

JOINT CONVENTION OF APRIL 19, 2022

Tuesday evening, April 19, 2022. The Joint Convention of the City Council and School Committee, held in the City Council Chamber, was called to order by Mayor Michael Nicholson at 7:00 o'clock p.m. for the purpose of approving the response of an open meeting law complaint filed by Scott Graves on April 1, 2022

City Clerk Titi Siriphan called the Roll of Convention. Present were:

Members of the City Council (9)

Elizabeth J. Kazinskas, President
James S. Boone
Nathan R. Boudreau
Craig R. Cormier
Ronald F. Cormier
Aleksander Dernalowicz
Karen G. Hardern
Dana M. Heath
George C. Tyros

Members of the School Committee (4)

Anne F. Hurst
Jennifer Z. Pelavin
Robert J. Swartz
Mayor Michael Nicholson

Councillors James Walsh and Judy A. Mack were absent.

School Committee Members Rachel Cormier, John M. LaFreniere and Shannon Ward-Leighton were absent.

OPEN MEETING RECORDING & PUBLIC RECORDS ANNOUNCEMENT

Mayor Nicholson announced to the assembly that the Open Meeting Recording and Public Records Announcement. Any person may make a video or audio recording of an open session of a meeting or may transmit the meeting through any medium subject to reasonable requirements of the chair as to the number placement and operation of equipment used so as not to interfere with the conduct of the meeting. Any person intending to make such recordings shall notify the Chair forthwith. All documents and exhibits used or referenced at the meeting must be submitted in duplicate to the chair as they become part of the meeting minutes pursuant to General Law Chapter 38 Section 20.

On a motion by Councillor Aleksander Dernalowicz and seconded by Councillor Nathan Boudreau, it was voted viva voce, thirteen (13) yeas from the City Councillors including Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander



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Dernalowicz, Karen Hardern, Dana Heath, Elizabeth Kazinskas, and George Tyros; and School Committee Member Michael Nicholson, Anne F. Hurst, Jennifer Z. Pelavin, and Robert Swartz to *accept the draft response that was included in this evenings packet and send the response to the open meeting law complaint filed by Scott Graves on April 1, 2022.*

On a motion by Aleksander Dernalowicz and seconded by Councillor Nathan Boudreau, it was voted viva voce to adjourn at 7:02 p.m.

Accepted by the City Council: June 21, 2022

[INSERT LETTER HEAD WHEN FINALIZED BY VOTE OF JOINT CONVENTION]

[INSERT DATE OF VOTE TAKEN BY JOINT CONVENTION]

Scott Graves
69 Lakeview Dr
Gardner, MA 01440

RE: Response to Open Meeting Law Complaint, Filed 4/1/2022

Dear Mr. Graves,

The Joint Convention is in receipt of an Open Meeting Law complaint submitted by you on April 1st, 2022. (Attached hereto as **Exhibit A**).

In this complaint you allege the following occurred:

1. A member or members shared their opinions about several aspects of the two City elections (the two matters within the public body's jurisdiction) in group emails, with a quorum of members, outside of a duly-noticed and open public meeting;
2. On March 18, 2022, a member of the public body shared her own opinions about the matters within the public body's jurisdiction in group emails, amongst a quorum of members, without notice to the Citizens, and not in the open;
3. On March 18, 2022, the public body made material decisions (through one member, as discussed below) about the matters pending within its jurisdiction, and it did this without notice to the public, and not in the open;
4. On March 18, 2022, the public body made a determination (through one member, as discussed below) that the public body's final resolution of the one pending matter within its jurisdiction did not "need" (her word) to take place at a duly-noticed and open public meeting, and the public body made this decision without notice to the Citizens, and not in the open;
5. On March 18, 2022, the public body made a determination (through one member, as discussed below) that the one pending matter within its jurisdiction, the giving away of the two years remaining in Boone's term, was dispositively resolved, and it did this without notice to the Citizens, and not in the open; and
6. That the public notice for the meeting did not comply with the Open Meeting Law.
7. The supporting documents of the meeting packet constituted a sharing of opinion.

Our responses to these allegations are as follows:

1. There are no emails between a quorum of members of neither the full Joint Convention nor either of the bodies that make up the joint convention in which any opinion was shared prior to the Joint Convention being called to order. The only emails that were sent were sent prior to the meeting to a quorum of members of the meeting was the City Clerk and the Superintendent's Secretary sending the meeting packet to the City Council and School Committee respectively.
2. It is assumed that your second allegation relates to an email sent by Council President Elizabeth Kazinskas on Friday, March 18, 2022 at 3:05 PM. (Attached hereto as **Exhibit B**). In this email, Council President Kazinskas provided statements of facts about events that had occurred. Since all required documents had been received and a response submitted by Monty Tech, the simple fact that there would be no need to convene a Joint Convention was mentioned. No opinion was shared in this email. It was a simple statement of facts and not a deliberation.
3. There is no Open Meeting Law violation associated with your third allegation, as there was no material decision made. The Joint Convention had met to appoint individuals to the Monty Tech School Committee. Whereas Monty Tech had received all necessary documentation from the two individuals appointed by the City of Gardner to their School Committee, there would be no business should a joint convention convene.
4. There is no Open Meeting Law violation associated with your third allegation. Please see the reasoning provided for item 3.
5. There is no Open Meeting Law violation associated with your third allegation. Please see the reasoning provided for item 3.
6. In order to interpret the Open Meeting Law's requirements for public meeting postings, the Attorney General's Office has issued the following guidance:

WHAT INFORMATION MUST MEETING NOTICES CONTAIN?

Meeting notices must be posted in a legible, easily understandable format, contain the date, time, and place of the meeting; and list all topics that the chair reasonably anticipates, 48 hours in advance, will be discussed at the meeting. The list of topics must be sufficiently specific to reasonably inform the public of the issues to be discussed at the meeting. Where there are no anticipated topics for discussion in open session other than the procedural requirements for convening an executive session, the public body should list "open session" as a topic, in addition to the executive session, so the public is aware that it has the opportunity to attend and learn the basis for the executive session.

Meeting notices must also indicate the date and time that the notice was posted, either on the notice itself or in a document or website accompanying the notice. If a notice is revised, the revised notice must also

conspicuously record both the date and time the original notice was posted as well as the date and time the last revision was posted. Recording the date and time enables the public to observe that public bodies are complying with the Open Meeting Law's notice requirements without requiring constant vigilance. Additionally, in the event of a complaint, it provides the Attorney General with evidence of compliance with those requirements.

If a discussion topic is proposed after a meeting notice is posted, and it was not reasonably anticipated by the chair more than 48 hours before the meeting, the public body should update its posting to provide the public with as much notice as possible of what subjects will be discussed during the meeting. Although a public body may consider a topic that was not listed in the meeting notice if it was not anticipated, the Attorney General strongly encourages public bodies to postpone discussion and action on topics that are controversial or may be of particular interest to the public if the topic was not listed in the meeting notice.

(SOURCE: "Open Meeting Law Guide and Educational Materials, Office of Attorney General Maura Healey, Commonwealth of Massachusetts, January 2018. Page 10.) **Hereto Attached as Exhibit C.**

The Meeting notice for the Joint Convention was posted per the requirements of the Open Meeting Law, with all of the necessary requirements listed above. A Copy of this posting is hereto attached as **Exhibit D.**

Since this posting contained all of the requirements listed in the Open Meeting Law, there is no violation associated with the official meeting posting.

7. There is no violation associated with your allegation that the documents included in the twenty-six (26) page information packet for the meeting constitute a sharing of opinion. The documents that were shared were all legal public records that were all related to the subject of the meeting and were provided to the members of the joint convention just the same as any other items of supporting documentation to any other meeting packet. These items were publicly posted for the two (2) business days along with the public meeting posting. In fact, Councilor James Boone, himself a candidate for appointment provided documentation on the matter himself that was included in the packet. The full packet is hereto attached as **Exhibit E.**

These supplemental documents are meant to provide the members with information for them to utilize to understand the full situations of what are occurring as is done with every appointed and elected board and commission of the City, and cities and towns across the Commonwealth. These were all public records that were publicly posted and included in the Minutes of the Convention. Hereto attached as **Exhibit F.**

Due to all of the above-mentioned reasons, it is held by the Joint Convention that there were no violations of the Open Meeting Law associated with the Joint Convention held on February 22, 2022.

Sincerely,

[INSERT MAYOR'S SIGNATURE HERE FOLLOWING VOTE]