

4

DATE: DECEMBER 16, 2013
TO: DONNA P. LOPEZ, CITY CLERK
FROM: MAYOR HENRIETTA DAVIS HD
SUBJECT: COMMUNICATION AND REPORTS FROM CITY OFFICIALS

Please place the attached Open Meeting Law Complaint filed by Ilan Levy, 148 Spring Street on the Agenda for December 16, 2013 as a late Communication and Reports from City Officials.

I am also submitting an order for your consideration.

Thank you for your cooperation in this matter.





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: Ilan Last Name: Levy

Address: 148 spring st

City: Cambridge State: MA Zip Code: 02141

Phone Number: 6174750087 Ext. _____

Email: ilan@genrealty.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 DEC 12 PM 2 13
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): The Nine Member Cambridge Mass City Council Per Section 98 of Cambridge Plan E Charter

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

Date of alleged violation: unknown

Description of alleged violation:

Describe the alleged violation that this complaint is about. If you believe the alleged violation was intentional, please say so and include the reasons supporting your belief.

Note: This text field has a maximum of 3000 characters.

On October 30, 2013 a meeting was held by the City of Cambridge regarding the future of the Foundry building, at 117 Roger Street in East Cambridge, MA 02141. The meeting was advertised on the city web site, and by other means, as an 'Informational Discussion on the Foundry Building'. The meeting was very well attended by the community. During the meeting the City Manager, Mr Richard Rossi, explicitly stated that:

The meeting was about the disposal of the Foundry building as per article 2.110.010- Disposition of city property of the Municipal Code. The information garnered from the community, during the meeting, would be used to create an RFP, request for proposal, for the a very long term lease of the Foundry building. The foundry building should be leased by June 2014.

As per section 104 of Plan E. , the City Manager must faithfully execute the ordinances, resolutions and regulations of the City Council:

"Except as otherwise specifically provided in this chapter, it shall be the duty of the city manager to act as chief conservator of the peace within the city; to supervise the administration of the affairs of the city; to see that within the city the laws of the commonwealth and the ordinances, resolutions and regulations of the city council are faithfully executed;"

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. Give the time and place of the meeting during which the policy order / resolution in which the leasing for the Foundry building was voted on.
2. Clearly explain why the public was not informed of such meeting.
3. Rescind all decisions made regarding the future of the Foundry building during said meeting.
4. If no meeting took place and the decision to lease the Foundry building was not taken , explain how the City Manager can proceed to state that it has.

Review, sign, and submit your complaint

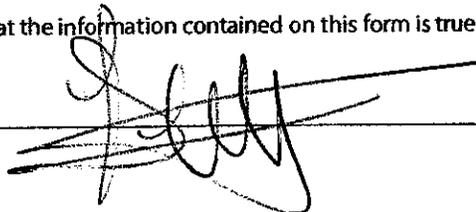
Read this important notice and sign your complaint.

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: December 10, 2013

For Use By Public Body

Date Received by Public Body:

For Use By AGO

Date Received by AGO:

Description of alleged violation:

On October 30, 2013 a meeting was held by the City of Cambridge regarding the future of the Foundry building, at 117 Roger Street in East Cambridge, MA 02141.

The meeting was advertised on the city web site, and by other means, as an 'Informational Discussion on the Foundry Building'. The meeting was very well attended by the community. During the meeting the City Manager, Mr Richard Rossi, explicitly stated that:

1. The meeting was about the disposal of the Foundry building as per article 2.110.010- Disposition of city property of the Municipal Code.
2. The information garnered from the community, during the meeting, would be used to create an RFP, request for proposal, for the a very long term lease of the Foundry building.
3. The foundry building should be leased by June 2014.

As per section 104 of Plan E. , the City Manager must faithfully execute the ordinances, resolutions and regulations of the City Council:

"Except as otherwise specifically provided in this chapter, it shall be the duty of the city manager to act as chief conservator of the peace within the city; to supervise the administration of the affairs of the city; to see that within the city the laws of the commonwealth and the ordinances, resolutions and regulations of the city council are faithfully executed;"

Therefore, prior to the 'Informational Discussion on the Foundry' meeting of October 30 2013, during which the City Manager unequivocally stated that the Foundry building was going to be leased to a third party, the City Council must have voted on a policy order or resolution explicitly stating their decision to lease the Foundry Building. Since my request for clarification to the City Council, on November 15, 2013 (exhibit H), which as of December 12, 2013, still remains unanswered. And since, nowhere in the city's public record can information about such meeting be found. And since any meeting during which such a policy order/resolution is voted on by the City Council must be a public meeting. It can only be concluded that the Open Meeting Law must have been breached. Since the future use of the Foundry building is a very prominent issue, it seems unbelievable such violation would have been unintentional.

Included are the copies of all available policy orders/resolutions of the City Council regarding the Foundry building

- Exhibit A: July 29, 2013; Policy Order O-17
- Exhibit B: June 3, 2013; Policy Order O-3
- Exhibit C: February 11, 2013; Policy Order O-10
- Exhibit D: December 3, 2012; Policy Order O-5
- Exhibit E: July 30, 2012; Policy Order O-35
- Exhibit F: June 4, 2012; Policy Order O-19

Exhibit G: November 21, 2011; Policy Order O-11
Exhibit H: Email of November 15, 2013 to the City Council
Exhibit I: Plan E article 104

What action do you want the public body to take in response to your complaint?

1. Give the time and place of the meeting during which the policy order / resolution in which the leasing for the Foundry building was voted on
2. Clearly explain why the public was not informed of such meeting.
3. Rescind all decisions made regarding the future of the Foundry building during said meeting.
4. If no meeting took place and the decision to lease the Foundry building was not taken, explain under what authority can the City Manager proceed to state that it has.

Review, sign, and submit your complaint,

Under most circumstances your complaint will be considered a public record and 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: December 10, 2013

For Use By Public Body

For Use By AGO:

Date Received by Public Body:

Date Received by AGO:

CITY COUNCIL

Exhibit A

Policy Order Resolution

O-17
IN CITY COUNCIL

July 29, 2013

MAYOR DAVIS

ORDERED: That the City Manager be and hereby is requested to develop cost benefit analyses for at least five scenarios related to the Foundry Building. All options would retain at least 10,000 square feet for community use. Analyses should include funds that would need to be expended to refurbish the building and any ongoing maintenance and management expenses. Also to be noted any potential income from sale or lease.

Options:

1. Retain the building and if necessary rehab it for lease as a commercial building.
2. Retain the building using the entire building as community space/non-profit rental. In this option describe possible funding mechanisms.
3. Sell the building with an agreement for community space.
4. Improve the building for use as a childcare facility.
5. To be determined; and be it further

ORDERED: That the City Manager report back on this matter to the entire City Council.

In City Council July 29, 2013
Adopted by the affirmative vote of eight members.
Attest:- Donna P. Lopez, City Clerk

A true copy;

ATTEST:-
Donna P. Lopez, City Clerk

COUNCILLOR KELLEY RECORDED IN THE NEGATIVE

Exhibit B

CITY COUNCIL

Policy Order Resolution

O-3
IN CITY COUNCIL

June 3, 2013

COUNCILLOR TOOMEY
COUNCILLOR CHEUNG
MAYOR DAVIS
COUNCILLOR DECKER
COUNCILLOR KELLEY
COUNCILLOR MAHER
VICE MAYOR SIMMONS

ORDERED: That the City Manager be and hereby is requested to report back on the feasibility on making the Foundry available for a community gathering on June 22, 2013.

In City Council June 3, 2013
Adopted by the affirmative vote of eight members.
Attest:- Donna P. Lopez, City Clerk

A true copy;

ATTEST:-
Donna P. Lopez, City Clerk

Exhibit C

CITY COUNCIL

Policy Order Resolution

O-10
AMENDED ORDER
IN CITY COUNCIL

February 11, 2013

- COUNCILLOR TOOMEY
- COUNCILLOR MAHER
- COUNCILLOR CHEUNG
- MAYOR DAVIS
- COUNCILLOR DECKER
- COUNCILLOR KELLEY
- COUNCILLOR REEVES
- VICE MAYOR SIMMONS
- COUNCILLOR VANBEUZEKOM

WHEREAS: There has been a great deal of interest expressed about future plans for the Foundry building which was deeded to the City of Cambridge as part of community mitigation; and

WHEREAS: The City Council would greatly benefit from an independent assessment of the property prior to making a decision regarding whether to retain ownership of the asset or consider an outright sale of the property; now therefore be it

ORDERED: That the City Manager be and hereby is requested to appoint a special task force of real estate and engineering professionals to assess and evaluate the current condition of the property and projected capital needs as well as anticipated expenses of maintaining the Foundry building; and be it further

ORDERED: That such a task force present a detailed report of their findings to the City Council within three months; and be it further

ORDERED: That such an assessment should include but not be limited to ADA compliance, soil contamination, structural integrity including roof, foundation and masonry, HVAC, plumbing, electrical, best use of open space be incorporated, and other operating needs; and be it further

ORDERED: That the report should include estimated revenue projections that the city could expect to collect if the building is held as well as an appraisal that a potential sale would net taking into account a possible deed restriction that would require that a new owner to meet the requirement that a minimum of 10,000 square feet of the building be used for community use; and be it further

ORDERED: That the committee should advise and consider possible best uses of the building and their potential impact on capital renovations.

In City Council February 11, 2013
Adopted as amended by the affirmative vote of nine
members.
Attest:- Donna P. Lopez, Interim City Clerk

A true copy;

ATTEST:-
Donna P. Lopez, Interim City Clerk

View Original Order

CITY COUNCIL

Exhibit D

Policy Order Resolution

O-5
IN CITY COUNCIL

December 3, 2012

COUNCILLOR CHEUNG
COUNCILLOR TOOMEY
MAYOR DAVIS
COUNCILLOR DECKER
COUNCILLOR KELLEY
COUNCILLOR MAHER
COUNCILLOR REEVES
VICE MAYOR SIMMONS
COUNCILLOR VANBEUZEKOM

WHEREAS: On July 30, 2012 the City Council adopted Policy Order #35 which asked for a report on answering questions regarding the Foundry Building in order to move the community process forward; and

WHEREAS: Local organizations have inquired as to the possibility of short-term usage of space in the Foundry Building while the City Council deliberates its long-term use; and

ORDERED: That the City Manager be and hereby is requested to update the City Council on the status of Policy Order #35 which appears on the Awaiting Report List.

In City Council December 3, 2012
Adopted by the affirmative vote of nine members.
Attest:- Donna P. Lopez, Interim City Clerk

A true copy;

ATTEST:-
Donna P. Lopez, Interim City Clerk

CITY COUNCIL

Exhibit E

Policy Order Resolution

O-35
IN CITY COUNCIL

July 30, 2012

COUNCILLOR CHEUNG
COUNCILLOR TOOMEY

WHEREAS: There has been much discussion and anticipation about how the Foundry Building in East Cambridge could be best used as a space to connect disparate communities in Cambridge; and

WHEREAS: Gathering the facts mentioned below would help move the community process forward:

- Could the building be rented in its current state?
- If not, what would make the building operational, habitable and safe to use?
- Are there any impediments to the use of the building in the speculative ways previously detailed in the Council or sent to the Manager?
- Are there any issues Councillors should be aware of with respect to the building?
- What types of uses would work in the building as it is or if it were renovated (identifying which falls under which category?)
- What needs to be done to open the building for use?

now therefore be it

ORDERED: That the City Manager be and hereby is requested to confer with the appropriate departments to determine the answers for the abovementioned questions and report back to the City Councillors.

In City Council July 30, 2012
Adopted by the affirmative vote of nine members.
Attest: - Donna P. Lopez, Interim City Clerk

A true copy;

ATTEST:-

Donna P. Lopez, Interim City Clerk

View attached file

CITY COUNCIL

Exhibit F

Policy Order Resolution

~~0-19~~
Calendar item #1
AMENDED ORDER
IN CITY COUNCIL

~~June 4, 2012~~
June 11, 2012

COUNCILLOR TOOMEY

- WHEREAS: The Foundry Building at 101 Rogers Street was acquired by the City of Cambridge as part of a community benefits and mitigation offered by Alexandria Real Estate during a re-zoning process; and
- WHEREAS: The agreement states that the Foundry Building, of approximately 52,000 square feet, be deeded to the City, with preference for municipal and community uses, with a minimum of 10,000 square feet for community use; and
- WHEREAS: Ownership of 101 Rogers was transferred to the City of Cambridge at the beginning of 2012; and
- WHEREAS: Along with community space, municipal use of the building is a primary focus; and
- WHEREAS: An official procedure bound by laws governing use of municipal property must be followed as tenants are sought for the space; and
- WHEREAS: It is important to the public that a well-defined process will be established to determine future use of the building; now therefore be it
- ORDERED: That the City Manager be and hereby is requested to report back to the City Council with possible municipal uses of 101 Rogers Street, considering, but not limited to, the needs for School Administration, High School Extension Program, senior groups; more daycare options, community space for veterans, space for machine shop, space for community classes and artists, low cost office space for nonprofits, space for neighborhood groups, space for a community kitchen, space for dance group, high school extension space, School Department space, IT Department, space for the arts, tech education/reeducation, space for seniors and public market/grocery mart: and be it further
- ORDERED: That the City Manager be and hereby is requested to report back on the legal process the city must follow for the sale, reuse, or lease of the space, as well as a list of organizations that have toured the property to date while under city ownership.

In City Council June 11, 2012
Adopted as amended by the affirmative vote of nine
members.
Attest:- Donna P. Lopez, Interim City Clerk

A true copy;

ATTEST:-
Donna P. Lopez, Interim City Clerk

[View Roll Call Votes from June 11, 2012](#)
[View Original Order](#)

CITY COUNCIL

Exhibit G

Policy Order Resolution

O-11
AMENDED ORDER
IN CITY COUNCIL

November 21, 2011

COUNCILLOR TOOMEY

ORDERED: That the City Manager be and hereby is requested to undertake the acquisition of the St. Francis property and begin a neighborhood planning process, with residents and stakeholders, and in conjunction with the newly-acquired Foundry Building to determine how the needs for the community uses and municipal uses can be satisfied through the renovations of both buildings, and to report back to the City Council.

In City Council November 21, 2011
Adopted as amended by the affirmative vote of nine members.
Attest:- D. Margaret Drury, City Clerk

A true copy;

ATTEST:-
D. Margaret Drury, City Clerk

ORDER ADOPTED AS AMENDED BY SUBSTITUTION

View Original Order

Exhibit #

November 15, 2013 12:03 PM

Ilan Levy <ilan@genrealty.com>
To: council@cambridgema.gov
The Foundry Building

Dear City Councilors,

As you know, on October 30st, the city organized a tour of the Foundry followed by a presentation of the City Manager, followed by a 'brainstorming'. During the City Manager presentation he clearly stated the following:

1. The building would be disposed of through a very long term lease to allow developer to recoup renovation costs
2. The request for ideas on possible uses was to create an RFP for said lease
3. The city would not invest any monies in the Foundry Building
4. The Foundry building would be leased by June 2014

During the committee meetings held on July 27th and August 5th, all City Councilor present stated clearly that they would like to see the City Manager explore creative financing alternatives to a lease of the building. Through an policy order dated July 29th 2013, Mayor Davis requested again that the City Manager explore using 'the entire building as community space/non-profit rental. In this option describe possible funding mechanisms.'

On said meeting of October 30th the City Manager omitted the requests made by the City Councilors and Mayor. After doing research I could not find any document stating the City Council had come to a decision on what would be done with the Foundry. I therefore find it extraordinary that

1. the City Manager would take it upon himself to decide of the disposal of the Foundry.
2. the presentation made during said meeting did not include the requests made by the City Council and Mayor
3. the questionnaire presented on the City's website doesn't mention clearly, as per presentation of City Manager on October 30th 2013, that it is for the creation of an RFP, which is extremely misleading.

The answer to the said questionnaire might be very different given different financing options.

I would like to have clarification as to the exact intent of the City and why the waste of time and money of all the meetings and policy orders if they are ignored by the City Manager.

Thank you in advance for your prompt reply,

Sincerely

ilan levy

148 Spring St,
Cambridge 02141

This message is intended only for the designated recipient(s). It may contain confidential or proprietary information and may be subject to confidentiality protections. If you are not a designated recipient, you may not review, copy or distribute this message. If you receive this in error, please notify the sender by reply e-mail and delete this message.
The contents of this message is provided "as is" and any or implied warranties including, but not limited to, the implied warranties, but not limited to, the implied warranties of merchantability and fitness for a particular purpose are disclaimed. In no event shall the sender be liable for any direct, indirect, incidental, special, exemplary, or consequential damages however caused and on any theory of liability, wheter in contract, strict liability, or tort (including negligence or otherwise) arising in any way out the use of this information, even if advised of possibility of such damage.

mayor or vice-chairman, by the member of the council or of the school committee, as the case may be, senior in length of service, or, if more than one have so served, then the member senior both in age and length of service.

*Chapter 43:
Section 103. City
manager;
appointment;
qualifications;
compensation;
removal*

Section 103. The city council shall appoint a city manager who shall be sworn to the faithful performance of his duties and who shall be the chief administrative officer of the city and shall be responsible for the administration of all departments, commissions, boards and officers of the city, whether established before its adoption of this plan or thereafter, except that of the city clerk, city auditor, any official appointed by the governor or any body elected by the voters of the city. He shall be appointed on the basis of his administrative and executive qualifications only, and need not be a resident of the city or commonwealth when appointed. He shall hold office during the pleasure of the city council and shall receive such compensation as it shall fix by ordinance. No member of the city council shall during his term of office be chosen as city manager, and no person who has within two years been elected to or served in any elective office in the city or in the county in which the city is located shall be chosen as city manager.

Before the city manager may be removed, if he so demand, he shall be given a written statement of the reasons alleged for his removal and shall have the right to be heard publicly thereon at a meeting of the city council prior to the final vote on the question of his removal, but pending and during such hearing the city council may suspend him from office. The action of the city council in suspending or removing the city manager shall be final, it being the intention of this provision to vest all authority and fix all responsibility for such suspension or removal in the city council. In case of the absence, disability or suspension of the city manager, the city council shall designate the head of some department to perform the duties of city manager during such absence, disability or suspension, and, in case the office of city manager becomes vacant, the city council shall designate the head of some department to serve as acting city manager until a new city manager is appointed.

*Chapter 43:
Section 104.
Powers, rights
and duties of city
manager*

Section 104. Except as otherwise specifically provided in this chapter, it shall be the duty of the city manager to act as chief conservator of the peace within the city; to supervise the administration of the affairs of the city; to see that within the city the laws of the commonwealth and the ordinances, resolutions and regulations of the city council are faithfully executed; and to make such recommendations to the city council concerning the affairs of the city as may to him seem desirable; to make reports to the city council from time to time upon the affairs of the city; and to keep the city council fully advised of the city's financial condition and its future needs. He shall prepare and submit to the city council budgets as required of the mayor by section thirty-two of chapter forty-four and, in connection therewith, may, to the extent provided by said section thirty-two in the case of a mayor, require the submission to him, by all departments, commissions, boards and offices of the city, of estimates of the amounts necessary for their expenses. He shall make all appointments and removals in the departments, commissions, boards and offices of the city for whose administration he is responsible, except as otherwise provided in this chapter, and shall perform such other duties as may be prescribed by this chapter or be required of him by ordinance or resolution of the city council. The city manager shall have and possess, and shall exercise, all the powers, rights and duties, other than legislative, had, possessed or exercised, immediately prior to the adoption of this plan, by the mayor, board of aldermen, common council and all other boards, commissions and committees of the city and their members, severally or collectively, except such as are by this chapter conferred upon the school committee or are otherwise provided for thereby.

*Chapter 43:
Section 105. City
officers and
employees;
appointments
and removals*

Section 105. Such officers and employees as the city council, with the advice of the city manager, shall determine are necessary for the proper administration of the departments, commissions, boards and offices of the city for whose administration the city manager is responsible shall be appointed, and may be removed, by the city manager. The city manager shall report every appointment and removal made by him to the city council at the next meeting thereof following such appointment or removal. The city manager may authorize the head of a department, commission or board, or the holder of an office, for whose administration he is responsible, to appoint and remove subordinates in such department, commission, board or office. All appointments by, or under the authority of, the city manager, if subject to chapter thirty-one and