



OFFICE OF THE CITY CLERK

CITY OF CAMBRIDGE

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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 QUORUM REQUIREMENTS FOR CITY COUNCIL COMMITTEES

I am transmitting to you the attached legal opinion received from City Solicitor Nancy E. Glowa regarding whether there is a quorum requirement for City Council Committee 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
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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: Quorum requirement for City Council Committees

Dear Mr. Rossi:

City Clerk Donna P. Lopez has requested a legal opinion on the question of whether there is a quorum requirement for City Council Committee meetings, and if so, is the quorum counted as a majority of the Committee members or a majority of the full City Council. See request for opinion attached. For the following reasons, the answers are that there is a quorum requirement for all City Council Committee meetings and that the quorum required is a simple majority of the membership of each Committee unless the City Council Rules are amended to provide otherwise.

The Open Meeting Law (G.L.c.30A, §§18-25) defines "Public body" as "a multiple-member board, commission, committee or subcommittee within... any... city... however created, elected, appointed or otherwise constituted, established to serve a public purpose; ...and provided further, that a subcommittee shall include any multiple-member body created to advise or make recommendations to a public body." G. L. c. 30A, §18. There is no question that the City Council itself is a public body subject to the Open Meeting Law. It is also clear from the provisional Rules of the City Council adopted by the City Council on January 6, 2014, (Rules 26 through 29), that the several City Council Committees¹ are each a multiple-member body created, among other reasons, to advise or make recommendations to the full City Council on matters within each Committee's designated jurisdiction. Each City Council Committee therefore meets the statutory definition of a "subcommittee" under the Open Meeting Law.

¹ Rule 26 creates seventeen committees: the Ordinance Committee, the Finance Committee, the Claims Committee, the Government Operations and Rules Committee, the Community Health Committee, the Environment Committee, the Neighborhood and Long Term Planning Committee, the Housing Committee, the Economic Development, Training, and Employment Committee, the Public Safety Committee, the Human Services Committee, the Civic Unity Committee, the Public Facilities, Art and Celebrations Committee, the Transportation, Traffic and Parking Committee, the Cable TV Telecommunications and Public Utilities Committee, the Veterans' Committee and the University Relations Committee.

Subcommittees of public bodies are themselves public bodies subject to the Open Meeting Law according to the definition of public body quoted above, as well as case law. In Nigro v. Conservation Commission of Canton, 17 Mass.App.Ct. 433 (1984) the Appeals Court held that a three-member subcommittee of the seven-member conservation commission was required to comply with Open Meeting Law requirements. The subcommittee's jurisdiction included making factual investigations, reporting its findings to the full commission and making recommendations for actions to be taken by the full commission. See also, Pearson v. Board of Selectmen of Longmeadow, 49 Mass.App.Ct. 119, 124 (2000) ("...a governmental body includes all subcommittees..."); and Kilcoyne v. Wayland Landfill Review Panel, 2004 WL 2434649 *3 (Mass. Super.) citing Connelly v. School Committee of Hanover, 409 Mass. 232, 236 n.7 (1991) ("As the Board is clearly a governmental body, any committee or board it creates to assist it in its statutory duties is likewise a governmental body.").

Because the City Council Committees are public bodies, they are subject to the Open Meeting Law requirement of needing to have a quorum present to conduct their business. As defined in the Open Meeting Law, G. L. c. 30A, §18, a "Meeting" occurs when a "Public Body" engages in "Deliberation," and a "Deliberation" occurs when a "Quorum" communicates on any public business within its jurisdiction. Therefore, there cannot be a meeting without a quorum. As stated in Pearson v. Board of Selectmen of Longmeadow, 49 Mass. App. Ct. 119, 124 (2000):

The definition of the term "quorum" and its use in the definitions of "meeting" and of "deliberation" indicate that the term is meant to signify group action. This meaning is borne out by dictionary definition and is suggested by case law. See, e.g., Webster's Third New Intl. Dictionary 1868 (1993), defining "quorum" as "the number of members of an organized body of persons...that when duly assembled is legally competent to transact business in the absence of the other members."

In Nigro v. Conservation Commission of Canton, 17 Mass. App. Ct. 433, 435 n.4 (1984), the Court accepted the assumption "that there would be no statutory quorum unless at least two of the three members of the subcommittee are present and participate."

"Quorum" is defined in G.L.c.30A, §18 as "a simple majority of the members of the public body, unless otherwise provided in a general or special law, executive order or other authorizing provision." The seventeen City Council committees are all comprised of an odd number of multiple members—two have nine members; three have five members; and twelve have three members. See Rule 26. Therefore, a quorum of the nine-member committees is five members; a quorum of the five-member committees is three members; and a quorum of the three-member committees is two members. There is no City Council rule, statute, or other authorizing provision that provides for a different quorum.

On its web-site, the Attorney General provides the following answer to an Open Meeting Law Frequently Asked Question about the calculation of a quorum:

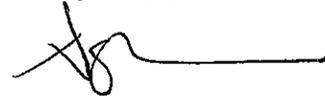
The Open Meeting Law does not define what constitutes an 'authorizing provision,' but where a general or special law sets a body's or type of body's number of members or quorum requirement, no other provision can set a different number or requirement. And where a general law says that a body or type of body has a set number of members, then unless a general or special law says otherwise, G. L. c. 4, §6, clause 5, sets the quorum at a majority of that number, and no other provision can set a different quorum requirement.

This means that because the number of members of the City Council is set by law at nine members, the number of Councilors that constitutes a quorum cannot be altered by the City Council itself. However, where no general or special law sets the number of City Councilors required to serve on City Council committees, the City Council is not prohibited from setting and/or altering the quorum requirement for those committees.

The quorum requirement of the Open Meeting Law applies whether there is a specific City Council Rule stating it or not. However, the City Clerk has requested language that could be adopted by the City Council as a new Rule to reflect this requirement, which would be necessary if the City Council wants to establish the quorum for City Council committee meetings that is different from the statutory quorum of a simple majority. In order to accomplish this, a new City Council Rule 29.5 could be adopted as follows: "No committee described in Rule 26 may hold a meeting unless a quorum of committee members is present. A quorum shall be [a simple majority of committee members OR (other number of) committee members]."

For the above-stated reasons, there is a quorum requirement for all City Council meetings and City Council committee meetings, and the quorum required for each such meeting is a simple majority of the membership of each body, unless the City Council were to amend the Provisional Rules of the City Council to provide otherwise with respect to City Council committee meetings.

Very truly yours,



Nancy E. Glowa

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