

Neighborhood Council: Public or Private Entity

In order to facilitate the discussion on the proposed Somerville Benefits Ordinance (“SBO”), this handout provides an overview of some of the key distinctions between a public body and a private entity. These distinctions are important because one of the central questions that the SBO raises is whether the Neighborhood Council should function as a public body or a private entity. This is a key question because the duties, responsibilities and powers of these two types of entities differ considerably and having a basic understanding of these differences is important for the decision-making process moving forward.

There are a number of factors that the courts consider in determining whether an entity is public or private. One of the key factors is the nature of the functions that the entity performs. Looking at the SBO from this perspective, some of the proposed changes could cause the Neighborhood Council to be deemed a public body. These proposed changes include:

1. Negotiating a exaction or impact fee for a High Impact Development Project
2. Requiring specific funding requests to be submitted to the BOA

The table on the following page highlights some of the major differences between a public body and a private entity in terms of their legal obligations and limitations. It is provided to aid the discussion of revisions proposed by members of the community to the draft Community Benefits Ordinance.

PUBLIC BODY***PRIVATE ENTITY***

Unable to negotiate Community Benefits Agreement on behalf of itself for its own benefit

Able to negotiate Community Benefits Agreement on behalf of itself

Unable to receive community benefits funds without a waiver of the state ethics laws on a case-by-case basis

Able to receive community benefits funds

Created and empowered by the city; part of the city government

Self-organized

Performs essential government function; Exercises control or supervision

Does not perform essential government functions

Receives or expends public funds

May receive public funds from public body pursuant to a public process or by contract

Meetings must be open to the public

Meetings can be private

48 hour advance notice of meetings posting requirement

No advance posting requirement

Minutes must be kept

No formal minutes requirement

Business must be discussed in open session; Executive sessions permissible only in very narrowly defined circumstances

No requirement of open discussions

Open Meeting Law constraints on quorum (whether communicating by email, telephone, text, or at a social gathering)

Not subject to Open Meeting Law

Meetings must be held in ADA accessible location

No ADA requirement

Communications and records must be disclosed (even if on a personal device) if public records request made; Strict time periods and penalties apply

No public records requirement

Members subject to state conflict of interest law

No state conflicts of interest prohibition

*Please note that the expectation is that Neighborhood Council meetings will be duly noticed, public, open, and ADA accessible regardless of whether they are deemed to be a public body or a private entity.