission for use of the space was granted by the abutting private property owner – the Sasha Bruce House – and not the District of Columbia. Equally important, use of the space in question neither required a public space permit nor a hearing before DDOT’s Public Space Committee. These facts further support the understanding that the property in question is *privately* controlled public space.

### Precedent

While the facts presented above are enough to uphold the previous decision that the \$1,000.00 grant was impermissible due to the location where the bulbs were planted, it is worth noting that the property conditions are identical to all of the privately owned properties in the immediate vicinity. These properties

<sup>2</sup> See: *Laws of the District of Columbia 1871-1872*. (Washington, D.C.: Chronicle Pub. Co., 1872), Pt IV, p. 42.

<sup>3</sup> Ibid. p. 41.

also have “public parking” between the private property and the sidewalk. Most if not all of them are fenced in. All of them are controlled by the abutting property owner, and most owners would be surprised to learn otherwise that their front yards are not under their control.

Based on this fact and as a matter of public policy, it is impossible to treat the Sasha Bruce property differently than the other privately held properties – meaning that ANC’s can either expend funds to plant flowers in *every* private property owner’s front yard, or they cannot. ANC funds not spent on the operation of an ANC’s office must be for a public purpose. Expenditures by grant have the added requirement that the purpose be one “that includes a significant benefit for the community and is not done for the primary purpose of benefitting a private entity.”<sup>4</sup> It is clear that a project primarily benefiting a private property owner is and impermissible expenditure.

### Tulipalooza

Notwithstanding the determination of the 2024 Guerrilla Gardeners Grant at hand, I note that this is an annual event. In that regard, I do want to emphasize that the problem with the grant was the location of the planting – not the grant applicant or the event itself. The OANC has reviewed flower plantings in other ANC areas and deemed them permissible. To further assist ANC 6A and support your efforts to improve the community’s quality of life, I encourage the Commission to forward future grant applications to us for review prior to your approval.

The OANC will never tell an ANC what grants to support, but we will provide guidance on impermissible uses for funds and guidance on how to cure a grant application for the benefit of the Commission and applicant.

Most sincerely,

A handwritten signature in black ink, appearing to read "K. C. Boese", with a stylized, cursive script.

Kent C. Boese  
Executive Director

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<sup>4</sup> D.C. Official Code § 1–309.13(l)(1).