

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CORPORATION COUNSEL

Office of Government Operations
Legal Counsel Division

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July 26, 2001

Norma M. Broadnax
Chairperson
Advisory Neighborhood Commission 5A
1322 Irving Street, N.E.
Washington, D.C. 20017

Re: ANC rescission of previous ANC action

Dear Commissioner Broadnax:


This responds to your letter dated July 9, 2001, requesting advice as to whether a sitting Commission can "undo" the action of a previous sitting Commission. Specifically you state that Advisory Neighborhood Commission (ANC) 5A voted on July 5, 2001 to rescind a voluntary agreement with D.C. Tunnel that was approved in October 2000 by ANC 5A, then composed of different members.

As a general rule, ANCs may vote to rescind an action previously approved by the Commission. Robert's Rules of Order, Newly Revised (9th Ed. 1998), §§ 6 (p. 76), 10 (pp. 118-121), 34 (pp. 299-304) (attached). In this case, the voluntary agreement was made a part of D.C. Tunnel's ABC license and may only be terminated or amended in accordance with D.C. Official Code § 25-446(d), which requires a writing by the parties and approval by the ABC Board. Therefore, ANC 5A's vote to rescind the voluntary agreement does not by itself legally rescind the agreement, rather it is the first-step in the process of terminating the voluntary agreement.

If you have any further questions with regard to this matter, please contact Annette Elseth, Assistant Corporation Counsel, Legal Counsel Division, at 724-5537, or me at 724-5493.

Sincerely,

ROBERT R. RIGSBY
Corporation Counsel


By: DARRYL G. GORMAN
Senior Deputy Corporation Counsel
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DGG/abe
(AL-01-488)

motions of any rank (such as *Point of Order*, *Appeal*, *Suspend the Rules*, *Motions Relating to Voting*, and certain types of *Requests and Inquiries*), whenever it is stated that one of these motions yields to "all motions" above a certain rank, the incidental motion nevertheless does not yield to any motion ranking below the one out of which it arises. For example, "A *Point of Order* yields to the motion to *Lay on the Table*, and to all privileged motions." This statement is true without qualification if the point of order is in connection with a motion ranking lower than *Lay on the Table* (that is, a main motion or any other subsidiary motion); but a point of order arising from a motion to *Recess* would yield only to the two higher-ranking privileged motions—to *Adjourn*, and to *Fix the Time to Which to Adjourn*.

While a series consisting of a main motion and a number of subsidiary or privileged motions is being considered, it is possible for some of the incidental motions—such as a *Point of Order*, an *Appeal*, or a *Division of the Assembly*—to arise more than once, in connection with different motions in the series.

INCIDENTAL MAIN MOTIONS CORRESPONDING TO INCIDENTAL MOTIONS. Counterparts of some of the incidental motions may occur as incidental main motions. For example, a *standing rule* (2) can be suspended for the duration of a session (8); and a motion for such a suspension, made when no business is pending, is an incidental main motion. Similarly, a motion prescribing how nominations shall be made is an incidental main motion if it is moved while no election is pending.

(Each of the incidental motions is fully discussed in 23-32.)

Motions That Bring a Question Again Before the Assembly

BASIS OF THIS CLASSIFICATION. Four motions are grouped in this book as *motions that bring a question again before the assembly* since, either by their adoption or by their introduction, they serve the function described by the name of the class. Two of these motions—and a third in certain applications—cannot be satisfactorily placed in any other classification. The remaining motion in the group and? in its other applications, the third just mentioned are incidental main motions having special characteristics. Like main motions, all of the motions that bring a question again before the assembly are usually made (and three of them can only be made) while no business is pending. The existence of these motions as a separate category may be seen as related to the following principles of parliamentary law:

- a) *During the meeting or series of connected meetings (called a "session," §) in which the assembly has decided a question, the same or substantially the same question cannot be brought up again, except through special procedures which imply an unusual circumstance.*
- b) *While a question is temporarily disposed of (by any of several methods described in this and later chapters) but is not finally settled, no similar or conflicting motion whose adoption would restrict the assembly in acting on the first question can be introduced.*
- c) *To change what the assembly has adopted requires something more (in the way of a vote or previous notice to the members) than was necessary to adopt it in the first place.*

No motion violating principles (a), (b), or (c) is in order. But the motions that bring a question again before the assembly enable the assembly for good reason to reopen a completed question during the same session, or to take up one that has been temporarily disposed of, or to change something previously adopted and still in force.

LISTING OF INDIVIDUAL MOTIONS IN THIS CLASS. The order in which these motions are listed below has no relation to the order of precedence of motions. The first three of these motions are either main motions or have the same low rank as main motions, and the fourth has special characteristics relating to rank (see pp. 79; 310-312). The motions that bring a question again before the assembly, briefly described by function, are as follows:

- 1) If it is desired to resume consideration of a main motion (with or without a series of *adhering* motions—see p. 79) which lies on the table, it can be proposed by means of the motion to *Take from the Table* (33), that the motion or series become pending again. (A main motion is said to lie on the table if it was laid on the table earlier in the present session, or in the last previous session with no more than a quarterly time interval having intervened [see p. 90], and it has not yet been finally disposed of.)
- 2) If it is desired to strike out an entire main motion, resolution, rule, bylaw, section, or paragraph that has been adopted, such action can be proposed by means of the motion to *Rescind* (or *Repeal*, or *Annul*, 34); and by another form of the same parliamentary motion—that is, the motion to *Amend Something Previously Adopted* (34)—it can be proposed to modify only a part of the

wording or text previously adopted, or to substitute a different version.

- 3) If a question has been referred, or a task has been assigned, to a committee that has not yet made its final report and it is desired to take the matter out of the committee's hands, either so that the assembly itself can consider or act upon *it* or so that *it* can be dropped, such action can be proposed by means of the motion to *Discharge a Committee* (35).
- 4) If, in the same session that a motion has been voted on but no later than the same or the next calendar day (not counting a legal holiday, weekend, or other single day on which no business meeting is held); new information or a changed situation makes it appear that a different result might reflect the true will of the assembly, a member who voted with the prevailing side can propose to *Reconsider* (36) the vote; that is, he can move that the question shall come before the assembly again as if it had not previously been considered.

RELATIONSHIPS AMONG MOTIONS IN THIS CLASS.

The motions that bring a question again before the assembly have a number of differences among themselves, and they may be variously subgrouped depending on the point of view, as follows:

- The motion that takes the form either to *Rescind* or to *Amend Something Previously Adopted* is an incidental main motion because (a) it brings *business* before the assembly by its *introduction* and (b) when it is voted on, business thereby ceases to be pending. By contrast, two other motions in this class, *Reconsider* (as applied to a main motion) and *Take from the Table*"

If the assembly is taking up business under the heading of Special Orders in the order of business, or that of Unfinished Business and General Orders (rather than New Business as in the above example), the chair instead of saying, "Is there further new business," announces, "The next item of business is ... [immediately proceeding to state the question]" (see 40).

(See 4 for variations in the steps illustrated above. For examples of the use of subsidiary and incidental motions in the handling of main motions and the application of privileged motions while a main motion is pending, see 11-32.)

Previous Notice of Motions

The term *previous notice* (or *notice*), as applied to necessary conditions for the adoption of certain motions, has a particular meaning in parliamentary law. A requirement of previous notice means that announcement that the motion will be introduced—indicating its exact content as described below—must be included in the call of the meeting (p. 4) at which the motion will be brought up, or, as a permissible alternative, if no more than a quarterly time interval (see p. 90) will have elapsed since the preceding meeting, the announcement must be made at the preceding meeting. The call of a meeting is generally mailed to all members a reasonable time in advance, which may be prescribed in the bylaws.

Motions which have the effect of changing or nullifying previous action of the assembly—such as the motion to *Rescind* or to *Amend Something Previously Adopted* (34), the motion to *Discharge a Committee* (35), or a motion to postpone an event already scheduled—require previous notice if they are to be adopted by only a majority vote. The

adoption or amendment of special rules of order requires notice *and* a two-thirds vote—as does the amendment of bylaws if they do not prescribe the procedure for their amendment, which they should do (see also Table of Rules Relating to Motions, tinted pp. 6-29). Bylaws sometimes also provide a requirement of notice for original main motions dealing with certain subjects (compare Standard Characteristic 7, p. 100).

Subject to any rules of the organization which provide how notice shall be given, it can be given as follows: "If previous notice is given *at a meeting*, it can be given orally unless the rules of the organization require it to be in writing—which is often the case with notice of amendments to bylaws. Unless the rules require the full text of the motion, resolution, bylaw amendment, etc., to be submitted in the notice, only the purport need be indicated, but such a statement of purport must be accurate and complete—as in "to raise the annual dues to \$20"—since it will determine what amendments are in order when the motion is considered. The notice becomes invalid if the motion is amended beyond the scope of the notice (see also 34, 35, 56).

When no question is pending; a member desiring to give a notice is entitled to preference in recognition, except that another member who wishes to make a motion to *Reconsider* (36) or to *Reconsider and Enter on the Minutes* (p. 326), or who is moving a series of motions (p. 297), is entitled to be recognized first. But if the member wishing to give the notice is unable to obtain the floor while no business is pending (as may sometimes happen, for example, in a convention that is following an adopted agenda or program, 40, or in cases where a meeting of an ordinary society adjourns before completing its regular order of

business), the notice, if necessary, can interrupt pending business or any other pending motion; the notice is also in order when another person has been assigned the floor but has not yet begun to speak, and is in order even after it has been voted to adjourn, provided that the chair has not yet declared the meeting adjourned (see also pp. 237-239).

A notice can be given and taken note of in a meeting as follows:

MEMBER A (obtaining the floor): I give notice that at the next meeting I will move to rescind the resolution adopted April 17, 19 ____, relating to. . .

CHAIR: Notice has been given that at the next meeting . . . [repeating the substance of the notice].

The secretary then records the notice in the minutes. If the member desiring to give the notice is unable to obtain the floor, the following variations in form can be used as appropriate to the case:

MEMBER A (rising and addressing the chair immediately after the chair has recognized another member; Mr. Y, and before the latter has begun to speak or remaining standing if he has just sought the floor unsuccessfully): Mr. President!

CHAIR: For what purpose does the member rise [or, if Member A has remained standing after seeking the floor, "For what purpose does the member address the chair"]?

MEMBER A: I wish to give notice of the following amendment to the bylaws: "To amend Article II, Section 3, by . . ."

CHAIR: Notice has been given of the following amendment to the bylaws: . . . Mr. Y has the floor.

Instead of being given at a meeting, a notice can also be sent by mail to every member with the call of the meeting at which the matter is to come up for action, except where

the rules of the organization provide otherwise. In such a case, the member desiring to give the notice writes a letter to the secretary alone, requesting that the notice be sent with the call of the next meeting; and the secretary should then do this at the expense of the organization.

Motion to Adopt and Motion to Ratify

; A motion to *adopt* (or *accept* or *agree to*) a report or the recommendations of an officer or a committee which the assembly (by means of a main motion) directed the officer or committee to prepare is an incidental main motion. A motion to adopt or accept a report or the recommendations of a standing committee prepared on the committee's own initiative and dealing with a subject that was not expressly referred to the committee, however, is an original main motion.

A motion to adopt a resolution, bylaws, or any other document can be amended by adding, "and that it be printed and that members be furnished with copies," or, "that it [or "they"] go into effect at the close of this annual meeting," or anything of a similar nature (see also 50; for the adoption of bylaws see 53 and p.564).

, "The motion to *ratify* (also called *approve* or *confirm*) is an incidental main motion, that is used to confirm or make valid, an action already taken that **cannot** become legally valid until **approved** by the assembly: Cases where, the procedure of ratification is applicable include:

- emergency **action** taken at a regular or properly called meeting at which no quorum was present;
- emergency action taken by officers, committees, or delegates in excess of their instructions;
- action taken by a local unit which requires **approval** of the state or national organization; or

who had exhausted their right of debate cannot speak on the question again; but if on another day, no notice is taken of speeches previously made. The *Previous Question* or a Limitation or Extension of debate is not exhausted, however, if the question to which such an order was applied is taken from the table at the same session, even on another day—as in a convention. At the next session any such order is exhausted and the regular rules of debate prevail.

Form and Example

The form used in making this motion is, for example, "I move to take from the table the resolution relating to ... and its amendment."

If Member A, who has risen to seek the floor for the purpose of making this motion, observes that the chair has recognized another member who rose at about the same time and who apparently intends to make a new main motion, the procedure would be as follows:

MEMBER A (remaining standing and interrupting): Mr. President, I rise for the purpose of moving to take a question from the table.

Upon recognition, Member A then would move "... to take from the table the motion relating to ..."

If Member A did not rise to claim the floor before the chair recognized another member who already has made a new motion, then before this question has been stated by the chair, Member A can quickly rise and address the chair, thus:

MEMBER A: Madam President.

CHAIR: For what purpose does the member rise?

MEMBER A: I rise for the purpose of moving ... [and so on, as in the case above].

§34. RESCIND; AMEND SOMETHING PREVIOUSLY ADOPTED

By means of the motions to *Rescind* and to *Amend Something Previously Adopted*—which are **two forms** of one incidental main motion governed by practically identical rules—the assembly can change an action previously taken or ordered. *Rescind*—also known as *Repeal* or *Annul*—is the motion by which a previous action or order can be cancelled or countermanded. The effect of *Rescind* is to strike out an entire main motion, resolution, rule, bylaw, section, or paragraph that has been adopted at some previous time. *Amend Something Previously Adopted* is the motion that can be used if it is desired to change only a part of the text, or to substitute a different version.

Standard Descriptive Characteristics

The motions to *Rescind* and to *Amend Something Previously Adopted*:

1. Take precedence of nothing, and can therefore be moved only when no other motion is pending. *Previous notice* (p. 118) of intent to offer one of these motions at the next meeting can be given while another question is pending, however—provided that it does not interrupt a speaker (see **Standard Characteristic 7**). These motions yield to **subsidiary**, **privileged**, and **incidental** motions.
2. Can be applied to any main motion *which has been adopted* (including questions of privilege and orders of the day) and to an affirmative result on an appeal (that is, to a vote which has sustained the chair's decision)—provided that none of the action involved has been carried out in a way which it is too late to undo, and provided that the question cannot be reached by calling

up a motion to *Reconsider* (36) that has already been made. (See below for actions that cannot be rescinded or amended.) All of the subsidiary motions can be applied to the motions to *Rescind* and to *Amend Something Previously Adopted*.

3. Are out of order when another has the floor; but previous notice of intent to offer one of these motions at the next meeting can be given after another member has been assigned the floor, provided that he has not begun to speak.
4. Must be seconded.
5. Are debatable; debate can go into the merits of the question which it is proposed to rescind or amend.
6. Are amendable, by the processes of primary and secondary amendment in any of the forms discussed in 12, as applicable to the particular case. Thus, a motion to *Rescind* can be amended, for example, to become a motion to strike out only a part of what it was proposed to rescind. But if a motion to *Rescind* or to *Amend Something Previously Adopted* is amended so that the change proposed by the amended motion then exceeds the scope of a previous notice that was given, the effect of the previous notice is destroyed and the motion can no longer be adopted by a majority vote (see Standard Characteristic 7). When these motions *require* previous notice (as in the case of a motion to rescind or amend a provision of the bylaws or a special rule of order), such a motion cannot be amended so as to make the proposed change greater than that for which notice has been given.
7. In an assembly, except when applied to a constitution, bylaws, or special rules of order, require (a) a two-thirds vote, or (b) a majority vote when notice of intent

- to make the motion, stating the complete **substance** of the proposed change, has been given at **the** previous meeting or in the call of the **present meeting**, or (c) a vote of a majority of the **entire membership**—**whichever** is most practical to obtain. In a committee, require a two-thirds vote unless all committee members who voted for the motion to be rescinded or amended are present or **have received ample** notice, in **which** case these motions require a majority vote. A motion to rescind or amend provisions of a constitution or **bylaws** is subject to the requirements for amendment as contained in the constitution or bylaws (**see** 55, 56). **If** the bylaws or **governing instrument** contains no provision relating to **amendment**, a motion to **rescind** or amend applied to a **constitution** or to **bylaws** is subject to **the** same voting requirement as to **rescind** or **amend special rules of order**—that is, it requires previous notice as described above **and** a two-thirds vote, or, without notice, a vote of a majority **of** the **entire membership**.
8. A **negative** vote on these motions can be reconsidered, but not an affirmative vote.

Further Rules and **Explanation**

RIGHT OF ANY MEMBER TO MAKE THE MOTIONS, WITHOUT TIME LIMIT. In contrast to the case of the motion to *Reconsider*, there is no time limit on making these motions **after** the adoption of the measure to which they are applied, and they can be **moved** by **any** member, regardless of how he voted on **the original question**. When previous notice has been given, it is **usual** to **wait** for the member who gave notice of these motions to move them; but if he **does not**, any member can do so.

CONDITIONS DETERMINING TYPE OF VOTE TO BE SOUGHT. The type of vote (two thirds, Or a majority when previous notice has been given, or a majority of the entire membership) to be sought for adopting one of these motions will depend on conditions. Ordinarily it is desirable to give previous notice if there is a possibility of serious disagreement. The two-thirds vote without previous notice may be used for matters requiring emergency action. In many organizations, a majority of the entire membership may never be obtainable at a meeting; but this may become the best method in a convention of delegates, or in a small board.

ACTIONS THAT CANNOT BE RESCINDED OR AMENDED.
The motions to *Rescind* and to *Amend Something Previously Adopted* are not in order under the following circumstances:

- a) When it has **previously** been moved to reconsider the vote on the main motion, and the question can be reached by calling up the motion to *Reconsider* (36).
- b) When something has been done, as a result of the vote on the main motion, that it is impossible to undo. (The unexecuted part of an order, however, can be rescinded or amended.)
- c) When the case is in the nature of a contract, and the other party has been informed of the vote.
- d) When a resignation has been acted upon, or a person has been elected to or expelled from membership or office, and the person was present or has been officially notified of the action. (The only way to reverse an expulsion is to follow whatever procedure is prescribed by the bylaws for admission or reinstatement. For the case of an election, see p. 657 regarding removal of a person from office.)

Form and Example

When previous notice has been given, the motions to *Rescind* or to *Amend Something Previously Adopted* may be made as follows:

MEMBER A (obtaining the floor): In accordance with notice given at the last meeting, I move to **rescind** the resolution which authorized additional landscaping of the grounds. [Or "... to amend the resolution ... by adding ..."] (Second.)

In such a case, a majority vote is **sufficient**.

When no notice of the motion to *Rescind* or to *Amend* has been given; the **motions** may be made as follows:

MEMBER A (obtaining the floor): I move to **rescind** the motion relating to adopted at the May meeting. [Or "... to amend the motion by inserting ..."] (Second.)

Without previous notice, the **motion** requires a **two-thirds** vote or a majority of the entire membership for its adoption.

Rescind and Expunge from the Minutes

On extremely rare occasions when it is desired not **only** to rescind action but also to express the strongest disapproval, a member may move to *Rescind and Expunge from the Minutes* (or *the Record*). **Adoption** of this motion requires an affirmative vote of a **majority** of the **entire** membership, and may be inadvisable unless the **support** is even greater. Even a **unanimous vote** at a **meeting** is insufficient if that vote is not a **majority** of the **entire** membership. If such a motion is adopted, the **secretary**, in the presence of the assembly, **draws a single line** through or around the offending words in the minutes, and writes across them the words, "Rescinded and Ordered Ex-

punged," with the date and his signature. In the recorded minutes the words that are expunged must not be blotted or cut out so that they cannot be read, since this would make it impossible to verify whether more was expunged than ordered. If the minutes are published, the expunged material is omitted. Rather than expunging, it is usually better to rescind the previous action and then, if advisable, to adopt a resolution condemning the action which has been rescinded.

§35. DISCHARGE A COMMITTEE

By means of the motion to *Discharge a Committee* from further consideration of a question or subject, the assembly can take the matter out of a committee's hands after referring it to the committee and before the committee has made a final report on it, and the assembly itself can consider it.

So long as a question is in the hands of a committee, the assembly cannot consider another motion involving practically the same question.

The rules governing this motion are similar to those applying to the motion to *Rescind* or to *Amend Something Previously Adopted*—of which it is a particular case in certain applications, as explained on pages 307-308.

Standard Descriptive Characteristics

The motion to *Discharge a Committee*:

1. Takes precedence of nothing, and therefore can be moved only when no other question is pending. *Previous notice* of intent to offer the motion at the next meeting can be given while another question is pending, however—provided that it does not interrupt a

- speaker. This motion yields to all subsidiary, privileged, and incidental motions.
2. Can be applied to any main motion, or any other matter, *which* has been referred to a committee and which the committee has not yet finally reported to the assembly. All of the subsidiary motions can be applied to it.
 3. Is out of order when another has the floor; but previous notice of intent to offer this motion at the next meeting can be given after another member has been assigned the floor, provided that he has not begun to speak.
 4. Must be seconded.
 5. Is debatable; debate can go into the merits of the question in the hands of the committee.
 6. Is amendable. For example, the motion can be amended as to the time at which the assembly is to consider the question; or an amendment to the effect that the committee be instructed to report instead of being discharged can be moved as a substitute.
 7. Since the motion would change action already taken by the assembly, it requires (a) a two-thirds vote, or (b) a majority vote when notice of intent to make the motion has been given at the previous meeting or in the call of the present meeting, or (c) a vote of a majority of the entire membership—whichever is most practical to obtain. To prevent business from being delayed by a committee, however, there are two special circumstances under which the motion requires only a majority vote (even without notice): (a) if the committee fails to report within a prescribed time as instructed, and (b) while the assembly is considering any partial report of the committee.
 8. A negative vote on this motion can be reconsidered, but not an affirmative vote.