

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL
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April 29, 2019

Commissioner Chander Jayaraman
Chairperson, ANC 6B
1436 Independence Avenue, S.E.
Washington, D.C. 20003

Re: Great Weight in the Eastern Market Use Area

Dear Chairperson Jayaraman:

You asked whether Advisory Neighborhood Commissions are entitled to great weight over matters in the Eastern Market Special Use Area (“Special Use Area”). The answer is that great weight applies in the Special Use Area in the same way – subject to the same limits – as elsewhere in the District.

Under the Advisory Neighborhood Commissions Act of 1975 (“ANC Act”),¹ when a District agency proposes an action of significance to neighborhood planning and development, the agency must give affected ANCs advance notice of the proposed action, and must give great weight to any timely written comments an ANC submits on that proposal.² That requirement is as applicable to agency proposals involving the Special Use Area as it is to other proposed agency actions. It is true that the Council created a body known as the Eastern Market Community Advisory Committee (“EMCAC”) to offer advice on certain matters concerning the Special Use Area,³ and that the EMCAC includes a Commissioner from your ANC.⁴ Nonetheless, neither the ANC Act nor the act that established the EMCAC⁵ explicitly excludes agency actions in the Special Use Area from the ANC Act’s great-weight requirement, and we have identified no indication that the Council intended to do so. We therefore conclude that the

¹ Effective October 10, 1975 (D.C. Law 1-21; D.C. Official Code § 1-309.01 *et seq.* (2016 Repl. and 2018 Supp.)).

² See D.C. Official Code § 1-309.10(a)-(d) (2016 Repl. and 2018 Supp.); *Kopff v. Alcoholic Beverage Control Bd.*, 381 A.2d 1372, 1379-1381 (D.C. 1977).

³ See D.C. Official Code § 37-111(g)-(j) (2012 Repl.).

⁴ *Id.* § 37-111(a)(2).

⁵ That act is the Eastern Market Real Property Asset Management and Outdoor Vending Act of 1998, effective April 16, 1999 (D.C. Law 12-228; D.C. Official Code § 37-101 *et seq.* (2012 Repl. and 2018 Supp.)).

act establishing the EMCAC did not, and was not intended to, alter the normal applicability of great weight to proposed actions in the Service Area.⁶

This does not mean every agency decision involving the Special Area is subject to the great weight requirement. In the Special Use Area, as elsewhere, ANCs are entitled to great weight only with respect to proposed government actions “of significance to neighborhood planning and development.”⁷ Based on controlling local precedent, proposed actions regarding the Special Use Area are not of significance to neighborhood planning and development unless “a prior hearing is required by law”⁸ or a statute specifically requires advance notice to affected ANCs.⁹ Accordingly, proposed District government actions in the Special Use Area that do not meet either of these conditions would not be subject to great weight.

If you have any questions, please contact Josh Turner, Assistant Attorney General, at 442-9834, or Brian K. Flowers, Deputy Attorney General, Legal Counsel Division, at 724-5524.

Sincerely,

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By:


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(AL-19-327)

⁶ See *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 243 (2009) (“[A]bsent a clearly expressed congressional intention, repeals by implication are not favored”) (quoting *Branch v. Smith*, 538 U.S. 254, 273 (2003)).

⁷ See *Kopff*, 381 A.2d at 1381.

⁸ *Id.* (emphasis omitted).

⁹ See *Shiflett v. Dist. of Columbia Board of Appeals and Review*, 431 A.2d 9, 10 (D.C. 1981) (“In light of the language of the ANC Act identifying permits of construction as requiring notification, the Council in our view thereby placed them in a category of ‘permits of significance’”).