

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL
KARL A. RACINE

Legal Counsel Division

April 8, 2021

Yannik Omictin
Commissioner, ANC 2A01

Re: Questions re Commissioners Speaking in ANC Meetings

Commissioner Omictin:

District law currently allows Advisory Neighborhood Commissions (“ANCs”) to conduct their meetings *via* teleconference or other virtual means.¹ You have asked us two questions about how these meetings may be conducted:

- (1) During a virtual public meeting, may the ANC’s Chairperson mute a Commissioner’s microphone while the Commissioner is speaking, on the basis that the Commissioner’s remarks are not germane?
- (2) In virtual (or in-person) meetings, may a Commissioner who works for an issue-based advocacy organization speak about an issue that the organization speaks to and that affects the Commissioner’s single-member district?

We answer each in turn.

- (1) **The Chairperson may not mute a Commissioner’s microphone in a virtual meeting on the basis you describe unless the ANC’s bylaws otherwise so provide**

Although a Commissioner who has the floor in a virtual meeting may not speak on matters that are not germane, Robert’s Rules of Order do not permit the Chairperson to silence that Commissioner by muting the Commissioner’s microphone. Accordingly, an ANC chairperson lack authority to do this unless the ANC’s bylaws so permit.

Since this is a question about the chairperson’s power, we start by describing that power, which flows from the Advisory Neighborhood Commissions Act of 1975 (“ANC Act”),² as well as

¹ See Coronavirus Support Temporary Amendment Act of 2020, § 905(d)(2), effective Oct. 9, 2020 (D.C. Law 23-130; 67 DCR 8622).

² Effective Oct. 10, 1975 (D.C. Law 1-21; D.C. Official Code § 1-309.01 *et seq.*).

from Robert’s Rules of Order (“Robert’s Rules”),³ which governs ANC operations to the extent consistent with your ANC’s Bylaws.⁴ The ANC Act makes the Chairperson the “convener of the Commission,” responsible for “chair[ing] the Commission meetings.”⁵ This makes the Chairperson the “presiding officer” described in Robert’s Rules, and Robert’s Rules further describe what that role involves. The presiding officer’s functions include calling meetings to order, “recogniz[ing] members who are entitled to the floor,” putting questions to a vote, ruling on whether a motion is in order, and “enforc[ing] the rules relating to debate and those relating to order and decorum within the assembly.”⁶

One of those rules is that a Commissioner’s remarks must be germane to the matter that is under consideration.⁷ If a Commissioner begins speaking on a non-germane matter, the Commissioner may properly be interrupted with a point of order, from the Chairperson or from another Commissioner.⁸ When that happens, the interrupted Commissioner must take a seat (literally or figuratively) “while the interrupting matter is being attended to,”⁹ and cannot resume speaking until the Chairperson gives the floor back to that Commissioner.¹⁰ In a virtual meeting, it may be prudent for the interrupted Commissioner to mute his or her mic until he or she regains the floor.

Even in that situation, however, nothing in Robert’s Rules permits the Chairperson to mute the Commissioner’s microphone, even if the Commissioner fails to properly yield the floor. That type of authority lies outside the enforcement measures a presiding officer may employ. A Chairperson may advise a member to desist from a violation (perhaps coupled with a rap from a gavel), may call a member to order, or may “name” a member,¹¹ but “has no authority to impose a penalty or [literally or figuratively] order the offending member removed from the hall.”¹² Only the body – the Commission – may do that, by vote.¹³ Accordingly, the power to actually prevent a Commissioner from speaking in a meeting rests only with the Commission as a whole, and even that power should be exercised only in extraordinary cases.

A Chairperson’s lack of authority to mute a member makes sense, since muting a member could effectively deny a Commissioner prerogatives that Robert’s Rules guarantee. For example, muting a Commissioner may prevent a Commissioner from lodging a point of order. Under Robert’s Rules, even when a Commissioner has yielded the floor for an interrupting matter, the Commissioner may still raise points of order.¹⁴ A muted Commissioner cannot do this unless the Commission permits motions to be made *via* chat.

³ See Henry M. Robert III *et al.*, Robert’s Rules of Order Newly Revised (12th ed. 2020).

⁴ See D.C. Official Code § 1-309.11(e)(3) (“Where not otherwise provided, the procedures of the Commission shall be governed by Robert’s Rules of Order”).

⁵ *Id.* § 1-309.11(e)(1A)(A).

⁶ Robert’s Rules § 47:7.

⁷ See *id.* § 4:30 (“Debate must be confined to the merits of the pending question”).

⁸ See *id.* § 42.18(c).

⁹ *Id.* § 42.20.

¹⁰ *Id.*

¹¹ *Id.* §§ 61:10-61:12.

¹² *Id.* § 61:13.

¹³ See *id.*

¹⁴ See *id.* §§ 23:2 and 61:8.

Based on the above, Robert’s Rules do not allow a Chairperson to mute the mic of a Commissioner that the Chairperson believes has spoken on non-germane matters. Nor does anything in your ANC’s Bylaws permit this.¹⁵ A Commission may, however, adopt bylaws that depart from Robert’s Rules.¹⁶ The Commission may therefore give a Chairperson this power through a bylaw amendment. A Commission seeking to do this should take care, however, to ensure that any such amendment does not unduly impede the ability of each Commissioner, representing each single-member district in the neighborhood area, to participate fully and fairly in virtual meetings.

(2) A Commissioner who belongs to an issue-based advocacy organization may, within limits, speak in an ANC meeting about issues that organization speaks about

Nothing in the ANC Act, or in other law, categorically prohibits a Commissioner from speaking in an ANC meeting about an issue that affects the neighborhood area but is also an issue of interest to an issue-based advocacy organization to which the Commissioner belongs. That means this issue must be resolved on a case-by-case basis. When a Commissioner wants to speak on such an issue, the Commissioner should clearly disclose his or her affiliation with the advocacy organization, and should make sure that speaking on the matter will be consistent with the ANC’s bylaws¹⁷ and with the District’s ethics laws. To ensure compliance with those ethics laws, the Commissioner should consult the Board of Ethics and Government Accountability (“BEGA”)¹⁸ to make sure that speaking on the issue would not pose a financial conflict of interest or otherwise run afoul of the Commissioner’s ethical responsibilities.¹⁹

Sincerely,

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(AL-21-165)

¹⁵ See Bylaws of ANC 2A, available at <https://www.anc2a.org/bylaws> (all internet sites last visited Apr. 5, 2021).

¹⁶ See D.C. Official Code § 1-309.11(e)(3) (“Where not otherwise provided, the procedures of the Commission shall be governed by Robert’s Rules of Order”).

¹⁷ See, e.g., Bylaws of ANC 2A, art. 3, sec. 7 (conflicts of interest).

¹⁸ See <https://bega.dc.gov/service/ethics-advice>

¹⁹ We made a similar point when a Commissioner asked us whether a Commissioner could establish a non-profit organization to support community service efforts in the Commissioner’s single-member district. Letter to Comm’r-Elect Brannum, Dec. 27, 2004, at 2, available at <http://app.occ.dc.gov/documents/2004/20041227.pdf> (last visited Apr. 5, 2021)