



Government of the District of Columbia Advisory Neighborhood Commission 4B

RESOLUTION #4B-20-1002

Encouraging Best Practices to Assure Broad Inclusivity and Robust Participation in DC Government Hearings Adopted October 26, 2020

Advisory Neighborhood Commission 4B, in collaboration with Advisory Neighborhood Commission 4C, takes note of the following:

- Robust public participation in public hearings before the Council of the District of Columbia and government agencies is essential to a strong democracy. Individuals who are most impacted by proposed laws, regulations, and policy should be heard. Engaging the impacted community broadly can increase the chances of successful implementation of the underlying proposal due to broader community support and trust in decisionmaking entities. Advisory Neighborhood Commission 4B firmly believes elected officials and government entities have an obligation to hear from impacted individuals and to make participation as inclusive and accessible as possible to hear their views.
- As the DC government grapples with legislative, regulatory, and other mechanisms to address the broad and far-reaching impacts of the COVID-19 public health emergency, Advisory Neighborhood Commission 4B recognizes the importance of hearing from and considering the views of individuals most impacted by the public health emergency. Residents are facing job and wage losses, housing insecurity, increased health risks, and heightened racial disparities resulting from the COVID-19 public health emergency. See Jenny Gathright, *DCist*, "[Black Washingtonians Make Up Less Than Half Of D.C.'s Population, But 80% Of Coronavirus Deaths](#)" (May 6, 2020) ("The disparity in who dies from the virus isn't an anomaly — it matches disparities in myriad other health conditions. And as the death toll from the coronavirus continues to rise, many people in communities most affected are asking for a response that matches the depth of these dual crises: The one caused by COVID-19, and the health crisis in these communities that existed long before."). It is essential the DC government hear directly from these individuals when considering governmental responses to the public health emergency. In addition, transparency is especially important

during a public health emergency to ensure the availability of information about the government's responses to the emergency.

- Yet, there are significant barriers to individuals participating in public hearings before the DC Council and other government entities. And these barriers can be even more challenging to overcome for individuals most impacted by the COVID-19 public health emergency.
- As a general matter, where a public hearing occurs and where a public hearing is not limited to government and/or invited witnesses, public witnesses receive little-to-no information to meaningfully plan for providing their testimony. After an individual requests to testify and submits the required information by the required deadline, they receive – often shortly before the actual hearing – only the start time of the hearing and a list of witnesses. For most public government hearings, there is no indication as to when that individual who has signed up to testify will be called to provide their testimony. An individual who has signed up to testify can wait upwards of eight hours to be called, without any meaningful estimates as to when they will be heard. Residents with professional, familial, medical, or other obligations face significant barriers with regard to providing testimony at public hearings.
- Some recent examples from Advisory Neighborhood Commissioners provide useful context:
 - The DC Council's Committee of the Whole and Committee on Education held a public hearing on October 2nd at 9:00 a.m. “to hear from community stakeholders and government agencies about the roll out of distance learning during the ongoing public health emergency,” including “digital access, the quality of learning, and understanding how schools are ensuring student attendance and engagement.” Despite [input from 160 affected families, students, and teachers](#) that managing distance learning and working and handling other obligations made a hearing during the work and school day impossible, the hearing proceeded. Advisory Neighborhood Commissioner Tiffani Nichole Johnson (4B06) desired to testify as to the Commission's detailed and lengthy involvement in receiving and reflecting on feedback from families, students, and teachers about distance learning, but she was unable to do so due to the timing of the hearing and the inability to know even a window within which she might be called to testify.
 - Following the October 5, 2020, announcement that DC Public Schools will begin offering in-person instruction to students starting November 9, several Councilmembers shared on October 14 that the DC Council's Committee of the Whole and Committee

on Education would hold a joint public roundtable on October 23 to further evaluate the District's plan to reopen schools. The public – including students, parents, and teachers, later learned that the hearing would include government witnesses only, depriving those most impacted of the opportunity to testify before the Council and limiting the Council's ability to press government witnesses as to the public's concerns. No Commissioner from Advisory Neighborhood Commission 4B was invited to testify.

- The DC Council's Committee on Housing & Neighborhood Revitalization held a public hearing on September 24th at 12:00 p.m. to hear from the public about several pieces of proposed legislation related to rent control in the District. Two government witnesses and 124 public witnesses signed up to testify for the hearing. The government witnesses used a substantial amount of time to testify. After initially indicating the hearing would only proceed until 6:00 p.m., regardless of whether all public witnesses testified, the Committee Chair [changed course](#) and allowed all witnesses to testify, but noted recording of the hearing would stop at 6:00 p.m. Advisory Neighborhood Commissioner Erin Palmer (4B02) was number 62 on the witness list and testified shortly before 6:00 p.m. She had no indication of when she would be called to testify and was only able to participate due to another individual affiliated with the Reclaim Rent Control campaign keeping track of testimony and sending text messages to witnesses to inform them of when they were near being called to testify.
- The Public Service Commission of the District of Columbia held a community hearing on September 29th at 2:00 p.m. about Pepco's application for a \$162 million rate increase. 106 individuals signed up to testify for the hearing. Advisory Neighborhood Commissioner Jonah Goodman (4C10) had no indication of when he would be called to testify and had to watch the livestream for the full hearing to ensure he was able to testify.
- Each of the aforementioned public hearings related to issues broadly and directly impacting residents and of particular importance during the COVID-19 public health emergency. Advisory Neighborhood Commissioners faced significant challenges finding ways to make their voices heard; residents face equal if not more cumbersome hurdles to testifying at public hearings and roundtables. The current procedures for DC Council and many other government agency hearings generally unfairly favor those with economic ability to be available all day and/or to hire counsel to represent them.
- While individuals are able to provide written testimony, Advisory Neighborhood Commission 4B believes the ability to provide live

testimony is essential. Written testimony is often not released until well after a hearing occurs, and it can be hard to find. In addition, written testimony may not be included in full and may be summarized incorrectly. Live testimony allows decisionmakers to ask questions and clarify testimony – which rarely happens with written testimony – and thereby provides decisionmakers with the most helpful information to guide decisionmaking. Residents seek assurances that their voices are being heard and that their views are being considered during deliberations regarding proposed legislation, regulation, and policy.

- Advisory Neighborhood Commission 4B requests DC Council and agency consideration, where appropriate, of the following best practices to better assure inclusive public hearings and broad participation:
 - Hearings with day, evening, and weekend options, particularly where individuals most impacted by the proposed law, regulation, or policy are generally unable to attend during business or school hours;
 - Hearings with separately scheduled government witnesses to better accommodate public witnesses and to ensure government witnesses do not limit public witness participation (with a preference for public witness testimony to precede government witness testimony to better inform DC Council and other oversight);
 - Improved notification and transparency around how and when a hearing is open to public witnesses, or only invited witnesses or government witnesses, with every effort to include public witnesses and written justification and a clear explanation regarding how to provide written testimony or other feedback for any limitation on public witness testimony;
 - Use of timed panels, with a commitment to not begin hearing testimony from the panel before the time provided (similar to hearings before the Historic Preservation Review Board) and/or implementation of a text message or other notification system indicating hearing progress in terms of panel or witness testifying;
 - Provision of options for video and other recorded testimony to be played at a hearing;
 - Use of a public comment platform similar to the Lakewood, Colorado Planning Commission's [People Speak Public Hearing](#)

[Engagement Platform](#) that allows broader public participation in a manner that is more convenient for residents;¹

- Implementation of a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the Americans with Disabilities Act and resolving any doubt whatsoever in favor of accessibility;
- Implementation of a procedure for receiving and swiftly resolving requests for language access and translation to ensure that all communities can participate broadly in the language they are most comfortable speaking;
- Provision a one-page overview of the various options for remote public participation in government hearings;
- Publication of hearing transcripts as soon as possible (similar to meetings of the DC Public Charter School Board); and
- Publication of written testimony as closely as possible to when it is received so that written testimony received prior to a hearing can be reviewed by the public prior to or during the hearing, and publication of written testimony received after the hearing as soon as possible.²

¹ See, e.g., DLA Piper, "[Public legislative processes and public meetings during the time of COVID-19](#)" (April 3, 2020) ("Citizens can review presentations and documents, ask questions of staff and project applicants, and comment on proposed actions, all on their own time and at their own pace with the same level of experience and impact as attending the live meetings. Public participation in planning meetings has increased significantly since LakewoodSpeaks.org launched in August 2017, now with both the Planning Commission and City Council using the site. In 2019, use of the platform increased participation by over 800%, including populations left out of the traditional live hearing process.").

² Advisory Neighborhood Commission 4B understands the DC Council is subject to procedural rules regarding hearing records. See Rules of Organization & Procedure for the Council of the District of Columbia, R. 531. We believe best practices can offer improvements that do not necessarily require amendments to the Rules.

RESOLVED:

- That Advisory Neighborhood Commission 4B calls on the DC Council and government agencies, where appropriate, to devise and implement best practices for government hearings to facilitate public participation. Best practices may include day, evening, and weekend hearing options; separate hearings for government and public witnesses; improved notification and transparency around how and when a hearing is open to public witnesses; timed panels; allowing video and other recorded testimony to be played in place of live testimony; use of a public comment platform; procedures for receiving and swiftly resolving requests for reasonable modification or accommodation and for language access and translation; and clear and concise communications regarding the various options for remote public participation in government hearings.
- That Advisory Neighborhood Commission 4B calls on the DC Council and government agencies, where appropriate, to devise and implement best practices for publishing materials related to hearings, including publishing hearing transcripts as soon as possible and publishing written testimony as closely as possible to when it is received so that written testimony received prior to a hearing can be reviewed by the public prior to or during the hearing, and publishing written testimony received after the hearing as soon as possible.

FURTHER RESOLVED:

That the Commission designates Commissioner Erin Palmer, ANC 4B02, and Commissioner Tiffani Nichole Johnson, ANC 4B06, to represent the Commission in all matters relating to this Resolution.

FURTHER RESOLVED:

That, in the event the designated representative Commissioners cannot carry out their representative duties for any reason, the Commission authorizes the Chair to designate another Commissioner to represent the Commission in all matter relating to this Resolution.

FURTHER RESOLVED:

That, consistent with DC Code § 1-309, only actions of the full Commission voting in a properly noticed public meeting have standing and carry great weight. The actions, positions, and opinions of individual commissioners, insofar as they may be contradictory to or otherwise inconsistent with the expressed position of the full Commission in a properly adopted resolution or

letter, have no standing and cannot be considered as in any way associated with the Commission.

ADOPTED by voice vote at a regular public meeting (notice of which was properly given, and at which a quorum of eight of nine members was present) on October 26, 2020, by a vote of 8 yes, 0 no, 0 abstentions.