



MINUTES OF LEGISLATIVE AND ORDINANCE COMMITTEE MEETING  
59 COURT ST, WESTFIELD, MA  
CITY HALL - ROOM 201  
SEPTEMBER 15, 2021 at 5:30 PM

RECEIVED

OCT - 7 2021

WESTFIELD CITY CLERK

1. The meeting was called to order by Councilor Onyski at 5:30 PM.
2. Councilor Onyski called the Roll. The following committee members were present: Chair, William Onyski, James Adams and Michael Burns. Councilor Onyski noted that the meeting was being recorded by Kaitlyn Bruce.
3. Councilor Onyski opened the meeting for public participation. There was no one present to speak.
4. Upon Motion of Councilor Adams, it was  
VOTED: That the L&O Minutes of September 1, 2021 meeting be accepted.  
Motion seconded by Councilor Burns.  
Approved by Roll Call 3-0
5. Upon motion of Councilor Adams, it was  
VOTED: to SUBMIT an Ordinance amending Chapter 17 Section 17-73 by adding a Stop Sign at Breighly Way eastbound at Birch Bluffs, as voted by the Westfield Traffic Commission on March 17, 2021 with a POSITIVE RECOMMENDATION.

The vote on the foregoing was as follows:

James Adams	Yes
Michael Burns	Yes
William Onyski	Yes

Councilor Onyski welcomed City Solicitor Shanna Reed who was joining by telephone. City Engineer Mark Cressotti informed the committee that Breighly Way is a new Subdivision approved by the Planning Board. A requirement of the approval was to add this stop sign. To give it legal standing, the Traffic Commission reviewed and voted in favor of the stop sign on March 17, 2021.

6. Upon motion of Councilor Burns, it was  
VOTED: to SUBMIT a motion to have the City of Westfield accept the Mullin Rule with a POSITIVE RECOMMENDATION.

City Solicitor Shanna Reed informed the committee that MGL 39, Sec 23B was enacted and took effect in August of 2006. It is a local acceptance statute; if the council votes to accept the Resolution and the Mayor signs it, the City of Westfield will have accepted it. MGL 39, Sec 23B is often called the "Mullin Rule", because it partially overturned judicial precedent in Mullin v. Planning Board of Brewster. It authorizes a member of a board, committee or commission holding an adjudicatory hearing to vote in the matter even though the individual has missed one session provided that certain conditions are met. Those conditions include (1) acceptance of the statute, (2) the member is absent from one session only of the adjudicatory hearing, (3) there is an available recording or transcription of the hearing from which the member was absent and (4) that the member certifies that he or she has examined all evidence received at the missed session using the basic attached certification form (Appendix A). The Certification Form will need to be kept on file with the minutes of the public hearing for which any member is invoking the Mullin Rule. The legislative body needs to specify if the Mullin Rule will be for City Council or any and all Board and Commissions that have adjudicatory hearings; examples include special permits, variances, licensing applications and requests for determinations of applicability/notice of intent. Councilor Onyski reviewed the answers to a list of questions he had submitted to Attorney Reed prior to the meeting (Appendix B). Councilor Adams asked for clarification on how soon the Council could use the Mullin Rule. Attorney Reed stated, per section 31 of the Charter, a Resolution takes effect upon acceptance, which is once the Mayor signs the Resolution. As long as it has been accepted before a vote is made; any subsequent meeting after the Mayor has signed the Resolution, the Mullin Rule can be invoked. She clarified that the statute specifies that it is a video recording, audio recording or a full transcript of the meeting that must be reviewed to capture everything that was discussed. Minutes are only a synopsis and would not be counted as a full review of the meeting. Councilor Onyski asked if a presentation would have to be reviewed. Attorney Reed confirmed, stating that anything presented is given to the City Clerk as part of the record and the full Public Hearing record would need to be reviewed in order to vote. Councilor Adams asked if it is a self certification process. Attorney Reed confirmed. He asked if it was optional to utilize the Mullin Rule. Attorney Reed confirmed. She stated that a lot of communities use this and noted how beneficial it is for the smaller boards and commissions. Councilor Figy was present at the meeting and stated he thought this would benefit the Planning Board and cut down on the number of continued Public Hearings. He asked Attorney Reed if the meeting could be watched remotely and she confirmed, adding that anything submitted to the Clerk's Office would need to be reviewed if it was unable to be viewed on the screen.

The vote on the foregoing was as follows:

James Adams	Yes
Michael Burns	Yes
William Onyski	Yes

At 5:52 PM, and upon motion of Councilor Adams, it was VOTED to ADJOURN.

The vote on the foregoing was as follows:

James Adams	Yes
Michael Burns	Yes
William Onyski	Yes

Respectfully submitted,

Kaitlyn Bruce, Scribe for the Legislative and Ordinance Subcommittee

**CITY OF WESTFIELD**

**MULLIN RULE CERTIFICATION**

Pursuant to MGL c. 39, §23D, the undersigned member of a board, committee or commission on the City of Westfield hereby certifies that he or she has examined all of the evidence received by said board, committee or commission at the one session of its adjudicatory hearing on the matter identified below for which the undersigned member was not in attendance, and that such evidence included an audio or video recording of the missed session or a transcript thereof. This Certification has been executed prior to the undersigned's participating in a vote on the matter and shall be part of the record of the hearing.

Member Name: \_\_\_\_\_

Board, Committee or Commission: \_\_\_\_\_

Subject Matter of the Hearing: \_\_\_\_\_

Date of Missed Session: \_\_\_\_\_

Signed under the pains and penalties of perjury this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed name

APPENDIX B.

**From:** Shanna Reed <s.reed@cityofwestfield.org>  
**Sent:** Tuesday, September 14, 2021 3:14 PM  
**To:** William Onyski <william.onyski@cityofwestfield.org>  
**Subject:** Re: Questions on Mullin Rule

I added my answers below in red.

Shanna R. Reed, Esq.  
First Assistant City Solicitor  
City of Westfield  
59 Court Street  
Westfield, MA. 01085  
(413)572-6260  
(413)568-6745

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**From:** William Onyski <william.onyski@cityofwestfield.org>  
**Sent:** Monday, September 13, 2021 8:34 PM  
**To:** Shanna Reed <s.reed@cityofwestfield.org>  
**Subject:** Questions on Mullin Rule

Hi Shanna,

Feel free to respond before or during the meeting on these.

If the Mullin rule passes as is, every board and commission in Westfield can use it. The legislative body accepting the statute must accept it either for all boards and commissions within the municipality or for limited and then they must specify. I have assumed it was for all but mentioned in the memo that if that is not what the vote is that your clerk can change the resolution.

At that point, I assume, it would be up to the individual board member or commissioner to act upon it. Assumptions:

1. It is entirely up to the board member whether it gets used. The Chair of a board can't tell a member that they can't use it. Correct, if it is accepted for all boards, commissions and committees, it is then up to the individual member whether they want to watch the video to bring themselves up to speed and then be qualified to vote after signing the certification. The chair can neither require nor prohibit.
2. The member needs to "enact" the Mullin rule at the next meeting after they miss it. For instance, a topic goes 4 meetings. Jane Smith misses meeting number 2. Does she have to declare the Mullin Rule at meeting number 3? The statute does not specify. It just

APPENDIX B.

states that the member can only miss one of the sessions of the public hearing and that the certification must be on file before a final vote.

3. Signature page needs to be submitted prior to vote on the topic, typically before the meeting starts. Yes, submitted to the clerk to be kept as part of the record.
4. The person(s) that use the Mullin rule should publicly declare it at the meeting. This is not a requirement of the statute.
5. The Law department will create a brief description of the Mullin Rule, similar to your advice to LO, so that the Mayor can send to all Board and Commission Chairs. The L&O memo can be amended to be sent to the staff for all boards and commissions through the clerk's office.
6. If someone is 15 minutes late to an hour long meeting on a topic, does the Mullin rule need to be enacted, provided there is more than one meeting on a topic? If the member misses any of the public hearing it would be advisable that they review the portion of the public hearing missed and file the certificate stating they reviewed before voting.
7. Is there an opinion on retroactivity (first time I ever used that word) of the Mullin Rule? It cannot be invoked Thursday night as local acceptance also needs Mayoral approval. There isn't caselaw on whether after the Mayor approves the resolution at the next meeting a certification could be filed. The argument could be made that the statute says "upon acceptance" so that a certification filed after acceptance (both council vote and mayoral approval) would be valid no matter when the public hearing took place.

That is all for now!

Thank you,  
Bill

**William J. Onyski**  
Westfield City Councilor Ward 6  
413-568-7747  
[william.onyski@cityofwestfield.org](mailto:william.onyski@cityofwestfield.org)