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OML 2025 – 54

Olivia Hart-Paulson
Assistant City Solicitor
Lowell Law Department
375 Merrimack Street
Lowell, MA 01852

By email only: ohartpaulson@lowellma.gov

RE: Open Meeting Law Complaints

Dear Attorney Hart-Paulson:

This office received two complaints from Laura Ortiz on January 26, 2025, three complaints on February 24, 2025, and one complaint on March 17, 2025, alleging that the Lowell City Council (the “Council”) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The first two complaints were originally filed with the Council on November 13, 2024, and you responded to both complaints, on behalf of the Council, by separate letters dated December 4, 2024. The next three complaints were originally filed with the Council on November 27, 2024, and you responded to all three complaints, on behalf of the Council, by separate letters dated December 18, 2024. The sixth and final complaint was originally filed with the Council on December 26, 2024, and you responded to the complaint, on behalf of the Council, by letter dated January 16, 2025. Collectively, the complaints allege that the Council i) deliberated outside of a posted meeting on October 15, 2024, when members signed certificates of receipt of Open Meeting Law materials (“the Certificates”);¹ ii) violated the Open Meeting Law when a

¹ To the extent that a complaint alleges that the Council deliberated outside of a properly posted meeting between November 5 and November 18, 2024, by discussing amendments to three sets of meeting minutes from 2023, we do not find a violation. The Council denied that it deliberated outside of a meeting and we have been presented with no evidence to contradict the Council’s assertion that no deliberation occurred outside of a posted meeting. See OML 2020-172; OML 2019-73; OML 2017-93 (Absent evidence to the contrary, we credit the public body’s account of the facts.). Any communications from the City Solicitor to a quorum of the Council regarding revisions to the minutes would not constitute improper deliberation where the City Solicitor is an individual public official not subject to the Open Meeting Law. See OML 2020-71; OML 2020-53; OML 2014-80.

quorum of the Council was present at a November 19, 2024, meeting of the Council's Rules and Election Law Subcommittee and deliberated, even though the meeting was not noticed as a joint meeting; iii) created insufficient minutes of meetings held on October 8, October 15, October 22, October 29, November 5, November 12, and November 19, 2024, where the minutes failed to list the names of members who were present and failed to properly record roll call votes; and iv) posted insufficiently specific notices of meetings held on October 15, November 26 and December 17, 2024.

Following our review, we find that the Council violated the Open Meeting Law by deliberating during a Rules and Election Law Subcommittee meeting held on November 19, 2024, without posting notice; creating and approving insufficient minutes of meetings held on October 8, October 15, October 22, October 29, November 5, November 12, and November 19, 2024; and by posting notices for meetings held on November 26 and December 17, 2024, that included insufficient specificity. We find that the Council did not violate the Law in the other ways alleged. In reaching this determination, we reviewed the original complaints, the Council's responses to the complaints, and the complaints filed with our office requesting further review. In addition, we reviewed the notices and minutes of Council meetings held on October 8, October 15, October 22, October 29, November 5, November 12, November 19, November 26, and December 17, 2024; the notice and minutes of the Rules and Election Law Subcommittee meeting held on November 19, 2024; and video recordings of Council meetings held on October 29, November 26, and December 17, 2024, as well as a video recording of the Rules and Election Law Subcommittee meeting held on November 19, 2024.²

DISCUSSION

I. The Council Did Not Violate the Open Meeting Law When Members Signed the Certificates Outside of a Public Meeting.

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 Comm. of Southbridge, 376 Mass. 70, 72 (1978). Except when convened in executive session, “all meetings of a public body shall be open to the public.” G.L. c. 30A, § 20(a). 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. The Open Meeting Law defines “deliberation” broadly as “an 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 [information] or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed.” Id.

Pursuant to the Open Meeting Law, “all persons serving on a public body shall certify, on a form prescribed by the attorney general, the receipt of a copy of the open meeting law, regulations promulgated pursuant to section 25 and a copy of the educational materials prepared

² Video recordings of Council and Subcommittee meetings are available on the Lowell Telemedia Center's YouTube channel, <https://www.youtube.com/@LTCLowellMA/streams>.

by the attorney general explaining the open meeting law and its application pursuant to section 19.” G.L. c. 30A, § 20(h).

On September 20, 2024, our office issued a determination, finding that the Council violated the Open Meeting Law when members failed to certify receipt of copies of the Open Meeting Law, regulations promulgated pursuant to section 25 and educational materials, as is required by G.L. c. 30A, § 20(h). See OML 2024-171.³ To address the violation, we ordered Council members to execute the Certificates within thirty (30) days of the date of our determination. On October 15, 2024, members signed the Certificates when they were present for a posted meeting of the Council, but not during the meeting itself. The act of signing a certification form outside of a meeting is not itself improper deliberation. See OML 2015-8; OML 2014-70. Therefore, Council members’ execution of the Certificates outside of a public meeting did not violate the Open Meeting Law. Moreover, the Council explicitly denies that any deliberation occurred as they executed the Certificates. The complainant has provided no facts in support of her allegation that the Council deliberated while executing the Certificates. Absent sufficient evidence to the contrary, we credit a public body’s account of the facts. See OML 2023-121; OML 2017-93; OML 2016-141; see also LaPointe v. License Board of Worcester, 389 Mass. 454 (1983) (“There is every presumption in favor of the honesty and sufficiency of the motives actuating public officers in actions ostensibly taken for the general welfare.”)

II. The Council Violated the Open Meeting Law by Deliberating During the Rules and Election Law Subcommittee Meeting on November 19, 2024, Without Posting Notice of a Joint Meeting.

Although not clearly raised, we understand the second complaint that was filed with the Council on November 27, 2024, to allege that the Council did not post notice of a joint meeting held with the Rules and Election Law Subcommittee (the “Subcommittee”) on November 19, 2024.⁴ The Open Meeting Law requires that, except in an emergency, “a public body shall 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). A subcommittee of a public body is itself a public body subject to the Open Meeting Law. G.L. c. 30A, § 18. When two or more public bodies hold a joint meeting, each public body participating in the meeting must provide independent notice of their meetings, or if posting a single notice, must clearly state that each public body will be meeting. See OML 2021-153; OML 2019-163. For purposes of clarity, all bodies involved should note in their meeting notices that the meeting will be a joint meeting with the other public body.

The Open Meeting Law defines a “meeting” as “a deliberation by a public body with respect to any matter within the body’s jurisdiction,” however this definition does not include the

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

⁴ To the extent this complaint also alleges that the Rules and Election Law Subcommittee violated the Open Meeting Law by posting a notice with an insufficiently specific topic for the November 19, 2024, meeting, we decline to review this allegation where the complaint was only filed with the Council and not with the Subcommittee. See G.L. c. 30A § 23(b) (individuals who allege a violation of the Open Meeting Law must first file a complaint with the public body alleged to have violated the Law).

“attendance by a quorum of a public body at a meeting of another public body that has complied with the notice requirements of the open meeting law, so long as the visiting members communicate only by open participation in the meeting on those matters under discussion by the host body and do not deliberate.” Id. “Deliberation” is defined, in relevant part, as “an 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.” Id.

The Council is an 11 member public body; thus, six members constitute a quorum. Three Councilors – Sokhary Chau, John Descoteaux, and Kimberly Scott - were the sole members of the Subcommittee. The Subcommittee’s November 19, 2024, notice did not state that the meeting would be a joint meeting between the Subcommittee and the Council. However, during the Subcommittee meeting, which took place in the Council Chamber, six other Councilors arrived and sat in their regular Councilor seats. During the meeting, four of the six Councilors in attendance – Erik Gitschier, Rita Mercier, Vesna Nuon and Corey Robinson, were recognized to speak. These Councilors, not members of the Subcommittee, addressed the Subcommittee from their Councilor seats and spoke on the one noticed topic, which pertained to the development of an ordinance for selection of the Mayor.

Members of a parent public body may attend the meeting of a subcommittee provided there is no deliberation. See OML 2013-38. In considering whether members of the parent public body have deliberated during a subcommittee meeting, we look for indicia such as whether the parent public body members were seated with the general public and whether they participated by open participation to conclude that no improper deliberation occurred. See OML 2019-103; OML 2016-117. Here, all six Councilors sat in their regular Council seats and when Councilors Gitschier, Mercier, Nuon, and Robinson, were recognized to speak, it was done with the honorific “Councilor.” Based on this, a reasonable member of the public watching the meeting would have believed they were watching a joint meeting of the Council and the Subcommittee. We therefore find that the Council violated the Open Meeting Law by deliberating during the November 19, 2024, meeting without posting notice. See OML 2016-117.

III. The Council Created Insufficient Minutes for Meetings Held on October 8, October 15, October 22, October 29, November 5, November 12, and November 19, 2024.

The Open Meeting Law requires that a public body “create and maintain accurate minutes of all meetings, including executive sessions, setting forth the date, time and place, the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, including the record of all votes.” G.L. c. 30A, § 22(a). When reviewing minutes for compliance with the Open Meeting Law, we look for substantial compliance with the accuracy requirement. See OML 2016-105; OML 2013-64. By substantial compliance, we mean that the minutes should contain enough detail and accuracy so that a member of the public who did not attend the meeting could read the minutes and have a clear understanding of what occurred. See OML 2025-18; OML 2012-106.

Five of the complaints allege that the Council created and approved insufficient minutes of meetings held on October 8, October 15, October 22, October 29, November 5, November 12, and November 19, 2024, where the minutes failed to list the names of members who were present and failed to properly record roll call votes.⁵ The Open Meeting Law requires that minutes of meetings include a list of the members who were present *or* the members who were absent, not a list of all the members who were present *and* all the members who were absent. See G.L. c. 30A, § 22(a); 940 CMR 29.11(1). Although we recommend as a best practice that public bodies list both members present and absent in their meeting minutes, it is not a requirement of the Open Meeting Law. As such, we find that the Council did not violate the Open Meeting Law by listing in its November 5, November 12 or November 19, 2024, meeting minutes only the members who were absent at each meeting.

However, we find the minutes of the October 8, October 15, October 22, and October 29, 2024, meetings to be insufficient where the minutes neither contain a list of the members who were present nor a list of those who were absent. Rather, each set of minutes simply states that “Roll Call showed 11 present.” We find that this does not satisfy the Open Meeting Law’s requirement that the minutes set forth “the members present or absent.” See G.L. c. 30A, § 22(a). We order the Council to amend the minutes of the October 8, October 15, October 22, and October 29, 2024, meetings to include the names of the members who were present, since no members were actually absent.

In addition, meeting minutes must include, among other things, “the record of all votes.” G.L. c. 30A, § 22(a). Because the Open Meeting Law requires a public body to create accurate minutes, all votes taken during a meeting must be accurately recorded. Thus, to be accurate, minutes must document a roll call vote by listing the names of each public body member and how each voted. Even unanimous votes should be recorded by roll call in the minutes. See OML 2015-131; OML 2013-195.

Here, votes were conducted by roll call during Council meetings held on October 8, October 15, October 22, October 29, November 5, November 12 and November 19, 2024. Yet, none of the meeting minutes recorded the roll call votes by documenting the vote of each public body member by name. Rather, the minutes record the votes taken as, for example, “Adopted per Roll Call vote 9 yeas, 2 absent” or “Adopted per Roll Call vote 10 yeas, 1 absent” and then identify the name of the Council member(s) who was absent. In instances where the vote was

⁵ With respect to the allegation that the October 29, 2024, meeting minutes were also insufficient where the minutes did not identify a substitute motion that was made during the Council’s discussion of topic 6.9, which topic was “Req. City Mgr. Direct The Law Department To Query The Huot V. City Of Lowell Plaintiffs’ Attorney Regarding Their Opinion On Direct Election Of The Mayor By Voters, Noting That Both District And At-Large Candidates Are Eligible And Report Back To The Council In Executive Session If Necessary,” we do not find a violation. After watching a video recording of the October 29, 2024, meeting, we find that the minutes are sufficient as the substitute motion is referenced in the minutes as “to refer the matter to the Rules” Subcommittee, which was the motion made during the meeting.

In addition, we decline to review the allegation that the Non-Profit Organizations Subcommittee violated the Open Meeting Law by failing to properly record roll call votes in the Subcommittee’s October 22, 2024, meeting minutes, where the complaint was only filed with the Council and not with the Subcommittee. See G.L. c. 30A § 23(b) (individuals who allege a violation of the Open Meeting Law must first file a complaint with the public body alleged to have violated the Law).

unanimous, the minutes state “Adopted per Roll Call vote 11 yeas.” In instances where the vote was not unanimous, the minutes state, for example, “Adopted per Roll Call vote 8 yeas, 2 nays, 1 absent” or “Adopted per Roll Call vote 7 yeas, 3 nays, 1 absent” and then identify the names of the Council members who voted in the negative or were absent.

Because the minutes of the seven meetings held between October 8 and November 19, 2024, fail to record the roll call votes by documenting the vote of each Council member, we find that the Council violated the Open Meeting Law. Had each set of minutes included a list identifying the members who were present at the meeting, then perhaps the minutes may have been sufficient where the vote of each member, recorded in that way, could be discerned from the minutes. See, e.g., OML 2021-196 (finding minutes sufficient where the combination of listing the five Committee members present at the meeting, combined with the statement “5 yeas” or “4 yeas, 1 nay” with the name of the Committee member voting in the negative, clearly and accurately recorded the roll call vote of each Committee member). Nonetheless, because each of the seven sets of minutes did not include a list of Council members present during each of the meetings, the minutes do not document the vote of each member, and we thus find that the minutes are insufficient by failing to contain a clear and accurate record of the roll call votes. We order the Council to amend the minutes of the October 8, October 15, October 22, October 29, November 5, November 12 and November 19, 2024, meetings to record all roll call votes by documenting the vote of each Council member.

We must determine whether this violation was, as the complainant urges, an intentional one. See G.L. c. 30A, § 23(c). 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 ignorance of the law’s requirement or has previously been advised that certain conduct violates the Open Meeting Law. Id. On October 18, 2024, our office issued a determination “remind[ing] the Council that when voting by roll call, the vote of each member must be recorded in the minutes.” See OML 2024-193. Although it is concerning that this advisory was apparently overlooked, we acknowledge that it was a single sentence in a seven-page letter and did not pertain to an allegation that was specifically raised in the complaint that was the subject of the October determination. For these reasons, we do not find this violation to be intentional. Nonetheless, we note that the Council has now been advised of its obligation to properly record roll call votes, and we emphasize that future violations may result in a civil penalty of up to \$1,000 per violation.

IV. Omission of the Certificates As a Topic Did Not Render Notice of the October 15, 2024, Meeting Insufficiently Specific.

A public body must post notice of every meeting at least 48 hours in advance, not including Saturdays, Sundays, and legal holidays. G.L. c. 30A, § 20(b). Notices must include “a listing of topics that the chair reasonably anticipates will be discussed at the meeting.” Id. The list of topics must have “sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting.” 940 CMR 29.03(1)(b). When reviewing a meeting notice for sufficiency, unless it is clearly insufficient on its face, we do not review a meeting notice standing alone. See OML 2015-109; OML 2014-155. Rather, we review what was actually

discussed at the meeting to determine if the notice was sufficiently detailed to make the public aware of the discussion topics.

The first complaint alleges that the notice of the October 15, 2024, meeting was not sufficiently specific because it did not include the Certificates as a topic of discussion. However, the Council did not discuss the Certificates during the October 15, 2024, meeting. Where a public body does not actually engage in any deliberation on a particular topic, it cannot violate the Open Meeting Law with respect to the sufficiency of the meeting notice. See OML 2023-169; OML 2016-76. Therefore, the Council was not required to include the Certificates as a topic of discussion on the notice of the October 15, 2024, meeting and we find no violation relative to the notice.

V. Notices for Certain Executive Sessions Lacked Sufficient Specificity.

A public body may enter an executive, or closed, session for any of the ten purposes enumerated in the Open Meeting Law provided that it has first convened in an open session, that a majority of members of the body have voted to go into executive session, that the vote of each member is recorded by roll call and entered into the minutes, and the chair has publicly announced whether the open session will reconvene at the conclusion of the executive session. G.L. c. 30A, §§ 21(a), (b); see also OML 2014-94.

The chair of the public body must announce in open session the purpose for the executive session, “stating all subjects that may be revealed without compromising the purpose for which the executive session was called.” See G.L. c. 30A, §§ 21(a), (b)(3); see also District Attorney for the N. Dist. v. Sch. Comm. of Wayland, 455 Mass. 561, 567 (2009) (“[a] precise statement of the reason for convening in executive session is necessary ... because that is the only notification given the public that a [public body] would conduct business in private, and the only way the public would know if the reason for doing so was proper or improper”). This level of detail about the executive session topic must also be included in the meeting notice. See G.L. c. 30A, § 20(b); OML 2016-72.

The sixth and final complaint alleges that the notices for the executive session meetings held on November 26 and December 17, 2024, were insufficient where they did not include the name of the individual who filed the Open Meeting Law complaints. Here, the notices of the Council meetings held on November 26 and December 17, 2024, indicated that the Council would convene in executive session to “Consider and Discuss . . . Open Meeting Law Complaints Filed Against the City Council” and included the number of complaints to be reviewed – two during the November 26 meeting and three during the December 17 meeting – as well as the dates that the complaints were filed with the Council. However, neither notice identified the name of the person who filed the Open Meeting Law complaints to be discussed. We have explained that a meeting notice should generally include the name of the person who filed the Open Meeting Law complaint or other identifying information about the complaint. See OML 2019-32; OML 2013-82. This level of detail is necessary to put any interested member of the public, especially the individual who filed the complaint, on notice that the Council planned to discuss particular Open Meeting Law complaints. See, e.g., OML 2013-151; OML 2013-140. Because the notices included some identifying information about the complaints to be discussed

during the November 26 and December 17, 2024, meetings, including the number of Open Meeting Law complaints and the dates the complaints were filed with the Council, we find a *de minimus* violation where the notices did not otherwise identify the specific complaints to be discussed at each meeting.⁶

Finally, the complaint alleges that the notice of the December 17, 2024, meeting failed to provide sufficient information about the executive session involving the Lupoli Company. Here, the December 17, 2024, meeting notice listed an executive session to “Consider And Discuss Ongoing Negotiations Relative To Lupoli Companies, LLC, Public Discussion Of Which Could Have A Detrimental Effect On The City’s Position.” The Council explains that the City was negotiating with Lupoli Companies about properties and stated that “adding information such as which property is being discussed would defeat the purpose of executive session, as those details could be detrimental to the City’s negotiation position.”

A public body may convene in executive session to “consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body.” G.L. c. 30A, § 21(a)(6) (“Purpose 6”). Purpose 6 is intended to preserve confidentiality in negotiating the value of the property to be purchased, exchanged or leased to avoid putting the public body at a disadvantage in its negotiations for the property. See District Atty. for the Plymouth Dist. v. Selectmen of Middleborough, 395 Mass. 629, 631 (1985); OML 2016-50. When posting notice of an anticipated Purpose 6 discussion, the executive session topic should include a sufficient description of the anticipated executive session, such as the statutory citation to the specific executive session purpose relied on and/or the language used in the statute, along with information about the specific property to be discussed, if such disclosure does not compromise the Board’s negotiating position. See OML 2024-158; OML 2016-94; OML 2016-5. While the Council need not reference the specific property to be discussed during the executive session if such disclosure would adversely impact its negotiating position, the Council should have included the specific statutory citation or language of the executive session it planned to convene under, so that a member of the public could read the notice and reasonably understand that the matters were appropriate for discussion in executive session. Here, the notice of the December 17, 2024, meeting did not reference Purpose 6 or that the discussions pertained to the purchase, exchange, lease or value of real property. As such, we find that the notice did not offer the public an understanding of the anticipated executive session discussion and therefore the Council

⁶ To the extent the complaint alleges that the minutes of the November 26 and December 17, 2024, meetings were insufficient for also failing to include the name of the individual who filed the Open Meeting Law complaints, we do not find a violation. During the November 26 and December 17, 2024, meetings, the Mayor, who is the Council President, announced that the Council would convene in executive session to discuss Open Meeting Law complaints filed on specific dates but did not identify the name of the individual who filed the complaints. As such, the minutes necessarily do not include the name of the individual who filed the complaints. To be “accurate,” meeting minutes must accurately reflect the discussions that took place during a meeting. See OML 2020-62. Because the minutes must accurately capture the discussions and actions that actually took place, it is inappropriate to include information in meeting minutes that was not discussed or did not occur at a meeting. See OML 2021-128. We note that the Open Meeting Law does not require a public body to engage in a substantive discussion of the merits of each complaint, nor to read a complaint in full during a meeting. See OML 2022- 59; OML 2021-128; OML 2020-38; OML 2018-134.

violated the Open Meeting Law by posting an insufficiently specific notice of the December 17, 2024, meeting. See OML 2018-80; OML 2014-43.

CONCLUSION

For the reasons stated above, we find that the Council violated the Open Meeting Law by creating and approving insufficient minutes of meetings held on October 8, October 15, October 22, October 29, November 5, November 12, and November 19, 2024; by deliberating during a Rules and Election Law Subcommittee meeting held on November 19, 2024, without posting notice; and by posting notices for meetings held on November 26 and December 17, 2024, that included insufficient specificity. We order the Council to amend the minutes of the October 8, October 15, October 22, October 29, November 5, November 12 and November 19, 2024, meeting within thirty days of the date of this letter in accordance with the guidance provided above. In addition, we order immediate and future compliance with the law's requirements, and we caution that similar future violations could be considered evidence of intent to violate the law.

We now consider the complaints addressed by this determination to be resolved. This determination does not address any other complaints that may be pending with our office or the Council. 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: Laura Ortiz – By email only: [REDACTED]
Lowell City Council c/o Mayor Daniel P. Rourke – By email only:
drourke@lowellma.gov
Lowell City Clerk Michael Geary – By email only: mgeary@lowellma.gov

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.