



**MEMORANDUM**  
FROM THE OFFICE OF THE GENERAL COUNSEL

TO: BILL WARNER, AICP, DIRECTOR, PCD

FROM: BRIG SMITH, GENERAL COUNSEL *Brig Smith*

CC: MARIE NORWOOD, COUNCIL CLERK  
OGC PERSONNEL

DATE: DECEMBER 11, 2013

RE: PLANNING AND ZONING COMMISSION'S ORGANIZATIONAL  
MEETING AND ELECTION OF OFFICERS

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**BACKGROUND**

At its previously scheduled organizational meeting, the Planning and Zoning Commission adjourned prior to election of its officers in light of then-Commissioner Chisem's appearance at the meeting and questions regarding whether he could serve both as a Commissioner and as a (newly elected) Common Council Member. He has since resigned, but in anticipation of the rescheduled organizational meeting noticed for today, you have inquired about the Commission's options and obligations in electing officers. Simply put, you would like to know whether the Commission must elect officers at this meeting, or if there are other temporary workarounds or past practices that might allow them to continue their work on planning and zoning matters without electing permanent officers.

**QUESTION PRESENTED**

Must the Commission elect its officers at its annual organizational meeting?

**SHORT ANSWER**

Yes.

**ANALYSIS**

The Charter and the Commission's Bylaws clearly state that officers are to be elected at the annual organizational meeting. Under our Charter, "[t]he Planning and Zoning Commission shall annually elect a Chairman, Vice Chairman, and Secretary from among its regular voting members." Charter, Chapter VII, Section 1 (emphasis added). The Bylaws are in accord:

An annual organization meeting shall be held during the month of November and administered by staff until such officers are elected at same meeting. Election of officers shall be the first item of business. At this time, officers shall be elected and assume the duties of the office....A legal quorum of the Planning and Zoning Commission, six (6) members, shall be present before the election of officers can take place. In the event the organizational meeting does not occur or is cancelled, it will be held at the next regular meeting of the Commission.

Bylaws, Article V, Section 1 (emphasis added).

The Charter, on its face, states that the Commission “shall” annually elect its officers. There is no ambiguity in its command. The Bylaws expand on the Charter’s clear command, directing that election of officers “shall be the first item of business.” In other words, there shall be no other business until the first item of business—election of officers—has been conducted. The Bylaws take this point seriously, specifying what happens if the organizational meeting is cancelled or does not occur—it “will be held” at the next regular meeting of the Commission. Again, before the Commission can properly consider any other item of business before it, it must consider the first item of business before it—the election of its own officers.

You have raised both past practice and potential temporary workarounds as countervailing considerations, but neither trump the clear command of the Charter and Bylaws. As to past practice, apparently the last time the Commission faced a potential deadlock for election of officers, the chairmanship reverted to the immediate past Chair until a new Chair could be elected. It is true that Robert’s Rules of Order, Newly Revised (RONR) (11<sup>th</sup> ed.) would otherwise govern this situation, and would suggest deference to that past practice. *See, e.g.*, RONR § 56, p. 573, ll. 9-13 (“in the absence of such a provision or any rule adopted by the society [for nomination and election of officers], nominations are made in accordance with established custom (if any) or as otherwise directed by vote of the society at the time of each election.”); *id.* at § 56, p. 585, ll. 25-30 (“officers shall be elected by ballot to serve for one year or until their successors are elected....”).

As to a temporary workaround, Robert’s Rules allow for the temporary election of a presiding officer in the absence of the Chair. They allow for the “election of temporary officers” at the “first organizational meeting,” *id.* at § 54, p. 554, ll. 5-27, but anticipate that the election of permanent officers will occur as part of that meeting. *See id.* at § 54, p. 560, ll. 22-24 (“Unless a proviso attached to the bylaws...prescribes otherwise, the newly elected officers immediately replace the temporary ones.”). Elsewhere, Robert’s Rules speak to an “elected chairman pro tem” if “neither the president nor the vice-president is present” and even discuss the assembly electing a “chairman pro tem to hold office beyond the current session (in the event that the president and vice-presidents are unable to perform their duties for that length of time)....” *Id.* at § 54, p. 453, ll. 11-14.

The problem is that neither past practice nor a temporary workaround come into play under Robert’s Rules where, as here, there is a clear command to the contrary in the governing documents. As the Bylaws state: “Unless otherwise specified, the current revised edition of Roberts Rules of Order for meetings shall govern the proceedings at the meeting of the

Commission....” Bylaws, Article IX, Sec. 12. Here, of course, the election of officers is otherwise specified, and the specification is that Commission shall elect officers at its organizational meeting. The other provisions of Robert’s Rules simply do not apply because there is no other credible way to read the unambiguous language of the Charter and Bylaws.

In reading the Charter, and the Bylaws, we apply the standard rules of statutory interpretation. As the Supreme Court has put it:

It has been well established that a city's charter is the fountainhead of municipal powers.... The charter serves as an enabling act, both creating power and prescribing the form in which it must be exercised.... Agents of a city, including [its commissions], have no source of authority beyond the charter.... In construing a city charter, the rules of statutory construction generally apply....

*Fennell v. City of Hartford*, 238 Conn. 809, 813 (1996) (internal citations and quotation marks omitted). And, one of the cardinal rules of statutory (and charter) construction is that “common sense must be used and courts must assume that a reasonable and rational result was intended.” *Germain v. Town of Manchester*, 135 Conn.App. 202, 210 (2012) (internal citations and quotation marks omitted). “It is well established that “[a] statute must be interpreted to give effect to all its provisions.... No word within a statute is to be rendered mere surplusage.” *Id.* If the annual election of officers does not occur at the organizational meeting, then the explicit election requirements of the Charter and Bylaws are rendered “mere surplusage,” and this the law forbids.

In a somewhat similar situation, the Lansing City Council would often face budgetary deadlocks in tight financial times and an equally clear command under its Charter that, “[n]ot later than the third Monday in May of each year,” it “shall, by resolution, adopt a budget for the ensuing fiscal year.” Lansing City Charter 7-105.1 (emphasis added). My office would often be asked what happens if the Council could not agree and adopt the budget by the third Monday in May. Invariably, our response was that we had every confidence that the Council would timely adopt the budget in light of the Charter’s requirement. And, while there were many contentious years and times where it was doubtful whether the Council would fulfil its duty under Charter, invariably it did. I have every confidence that the Middletown Planning and Zoning Commission will do so here.

### CONCLUSION

The Middletown Charter states that the Commission “shall annually elect a Chairman, Vice Chairman, and Secretary from among its regular voting members,” and the Bylaws state that “[e]lection of officers shall be the first item of business” and that “[a]t this time, officers shall be elected and assume the duties of the office.” Any other interpretation, by definition, requires that the Commission not annually elect its officers as the first item of business in its organizational meeting, and that they not assume the duties of office at that meeting. This would render the explicit requirements of the Charter and Bylaws meaningless. To the contrary, the Charter and Bylaws say what they mean, and mean what they say. Again, the Commission must elect its officers before it can proceed to any other business.