

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL
KARL A. RACINE

Legal Counsel Division

June 9, 2017

Karen Lucas
Commissioner, ANC 8C

Re: Questions Concerning Meetings and Officers

Commissioner Lucas:

You asked us four questions concerning Advisory Neighborhood meetings and officers.

(1) May an ANC forbid Commissioners or others from recording ANC meetings that are open to the public?

Probably not. As we explained in a 2015 letter, there is a reasonable argument that the open meetings laws applicable to ANCs¹ “give members of the public a right to record public ANC meetings.”² Moreover, even if those open meetings laws do not authorize the public to record ANC meetings, Commissioners and members of the public are entitled to record those meetings as long as nothing in the ANC’s bylaws, or in any resolution adopted by vote of the ANC, prohibits Commissioners or other meeting attendees from doing so.³

(2) May an ANC forbid new Commissioners from holding ANC offices?

Yes, but only by saying so in its bylaws. The Advisory Neighborhood Commissions Act of 1975 (“ANC Act”)⁴ requires each ANC to elect officers,⁵ and directs each ANC to establish in its

¹ See D.C. Official Code §§ 1-309.11(g) (requiring ANC meetings to be open to the public “unless legal or personnel matters are discussed”) and 1-207.42 (requiring “commission” meetings, which includes ANC meetings, to be open if the commission takes official action) (2012 Repl.).

² See Letter to Kathy Henderson, Comm’r, ANC 5D, at 1, Feb. 5, 2015 (attached).

³ See *id.* at 2 (“If the ANC bylaws, or applicable resolutions adopted by the ANC, do not prohibit attendees from recording a meeting, those attendees have the right to record that meeting in a manner that complies with other lawful ANC bylaws and resolutions”); HENRY M. ROBERT III ET AL., ROBERT’S RULES OF ORDER NEWLY REVISED (“ROBERT’S RULES”) 265, ll. 25-29 (11th ed. 2011) (standing rules may be used to regulate recording devices at meetings). We note that each citation to Robert’s Rules will, as here, include both a page number and a line number.

⁴ Effective October 10, 1975 (D.C. Law 1-21; D.C. Official Code § 1-309.01 *et seq.* (2012 Repl. and 2016 Supp.)).

⁵ D.C. Official Code § 1-309.11(e)(1) (2012 Repl.).

bylaws the “manner of selection of chairpersons and other officers.”⁶ This includes specifying any qualifications an officer must possess.⁷ A new Commissioner is not ineligible for an officer position unless the bylaws say so. But if the bylaws impose such a restriction, that restriction is valid. Whatever arguments may be made about the wisdom of excluding new Commissioners from officer positions, nothing in District law guarantees any particular Commissioner or group of Commissioners the right to seek election for a Commission office.

(3) May the Chairperson of an ANC retain exclusive power to set the agenda for ANC meetings?

Not unless the ANC bylaws empower the Chairperson to do so.

ANC meetings must operate in a manner consistent with the ANC Act, and any question that the ANC Act does not resolve is controlled by Robert’s Rules of Order unless the ANC’s bylaws say otherwise.⁸ The ANC Act does not resolve this question. It simply states that the Chairperson convenes and presides over ANC meetings.⁹ Under Robert’s Rules, however, a Chairperson may carry out an agreed-upon meeting agenda,¹⁰ but has no authority to set the agenda unilaterally or to prevent fellow Commissioners from seeking changes to the agenda.¹¹ An ANC Chairperson therefore lacks exclusive authority to set the agenda unless the ANC bylaws confer that authority.

(4) May the Chairperson of an ANC prohibit other Commissioners from speaking at ANC meetings?

Not unless the ANC bylaws empower the Chairperson to do so. Robert’s Rules denies an ANC Chair the power to prohibit Commissioners from speaking at meetings. It states that each member of an assembly (which a Commissioner is) is “entitled to full participation in its proceedings,”¹² and cannot be deprived by the Chairperson of the “basic rights” to “attend meetings, to make motions, to speak in debate, and to vote.”¹³

⁶ *Id.* § 1-309.11(d)(1)(E).

⁷ *See* ROBERT’S RULES at 447, l. 10 (11th ed. 2011).

⁸ *See* D.C. Official Code § 1-309.11(e)(3) (2012 Repl. and 2016 Supp.) (“Where not otherwise provided, the procedures of the Commission shall be governed by Robert’s Rules of Order”); Letter to Janis Hazel, Comm’r, ANC 7D, at 1, July 11, 2013 (“If there is a question of law or procedure on which the ANC statute, the common law, and your ANC’s bylaws are all silent, Robert’s Rules control”); Letter to Kathryn Pearson-West, Comm’r, ANC 5A, at 1, Nov. 5, 1993 (if a subject is not addressed by law or by the ANC’s bylaws, “Robert’s Rules of Order govern”); Letter to Vannie Taylor, III, Vice-Chairperson, ANC 4B, at 2 n.1, Jan. 23, 1992 (“Robert’s Rules of Order govern the procedures of ANCs in the absence of a statutory provision or by-law to the contrary”).

⁹ *See* D.C. Official Code § 1-309.11(e)(1) (2012 Repl.).

¹⁰ *See* ROBERT’S RULES at 449 ll. 27-30 (describing a Chairperson’s authority to “announce in proper sequence the business that comes before the assembly or becomes in order in accordance with the prescribed order of business, agenda, or program”).

¹¹ *See id.* at 372 l. 16 (an agenda “can be adopted by majority vote”).

¹² *Id.* at 3 ll. 2-3.

¹³ *Id.* at 3 ll. 4-6 (emphasis removed).

Because Robert's Rules denies the Chairperson this authority, he or she would only have this power if the ANC's bylaws so provided. In that event, however, it would be necessary to assess whether such a dramatic (and, to our knowledge, unprecedented) restriction would be consistent with the ANC Act.

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

Sincerely,

KARL A. RACINE
Attorney General for the District of Columbia

By: 
JOSHUA TURNER
Assistant Attorney General
Legal Counsel Division

(AL-17-353)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



Legal Counsel Division

February 5, 2015

Commissioner Kathy Henderson
ANC 5D05
1807 L St, NE
Washington, D.C. 20002

Re: Questions Concerning Videorecording a Public ANC Meeting

Dear Commissioner Henderson,

On January 23, 2015, you contacted Attorney General Karl Racine, asking for references to any District law that allows members of the public to record D.C. government public meetings. Attorney General Racine then referred the matter to us.

Nothing in District law explicitly gives members of the public a right to record D.C. government public meetings in general or public ANC meetings in particular. Nonetheless, the open-meetings provisions applicable to ANCs could reasonably be read to give members of the public a right to record public ANC meetings. Under section 14(g) of the Advisory Commissions Act of 1975 (“ANC Act”),¹ ANC meetings must be open to the public “unless personnel or legal matters are discussed.”² As we observed in a 2010 letter to Sara Green,³ many jurisdictions have concluded that their own open-meetings laws “required that residents be permitted to electronically record meetings of their representative bodies, if done unobtrusively.”⁴ Likewise, a court could reasonably read the District’s open meetings law to give ANC meetings attendees that same right. At the very least, the open-meetings provisions that apply to ANCs mean that there is no “reasonable expectation of privacy at public ANC meetings for either commissioners

¹ Effective March 26, 1976 (D.C. Law 1-58; D.C. Official Code § 1-309.11(g) (2012 Repl. and 2014 Supp.)).

² Section 14(g) of the ANC Act also makes ANCs subject to the more general open-meetings guarantee in section 742 of the District of Columbia Home Rule Act, effective December 24, 1973 (87 Stat. 831; D.C. Official Code § 1-207.42 (2012 Repl.)). That provision states that meetings of an ANC “at which official action is taken shall be open to the public.” D.C. Official Code § 1-207.42(a) (2012 Repl.).

³ Letter from Assistant Attorney General Jason Lederstein to ANC 4B Secretary Sara Green (“2010 Letter”), Oct. 8, 2010, available at <http://app.occ.dc.gov/documents/2010/20101008.pdf> (last visited Feb. 5, 2015). Attached to the 2010 Letter is another relevant letter, from Assistant Corporation Counsel Annette Elseth to ANC 4B Treasurer Frank E. Jackson, II, on Apr. 14, 1999. That letter can be found separately at <http://app.occ.dc.gov/documents/1999/apr/19990414.pdf> (last visited Feb. 5, 2015).

⁴ 2010 Letter, *supra* n. 2.

or the community when they choose to participate.”⁵ As a 2003 New York court decision put it, “those 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.”⁶

Depending on what the bylaws and resolutions adopted by ANC 5D say, ANC commissioners and members of the public may well have the right to record ANC public meetings even if the open meetings laws do not give them that right. If the ANC bylaws, or applicable resolutions adopted by the ANC, do not prohibit attendees from recording a meeting, those attendees have the right to record that meeting in a manner that complies with other lawful ANC bylaws and resolutions. This means, for example, that if the ANC has adopted bylaws or resolutions that forbid meeting attendees from disrupting the meeting, the ANC’s commissioners may ask someone who records the meeting in a way that violates those bylaws or resolutions to stop doing so or to leave the meeting.

If you have any questions, please contact Josh Turner, Assistant Attorney General, at 442-9834, or Janet M. Robins, at 724-5524.

Sincerely,

KARL A. RACINE
Attorney General for the District of Columbia

By: 
JOSHUA TURNER
Assistant Attorney General
Legal Counsel Division

(AL-15-089)

cc: Gottlieb Simon
Executive Director
Office of Advisory Neighborhood Commissions

⁵ *Id.*

⁶ *Csorny v. Shoreham-Wading River Cent. Sch. Dist.*, 759 N.Y.S. 2d 513, 517-18 (N.Y. App. Div. 2003) (quoted in *id.*). The court also concluded that “[t]he 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*, 759 N.Y.S. 2d at 518 (quoted in 2010 Letter).