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## CITY OF CAMBRIDGE

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

September 24, 2012

Robert W. Healy  
City Manager  
City Hall  
Cambridge, MA 02139

***Re: Awaiting Report No. 12-47 Re: Report on Legal Requirements for Public Notices and Meetings of the Planning Board and the Board of Zoning Appeal***

Dear Mr. Healy:

Please find the following responses to the questions detailed in the above referenced Council Order, requesting that "the City Manager be and hereby is requested to report back to the Council on the legal requirements for public notices and meetings to include whether":

1. "There is, or should be, a requirement that posted public notices be printed rather than written in cursive."

Answer: The Open Meeting Law, G.L. c. 30A, §20(b) (the "Open Meeting Law") requires that "Except in an emergency, in addition to any notice otherwise required by law, a public body shall post notice of every meeting at least 48 hours prior to such meeting, excluding Saturdays, Sundays and legal holidays. In an emergency, a public body shall post notice as soon as reasonably possible prior to such meeting. Notice shall be printed in a legible, easily understandable format and shall contain the date, time and place of such meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting." Further, G.L. c. 30A, §20(c) provides: "For meetings of a local public body, notice shall be filed with the municipal clerk and posted in a manner conspicuously visible to the public at all hours in or on the municipal building in which the clerk's office is located." Open Meeting Law regulations, at 940 CMR 29.03(1)(b), state that "Meeting notices shall be printed or displayed in a legible, easily understandable format..."; 940 CMR 29.03 (2)(b)(1) states: "Public bodies may post notice of meetings on the municipal website."

The Massachusetts Zoning Act, G.L. c. 40A, §11 (the “Zoning Act”) requires that “In all cases where notice of a public hearing is required notice shall be given by publication in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of such hearing and by posting such notice in a conspicuous place in the city or town hall for a period of not less than fourteen days before the day of such hearing.”

The Cambridge Zoning Ordinance (the “Ordinance”) requires in Article 10, Section 10.42.1 that a public notification panel be prepared and posted at the subject site indicating that a request for zoning relief has been filed with respect to the subject site. Section 10.42.1 (d) requires that public notification panels “shall not be less than eighteen (18) inches by twenty-four (24) inches in dimension; they may be larger. No text on the panel shall be smaller than 12 point type.”

There is no requirement in the Open Meeting Law, the Zoning Act or the Ordinance that posted public notices be printed rather than written in cursive.

2. “There is, or should be, a requirement that posted notices be easily legible from the public way.”

Answer: Neither the Open Meeting Law nor the Zoning Act requires posted notices to be easily legible from the public way.

As noted in Answer # 1, the public notification panels that are required by the Ordinance to be posted at the site must be no smaller than eighteen (18) inches by twenty-four (24) inches, and the text on the panels must be no smaller than 12 point type. The Ordinance further requires in Section 10.42.1 (a) that public notification “panels shall be securely mounted on the subject lot at the street line or within the property, but in any case not more than twenty (20) feet from the street line. However, wherever located, the panel(s) shall be visible, easily identifiable, and legible to persons passing by on the public street, without the necessity of trespass onto private property.” Section 10.42.1 (a) of the Ordinance also requires larger lots to have multiple public notification panels depending on the size of the lot.

3. “There is, or should be, a requirement that posted public notices include both a reference to the appropriate section(s) of the zoning code, licensing regulations or other regulatory framework and a concise definition in plain English that would allow the casual reader to determine if the application in question warranted more attention.”

Answer: Neither the Open Meeting Law nor the Zoning Act has any such requirement.

The Ordinance provides in Section 10.42.1 (c) that the “text of the panel shall generally contain the name of the petitioner; a description of the area or premises; street address or other information adequate to identify the location or area subject

of the permit petition; the date, time and place of the public hearing; the subject matter of the hearing; the nature of the action or relief requested; the place where the full application may be inspected; case number of the application; the place where written comments may be directed; the phone number of the municipal agency or contact person where further information may be obtained.”

4. “There is, or should be, a requirement that public comment be allowed at all application hearings where the applicant is presenting anything to the relevant Board, to include answering questions from the Board.”

Answer: There is no explicit requirement under the Open Meeting Law or the Zoning Act that public comment be allowed at application hearings, although our courts have stated that “at the least a public hearing in the zoning context ‘connotes the opportunity for interested persons to appear and express their views pro and con.’” *Milton Commons Association v. Board of Appeals of Milton*, 14 Mass. App. Ct. 111, 114-115 (1982) (citations omitted.)

The Ordinance requires only that a public hearing be held on applications coming before the Board of Zoning Appeal or the Planning Board, and does not require that public comment be allowed at such public hearings. However, both the Board of Zoning Appeal and the Planning Board allow public comment at hearings on applications.

Very truly yours,



Nancy E. Glowa