

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



Attorney General

October 8, 2010

Sara Green, Secretary
ANC 4B
6856 Eastern Avenue, NW #314
Washington, DC 20012

Re: Tape Recording of ANC Meetings and Legality of Closed Sessions

Dear Ms. Green:

This letter responds to your recent email inquiries concerning the law as it respects tape recording of ANC meetings and their subsequent posting on the ANC website, as well as the ability of the ANC to have closed meetings.

Specifically, on September 16, 2010, this office received your email indicating that ANC 4B has tape recordings of several public meetings and there was consideration of posting the recordings on the ANC web page, along with the adopted meeting minutes, which were already posted. You indicated that commissioners were concerned about the legality of making the tape recordings available in that way, as members of the public may be unaware that they are being recorded and would believe that they have an expectation of privacy when they speak at the ANC meetings. On September 30, 2010, you sent an additional email seeking legal advice in reference to a letter from Robert Maxwell which argued that the ANC open nearly all of its meetings, including monthly planning or executive meetings. The letter from Mr. Maxwell was not attached.¹ Your September 30 email also revisited the tape recording issue by asking whether the ANC was required to tape record its meetings, and whether the ANC must notify the public that the meetings would be so recorded.²

¹ You also sent an email on September 23, 2010, indicating that Robert Maxwell had served a request under the Freedom of Information Act (FOIA) for copies of minutes and audio recordings of public and closed meetings of ANC 4B. This office referred your question to Thorn Pozen, Special Assistant Attorney General, who handles FOIA requests for the Office of Attorney General.

² It is noted that after your initial inquiry on the tape recording issue, this office received an email from Commissioner Judi Jones, ANC 4B07, indicating that she had not given consent for tape recordings of meetings, and that she did not recall the subject having been put to a vote. Commissioner James Sydnor, ANC 4B04, then emailed this office indicating the subject of tape recording had been discussed at several ANC planning meetings, and that the ANC voted at a public meeting to purchase a recorder.

As set forth more fully below, we advise that tape recording of public or closed meetings is not required by the law governing ANC operations, but neither is there any legal barrier to such recordings. If audio recordings are made, they are required to be made available to the public, with the exception of recordings that involve personnel matters or strictly legal issues of the ANC. Thus, they could be posted on the ANC website. While the ANC is not required to notify the public that it will be tape recording meetings, it would be prudent to do so in the interest of full disclosure, and as a part of voting on any expenses associated with the recording. As for closed meetings of the ANC, they are permitted in limited fashion. Meetings may be closed to deal with personnel or legal matters only.

Tape Recording

The internal operations of the ANCs are addressed in section 14 of the Advisory Neighborhood Commissions Act of 1975, effective October 10, 1975, as amended, (D.C. Law § 1-21; D.C. Official Code § 1-309.11 (2006 Repl.)) (“the Act”). This section of the Act details, for example, various requirements for the ANC to give adequate notice of public meetings, items to be included in the ANC’s internal by-laws, and a prescription for the election or removal of ANC officers. D.C. Code § 1-309.11(c), (d) and (e) (2006 Repl.). To the extent the Act does not provide for specific Commission procedures in an area, it directs that they be governed by *Robert’s Rules of Order*. D.C. Official Code § 1-309.11(e)(3) (2006 Repl.).

The only comment in the Act concerning recordation of ANC meetings is found in the description of duties for the elected ANC secretary, wherein the Act states that the secretary “shall ensure that appropriate minutes of Commission meetings are kept. . .[.]” D.C. Official Code § 1-309.11 (2006 Repl.). The term “appropriate” is not further defined in the Act, presumably thereby giving discretion to the secretary or the Commission to determine the manner in which to sufficiently keep a record of the business undertaken by the Commission. In this regard, the current edition of *Robert’s Rules of Order* suggests that ordinarily, minutes would mainly record what was done at a meeting, not what was said by members of the organization. *Robert’s Rules of Order*, § 48, p. 451 (10th Ed.) (“Rules”). However, when minutes are to be “published”, the Rules suggest that speakers on each side of a question being debated be listed, with an abstract or the text of each “address” by the speaker. *Id.* at 458. In cases where it is desired to publish the proceedings of a meeting in full, cases which the Rules do not purport to identify, the Rules suggest providing the secretary with a stenographer or recording technician. *Id.*

District law does not require that minutes of ANC meetings be published and disseminated, although they are required to be “made available” to the public. D.C. Code § 1-309.11(g) (2006 Repl.). However, ANC 4B has chosen to post the minutes on its website. As a result, in light of the description by Robert’s Rules as to the options to be used when publishing minutes, but consistent with the discretion provided to the

secretary by the Act as to what are “appropriate” minutes, this Office believes the ANC minutes should record more than simply the votes taken by the Commission, but need not attempt to record verbatim the entire proceedings of the ANC. Consequently, the Commission is not required to make tape recordings of its meetings, but it certainly may choose to do so, provided they do not disclose the privileged personnel or legal items mentioned above, and are made available to the public upon request. We see no barrier to such recordings being posted on the ANC website.

We are mindful of the concerns expressed by Commissioner Jones, and potentially others, that their remarks at meetings be confined only to such settings to preserve their interest in privacy. However, while the courts in the District have not had occasion to confront this issue, other jurisdictions have rejected such concerns in cases where members of the public have successfully claimed that “Open Meetings” laws in those jurisdictions³ actually required that residents be permitted to electronically record meetings of their representative bodies, if done unobtrusively. Letter to Frank Jackson, II, ANC 4B (April 14, 1999)(copy attached). Indeed, in a recent New York case addressing a member’s challenge to a ban on videotaping local Board of Education meetings, the court quoted with approval from an earlier opinion that held audio recording would not inhibit the democratic process:

[T]hose who attend [public] meetings, and who decide to freely speak out and voice their opinions, fully realize that their comments and remarks are being made in a public forum. The argument that members of the public should be protected from the use of their words, and that they have some sort of privacy interest in their own comments, is . . .wholly specious.

Csorny v. Shoreham-Wading River Central School District, 759 N.Y.S. 2d 513, 517-18 (N.Y. App. Div. 2003)(quoting *Mitchell v. Board of Education of Garden City Union Free School District*, 493 N.Y.S. 2d 826 (N.Y. App. Div. 1985)(internal quotations omitted). This would certainly apply to statements by an elected commissioner at a public meeting. Again, while the District courts have not ruled on such a question, we do not believe there is a reasonable expectation of privacy at public ANC meetings for either commissioners or the community when they choose to participate.

You have also asked whether the ANC must give notice to the public that it will be tape recording Commission meetings. We do not see any part of the Act that would require

³ The District’s Open Meetings Law, sometimes referred to as the Sunshine Act, is found within section 742 of the District of Columbia Home Rule Act (“Home Rule Act”), approved December 24, 1973, Pub. L. 93-198, 87 Stat. 831, D.C. Code § 1-207.42 (2006 Repl.), which reads, in pertinent part, that

All meetings (including hearings) of any department, agency, board, or commission of the District government, including meetings of the Council of the District of Columbia, at which official action of any kind is taken shall be open to the public. No resolution, rule, act, regulation, or any other official action shall be effective unless taken, made, or enacted at such meeting.

D.C. Code § 1-207.42(a) (2006 Repl.)

such notice, and as noted above, the public may presume that public meetings will be recorded in some fashion, particularly in light of evolving technology. However, we note that the ANC by-laws are a logical place to adopt an ANC policy on recording meetings, and using this method would not only clearly allow other commissioners to weigh in prior to the policy being adopted, but the by-laws would also be available to the community. At a minimum, it may be prudent for the ANC to notify residents of the intent to record meetings given that, as Commissioner Sydnor pointed out in his email to this office, any expenditure of funds for recording equipment would have to be approved by the Commission during a public vote.

Closed Meetings

You have asked whether the ANC must open all meetings to the public, including what you describe as “planning” or “executive” meetings. Whether and to what extent the ANC may hold a meeting that is closed to the public is also governed by section 14 of the Act, found at D.C. Official Code § 1-309.11(g) (2006 Repl.). This section begins by requiring that ANCs be subject to the first part of the District’s Open Meetings Law that is quoted above. See, note 3; D.C. Code § 1-207.42(a) (2006 Repl.).⁴ The plain language of the Open Meetings Law indicates that all meetings of the ANC at which any “official action” is to be undertaken must be open to the public. As a result, for many years after the advent of home rule, the ANCs may have been able to close those meetings where the ANC would not be deciding matters properly before the Commission that were required to be put to a formal vote, or which would commit the ANC to take or refrain from a particular action.⁵

However, the Act goes on to admonish that “[n]o [Commission] meeting may be closed to the public unless personnel or legal matters are discussed.” D.C. Official Code § 1-309.11(g) (2006 Repl.). This latter directive was added by the Council through the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, effective June 27, 2000, (D.C. Law 13-135; D.C. Official Code § 1-309.11(g) (2006 Repl.). The legislative history indicates that the Council was concerned that residents were too frequently prevented from participating in Commission meetings. Report of the Committee on Local and Regional Affairs on Bill 13-468, the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, at 9 (Council of the District of Columbia January 11, 2000). The Council therefore added language that would “prohibit[] the exclusion of the public from meetings at which no legal or

⁴ Since the Open Meetings Law is part of the Home Rule Act and by its terms applies, among other things, to “any. . .commission of the District government,” the Open Meetings Law would apply to the ANCs, even without section 14 of the ANC Act. The second part of the Open Meetings Law requires that a written transcript be kept for all such meetings. D.C. Code § 1-207.42(b) (2006 Repl.). Although section 14 of the ANC Act doesn’t mention the second part of the Open Meetings Law, that part also applies directly to the ANCs. We note that the reference in the Open Meetings Law to a written transcript only, is further evidence that ANCs are not required to tape record their meetings.

⁵ See, e.g. Letter to Jonda McFarlane, February 26, 1997 and Letter to Barbara Zartman, *et. al*, July 14, 2000. Presumably, this guiding principle could have allowed for closed meetings where substantive matters within the ANC statutory responsibilities were simply discussed but not resolved, including matters pertaining to its internal operations.

personnel matters were to be discussed,” so as to “ensure public access and participation.” *Id.* The Council’s amendment in 2000 clearly denotes a legislative intent that **all** ANC meetings now be open, regardless of the matters addressed in the meeting (unless they meet the stated exceptions), or whether they culminated in a vote by commissioners.

As a result, while you have not described the precise contours of your ANC’s “planning” or “executive” meetings, we believe they must be open to the public, unless there are matters discussed regarding personnel or legal issues, such as discussions with an attorney advising the Commission. This may, of course, require an adjustment for some ANCs, but we note that other jurisdictions have viewed their Open Meetings laws to require pre-vote deliberations of their public bodies to be in the public arena.⁶

Although we advise that ANCs open substantially all of their meetings, we are not suggesting that commissioners cannot communicate with each other about ANC business in between public meetings. Commissioners retain their rights as private citizens, and we interpret the Council’s intent to be directed at those occasions when the Commission is acting as a body. Because the term “meeting” is not presently defined in the ANC law, there is likely to be continuing ambiguity as to where the line is between permissible informal communications among commissioners, and impermissible closed meetings. We believe, at a minimum, that when a quorum of commissioners exists during a discussion concerning ANC matters, it becomes a “meeting” of the Commission that needs to be open to the public. Other jurisdictions have taken a similar approach in their Open Meetings laws. *See, e.g.* MD. CODE ANN., STATE GOVERNMENT, § 10-502(g) (“Meet” defined as convening a quorum of a public body for consideration of or to transact business); PA CONST. STAT. § 703 (“Meeting” defined as any prearranged gathering which is attended or participated in by a quorum of members held for the purpose of deliberating agency business or taking official action).

It is our understanding that ANCs frequently utilize closed executive or planning meetings to discuss the agenda or plan logistics for regularly scheduled public meetings. Provided less than a quorum of commissioners are present, and this process is not somehow used to circumvent the intent of the Council to have most ANC business be open to the public, this would seem to be a permissible practice that may continue.

I hope that this information has been helpful to you. If you have any questions, please do not hesitate to contact this office further.

⁶ *See, City of College Park v. Cotter*, 525 A.2d 1059 (Md. 1987):

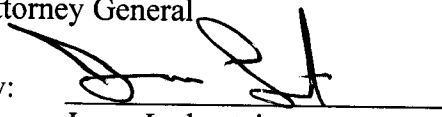
While the [Sunshine Law] does not afford the public any right to participate in the meetings, it does assure the public right to observe the deliberative process and the making of decisions by the public body at open meetings. . . It is, therefore, the deliberative and decision-making process in its entirety which must be conducted in meetings open to the public since every step of the process, including the final decision itself, constitutes the consideration or transaction of public business.

Id. at 1064-65 (quoting *City of New Carrollton v. Rogers*, 410 A.2d 1070, 1078-79 (Md. 1980).

Sincerely,

PETER NICKLES
Attorney General

By:



Jason Lederstein
Assistant Attorney General
Legal Counsel Division

(AL-10-468)

cc: Gottlieb Simon, Executive Director
Office of Advisory Neighborhood Commissions

Attachment

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

JUDICIARY SQUARE

441 FOURTH ST., N.W.

WASHINGTON, D. C. 20001



IN REPLY REFER TO:

Prepared by: LCD:ABE
(AC-99-128)

April 14, 1999

Mr. Frank E. Jackson, II
Treasurer
ANC48
746 Kennedy Street, N.E.
Washington, D.C. 20011

Dear Mr. Jackson,

This responds to your March 16, 1999 letter to me, requesting advice about whether Advisory Neighborhood Commission ("ANC") 48 may prohibit members of the public or Commissioners from videotaping and/or audiotaping ANC meetings, either public meetings or executive session meetings. I have received similar requests for advice from the parties listed at the end of this letter.

CONCLUSION

ANC 48 may adopt a by-law regulating the use of audio and video recording devices at ANC public meetings. No court has yet decided whether the District's Open Meetings Law, found at section 742(a) of the Home Rule Act, effective December 24, 1973, 87 Stat. 831, D.C. Code § 1-1504(a) (the "Open Meetings Law"), permits the public to audiotape or videotape public meetings. However, based on court decisions under the Open Meetings Laws of other jurisdictions, a by-law that permits audio and videotaping with certain restrictions is more likely to be upheld by the courts than one that bans such recording altogether. (The Open Meetings Law cases are more restrictive than the First Amendment cases, which generally allow a blanket ban on recording.) In any case, the courts would likely strike down a ban on audio or videotaping of public meetings that was directed specifically at any individual. Any ban on audio or videotaping of public meetings directed solely at any individual or discrete group should be avoided because it raises additional Constitutional objections which would be difficult to overcome. As to executive sessions, since the District's Open Meetings Law does not apply, a total ban on recording is likely to be upheld. Thus, in the absence of any statutory clarification of a public right to record ANC meetings or public meetings generally, I recommend that ANC 48 establish non-discriminatory

regulations regarding the use of audio and video recording equipment at both public meetings and executive sessions, as an amendment to its by-laws.

BACKGROUND

The facts, as related by two ANC 48 Commissioners and one member of the public, are as follows. On February 25, 1999, ANC 48 held a public meeting at the 4th District Police headquarters. Mr. Paul Montague, a former ANC 48 Commissioner, attended the meeting as a member of the public. Mr. Montague attempted to videotape the meeting. A Commissioner objected to being videotaped and a discussion ensued wherein Mr. Montague insisted that he be allowed to videotape, and one or more Commissioners expressed their concern about the privacy of members of the public and the potential use of the tape after the meeting. Eventually Mr. Montague agreed that if a majority of the Commissioners objected to the videotaping, he would honor that decision. Mr. Montague did not, thereafter, videotape the meeting. Mr. Montague states that the ANC ruled at the same meeting that members of the news media are permitted to videotape ANC 48 meetings. Mr. Montague says he was told that the only way he could videotape the meetings was if he had written permission from each individual Commissioner. Subsequently, the Commander of the 4th District Police headquarters, where meetings are currently being held, informed the ANC that no cameras are permitted inside the building.

The second question arose from an "Executive Committee" meeting of ANC 4B. An Executive Committee meeting is a non-public meeting of some or all ANC 48 Commissioners equivalent to an executive session at which no official action is taken. At that meeting, which was held at the home of one of the Commissioners, Commissioner Robert Richard attempted to audiotape the meeting. One or more of the Commissioners objected to Mr. Richard recording the meeting. The Commissioners offered Commissioner Richard the option of having his tape considered the "official record" of the ANC, which would mean surrendering the tape to the Secretary after the meeting to be duplicated and then returned to him. Commissioner Richard rejected that option. The Commissioners present then decided that Commissioner Richard should not be permitted to tape record the meeting, whereupon, Commissioner Richard left the meeting.

ANALYSIS

OPEN MEETINGS LAW

Section 14(g) of the Duties and Responsibilities of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976, D.C. Law 1-58, D.C. Code § 1-262(g), makes each ANC subject to the Open Meetings Law, which provides as follows:

"All meetings (including hearings) of any department, agency, board, or commission of the District government, including meetings of the Council of the District of Columbia, at which official action of any kind is taken shall be

open to the public. No resolution, rule, act, regulation, or other official action shall be effective unless taken, made, or enacted at such meeting."

D.C. Code § 1-1504(a). The Open Meetings Law does not apply to the Executive Committee meeting which Commissioner Richard attempted to tape record because it applies only to public meetings at which official action is taken. Therefore, under the Open Meetings Law, neither a member of the public nor an ANC Commissioner has a right to audiotape or videotape an executive session of an ANC. However, the Open Meetings Law does apply to the public meeting which Mr. Montague attempted to videotape.

No court has determined whether the District's Open Meetings Law permits the public to record or videotape public meetings. Two courts have held that the plain language of similar Open Meetings Laws do not provide any right to the public to record or videotape public meetings; they only provide a right to attend public meetings. See Thompson v. City of Clio, 765 F. Supp. 1066 (N.D. Ala. 1991); Davidson v. Common Council of White Plains, 244 N.Y.S.2d 385 (1963). However, several states have interpreted similar Open Meetings Laws as permitting the recording of public meetings by the public. See Belcher v. Mansi, 569 F. Supp. 379 (D.R.1. 1983)(right to attend under Open Meetings Law demands that taping of public meetings be permitted, but certain restrictions may be lawfully imposed); Sudol v. Borough of North Arlington, 348 A.2d 216 (N.J. 1975)(taping permitted based on statement of policy in the law as to right of public to be fully informed); Peloquin v. Arsenault, 616 N.Y.S.2d 716 (1994)(blanket prohibition of video or audio recording is not permissible in face of virtual presumption of openness, but reasonable restrictions may be imposed); Mitchell v. Board of Educ. of the Garden City Union Free School Dist., 493 N.Y.S.2d 826 (1985)(action barring unobtrusive audio recording devices is inconsistent with goal of fully informed citizenry); State v. Ystuea, 418 N.Y.S.2d 508 (1979)(taping permitted based on a statement of public policy of right of public to be fully informed contained in the law); Spratt v. Rickey, 1998 Ohio.App. LEXIS 1207 (OH 1998)(remanding for the trial court's decision the question whether a village ordinance prescribing procedures for recording village council meetings violates the Ohio Public Meetings Law, but noting that the ordinance implies that the village council seeks to meet free from public scrutiny that occurs from recording a meeting).

In most of these cases, the courts permitted the public to audiotape or videotape public meetings in spite of reasons offered by the public body in favor of a blanket prohibition on recordings, such as: 1) recording is a distraction, is obtrusive, or otherwise disturbs or disrupts the meeting; 2) members of the public have a privacy interest in their comments made at a public meeting; 3) recordings can be edited, altered, or used out of context; and 4) the public body's duty to prepare minutes precludes the use of other methods of recordation. At the same time, in nearly every case the courts have permitted the public body to place limitations on the recording of public meetings. The Belcher Court outlined the reasonable restrictions that generally may be lawfully imposed: 1) restrictions to preserve orderly conduct of a meeting by controlling noise levels, spatial requirements, and visibility (so as not to interfere with the orderly conduct of business and the rights of those present to see, hear, and

participate in the proceedings); 2) restrictions to safeguard public facilities against damage by use of equipment (for example, to the electrical system of the building where the meeting is held); and 3) restrictions to require fair payment for the use of electricity or other services provided by the body to facilitate the recording (although the public body is not required to provide any such services). Belcher, 569 F.Supp. at 384.

While it is impossible to predict with certainty how the District's courts would interpret the District's Open Meetings Law, the trend seems to be to interpret such statutes as permitting the recording of public meetings in the absence of plain language in the statute to the contrary, and as permitting the public body to implement reasonable restrictions on recording. Consequently, I recommend that ANC 48 permit a member of the public, like Mr. Montague, to audiotape or videotape its public meetings, subject to any reasonable restrictions it may select of the kind described above.

FIRST AMENDMENT

The issue of the recording of public meetings has never been decided by the U.S. Supreme Court or the U.S. Court of Appeals for the D.C. Circuit, but the First Amendment implications have been considered by other courts. These courts have generally held that there is no First Amendment right to televise public meetings, *see e.g. Whiteland Woods, L.P. v. Township of West Whiteland*, 1997 U.S. Dist. LEXIS 16313 (ED. P. 1997), or to otherwise record public meetings, *see, Sigma Delta Chi v. Speaker*, 310 A.2d 156 (Md. 1973); *Educational Broad. Corp. v. Ronan*, 328 N.Y.S.2d 107 (1972). Indeed, both the U.S. Senate and the U.S. House of Representatives ban videotaping, and that fact has been cited as additional precedent for other bodies to adopt similar bans in the absence of open meeting requirements. *See Johnson v. Adams*, 629 F. Supp. 1563 (ED. Tex. 1986). Furthermore, these courts have held that a ban on recording a public meeting is "not considered a prior restraint on speech because the ban does not seek to prevent publication of a message or freedom of expression. *See Dean v. Guste*, 414 So.2d 862 (La. Ct. App. 1982), citing *CBS v. Lieberman*, 439 F. Supp. 862 (ED. 111.1976); *Sigma Delta Chi v. Speaker*, 310 A.2d 156 (Md. 1973). It follows that there also is no First Amendment right to record an executive committee meeting. *See, e.g., Dean v. Guste*, 414 So.2d 862 (La. Ct. App. 1982).

However, a minority of courts have acknowledged that the right to record a public meeting is akin to a right of access or right to gather or receive information, therefore such actions "touch upon" the First Amendment right to free speech. *See Blackston v. State of Alabama*, 30 F.3d 117 (11th Cir. 1994); *Whiteland Woods, L.P. v. Township of West Whiteland*, 1997 U.S. Dist. LEXIS 16313 (ED. P. 1997); *Thompson v. City of Clio*, 765 F. Supp. 1066 (M.D. Ala. 1991). *Cf. Nevens v. City of Chino*, 233 Cal. App. 2d 775 (1965) (the First Amendment is only indirectly affected by ban on videotaping). Therefore, under these decisions, a content-neutral ban on taping is permissible only if it is reasonable, supported by a significant or substantial government interest and does not unreasonably limit alternative avenues of communication. *See Whiteland Woods*, 1997 U.S. Dist. LEXIS 16313; *Thompson*, 765 F. Supp. 1066. Under these authorities,

restrictions which would be permissible under the First Amendment include reasonable regulations relating to: 1) number and type of cameras permitted; 2) position of cameras; 3) the activity and location of the operator; 4) position or limitation on lighting; 5) rules for interrupting recording upon request if the matter being discussed, although public, might be embarrassing or humiliating to an individual if replayed at a later date; and 6) other items necessary to maintain order in the chamber and to prevent unnecessary intrusion into the proceedings. Maurice River Township Bd. of Educ. v. Maurice River Township Teachers Assoc., 475 A.2d 59, 61-62 (N.J. Super. 1984). Accordingly, while a minority view, these decisions support my recommendation under the District's Open Meetings Law that - subject to any reasonable restrictions ANC 4B may wish to adopt - a member of the public be allowed to audiotape or videotape public meetings.

In this case, Mr. Montague alleges that he was not permitted to videotape but that members of the news media were permitted to tape. Clearly, members of the press have no greater rights under the First Amendment than members of the public. See Dean v. Guste, 414 SO.2d 862,865 (La. Ct. App. 1982). Such a viewpoint specific, content-based ban on taping probably would be invalid under the First Amendment unless it was necessary to serve a compelling state interest and narrowly drawn to achieve that end. See Blackston v. State of Alabama, 30 F.3d 117 (11th Cir. 1994); Belcher v. Mansi, 569 F. Supp. 379, 384 (D.R.1. 1983)(once the right to videotape is granted by the Open Meetings Law, it must comply with the First Amendment.); Thompson v. City of Clio, 765 F. Supp. 1066, 1072 (M.D. Ala. 1991). A viewpoint specific regulation or ban on recording also raises the potential for violation of the Equal Protection guarantee of the Fifth Amendment of the U.S. Constitution. See Belcher v. Mansi, 569 F. Supp. 379, 384 (D.R.1. 1983).

If you have any additional questions with regard to this issue, or if you would like me to review any proposed by-law language prior to its adoption, please do not hesitate to contact me at 727-3400.

Sincerely,



Annette B. Elseth
Assistant Corporation Counsel
Legal Counsel Division

cc: The Honorable David Catania
Chairman, Committee on Local and Regional Affairs
Council of the District of Columbia

The Honorable Charlene Drew Jarvis
Councilmember
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