

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL**



**ATTORNEY GENERAL
BRIAN L. SCHWALB**

Legal Counsel Division

April 27, 2023

Trupti J. Patel
Commissioner, ANC 2A
950 25th St., N.W.
Washington, D.C. 20037

Re: Commissioner Remote Participation

Commissioner Patel:

You asked our advice with respect to a scenario that recently materialized in a videoconference meeting of your Advisory Neighborhood Commission (“ANC”). One of the attending Commissioners is on the phone with another Commissioner, who is not logged into the videoconference but can hear what the Commissioners on the videoconference are saying and can (through the phone) be heard through the attending Commissioner’s laptop microphone. You asked whether this second Commissioner (the one on the phone with the attending Commissioner) may lawfully be counted as a meeting attendee. You also asked whether a Commissioner who wishes to participate this way must seek an accommodation to do so. In our view, this second Commissioner may lawfully be counted as a meeting attendee, making it unnecessary for the Commissioner to request, or the ANC to grant, an accommodation request.

To answer your questions, we reviewed the provisions of the Advisory Neighborhood Commissions Act of 1975 (“ANC Act”)¹ that allow Commissioners to participate remotely in ANC meetings. Until recently, section 14(b) of the ANC Act (D.C. Official Code § 1-309.11(b)) required each Commissioner to be “physically present at a public meeting in order to participate in the meeting, including being counted toward the presence of a quorum and voting on matters before the Commission.”² When the COVID-19 pandemic arrived, however, the Council authorized ANCs to meet virtually rather than in-person. The COVID-19 Response Emergency Amendment Act of 2020³ qualified section 14(b)’s in-person meeting requirement with a new paragraph (1B), which said that, during a public health emergency, “[n]otwithstanding any other provision of law”:

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

² D.C. Official Code § 1-309.11(b)(1A).

³ Effective Mar. 17, 2020 (D.C. Act 23-247; 67 DCR 3093).

Advisory Neighborhood Commissioners may call a meeting and remotely participate in that meeting and vote on matters before the Commission without being physically present through a teleconference or through digital means identified by the Commission for this purpose. Members physically or remotely present shall be counted for determination of a quorum.⁴

The emergency declaration resolution that accompanied this measure explained why the Council was taking this step: ANCs needed to “convene remote meetings during this public health emergency to prevent large gatherings that could facilitate the transmission of COVID-19.”⁵ Although the initial emergency legislation authorizing remote meetings expired in June of 2020, subsequent emergency and temporary acts have carried it forward, with virtually no change in language (although it is now a paragraph (1C) instead of (1B)).⁶

We interpret these provisions based on the ordinary meaning of their terms. *See, e.g., New Prime, Inc. v. Oliveira*, 139 S. Ct. 532, 539 (2019). Under this language, a Commissioner may participate remotely in a meeting “through a teleconference or through digital means identified by the Commission for this purpose.” The word “teleconference” is an expansive, flexible term that encompasses any “meeting in which some or all the participants are not physically present but take part by electronic communications such as telephone, closed-circuit television, Internet text, audio, or other audiovisual means.”⁷ So, for instance, a Commissioner who calls into an in-person meeting rather than joining the meeting in person can be said to be participating by teleconference. The same could be said for a Commissioner calling into a video meeting (a practice not uncommon when, for instance, someone joins a meeting from on the road). Moreover, nothing in this language indicates that a Commissioner must call directly into a meeting, rather than, for example, relying on a fellow Commissioner’s connection. For example, if two Commissioners were in the same room and wanted to call into a meeting, nothing in this language appears to require that they call separately rather than joining from one of the Commissioner’s cell phones. Accordingly, we conclude that a Commissioner who participates in a meeting by telephone is remotely present for, and thus may participate in, that meeting.

We recommend, however, that an ANC establish safeguards to make sure it maintains a quorum throughout the meeting. For example, when the ANC proceeds to a vote on a matter, the Chair should verbally confirm with the Commissioner participating over the phone that the person is still participating in the meeting and has not terminated the call or walked away from the phone. You may wish to consult with the Office of Advisory Neighborhood Commissions about different possible options.

⁴ *Id.* § 501(2).

⁵ COVID-19 Response Emergency Declaration Resolution of 2020, § 2(p), effective Mar. 17, 2020 (Res. 23-382; 67 DCR 3118).

⁶ *See, e.g.,* Advisory Neighborhood Commissions Pandemic Provisions Extension Second Temporary Amendment Act of 2022, § 2(c)(2), effective Feb. 23, 2023 (D.C. Law 24-277; 70 DCR 2949). The only change, which carries no substantive import, is that the law currently says that “An Advisory Neighborhood Commissioner,” rather than “Advisory Neighborhood Commissioners,” may do this. *See id.*

⁷ *Teleconference*, Black’s Law Dictionary (11th ed. 2019).

Sincerely,

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