

Open Meeting Law Complaint: Malden City Council
Meeting Date: 9/8/22
Complainant: Brian DeLacey
Date Complaint Submitted: 9/12/22

This open meeting law complaint is filed against the Malden City Council alleging it violated open meeting law on September 8, 2022 as a result of

1. Deliberation by a quorum of the City Council on 9/8/22 (attended by at least nine of the 11 members of the City Council);
2. When no meeting notice announced the Council would meet and deliberate on 9/8/22;
3. With no appropriately specific agenda for the Council to meet on 9/8/22;
4. In a gathering attended by more than a quorum of the Council, where at least five members of the Council expressed strong, conflicting opinions in the presence of the quorum of the Council;
5. Related to funding and design deliberations for the Roosevelt Park Improvement Project, an ongoing matter in the jurisdiction, and currently before the Malden City Council.

The FACTS are as follows:

1. 'A "meeting" is defined, 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.
2. The law defines "deliberation" as "an oral or written communication through any medium, including electronic email, between or among a quorum of a public body on any public business within its jurisdiction" ...
3. For the purposes of the Open Meeting Law, a "quorum" is a simple majority of the members of a public body." [see OML 2019-163, Acton Board of Assessors]
4. 'The Open Meeting Law requires that public bodies post notice of every meeting "at least 48 hours prior to such meeting, excluding Saturdays, Sundays and legal holidays." G.L. c. 30A, § 20(b)." [see OML 2019-163, Acton Board of Assessors]
5. The Malden City Council Consists of 11 elected members;
6. The Malden City Council, among many other obligations, is responsible for approval and oversight of the City budget and approval for all projects funded through the Community Preservation Committee, as well as federal funding initiatives such as an order recorded in the minutes of the 10/6/20 City Council meeting stating "That the Malden Redevelopment Authority apply to the US Department of Housing and Urban Development for a \$1,200,000 Section 108 loan to renovate Roosevelt Park, 529 Salem Street, a public property in the City of Malden.";
7. HUD refused to release the funds sought by the Malden City Council, and those funds would only be attainable upon further remedial steps taken - specifically related to Environmental Justice - to accomplish that order of the City Council related to \$1,200,000;

8. With full knowledge of the City Council's public business and jurisdiction in this matter, including both financing and final design, a meeting was scheduled for 9/8/22 in the Council Chambers;
9. On 9/8/22, that "meeting" took place as part of the effort to obtain funding of \$1.2M from HUD, as ordered by the Malden City Council;
10. Nine or more members of the Malden City Council attended in person, or remotely, and of this number at least five council members strongly expressed their opinions concerning the hotly debated Roosevelt Park Improvement Project, an ongoing project with Council jurisdictional authority;
11. City Councillors observed in attendance at the meeting include: W1 - Crowe, W3 - Linehan, W4 - O'Malley*, W5 - Murphy, W6 - Winslow*, W7 - Simonelli*, AtLarge -Spadafora*, AtLarge - Macdonald, AtLarge - Colón Hayes* - verifiable by Zoom video of the meeting recorded by the City, testimony of Mayor Gary Christenson, confirmation by any identified Councillor and photos;
12. A copy of the meeting video is available on YouTube at <https://youtu.be/pvfAYTdChxk>. See O'Malley deliberating at 1 hour 27 minutes; See Simonelli deliberating at 1 hour 54 minutes; See Winslow deliberating at 2 hours 17 minutes; See Colón Hayes deliberating at 1 hour 20 minutes;
13. From the list of councillors who attended, those marked with an asterisk expressed strong opinions related to the Roosevelt Park Improvement Project to a quorum of the City Council;
14. Spadafora participated remotely with a written statement; his remote participation was not announced "[a]t the start of the meeting, the chair shall announce the name of any member who will be participating remotely."; 940 CMR 29.10(7)(b) and (c)." [see OML 2020-156 Fairhaven]
15. Video of the meeting, available from the City's various recordings, clearly show violations of Open Meeting Law resulting from "deliberation" by members of the City Council on a "matter within the body's jurisdiction", in a setting where a quorum of the City Council was assembled, without proper notice having been given;¹
16. The City of Malden recorded the meeting, and the recording of that meeting would be available;
17. The Council (e.g. Spadafora) spoke thru prepared, written communication while others spoke in public expression of their opinions and viewpoints related to The Roosevelt Improvement Project, including the expression of new viewpoints and opinions expressed by various Councillors which had not previously been revealed in open meetings of the Public Body;
18. Roosevelt Park has been an EXPLICIT topic of deliberation before the City Council on at least the following City Council meeting dockets and dates in 2022 (and may other dates in earlier years): 6/21/22, 6/28/22, and 9/13/22;

¹ See the City's Facebook invitation at <https://www.facebook.com/cityofmalden/posts/397145249261911>; there was no mention of City Council involvement. The City Calendar announced a meeting would take place - "The purpose of the community meeting is to engage and inform the community about the project, to receive feedback, and to address questions or concerns about the project, including about environmental issues.", but there was no mention of it involving a meeting of the City Council public body - see 9/8/22 "Roosevelt Park Improvement Project Community Meeting" with the full meeting announcement at <https://www.cityofmalden.org/Calendar.aspx?EID=3813&month=9&year=2022&day=8&calType=0>.

19. Roosevelt Park Improvement Project has been an IMPLICIT topic of deliberation before the City Council on at least the following recent City Council meeting dates, where the Community Preservation Committee (CPC) was discussed, since the City Council holds budgetary approval over the CPC, and the RPIP is one of its longest outstanding projects with numerous requests made to the City Council: see Council on 2/8/22, 3/1/22, 4/26/22, 5/24/22, 6/7/22 and 9/13/22;
20. Mayor Gary Christenson attended this community gathering on 9/8/22 and could attest to those present and those who deliberated and other relevant topics related to jurisdiction;
21. In advance of the meeting, the Mayor's office indicated "there is no written Agenda" for the meeting;
22. The 9/8/22 meeting was heavily promoted on social media and email by both the City of Malden (numerous social media communications) and two City Councillors, Winslow and Murphy, without revealing details concerning the eventual involvement of the City Council public body;
23. On 8/28/22, Councillor Winslow sent email from Stephen Winslow via ActionNetwork.org with the Subject "Roosevelt Field - Urgent Request - Please Attend Meeting Sept 8th at 6 PM";
24. On 9/5/22, Councillors Winslow and Murphy sent email, with the Subject of "Reminder Roosevelt Field - Meeting Thursday Sept 8th at 6 PM", from the email address of Stephen Winslow via ActionNetwork.org <info@sg.actionnetwork.org> - in which he also made called for email sent to a city employee "apratt@cityofmalden.org" - "Please know that there will be many other supporters who will be attending so do not let any tactics of opponents intimidate you from attending or expressing your support. If your part of a local organization or team, please feel free to wear a jacket or shirt to help ID your support. Keep comments or questions brief and to the point. ... We look forward to seeing you either in person or via Zoom on Thursday. If you can't attend, please feel free to send another comment letter either via the Action Network or to apratt@cityofmalden.org.";
25. On 9/12/22, a local news journal "The Patch" published a story describing some of the deliberations - specifically the 9/12 article refers to discussion by two Councilors: "Malden Roosevelt Park Debate Continues As City Holds Community Meeting". You can find that story at this link:
<https://patch.com/massachusetts/malden/malden-roosevelt-park-debate-continues-city-holds-community-meeting>

CONCLUSIONS

The Malden City Council violated Open Meeting Law in at least the following interrelated ways:

1. 'Any communication among a quorum of a public body on matters that are pending or will come before it within the public body's jurisdiction is considered deliberation" See OML 2015-3; OML 2014-108; OML 2013-136; Boeltr v Board of Selectmen of Wayland, 479 Mass. 233, 243 (2018).' [See OML 2020-56 - Longmeadow School Committee]
2. Public bodies must list topics for discussion with "sufficient specificity to reasonably advise the public of the issues to be discussed" [See 940 CMR 29.03(1)(b) and OML 2013-135 Sterling]
3. It is well known that '[p]ublic bodies must list anticipated discussion topics in their meeting notices with "sufficient specificity to reasonably advise the public" [OML 2012-76]
4. At the 9/8/22 meeting, as is described in the summary of facts, a quorum met and deliberated on matters concerning business in their jurisdiction, outside a properly noticed meeting;
5. The City Council meeting chair (Spadafora) failed to announce members attending this deliberative, quorum-rich meeting remotely (e.g. Spadafora) in accord with open meeting law, such as "[a]t the start of the meeting, the chair shall announce the name of any member who will be participating remote."; 940 CMR 29.10(7)(b) and (c)." [see OML 2020-156 Fairhaven]
6. On June 28 at 3:20 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 ... "
 - a. Spadafora's deliberative comments during the 9/8/22 meeting were clearly created with forethought and planning, and thus his deliberation was clearly intentional in the parlance of Open Meeting Law.
 - b. Spadafora previously prohibited remote meeting participation, even in properly noticed meetings, by another Councillor: "I have asked that the remote access link published on Facebook for [the] Parks & Recreation Committee be disabled."
 - c. In contrast, on 9/8/22, Spadafora himself used remote participation to deliberate remotely, suggesting aggravating circumstances.
 - d. Spadafora's lengthy written comment, which reportedly exceeded the allotted time for reading into the record, ignored limitations imposed by the meeting moderator and was thus reportedly read into the record in a manner that unfairly favored his submission over those of members of the public.