



The Commonwealth of Massachusetts
Office of the Attorney General
One Ashburton Place
Boston, Massachusetts 02108

OPEN MEETING LAW COMPLAINT FORM

Instructions for completing the Open Meeting Law Complaint Form

The Attorney General's Division of Open Government interprets and enforces the Open Meeting Law, Chapter 30A of the Massachusetts General Laws, Sections 18-25. Below is the procedure for filing and responding to an Open Meeting Law complaint.

Instructions for filing a complaint:

- o Fill out the attached two-page form completely and sign it. File the complaint with the public body within 30 days of the alleged violation. If the violation was not reasonably discoverable at the time it occurred, you must file the complaint within 30 days of the date the violation was reasonably discoverable. A violation that occurs during an open session of a meeting is reasonably discoverable on the date of the meeting.
- o To file the complaint:
 - o For a local or municipal public body, you must submit a copy of the complaint to the chair of the public body AND to the municipal clerk.
 - o For all other public bodies, you must submit a copy of the complaint to the chair of the public body.
 - o Complaints may be filed by mail, email, or by hand. Please retain a copy for your records.
- o If the public body does not respond within 14 business days and does not request an extension to respond, contact the Division for further assistance.

Instructions for a public body that receives a complaint:

- o The chair must disseminate the complaint to the members of the public body.
- o The public body must meet to review the complaint within 14 business days (usually 20-22 calendar days).
- o After review, but within 14 business days, the public body must respond to the complaint in writing and must send the complainant a response and a description of any action the public body has taken to address it. At the same time, the body must send the Attorney General a copy of the response. The public body may delegate this responsibility to its counsel or a staff member, but only after it has met to review the complaint.
- o If a public body requires more time to review the complaint and respond, it may request an extension of time for good cause by contacting the Division of Open Government.

Once the public body has responded to the complaint:

- o If you are not satisfied with that the public body's response to your complaint, you may file a copy of the complaint with the Division by mail, e-mail, or by hand, but only once you have waited for 30 days after filing the complaint with the public body.
- o When you file your complaint with the Division, please include the complaint form and all documentation relevant to the alleged violation. You may wish to attach a cover letter explaining why the public body's response does not adequately address your complaint.
- o The Division will not review complaints filed with us more than 90 days after the violation, unless we granted an extension to the public body or you can demonstrate good cause for the delay.

If you have questions concerning the Open Meeting Law complaint process, we encourage you to contact the Division of Open Government by phone at (617) 963-2540 or by e-mail at openmeeting@state.ma.us.



OPEN MEETING LAW COMPLAINT FORM

Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Please note that all fields are required unless otherwise noted.

Your Contact Information:

First Name: Brian Last Name: DeLacey

Address: 1 Earl St

City: Malden State: MA Zip Code: 02148

Phone Number: _____ Ext. _____

Email: bdelacey@gmail.com

Organization or Media Affiliation (if any): Malden News Network

Are you filing the complaint in your capacity as an individual, representative of an organization, or media?

(For statistical purposes only)

Individual Organization Media

Public Body that is the subject of this complaint:

City/Town County Regional/District State

Name of Public Body (including city/town, county or region, if applicable): City Council, Committee on Technology Policy, Parks & Recreation Committee

Specific person(s), if any, you allege committed the violation: Council President Craig Spadafora

Date of alleged violation: June 28, 2022

Description of alleged violation:

Describe the alleged violation that this complaint is about. If you believe the alleged violation was intentional, please say so and include the reasons supporting your belief.

Note: This text field has a maximum of 3000 characters.

The description of alleged violations is attached

What action do you want the public body to take in response to your complaint?

Note: This text field has a maximum of 500 characters.

Action requested are spelled out in the attached

Review, sign, and submit your complaint

I. Disclosure of Your Complaint.

Public Record. Under most circumstances, your complaint, and any documents submitted with your complaint, is considered a public record and will be available to any member of the public upon request.

Publication to Website. As part of the Open Data Initiative, the AGO will publish to its website certain information regarding your complaint, including your name and the name of the public body. The AGO will not publish your contact information.

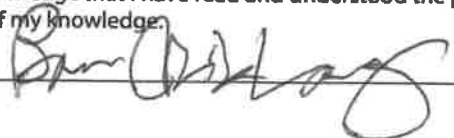
II. Consulting With a Private Attorney.

The AGO cannot give you legal advice and is not able to be your private attorney, but represents the public interest. If you have any questions concerning your individual legal rights or responsibilities you should contact a private attorney.

III. Submit Your Complaint to the Public Body.

The complaint must be filed first with the public body. If you have any questions, please contact the Division of Open Government by calling (617) 963-2540 or by email to openmeeting@state.ma.us.

By signing below, I acknowledge that I have read and understood the provisions above and certify that the information I have provided is true and correct to the best of my knowledge.

Signed: 

Date: 7/21/22

"The purpose of the Open Meeting Law is to ensure transparency in the deliberations on which public policy is based."

"Open Meeting Law Guide and Educational Materials", January 2018

Summary of COMPLAINT

=====

For Malden's June 28, 2022 meeting of the Parks and Recreation Committee, Council President Spadafora willfully interfered with the ability of the public to peaceably assemble - both in person, in meeting room 105 of City Hall, and via online Zoom. As a result of his intentional actions, it appears he committed one or more violations of Open Meeting Law and possibly other state and federal laws.

In an email deliberation to the City Council on June 28 at 3:20 PM, just a few hours before this public body meeting was set to start at 5:45 PM, Council President Spadafora distributed an email to all members of the City Council:

"The Council President alone" has the authority to approve "all requests for remote access to Council or Council Committee Meetings ..." Spadafora described the steps he took to pull the online plug for the meeting that day:

"I have asked that the remote access link published on Facebook for [the] Parks & Recreation Committee be disabled."

The actions taken by Spadafora - email deliberation, and disabling a communication channel which was to be used to transmit and record that June 28th meeting - violates multiple aspects of Open Meeting Law. As described in the Council President's own written words, he makes clear this was intentional. In other words, any and all violations associated with this matter are unquestionably intentional. Spadafora's actions were planned, willful, deliberate and determined. He used taxpayer resources to carry this out.

Councillor Spadafora's intent was clearly to interrupt or disrupt an assembly of people meeting for the lawful purpose of the Parks and Recreation Public Body meeting. Additionally, his intent was to cut off online assembly and gathering of people. This had been planned and publicly promoted by the meeting Chair (and other residents of Malden who forwarded and shared news of online access to this meeting).

Council President Spadafora's own written words (via email) make clear his design and intention behind disabling a Zoom account. Council President Spadafora actively worked to discourage, disturb, disrupt, and disconnect remote public access to the June 28th meeting. He did so by ordering a Zoom account disabled so that it could not be used to transmit or record a public body meeting. Spadafora's multiple actions unreasonably undermined residents' rights under open meeting law. Chapter 30a, section 20 makes clear:

"After notifying the chair of the public body, any person may make a video or audio recording of an open session of a meeting of a public body, or may transmit the meeting through any

medium, subject to reasonable requirements of the chair as to the number, placement and operation of equipment used so as not to interfere with the conduct of the meeting."¹

As a result of disruptions caused by Spadafora's actions disabling remote access, the in-person portion of the June 28th meeting was extensively disrupted. The committee was unable to complete the agenda it had planned.

Dozens of identifiable residents were unable to peaceably assemble for that public body meeting. Council President Spadafora's actions infringed valuable rights of Malden residents and those rights ought to be protected. The City of Malden is duty bound to ensure the protection and enjoyment of these rights, which the people of Massachusetts and of Malden are entitled under the state constitution.

The City of Malden publicly promotes and praises its state-of-the-art, costly investments in media technology at the modern taxpayer funded City Hall. Despite that, the Council President has reportedly prohibited the use of that technology for remote public access to Committee meetings. These access roadblocks have been imposed on the public during a period of time when COVID-19 related measures are in place to encourage holding remote meetings and remote public access to meetings.

The actions documented in this Complaint, while focused on Council President Spadafora, likely involve actions by one or more other city officials. The goal was to interfere with the June 28th public body meeting by disabling remote access links published to the public. The view of the Complainant is this constitutes a violation of the spirit and language of the laws that guide Open Government.

As has been made clear in Ghiglione v. School Committee of Southbridge, 376 Mass (see <https://casetext.com/case/ghiglione-v-school-committee-of-southbridge>)

"The open meeting law is designed to eliminate much of the secrecy surrounding the deliberations and decisions on which public policy is based."

The actions of Council President Spadafora, in relation to the June 28th meeting, violated the spirit and language of Open Meeting Law and other democratic principles of the State of Massachusetts

Every indication is this was a willful, intentional, coordinated, purposeful effort by one or more City of Malden officials. The goal was clearly to violate fundamental public rights to assembly, and violated the Attorney General's description a fundamental right of all of us:

"Every resident of Massachusetts should be able to access and understand the reasoning behind the government policy decisions that affect our lives."

DETAILED DESCRIPTION

=====

In the hours before the June 28th meeting of Malden's Parks & Recreation Committee (a public body), Council President Craig Spadafora sent an email to the entire City Council, as part of his unilateral and intentional violations of state law. You can find his communication in Exhibit 1.

¹ See <https://malegislature.gov/laws/generallaws/parti/titleiii/chapter30a/section20>

In relation to the June 28th public body meeting, Councillor Spadafora knowingly - with willful forethought and planning (see Exhibit 2) - acted in a manner to intentionally restrict, impede and block public participation in a publicly noticed meeting of a formal public body² in the City of Malden. Spadafora's actions appear to violate numerous state and federal laws which anchor the principles of democratic governance.

SEQUENCE OF EVENTS

=====

1. On June 24th, Councillor Ryan O'Malley posted the meeting announcement for the upcoming Parks & Recreation Committee to be held on June 28th at 5:45 PM in City Hall, noting "You can either come to City Hall, 215 Pleasant St, first floor (Room 105) in person or participate remotely through the below Zoom link." Adding, "Join Zoom Meeting <https://cityofmalden.zoom.us/j/91251837577>"
2. On Sunday, Jun 26th this Zoom Link circulated widely on social media and through personal communications. Here is the "Zoom Link to Parks Committee Meeting if you can't make it in person. Join Zoom Meeting, <https://cityofmalden.zoom.us/j/91251837577>
3. On Tuesday, June 28th, shortly after the meeting start time arrived, messages began to circulate on social media about difficulties getting electronic transmission and recording of the meeting. For instance, this message circulated by the Friends of Roosevelt Park at about 6 PM: "UPDATE: THE committee is having technical difficulties with the zoom link, but it should be fixed in the next few minutes. Please try again in a moment. Thank you!"
4. At that time, the meeting Vice Chair located a City of Malden IT employee. They visited the meeting room, deciphered the Zoom account had been deactivated - at that point none of the participants were aware of Council President Spadafora's actions to deactivate the account.
5. The City of Malden IT employee reactivated the Zoom account, which was an account held by Ward 4 City Councillor Ryan O'Malley, acting in his official capacity as an elected City Official.
6. The meeting transmission then proceeded. However, soon after the transmission was interrupted and allegedly disabled. This disrupted both people attending the meeting in person as well as more than a dozen residents attempting to view the transmission online.
7. Using his knowledge of the meeting room technology, Councillor O'Malley activated the Zoom broadcast and recording system which is installed in Meeting Room 105. That action generated a new link for remote viewers. That updated information was shared.
8. On 6/28 at 6:22 PM, a new message circulated as outreach to residents - "UPDATE NEW ZOOM LINK", "Update #2: Mayor Christenson and Councilor at Large Craig Spadafora actually disabled the committee's account prior to this meeting today. Here is the new zoom ID and passcode to access the meeting now: Meeting ID: 919 4615 8092 Passcode: 481445"
9. Sometime shortly thereafter, complaints circulated that this meeting had also been shut down.
10. At some point, a Zoom account was deactivated during the actual transmission of the meeting. The way the Zoom technology appears to work, meeting moderation then transfers to another

² See DEFINITIONS at <https://malegislature.gov/laws/generallaws/parti/titleiii/chapter30a/section18> - By definition a public body is "a multiple-member board, commission, committee or subcommittee within the executive or legislative branch or within any county, district, city, region or town, however created, elected, appointed or otherwise constituted, established to serve a public purpose"

online meeting attendee. Consequently, the subsequent deactivation of the specific Zoom account during the transmission of the meeting, actually transferred the meeting Chair's role as online moderator to a non-elected resident who was viewing the meeting, further inconveniencing residents and undermining the elected and appointed governmental authority of the Chair (and members) of the Parks & Recreation Public Body.

It was later reported on social media, "The City of Malden shut down the Zoom meeting. We tried but it kept getting disconnected every time we got it started. City said they sent an email to Councillors this afternoon-No Zoom Meetings without permission from Council President."

Narrative and Further Chronology of Events

=====

- 1) Late in the afternoon on June 28th, Council President Craig Spadafora released an email which announced he ordered a Zoom account be disabled. He did this knowing it had been well advertised as providing remote, on-line access to an officially announced Public Body meeting, the Parks and Recreation Committee;
- 2) Spadafora knew the Zoom account he disabled was used to announce the transmitting (and recording) for a meeting to take place in just a few short hours after the distribution of his email. Spadafora knew the Zoom account he disabled was exclusively used by a City Official, Ward 4 Councillor Ryan O'Malley, for official City of Malden Business. Spadafora disabled and compromised this account without forewarning, coordination, fair notice, or a courtesy communication to the Chair or Vice Chair of this Public Body, the Parks & Recreation Committee;
- 3) Upon arrival at that meeting, the owner of the Zoom account became aware the intended video transmission had been compromised, though he was unaware of the precipitating actions by Spadafora;
- 4) A staff member from the IT organization was sought out for urgent assistance as people gathered for the meeting. The IT staffer discovered the the account had been deactivated without the knowledge of the account holder. The IT staffer then reactivated the account.
- 5) Once the Zoom account had been reactivated the meeting proceeded. However, after a short period of time, allegedly by the intervention of other City Staff, the publicized transmission of the meeting was disabled;
- 6) As a result, the Chair of the Parks & Recreation Committee created a new Zoom link, from the media system located in the meeting room 105 at City Hall. That Zoom link was subsequently published through social media communication channels.
- 7) However, that Zoom link eventually failed in various ways, with some people reporting being able to see video but not hear audio.
- 8) Technology records have been independently inspected and verified to confirm at least two Zoom Meeting Accounts were apparently tampered with in order to disrupt and impede the public meeting on June 28th.

It's clear that the disruption to this meeting, as described in event (1) above, was caused by actions taken solely by Council President Craig Spadafora.

It's unclear who else may have contributed to, or directly caused, subsequent disruptions to the meeting. For instance, the Zoom account dedicated to Meeting Room 105 (thus is a public asset for the public good) was initialized by meeting attendees but appears to have been interrupted by someone behind a technology curtain.

The City has claimed, in response to a public records request, they do not have records documenting who deactivated Zoom accounts during the time period around this meeting. In a video obtained by that public records request, we can see that a portion of this meeting was recorded Although it appears it was not available to the public via a real time transmission, despite that being the intent of the public body Chair and many meeting attendees.

VIOLATIONS

=====

On information and belief, the rights of dozens of identifiable residents were violated by Council President Spadafora's actions related to the June 28th meeting. Details of the meeting are shown in a half-dozen descriptive, support documents listed under the title of Exhibit 3.

There are multiple alleged and apparent violations of state and federal law; these are severe. Council President Spadafora's actions, and results of those actions, can be summarized as follows:

- 1) Council President Spadafora sent email to the Council on 6/28, in which he "deliberated outside of a noticed meeting via email."
 - a) This was sent by a city staff member at Spadafora's direction to the entire City Council, and thus all the subcommittees of the City Council.
 - b) Spadafora worked through a proxy to deliver this deliberation, and the message was clearly directed to be sent by Spadafora.
 - c) The "Good Afternoon All" email was a communication to a quorum of the Council which forcefully conveyed Spadafora's strongly held opinions on contested matters of business (ie. remote participation) which have been properly, and are currently, before the Council.
 - d) These violations were purposeful, knowing, willful and intentional. And consequential.
- 2) This email also discloses, for the first time to the Complainant's knowledge, that city officials have (once again) conducted communications between counsel and a quorum of the City Council. The 6/28 email describes the communications quite clearly:
- 3) "the law designated the Council President - and the Council President alone - to make those decisions on behalf of the body and its subcommittees." Moreover, that email refers to communications with the City Solicitor's office and the "the legal decision with [the City Solicitor's office] this afternoon" - this violates past Open Meeting Law determinations - involving Malden - and the well known requirement that "communication between counsel and a quorum of a public body may occur only during a properly posted open meeting or during a valid executive session." OML 2019-140, dated 11/5/2019, involving Malden's City Council, makes this point clearly:

The Appeals Court recently confirmed that this rule remains in effect, notwithstanding the Supreme Judicial Court's 2007 decision in Suffolk Construction, Revere Retirement Bd. v. Attorney General, 93 Mass. App. Ct. 1117 (2018) (Rule 1:28 Decision) (Further Appellate Review denied Sep. 13, 2018). Therefore, communication between counsel and a quorum of a public body may occur only during a properly posted open meeting or during a valid executive session. See District Attorney for the Plymouth Dist. v. Selectmen of Middleborough, 395 Mass. 629, 632-634 (1985); see also; OML 2018-139; OML 2017-72. A discussion between a quorum of public body members and counsel may be held in executive session, outside of the view of the public, only if the communication falls within one of the enumerated executive session purposes. Id. The attorney-client privilege itself is not an explicitly enumerated basis for executive session, nor is there an implied executive session purpose for attorney-client communications. See Id.; G.L. c. 30A, § 21(a).

Source: OML 2019-140, dated 11/5/2019

- 4) There were multiple violations of Open Meeting Law's guidelines on deliberation, which Spadafora (and the entire City Council) is well versed in from past violations.
- 5) Spadafora's 6/28 email raises his opinions on matters before multiple public bodies (all of which he is a member of), including:
 - a) the full City Council - see #314-21 - tabled motion for the Mayor regarding remote participation (business before full City Council)
 - b) Spadafora's actions are email deliberation, and blatant overreach (see Exhibit 4, 5, 6, 7, and 8) of ongoing business of the Committee on Technology Policy³
 - i) See #154-22 - Committee on Technology Policy "technology availability in the new City Hall Business, remote participation for Councillors and the Public" etc. (business before Committee on Technology Policy)
 - ii) See #118-22 - Committee on Technology Policy "adopting policies for public access and remote participation" etc. (business before Committee on Technology Policy)
 - iii) These are all matters to be reviewed by the FULL City Council when they are referred out of Committee
 - iv) The 6/28 email by Spadafora notes ongoing deliberations and review by the Committee on Technology Policy on April 12, 2022; from all indications, that committee's recommendations and report have been blocked from return to the full City Council by Spadafora, and thus these deliberations remain active and current before the public bodies.
 - v) At a May 10, 2022 meeting, this committee had an agenda items "to discuss adopting policies for public access and remote participation for Councillors and any other business" - which directly relates to positions stated by Spadafora in his 6/28 email.
 - c) Spadafora is a member of each of these public bodies, thus leading to violations related to business before each of these public bodies; this business related to remote access of meetings has been front-and-center before Malden's public bodies since at least June 2021 (see Exhibit 9);
- 6) The kinds of authority Council President Spadafora claims in his 6/28/22 email amount to new policy making authority granted by self-proclamation of the Malden City Council President

³ Exhibits 6, 7 and 8 for minutes and draft minutes of the Committee on Technology Policy, highlighting current deliberative topics before that public body.

- a) There is no evidence in Council rules, or precedent, that "all requests for remote access ... must be approved by the Council President" and "the Council President - and the Council President alone - to make those decisions on behalf of the body and its subcommittees", particularly the result of actions taken by Spadafora on 6/28 which impeded the ability of persons to transmit and record a public body meeting, as allowed under Open Meeting Law.
 - b) Any such determination that the Council President to "alone" make such decisions would derive from the City Council Rulebook - and there is no such travel of truth.
 - c) The current version of the Rulebook makes no mention of such powers related to remote meetings, Spadafora is stating his opinions on changes to make to the Rulebook - a business and deliberative matter clearly before the public body of the full City Council;
 - d) The City Council has a paper before the Rules & Ordinance Committee See #313-21 (that ordinances be amended in relation to "remote participation by members of the public") and another that was proposed by tabled See #314-21 related to authorizing remote participation (that the Mayor be authorized to make such determinations)
- 7) Spadafora's actions interfered with online-assembly, participation and access to a public meeting. He should know better, since he has been cited for violations on this before. However, this series of actions is more extreme than before and clearly breaks into new areas of state and federal law with disturbance of public meetings and infringement of civil rights (see Exhibit 10)
 - 8) Spadafora's email, and related actions taken by other public personnel, impeded in-person participation and peaceable assembly of dozens of residents for a meeting at Malden City Hall;
 - 9) Zoom bombing in new and novel ways of this June 28th online meeting leveraged questionable claims of official, legal authority and personal dictate;
 - 10) Unreasonably obstructing and undermining the ability of one or more persons in the City of Malden from transmitting a video of a public body meeting is direct violation of Open Meeting Law - this clearly took place on June 28, 2022, with early indicators and evidence of this imminent risk going back to at least June 2021 (see Exhibit 11);
 - 11) Unreasonably obstructing and undermining the ability of one or more persons in the City of Malden to record video of a public body meeting, as allowed under Open Meeting Law;
 - 12) Restricting and obstructing Open Meeting public access to a public body meeting during a time of COVID-19 regulations which unambiguously encourage online access, legislation extended most recently on 7/14/22;
 - 13) Disrupting peaceable assembly of residents attending a public meeting, in City Hall 105 on 6/28/22, by delaying the start of the meeting by interfering with infrastructure (e.g. network);
 - 14) Disrupting online access / assembly by suborning subsequent meeting disruptions resulting from disconnections of public infrastructure and the use of Zoom from a public meeting (based on allegations of multiple interferences by City of Malden employees after the meeting began;
 - 15) Abridging the rights of persons, including their freedom of speech and right to peaceably assemble, as allowed under the First Amendment of the United States Constitution;
 - 16) Infringing residents' rights under Article 19 of the Massachusetts Constitution, whereby "The people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good ..." <https://malegislature.gov/laws/constitution#partTheFirst>
 - 17) Violating residents' rights under the First Amendment of the Constitution, whereby government officials are prohibited from "prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble."

It is clear these violations were intentional, with the intent clearly documented and outcomes harmful.

Spadafora's actions required forethought, planning, and he used the power of his official position and office to employ other City of Malden staff to carry out these violations (e.g. the Clerk of Committees to distribute messages and city staff to deactivate one or more Zoom accounts and meetings).

The alleged and apparent violations in this matter touch on at least the following areas of Massachusetts General Law:

1. Open Meeting Law, G.L. c. 30A, 18-25⁴
2. Chapter 272, Section 40 of the General Laws: "Whoever willfully interrupts or disturbs an assembly of people meeting for a lawful purpose shall be punished ..."⁵
3. Disturbing the 6/28/22 meeting in violation of Article 19 of the Massachusetts Constitution, whereby "The people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good ..."⁶
4. Violations of constitutional rights of any persons⁷ including the First Amendment⁸ of the United States Constitution
5. Violations of rights characterized "by force or threat of force, willfully injure, intimidate or interfere with, or attempt to injure, intimidate or interfere with, or oppress or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him by the constitution or laws of the commonwealth or by the constitution or laws of the United States"⁹
6. Actions tied to misuse of public funds and resources in a manner detrimental to public interest and democratic principles (ie. city staff, city resources, computers, media assets, software, network, meeting rooms etc.) falling under the "Unlawful exercise or departments abuse of power"¹⁰

COMPLAINANT SEEKS THE FOLLOWING

=====

As a result of the breadth and severity of these apparent violations, Complainant seeks the following actions be taken in consideration of this Complaint concerning the June 28th meeting:

1. A formal investigation by a combined delegation from the City Solicitor's Office and the Attorney General's Office to fully review alleged violations of law related to the June 28th meeting.
2. City of Malden acknowledgement of the violations in this Complaint, and promise to not repeat
3. Improved IT procedures for logging alterations to the Zoom and meeting recording systems

⁴ See Open Meeting Law, 18-25 <https://malegislature.gov/laws/generallaws/parti/titleiii/chapter30a/section18>

⁵ See <https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleI/Chapter272/Section40>

⁶ See <https://www.mass.gov/news/massachusetts-declaration-of-rights-article-19>, <https://malegislature.gov/laws/constitution#partTheFirst>

⁷ See <https://malegislature.gov/laws/generallaws/parti/titleii/chapter12/section11h>

⁸ See First Amendment at <https://constitution.congress.gov/constitution/amendment-1/>

⁹ See General Laws, Part IV, Title I, Chapter 265, Section 37, <https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleI/Chapter265/section37>

¹⁰ See General Laws, Part I, Title III, Chapter 29, Section 63, <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleIII/Chapter29/Section63>

4. City of Malden release of records related to the deactivation of any Zoom account (it appears TWO Zoom accounts were disrupted on June 28th).
5. City Council censure of actions by City of Malden staff disrupting the June 28th meeting
6. Enforcement and penalties under Massachusetts law for actions by any city officials culpable for violation of laws related to the June 28th meeting, specifically:
 - a. A \$5,000 civil fine for the intentional violations of Open Meeting Law¹¹ associated with email deliberations by Councillor Spadafora (Five violations related to #313-21, #314-21, #154-22, #118-22 and the City Council Rulebook¹².)
 - b. Councillor Spadafora was previously found to have committed (multiple) violations of Open Meeting Law (OML 2021-179) in circumstances similar to this.
 - i. In the earlier Determination, Spadafora was deemed to have "deliberated outside of a noticed meeting via email. Furthermore, we find these violations to be intentional. We order the Council ... immediate and future compliance. ... Finally, we caution the Council and the Committee that similar violations in the future may result in the imposition of a civil penalty of up to \$1,000 per intentional violation."

In accord with Open Meeting Law, Complainant respectfully requests the following:

First, for the Attorney General to conduct "an investigation to ascertain whether in fact such person has violated the open meeting law".

Second, for the Attorney General to "take testimony under oath concerning such alleged violation of the open meeting law".

Third, for the City of Malden to make public, and "examine or cause to be examined any documentary material of whatever nature relevant to such alleged violation of the open meeting law".

Fourth, for the City of Malden to make public the facts of the investigation, testimony, and documentary material gathered through this investigation, particularly any and all City of Malden records related to the deactivation of any Zoom Account or IT service related to the June 28th meeting.

Fifth, for the City of Malden to report on administrative and security protocols for creation, activation, deactivation and general administration of all ZOOM accounts used by any city staff member.

<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleIII/Chapter30A/Section24>

The violations described in this Complaint negatively impacted dozens of residents. Here are some of the comments provided as a result of Councillor Spadafora's actions:

¹¹ See <https://malegislature.gov/laws/generallaws/parti/titleiii/chapter30a/section18>

¹² The City Council Rulebook - aka file #191-18 - in draft is at this link <https://bit.ly/2MbunAf>

[Person 1] "Craig Spadafora does not have the right to intentionally hinder freedom of speech through freedoms of access. It's completely unethical." [Person 1]

[Person 2] "Really no excuse for it-we have the up to date technology - it was a clear attempt to withhold access to the public ..." [Person 2]

[Person 3] "Tried to attend this meeting virtually. First couldn't get on at all then video but no audio. Very disappointed that I couldn't participate. Later learned of the intentional blocking of citizens who planned to participate remotely and was furious our City's representatives would block public access. It was just another way to try and shut down citizens' voices re our parks. 1. Not allowing Friends of Roosevelt Park to speak. 2. Not providing Parks subcommittee a room in which to meet (or a Clerk). 3. Shutting down remote access to the meeting. What else? What's next?" [Person 3]

[Person 4] "Thank you for this updated information. I tried to attend by Zoom and when I was able to, attributed it to technical difficulties. When I learned what really happened, I found it very disturbing and has caused me to lose faith in our local government."

"I love remote participation. All meetings fall at the same time my kids go to bed. So I listen in when I can't physically get to a meeting. I think it's the right thing to do (and completely in line with our 21st century way of life) to have more people informed via virtual means if we choose to participate. At least remote access gives us the option to do so." [Person 4]

[Person 5] "Hope council moves to change rules and allow for as long as possible and moves for more access going forward. Hard to make all these meetings even when info is important." [Person 5]

[Personal 6] "I was very disappointed that I wasn't able to attend this meeting via Zoom last night. Even though I couldn't get in at first, I did persist! When I did finally get into the meeting after about 20 minutes of trying, I was very frustrated that I wasn't even able to type into the Zoom chat to say that we couldn't hear because the chat was disabled along with our ability to use our microphones or videos. I now know this was because the people running the meeting had the typical host profile to enable these features for the participants taken away from them. It upsets me to learn that the City of Malden is going backwards and thwarting civic participation and transparency by taking away the ability for citizens to take part in meetings via Zoom when this was previously an option. It feels like a very arbitrary decision that the council president alone gets to approve which meetings are made available to Malden citizens via Zoom and which meetings that citizens needing Zoom will be excluded from. I would like to know why, in this age of technological awakening, that all meetings aren't available via Zoom. I'd also like to see a written description of the criteria that are used to decide which meetings are and are not deemed worthy enough to be made available via Zoom." [Personal 6]

Additional BACKGROUND
=====

The City has expended ample taxpayer funds to acquire and deploy the technology resources necessary to provide online, public body outreach to residents. It has failed to do so.

Based on information and belief, Councillor Spadafora has acted egregiously to limit electronic transmission and recording of a June 28th public body meeting, in various ways.

While some City Officials appear to be making the argument this is their discretionary choice, the meeting of June 28th made clear this is a very unpopular path to follow.

City Officials have no justification to support their active measures to deactivate, disable, and disrupt independent efforts of residents who wished to enjoy their rights under Open Meeting Law on the evening of June 28th.

In a June 15, 2021 correspondence, Complainant raised concerns about limitations being placed on remote transmission and recording of meetings, and the detrimental impact this was having in Malden. The following text is excerpt of a communication to the City Clerk, Councillors O'Malley, Linehan, Spadafora and others¹³:

"Was tonight's City Council meeting broadcast by Zoom? The Rules and Ordinance meeting was also held in the Council Chambers. The agenda - attached - provided no directions for remote access. If not, what is the reason?"

These meetings were poorly attended in person. However, topics at the R&O and Council meeting had important speakers.

Is the world-class video and audio technology installed in the new city hall operational? My understanding this was installed at considerable expense to tax payers. It's unclear why these important Council meetings would not be routinely broadcast for public benefit.

The agenda for these meeting gave no indication the meeting would be zoom-cast or otherwise made available to the public. These meetings were poorly attended in person. However, the guest speakers had very important information to convey to Malden's residents.

With the world-class video and audio technology installed in the new city hall, at considerable expense to tax payers, it's unclear why these City Council meetings would not be shared."

The City has indicated they have no "log files indicating activation, deactivation or alteration of Zoom accounts from June 22, 2022 to June 28, 2022 and the authorized user making these changes. This information may be available from Zoom." The City of Malden should inform the Attorney General its findings upon further inquiry to Zoom.

¹³ See Exhibit 11 for June 2021 Email on Technology and Media use for public body meetings.

APPENDIX - Malden City Hall

=====

Malden's City Hall is a modern facility, built at great expense to taxpayers. Various anecdotal information suggests the City expended considerable funds - perhaps local, state and federal during related to pandemic allocations - to outfit Malden City Hall with remote media access.

In particular, Malden has publicly funded Zoom accounts it has made available to some city employees and installed as infrastructure in some City Hall meeting rooms.

Generally, the City has invested in a state of the art IT infrastructure (see Exhibit 11). You can find a video of Malden City Hall Tour at <https://youtu.be/PQyCl8f04Rg>, where you will see copious visual evidence of the financial expenditures the City has made on Media and IT investments. You will hear references praising media and access technologies, which are promises to the public prohibited by the actions of Council President Spadafora to deactivate and prohibit remote access:

"Starting with our large capacity conference room - this large inviting space is not only intended for the use of board and commission meetings but is also available for members of the public to reserve ... civic organizations ... " (1:30)

"More than one meeting going on at a time? No problem!" (1:40)

The Mayor's video tells us Malden is lucky to have a new City Hall, "When it comes to the latest in technology, these conference rooms really hit the mark. Outfitted with the latest in audio visual technology, those attending a meeting both in person as well as remote will be delivered a rich audio visual experience." (1:58)

The Mayor's 2021 Virtual Tour of City Hall opens with a view of "the large inviting space for our residents, guests and city officials to gather." And then a voiceover boasts, "You asked for meeting space and we delivered!"

Malden City Hall is "equipped with as much technology as the building has to offer — with high definition television cameras and a high tech control room ..." how can there be these kinds of modern day access issues? The Virtual Tour promotes fancy ZOOM logos.

As the City Council's "Committee on Technology Policy" noted in their March 22, 2022 minutes recognizing the public benefit and existing law covering the ability to both transmit and record electronic meetings. A history of efforts by the Committee on Technology Policy also suggests electronic access and recordings of those meetings has been ordered turned off by Council President Spadafora.

Despite that record of fact, Council President Spadafora took oppositional action to undermine this aspect of Open Meeting Law:

"Personally she feels we should be going into this with the attitude of wanting to embrace hybrid participation ..."

"We have already paid to get the City Hall to do this and he doesn't feel that we need to do much work on the technology side...during the pandemic we were all on zoom and got used to it participation went up for all boards and commissions and now there is no one here. We have to decide what kind of City we want to be."

"Councillor Linehan said we already have the technology in place ...

As was made clear at that meeting, which was attended by a representative of the City Solicitor's office, "rules around recording it and posting it later, nothing is stopping us or pre-covid if we opened this building we could still legally record this and post that video. If we are going to set different sets of rules one is in the air and other other is what is the technology in the building."

It appears the City Solicitor representative at that meeting said

"her understanding is that once July 15th happens the law is that it goes back to pre-covid. She said you could allow the public to watch via zoom because we did that pre-covid but on terms of participation she will get back to the committee ..."

GENERAL CONSIDERATIONS

=====

<https://malegislature.gov/laws/constitution#partTheFirst>

Article 19 - Article XIX.

"The people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good; give instructions to their representatives, and to request of the legislative body, by the way of addresses, petitions, or remonstrances, redress of the wrongs done them, and of the grievances they suffer. [See Amendments, Art. XLVIII, The Initiative, II, sec. 2.]"

Under open meeting law (General Laws Part I Title III Chapter 30A, Section 20):

"After notifying the chair of the public body, any person may make a video or audio recording of an open session of a meeting of a public body, or may transmit the meeting through any medium, subject to reasonable requirements of the chair as to the number, placement and operation of equipment used so as not to interfere with the conduct of the meeting."

Under the First Amendment of the Constitution, government officials are prohibited from "prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble."

Under Massachusetts General Laws, Part I, Title II, Chapter 12, Section 11H, violations of constitutional rights may warrant further involvement by the Attorney General. In addition to acknowledging this violation of Open Meeting Law, the City should undertake a further investigation to fully determine the extent of constitutional rights violations which may have occurred in relation to the June 28th meeting.

"Assembly is the only right in the First Amendment that requires more than a lone individual for its exercise."

<https://constitutioncenter.org/interactive-constitution/interpretation/amendment-i/interps/267>

<https://www.mass.gov/doc/open-meeting-law-guide-and-educational-materials-0/download#:~:text=A%20member%20of%20the%20public.to%20interfere%20with%20the%20meeting.>

Right to Assemble and Petition

<https://www.mass.gov/doc/attorney-generals-regulations-940-cmr-2900-2911/download>

Open Meeting Law Guide (2018)

=====

"Any member of the public may make an audio or video recording of an open session of a public meeting. A member of the public who wishes to record a meeting must first notify the chair and must comply with reasonable requirements regarding audio or video equipment established by the chair so as not to interfere with the meeting. The chair is required to inform

other attendees of any such recording at the beginning of the meeting. If someone arrives after the meeting has begun and wishes to record a meeting, that person should attempt to notify the chair prior to beginning recording, ideally in a manner that does not significantly disrupt the meeting in progress (such as passing a note for the chair to the board administrator or secretary). The chair should endeavor to acknowledge such attempts at notification and announce the fact of any recording to those in attendance."

"Intentional violation", an act or omission by a public body or a member thereof, in knowing violation of the open meeting law."

See <https://malegislature.gov/laws/generallaws/parti/titleiii/chapter30a/section18>

REFERENCES

=====

<https://www.mass.gov/doc/open-meeting-law-guide-and-educational-materials-0/download#:~:text=A%20member%20of%20the%20public,to%20interfere%20with%20the%20meeting.>

<https://www.mass.gov/doc/attorney-generals-regulations-940-cmr-2900-2911/download>

<https://cityofmalden.legistar.com/MeetingDetail.aspx?ID=984005&GUID=3BDB1D83-70A4-44BE-9C45-3059D895832B&Options=info|&Search=>

The screenshot shows the City of Malden website interface. At the top, there is a navigation menu with links for Home, Legislation, Calendar, City Council, Departments, and People. To the right of the menu are social media icons for Facebook, Twitter, and YouTube, along with buttons for Share, RSS, and Alerts. A yellow banner below the navigation contains the text: "Please note: this meeting's minutes have not been finalized yet. Actions taken on legislation and their results are not available." Below the banner, the "Details" section for a meeting is displayed. The meeting name is "Parks and Recreation Committee", the date/time is "6/28/2022 5:45 PM", and the location is "City Hall, Room #105 215 Pleasant Street". The agenda status is "Final", minutes status is "Draft", and published minutes are "Not available". There is also a link to the "Agenda". Under the "Attachments" section, there is a "Meeting Items (1)" table. The table has columns for File #, Ver., Agenda #, Name, Type, Title, Action, Result, Action Details, and Video. One item is listed with File # 324-22, Ver. 1, Agenda # 1, Type Communication, and a title describing the committee meeting. The Action and Result columns for this item are empty, and the Action Details and Video columns show "Not available".

"Every resident of Massachusetts should be able to access and understand the reasoning behind the government policy decisions that affect our lives."

"Open Meeting Law Guide and Educational Materials", January 2018

https://www.mass.gov/files/documents/2018/11/15/2017%20Guide%20with%20ed%20materials_revised%201-30-18.pdf

"The purpose of the Open Meeting Law is to ensure transparency in the deliberations on which public policy is based. Because the democratic process depends on the public having knowledge about the considerations underlying governmental action, the Open Meeting Law requires, with some exceptions, that meetings of public bodies be open to the public. It also seeks to balance the public's interest in witnessing the deliberations of public officials with the government's need to manage its operations efficiently."

"Open Meeting Law Guide and Educational Materials", January 2018

https://www.mass.gov/files/documents/2018/11/15/2017%20Guide%20with%20ed%20materials_revised%201-30-18.pdf

"The open meeting law is designed to eliminate much of the secrecy surrounding the deliberations and decisions on which public policy is based."

Ghiglione v. School Committee of Southbridge, 1978

<https://casetext.com/case/ghiglione-v-school-committee-of-southbridge>

<https://www.mass.gov/the-open-meeting-law>

<https://www.mass.gov/service-details/open-meeting-law-educational-materials>

Other REFERENCES

=====

The City Council Rulebook - aka file #191-18 - is available at this link <https://bit.ly/2MbunAf>

<https://www.mma.org/resources/open-meeting-public-records-ethics-laws/>

EXHIBIT 1



Craig Spadafora
City Council President
cspadafora@cityofmalden.org
www.cityofmalden.org

City of Malden Massachusetts

Malden City Council
215 Pleasant Street, 4th Floor
Malden, Massachusetts 02148



Phone 781-397-7130

June 28, 2022

Good Afternoon All,

I am writing to remind you that all requests for remote access to Council or Council Committee Meetings must be approved by the Council President and approved remote links be included in the meeting notice.

This topic has been reviewed by the Committee on Technology Policy, with the assistance of Assistant City Solicitor Alicia McNeil, who appeared at their meeting of April 12, 2022. Solicitor McNeil provided the attached opinion to members and, during discussion of the topic, made clear that the law designated the Council President – and the Council President alone – to make those decisions on behalf of the body and its subcommittees. I have reconfirmed the legal decision with Alicia this afternoon.

Therefore, a committee chair should never post a remote meeting link without obtaining the authorization of the President. If remote access is approved, that information must be included on the official meeting notice; failure to include that information on the meeting notice would potentially subject us to an Open Meeting Law challenge.

With this in mind, I have asked that the remote access link published on Facebook for tomorrow's Parks & Recreation Committee be disabled. Not only did the Chair fail to obtain my permission for remote participation, but the link was not published on the official meeting notice.

At this point, it is uncertain that remote participation will be allowed after July 15, 2022, when Covid provisions expire. In the meantime, however, I urge you to prevent confusion among the public by strict compliance with the law.

Thank you,

Council President

From: Lisa M. Cagno <lcagno@CITYOFMALDEN.ORG>

Sent: Tuesday, June 28, 2022 3:20 PM

To: Amanda Linehan <alinehan@CITYOFMALDEN.ORG>; Barbara Murphy <bmurphy@CITYOFMALDEN.ORG>; Carey McDonald <cmcdonald@CITYOFMALDEN.ORG>; Chris Simonelli <csimonelli@CITYOFMALDEN.ORG>; Craig Spadafora <cspadafora@CITYOFMALDEN.ORG>; Jadeane Sica <jsica@CITYOFMALDEN.ORG>; Karen Colón Hayes <kcolonhayes@CITYOFMALDEN.ORG>; Paul Condon <pcondon@CITYOFMALDEN.ORG>; Peg Crowe <pcrowe@CITYOFMALDEN.ORG>; Ryan O'Malley <romalley@CITYOFMALDEN.ORG>; Stephen Winslow <swinslow@CITYOFMALDEN.ORG>

Cc: Kathryn M. Fallon <kfallon@CITYOFMALDEN.ORG>; Alicia McNeil <amcneil@CITYOFMALDEN.ORG>; John McNaught Jr. <jmcnaught@CITYOFMALDEN.ORG>; Zaheer Samee <zsamee@CITYOFMALDEN.ORG>; Greg Lucey <glucey@CITYOFMALDEN.ORG>

Subject: Communication from Council President Re: Remote Meetings June 28, 2022

Good afternoon All....On behalf of Council President Spadafora please find the attached communication regarding remote meetings.....Lisa

Lisa M. Cagno

Clerk of Committees

Malden City Council

215 Pleasant Street, Room 430

Malden, MA 02148

lcagno@cityofmalden.org

781-397-7130 (office)

781-397-7004(FAX)

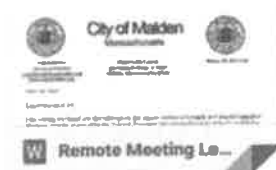


EXHIBIT 2

CITY OF MALDEN, MASSACHUSETTS
Office of the City Solicitor
215 Pleasant Street, Suite 420
Malden, MA 02148



Kathryn M. Fallon
City Solicitor

John J. McNaught, Jr.
Assistant City Solicitor

Alicia A. McNeil
Assistant City Solicitor

Zaheer A. Samee
Assistant City Solicitor

Mark E. Rumley
Special Counsel

Law Department
Tel: 781.397.7000 x2106
legal@cityofmalden.org
Workers' Compensation
Tel: 781.397.7000x2106
Fax: 781.397.7105

TO: Councilor Amanda Linehan, Chair, Committee on Technology Policy
FROM: Alicia A. McNeil, Assistant City Solicitor
DATE: March 28, 2022
RE: Opinion on Remote Participation
CC: Kathryn M. Fallon, City Solicitor
Craig Spadafora, Council President

This memo is in response to your request for an opinion from the City Solicitor's Office regarding the state of the law on Remote Participation. More specifically, your questions are whether your committee can create policies and procedures for remote access to meetings for the City Council and for public participation.

Per our discussion Tuesday, March 22nd, the state of the law through July 15, 2022, is that City Council members may participate at meetings remotely, and the public may have remote access to these meetings if allowed by the Chair. As it stands today, beginning July 16, 2022, participation for both members of the City Council and the general public will revert to in-person participation and access as it was pre-COVID unless changed by the legislature. (See discussion below).

FACTS YOU PRESENTED

Your newly formed committee seeks to embrace virtual participation and adopt policies for public access to meetings, as well as policies for remote participation by City Councilors.

DISCUSSION

As you are aware on March 12, 2020, Governor Baker issued an Executive Order Suspending Certain Provisions of the Open Meeting Law during COVID-19. These procedures have been updated and modified several times, with the most recent update occurring on February 18, 2022. Governor Baker signed into law session law Chapter 22 of the Acts of 2022, which included extending remote meeting provisions until July 15, 2022. The relevant parts of the law as it pertains to remote meetings are:

First, the new law allows public bodies to continue providing live “adequate, alternative means” of public access to the deliberations of the public body, instead of holding meetings in a public place that is open and physically accessible to the public. “Adequate, alternative means” may include, without limitation, providing public access through telephone, internet, or satellite enabled audio or video conferencing or any other technology that enables the public to clearly follow the proceedings of the public body in real time.

Second, the new law authorizes all members of a public body to continue participating in meetings remotely; the Open Meeting Law’s requirement that a quorum of the body and the chair be physically present at the meeting location remains suspended.¹

Prior to COVID, the Attorney General’s office established a provision for remote participation, under certain circumstances, in its regulations 940 CMR 29.10 in the hope of encouraging more involvement in government. Despite carving out this provision, the Attorney General “strongly encourages members of public bodies to physically attend meetings whenever possible.” *Id.* Moreover, the regulations highlight that “[m]embers of public bodies have a responsibility to ensure that remote participation in meetings is not used in a way that would defeat the purpose of...promoting transparency with regard to deliberations and decisions on which public policy is based.” *Id.* As I stated at the meeting, the Chief Executive Officer of local public bodies, in this case, Mayor Christenson, is the person who is authorized under this regulation to approve remote participation as well as to promulgate policies, procedures and/or rules for participation that conforms to the law.

OPINION

Through July 15, 2022, the state of the law is as follows: since the City of Malden is now open and the City Council is back to in-person meetings, the Chair, Council President Spadafora, determines whether the members may attend in-person or remotely as the provisions are permissive and not mandatory. Likewise, if the City Council holds in-person meetings that are open to the public, it is not required to provide alternative means of remote access, and the Chair would determine whether it is permissible for alternative remote access.

It is my opinion that barring the legislature changing the Open Meeting Law to include remote participation, effective July 16, 2022, the Council meetings will proceed as they were pre-COVID. Mayor Christenson may authorize to continue remote participation at his discretion. If remote participation is permitted, the Chair, or the person designated as chair in his absence, as well as a quorum of the member body must be physically present at the City Council Chamber.

Feel free to reach out to me if you have any additional questions or if I can assist you further.

¹ <https://www.mass.gov/service-details/updated-guidance-on-holding-meetings-pursuant-to-the-act-extending-certain-covid-19-measures>

EXHIBIT 3



Parks and Recreation Committee Meeting

City of Malden, Massachusetts

Councillor Ryan O'Malley, Chair
Councillor Karen Colón Hayes, Vice-Chair
Councillor Amanda Linehan

Date: June 28, 2022 at 5:45PM

Location: City Hall, 215 Pleasant Street, Malden, MA, Room 105 (simultaneously broadcast online)

The meeting started late because Mayor Gary Christenson's staff and Council President Craig Spadafora disabled IT technology to prevent online broadcasting from room 105.

The in-person meeting started at 5:55PM with Chair Ryan O'Malley, Ward 4, and Vice-Chair Karen Colón Hayes making a quorum to conduct business. All committee members attended in-person. Chair O'Malley was the acting clerk for the beginning of the meeting.

The Chair announced that video and audio recording would occur, but that recording was delayed because of the technical difficulties described above.

The committee began with introductions starting with Chair O'Malley and Vice-Chair Colón Hayes. All wards of the city were represented and Lisa Sulda, Chair of the Community Preservation Committee was also in attendance. Maria Luise, executive assistant to Mayor Christenson, periodically came into the room speaking on the phone and would leave quickly.

Jamie Whelan from IT came into the meeting at 5:56PM and helped start the online broadcast.

The online broadcast started at 5:58PM from room 105.

Assistant City Solicitors Zaheer Samee and John McNaught were in attendance at the beginning of the meeting but left soon after the start of the meeting. Before they left, Chair O'Malley asked the Ass. Solicitors if they were aware of why the online broadcast was being disabled. Ass. Solicitor McNaught said that the entire City Council received a communication in our emails from the Council President regarding online broadcasting of meetings. Chair O'Malley and Vice-Chair Colón Hayes were not aware of the email and could not open the attached letter from Councillor Spadafora to the entire City Council.

The Chair read the meeting agenda:

324-22: The committee will meet to discuss goals and opportunities for improvements to parks and recreation in Malden. The committee will discuss and reference the Open Space and Recreation Plan (<<https://cityofmalden.org/DocumentCenter/View/861/Malden-Open-Space-and-Recreation-Plan---Final-PDF>>).

The Chair presented the history of why the City Council created the committee. The origin was based on 1. elevating the parks and recreation area to a director level position in the City of Malden, 2. having the Mayor follow the City Charter and appoint members to the Parks Commission, and 3. establishing park rangers to provide interpretive programs and other support in our parks.

The Chair then gave an overview of the Open Space and Recreation Process which occurs every 7 years. The current Open Space and Recreation plan expires in 2024.

Councillor Karen Colón Hayes expressed a desire to get more resources for maintenance and community engagement around the improvement of parks and recreational spaces.

At 6:05PM committee member Councillor Amanda Linehan joined the meeting.

Midway through the meeting, the live broadcast was disabled at the direction of Mayor Gary Christenson and Councillor Craig Spadafora and a second online broadcast was started from room 105.

At 6:18 Councillor Carey McDonald joined the meeting.

At 6:21PM Chair O'Malley left the meeting to attend another meeting. Vice-Chair Colón Hayes assumed the role of chair. Councillors Colón Hayes and Linehan maintained a quorum. A community member assumed the role of clerk.

Concerns were expressed that a youth sports coach claimed temperature of turf fields only go up 10 degrees when temp can go up 45 degrees. Turf is a step backward.

Vice-Chair Colón Hayes expressed that the Middlesex fells has many more people and we need to figure out how to take better care of it. Asked for people to review open parks plan to see what we already have in place. Director of DPW will be invited to next meeting

Trash in woods has accumulated and has remained in place for past 4 years. Requests resources for group of volunteers to help clean up.

Vice-Chair Colón Hayes expressed an adopt a park option (Patchell park example). Maplewood square. This committee could be an organization for that.

Discussion about survey questions in future could be more helpful. Board of health never given opportunity to mediate arguments – could be helpful in the future. Roosevelt park has possible contamination. When the City does renovations, it should have a schedule for testing in other areas.

Councillor Carey McDonald mentioned that he is the chair of the Energy efficiency committee which applied for grant for citywide awaiting final decision.

Community members expressed desire to see parks and rec apply for a volunteer coordinator for clean ups and events.

The Friends of Roosevelt Park mentioned inviting the National grass society to speak before the committee. Recommended a comprehensive maintenance plan if we're spending so much money.

Vice-Chair Colón Hayes expressed that the City of Malden does not have a good history of taking care of public property which is why we end up bidding it out for services. For long term planning we should be working towards cost effective taking care of our parks and investing in our infrastructure.



Councillor O'Malley returned to the meeting at 6:30PM but did not retake the chair.

Recommendation that the City implement a rule for no turf for any park. You're either green or your not. You can't vote for a turf field and say you support a green city. Create an outline for procedure (i.e. environmental justice plan, etc.) procedure plan/packet can be referenced when going to do improvements.

Friends of Roosevelt Park stated that Maplewood park has failed safety tests. Any kid who falls can have significant injuries (not up to safety standards)

Councillor O'Malley stated that the City leases out parks to entities that don't maintain and then the facilities fall apart. The Roosevelt Park plan is same exact methodology... idea is to get ahead of that. A new Open Space & Recreation Plan is needed by 2024 so the plan will likely be done in 2023, an election year.

Councillor Linehan asked if the last Open Space & Recreation Plan was funded through DLT. Cities/towns have to do it every 5 years. Actually 7.

Councillor O'Malley asked if the committee had come up with an agenda for the next several years?

Vice-Chair Colón Hayes said that the homework was to review open space plan from 2017 then we can work to pick out certain things or add. Etc. Short term goal was cleanup groups. Volunteer coordinator to help cleanup, etc.

At 6:37PM the second online broadcast was again disabled at the direction of Mayor Gary Christenson and Councillor Craig Spadafora.

Councillor O'Malley said that these City organized volunteers could help with other events (4th of July etc) that require a lot of coordination.

At 6:45PM Councillor O'Malley again left the meeting to attend another meeting and did not return. Councillors Colón Hayes and Linehan maintained a quorum.

Vice-Chair Colón Hayes recommended that a school representative be at future meeting. The committee should analyze parks by schools. Wants to see toxic area at Roosevelt cleaned up and grass planted. Continued presence at meetings, community organizing, rallies, etc. are needed.

Friends of Roosevelt Park mentioned that the Malden vulnerability plan should be incorporated into an open space plan. The composition of the Open Space & Recreation Committee should also be looked at.

Comments made by the public that the city is about to move the 15 Ferry Street Converse building to a tiny spot of green space near the high school. Wants committee to be aware of losing this piece of green space. Can it be placed in another space nearby that's not green space?

Councillor McDonald mentioned that the City Council talked about this and got city to commit to agree to address replacing the lost greenspace from this building being moved to the high school lawn.

The committee adjourned at 6:55PM through unanimous consent.

Approved on: _____



Author

Councillor Ryan O'Malley

New zoom link - sorry - Mayor and Spadafora have disabled our account.

Meeting ID: 919 4615 8092

Passcode: 481445



Like Reply 2w



Author

Councillor Ryan O'Malley

Hi all,

Gary Christenson and Craig Spadafora had the online broadcast disabled.

Jamie Whelan from IT was a superstar and got us back up online. Unfortunately, it appears that the powers that be again disabled the online broadcast.

Trust in City Hall is at an all time low because of this type of behavior.

We need new leadership.



City of Malden

Malden City Hall
215 Pleasant Street
Malden, MA 02148

Meeting Agenda - Final Parks and Recreation Committee

*Councillor Ryan O'Malley, Chair
Councillor at Large Karen Colon Hayes, Vice-Chair
Councillor Amanda Linehan, Member*

Tuesday, June 28, 2022

5:45 PM

City Hall, Room #105
215 Pleasant Street

Roll Call

Minutes to be Approved

Business

324-22

The committee will meet to discuss goals and opportunities for improvements to parks and recreation in Malden. The committee will discuss and reference the Open Space and Recreation Plan

(<https://cityofmalden.org/DocumentCenter/View/861/Malden-Open-Space-and-Recreation-Plan---Final-PDF>).

Other Business

Adjournment

6:28



◀ Chrome

Meet & Chat



New Meeting



Join



Schedule



Share Screen

Invalid meeting ID

Please check and try again.

OK

Find people and start chatting!

Parks & Recreation Committee Meeting

Committee Members

Councillor Ryan O'Malley, Chair

Councillor at Large Karen Colon Hayes, Vice-Chair

Councillor Amanda Linehan, Member

TUESDAY,
JUNE 28

5:45 pm

JOIN US
IN PERSON

City Hall, Room #105
215 Pleasant Street

-OR-

VIA ZOOM

Link in Comments

Are you interested in learning more about what we can do to improve Malden's parks?

The committee will meet to discuss goals and opportunities for improvements to parks and recreation in Malden. The committee will discuss and reference the 2017 Open Space and Recreation Plan.

<https://cityofmaiden.org/DocumentCenter/View/861/Malden-Open-Space-and-Recreation-Plan---Final-PDF>



A motion was made by Councillor Condon, seconded by Councillor Sica, that the Petition be referred to the License Committee. The motion carried by the following vote:

Yea: 11 - Anderson, Camell, Condon, Crowe, DeMaria, Linehan, Murphy, O'Malley, Sica, Spadafora and Winslow

9. MOTIONS, ORDERS AND RESOLUTIONS

312-21

Order: That pursuant to Massachusetts General Laws Chapter 44 Section 53A the City of Malden accept a grant from the federal government (American Rescue Plan Act) to be deposited with the City Treasurer and held in a separate account and expended on any and all lawful expenditures as allowed in the Interim Final Rule and/or other guidance issued by the United States Treasury.

Sponsors: Barbara Murphy

A motion was made by Councillor Murphy, seconded by Councillor Sica, that the Order be adopted. The motion carried by the following vote:

Yea: 11 - Anderson, Camell, Condon, Crowe, DeMaria, Linehan, Murphy, O'Malley, Sica, Spadafora and Winslow

313-21

Order: Be it hereby ordained that the City of Malden Ordinances section 2.16 "Board, Commissions, and Committees" be amended to require remote participation by members of the public for all public meetings by inserting a new section 2.16.001 "Remote participation required."

Sponsors: Ryan O'Malley, Deborah DeMaria and Amanda Linehan

Councillor Crowe stated the paper should go to Ordinance. Councillor Condon said if the paper was looking to add committee meetings, it could get complicated. Councillor Murphy stated she agreed with the paper but there are details that need to be worked out and there is a need to pause and see how it will all work and the paper should be referred to committee and have Legal weigh in. Councillor O'Malley said he would agree to referring the paper to Ordinance if Chair Spadafora would commit to taking the paper up at the June 29th meeting. Councillor Spadafora will commit to having the meeting and that he will be available in July if necessary. Councillor Sica stated she is in support but there is no need to rush as evidence by being able to have a hybrid meeting tonight. Council President Anderson wanted the paper be sent to ordinance because of all the moving parts and said as President he approved the meeting tonight as a hybrid meeting.

A motion was made by Councillor O'Malley, seconded by Councillor DeMaria, that the Order be referred to the Rules & Ordinance Committee. The motion carried by the following vote:

Yea: 11 - Anderson, Camell, Condon, Crowe, DeMaria, Linehan, Murphy, O'Malley, Sica, Spadafora and Winslow

314-21

Resolve: That, the Malden City Council authorize the Mayor, as Malden's Chief Executive Officer, to allow remote participation in accordance with the requirements of 940 CMR 29.10, for all subsequent meetings of all local public bodies in the City of Malden."

EXHIBIT 4

CITY OF MALDEN

Home Legislation Calendar City Council Departments People

Share RSS Alerts

Details Reports

File #: 118-22 Version: 1 Name:

Type: Council Item Status: Agenda Ready

File created: 3/17/2022 In control: [Committee On Technology Policy](#)

On agenda: 3/22/2022 Final action:

Title: The Committee on Technology Policy will meet to discuss adopting policies for public access and remote participation for Councillors and any other business moving forward with the committee.

History (0) Text

EXHIBIT 5

CITY OF MALDEN

Home Legislation Calendar City Council Departments People

Share RSS Alerts

Details Reports

File #: 154-22 Version: 1 Name:

Type: Communication Status: Agenda Ready

File created: 4/6/2022 In control: [Committee On Technology Policy](#)

On agenda: 4/12/2022 Final action:

Title: The Committee on Technology Policy will meet with Ron Cochran, Communications Director, Anthony Rodrigues, IT Director and Terlonzo Amos, from UMA to discuss technology availability in the new City Hall Building, remote participation for Councillors and the Public, and any other business moving forward with the committee.

EXHIBIT 6



City of Malden

Malden City Hall
215 Pleasant Street
Malden, MA 02148

Meeting Minutes - Final Committee On Technology Policy

*Councillor Linehan-Chair
Councillor-at-Large Colon-Hayes, Vice Chair
Councillor O'Malley*

Tuesday, March 22, 2022

6:30 PM

City Hall, Rm#105
215 Pleasant Street

Roll Call

Present: 3 - Councillor Amanda Linehan, Councillor at Large Karen Colon Hayes and Ryan O'Malley

*Also Present: Councillor McDonald
Alicia McNeil-Assistant City Solicitor
Maria Luise-Mayor's Office*

Councillor Linehan called the meeting to order at 6:35 P.M.

Minutes to be Approved

Business

118-22

The Committee on Technology Policy will meet to discuss adopting policies for public access and remote participation for Councillors and any other business moving forward with the committee.

Councillor Linehan explained that she wanted to get some consensus of what they wanted to do and will book a meeting in two weeks to invite Anthony Rodrigues, IT Director and Ron Cochran, Mayor's Office in to discuss what we have in place for technology already. She would also like to invite someone in from UMA to see what they have available. She feels they have two sets of guidelines one that will govern virtual access to our meetings and one what Councillors can expect in terms of their own participation, who approves that what it looks like, is there a limit to how many times a year you can remote participate, what are the reasons and who decides that and hopefully codified that in our Council rules. She feels there are budgetary and staffing implications to both of those issues things. She explained that one of the things she has run into having hybrid meetings in the big room is that if there is an issue and there is no one on sight you don't know what to do if the machine wont run things properly. We also may want to know what software is best zoom or maybe look at what teams is capable of since we pay for a Microsoft account for every city employee. Personally she feels we should be going into this with the attitude of wanting to embrace hybrid participation we had really high engagement from residents and we embrace and further it and help that to happen and be clear about what Councillors are expected to do if we say certain committee meetings like Finance and Ordinance will always be streaming then they should have priority on the two rooms that have that capability baked in. Going forward we can continue conversation of setting goals and who we would like to bring to the committee and what we want on the agenda in two weeks.

Councillor Colon-Hayes said she agrees this is a great overall umbrella separating what

we need as policies for us as Councillors and what we need for the community as well. She has spoken with someone in the Attorney Generals office and randomly asked about policies and she would be willing to share that with the Council. She also feels we should bring in IT and Ron to see if they have already started something.

Councillor O'Malley agrees with that agenda and the ownership of if it fits in the Mayor's office or does it belong in IT and feels that is a sensitive topic he would like to have that conversation with both of those individuals in the room, he feels it is a unique dynamic of the cell phones through the Mayor's office and if there is any additional support they may need or does it fit in IT. We have already paid to get the City Hall to do this and he doesn't feel that we need to do much work on the technology side but the budgeting staffing and cultural decision that we are going to do this. Prior to the pandemic we had people filming us from multiple angles which was helpful but not ideal and then during the pandemic we were all on zoom and got used to it participation went up for all boards and commissions and now there is no one here. We have to decide what kind of City we want to be

Councillor Linehan said we already have the technology in place and agrees it is a culture change and never wants anyone to feel like they need to have a certain set of technology skills to do their job if someone is having difficulty they should have support on hand to run a meeting

Councillor Colon-Hayes said it is hard and to run the meeting, run the zoom, watch the comments she is not sure how it works now, it would be important to have some one specifically doing the background stuff.

Councillor O'Malley said that would be more for public hearings and the main Council meeting in terms of public comment

Councillor Linehan said that the School Committee is doing it the Mayor chairs the meeting and Adam is the technology hand.

Councillor O'Malley said if we wanted to record a meeting we could and if someone wanted to sign into the meeting how do we do that so that everyone is there

Councillor Linehan said then we would have to know how do we store that and who makes the decision of what gets posted, when do they get archived, how do you respond to a public records request

Councillor O'Malley said he has advocated this for a while maybe an additional person in the City Clerk's office who would focus on public records and that type of situations that they are making sure our agendas are properly referencing the documents we have or the video

Councillor Linehan said it seems clear additional personnel resources would be required
Motion to recess the meeting at 7:05 PM and reconvene after the Committee of the Whole was made by Councillor O'Malley, seconded by Councillor Hayes. All were in favor.

Motion to reconvene the Committee on Technology Policy at 7:14 PM was made by Councillor O'Malley and seconded by Councillor Colon-Hayes. All were in favor.
Alicia McNeil-Assistant City Solicitor wanted to make sure she had an understanding of what the committee is trying to do and are they trying to put something in place where you could meet remotely on a consistent basis, and explained that the Governor only extended the remote meeting law till July 15th and after that date then it is in person meeting unless the Mayor decided you could meet remotely and also if the AG's office provides you could meet remotely if you meet certain criteria. In terms of just meeting and putting a policy in place to meet remotely that is not what the law is.

Councillor Linehan said her impression of what they are here to do is not to allow us to meet as a body fully remotely its to decide when individual Councillors are allowed to participate remotely if they are traveling for work, ill, on vacation and she understands they cannot make a quorum remotely and understands that is what the emergency extension is that we could make quorum by being fully remote due to the public health crisis now but we are in this limbo now where that has been extended and you could do it

if you needed to but the expectation is long term we would be not allowed to make quorum remotely or have the Chair run the meeting remotely just can a Councillor zoom in and if it is allowed when are our rules allowing someone do you need permission from the Councillor President, how many times, can you be denied, do you have to say why. What do we allow the public to do in terms of participating virtually. She does not know if that is covered by the State extension or not we would be looking to get forth in our rules what is actually allowed and what is the regular practice, do we allow public comment on zoom, do we always stream our meetings on zoom and UMA, can we record every committee and ad-hoc committees and what is regularly recorded and streamed.

Alicia said prior to the pandemic the rule was that you were meeting in person after the pandemic it seems the law may move that way but as the current law is after July 15th it goes back to how it was before you are to meet in person so in terms of making a policy of when you can and when you can't that is not really the law, the law is that you are expected to meet in person and there are some minor exceptions but its not that you can make a rule to say we will allow to meet five times remotely the AG's Office has it very specific that the expectation is to meet in person.

Councillor Colon-Hayes asked what exactly is the law that states we can't meet remotely as a quorum of the whole body or is it that one or two people could is there a distinction for one or two people zooming in remotely or not or does that law specifically state no one can call in

Alicia said she doesn't think it specifically says that but it would be up to the Chair Councillor Linehan said it sounds like members of our Legislative members on the hill working on this may not be resolved by the end of this session, but for our purposes she asked Alicia in her opinion if it would be a logical thing for us to do set down rules assuming some type of remote participation could be allowed past July if that was the way the AG's office or the legislator might go

Alicia said she doesn't think that would be a good idea because she thinks what will happen the law will determine what the rules are just like the law now determines what the terms are in terms of meeting remotely and she feels that it will progress that way and determine what rules are in place in terms of what you can and cannot do

Councillor Linehan said there is a distinction between our meetings being partway virtual or hybrid versus rules around recording it and posting it later, nothing is stopping us pre-covid if we opened this building we could still legally record this and post that video. If we are going to set different sets of rules one is in the air and the other is what is the technology in this building.

Councillor O'Malley said there are different channels and parallel things going on, the changes happening at the State related to public participation is one thing. Right now we could implement 940CMR29.10 by the Mayor and would allow not a quorum but remote participation for certain rules that are codified by the AG in that particular situation such as homebound, COVID, funeral or business trip. He doesn't see why we couldn't make it a policy to allow remote participation of the public the only law we could be violating is the OML, but if we have a quorum and we open up a zoom to allow members of the public to participate in the same way members of the public can send in letters the only difference is that you are allowing them to participate remotely Councillor Colon-Hayes said participation of the public is top priority for her and the separate issue sounds like it goes through the Chair to make the decision right now and for having the public attend via zoom like they were suggesting with some kind of technology is that currently ok or do you think that would change in any way after July Alicia said she would get back to them on that but her understanding is that once July 15th happens the law is that it goes back to pre-covid. She said you could allow the public to watch via zoom because we did that pre-covid but on terms of participation she will get back to the committee

Councillor Linehan said there are three things one the State hasn't extended the rules around public bodies convening in whole or in part virtually the hybrid meetings is one

thing, then the practice around whether we record our meetings and post that somewhere and the policy around can the public participate be it public comment or remotely Councillor McDonald thinks it would be useful to talk about how information about what we are doing lives on line agendas, how things get posted he feels the Council Agendas are somewhat confusing what do tabled papers mean at the end of the agenda, tech accessibility questions

Councillor Linehan said she watches the School Committee a lot and does public comment while she is cooking and there are interpreters and have ASL interpretation it does bring up can we simplify the agenda, what is committee of the whole which are important things that can flow from this discussion

Councillor McDonald said if you can't translate stuff in English you definitely can't in another language. If we assume the law going forward is what it was pre-covid he feels they will not make the law more restrictive but given that would we have the authority as City Council to set rules that govern when Councillors might be able to join via phone or zoom provided a quorum is present

Alicia said that is the question she will get the answer for them

Councillor Linehan said that is important we need to know what we have the power to do as a municipality as opposed to having to wait from the State

Councillor O'Malley said we don't have the power to do it we would have to wait for the Mayor but right now till July 15th you or any Chair of any committee can have remote participation and this meeting could be via zoom

Alicia said yes until July 15th

Councillor Linehan said she thinks we should for the next one

Councillor O'Malley said the City Clerk or the Clerk of Committees would enter the meeting and public could click in to participate or we could try to petition a home rule petition to the State

Councillor McDonald said but we would not be able to authorize any one to participate virtually unless the Mayor does this

Alicia said according to the rule the Mayor is the CEO and he would have to be the one that states whether or not we could do zoom

Councillor Colon-Hayes said as a committee our goal is to make it transparent as possible to the City

Councillor Linehan said there are some areas we could set our intentions around such as the bulk of business gets done and meet often she feels all that is what we could do within our own rules

Councillor O'Malley said Maria Luise-Assistant to the Mayor just informed me that for most public bodies the Mayor is required to trigger that remote participation except for the Disability Commission for the specific reason some of the members can't make it in person. He reads the preamble of the 940CMR29.10.

He said we could at least stream it

Councillor Colon-Hayes said she has spoken with Councillor Spadafora about the Council members hopefully it won't happen a lot to put in some kind of number if you want to because we are accountable to the public who would not show up to meetings because someone might vote you out it wouldn't make any sense to do that her hope is people would face natural consequences but she feels this is a good first start

Councillor Linehan said recruitment for people to run for different positions you want people not to feel that whatever is going on in their life is a deterrent. Its exciting for people have a job where they have to travel

Motion to invite Ron Cochran, Mayors Office and Anthony Rodriques, IT Director to the next meeting to be held hybrid was made by Councillor O'Malley and seconded by Councillor Colon-Hayes. All were in favor

Motion to request from the legal department give an overview of whether or not there is

any law prohibiting the public from participating in any public hearing or meeting remotely under the traditional laws not the emergency laws was made by Councillor O'Malley and seconded by Councillor Colon-Hayes. All were in favor.

Councillor McDonald said in 940CMR29.10 that there is the possibility that the Mayor could put any restrictions around it and feels its clearly all in or all out except for these special bodies.

*Councillor Colon-Hayes asked if someone from legal will be at the next meeting
Councillor Linehan said that she will try to schedule the next meeting for two weeks,
Tuesday, April 5, 2022*

Motion to adjourn was made by Councillor O'Malley and seconded by Councillor Colon-Hayes. All were in favor.

Other Business

Adjournment

Motion to adjourn was made by Councillor Ryan O'Malley, seconded by Councillor at Large Karen Colon Hayes, that this meeting be adjourned at 7:41 P.M. The motion carried unanimously.

EXHIBIT 7



City of Malden

Malden City Hall
215 Pleasant Street
Malden, MA 02148

Meeting Minutes - Draft Committee On Technology Policy

*Councillor Linehan-Chair
Councillor-at-Large Colon-Hayes, Vice Chair
Councillor O'Malley*

Tuesday, April 12, 2022

6:00 PM

215 Pleasant Street, Room #108

Roll Call

Present: 2 - Councillor Amanda Linehan and Councillor at Large Karen Colon Hayes

Absent: 1 - Ryan O'Malley

Also Present:

*Alisha McNeil-Assistant City Solicitor
Ron Cochran-Communications Director
Anthony Rodrigues-IT Director
Terlonzo Amos-UMA*

Councillor Linehan called the meeting to order at 6:15 P.M.

Minutes to be Approved

153-22

Minutes of March 22, 2022 to be approved.

A motion was made by Councillor at Large Colon Hayes, seconded by Councillor Linehan, that the Committee Minutes of March 22, 2022 be approved. The motion carried by a unanimous vote.

Business

154-22

The Committee on Technology Policy will meet with Ron Cochran, Communications Director, Anthony Rodrigues, IT Director and Terlonzo Amos, from UMA to discuss technology availability in the new City Hall Building, remote participation for Councillors and the Public, and any other business moving forward with the committee.

Councillor Linehan thanked Ron Cochran, Anthony Rodrigues and Terlonzo Amos for coming to the meeting. This committee is to set policies for the use of technology in the building and then hand in hand set policies how the Councillors will use it and the public can have access to our meetings. We are not recording tonight because the Council President would like us to get things in order before we do things haphazard. We would like to discuss what's available, what gaps exist in terms of what support we might need on Council nights if we use it more than just the room if we want to stream it or just record it. If we aim for certain things what needs to be in place from a budgetary standpoint if we need more people on site on Tuesday, additional licenses if we want to use zoom or if we wanted to look for a different platform. She would love to understand

24

how UMA interfaces with the core meetings and if we wanted to add more meetings what would that look like, how do we make those requests and is that feasible on staffing levels. The last piece is that she would like to follow up with the School Committee as they are streaming their meetings live.

Councillor Colon-Hayes said she agrees how do we get the Councillors to participate remotely and how do we get the public to participate

Councillor Linehan said there is three pieces: council absentees, how does the public come into the meeting and how do we broadcast the meetings

Anthony said right now we have four rooms all capable of zoom currently. We also have the ability to live stream but we do have some limitations what can we send out to UMA we have to pick and choose and typically its the Council Meeting or the School Committee Meeting. We are looking at converting some of these rooms to team.

Councillor Linehan asked about the polycom

Anthony said that is what sets up the zoom meetings and Ron said but not webinars.

Anthony said the Governor is going to be converting all meetings in July so that remote participation is not necessarily preferred anymore

Councillor Colon-Hayes said after the meeting Senator Lewis' office sent her information that there is going to be a mandate to be able to provide remote access that is his though but it is likely to happen

Anthony said that will be complicated for many people in the room in terms of capabilities

Ron said we use zoom for remote meetings but it is worthy to talk about if you go to any corporate environment this set up has been around for two decades but not for the public we have stretched it to its limits and now that it is settling down in July we don't know what the laws will be it seems like whatever they come up with we will be capable of accommodating but to Councillor Spadafora's point with policy should we train the Council but Ron feels that the Council shouldn't have to think about that stuff. The Cannabis Commission is doing great with recording and posting in a reasonable amount of time. He thinks it requires a Clerk role to handle that process.

Councillor Linehan agrees with that for example if our policy says we can record Finance and Ordinance but she doesn't want any Councillor to feel like they don't have the ability to do that so it is about making sure we have support to have the meetings run smoothly on site for meetings

Councillor Colon-Hayes said they have talked about students or job sharing or somebody who was already working or asking for funding to hire someone for those nights to do something.

Anthony said when you are talking about students it sometime becomes a revolving door, you may want to have an anchor person in the building to help with this stuff who can always be here. With the public interacting with meetings you can stretch the capabilities of zoom having it be in the webinar mode it is not ideal.

Ron said the School Committee does use webinar they have extra members they invite in Anthony said it is more important to memorialize a meeting than have the participation live. There are meetings with public input but not all.

Councillor Linehan said for example when there is a public hearing in Finance and Ordinance

Ron agrees because sometimes when you go live there can be a lot of issues for example if you put the wrong zoom address and one character is off no one can get into the meeting

Anthony said also not every one is aware of parliamentary procedure

Terlonzo said they are streaming the Council meeting live on UMA from the Chamber Ron said there is an important distinction you are talking about the Chamber not all the meetings

Councillor Colon-Hayes said she feels every meeting should be live or at least recorded to view later

Ron said you are referring to two different things a live meeting which gets recorded but

the public having access is not live they will be able to view it tomorrow if it is recorded. Councillor Colon-Hayes said we do have minutes but nobody can hear this meeting and she feels it should be recorded so everyone can hear it even if it is later. She feels in the future we should be able to record it and within 24 hrs we should be able to post it. It would be wonderful to have it live but that would be a dream.

Anthony said there is no public participation so there is no reason to stream it live. We have the ability to stream in multiple rooms but only stream one with UMA

Ron said there is a fee for cloud storage and it is getting eaten up but you have to think about that down the road

Anthony said it all has to be backed up and replicated which is part of the whole policy of recording and it has to be archived there are different policies for email he is not sure what it is for videos. Emails and FOIA requests are totally different policies and it is not cheap. Office 365 offers a lot of tools for collaboration and we have to also say is TEAMS as secure as zoom do they have a webinar format.

Ron said we did a lot of research to avoid anything happening on zoom we had more time you have to decide is the policy going to drive the technology.

Councillor Colon-Hayes asked if we are pretty solid in our policies and we are set up with technology and we are ready to go to policy. She had spoke to Maura Healey and this came up and she asked if anyone has policies yet on how to run a meeting and she said isn't everyone doing it already and Councillor Colon-Hayes asked about certain questions Councillor Spadafora had and she felt they would not be issues one about open meeting laws and capacity and cutting people off in meetings

Councillor Linehan asked the legal department to summarize the law

Alicia said the opinion from the City Solicitor's office is that it looks like the policy is going towards having zoom meetings however there is a policy that it starts by the Mayor and he has to agree we can continue to have these remote meetings. Once the Mayor does agrees, then whoever is the Chair, in your case would be Council President Spadafora, would be the person to determine if all cases including committee meetings for example for the Council to be remote meetings or not. There has to be a quorum that is live if four were remote and three were live it can't be a remote meeting it has to be a quorum that is present and the Chair has to be present.

Councillor Colon-Hayes said the thought when we start to write policy we were talking about was more for urgent reasons

Councillor Linehan said more for us internally she is concerned where the Council President changes every year she would like the policy to be more consistent

Ron said you mentioned oversight and explained he can have a perfectly easy set of instructions and you could have a clerk trained on it and invariably it involves steps. If you are looking for oversight its not just technology it's procedural. He speaks of policy where if you have a recording it should be posted within x number of days. Minutes are different and they can be edited and that is why you need training

Councillor Linehan said we have strict rules about what you can and cannot edit

Councillor Colon-Hayes said pertaining to funding she feels this is something new and it warrants a position to handle all that. She said maybe we could do it through a grant and feels we need to figure it out because it will be here to stay.

Anthony said we have to figure out how we maintain this moving forward you need to figure out methodology

Ron said if it becomes policy then you have to meet that need you should have someone technically or a media specialist with media experience on hand

Councillor Linehan said every corporation is doing this

Anthony said we will have some technical challenges and we have looked at different cloud storage which is sustainable and it can get complicated but it is doable

Councillor Linehan said we are coming to a consensus that there is a big difference between live and recorded and that we don't need to try to do that all the same but make it accessible. During Covid, she feels she could always watched a meeting and get

caught up on every committee. She feels it is helpful to do our jobs better
Councillor Colon-Hayes said there is something nice to see and hear voices with meetings
Councillor Linehan said we will debrief Councillor O'Malley and maybe set another meeting in a few weeks
Councillor Colon-Hayes said she would love to go back to this although now you said
Councillor Spadafora said no she would love to start at the smallest steps and be able to take this recording, record committee meetings and put it up not live so people can see it
Councillor Linehan as it stands right now the ball is in his court he declined to give us that permission which is his prerogative but that is what the Technology Policy Committee is suppose to address
Councillor Colon-Hayes said that is a conversation between you and Councillor Spadafora
Councillor Linehan said it was my respect through the clerk, it was a conversation she had with the Council President and let me know we did not get the permission and that is the way it is set up now so we have to respect that even if we disagree she would love to make a recommendation and get back to the full council of what that policy includes. It sounds like we are looking at a request for a position and she wants to word things so that she doesn't exclude technology and have a policy that is agnostic with the platform we ultimately go with and is flexible over time and she want to get that wording right
Anthony said we should memorialize the meeting with public input or the meeting that is just being publicized or broadcasted
Ron said it could be worded in such a way like the public shall have electronic means of remotely asking a questions through text or audio or and there shall be a way of co-mingling body members with in person body members. The technology you choose will coincide with the policy with public comment. You should try to pretend zoom never existed.
Anthony said if there is no public input then they can't speak and it would remain that way
Councillor Linehan would love to make sure people could always send in emails on their concerns
Ron said it is better to go at it on committee levels by recording it because there is a lot of room for error
Councillor Colon-Hayes said just as long as the people could see it she is fine
Anthony asked Terlonzo what are the meetings that are covered
Terlonzo said City Council, School Committee, Planning Board and Board of Appeals
Anthony said those are the four big ones which have the most impact at the end of the day to constituents
Councillor Linehan said that makes sense and she will watch some other meetings doing this well soup to nuts

Other Business

Adjournment

Motion was made by Councillor at Large Karen Colon Hayes, seconded by Councillor Amanda Linehan, That this meeting be adjourned at 7:00 PM. The motion carried unanimously.

EXHIBIT 8



City of Malden

Malden City Hall
215 Pleasant Street
Malden, MA 02148

Meeting Minutes - Draft Committee On Technology Policy

*Councillor Linehan-Chair
Councillor-at-Large Colon-Hayes, Vice Chair
Councillor O'Malley*

Tuesday, May 10, 2022

6:30 PM

City Hall, Room#108
215 Pleasant Street

Roll Call

Also Present: Councillor Winslow

Councillor Linehan called the meeting to order at 6:38 P.M.

Present: 3 - Councillor Amanda Linehan, Councillor at Large Karen Colon Hayes and Ryan O'Malley

Minutes to be Approved

Business

The Committee on Technology Policy will meet to discuss adopting policies for public access and remote participation for Councillors and any other business moving forward with the committee.

Councillor Linehan recaps the last meeting and said that they had brought in Terlonzo Amos-UMA, Ron Cochran-Communications Director and Anthony Rodrigues-IT Director to talk through IT communications and cable expectations and what they provide now and what the building is capable of now. She said we are looking at the three pronged policy hoping to look at governing Councillors abilities to participate remotely and what that looks like a set number of times per year or set a policy for Councillor participation with our own main Council meetings. Secondly, Public participation not for every Council meeting the hope would be to offer remote public participation option for every public hearings so folks would not to have to come in person. Such as Cannabis, Utility, 5G and the Budget or any public hearing. The third piece was around recording and uploading meetings. What we have heard is we should think about the policy that works because they would find the platform the building has the hardwire technology, they would look into whether the City would adopt zoom or teams is what the City wants to adopt permanently. She heard clearly that we should come up with the policy that works and they will decide the platform and right size the cloud storage the city needs to keep all those recordings. She said they feel the process works well when the clerk of the committees or Board and Commissions is responsible for all the recordings and also uploading to the agenda center within a certain time frame. She was thinking 48 hours sounds fast but that would be the only way to get the meeting viewed in the same week but they could wait till the next week but clearly stating responsibility will be anyone clerking would make sure it is recording and posting online in a reasonable amount of time. The last point was if it was getting to a point were it is to ownerous to us or clerks are getting to overwhelmed the budgetary ask could be a media specialist who would be on hand if we needed support during meetings to troubleshoot. We did not talk about costs, it could potentially be a student or an intern it doesn't have to be a full-time salary although it could if the need was there. She say they could handle the platform and the

cloud storage option out of the cities IT budget.

Councillor Colon-Hayes said she has heard from the IT Director that we are fully equipped and we could do that and even uploading that fast would be an issue and she also feels that Ron Cochran was most concerned about how that was going to get done

Councillor Linehan said maybe the intern or media specialist will do as well

Councillor Winslow explained he sets up his meeting on his phone and then sends the link to the clerk to record the minutes. He is just filming when you are running it hybrid you do need two people to run the meeting

Councillor Linehan explains when she had the meeting at Salemwood about Maplewood it was convoluted

Councillor Winslow said he was at a meeting with Senator Lewis coming in with a video link but it was awkward. He feels it goes well in the Chamber.

Councillor Colon-Hayes asked if we were talking about the ease of just recording even now why we are sitting here she feels the public is not attending to film because we have the ability to do that. Right now Councillor Spadafora said we cannot film the meeting. She feels that committee meetings are where things happen and they should be filmed.

Councillor Linehan said who needs to press the button to film we would need to caution that

Councillor O'Malley said all Ron or Anthony need to do is set up the meeting and it can be broadcast

Councillor Linehan said are we trying to amend the Council rule book so that it stays in place and not every Council President has to change the rules

Councillor Winslow said initially try it for six months and then maybe it becomes policy

Councillor O'Malley said when a committee chair sets up a meeting it should be put into the polycom and they create a zoom link. We could do that but we don't know the ins and outs of IT, Ron Cochran and the City Clerk's office it he feels it should all be the same but how you get it on to the PolyCom

Councillor Linehan said if we feel that we have guidelines that start with Finance and R/O and pilot that which would be the bare minimum of meetings to be recorded the expectation would be that the clerk would input it to there

Councillor O'Malley said they would have to get the zoom information first he feels that is the easiest way and it would be up to the Chair to allow people to speak and it goes to the Cloud automatically

Councillor Linehan said she feels the City is deciding to use zoom or teams and once they decide you process it out. We need to write down the process document and the Anthony and Ron will make the tech happen in the background

Councillor O'Malley said he feels the process flow is that the Committee Chair requests from the clerk or clerk of committee there is a docket for an ordinance meeting create the agenda and then create a meeting in zoom or team and put the information on the agenda and publish the agenda with the zoom link.

Councillor Winslow said you would need a little bit of training

Councillor O'Malley said he feels it is already here and Anthony, Ron and Eric said it is already here

Councillor Linehan said she still feels like we may need someone to be on call in the building during the meetings in case they need technical help.

Councillor Colon-Hayes asks if we can discuss this process outside of the meetings but Councillor O'Malley said no we can all work on it alone and then come together in another meeting.

The Clerk of Committees explains when we were producing the agendas during zoom Greg was on the city account and would send the zoom information for the agendas. At one point the Assistant City Clerk was actually uploading the meetings to the agenda just like we attach the agendas to the meeting information on the City Website.

Councillor Linehan feels she needs to ask the Mayor if it is going to be a budget ask if we need more staffing for this

Other Business

Adjournment

A motion was made by Councillor at Large Karen Colon Hayes, seconded by Councillor Ryan O'Malley, that this meeting be adjourned at 7:00 PM. The motion carried unanimously.

EXHIBIT 9

Re: Council plans and policy on Zooming meetings in the future? >>



Brian DeLacey <bdelacey@gmail.com>

Wed, Jun 16, 2021, 8:36 AM



to Ryan, William ▾

Dear Councilor O'Malley,

This is excellent news. Wishing you luck with this - it would be an important step forward.

Regards,
Brian

On Wed, Jun 16, 2021 at 8:15 AM Ryan O'Malley <romalley@cityofmaiden.org> wrote:

Hi Brian,

I am working on a paper to make remote participation and meeting recording permanent. It will be on the docket next week.

Thank you,
Ryan

Ryan O'Malley
Councilor Ward 4
City of Malden

On Jun 15, 2021, at 8:38 PM, Brian DeLacey <bdelacey@gmail.com> wrote:

Dear City Officials,

Was tonight's City Council meeting broadcast by Zoom? The Rules and Ordinance meeting was also held in the Council Chambers. The agenda - attached - provided no directions for remote access. If not, what is the reason?

These meetings were poorly attended in person. However, topics at the R&O and Council meeting had important speakers.

Is the world-class video and audio technology installed in the new city hall operational? My understanding this was installed at considerable expense to tax payers. It's unclear why these important Council meetings would not be routinely broadcast for public benefit.

The agenda for these meeting gave no indication the meeting would be zoom-cast or otherwise made available to the public. These meetings were poorly attended in person. However, the guest speakers had very important information to convey to Malden's residents.

With the world-class video and audio technology installed in the new city hall, at considerable expense to tax payers, it's unclear why these City Council meetings would not be shared.

Thank you in advance for an update on this. I remain interested from my earlier inquiry of a week ago.

Respectfully,
Brian

On Tue, Jun 8, 2021 at 10:00 PM Brian DeLacey <bdelacey@gmail.com> wrote:

Dear City Officials,

Congratulations on a great start in the new Council meeting environment.

Could you please let us know what your policy and plan is for the streaming / recording of public body meetings by city staff? The new Council Chambers and nearby meeting room appear to have world-class video and audio technology installed. It would seem little more than a push of a button is required to share these meetings with the public. However, it appeared that not all committee meetings were shared tonight, despite having budget-critical discussions on their agenda.

A number of people inquired about video availability today, and we would like to share this information publicly.

Additionally, a few of us are interested in the video recording capabilities of the facility and hope that one of you might arrange a public tour of the video installation in the future.

Thank you,
Brian

EXHIBIT 10

Massachusetts Law Updates



BLOG POST

Massachusetts Declaration of Rights – Article 19

Right to Assemble and to Petition the Legislature

1/19/2019

MASSACHUSETTS Article 19 Declaration of Rights

Article 19 (1780)

The people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good; give instructions to their representatives, and to request of the legislative body, by the way of addresses, petitions, or remonstrances, redress of the wrongs done them, and of the grievances they suffer.

Precedents and Quotations

Nathaniel Ward, *Body of Liberties*, (1641):

"Every man whether Inhabitant or Forreiner, free or not free shall have libertie to come to any publique Court, Councel, or Towne meeting, and either by speech or writing to move any lawfull, seasonable, and materiaall question, or to present any necessary motion, complaint, petition, Bill or information, whereof that meeting hath proper cognizance, so it be done in convenient time, due order, and respective manner."

Constitution of Pennsylvania, "A Declaration of the Rights of the Inhabitants of the Commonwealth or State of Pennsylvania", Section XVI, September 28, 1776:

"That the people have a right to assemble together, to consult for their common good, to instruct their representatives, and to apply to the legislature for redress of grievances, by address, petition, or remonstrance."

First Amendment, United States Constitution, became law Dec. 15, 1791 when ratified by Virginia, the 10th state to approve the 10 Amendments to the U.S. Constitution, now known as the Bill of Rights:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

Stephen A. Higginson, "A Short History of the Right to Petition Government for the Redress of Grievances", 96 *Yale Law Journal* 142 (1906):

"The original design of the First Amendment petition clause ('Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances.') - stemming from the right to petition local assemblies in colonial America, and forgotten today - included a governmental duty to consider petitioners' grievances. . . [C]olonial assemblies, accustomed to quasi-judicial lawmaking and anxious to encourage petitions as sources of both jurisdiction and information, generally favored citizens' rights to assembly consideration. . . Aggrieved persons could reformulate causes of action for judicial redress into grievances of abridged liberties in order to secure legislative relief. . . Not only the enfranchised population, but also unrepresented groups - notably women, felons, Indians, and, in some cases, slaves - represented themselves and voiced grievances through petitions. This broadening of participation and access to relief mitigated some of the hardship of limited colonial suffrage. The right to petition vested these groups with a minimum form of citizenship: petitioning meant that no group in colonial society was entirely without political power."

AUTHOR

Berkshire Law Library

Trial Court Law Libraries

RELATED

[Ask a Law Librarian](#) +

[Massachusetts law about...](#) +

[Trial Court Law Libraries locations](#) +



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

MAURA HEALEY
ATTORNEY GENERAL

TEL: (617) 727-2200
www.mass.gov/ago

December 2, 2021

OML 2021 – 179

VIA EMAIL ONLY

Kathryn M. Fallon, Esq.
City Solicitor
City of Malden Legal Department
[REDACTED]

RE: Open Meeting Law Complaint

Dear Attorney Fallon:

This office received one complaint each from Debbie DeMaria and Ryan O'Malley, both members of the Malden City Council (the "Council"), alleging that the Council, the Council's License Committee, and the Council's Rules and Ordinance Committee (collectively, the "Committees") violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. Specifically, Councilor DeMaria's complaint alleges that Councilor Jadeane Sica, as a member of the License Committee, deliberated via email on January 25, 2021,¹ and Councilor O'Malley's complaint alleges that Councilor Craig Spadafora deliberated via email on January 26, January 28, and February 21.²

Councilor DeMaria's complaint was filed with the Council on February 20, and you responded on behalf of the Council by letter dated March 16. Thereafter, Councilor DeMaria filed her complaint with our office on April 12. Councilor O'Malley's complaint was filed with the Council on February 25, and you responded on behalf of the Council by letter dated March 23.³ Thereafter, Councilor O'Malley filed his complaint with our office on April 26.

¹ All dates are in 2021, unless otherwise indicated.

² We note that our review is limited to allegations raised in the original Open Meeting Law complaints. See OML Declination 5-23-2018 (Uxbridge Board of Selectmen).

³ The Council raises the timeliness of Councilor O'Malley's complaint and its response thereto. We note that the complaint, filed by email at 4:58 p.m. on February 25, was timely filed with respect to all allegations. The Council asserts that because the complaint was filed two minutes before City offices closed on Thursday, February 25, and

We appreciate the patience of the parties while we reviewed these matters. Following our review, we find that the Council, its License Committee, and its Rules and Ordinance Committee, and specifically Councilors Sica and Spadafora and Councilor Peg Crowe, violated the Open Meeting Law by deliberating via email. In reaching this determination, we reviewed the Open Meeting Law complaints, the Council's responses, the requests for further review, the emails at issue, and an additional response provided by the Council.

FACTS

We find the facts to be as follows. The Council is an eleven-member body; therefore, six members constitute a quorum. The Council is the legislative body in the City of Malden. The Council has broad authority. As described on the Council's webpage, it "sets policy; adopts ordinances, orders and resolutions; reviews and approves the City's annual budget; approves or confirms appropriations, appointments and other matters proposed by the Mayor; and performs many other legislative related tasks."⁴ The License Committee and the Rules and Ordinance Committee are subcommittees of the Council and are comprised entirely of members of the Council. Each of these two committees has five members; therefore, a quorum of either body consists of three members of that body.

On November 5, 2019, our office issued an Open Meeting Law determination finding that a member of the Council violated the Open Meeting Law by impermissibly deliberating outside of a meeting via email. OML 2019-140. In our determination we ordered the Council's immediate and future compliance with the Law and cautioned that a determination by our office of a similar violation in the future may be considered evidence of an intent to violate the Open Meeting Law. Councilors Sica, Spadafora, and Crowe were all members of the Council at the time OML 2019-140 was issued.

On January 21, the License Committee posted notice for a meeting to be held on January 26. Included on the notice was the topic "340-20 Petition: Class II - Brothers Auto Body, 969 Salem Street, Malden, MA - 0 cars." On January 25, Councilor Sica forwarded to three fellow members of the License Committee an email from the Licensing Administrator for the City of Revere regarding Brothers Auto Body. In the body of Councilor Sica's email, Councilor Sica stated "I cannot remember if I already sent you this information regarding brothers auto body. Not sure if it's coming off the table at tomorrow night[']s meeting but I will not be supporting it[']s renewal. Let me know if you have any questions."

On January 26, Councilor Spadafora sent two emails to the entire Council. The first email, titled "Green Space Resolve" was addressed to the Councilors in their capacity as Council members. In the email, Councilor Spadafora reminded the Council that he sponsored a Council

because City offices are closed on Fridays, the complaint was not received until Monday, March 1. This speaks to the timeliness of the Council's response to the complaint, not to the timeliness of the complaint itself. The Open Meeting Law requires that a complaint be filed within 30 days of the date of the alleged violation, and that a public body respond to a complaint within 14 business days of receipt of the complaint. G.L. c. 30A, § 23(b); 940 CMR 29.05.

⁴ <https://www.cityofmalden.org/469/City-Council>.

“resolve” to work with the Community Preservation Committee to explore increasing the City’s open space through the acquisition of property. Councilor Spadafora went on to share his thoughts and opinions regarding the need to expand green space in the City, the benefits of doing so, and the challenges in trying to accomplish such a goal. Councilor Spadafora attached to the email a spreadsheet of “potential parcels” of land, presumably potentially available for purchase by the City. While there is no specific call to action in the email, Councilor Spadafora mentions 1) that “[t]he goal for this proposal is protection, through acquisition or Conservation Restrictions, of lands . . .”; 2) starting a “discussion towards ‘realistic’ and ‘attainable’ goals and a plan to look for a strategy that take[s] advantage of limited opportunities”; and 3) “[b]y taking advantage of [Community Preservation Act] funds, it is my hope that open space will continue to shape the character and future of Malden.”

Councilor Spadafora’s second January 26 email was sent in response an email from the Special Assistant to the Mayor. The Special Assistant had emailed the Council and others explaining that Mystic Valley Elder Services would be able to provide transportation to vaccination sites for seniors needing rides. In response, Councilor Spadafora, copying the full Council and others, wrote “Great news. Certainly going to be a need.”

On January 28, Councilor Spadafora responded to another email from the Special Assistant. The Special Assistant had emailed the full Council and others informing them that Housing Families, Inc. had secured state funding to open a shelter. In response, Councilor Spadafora, copying the full Council and others, wrote “Great work. Especially during this unusual time more and more families are in need of housing.”

On February 21, Councilor O’Malley, as a member of the Rules and Ordinance Committee, emailed Councilor Spadafora, as chair of the Rules and Ordinance Committee, copying several individuals, none of whom serve on the Rules and Ordinance Committee or the Council. In the email Councilor O’Malley requested that the Malden River zoning papers be included on the notice for the next Rules and Ordinance Committee meeting. That same day, Councilor Spadafora replied to Councilor O’Malley, copying the same original recipients and adding Councilor Peg Crowe who also serves on the Rules and Ordinance Committee. Councilors O’Malley, Spadafora, and Crowe constitute a quorum of the Rules and Ordinance Committee. In his response to Councilor O’Malley, Councilor Spadafora explained that he could not include the Malden River zoning papers on the notice for the next meeting because they had been referred by the Council to the Rules and Ordinance Committee and the Planning Board for a joint meeting. Councilor Spadafora went on to explain that there were two procedural options available with respect to the Malden River papers, including making “a motion to rescind the vote to send to ordinance/ planning. Then revote to only send to ordinance to discuss. Meet in ordinance to craft one paper and then refer that paper to joint planning/ordinance.” Councilor Spadafora then explained that it was his preference to “rescind and do the work in ordinance,” and that he had spoken with Councilor Crowe about supporting a motion to rescind the earlier vote of the Council.

On February 22, Councilor Crowe responded to the February 21 email exchange, copying the original recipients including Councilors O’Malley and Spadafora, stating “I agree with

rescinding the papers. I think working to have one paper that includes the best of each is a better paper to send to planning.”

DISCUSSION

The purpose of the Open Meeting Law is “to eliminate much of the secrecy surrounding the deliberations and decisions on which public policy is based.” Ghiglione v. School Comm. of Southbridge, 376 Mass. 70, 72 (1978). Accordingly, the law requires that all meetings of a public body be properly noticed and open to members of the public, unless an executive session is convened. See G.L. c. 30A, §§ 20(a)-(b), 21. A subcommittee of a public body is itself a public body subject to the Open Meeting Law. G.L. c. 30A, § 18.

The Open Meeting Law defines “meeting,” in relevant part, as “a deliberation by a public body with respect to any matter within the body’s jurisdiction.” G.L. c. 30A, § 18. The Law defines deliberation broadly to include any “oral or written communication through any medium, *including electronic mail*, between or among a quorum of a public body on any public business within its jurisdiction; provided, however, that ‘deliberation’ shall not include the distribution of a meeting agenda, scheduling information or distribution of other procedural meeting or the distribution of reports or documents that may be discussed at a meeting, *provided that no opinion of a member is expressed*.” G.L. c. 30A, § 18 (emphasis added). The Open Meeting Law does not carve out an exception to the definition of “deliberation” for discussions that do not result in a decision or vote. See OML 2020-93; OML 2020-160. Likewise, a one-way communication from one public body member to a quorum on business within a body’s jurisdiction is deliberation, even if no other members respond. See OML 2020-136.

I. Emails That Do Not Constitute Deliberation.

We find that Councilor Spadafora’s January 26 and 28 emails responding to the Special Assistant to the Mayor do not constitute deliberation because they do not relate to business within the Council’s jurisdiction. Councilor O’Malley asserts that the emails relate to business within the Council’s jurisdiction because they relate to “community organizations which receive funding from the City of Malden through the Community Development Block Grant (CDBG) program[, and t]he application period for CDBG had recently opened on January 13” Councilor Spadafora’s emails did not relate to the Community Development Block Grant or any other funding that falls within the Council’s jurisdiction. Instead, both emails simply stated support and appreciation for services that Mystic Valley Elder Services and Housing Families, Inc. would be able to provide to the residents of Malden.

II. Emails that Constitute Deliberation Outside of a Noticed Meeting.

Councilor Sica’s January 21 Email

Where Councilor Sica’s January 21 email reached a quorum of the License Committee and clearly expressed her thoughts and opinions on a matter squarely within that committee’s

jurisdiction, we find that Councilor Sica violated the Open Meeting Law by deliberating outside of a properly noticed meeting via email. See OML 2013-186; OML 2016-31; OML 2021-41.⁵

Councilor Spadafora's Green Space Resolve Email

In the materials provided by the Complainant and the Council, both focus on whether the “resolve” mentioned in Councilor Spadafora’s January 26 green space email is a matter that falls within the Council’s jurisdiction as well as whether the email relates to a proposal regarding Fellsmere Pond and Park sponsored by Councilor Spadafora. We find that although both the resolve and Fellsmere Pond are mentioned in the email, and although the email relates to the same subject matter as the resolve—green space in the City—the email is not about either the resolve or the Fellsmere Pond proposal.⁶ Instead, we find that the email concerns Councilor Spadafora’s thoughts and opinions regarding the desirability of increasing green space in the City as well as the possibility of purchasing land and using Community Preservation Act funds to expand the City’s green space. We find that these matters, in general, fall within the Council’s broad jurisdiction as the legislative body for the City. Therefore, Councilor Spadafora’s January 26 email constituted deliberation outside of a properly noticed meeting.

We understand the Council to make two temporal arguments for why the matters discussed in the January 26 email were not within the Council’s jurisdiction. First, the Council asserts that at the time of the email the Council was not considering the sale, lease, or purchase of any property, nor was such a consideration anticipated for the near future. Second, with respect to Community Preservation Act funds, the Council asserts that any project utilizing such funds must first be approved by the City’s Community Preservation Committee which would then submit a proposed appropriation to the Council for its approval or denial, and that no proposed appropriation was before the Council at the time of the email. We find both argument unavailing.

Whether to purchase land and whether to approve the appropriation of Community Preservation Act funds are topics squarely within the Council’s jurisdiction. That the Council

⁵ We note that in its response, the Council explained that it initially handled Councilor DeMaria’s complaint internally at her request. The Council additionally explained that several remedial steps were taken in response to the complaint and that these steps were communicated to Councilor DeMaria. Thereafter, Councilor DeMaria expressed her desire to have the complaint addressed publicly. In response, the License Committee discussed the complaint at its March 23 meeting. The request made to our office for further review of the complaint makes no mention of Councilor DeMaria being dissatisfied with the remedial steps taken or with the License Committee’s discussion of the complaint and instead appears to be motivated by a concern that Councilor DeMaria did not receive an “official formal” response to the complaint. Where there is no material dispute between a public body and a complainant, and where the public body has taken appropriate remedial action, we strongly encourage complainants to consider whether further review by this office is necessary.

⁶ The Council asserts that resolves “are matters on which the Council wishes to opine - not matters under the legislative jurisdiction or authority of the Council. In other words, procedurally, the Council utilizes Resolves for matters which are not in its jurisdiction to act as a legislative body,” and that specifically, the resolve mentioned in the email “was an opinion issued by the Council that the public bodies with jurisdiction to do so consider acquiring additional parkland and recreational spaces for environmental purposes.” Because we ultimately do not find the January 26 email to be about the resolve mentioned in the email, we make no formal determination regarding whether a resolve is a matter that falls within the jurisdiction of the Council; however, we do advise caution. See OML 2021-35.

was not actively considering the purchase, sale, or lease of any particular property does not remove this topic from its jurisdiction. Likewise, that another public body must first approve a project before the Council may approve the appropriation of Community Preservation Act funds does not remove this topic from the Council's jurisdiction. See OML 2019-119 (finding that the appointment of a town accountant was within the Board of Selectmen's jurisdiction even though it was the town administrator who had authority to appoint the accountant, subject to the Board's approval, and the administrator had not yet appointed an accountant); OML 2014-148 ("Because issues relating to a new restaurant opening in town could conceivably come before the Board, we find that this discussion was within the Board's jurisdiction and should have taken place during an open meeting."). Indeed, as we previously explained to the Council in OML 2019-140, this kind of temporal argument misconstrues the legal standard of deliberation, which includes "any public business within [the public body's] jurisdiction," regardless of timeframe.

The Rules and Ordinance Committee Emails

Although the February 21 and 22 emails exchanged among a quorum of the Rules and Ordinance Committee present a closer question than Councilor Spadafora's January 26 email discussed above, we ultimately find that these emails also constitute deliberation outside of a noticed meeting in violation of the Open Meeting Law. The Rules and Ordinance Committee asserts that the February 21 and 22 emails do not constitute deliberation because the emails concern rescinding a vote taken by the full Council and therefore do not relate to business within the committee's jurisdiction. We find that Councilor Spadafora's and Councilor Crowe's emails went beyond simply discussing whether the full Council should rescind its earlier vote. The emails discuss options related to how the Rules and Ordinance Committee might move forward with respect to the Malden River zoning papers, a topic clearly within the Rules and Ordinance Committee's jurisdiction.

The Rules and Ordinance Committee also asserts that the emails fall within the exception to the definition of "deliberation" in the Open Meeting Law for the "distribution of a meeting agenda, scheduling information or distribution of other procedural meeting [sic] or the distribution of reports or documents that may be discussed at a meeting." G.L. c. 30A, § 18. This exception is limited to purely administrative discussions and only applies "provided that no opinion of a member is expressed." *Id.* Here, both Councilor Spadafora and Councilor Crowe clearly expressed their opinions regarding how they wanted to handle the Malden River zoning papers moving forward. Although we find a violation with respect to the February 21 and 22 emails, we do recognize that it is sometimes difficult to determine whether communication constitutes deliberation under the Open Meeting Law; therefore, our office cautions public bodies on the use of electronic media.⁷

III. We Find the Open Meeting Law Violations to Be Intentional.

Next, we must determine if the violations found here were intentional, as both complainants assert. We find that they were. An intentional violation is an "act or omission by a public body or a member thereof, in knowing violation of [the Open Meeting Law]." 940 CMR 29.02. An intentional violation may be found where the public body acted with deliberate

⁷ See <https://www.mass.gov/info-details/frequently-asked-questions-about-the-open-meeting-law>.

ignorance of the law's requirement or has previously been advised that certain conduct violates the Open Meeting Law. Id. Although we acknowledge that Councilors Spadafora, Sica, and Crowe may have sincerely misunderstood the Open Meeting Law's requirements with regard to email communication, nonetheless we previously advised the Council that similar communications violated the Open Meeting Law. Specifically, in OML 2019-140, issued to the Council on November 5, 2019, we found that former Council member John Matheson violated the Open Meeting Law when he sent an email to a quorum of the Council expressing his thoughts and opinions regarding public business within the Council's jurisdiction. Additionally, in OML 2019-140, we rejected certain arguments raised by the Council that are similar to arguments raised in response to the two complaints at issue here, such as the assertion that certain matters did not fall within the Council's jurisdiction for temporal reasons. Because we have previously clearly warned the Council that deliberation via email violates the Open Meeting Law, we find the violations here to be intentional.

CONCLUSION

For the reasons stated above, we find that the Council, its License Committee, and its Rules and Ordinance Committee violated the Open Meeting Law when, on various dates, Councilors Sica, Spadafora, and Crowe deliberated outside of a noticed meeting via email. Furthermore, we find these violations to be intentional. We order the Council and the Committees' immediate and future compliance. Additionally, we order the Council and the Committees to, within 30 days of the date of this letter, release to the public the emails found here to be in violation of the Open Meeting Law. Finally, we caution the Council and the Committees that similar violations in the future may result in the imposition of a civil penalty of up to \$1,000 per intentional violation.

We now consider the complaints addressed by this determination to be resolved. This determination does not address any other complaints which may be pending with our office, the Council, or the Committees. Please feel free to contact our office at (617) 963-2540 if you have any questions.

Sincerely,



Elizabeth Carnes Flynn
Assistant Attorney General
Division of Open Government

cc: Malden City Council (via e-mail: [REDACTED])
Debbie DeMaria, City Councilor (via e-mail: [REDACTED])
Ryan O'Malley, City Councilor (via e-mail: [REDACTED])
Jadeane Sica, City Councilor (via e-mail: [REDACTED])
Craig Spadafora, City Councilor (via e-mail: [REDACTED])
Peg Crowe, City Councilor (via e-mail: [REDACTED])

This determination was issued pursuant to G.L. c. 30A, § 23(c). A public body or any member of a body aggrieved by a final order of the Attorney General may obtain judicial review through an action filed in Superior Court pursuant to G.L. c. 30A, § 23(d). The complaint must be filed in Superior Court within twenty-one days of receipt of a final order.

ALM GL ch. 272, § 40

Current through Chapter 91 of the 2022 Legislative Session of the 192nd General Court

Annotated Laws of Massachusetts > PART IV CRIMES, PUNISHMENTS AND PROCEEDINGS IN CRIMINAL CASES (Chs. 263 - 280) > TITLE I CRIMES AND PUNISHMENTS (Chs. 263 - 274) > TITLE I CRIMES AND PUNISHMENTS (Chs. 263 – 274) > Chapter 272 Crimes Against Chastity, Morality, Decency and Good Order (§§ 1 – 107)

§ 40. Disturbance – Public School or Meeting.

Whoever willfully interrupts or disturbs an assembly of people meeting for a lawful purpose shall be punished by imprisonment for not more than 1 month or by a fine of not more than \$50; provided, however, that an elementary or secondary student shall not be adjudged a delinquent child for an alleged violation of this section for such conduct within school buildings or on school grounds or in the course of school-related events.

History

1849, 59; GS 165, § 23; PS 207, § 23; RL 212, § 32; 1969, 463, § 1; [2018, 69, § 159](#), effective April 13, 2018.

Annotations

Notes

Amendment Notes

The 1969 amendment added the provision dealing with a second conviction.

The 2018 amendment, effective April 13, 2018, rewrote the section, which formerly read: "Whoever willfully interrupts or disturbs a school or other assembly of people met for a lawful purpose shall be punished by imprisonment for not more than one month or by a fine of not more than fifty dollars; provided, however, that whoever, within one year after being twice convicted of a violation of this section, again violates the provisions of this section shall be punished by imprisonment for one month, and the sentence imposing such imprisonment shall not be suspended."

Notes to Decisions

This section includes meetings assembled for discussion of subject of temperance; and also, it seems, political gatherings, meetings for amusement, and all public meetings held for lawful purposes. [Commonwealth v. Porter, 374 Mass. 476, 1854 Mass. LEXIS 80 \(Mass. 1854\)](#).

Massachusetts Institute of Technology was "school" within meaning of section. [Commonwealth v. Bohmer, 374 Mass. 368, 372 N.E.2d 1381, 1978 Mass. LEXIS 854 \(Mass. 1978\)](#).

ALM GL ch. 272, § 40

Section requires only that acts be willfully performed or intentional, not that defendant have specific intent to cause disturbance. [Commonwealth v. Bohmer, 374 Mass. 368, 372 N.E.2d 1381, 1978 Mass. LEXIS 854 \(Mass. 1978\)](#).

Section does not prohibit expressive conduct or speech that is compatible with free flow of ideas essential to learning process and therefore does not substantially deter exercise of First Amendment rights; hence, it is not unconstitutionally overbroad. [Commonwealth v. Bohmer, 374 Mass. 368, 372 N.E.2d 1381, 1978 Mass. LEXIS 854 \(Mass. 1978\)](#).

Section proscribes only such activity as actually creates interruption or disturbance of normal functioning of school. [Commonwealth v. Bohmer, 374 Mass. 368, 372 N.E.2d 1381, 1978 Mass. LEXIS 854 \(Mass. 1978\)](#).

Section is sufficiently definite to satisfy notice requirements of due process clause, and thus is not unconstitutionally vague. [Commonwealth v. Bohmer, 374 Mass. 368, 372 N.E.2d 1381, 1978 Mass. LEXIS 854 \(Mass. 1978\)](#).

“An Act relative to criminal justice reform,” which amended this statute by specifically removing certain school-based offenses from the sphere of infractions for which juveniles could be adjudicated delinquent, had retroactive application because there was no reason to delay application of the amendment, which was aimed at combatting the negative effects of Juvenile Court involvement on children and their communities. [Commonwealth v. Ashe A., a juvenile, 483 Mass. 1005, 133 N.E.3d 818, 2019 Mass. LEXIS 650 \(Mass. 2019\)](#).

Retroactive application of the 2018 amendment to this statute was buttressed by the jurisdictional nature of the amendment. Because prospective application would be repugnant to the purpose of the amendment of the school assembly statute, the statute applied retroactively to cases that were pending as of April 13, 2018. [Commonwealth v. Ashe A., a juvenile, 483 Mass. 1005, 133 N.E.3d 818, 2019 Mass. LEXIS 650 \(Mass. 2019\)](#).

Probable cause to prosecute a spectator at a baseball game for disturbing a public assembly existed because the spectator engaged in loud and obscene conduct and some degree of disturbance occurred where an umpire noticed the spectator's behavior and instructed that he be ejected. Thus, the spectator could not establish a malicious prosecution claim based on his prosecution for disturbing a public assembly. [Goddard v. Kelley, 629 F. Supp. 2d 115, 2009 U.S. Dist. LEXIS 55970 \(D. Mass. 2009\)](#).

Research References & Practice Aids

Research References and Practice Aids

Law Reviews

Wald, Controlling Partners: When Law Enforcement Meets Discipline in Public Schools. [54 N.Y.L. Sch. L. Rev. 977 \(2009/2010\)](#).

Treatises

CR Model Jur Instructions for use in the Dis Cts - Mass. Instruction (MCLE) 7.200, Disturbing The Peace.

Annotated Laws of Massachusetts
Copyright © 2022 Matthew Bender & Company, Inc.,
a member of the LexisNexis Group All rights reserved.



Positive

As of: July 5, 2022 10:53 PM Z

Commonwealth v. Porter

Supreme Court of Massachusetts, Hampshire, Franklin and Hampden

September, 1854, Decided

No Number in Original

Reporter

67 Mass. 476 *; 1854 Mass. LEXIS 80 **; 1 Gray 476

Commonwealth vs. Adolphus Porter & others.

Disposition: [**1] Exceptions overruled.

Core Terms

disturbance, assembly, meetings, rights, public meeting, interruption, lawful purpose, orderly, wilful

Case Summary

Procedural Posture

Defendants appealed from the decision of a court of common pleas (Massachusetts), which convicted them of wilfully disturbing and interrupting an assembly of people, met for a lawful purpose.

Overview

Three defendants were indicted for wilfully disturbing and interrupting an assembly of people, met for a lawful purpose by coughing, laughing, whistling, and talking in a loud and boisterous manner. The meeting was held for the purpose of discussing the subject of temperance. Two of the defendants were convicted and one acquitted. Defendants, before trial, sought to quash the indictment, on the grounds that no crime was alleged. After the trial a motion in arrest of judgment was made by those convicted, for the same reason, which was also overruled, and to that decision defendants except. The court concluded that (1) what constituted an interruption and disturbance of a public meeting or assembly depended on the nature and character of each particular kind of meeting and the purposes for which it is held, and much also on the usage and practice governing such meetings; (2) the disturbance had to be wilful and not done through accident or mistake; and (3) because the public meeting of citizens for lawful purposes was an essential and valuable right, the law went no further than to give practical efficacy and security to it, by a moderate punishment for its disturbance.

Outcome

The court overruled the exceptions of defendants convicted of wilfully disturbing and interrupting an assembly of people, met for a lawful purpose.

LexisNexis® Headnotes

Criminal Law & Procedure > ... > Crimes Against Persons > Disruptive Conduct > General Overview

[HN1](#) Crimes Against Persons, Disruptive Conduct

44

See 1849 Mass. Acts 59.

Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Association

[HN2](#) Fundamental Freedoms, Freedom of Association

The [Massachusetts Declaration of Rights, art. 19](#) provides: The people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good; give instructions to their representatives; and to request of the legislative body, by the way of addresses, petitions or remonstrance, redress of the wrongs done them, and of the grievances they suffer.

Criminal Law & Procedure > ... > Crimes Against Persons > Disruptive Conduct > General Overview

[HN3](#) Crimes Against Persons, Disruptive Conduct

What shall constitute an interruption and disturbance of a *public meeting* or assembly, cannot easily be brought within a definition, applicable to all cases; it must depend somewhat on the nature and character of each particular kind of *meeting* and the purposes for which it is held, and much also on the usage and practice governing such meetings. As the law has not defined what shall be deemed an interruption and disturbance, it must be decided as a question of fact in each particular case; and although it may not be easy to define it beforehand, there is commonly no great difficulty in ascertaining what is a wilful disturbance in a given case. It must be wilful and designed, an act not done through accident or mistake.

Headnotes/Summary

Headnotes

The St. of 1849, c. 59, entitled "An act to prevent disturbances of schools and *public* meetings," and providing for the punishment of "every person who shall wilfully interrupt or disturb any school or other assembly of people, met for a lawful purpose," includes meetings assembled for the discussion of the subject of temperance; and also, *it seems*, political gatherings, meetings for amusement, and all *public* meetings held for lawful purposes.

Counsel: D. Aiken, for the defendants.

J. H. Clifford, (Attorney General,) for the Commonwealth.

Judges: Shaw, C. J.

Opinion by: Shaw

Opinion

[*476] Shaw, C. J. The three defendants were indicted for wilfully disturbing and interrupting an assembly of people, met for a lawful purpose in a *meeting*-house in Orange, by coughing, laughing, whistling, and talking in a loud and boisterous manner, within said *meeting*-house. A second count charges the same offence, with the further averment that the said *meeting* was held for the purpose of discussing the subject of temperance. Two of the defendants were convicted and one acquitted.

The defendants, before trial, moved the court of common pleas to quash the indictment, because no crime was alleged; this motion being overruled, a trial was had with the result above stated, and a motion in arrest of judgment was made by those convicted, for the same reason, which was also overruled, and to that decision the defendants except. The question is, whether this indictment sets forth any offence punishable by law.

The statute, on which the indictment is founded, is St. 1849, c. 59. It is very short, and is in these words: [HN1](#) "Every **[**2]** person who shall wilfully interrupt or disturb any school or other assembly of people met for a lawful purpose, within the place of such meeting, or out of it, shall be punished by imprisonment in the county jail not more than thirty days, or by fine not exceeding fifty dollars." The title of the act is "An act to prevent disturbances of schools and public meetings."

We concur with the learned counsel for the defendants, that the construction to be given to this statute becomes very important. So numerous are the public meetings of persons in this commonwealth, and so various the purposes for which they are held, that the peace, harmony and good order of society **[*477]** depend much upon the orderly conduct of all such meetings. That this statute is intended to extend beyond schools, is very clear; shall the maxim *noscitur a sociis* limit it to places of instruction, such as academies, classes in colleges, lyceums and institutes, and the like? That it does extend to them we think quite clear; but is it limited to them? These would hardly be sufficient to satisfy the other branch of the statute, "assembly of people," especially if any force is given to the title, "to prevent **[**3]** disturbances of schools and public meetings." We are aware that not much influence is allowed to the title in the exposition of a statute; yet when statutes are so very concise, the title, being passed upon as part of the statute, may have some slight influence. The coupling of the words "school" and "assembly of people" together, in this act, can have little effect in limiting the latter words.

The defendants contend, that this clause applies only to meetings which are required by law, as schools are, as for example, town meetings, parish meetings, school district meetings, which are made necessary by law, for the exercise of the legal rights and duties of citizens. And this excellent reason is suggested, that the law, imposing the duty, will protect the citizen in exercising that duty.

May not this reasoning, so well stated, be extended a little further, to this effect; that wherever the law has authorized people to meet together peaceably for a lawful purpose, for any useful, beneficial and laudable object, it is a valuable right conferred on the citizens, and the law will protect them in the exercise of that right.

This is recognized as a valuable right secured to the people **[**4]** by the constitution. [HN2](#) Declaration of Rights, art. 19. "The people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good; give instructions to their representatives; and to request of the legislative body, by the way of addresses, petitions or remonstrances, redress of the wrongs done them, and of the grievances they suffer."

This, like the similar declarations of other rights, essential to a free government, is expressed in general terms; but it not only **[*478]** gives authority to the legislature, but makes it their bounden duty, to make suitable laws from time to time, as the exigencies of the times may require, for the protection and enjoyment of such rights.


If the public meeting of citizens for lawful purposes is an essential and valuable right, and this law goes no further than to give practical efficacy and security to it, by a moderate punishment for its disturbance, we can perceive no good reason why the law should not be made to be coextensive with the right to be secured, and applied, according to its plain terms, to the wilful disturbance of all public meetings held for lawful purposes.

We are asked, as if the question could **[**5]** not admit of an affirmative answer, whether this law shall extend to all the noisy political gatherings of the times. We should hope and believe, that such gatherings would be less noisy, and more decent and orderly and useful, if it is well understood that they cannot be wilfully interrupted. But the question admits of and requires a more serious answer. The article in the Declaration of Rights, already cited, declares the right of the people, in an orderly and peaceable manner, to assemble to consult upon the common good. Nothing more concerns the public good, than the election of good men, in all respects qualified, to public offices. The extended and almost unlimited rights of suffrage, secured to the people of this commonwealth by the constitution and laws, assume and are founded on the right of voters, to have the fullest and freest discussion and

consultation upon the merits and qualifications of candidates, for their information and the means of exercising a sound and enlightened judgment in regard to public men and political measures. Such discussions, through the medium of the press, though they might be otherwise libellous, are justified, on this consideration, as privileged **[**6]** communications. Commonwealth v. Clap, 4 Mass. 163. Why should not the orderly and peaceable meetings of voters, for deliberation and mutual information, on like subjects and for similar purposes, be under the protection of the law, although they are political gatherings?

[*479] It is argued that such a literal construction of the statute would extend its operation to meetings of parties for amusement. We are strongly inclined to think that this conclusion is correct; but if it be so, we can perceive in it no objection to the wisdom and fitness of the statute on that account. Take the case of dramatic and musical exhibitions for instance, sanctioned by law, placed to some extent under the vigilant guardianship of municipal authorities, and by them duly licensed. Capitalists are encouraged to invest their property in the erection of buildings, to enlist persons of talent and genius of the highest order, to produce exhibitions well adapted, in the opinion of many enlightened persons, to refine the taste of the people, and to inspire generous sentiments among the people. Visitors and auditors are encouraged to pay their money for admission, to a scene of enjoyment, if not **[**7]** improvement, which, whatever other judgment may be formed of it, all will agree, is a lawful assembly. Shall not proprietors, authors, composers, artists, visitors and all other persons interested, be protected in their rights, against wilful disturbance, by the operation of that law, which gives them their rights? And yet those rights can only be preserved by maintaining such meetings from wilful interruption and disturbance, so that the performances may be witnessed, heard and enjoyed. Being expressly opened to the public, every person purchasing a ticket has a right to enter; he cannot be excluded by the proprietors on the ground of their right of property in the building, because his ticket is a license; and yet a few ill-disposed persons, thus abusing their license, by tin horns, cracked kettles, and other loud and discordant sounds, as well as by vociferation, might destroy the effect of the most pathetic tragedy, or the sublimest oratorio. Our constitution has made it the duty of legislatures and magistrates, in all future periods of this commonwealth, to cherish the interests of literature, to encourage private societies and public institutions for the promotion of the arts, **[**8]** to countenance and inculcate the principles of humanity, sincerity, good humor, and all social affections and generous sentiments among the people. Constitution, c. 5, § 2.

[*480] All assemblies, therefore, designed and properly adapted to accomplish these high and generous purposes, whether in the form of deliberative bodies, lectures, or even those characterized as meetings for amusements, if warranted by law, seem thus to be sanctioned and encouraged by the admirable passage in the constitution, of which the foregoing is an abstract.

HN3  What shall constitute an interruption and disturbance of a public meeting or assembly, cannot easily be brought within a definition, applicable to all cases; it must depend somewhat on the nature and character of each particular kind of meeting and the purposes for which it is held, and much also on the usage and practice governing such meetings. As the law has not defined what shall be deemed an interruption and disturbance, it must be decided as a question of fact in each particular case; and although it may not be easy to define it beforehand, there is commonly no great difficulty in ascertaining what is a wilful disturbance in a given **[**9]** case. It must be wilful and designed, an act not done through accident or mistake.

It was urged that the legislature could not have so understood this statute, because two years after they passed an act to prevent disturbances at funerals, which would have been unnecessary, under the construction proposed to be given to this act. *St. 1851, c. 193*. But it is to be considered, that the legislature often pass an act directed to some particular abuse, *ex majori cautela*, although there may be some prior statute in force, or some rule of the common law, which might reach it. Besides; it is manifest that the latter act, prohibiting the disturbance of a funeral assembly or procession, by fast driving or otherwise, rather looks to a decent respect for the formation or movement of a funeral procession, in a street or highway, than a meeting formed for deliberation or consultation; and therefore the former statute might not reach the precise abuse, intended to be prohibited by the latter.

So of the rule of the common law, in regard to riot; it must be committed by three persons at least, and has its own technical rules, and therefore is not fully and precisely adapted to reach the **[**10]** specific and numerous cases contemplated by this statute.

[*481] Our remarks on the construction of this statute, induced perhaps by the able argument for the defendants, have extended beyond what might be considered necessary to the decision of the present case, and must be estimated accordingly. The present case is that of a meeting of citizens assembled in the meeting-house for the discussion of the subject of temperance. This is a subject of great public interest, and has, we know, attracted the earnest attention of the people of this commonwealth, especially with a view to legislative action. For aught that appears, this was a meeting of people, and a discussion of the subject of temperance, which actually resulted in a petition or remonstrance to the legislature, with a view to ameliorate or alter, or to retain and confirm, the existing law upon the subject of temperance, and, as such, a meeting held in strict conformity to the right secured by the constitution. The court are therefore of opinion that the direction of the judge at the trial was right, that the indictment did state an offence punishable by law, and that the motion in arrest of judgment on that ground was [****11**] rightly overruled.

Exceptions overruled.

End of Document



Legal Information Institute [LII]

OPEN ACCESS TO LAW SINCE 1992

[ABOUT LII](#) ▶ [GET THE LAW](#) ▶ [LAWYER DIRECTORY](#) [LEGAL ENCYCLOPE](#)

LII > U.S. Constitution > **First Amendment**

First Amendment

The First Amendment guarantees freedoms concerning religion, expression, assembly, and the right to petition. It forbids Congress from both promoting one religion over others and also restricting an individual's religious practices. It guarantees freedom of expression by prohibiting Congress from restricting the press or the rights of individuals to speak freely. It also guarantees the right of citizens to assemble peaceably and to petition their government.

SECTION 11H

GENERAL LAWS

Chapter

Section

 Print Page

< Prev

Next >

Section 11H: **Violations of constitutional rights**; civil actions by attorney general; venue; compensatory damages; fees and costs; civil penalties

[Text of section effective until July 1, 2021. For text effective July 1, 2021, see below.]

Section 11H. Whenever any person or persons, whether or not acting under color of law, interfere by threats, intimidation or coercion, or attempt to interfere by threats, intimidation or coercion, with the exercise or enjoyment by any other person or persons of rights secured by the constitution or laws of the United States, or of rights secured by the constitution or laws of the commonwealth, the attorney general may bring a civil action for injunctive or other appropriate equitable relief in order to protect the peaceable exercise or enjoyment of the right or rights secured. Said civil action shall be brought in the name of the commonwealth and shall be instituted either in the superior court for the county in which the conduct complained of occurred or in the superior court for the county in which the person whose conduct complained of resides or has his principal place of business.

If the attorney general prevails in an action under this section, the attorney general shall be entitled to: (i) an award of compensatory damages for any aggrieved person or entity; and (ii) litigation costs and reasonable attorneys' fees in an amount to be determined by the court. In a matter involving the interference or attempted interference with any right protected by the constitution of the United States or of the commonwealth, the court may also award civil penalties against each defendant in an amount not exceeding \$5,000 for each violation.

Chapter 12: Section 11H. **Violations of constitutional rights**; civil actions by attorney general; right to bias-free professional policing

[Text of section as amended by 2020, 253, Sec. 37 effective July 1, 2021. See 2020, 253, Sec. 122. For text effective until July 1, 2021, see above.]

Section 11H. (a)(1) Whenever any person or persons, whether or not acting under color of law, interfere by threats, intimidation or coercion, or attempt to interfere by threats, intimidation or coercion, with the exercise or enjoyment by any other person or persons of rights secured by the constitution or laws of the United States, or of rights secured by the constitution or laws of the commonwealth, the attorney general may bring a civil action for injunctive or other appropriate equitable relief in order to protect the peaceable exercise or enjoyment of the right or rights secured. Said civil action shall be brought in the name of the commonwealth and shall be instituted either in the superior court for the county in which the conduct complained of occurred or in the superior court for the county in which the person whose conduct complained of resides or has his

50


SECTION 20

GENERAL LAWS

Chapter

Section

GO >

 Print Page

 Prev

Next 

Section 20: Meetings of a public body to be open to the public; notice of meeting; remote participation; **recording and transmission** of meeting; removal of persons for disruption of proceedings; office holders to certify receipt of open meeting law and educational materials

[Section impacted by 2020, 53, Sec. 17, as amended by 2020, 201, Secs. 33 to 38 effective November 10, 2020, and 2021, 20, Secs. 20, 27 and 31 as amended by 2021, 29, Sec. 57 and 2022, 22, Secs. 8 to 10 effective June 16, 2021 in order to address disruptions caused by the outbreak of COVID-19.]

Section 20. (a) Except as provided in section 21, all meetings of a public body shall be open to the public.

(b) Except in an emergency, in addition to any notice otherwise required by law, a public body shall post notice of every meeting at least 48 hours prior to the meeting, excluding Saturdays, Sundays and legal holidays. In an emergency, a public body shall post notice as soon as reasonably possible prior to the meeting. Notice shall be printed in a legible, easily understandable format and shall contain the date, time and place of the meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting.

(c) For meetings of a local public body, notice shall be filed with the municipal clerk and posted in a manner conspicuously visible to the public at all hours in or on the municipal building in which the clerk's office is located.

EXHIBIT 11

Re: Council plans and policy on Zooming meetings in the future?   



Brian DeLacey <bdelacey@gmail.com>

Tue, Jun 15, 2021, 9:37 PM



to Neal, Greg, rcochran, Ryan, Councillor, Amanda, Councillor, Maria, William, Jon

Dear City Officials,

Was tonight's City Council meeting broadcast by Zoom? The Rules and Ordinance meeting was also held in the Council Chambers. The agenda - attached - provided no directions for remote access. If not, what is the reason?

These meetings were poorly attended in person. However, topics at the R&O and Council meeting had important speakers.

Is the world-class video and audio technology installed in the new city hall operational? My understanding this was installed at considerable expense to tax payers. It's unclear why these important Council meetings would not be routinely broadcast for public benefit.

The agenda for these meeting gave no indication the meeting would be zoom-cast or otherwise made available to the public. These meetings were poorly attended in person. However, the guest speakers had very important information to convey to Malden's residents.

With the world-class video and audio technology installed in the new city hall, at considerable expense to tax payers, it's unclear why these City Council meetings would not be shared.

Thank you in advance for an update on this. I remain interested from my earlier inquiry of a week ago.

Respectfully,
Brian

On Tue, Jun 8, 2021 at 10:00 PM Brian DeLacey <bdelacey@gmail.com> wrote:

Dear City Officials,

Congratulations on a great start in the new Council meeting environment.

Could you please let us know what your policy and plan is for the streaming / recording of public body meetings by city staff? The new Council Chambers and nearby meeting room appear to have world-class video and audio technology installed. It would seem little more than a push of a button is required to share these meetings with the public. However, it appeared that not all committee meetings were shared tonight, despite having budget-critical discussions on their agenda.

A number of people inquired about video availability today, and we would like to share this information publicly.

Additionally, a few of us are interested in the video recording capabilities of the facility and hope that one of you might arrange a public tour of the video installation in the future.

Thank you,
Brian

2 Attachments



52

EXHIBIT 12



Geographic Information Systems

[Home](#) > [Government](#) > [Department A..I.](#) > [Information Technology](#)

Information Technology

The Information Technology Department (ITD) is charged with the management and oversight of all computerized information systems for the City of Malden. The mission of the Department is to provide and enhance technology platforms that support the City's core functions and increase governmental efficiency for the residents of Malden.

Financial Systems

ITD is responsible for the management and oversight of the City's main financial system as well as public safety operations. The systems process and store \$200 million-plus of operational financial data and coordinate Police and Fire dispatching.

Database

All relevant databases are managed, stored and maintained by ITD operations staff and related IT personnel. The department has at its disposal 100 terabytes of storage mirrored in two remote backup locations. Daily backups, disaster planning and 24 hours a day, 7 days a week system restoration are elemental to all operations.

Desktop Systems Support

The main goal of desktop support is to ensure reliable access to computing services. Most administrative staff spend a significant portion of their day doing computing work, these resources are essential for city staff to perform their jobs effectively. Without reliable, robust systems and access to good technical support, we cannot accomplish the business of the city in an efficient manner.

Network Management

All network fabric are managed, maintained and centrally monitored in the ITD operations center, including:

- Citywide broadband wireless backbone
- Fiber
- Firewalls
- LANS
- Routers
- Switches
- WAN

Contact Us

Anthony Rodrigues

Director

Phone: 781-397-7154 ext. 2154

Information Technology

[Email Anthony Rodrigues](#)

Physical Address [View Map](#)

215 Pleasant Street
9th Floor - Room 540
Malden, MA 02148

Directions

Phone: 781-397-7154

Hours

Monday, Wednesday and Thursday

8 a.m. to 5 p.m.

Tuesday

8 a.m. to 7 p.m.

Friday

Closed

Directory

