

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL**



**ATTORNEY GENERAL
KARL A. RACINE**

November 10, 2016

Commissioners
Advisory Neighborhood Commission 3D
P.O. Box 40846 Palisades Station
Washington, DC 20016

Re: Immediate Office Review of ANC3D's Bylaws Concerning Special Meetings

Commissioners:

Chairperson Smith requested that the Immediate Office reexamine¹ the Legal Counsel Division's (LCD) written advice that Advisory Neighborhood Commission 3D's (ANC) Bylaws unambiguously require a request from two Commissioners or a petition from ten residents before the Chairperson may call a special meeting. This matter began on May 2, 2016, when Commissioners Spencer, Gardner, and Ross presented this question to LCD. On June 13, 2016, LCD advised that the Chairperson could not call a special meeting without an antecedent request. Chairperson Smith formally asked LCD to reconsider that advice on June 15, 2016, and after thorough review, LCD reaffirmed its advice on July 11, 2016. Chairperson Smith then requested the Immediate Office to reexamine that conclusion.

Immediate Office Review

In accordance with Chairperson Smith's request, the Immediate Office reviewed LCD's advice. In sum, the Immediate Office concludes that ANC3D's Bylaws can reasonably be read to allow the Chairperson to call a special meeting without any prior request.

Two provisions of ANC3D's Bylaws describe how special meetings may be called. Article IV, Section 7 vests the Chairperson with the "power to call special meetings of the Commission." And Article V, Section 3(B) states that:

Special meetings of the Commission may be called by the Chairperson, by written request of two (2) Commissioners or upon petition of ten (10) residents, 18 years

¹ Commissioner Spencer also asked me to offer guidance on how our office will approach requests for reconsideration going forward. The Attorney General reserves discretion to reexamine any legal advice that this office has supplied to an ANC or its Commissioners.

or older, of the Commission area. No matter shall be considered at any special meeting except those stated in the request and notification.

The first sentence of Section 3(B) is ambiguous because there is no comma between “request of two (2) Commissioners” and “or upon petition of ten (10) residents.” Consequently, this sentence could be read to mean that the Chair may only call a special meeting if other Commissioners or ANC residents request one. It could also, however, be read in conjunction with Article IV, Section 7 to mean that the Chairperson has the power to call a special meeting, and even if a Chairperson does not call a special meeting, two Commissioners (by request) or ten residents (by petition) may nonetheless call one.

This plausible reading would preserve the Chairperson’s authority to call a special meeting because it would not make that authority hinge on whether other Commissioners or ANC residents asked the Chairperson to call a meeting. It would also ensure that Section 3(B) serves as an effective check against abuses of special meetings. It would check the Chairperson because no Chairperson could obstruct a special meeting if other Commissioners, or ANC residents, believe such a meeting to be necessary and appropriate.² Indeed, whenever two or more Commissioners (or ten or more residents) object to the date of a special meeting called by the Chairperson, they could call one themselves. This plausible reading would also prevent abuses more generally by limiting the scope of any special meeting. Because no matter may be considered in any special meeting “except those stated in the request and consideration,” no special meeting could include matters not mentioned in the public notice for that meeting,³ and no special meeting requested by Commissioner or residents could exceed the scope of what was requested.

This reading also has the benefit of being consistent with the past practice of this and other ANCs. Based on the information that Chairperson Smith and Commissioner Gates have provided, Chairpersons of ANC3D have relied on their authority to call special meetings at least five times before. Moreover, my understanding is that ANCs commonly authorize their Chairpersons to call special meetings without requiring a prior request. It would be unusual, therefore, for an ANC to deny its Chairperson that authority.

Conclusion

Because ANC3D’s Bylaws can reasonably be read to permit the Chairperson to call a special meeting without any prior request, it is for ANC3D, not this office, to determine whether that

²While this reading would permit a Chairperson to schedule a special meeting when dissenting Commissioners were unavailable, *any* reading of the Bylaws would permit that as long as at least two Commissioners supported that course of action. Conversely, a majority of Commissioners can always prevent an unwanted special meeting by ensuring that the meeting lacks a quorum. *See* Bylaws Art. V, Sec. 2.

³ *See* Bylaws Art. V, Sec. 6 (“Public Notice of Meetings”).

Commissioners
Advisory Neighborhood Commission 3D
November 10, 2016
Page 3

interpretation is correct.⁴ The Bylaws do not unambiguously require the Commission to alter the status quo by reexamining its decision in the special meeting to recommend historic designation for the Palisades Playground and Field House. Since the Bylaws are ambiguous, however, we would recommend that the Commission consider amending them to avoid unnecessary uncertainty.

Sincerely,

A handwritten signature in blue ink that reads "Karl A. Racine" followed by a stylized signature that appears to be "by NOL".

Karl A. Racine
Attorney General for the District of Columbia

⁴ See Letter to Tom Smith, Chairperson, ANC 5D, July 1, 2014 (“if a bylaw provision is ambiguous, it is proper to resolve the ambiguity through a majority vote of the ANC (or amend the bylaw)”); HENRY M. ROBERT III *ET AL.*, ROBERT’S RULES OF ORDER NEWLY REVISED (“Robert’s Rules”) 588 ln. 25 (11th ed. 2011) (“[e]ach society decides for itself the meaning of its own bylaws”).