

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



**ATTORNEY GENERAL
KARL A. RACINE**

Legal Counsel Division

March 24, 2020

Gottlieb Simon
Executive Director
Office of Advisory Neighborhood Commissions
1350 Pennsylvania Ave., N.W., Ste. 11
Washington, D.C. 20004

**Re: Application of the Home Rule Act's Open Meetings Requirement to Meetings
Conducted by Videoconference**

Mr. Simon:

To help prevent further spreading of Covid-19,¹ recent Council legislation allows Advisory Neighborhood Commissions (“ANCs”) to meet virtually.² You asked whether the Home Rule Act’s open meetings provisions³ allow an ANC to take official action in these virtual meetings. We conclude that they do, as long as members of the public can hear (and, in the case of a meeting by video conference, see) the ANC proceedings live, and can obtain a transcript or transcription once the meeting ends.

The legislation allowing ANCs to meet virtually is the Covid-19 Response Emergency Amendment Act of 2020 (“Emergency Act”).⁴ Section 501(2) of that act amended section 14 of the Advisory Neighborhood Commissions Act of 1975 (“ANC Act”)⁵ to let Commissioners “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.”⁶

¹ See Centers for Disease Control and Prevention, “Coronavirus Disease 2019 (Covid-19),” <https://www.cdc.gov/coronavirus/2019-ncov/about/index.html> (all internet sites last visited Mar. 24, 2020).

² See Covid-19 Response Emergency Declaration Resolution of 2020, § 2(p), effective Mar. 17, 2020 (Res. 23-382; 67 DCR 3118) (ANCs and other bodies have an “immediate need to . . . convene remote meetings during this public health emergency to prevent large gatherings that could facilitate the transmission of COVID-19”).

³ See District of Columbia Home Rule Act, § 742, approved Dec. 24, 1973 (87 Stat. 831; D.C. Official Code § 1-207.42).

⁴ Effective Mar. 17, 2020 (D.C. Act 23-247; 67 DCR 3093).

⁵ Effective Mar. 26, 1976 (D.C. Law 1-58; D.C. Official Code § 1-309.11).

⁶ Section 501(2) also provides that “[m]embers physically or remotely present shall be counted for determination of a quorum.”

Your question arises because these virtual meetings, like physical meetings of an ANC, may be subject to the open meetings requirements of the Home Rule Act. Section 742(a) of the Home Rule Act⁷ states that “[a]ll meetings of any department, agency, board, or commission of the District government . . . at which official action of any kind is taken must be open to the public.” That requirement, coupled with section 742(b)’s requirement that these meetings be transcribed,⁸ ensures that members of the public can observe meetings as they happen and obtain documentation of a meeting after the fact. Since ANCs are “commissions,” we have previously advised that in-person ANC meetings must satisfy these requirements.⁹ So far, courts in the District have not decided whether a virtual meeting must satisfy those requirements too.¹⁰ Nonetheless, there is a reasonable argument that a video conference or other virtual ANC gathering is a “meeting” within the meaning of section 742. Just as a conversation can take place either in person or over digital media, the word “meeting” could, in its ordinary sense,¹¹ reach digital gatherings (such as a videoconference) as well as in-person ones.¹²

To the extent that a virtual ANC meeting is subject to section 742, that meeting can fairly be considered “open to the public” if its full contents are broadcast simultaneously to the general public. That is what, in this context, distinguishes an open meeting from a closed one. In an open meeting, members of the public may attend the meeting and observe, live, what transpires. Accordingly, in *Jordan v. District of Columbia* – one of the few court decisions to interpret section 742 – the D.C. Court of Appeals noted that, in open adjudicatory proceedings, “testimony and arguments are entertained in public.”¹³ Conversely, a closed meeting is one where the conduct of the meeting takes place outside of public view.¹⁴

What being “open to the public” looks like for a virtual ANC meeting would depend on the form the meeting takes. For example, if an ANC meets by video conference, it should live-stream the contents of that meeting on its website or at another publicly accessible online location. That way, members of the public can observe what takes place. If the ANC meets by telephone conference, the public’s means of “observing” the meeting is listening to the discussion between

⁷ D.C. Official Code § 1-207.42(a).

⁸ *Id.* § 1-207.42(b) (“A written transcript or a transcription shall be kept for all [meetings described by subsection (a)] and shall be made available to the public during normal business hours of the District government”); See Letter to Gottlieb Simon, Aug. 10, 2015, at 2-3 (on file) (interpreting this requirement).

⁹ See Letter to Gottlieb Simon, July 21, 2017, at 2, available at <https://oag.dc.gov/sites/default/files/2018-02/ANC-July-21-2017-Open-Meetings-Question.pdf> (section 742 applies to ANCs “because they are ‘commissions’”).

¹⁰ See, e.g., *Kane v. Dist. of Columbia*, 180 A.3d 1073, 1080 n.24 (D.C. 2018) (“We need not resolve” whether “ANC Commissioners are engaged in ‘meetings’ within the meaning of [section 742] when they communicate by email rather than in person”).

¹¹ See *Gonzalez v. Carhart*, 550 U.S. 124, 152 (2007) (“In interpreting statutory texts courts use the ordinary meaning of terms unless context requires a different result”).

¹² See, e.g., *Ettinger v. Town of Madison Planning Bd.*, 35 A.3d 562, 565 (N.H. 2011) (noting that New Hampshire’s right-to-know law applies to “all meetings, whether held in person, by means of telephone or electronic communication, or in any other manner”); *Claxton Enterprise v. Evans County Board of Commissioners*, 549 S.E.2d 830, 835 (Ga. Ct. App. 2001) (a meeting of a governmental body “can be realized through virtual as well as actual means”).

¹³ 362 A.2d 114, 117 (D.C. 1976).

¹⁴ See *Closed*, Black’s Law Dictionary (3d Pocket ed. 2006) (defined, in the context of a meeting, as “conducted in secrecy”).

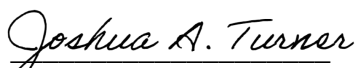
Commissioners, so the audio of that conference should be conveyed contemporaneously to the public. The ANC could broadcast the audio live, or could set the meeting up as a call that members of the public can call into.¹⁵ An ANC that takes measures like these (and, in keeping with section 742(b), supplies a transcript or transcription of the meeting afterward) has satisfied section 742.

We note, of course, that virtual ANC meetings are still subject to many of the requirements governing ordinary, in-person ANC meetings. For example, the ANC generally must give proper notice at least 7 days before a meeting,¹⁶ must have a quorum participating in the meeting in order to take official action,¹⁷ and must “set aside a portion” of each open meeting “to hear the views of residents within the Commission area and other affected persons.”¹⁸ Likewise, any virtual meeting must abide by the Americans with Disabilities Act of 1990.¹⁹

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

Sincerely,

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(AL-20-257)

¹⁵ This could include a format where, for most of the meeting, members of the public may call in solely to listen to the proceedings.

¹⁶ D.C. Official Code § 1-309.11(c).

¹⁷ *Id.* § 1-309.11(b)(1) (as amended by the Emergency Act).

¹⁸ *Id.* § 1-309.11(b)(3).

¹⁹ Approved July 26, 1990 (104 Stat. 328; 42 U.S.C. § 12101 *et seq.*); see Letter to Comm’r James Harnett, Feb. 4, 2020 (on file) (offering guidance on ADA compliance); Letter to Joan Fowler Brown, Oct. 22, 1992, available at <http://app.occ.dc.gov/documents/1992/oct/19921022.pdf> (same).