

Government of the District of Columbia



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MEMORANDUM

TO: Dieter Lehmann Morales, Chair ANC 1A
Billy Easley, Treasurer ANC 1A
FR: Denise Wiktor, General Counsel
DT: 3/18/2024
RE: Tivoli Anniversary Grant

The OANC has received a copy of a grant request from Horning Management for a grant to help fund for the 100th anniversary of the Tivoli Theater. The OANC has reviewed the grant and found it not to be a permissible use of ANC funds based upon a lack of a stated benefit to ANC 1A. This is potentially curable with a revision of the grant application.

There are five prongs a grant must meet to be a permissible expense¹ and a 6th requirement of the D.C. Official Code that limits the amount of a grant that can be spent on overhead². They are:

1. **Public Purpose:** The application discusses a number of activities that will be free to the public and within the boundaries of ANC 1A. It is unclear whether the events primarily benefit the residents of ANC 1A, 1D or Ward 1. District Bridges was mentioned several times. District Bridges for that area serves ANC 1A, 1D and part of 1B. It is unclear if ANC 1A is the primary beneficiary of this grant.

ANC grants must be for “public purposes within the Commission area.”³ A public purpose is one “that benefits the community as a whole and is not done for the primary purpose of benefitting a private entity.”⁴ The community in this case is ANC 1A.

2. **Local Benefit:** A grant must “benefit persons who work or reside in the Commission area.”⁵ This does not mean the grant may only benefit Commission residents; it simply means the grant’s benefits should be focused on those residents.⁶ The application speaks

¹ See, *Letter to Schanette Grant on Seasoned Settlers and Grants Generally*, April 14, 2022, found at <https://oag.dc.gov/sites/default/files/2022-04/Letter-to-OANC-Re-Seasoned-Settlers-Grant-and-Grants-Generally-.pdf>

² D.C. Official Code 1-309.13(m)(2)(D) “No Commission shall provide a grant for which the grantee estimates that the overhead costs would exceed 15% of the entire grant amount.”

³ D.C. Official Code § 1-309.13(l)(1).

⁴ *Id.*

⁵ D.C. Official Code § 1-309.13(m)(1)

⁶ See *Letter to Deborah K. Nichols*, Nov. 9, 2006, at 2 n.2 found at [Letter-to-Deborah-Nichols-Re-Whether-an-ANC-may-approve-a-grant-to-commission-plans-and-drawings-.pdf](#) (ANC 4C grant was permissible where “[b]enefit to other ANCs would be incidental to the benefit conferred on ANC 4C residents,” because a grant’s benefits need not

to a general public benefit as discussed in number 1. Where the ANC is discussed, it is mentioned parallel to District Bridges as an organization, not the residents and businesses within ANC 1A.

3. **Proposed Project.** A grant must be for a proposed project.⁷ This is a single event occurring in the future and qualifies as a proposed project.
4. **Organization.** A grant must be to an “organization,” not an individual or a government entity,⁸ although the organization need not be incorporated.⁹ “A Commission may approve grants only to organizations that are public in nature and benefit persons who reside or work within the Commission area.”¹⁰ The OAG has several opinions on the meaning of “public in nature” which conclude that the term modifies the event not organization. The OANC believes a plain reading of the statute shows that “public in nature” modifies organization meaning the organization should not be a for profit organization, not necessarily an incorporated non -but not a profit-making organization. However, the OANC chooses to allow the OAG interpretation to stand at this time.
5. **Non-Duplication.** A grant cannot duplicate any services offered by the D.C. government.¹¹ The D.C. government does not offer a service like this or similar to it thought application notes it builds on services the government offers.
6. **Overhead.** Overhead cannot exceed 15% of the grant amount. None of the uses for the grant appear to exceed the overhead requirement.

Permissible Expenses

A review of the budget shows two items that would not be permissible to expend ANC grant monies on 1. Food and Beverages and 2. Photographer. Food and beverages because of a federal procurement rule on food and drinks and the photographer as the primary beneficiary of the photographs is presumably Horning.

Conclusion

For the reasons stated above this grant is not a permissible expenditure of ANC funds. It is possible that this could be cured by revising the application to state clearly what the benefit to ANC 1A is.

“be exclusive to the ANC that gives the grant funds”); see *Letter to Comm’r Fletcher*, Mar. 15, 2022, at 2, available at <https://oag.dc.gov/sites/default/files/2022-03/ANC-7E-Letter-to-Commissioner-Fletcher-RePublic-Purposes-Within-the-Commission-Area-.pdf> making the same point with respect to the public-purpose requirement).

⁷D.C. Official Code § 1-309.13(m)(2)(A)

⁸ D.C. Official Code § 1-309.13(m)(1); see also *Letter to Deborah K. Nichols*, Jan. 14, 2010, at 4, available at <https://oag.dc.gov/sites/default/files/2018-02/ANC-January-14-2010-Guidelines-for-Use-of-ANC-Funds.pdf>

⁹ See *Letter to Deborah K. Nichols*, Aug., 4, 2000 at 3, available at <https://oag.dc.gov/sites/default/files/201802/ANC-August-4-2000-Grants-by-ANCs-Public-Purpose-and-Corporate-Status-of-Recipients.pdf> (“The plain meaning of the term ‘organization’ includes unincorporated associations”).

¹⁰ D.C. Official Code § 1-309.13(m)(1)

¹¹ *Id.* The ANC Act does not apply this same restriction to non-grant expenditures. See D.C. Official Code § 1-309.13(l).