

City of Fall River Massachusetts

Office of the City Clerk

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2017 JAN 24 P 4:37

CITY CLERK _____
FALL RIVER, MA

ALISON M. BOUCHARD
CITY CLERK

**AMENDED AGENDA
(ORIGINAL AGENDA POSTED ON JAN. 20, 2017 AT 10:31 AM)*

INÊS LEITE
ASSISTANT CITY CLERK

JANUARY 20, 2017
MEETINGS SCHEDULED FOR NEXT WEEK
CITY COUNCIL CHAMBER, ONE GOVERNMENT CENTER

TUESDAY, JANUARY 24, 2017
AGENDA

6:00 P.M. COMMITTEE ON FINANCE

1. Resolution – Discussion with Administration re: architectural design services at Veterans' Center on Pine Street (adopted 1-10-17)
2. Resolution – Discussion with Administration re: positions of Grant Coordinator and Substance Abuse Prevention Coordinator (adopted 10-11-16)
3. Discussion of Fiscal Year 2017 – Quarter 2 Budget Report (tabled 1-10-17)

7:00 P.M. REGULAR MEETING OF THE CITY COUNCIL OR IMMEDIATELY FOLLOWING THE COMMITTEE ON FINANCE MEETING IF THAT MEETING RUNS PAST 7:00 P.M.

PRIORITY MATTERS – None

PRIORITY COMMUNICATIONS

1. *Rep. Carole Fiola requesting meeting with federal delegation to discuss the city's multi-million dollar Combined Sewer Overflow (CSO) project
2. *Corporation Counsel and Attorney General's Office regarding an open meeting law complaint
3. *Corporation Counsel re: city resident's request to cap number of tobacco sales permits

COMMITTEE REPORTS – None

ORDINANCES

4. *Proposed ordinance re: Quarterly Budget Reports

RESOLUTIONS

5. *Engineering Division and the Administration investigate possibility of resurfacing Wilson Road as soon as possible
6. *City Council support the redevelopment or building of a new B.M.C. Durfee High School
7. *City Council support the Fall River Area Chamber of Commerce and area businesses in Promoting the EdUp Campaign

CITATIONS – None

ORDERS – HEARINGS – None

ADA Coordinator: Gary P. Howayeck, Esq. 508-324-2650
One Government Center • Fall River, MA 02722
TEL 508-324-2220 • FAX 508-324-2211 • EMAIL city_clerks@fallriverma.org

ORDERS – MISCELLANEOUS

- 8. *City Council meeting schedule for remainder of 2017
- 9. Police Chief's report on licenses

Taxicab Drivers:

Kathleen Anderson	Akeem Barlow	Angela Beveridge
Christopher C. Cole	Dane Dicarlo	Michael Diniz
Tiffany Evans	Tracee Francisco	Anthony Garcia
Sereda Lopes	William Marshall	Keith Mcaskill
Steven Ouellette	Todd Pina	Zachary Powers-Alves
Manuel Silvia II	Ashley Sylvia	Sarah Thomas

Private Livery Drivers:

Sandra Barcellos Dion

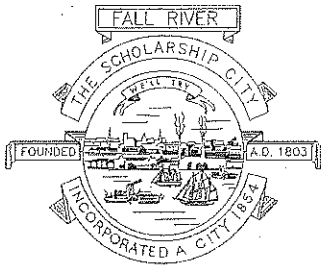
- 10. Auto Repair Shop license renewals:
 - David J. Motta d/b/a Action Cycles, 326 Pleasant Street
 - Thomas A. Legault d/b/a Tom Legault's Auto Repair, 745 Brayton Avenue

COMMUNICATIONS – INVITATIONS – PETITIONS

- 11. *Claims
- 12. *Open Meeting Law complaint from CJ Ferry regarding January 4, 2017 complaint re: meeting of City Council Committee on Economic Development and Tourism
- 13. *Communication from Attorney General regarding OML complaint of December 13, 2016 City Council Committee on Economic Development and Tourism
- 14. City Council Committee/Meeting Minutes:
 - *City Council Meeting – December 27, 2016
 - *Committee on Finance – January 10, 2017
 - *Public Hearing – December 13, 2016
 - *Special City Council Meeting – November 9, 2016
 - *Special City Council Meeting – January 10, 2017

BULLETINS – NEWSLETTERS – NOTICES – None


City Clerk



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ITEMS FILED AFTER THE AGENDA WAS PREPARED:

CITY COUNCIL MEETING DATE: JANUARY 24, 2017

CITATIONS

American Youth Football National All Star Tournament

- Coach Brianna DeAguiar
- Chayliese Perez
- O'Sheaya Sterling
- Iyanna Posey
- Jessica Walker
- Coach Matthew Cuvellier
- Wilfredo Aybar
- Bryan Cruz
- Anthony Gomez
- Napier Monteiro
- Head Coach Ron "Bear" Gagnon
- Coach Chris Thomas
- Benjamin Almeida
- Isaiah Thomas
- Jevon Holley
- Jaden Lewis
- Jayvyn Bobola
- Jason Hall Jr.
- Tyrone Young Jr.
- Tajo'n Rattray
- Benjamin Haliday

COMMUNICATIONS – INVITATIONS – PETITIONS

*Open Meeting Law complaint from CJ Ferry regarding complaint received
January 23, 2017

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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: CJ Last Name: Ferry

Address: 300 Buffinton Street

City: Fall River State: MA Zip Code: 02721

Phone Number: +1 (508) 646-9026 Ext. _____

Email: cj.ferry@comcast.net

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): City Of Fall River City Council

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

Date of alleged violation: Jan 17, 2017

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.

On December 27, 2016, the entire Fall River City Council was served with this Open Meeting Law Complaint with copies to the Fall River City Clerk and the Fall River Corporate Council.

Under MGL 30A §23(b), the public body is allowed fourteen (14) business days to respond to the complaint from the date of filing.

The Fall River City Council, failed to provide a response to the complaint of December 27, 2016 within the fourteen business days as required by MGL 30A §23(b).

This is evidenced by the response of the Fall River City Corporate Counsel hereto attached dated January 23, 2017.

The City Council deliberately chooses to assign responses to another individual, office or entity by which they regularly and continuously fail to meet the requirements under MGL 30A § 23(b), these acts are willful and deliberate and refuse to meet with the complainant regarding these issues as does the assigned individual, office ro entity.

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.

The City Council should implement a policy where a meeting or discussion with the complainant on possible resolutions to the complaint be held to amicably resolve these issues.

The assessment of the maximum pecuniary assessment against the City Council members as they have the legal responsibility to insure that the law is complied with and have regularly failed to comply with the law.

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, will be considered a public record and available to any member of the public upon request. In response to such a request, the AGO generally will not disclose 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: January 23, 2017

For Use By Public Body For Use By AGO
Date Received by Public Body: Date Received by AGO:

City of Fall River
Office of the Corporation Counsel

JASIEL F. CORREIA II
Mayor



JOSEPH I. MACY
Corporation Counsel

GARY P. HOWAYECK
Assistant Corporation Counsel

January 23, 2017

CJ Ferry
300 Buffington Street
Fall River, MA 02721

**RE: OPEN MEETING LAW COMPLAINT
FALL RIVER CITY COUNCIL
DATE OF ALLEGED VIOLATION: 12/27/2016**

Dear Mr. Ferry:

This letter is in response to your Open Meeting Law Complaint filed against the Fall River City Council on or about December 27, 2016. Specifically, you allege the following:

1. On local radio media, WSAR, the Mayor of the City of Fall River, discussed via text messaging with all nine city councilors the possibility of allowing "Amnesty of Trash and recycling Fines." He [Mayor] stated he wanted to do this to remain in compliance with city ordinance. This communication appears to be serial communication and deliberation with a quorum of the City Council if not the entire City Council.

As you are aware, the purpose of the Open Meeting Law is to ensure transparency in the deliberations on which public policy is based. It requires, with some exceptions, that meetings of public bodies be open to the public. It also seeks to balance the public's interest in witnessing the deliberations of public officials with the government's need to manage its operations efficiently.

The Open Meeting Law requires that all meetings of a public body be properly noticed and open to members of the public, unless an executive session is convened. See G.L. c. 30A, §§ 20(a)-(b), 21. The Law's purpose is to eliminate much of the secrecy surrounding deliberations and decisions on which public policy is based." Ghiglione v. School Committee of Southbridge, 376 Mass. 70, 72 (1978). A "meeting" is defined, in relevant part, as "a deliberation of a public body with respect to any matter within the body's jurisdiction." G.L. c. 30A, § 18. The law defines "deliberation" 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; provided, however, that 'deliberation' shall not include the distribution of a meeting agenda, scheduling information or distribution of other procedural meeting or the distribution of

reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed.” Id.

A member of a public body may distribute a document for discussion at a meeting via email, so long as the document does not contain the opinion of a member of the public body. G.L. c. 30A, § 18; OML 2012-84. “Expression of an opinion on matters within the body’s jurisdiction to a quorum of a public body is a deliberation, even if no other public body member responds.” OML 2013-186.

A public body may not engage in a serial communication whereby a quorum communicates in a non-contemporaneous manner outside of a meeting, on a particular subject matter within the public body’s jurisdiction. See OML 2012-84 (improper deliberation where committee Chair made request to non-committee members to forward his opinions to other Committee members to circumvent the OML requirements-the Chair was attempting to facilitate communication between and among a quorum of the Committee on public business within the Committee’s jurisdiction.; McCrea v. Flaherty, 71 Mass. App.Ct. 637 (2008) (holding that private serial communications violate the spirit of the Open Meeting Law and may not be used to circumvent the intent of the law). A public body may not use a non-member, such as a staff member, to communicate on matters that the Board would otherwise save for discussion at an open meeting. See District Attorney for the Northern District v. School Committee of Wayland, 451 Mass. 561, 570-571 (2009) (“Governmental bodies may not circumvent the requirements of the open meeting law by conducting deliberations via private messages, whether electronically, in person, over the telephone, or in any other form.”)

First, the mayor’s text to the councilors did not constitute serial communication between or among members of the City Council, as he did not express or solicit opinions between/among members of the Council. See e.g., OML 2015-3 (where quorum of commission members agreed to elect the leadership of the commission through email and in-person communications, it constituted deliberation outside of noticed meeting in violation of OML) ; OML 2013-186 (where Board of Selectmen Chair sent communications through telephone, email, and through a third party, asking to get the boards thoughts and expressing opinion on matter of public business within the board’s jurisdiction to a quorum of the board, it constituted deliberation outside of properly posted meeting in violation of OML); and OML 2013-186 (where town administrator facilitated serial communication between Board members where he took a poll of the board about whether to close Town Hall for inclement weather); OML 2012-105 . . . ;

OML 2012-84 (former School Committee Chair sent emails to a quorum of the Committee covering a variety of topics, containing communications about Committee business)

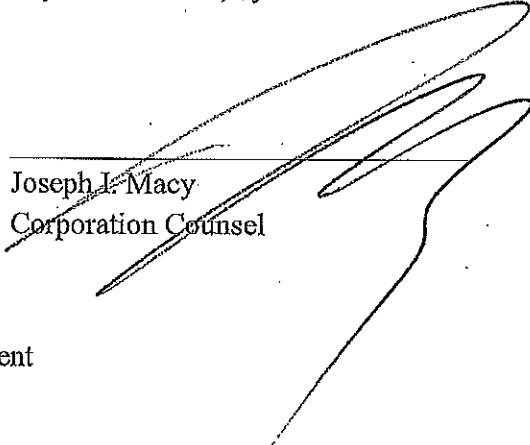
Moreover, no councilors responded to the communication, no dialogue or exchange of opinions resulted between or among a quorum of the Council and therefore the Council as a whole did not violate the Open Meeting Law. See OML 2012-84 (where no other dialogue or exchange of opinions resulted between or among a quorum of the Committee outside of a meeting as a result of Chair's communications, Committee as a whole did not violate the Open Meeting Law)

As such, the City Council did not violate the Open Meeting Law by engaging in deliberation outside of a properly posted meeting when it received text from the Mayor.

The Fall River City Council acted in good faith compliance with the law and should not be considered to have committed an intentional violation of the law. G.L. c. 30A, §23(g); 940 CMR20.02.

Since a determination has been made that no violation has occurred, we consider this matter closed. Please note that you have the right to appeal to the Massachusetts Attorney General – Division of Open Government.

City of Fall River, by



Joseph J. Macy
Corporation Counsel

Cc: Attorney General – Division of Open Government