



CITY OF CAMBRIDGE | Office of the Mayor

Mayor E. Denise Simmons

TO: City Clerk Donna Lopez
FROM: Mayor E. Denise Simmons
DATE: January 7, 2016
RE: Communications and Reports from City Officers

Please include the amended Open Meeting Law Complaint filed by Kim Courtney and Xavier Dietrich on the January 11, 2016 agenda and the attached policy order.

Your kind attention in this matter will be greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Denise Simmons", is written over a horizontal line.

Mayor E. Denise Simmons

Creedon, Paul

From: kim@kimcourtneylaw.com
Sent: Wednesday, January 6, 2016 6:55 PM
To: Lopez, Donna; City Council; Maher, David; McGovern, Marc; Cheung, Leland; Kelley, Craig; Simmons, Denise; Dennis Banzan (home); Carlone, Dennis; Mazen, Nadeem; Toomey, Tim; Devereux, Jan
Cc: Xavier Dietrich; City Council; Marc Levy
Subject: Reply to Open Meeting Law Complaint Response
Attachments: Reply - Open Meeting Law Response, City Council Minutes of Aug 10, 2015.pdf; Amended Open Meeting Law Complaint City Council Minutes Aug 10, 2015.pdf; Transcript of Video of August 10 2015 Cambridge City Council Meeting Excerpts.pdf

Donna Lopez and City Councillors,

Please see the attached reply to the Response from Donna Lopez to the Open Meeting Law Complaint regarding the inaccurate minutes from the August 10, 2015 City Council meeting, including an Amended Complaint and a Transcript of the meeting video.

Please include this with the correspondence materials for the next City Council meeting. Copies were already been sent by first class mail as well.

Thank you,
 Kim Courtney
 Xavier Dietrich

Attachment: Amended OML Complaint Attachment.tmp.pdf (COF 2016 # 1 : Kim Courtney and Xavier Dietrich OML Complaint)



OPEN MEETING LAW COMPLAINT FORM

Office of the Attorney General
One Ashburton Place
Boston, MA 02108

9.1.b

Amended

Please note that all fields are required unless otherwise noted.

Your Contact Information:

First Name: Kim

Last Name: Courtney

Address: Xavier
955 Massachusetts Ave #259

Dietrich

City: Cambridge

State: MA

Zip Code: 02139

Phone Number: 6177974112

Ext. _____

Email: kim@kimcourtneylaw.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

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 Clerk
Cambridge City Council

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

City Clerk Donna Lopez ; and individually

Denise Simmons, Timothy Toomey,
Date of alleged violation: October 2015

City Councillors Dennis Benzen, David Maher, Dennis Carlone,
Nadeen Mazem Leland Cheung, Marc McGovern
Amended Jan. 5, 2015 and Craig Kelley

Attachment: Amended OML Complaint Attachment.tmp.pdf (COF 2016 # 1 : Kim Courtney and Xavier Dietrich OML Complaint)

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.

Please see attached letter dated October 28, 2015 from Kim Courtney and Xavier Dietrich.

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) Require City Clerk Donna Lopez to revise the Minutes from the August 10, 2015 meeting to make them accurate, including reference to all documents submitted at the meeting; and
- 2) Convene a public hearing to determine whether these acts were intentional; and
- 3) Impose a fine of \$1,000 for each act outlined in the attached letter.

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:

Kimberly S. Courtney
Xavier Dietrich

Date:

10/28/15

28-Oct-2015

Amended Jan 5, 2016

Page 2

Kimberly S. Courtney
Xavier Dietrich

For Use By Public Body

Date Received by Public Body:

For Use By AGO

Date Received by AGO:

To: Attorney General's Office, Division of Open Government;
Cambridge City Clerk Donna Lopez;
Cambridge City Council;
Cambridge City Councillors, individually: Denise Simmons, Timothy Toomey, David Maher, Dennis Benzan, Leland Cheung, Marc McGovern, Nadeem Mazen, Dennis Carlone, Craig Kelley

From: Kim Courtney & Xavier Dietrich

Re: Complaint, Amended Complaint & Reply to Response from City Clerk Donna Lopez regarding Open Meeting Law Complaint dated October 28, 2015 for Inaccurate Minutes from August 10, 2015 City Council meeting.

Date: January 5, 2015

This letter is in support of the attached Original and Amended Open Meeting Law Complaints dated December 9, 2015 against Cambridge City Clerk Donna Lopez and the Cambridge City Council for the creation of inaccurate minutes from the August 10, 2015 City Council meeting.

The Amended Complaint has added all nine Cambridge City Councillors, individually, to the Complaint due to a unanimous vote taken by them at the November 23, 2015 City Council meeting to approve City Clerk Donna Lopez' Response to the Complaint, which fails to resolve the Open Meeting Law violations at issue. The act of voting in favor of the Response, which explains how Lopez intends to further violate the Open Meeting Law, constitutes additional violations by the City Councillors individually.

To assist the Attorney General's Office, we have provided a transcript of the video recording that was taken of the meeting at issue, with links to that video.

The Response received from Ms. Lopez in no way remedies the Open Meeting Law violations at issue. The proposed changes to the Minutes still contain knowing, false information, that renders those minutes "inaccurate" under the Open Meeting Law.

First, Ms. Lopez' factual section is filled with intentional inaccuracies and misrepresentations, most of which appear to be included for the mere purpose of disparaging the complainants, rather than addressing the violations at issue. The issues at hand are not whether the actions and statements of the Council were proper or legal, which will be addressed in a different forum, but whether Ms. Lopez "accurately" described those actions and statements in the Minutes. She did not, and her proposed amendments render them still inaccurate.

Ms. Lopez has access to the video and audio recordings of the meeting and the transcripts of the statements made by Ms. Courtney and Mr. Dietrich, and thus has no excuse for continuing to make false statements about what transpired at the meeting. It is flat out fabrication when Ms. Lopez states that Mayor David Maher “declared the Council in recess” after “hearing no objection”. There can be no objection where there was no motion presented to the Council for a vote. The clear civil and criminal legal ramifications of Mayor Maher’s actions are not at issue here, but they are relevant to the extent that it appears to be the basis for Ms. Lopez attempting to fabricate the official public record of the meeting, in order to protect Mayor Maher from legal liability. This is not only unethical, but a violation of her oath, and a violation of the Open Meeting Law to fabricate minutes that must be “accurate” by law.

Ms. Lopez’ Response also added more new fabricated information, that “following the recess, public comment continued”. This is false. Mr. Dietrich’s public comment was interrupted by Mayor Maher’s abrupt declaration that the meeting was in recess (without a vote), and he still had time that was supposed to have been afforded to him to continue his public comment. However, Mr. Dietrich was not permitted to continue with his public comment.

The Response from Ms. Lopez claims that a change will be made to the minutes, however that change simply alters one inaccurate statement to make it equally inaccurate. There is no legal difference between stating as she originally did “motion for recess carried” compared with her proposed change of “hearing no objections, the motion – carried”. Again, there was no motion presented to the Council for a vote by Mayor Maher, who was chairing the meeting, there was no opportunity afforded to the Councillors to object to any such motion, and there was definitively no motion that “carried”, which the Council Rules make very clear. Those rules are only relevant here to the extent that Ms. Lopez claims that there was an actual motion presented to the Council and that it was voted upon and passed by the Councillors, which would have required the motion to have been presented to the Council by the chair, as he does for every other motion. The audio and video records of the meeting are clear, there was no motion and no vote taken, and the minutes are thus clearly fabricated.

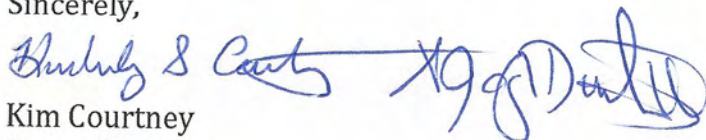
Ms. Lopez alleges in her Response that there is no requirement to have “verbatim” minutes, which is correct. However, this Complaint does not claim that the minutes were not “verbatim”, it claims that the minutes are clearly “inaccurate” in that they contain false information for the sole purpose of protecting Mayor Maher from legal liability, and the minutes omit important and relevant acts and statements that should have been recorded in the minutes. The specificity that Ms. Lopez provided for other public

speakers, compared to her summaries of Ms. Courtney's and Mr. Dietrich's statements, make it clear that her omissions were intentional.

Moreover, there are statements and actions by Mayor Maher, and Councillors Timothy Toomey and Denise Simmons which are missing from the minutes all together, yet Ms. Lopez fails to even address those in her Response.

We hereby request that the Attorney General's Office start an investigation of this matter pursuant to the Open Meeting Law, and request testimony from all parties under oath to determine whether the violations here were intentional, which we believe they were, and to determine the penalties to be assessed.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kim Courtney & Xavier Dietrich", with a large, stylized flourish extending to the right.

Kim Courtney
Xavier Dietrich

Special City Council Meeting

City of Cambridge

August 10, 2015, 5:30pm

Location: Cambridge City Hall, 795 Massachusetts Avenue, Cambridge, MA 02139

City Councillors in Attendance: Chair, Mayor David Maher, Councillors Denise Simmons, Tim Toomey, Marc McGovern, Dennis Benzan, Craig Kelley, Dennis Carlone, Nadeem Mazen

Staff in Attendance: City Clerk Donna Lopez, Lead Assistant to the City Council Sandra Albano

This transcript was created from the video taken by Xavier Dietrich of the August 10, 2015 Cambridge City Council meeting, including the comments of Kim Courtney and Xavier Dietrich, which can be found online at

<https://youtu.be/IT6zoz7MZc0> or <http://bitly.com/AugustCityCouncil>.

The following link can be used to forward directly prior to the recess

<https://youtu.be/IT6zoz7MZc0?t=5m18s>.

An audio recording of the entire meeting is also available from the City of Cambridge at <http://www.cambridgema.gov/citywebcast> (click on August 10, 2015 meeting). Note that the City's recording has intermittent problems with the video, but the audio functions.

Public Comments of Kim Courtney

Kim Courtney: My name is Kim Courtney, and I am an attorney and resident in Cambridge. Thank you for the opportunity to speak this evening.

I am here to speak in support of a proposed Policy Order that was submitted to the Council through Correspondence from myself and 23 others, asking the Council to enforce the law against un-licensed taxis that are currently operating in

Cambridge. I also speak in opposition to proposed resolutions 15 and 24, and proposed order 18, relating to this issue, which are filled with incorrect factual and legal references.

Companies like Uber and Lyft, and their drivers, are engaging in City supported Civil Disobedience in Cambridge by intentionally violating laws that apply to them. The City government has failed the people and businesses of Cambridge by actively permitting those companies and their drivers to knowingly violate the law, which to many is seen as corrupt.

The issue before you has nothing to do with whether the Council likes Uber or Lyft, or believes that the People of Cambridge want them in operation. The current state of the law is that they are not legal.

The Council has no authority to allow government officials to fail to enforce the law while it waits for the State legislature to legalize Uber and Lyft. Nor does the Council have the authority to place a moratorium on fees paid by the taxi industry. It's simple. The City has to enforce existing laws until they are changed.

This issue exemplifies what I consider to be a systemic malfunction in Cambridge city government. Our City Manager Richard Rossi refuses to perform his duty to oversee the License Commission, declaring it to be independent. This failure has resulted in the Commission engaging in gross violations of the laws, as we see here with the taxi industry.

This has also been seen recently with the License Commission's unfair and illegal taking of the value of certain liquor licenses, without a law in place permitting that act. Similarly, the Commission has failed for 6 months to close down a liquor

store that has been operating for 10 years with what the Commission and ABCC declared is an invalid liquor license. The License Commission simply has no authority to make its own laws, or to pick and choose to whom to apply the laws. The powers given to our City government are those derived from the people through the Constitution of the Commonwealth of Massachusetts. The Council is vested with authority only as agents of the people, and are at all times accountable to them. The people of Cambridge have the right to an impartial interpretation and a faithful execution of the law, and the right to reform, alter or totally change the government when it fails them.

It is time to replace License Commission Chair Andrea Jackson with someone who is competent and qualified for that position.

Councillor Tim Toomey: Mr. Mayor. Mr. Mayor, the speaker is out of line.

Kim Courtney: It is time for the Council to begin a search ...

Councillor Tim Toomey: There are no personal attacks allowed in this chamber.

Kim Courtney: It is time for the Council to begin a search for a new City Manager.

Councillor Tim Toomey: Out of order Mr. Mayor.

Kim Courtney: And, it's time for the Council to uphold its duty to the People of Cambridge and enforce the law against Uber and Lyft. Thank you.

Councillor Tim Toomey: Mr. Mayor, I have to take note, there are no personal attacks allowed in this chamber. The speaker is clearly out of line, and as an attorney you should know better.

Mayor Maher: Thank you [inaudible]. Um, Xavier? And then Carla Fipps [phonetic].

[applause]

Public Comments of Xavier Dietrich

Xavier Dietrich: My name is Xavier Dietrich and I am a Cambridge resident.

I thank the Council for the opportunity to speak in support of the Taxicab Industry tonight regarding a few items on tonight's agenda. Two of those items appear as resolutions, numbers 15 and 24, the third item is a policy order, number 18, requesting a moratorium on fees, but not fines, that would otherwise be imposed on Cambridge Taxicab Drivers.

The merits of the various bills before the House regarding regulation of transit network companies mentioned in these policy orders and resolutions will be debated and decided upon elsewhere. It is my purpose tonight to raise awareness of a real and disturbing issue within the City - specifically the Cambridge License Commission - and that is one of refusal to enforce existing laws.

The law regarding conveyance of person for hire is clear as stated in the City of Cambridge's Code of Ordinances 5.20. The ordinance is clear and yet it appears that the position of the City, including Council Members, the City Manager and the License Commission is that it is appropriate to not enforce these ordinances.

I believe this position is wrong.

Until such time as these ordinances are modified they must be enforced - as it is the duty of the city manager in accordance with the Plan E Charter to see that within the City the laws of the Commonwealth and the ordinances, resolutions and regulations of the city council are faithfully executed.

It should come as no surprise to city officials if citizens view them as corrupt

and express contempt for them as a result of the failures and inappropriate actions of these city officials.

The Cambridge License Commission has a long history of failing to enforce existing laws, including the failure to enforce the aforementioned law regarding conveyance of persons for hire. Another recent example is the failure to enforce a liquor license violation where the License Commission itself has acknowledged that the Cellar Wine and Spirits ...

Mayor David Maher: Stick, stick to the items that are on the agenda.

Xavier Dietrich: ... is in clear violation of M.G.L. Chapter 138 section 17 and has been since 2005.

Councillor Denise Simmons: Point of order Mr. Mayor.

Xavier Dietrich: The only remedy for this violation is revocation of the license.

[Mayor David Maher bangs gavel]

Councillor Denise Simmons: Move for recess Mr. Mayor. Move for recess.

Mayor David Maher: Here's a recess.

[Mayor David Maher bangs gavel].

Xavier Dietrich: The License Commission has made it public six months ago that it has been aware of this violation, yet the establishment remains open and currently remains licensed with no disciplinary action taken toward it. I am here tonight to support those ...

[Microphone is removed from Mr. Dietrich while he was speaking and turned off by Lead Assistant to the City Council Sandra Albano. The majority of Councillors leave the Chamber.]

I hereby certify that the above transcription is true and accurate to the best of my ability.

Kimberly S. Courtney, Esq.



City of Cambridge

(ID # 1790)
IN CITY COUNCIL
January 11, 2016

MAYOR SIMMONS

WHEREAS: The City Council is in receipt of an amended Open Meeting Law Complaint filed by Kim Courtney and Xavier Dietrich, 955 Massachusetts Avenue #259 which appears under Communications and Reports from City Officers Number One; now therefore be it

ORDERED: That the City Clerk, in consultation with the City Solicitor, draft a response regarding the attached amended Open Meeting Law Complaint for the City Council's consideration so that the draft response may be considered and voted on by the City Council at its regular business meeting of January 25, 2016.