



Roll Call

*CITY COUNCIL MEETING
CONDUCTED AS AN ON-LINE ZOOM MEETING
Northampton, MA*

A special meeting of the City Council was called to order on June 25, 2020 by City Council President Gina-Louise Sciarra. At 6:02 p.m. on a roll call the following City Councilors were present:

- | | |
|--|--------------------------------------|
| At-Large Councilor Gina-Louise Sciarra | At-Large Councilor William H. Dwight |
| Ward 1 Councilor Michael J. Quinlan, Jr. | Ward 5 Councilor Alex Jarrett |
| Ward 2 Councilor Karen Foster | Ward 6 Councilor Marianne LaBarge |
| Ward 3 Councilor James B. Nash | Ward 7 Councilor Rachel Maiore |
| Ward 4 Councilor John Thorpe | |

Also present: City Solicitor Alan Seewald, Esq.

Announcement of Audio/Video Recording

At 6:01 p.m., Councilor Sciarra convened the regular meeting. She announced that the meeting was being held by remote participation and audio/video recorded.

Open Meeting Law Complaints

Open Meeting Law Complaints filed by Joshua Wallace of NEPBA #186 June 19, 2020 and Brian Letzeisen of New England Police Benevolent Association (NEPBA), Local 187, June 21, 2020

The purpose of the meeting is to comply with instructions for a public body in receipt of an Open Meeting Law (OML) complaint, Councilor Sciarra explained. Instructions state that the body must meet to review the complaint and respond to the complainant with a copy to the Attorney General (AG) within 14 days. Two complaints have been filed and are on the agenda for review and response; one submitted to her as Council President and the City Clerk on June 19, 2020 at 4:15 p.m. and the other received by her on Sunday, June 21, 2020. The first is from Joshua Wallace on behalf of NEPBA #186 and the second is from Brian Letzeisen for the New England Police Benevolent Association (NEPBA), Local 187. City solicitor Attorney Seewald is joining them

As the Council President said, the goal of the meeting is to formulate a response to the complaints within 14 business days, or by July 9, 2020 - the deadline for response, Attorney Seewald confirmed. There are different ways to formulate that response. Councilors could opt to have an independent investigation by someone outside the city (he would not perform that investigation or be involved) or councilors could self-disclose. If self-disclosure is made and there is a determination of a violation, members would go on to decide the remedy, up to the point of re-voting the order for the General Fund budget. If they opt to self-disclose and there is no violation, the process would conclude with that report.

There is an open question with regard to how communications outside the meeting are handled within a virtual meeting, Attorney Seewald advised. The Division of Open Government at the office of the Attorney General with which he consulted has not taken a position yet on whether two councilors speaking at intermission is a violation. Normally, they think of violations as involving a quorum, but the Assistant Attorney General he spoke to was not willing to commit to such a position since the division has not yet taken a position. Since this may be the case in which they do take a position, they did not want to prejudge or give advice that may be inconsistent with what is ultimately decided.

It's up to the council to decide how to proceed. If somebody needs information about what's in the complaint, he is happy to address that, he added.

Councilor Dwight said he understands rules have changed substantially in response to COVID for remote participation at meetings. The council in this city has been assiduous about adhering not only to the letter of the law but to the spirit of the law, he recounted. In this instance, if they were not in remote participation and went into recess, he expressed his understanding that a councilor walking outside for a cigarette would not be precluded or disallowed from having a conversation with another councilor.

He says this because he doesn't believe that what is being alleged occurred, but, even if it did, he doesn't think what is being alleged in both complaints is a de facto violation because councilors communicating individually - not serially or collectively - on an issue under consideration would not be a violation, he elaborated.

You are correct, Attorney Seewald confirmed. But those kinds of casual conversations are different than a concerted effort to secretly communicate behind the scenes in the middle of a meeting. "Is it more like three councilors at recess deciding to go into a separate room and have a conversation?" he asked rhetorically. At least people know that's happening. Here the conversations are happening behind the scene so no one knows that they're happening.

He's not saying that it's a violation; he would take the position that it's not a violation, he continued. But the Division of Open Government has not decided what position they're going to take in this COVID-19 OML reorganization that they're operating under. He does believe in the quorum requirement. He doesn't know what the division will do but it certainly will be his position that a conversation between two councilors at a recess would not be a violation.

Councilor Dwight asked if it would be an appropriate process in the context of this meeting for them to determine either positively or negatively whether the alleged violation occurred. If they determine that it hasn't, is that adequate? He asked.

Yes, Attorney Seewald said. In that case, he or someone on the council's behalf would relay the determination that no violation occurred and no remedial action is required. Or, the council could call for a more formal investigation and councilors will be contacted by an investigator who will ask questions and perhaps ask for documents. There is nothing the council can do to force members to produce documents, he noted.

"What the councilors have had to go on is the statute, and the statute is very clear," Councilor Maiore pointed out. The OML says that in order for there to be a violation there has to be serial communication or a quorum, she stated.

She asked if this is a situation where they would go into executive session.

Attorney Seewald said no.

Even though there are accusations against the councilors? She pressed.

There's nothing in the OML that allows an executive session because someone makes an allegation, he asserted. "Right now we have an OML violation and I think it would be very odd to go into a secret meeting," he said.

It wouldn't be secret; executive sessions are made public, Councilor Maiore countered.

At some point they're made public, "but it is a meeting where the public is excluded," Attorney Seewald said.

He understands the conundrum for public officials, but they're not operating under the statute completely. They're operating under an order from the governor that alters the statute. The question is, in this altered environment, what are the rules? He will take the position that a quorum is necessary in order to violate the OML. All he can tell her is that an Assistant Attorney General would not commit to that position. It is what they call a 'case of first impression' in that it hasn't been ruled on before.

Councilor LaBarge made the following statement: "I am requesting as a city councilor, Marianne LaBarge, to put on record that I did not speak to any councilor while I was on my break during the June 18, 2020 City Council meeting. You have received a letter from me on the Open Meeting Law complaint filed, a letter from my brother, George Pappas from Snellsville, Georgia and from Ruth McGrath. These letters verify the fact that during the June 18, 2020 City Council meeting during my break time, I only spoke to my brother on the phone."

Her brother called three times during the meeting, she noted. She didn't answer two because they were in session. On her break, her brother called again and she spoke to him. He was

concerned because he had heard from family members that during a protest on Wednesday night, a large sign had been placed on the hood of her car. He wanted to make sure no one was in harm's way. "I did not speak to any councilor during my break time," she stated emphatically.

Councilor Jarrett referred to a frequently asked question about the Open Meeting Law posted on the mass.gov website: "May members of public bodies who are physically present at a meeting use electronic messaging, such as text messaging or email, to communicate with other public body members during that meeting?"

He quoted from the answer as follows: "Electronic messaging during a meeting by less than a quorum of the public body's members, while not directly prohibited by the Open Meeting Law, is discouraged if those electronic communications are not shared at the meeting with the members of the public who are present."

This doesn't address the question of electronic messaging during a recess of a virtual meeting, he acknowledged. But since during a physical meeting texting is only discouraged, not prohibited, it does suggest that it would be discouraged but not prohibited in remote meetings, he proposed. He said he hoped they would get guidance from the division at some point.

The Assistant Attorney General said she believes it is inappropriate at a virtual meeting for councilors to be texting with each other and inappropriate to use the chat feature during a Zoom meeting, Attorney Seewald related. There are just different rules in a virtual setting because no one can see what members are doing. He reiterated that he would take the position that a quorum is necessary but he doesn't know that that is correct and how the Division of Open Government will come down.

Councilor Sciarra noted that, as the meeting moderator, she has always tried to limit the chat feature and changes the settings so people can only chat to her. After public comment, she eliminates it entirely. She has always tried to make sure that the council couldn't chat with each other or anybody else.

They've just heard Councilor LaBarge who is the focus of one of the allegations refute the allegations rather vehemently, Councilor Dwight observed. The allegations allege that she was persuaded during the course of the recess to change her vote. Clearly that phone call did not figure into her decision nor was it a phone call or communication from any councilor.

The other allegation is that Councilor Jarrett was madly working the phones and twisting arms. If they can clear that up, he thinks they've done their due diligence.

That is with regard to Officer Wallace's complaint, Attorney Seewald agreed. The other complaint is broader in that it alleges that some or all of the councilors "participated in communication with each other or were aware that other councilors participated in communication with each other," Attorney Seewald clarified.

Councilor Dwight asked if it would be sufficient for them to ask for a show of hands of councilors who communicated with each other relative to that vote. If a show of hands indicates it did not occur, would that be adequate? He asked.

If fewer than a quorum of hands go up, he believes that would be adequate, Attorney Seewald confirmed.

Councilor Dwight expressed his hope that such a vote would reflect the extent of their investigation. "We are not an investigative body," he contended.

Obviously, the Attorney General has great investigative powers, including the power to force members to testify and produce documents, Attorney Seewald advised. He will say the Division of Open Government does not usually engage in subpoenas or forced testimony; they do take people at their word. By contrast, the council does not have authority to exclude anyone from voting or to impose civil fines, he reminded.

Over the next fifteen minutes, six councilors in turn disclosed that they either had no conversation or did not deliberate with any other councilor during the recess.

"I didn't have any conversation with anyone during deliberation," Councilor Thorpe asserted. He stands by his no vote on the amendment, and the fact that he voted to approve the whole budget does not reverse that decision. He saw it as reflecting that he didn't agree with part of the budget but still wanted to approve the whole budget in its entirety. "I still believe that there is a plan that is needed and a measured approach to this," he shared. Even before the meeting commenced he planned to do exactly as he did, and his no vote should not be considered a reversal, he insisted.

The complaint was brought because he withdrew his request for consideration after the recess, Councilor Jarrett noted. Councilors LaBarge and Thorpe voted to adopt the budget although they had not voted for the amendment. With Councilors LaBarge and Thorpe clearly communicating that they did not communicate with another member, does that settle the matter? He asked. "I did not have any communication with them affecting my decision to withdraw the reconsideration," he assured.

One of the allegations is that some or all of the councilors talked to each other, Attorney Seewald reminded. He doesn't think Councilor Jarrett simply saying he didn't talk to the people whose votes changed resolves the matter. The question is: Were there communications either as a group or serial conversations where there was some coordination among councilors?

"We won't know if there's a violation until we know what conversations happened." That's either going to happen by self-disclosure or as a result of an investigation. In his view that isn't satisfied just by Councilor Jarrett's saying he didn't speak to the councilors whose votes changed.

Councilor Maiore said it seems clear to her that they don't even have the premise of violating at least one of these complaints. If they could eliminate one complaint and concentrate on the other, it would feel less overwhelming to her.

Attorney Seewald said he thinks they probably have resolved the Wallace complaint given that the allegations were very specific to two specific councilors.

Relative to the second, broader complaint, "I did not deliberate in any way electronically other than what was seen in the course of the meeting," Councilor Dwight reported. "I did not transmit anything relative to the order being discussed."

To be honest, he is receiving texts in the course of a meeting from family members and people outside but he is not communicating with other councilors and deliberating with them.

Attorney Seewald asked if he was saying he had no conversations with other councilors during the recess.

He did text the council president to tell her Councilor LaBarge's microphone was open and that she might want to mute her since it looked like she was having a personal conversation, Councilor Dwight said.

Councilor Sciarra said she had gone to the bathroom. When she came back, she heard that Councilor LaBarge was having a conversation and muted her. After that, Councilor Dwight alerted her to the fact that Councilor LaBarge had left her mike open. That was the extent of her communication.

Councilor Nash stated that he had no deliberations or communications during that very critical and difficult vote. He appreciated where they landed and sensed his colleagues were all "sweating the details" of that very difficult decision. "I don't hold anyone's vote against them and I don't think anyone was persuaded by anything outside of that meeting," he said. From the energy in that virtual room, he didn't sense any of that going on. He sensed they were all there making a very difficult decision.

"We have now ascertained that a quorum of councilors did not communicate," Councilor Jarrett pronounced. He sees this as an attempt to intimidate or maybe a lack of understanding of the Open Meeting Law. "I think no reasonable person would suspect that a quorum of councilors, which is five, communicated with each other in that 13-minute period," he stated.

They've essentially ascertained that a quorum did not happen; do they want to continue and each give a statement or do they want to just end because they've done their duty? He queried.

She's done what she had to do to prove who she was talking to during the recess so she is very comfortable with the letters submitted, Councilor LaBarge volunteered.

If anyone's uncomfortable going beyond this, he thinks they've met the letter of the statute as it stands, Councilor Dwight agreed. If two councilors were communicating relative to the deliberation, he doesn't think that's a violation since it's no different than two councilors sitting next to each other and mumbling to each other. He is satisfied with where it stands, but if everyone else is more comfortable going around the virtual room and making declarations, it would certainly put an end to it.

"I think we've met the conditions as they've been alleged and we've successfully challenged them and refuted them," he concluded.

In the spirit of that, he would tell them that he had no communication with anyone during the recess, Councilor Quinlan reported. He basically filled his water glass and sat back down.

She does believe they've met the spirit of the statute but would also like to take the opportunity to say that she did not communicate during that recess as well, Councilor Foster shared. She refilled her water bottle, checked on her kids and came back to the meeting; she was not communicating or deliberating with any other councilor.

She feels the complainants are directly impacted by the referenced vote and are not happy about the outcome of the vote, so they want the vote undone, Councilor Maiore said. While it is the council's job to give the review of complaints due diligence, she feels they should adjust the air time and oxygen they give it accordingly. They've already established based on the statute there was no quorum and no Open Meeting Law violation. She moved to adjourn.

Councilor Sciarra said they could not adjourn; they first need to decide how to proceed.

Councilor Dwight asked if they could charge Attorney Seewald with writing a response.

Attorney Seewald said he would be happy to take that charge. The statute specifically allows the City Council to assign the response to one of its members, its agent or its counsel.

That would be his request, Councilor Dwight said. He would like a letter drafted by the solicitor reflecting the conclusions they came to in the course of this conversation. "We feel that we've adequately responded to both complaints and found them lacking," he added.

Councilor Sciarra said it would also be her preference to have the letter drafted by the city solicitor.

Councilor Dwight moved to have the solicitor draft a letter reporting the conclusions they have come to and that they find both complaints lacking. Councilor Foster seconded. The motion passed unanimously 9:0 by roll call vote.

Motion to Adjourn

Upon motion made by Councilor Dwight and seconded by Councilor Maiore, the meeting was adjourned at 6:42 p.m. The motion carried unanimously 9:0 by roll call vote.

Attest: _____ Administrative Assistant to the City Council

EXHIBIT A

List of Documents Reviewed at June 25, 2020 Northampton Special City Council Meeting:

1. June 25, 2020 Agenda
2. Letter from City Councilor Marianne LaBarge to City Council President Gina-Louise Sciarra, Attorney Adam (sic) Seewald, New England Police Benevolent Association, Local 187, ATTN: Brian Letzeisen dated June 24, 2020 re: June 18, 2020 City Council Zoom Meeting Open Meeting Law Complaint
3. Email from Ruth E. McGrath of 4 Pinecrest Circle, Ware to City Council President Gina-Louise Sciarra, Attorney Adam (sic) Seewald, New England Police Benevolent Association, Local 187, ATTN: Brian Letzeisen dated June 24, 2020 re: June 18 Open Meeting Law Complaint Against City Councilor Marianne LaBarge
4. Letter from George Pappas to City Council President Gina-Louise Sciarra, Alan Seewald, Esq. and Brian Letzeisen of City Police Union N.E. Benevolent Association (sic), Local 187 dated June 24, 2020
5. Email from Patrick Waite, 80 Barrett Street, C6, Northampton, MA dated June 24, 2020 re: Thoughts Regarding the June 25 2020 Special City Council Meeting

2020 - 2021 ROLL CALL RECORD FOR NORTHAMPTON CITY COUNCIL

Record of City Council Votes for June 25, 2020		Dwight	Foster	Jarrett	LaBarge	Maiore	Nash	Quinlan	Sciarra	Thorpe	Total
Roll Call by Laura Krutzler, Administrative Assistant to the City Council @ 6:02 p.m.		Present	Present	Present	Present	Present	Present	Present	Present	Present	9 Present
Motion to have the solicitor draft a letter reporting the conclusions they have come to and that they find both complaints lacking		Motion to have solicitor draft letter	Second Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Motion carried 9:0; roll call vote
Motion to Adjourn		Motion to Adjourn	Yes	Yes	Yes	Second Yes	Yes	Yes	Yes	Yes	Motion carried 9:0; roll call vote



June 18, 2020 City Council Zoom Meeting Open Meeting Law Complaint

mlabargeward6@aol.com <mlabargeward6@aol.com>

Wed, Jun 24, 2020 at 10:51 PM

Reply-To: mlabargeward6@aol.com

To: "glsciarra@northamptonma.gov" <glsciarra@northamptonma.gov>, "bletzeisen@northamptonma.gov" <bletzeisen@northamptonma.gov>, "aseewald@northamptonma.gov" <aseewald@northamptonma.gov>

Cc: "lkrutzler@northamptonma.gov" <lkrutzler@northamptonma.gov>

June 24, 2020

City Councilor Marianne LaBarge
698 Westhampton Road
Florence, MA 01062

Council President Gina-Louise Sciarra
City Council Office
City Hall
Room 16
210 Main St.
Northampton, MA 01060

Attorney Adam Seewald
[71 King Street](#)
[Northampton, MA 01082](#)

[New England](#) Police Benevolent Association
Local 187
ATTN: Brian Letzeisen
[29 Center Street](#)
Northampton, MA 01082

To Whom It May Concern:

The City Council Meeting on June 18, 2020 was held on Zoom. I attended the entire meeting on Zoom. Apparently there was an Open Meeting Law complaint regarding a phone call I took during a 5 minute break.

I would like to respond to that complaint. During the meeting I did not answer any phone calls. My brother George Pappas, who lives in Snellville, Georgia called me twice during the meeting; I did not answer his calls. He called again during our 5 minute break. I answered the phone and I explained to my brother that I was on a five minute break while we were Zooming the City Council meeting. He was calling with concern over the protest sign left draped over my car, which had happened late Wednesday evening and was found early Thursday morning by my husband Richard. My brother had been informed by a member of my family of that happening.

That was the only call I answered, it was a personal call not City Business. I spoke to my brother briefly and hung up. I did talk with my brother the next day. I did not break any Open Meeting Laws. I would like this letter placed on record.

Any other questions, feel free to call me at (413) 584-7937.

Sincerely,

City Councilor Marianne LaBarge

 **lawyer letter.doc**
29K



June 18 Open Meeting Law Complaint against City Councilor Marianne LaBarge

Ruth McGrath <ruth4now@comcast.net>

Wed, Jun 24, 2020 at 11:05 PM

To: glsciarra@northamptonma.gov, bletzeisen@northamptonma.gov, aaseewald@northamptonma.gov

Cc: Marianne LaBarge <mlabargeward6@aol.com>, lkrutzler@northamptonma.gov

June 24, 2020

Ruth E. McGrath
4 Pinecrest Circle
Ware, MA 01082

Council President Gina-Louise Sciarra
City Council Office
City Hall
Room 16
210 Main St.
Northampton, MA 01060

Attorney Adam Seewald
71 King Street
Northampton, MA 01060

New England Police Benevolent Association
Local 187
ATTN: Brian Letzeisen
29 Center Street
Northampton, MA 01060

To Whom It May Concern:

I was assisting City Councilor Marianne LaBarge with her technical issues during a Zoom City Council Meeting on June 18, 2020. I was present when she took a phone call from her brother, George Pappas during a five minute break.

Councilor LaBarge did not answer any phone calls during the meeting. Her brother called twice during the meeting. She did not answer his calls during the meeting. When he called during the meeting she told me who was calling but did not answer. She took the one call, a personal call from her brother, during a break. I did hear her side of the conversation, she was explaining that she was zooming the City Council meeting. She told her brother about the sign left on her car and told him she would call him back.

Councilor LaBarge did not talk on the phone during the meeting and the one call she took during the break was a personal call. I was with her and did hear her side of the call.

I am sending this letter in response to a complaint about Councilor LaBarge breaking the Open Meeting Law. She did not break any laws by accepting a personal call during a break.

If you would like to talk to me or need any further information, please feel free to contact me. My home phone is (413) 277-0419.

Thank you,

Ruth E. McGrath

TO: CITY COUNCIL PRESIDENT

GINA LOUISE SCIARRA

BRIAN LETZEISEN

ATTY: ALAN SEEWALL

CITY POLICE UNION N.E. BENEVOLENT ASSOC, LOCAL 187

I CALLED MY SISTER, MARIAM~~E~~ LABARGE 3 TIMES ON JUNE 18TH, TO CHECK ON HER SAFETY.

MY NEPHEW HAD SAID SOMEONE HAD PUT A SIGN ON HER CAR.

I DID NOT KNOW SHE WAS IN A MEETING, SHE ANSWERED MY THIRD CALL, WHICH SHE SAID WAS THE BEGINNING OF HER 5 MINUTE BREAK.

THANK YOU

Geoff Tapan

P.S: IF YOU NEED TO CALL ME. I CAN BE REACHED AT
678-457-5871



**City of
Northampton**

Laura Krutzler <lkrutzler@northamptonma.gov>

Thoughts regarding the June 25 2020 Special City Council Meeting

Patrick Waite <patrickm.waite@gmail.com>
To: Citycouncil@northamptonma.gov

Wed, Jun 24, 2020 at 7:52 PM

Good day City Councilors and Mayor

In light of the open meeting law violation complaint that is being discussed on Thursday evening June 25, 2020, I wanted to share we as a community stand with the council against frivolous lawsuits and attempts at bullying by the police union. Real change is hard and frightening, but you are doing the work this community needs to thrive and we will continue to support you through this process.

As we embark, I hope that this intimidation does not dissuade you from future action. In fact I hope this intimidation galvanized you, as it has me. This is just a little crumb of why we as a community are fighting so hard for what we believe in. Albeit a very white form of intimidation, this is the type of behavior, this is the type of tactics, this is the type of schoolyard bullying that countless members of our community deal with each and every day. I hope that this baseless attempt to circumvent the authority of the city council is remembered as we move forward. Remember it well, and remember they can't stop the power of the people because the power of the people don't stop.

Best
Patrick Waite
[80 Barrett Street C6](#)
[Northampton](#)
978-895-5609