



Mayor Joshua Garcia

Office of Planning & Economic Development

City of Holyoke

Aaron ~~Vice~~ Director

SEP 19 2022

September 14, 2022

Dear President McGee and honorable members of Holyoke City Council:

Holyoke City Clerk's
Holyoke, MA

We¹ write to draw the Council's attention to an incident that took place during the Ordinance Committee's and Planning Board's joint public hearing on August 23, when a member of the City Council² used his position to make a baseless personal attack on our colleague Nathan Chung. While we regret the need to give this incident any more attention than necessary, we believe that Mr. Chung is owed an apology. As are many other Holyoke citizens, for this incident was part of a long pattern.³ As such, it raises issues that need to be addressed for the good of all Holyoke.

Before going into detail, we want to make it clear that we have nothing but respect for the Ordinance Chair. She deals with a difficult management task at every joint public hearing, and does so with admirable courtesy, patience, and evenhandedness. We appreciate it, and none of what follows should be taken as criticism of her work. We would regret it very much if occurrences like this one made it impossible for us to continue to hold hearings in joint session with the Ordinance Committee.

The facts are these. On August 23, during our continued joint public hearing on a zone change application for 41 Temple Street, Mr. Chung, having properly recused himself from participation as a Board member on this application, approached the microphone to speak as a member of the public.

That he had a right to speak cannot be doubted. As all of us who sit on boards or commissions, or serve as elected officials, are aware, the Massachusetts State Ethics Commission provides training and guidance on how public officials should handle situations where a matter before the body on which they serve may create a conflict of interest for them. Where an official has any question about their rights and duties, the Ethics Commission provides officials with individual opinions addressing their specific concerns. Where a public official has consulted the Ethics Commission, has obtained its advice, and is acting in accordance with its opinion, he has done everything right.

Mr. Chung has followed the guidance of the Ethics Commission on this matter from the time he was appointed to the Planning Board.⁴ He reached out to the Commission on or around July 25, following a complaint about his participation by a City Councilor at the June 28 session of the public hearing. The Commission advised Mr. Chung that he was fully entitled to speak on the matter as a member of the public. Mr. Chung recused himself and did not participate during the July 26 session of this hearing.

On August 17-18, with the August 23 session of the hearing approaching, Mr. Chung once more consulted with the Ethics Commission,⁵ and obtained an opinion that as long as he fully recused himself and acted only in his capacity as a member of the public, he was fully entitled to speak during the hearing.

As this should demonstrate, Mr. Chung was as meticulous as he could possibly have been in ensuring that he violated no ethical or legal principles, and had a right to speak. Nevertheless, on August 23 when he approached the microphone, the same Councilor who had previously objected to his speaking on this matter interrupted with a point of order, was recognized, and proceeded to attack Mr. Chung in extraordinarily personal and venomous tones, impugning his integrity as well as dismissing his right to speak.⁶

The Ordinance Committee chair, following City Council procedural rules,⁷ sustained the point of order, in part on the grounds that Mr. Chung had already spoken once, in a previous session of the hearing. At this point, Mr. Chung very graciously let the matter go rather than derail the hearing by disputing it, though he would have been entirely within his rights to do so.

¹ This letter is signed by Planning Board members Mimi Panitch, Kate Kruckemeyer, Gurninder Dhaliwal, and Rosanna Lopez. Ms. Kruckemeyer was not present for the hearing session on August 23, but has reviewed the recording of the session. Ms. Panitch, Mr. Dhaliwal, and Ms. Lopez were present at the hearing.

² Out of deference to the Council's Rules as we understand them, this letter will not use the Councilor's name.

³ Were this particular attack unusual, there would be no need for this communication. Unfortunately it is not: we are confident that Councilors will be able to recall all too many similar occurrences without our offering a list of other examples. Relatively few of them involve the Planning Board; the pattern is unfortunately pervasive across the City Council's work.

⁴ Prior to his appointment, he was of course entitled to participate as a member of the public in this hearing, and did so.

⁵ It should trouble the Council that Mr. Chung's second consultation with the Ethics Commission was motivated in part by this Councilor's striking hostility to him at the June 28th session of the hearing. Whether or not the Councilor intended to silence Mr. Chung through intimidation, the interaction might have had that effect had the Ethics Commission's guidance not been available to him.

That advice is not, of course, available to private citizens. The possibility that members of the public who encounter similar treatment may be silenced by it should not be dismissed.

⁶ The City Council need not blindly accept our characterization of these remarks. Video of the Councilor's August 23 comments can be found at approximately 0h8m52s to 0h10m50s of the recording of that session of the joint hearing, available online at https://www.youtube.com/watch?v=8I3_skJKWVs. The Councilor's remarks at the June 28 session can be found at <https://www.youtube.com/watch?v=22ivFZFyCfM>, from 1:07:10 - 1:09:47.

⁷ These Rules differ from the Planning Board's procedural rules, and attempting to navigate a joint hearing where two different and sometimes conflicting sets of rules may apply adds an additional layer of difficulty to the Chair's work.

⁸ The Planning Board has had cause to seek the City Solicitor's opinion about permissible limitations on public participation in public hearings in the past. We have been advised that while we may impose reasonable limitations on repetitive comments, and on digressions, we have an obligation to hear any relevant new information or arguments members of the public wish to present. We need not hear the same points, from the same speaker, in each session of a public hearing; but if a speaker has new relevant information or analysis to present, we have a duty to hear it even if the same person spoke at an earlier session of that hearing. We assume that in public hearings similar principles apply to the City Council.

There can be no both-sides-ing this. The Council member in question was entirely wrong: not merely discourteous, but wrong on the merits. The structure of Council hearings, and the norms that the Council has tolerated, allowed him to silence a speaker and deprive both bodies of whatever information he might have provided. And while this may be only one incident, and the harm from it may be limited (though it is not zero), it is representative of a pattern of behavior that has been tolerated for far too long, and should not be permitted to continue.

As we hope the Council will agree, this incident, and this continuing situation, is troubling in at least two separate ways.

First, and most obviously, it chills public participation for members of the public to be at risk of this sort of treatment from City Councilors when they seek to exercise their right to participate in municipal affairs. Those of us who accept, or seek, any public office may forget how intimidating it can be to speak before the Council, and how many of our fellow citizens find any kind of public speaking difficult even under the most welcoming of circumstances. We do not believe that the Council should continue to tolerate an internal culture, and norms arising from it, that make public participation more threatening than it needs to be.

For the Council to look the other way when Councilors launch personal attacks on citizens whose views they happen to disagree with can only result in fewer citizens being willing to speak up. This comes at a significant cost, to civic engagement, to sense of community, and to public connection with its municipal government. And these costs are increased when the public sees Councilors placing themselves above members of the public.

Second, when members of the public are discouraged from speaking, we defeat a great deal of the point of holding public hearings. We may also violate the relevant law. Public comment before the Council in its regular meetings may be at the discretion of the Council, but in public hearings, members of the public have a right to be heard.⁸ Moreover, we have a powerful interest in hearing them: effective governance relies on it. Our citizens often have information we do not, and viewpoints we may not have considered. This is substantive information that should help to guide our policy.

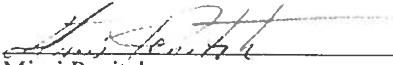
In this case, it is entirely possible that Mr. Chung had new information, or new analysis, to present. If so, we and the City Council have lost the benefit of that information: the hearing is now closed. We have also lost the benefit of any contribution that neighbors who might disagree with the relevant Councilor, but were put off by the prospect of being attacked in public, might have made.

Again, this is not only a problem for this particular zone change application. The loss of information, and of confidence in our city government, has an impact on every public hearing the Council conducts, and may have an impact on public hearings other of our municipal bodies conduct. It is a harm to all of us.

We understand that it is often easier and more efficient in the short run to tolerate bad behavior by public officials than to do the work of stopping it. It is also more comfortable. But it carries much higher costs in the longer term, and we believe it is long past time for the Council to address the problem head-on and take steps to fix it. We rely upon you: the Council has the power to do it, and no other entity in Holyoke can do it for you.

Again, we regret that this letter is necessary. We know you share our commitment to the City of Holyoke, and our desire to see it as the best version of itself it can possibly be, and we look forward to a city government where this sort of incident is no longer routine.

Respectfully,


Mimi Panitch,
Planning Board Chair

Kate Kruckemeyer 

Rosanna Lopez 