



THE COMMONWEALTH OF MASSACHUSETTS
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September 25, 2023

OML 2023 – 155

Ryan O'Malley
Chair, Parks & Recreation Committee
215 Pleasant Street, 4th Floor
Malden, MA 02148

By email only: romalley@cityofmalden.org

RE: Open Meeting Law Complaint

Dear Mr. O'Malley:

This office received a complaint from Craig Spadafora on September 19, 2022, alleging that the Malden Parks and Recreation Committee (the "Committee") violated the Open Meeting Law, G.L. c. 30A, §§ 18-25.¹ The complaint was originally filed with the Committee on July 20, and you responded, on behalf of the Committee, by letter dated August 16. The complaint alleges that the Committee violated the Open Meeting Law by posting notice for a meeting to be held on June 28 "which did not contain information on the availability of remote access."

We appreciate the patience of the parties while we reviewed this matter. Following our review, we find that the Committee did not violate the Open Meeting Law in the way alleged. In reaching this determination, we reviewed the original complaint, the Committee's response to the complaint, the complaint filed with our office requesting further review, and the Committee's amended response to the complaint. We also reviewed the notice and minutes of the Committee meeting held on June 28.

FACTS

We find the facts as follows. The Committee is a subcommittee of the City Council. All three members of the Committee are also City Councilors. The complainant is also a City Councilor and currently serves as President of the City Council.

¹ Unless otherwise indicated, all dates in this letter refer to the year 2022.

On June 23, the Committee posted notice for a meeting to be held on June 28 at 5:45 P.M. and the notice stated that 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.” The notice listed the location of the meeting as City Hall, Room #105, 215 Pleasant Street in Malden.

On June 24, Committee Chair Ryan O’Malley² posted on Facebook information necessary to access the June 28 meeting virtually via Zoom, including a link to the Zoom meeting, several telephone numbers the public could use to dial into the meeting, and the Webinar ID number required to log into the meeting. On June 28 at 3:20 P.M., the City Council Clerk emailed to all City Councilors a letter from the complainant reminding Councilors that “all requests for remote access to Council or Council Committee Meetings must be approved by the Council President.” The letter further stated that “a committee chair should never post a remote meeting link without obtaining the authorization of the President. . . . With this in mind, I have asked that the remote access link published on Facebook for tomorrow’s Parks & Recreation Committee [sic] be disabled.”

The June 28 meeting was held as planned and Committee members were present in Room 105 of City Hall, the physical meeting location. Because the remote link had been disabled, the meeting was initially not accessible via Zoom. However, the Zoom link was reactivated and members of the public could then access the meeting remotely. About 15 minutes later, the Zoom link was again disabled but Chair O’Malley obtained a new Zoom link and posted this new link on Facebook. Approximately 40 minutes later, the complainant directed the new link to be disabled and the meeting was no longer remotely accessible. During the meeting, the Board discussed the open space and recreation plan that expires in 2024 and ways to maintain existing parks.

DISCUSSION

The Open Meeting Law was enacted “to eliminate much of the secrecy surrounding the deliberations and decisions on which public policy is based.” Ghiglione v. School Committee of Southbridge, 376 Mass. 70, 72 (1978). At the core of the Open Meeting Law is the requirement that meetings of public bodies be open and accessible to the public. G.L. c. 30A, § 20(a) (except when meeting in executive session, “all meetings of a public body shall be open to the public.”). Generally, access to a meeting must include the opportunity to be physically present as well as to see and hear what is being discussed by the members of the public body. See OML 2020-100; OML 2018-75; OML 2016-54.³

On June 16, 2021, Governor Charles Baker signed into law An Act Relative to Extending Certain COVID-19 Measures Adopted During the State of Emergency, Chapter 20 of the Acts of 2021 (“Chapter 20”).⁴ Relevant here, Section 20 of Chapter 20 suspended the requirements under the Open Meeting Law and the Attorney General’s Open Meeting Law regulations that a

² For purposes of clarity, we refer to you in the third person hereafter.

³ Open Meeting Law determinations may be found at the Attorney General’s website, <https://www.mass.gov/the-open-meeting-law>.

⁴ These provisions were extended until March 31, 2025. See Chapter 2 of the Acts of 2023.

quorum of a public body, including the chair, be physically present at the meeting location and allows all members of a public body to participate in a meeting remotely, provided that the public body provide “adequate, alternative means” of public access, such as 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 while those activities are occurring. See Chapter 20, § 20(b); OML 2021-135. Section 20 allows public bodies to provide the public with “adequate, alternative” access to meetings instead of providing in-person access but does not require public bodies to provide “adequate, alternative” access if in-person access is provided.

The complaint alleges that the Committee posted notice for a meeting to be held on June 28 “which did not contain information on the availability of remote access.” When all public body members participate in a meeting remotely or when a public body meets in person without providing the public physical access to the meeting location, the public body must then provide the public with adequate, alternative access to the meeting, which requires access to the proceedings in real time. See OML 2020-111; OML 2020-100; Chapter 20, § 20(b). However, a public body may hold in-person meetings without providing a remote access option, as long as access to the meeting includes the opportunity to be physically present, as well as to see and hear what is being discussed by the members of the public body. See OML 2021-148; OML 2020-100; OML 2017-135; OML 2016-54.

The notice here included only one location for the public to access the June 28 meeting, in person in Room 105 of City Hall, and the physical meeting location at City Hall was accessible to any individual who wished to attend the meeting and all members of the Committee were present at this location. We have not been presented with any evidence that a member of the public sought to physically attend the June 28 meeting and was denied access or that the Committee limited the number of people who could be present in the meeting room. Compare 2021-43 (public body violated the Open Meeting Law when it held a meeting in a location with a strict 12-person limit and turned away members of the public once the room was at capacity). Because we have consistently stated that the Executive Order and Section 20 of Chapter 20 do not require that a public body provide remote access to its meetings if those meetings are instead held in-person at a location that is open and physically accessible to the public, we find that the Board did not violate the Open Meeting Law here where it provided in-person access. See OML 2021-147. We encourage public bodies to provide multiple means of access to their meetings when possible and remind public bodies that in the spirit of the Open Meeting Law, they should strive to make their meetings as accessible as possible.

CONCLUSION

For the reasons stated above, we find that the Committee did not violate the Open Meeting Law. We now consider the complaint addressed by this determination to be resolved. This determination does not address any other complaints that may be pending with the Committee or with our office. Please feel free to contact our office at (617) 963-2540 if you have any questions regarding this letter.

Sincerely,



KerryAnne Kilcoyne
Assistant Attorney General
Division of Open Government

cc: Craig Spadafora – By email only: cspadafora@cityofmalden.org
John McNaught, Acting City Solicitor – By email only: jmcnaught@cityofmalden.org
Alicia McNeil, Acting City Solicitor – By email only: amcneil@cityofmalden.org
Malden City Clerk – By email only: cdesiderio@cityofmalden.org

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.