The Special meeting of the City Council was held in the Memorial Middle School Library, 615 Rollstone St., Fitchburg MA and called to order by President Kushmerek at 7:35 PM. The salute to the Flag was led by Councillor Donnelly. The Clerk called the Roll and ten (10) members were present. Councillor Kaddy was absent. President Kushmerek read the Warrant for the Special Meeting.

Noted for the record:
FATV was recording the audio and video of the meeting.

WARRANT FOR A SPECIAL MEETING OF THE CITY COUNCIL
A Special Meeting of the City Council will be held on Wednesday, February 6, 2019 Immediately following the Council as a Whole Committee Meeting which is scheduled to begin at 6:00 PM. Memorial Middle School Library 615 Rollstone Street, Fitchburg MA

The agenda will consist of the following:

ORAL REPORT FROM COUNCIL AS A WHOLE COMMITTEE ON THE FOLLOWING MATTERS:

027-19. Councilor Anthony M. Zarrella, to amend the rules of the Fitchburg City Council by adopting the following rule relative to the operation of Subcommittee meeting.

At Committee meetings, only Councilors appointed to the Committee in question shall take their place as Councilors at the Council Table or equivalent and participate in proceedings. Other Councilors may attend as members of the public, but shall stand or be seated in the same area as public attendees, shall be subject to all rules governing public comment, and shall not, when addressing the Committee, be addressed as Councilors by the Committee.

• COMMUNICATION: From Vincent P. Pusateri, II, RE: Open Meeting Law/Subcommittees

Oral Report from the Council as a Whole Committee:
The Council as a Whole Committee meeting was called to order by President Kushmerek at 6:00PM on February 6, 2019 in the Memorial Middle School library, 615 Rollstone St. Fitchburg MA. Members present were Councillors Beauchemin, Clark, DiNatale, Donnelly, Fleming, Green, Squalia, Walsh and Zarrella. Councillor Kaddy was absent. In addition to City Clerk Anna Farrell, the Assistant City Clerk Amanda Alford was present. City Solicitor Vincent Pusateri and Assistant City Solicitor Christine Tree were present and seated at the center table to address the Council.
The following matters were on the agenda:

027-19. Councilor Anthony M. Zarrella, to amend the rules of the Fitchburg City Council by adopting the following rule relative to the operation of Subcommittee meetings.

TO THE HONORABLE CITY COUNCIL OF THE CITY OF FITCHBURG

Ladies and Gentlemen:

The undersigned Petition your Honorable Body to

To Amend the Rules of the Fitchburg City Council by adopting the following rule relative to the operation of Subcommittee meetings.

At Committee meetings, only Councilors assigned to the Committee in question shall take their place as Councillors of the Council Table or equivalent and participate in proceedings. Other Councilors may attend as members of the public, but shall stand to or be seated in the same area as public spectators, shall be subject to all rules governing public attention, and shall not, when addressing the Committee, be addressed as Councillors by the Committee.

Respectfully submitted,

Anthony M. Zarrella
Councillor-at-Large

FITCHBURG CITY CLERK
3/2/2018
Michael Kushmerek, President
Fitchburg City Council
166 Boulder Drive
Fitchburg, MA 01420

RE: Open Meeting Law and Council’s Subcommittees

Dear Council President Kushmerek,

Kindly accept this letter as an opinion relative to the Open Meeting Law, M.G.L. c. 30A, §§18-25 as it applies to subcommittee meetings of the City Council. Specifically, it is this office’s opinion that the City Council is required to change its current mode of operation for subcommittees to avoid a violation of the Open Meeting Law. It is important to avoid the appearance that a quorum of the City Council is meeting when only a subcommittee meeting has been noticed to the public.

As you are aware, councilors enjoy participating in subcommittee meetings regularly. Councilors sit at the Council Table (also known as the Council Dias) during subcommittee meetings and are addressed as councilors during the course of the meeting. Currently councilors attending a subcommittee meeting stop participating in discussions once a motion has been made in an effort to abide by the Open Meeting Law. While the Council is well-intentioned, this is not sufficient to avoid participating in deliberations.

In evaluating whether visiting councilors deliberated, the Office of the Attorney General set forth the test as whether “a reasonable member of the public watching the recording of the meeting would have believed they were watching a joint meeting of the council and the

1 A similar situation was brought to the Attorney General in 2016. The Attorney General opined “Members of a parent public body may attend the meeting of a subcommittee provided that there is no deliberation. See OML 2013-38. In considering whether members of the parent public body have deliberated during a subcommittee meeting, we look for indicia such as whether the parent public body members were seated with the general public and whether they participated by open participation to conclude that no improper deliberation incurred.” OML 2016-117, Page 2.
In that case, a quorum of councilors were present at a City Council subcommittee meeting, and non-committee members sat in their usual seats at the Council Table and were addressed as "Councillor." Those three factors were sufficient to support a finding that the Open Meeting Law was violated.

From this and prior decisions it is clear that the presence of a quorum of City Councillors alone will not trigger a violation of the Open Meeting Law. The Attorney General seemed more focused on the public appearance of the meeting and whether topics outside of the subcommittee's jurisdiction were discussed. Consequently, the presence of a quorum of the City Council or any committee at any other committee or board meeting can call a councilor's conduct into question.

Therefore, I am recommending a cautious approach to the operation of your subcommittees which would include as follows:

1. Non-committee members should sit in the area designated for public attendance;
2. Recognize councilors who are not committee members by the prefix of Mr., Ms., Mrs., Dr., Attorney, etc. as opposed to the honorific "Councillor";
3. Councilors should be permitted the same latitude as the general public to address the committee; and
4. Discussion by non-committee member councilors of topics outside the committee's responsibilities and agenda should be avoided.

I have attached a copy of the Attorney General's opinion for your review. I would like to thank Councillor Zarrella for bringing this issue to my attention. I look forward to any questions or comments you may have.

Very truly yours,

[Signature]

Vincent P. Panatier, II, Esq.
Solicitor, City of Fitchburg

VPP/dam
Enclosures

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1 Id., Page 3.
THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

MAURA HEALEY
ATTORNEY GENERAL

TEL: (617) 727-2200
www.mass.gov/ago

September 1, 2016
OML 2016 – 117

Joseph I. Macy, Corporation Counsel
City of Fall River
1 Government Center
Fall River, MA 02722

RE: Open Meeting Law Complaint

Dear Attorney Macy:

This office received a complaint from CJ Ferry, dated March 30, alleging that the Fall River City Council (the “Council”) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint was originally filed with the Council on February 16, and the Council responded by letter dated March 10. In his complaint, Mr. Ferry alleges that the Council violated the Open Meeting Law when a quorum of the Council was present at a meeting of the Council’s Subcommittee on Ordinances and Legislation (the “Subcommittee”) and deliberated, even though the meeting was not noticed as a joint meeting.

We appreciate the patience of the parties while we reviewed this matter. Following our review, we find that the Council violated the Open Meeting Law as alleged. In reaching a determination, we reviewed the original complaint, the Council’s response, and the request for further review filed with our office. We also reviewed a video recording of a Subcommittee meeting held on February 16.

FACTS

We find the facts as follows. The Council is a nine-member public body, thus five members constitute a quorum. At all times relevant to this complaint, five Councilors—Cliff Ponte, Joseph Camara, Pam Laliberte-Lebeau, Stephen Long, and Linda Pereira—were the sole members of the Subcommittee. On February 10, the Subcommittee posted notice of a meeting to be held on February 16. The notice did not state that the meeting would be a joint meeting between the Subcommittee and the Council.

1 Unless otherwise indicated, all dates in this letter refer to the year 2016.
2 We note that the complainant filed an amended complaint on February 22, adding more detail.
The Subcommittee held the February 16 meeting as planned in the Council chambers with four Subcommittee members present. The Subcommittee members sat at a rectangular table in the middle of the room in front of the dais where the Councilors regularly sit. During this meeting, four other Councilors arrived, sitting in their regular seats at the Council’s dais, bringing the total present to eight Councilors. During the meeting, Councilors Richard Cabecceiras, Shawn Cadime, Raymond Mitchell, and Steven Camara were recognized to speak. These Councilors, not members of the Subcommittee, addressed the Subcommittee from the Council dais and asked questions. Ultimately, the Subcommittee voted to refer one issue to the Council for full discussion; the Councilors present did not comment on this vote.

DISCUSSION

The Open Meeting Law requires that, except in limited circumstances, “all meetings of a public body shall be open to the public.” G.L. c. 30A, § 20(a). Except in an emergency, “a public body shall post notice of ever meeting at least 48 hours prior to such meeting, excluding Saturdays, Sundays and legal holidays.” G.L. c. 30A, § 20(b). A subcommittee of a public body is itself a public body subject to the Open Meeting Law. G.L. c. 30A, § 18. The Open Meeting Law defines a “meeting” as “a deliberation by a public body with respect to any matter within the body’s jurisdiction,” however this definition does not include the “attendance by a quorum of a public body at a meeting of another public body that has complied with the notice requirements of the open meeting law, so long as the visiting members communicate only by open participation in the meeting on those matters under discussion by the host body and do not deliberate.” Id. “Deliberation” is defined, in relevant part, as “an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction.” Id.

The complaint alleges that the presence of five Councilors—a quorum of the Council—on the Subcommittee is a per se violation of the Open Meeting Law. The complaint alleges that every Subcommittee meeting is therefore a meeting at which a quorum of the Council is present. This argument is unavailing. We have previously concluded that a quorum of a public body may sit on its subcommittee without having to post a separate meeting notice, provided that the discussion is limited to matters within the jurisdiction of the subcommittee. See OML 2013-155, Fn. 2.4 Because we discern from the recording of the February 16 meeting no discussion of topics beyond the Subcommittee’s jurisdiction, we find no violation with respect to this allegation.

The complaint also alleges that the Councilors who were not members of the Subcommittee violated the law when they deliberated during the Subcommittee’s February 16 meeting. Members of a parent public body may attend the meeting of a subcommittee provided there is no deliberation. See OML 2013-38. In considering whether members of the parent public body have deliberated during a subcommittee meeting, we look for indicia such as whether the parent public body members were seated with the general public and whether they participated by open participation to conclude that no improper deliberation occurred. Id. Here, Councilors Cabecceiras, Cadine, Mitchell, and Camara sat in their seats at the Council dais. When they were recognized to speak, it was done with the honorific “Councillor.” Based on this,

4 Open Meeting Law determinations may be found at the Attorney General’s website: www.mass.gov/ago/openseeting.
Council as a Whole Committee
Oral Report

a reasonable member of the public watching the recording of the meeting would have believed they were watching a joint meeting of the Council and the Subcommittee. We therefore find that the Council violated the Open Meeting Law by deliberating during the February 16 meeting without posting notice.

While not raised in the complaint, we note that the Council did not respond to the complaint within the time frame required by law. Unless an extension of time has been granted, a public body must, within 14 business days of receipt of an Open Meeting Law complaint, send a copy of the complaint to the Attorney General’s Office and notify the Attorney General’s Office of any remedial action taken. G.L. c. 30A, § 23(b); 940 CMR 19.05(5), (6). Here, the complaint was filed with the Council on February 16. The Board did not request an extension, and responded by letter dated March 10. We take this opportunity to remind the Board of its obligations under the Open Meeting Law.

CONCLUSION

For the reasons stated above, we find that the Council violated the Open Meeting Law. We order the Council’s immediate and future compliance with the Open Meeting Law, and we caution that similar future violations may be considered evidence of intent to violate the law.

We now consider the complaint addressed by this determination to be resolved. This determination does not address any other complaints that may be pending with our office or the Council. Please feel free to contact the Division at (617) 963-2546 if you have any questions.

Sincerely,

Kevin W. Manganaro
Assistant Attorney General
Division of Open Government

cc: CJ Ferry
Fall River City Council

This determination was issued pursuant to G.L. c. 30A, § 23(c). A public body or any member of a body aggrieved by a final order of the Attorney General may obtain judicial review through an action filed in Superior Court pursuant to G.L. c. 30A, § 23(d). The complaint must be filed in Superior Court within twenty-one days of receipt of a final order.
The following documents were submitted and/or noted in the discussion by Councillor Squailia:

January 29th, 2019 City Council Meeting notes, Sam Squailia, Councilor at Large 978-352-0310

Regarding Petition 027-19.
Councilor Anthony M. Zarella, to amend the rules of the Fitchburg City Council by adopting the following rule relative to the operation of Subcommittee meeting.
At Committee, meetings, only Councillors appointed to the Committee in question shall take their place as Councillors at the Council Table or equivalent and participate in proceedings. Other Councillors may attend as members of the public, but shall stand or be seated in the same area as public attendees, shall be subject to all rules governing public comment, and shall not, when addressing the Committee, be addressed as Councillor by the Committee. (Council as a Whole Committee)

Problem Identified: Potential Open Meeting Law Violation if a quorum of councilors (6+) attend a subcommittee meeting and participate, if meeting is not advertised as a joint committee of the whole council.

(2) Potential Solutions to this identified problem:
1. Advertise all Committee Meetings also as a Committee of the Whole Meeting.
2. Limit councilors from participating in committee meetings.

Solution 1:
We amend the rules of the Fitchburg City Council such that all Committee Meetings are advertised to the public as both a Specific Committee Meeting and a Committee of the Whole Meeting.

- This would satisfy the OML requirements per Asst Solicitor Tree.
- In the case of no quorum of the city council, the Committee of the Whole would be held, with a statement that no quorum of the city council is present for the public. Councilors would then be allowed to participate, at the table, as historically allowed.
- In the case of a quorum of the city council, we would designate the Committee Chair (ex. Finance Chair) to run the meeting, and the Clerk of the Committee (Ex. Chair of the Finance Committee) to take the minutes for the committee.
- Per city Code, the Clerk must attend Council Meetings and keep the Minutes, no such rule exists for attendance at Committee of the Whole Meetings. However, as the City Clerk and Solicitors commonly attend Committee of the Whole Meetings, we should note in our Council Rules to clarify that the Clerk/Solicitor's attendance at Joint Committees as described to be at the discretion of the Chair.
- This is how Kopelman and Page / KP Law (which represents 125 municipalities in the Commonwealth) has advised Leominster City Council to conduct their meetings. See attached Committee Agenda Example.

Solution 2:
We amend the rules to limit councilors from participating in all committee meetings entirely (that they are not a member of).

- This approach also would satisfy the OML requirements per Solicitor Pusateri...yet is a severely restrictive approach.
- I’ve never seen an instance or problem at any committee meeting where progress has been impeded due to a councilor wanting to sit at the table and participate in their already limited capacity.

I believe that Councilors, regardless of whether or not they are on a specific committee, are duly elected to represent their constituents ... and if any duly elected Councilor is willing and able to show up to a committee meeting to represent their constituents ... they should be allowed to participate.
Council as a Whole Committee
Oral Report

City of Fitchburg, February 6, 2019

ITEM OF BUSINESS: MASSACHUSETTS GEN. LAWS Ch. 122 Section 74, Section 95-4C Committee Meeting

City of Fitchburg, January 30, 2019, 3rd Floor, City Council Chambers - City Hall

Chairman of the Whole Meeting

Administrative Ordinance - IN ORDIANANCE

Amending Ordinance 2005, the Revised Ordinance entitled "Speeds and Traffic Laws":

be amended by the City Council of the City of Fitchburg, as follows:

Paragraph 4 of the Revised Ordinance entitled "Parades, Processions and Other Public Assemblies", by striking and deleting the current text in its entirety and replacing it with the following new section: SECTION 20-10.

PARADES:

Amend by striking and deleting opposition to Middlesex Integrative Health, a limited liability corporation, "Medical Marijuana Dispensary (RMD) to be located at 308 North Avenue, Wellesley, MA to be signed by the Mayor or the Chairman of the Committee of the Whole Council.

The Chairman of the Committee of the Whole Council, by striking the Secretary of the City of Fitchburg, to amend the Zoning Ordinances, to remove the conflict, of the Section of Article XII 22-71-5 that states a "No signs over the building's roofline and/or the wall upon which the sign is attached". This contravenes section 22-71-5 that covers sign illuminated signs may extend eight feet above the roof line.

Committee Chairman

Chairman of the Whole meeting is posted in the event of a meeting of this standing committee meeting. If a meeting of any such meeting shall be restricted to those in attendance.
as referenced in the meeting

Sam Squailia
Fitchburg City Councilor-at-Large
225 Scott Rd, Fitchburg, MA 01420
ssquailia@fitchburgma.gov
978-352-0310

From: OpenMeeting (AGO) <openmeeting@state.ma.us>
Sent: Thursday, January 31, 2019 11:20 AM
To: Squailia, Samantha
Subject: RE: Fitchburg City Council Committee Meetings and Open Meeting Law Compliance

When two or more public bodies hold a joint meeting, each public body participating in the meeting must provide independent notice of their meetings, or if posting a single notice, must clearly state that each public body will be meeting. The notice must include the date, time and place of the meeting, as well as a list of topics that the chair reasonably anticipates will be discussed. For purposes of clarity, all bodies involved should note in their meeting notices that the meeting will be a joint meeting with the other bodies. If a quorum of Councilors always want to participate during Committee meetings, then it would seem that every meeting is a meeting of the whole rather than truly a joint meeting.

Kerry Kilcoyne
Assistant Attorney General
Division of Open Government
Office of the Massachusetts Attorney General
One Ashburton Place, 20th Floor
Boston, MA 02108

From: Squailia, Samantha <SSquailia@fitchburgma.gov>
Sent: Wednesday, January 30, 2019 4:37 PM
To: OpenMeeting (AGO) <OpenMeeting@MassMail.State.MA.US>
Subject: Re: Fitchburg City Council Committee Meetings and Open Meeting Law Compliance

Hi Kerry,

Thanks for the response,

The current option proposed by our Solicitor will ban councilors from participating— and I’m trying to create a workable solution that helps all representatives to be allowed to participate if they are able and willing.

In the determination from the OML violation included in the Solicitor’s letter, it specifically noted that the
violation was that the meeting was not advertised as a joint meeting of the Committee of the Whole and Subcommittee Meeting with a quorum of councilors attending.

Therefore, I'd like to propose a solution for advertising the meetings as Joint Committee meetings.

How should we advertise our Committee Meetings as Joint Committee Meetings to ensure your office approves of it's design?

Leominster's agenda was an example currently in use as suggested by their Solicitor Kopelman & Page. How would we improve upon this design to satisfy the law?

Thank you,

Sam Squailia
Fitchburg City Councilor-at-Large
225 Scott Rd, Fitchburg, MA 01420
ssquailia@fitchburgma.gov
978-352-0310

From: OpenMeeting (AGO) <openmeeting@state.ma.us>
Sent: Wednesday, January 30, 2019 4:22 PM
To: Squailia, Samantha
Subject: RE: Fitchburg City Council Committee Meetings and Open Meeting Law Compliance

Good Afternoon Sam,

I believe the best option is to follow the advise given by your City Solicitor. After reviewing the notice you provided from Leominster, I cannot tell whether that was a meeting of the City Council, a meeting of the Legal Affairs Committee, or a joint meeting of both. If a quorum of the City Council is not present at Committee meetings but Councillors who are present sit at the table and participate, then technically it might not be a violation of the Open Meeting Law but there may be an appearance of impropriety and a violation of the spirit of the law.

Sincerely,
Kerry Kilcoyne
Assistant Attorney General
Division of Open Government
Office of the Massachusetts Attorney General
One Ashburton Place, 29th Floor
Boston, MA 02108

Ph: (617) 963-2540
openmeeting@state.ma.us

From: Squailia, Samantha <ssquailia@fitchburgma.gov>
Sent: Wednesday, January 30, 2019 11:32 AM
To: OpenMeeting (AGO) <OpenMeeting@MassMail.State.MA.US>
Subject: Fitchburg City Council Committee Meetings and Open Meeting Law Compliance

Hello,
I have a pressing matter before our Fitchburg City Council I would greatly appreciate your guidance on.

The problem brought before us last Thurs is the way we are advertising our Committee Meetings...when possibly a quorum of councilors could attend ‘appear’ to be deliberating to the public.

See attached opinion by our City Solicitor’s Office.

The resulting petition is one option to satisfy the Open Meeting Law requirements.

Petition 027-19 Councilor Anthony M. Zarrella, to amend the rules of the Fitchburg City Council by adopting the following rule relative to the operation of Subcommittee meeting.

At Committee, meetings, only Councilors appointed to the Committee in question shall take their place as Councilors at the Council Table or equivalent and participate in proceedings. Other Councilors may attend as members of the public, but shall stand or be seated in the same area as public attendees, shall be subject to all rules governing public comment, and shall not, when addressing the Committee, be addressed as Councilor by the Committee.

I would like guidance on an alternative option, that would also satisfy OML, but would also allow councilors (not on committees) to participate at the table and ask questions of representatives of petitions.

In Leominster, they have dealt with this concern by advertising all Committee Meetings as Joint Meetings of Committee and Committee of the Whole. I am attaching their recent Committee Agenda that illustrates this.

This is the option I would like to present to our Councilors at our upcoming meeting.

Some details I believe would work:
- In the case of no quorum of the city council, the Committee of the Whole would be not be held, with a statement that no quorum of the city council is present for the public. Councilors would then be allowed to participate, at the table, as historically allowed.
- In the case of a quorum of the city council, we would designate the Committee Chair (Ex. Finance Chair) to run the meeting, and the Clerk of the Committee (Ex. Chair of the Finance Committee) to take the minutes for the committee.

I’d greatly appreciate help so I can present a working option to our councilors, to allow our participation as elected officials in all matters as councilors may choose to attend to.

Thank you!

Sam Squailia
Fitchburg City Councilor-at-Large
225 Scott Rd, Fitchburg, MA 01420
ssquailia@fitchburgma.gov
978-352-0310
Arthur Vigeant
City Council President
140 Main St.
Marlborough, MA  01752

RE:  Open Meeting Law Complaint

Dear President Vigeant:

This office received a complaint filed by Kathleen Rober, dated June 27, 2011, alleging that the Marlborough City Council (the "Council") violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint alleges that on "May 16, 2011, the City Council Finance sub-committee met during a duly posted meeting to continue their discussion of the school department's line item in the City's FY12 budget. The eleven member city council includes a 5 member [finance committee]; all eleven members were in attendance at the meeting and all sat in their council seats rather than the visitor's gallery." The complaint alleges that a quorum of the Council met and deliberated during the Finance Committee meeting, although no Council meeting was posted or convened. The complaint was originally filed with the Council on May 20, 2011, and the Council filed a response to the complaint on May 31, 2011.

We find that the Council violated the Open Meeting Law by failing to post notice and failing to convene a meeting of the full Council during the May 16, 2011 Finance Committee meeting. In reaching this determination, we reviewed the May 20, 2011 complaint, the Council's May 31, 2011 response to the complaint, and the June 27, 2011 complaint. We also reviewed the Council Rules, the notice for and minutes of the Finance Committee's May 16, 2011 meeting, and the documents used by the Finance Committee at that meeting. Finally, we reviewed a video recording of the Finance Committee's May 16, 2011 meeting.
FACTS

The Council consists of 11 elected members. The Council’s Finance Committee consists of five of the 11 Council members. Items submitted to the full Council are referred during regular meetings to its respective subcommittees, and recommendations are subsequently referred back to the Council for decision. The Council’s rules allow members of the Council to actively participate in meetings of Council subcommittees, even if they are not members of the subcommittee, as long as they are recognized by the chair of the subcommittee. Municipal managers and members of the public may also participate in subcommittee meetings, if recognized by the chair.

The Finance Committee met on May 16, 2011 to discuss the Mayor’s fiscal year 2012 budget, and specifically the school department budget. A notice for this meeting, with the topic “Mayor’s FY12 Budget” was posted on April 28, 2011. At the meeting, all 11 members of the Council participated in the budget discussion, though only the Finance Committee members were permitted to vote. Councillors sat in their regular seats, facing the audience, similar to the manner in which they conduct full Council meetings. The meeting was recorded by the local cable access station.

DISCUSSION

The Open Meeting Law requires that, except in limited circumstances, “all meetings of a public body shall be open to the public.” G.L. c. 30A, § 20(a). Except in an emergency, “a public body shall 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). A subcommittee of a public body is itself a public body subject to the Open Meeting Law. G.L. c. 30A, § 18. The Open Meeting Law defines a “meeting” as “a deliberation by a public body with respect to any matter within the body’s jurisdiction,” however a meeting does not include the “attendance by a quorum of a public body at a meeting of another public body that has complied with the notice requirements of the open meeting law, so long as the visiting members communicate only by open participation in the meeting on those matters under discussion by the host body and do not deliberate.” Id. “Deliberation” is defined, in relevant part, as “an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction.” G.L. c. 30A, § 18.

The Council violated the Open Meeting Law on May 16, 2011 by deliberating outside of a posted meeting. Although the Finance Committee posted notice for its meeting on that date, the full Council did not. Members of the Council, who are not members of the Finance Committee, may attend a subcommittee meeting without it being a meeting of the Council as long as they do not deliberate. See G.L. c. 30A, § 18. This means that Council members may attend the meeting and listen as members of the audience, and participate as members of the
audience at the discretion of the chair of the subcommittee. However, at the May 16, 2011 meeting, the Council members sat in their regular seats in the Council chambers, and participated on the same terms as members of the subcommittee, except for voting. The Council’s conduct therefore did not fall within the exception to the definition of “meeting,” and notice should have been posted.

Our office recently resolved a similar complaint, OML 2011–16. In that determination, we found that a quorum of a board of selectmen deliberated, and should therefore have posted notice for a meeting, when its members attended a public forum, sat together at the front of the room facing the audience and participated in discussion of matters within the board’s jurisdiction. The same reasoning applies to attendance by a quorum of a public body at a meeting of that body’s own subcommittee.

"was meant to bring this issue to the forefront by showing how a seemingly well-meaning body, the City Council, would act in what appeared to be a transparent process, but was, rather, a violation of law that they did not intend to commit."

If the Councillors wish to attend a subcommittee meeting and listen to the discussion, they may sit in the audience and do so and no meeting of the Council is required. If they wish to ask questions of the subcommittee, they may also do so without convening a meeting of the Council provided their participation is open and on the same terms as members of the public, and there is no discussion between a quorum of the Council on matters within its jurisdiction.

1 The Attorney General has provided a Frequently Asked Question available at www.mass.gov/ago/opmeeting addressing this point:

If a subcommittee of a public body holds a meeting and members of the public body, who are not members of the subcommittee, wish to attend the meeting, must the public body post a meeting notice?

No, as long as the public body does not engage in a deliberation. Members of a public body may wish to attend a meeting of a subcommittee of that public body, even where those members are not part of the subcommittee. In those cases, they may sit in the audience and participate as members of the public. They may address the public body with the permission of the chair, and may state their opinion on matters under consideration by the subcommittee. They may not discuss matters as a quorum, or discuss topics which are not under consideration by the subcommittee. Doing so would constitute a deliberation, and a separate meeting notice for the public body would be required. The subcommittee convening the meeting must still post its regular meeting notice.

2 Open Meeting Law determinations may be found at www.mass.gov/ago/opmeeting.
The Complainant protests that if Council members were to participate from the audience during meetings of subcommittees of which they are not members, "every subcommittee would have to allow public participation if they wished to obtain input and comment from members of the main body." The Complainant contends this is a problem because, "[w]ith rare exception, the Marlborough City Council and School Committee do not allow public participation at the sub-committee meetings." Whether to allow public participation, and to what extent, is a matter at the discretion of the chair. See G.L. c. 30A, § 20(f). The chair may choose to recognize some individuals, and not others, and allow them to address the public body.

CONCLUSION

We find that the Council violated the Open Meeting Law by failing to post notice for and convene a meeting during the May 16, 2011 Finance Committee meeting. We do not find that this was an intentional violation, and we acknowledge that the Council's deliberation was held during a posted meeting of another public body, which was open and accessible to the public, and aired live on local cable access television. We therefore provide this letter as guidance to the Council and its committees, and order no further remedial action.

We now consider this matter closed. If you have any questions regarding this determination, please do not hesitate to contact me at the number below.

Sincerely,

[Signature]

Jonathan Scarnac
Assistant Attorney General
Division of Open Government
Ph: 617-963-2045

cc: Kathleen Robey
Attorney Tree and Attorney Busateri explained that the basis of their opinion letter is that the Attorney General has determined that if a quorum of the entire City Council sits at a sub-committee meeting it is a violation of the Open Meeting Law due to the fact that it is essentially a meeting of the full City Council and not the sub-committee. Therefore, they have opined that the non-committee member Councillors may attend the meeting, sit with the public and may participate as members of the public from the public area including approaching the center table to speak when recognized by the Committee Chair. Attorney Busateri stated that the issue boils down to the location of seating of non-committee member Councillors and being addressed in the meeting as Mr., Ms. Mrs. or Miss instead of Councillor.

Attorney Tree noted the reference made by Councillor Squailia to another local City Council which posts their sub-committee meeting notices as follows with the belief that it meets the requirements of the Open Meeting Law.:

"This notice of a City Council Committee of the Whole meeting is posted in the event that a quorum of City Councillors is present at this standing committee meeting. If less than a quorum of the City Council is present, no Committee of the Whole meeting shall take place. If a quorum is present, any such meeting shall be restricted to the standing committee agenda items listed above."

Attorney Tree stated that she has spoken with the Attorney General's Director of Open Government regarding this practice and was told that the notice is questionable because the public cannot know for sure which meeting will be held and that, furthermore, it could be regarded as an intentional strategy to avoid compliance with the Open Meeting Law therefore they cannot recommend this practice. Attorney Busateri stated that if a Council as a Whole Committee meeting is posted there needs to be a true intention to hold that meeting.

The public was invited to speak on the matter. Mr. Alexander Vera was recognized and stated that all Councillors should participate in all discussions on all matters before them therefore the Council as a Whole Committee should be the setting for all discussions.

No one else requested to speak from the audience.

President Kushmerek spoke in support of the petition and the opinion of the City Solicitor and Assistant City Solicitor, noting that the process proposed is followed by many other municipalities in MA and across the country as well as our State and Federal government.

Councillor Zarrella spoke as the sponsor of the petition. He stated that he does not want to silence anyone but instead wants to establish a process for all Councillors to be able to participate at committee meetings in compliance with the Open Meeting Law.

Councillor Squailia spoke in opposition to the petition. She stated that Councillors are duly elected to represent the public and should be able to participate in all committee discussions. She stated that the public cannot participate in committee meetings therefore by relegateing non-committee member Councillors to the public area they are prevented from participating. She referenced her counter-proposal and the 2012 communication from the Attorney General as evidence that it can be lawfully instituted.

Attorney Busateri noted that the referenced communication from the Attorney General is from 2012 and that they have since
updated their opinion on the practice described as being questionable. He believes that the practice will eventually be viewed by the Attorney General as a manner to elude the OML requirements and ruled non-compliant. He stated that the question comes back to whether or not the Council wishes to have sub-committees or not.

Councillors Walsh, DiNatale, Green, Fleming and Donnelly joined in the discussion expressing that the sub-committee system works well, sending everything to Council as a Whole Committee would be inefficient, that the public is allowed to speak at committee meetings and that Councillors have full access to all City Department heads to ask questions about any matter that comes before them.

Councillor Beauchemin voiced a concern about not always being able to hold out items from a Committee report for a separate vote during the full Council meetings. A question was posed to the City Clerk asking if the meeting records could note specific objections made by a Councillor regarding a specific matter in a Committee report when no separate vote is taken. The Clerk responded that this could certainly be done and requested that, since minutes are not verbatim, if a Councillor wishes a specific note be made that they preface their objection with "please let the record reflect" to ensure that the verbatim statement is noted and made part of the permanent record.

When discussion was complete a motion was made and seconded to grant the petition. Motion passed by vote of 9 in favor and 1 opposed (Squallia). 10 members present. Board consists of 11 members.

The report of the Council as a Whole Committee was accepted. Petition was granted by vote of 9 in favor and 1 opposed (Squallia). 10 members present. Board consists of 11 members.

The meeting adjourned at 7:38 P.M.

Anna M. Farrell, Clerk