

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL
BRIAN L. SCHWALB

Legal Counsel Division

April 13, 2023

Trupti J. Patel
Commissioner, ANC 2A
950 25th St., N.W.
Washington, D.C. 20037

Re: Removal of ANC Chairperson

Commissioner Patel:

You have asked us four questions about the removal of an Advisory Neighborhood Commissioner from their position as Chairperson, requiring a legal interpretation of the Advisory Neighborhood Commissions Act of 1975 (“ANC Act”).¹ Two of these questions involve the requirements for removing a Chairperson in a special meeting, and two pertain to a separate, regular meeting of the Advisory Neighborhood Commission (“ANC”). This letter responds to your questions, in keeping with this Office’s statutory function of “provid[ing] legal interpretations of statutes concerning or affecting the Commissions, or of issues or concerns affecting the Commissions.”²

I. Removal of the Chairperson

We start with your two questions about removing a Chairperson:

- (1) If 5 Commissioners request a special meeting to seek the Chairperson’s removal, may the Chairperson decline to call that meeting? **No**
- (2) Must the request for that meeting be in writing, or is an oral request sufficient? **A written request is required.**

Both answers follow from section 14(e)(2) of the ANC Act (D.C. Official Code § 1-309.11(e)(2)). Section 14(e)(2) makes clear that the “[r]emoval of any officer shall be undertaken at a special Commission meeting.”³ That meeting “shall be called if at least one-half of the elected

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

² D.C. Official Code § 1-309.12(d)(4). This function, one of the “powers afforded the Attorney General by the common and statutory law of the District,” is part of this Office’s “charge and conduct of all law business” of the District. *Id.* § 1-301.81(a)(1).

³ *Id.* § 1-309.11(e)(2)(A).

Commissioners” (here, 5 of 9 elected Commissioners)⁴ “request in writing that the Chairperson take such action.”⁵ The word “shall” is mandatory; the Chairperson cannot refuse to call a meeting if 5 Commissioners so request.⁶ And the Commissioners must request this meeting “in writing”; an oral request is not sufficient.⁷

II. Conduct of the upcoming regular ANC meeting

Your other two questions concern a regular ANC meeting that is scheduled for later this month:

- (1) Assuming this regular meeting precedes any special meeting to remove the Chairperson, may the ANC vote to have the Vice-Chairperson preside over the regular ANC meeting in the Chairperson’s stead? **No.**

Under section 14(e)(2)(C) (D.C. Official Code § 1-309.11(e)(2)(C)), the Vice Chairperson presides over any special meeting to remove the Chairperson. Outside that context, however, the Vice Chairperson has no authority to act in the Chairperson’s stead except “upon the absence, death, incapacitation, or resignation of the Chairperson.”⁸ Accordingly, if the Chairperson is not incapacitated, has not resigned, and attends the upcoming regular meeting, the Chairperson, not the Vice Chairperson, must preside over the meeting. Otherwise, the Vice Chairperson must preside. In either case, the Vice Chairperson’s authority is determined by law and cannot be altered by a vote of the ANC.

- (2) If there is no quorum for that meeting, must it be open to the public? **No.**

Under section 14(g) of the ANC Act (D.C. Official Code § 1-309.11(g)), no ANC meeting, including a meeting of an ANC committee, “may be closed to the public unless personnel or legal matters are discussed.” We have advised, however, that a meeting of the ANC consists of a quorum of Commissioners convened (in-person or online)⁹ to conduct official business.¹⁰ This means that, absent a quorum, there is no meeting of the ANC, and no official action may take

⁴ See <https://anc.dc.gov/page/advisory-neighborhood-commission-2a>.

⁵ D.C. Official Code § 1-309.11(e)(2)(B).

⁶ See *Williams v. United States*, 33 A.3d 358, 360 (D.C. 2011) (“Verbs such as ‘must’ or ‘shall’ denote mandatory requirements unless such construction is inconsistent with the manifest intent of the legislature or repugnant to the context of the statute”) (cleaned up; internal citation omitted); Council of the Dist. of Columbia, Legislative Drafting Manual at 86 (2019 ed.) (“Use ‘shall’ to express a duty, obligation, or requirement”).

⁷ At the same time, since nothing in this language specifies whether meeting requests must be grouped; it leaves the requesting Commissioners with the discretion to choose whether to submit separate written requests or a single, combined request.

⁸ *Id.* § 1-309.11(e)(1A)(B).

⁹ See Letter to Gottlieb Simon, Mar. 24, 2020, at 2, available at <https://oag.dc.gov/sites/default/files/2021-01/ANC-%20Letter%20Regarding%20Open%20Meetings%20and%20Videoconferencing.pdf> (noting that a virtual meeting of the ANC could fairly be considered a “meeting” for the purposes of Home Rule Act open meetings requirements that ANCs must follow).

¹⁰ See, e.g., Letter to Gottlieb Simon, July 21, 2017, at 4, available at <https://oag.dc.gov/sites/default/files/2018-02/ANC-July-21-2017-Open-Meetings-Question.pdf> (“ANC planning meetings involving a quorum of Commissioners ‘must be open to the public, unless there are matters discussed regarding personnel or legal issues’”) (quoting an earlier letter).

place.¹¹ Of course, the fact that open meetings requirements apply to committee meetings as well means that, if a group of Commissioners meet, and they do not form a quorum for a full ANC meeting but do form a quorum for a committee meeting, any committee business they conduct must be open to the public unless legal or personnel matters are discussed.

Sincerely,

BRIAN L. SCHWALB
Attorney General for the District of Columbia

By: *Joshua A. Turner*
JOSHUA A. TURNER
Assistant Attorney General
Legal Counsel Division

(AL-23-273)

¹¹ See D.C. Official Code § 1-309.11(b)(1) (the ANC may “declare a quorum and take official action” only when a “majority of single-member district Commissioners of the Commission is present”).