

Charles Teague  
23 Edmunds St  
Cambridge, MA 02140

2013 DEC 5 PM 3 53

OFFICE OF THE CITY CLERK  
CAMBRIDGE, MASSACHUSETTS

December 5, 2013

Donna Lopez, City Clerk  
The City Clerk's Office  
Cambridge City Hall  
795 Massachusetts Ave  
Cambridge, MA 02139

RE: Reply to Action of 5 Nov 2013 by Cambridge City Council on Open Meeting Law  
Complaint

Dear Clerk Lopez,

Attached is my reply to the Cambridge City Council's Open Meeting Law (OML)  
response dated 5 Nov 2013. Please enter this into the record as a communication from  
me for the Monday December 9, 2013 City Council meeting.

Thank you,



Charles Teague

Charles Teague  
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[charles.d.teague@gmail.com](mailto:charles.d.teague@gmail.com)  
(617) 212-3132

2013 DEC 5 PM 3 53

OFFICE OF THE CITY CLERK  
CAMBRIDGE, MASSACHUSETTS

December 2, 2013

Amy Nable, Assistant Attorney General  
Director of Division of Open Government  
Office of the Attorney General  
One Ashburton Place  
Boston, MA 021108

RE: Reply to Action of 5 Nov 2013 by Cambridge City Council on Open Meeting Law Complaint

Dear Director Nable,

This is my reply to the Cambridge City Council's Open Meeting Law (OML) response dated 5 Nov 2013. Attached find an annotated copy of the Council response with every paragraph uniquely labeled (See Exhibit C).

The response of the City of Cambridge attempting to defend against the allegation of an OML violation in this case is insufficient because, as set forth in greater detail below, (i) one of the participating Councilors admitted to serial deliberation, (ii) outside/independent attorneys have opined that an OML violation occurred, (iii) the complaint was filed within days of new probative evidence being revealed, (iv) the clerk conceded that a rules violation had taken place, and (v) the Council has a long history of questionable OML practices including already being found this year by your office to have violated the OML.

Finally, the Council proposes no remedial action at all, not even OML training.

1. The Cambridge City Council consists of:

- Mayor Henrietta Davis
- Vice-mayor Denise Simmons
- Councillors
  - David Maher
  - Kenneth Reeves

- Minka vanBeuzekom
- Tim Toomey
- Marjorie Decker
- Leland Cheung
- Craig Kelley

**Councillor Maher admitted to serial deliberation**

2. Maher admitted to deliberation with MIT and subsequently with Mayor Davis **and others** to The Cambridge Chronicle as reported in both the print and on-line editions (See Exhibit F Cambridge Chronicle 11/1/13)

*"Maher said representatives from MIT made a signaling motion to him as soon as the amendment was voted through and then spoke with him outside the council chambers. Maher said he then communicated the findings **with his colleagues** [note plural & emphasis added] while Councilor Ken Reeves discussed a University Relations subcommittee tour of MIT."*

**three expert attorneys' opine OML violated**

3. The Cambridge Chronicle is the "newspaper of record" for the City of Cambridge, is owned by Gatehouse Media, Inc. and is published on-line as "Wicked Local Cambridge".

4. The Cambridge Chronicle quotes expert attorneys Robert Bertsche and Peter Caruso II. (See Exhibit F Cambridge Chronicle 11/1/13):

*"Two open meeting law attorneys at the law firm Prince Lobel Tye LLP, retained by the New England Newspaper and Press Association — a regional trade group of which the Chronicle is a member, said Maher's actions could constitute a violation of the open meeting law, particularly the provision prohibiting serial deliberations."*

5. The Cambridge Chronicle quotes Attorney Bertsche as (See Exhibit F Cambridge Chronicle 11/1/13):

*Bertsche pointed to "whispered deliberations" as the first violation of open meeting law.*

*Bertsche said the second part of the violation was more concerning because it pertains to "serial deliberations."*

*"One could argue that his [Maher's] private conversations did not rise to the level of being the deliberations of a quorum of the*

*council, and therefore were not subject to the open meeting law ... That would be wrong, however, not only because the council was then in open session, but also because an agency may not engage in 'serial communications' in order to evade the law's requirement of an open (and audible) meeting."*

6. The Cambridge Chronicle quotes Attorney Caruso as (See Exhibit F Cambridge Chronicle 11/1/13):

*"The Attorney General said all public officials must conduct their deliberations under the glare of public scrutiny ... That's the foundation of the open meeting law. In our democratic government, it's not only the decisions the public should have access to but more importantly, the way the decisions are reached."*

7. Before filing the OML complaint, I consulted with Attorney Adam Costa, who conducts OML training, who wrote to me:

*"Private discussion between Councillors while a meeting is underway, particularly a quorum of Councillors but really any number, if inaudible to those in attendance, might be considered contrary to the spirit, if not the letter, of the law. An open meeting is supposed to be just that: open to the public. If the public can't hear what is being discussed, the purpose of the law is defeated. Private discussion by a Councillor with other(s) is not prohibited (though a private conversation between a Councillor and an applicant or proponent before the Council certainly has an appearance of impropriety), but changing one's vote as the consequence of such a conversation and based on information not brought forth in the public forum but stated "behind closed doors" is improper, in my opinion."*

***the city clerk admitted that Council rules were violated***

8. The Cambridge Chronicle reported that the Clerk of the City of Cambridge admitted that the rules of the City Council were violated (See Exhibit F Cambridge Chronicle 11/1/13):

*"Teague said the mayor failed to follow council rules, which the city clerk confirmed, when she changed her vote."*

### **some councillors admit OML response inaccurate**

9. In City Council on 4 November 2013, Councillor vanBeuzekom stated that the Council's assertion that *"the vote change was not fatally flawed from a procedural perspective"* was factually incorrect. (See the video excerpt at: "TinyURL.com/4-Nov-CityCouncil", Exhibit M)
10. The Council chose not to revise the letter with Councillor Cheung stating that he had talked with *"people in the Attorney General's Office ... don't think that this is even gonna go anywhere"* and then (implicitly admitting inaccuracies) said *"I don't think we need to spend so much time really talking about this ..."*. Cheung then called the question to end any other possible modifications to the Council response. (See the video excerpt at: "TinyURL.com/4-Nov-CityCouncil", Exhibit M)
11. The Council voted to close debate on the Council's OML response making it impossible to discuss further, if any, inaccuracies. The vote was not unanimous. Councillors, Kelley, vanBeuzekom, and Vice-mayor Simmons voted against closing further discussion and debate.
12. After this vote, vanBeuzekom asked if it were possible for *"other amendments that might be needed for this letter [the Council's response]"*. No other amendments were allowed to be heard.
13. The Council approved its OML response with only vanBeuzekom voting against approval.

### **Council's "untimely" defense fails**

14. The Council states:  
*"he now seeks to evade the bar of the limitation period by stating that he just recently became aware of a photograph [The Hawkinson Photo]"*  
(See Exhibit C Council's Response - Annotated para. D)
15. I was told of The Hawkinson Photo by Hawkinson after he read my article, I saw it on 14 October 2013, and I filed my complaint on 17 October 2013. (See Exhibit D Hawkinson Emails)
16. The Hawkinson Photo shows Maher with MIT representatives. The video record did not prove that Maher deliberated with MIT because it only showed that both

Maher and Davis's aide Matt Nelson exited the Council chamber. (See video at "TinyURL.com/Davis-Changes-Vote", Exhibit M)

17. It would have been irresponsible, frivolous and a waste of the Division's resources for me to have filed an OML complaint without direct evidence, i.e. The Hawkinson Photo, that the very deliberations I suspected, between Maher and MIT, had actually occurred. It was not until October 14 that I had that evidence, and I could not have reasonably discovered it any sooner.

18. The Council cites multiple OML declinations including:

*"Acts that take place during an open session meeting are discoverable at the time they occur."*

The "doorway" in The Hawkinson Photo is between the Council ante-chamber ("the green room") and the outer hallway. The Council was in session, **inside** the chamber, where both the city cameras, my camera, and the public's attention were on Ken Reeves who was speaking while Maher deliberated with MIT **outside** the chamber. It is **not** reasonable for any person to be in two places at once. (See Exhibit C Council's Response - Annotated, para. 1.a & 1.b )

19. It is also **not** reasonable to require that any person be aware of the contents of the Internet at all times.

### ***Council attempts to claim photograph proves nothing***

20. The Council admits to MIT and Maher being in the hallway, outside the Council chamber.

*"Councillor Maher standing in a doorway **near** MIT representatives". (emphasis added)*

The Hawkinson Photo clearly shows far more than "near", it shows an interaction. (See Exhibit A The Hawkinson Photo, Exhibit C Council's Response - Annotated, para. D)

21. The Council states:

*"Third, the photo at issue is silent; it gives no indication of the content of communications, if any, among the individuals pictured. Therefore, it in no way supports allegations of an Open Meeting Law violation."*

Maher's admission (see paragraph 2 above), Davis's statement in the Council session after she reversed her vote, and her statement to the press after the session ended clearly indicate the content of the deliberation with MIT. (See

Exhibit E Cambridge Day 10/1/13, Exhibit C Council's Response - Annotated, para. 1.b)

***Council's quorum defense:***

22. The quorum is met as (a) the Council is in session, and (b) Maher personally communicates with Davis, Decker, Kelley, and Reeves (which is five, the quorum) without counting even one of the three councillors on the far side of the chamber, or any of the other communications by other councillors and staff.

Time in video	Communications between City Councillors and others documented by the video record
2:52	Maher deliberates with Decker
4:03	Maher deliberates with clerk and assistant
4:08	Davis deliberates with her aide, Matt Nelson
4:22	Davis joins Maher, clerk, and assistant
4:38	Maher deliberates with Davis
4:57	vanBeuzekom deliberates with Nelson
5:15	vanBeuzekom deliberates with Davis
5:45	Maher deliberates with Davis, clerk, and assistant
6:10	Maher (at least) passes note to Kelley
6:26	Maher deliberates with Decker
6:56	Maher goes off camera towards Cheung, Simmons, and Toomey
7:39	Maher deliberates with Davis's aide Nelson
8:00	Maher passes note to Reeves
8:24	Davis deliberates with Nelson

(See the video record of the 8 April 2013 Council meeting at: "[TinyURL.com/Davis-Vote-Change](http://TinyURL.com/Davis-Vote-Change)", Exhibit M)

23. The complaint form restricts the text of the complaint to 3,000 words which limits the completeness of the complaint. (See Exhibit G Complaint Form)
24. In the attempt to use their quorum argument, the Council misapprehends the complaint which alleges **intentionally** violating the Open Meeting Law by Maher, Davis, and Reeves. The complaint does **not** allege intent by the six other councillors but does **not** say whether they were part of any violation. The complaint does represent that the video record and The Hawkinson Photo document Maher deliberating privately with MIT and Davis while the Council is in session, and Reeves "implementing a diversion". (See Exhibit G Complaint Form)
25. The Council asserts:

*'a single City Councillor speaking with members of the public outside of a public meeting is not engaging in prohibited "deliberation." '*

It fails to mention that the *"members of the public"* had business before the Council worth hundreds of millions of dollars and are MIT staff, an unknown attorney for MIT, and Attorney Anthony Gallucio (fourteen years on the Cambridge City Council with 2 years as mayor, resigned from the State Senate in 2010) for MIT. (See Exhibit C Council's Response - Annotated, para. 2.b)

***Council claims vote change did not violate procedure***

26. It is undisputed that Davis did tell the public why she was changing her vote after she changed it. But by breaking the Council rules, she also stifled any discussion/debate on the reasons for doing so and before she did it. To quote from the Attorney General's website:

*"The Open Meeting Law supports the principle that the democratic process depends on the public having knowledge about the considerations underlying governmental action."*

27. Even if the lack of discussion/debate before the vote change was not itself an Open Meeting Law violation, Davis changing her vote at the behest of MIT is an extremely significant outcome of the Open Meeting Law violation created by Maher's multiple private deliberations.

***Council asserts there was no intent***

28. Maher admitted deliberating with MIT and *"then communicated the findings with his colleagues"*. It would have been straightforward to communicate MIT's demand openly to the Council and the public. Maher and Davis both chose not to do so. Maher and MIT's Attorney Galluccio are very experienced with the last minute amendment process as both are former Cambridge Mayors. (See Exhibit F Cambridge Chronicle 11/1/13)

29. Maher had the time to deliberate with MIT and his colleagues only because Reeves kept the meeting open and in session but delaying the final vote with his long irrelevant monolog. No councillor attempted to stop Reeves. Reeves did stop upon Maher passing him a note.

**(additional) REQUESTS FOR GUIDANCE**

30. Guidance by the Attorney General would provide clarification to the city and the public on these OML topics:

- a. Entry into Executive Session: Councillor Kelley argued at 4 Nov meeting that the Council enters Executive Session inappropriately. (See the video of the entire meeting at the City Council website, Exhibit M)
- b. Whispering: During meetings, including 4 Nov, the Mayor consults privately with the Clerk by not using the microphone.
- c. Inadequate facilities: There are public meetings (examples include License Commission and Board of Zoning Appeal) where it is often difficult or impossible for the public to see presentations or hear deliberations.
- d. Training: All members of City of Cambridge public bodies should be trained in OML and other Rules.

**Council has long history of violating the OML and its own rules**

31. Attorney Raymond Ausrotas, a Cambridge resident, wrote in a 2008 letter to the editor (See Exhibit K Cambridge Chronicle 8/4/08):

*"Followers of our fair city's elected body may recall — or perhaps have observed firsthand — that during some public hearings, several city councilors have left to retire to "The Green Room," for varying amounts of time, only to return for the formality of a vote. ... we do not know what Cambridge's City Councilors have actually talked about with one another when they have been hidden back in the Green Room. But this is precisely the problem with their disappearance: we may fairly assume that some deliberation on the public matters up for consideration that night is going on behind closed doors."*

32. Another resident's letter cited even more letters and stated (See Exhibit L Cambridge Chronicle 4/17/07):

*"In many letters to the council, I pointed out the frequent anomalies on voting (most recently my letter in the April 9 agenda). On that day there was no vote on a motion to table an item. It was tabled without a vote. There are frequent violations of City Council rules on suspending the rules."*

***second OML violation within one year***

33. Despite being found by your office to have violated the Open Meeting Law when choosing the City Manager, the Council's latest response offers no remedial action at all. Instead the Council claims to have eluded responsibility by proffering a number of specious technical arguments. (See Exhibit I OML Finding 6/4/13)
34. In fact, Councillor Reeves expresses defiance saying in 4 Nov 2013 Council: (See Exhibit J Cambridge Chronicle 11/14/13, See Exhibit M Internet Exhibits)  
*Reeves said there was an "omnibus" provision in the council rules that state, "We can do whatever we want when we want to do it, too."*
35. The Council acts with apparent "*deliberate indifference to the law*" despite the warning from your office this year (See Exhibit I OML Finding 6/4/13 p. 4)  
*"We order immediate and future compliance with the Open Meeting Law, and caution that **future similar violations may be considered evidence of intent to violate the Law.**" (emphasis added)*
36. I am unsatisfied with the Council's response and am filing this letter together with the original complaint with your office. (See Exhibit G Complaint Form)

Thank you in advance for your consideration.

Sincerely,



Charles Teague

CC: Margaret Hurley, Director, Municipal Law Unit  
Office of the Attorney General, 10 Mechanic Street, Worcester, MA 01608

City Clerk Donna Lopez, Cambridge City Hall  
795 Massachusetts Ave, Cambridge, MA 02139

- Exhibit A. The Hawkinson Photo
- Exhibit B. Hawkinson Tweet 4/8/13
- Exhibit C. Council's Response - Annotated
- Exhibit D. Hawkinson Emails
- Exhibit E. Cambridge Day 10/1/13
- Exhibit F. Cambridge Chronicle 11/1/13
- Exhibit G. Complaint Form
- Exhibit H. City Council Rules
- Exhibit I. OML Finding 6/4/13
- Exhibit J. Cambridge Chronicle 11/14/13
- Exhibit K. Cambridge Chronicle 8/4/08
- Exhibit L. Cambridge Chronicle 4/17/07
- Exhibit M. Internet Exhibits

Exhibit A. The Hawkinson Photo

Photograph by John Hawkinson, (617) 797-0250, [jhawk@mit.edu](mailto:jhawk@mit.edu) , 2 Clinton Street #5, Cambridge MA 02139

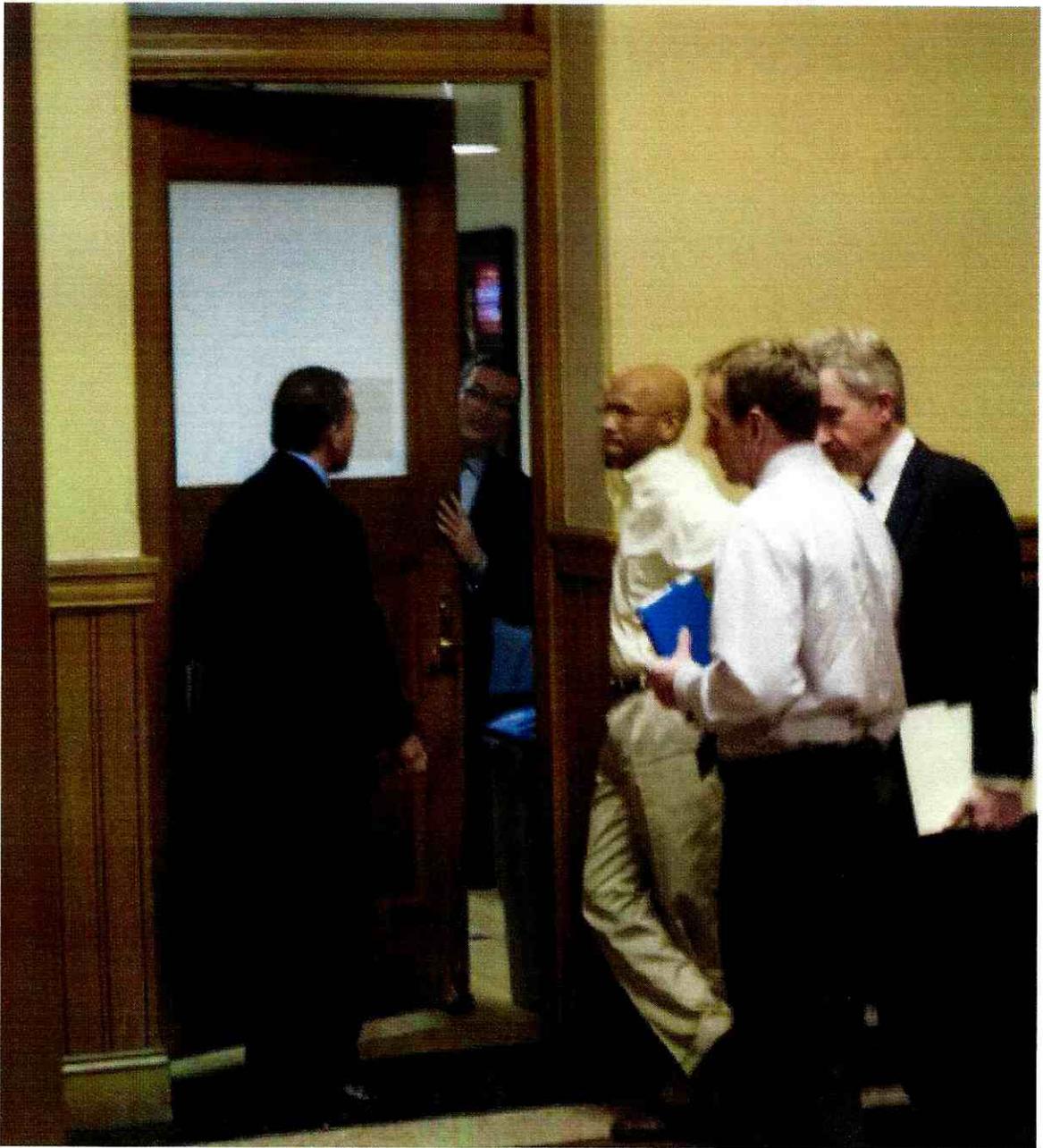


Exhibit B. 8 April 2013 Hawkinson Tweet



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**John Hawkinson**

@johnhawkinson



**PIC: Maher meeting w/ MIT reps after amendments pass #k2c2 yfrog.com/nvjyeokj**

[← Reply](#) [↻ Retweet](#) [★ Favorite](#)

**1**

RETWEET



7:30 PM - 8 Apr 13

### Don't miss any updates from John Hawkinson

Join Twitter today and follow what interests you!

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Exhibit C. Council's Response - Annotated



## OFFICE OF THE CITY CLERK

CITY OF CAMBRIDGE

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**DONNA P. LOPEZ**  
**CITY CLERK**

November 5, 2013

Amy Nable, Assistant Attorney General  
Director of Division of Open Government  
Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108

***Re: Action taken by Cambridge City Council on Open Meeting Law complaint of  
Charles Teague dated October 17, 2013***

Dear Ms. Nable:

On behalf of the Cambridge City Council, I am writing to advise you pursuant to 940 CMR 29.05(5) of the action taken by the City Council on the Open Meeting Law complaint of Charles Teague. A copy of Mr. Teague's complaint dated October 17, 2013 is attached as Exhibit "A." Mr. Teague alleges that the actions of three members of the nine-member Cambridge City Council during a City Council meeting occurring on April 8, 2013 violated the Open Meeting Law. The City Council disagrees for the reasons stated herein.

**A**

### FACTS

The Cambridge City Council is composed of nine Councillors. Five City Councillors constitute a quorum. The full City Council meets weekly on most Monday evenings throughout the year, except during July and August. At its Monday evening meeting on April 8, 2013, the City Councillors were considering a complex set of zoning ordinance amendments related to properties owned by the Massachusetts Institute of Technology in the Kendall Square area of Cambridge, which amendments would add a new Planned Unit Development District (known as PUD-5) in Section 13.80 to the Cambridge Zoning Ordinance. As part of the proposed new zoning, MIT had submitted a commitment letter to the City describing obligations that MIT would perform for the public benefit if the zoning amendment were adopted by the City Council. At the April 8 meeting, the City Council considered and voted on a number of amendments to the zoning ordinance and the commitment letter before them. One City Councillor, Minka van Beuzekom, proposed an amendment to the zoning ordinance language that Mr. Teague denotes as the "Net Zero Emissions Amendment," (hereafter "NZEA") which in essence would have required that the buildings constructed by MIT in the area affected by the new zoning laws meet energy standards that did not exist elsewhere in the Cambridge Zoning Ordinance and had not

**B.1**

previously been applied to any other buildings in Cambridge. Adding the amended language to the proposed ordinance language before the City Council required a majority vote of five members of the City Council. The initial vote at the meeting was five members in favor, three members against it, with one member voting present. A few moments later, Mayor Henrietta Davis announced publicly that she was changing her vote from a vote in favor to a vote of present. The NZEA thereupon failed with only four members in favor, being less than a majority. Mayor Davis explained her change of vote at the meeting as being based on her learning that passage of the NZEA might sink the entire project and jeopardize MIT's ability to see the project through, and because the zoning ordinance and MIT's development plans and obligations set forth in its commitment letter are tied together. No City Councillor challenged the right of Mayor Davis to change her vote on the NZEA. No City Councillor challenged the ruling of the chair (being Mayor Davis) that the NZEA failed. Then, the City Council voted on the enactment of the entire zoning ordinance, as amended, without the NZEA, and the motion passed seven members in favor, one member opposed, with one member voting present. The commitment letter, as it had been revised, was then adopted by the City Council as well. No City Councillor made a motion for reconsideration after the votes were taken, as permitted by the Rules of the City Council.<sup>1</sup>

**B.2**

Mr. Teague's Open Meeting Law Complaint does not identify the public body complained of, but states that the Complaint is against the "City of Cambridge," and that specifically, City Councillors David Maher, Kenneth Reeves and Mayor Henrietta Davis, being three of the nine City Councillors, violated the Open Meeting Law. Mr. Teague alleges that, during the City Council's April 8 public meeting, after the initial vote passing the NZEA, Councillor Maher left the meeting briefly to speak privately with MIT representatives while Councillor Reeves was speaking at the meeting ("implementing a diversion" according to Mr. Teague). Mr. Teague alleges that when Councillor Maher returned to the meeting, he spoke privately (on camera) with Mayor Davis who then reversed her vote on the NZEA, resulting in its defeat.

**C**

Mr. Teague acknowledged in a related complaint letter he sent on October 9, 2013 to Assistant Attorney General Margaret Hurley that the thirty day limitation period for filing an Open Meeting Law Complaint regarding the actions of April 8, 2013 expired long ago. See attached letter dated October 9, 2013 from Mr. Teague to Assistant Attorney General Margaret Hurley and Exhibit "A" thereto entitled "Chronology of Citizen's Petitions," at paragraph 3, attached as Exhibit "B" hereto. However, he now seeks to evade the bar of the limitation period by stating that he just recently became aware of a photograph that has been on a person's Twitter site since April 8 showing Councillor Maher standing in a doorway near MIT representatives.

**D**

## DISCUSSION

<sup>1</sup> City Council Rule 16 provides: "A question having been taken, it shall not be in order for any member to move reconsideration thereof at the same meeting. A motion to reconsider may be made at the next meeting, provided written notice of such motion has been filed with the City Clerk within thirty-six hours of the day of the vote, Saturdays and Sundays to be excluded in the computation of the thirty-six hours. No more than one motion for reconsideration of any votes shall be entertained. Any member may move reconsideration; if reconsideration is not moved prior to the adjournment of the next regular or special meeting called for that particular purpose, the action taken by the City Council stands."

**E**

**1. Mr. Teague's complaint is untimely.**

Mr. Teague's Open Meeting Law Complaint should be dismissed because it is untimely. G.L.c.30A, §23(b) requires that an Open Meeting Law Complaint "shall be filed within 30 days of the date of the alleged violation." The Attorney General's regulations, at 940 CMR 29.05(3), provide that if the alleged violation of the Open Meeting Law "could not reasonably have been known at the time it occurred, then [a Complaint may be filed] within 30 days of the date it should reasonably have been discovered." The alleged violations occurred at a meeting on April 8, 2013. Any Open Meeting Law Complaint based on actions at that meeting had to be filed by May 8, 2013. Mr. Teague filed his Complaint on October 17, 2013, over five months late. Mr. Teague himself acknowledged in a related complaint letter dated October 9, 2013 that he sent recently to Assistant Attorney General Margaret Hurley that the thirty (30) day limitation period for filing an Open Meeting Law Complaint regarding the actions of April 8 expired long ago. See Exhibit B.

**1.a**

Mr. Teague's attempt to rely on "new evidence" to assert that he could not reasonably have known of the alleged violations until he saw a still photograph this month of Councillor Maher near MIT representatives should not be credited for a number of reasons. First, the Division of Open Government has stated consistently that: "Events that occur during an open session meeting are reasonably discoverable at the time they occur." OML Declination 4-30-13, p.1. Similarly, in OML Declination 11-5-12, the Division of Open Government stated: "Acts that take place during an open session meeting are discoverable at the time they occur. That the complainant chose not to attend that particular meeting does not change the fact that any member of the public could have attended the meeting and learned of the alleged violations on that date." The reasonableness standard is objective, not subjective; that is, it is not dependent on whether a particular individual personally learned of information beyond the limitation period. Second, the "new evidence" itself, the photo, is not actually new. It was apparently posted on Twitter the evening of the meeting. That it may have been "new" to Mr. Teague several months later is not relevant for determining the expiration of the limitation period. Third, the photo at issue is silent; it gives no indication of the content of communications, if any, among the individuals pictured. Therefore, it in no way supports allegations of an Open Meeting Law violation.

**1.b**

**2. There was no Open Meeting Law violation.**

No further action is necessary if the Open Meeting Law Complaint is dismissed as untimely. If the Complaint is not dismissed as untimely, it fails in any event for the following reasons.

**2**

**a. There must be five City Councillors to constitute a quorum.**

The Complaint alleges that three City Councillors violated the Open Meeting Law by deliberating only with each other. Even if that were true, because a quorum of the City Council is five, there could be no "deliberation" as defined in the Open Meeting Law among only three City Councillors. See, G.L.c.30A, §18 ("Deliberation [is] an oral or written communication through any medium, including electronic mail, between or among a quorum of a public

**2.a**

body....”). Therefore, a discussion among three City Councillors does not violate the Open Meeting Law.

**b. A member of a public body taking a break during a meeting and speaking briefly with a member of the public is not an Open Meeting Law violation.**

The Complaint alleges that one City Councillor left the public meeting, spoke briefly with MIT representatives, and then returned to the meeting. The Attorney General’s Division of Open Government has statutory authority to determine “whether there has been a violation of the open meeting law.” G.L.c.30A, §23(c). There is no provision of the Open Meeting Law that prohibits the complained of behavior. One City Councillor is not a quorum. Therefore, a single City Councillor speaking with members of the public outside of a public meeting is not engaging in prohibited “deliberation.”

**2.b**

**c. The Mayor’s change of vote at the meeting of April 8, 2013 is not an Open Meeting Law violation.**

The final allegation in the Complaint is that the Mayor’s change of vote during the public meeting of April 8, 2013 violated the Open Meeting Law. However, there is no provision of the Open Meeting Law that prescribes what procedure must be followed for a member of a public body to change her vote. Therefore, a change of vote does not violate the Open Meeting Law.

**2.c.1**

In addition to its not violating the Open Meeting Law, the vote change was not fatally flawed from a procedural perspective. The Mayor orally explained her vote change after changing it, no other City Councillor objected to her vote change, and minutes later, the City Council voted on the enactment of the entire zoning ordinance, as amended, without the NZEA, and the motion passed seven in favor, one opposed, with one member voting present. The City Council’s actions after the vote change essentially ratified it.<sup>2</sup> Also, as stated in City Council Rule 16, the absence of a timely motion for reconsideration by any City Councillor means that “the action taken by the City Council stands.”

**2.c.2**

**3. Even if the practices complained of were timely asserted violations of the Open Meeting Law, the remedies requested by Mr. Teague are extreme and inappropriate.**

Even if the Complaint had been timely and there had been Open Meeting Law violations, the three remedies requested by Mr. Teague in his Complaint are inappropriate. First, he asks for the public body to admit to an intentional violation of the Open Meeting Law even though there were no Open Meeting Law violations, and even if there were a violation, there is no indication that any such violation was intentional. “Intentional violation” as defined in 940 CMR 29.02 requires specific intent to violate the law, acting with deliberate indifference to the law’s requirements, or acting contrary to advice from a court or the Attorney General regarding specific conduct. None of those elements is present in this case.

**3.a**

<sup>2</sup> See, Roberts Rules of Order, §45, p.409: “Assembly’s Prerogative in Judging Voting Procedures. The assembly itself is the judge of all questions arising that are incidental to the voting or the conduct of the votes.”

**F**

Second, Mr. Teague asks that the zoning ordinance enacted at the April 8, 2013 meeting be altered to include the NZEA. This would effect a significant change to a complex zoning law that has existed now for over six and a half months, and upon which those affected by the ordinance have no doubt acted in reliance. This is unwarranted because: the Open Meeting Law was not violated; Mayor Davis explained her vote change publicly at the meeting; no City Councillor objected; after the vote change, the City Council enacted the zoning ordinance without the NZEA; and no City Councillor moved subsequently for reconsideration of the vote. These actions constitute subsequent independent deliberative action taken by the City Council that cured any previous violations. Violations of the Open Meeting Law may be cured by subsequent independent deliberative action taken in a full meeting. *McCrea v. Flaherty*, 71 Mass.App.Ct. 637, 642 (2008). In addition, state law, at G.L.c.40A, §5 and G.L.c.40, §32, provide a ninety (90) day period after the publication of an enacted zoning ordinance<sup>3</sup> to mount a legal challenge based on procedural defects to the enactment of a local zoning amendment. That limitation period expired months ago, and there was no filing of a challenge to the zoning amendment within the limitations period.

3.b

Third, Mr. Teague asks that Councillors Maher and Reeves not be appointed as chairs of any City Council committees for the next two-year term. The appointment of City Council committee chairs in the next term will be made at the next Mayor's discretion.<sup>4</sup> If Councillors Maher and Reeves are re-elected by Cambridge voters, it would be inappropriate in response to this Complaint to limit the ways in which these City Councillors will be allowed to serve the citizens of Cambridge in the future who elect them. It would also be inappropriate for there to be any interference with the next Mayor's authority to appoint City Council committee chairs as he/she sees fit.

3.c

As required by 940 CMR 29.05(5), the City Council reviewed the allegations of this Open Meeting Law complaint within 14 business days of receiving it. At its meeting of November 4, 2013, the City Council voted to adopt this letter as its response and resolution. Mr. Teague is being informed of the City Council's action by copy of this letter.

G

Very truly yours,

  
Donna P. Lopez  
City Clerk

cc. Charles Teague ✓  
23 Edmunds Street  
Cambridge, MA 02140

<sup>3</sup> The MIT zoning amendment at issue was published after enactment on April 18, 2013.

<sup>4</sup> Mayor Davis is not running for re-election as a City Councillor for the next term. Even if she were running and were elected, she would not necessarily be Mayor, as the nine City Councillors vote to elect a new Mayor after they are sworn in at the beginning of each new term.

H

I



# OPEN MEETING LAW COMPLAINT FORM

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

Exhibit

A

Please note that all fields are required unless otherwise noted.

**Your Contact Information:**

First Name: Charles Last Name: Teague

Address: 23 Edmunds St

City: Cambridge State: MA Zip Code: 02140

Phone Number: +1 (617) 212-3132 Ext. \_\_\_\_\_

Email: charles.d.teague@gmail.com

Organization or Media Affiliation (if any): \_\_\_\_\_

Are you filing the complaint in your capacity as an individual, representative of an organization or media?  
(For statistical purposes only)

Individual     Organization     Media

2013 OCT 17 PM 3 07  
OFFICE OF THE CITY CLERK  
CAMBRIDGE, MASSACHUSETTS

**Public Body that is the subject of this complaint:**

City/Town     County     Regional/District     State

Name of Public Body (including city/town, county or region, if applicable): City of Cambridge

Specific person(s), if any, you allege committed the violation: City Councillors David Maher & Kenneth Reeves, Mayor Henrietta Davis

Date of alleged violation: Apr 8, 2013

## 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.

I received an email on Oct 14 2013 with new evidence confirming my previously un-provable suspicion of an intentional OML violation by three members of the Cambridge City Council: Mayor Henrietta Davis, Councillors David Maher and Kenneth Reeves. The new evidence proves by way of a photograph that Maher met with MIT representatives, including Steve Marsh, while the council was in session. See the photo at: <http://tinyurl.com/Maher-MIT-Picture> and text at: [tinyurl.com/Maher-MIT-Tweet](http://tinyurl.com/Maher-MIT-Tweet).

I was not able to "reasonably" discover this new evidence within 30 days of the violation. I had left City Hall after the opening "Public Comment" period, my video camera was operated by a friend, and the photograph was taken by an independent journalist who told me of it sometime after reading my article (see [tinyurl.com/Article-MIT-Vote](http://tinyurl.com/Article-MIT-Vote)).

The violation is that Maher left the April 8 2013 City Council meeting during a diversion executed by Reeves, met with MIT representatives, returned to the meeting, and then deliberated privately with Davis who subsequently, without any public deliberation, reversed her vote on an amendment to MIT's zoning petition.

This is documented by a video record (see [tinyurl.com/Davis-Changes-Vote](http://tinyurl.com/Davis-Changes-Vote)) from my camera supplemented by the city's camera system, by journalists who were there, and by my article.

I believe that Maher, Reeves and Davis intentionally violated the OML as they were (1) in the process of their (failed) defense of a Dec. 4 2012 OML complaint and should have been well aware of OML requirements, (2) clearly shown on the video record as deliberating with each other but not to the rest of the councillors or the public, and (3) implementing a diversion to distract the rest of the councillors and the public.

Before I received the new evidence, I informed Margaret Hurley, Director of the Municipal Law Unit, by letter dated Oct 9 2013 of other violations of state law by Maher and staff of the City of Cambridge.

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.

- 1.) admit intentional violation of Open Meeting Law on April 8, 2013 which led to the failure of the "Net Zero Emissions Amendment" (NZEA) to MIT's zoning petition
- 2.) order correction of Zoning Ordinance by including the NZEA as Davis's first vote was legal, her change of her vote was not legal, and therefore cannot be honored. MIT can simply file another zoning petition to remove the NZEA
- 3.) not appoint Councillors Maher & Reeves as chairs of any committees for the next two-year term

## Review, sign, and submit your complaint

**Read this important notice and sign your complaint.**

Under most circumstances your complaint will be considered a public record and be available to any member of the public upon request.

I understand that when I submit this complaint the Attorney General's Office cannot give me legal advice and cannot act as my personal lawyer.

I certify that the information contained on this form is true to the best of my knowledge.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

10-17-2013

For Use By Public Body  
Date Received by Public Body:

For Use By AGO  
Date Received by AGO:

Exhibit

B

Charles Teague  
23 Edmunds St  
Cambridge, MA 02140  
[charles.d.teague@gmail.com](mailto:charles.d.teague@gmail.com)  
(617) 212-3132

2013 OCT 10 AM 10 42

OFFICE OF THE CITY CLERK  
CAMBRIDGE, MASSACHUSETTS

October 9, 2013

Margaret Hurley, Director  
Municipal Law Unit  
Office of the Attorney General  
10 Mechanic Street  
Worcester, MA 01608

Dear Director Hurley,

As a concerned citizen of the City of Cambridge, I write to your office requesting assistance in addressing the City Council's ongoing prejudice toward citizens' zoning petitions and, in connection therewith, its violations of the Zoning Act, G.L. c. 40A, and of the requirements of the City's own Zoning Ordinance and/or its failure to address inconsistencies between them.

Specifically, among the violations/inconsistencies are:

- A. David Maher, as Chair of the City Council's Ordinance Committee and responsible for its schedule, failed to open a hearing on a citizen's petition within sixty-five (65) days of submittal, in violation both of G.L. c. 40A, § 5, and of its own Zoning Ordinance, Section 1.51, which incorporates said statute by reference.
- B. David Maher has (1) repeatedly violated City Council rules, (2) together with the council was found to have violated the Open Meeting Law (OML) by the Attorney General's office, (3) appears to have violated the OML again on April 8 (after the December 2012 OML complaint), and (4) has exhibited a prejudice against citizen participation, especially Citizen Zoning Petitions. For these reasons, the above violation of G.L. c. 40A, § 5 is intentional and is a violation of Massachusetts ethics laws, namely the standards of conduct established by G.L. c. 268A, § 23 (e.g. acting in a manner which would cause a reasonable person to conclude that he can be improperly influenced in the performance of his official duties).

- C. The City of Cambridge does not have a Master Plan in violation of G.L. c. 41, § 81D. Said Section provides that "a planning board. . . shall make a master plan ... and from time to time may extend or perfect such plan ..." Statutorily, the master plan must contain nine (9) elements: a goals and policy statement; a land use plan; a housing element; an economic development element; an inventory of natural and cultural resources; an inventory of recreational resources and open space areas; a services and facilities element; an inventory of circulation and transportation systems; and an implementation program. By its own admission (see Exhibit I, City Website on Master Plan) the City seeks instead to qualify its Zoning Ordinance and Map, a 1993/2007 "growth policy document" and other, disjointed planning studies it has undertaken, collectively, as its "master plan". It is not.
- D. The Zoning Ordinance provides, in Section 1.52, that "[f]ailure of the City Council to take action on a petition for a zoning amendment within ninety (90) days after the Planning Board's hearing on said petition shall render the petition inactive. . . [and] require another Planning Board public hearing. . ." Said provision is a source of confusion due to its inconsistency with and contradiction of G.L. c. 40A, § 5, ¶ 4, which calculates the aforesaid, ninety-(90)-day deadline not from the date of the Planning Board's hearing but from the date of "the city council [or committee thereof, presumably] hearing" thereon.
- E. The above confusion aside, the rendering of a petition "inactive" is not explained in the Ordinance, is not authorized by G.L. c. 40A, § 5, (or consistent with the legislative purpose of the same) and is implemented by the City in a manner that is prejudicial and an undue burden and expense to petitioners and their supporters. That is, upon the passage of ninety (90) days from the date a Planning Board public hearing is held on a proposed zoning amendment, the City does not re-notice and hold a new hearing, but declares the petition "dead," so to speak, requiring that it be re-filed (and a new fee paid) by the petitioner.
- F. The consequences of the City's action, as described in Item E, above, are: first, that the City Council, by refusing to act on a citizen's petition within 90 days of the Ordinance Committee or Planning Board's (depending on whether it relies upon state law or its own Zoning Ordinance) hearing thereon, can prevent consideration or adoption of an amendment indefinitely; and second, that the lapse between the expiration and re-filing of a petition provides a "window" for applicants to validly obtain building permits or special permits that will be

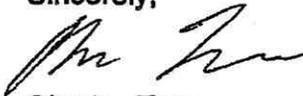
grandfathered, pursuant to G.L. c. 40A, § 6, should the re-filed petition ultimately pass prohibiting the authorized use or structure.

For your convenience and in support of my grievances, above, I include herewith a chronology of multiple, recent citizens' zoning petitions (see Exhibit A, Chronology of Citizen's Petitions) and the actions of the City Council relative to the same. Please be aware of the manner in which the petitions' supporters have been repeatedly prejudiced by the City Council's action or, conversely, its inaction, e.g. the permitting of project(s) that would have been prohibited by a zoning amendment that was not heard or acted upon.

Any effort that can be made by the Office of the Attorney General to investigate the actions of the Cambridge City Council and to act appropriately to ensure its future compliance with the Zoning Act and the City's Zoning Ordinance will be greatly appreciated. Instruction or an advisory opinion to the Council admonishing its past actions and advising it to conform its practices to the Zoning Act, the Ordinance, and its own rules is certainly appropriate. While I defer to your Office, I might also suggest consideration of an order that the Cambridge City Council amend Section 1.52 of the Cambridge Zoning Ordinance so as to be consistent with G.L. c. 40A, § 5. I might further suggest consideration of an order that the Cambridge Planning Board create a Master Plan that complies with G.L. c. 41, § 81D.

Thank you in advance for your consideration.

Sincerely,



Charles Teague

CC: The City Clerk's Office  
Cambridge City Hall  
795 Massachusetts Ave  
Cambridge, MA 02139

**Exhibit A. Chronology of Citizen's Petitions**

## Chronology of Citizen's Petitions

### Background: previous City Council irregularities

1. The Office of the Attorney General stated in a letter dated June 4, 2013: "*we find that the [Cambridge City] Council violated the Open Meeting Law ... and caution that future similar violations may be considered evidence of intent to violate the Law*". (see Exhibit C, Finding by Attorney General)
2. The city admitted that Councillor Maher and three other Councillors initiated the action, renegeing on the City Council's commitment to the public for an open and transparent search for a replacement City Manager, that led to said violation. (see Exhibit D, Open Meeting Law Response by City)
3. Video of the subsequent April 8, 2013 City Council meeting documents at least a violation of City Council rules and possibly the Open Meeting Law by at least Mayor Henrietta Davis and likely Councillors David Maher and Kenneth Reeves. The time limits (7 day time limit to affect the zoning amendment and 30 day time limit for an open meeting law complaint) for any "appeal" have expired but that does not validate or excuse the conduct of Maher, Reeves, or Davis. (see Exhibit E, Article on Violations)

### Phillips Citizen's Petition: discrepancy of 90 day limit

4. The Phillips Citizen's Petition was filed with the City Clerk on March 28, 2013. The Phillips Citizen's Petition was advertised on or about May 2, 2013.
5. The City Solicitor's legal opinion to the City Council by letter dated July 29, 2013 ("Opinion Letter") is that the Phillips Citizen's Petition expired on either August 20, 2013 or September 3, 2013. The two possible dates are due to a discrepancy between the Cambridge Zoning Ordinance and MGL 40A Section 5 as documented in Section 1.A in the Opinion Letter. Again, the discrepancy is that the Zoning Ordinance provides for a ninety-(90)-day deadline calculated from the date of the Planning Board's hearing on a petition (and provides for expiration of the petition upon passage of said deadline) whereas state law, i.e. G.L. c. 40A, § 5, provides for a ninety-(90)-day deadline calculated from the date of the city council (or council committee's) hearing thereon (and is silent as to expiration, only requiring that, thereafter, a new hearing be noticed and held). (see Exhibit G, Opinion Letter by City)

Exhibit D. Hawkinson Emails

11/11/13

Gmail - Picture of MIT & Maher, please, please, please!!!



Charles Teague <charles.d.teague@gmail.com>

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## Picture of MIT & Maher, please, please, please!!!

1 message

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**Charles Teague** <charles.d.teague@gmail.com>

To: John Hawkinson <jhawk@mit.edu>

Thu, Oct 10, 2013 at 8:29 PM

000028



Charles Teague &lt;charles.d.teague@gmail.com&gt;

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**Re: Picture of MIT & Maher, please, please, please!!!**

1 message

---

**John Hawkinson** <jhawk@mit.edu>

Thu, Oct 10, 2013 at 8:31 PM

To: Charles Teague &lt;charles.d.teague@gmail.com&gt;

I'll look for it when I next make it home, which might be a while.  
But...what do you want to use it for, exactly? -jhawk

Charles Teague <charles.d.teague@gmail.com> wrote on Thu, 10 Oct 2013  
at 20:29:46 -0400 in <CAN=Hs0r45bbv4MY+5NDwGS=J3yj4Lie6vZsiqSctXWLkvSaZQg@mail.gmail.com>:

> Date: Thu, 10 Oct 2013 20:29:46 -0400  
> From: Charles Teague <charles.d.teague@gmail.com>  
> To: John Hawkinson <jhawk@mit.edu>  
> Subject: Picture of MIT & Maher, please, please, please!!!  
> Message-ID: <CAN=Hs0r45bbv4MY+5NDwGS=J3yj4Lie6vZsiqSctXWLkvSaZQg@mail.gmail.com>  
>  
>





Exhibit E. Cambridge Day 10/1/13

# CAMBRIDGE DAY

HOME ARTS + CULTURE BUSINESS CHECKLIST COMMENTARY FEATURES NEWS OBITUARIES POLITICAL NOTES

ABOUT CAMBRIDGE ABOUT THIS SITE LINKS

## How councillors went against the rules, and their environmental roots, for MIT

By Charles Teague  
October 1, 2013



Henrietta Davis

Since the attorney general reprimanded our City Council for violating the open meeting law when voting in our new city manager, the return of “net zero emissions” to the city agenda demands a forensic examination of how our council broke its own rules and likely again violated the open meeting law to grant MIT’s wish to kill the first “net zero” attempt.

Video of the council’s April 8 voting to grant MIT the right to build vastly bigger and taller on its 26 acres in Kendall Square shows what we already know: that Mayor Henrietta Davis voted for the net zero

amendment and it passed; 10 minutes later, she changed her vote to defeat it. Davis then stated on camera “it has come to my attention that [net zero] may be a way to sink this entire project.” Additionally, Davis told Cambridge Day immediately afterward that MIT “just couldn’t support [net zero]. They don’t really understand what that means, that’s what Steve [Marsh, MIT’s representative] just said to me.”

Since the video shows that Davis never left the podium and there was no public discussion with MIT, how did this information get to her?

The video does show that councillor David Maher and Davis’ aide, Matt Nelson, exited to the “green room” (the council anteroom), returned and conferred with Davis multiple times. It does not show who said what to whom, but these exchanges are the likely communication path with the Massachusetts Institute of Technology.

The time for lobbying by MIT and for Maher’s running in and out and all around the council chamber was created by a long, nonsensical filibuster by councillor Ken Reeves, which ended abruptly when Maher passed him a note.

Just before a final announcement, Davis simply turned to the clerk to change her vote. Any other councillor must ask the mayor, as chairwoman of the meeting, to change their vote. Such a request would have forced a call for unanimous consent – which councillor Minka vanBeuzekom, the maker of the meeting’s net zero amendment, could have vetoed. Then a majority vote on suspension of the rules followed by a motion to reconsider would have been required. Then the entire council would be allowed to debate and discuss the reasons for Davis’ change. Instead, the public and the other councillors were deprived of the private discussions that led to Davis’ unilateral vote change. Instead, Davis used her unique position as mayor to violate the council rules she is known for vigorously enforcing.

LOVE ME DO FROM ME TO YOU  
SHE LOVES YOU I WANT TO HOLD YOUR HAND  
CAN'T BUY ME LOVE A HARD DAY'S NIGHT  
EIGHT DAYS A WEEK TICKET TO RIDE  
I FEEL FINE DAY TRIPPER WE CAN HELP YESTERDAY WORK IT OUT  
PAPERBACK WRITER YELLOW SUBMARINE  
ELEANOR RIGBY PENNY LANE ALL YOU NEED  
HELLO-GOODBY LADY MARIANNA IS LOVE  
HEY JUDE GET BACK THE BALLAD OF JOHN  
SOMETHING COME TOGETHER AND YOKO  
LET IT BE THE LONG AND WINDING ROAD  
**THE ONE CONCERT**  
FEATURING BEATLEBUREAU  
**All The Beatles #1 Hits Live!**  
Sat, Nov 2 at Lexington's Cary Hall  
[Click Here For Details](#)

With Reeves' obvious filibuster, it is hard to see how this was not an intentional violation of the state's open meeting law. Did non-council members discuss the motion privately with Maher or Nelson (or both) while the council was in session? Was the public and the rest of the council illegally deprived of their right to a full and open discussion? Davis' admissions show that MIT was granted special access to some council members while other members and the public were shut out.

#### **Freed from re-election cares**

One interpretation of what happened is that Davis, knowing she would not run for re-election, used her office to break council rules, violate the open meeting law and personally pull the trigger to kill net-zero for MIT. If so, Davis broke the trust of every citizen, especially her longtime environmental supporters who know it is critical for MIT and Cambridge to lead the fight against climate change. Even worse, our council let MIT go the opposite way, substituting watered-down language and no longer requiring the previously promised and highly touted LEED Gold building standards. The revised language was never posted on the city's Web page of all zoning amendments under consideration.

Fred Salvucci, a lecturer at MIT and former state secretary of transportation, said he was "disgusted" by MIT and Davis for their "disgraceful performance" and their "lack of commitment to principle."

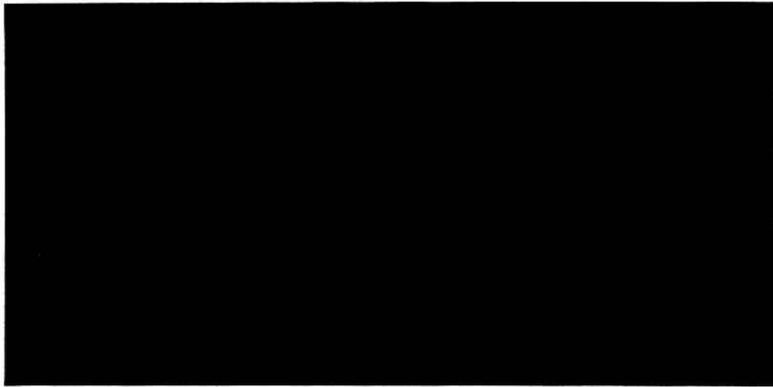
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This is not the first time Davis put MIT's real estate interests ahead of the public. In an Ordinance Committee hearing before her killing of net zero for MIT, she called for the vote to move MIT's upzoning forward before any allowing public comment. [The Cambridge Chronicle](#) reported that [the public hissed Davis](#).

But Maher, who made this all possible, is running for reelection. Reeves is also.

If you find the description of what the councillors did unbelievable, watch the video yourself. It's about 12 minutes long, but annotated so you can follow the action.





Here's the replay: MIT's coach, Steve Marsh, sends in the play from the sidelines to his quarterback, Maher, shown on the video replay huddling with Davis, Nelson and Decker, passing notes to Reeves and Kelley, and slanting off-camera toward Cheung, Simmons and Toomey. Reeves screened the play from the public, vanBeuzekom and Kelley; then Davis walked in to score for MIT, untouched and untackled.

Many say our City Council is dysfunctional and cannot work together. This is not true. The video seems to show them working together to deliberately violate the rules. Our council is a team. Unfortunately, they are playing for MIT and not for us.



## **2 Responses to *How councillors went against the rules, and their environmental roots, for MIT***



**Nancy Ryan**

October 2, 2013 at 8:19 pm

After reading Charles Teague's op ed and watching the video of the City Council making the decision about MIT's development, I am deeply disturbed. We seem to have a serious crisis of democracy here in Cambridge. The Mayor and the rest of the Council ignoring the rules of Council procedure? The Mayor changing her vote at least 15 minutes after making it without invoking a suspension of the rules as required? Other Council members possibly colluding with MIT and subverting the rules to support MIT's radical development proposal? We may be in more serious trouble than we've considered. I hope people are paying attention.



**elie yarden**

October 3, 2013 at 1:46 am

I have been paying attention for quite some time. That is why I am now a candidate for City Council. The actions of the City Council have revealed its subservience to predatory corporate agendas for quite some time, and the Mayor is far from the only member who acts as an agent of corporate interests. At some point the residents of Cambridge will decide whether they wish to govern or be managed.

You must be logged in to post a comment [Login](#)

Exhibit F. Cambridge Chronicle 11/1/13

ELECTION 2013: [Click here for complete coverage of Cambridge's election](#)

## Resident files open meeting law, zoning complaints against Council

By Erin Baldassari/[ebaldassari@wickedlocal.com](mailto:ebaldassari@wickedlocal.com)

**Wicked Local Cambridge**

Posted Nov 01, 2013 @ 10:38 AM

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Vandini family suffers loss of second son

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Why One Man Had His Harley-Davidson Tattoo Removed Victory Motorcycles

The Sign That Could Cost A Restaurant Owner \$31K OPEN Forum

Sponsored content What's this?

Cambridge — A Cambridge resident has filed two complaints against the City Council with the state Attorney General, one charging violations of the state's zoning law, the other alleging breaches in the open meeting law.

Central to the complaint is what long-time activist Charles Teague calls an "ongoing pattern" of violations, which he directed primarily at Councilor David Maher, chairman of the Ordinance Committee, which oversees zoning petitions. Teague said Maher used his position to favor petitions submitted by developers over some resident-submitted petitions. Maher denies the allegations.

Teague filed his first complaint of zoning law violations Oct. 9. The Attorney General's Office confirmed they received an open meeting law complaint Oct. 17.

A representative from the Attorney General's Office said residents must first file open meeting law violations with the offending body, in this case the City Council. Cambridge City Solicitor Nancy Glowa confirmed the council received the complaint and would respond within 14 business days, per state law, with remedial actions, if necessary. The petitioner then has 16 business days to appeal the city's response to the Attorney General.

### Alleged Zoning Violations

Teague said Maher violated state law when he failed to schedule a hearing for the Walker Petition, filed by resident John Walker on July 29, according to City Council records. The petition was referred to the Planning Board and Ordinance Committee, but Maher admitted he did not schedule a hearing.

Maher has since refilled the petition for the residents as a City Council petition, meaning petitioners don't have to pay a new filing fee.

The petition pertains to a plot of land in North Cambridge owned by **Fawcett Oil**, currently wrapped up in a lawsuit filed by abutters. Maher said councilors had not been supportive of a previous iteration of the petition, called the **Phillips Petition**, which expired before councilors voted.

If councilors vote against the petition, the petitioners cannot refile the same petition for two years. Allowing petitions to expire — as opposed to voting the petition up or down — is one way to keep the petition alive, Teague conceded.

But, he said failing to act on the Phillips Petition and failing to schedule a hearing on the **Walker Petition** demonstrates a pattern. Maher said those allegations are simply not true.

The same residents filed an earlier petition in December 2011, the **Bishop Petition**, which was adopted by the council. Aimed at reducing the height and density of buildings allowed in the district, the Bishop Petition focused on the same Fawcett Oil site.

When the owner of the Fawcett Oil site came forward with a development proposal that met the criteria of the Bishop Petition, residents still protested the development and subsequently filed the Phillips and Walker petitions.

"I worked with a number of community folks in North Cambridge that brought forward the Bishop Petition," Maher said. "Quite honestly, I was waiting to see if the lawsuit would be accepted by the court or not before going forward with the petition. ... If the case is accepted, then it will take as long as two years to be heard, during which time nothing will happen on that Fawcett Oil site."

In addition to the alleged "pattern of inconsistencies," Teague's complaint charges the city with violating state law by failing to have a master plan. According to the city's Community Development Department [website](#), Cambridge's master plan is "composed of a set of documents: the Zoning Map and the Zoning Ordinance, the city's growth policy document, Towards a Sustainable Future, and the major area-wide planning studies that are currently applicable across the city."

The growth policy document was first drafted in 1993 and updated in 2007, according to the site. Teague said those documents aren't good enough to represent a comprehensive master plan.

"Development affects every part of our lives from how much traffic we have to how much congestion and smog and noise," Teague said. "With the way things are heading, it directly affects many people's ability to stay in Cambridge."

Assistant City Manager for Community Development Brian Murphy said the master plan is intended to be "a statement designed to provide a basis for decision making" and the "long-term physical development of a municipality." He pointed to the city's growth plan, the zoning ordinance and map, and the recent area-wide studies.

### Alleged Open Meeting Law violation

Teague's second complaint is aimed squarely at Maher, who Teague says violated the open meeting law by engaging in a conversation with developers from MIT **while their zoning petition was being voted**.

000037

The zoning – which passed on a 7-1-1 vote in April – allowed the redevelopment of more than 2 million square feet spread out over a 26-acre swath of Kendall Square. Among the provisions: A \$19.5 million contribution.

Councilor Minka vanBeuzekom introduced an amendment on the floor calling for all of the new buildings to conform to net-zero emissions standards. The amendment passed on a 5-4 vote.

Maier said representatives from MIT made a signaling motion to him as soon as the amendment was voted through and then spoke with him outside the council chambers. Maier said he then communicated the findings with his colleagues while Councilor Ken Reeves discussed a University Relations subcommittee tour of MIT. Maier said he never asked Reeves to filibuster, but the discussion abruptly ended when Mayor Henrietta Davis announced she would reverse her vote.

"It's come to my attention that this may be a way to sink this whole entire project," Davis said at the April 8 meeting. "It was not my intention to cast a vote that did that. It breaks my heart to change my vote, but I think it's important to see this project through, and I know MIT has the best of intentions on greenhouse gas emissions."

Two open meeting law attorneys at the law firm Prince Lobel Tye LLP, retained by the New England Newspaper and Press Association – a regional trade group of which the Chronicle is a member, said Maier's actions could constitute a violation of the open meeting law, particularly the provision prohibiting serial deliberations. Ultimately, the Attorney General has the final say.

Prince Lobel attorney Robert Bertsche called the alleged behavior "particularly inappropriate" because the council reverted to not just one, but two of the more "sophisticated" ways public bodies sometimes violate the law. Bertsche pointed to "whispered deliberations" as the first violation of open meeting law.

According to Prince Lobel attorney Peter Caruso II, the Attorney General condemned the Wareham Conservation Commission in 2005 for whispering during a public meeting.

"Someone in the town said, 'Hey, we can't hear you. You need to speak up,'" Caruso said, adding the public official responded with, "It's not necessary for the public to hear what we're saying."

Caruso said the open meeting law is designed to afford residents the opportunity to know how their councilors voted, and why they voted the way they did.

"The Attorney General said all public officials must conduct their deliberations under the glare of public scrutiny," Caruso said. "That's the foundation of the open meeting law. In our democratic government, it's not only the decisions the public should have access to but more importantly, the way the decisions are reached."

Without a visible deliberative process, trust in the government erodes, Caruso said.

Bertsche said the second part of the violation was more concerning because it pertains to "serial deliberations."

"One could argue that his private conversations did not rise to the level of being the deliberations of a quorum of the council, and therefore were not subject to the open meeting law," Bertsche said. "That would be wrong, however, not only because the council was then in open session, but also because an agency may not engage in 'serial communications' in order to evade the law's requirement of an open (and audible) meeting."

Even outside an open session, Bertsche said open meeting laws still prohibit one member of a public body from speaking with other members one-on-one until that member has communicated with a quorum of members on matters within the public body's jurisdiction.

It's the second **open meeting law complaint** of the year. In June, the Attorney General ruled the City Council violated opening meeting law by cosponsoring a policy order to hire Richard Rossi as the city manager last December.

Maier said there was nothing malicious in his actions.

"I handled it in what I thought was the right way," Maier said. "There was no conspiracy."

Maier said the petition had gone through countless revisions with hours of public comment in the three years it had been before the council. The original petition prompted the city to hire planning consultants Goody Clancy to study Kendall and Central squares along with a committee of invested parties, including residents. Those committees returned recommendations last year and MIT re-filed its petition in December based on the recommendations for Kendall Square.

"We had worked over a very long period of time and many, many months to come up with a zoning package and to have MIT agree to a letter of commitment," Maier said. "That amendment placed everything we had worked for over the past year in jeopardy. You just can't unilaterally change a letter of commitment."

Maier said if the amendment was allowed to pass, MIT told him they would render the letter of commitment null and void, sinking the entire project.

"I told the mayor we had a problem," Maier said. "It was pretty simple, and it was explained on the floor."

Teague said the mayor failed to follow council rules, which the city clerk confirmed, when she changed her vote. Teague has asked the Attorney General to rule the vote – and the zoning – invalid.

Maier called the timing of Teague's complaint "politically motivated" because it comes just weeks before an election.

"This is a politically charged and politically based mudslinging contest here," Maier said. "The timing of his complaint is very suspicious. Three weeks before an election when the proposed charges happened six months ago? That by itself should raise the ear of most people."

Teague said he included the open meeting law complaint because it helped bolster his argument for a pattern of favoritism.

"I included it as a pattern of bad acts," Teague said. "To prove intent you have to go deeper and you have to say, are these people repeated rule breakers or not?"

Contact Cambridge Chronicle assistant editor Erin Baldassari at 617-629-3390 or [ebaldassari@wickedlocal.com](mailto:ebaldassari@wickedlocal.com), and follow her on Twitter: @e\_baldi.

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Exhibit G. Complaint Form



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

**OPEN MEETING LAW COMPLAINT FORM**

Instructions for completing the Open Meeting Law Complaint Form

The Office of the Attorney General's Division of Open Government is responsible for interpreting and enforcing the Open Meeting Law. Pursuant to G.L. c. 30A, §23, the Open Meeting Law requires that complaints must first be filed with the public body that is alleged to have committed the violation, prior to filing a complaint with the Attorney General.

The complaint must be filed with the public body within 30 days of the alleged violation, or if the alleged Open Meeting Law violation could not reasonably have been known at the time it occurred, then within 30 days of the date it should reasonably have been discovered. The complaint must set forth the circumstances which constitute the alleged violation, giving the public body an opportunity to remedy the alleged violation.

Please complete the entire form, providing as much information as possible, to assist the public body in responding to your complaint. The Division of Open Government will not, and public bodies are not required to, investigate anonymous complaints. You may attach additional materials to your complaint if necessary. The public body may request additional information if necessary.

For complaints alleging a violation of the Open Meeting Law by a local public body, you must file with the public body and file a copy with the clerk of the city or town where the alleged violation occurred. For complaints alleging a violation by a county, regional or state public body, you must file with the chair of the public body.

If you are not satisfied with the action taken by the public body in response to your complaint, you may file a copy of your complaint with the Attorney General's Office 30 days after filing your complaint with the public body. The Attorney General's Office may decline to investigate a complaint that is filed with the Attorney General's Office more than 90 days after the alleged OML violation, unless an extension was granted to the public body or the complainant demonstrates good cause for the delay.

The complaint must include this form and any documents relevant to the alleged violation. A complaint may be filed either by mail or by hand:

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



## 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: Charles Last Name: Teague

Address: 23 Edmunds St

City: Cambridge State: MA Zip Code: 02140

Phone Number: +1 (617) 212-3132 Ext. \_\_\_\_\_

Email: charles.d.teague@gmail.com

Organization or Media Affiliation (if any): \_\_\_\_\_

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

(For statistical purposes only)

Individual  Organization  Media

### Public Body that is the subject of this complaint:

City/Town  County  Regional/District  State

Name of Public Body (including city/town, county or region, if applicable): City of Cambridge

Specific person(s), if any, you allege committed the violation: City Councillors David Maher & Kenneth Reeves, Mayor Henrietta Davis

Date of alleged violation: Apr 8, 2013

## 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.

I received an email on Oct 14 2013 with new evidence confirming my suspicion of an intentional OML violation by three members of the Cambridge City Council: Mayor Henrietta Davis, Councillors David Maher and Kenneth Reeves. The new evidence is a photograph of Maher meeting with MIT representatives, including Steve Marsh, while the council was in session. See the photo at: <http://tinyurl.com/Maher-MIT-Picture> and text at: [tinyurl.com/Maher-MIT-Tweet](http://tinyurl.com/Maher-MIT-Tweet).

I was not able to "reasonably" discover this new evidence within 30 days of the violation.

The violation is that Maher left the April 8 2013 City Council meeting during a diversion executed by Reeves, met with MIT representatives, returned to the meeting, and then deliberated privately with Davis who subsequently, without any public deliberation, reversed her vote on an amendment to MIT's zoning petition.

This is documented by a video record (see [tinyurl.com/Davis-Changes-Vote](http://tinyurl.com/Davis-Changes-Vote)) from my camera supplemented by the city's camera system and by my article (see [tinyurl.com/Article-MIT-Vote](http://tinyurl.com/Article-MIT-Vote)).

I believe that Maher, Reeves and Davis intentionally violated the OML as they were (1) in the process of a (failed) defense of a Dec. 4 2012 OML complaint and should have been well aware of OML requirements, (2) clearly shown on the video record as deliberating with each other but not to the rest of the councillors or the public, and (3) implementing a diversion to distract the rest of the councillors and the public.

Before I received the new evidence, I informed Margaret Hurley, Director of the Municipal Law Unit, by letter dated Oct 9 2013 of other violations of state law by Maher and staff of the City of Cambridge.

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.

- 1.) admit that the Open Meeting Law was intentionally violated on April 8, 2013 which led to the failure of the "Net Zero Emissions Amendment" (NZE) to the MIT zoning petition.
- 2.) order that the Cambridge Zoning Ordinance be corrected by including the NZEA
- 3.) not appoint Councillors Maher and Reeves as chairs of any committees for the next two-year term

## Review, sign, and submit your complaint

### Read this important notice and sign your complaint.

Under most circumstances your complaint will be considered a public record and be available to any member of the public upon request.

I understand that when I submit this complaint the Attorney General's Office cannot give me legal advice and cannot act as my personal lawyer.

I certify that the information contained on this form is true to the best of my knowledge.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

For Use By Public Body  
Date Received by Public Body:

For Use By AGO  
Date Received by AGO:

Exhibit H. City Council Rules

(ADOPTED ON JANUARY 2, 2012)

**RULES OF THE CITY COUNCIL**

**2012-2013**

These rules, after adoption by the City Council, shall be published and made available to the public.

Rule 1. All meetings of the City Council five (5) Councillors shall constitute a quorum for the transaction of business.

**DUTIES AND POWERS OF THE CHAIR.**

Rule 2. On the first Monday of January, following the regular municipal election, the City Council shall by a majority vote of all the members elected, elect a mayor from its own members who shall preside at all meetings of the City Council and perform such other duties as are prescribed in section one hundred (100) of Chapter 43 of the General Laws, and any acts in amendment thereof or supplementary thereto. The City Council shall, in like manner, elect a Vice-Chairman who shall also be called Vice-Mayor.

Rule 3. The Mayor shall take the chair at the hour to which the City Council has adjourned and call the members to order. In the absence of the Mayor, the Vice-Chairman of the City Council shall preside and, in the absence of both, a temporary chair shall be chosen, who shall serve during the absence of both Mayor and Vice-chair.

Rule 4. The Mayor shall preserve decorum and order, and may speak to points of order, in preference to other members. The Mayor shall decide all questions of order, subject to an appeal to the City Council, regularly seconded. If the ruling of the Chair is questioned, no other business shall be in order until the question on the appeal shall have been decided; the question shall be put as follows: "Shall the decision of the chair stand as the judgment of the City Council?" The vote shall be by roll call, and it shall be decided in the affirmative unless a majority of the votes are to the contrary.

Rule 5. The Mayor shall declare all votes. If any member doubts the vote, the chair without further debate upon the question, shall require the members voting in the affirmative and negative, respectively, to be counted; the Mayor shall declare the results, but no such declaration shall be made unless a quorum of the City Council has voted.

**Rule 6. All final votes of the City Council on questions involving the expenditure of fifty dollars or more, or upon the request of any member, any vote of the City Council shall be by yeas and nays and shall be entered on the records.**

**Rule 7. All petitions, memorials, communications or any matter before the City Council may be referred as follows:**

- 1. To standing committee of the City Council.**
- 2. To a consent agenda.**
- 3. To a special committee of the City Council.**
- 4. To the City Manager.**
- 5. To any department or department head or any person, group or organization to whom referral is permitted, authorized or allowed under the provisions of the Plan E Charter and under applicable provisions of the Massachusetts General Laws.**

**Any member offering a motion, order or resolution which is referred to a committee shall be given a hearing on the same by the committee before a report is made thereon, provided he so requests at the time of the communication, or before final action by the committee.**

**Rule 8. The chair shall put all questions in the order in which they are moved, unless the subsequent motion be previous in its nature, except that in naming sums and fixing times, the largest sum and the longest time shall be first put. After a motion has been put by the chairman, it shall not be withdrawn except by unanimous consent.**

**Rule 9. When a question is under debate the chair shall receive no motion, but**

- To Adjourn.**
- To Lay on the Table.**
- To Postpone to a certain day.**
- For the Previous Question.**
- To Refer.**
- To Amend.**
- To Postpone indefinitely.**

**These motions shall have precedence in the above order. A motion to adjourn shall be in order at any time except upon immediate repetition. A motion to adjourn, to lay on the table, to take from the table, or for the previous question shall be decided without debate.**

**Rule 10. The previous question shall be put in the following form: " Shall the main question be put?" and all further amendments or debates of the main question shall be suspended until the previous question is decided.**

**Rule 11. When two or more members ask to be recognized at once, the chair shall name the member who is entitled to the floor.**

## RIGHTS AND DUTIES OF MEMBERS

**Rule 12.** Every member, when about to speak shall respectfully address the Chair, and wait to be recognized. The member shall confine his/her remarks to the question under debate and avoid personalities.

**Rule 13.** No member speaking shall be interrupted by another except to make a point of order, request an explanation, or request a point of personal privilege.

**Rule 14.** No member shall vote on any question, or serve on any committee, where his private interest is immediately concerned distinct from that of the public. The City Council shall be ordinance establish and implement a code of ethics for its members and for all city employees.

**Rule 15.** When a question is put, every member present shall vote unless the City Council for special reasons excuses him. A vote of "Present" shall be accepted by the Chair and so recorded. Application to be excused from voting must be made before the vote of the City Council has been decided. Such application shall be accompanied by a brief statement of the reasons and shall be decided without debate.

**Rule 16.** A question having been taken, it shall not be in order for any member to move a reconsideration thereof at the same meeting. A motion to reconsider may be made at the next meeting, provided written notice of such motion has been filed with the City Clerk within thirty-six hours of the day of the vote, Saturdays and Sundays to be excluded in the computation of the thirty-six hours. No more than one motion for reconsideration of a ny vot es hall b ee ntertained. A ny m ember m ay m ove reconsideration; if reconsideration is not moved prior to the adjournment of the next regular or special meeting called for that particular purpose, the action taken by the City Council stands.

## SPECIAL EVENTS PRESENTATIONS AND REGULAR MEETINGS

**Rule 17. Special Events Presentations.**

Commencing at 5:00 p.m. before any regular meetings there may be a *SPECIAL EVENTS PRESENTATION*. At this time special events will be presented and will be broadcast on cable television. Special Events Presentations will be scheduled through the Mayor's Office. The Special Events Presentations will conclude at 5:30 p.m. No quorum of the City Council is required.

**Rule 17. Section 17. Meetings.**

All regular meetings of the City Council shall be held in the Sullivan Chamber, City Hall, or, if agreed to by a majority of the City Council, at any other suitable public building within the City of Cambridge, at 5:30 p.m. on Monday of each week,

from the first Monday in January to and including the last Monday in June, and from the second Monday in September to and including the last Monday in December.

When a meeting day falls on a holiday, the succeeding Monday shall be the meeting. The City Council may at any meeting, by a majority vote, decide to discontinue any future meeting previously scheduled. All City Council meetings shall end no later than 12:00 midnight.

#### SPECIAL MEETINGS

Rule 18. The Mayor, or the Vice-Chairman of the City Council, or any four members thereof, may at any time call a special meeting by causing written notices, stating the time of holding such meeting and signed by the person calling the same, to be delivered in hand to each member of the City Council, or left at his usual dwelling place, at least forty-eight hours notice to all members and the public prior to each meeting. (Chapters 303 of the Acts of 1975).

#### CALENDAR

Rule 19. Any ordinance, order or resolution may be passed through all its stages of legislation at one session, provided that no member of the City Council objects thereto; but if any member of the City Council objects, the measure shall be postponed for that meeting. (Chapter 43, Section 22 of the General Laws.)

Any member may move the item, which has been subject to the Charter Right. If no action is taken at the next regular meeting by any member, then the item will be removed from the City Council Calendar.

Upon the objection of one Councillor, no action may be taken on any item not on the Calendar of the day and shall not be acted upon until the next regular meeting.

Rule 20. All matter of whatever description which require action by the City Council at its meeting shall be presented to the City Clerk by 5:00 p. m. on the Thursday preceding the regular meeting, except for orders and resolutions which shall be presented to the City Clerk by 3:00 p. m. During a week in which a legal holiday falls on a Friday, said matters shall be presented to the City Clerk by 5:00 p. m. on the Wednesday preceding the regular meeting except orders and resolutions which shall be presented to the City Clerk by 3:00 p.m. Communications submitted later will be held over for the next regular meeting, except that where the City Manager believes that emergency or exigent circumstances require him to present to the City Council a matter which was not presented to the City Clerk by 5:00 p.m. on Thursday, the City Manager may present such matters to the City Council at its meeting in writing as a part of a Supplemental Agenda of the City Manager.

Rule 21. The City Clerk shall prepare the minutes of the previous regular and/or special meetings and a calendar of all matters to come before the City Council at each

meeting in accordance with the established order of business and shall deliver to the residence of each Councillor a copy of the same not later than twenty-four hours prior to said meeting. On all matters on which there has been a roll-call vote, the minutes shall reflect the votes of the individual members.

**Rule 22.** The City Clerk is authorized by these rules to order and publish notice of hearings on petitions presented to him regarding public hearings before the Council.

### **ORDER OF BUSINESS**

**Rule 23 A.** At every regular meeting of this City Council, except for roundtable/working meetings, the order of business shall be as follows:

1. Reading of the record, if requested by the City Council.
2. Motions for Reconsideration
3. Manager's Consent Agenda
4. Communications from the City Manager (Manager's Non-Consent Agenda)
5. Unfinished business from preceding meetings
  - a. Charter Rights
  - b. On the Table
  - c. Unfinished Business
6. Consent Applications for permits or petitions which require City Council approval or referral.
7. Consent communications (petitions, memorials and other communications from citizens, employees and others, which do not require action by the City Council.
8. Consent orders and resolutions.
  - a. Resolutions
  - b. Orders and resolutions relating to policy analysis or development
9. Committee Reports
10. Communications and Reports from City Officers
11. Non-Consent Communications (applications, petitions, memorials and other communications removed from the Applications and Petitions or the Consent Communication Agenda by request of a member of the City Council.
12. Resolutions and orders which have been removed from the Consent Resolution and the Consent Order and Resolution Relating to Policy agendas by request of a member of the City Council. Requests for information of limited public interest and for repair, replacement, attention or implementation which do not require a change in current practices shall not be placed on the agenda but shall be referred directly to the City Manager by the member making the request.

Public hearings shall be scheduled at the request of the City Council but not on the night of a regular business meeting.

**RULE 23 B. Six to eight meetings per year shall be roundtable/working meetings. The date for a particular roundtable shall be set by majority vote at a prior regular business meeting or as a special meeting. At a roundtable meeting, no votes shall be taken except upon a motion to adjourn. The meeting shall not be broadcast on cable television. The Mayor shall determine the agenda for the roundtable meeting in consultation with the City Manager and other members of the City Council.**

**RULE 23 C. Public Comment.**

**1. Regular business meetings**

**a. Under the provisions of Chapter 43, Section 98 of the General Laws, Tercentenary Edition, citizens and employees of the city shall have reasonable opportunity to be heard at any meeting of the City Council in regard to any matter considered thereat. Opportunities for citizens and employees to be heard at all regular meetings, except for working/roundtable meetings, shall be provided directly after the reading of the record, if requested by the City Council (submission of the record of the previous meeting). Members of the public may comment upon items in the following categories of business: Motions for reconsideration, City Manager's consent agenda, Unfinished business from preceding meetings, Applications and petitions requiring approval or referral by the City Council, Consent resolutions. Consent resolutions and orders relating to policy analysis or development, Committee reports and Communications and reports from other city officers. Each speaker shall limit his or her comments to no more than three minutes.**

**b. Procedure: An individual may sign up to speak before the City Council via telephone to the City Council office on Mondays from 9:00 a.m. to 3:00 p.m., or in person from 5:00 p.m. to 6:00 p.m. via a sign up sheet available in the Sullivan Chamber. The individual must indicate on the sign up sheet which item(s) he or she is planning to address.**

**2. Regular roundtable/working meetings.**

**Public comment shall not take place at working/roundtable meetings of the City Council, where no matter being discussed may be finally considered, in that no votes may be taken. Written comments will**

be accepted and made part of the record of the meeting. The opportunity for the public to make oral comments on items discussed at working/roundtable meetings shall be at the regular meeting at which the item may be considered for action by the City council.

**Rule 23D.** Each consent agenda is voted on in its entirety, with no discussion. By request of a single City Councillor, item(s) may be removed for separate vote. Upon such request, the item will be moved to the appropriate section of the agenda. Placement of items on the City Manager's Consent Agenda shall be determined by the City Manager. Placement of items on the Communications Consent Agenda shall be at the discretion of the City Clerk.

**Rule 23E.** The City Clerk shall include the written statement of the mission and goals or priorities of the City Council and the City Manager with the materials prepared for the agenda of the City Council for its weekly meeting.

**Rule 24.** The seats of the members of the City Council shall be determined by the City Clerk in consultation with the members; no members shall change his seat but by permission of the Chair.

#### **COMMUNICATIONS AND COMMITTEES**

**Rule 25.** All communications, petitions, or resolutions addressed to the City Council, which require action by the City Council at its meetings shall be filed with the City Clerk. The City Clerk shall place all new communications on the agenda for the next regular City Council meeting. Upon receipt of a communication that is a substantially unchanged copy of a previously submitted communication, the City Clerk shall not place the communication on the agenda and shall transmit said communication to the Mayor. Any communication, petition, or resolution that does not meet the agenda deadline specified in Rule Twenty shall be held over for the subsequent City Council agenda unless it is of an emergency nature.

**Rule 26.** The Mayor shall appoint the standing committees of the City Council. The Mayor shall appoint a chair for each committee and may at his or her discretion appoint co-chairs for the committees that consist of at least five members. The Mayor may appoint additional members to committees designated as three-member committees in the Rules but shall not appoint fewer than five members to committees designated in the Rules as five member committees. The clerk or his/her designee shall staff each committee and where deemed appropriate, the chair may request additional staff help through the City Manager.

Each committee shall meet regularly to review matters referred to it by the City Council or to take up other matters within its domain. To the extent possible, matters of policy shall be referred to the appropriate committee, so that careful study and consideration can be given to the subject matter. Where appropriate, the committee shall work with other committees of the City Council to assure the coordination of related aspects within the purview of those committees. The committees shall make policy and other recommendations to the City Council as a whole for discussion, consideration and adoption. The committee may monitor implementation of City Council policies related to the subject matter within its purview as authorized by the City Council. If so authorized by the City Council, the committee may represent policy interests related to its subject matter at committees of the General Court of Massachusetts.

It is the goal of the City Council to involve citizens actively in the work of city government through these committees. All committees shall work with community and neighborhood groups and committees on issues that relate to these groups' mandates and interests. The committee staff shall keep lists of interested parties and shall keep citizens informed of the meetings and deliberations of the committees.

The standing committees of the City Council shall be as follows:

**ORDINANCE COMMITTEE** – A committee of the whole consisting of the mayor and eight City Councillors.

Purposes

- To consider the merit of any ordinance presented to the City Council and to consider the form and legality thereof;
- To consider all legal matters for which no other provision is made; and
- To represent general interests of the city before committees of the General Court when so authorized by a vote of the City Council.

**FINANCE COMMITTEE** – A committee of the whole consisting of the mayor and eight City Councillors.

Purposes

- To consider all matters relating to the financial interests of the city, including the city budget, sources of city revenue, appropriations and loans, and city bonding capacity;
- To work with the City Manager and other officers of the city for the financial benefit the city; and
- To work with citizen groups and committees that might be formed from time to time to consider the financial health of the city.

**CLAIMS COMMITTEE - A committee of three City Councillors.**

**Purposes**

- To consider claims that have been filed against the city and make recommendations on these claims to the City Council which shall give final approval of the disposition of these claims; and to consider and make recommendations on issues related to litigation of claims that may be referred to the City Council by the City Manager.

**GOVERNMENT OPERATIONS AND RULES COMMITTEE - A committee of five City Councillors.**

**Purposes**

- To consider matters relating to the effective delivery of city services, the functions and operation of city government and city departments;
- To consider matters relating to the hiring and evaluation of employees who report to the City Council;
- To consider the rules of the City Council and its committees and to recommend amendments and changes thereto.

**COMMUNITY HEALTH COMMITTEE - A committee of three City Councillors.**

**Purposes**

- To consider matters relating to the health of the citizens of Cambridge;
- To monitor and improve city policies relating to health programs.

**ENVIRONMENT COMMITTEE - A committee of three City Councillors**

**Purposes**

- To consider matters relating to the physical environment of the city including without limitation issues relating to air and water quality, solid and hazardous waste, visual quality and the environmental impact of development and the sustainability of our physical environment.

**NEIGHBORHOOD AND LONG TERM PLANNING - A committee of three City Councillors.**

**Purposes**

- To enhance the quality of life in Cambridge as it relates to the livability of neighborhoods;
- To consider all matters relating to land use planning, sustainability and other long range planning;
- To work with city and other agencies and other City Council committees on issues related to industrial and commercial development, especially as they relate to linkage and neighborhood protection.

**HOUSING COMMITTEE - A committee of five City Councillors.**

**Purposes**

- To develop policies for the maintenance and development of housing, with an emphasis on the needs of low income and working people;
- To coordinate with city and other agencies as necessary toward this goal;
- To monitor implementation.

**ECONOMIC DEVELOPMENT, TRAINING, AND EMPLOYMENT COMMITTEE –  
A committee of three City Councillors.**

**Purposes**

- To develop policies to enhance the employability of Cambridge residents, especially of young people, and to enhance employment opportunities for Cambridge residents, especially youth;
- To work with the city and other agencies, other City Council committees, the School Department, the Cambridge Chamber of Commerce, the Private Industry Council, and other private sector groups, to develop policies and programs that will enhance economic development in the city and expand employment opportunities for Cambridge residents;
- To monitor and improve existing employment programs.

**PUBLIC SAFETY COMMITTEE - A committee of three City Councillors**

**Purposes**

- To consider all matter affecting the public safety of Cambridge citizens; and
- To review matters relating to the performance, organization, and effectiveness of the police and fire departments, the Inspectional Services Department as it relates to public safety issues, and the Police Review Board.

**HUMAN SERVICES COMMITTEE - A committee of three City Councillors.**

**Purposes**

- To develop and support policies assuring a broad human service delivery system to be provided by the city, other levels of government, and non-profit and private agencies for children, youth, families, single adults and senior citizens of all backgrounds;
- To study policies, overall planning, and the delivery of human services to Cambridge people;
- To make recommendations to the City Council to improve the scope and quality of these services and
- To locate new sources of funding;

**CIVIC UNITY - A committee of three City Councillors.**

**Purposes**

- To promote civic unity
- To consider matters relating to the civil rights, human rights, race and class relations and other aspects of civic unity in the City of Cambridge;
- To work with city and other agencies that deal with these issues;
- To respond to incidents or concerns that are brought to the attention of the City Council relating to civil and human rights, race and class relations and other aspects of civic unity and to bring in the appropriate agencies, departments or legal services to assist in responding to such incidents; and
- To develop needed policies and legislation in this area.

**PUBLIC FACILITIES, ART AND CELEBRATIONS COMMITTEE - A committee of three City Councillors**

**Purposes**

- To consider matters of open space, public facilities and public buildings, including historical sites, and matters that are related to public works;
- To consider matters related to the appearance of squares and neighborhoods of the city and their upkeep, and public planting;
- To consider matters related to public art, public development arts projects and public celebrations.

**TRANSPORTATION, TRAFFIC AND PARKING - A committee of three City Councillors.**

**Purposes**

- To consider and recommend to the City Council policies on matters affecting transportation, traffic and parking;
- To monitor transportation proposals and services of all kinds which affect Cambridge;
- To develop policies which promote a multi-modal and environmentally friendly traffic and transportation program which will balance the needs of residents and employees at a minimal cost to the environment.

**CABLE TV TELECOMMUNICATIONS AND PUBLIC UTILITIES COMMITTEE - A committee of three City Councillors.**

**Purposes**

- To consider issues relating to cable television, telecommunications, and public utilities and consumer protection issues related therein;
- To recommend policies to facilitate effective communication by the City Cable office to the City Council City agencies and the general public.

**VETERANS' COMMITTEE - A committee of three City Councillors.**

**Purpose**

- To consider all matters affecting veteran services and benefits of the City.

**UNIVERSITY RELATIONS COMMITTEE – A committee of five City Councillors.**

**Purposes**

- To consider all issues regarding the relationship between the city and the educational institutions located in Cambridge.
- To develop policies that will facilitate the regular and timely exchange of information between these institutions and the city administration and City Council, and monitor implementation.
- To work with the city and the institutions on the development and exchange of written long-term planning documents on land use, growth and development.
- To review and evaluate agreements between the city and institutions for payments made by institutions in lieu of property taxes, develop policies to ensure that the agreements are fair and equitable, and monitor implementation.
- To further the development of mutually beneficial partnerships between the educational institutions and the city relative to education, philanthropy, the arts and other matters of mutual concern.

**Rule 27. Every committee of the City Council to which any subject may be referred shall report on the subject within a reasonable time from the time of referral. In the case that the chairman of any committee shall fail for thirty (30) days from the time any subject has been referred to it to call a meeting of the committee, a majority of the committee may call a meeting of said committee. Notice of all committee meetings must be given at least forty-eight (48) hours before the time of the meeting.**

**Rule 28. Minutes shall be kept of all committee proceedings. All minutes, reports, and papers shall be submitted to the City Council by the clerk of Committees at the request of the chairman or a majority of the committee hereof. Recommendations of each committee shall be made to the City Council for consideration and adoption.**

**Rule 29. The Councillor first named thereto shall be the chair of any committee of which he/she is a member, and in case of his/her resignation or inability to serve, another member of the committee shall be named by the Mayor.**

**MEMBERS LOBBY**

**Rule 30. No person will be admitted within the rail in the Sullivan Chamber or in Members' Lobby connected with said chamber at any meeting of the City Council except upon permission of the Mayor.**

## HEARINGS

**Rule 31A.** Public hearings may be requested for matters of public interest or of legislative requirement. Public hearings shall not be held during regular business meetings of the City Council except in an emergency. The City Council shall refer such requests to a committee of the City Council. If the City Council deems it advisable, it may direct that the hearing be televised.

**Rule 31B.** The time devoted to public hearings shall not be more than two (2) hours at any one sitting. Any hearing not completed within the specified time may be continued to another meeting.

Any individual appearing before the City Council at a public hearing and claiming to represent another as agent or otherwise in the matter of being heard shall file with the City Council a written authorization signed by the individual, or organization or corporation whose interests such individual represents.

There shall be a five (5) minute time limit for each speaker to express her or his views on the matter being heard by the City Council. Speakers will be required to address themselves solely to the issue, which is before the City Council for discussion and shall not engage in personal or rude remarks.

In all hearings before the City Council, the case of the petitioner shall be submitted first, except in matters affecting acceptance of highways or taking by right of eminent domain.

## ORDINANCES AND ORDERS

**Rule 32.** All by-laws passed by the City Council shall be termed ordinances, and the enacting style shall be "Be it ordained by the City Council of the City of Cambridge." In all votes by which the City Council expresses anything by order or command the form of expression shall be "Ordered," and in all votes by which the City Council expresses opinions, principles, facts or purposes, the form shall be "Resolved."

**Rule 33.** The City Clerk shall determine the newspaper of the city in which shall be published any loan order or any ordinance and said publication shall be made in each newspaper in regular order, beginning with the oldest publication.

**Rule 34.** Every ordinance and every order, resolution or vote shall after its passage remain in the possession of the City Clerk for thirty-six (36) hours after the day of the meeting for the purpose of giving any Councillor an opportunity to file notice of his intention to move reconsideration.

## AMENDMENT AND SUSPENSION

**Rule 35A.** Any of the foregoing rules with the exception of Rule 19 may be suspended at any meeting by a two-thirds yeas and nays vote of the entire membership of the City Council, provided that suspension of the rules to take up an item of business out of order may be moved only one time per meeting by each member. This limitation does not apply to motions to suspend the rules to move reconsideration hoping the same does not prevail. A roll call vote for suspension of the rules to consider late policy orders, separate from any vote for suspension of the rules to consider late ceremonial resolutions, shall be required to allow consideration of policy orders at the end of the regular business meeting, after the regular order of business has been concluded.

**Rule 35B.** No amendments or additions to the rules may be enacted until at least seven days have elapsed from the date of the submission of the proposed changes or additions and require a majority vote of the entire membership of the City Council.

## ROBERTS' RULES OF ORDER

**Rule 36.** The City Council shall be governed by "Roberts' Rules of Order" in all questions of parliamentary practice not provided for by special rules of order.

## RULES OF COURTESY

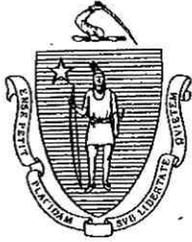
**Rule 37.**

- 1.** No one shall delay or interrupt the proceedings, or refuse to obey the orders of the presiding officer.
- 2.** All persons shall refrain from any private conversation, which would interfere with the proper conduct of the meeting or hearing.
- 3.** All persons should refrain from smoking, drinking or eating in the Sullivan Chamber.
- 4.** Poster or placards must remain outside the Sullivan Chamber.
- 5.** People are admitted to the Sullivan Chamber up to the fire safety capacity of the room which includes the fourth floor balcony. Overflow crowds may listen to the proceedings on loud speakers and television provided in the hallway.
- 6.** All persons shall confine their remarks to the question under debate and avoid personalities.
- 7.** While in the Sullivan Chamber, all persons with cell phones, pagers or other devices emitting audible signals shall either set the device to a non-audible signal mode or turn off the device.

## **RULES OF TRAVEL**

**Rule 38. The City Council's travel and incidental expenses thereto shall be approved by five members of the City Council through the budget process. All individual expenses will be substantiated by receipts and requests for payments will be approved by the City Auditor prior to reimbursement. The City Auditor shall be required to keep copies of Travel Expense Reports for all City Council travel expenditures reimbursed by the City and make the same available on request to all interested persons. The City Council may adopt a Travel Policy consistent with this rule to specify acceptable travel arrangements and limitations on reimbursable expenses.**

Exhibit I. OML Finding 6/4/13



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE  
BOSTON, MASSACHUSETTS 02108

MARTHA COAKLEY  
ATTORNEY GENERAL

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

June 4, 2013

OML 2013 – 76

Nancy Glowa, Esq.  
City Solicitor  
City of Cambridge  
Office of the City Solicitor  
795 Massachusetts Avenue  
Cambridge, MA 02139

**RE: Open Meeting Law Complaint**

Dear Attorney Glowa:

This office received a complaint from Tom Stohlman, dated December 28, 2012, alleging that the Cambridge City Council (the "Council") violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint was originally filed with the Council on or about December 4, 2012, and the Council responded to the original complaint by letter dated December 17, 2012.<sup>1</sup> In his complaint, Mr. Stohlman alleges that on November 29, 2012, the Council engaged in a deliberation outside of a properly posted meeting when four councilors crafted an order to appoint a new City Manager, which was then emailed to the remaining five councilors for co-sponsorship prior to the next Council meeting.

We reviewed the December 4, 2012 complaint; the Council's December 17, 2012 response; the December 28, 2012 complaint filed with our office requesting further review; and your February 8, 2013 letter to our office. We also reviewed the notice for and minutes from the Council's December 3, 2012 meeting, and viewed portions of an audiovisual recording of that meeting. Finally, we spoke by telephone with Cambridge City Clerk Donna Lopez.

Following our review, we find that the Council violated the Open Meeting Law. However, we note that the primary violation concerns a practice addressed for the first time in this determination and in a companion determination, also issued today. See OML 2013-75. Thus, we do not ascribe any wrongful intent to the violation and we offer a detailed discussion as guidance.

<sup>1</sup> On December 10, 2012, the complainant submitted a letter to the Council supplementing his initial complaint with questions concerning a committee of the Council. In its December 17, 2012 response to the complaint, the Council provided clarification on the issues raised in that letter, and the complainant found the response satisfactory. We therefore do not review those allegations here.

## FACTS

Based upon our review of the material listed above, the facts are as follows. The Council is comprised of nine members, thus five members constitute a quorum. On November 29, 2012, Councilor David Maher sent an email to Donna Lopez, City Clerk, asking her to “share the attached order with [his] colleagues and ask if they would like to co-sponsor.” An order (the “Order”) regarding the appointment of Richard Rossi as City Manager for a three year term was attached to the email, and noted that it was co-sponsored by Councilors Maher, Cheung, Reeves and Toomey. Ms. Lopez then sent an email to the remaining five councilors, with a copy to Councilor Maher and Paula Crane, an assistant, stating, “Dear Mayor Davis, Vice Mayor Simmons, Councilors Decker, Kelley and vanBeuzekom, Councilor Maher has requested that I share the attached order with my colleagues and ask if they would like to co-sponsor... Please respond to me or Paula if you wish to be a co-sponsor.” Mayor Davis and Councilor Decker each responded by telephone to Ms. Lopez and asked to be added as co-sponsor. Vice Mayor Simmons also called Ms. Lopez to be added as a co-sponsor, but she had already missed the deadline to respond. Ms. Lopez, who drafted the meeting notice alone, did not share the list of final co-sponsors before it was posted on the City website.

On December 3, 2012, the Council convened in open session. The meeting notice, posted on the designated City website on November 30, 2012 (a day late due to a power outage), contained a link to a “Policy Order and Resolution List.” Under that header, the following topic for discussion was listed: “6. That the City Council hereby appoint Richard C. Rossi as City Manager of the City of Cambridge, Massachusetts beginning on July 1, 2013 for a period of three years ending on June 30, 2016.”<sup>2</sup> Although not reflected in the meeting minutes, the Council began its discussion about the Order, which lasted about an hour, with an explanation of how councilors seek co-sponsors for their orders and then, specifically, the history of how this Order came before the Council. Generally, councilors seeking to add co-sponsors to an order will reach out to Ms. Lopez by telephone or email to ask her to send out a request to the remaining councilors. Councilors must respond to such requests by 3 P.M. on the Thursday before the regularly scheduled Council meetings, which are held on Mondays. According to Ms. Lopez, the Council has used this process “for years.” Following this discussion, the Council approved the Order by roll call vote.

The December 3, 2012 meeting minutes note the outcome of the discussion regarding each item on the agenda but, apart from the public comment period, the minutes do not include any summary of the discussion that occurred.

## DISCUSSION

The Open Meeting Law requires that all meetings of a public body be properly noticed and open to members of the public, unless an executive session is convened. See G.L. c. 30A, §§ 20(a)–(b), 21. The Law’s purpose is “to eliminate much of the secrecy surrounding deliberations and decisions on which public policy is based.” *Ghiglione v. School Committee of Southbridge*, 376 Mass. 70, 72 (1978). A “meeting” is defined, in relevant part, as “a deliberation by a public

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<sup>2</sup> We note that after each meeting, Ms. Lopez updates the online meeting notice to reflect the outcome. In this instance, the notice was amended as follows, “Order Adopted.”

body with respect to any matter within the body's jurisdiction." G.L. c. 30A, § 18. The law defines "deliberation" 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 or the distribution of reports or documents that may be discussed at a meeting, *provided that no opinion of a member is expressed.*" *Id.* (emphasis added)

Generally, sending an email with proposed language for an order to be considered at an upcoming meeting is not deliberation because it constitutes distribution of "reports or documents that may be discussed at a meeting." G.L. c. 30A, § 18. However, here we find that the email communication sent by Ms. Lopez at Councilor Maher's request crossed the line into impermissible deliberation. While the email was sent by a person who was not a member of the Council, and the Councilors responded to her individually, the attachment relayed the opinion of the four original co-sponsors – that is, their support of the Order – to the remaining five Councilors. Thus, the email constituted communication between or among a quorum of the Council, facilitated by Ms. Lopez. A public body may not use a non-member, such as a staff member, to communicate on matters that it would otherwise save for discussion at an open meeting. See District Attorney for the Northern District v. School Committee of Wayland, 451 Mass. 561, 570-571 (2009) ("Governmental bodies may not circumvent the requirements of the open meeting law by conducting deliberations via private messages, whether electronically, in person, over the telephone, or in any other form.") Additionally, the email contained a request for the opinions of the remaining five councilors, namely whether they wished to co-sponsor the Order, in effect expressing their support for the measure. As discussed below, a non-member may send such a request, provided the responses are directed only to that non-member. We caution the Council that this type of open-ended request could easily lead to an inadvertent or intentional reply to all recipients containing a public body member's opinion on the matter under review.

While we acknowledge that this practice has been used for years, it does not comply with the current Open Meeting Law. However, we note that the Council can bring this practice into compliance with just a minor modification. If the Council wishes to announce the sponsors of an order at the time it is introduced, Ms. Lopez, or another Council administrator, could send an email by blind carbon copy to the Council members, attaching a specific piece of legislation (which should not include the names of any co-sponsors) and requesting sponsorships. See OML 2013-75. That same staff person could then compile the sponsorships, and announce the result during a meeting. The results should not be made public prior to the meeting, however, including in a publicly-posted meeting notice. While the change is admittedly minor, it would enable the Council to compile sponsorship information without members conducting an improper poll outside of a meeting (which is deliberation). See OML 2011-35. Alternatively, a Council member who introduces an order can request sponsors during a meeting, or at a prior meeting before the order is introduced.

Finally, while not raised in the complaint, we find that the Council's meeting minutes were not sufficient for purposes of the Open Meeting Law. 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). 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. OML 2013-16; OML 2012-29. Apart from the "Public Comments" section, the minutes of the Council's December 3, 2012 meeting do not include any summary of the meeting discussion or otherwise provide an explanation of how the Council reached a decision regarding any item on the agenda. Accordingly, we order the Council to draft and approve revised minutes for the December 3, 2012 meeting that contain a summary of the discussion with sufficient 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.

### CONCLUSION

For the reasons stated above, we find that the Council violated the Open Meeting Law by engaging in deliberation outside of a properly posted meeting, and by failing to include sufficient detail in its meeting minutes. We order immediate and future compliance with the Open Meeting Law, and caution that future similar violations may be considered evidence of intent to violate the Law. Additionally, we order the Council to draft and approve the revised minutes of its December 3, 2012 meeting within thirty (30) days of the date of this letter.

We now consider the complaint addressed by this determination to be resolved. This determination does not address any other complaints which 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 or believe any facts in this letter to be inaccurate.

Sincerely,



Hanne Rush  
Assistant Attorney General  
Division of Open Government

cc: Tom Stohlman  
Cambridge City Council ✓

**This determination was issued pursuant to G.L. c. 30A, § 23(c). A public body or any member of a body aggrieved by this order 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 this order.**

Exhibit J. Cambridge Chronicle 11/14/13

ELECTION 2013: [Click here for complete coverage of Cambridge's election](#)

## Cambridge City Council responds to Open Meeting Law complaint

By Erin Baldassari/ebaldassari@wickedlocal.com

**Wicked Local Cambridge**

Posted Nov 14, 2013 @ 11:59 AM

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Cambridge — The Cambridge City Council denied allegations it violated the Open Meeting Law in a letter approved by the council Nov. 4 that responds to a citizen complaint filed with the state Attorney General's Office.

Longtime activist Charles Teague filed the [Open Meeting Law complaint](#) Oct. 17 against the city of Cambridge. But, it is pointed primarily at Councilor David Maher. Teague says Maher violated the law by engaging in a conversation outside of open session with developers from MIT while their zoning petition was on the table for a vote, then sharing that conversation with the rest of the council, which resulted in a vote change that was not vetted in open session.

In the city's response, which was drafted by the City Solicitor's Office but signed by city Clerk Donna Lopez, the council flatly denies any wrongdoing. The letter to the Attorney General argues the complaint should be dismissed chiefly because it came to council approximately six months after the alleged violation occurred. State law requires complaints to be filed within 30 days of the alleged violation or 30 days from when the alleged violation "could reasonably have been discovered."

Teague said he didn't file the complaint at the time because he was lacking evidence to support it. He pointed to a picture he said he had "just discovered" that was taken by MIT Tech reporter John Hawkinson and tweeted at 8:30 p.m. on April 8, the date of the vote.

Lopez argues the fact that he "just discovered" the picture is not a legally permissible reason for allowing a delay in the filing. Lopez also attempts to discredit the picture because it is "silent" and gives "no indication of the content of communications, if any, among the individuals pictured."

"The 'new evidence' itself, the photo, is not actually new," the response reads. "That it may have been 'new' to Mr. Teague several months later is not relevant for determining the expiration of the limitation period."

Even if the complaint had been filed in a timely fashion, Lopez rejects the notion that any Open Meeting Law violation occurred. A minimum of five councilors constitutes a quorum, Lopez said in the letter. Teague alleged that Councilor Ken Reeves cooperated by "filibustering" while Maher was outside the chambers with MIT before Mayor Henrietta Davis reversed her vote on an amendment.

The amendment, submitted by Councilor Minka vanBeuzekom, would have required all new buildings to conform to net-zero-emissions standards and initially passed on a 5-4 vote. Several minutes later, Maher left the room and then returned to speak with councilors individually on the floor.

"The complaint alleges that three city councilors violated the Open Meeting Law by deliberating with each other," the response reads. "Even if that were true, because a quorum of the City Council is five, there could be no 'deliberation' as defined in the Open Meeting Law among only three city councilors."

The response is silent, though, on the subject of "serial deliberation," which Open Meeting Law attorney Robert Bertsche said is also explicitly prohibited. Bertsche is a lawyer with the law firm Prince Lobel Tye LLP, which is retained by the New England Newspaper Press Association, a regional trade group of which the Chronicle is a member.

Even outside of open session, Bertsche said Open Meeting Law still prohibits one member of a public body from speaking with other members one-on-one until that member has communicated with a quorum of members on matters within the public body's jurisdiction. Bertsche said the remedy is to have the contents of the conversation be discussed in open session — so all of the public can hear the deliberations.

Lopez said the council has already done that.

"Mayor Davis explained her change of vote at the meeting as being based on her learning that passage of the [net-zero-emissions amendment] might sink the entire project and jeopardize MIT's ability to see the project through, and because the zoning ordinance and MIT's development plans and obligations are set forth in its commitment letter are tied together," the letter reads.

Although at the meeting Davis never mentioned anything about MIT's development plans being tied to its letter of commitment, Maher told the Chronicle it was clear those two items were intrinsically linked.

The zoning — which passed on a vote of seven in favor, one against and one voting neither for nor against the petition — allowed the redevelopment of 2 million square feet spread over a 26-acre swath of Kendall Square and included a \$19.5 million contribution to the city's coffers. The plan was some three years in the making and was in part guided by consultant

000066

Goody Clancy and a city-led advisory committee that studied the area for a year and made recommendations for redevelopment.

At the council meeting Nov. 4, vanBeuzekom refuted Lopez's initial characterization that the explanation was "immediate" and that the vote was not "fatally flawed." The council violated its own rules when Davis changed her vote because Davis failed to ask for unanimous consent, she said.

"So, to say the vote was not procedurally flawed is not entirely accurate," vanBeuzekom said. "And, it's not entirely accurate to say the vote was explained 'immediately' after the change. As a matter of fact, when I did ask for the mayor to explain why she changed her vote, she said it was not in order for me to do that. And then yes, Madame Mayor, you did eventually explain the vote."

Reeves said there was an "omnibus" provision in the council rules that state, "We can do whatever we want when we want to do it, too." Reeves blasted Teague for naming him in the complaint and accusing him of colluding to violate the Open Meeting Law.

"There's no context of what I was doing or why I was doing it and nobody has asked me, so it's not possible for my state of mind to have been read by somebody I don't know," Reeves said. "I hope [the complaint] goes to the Attorney General, to the U.S. Attorney and to the president of the world to clear my name because I care about what is being said about me. If I'm doing some nefarious thing, I usually tell you it's a nefarious thing."

Councilor Craig Kelley took the opportunity to condemn the council for repeatedly shirking controversial issues and hiding behind exemptions in the Open Meeting Law that allow the council to talk in executive session – behind closed doors – under a narrow set of circumstances. Davis had initially tried to quash discussion of the letter because City Solicitor Nancy Glowa said it classified as "pending" or "threatened" litigation. Glowa later explained the council could speak about the contents of the letter, but she could not provide legal advice in open session.

"I'm hugely worried by how quickly we go into executive session to talk about stuff that we find uncomfortable," Kelley said. "Being uncomfortable about something does not mean we need to go into executive session."

A motion to close the debate was called by Councilor Leland Cheung. Councilors Kelley, vanBeuzekom and Vice Mayor Denise Simmons voted against closing the debate on the letter. It was then approved on a vote of 8-1, with vanBeuzekom voting against it.

According to a representative from the Attorney General's Office, the complaint must first be filed with the offending body, which in this case is the City Council. The accused body has 14 days to respond with remedial action or a rebuttal, and Teague then has 30 days from the original filing date to contest the response.

Contact Cambridge Chronicle assistant editor Erin Baldassari at 617-629-3390 or ebaldassari@wickedlocal.com, and follow her on Twitter: @e\_baldi.

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Exhibit K. Cambridge Chronicle 8/4/08

**ELECTION 2013:** [Click here for complete coverage of Cambridge's election](#)

## Guest commentary: It isn't easy being a green room

By **Raymond P. Ausrotas**  
**GateHouse News Service**

Posted Aug 04, 2008 @ 11:40 AM

Last update Aug 04, 2008 @ 04:03 PM

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Cambridge — Followers of our fair city's elected body may recall — or perhaps have observed firsthand — that during some public hearings, several city councilors have left to retire to “The Green Room,” for varying amounts of time, only to return for the formality of a vote. (See “City Clerk: Don't Question Councilors Who Missed Vote,” April 12, 2007; “Clerks Grapple to Keep Councilors In Room,” April 25, 2007.) In light of this past practice, our city councilors in Cambridge (as well as the clerk) would be well-advised to cast their eyes across the Charles and take note of how their Boston compatriots fared in a recent legal dispute over the administration of their public deliberative proceedings.

In *McCrea v. Flaherty, et al.*, 71 Mass. App. Ct. 637 (2008), the Massachusetts Appeals Court recently found that the Boston City Council violated the open meeting law, M.G.L. c. 39, §§ 23A-23C. The case involved several private meetings the City Council held on two high-profile subjects between 2003 and 2005: a bacteria outbreak at a BU lab, and the extension of urban renewal planning in the city by the BRA.

The Appeals Court found that, right before their vote on the BRA issue, the Boston councilors admitted to holding days of private meetings on the subject, and that the councilors met privately during the approval hearing itself, including during a three-hour recess when “an undetermined number [of councilors] gathered in back offices.” The hearing to approve was notified for 11:30 a.m., but the vote was held at 6:45 p.m. after “a maximum of twenty minutes of public discussion on a proposal that had not previously been presented.” The Appeals Court noted that in light of this background, “a fact finder would properly conclude that the public had no opportunity to understand how or why the alternative versions that were rejected led, through deliberation, to the version that was approved,” and rejected the Boston councilors' argument that the open meeting held when the vote was taken “cured” any prior violations.

In addition, the evidence showed that for several of the challenged BRA meetings, the Boston City Council had posted a guard at the door of a conference room to “maintain a careful headcount and ensure that only a minority of councilors, albeit a rotating minority, were physically in each others' presence at any one moment...” The Boston City Council argued that this charade should have kept the open meeting law from applying to these meetings because a “quorum” (i.e., majority) of councilors was never present to deliberate at the same time. The Appeals Court “reject[ed] this strained interpretation of statutory language, asserted for the sole purpose of defeating the fundamental purpose of the law,” and noted “[i]t is essential to a

democratic form of government that the public have broad access to the decisions made by its elected officials and to the way in which the decisions are reached.”

A finding of a violation of the open meeting law is significant. It carries financial penalties and the payment of a successful plaintiff's costs. More importantly, any decision by a governmental body following such a violation will likely be invalidated if later challenged in court. Of course, we do not know what Cambridge's City Councilors have actually talked about with one another when they have been hidden back in the Green Room. But this is precisely the problem with their disappearance: we may fairly assume that *some* deliberation on the public matters up for consideration that night is going on behind closed doors. As the *McCrea* case instructs, if these private discussions continue and are challenged in the future — which will presumably happen at a time when the stakes are highest on a prominent issue — the Council's actions may be voided, the Council may face penalties and fines, and our public funds may be tapped to pay not only plaintiff's costs but also attorneys' fees in defending the case. There can be no question now that if Cambridge City Councilors hold only “ceremonial” public hearings before a vote, and “rotate” their individual presence during private deliberations to avoid a quorum, they do so at their peril — as well as ours.

*Raymond P. Ausrotas, CRLS '87, is an occasional contributor to the Chronicle regarding various issues under Massachusetts law and is a member of the Ward 11 Democratic City Committee.*

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Exhibit L. Cambridge Chronicle 4/17/07



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## Letter: Council vote a little fishy

### Cambridge Chronicle

Posted Apr 17, 2007 @ 05:41 PM

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Cambridge — “City Clerk Margaret Drury said that as long as none of city councilors realized there was not a quorum, or a majority of members present, or called for a quorum beforehand, the vote stands.”

“Drury also [said] the City Council’s voting procedures had never been questioned in the past.” The most cooperative city employee is wrong twice. (Erin Smith, “City Clerk: Don’t question councilors who missed vote,” Cambridge Chronicle, Apr 12, 2007.)

Erin Smith correctly notes more is in play here than Robert’s Rules. The City Council’s rules require a quorum. Rule 5 states, “The Mayor shall declare all votes. [...] The mayor shall declare the results, but no such declaration shall be made unless a quorum of the City Council has voted.”

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It is wishful thinking to say the council was never questioned in the past about rules violations. The clerk verifies my belief that city councilors and city employees ignore public comment. During several meetings, a few citizens openly challenged the council about having less than a quorum present. Once the mayor threatened to have me removed when I noted that there was no quorum.

In many letters to the council, I pointed out the frequent anomalies on voting (most recently my letter in the April 9 agenda). On that day there was no vote on a motion to table an item. It was tabled without a vote. There are frequent violations of City Council rules on suspending the rules. I detailed the violations dozens of time.

#### From the Web

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It is clear that city officials hear selectively, see selectively, speak selectively, and worst of all, enforce rules and laws selectively. That is the major problem resulting from nine councilors being intentionally ignorant of the rules of running a meeting. The City Council rules mandate that the meetings be run by Robert’s Rules. It is a recurring problem with one-party government.

The mayor admitted on April 9 he is now taking classes on how to run a meeting after being a councilor for 18 years. It is never too late to learn.

**ROY BERCAW**  
Editor  
ENOUGH ROOM  
Box 400297

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**Exhibit M. Internet Exhibits**

Inventory of references available on the Internet

**Type:** either the original video from the City of Cambridge website or "excerpts" from the city video or citizen video

**URL:** the address on the Internet

Date	Type	URL	Comment
4-8-13	excerpt	<a href="http://TinyURL.com/Davis-Vote-Change">TinyURL.com/Davis-Vote-Change</a>	annotated video sourced from citizen camera & city camera of the OLM violation
4-8-13	city	<a href="http://view.earthchannel.com/PlayerController.aspx?PGD=cambridgema&amp;eID=16">http://view.earthchannel.com/PlayerController.aspx?PGD=cambridgema&amp;eID=16</a>	entire city council meeting
11-4-13	excerpt	<a href="http://TinyURL.com/4-Nov-CityCouncil">TinyURL.com/4-Nov-CityCouncil</a>	some of the council discussion of OML response
11-4-13	city	<a href="http://view.earthchannel.com/PlayerController.aspx?PGD=cambridgema&amp;eID=451">http://view.earthchannel.com/PlayerController.aspx?PGD=cambridgema&amp;eID=451</a>	entire city council meeting
4-8-13	Tweet	<a href="http://TinyURL.com/Maher-MIT-Picture">TinyURL.com/Maher-MIT-Picture</a>	still photo of Maher with MIT
4-8-13	Tweet	<a href="http://TinyURL.com/Maher-MIT-Tweet">TinyURL.com/Maher-MIT-Tweet</a>	text of Tweet
4-29-13	excerpt	<a href="https://www.youtube.com/watch?v=0xBUsOG1wEI">https://www.youtube.com/watch?v=0xBUsOG1wEI</a>	correct method of changing a vote
4-29-13	excerpt	<a href="https://www.youtube.com/watch?v=OfI3iIytYkU">https://www.youtube.com/watch?v=OfI3iIytYkU</a>	Mayor Davis "vote is final when announced"
4-29-13	excerpt	<a href="https://www.youtube.com/watch?v=uYe1qTx79Q">https://www.youtube.com/watch?v=uYe1qTx79Q</a>	Councillor Ken Reeves states that it is important that the council follow the rules

To get the original video from the City of Cambridge website go to the address in this "screen shot" and select the date of the city council meeting. The video can be viewed on-line but it is easier to use the "download video" button on the next screen and use a "media player" such as "VLC" available free from <http://www.videolan.org/>.



### Archived City Council Meetings

To view archived video footage of previous City meetings, browse the list below to find the meeting you want to view. A player will pop open with your chosen video.

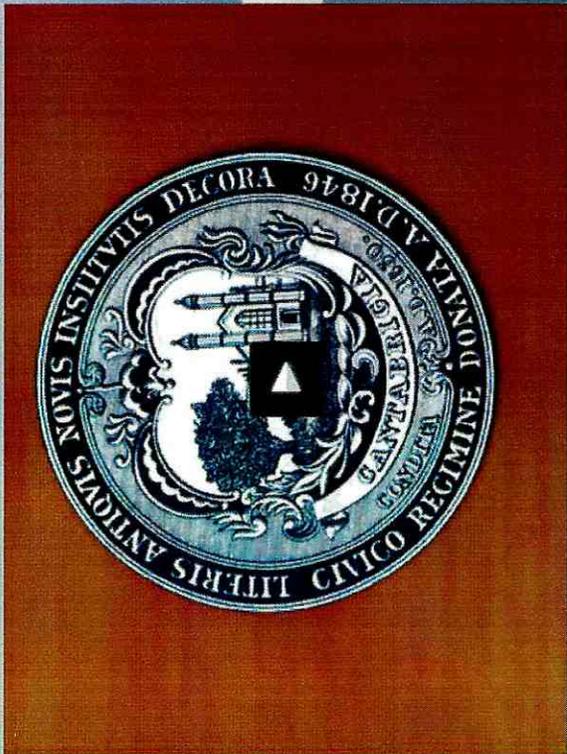
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All City Meetings City Council Committee Meetings Budget

2013	November 20	Ordinance Committee Meeting
All Months	November 18	Regular City Council Meeting
Jan Feb Mar Apr	November 7	Ordinance Committee Meeting
May Jun Jul Aug	November 4	Regular City Council Meeting
Sep Oct <b>Nov</b> Dec		

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# Regular City Council Meeting

November 04, 2013

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