GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL

Legal Counsel Division

February 27, 2013

Commissioner Sara Green
Advisory Neighborhood Commission 4B01
6856 Eastern Ave, NW
Suite 314
Washington, D.C. 20012

Re: Applicability of the "Open Meetings Act" to the Walter Reed LRA Community Advisory Group

Dear Commissioner Green,

On February 25, 2013, you asked this office to analyze whether meetings of the Walter Reed Local Redevelopment Authority Community Advisory Group ("CAG") must be open to the public under the Open Meetings Amendment Act of 2010, effective March 31, 2011 (D.C. Law 18-350; D.C. Official Code § 2-571 *et seq.* (2012 Repl.)) ("Open Meetings Act" or "Act"). We conclude that the Open Meetings Act does not apply to the CAG because the CAG is not a "public body" within the meaning of that Act.

The CAG was formed on December 10, 2012 to "help guide the District government's community engagement and implementation of the Walter Reed Site Reuse Plan . . . ."[1] Its responsibilities include "voic[ing] community concerns," "shar[ing] input and expertise," and "shap[ing]/inform[ing] community engagement."[2] It was not created either by act of the Council or by a Mayor's Order, and it is "not a formal voting body."[3] Indeed, our understanding is that the CAG does not adopt or vote on a series of formal recommendations. Instead, it provides an informal discussion space where experts drawn from the public can offer thoughts and suggestions, and officials of the District government can discuss and take note of those suggestions. Meetings of this group have so far not been opened to the public.

[1] Press Release, Government of the District of Columbia, Mayor Gray Announces Walter Reed Community Advisory Group and Launches Great Streets Grants for Four Retail Corridors (December 10, 2012), http://www.walterreedlra.com/wp-content/uploads/2013/01/Walter_Reed_Advisory_Group_Great_Streets_Announcement_FINAL-2.pdf.

[2] PowerPoint Presentation, Office of the Deputy Mayor for Planning and Economic Development, The Walter Reed Local Redevelopment Authority and Walter Reed Community Advisory Group Meeting (January 23, 2013), http://www.walterreedlra.com/wp-content/uploads/2013/01/WR_Community_Advisory_Mtg_1-23-13-reduced.pdf.

[3] *Id.*

Generally, under the Open Meetings Act, "a meeting shall be open to the public."[4] This does not mean that every discussion between two or more government officials must be publicly accessible. As is frequently true, the Act's meaning turns on how it defines its terms.[5] The Act defines a "meeting" as "any gathering of a quorum of the members of a public body . . . ."[6] A "public body," in turn, is:

> [A]ny government council, including the Council of the District of Columbia, board, commission, or similar entity, including a board of directors of an instrumentality, a board which supervises or controls an agency, or an *advisory body that takes official action by the vote of its members convened for such purpose.*[7]

The Open Meetings Act therefore applies only to public bodies, and an advisory entity is a public body only if it (a) has the authority to take official action, and (b) takes official action by a vote of its members convened for that purpose.

The term "official action" is not defined in this or any other open-meetings statute. Based on the text and history of the Open Meetings Act, however, merely gathering for discussion or debate would not rise to the level of "official action." Indeed, the text strongly suggests that the Act applies only to entities that exercise the authority of the District. When defining a public body, the Council made a list of the types of entities considered to be "public bodies." Alongside "advisory committee[s] that tak[e] official action" are:

- The Council of the District
- A board
- A commission
- An instrumentality's board of directors, or
- A board that supervises or controls an agency.[8]

Significantly, every other entity listed as a "public body" in the Open Meetings Act exercises the authority of the District government.[9] Moreover, even the draft version of the Act, which was significantly more expansive than the final enrolled legislation, was only meant to apply to entities that exercise the authority of the District. The Council committee that reviewed that draft Act stated that it would only apply to entities that were "created by and exercis[e] authority

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[4] D.C. Official Code § 2-575(a) (2012 Repl.).

[5] *Ball v. Arthur Winn General Partnership/ Southern Hills Apartments*, 905 A.2d 147, 151 (D.C. 2006) ("When the legislature defines the language it uses, its definition is binding").

[6] D.C. Official Code § 2-574(1) (2012 Repl.).

[7] *Id.* § 2-574(3) (emphasis added).

[8] *Id.*

[9] *See* 2A Sutherland, *Statutory Interpretation*, § 47:16 (2000) ("[T]he coupling of words denotes an intention that they should be understood in the same general sense"); *Burcke v. Groover, Christie and Merritt, P.C.*, 26 A.3d 292, 302 n.8 (D.C. 2011) (A "word is known by the company it keeps") (citing *Jarecki v. G.D. Searle and Co.*, 367 U.S. 303, 307 (1961)).

delegated by the District of Columbia government."[10] The Act's legislative history contains no evidence that the full Council wanted the final enrolled Act to apply more broadly. Based on the language and history of the Act, we conclude that an advisory body is not a "public body," bound by the Act, unless part of its function involves exercising the authority of the District.

The CAG does not exercise any authority of the District government. Unlike an advisory entity that performs some official functions, the CAG performs no official functions. It does not issue regulations or permits, adjudicate cases, impose fines, or in any other way act with the force of law. It does not even issue a set of formal recommendations. Moreover, it does not take any action, official or otherwise, by a "vote of its members."[11] In short, it does not do anything that could fairly be construed as "official action," and, accordingly, it is not a public body. Since the CAG is not a public body, the Open Meetings Act does not apply to it.

We hope this information has been helpful to you. If you have any questions, please contact Josh Turner, at 442-9834, or Janet M. Robins, Deputy Attorney General, at 724-5524.

Sincerely,

IRVIN B. NATHAN
Attorney General for the District of Columbia

By: _____
Joshua Turner
Assistant Attorney General
Legal Counsel Division

(AL-13-163)

cc: Gottlieb Simon
Executive Director
Office of Advisory Neighborhood Commissions

[10] Council of the District of Columbia: Committee on Government Operations and the Environment, Report on Bill 18-716, the "Open Meetings Act of 2010", at 5 (2010) ("Committee Report"). The bill was ultimately designated as the "Open Meetings Amendment Act of 2010."

[11] Only a "gathering of a *quorum* of the members of a public body" qualifies as a "meeting" under the Open Meetings Act. Our understanding is that there is no specific minimum number of people, *i.e.* a quorum, who must be present in order for the CAG to get together.