

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL
KARL A. RACINE

Legal Counsel Division

July 19, 2021

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

Re: Open Meetings and Vaccination Requirements

Mr. Simon:

We previously advised that, if an Advisory Neighborhood Commission (“ANC”) met virtually, that ANC could take official action in that meeting without violating the open-meetings requirements of the Home Rule Act.¹ You asked whether an ANC that meets in person, but in a space that requires attendees to be vaccinated, may satisfy those open-meetings requirements by allowing non-present attendees to view the proceedings by video. It may.

We start with some context. Beginning in March 2020, the Council authorized ANCs to meet virtually in order to prevent the spread of SARS-COV-2.² But that authorization has applied only “during a period for which a public health emergency has been declared by the Mayor.”³ Once the Mayor terminates the public health emergency, ANCs will again be required to meet in person, and some of the venues in which they wish to meet may have pre-existing requirements that anyone entering that venue be vaccinated. At the same time, those meetings will be subject to section 742(a) of the Home Rule Act,⁴ which 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.” They will similarly be subject to section 14(g) of the

¹ See Letter to Gottlieb Simon, Mar. 24, 2020, available at <https://oag.dc.gov/sites/default/files/2021-01/ANC-%20Letter%20Regarding%20Open%20Meetings%20and%20Videoconferencing.pdf> (all websites last visited July 19, 2021).

² See *id.* at 2; 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 Coronavirus Support Temporary Amendment Act of 2021, § 905(d)(2), effective June 24, 2021 (D.C. Law 24-9; 68 DCR 4824).

⁴ Approved Dec. 24, 1973 (87 Stat. 813; D.C. Official Code § 1-207.42(a)).

Advisory Neighborhood Commissions Act of 1975 (“ANC Act”),⁵ which expressly says ANCs must follow section 742(a) and adds that “[n]o meeting may be closed to the public unless personnel or legal matters are discussed.”

Although section 742(a) does not define what it means for a meeting to be “open to the public,” our prior letters have explained that section 742(a) was drawn directly from Florida’s own open meetings law, which is colloquially known as the “Sunshine Act.” In a 1988 letter, we observed that Florida congressman Bill Young offered section 742 as an amendment to the pending home rule legislation for the District, and that the amendment was accepted on the understanding that it was drawn directly from Florida’s open meetings law.⁶ Because statutory language “transplanted from another legal source . . . brings the old soil with it,”⁷ we explained that “Florida case law is relevant to ascertaining the intent of Congress in including § 742(a) in the Self-Government Act.”⁸ Likewise, Florida’s interpretation of its Sunshine Act informs our interpretation of section 742(a).

Florida precedent indicates that, for a meeting to be open to the public, it must be broadly accessible to the public at large, not just to a segment of the public.⁹ But that does not mean the public at large must be able to physically attend. In our March 24, 2020 letter to you, we explained that, if an ANC conducts a virtual meeting, it can satisfy section 742(a) of the Home Rule Act “as long as members of the public can hear (and, in the case of a meeting by video conference, see) the ANC proceedings live.”¹⁰ Such a meeting is the antithesis of a closed meeting, “where the conduct of the meeting takes place outside public view.”¹¹ True, viewing an in-person meeting by video is somewhat different from viewing a video conference by video, since someone watching an in-person meeting over video is not “attending” the meeting in the same way that Commissioners and other in-person attendees are. Nonetheless, the same logic applies. Those who watch an in-person meeting live can hear and see those proceedings in real time, just as in-person attendees can. Accordingly, as long as unvaccinated individuals who cannot attend an in-person ANC meeting can nonetheless watch and listen to that meeting in real time, the open-meetings requirements of section 742(a) have been satisfied.

That said, we offer two cautionary notes. First, whenever an ANC holds a meeting in a space that prevents many members of the public from entering that space, the ANC should confirm that the restriction is consistent with District law. Second, as we noted in our March 24, 2020 letter to you, the open-meetings requirements of section 742(a) (and the related transcript-or-

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

⁶ Letter to Valerie Costelloe, Apr. 28, 1988, at 2, available at <http://app.occ.dc.gov/documents/1988/apr/19880428.pdf>.

⁷ *Sekhar v. United States*, 570 U.S. 729, 733 (2013) (quoting Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 COLUM. L. REV. 527, 537 (1947)).

⁸ Letter to Valerie Costelloe, *supra*, at 2.

⁹ See *Port Everglades Auth. v. Int’l Longshoremen’s Ass’n, Local 1922-1*, 652 So.2d 1169, 1170 (Fl. Ct. App. 1995); Fl. Op. Attorney Gen. 99-53, Sept. 1, 1999, available at <http://www.myfloridalegal.com/ago.nsf/Opinions/DEEFC081283817B8852567E0004B8312> (not paginated).

¹⁰ Letter to Gottlieb Simon, Mar. 24, 2020, *supra*, at 1.

¹¹ See *id.* at 2.

transcription requirement in section 742(b)¹²) are not the only ones an ANC must satisfy here. For example, an ANC must “set aside a portion of each public meeting to hear the views of residents within the Commission area and other affected persons on problems or issues of concern within the Commission area and on proposed District government actions that affect the Commission area.”¹³ To effectuate this, the ANC must provide residents and others who cannot attend an ANC meeting live a way to convey their views in that meeting. Likewise, any mechanism for remote participation in an ANC meeting must abide by applicable requirements in the Americans with Disabilities Act.¹⁴

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-21-462)

¹² See D.C. Official Code § 1-207.42(b).

¹³ *Id.* § 1-309.11(b)(3).

¹⁴ Approved July 26, 1990 (104 Stat. 328; 42 U.S.C. § 12101 *et seq.*).