



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



April 12, 2024

**VIA ELECTRONIC MAIL**

The Honorable Brooke Pinto, Councilmember  
Council of the District of Columbia  
John A. Wilson Building  
1350 Pennsylvania Avenue NW, Suite 106  
Washington, DC 20004  
bpinto@dccouncil.gov

**RE: Aston Community Advisory Team (Aston CAT) Advisory Opinion  
(#OOG-2024-0008)**

Dear Councilmember Pinto:

Thank you for contacting the Office of Open Government (OOG) to receive advice on whether an entity created by a District of Columbia government agency is a public body subject to the Open Meetings Act (OMA).<sup>1</sup> OOG received your request for an advisory opinion on March 7, 2024, which OOG assigned advisory opinion # OOG-2024-0008 (the “request”). As Director of Open Government, I am authorized to issue advisory opinions regarding the OMA, upon request.<sup>2</sup>

**I. BACKGROUND**

The request was for OOG to opine on whether the Aston Community Advisory Team (“Aston CAT”) is a public body subject to the Open Meetings Act (“OMA”) (D.C. Official Code § 2-571 *et seq.*).<sup>3</sup> OOG advised the Aston CAT to conduct its first meeting, on March 11, 2024, in line with the following:

1) provide my office [OOG] a copy of a public notice of the meeting which includes: the date, time, location, meeting type (physical, hybrid, or virtual), and draft agenda of the meeting, including any intent to close any portion of the meeting; 2) post the notice (all of the items in section #1) on any relevant websites, including DHS, ANCs, etc.; 3) submit the same information to the DC Register for publication in the next published issue (it does not have to have been published to satisfy the requirements of the OMA, if we determine that this body’s meetings are subject to the OMA);

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<sup>1</sup> Title IV of Pub. L. 90-614, effective Mar. 31, 2011 (D.C. Official Code § 2-571 *et seq.*).

<sup>2</sup> See D.C. Official Code §§ 1-1162.05c(a)(1), 2-579(g) (section 205c(a)(1) of the Government Ethics Act of 2011, section 409(g) of the OMA).

<sup>3</sup> March 7, 2024, email request from Linn Groft, Legislative Director (Office of Councilmember Brooke Pinto) to OOG Attorney Advisor Anthony J. Scerbo.

and 4) record the meeting and retain the recording in case there is any request to view it.<sup>[4]</sup>

On March 11, 2024, the first Aston CAT meeting was held, as well as a second meeting on April 8, 2024.<sup>5</sup> OOG monitored both meetings.

OOG is providing analysis on two issues concerning Aston CAT. The first is whether the Aston CAT is an OMA-subject public body. The second is, does the “nature of work of the Community Advisory Team”<sup>6</sup> meet the definition of meetings as contemplated in the OMA. I discuss the two issues in turn below.

## II. DISCUSSION

### A. The Aston CAT is a public body as defined and contemplated by the OMA

The threshold question in determining whether a public body is subject to the OMA is whether the entity falls under the “public body” definition in the statute. The OMA definition of “public body” includes a “government council, including the Council of the District of Columbia, board, commission, or similar entity, including a board of directors of an instrumentality, a board which supervises or controls an agency, the board of trustees of a public charter school, or an advisory body that takes official action by the vote of its members convened for such purpose...”<sup>7</sup>

OOG has issued several prior advisory opinions that applied a broad scope to the definition of a public body under the OMA. This includes “task forces” or other bodies beyond boards or commissions “intended to impact District operations and inform policy.”<sup>8</sup> These entities “meet[] to consider, conduct or advise on public business”<sup>9</sup> (applying the definition of a “meeting” in the OMA). This broad interpretation also applies even when the public body was not established by a Mayor’s Order or statute, but less formally by a subordinate office or agency, as I explain below.

In the November 30, 2023, memo from the Department of Human Services (DHS) to your office (DHS Memo), DHS Interim Director Rachel Pierre states that DHS will “work with a Community Advisory Team to discuss progress and ensure success of the project.” The DHS memo then describes the composition and functions of the Aston CAT as follows:

The Advisory Team will be co-chaired by the ANC Chair (or designee) and a representative from Mayor Bowser's administration.

- Community, ANC, and Council Representatives (10)

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<sup>4</sup> March 7, 2024, email response from Scerbo to Groft.

<sup>5</sup> See meeting details at [Aston Community Advisory Team \(CAT\) | mocrs \(dc.gov\)](#).

<sup>6</sup> November 30, 2023, memorandum from Rachel Pierre, Interim Director, Department of Human Services, to Councilmember Brooke Pinto, regarding “Bridge Housing at The Aston.”

<sup>7</sup> D.C. Official Code § 2-574(3).

<sup>8</sup> See DME Cross-Sector Collaboration Task Force\_OOG OPINION (10.7.15)(OOG-0002\_(Niles).pdf (open-dc.gov, [here](#)), at 4.

<sup>9</sup> See generally OOG-2023-0002-M OMA ATE Final.pdf (open-dc.gov, [here](#)) pt.II; HWTF OMA Advisory Opinion\_FINAL 9 2 2022\_redacted\_0.pdf (open-dc.gov, [here](#)) pt.II.A;

\* ANC - 4 participants: ANC Chair, ANC for the SMD, and 2 community members selected by the ANC. Suggestions for community members include immediate neighbors, faith community representatives, and members of the business community, nearby condo association president, or other community stakeholders.

\* Civic or Neighborhood Association - 2 participants: the president of each of the two local associations, or a designee for each.

\* Ward Councilmember-3 participants: Ward Councilmember or designee and two community representatives selected by the Ward Councilmember.

- Homeless Services Stakeholders (3)

- \* One homeless services provider who serves the neighborhood surrounding the Aston under the District’s outreach provider contract.

- \* One homeless services consumer selected by the above homeless services provider.

- \* One representative from the service provider operating services at the Aston.

- DC Executive Government Representatives (3)

- \* Bowser Administration Co-Chair

- \* DGS Project Manager

- \* DHS representative

Here, the composition of the Aston CAT is significant, if not determinative. Four of the members are based upon Advisory Neighborhood Commission (“ANC”) membership or appointment by the ANC. ANCs are specifically exempted from the OMA,<sup>10</sup> and are instead subject to their own statutory openness requirement.<sup>11</sup> Two of the members are either the presidents or designees of their “civic or neighborhood” or “local associations.” Three members include the Ward Councilmember and two of the Ward Councilmember’s community designees. Although the Council of the District of Columbia (“the Council”) is specifically included within the OMA,<sup>12</sup> “[n]otwithstanding any provision of [the OMA], *the Council may adopt its own rules to ensure the District’s open meetings policy, as established in § 2-572, is met with respect to Council meetings*; provided, that the rules of the Council shall comply with this section and the definition

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<sup>10</sup> D.C. Official Code § 2-574(3)(F).

<sup>11</sup> D.C. Official Code § 1-309.11.

<sup>12</sup> D.C. Official Code § 2-574(3).

of meeting in § 2-574(1); provided further, that until the Council adopts rules pursuant to this subsection, [the OMA] shall apply to the Council.”<sup>13</sup> (emphasis added) Thus, the Council is a unique body within the purview of the OMA. Of the remaining six positions on the Aston CAT, three are representatives of the Mayor’s Office (“Bowser Administration Co-Chair”) or DGS and DHS representatives, from District agencies; normally neither “[a] District agency or instrumentality” nor “[t]he Mayor’s Cabinet” are subject to the OMA.<sup>14</sup> The final three positions represent “stakeholders” for “homeless services,” who have no particular relation to the OMA one way or another.

While some individual members or designees of the Aston CAT may belong to groups that are not subject to the OMA (ANCs, DHS, DGS, etc.), other members or designees belong to groups that are subject to the OMA (i.e., the Council). In the aggregate, the Aston CAT represents a group of stakeholders brought together for the purposes of “discuss[ing] progress and ensur[ing] success of the project;” here, “the Aston renovation project.”

Thus, the membership of the Aston CAT is specifically designed to include all relevant stakeholders for the purposes of perspective and representation, as well as the ability to interface with the public. The Aston CAT is a public body according to the OMA definition of the same.

#### **B. The Aston CAT meetings are meetings as contemplated by the OMA**

The second question is whether the meetings of the Aston CAT are meetings as defined and contemplated by the OMA. Relative to the OMA a “[m]eeting” means any gathering of a quorum of the members of a public body...at which the members consider, conduct, or advise on public business, including gathering information, taking testimony, discussing, deliberating, recommending, and voting....”<sup>15</sup>

In the DHS Memo, the functions of the Aston CAT are described as follows:

##### Nature of Work of the Community Advisory Team:

1. Provide feedback on concerns related to residents’ quality of life during any building repurposing/construction and during the first two years of operations;
2. Coordinate opportunities for community feedback and input on all issues and concerns related to the development of Bridge Housing and share information with DHS; and
3. Develop Good Neighbor Agreements.

And further, it states:

In coordination with the Advisory Team, DHS will:

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<sup>13</sup> D.C. Official Code § 2-575(f).

<sup>14</sup> D.C. Official Code § 2-574(3)(A),(D).

<sup>15</sup> D.C. Official Code § 2-574(1).

1. Provide feedback on concerns related to quality-of-life concerns and present any building repurposing/construction during the first two years;
2. Report on the impact of the property on the surrounding neighborhood, using data on metrics provided by other District agencies; and
3. Receive and coordinate opportunities for community feedback and input on concerns related to the development of this project.

From the activity described, the Aston CAT would conduct public business covered by the OMA to execute its functions. Here is the rationale. First, it has membership including representatives of public bodies whose own activities are subject to the OMA, as well as other public stakeholders (above). Second, it will “provide” and “coordinate” feedback from the Aston residents and the community, “report on...impact,” and “[d]evelop Good Neighbor Agreements.”

The receipt, coordination, and provision of feedback functions could, arguably, be activities that failed to meet the threshold of being public business, particularly as these functions are paralleled by activities spelled out in the DHS Memo for DHS “[i]n coordination with the Advisory Team.” The issue is not further addressed here because the third, or final, role assigned to the Aston CAT is more clearly dispositive, the “[d]evelop[ment of] Good Neighbor Agreements” (GNAs).

A number of slides presented by DHS during the second meeting of the Aston CAT on April 8, 2024,<sup>16</sup> describe the “Protocols,” areas of activity (“Protocol Topics to Address”), and “Purpose,” of developing the Good Neighbor Agreements. Among the “[p]rotocols” was “identify[ing] topics/concerns/areas of emphasis; [e]stablish a one or two sentence objective for each topic; [o]utline each stakeholder’s commitment to achieving the objective.” Topics to be addressed were: “Property Maintenance; Safety and Security; Conduct / Behavior and Mutual Respect; Stakeholder Communication; Amending the GNA Protocols.” The “Purpose” section specified “establish and maintain a positive relationship between the neighbors and the operators of the Aston program,” “outline the commitment and shared responsibilities of Aston stakeholders,” “identify stakeholder points of contact,” and “establish common goals and protocols to include:...maintenance of [a] peaceful, safe, and clean neighborhood; sharing open and honest communication; processes for helping each other address concerns and solve problems; and identifying mutual ways for the community and program to support one another.”

The protocols and purposes outlined above clearly implicate multiple types and gradations of public business, including considering inputs from the community, “including gathering information, taking testimony, discussing, deliberating, recommending, and” presumably “voting,” on the GNAs. Without regard to whether the GNAs are binding or non-binding, as this was not explicitly stated during the April 8 meeting, the “purposes” stated above are clearly public

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<sup>16</sup> Slide presentation by Anthony Newman, Deputy Administrator for Family Services (DHS), to second meeting of the Aston CAT on April 8, 2024.

business and are the types of activity for which the definition of a meeting in D.C. Official Code § 2-574(1) were written to include.

The meetings of the Aston CAT are OMA-subject meetings.

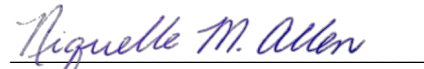
### III. CONCLUSION

In sum, with the broad presumption of openness in mind, and with an eye to its own prior advice on this subject, OOG regards the Aston CAT, and comparable “community advisory teams” for short-term family housing programs, as public bodies subject to the OMA. OOG is prepared to help them through the compliance process.

Of course, we encourage proactive transparency practices for all District entities, including even in anticipation of future changes in the law. We will offer training and guidance to Aston CAT members or supporting staff, including answering any unique or situational questions.

Please let me know if we may be of further assistance.

Sincerely,



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

cc:

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