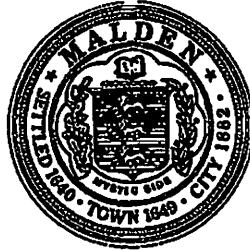


**CITY OF MALDEN, MASSACHUSETTS
Office of the City Solicitor
215 Pleasant Street, Suite 420
Malden, MA 02148**



Kathryn M. Fallon
City Solicitor

John J. McNaught, Jr.
Assistant City Solicitor

Alicia A. McNeil
Assistant City Solicitor

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

August 17, 2021

Ryan O'Malley
706A Main Street
Malden, MA 02148

Via Email Transmission to maldenomalley@gmail.com

Office of the Attorney General
ATTN: Division of Open Government
One Ashburton Place
Boston, MA 02108

Via Email Transmission to openmeeting@state.ma.us

Re: Open Meeting Law Complaint of Ryan O'Malley July 29, 2021

Dear Mr. O'Malley and Division of Open Government:

This office represents the City Council for City of Malden regarding the 7/29/21 Open Meeting Law Complaint filed by you against them. The City Council voted during its 8/17/21 meeting to permit this office to answer the allegations of your complaint.

I have attached the Report Regarding July 29, 2021 O'Malley Open Meeting Law Complaint.

Respectfully submitted,

s/John J. McNaught, Jr.

JJM:dma
Enclosure

CC: Members of the Malden City Council
Greg Lucey, City Clerk

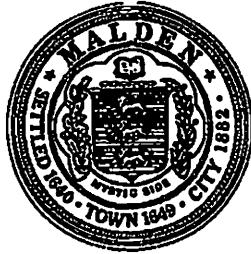
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REPORT REGARDING RYAN O'MALLEY OPEN MEETING LAW COMPLAINT
OF JULY 29, 2021

FACTS

On July 29, 2021 City Councilor Ryan O'Malley filed with the Clerk of the City of Malden an Open Meeting Law Complaint.

Councilor O'Malley stated, in part, the following in his Open Meeting Law Complaint:

"On June 29, 2021, the Malden City Council violated the Open Meeting Law by taking up paper number 235 – 21 which was not properly posted on the Council's agenda. At the meeting Councilor Barbara Murphy moved to suspend docket rules to take up this financial paper."

"The Open Meeting Law's requirement of providing a detailed agenda with at least 48 hours' notice is the ruling authority on this matter." "At the meeting the City Solicitor Kathryn Fallon advised the City Council not to take final action on the matter that night because it was not properly docketed on the agenda"

I attach hereto a copy of Councilor O'Malley's complaint, marked as **Exhibit A**.

SUMMARY OF REVIEW

In the course of the investigation, I obtained from the City Clerk a copy of the meeting minutes in draft form of the meeting of Tuesday, June 29, 2021. This meeting of the City Council that took place on June 29, 2021 is the meeting at which Mr. O'Malley complains of the stated violation of the open meeting Law. I also attach a copy of the meeting minutes – draft of the City Council meeting of Tuesday, June 29, 2021, marked as **Exhibit B**.

Although Councilor O'Malley complained of only one instance of the City Council moving to suspend the Council Rules for the purpose of receiving the Finance Committee Report, a review of the meeting minutes in draft form of the City Council meeting of June 29, 2021 reveals nine circumstances wherein the City Council moved to suspend council rules for adopting orders that would have required referral to a committee of the City Council for review and discussion. The usual method for the handling of these orders and Petitions is to place the committee report on the next City Council agenda for a final vote.

I also interviewed each member of the City Council that I could reach. I was unable to reach Councilor Amanda Linehan, Councilor David Camell and Council President Neal Anderson. Councilors Peg Crowe, Paul Condon, Barbara Murphy, Stephen Winslow, Craig Spadafora and Jadeane Sica agreed with Councilor O'Malley's OML Complaint and each also agreed that the process of moving to suspend Council Rules should not be used in the future. I also interviewed Councilor O'Malley who stated that he had "no comment" as to the violations and "no comment" as to any remedies. I interviewed Councilor Debbie DeMaria who wanted it known that she had been recused from any comment or vote on Order 235-21 and had "no comment" on any violations or remedies. Councilor Winslow had several comments about the proper use of a "Motion to Suspend the Council Rules," but he acknowledged the circumstances of the OML Complaint of Councilor Ryan O'Malley.

LEGAL ANALYSIS

These motions to suspend the Council Rules for the purpose of adopting the Order on the floor are violations of the Open Meeting Law, G.L. c. 30A, § 20.

Notice pursuant to G.L. c. 30A, § 20 requires the filing and posting of a notice of a public meeting at least 48 hours in advance of the meeting, excluding Saturdays, Sundays and legal holidays. Meeting notices shall be printed or displayed in a legible, easily understandable format and shall contain the date, time and place of such meeting, and a list of topics that the chair reasonably anticipate will be discussed at the meeting. The list of topics shall have sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting. 940 CMR 29.03 (1) (b). A topic is considered sufficiently specific if a reasonable member of the public could read the topic and understand the anticipated nature of the public body's discussion (and decision). OML 2020-137.

In the instant case as posed by the Complainant the reasonable member of the public would not anticipate a final vote on a matter of Order 235-21 that would be reasonably anticipated as heading to a committee for a hearing. In the same way the eight other circumstances illustrated in the City Council Meeting-draft minutes of motions to suspend Council Rules are also clear violations of the Open Meeting Law because the actions did not permit the public to understand the finality of the vote taken.

The City Council had been using the motions to suspend Council Rules for many years at those times when the Council felt the necessity to act upon a matter that should have been sent to committee but needed immediate attention, such as a license or an appropriation of funds before the new fiscal year. This action is now appreciated by the City Councilors as stated by them during my interviews.

REMEDIAL MEASURES

With the exceptions of those Council Members that I could not reach for an interview and Councilors O'Malley and DeMaria who expressed "no comment," the remaining Councilors agreed that the matters upon which they moved to suspend Council Rules and voted upon at the Council Meeting of June 29, 2021, would be placed on the agenda for the next meeting in September of the full City Council. The City Council would then vote again on those matters. Those same members generally agreed that such motions to suspend the Council Rules should not be used in the future.

Considering the facts and the application of the above-stated Open Meeting Law sections, it is this writer's finding that the violations are not intentional and that the City Council members understand the necessary remedial measures.

Malden City Council
By its attorneys:

/s/John J. McNaught, Jr., Esq.
Kathryn M. Fallon, Esq.
Alicia A. McNeil, Esq.
Mark Rumley, Esq.
City of Malden Legal Department
215 Pleasant Street, Suite 420
Malden, MA 02148

Dated: 8/18/21

cc: via email transmission
Councilor Ryan O'Malley
All members of the Malden City Council
City Clerk Greg Lucey
Attorney General's Office

EXHIBIT A



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: RYAN Last Name: O'MALLEY

Address: 215 PLEASANT STREET

City: MALDEN State: MA Zip Code: 02148

Phone Number: +1 (781) 870-0041 Ext.

Email: MALDENOMALLEY@GMAIL.COM

Organization or Media Affiliation (if any): MALDEN CITY COUNCIL

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): MALDEN CITY COUNCIL

Specific person(s), if any, you allege committed the violation:

Date of alleged violation: Jun 29, 2021

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.

On June 29, 2021, the Malden City Council violated the Open Meeting Law by taking up paper #235-21 which was not properly posted on the Council's agenda. At the meeting, Councillor Barbara Murphy moved to suspend docket rules to take up this financial paper. The paper in question added millions of dollars in unfunded pension liabilities to the City of Malden.

A financial paper that significantly impacts the long term financial health of the City should be properly docketed so that the public and taxpayers have sufficient notice. The Open Meeting Law's requirement of providing a detailed agenda with at least 48 hours notice is the ruling authority on this matter.

As the chair of the Finance Committee and sponsor of the paper, Councillor Murphy had months to take up this important financial discussion but instead waited until 1 week prior to the June 30, 2021 deadline to bring it before that committee. This delay forced the City Council into a textbook "catch-22" where we either had to (1) miss the June 30th deadline or (2) violate the Open Meeting Law. This situation could have been completely avoided and was unfair to the retirees impacted, the public and taxpayers, and the members of the City Council who have taken an oath to uphold the laws of the Commonwealth of Massachusetts.

At the meeting, the City Solicitor Kathryn Fallon very clearly advised the City Council not to take final action on the matter that night because it was not properly docketed on the agenda. The City Solicitor went on to suggest that the matter could be characterized by the Council as an "emergency," so that another meeting agenda, including paper #253-21, could be posted before the June 30th deadline without complying with the Open Meeting Law's 48 hour public notice requirement.

Councillor Craig Spadafora willfully ignored the City Solicitor's warnings and suggestions by moving to adopt the paper in violation of the Open Meeting Law. The motion to adopt was seconded by Councillor Jadeane Sica and paper #253-21 was then passed by the City Council 9 yeas, 1 nay, and 1 refusal.

The debate and discussion can be reviewed from 01:20:20 to 02:13:00 in the below recording:

<https://videoplayer.telvue.com/player/0161qrd2cTlyQzYJ0oHNRYLt8lmyVn7U/media/658108?fullscreen=false&showtabssearch=true&autostart=false>

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.

Comply with the Open Meeting Law.

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: Ryan J. Murphy

Date: 7/29/2021

For Use By Public Body

Date Received by Public Body:

For Use By AGO

Date Received by AGO:

Greg Lucey

From: Ryan O'Malley
Sent: Thursday, July 29, 2021 3:58 PM
To: Neal Anderson; Greg Lucey
Cc: Ryan O'Malley (Gmail)
Subject: Open Meeting Law Complaint
Attachments: OML Complaint 2021.06.29.pdf

Neal and Greg,

Please see the attached.

Ryan

EXHIBIT B



City of Malden

Malden City Hall
215 Pleasant Street
Malden, MA 02148

Meeting Minutes - Draft City Council

*Council President Neal Anderson,
Councillor David Camell,
Councillor Paul Condon,
Councillor Peg Crowe,
Councillor Deborah DeMaria,
Councillor Amanda Linehan,
Councillor Barbara Murphy,
Councillor Ryan O'Malley,
Councillor Jadeane Sica,
Councillor Craig Spadafora,
Councillor Stephen Winslow*

Tuesday, June 29, 2021

7:00 PM

215 Pleasant Street - Council Chambers

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE & MOMENT OF SILENCE IN HONOR OF SERVICEMEN & WOMEN

3. ROLL CALL

Also in attendance was City Solicitor Kate Fallon and City Planner Michelle Romero.

The meeting started at 7:09 P.M.

Present - Councillors: 11 - Neal Anderson, David Camell, Paul Condon, Peg Crowe, Deborah DeMaria, Amanda Linehan, Barbara Murphy, Ryan O'Malley, Jadeane Sica, Craig Spadafora and Stephen Winslow

4. GUESTS, CITIZEN ACHIEVEMENT AND ANNOUNCEMENTS

5. PUBLIC COMMENT

350-21

One email was received for Public Comment, John Sala, 39 Pierce Street in opposition to paper 344-21.

The following people spoke in person at the meeting.

- 1) Deborah Burke, MRA Executive Director, 215 Pleasant Street in opposition to Paper 336-21.*
- 2) Karen Colon Hayes, 105 Wyoming Ave, in favor of Papers 232-21, 40-21, 337-21 and 338-21.*
- 3) Ari Taylor 57 Mount Vernon Street, wanted to hear about the tax taking process.*
- 4) Paul Sieswerde, 78 Glenrock Ave., in favor of Paper 337-21.*
- 5) Karen Buck Gilbert, 323 Forest Street in favor of the Malden River Papers 40-21,41-21*

This Communication was received and filed

6. APPROVAL OF MINUTES

333-21 Minutes of the Meeting of June 22, 2021.

A motion was made by Councillor Winslow, seconded by Councillor Sica, that the Council Minutes be approved. The motion carried by a unanimous vote.

7. APPOINTMENTS & ELECTIONS

334-21 Mayoral Appointment: Mikenell Paul, 10 Manomet Street, New Bedford, MA as Senior Center Program coordinator, said term to expire 3 years from appointment date.

Sponsors: Peg Crowe

Mayor Christenson submitted a letter on behalf of the appointee and because the Council will not be meeting until September, he would be appointing Mr. Paul as the temporary interim/acting Senior Center Program Coordinator when he becomes available on July 30th. The confirmation process of the appointment will take place when the Council returns in September.

A motion was made by Councillor Crowe, seconded by Councillor DeMaria, that the Appointment be referred to the Personnel/Appointments Committee. The motion carried by a unanimous vote.

8. HEARINGS, PETITIONS, MEMORIALS AND REMONSTRANCES

335-21 Outdoor Parking: Motel Realty Co. Inc. - 735 Broadway, Malden, 15 spaces (Renewal)

Sponsors: Paul Condon

Licensing Chair Condon made a motion to suspend rules for the purpose of granting the license on the floor, seconded by Councillor Sica, it was so voted unanimously by voice vote 11-0.

A motion was made by Councillor Condon to grant, seconded by Councillor Sica, it was so voted to grant by voice vote 11-0.

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

9. MOTIONS, ORDERS AND RESOLUTIONS

232-21

Order: Be it ordained that Section 12 of the Revised Ordinances of 2020 be amended by adding Section 12.12.200 entitled Inclusionary Zoning.

Sponsors: Craig Spadafora, Stephen Winslow, Peg Crowe, David Camell, Ryan O'Malley and Amanda Linehan

A motion was made by Councillor Spadafora, seconded by Councillor Crowe, that the Order be referred to a joint meeting of the Rules & Ordinance Committee

and Planning Board for a Public Hearing. The motion carried by a unanimous vote.

336-21

Order: That the motto of the City of Malden be amended from the logically incorrect 'Strong Past, Proud Future' to 'Proud Past, Strong Future.'

Sponsors: Ryan O'Malley

Councillor O'Malley the sponsor of the Paper stated that Strong Past and Proud Future is grammatically incorrect and that it bothered him personally. Councillor O'Malley was unaware of the history of the current motto until Ms. Burke spoke at Public Comment of how the process took place to establish the slogan. Councillor O'Malley stated that because it is not grammatically correct it does need to be addressed. Councillor O'Malley made a motion to send the paper to Citizens Engagement.

Councillor DeMaria did not want to offend anyone and if the paper goes to Citizens Engagement, she would welcome Ms. Burke to come before the committee. Councillor DeMaria seconded the motion.

Councillors Sica, Murphy and Anderson all spoke in opposition to the paper.

A motion was made by Councillor O'Malley, seconded by Councillor DeMaria, that the Order be referred to the Citizens Engagement Committee. The motion failed by the following vote:

Yea: 2 - DeMaria and O'Malley

Nay: 9 - Anderson, Camell, Condon, Crowe, Linehan, Murphy, Sica, Spadafora and Winslow

337-21

Order: That the appropriation enumerated below, being in the amount of \$40,000 (Forty Thousand Dollars), be appropriated from the Community Preservation Act Fund for the following project:

Patchell Park Master Plan: \$40,000 from Open Space Reserve
Total Appropriation = \$40,000

**APPROPRIATION ORDER
COMMUNITY PRESERVATION ACT FUNDS
June 29, 2021**

Sponsors: Barbara Murphy

Papers 337-21 and 338-21 are funding for projects that were approved by the CPC. Finance Chair Murphy wanted to get a sense of the Council whether to suspend rules and pass the papers on the floor rather than sending the papers to Finance and the vote would not be taken until September delaying the two projects over the summer. Councillors Camell, Crowe, Linehan, Winslow, Condon, O'Malley and Spadafora all spoke in favor of both projects.

Councillor O'Malley made a motion to suspend council rules for both papers 337-21 and 338-21 for the purpose of adopting on the floor. Both motions were seconded by Councillor DeMaria.

A motion was made by Councillor Murphy, seconded by Councillor O'Malley, that the Order be adopted. The motion carried by a unanimous vote.

338-21

Order: That the appropriation enumerated below, being in the amount of

\$60,000 (Sixty Thousand Dollars), be appropriated from the Community Preservation Act Fund for the following project:
Oak Grove Community Center Master Plan
And Feasibility Study: \$60,000 from Historic Reserve
Total Appropriation = \$60,000

**APPROPRIATION ORDER
COMMUNITY PRESERVATION ACT FUNDS
June 29, 2021**

Sponsors: Barbara Murphy

A motion was made by Councillor Murphy, seconded by Councillor O'Malley, that the Order be adopted. The motion carried by a unanimous vote.

339-21

Order: Be it hereby ordained that section 12.12.030 be amended by striking "SP" and inserting "No" for "Parking Facilities, Offsite" in "Res A" zoning district.

Sponsors: Ryan O'Malley

A motion was made by Councillor O'Malley, seconded by Councillor Winslow, that the Order be referred to a joint Rules & Ordinance Committee Planning Board meeting for a public hearing. The motion carried by a unanimous vote.

340-21

Order: That newly planted trees be given a 3-5 year care plan (watering, mulching, fertilizing, and pruning) to ensure that they survive and thrive.

Sponsors: Ryan O'Malley

A motion was made by Councillor O'Malley, seconded by Councillor Winslow, that the Order be referred to the Community Forestry Program Advisory Committee. The motion carried by a unanimous vote.

341-21

Order: That the City of Malden fund and expand a dedicated unit for urban forestry.

Sponsors: Ryan O'Malley

A motion was made by Councillor O'Malley, seconded by Councillor Winslow, that the Order be referred to the Community Forestry Program Advisory Committee. The motion carried by a unanimous vote.

342-21

Order: ordered that the city treasurer appear before the City Council to explain the tax taking process and inform residents what remedies the City of Malden has to ease this burden during these difficult economic times. Furthermore, how the City of Malden can improve the unpaid tax notification process, with specific care and attention given to our elderly residents 75 years and older.

Sponsors: Ryan O'Malley

At the request of Councillor O'Malley, Treasurer Grover appeared before the Council to give an overview of the Tax Title process by the City. Treasurer Grover gave a slide presentation and answered questions from the Council. Councillor O'Malley stated he had read the list of the names that were published and reached out to the names he knew, all were unaware that there were unpaid taxes. Councillor Linehan asked if there were something in between that we could do reaching out to folks before the names are made public. Councillor Winslow asked Mr. Grover about the strict rules that need be followed

with the process. Councillor Murphy asked if penalties can be abated, Mr. Grover replied only up to \$15. Councillor O'Malley requested the slide presentation be on the city's website and part of the council minutes. Councillor O'Malley said it was unfortunate that the city waited 5 years to send out the notices and the bills were accumulating interest.

343-21

Resolve: That the City Clerk prepare and present to the City Council a hard copy and digital copy on Granicus of any/all Ordinances coming out of Committee. This would offer the Councillors as well as the community preparation time for public comment and review, prior to any votes or amendments on the floor.

Sponsors: Deborah DeMaria

A motion was made by Councillor DeMaria, seconded by Councillor O'Malley, that the Resolution be passed. The motion carried by a unanimous vote.

10. COMMUNICATIONS**11. ENROLLED ORDINANCES****285-21**

Order: Be It hereby ordained that Chapter 2, Section 6.08.070 (d) of the Revised Ordinances of 2020 be amended by adding social and Economic Empowerment applicants and designate minority business owned applicants for a retail cannabis license.

Sponsors: Craig Spadafora

The wording was not what was discussed in the Ordinance Committee on the changes the CLEC were looking for so Councillor Spadafora made a motion to unenroll paper 285-21 to correct the wording. Councillor O'Malley seconded the motion. It was so voted by roll call vote; Camell (y), Condon (y), Crowe (y), DeMaria (y), Linehan (y), Murphy (y), O'Malley (y), Sica (y), Spadafora (y), Winslow (y), Anderson (y).

Councillor Crowe made a motion to re-enroll Paper 285-21 as amended with correct wording adding in the words "at least" after For and add after Empowerment Priority Review: "or the Social Equity Program OR a minority owned business as designated by the Commonwealth of Massachusetts".

*The section with the changes will read;
For (at least) one of the licenses, preference shall be given to an applicant where at least 51% of the business is owned by a resident of Malden, who has been a resident for each of the past five years, OR an applicant who would qualify for the Cannabis Control Commission Economic Empowerment Priority Review (or the Social Equity Program OR a minority owned business as designated by the Commonwealth of Massachusetts.)*

The motion was seconded by Councillor O'Malley, It was so voted by roll call vote: Camell (y), Condon (y), Crowe (y), DeMaria (y), Linehan (y), Murphy (y), O'Malley (y), Sica (y), Spadafora (y), Winslow (y), Anderson (y).

Councillor Crowe made a motion to suspend Council Rules for the purpose of Ordaining the paper, seconded by Councillor O'Malley it was so voted by roll call vote; Camell (y), Condon (y), Crowe (y), DeMaria (y), Linehan (y), Murphy (y), O'Malley (y), Sica (y), Spadafora (y), Winslow (y), Anderson (y)

A motion was made by Councillor O'Malley, seconded by Councillor Camell, that the Ordinance be ordained as amended. The motion carried by the following

vote:

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

40-21

Order: Be It ordained that Section 12.16 (Dimensional Controls) of the Revised Ordinances of 2020 be amended by revising Section 12.16.050 as to waiving rear yard setbacks in Industrial Districts by deleting reference to "rivers or water courses."

Sponsors: Craig Spadafora

Councillor Spadafora made a motion that he be recused from papers 40-21 and 41-21, seconded by Councillor Sica, it was so voted unanimously by voice vote, 11-0.

A motion was made by Councillor Crowe, seconded by Councillor Camell, that the Ordinance be ordained as amended. The motion carried by the following vote:

Yea: 10 - Anderson, Camell, Condon, Crowe, DeMaria, Linehan, Murphy, O'Malley, Sica and Winslow

Recused: 1 - Spadafora

41-21

Order: Be It ordained that Section 12.12 (Use Regulation), of the Revised Ordinances of 2020, be amended by adding new Section 12.12.200, to include Malden River Site Plan Review.

Sponsors: Craig Spadafora

City Planner Michelle Romero addressed the Council with concerns the language in 41-21 may have a loophole in language inadvertently creating an exemption with the Energy Efficiency Waiver. The exemption potentially could be renovations not just new buildings. Ms. Romero arrived at this after discussing the ordinance with Building Commissioner Nelson Miller.

Councillor Winslow suggested to not complicate the issue and pass as is and when the Council comes back in September correct the issue.

A motion was made by Councillor Crowe, seconded by Councillor Camell, that the Ordinance be ordained as amended. The motion carried by the following vote:

Yea: 10 - Anderson, Camell, Condon, Crowe, DeMaria, Linehan, Murphy, O'Malley, Sica and Winslow

Recused: 1 - Spadafora

12. COMMITTEE REPORTS

344-21

Committee Report: Rules & Ordinance Paper # 67-21 Order: Be It hereby ordained that the City of Malden Revised Ordinances of 2020 Section 11.24.020 SITING AND INSTALLATION OF WIRELESS COMMUNICATIONS EQUIPMENT <<https://malden.municipalcodeonline.com/book?type=ordinances>> be amended by adding the following additional language:

1. F. Dimensions and appearance by adding "Small Cell antennas cannot be mounted no closer than 12 feet from the nearest window, deck, or other

publicly-accessible area. In addition, while the antenna shape is akin to a rounded cone, these antennas are directional in nature with the signal primarily focused up and down streets, and not directly into the residence behind the pole."

2. L. Contents of Written Petition by adding. The carrier would then be required to attach a notice of public meeting to the pole.
3. Adding WARNING STICKER AND NODE ID Utilize the smallest and lowest visibility (e.g. yellow instead of blue) radio-frequency (RF) warning sticker required by government or electric utility regulations. Place the RF sticker as close to the antenna as possible, facing directly out toward the street, or directly away from street if there is no window within 25 feet of the pole (preferred). For the Node ID sticker; avoid the use of large and highly visible site (node) identification tags (with carrier's phone number). Consider combining with disconnect information. Use sticker colors that are more muted (e.g. tan), such as the same color as the equipment but with white color lettering. Consider placing the Node ID sticker on the underside of the equipment enclosure so it is only visible underneath.
4. Request a street tree to be provided by the wireless carrier for each facility mounted on a pole within the public right-of-way; in order to screen the equipment. In the event a tree cannot be planted due to conflicts such as existing trees, driveways or utility infrastructure (link to location requirements), the wireless carrier would be required to pay an "in-lieu fee" (No less than \$75) to be used by the Malden DPW/Urban Forestry Project and shall be payable prior to the city's issuance of the small cell Permit.
5. All Small Cells will be posted on cities GIS system and accessible to the public.

A motion was made by Councillor Spadafora that the Committee Report be received and filed. The motion carried by a unanimous vote.

67-21

Order: Be It hereby ordained that the City of Malden Revised Ordinances of 2020 Section 11.24.020 SITING AND INSTALLATION OF WIRELESS COMMUNICATIONS EQUIPMENT <<https://malden.municipalcodeonline.com/book?type=ordinances>> be amended by adding the following additional language:

1. F. Dimensions and appearance by adding "Small Cell antennas cannot be mounted no closer than 12 feet from the nearest window, deck, or other publicly-accessible area. In addition, while the antenna shape is akin to a rounded cone, these antennas are directional in nature with the signal primarily focused up and down streets, and not directly into the residence behind the pole."
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3. Adding WARNING STICKER AND NODE ID Utilize the smallest and lowest visibility (e.g. yellow instead of blue) radio-frequency (RF) warning sticker required by government or electric utility regulations. Place the RF sticker as close to the antenna as possible, facing directly out toward the street, or directly away from street if there is no window within 25 feet of the pole (preferred). For the Node ID sticker; avoid the use of large and highly visible

site (node) identification tags (with carrier's phone number). Consider combining with disconnect information. Use sticker colors that are more muted (e.g. tan), such as the same color as the equipment but with white color lettering. Consider placing the Node ID sticker on the underside of the equipment enclosure so it is only visible underneath.

4. Request a street tree to be provided by the wireless carrier for each facility mounted on a pole within the public right-of-way; in order to screen the equipment. In the event a tree cannot be planted due to conflicts such as existing trees, driveways or utility infrastructure (link to location requirements), the wireless carrier would be required to pay an "in-lieu fee" (No less than \$75) to be used by the Malden DPW/Urban Forestry Project and shall be payable prior to the city's issuance of the small cell Permit.
5. All Small Cells will be posted on cities GIS system and accessible to the public.

Sponsors: Craig Spadafora

A motion was made by Councillor Winslow, seconded by Councillor Spadafora, that the Order be amended. The motion carried by the following vote:

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

A motion was made by Councillor Winslow, seconded by Councillor Sica, that the Ordinance be enrolled as amended. The motion carried by the following vote:

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

Councillor Winslow moved to suspend rules for the purpose of ordaining paper 67-21, seconded by Councillor Sica. the following roll call vote was taken; Camell (y), Condon(y), Crowe (y), DeMaria (y), Linehan (y), Murphy (y), O'Malley (y), Sica (y), Spadafora (y), Winslow (y), Anderson (y)

A motion was made by Councillor Sica, seconded by Councillor O'Malley, that the Ordinance be ordained as amended. The motion carried by the following vote:

Yea: 9 - Anderson, Camell, Condon, Crowe, Linehan, Murphy, Sica, Spadafora and Winslow

Nay: 2 - DeMaria and O'Malley

345-21

Committee Report: Rules & Ordinance Paper # 264-21 Order: Be it hereby ordained by the Malden City Council that Section 2.04.010 of the Revised Ordinances of 2020 be stricken and the following new Section 2.040.010 be inserted in place thereof:
2.04.010 HOURS CERTAIN OFFICES TO BE OPEN

The Mayor shall establish and may, from time to time, amend a regular schedule of days and hours during which administrative offices of the city will be open to the public. The Mayor may temporarily alter the schedule so established in observance of legal holidays or when it is deemed that opening poses a threat to the health, safety or welfare of city employees or the public.

A motion was made by Councillor Spadafora that the Committee Report be

received and filed. The motion carried by a unanimous vote.

264-21

Order: Be it hereby ordained by the Malden City Council that Section 2.04.010 of the Revised Ordinances of 2020 be stricken and the following new Section 2.040.010 be inserted in place thereof:

2.04.010 HOURS CERTAIN OFFICES TO BE OPEN

The Mayor shall establish and may, from time to time, amend a regular schedule of days and hours during which administrative offices of the city will be open to the public. The Mayor may temporarily alter the schedule so established in observance of legal holidays or when it is deemed that opening poses a threat to the health, safety or welfare of city employees or the public.

Sponsors: Jadeane Sica

Councillor O'Malley stated there should be more public participation and employee feedback on the paper. Councillor Crowe said the Mayor should have the ability to change city hall hours if needed.

A motion was made by Councillor Spadafora, seconded by Councillor Sica, that the Ordinance be enrolled. The motion carried by the following vote:

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

346-21

Committee Report: Public Property - (Paper # 292-21, 293-21 & 294-21) - Total 7 sites approved. The standing committee on Public Property after having considered Celco/ExteNet Petitions recommend favorably the following locations to the full council. These petitions were recommended favorably to council at their 6/8/21 meeting; however the below petitions were left off original Committee Report to Council on

7 Broadway
133 Cross Street
11 Phillips Street
37-39 Willard Street
52 High Street
29 Ashland Street
84 Durso Avenue

This Committee Report was received and filed

292-21

The committee will review and discuss the letter submitted by Attorney John Weaver, Celco d/b/a/ Verizon Re: Supplemental Materials to the Small Cell Applications listed:

Utility Pole #5103, Adjacent to 7 Broadway Street (the "Broadway Street Pole");
Utility Pole #4740, Adjacent to 133 Cross Street (the "Cross Street Pole");
Utility Pole #1869, Adjacent to 11 Phillips Street (the "Phillips Street Pole");
Utility Pole #2452, Adjacent to 37-39 Willard Street (the "Willard Street Pole");
Utility Pole #1355, Adjacent to 52 High Street (the "High Street Pole").

The 5 small cell locations in paper 292-21 (7 Broadway, 133 Cross Street, 11 Phillips St, 37-39 Willard Street and 52 High Street had a public hearing and were approved at the

June 8th Public Properties Committee meeting. Councillor Linehan made a motion to grant with conditions, seconded by Councillor Spadafora, it was so voted by voice vote; Camell (y), Condon (y), Crowe (y), DeMaria (y), Linehan (y), Murphy (y), O'Malley (n), Sica (y), Spadafora (y), Winslow (y), Anderson (y). The licenses were granted with conditions 10-1.

293-21

The committee will review and discuss the letter submitted by Attorney John Weaver, Cellco d/b/a/ Verizon Re: Supplemental Materials to the Small Cell Applications listed: Utility Pole #1393, Adjacent to 29 Ashland Street (the "Ashland Street Pole"); and Utility Pole #55/7 VZ (NG 1136-1), Adjacent to 80 Mountain Avenue (the "Mountain Avenue Pole").

For paper 293-21, 29 Ashland Street had a public hearing and was approved in the June 8th Public Properties meeting.

Councillor Linehan made a motion to grant with conditions, seconded by Councillor Spadafora it was so voted by voice vote; Camell (y), Condon (y), Crowe (y), DeMaria (y), Linehan (y), Murphy (y), O'Malley (n), Sica (y), Spadafora (y), Winslow (y), Anderson (y). The petition was granted with conditions 10-1.

Councillor Linehan made a motion to suspend council rules for the purpose of granting the petition with conditions for Utility Pole #55/7 VZ (NG 1136-1), Adjacent to 80 Mountain Avenue (the "Mountain Avenue Pole"). This pole had a public hearing and was approved at the June 8th Public Properties meeting but in error was left off this council agenda. The motion was seconded by Councillor Spadafora it was so voted by voice vote; Camell (y), Condon (y), Crowe (y), DeMaria (y), Linehan (y), Murphy (y), O'Malley (n), Sica (y), Spadafora (y), Winslow (y), Anderson (y), Rules were suspended 10-1.

Councillor Linehan made a motion to grant with conditions the Mountain Ave. Pole, seconded by Councillor Winslow, it was so voted; Camell (y), Condon (y), Crowe (y), DeMaria (y), Linehan (y), Murphy (y), O'Malley (n), Sica (y), Spadafora (y), Winslow (y), Anderson (y), The petition was granted 10-1 with conditions.

294-21

The committee will review and discuss the letter submitted by Hans Eysenbach, Attorney for ExteNet Systems, Inc., RE: Request to Reconsider Recommended Denial of Attachment License Requests by ExteNet Systems, Inc., for 84 Durso Ave., 52 Malden St., and 183 Highland Ave.

Councillor Linehan made a motion to suspend rules for the purpose of granting with conditions for the petitions located at 52 Malden Street and 183 Highland Ave., seconded by Councillor Spadafora. It was so voted by voice vote; Camell (y), Condon (y), Crowe (y), DeMaria (y), Linehan (y), Murphy (y), O'Malley (n), Sica (y), Spadafora (y), Winslow (y), Anderson (y). Rules were suspended 10-1.

The petitions for 52 Malden Street and 183 Highland Ave were initially denied but the petitioner has corrected the issues that caused the denial. Councillor Linehan made a motion to grant with conditions both petitions, seconded By Councillor Sica, it was so voted by voice vote; Camell (y), Condon (y), Crowe (y), DeMaria (y), Linehan (y), Murphy (y), O'Malley (n), Sica (y), Spadafora (y), Winslow (y), Anderson (y). The petitions were granted with conditions 10-1.

351-21

Committee Report: License - Petitions - Paper # 162-21 AGM, 135 Eastern Avenue, Malden, MA - Outdoor Parking - 24 vehicles and Paper # 326-21 AGM, 160 Eastern Avenue, Malden, MA - Increase from 18 to 24 vehicles.

This Committee Report was received and filed

162-21

Outdoor Parking: AGM Auto Sales, 135 Eastern Ave. Malden, MA, 24 spaces (Renewal)

Sponsors: Paul Condon

Councillor Condon made a motion to suspend Council Rules to receive the Committee report. It was so voted by voice vote; Camell (y), Condon (y), Crowe (y), DeMaria (y), Linehan (y) Murphy (y), O'Malley (n), Sica (y), Spadafora (y), Winslow (y), Anderson (y)

A motion was made by Councillor Condon, seconded by Councillor Sica, that the Petition be granted. The motion carried by a unanimous vote.

326-21

Petition: Class II - AGM, 160 Eastern Ave., Malden, MA - change number of vehicles from 18 to 24.

Sponsors: Paul Condon

Councillor Condon made a motion to suspend rules to receive the Committee Report, It was so voted by voice vote; Camell (y), Condon (y), Crowe (y), DeMaria (y), Linehan (y), Murphy (y), O'Malley (n), Sica (y), Spadafora (y), Winslow 9y), Anderson (y).

A motion was made by Councillor Condon, seconded by Councillor Sica, that the Petition be granted. The motion carried by a unanimous vote.

352-21

Committee Report: Finance - Paper # 235-21 - Order: That the City Council approve an increase in the COLA base from \$14,000 to \$18,000 for contributory and non-contributory retirees of the Malden Retirement System.

This Committee Report was received and filed

235-21

Order: That the City Council approve an increase in the COLA base from \$14,000 to \$18,000 for contributory and non-contributory retirees of the Malden Retirement System.

Sponsors: Barbara Murphy

The Retirement Board had an emergency meeting on Monday June 28th to revisit the vote that was taken increasing the COLA base from \$14,000 to \$18,000. The Board revoted to only increase the base to \$16,000. The Council needed to approve the change and needed to be approved by June 30th. The Finance Committee met prior to this Council meeting and approved the changed COLA base to \$16,000 by a 5-0 vote. Councillor Murphy made a motion to suspend Council Rules for the purpose of receiving the Finance Committee Report. This was seconded by Councillor Crowe, it was so voted by voice vote: Camell (y), Condon (y), DeMaria (y), Linehan (y), Murphy (y), O'Malley (n) Sica (y), Winslow (y), Anderso (y).

Councillor DeMaria made a motion that she be recused from the vote, the following voice vote was taken; Camell (y), Condon (y), DeMaria (y), Linehan (y), Murphy (y), O'Malley (y) Sica (y), Winslow (y), Anderso (y).

Councillor O'Malley stated at the last Finance Committee meeting, CFO Chuck Ranaghan gave a presentation of the millions of dollars of cost if the base was expanded to \$18,000. Because of the millions of dollars of liability and the item not being on the docket, Councillor O'Malley stated in good faith he could not support. Councillor Sica

said retirees deserve and need the increase and asked for a legal opinion from City Solicitor Fallon. Solicitor Fallon's opinion was that the council shouldn't take the vote and instead call for an Emergency Meeting for June 30th. Council President Anderson asked if councillors were available on June 30th for a meeting, not all councillors were available. Councillor Winslow was fine with the Finance Report, Councillors Crowe, Condon and Anderson all were in support of the Committee Report being voted on. Clerk Lucey read Sec. 25 on page 260 from Robert Rules, 11th edition on an organization's ability to suspend rules. Councillor Spadafora made a motion to adopt the Finance Committee recommendation as amended for a \$16,000 COLA base, seconded by Councillor Sica,

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

Yea: 9 - Anderson, Camell, Condon, Crowe, Linehan, Murphy, Sica, Spadafora and Winslow

Nay: 1 - O'Malley

Recused: 1 - DeMaria

13. TABLED PAPERS

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."

"Whereas, the COVID-19 pandemic revealed the need for emergency preparedness planning for all entities, public and private;

Whereas, the Governor Baker's 2020 emergency order authorizing remote participation for public meetings, resulted in record public meeting attendance and participation in the City of Malden;

Whereas, remote participation has helped enable the elderly, disabled, evening shift workers, young families, and home bound individuals participate in public meetings,

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

14. EXECUTIVE SESSION

347-21

The City Council will vote to go into executive session, with legal counsel for the City Council, in accordance with Exemption One (MGL c. 30A, § 21 (a) (1), and Exemption Seven (MGL c. 30A, § 21 (a) (7), to comply with, or act under the authority of, any general or special law or federal grant-in requirements, in order to act on pending complaint of June 21, 2021, by Brian DeLacey against the Malden City Council under the Open Meeting Law, MGL c. 30A, § 23 (b).

Councillor Camell made a motion to not go into executive session and discuss the OML complaint in open session, the motion was seconded by Councillor O'Malley. The

following roll call vote was taken; Camell (y), Condon (y), Crowe (y), DeMaria (y), Linehan (y), Murphy (y), O'Malley (y), Sica (y), Spadafora (y), Winslow (y), Anderson (y)

Councillor O'Malley made a motion to accept City Solicitor Fallon's recommendation that Legal respond to the Open Meeting Complaint in the same manner they have responded in recent complaints. The motion was seconded by Councillor Murphy, the following roll call vote was taken; Camell (y), Condon (y), Crowe (y), DeMaria (y), Linehan (y), Murphy (y), O'Malley (y), Sica (y), Spadafora (y), Winslow (y), Anderson (y).

City Solicitor Fallon handed out to the Council Legal's response to the June 21st Open Meeting law Complaint filed by Brian DeLacey.

The motion passed 11-0 by roll call vote.

15. PERSONAL PRIVILEGE

Councillor Camell spoke regarding the recent Advocate article reporting the Mystic Valley Charter School has a sales agreement for the block of buildings at 12-24 Lebanon Street and a parcel on Columbia Street. Councillor Camell stated that he would like to make a motion to have Citizens Engagement hold a public meeting on the sale and the impact it would have on residents and businesses in the area. Councillor Camell stated that he didn't know how a public funded institution could make such a purchase with no public input and with the impact it would have on the area. Councillor Camell stated he will have a public meeting anyways if the motion was not approved.

Councillor Demaria said she would lead the charge and meet over the summer. Councillor DeMaria also requested the administration be part of it.

Councillor Winslow said that this is a really important issue for our neighborhood and it is unacceptable there was no public input to something that will affect a quarter of Maplewood Square.

Councillor Camell's motion:

Order: That the Citizen Engagement Committee of the City Council work with Councillor Camell to arrange for a public meeting in order to hear from our constituents about the future of Maplewood Square in light of recent news of Mystic Valley Charter School's purchase of significant property.

Councillor Winslow seconded, it was so voted unanimously by voice vote.

353-21

16. ADJOURNMENT

A motion was made by Councillor Crowe, seconded by Councillor Sica, that the council recess to the call of the chair. The motion carried by a unanimous vote.

The meeting recessed at 10:44 P.M.

GREGORY LUCEY, CITY CLERK