

Megan B. Bayer
City Solicitor

Elliott J. Veloso
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CITY OF CAMBRIDGE

Office of the City Solicitor
795 Massachusetts Avenue
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Public Records Access Officer

Seah Levy

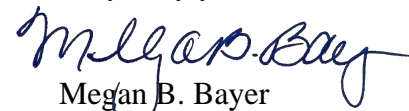
January 6, 2025

To the Honorable, the City Council,

On December 26, 2024, the City Clerk received an Open Meeting Law Complaint against the City Council from Piotr Mitros in connection with the City Council's meeting on December 23, 2024. A copy of the Complaint is attached.

I am requesting that the City Council vote tonight to authorize the City Solicitor to take any action necessary to respond to the Complaint on behalf of the City Council, including by responding with the attached proposed response.

Very truly yours,


Megan B. Bayer
City Solicitor



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: Piotr Last Name: Mitros

Address: 9 Michael Way

City: Cambridge State: MA Zip Code: 02141

Phone Number: (617)395-7963 Ext. _____

Email: piotr@mitros.org

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): Cambridge City Council

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

Date of alleged violation: 12/23/2024

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.

940 CMR 29.00 states:

(a) Except in an emergency, public bodies shall file meeting notices sufficiently in advance of a public meeting to permit posting of the notice at least 48 hours in advance of the public meeting, excluding Saturdays, Sundays and legal holidays, in accordance with M.G.L. c. 30A, § 20. In an emergency, the notice shall be posted as soon as reasonably possible prior to such meeting.

(b) Meeting notices shall be printed or displayed 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. The list of topics shall have sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting.

The Cambridge City Council discussed a change in zoning in a late order the day before Christmas. I found out about this meeting incidentally, from a neighbor. Even the day of the meeting, I could find no information about this topic on the agenda on the Open Meetings Portal (and I could not sign up for public comment without an agenda number). I only received advice from a neighbor on how to sign up 30 minutes before the meeting. Virtually the whole public comment was about this secretive agenda item, so it was of high public interest (this item reflects a give-away of hundreds of millions of dollars to private developers). There was also circumstantial evidence of private deliberations prior to the meeting.

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.

I would like the body to go back and do this right:

- Invalidate last meeting's discussion and vote, and announce the same item with proper 48-hours notice
- Give proper notice and opportunity for public comment
- Clearly record the votes in the minutes

This should be done in the light of day. For a change like this, we want neither the appearance nor the

Review, sign, and submit your complaint

I. Disclosure of Your Complaint.

Public Record. Under most circumstances, your complaint, and any documents submitted with your complaint, is considered a public record and will be available to any member of the public upon request.

Publication to Website. As part of the Open Data Initiative, the AGO will publish to its website certain information regarding your complaint, including your name and the name of the public body. The AGO will not publish your contact information.

II. Consulting With a Private Attorney.

The AGO cannot give you legal advice and is not able to be your private attorney, but represents the public interest. If you have any questions concerning your individual legal rights or responsibilities you should contact a private attorney.

III. Submit Your Complaint to the Public Body.

The complaint must be filed first with the public body. If you have any questions, please contact the Division of Open Government by calling (617) 963-2540 or by email to openmeeting@state.ma.us.

By signing below, I acknowledge that I have read and understood the provisions above and certify that the information I have provided is true and correct to the best of my knowledge.

Signed: _____

Date: 12/26/2024

For Use By Public Body

Date Received by Public Body:

For Use By AGO

Date Received by AGO:

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January 6, 2024

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

Re: *Response of the Cambridge City Council to December 26, 2024 Open Meeting Law Complaint*

Dear Carrie Benedon:

On behalf of the Cambridge City Council, I am writing pursuant to 940 CMR 29.05(5) in response to the Open Meeting Law Complaint of Piotr Mitros (the “Complainant”) dated December 26, 2024, a copy of which is attached (the “Complaint”). The Complainant alleges that at the City Council’s December 23, 2024 meeting, the Council discussed a zoning change without including the topic of the Council’s agenda. For the reasons stated herein, the Complaint is without merit and should be dismissed.

FACTS

1. Background about the Multifamily Zoning Petitions

The Cambridge City Council is considering amendments to the Cambridge Zoning Ordinance that would, among other things, allow multifamily housing in all neighborhoods of the City of Cambridge (the “City”). The concept of allowing multifamily housing citywide has been something the City Council has considered as far back as 2021 and 2022. See the “Past Meetings and Materials” tab at <https://www.cambridgema.gov/CDD/Projects/Zoning/multifamilyhousing>. More recently, the City Council Housing Committee met on multiple occasions from May through August 2024 to discuss the concept of a zoning change to allow multifamily housing citywide. *Id.* On September 30, 2024, the City Council referred the multifamily zoning petitions¹ to the Cambridge Planning

¹ The proposed zoning amendments, which among other things allow multifamily housing citywide, are presented in two separate but complementary zoning petitions because one zoning petition includes amendments that would only require a simple majority vote of the Council to pass, and the other zoning petition includes amendments that would require a two-thirds vote of the Council to pass, pursuant to G.L. c.40A, §5.

Board and the City Council Ordinance Committee, a committee of the whole, for hearings, pursuant to G.L. c.40A, §5.

<https://www.cambridgema.gov/cdd/zoninganddevelopment/zoning/amendments>

Since the referral of the petitions for public hearings, the City's Community Development Department has conducted information sessions about the multifamily zoning petitions on October 24, October 29, and December 3, 2024.

<https://www.cambridgema.gov/CDD/Projects/Zoning/multifamilyhousing>. Additionally, the Planning Board opened its public hearing on November 12, 2024, and has continued to meet and hold public hearings on November 19, 2024, and December 17, 2024. Id. The City Council Ordinance Committee opened its public hearing on November 19, 2020, and continued to meet and hold public hearings on December 4, 2024, and December 19, 2024. Id.

2. Posting of the Agenda for the City Council's Monday, December 23, 2024 Meeting

The City Council's regular meeting time is Mondays at 5:30 p.m. The City Council met on Monday, December 23, 2024 at 5:30 p.m. The City Clerk's Office informed me that the City Council agenda for December 23rd was posted at 12:58 p.m. on Thursday December 19, 2024, which was over 48-hours (not counting the weekend) before the meeting. The agenda was posted on the City's Open Meeting Portal (<https://cambridgema.iqm2.com/citizens/default.aspx>) and the original agenda can be found here -

<https://cambridgema.iqm2.com/citizens/FileOpen.aspx?Type=1&ID=4164&Inline=True>.

3. The City Council's Ordinance Committee Meeting on December 19, 2024

On December 19, 2024, the City Council's Ordinance Committee met at 5:30 p.m. to continue its public hearing on the multifamily zoning petitions.

https://cambridgema.iqm2.com/Citizens/Detail_Meeting.aspx?ID=4615. Over the course of the December 19th meeting, the Ordinance Committee considered and voted to recommend that the City Council request that the Community Development Department draft several amendments to the multifamily zoning petitions for the Ordinance Committee's consideration at a future Ordinance Committee meeting. Also at the December 19th meeting, the Ordinance Committee voted to recommend that the City Council request several City departments report back at a future Ordinance Committee meeting regarding several questions related to the multifamily zoning petitions. The December 19th Ordinance Committee meeting started at 5:30 p.m. and lasted for 3 hours and 27 minutes. A recording of the meeting is available here - https://cambridgema.granicus.com/player/clip/925?view_id=1&redirect=true.

The City Council's Ordinance Committee is a committee of the whole, but as a committee, its authority is limited to making recommendations to the full City Council, and then the full City Council has to vote to direct staff to take any action.² Accordingly, to formally direct staff to draft amendments to the multifamily zoning petitions and answer questions about the multifamily zoning petitions, the request needed to be voted on by the City Council.

² Cambridge City Council Rule 26 states: "The committee shall make policy and other recommendations to the City Council as a whole for discussion, consideration, and adoption."

4. The Late City Council Agenda Item – the Policy Order Re: the Multifamily Zoning Petitions

Therefore, the request to staff related to the multifamily zoning petitions was added to the December 23, 2024 City Council agenda in the form of a Policy Order. The City Clerk’s Office informed me that the December 23, 2024 agenda was updated on December 23, 2024, at 11:34 a.m. to include the Policy Order. The late Policy Order is listed as agenda item II.3. – POR 2024 #163 and can be seen at this link -

https://cambridgema.iqm2.com/Citizens/Detail_Meeting.aspx?ID=4588 (the “Policy Order”).

The City Clerk’s Office also informed me that the late Policy Order was also added to the “Late items for Current City Council Meeting” link on the City Council portion of the City’s Open Meeting Portal at 11:41 a.m. on December 23, 2024 -

<https://cambridgema.iqm2.com/citizens/default.aspx> and

<https://www.cambridgema.gov/Departments/cityclerksoffice/citycouncilagendalateitems>.

As the Complainant asserts, at the December 23, 2024 City Council meeting, prior to the Council’s discussion on the Council Order, many people spoke during the public comment section of the meeting about this topic. The City Clerk’s Office reports that there were 43 people who spoke on this topic at public comment. At the December 23, 2024 City Council meeting, the City Council voted 8 to 1 to pass the Policy Order directing staff to draft amendments to the multifamily zoning petitions and answer questions about the multifamily zoning petitions. The City Council has not yet approved and posted the minutes of that meeting, but the City Clerk’s Office did prepare and post a summary of the final actions taken by the City Council at the December 23, 2024 meeting, which includes that the Policy Order was adopted with 8 yeas and 1 nay. <https://cambridgema.iqm2.com/citizens/FileOpen.aspx?Type=15&ID=2958&Inline=True>.

The Policy Order that was passed asks staff to draft the proposed language and answer the questions in advance of the already scheduled January 16, 2025 Ordinance Committee meeting³ which is a continued public hearing on the multifamily zoning petitions. The City Council had limited opportunities to vote on this Policy Order and give staff sufficient time to take the requested action before the January 16, 2025 Ordinance Committee meeting because the City Council had canceled its meeting on Monday, December 30, 2024, due to the winter holidays.

Also, the vote to adopt the Policy Order simply asks staff to draft proposed language and answer questions. Once staff presents the requested language and information to the Council, the Council may or may not vote to substitute language in the multifamily zoning petitions with the new proposed language, and may or may not make further amendments to the multifamily zoning petitions. Eventually, the Council may or may not vote to ordain the multifamily zoning petitions as amendments to the Cambridge Zoning Ordinance. The Council’s vote on December 23, 2024, to adopt the Policy Order was not a final vote on whether to amend the Cambridge Zoning Ordinance.

³ There is also a meeting of the Ordinance Committee scheduled for January 8, 2025 and that meeting will also be a continued public hearing on the multifamily zoning petition.

DISCUSSION

The City Council did not violate the Open Meeting Law at its December 23, 2024 meeting when it discussed and voted on the Policy Order because the chair of the City Council, Mayor E. Denise Simmons, could not have anticipated discussing that topic at the December 23, 2024 meeting 48 hours in advance of the meeting. The Policy Order arose out of the actions taken by the Ordinance Committee at its 5:30 p.m. December 19, 2023 meeting, which occurred less than 48 business hours before City Council's December 23, 2024 meeting. Mayor Simmons informed me that at the time the December 23, 2024 meeting agenda was posted, and up until 5:30 on December 19th which was the 48-hour mark, she did not anticipate that the Council would discuss the Policy Order at the December 23, 2024 meeting.

Pursuant to the Open Meeting Law, public bodies are required to post notice of every meeting "at least 48 hours prior to such meeting, excluding Saturdays, Sundays and legal holidays." G.L. c. 30A, § 20(b). "Notice 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." *Id.* "A public body may amend a meeting notice within 48 hours of a meeting to include an unanticipated topic and then discuss that topic during the meeting." OML 2021-49. It is not even a requirement of the law to amend the notice to include the late item, although it is a best practice. *Id.* If a meeting is duly noticed at least 48 hours prior to the meeting, the Attorney General's Office only analyzes whether a topic that was not listed on the agenda was unanticipated by the chair 48 hours prior to the meeting. OML 2020-53, fn. 15; OML 2021-49; OML 2017-2. Additionally, "[a]lthough a Chair generally may be aware that a discussion is ongoing, the Open Meeting Law only requires the meeting notice to contain the topics the Chair reasonably anticipates discussing at the particular meeting for which the notice is posted. OML 2020-53.

The City Council agenda for December 23rd was posted at 12:58 p.m. on December 19, 2024, which was prior to 48-hours before the meeting. Although the City Council Ordinance Committee has been in the process of holding a public hearing to discuss the multifamily zoning petitions, the Chair of the City Council did not reasonably anticipate that the City Council would be discussing that topic, and specifically the Policy Order, at its December 23rd meeting until after the December 19th Ordinance Committee meeting, which took place less than 48 hours before the December 23, 2024 City Council meeting.

The Attorney General's Office has stated:

A public body may discuss a topic not listed on a meeting notice if the topic was not reasonably anticipated by the chair 48 hours in advance of the meeting. See OML 2017-2; OML 2013-87. Nevertheless, the public body is encouraged to amend its meeting notice to include the unanticipated topic and provide the public with as much notice as possible of the topics to be discussed during a meeting. While a public body may consider a topic at a meeting that was not listed in the notice if it was not reasonably anticipated at least 48 hours before the meeting, we encourage public bodies to postpone discussion of topics that were not listed in the meeting notice until the topic may be included in a meeting notice, unless the

circumstances demand immediate action by the public body. See OML 2013-197; OML 2011-23.

See OML 2020-53, fn. 16.

Here, the City Council amended its agenda as of 11:34 a.m. on December 23, 2024, to include the Policy Order. Also, at the Ordinance Committee meeting on the evening of December 19, 2024, the Ordinance Committee voted to recommend the same actions that the Council voted to adopt as a Policy Order on December 23, 2024, and the Ordinance Committee mentioned that the recommendation would be before the Council as a Policy Order on December 23rd. Therefore, anyone who watched the Ordinance Committee meeting on December 19, 2024, was aware of the intent to have the Policy Order on the December 23rd agenda as a late item. Additionally, the Council was unable to delay discussion on the Policy Order because the Policy Order was directing staff to draft proposed amendments to the multifamily zoning petitions and for staff to provide information and opinions on several questions, all before the January 16, 2025 Ordinance Committee meeting, and the City Council was not meeting again until January 6, 2025.

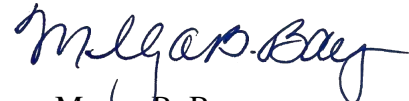
The Complaint also states in the Complaint that “[t]here was also circumstantial evidence of private deliberations prior to the meeting” without providing any additional information as to what the Complainant is alleging. Without more information, the City Council cannot respond to this allegation and denies that there were any violations of the Open Meeting Law. Additionally, the Complainant requests that the Council give proper notice and opportunity for public comment on this topic, but the Complainant concedes that he spoke at public comment about this topic at the December 23, 2024 meeting. There were a total of 43 people who spoke about this topic at public comment at the December 23, 2024 meeting. Lastly, the Complainant requests that the City Council clearly record the votes in the minutes, but the City Council has not yet approved minutes for the December 23, 2024 meeting, and has 30 days from December 23, 2024 to do so. 940 CMR 29.11(2).

CONCLUSION

As stated above, there was no violation of the Open Meeting Law by the City Council, and therefore no further action is necessary in this regard.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Very truly yours,



Megan B. Bayer
City Solicitor

Enclosures

Cc: Piotr Mitros



City of Cambridge

Agenda Item No. **x**
IN CITY COUNCIL
January 6, 2025

ORDERED: That the City Council authorize the City Solicitor to take any action necessary to respond to the December 26, 2024 Open Meeting Law Complaint filed by Piotr Mitros on behalf of the City Council, including by responding with the attached proposed response.