

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



**ATTORNEY GENERAL
KARL A. RACINE**

Legal Counsel Division

June 29, 2021

Paul Johnson
Chairperson, ANC 4C07

Re: Reconsideration of Whether an ANC 4C Chairperson May Be Removed at Will

Commissioner Johnson:

In a recent letter, explaining what an Advisory Neighborhood Commission (“ANC”) must do in order to remove its Chairperson for cause,¹ we advised that a Chairperson may instead be removed at will, relying on section 14(e)(2) of the Advisory Neighborhood Commissions Act of 1975 (“ANC Act”),² which says that, to remove an officer, a majority of Commissioners must request a special meeting, a special meeting must be held, and a majority must vote to remove the officer. You have asked us to reconsider whether this conclusion applies to your ANC, and to do so on an expedited basis, since a special ANC meeting on this matter is scheduled for July 12. In support of this request, you have also offered thoughtful commentary on the statute, Robert’s Rules, and your ANC’s Bylaws. Taking these all into consideration, we nonetheless conclude that in your ANC, as in others, Chairpersons and other officers may be removed at will.

Since section 14(e)(2) involves ANC officers, we start with some background on those officers. Each January, an ANC must “elect from among its members” a “Chairperson, Vice-Chairperson, Secretary, and Treasurer,” as well as “any other officers that the Commission deems necessary.” D.C. Official Code § 1-309.11(e)(1). The Chairperson convenes the Commission and chairs Commission meetings; the Vice-Chairperson fulfills the Chairperson’s obligation if the Chairperson dies, resigns, is absent, or is incapacitated; the Secretary carries out responsibilities related to minutes, meeting notices, and transmission of ANC recommendations; and the Treasurer carries out responsibilities described in section 16 of the ANC Act. *Id.* § 1-309.13(e)(1A)(A)-(D). ANC officers, like their fellow Commissioners, are elected volunteers. “Except for out of pocket expenses approved by the Commission, Commissioners shall not be compensated for personal services rendered on behalf of the Commission.” *Id.* § 1-309.13(o).

¹ We do not now, just as we did not then, weigh in on whether “cause” would be present in any particular case. That would be a matter for your ANC not us, to determine.

² Effective Mar. 26, 1976 (D.C. Law 1-58; D.C. Official Code § 1-309.11(e)(2)); *see* Letter to Comm’r Johnson, June 14, 2021 (on file).

Until 2000, the removal of Commissioner officers was governed by Robert’s Rules of Order, (which applies “[w]here not otherwise provided,” *id.* § 1-309.11(e)(3)), and by each ANC’s bylaws. So, for instance, when we reviewed whether ANC 6A had the authority to remove its Chairman, we examined what Robert’s Rules and the ANC 6A bylaws required. *See* Letter to Comm’r Ventura, Apr. 26, 1999.³ That changed, however, when the Council adopted the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000 (“2000 Act”),⁴ the omnibus legislation that added section 14(e)(2) to the ANC Act. According to the committee that recommended the 2000 Act, this new provision was intended to “establish[] the procedure for the removal of a Commission officer.”⁵ Accordingly, as we wrote in an August 21, 2001 letter to Commissioner Fields, “[r]emoval of an officer is governed by” section 14(e)(2).⁶

Section 14(e)(2) sets out a straightforward, streamlined removal process. An officer may only be removed “at a special Commission meeting.” D.C. Official Code § 1-309.11(e)(2)(A). Such a meeting must be called “if at least one-half of the elected Commissioners request in writing that the Chairperson take such action.” *Id.* § 1-309.11(e)(2)(B). The Chairperson must “schedule the meeting to take place within 30 days of receipt of the request,” and must preside over that meeting unless the Chairperson’s own position is at issue. *Id.* § 1-309.11(e)(2)(B) and (C). If a quorum is present at that meeting, “the vote of a majority of the Commissioners shall remove the officer from his or her office.” *Id.* § 1-309.11(e)(2)(D).

To determine what this language means, we apply ordinary rules of statutory interpretation. We read section 14(e)(2) “according to its terms,” *Intel Corp. Inv. Policy Comm. v. Sulyma*, 140 S. Ct. 768, 776 (2020), giving “effect, if possible, to every clause and word.” *Roberts v. Sea-Land Servs.*, 566 U.S. 93, 111 (2012). We also take into account the broader context of the ANC Act, since the “words of a statute must be read in their context and with a view to their place in the statutory scheme.” *Davis v. Mich. Dep’t of the Treasury*, 489 U.S. 803, 809 (1989); *In Re Edmonds*, 96 A.3d 683, 687 (D.C. 2014).

The language of section 14(e)(2) makes clear that, if a majority of Commissioners disapprove of the job an officer is doing, they may remove that officer without any demonstration or even allegation of misconduct. Commissioners need not allege any wrongdoing in order to request a special meeting; all that is required is that they request that meeting in writing.⁷ Then, when that meeting takes place (and a quorum is present), the statutory language is clear on the sole action necessary to remove the officer: a vote by the majority of Commissioners present. In effect, the ANC Act allows a Commission to recall, at its discretion, an officer it previously elected, which leaves ANC officers fully accountable to the Commissioners on whose behalf they act. As we

³ This letter is available at <https://oag.dc.gov/sites/default/files/2018-02/ANC-6-A-April-26-1999-Removal-of-Chairman.pdf> (all websites last visited June 24, 2021).

⁴ Effective June 27, 2000 (D.C. Law 13-135; 47 DCR 2741).

⁵ Comm. on Local and Regional Affairs, “Report on Bill 13-468, the ‘Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000,’” at 8, Jan. 11, 2000 (on file).

⁶ Letter to Comm’r Fields at 2, available at <https://oag.dc.gov/sites/default/files/2018-02/ANC-6-A-August-21-2001-Notice-of-Special-Meeting-to-Remove-Treasurer.pdf>.

⁷ Since we also read the ANC Act as one harmonious whole, normal meeting-notice requirements continue to apply. *See* D.C. Official Code § 1-309.11(c).

summed it up in our June 14 letter, “the Commission has the same broad discretion to remove an officer that it has to elect one.” Letter to Comm’r Johnson, June 15, 2021, at 2. To our knowledge, this has also been the consistent view of the Office of Advisory Neighborhood Commissions.

We have found nothing in other ANC Act provisions, or in the history of section 14(e)(2), to suggest a different reading. No other provision speaks to this topic, and the discussion of this provision on page 8 of the Committee Report echoes the plain language of section 14(e)(2):

Paragraph (2) establishes the procedure for the removal of a Commission officer. It requires that such removal be undertaken at a special Commission meeting called for that purpose if at least one-half of Commissioners request in writing that the Chairperson take such action. The Chairperson is required to schedule the meeting within 30 days of the request and preside over it. If the vote will affect the Chairperson’s position, the Vice-Chairperson shall act as presiding officer. A majority vote of the Commissioners, provided a quorum is present[,] shall remove the officer.

You suggest a different conclusion, based on two other, closely related, authorities.

First, you point us to Robert’s Rules. Under section 62:16 of Robert’s Rules, an officer who serves “only for a fixed term,” or serves “for X years and until their successors are elected,” “can be removed from office only for cause – that is, neglect of duty in office or misconduct.”⁸ Since section 3.03 of your Bylaws⁹ says that each officer of your ANC serves a fixed, one-year term and may continue to serve until the officer’s successor is elected, you contend that, under Robert’s Rules, an officer of your ANC cannot be removed except for cause. But this language from Robert’s Rules, like other language in Robert’s Rules, applies only when not “otherwise provided.” D.C. Official Code § 1-309.11(e)(3). As we have established above, the ANC statute now provides otherwise. Even assuming ANC officers still serve fixed terms now that section 14(e)(2) effectively allows an ANC to recall its officers at will, to say that an officer cannot be removed without cause – and thus that the ANC cannot remove an officer without all the attendant fact-finding necessary to demonstrate cause¹⁰ – would be inconsistent with that streamlined process.

Second, you point us to your bylaws, which say that each officer serves a one-year term and “may be removed for cause by a majority vote of the Commissioners,” with “cause” defined as “misconduct, wrongdoing[,] or neglect of duty in office.” ANC 4C Bylaws §§ 3.03 and 3.05. These bylaws do not, however, say that an officer cannot be removed without cause. Nor is it clear that your Commission has interpreted this ambiguous language to mean that. Moreover, this bylaw language was also adopted before the Council added section 14(e)(2) to the ANC Act in 2000.¹¹ Accordingly, even if this bylaw language was intended and interpreted to impose a for-cause requirement – as opposed to simply specifying what form a for-cause removal must take – that requirement ceased to apply when section 14(e)(2) was adopted, for much the same

⁸ Robert’s Rules of Order Newly Revised § 62:16 (12th ed. 2020) (emphasis omitted).

⁹ These bylaws are available from <https://www.anc4c.com/about-anc-4c#DKxJiT>.

¹⁰ See Letter to Comm’r Ventura, *supra* n.2.

¹¹ See, e.g., ANC 4C Bylaws (1997) § 3.05 (Removal) (on file).

reason that any comparable restriction in Robert's Rules did: a bylaw provision is not valid unless it is "consistent with the provisions of" the ANC Act. D.C. Official Code § 1-309.11(d)(2).

Based on all of the above, our view remains that the rule in section 14(e)(3) of the ANC Act controls here. Your ANC may remove an officer at will, without alleging any wrongdoing on the part of that officer.

Sincerely,

KARL A. RACINE
Attorney General for the District of Columbia

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

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