

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL
KARL A. RACINE

Legal Counsel Division

September 14, 2022

Paul Johnson
Commissioner, ANC 4C07
4418 5th Street, N.W.
Washington, D.C. 20011

Re: Proposed Bylaw Concerning Representation of ANC

Commissioner Johnson:

You asked whether a bylaw that will come before your ANC at tonight’s meeting raises legal concerns. It does. Its language is unclear, and its intent appears contrary to the requirements of the Advisory Neighborhood Commissions Act of 1975 (“ANC Act”).¹ It appears to give ANC officers authority that only the ANC as a whole may exercise: selecting the ANC’s representative in a matter.

The proposed bylaw language—a new section 2.05 that appears not to be divided into distinct provisions —says that, if a “Commissioner is non-responsive to items in their own single-member district where the ANC is given party status[,] a majority of the Commission Officers may request other Commissioners intervene to fulfill those duties.” It elaborates that “[t]his will be limited to items where there is an application before an agency or quasi-agency, with a hearing or review date, and the ANC is party to the case.” “Those shall only be,” it says, zoning cases; public-space permit matters; Alcoholic Beverage Regulation Administration license requests, renewals, or protests; or Historic Preservation Review Board cases. Whenever this situation arises, the “Officers shall notify the full Commission of their decision and inform the Commission which Commissioner, or Commissioners, will be intervening on behalf of the Commission.” The selected commissioner or commissioners will then take over the matter unless a majority of the ANC votes otherwise.

The scope of this proposed bylaw is somewhat vague. For example, it is not entirely clear what it means for a commissioner to be “non-responsive to items in their own single-member district,” or what it means for one or more Commissioners to “intervene to fulfill those duties.” It is possible this language was meant to refer specifically to a commissioner’s failure to diligently represent the ANC in the relevant administrative proceedings – especially since any broader

¹ Effective October 10, 1975 (D.C. Law 1-21; D.C. Official Code § 1-309.01 *et seq.*).


scope could exceed an ANC's limited authority to regulate the conduct of independently elected Commissioners.² If this narrow focus is the intent, the language needs to be clarified accordingly.

This proposed bylaw also raises a separate concern: it appears to give ANC officers the authority to choose who will represent the ANC, subject only to an affirmative veto by the ANC. The ANC Act authorizes ANCs to select, by a vote in a public meeting, who will represent them in particular proceedings.³ If the ANC has selected a representative in a particular matter, that selection can only be undone by a vote of the ANC; it cannot be undone by the decision of one or more ANC officers. (And if the ANC's representative in a particular matter or type of matter is set forth in express bylaw provisions, that selection could not be undone without a bylaw amendment.⁴) As we put it in a 2019 letter, "a Commissioner generally may not speak or act on behalf of his or her ANC without the ANC's authorization."⁵ This echoes our prior letters observing that the power to govern ANC affairs generally rests with the ANC as a body, not with any one commissioner. For example, we observed in a recent letter to the Office of Advisory Neighborhood Commissions that "a single Commissioner has no authority to determine how ANC funds will be spent within that Commissioner's single-member district, or to offer recommendations entitled to great weight about policies affecting that district," since "[a]ny ANC authority on those and other matters within a single-member district is exercised by the ANC as a body."⁶ For this proposed bylaw to be permissible, it would need to be revised so that the power to select a replacement representative when necessary rests with the ANC.⁷

Please let us know if you have further questions on this matter, including about any updated version of this proposed bylaw.

Sincerely,

KARL A. RACINE
Attorney General for the District of Columbia

By: 
JOSHUA TURNER
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(AL-22-469)

² See, e.g., Letter to Comm'r Campbell, May 17, 2022. This letter and others this Office has issued are available from <https://oag.dc.gov/about-oag/laws-and-legal-opinions/legal-advice-ancs> (last visited Sept. 14, 2022).

³ See D.C. Official Code § 1-309.11(e)(1A)(E).

⁴ See *id.* § 1-309.11(d).

⁵ Letter to Comm'r Hanlon, Dec. 6, 2019, at 1.

⁶ Letter to Schannette Grant, Mar. 15, 2022, at 2.

⁷ The ANC should also ensure that any process of exchanging one representative in an administrative matter for another conforms to any requirements in the statute and rules governing that type of matter.