



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL  
ONE ASHBURTON PLACE  
BOSTON, MASSACHUSETTS 02108

ANDREA JOY CAMPBELL  
ATTORNEY GENERAL

(617) 727-2200  
(617) 727-4765 TTY  
[www.mass.gov/ago](http://www.mass.gov/ago)

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OML 2023 – 43

VIA EMAIL

Kenneth J. Rosetti, Esq.  
City Solicitor  
City of Methuen  
41 Pleasant Street  
Methuen, MA 01844  
[krosetti@ci.methuen.ma.us](mailto:krosetti@ci.methuen.ma.us)

**RE: Open Meeting Law Complaint**

Dear Attorney Rosetti:

This office received a complaint from Sidney Harris on January 20, 2023, alleging that the Methuen City Council (the “City”) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint was originally filed with the Council on December 6, 2022, and you responded on behalf of the Board by letter dated January 13, 2023, pursuant to an extension of time granted by our office.<sup>1</sup> The complaint alleges that the Council held meetings on December 5 at a location that was not accessible to the public and that audio glitches caused a portion of the meeting to be inaudible.

Following our review, we find that the Council violated the Open Meeting Law by holding a meeting in a location that did not have an available ADA-compliant access point. We find that the Council did not violate the Law in the other way alleged. In reaching this determination, we reviewed the original complaint, the Council’s response to the complaint, and the complainant’s request for further review. We also reviewed a supplemental response you submitted on behalf of the Council and communicated with you by email.

**FACTS**

We find the facts as follows. The Council held in-person meetings at 6:00 p.m. and 7:00 p.m. on December 5 at Methuen City Hall. The Council also recorded and broadcast both meetings. In the afternoon of December 5, City Hall experienced a sewer overflow which forced the closure of the principal public access point into City Hall, which access point is a fully

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<sup>1</sup> Unless otherwise specified, all dates refer to 2022.

accessible entrance. As a result of the closure, a police officer was stationed at City Hall to direct members of the public wishing to attend the Council's meeting to an alternative access point, which was located one level above the principal access point and required descending a flight of stairs into City Hall.

During a portion of the 6:00 meeting, technical difficulties with the microphones caused audio disruptions to the recording and broadcast of the meeting. There is no indication that any portion of the meeting was inaudible to those in attendance at the meeting.

The complainant arrived at City Hall for the 7:00 meeting, identified himself to the police officer as disabled, and was directed to an upper-level parking lot that required descending stairs into City Hall. Although the complainant was aware that an additional access point into City Hall was available that would not require the use of stairs, the complainant asserts, and the Council acknowledges, that alternative access point was not fully compliant under the Americans with Disabilities Act. Ultimately, the complainant was able to enter City Hall and attend the Council's December 5 meeting.

On February 6, 2023, the Council held a public meeting during which it received a presentation from the City's ADA Coordinator regarding disability access into City Hall and engaged in an extended discussion regarding possible improvements to disability access into City Hall. During that meeting, the complainant was permitted to speak for approximately ten minutes regarding access points into City Hall.

#### DISCUSSION

The Open Meeting Law states that all meetings of a public body must be open to the public. G.L. c. 30A, § 20(a). For a meeting that is held in person, access must include the opportunity to be physically present as well as to see and hear what is being discussed by the members of the public body. OML 2022-230; OML 2018-75; OML 2012-66. In addition, for a meeting to be truly "open to the public," it must be held at a location that is accessible to persons with disabilities. See G.L. c. 30A, § 20(a); see also OML 2014-55; OML 2012-49 (stating that meetings of public bodies must be held in locations that are compliant with the ADA).<sup>2</sup>

On July 16, 2022, then-Governor Charles Baker signed into law An Act Relative to Extending Certain State of Emergency Accommodations. Among other things, this law extended the remote meeting provisions first established by executive order in March 2020. Relevant here, the Executive Order and subsequent legislation temporarily suspended the requirements under the Open Meeting Law and the Attorney General's Open Meeting Law regulations that a quorum of a public body, including the chair, be physically present at the meeting location and allows public bodies to provide the public with "adequate, alternative" access to meetings instead of providing in-person access. However, the law does not require public bodies to provide "adequate, alternative" access to meetings if in-person access is provided.

The Council's meetings on December 5 were held in-person at City Hall and were open to the public. Therefore, the Council was not required to provide "adequate, alternative" remote access to the meetings. We find no evidence that the temporary audio disruptions in the

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<sup>2</sup> All previous determinations issued by the Division can be found on the Attorney General's website: <https://www.mass.gov/the-open-meeting-law>.

broadcast of the meeting impacted the ability of those present at the meeting location to hear the Council's discussions. Although we encourage public bodies to provide more than one method of access to their meetings, and to ensure a reliable audio and video feed if the meeting is broadcast, we do not find that the audio disruptions in the meeting broadcast violated the Open Meeting Law in this instance where the meeting was held in-person and individuals in attendance at the meeting were able to see and hear the discussions.

However, the Council violated the Open Meeting Law because there was no ADA-compliant access point to City Hall on December 5, thereby impeding the public's access to the Council's meeting. See OML 2014-55; OML 2014-19; OML 2014-3. We acknowledge that the sewage overflow on December 5 that forced the closure of the main accessible entrance was unexpected, and we commend the Council's efforts to be responsive to the complainant's concerns and to take seriously the issue of expanding disability access into City Hall. Where the complainant was able to gain access to the meeting and we are aware of no other individuals who were unable to attend the meeting due to the lack of an ADA-compliant entrance, we order no further remedial action.

### CONCLUSION

For the reasons stated above, we find that the Council violated the Open Meeting Law by holding a meeting at a location that, at the time, lacked ADA compliant access to the meeting location. We order the Council's immediate and future compliance with the Open Meeting Law and caution the Council that a determination by our office of a similar violation in the future may be considered evidence of intent to violate the Open Meeting 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 - 2540 if you have any questions.

Sincerely,



Carrie Benedon  
Assistant Attorney General  
Division of Open Government

cc: Sidney Harris (via e-mail: sidharris54@gmail.com)  
Methuen City Council (via e-mail: citycouncil@ci.methuen.ma.us)  
Methuen City Clerk (via email: cityclerk@ci.methuen.ma.us)

**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.**