



2

OFFICE OF THE CITY CLERK

CITY OF CAMBRIDGE

(617) 349-4260

FAX: (617) 349-4269

tty/TDD (617) 492-0235

DONNA P. LOPEZ
CITY CLERK

DATE: JANUARY 28, 2014

TO: THE HONORABLE, THE CITY COUNCIL

FROM: DONNA P. LOPEZ, CITY CLERK 

SUBJECT: LEGAL OPINION ON SUBMISSION OF LATE POLICY ORDERS DURING A PUBLIC MEETING

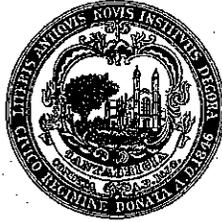
I am transmitting to you the attached legal opinion received from City Solicitor Nancy E. Glowa relating to the submission of late policy orders by members of the City Council during a public meeting and distribution of same to the public at an open meeting.

Your kind attention in this matter will be greatly appreciated.

Nancy E. Glowa
City Solicitor

Arthur J. Goldberg
Deputy City Solicitor

Vali Buland
First Assistant City Solicitor



Assistant City Solicitors

Paul S. Kawai
Elizabeth A. Lashway
Samuel A. Aylesworth
Amy L. Witts
Keplin K. U. Allwaters

CITY OF CAMBRIDGE

Office of the City Solicitor
795 Massachusetts Avenue
Cambridge, Massachusetts 02139

January 28, 2014

Richard C. Rossi
City Manager
City Hall
Cambridge, MA 02139

Re: Submission of late policy orders by City Councilors during a public meeting

Dear Mr. Rossi:

City Clerk Donna P. Lopez has requested a legal opinion on the question of whether it is a violation of the Open Meeting Law for City Councilors, pursuant to City Council Rule 35A¹, to introduce late policy orders at the end of the regular business meeting, and if not, whether written copies of the late policy orders should be made available to the general public before the meeting or after the motion for suspension to consider the late order prevails. See request for opinion attached. For the following reasons, in my opinion the introduction of late policy orders pursuant to Rule 35A does not violate the Open Meeting Law. The written copy of the late policy order itself is a Public Record, but the timing of its distribution to the public is a matter of policy, not a requirement of law.

The Open Meeting Law requires that the notice of a meeting be posted at least 48 hours in advance of every meeting and the notice must contain "a listing of topics that the chair reasonably anticipates will be discussed at the meeting." G. L. c. 30A, §20(b). The listing of topics "shall have sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting." 940 C.M.R. §29.03(1)(b).

The Attorney General is charged with interpreting and enforcing the Open Meeting Law. G. L. c. 30A, §23(a). There are two "frequently asked questions," and answers to those questions, on the Attorney General's web-site that relate to the question of a public body's consideration of matters at an open meeting that have not been listed as topics on the posted meeting notice. They state:

¹ The Provisional Rules of the City Council were adopted by the City Council on January 6, 2014. City Council Rule 35A provides in relevant part: "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."

May a public body consider a topic at a meeting that was not listed in the meeting notice?

Yes, if it is a topic that the chair did not reasonably anticipate 48 hours before the meeting. If a meeting topic is proposed after the meeting notice is posted, the public body is encouraged to update its posting to provide the public with as much notice as possible of what subjects will be discussed during a meeting. Although a public body may consider a topic that was not listed in the meeting notice if unanticipated, the Attorney General strongly encourages public bodies to postpone discussion and action on topics that are controversial or may be of particular interest to the public if those topics were not listed in the meeting notice.

May a public body list a section for "New Business" to cover topics which come up for the first time at the meeting in the meeting notice?

Yes, this category may be used for topics that the Chair did not reasonably anticipate for discussion when filing the meeting notice to be posted.... The best practice would be to explicitly state in the notice that the time is being reserved for topics that the chair did not reasonably anticipate would be discussed.

Therefore, in my opinion, late policy orders, if they concern matters that were unanticipated when the meeting notice was posted, may be considered by the City Council pursuant to City Council Rule 35A without violating the Open Meeting Law when they are raised for the first time at the meeting. As stated above, the Attorney General strongly encourages (but does not require) that controversial matters or new matters of particular public interest that are raised for the first time at a meeting be postponed for discussion by the body so that they can be listed on a subsequent meeting notice in advance of the meeting at which they will be considered.

The City Clerk also asked, if late policy orders are in writing and distributed for the first time at a meeting, whether they should "be made available to the general public before the meeting or after the motion for suspension of the rules prevails."

The written copies of the late policy orders are Public Records. This is true whether or not a vote on the suspension of the rules pursuant to Rule 35A passes. If the rules are suspended to consider the late policy order, the written copy of the late policy order then becomes one of the documents that must be kept along with the minutes as part of the record of the meeting. At G.L.c.30A, §22(d), the Open Meeting Law provides that, "documents and other exhibits, such as photographs, recordings or maps, used by the body at an open or executive session shall, along with the minutes, be part of the official record of the session." G.L.c.30A, §22(e) provides that the minutes of any open session, including all documents used (subject to certain specified exceptions), shall be Public Records. If suspension of the rules does not pass, then the late policy orders are not considered by the body at the meeting and therefore do not become part of the record of the meeting. However, they are still Public Records pursuant to the Public Records Law (G.L.c.4, §7(c).26)), which broadly defines Public Records to include any document made or received by a public employee (the disclosure of which may be subject to various exemptions).

There is no requirement that extra copies of either Public Records or documents used by a public body at a meeting be made available immediately to the public.² The City Clerk or the City Council as a body may decide the preferred timing of the public disclosure of written copies of late policy orders, which could be either before or after the vote on suspension to consider such late policy orders; however, the substance of any such late policy order should be disclosed orally at the open meeting before a vote is taken on the late policy order itself. The City Council may promulgate a new City Council Rule on the subject if it so chooses.

Therefore, in my opinion the introduction of late policy orders pursuant to City Council Rule 35A does not violate the Open Meeting Law. The written copy of the late policy order itself is a Public Record, but the timing of its distribution to the public at an open meeting is a matter of policy, not a requirement of law.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Nancy E. Glowa', with a long horizontal line extending to the right.

Nancy E. Glowa

² Written copies of late policy orders generally may not be withheld from the public for more than 10 days. See G.L.c.30A, §22(c) requiring the disclosure of minutes or draft minutes of an open meeting within 10 days; and G.L.c.66, §10(b) requiring disclosure of public records generally within 10 days of a request.

Lopez, Donna

From: Lopez, Donna
Sent: Tuesday, November 12, 2013 2:39 PM
To: Rossi, Rich; Peterson, Lisa
Cc: Glowa, Nancy; Goldberg, Arthur
Subject: Request for legal opinion

DATE: November 12, 2013

TO: RICHARD C. ROSSI, CITY MANAGER
LISA PETERSON, DEPUTY CITY MANAGER

FROM: DONNA P. LOPEZ, CITY CLERK

SUBJECT: REQUEST FOR LEGAL OPINIONS

I am respectfully requesting your approval for the City Solicitor to render legal opinions.

1. The Open Meeting Law defines "public body" to include committees and subcommittees and defines "quorum" as a simple majority of the members of the public body.

Would you kindly provide a legal opinion as to whether there is a quorum requirement at committee meetings, and if so, could language be provided to amend the City Council Rules to reflect this requirement? Also, if there is quorum requirement does the requirement pertain to a quorum of the committee membership or to a quorum of the body?

2. City Council Rule 35A provides that late policy orders may be introduced at the end of the regular business meeting after a motion for suspension of the rules has been made to introduce late policy orders on a roll call vote.

Would you kindly provide a legal opinion as to whether this may be a potential violation of the Open Meeting Law. Copies of the late orders are placed on the desk of each City Councillor. Copies are not provided to the general public. Please advise if copies of the late orders should be made available to the general public before the meeting or after the motion for suspension of the rules prevails.

On September 22, 2008 (O-15) Mayor Simmons requested that the City Council minimize the submission of late orders and submitting late orders decreased the ability for thoughtful public discussion prior to the vote of the City Council.

This subject came up again on August 1, 2011 (Amended O-14 submitted by Councillor Kelley), but failed of adoption.

Your kind attention in this matter will be greatly appreciated.

cc: Nancy Glowa, City Solicitor
Arthur Goldberg, Deputy City Solicitor



City of Cambridge

O-14
AMENDED ORDER
IN CITY COUNCIL
August 1, 2011

COUNCILLOR KELLEY
COUNCILLOR CHEUNG

- WHEREAS: The Cambridge City Council often suspends its rules to allow for late Orders, late Resolutions and immediate Reconsiderations; and
- WHEREAS: Such rule suspension limits public participation in Council affairs; and
- WHEREAS: Such rule suspension happens so often as to bring into question the purpose of these particular rules in the first place; now therefore be it
- ORDERED: That this matter be referred to the Government Operations and Rules Committee for a discussion.

ORDER FAILED OF ADOPTION ON A VOICE VOTE



City of Cambridge

O-14
ORIGINAL ORDER
IN CITY COUNCIL
August 1, 2011

COUNCILLOR KELLEY

WHEREAS: The Cambridge City Council often suspends its rules to allow for late Orders, late Resolutions and immediate Reconsiderations; and

WHEREAS: Such rule suspension limits public participation in Council affairs; and

WHEREAS: Such rule suspension happens so often as to bring into question the purpose of these particular rules in the first place; now therefore be it

ORDERED: That the City Manager be and hereby is requested to direct the City Solicitor to provide the City Council with suggested rule changes that would, if possible, create a set of Council rules that would preclude the current perceived need to waive the rules so consistently to conduct Council business; and be it further

ORDERED: That the City Manager be and hereby is requested to direct the City Solicitor to give the City Council guidance, should he be unable to draft such language, on the legality of the Council's constant suspending its rules for late Orders, late Resolutions and immediate Reconsiderations.



City of Cambridge

O-15
IN CITY COUNCIL
September 22, 2008

MAYOR SIMMONS
COUNCILLOR DAVIS
COUNCILLOR DECKER
COUNCILLOR KELLEY
COUNCILLOR MAHER
VICE MAYOR MURPHY
COUNCILLOR REEVES
COUNCILLOR TOOMEY

- WHEREAS: The process and protocol for City Councillors to submit orders before their colleagues intends to provide ample time for all members of the City Council to review, research, and prepare themselves for the appropriate discussion and debate during public meetings; and
- WHEREAS: There have been an increasing number of late orders submitted during City Council meetings which do not directly relate to the discussion and debate of items on the noticed agenda for that evening; now therefore be it
- ORDERED: That the City Council be and hereby is requested to thoughtfully limit and minimize the submission of late orders and to consider that doing so decreases the ability for thoughtful public discussion prior to the vote of Councillors.

In City Council September 22, 2008
Adopted by the affirmative vote of eight members.
Attest:- D. Margaret Drury, City Clerk

A true copy;

ATTEST:-
D. Margaret Drury, City Clerk