

**TESTIMONY OF THE COMMITTEE OF 100 ON THE FEDERAL CITY BEFORE THE COUNCIL OF THE DISTRICT OF COLUMBIA, COMMITTEE ON GOVERNMENT OPERATIONS, JUNE 7,2010. BILL 18-777: OPEN GOVERNMENT OFFICE ESTABLISHMENT ACT OF 2010.**

Thank you for the opportunity to be heard on this important bill. I am Richard Wolf, representing the Committee of 100 on the Federal City, the oldest private planning organization in the District of Columbia, established in 1923 for the purpose of implementing and protecting the historic L'Enfant plan for the nation's capitol and the follow-on Mc Millen Commission Report of 1901 which further developed plans for Washington. The Committee has been noted for its active involvement in helping to shape the city's comprehensive plan, zoning code re-write, and important development projects. It's most important projects in recent years have been the 5 year battle in the late 1960s and 1970s to stop the building of an extensive freeway system in the city which would have destroyed many neighborhoods, and the promotion of mass transit. Our activities depend upon an open government in which information about city initiatives in development and transportation are transparent and easily accessible. That is not the case now. This bill will help cure the problem.

An open government office operating with strong authority to implement a variety of actions to assure the availability of government records, counseling government officials on their obligations to release information, and developing formats for agencies to present information in easily accessible ways for the public are very important attributes of this new entity. Being able to file freedom of information requests and having them handled quickly with the burden for release shifted to the government is an important attribute of this bill. There is no reason that my recent experience in obtaining records from DDOT should have taken more than three months—fees were waived. Moreover, the records were redacted in such ways as to make them less than useful and, of course, the information in the records was not presented in a manner which allowed me to fit the records into the pattern I wanted without a great deal of work. Of course, the Council has similarly frustrating experiences in conducting its oversight and appropriating responsibilities.

As a policy matter all DC information, should be available to the public with very few exceptions. As a former federal attorney who participated in the earliest implementation of FOIA my experience is that it was a great innovation in our democracy and assisted those of us charged with advising clients on release issues in getting government officials to understand their obligation to make public just about everything. I was fortunate that I worked at NASA in its earliest days when having an open and public program was a key policy under the 1958 Space Act. Those policies did not hold up as the agency grew older and more bureaucratic in its operations. Nevertheless, it remained mindful of its obligations to the Congress to be open and complete in responding to inquiries and committee hearings.

Because there is so little information in the DC government that should be considered exempt from release, the new office can be most useful in advising and even compelling agencies to post information and aggregate it in publicly useful ways. This should not only help the public but assist DC agencies in running their own operations effectively. My experience with obtaining DC government information is

not only that there is a reluctance to releasing information outside the agency but also a lack of understanding of how to organize and utilize information for themselves. This government generally has a poor record of how to govern itself and conforming with a myriad of applicable federal and local statutes. Government can only operate on the basis of authority for its actions, and there is little understanding, in general, of that principle in the DC government.

Because of our group's emphasis on planning I would like to focus on the Office of Planning, the Zoning Commission, and the BZA in connection with information availability. Our problem in this area is compounded by the fact that the city does not have an independent planning commission. Under the Home Rule Act the Mayor is the principal planning authority with the Council having broad powers of amending or rejecting amendments to the comprehensive plan which are presented by the Mayor. Unfortunately, there little context for what the Council sees when such legislation is presented. The Office of Planning is the wild west in conducting their operations.

Because OP is not an independent agency and is not subject to the DC Administrative Procedure Act, it is able to make up its rules of engagement for the public as it does business. For example, in its most recent major initiatives in developing amendments to the comprehensive plan and the zoning re-write it invents a form of public review, selecting the review participants. OP has no obligation to take public comment into account in formulating its proposals and does not furnish a record of handling public comment as well as the very important input from other agencies. What the public and the Council sees are barebones conclusions from OP in the form of proposed comp plan amendments and revisions of the zoning code.

Finally the Zoning Commission and the BZA have grave governance problems. The Office of Zoning which was created as an initiative some 15 years ago by some of us to give the Zoning Commission an independent support staff—separate from the Mayor—works very effectively to facilitate the zoning process. But the Commission, which is subject to the DC Administrative Procedure Act, does not when acting in its rule-making capacity—creating new zoning code and standards for hearing process—set forth rules for comment and then when adopting its rules explain the disposition of public comment. It simply publishes and adopts without explanation. Moreover, it continues to receive its legal support from the Mayor and OP enjoys the role of Zoning staff in making its recommendations in rule making or specific cases. In other words, the Zoning Commission and the BZA are still both perceptually and in reality not acting as independent agencies as that is understood in the law.

Finally, what is not addressed in the bill, is the adoption of the Federal government conflict of interest and standards of conduct laws and regulations for the DC government. The Zoning Commission in our experience is dominated by developers as members. That is true now more than ever. These persons have conflicts of interest under Federal rules constantly because they do business all the time with both the government and applicants. I have never seen a zoning commission member recuse themselves from sitting on a case because of these circumstances. The perception and reality is that the Zoning Commission and the BZA lack integrity because of the absence of strong rules regarding conflict of interest.

There is much more to be said about this bill and as it moves through the legislative process we will be here to testify on these matters.