GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL
KARL A. RACINE

Legal Counsel Division

July 11, 2016

Thomas M. Smith
Chairperson
Advisory Neighborhood Commission 3D02
4601 Tilden Street NW
Washington, DC 20016

Re: Request for Reconsideration Concerning the Lawfulness of April 25, 2016 Special Meeting

Dear Chairperson Smith:

On May 2, 2016, Commissioner Spence Spencer asked us whether ANC 3D's April 25, 2016 special meeting complied with the ANC's Bylaws. In a June 13, 2016 letter to Commissioner Spencer, we concluded that, based on the description in Commissioner Spencer's letter, the meeting violated the ANC's Bylaws. The letter contended that the meeting was called without any written request from either Commissioners or community members, and we concluded that the Bylaws unambiguously required such a request. You asked us to reconsider that conclusion, and you sent us two letters that expanded existing arguments and volunteered new ones. We also received a letter from Commissioner Alma Gates, the Secretary of ANC 3D, that concurred with your desire for reconsideration.[1] We have carefully considered the reasoning offered in all three of those letters, and have again reviewed the Bylaws closely. We still conclude that the Bylaws unambiguously require a written request from two Commissioners or ten community members to call a special meeting.

As we explained in our June 13 letter, this office will only resolve a question about ANC bylaws when those bylaws are unambiguous. "[W]hen the meaning [of bylaws] is clear," the ANC "cannot change that meaning except by amending its bylaws."[2] If there is one interpretation that is consistent with only some of the Bylaws, and a second interpretation that is consistent with *all*

[1] For convenience, your original letter, your addendum to that letter, and the letter from Secretary Gates, are attached to this letter. For convenience, this letter will cite your two letters as the "Smith Letter" and the "Smith Addendum," and will cite Secretary Gates's letter as the "Gates Letter."

[2] Henry M. Robert III *et al.*, ROBERT'S RULES OF ORDER NEWLY REVISED ("Robert's Rules") 588 ln. 26-28 (11th ed. 2011); *see* Advisory Neighborhood Commissions Act of 1975 ("ANC Act"), § 14(e)(3), effective March 26, 1976 (D.C. Law 1-58; D.C. Official Code § 1-309.11(e)(3) (2012 Repl.)) ("Where not otherwise provided, the procedures of the Commission shall be governed by Robert's Rules of Order").

of the Bylaws, the second interpretation is unambiguously the right one. The only interpretation here that is consistent with *all* of the Bylaws – and, particularly, with Article V – is the interpretation that the Chairperson may not call special meetings without a prior request.

Article V, Section 3, subsection B states (with emphasis added) that:

> Special meetings of the Commission may be called *by the Chairperson, by written request of (2) Commissioners or upon petition of (10) residents*, 18 years of age or older, of the Commission area. No matter shall be considered at any special meeting except those stated in the request and notification. Regular meeting procedures shall be followed.[3]

There are two ways to read the first sentence if we read it by itself:

1. There are three ways to call a special meeting: (1) by the Chairperson; (2) by written request of two Commissioners; and (3) upon a residents' petition.

2. Special meetings are called by the Chairperson, and are called either: (1) by written request of two Commissioners; or (2) by a residents' petition.

As your Addendum notes, this sentence contains three prepositional phrases: "by the Chairperson," "by written request of (2) Commissioners," and "upon petition of (10) residents . . ." But that fact is not sufficient to determine whether this sentence establishes three parallel ways to call a special meeting. Indeed, these three phrases are *not* parallel. One of them ("by the Chairperson") identifies who calls a special meeting, but the other two ("by written request of (2) Commissioners" and "upon petition of (10) residents") do not. As your Letter notes, any special meeting that is called under this provision is called *by the Chairperson*.[4] Accordingly, the ambiguity remains.

While the first sentence is ambiguous, the second sentence clarifies it: "No matter shall be considered at *any* special meeting except those stated in *the request and notification*" (emphasis added). This sentence limits every special meeting, not just some, to matters described in "the request *and* notification,"[5] a limit that is only intelligible if each special meeting must be preceded not just by a notification,[6] but also by a request – in this case, a request from two

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[3] As the Bylaws are formatted, the first line of subsection (B) ends with the word "called," and after a full line space, the next line begins with the phrase "by the Chairperson." This formatting does not, however, appear to be by design. We have identified other instances of similar formatting that appear to carry no substantive significance. *See, e.g.,* Bylaws Article 5, Section 10, Subsection (C).

[4] *See* Smith Letter at 3 (reading the first sentence as three ways to call a special meeting means that the minority can "compel[] *the Chairperson* to call a special meeting") (emphasis added).

[5] Your Letter describes this provision as "limit[ing] the scope of the special meetings to the matters identified in the public notice *and/or* the request for the special meeting made by two ANC Commissioners or the public." Smith Letter at 4 (emphasis added; original underlining removed). There are Bylaw provisions that say "and/or." *See, e.g.,* Bylaws Art. III, Sec. 5 (referring to "the discussion *and/or* recommendation") (emphasis added). But Article V, Sec. 3 does not say "and/or"; it says "and."

[6] *See* Bylaws Art. V, Sec. 6 (Public Notice of Meetings).

Commissioners or ten community members. This provision therefore cannot be squared with the conclusion that the ANC may conduct a special meeting *without* a prior request.

Although the only plausible reading of Article V is that any special meeting requires a request from Commissioners or members of the public, your Letter suggests that this reading would conflict with Article IV, Section 7, Subsection A of the Bylaws.[7] We disagree. That provision states that:

> The Chairperson shall serve as the convener of the Commission and shall chair the Commission meeting. In addition, the Chairperson shall have the power to call special meetings of the Commission.

Your Letter notes that this provision empowers the Chairperson to "call" special meetings, not just convene them and does not explicitly limit that power.[8] Your Letter and Addendum therefore infer that if Article V had been intended as a limit on the Chairperson's Article IV power to call special meetings, Article IV would have mentioned that limit.[9] But the mere fact that one provision grants a power and does not identify specific limits on that power does not mean that other provisions do not limit that power or describe how it must be exercised. Indeed, other provisions in the Bylaws unmistakably limit the Chairperson's power to call special meetings. To name just one example, Article V, Section 6 of the Bylaws requires advance public notice of both normal and special meetings. Moreover, *either* reading of Article V would implicitly limit the Chairperson's authority. Our reading would imply that the Chair must satisfy one minor prerequisite in order to call a special meeting: a request, from either two Commissioners or ten residents. The reading reflected in your Letter and Addendum would limit the Chairperson's authority by imposing on him or her an obligation that no other Bylaw mentions: calling a special meeting whenever two Commissioners or ten community members seek one.

Our interpretation of the Bylaws implies that, in most cases, when Commissioners or residents request a special meeting, the Chairperson has the authority to decide whether that meeting will take place.[10] Your Letter maintains that this reading would contradict the clear intent of the Bylaws.[11] Article IV, Section 6, however, suggests precisely the opposite. Unlike Article V, Section 3, which outlines circumstances under which a special meeting "*may* be called," Article IV, Section 6 states that a special meeting "*shall* be called if at least one-half of the elected Commissioners request in writing that the Chairperson take such action" (emphases added). This language indicates that where the Bylaws sought to require the Chairperson to call a special meeting, they said so explicitly.[12]

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[7] *See* Smith Addendum at 2.

[8] *See* Smith Letter at 2.

[9] *See id.*; Smith Addendum at 2.

[10] *See* Smith Letter at 1.

[11] *See id.* at 3.

[12] The fact that Article IV, Section 6 of the Bylaws echoes existing law does not change this analysis. *See* D.C. Official Code § 1-309.11(e)(2)(B) (2012 Repl.) (a "special meeting to remove an officer shall be called if at least one-half of the elected Commissioners request in writing that the Chairperson take such action").

Your Letter advances a number of policy objections to our interpretation. First, your Letter argues that our interpretation of Article V, Section 3, Subsection B would "deny Commissioners in the minority the ability to bring forward issues of concern by compelling the Chairperson to call a special meeting," and would "raise a barrier for residents seeking to fully engage with the ANC and force the ANC to deal with issues that, perhaps, the Chairperson or the Commission as a whole would prefer to ignore." These consequences may be unfortunate, but, as a practical matter, would obtain regardless of our interpretation. No action can be taken in a special meeting unless a majority of Commissioners are present,[13] which means that a majority of Commissioners can prevent the Commission from acting simply by refusing to participate.

Second, you suggest that giving the Chair the power to call special meetings, while restricting the circumstances under which he or she can call those meetings, does not make sense. "Given that special meetings enable an ANC to focus on a single issue of importance, what interest is served by making it more burdensome to hold special meetings?"[14] We agree that there might be disadvantages to doing this, but there are also plausible reasons why an ANC might adopt this approach. It might wish to ensure that special meetings generally would not be called without the Chairperson's agreement, and that any proposed special meeting carried a modicum of support from Commissioners or the community. In any event, the question is not which interpretation embraces sounder public policy; the question is which interpretation is consistent with the actual governing language that the ANC has adopted.

Finally, your Letter maintains, as does the letter from Secretary Gates, that our opinion fails to give "due consideration . . . to the ANC's long standing practice that has recognized three ways for calling a special meeting."[15] We recognize that ANCs have often developed, through practice, ways of interpreting their bylaws. And had we concluded that your Bylaws were ambiguous, we would not have opined in favor of one interpretation or the other. We offered an opinion about the meaning of the Bylaws only because we concluded that the Bylaws were unambiguous with respect to the question that was raised.

We hope that this follow-up letter will be useful to you. If you have any questions, please contact Josh Turner, Assistant Attorney General, at 442-9834, or Janet M. Robins, Deputy Attorney General, Legal Counsel Division, at 724-5524.

Sincerely,

KARL A. RACINE
Attorney General for the District of Columbia

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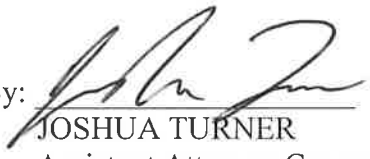
[13] *See* Bylaws Art. V, Sec. 2 ("No official action may be taken by the Commission unless a quorum shall be present. A quorum shall be a majority of the current Commission members, provided that a majority of the Single Member Districts within the Commission area has Commissioners").

[14] Smith Letter at 4.

[15] *Id.* at 5; *see* Gates Letter at 2 ("Until May 2, 2016, ANC 3D has operated with the belief the bylaws provide three different ways a special meeting may be called").

By: 
JOSHUA TURNER
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(AL-16-308 B)

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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PALISADES – KENT - SPRING VALLEY - WESLEY HEIGHTS - NEW MEXICO/CATHEDRAL – THE AMERICAN UNIVERSITY - FOXHALL VILLAGE -BERKELEY

June 15, 2016

Mr. Joshua Turner
Assistant Attorney General
Legal Counsel Division
Office of the Attorney General
441 4th Street NW
Washington, D.C. 20001

Re: June 13, 2016 OAG Letter On ANC 3D By Laws Provisions On Special Meetings

Dear Mr. Turner:

I want to express my appreciation again to you for taking the time yesterday to clarify your June 13, 2016 letter concerning the request to interpret sections of the Bylaws of Advisory Neighborhood Commission (ANC) 3D dealing with Special Meetings. I also appreciate that you see value in reexamining your opinion based on our conversation and please consider this a formal request, if one is necessary. It is my understanding that you also have spoken with Gottlieb Simon, the OANC Director, on this matter.

As we discussed yesterday, I believe the June 13 opinion is flawed; does not hold up under scrutiny; and is inconsistent with the Commission's long standing practices – that have served the Commission well for more than 11 years – for convening special meetings.

I concur with your fundamental view that Article IV ("Officers") , Section 7 ("Duties of the Chairperson), subsection (A) and Article V ("Meetings"), Section 3 ("Types of Meetings"), subsection (B) cannot be viewed independently or in isolation. However, those sections also cannot be viewed jointly in isolation either; but rather, they, too, must be viewed within the totality of the Bylaws document.

I do not agree with your view that Article V, Section 3, subsection (B) exists solely to qualify the Chairperson's authority to call a special meeting – while at the same time granting the Chairperson unilateral authority to reject a request for a special meeting if a special meeting is requested in writing by two Commissioners or ten residents.

First, it is important to note that Article IV ("Officers"), Section 7 ("Duties of the Chairperson"), subsection (A) begins by stating: "The Chairperson shall serve as the convener of the Commission and shall chair the Commission meetings." It does not make a distinction among meetings, so it is reasonable to conclude that the Chairperson is authorized under this language to convene all meetings, including special meetings. However, then the language outlines an added duty of the Chairperson when it states: "Additionally, the Chairperson shall have the power to call special meetings." It is significant that this language uses the word "call" instead of "convene" suggesting that the Chairperson has some added role to play within the context of special meetings beyond procedural issues tied to convening a meeting.

It is also significant that the language – which is included in a section entitled "Duties of Chairperson" states the Chairperson "**shall have the power** to call special meetings." By specifically using the words **"shall have the power,"** Article IV grants authority to the Chair. Your opinion has glossed over the language "shall have the power." In fact, it is the only place in the Bylaws where the words "shall have the power" is used giving this duty some added significance within the Bylaws. In outlining any other duties for Officers or outlining any responsibilities of the Commission as a whole, the words "shall have the power" are not used. It is only used in reference to the role of the Chairperson in **calling** – not just **convening** – special meetings. If "shall have the power" has no meaning, the Bylaws would have read "shall call special meetings" or "shall convene special meetings." But, that is not the language used in the Bylaws.

It is also significant to note that this language outlining the duties/authority of the Chairperson is not followed up with any language limiting that authority, such as "in accordance with Article V, Section 3 subsection (B)" which would have been expected **if** the intent of the Bylaws was to use the Article V language to deny the Chairperson the power to call a special meeting that is specifically granted in Article IV; impose conditions on the Chairperson's authority; **or** to conclude that Article V, Section 3, subsection (B) existed only for the purpose of prescribing the process for a Chairperson to call a special meeting, as you suggest in your June 13 opinion letter.

To suggest then that Article V. Section 3, subsection (B) serves as a limitation on the "power of the chairperson" seems to be reading something into the Bylaws that does not exist. In fact, the title of Article V. Section 3 is "Types of Meetings" and identifies the various types of meetings that the Commission can hold. The language offers a profile of the types of meetings, not a definitive set of procedures for holding those meetings. These procedural issues are covered under different and separate sections of Article V (e.g. Meeting Places; Public Notice of Meetings; Hearing of Resident Views etc.).

You have interpreted Article V as existing for the purpose of limiting the ability of the Chairperson to call a special meeting. Yet, there is no language to suggest that. In fact, the absence of any qualifying language in Article IV would seem to reinforce the fact that Article V was not intended to limit the "duties" of the Chair to **call** (as opposed to **convene**) special meetings. Rather, the language in Article V seems to exist for the purposes of outlining two additional ways – beyond being called by the Chairperson – that special meetings of the ANC may be called. Those two additional ways have the effect of empowering a minority of Commissioners and/or residents of the ANC 3D and is consistent with the Commission's

interpretation of the language going back at least to 2005 if not back to 1998 when these bylaws were first written. This complements and is consistent with the interpretation of language in Article IV that grants the Chairperson the power to call special meetings.

The Bylaws language offers as much reason for the conclusion that the Bylaws outlines three ways a special meeting may be convened as the conclusion you reached in your opinion letter of June 13, 2016.

The absence of a comma in Article V was the primary argument advanced by three ANC Commissioners when they challenged the interpretation of the Bylaws and the ability of the Chairperson to call a special meeting. You already have determined that the absence of a comma is "not decisive" in the interpretation of the language largely because the Bylaws are not consistent with its use of the "Oxford comma." So, the absence of the comma does not conflict with the long-standing interpretation of the ANC Bylaws that identify three ways for calling a special meeting: (1) reinforcing the "power" granted in Article IV to the Chairperson; (2) by written request of two Commissioners; and (3) by a residents' petition.

I concur with your view that the absence of the comma is not definitive and, in itself, creates some ambiguity. But, long-standing practice has shown that the ANC has interpreted Article V to provide three methods for calling a special meeting, as outlined above. Although the ANC has revised some provisions of its bylaws over the last ten years, this provision is not one that has been altered at least since the last major bylaws revision in 2005.

The distinctions you make in Article V between the words "request" and "call" also lead to a conclusion that may have particularly unfortunate consequences for an ANC and the residents it represents. But, it also may be reading something into the Bylaws that was never intended and not supported by the totality of the Bylaws language. Your assessment of the use of those words – which could only apply if there is a conclusion that Article V is a qualifier that limits the "power" of the Chair – creates the unusual paradox of limiting the Chairperson's power outlined in Article IV to call a special meeting, but then granting authority for the Chairperson to reject a request for a special meeting by two Commissioners or ten residents. The ANC's bylaws have never been interpreted this way over the last fifteen years. This would not seem to be a reasonable objective of the ANC in crafting its Bylaws language.

So, in effect, you grant new powers to the Chairperson that are inconsistent with past practice of the Commission; deny Commissioners who may be in the minority the ability to bring forward issues of concern by compelling the Chairperson to call a special meeting; and raise a barrier for residents seeking to fully engage with the ANC and force the ANC to deal with issues that, perhaps, the Chairperson or the Commission as a whole may prefer to ignore. This language was intended to protect the rights and interests of all Commissioners – even if they hold minority views – and the public interest. Of course, there are other ways for Commissioners and the public to shape the ANC, including through the elections process.

Although Article IV, Section 7, subsection (A) states the Chairperson "shall have the power to call special meetings," there is nothing in the language that suggests this is exclusive. For example, the language does not read: "Only the chairperson shall have the power to call special

meetings." In fact, the language of Article V supports the notion that this "power" is not exclusive, especially if the determination is made that the absence of the Oxford comma is not defining.

Why would the bylaws give the Chairperson power to veto a request for a special meeting, but limit the Chairperson's authority to call a special meeting when the Bylaws specifically state that the Chairperson "shall have the power to call a special meeting?" Where in the Bylaws does it suggest the Chairperson has the power to reject a request for a special meeting? And why would the Bylaws seek to make it more difficult to convene special meetings when there is no language that prevents the ANC from holding "additional" meetings? The ANC can simply hold additional meetings to manage its workload.

The value of special meetings is that the language limiting the scope of the special meetings enables the Commission to focus solely on the purpose of the special meeting rather than be open to conduct any and all business of the ANC. <u>This is also the significance of the language in the bylaws that limits the scope of the special meetings to the matters identified in the public notice and/or the request for the special meeting made by two ANC Commissioners or the public.</u>

Given that special meetings enable an ANC to focus on a single issue of importance, what interest is served by making it more burdensome to hold special meetings? If the objective is to limit the power of the Chairperson as a check and balance, that objective is more easily met by Commissioners refusing to attend the special meeting so that no quorum exists rather than creating a limitation on the power of the Chairperson to convene a special meeting or grant new authority to the Chairperson to reject a request for a special meeting that is not more clearly defined in the Bylaws.

The conclusion outlined in the June 13 opinion letter only holds if you accept that Article V, Section 3, subsection (B) exists only for the purpose of qualifying the "power" of the Chairperson. But, this requires reading into the bylaws language something that is simply not there, which explains why it does not conform to long standing practices of the ANC. It would seem that the only way the bylaws could be read definitively to impose such a qualification of the "power" of the Chairperson would be conclude that the Oxford comma is "defining," but that conclusion would not stand the test of scrutiny when considering the totality of the Bylaws language.

Although I can understand the rationale you have outlined in your opinion, I do not concur with your view that the bylaws are "unambiguous," especially given the opinion you have put forward. The June 13 opinion's particular reliance on the use of the words "request," "call," and "petition" and the use of the word "and" in the phrase "request and notification" may create some ambiguity in the meaning of the Bylaws, but they are not definitive to characterize the intent of Article V, Section 3, subsection (B) as limiting the duties of the Chairperson, especially within the context of the totality of the Bylaws.

Finally, it was helpful to hear from you that the OAG opinion "is not a binding force" on the ANC and that the ANC has "no independent legal requirement to follow the opinion" you have provided. As you explained, actions taken inconsistent with statute would be "illegal;" but the

same cannot be said about actions taken by the ANC that may be perceived as being inconsistent by some with its bylaws. At the end of the day, it falls to the Commission as a whole to interpret its Bylaws.

It is not good practice for an ANC to act in contravention of its bylaws; but the conclusion that the meeting was "not lawfully convened," as outlined in your opinion, may not be appropriate given the ANC has no "legal requirement" to adhere to the opinion. Holding an "illegal meeting" is different than holding a meeting that some Commissioners may perceive as being in conflict with the ANC's Bylaws. The fact that such opinions are not binding raises questions about why the OAG even takes the time to entertain requests from ANC Commissioners to interpret ANC bylaws.

An inordinate amount of time has been spent by the OAG and ANC 3D over the last year on matters relating to interpretation of the ANC 3D Bylaws. It hardly seems a useful expenditure of the city's tax dollars. Creating a perfect and unambiguous set of Bylaws – immune to conflicting interpretations – is not the driving force outlined in statute for the existence of the ANCs, if such a goal was even possible.

Perhaps, it would be a better use of the OAG's time to defer interpreting ANC Bylaws unless the request is made by a majority vote of the ANC, so that such interpretations are not used as a wedge in internal policy disputes within an ANC on a neighborhood issue – as is the case in this matter.

In conclusion, I believe – taking both Article IV and V together and examining those sections within the context of the totality of the Bylaws – the Chairperson has the "power" to call a special meeting and that a special meeting may be convened by the Chairperson also when two Commissioners make such a request and when 10 residents submit a petition making such a request.

Moreover, the interpretation of ANC 3D's Bylaws advanced in your June 13 letter suggests a level of ambiguity in the language that I had not anticipated or read into the Bylaws suggesting that due consideration also then should be given to the ANC's long standing practice that has recognized three ways for calling a special meeting.

Thank you again for your willingness to work through these issues with ANC 3D.

Sincerely,

Tom Smith

Thomas M. Smith
Chair, ANC 3D

cc: Gottlieb Simon
ANC 3D Commissioners

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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PALISADES – KENT - SPRING VALLEY - WESLEY HEIGHTS - NEW MEXICO/CATHEDRAL – THE AMERICAN UNIVERSITY - FOXHALL VILLAGE -BERKELEY

June 15, 2016

Mr. Joshua Turner
Assistant Attorney General
Legal Counsel Division
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1350 Pennsylvania Avenue NW, Suite 409
Washington, D.C. 20004

Re: Addendum -- June 13, 2016 OAG Letter On ANC 3D By Laws Provisions On Special Meetings

Dear Mr. Turner:

As you know, I sent you a letter earlier today formally requesting that you reconsider the June 13, 2016 OAG opinion letter concerning sections of the Bylaws of Advisory Neighborhood Commission (ANC) 3D dealing with Special Meetings. I wanted to add briefly to that analysis of the Opinion Letter and the ANC 3D Bylaws outlined in my letter to you earlier today.

As you know, Article IV, Section 7, subsection (A) consists of two sentences:

> "The Chairperson shall serve as the convener of the Commission and shall chair the Commission meetings. In addition, the Chairperson shall have the power to call special meetings of the Commission."

You have interpreted Article V, Section 3, subsection (B) in such a way as to suggest that it outlines limits on the Chairperson's authority: that is, that a Special Meeting can be called by the Chairperson only upon written request of two Commissioners or upon petition of 10 residents of the Commission area.

If the interpretation outlined in your June 13 letter is correct, then the second sentence of Article IV, Section 7, subsection (A) is rendered meaningless in that the first sentence already conveys the authority of the Chairperson to "chair Commission meetings." It would not need to exist. This reinforces the notion that Article V outlines three ways that a special meeting can be called:

Special meetings may be called **BY** the Chairperson, **BY** written request of two Commissioners, or **UPON** petition of 10 residents of the Commission area.

The construction of the sentence in Article V – putting emphasis on the prepositional phrases –

- By the Chairperson
- By written request of two Commissioners
- Upon petition of 10 residents

reinforces the view that Article V outlines three ways that special meetings can be called by the ANC. This is as reasonable an explanation of the bylaws as to suggest that phrases 2 and 3 somehow limit the authority of the Chairperson to call a special meeting.

Second, an examination of other subsections in Article IV, Section 7 include language that qualifies the authority of the chairperson granted in that subsection. For example, subsection (B) notes that rulings of the Chairperson can be overturned by a majority vote of the Commission. Subsection (C) specifies that he Chairperson is responsible for supervising staff "except as otherwise indicated in these bylaws."

These are explicit limits on the duties of the Chairperson outlined in Article IV. If the power of the Chair to call special meetings is to be so limited, it would be reasonable to conclude – based on the other language in Article IV, Section 7 – that such limitations would be included or referenced in subsection (A) as opposed to a later section of the Bylaws whose purpose is to discuss Meetings (not duties of Officers).

Interpreting Article V, Section 3, subsection (B) to include a limit on the Chairperson's authority to call a special meeting would put the Bylaws in conflict. Interpreting Article V, Section 3, subsection (B) as providing three ways for special meetings to be called does not create conflict in the Bylaws and would be consistent with the language of the second sentence of Article IV, Section 7, subsection (A) stating that the Chairperson shall have the additional power to call special meetings.

The interpretation I have advanced is just as reasonable – just as feasible – and supported by more than 11 years of practice by ANC 3D – as the interpretation proffered in the June 13 Opinion Letter.

Again, thank you for your consideration.

Sincerely,

Thomas M. Smith
Chair, ANC 3D

cc: Gottlieb Simon

ANC 3D Commissioners

4911 Ashby Street, NW
Washington, DC 20007

June 17, 2016

Joshua A. Turner
Assistant Attorney General
Legal Counsel Division
Office of the Attorney General for the District of Columbia
1350 Pennsylvania Avenue NW
Washington, D.C. 20004

RE: Lawfulness of (ANC 3D) April 25, 2016 Special Meeting

Dear Mr. Turner:

The interpretation provided by the Office of the Attorney General of ANC 3D's Bylaws with regard to the authority of the Chair to call a special meeting is a disappointment, wrong and in need of prompt reconsideration.

Many ANCs in the District of Columbia rely on special meetings for a variety of reasons; and, the elected Chair of a Commission is recognized as the person responsible for leadership of the commission. To ensure ANC 3D leadership, the election of officers takes place at the first meeting of the commission each January (Article IV, Section 1). Once elected, the chair and officers assume the duties outlined in Article IV of the commission's bylaws. The duties of the chair are found under Article IV, Section 7.(A) and Article V, Section 3.(B). The chair is defined as the convener of regular and special meetings.

Since early 2000, when I was first elected to ANC 3D, there has not been the level of toxicity which currently exists within the commission and it has remained constant since January of 2015. As might be gathered from the May 2, 2016, letter, the request for an opinion has as much to do with discrediting the chair as it does with actual interpretation of ANC 3D's Bylaws.

The filing of the letter coincides with the inability of Commissioner Spencer to attend the April 25th special meeting of ANC 3D. The subject property of that meeting is not located in the commissioner's Single Member District and for that

matter, Commissioner Spencer does not live in Palisades, although he lists his involvement in Palisade's activities which continue in spite of the fact he is an elected ANC Commissioner representing a different area of the commission.

The proposed historic designation was something about which Commissioner Spencer has strong feelings and seems compelled to pursue at the cost of the reputation and standing of the ANC Chair and ANC 3D itself. The purpose of the May 2, 2016 letter was intended to undo the vote taken by ANC 3D on April 25, 2016, however, your letter indicates that should not happen.

With regard to the interpretation of the bylaws and the issue of the comma, there was a time when a third comma was used to separate a series of words or phrases; however, current editorial style removes the third comma because it is regarded as unnecessarily redundant when used in addition to a conjunction. The conjunction is regarded as sufficient to separate the final word or phrase in a series. The lack of the third comma is reflected in ANC 3D's Bylaws in Article V. Section 3.(B) and is replaced with the conjunction "or"; nevertheless, the division of phrases is intended to define three different ways a special meeting of ANC 3D may be called. Until May 2, 2016, ANC 3D has operated with the belief the bylaws provide three different ways a special meeting may be called:

1) by the Chairperson,
2) by written request of two (2) Commissioners **or** (emphasis added)
3) upon petition of (10) residents, 18 years of age or older, of the Commission area.

Article IV, Section 7.(A), states the chairperson has the power to call special meetings of the Commission. This power is repeated in Article V. and is one of the three different ways a special meeting may be convened. The use of the conjunction "or" in Article V has been overlooked. Like the missing comma, it gives equal weight to each provision and delineates three ways a special meeting may be called rather than limiting the process. It also ensures the power of the chair is not used to block the ability of other commissioners or members of the community to request a special meeting.

During my four-terms as Chair of ANC 3D, I called a number of special meetings and no one, including Commissioner Ross, ever questioned that authority because commission members recognized the authority or power granted to the chair by the bylaws; and, there was respect for the chair.

Both Commissioners Spencer and Gardner are in their first terms on ANC 3D and have failed to show respect for the chair, the commission, the ANC bylaws or their fellow commissioners. Commissioner Ross, a seasoned attorney, is the third most senior member of the commission, and while he has participated in many special meetings convened by an elected chair, only now finds need to have the bylaws interpreted with regard to special meetings. Also, Commissioners Spencer, Gardner and Ross did not question the power of the chair when an earlier special meeting was called to consider a zoning matter; but, did feel the need when Commissioner Spencer could not attend the special meeting in late April. It should be noted that Commissioner Spencer has not been present at a meeting of ANC 3D since April 6, 2016.

Mr. Turner, I fear you have walked into the proverbial "hornet's nest." The interpretation sought by Commissioners Spencer, Gardner and Ross has little to do with interpretation of ANC 3D's bylaws. Rather, this is an attempt to overturn actions taken by ANC 3D as well as to the chair of the commission.

Please reconsider the opinion provided in your letter of June 13, 2016 to ANC 3D.

Sincerely,

Alma H. Gates

Alma H. Gates
Secretary and 3D05

cc: Gottlieb Simon