OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 8, 2015

Mr. Ross Miller
Business Representative of I.A.M.A.W
Local Lodge 822
2929 North 5th Street
Quincy, Illinois 62305

Mr. Steve Marold
Business Representative
IBEW Local 34 Quincy Division
1900 Harrison
Quincy, Illinois 62301

Mr. Joshua L. Jones
Assistant State's Attorney
Adams County State's Attorney's Office
Adams County Courthouse
521 Vermont Street
Quincy, Illinois 62301

RE: OMA Request for Review – 2015 PAC 34760 and 34766

Dear Mr. Miller, Mr. Marold, and Mr. Jones:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2014), as amended by Public Act 99-402, effective August 19, 2015). For the reasons that follow, the Public Access Bureau concludes that that the Adams County Board (Board) violated the Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2014)) by improperly restricting public comment during its April 15, 2015, meeting.

On April 16, 2015, Mr. Ross Miller, on behalf of the International Association of Machinists and Aerospace Workers, submitted a Request for Review alleging that he was prohibited from addressing the Board at its April 15, 2015, meeting. On April 16, 2015, Mr. Steve Marold, on behalf of the International Brotherhood of Electrical Workers Local 34,

submitted a Request for Review alleging that he also was prohibited from addressing the Board at the same meeting.

On April 22, 2015, this office forwarded copies of the Requests for Review to the Board and asked it to respond to the allegations and to provide a copy of the Board's established and recorded rules governing public comment, as well as copies of the agenda and minutes of the Board's April 15, 2015, meeting. The Board responded on April 30, 2015; Mr. Miller and Mr. Marold did not reply.

Because both Requests for Review allege that the Board improperly restricted public comment at its April 15, 2015, meeting, we have consolidated these files for determination.

DETERMINATION

Section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2014)) provides: "Any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." Although OMA does not specifically address the types of rules that a public body may adopt, public bodies may generally promulgate reasonable "time, place and manner" regulations that are necessary to further a significant governmental interest. *See, e.g,. I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2d 912, 922 (N.D. Ill. 2009) (examining whether the application of city council's rules for public comment violated plaintiffs' rights). "City Councils have legitimate reasons for having rules to maintain decorum at public meetings[ ]" and "to assure that the meetings can be efficiently conducted." *Timmon v. Wood*, 633 F. Supp. 2d 453, 465 (W.D. Mich. 2008). However, such rules must tend to accommodate, rather than unreasonably restrict, the right to address public officials. *See* Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 6. In that binding opinion, the Attorney General concluded that a rule requiring members of the public to sign up to speak five days before a meeting violated section 2.06(g) because "a person must request to speak and provide the topic of his or her conversation *before* the Board is required to post its meeting agenda. Consequently, by the time members of the public have an opportunity to review the agenda to determine whether they wish to comment, they may be time-barred from submitting a request to address the Board." (Emphasis in original.) Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 6.

In his Request for Review, Mr. Miller states that he called the Adams County Clerk on April 14, 2015, and asked to address an agenda item concerning policies proposed by Governor Bruce Rauner at the meeting the following day, but was advised that the Board Chairman would not permit anyone to address that issue. In his Request for Review, Mr. Marold stated that he also contacted the County Clerk the day before the meeting and asked to address

the Board, but was informed that he would not permitted to do so because he had not complied with a rule requiring such requests to be submitted to the Board Chairman seven days before the meeting. The Board's response to this office acknowledged that before the meeting several people requested an opportunity to address the Board during the meeting about a resolution on the agenda. The Board stated that the resolution which individuals wished to address was tabled at the recommendation of an Assistant State's Attorney after he determined that the Board's rules governing public comment would have to be amended to comply with the above-referenced binding opinion issued by the Attorney General. According to the Board, the Board Chairman "announced that the resolution would be on next month's agenda and that any individual who wished to speak should request to speak at the next meeting. At that point no individual made a request to speak or made any additional statements."[1]

The Board subsequently amended its rules governing public comment to require members of the public to submit a request to address the Board no later than 4:00 p.m. on the day before the meeting. However, at the time of the April 15, 2015, meeting, the Board's rules required members of the public to submit a written request to the Board Chairman, through the County Clerk, no later than 4:00 p.m. on the Tuesday of the week preceding the meeting.[2] It is undisputed that Mr. Miller and Mr. Marold contacted the County Clerk to request an opportunity to address the Board, and were told that they would not be permitted to do so. It is also undisputed that the Board Chairman announced during the meeting that public comment would not be permitted on the resolution despite several members of the public having requested the opportunity to address the Board on the resolution before the meeting commenced. If public comment was prohibited because of the Board's previous rule requiring speakers to provide written notice seven days in advance of the meeting, that rule unreasonably restricted members of the public from exercising their statutory right to address the Board. Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, at 6. Further, the Board has neither asserted nor demonstrated that prohibiting members of the public from speaking about the resolution at issue was necessary to maintain meeting order or decorum. Accordingly, we conclude that the Board violated section 2.06(g) of OMA by improperly restricting public comment at its April 15, 2015, meeting.

The Board has subsequently amended its rules so that it no longer requires members of the public to request permission to address the Board 7 days in advance of a meeting. Therefore, no further action by the Board is required to remedy its violation of section 2.06(g) of OMA. We caution the Board to limit restrictions on public comment in its established and recorded rules to those necessary to maintain meeting order and decorum.

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[1]Letter from Joshua L. Jones, Assistant State's Attorney, Adams County State's Attorney's Office, to Steve Silverman, Assistant Bureau Chief, Public Access Bureau, Office of the Attorney General (April 30, 2015).

[2]Resolution Amending the Adams County Board Rules to Reflect a Change in Rule 7, Section 6 (June 9, 2015).

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at (312) 814-6756. This letter serves to close this file.

Very truly yours,

[redacted]

STEVE SILVERMAN
Assistant Bureau Chief
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 5, 2016

Via electronic mail
[redacted]

Via electronic mail
Mr. Brian G. Smith
LaLuzerne & Smith, Ltd.
One North County Street
Waukegan, Illinois 60085
brian@lsattorneys.com

RE: OMA Request for Review – 2015 PAC 39069

Dear [redacted] and Mr. Smith:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2014), as amended by Public Act 99-402, effective August 19, 2015). For the reasons that follow, the Public Access Bureau concludes that that the Waukegan City Council (Council) rules governing public comment impermissibly restrict the right of members of the public to address public officials at public meetings, and that the Council violated OMA by enforcing those rules to prohibit [redacted] from addressing public officials at a December 7, 2015, Council meeting.

On December 11, 2015, [redacted] filed this Request for Review alleging that he was removed from the December 7, 2015, Council meeting because he was allegedly defaming another person. On December 22, 2015, we forwarded a copy of the Request for Review to the Council and requested that it provide a detailed written response to its allegations as well as a copy of the minutes for the December 7, 2015, Council meeting and any existing verbatim record of the meeting.

On December 31, 2015, the Council provided a written response which included a link to the City's website to view a video recording of the December 7, 2015, meeting. The

Council stated that sections 2-65.1(3) and (4) of the Waukegan City Code (Ordinance No. 07-O-53, § 2, adopted May 7, 2007) provide that "[t]he presiding officer, after one warning, may rule any individual addressing the city council out of order if the individual: * * * [m]akes personal attacks against others [or] [m]akes rude or slanderous remarks[.]" The Council explained:

> [redacted] began his remarks by asking "what makes an Officer Gliniewicz a/k/a G.I. Joe?", a reference to deceased Fox Lake Lt. Joseph Gliniewicz, who authorities contend staged his suicide to look like he was killed in the line of duty and was engaged in criminal activity before his death. [redacted] then says "let's start with your good friend Sgt. Kerkorian, Mayor," a reference to Robert Kerkorian, a former Waukegan police officer who retired in October 2015. [redacted] has, in past meetings, made personal attacks on Mr. Kerkorian, and thus it was evident where [redacted] was going in linking Mr. Gliniewicz to Mr. Kerkorian.[1]

The video recording of the December 7, 2015, meeting reflects that, as described by the Council in its response, the Mayor cited sections 2-65.1(3) and (4) of the Waukegan City Code and warned [redacted] that if he continued to speak of the subject of Mr. Kerkorian he would be out of order and asked to leave the podium; after [redacted] responded "[t]hen ask me to leave," he was escorted out of the Council chambers.

We forwarded a copy of the Council's response to [redacted] on January 8, 2016; he replied on January 12, 2016. [redacted] questioned "how could the Mayor possibly say I spoke of Mr. Kerkorian in a negative manner in the past and he know that's the direction I was advancing toward's."[2] According to [redacted] he had not made comments about Mr. Kerkorian in the past and was planning to repeat what had been reported in the press.

DETERMINATION

Section 2.06(g) of OMA

Section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2014)) provides: "Any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." Although OMA does not specifically address the nature of rules that a public body may permissibly adopt, "City Councils have legitimate reasons for

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[1]Letter from James C. Hartman, Smith, LaLuzerne & Hartman, Ltd. to Neil P. Olson, Assistant Attorney General, [Public Access Bureau] (December 31, 2015), at 1.

[2]E-mail from [redacted] to Public Access [Bureau] (January 12, 2016).

having rules to maintain decorum at public meetings[ ]" and "to assure that the meetings can be efficiently conducted." *Timmon v. Wood*, 633 F. Supp. 2d 453, 465 (W.D. Mich. 2008).

Notwithstanding the legitimate interest in establishing rules governing decorum, in order to withstand constitutional muster, any restrictions on public comment that are content-based must be narrowly drawn to serve the purpose of preserving decorum. *See I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2d 912, 922 (N.D. Ill. 2009). As the Ninth Circuit has explained:

> An ordinance that governs the decorum of a city council meeting is not facially overbroad if it only permits a presiding officer to eject an attendee for *actually* disturbing or impeding a meeting. However, actually disturbing or impeding a meeting means actual disruption of the meeting; a municipality cannot merely define disturbance in any way it chooses, e.g., it may not deem any violation of its rules of decorum to be a disturbance. (Internal citations and ellipses omitted.) (Emphasis in original.) *Acosta v. City of Costa Mesa*, 718 F.3d 800, 811 (9th Cir. 2013).

In *Acosta*, the court struck down as overbroad a city ordinance that provided for the removal of "any person who commits disorderly, insolent, or disruptive behavior, including * * * personal, impertinent, profane, insolent, or slanderous remarks." *Acosta*, 718 F.3d at 811. The court held that the ordinance was unconstitutional because it permitted individuals to be ejected for the proscribed types of remarks even if those remarks did not disrupt meetings. *Acosta*, 718 F.3d at 813.

Similarly, the Council has promulgated an ordinance that prohibits "personal attacks against others" or "rude or slanderous remarks." On its face, this ordinance is susceptible to overbroad and arbitrary application to public statements that do not disrupt the Council's proceedings. For instance, whether a remark constitutes a "personal attack" is an entirely subjective question that is necessarily dependent upon the listener's personal perspective. When criticism involves the conduct of present or former public officials in the performance of their public duties, significant latitude must be allowed. Further, whether a comment is defamatory requires a legal judgement that a tort has been committed, including a finding that the alleged offending statement is false. *See Hadley v. Doe*, 2015 IL 118000, ¶30, 34 N.E.3d 549, 557 (2015) (stating elements of a cause of action for defamation). The Council's rules are devoid of any criteria for determining when a comment is improper, thus vesting the presiding officer with unbridled discretion to limit or prohibit legitimate public criticism by ruling it "out of order." Accordingly, we conclude that sections 2-65.1(3) and (4) of the Waukegan City Code exceed the permissible scope of rules regulating the statutory right to address public officials under section 2.06(g) of OMA.

With respect to [redacted] conduct at the December 7, 2015, Council meeting, it does not appear that his attempt to comment created a disturbance or otherwise interfered with the efficiency of the Council proceedings. When the Mayor cited the ordinance and asked him to cease his comments on the subject matter at issue, [redacted] had only mentioned Mr. Kerkorian, and it was speculative to infer that subsequent comments would adversely affect the decorum of the meeting. The Council does not contend that any other aspect of [redacted] conduct was disruptive other than the content of his statement. Accordingly, we also conclude that the Council violated section 2.06(g) of OMA by impermissibly restricting [redacted] right to address public officials at the December 7, 2015, Council meeting.

In accordance with the conclusions of this letter, we request that the Council review its rules governing public comment to ensure they are appropriately and narrowly tailored to regulate only those governmental interests relating to decorum and efficiency. The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this file. If you have any questions, please contact me at (217) 782-9078.

Very truly yours,

[redacted]

NEIL P. OLSON
Assistant Attorney General
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 8, 2016

Via electronic mail
[redacted]

Via electronic mail
Mr. William Gleason
Hauser Izzo, LLC
1415 West 22nd Street, Suite 200
Oak Brook, Illinois 60523
wgleason@hauserizzo.com

Re: OMA Request for Review – 2015 PAC 37503

Dear [redacted] and Mr. Gleason:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2014), as amended by Public Act 99-402, effective August 19, 2015). For the reasons discussed below, this office concludes that the Crete-Monee School District 201-U Board of Education (Board) violated OMA by (1) repeatedly interrupting a member of the public who addressed the Board during its August 18, 2015, meeting and (2) by failing to identify on the meeting agenda the general subject matter of all final actions taken by the Board.

On September 16, 2015, [redacted] submitted a Request for Review to this office alleging that members of the Board "routinely cut off speakers if they don't like or disagree with comments of the speaker, which happened at" the August 18, 2015, meeting.[1] [redacted]

[1]E-mail from [redacted] to Sarah Pratt, Public Access Counselor, Office of the Attorney General (January 16, 2015).

[redacted] also alleged that the meeting agenda did not set forth the general subject matters of certain items upon which the Board took final action.

On October 9, 2015, the Public Access Bureau sent a copy of the Request for Review letter to the Board President, Dr. Nakia Hall, and asked for a written response to the allegations therein. This office also requested a copy of the Board's rules governing public comment together with copies of the agenda and the minutes of the August 18, 2015, meeting for our review. In a letter dated October 22, 2015, counsel for the Board, Mr. William Gleason, furnished those materials and directed this office to a video recording of the meeting posted on the District's website. On October 30, 2015, this office forwarded a copy of the Board's response to [redacted] On November 16, 2015, [redacted] replied to that response.

DETERMINATION

Public Comment

Section 2.06(g) of OMA, provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." Indeed, the Attorney General has previously concluded that section 2.06(g) of OMA "requires that all public bodies subject to the Act provide an opportunity for members of the public to address public officials at open meetings." Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 5; *see also* Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 4. Under the plain language of section 2.06(g) of OMA, public comment must be permitted in accordance with the public body's established and recorded rules.

Although OMA does not specifically address the types of public comment rules that a public body may adopt, courts have clarified that public bodies may promulgate reasonable "time, place, and manner" restrictions that are narrowly-tailored and necessary to further a significant governmental interest. *See I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2d 912, 922 (N.D. Ill. 2009). For example, a public body may adopt reasonable rules governing public comment in order to maintain decorum and ensure that meetings are conducted efficiently. *Timmon v. Wood*, 633 F. Supp. 2d 453, 465 (W.D. Mich. 2008); *see also* Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, at 4. However, such rules must tend to accommodate, rather than to unreasonably restrict, the right to address public officials. *See I.A. Rana Enterprises, Inc.*, 630 F. Supp. 2d at 923-25; *Timmon*, 633 F. Supp. 2d at 459.

A rule that promotes order and decorum by requiring members of the public to sign up in advance to address a public body does not violate the first amendment to the United States Constitution provided that it is reasonable in time and scope. *Timmon v. Jeffries*, No. 1:08–CV–645, 2009 WL 270043, at *3 (W.D. Mich. Jan. 30, 2009) (collection of sign-up forms immediately before public comment portion of meeting was a permissible narrowly tailored restriction) *see also Bach v. School Board of City of Virginia Beach*, 139 F. Supp. 2d 738, 741 (E.D. Va. 2001) (requiring speakers to sign-up in advance of meeting is a reasonable content neutral regulation). However, an advance sign up rule that is enforced to prevent a member of

the public from addressing a public body violates OMA if it is not reasonably necessary to promote a significant governmental interest. Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 6 (rule requiring members of the public to sign up to comment five days in advance of meetings, before the Board was required to post its agenda, imposed an unreasonable restriction on public comment); Ill. Att'y Gen. PAC Req. Rev. Ltr. 37391, issued January 11, 2016) (public body violated section 2.06(g) of OMA by prohibiting speaker from addressing the public body because she did not submit a form providing her address, telephone number and subject or list of questions).

The Board's Public Comment form directs a person who wishes to comment to provide his or her name, address, including city, state, and zip code, e-mail address and "[y]our Public Comment Topic (Please provide a brief description)[.]"[2] The Board's public comment rules require members of the public to submit the form to the Board's corresponding secretary before the meeting commences and to "complete the "Your Public Comment Topic" section of the form so that multiple comments on the same issue can be properly categorized. **No comments will be permitted without a completed form.**"[3] (Emphasis in original.)

The Board's rules require members of the public to do more than merely notify the Board that they intend to participate in public comment. The Board's rules require a person who wishes to address the Board to obtain and fill out a particular form and submit it to the Board's corresponding secretary before the meeting. The form requires individuals to identify the topic of his or her public comment. Requiring a member of the public to set forth the topic of his or her comment in writing in advance of a meeting may create a chilling effect on speech at public meetings. A person may be reluctant to put comments in writing, especially if the comments may be controversial, although controversial statements are no less protected from government censorship under the First Amendment to the U.S. Constitution.[4] In addition, the requirement could be enforced to restrict the content of speech by precluding comments a person may wish to make after reviewing the resolutions or other information disseminated by the Board during the meeting. Similarly, it is unclear how requiring a speaker to submit his or her address and e-mail address on a form before addressing the Board advances any significant governmental interest. The Board's response to this office did not provide any information indicating that the use of its form is necessary to promote order and decorum at meetings. A sign-up sheet set out just prior to the meeting asking for the names of individuals who wish to address the Board, or simply requiring prospective speakers to notify the Board's Office shortly before the meeting could accomplish the same goal of running a timely and orderly meeting in a much less restrictive manner.

This office has reviewed a video recording of the public comment portion of the

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[2]PUBLIC COMMENT FORM, Crete-Monee School District 201-U Board.

[3]PUBLIC COMMENT FORM, Crete-Monee School District 201-U Board of Education.

[4]U.S. Const., amend. I ("Congress shall make no law * * * abridging the freedom of speech.").

Board's August 18, 2015, Board meeting.[5] [redacted] was called and walked up to a podium set in front of the Board members seated on a stage, and she spoke about the need for public involvement and discussion of Board issues, proposed a public forum, and cited concerns about the Board's website. [redacted] also started to address the attendance record of a particular board member. During this portion of [redacted] public comment, a Board member continuously interrupted her by stating that her additional comments were not disclosed in her comment form. At no time did [redacted] raise her voice or use profanity. After [redacted] completed her public comment, a Board member cautioned speakers to limit their comments to the topics listed on the public comment forms they submitted before the meeting.[6]

The Board's response to this office asserted that the Board did not enforce its rules to prevent anyone from completing their public comment during the August 18, 2015, meeting. The Board's response did acknowledge that when [redacted] spoke about the attendance record of a Board member, another Board member twice noted that she had not indicated she would address that topic. However, the Board insisted that it "did not inhibit or improperly prohibit [redacted] from speaking; she made the entirety of her comment."[7] Based on our review of the recording of the meeting posted on the District's website, the Board member repeatedly interrupted [redacted] to state that her comments concerning attendance were not disclosed in her comment form. These repeated interruptions unreasonably interfered with [redacted] statutory right to provide public comment, and may have prevented her from fully addressing the attendance topic that was not listed on her form. Moreover, the video recording of the meeting reveals that [redacted] was not loud or disrespectful, nor was she attempting to comment outside of the designated public comment period. Because the Board enforced an unreasonable rule to infringe on [redacted] right to address the Board during its August 18, 2015, meeting, we conclude that the Board violated section 2.06(g) of OMA.

Specificity of Agenda Items

Section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2014)) provides: "Any agenda required under this Section shall set forth the ***general subject matter*** of any resolution or ordinance that will be the subject of final action at the meeting." The Senate debate on House Bill No. 4687, which as Public Act 97-827, effective January 1, 2013, added section 2.02(c) of OMA, indicates that the General Assembly intended this provision to ensure that agendas provide general notice of all matters upon which a public body would be taking final action:

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[5] Crete-Monee School District 201-U Board, Meeting, August 18, 2015, available at https://www.youtube.com/watch?v=h-Ac61mQttE (last visited February 23, 2016), 16:25-18:02.

[6] Crete-Monee School District 201-U Board, Meeting, August 18, 2015, available at https://www.youtube.com/watch?v=h-Ac61mQttE (last visited February 23, 2016), 18:12-18:18.

[7] Letter from William F. Gleason, Hauser Izzo, LLC, to S. Piya Mukjerjee, Assistant Attorney General, Public Access Bureau (October 22, 2015), at 3.

> [T]here was just no real requirement as to how specific they needed to be to the public of what they were going to discuss that would be *final action*. And this just says that you have to have a * * * ***general notice*** if you're going to have and take final action, ***as to generally what's going to be discussed so that – that people who follow their units of local government know what they're going to be acting upon.*** (Emphasis added.) Remarks of Sen. Dillard, Senate Debate on House Bill No. 4687 at 47.

In her Request for Review, [redacted] alleged that the Board's August 18, 2015, meeting agenda failed to provide sufficient advance notice of its final actions to enter into an agreement with an independent contractor, approve the purchase of a Voice Over Internet Protocol (VOIP) phone system, approve a facilities assessment, approve various hiring decisions, and contained items listed as "Old Business," "New Business," and "Action (if necessary)[.]"[8]

The Board's response to this office explained that "[t]here was no action taken under either the New Business or Old Business portions of the meeting."[9] This office's review of the video of the meeting and meeting minutes confirmed that no final action was taken during the New Business and Old Business portions of the meeting. Because no final action was taken, section 2.02(c) of OMA did not require the Board's August 18, 2015, meeting agenda to further identify the general subject matter of items discussed during those portions of the meeting.

However, it is undisputed that the Board took final actions during the meeting by voting to approve an independent contractor agreement, the VoiP phone system proposal, and a facilities assessment. The August 18, 2015, meeting agenda includes action items listed as "Independent Contractor Agreement-CONSENT," "VoiP Phone System Approval," and "Facility Assessment."[10] In addition, our review of the recording shows that Board approved a list of various new hires, leaves of absences, notices of intent to retire, reassignments, resignations, and call backs. The relevant agenda item for these final actions appears to have been listed only as "Consent Agenda Approval[.]"[11]

The Board's response to this office asserted that the agenda coupled with additional details provided in the agenda packet that was posted with the agenda on the District's website provided the public with sufficient advance notice of each of the agenda items in question. An "agenda" is defined" as a "list of things to be done, as items to be considered at a

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[8]Crete-Monee School District 201-U Board, Agenda Items 10,11, 12 (August 18, 2015).

[9]Letter from William Gleason, Hauser Izzo, LLC, to S. Piya Mukherjee, Assistant Attorney General, Public Access Bureau (October 22, 2015).

[10] Crete-Monee School District 201-U Board, Regular Meeting, Agenda Items 8(B)(1), 9(A)(1), 9(B)(3)
(August 18, 2015).

[11]Crete-Monee School District 201-U Board, Regular Meeting, Agenda Item 8 (August 18, 2015).

meeting, usu. arranged in order of consideration[.]" *Black's Law Dictionary* (9th ed. 2009), *available at* Westlaw BLACKS. The agenda packet, consisting of 180 pages, contains detailed information such as a personnel report listing the new hires, leaves of absences, notices of intent to retire, reassignments, resignations, and call backs, and the cost and services to be provided pursuant to the independent contractor agreement. The information in the meeting packet, however, is not a "list of things to be done[ ]" at the meeting and therefore is not relevant to whether the Board's meeting "agenda" provided sufficient advance notice of the Board's final actions. A public body may not satisfy the requirements of section 2.02(c) by providing detailed information in an agenda packet, which may consist of hundreds of pages from which the public is unable to readily discern final actions to be taken, when the agenda itself fails to identify the general subject matter of those final actions.

The agenda item "VoiP Phone System Approval" did identify the general nature of the Board's vote to approve a contract for the replacement of that phone system. The other agenda items in question, however, failed to identify the general nature of the Board's final actions. The minutes of the August 18, 2015, meeting show that the Board approved an independent contractor agreement to hire Mr. Bill Hanlon for math professional development, administration consultation and parent training services for the 2015-2016 school year by a vote of 5-1. At a minimum, the agenda would have to identify the general nature of the duties that the independent contractor was hired to perform. Similarly, the agenda item "Facility Assessment" is simply too vague to provide the public with advance notice of the final action that the minutes show the Board took to approve the assessment for the Sixth Grade Center, which suggested a number of facility needs and enhancements. Lastly, the agenda item "Consent Agenda Approval" does not identify the general subject matter of any of the hiring and other personnel actions taken by the Board which were listed in the personnel report in the agenda packet. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 23602, issued May 22, 2013 (agenda item for "personnel" for the appointment of a police chief did not comply with section 2.02(c) of OMA. Accordingly, we conclude that the Board violated section 2.02(c) of OMA with respect to those agenda items.

To remedy that violation, we request that the Board meeting reconsider and revote on the matters for which it failed to provide advance notice after posting an agenda that adequately informs the public of the general nature of each final action. We also request that the Board amend its rules governing public comment to eliminate the requirement that speakers fill out a form that requires them to identify their address, e-mail address, and topic in order to participate in the public comment portion of its meetings, and to refrain from interrupting individuals who address the Board if their conduct does not disrupt the order and decorum of the meeting.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at (312) 814-6756. This letter serves to close this matter.

Very truly yours,

[redacted]
S. PIYA MUKHERJEE
Assistant Attorney General
Public Access Bureau

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cc: *Via electronic mail*
Dr. Nakia Hall, President
Crete-Monee School District 201-U Board
1500 Sangamon Street
Crete, Illinois 60417
drhallcm201u@icloud.com

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 2, 2016

Via electronic mail
[redacted]

Via electronic mail
Mr. Brian G. Smith
LaLuzerne & Smith, Limited
One North County Street
Waukegan, Illinois 60085
brian@lsattorneys.com

RE: OMA Request for Review – 2016 PAC 39416

Dear [redacted] and Mr. Smith:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2014), as amended by Public Act 99-402, effective August 19, 2015). For the reasons that follow, the Public Access Bureau concludes that the Waukegan City Council's (Council) rules governing public comment impermissibly restrict the public's right to address public officials, and that the Council violated OMA by enforcing those rules to prohibit [redacted] from addressing public officials at the January 4, 2016, Council meeting.

On January 4, 2016, [redacted] filed this Request for Review alleging that he was interrupted and his microphone was turned off while he attempted to provide public comment at the Council meeting that occurred earlier that evening. On January 20, 2016, this office forwarded a copy of the Request for Review to the Mayor, as representative of the Council, and requested a detailed written response to [redacted] allegations, together with copies of the minutes, agenda, and any recording of the January 4, 2016, Council meeting.

On March 2, 2016, the Council provided a written response, which included a link to the City's website to view a video recording of the January 4, 2016, meeting, and the other requested materials. The Council stated that section 2-65.1 of the Waukegan City Code

(Waukegan, Ill., Code of Ordinances § 2-65.1 (2016) (effective May 7, 2007)) provides that "the presiding officer may rule an individual addressing the council as out of order if the individual makes personal attacks against others (subsection 3) or makes rude or slanderous remarks (subsection 4)."[1] The Council further asserted:

> [redacted] as he has done of previous occasions * * *, began addressing the audience by stating "What makes a GI Joe…what makes an officer like him go rogue?" presumably referring to deceased Fox Lake Police Lieutenant Joseph Gliniewicz. [redacted] then referenced Robert Kerkorian, a retired Waukegan police officer and a repeated target of [redacted] during City

[1]Letter from Brian G. Smith, LaLuzerne & Smith, Ltd. to Leah Bartelt, Assistant Attorney General, Public Access Bureau (March 2, 2016), at 2. Section 2-65.1 of the Waukegan City Code provides:

> The presiding officer shall conduct city council meetings in an orderly manner. No person in the audience shall engage in disorderly conduct, including any act that disturbs, disrupts, or otherwise impedes the orderly conduct of any council meeting or the presentation of any speaker.
>
> During the public comment portion of the city council meetings, if any, all public comments are limited to three minutes per individual. Individuals are directed to be brief and concise in making their remarks and to address topics directly relevant to business of the city council.
>
> The presiding officer, after one warning, may rule any individual addressing the city council out of order if the individual:
>
> (1) Becomes repetitive;
> (2) Exceeds the three-minute limitation;
> (3) Makes personal attacks against others;
> (4) Makes rude or slanderous remarks;
> (5) Becomes threatening or boisterous;
> (6) Engages in electioneering for candidate(s); or
> (7) Otherwise interferes with the orderly and dignified conduct of the meeting.
>
> If ruled out of order and is found by the chair to be out of order, the individual may be barred from further remarks at that city council meeting and barred from further attendance at that meeting. This ruling of the chair can be overridden by a two-thirds vote of the aldermen present.
>
> Nothing herein is intended to limit or restrain negative, positive or neutral comments about the manner in which an individual employee, officer, official or council member carries out his or her duties in public office or public employment of the city.

> Council meetings. The Mayor viewed these comments as personal attacks on the character of Mr. Kerkorian, now a private citizen, and ruled [redacted] out of order multiple times. [redacted] repeatedly refused to stop speaking or step away from the microphone, and continued speaking until after his time had expired and had to be escorted away from the podium by a uniformed Waukegan police officer.[2]

The video recording of the January 4, 2016, meeting reflects that [redacted] spoke uninterrupted for more than two minutes; after the subject of his comments turned to Mr. Kerkorian, the mayor interrupted [redacted] and stated that he was in violation of sections 2-65.1(3) and (4) of the Waukegan City Code. When [redacted] asserted that he had a right to continue speaking, the Mayor told him to sit down, and then asked a police officer to remove [redacted] from the podium. [redacted] continued to speak after the officer walked up to the podium; after standing near [redacted] for seven seconds, the officer then turned [redacted] microphone off. Shortly thereafter, the Mayor repeatedly announced "time is up." [redacted] continued to speak for several seconds, then walked away from the podium, accompanied by the officer.

This office forwarded a copy of the Council's response to [redacted] on March 11, 2016; he replied on March 15, 2016. [redacted] asserted that he addressed the Council respectfully, within the Council's rules and allotted time limit, and that his comments were a proper subject for public comment.

DISCUSSION

Section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2014)) provides: "Any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." Although OMA does not specifically address the nature of the public comment rules that a public body may adopt, "[c]ity councils have legitimate reasons for having rules to maintain decorum at public meetings[,]" as "the 'preservation of order in city council meetings to ensure that the meetings can be efficiently conducted' is a legitimate government interest." *Timmon v. Wood*, 633 F. Supp. 2d 453, 465 (W.D. Mich. 2008) (quoting *Timmon v. Wood*, 316 Fed.Appx. 364, 365-66 (6th Cir. 2007)).

Notwithstanding the legitimate interest in establishing rules governing decorum, any restrictions on public comment that are content-based must be narrowly-drawn and serve a compelling State interest to withstand constitutional muster. *See I.A. Rana Enterprises, Inc. v.*

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[2]Letter from Brian G. Smith, LaLuzerne & Smith, Ltd. to Leah Bartelt, Assistant Attorney General, Public Access Bureau (March 2, 2016), at 1-2.

City of Aurora, 630 F. Supp. 2d 912, 922-23 (N.D. Ill. 2009) ("Any content-based restrictions, promulgated with reference to the content of the speech being restricted, are subject to strict-scrutiny, and must serve a compelling state interest and be narrowly drawn to achieve that purpose."). As the Ninth Circuit Court of Appeals has explained:

> An ordinance that governs the decorum of a city council meeting is "not facially overbroad [if it] only permit[s] a presiding officer to eject an attendee for *actually* disturbing or impeding a meeting. [Citation.] However, actually disturbing or impeding a meeting means "[a]ctual disruption" of the meeting; a municipality cannot merely define disturbance "in any way [it] choose[s]," e.g., it may not deem any violation of its rules of decorum to be a disturbance. [Citation.] (Emphasis in original.). *Acosta v. City of Costa Mesa*, 718 F.3d 800, 811 (9th Cir. 2013).

In *Acosta*, the court struck down as overbroad a city ordinance that provided for the removal of "any person who commits disorderly, insolent, or disruptive behavior, including * * * personal, impertinent, profane, insolent, or slanderous remarks." *Acosta*, 718 F.3d at 811. The court held that the ordinance was unconstitutional because it permitted individuals to be ejected for the proscribed types of remarks even if those remarks did not disrupt meetings. *Acosta*, 718 F.3d at 813.

The Public Access Bureau has previously determined that "sections 2-65.1(3) and (4) of the Waukegan City Code exceed the permissible scope of rules regulating the statutory right to address public officials under section 2.06(g) of OMA." Ill. Att'y Gen. PAC Req. Rev. Ltr. 39069, issued April 5, 2016, at 3. The determination held that because the Council's public comment provision prohibits "personal attacks against others" and "rude or slanderous remarks" on its face, the provision is "susceptible to overbroad and arbitrary application to public statements that do not disrupt the Council's proceedings." Ill. Att'y Gen. PAC Req. Rev. Ltr. 39069, at 3. Furthermore, this office determined that the Council's public comment rules "are devoid of any criteria for determining when a comment is improper, thus vesting the presiding officer with unbridled discretion to limit or prohibit legitimate public criticism by ruling it 'out of order.'" Ill. Att'y Gen. PAC Req. Rev. Ltr. 39069, at 3. For the same reasons, this office again concludes that sections 2-65.1(3) and (4) of the Waukegan City Code may be enforced to impermissibly restrict the public's statutory right to address the Council.

With respect to the January 4, 2016, meeting, the Council acknowledged that the Mayor interrupted [redacted] and directed a police officer to turn off his microphone because the Mayor determined that the content of his comments constituted "personal attacks against others" and "rude or slanderous remarks." Based on this office's review of the video recording of the meeting, it does not appear that [redacted] comments created a disturbance or otherwise

interfered with the efficiency of the Council's proceedings. When the Mayor cited the Council's public comment rules and asked [redacted] to cease his comments on the subject matter at issue, [redacted] had only mentioned Mr. Kerkorian, and it was speculative to infer that subsequent comments would adversely affect the decorum of the meeting. The Council does not contend that any other aspect of [redacted] conduct was disruptive other than the content of his statement. Accordingly, this office also concludes that the Council violated section 2.06(g) of OMA by impermissibly restricting [redacted] right to address public officials at the January 4, 2016, Council meeting.

In accordance with the conclusions of this letter, this office requests that the Council review and revise its rules governing public comment to ensure they are appropriately and narrowly-tailored to regulate only those governmental interests relating to decorum and efficiency, if it has not already done so.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this file. If you have any questions, please contact me at (312) 814-6437.

Very truly yours,

[redacted]

LEAH BARTELT
Assistant Attorney General
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 1, 2016

Via electronic mail
[redacted]

The Honorable Earl "Joe" Harness, Jr.
Mayor Pro Tempore
City of Carrollton
621 South Main Street
Carrollton, Illinois 62016

RE: OMA Request for Review – 2015 PAC 37996

Dear [redacted] and Mr. Harness:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2015 Supp.)). For the reasons discussed below, the available information does not support [redacted] allegation that the City Council (Council) of the City of Carrollton (City) violated section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2014)) during its September 23, 2015, meeting. However, the Council violated section 2.06(g) of OMA during the Council's October 13, 2015, meeting by restricting public comment to City residents.

BACKGROUND

On October 13, 2015, [redacted] submitted a Request for Review alleging that the Council did not allow public comment during its September 23, 2015, special meeting, and that it prohibited attendees who were not City residents from addressing it during its October 13, 2015, regular meeting. [redacted] indicated that he does not live in the City.[1]

On October 20, 2015, the Public Access Bureau sent a copy of the Request for Review to the Mayor Pro Tempore (Mayor), in his capacity as the head of the Council, and asked for a written response to the allegations therein. This office also requested a copy of any

[1]E-mail from [redacted] to Public Access (October 13, 2015).

established and recorded Council rules regarding public comment during meetings, and copies of the agenda, open session minutes, and any audio or video recordings of the September 23, 2015, and October 13, 2015, meetings. On October 26, 2015, the City Clerk provided this office with a copy of the agenda and an audio recording of the October 13, 2015, meeting, but asserted that his office did not possess an agenda or recording of the September 23, 2015, meeting. Additionally, on November 9, 2015, this office received Mayor Harness's written response to the allegations. On November 13, 2015, this office forwarded a copy of Mayor Harness's response to [redacted] who did not respond.

On November 18, 2015, the City Clerk confirmed to the Public Access Bureau via e-mail that the City did not have established and recorded rules concerning public comment at Council meetings. On December 8, 2015, the City Clerk provided the Public Access Bureau with a copy of the minutes of the Council's October 13, 2015, meeting, and on February 23, 2016, provided a copy of the minutes of the Council's September 23, 2015, meeting.

DETERMINATION

Section 2.06(g) of OMA, which was added by Public Act 96-1473, effective January 1, 2011, provides that "[a]ny person ***shall*** be permitted an opportunity to address public officials under the rules established and recorded by the public body." (Emphasis added.) The use of the word 'shall' in a statute is generally considered to express legislative intent that the provision is to be mandatory. *Gingrey v. Lamer*, 315 Ill. App. 3d 486, 487 (3rd Dist. 2000). The Attorney General has previously concluded that section 2.06(g) of OMA "requires that all public bodies subject to the Act provide an opportunity for members of the public to address public officials at open meetings." Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 5; *see also* Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 4. Under the plain language of section 2.06(g) of OMA, a public body may restrict public comment only pursuant to its established and recorded rules. Thus, a public body that does not have established and recorded rules governing public comment violates OMA when it denies a member of the public the opportunity to address public officials at an open meeting.

With respect to the September 23, 2015, meeting, [redacted] stated in his Request for Review that "[p]ublic comment was not on the agenda, and was not allowed at the end of the meeting."[2] Mayor Harness acknowledged that public comment was not listed on the agenda, but also asserted that "[n]o one said anything until after the fact."[3] [redacted] did not contest that

[2]E-mail from [redacted] to Public Access (October 13, 2015).

[3]Letter from [Earl "Joe" Harness, Jr.] to Leah Bartelt, Ass't Attorney General, Public Access Bureau (undated).

assertion. The minutes of the September 23, 2015, meeting do not reflect that the Council called for public comment, or that any member of the public attempted to comment and was denied. The Public Access Bureau has previously determined that section 2.06(g) of OMA does not require a public body to list public comment on a meeting agenda in order for members of the public to be able to address the members of the public body during that meeting. Ill. Att'y Gen. PAC Req. Rev. Ltr. 26020, issued April 14, 2014, at 2. Thus, although the Council acknowledges that public comment was not listed on the agenda for the September 23, 2015, meeting, there is insufficient evidence to conclude that the Council violated section 2.06(g) by prohibiting [redacted] or anyone else from addressing the Council. A better practice, however, would be for the Council to invite public comment during open meetings even if public comment is not listed as an agenda item.

In contrast, the Council acknowledged that during the October 13, 2015, meeting, Mayor Harness restricted public comment to residents of the City and to matters listed on the agenda. The meeting minutes corroborate that the Mayor announced that "comments would be limited to the agenda and would be limited to citizens of the city only."[4] To explain those extemporaneous restrictions, the Mayor asserted that non-residents were being prohibited from addressing the Council "since these have been the people most [disruptive] in conducting a meeting for the past 4 mos." However, the Council did not cite any evidence that [redacted] or any other non-resident had been disruptive at any prior meeting, nor did it assert that any non-resident was disruptive during the October 13, 2015, meeting. In fact, [redacted] and other non-residents were given no opportunity to address the Council during the public comment portion of the meeting before or after the Mayor stated that they would be prohibited from speaking. Therefore, the Council did not establish that it was necessary or even reasonable to categorically prohibit all non-residents from commenting in order to maintain order at the meeting. Further, it is undisputed that the Council had not established and recorded a rule excluding non-residents from addressing the Council, or any other rules governing public comment. Accordingly, this office concludes that the Council violated section 2.06(g) of OMA during its October 13, 2015, meeting by extemporaneously imposing an unauthorized restriction on public comment.

Moreover, a rule purporting to limit the right to comment to residents of the City would run afoul of section 2.06(g) of OMA, which specifically provides that "***[a]ny person*** shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." (Emphasis added.) Although a public body may adopt reasonable rules governing the manner in which members of the public provide comments during open meetings, "a person's right to comment at an open meeting is not contingent upon where he or she resides." Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 7. Accordingly, this

[4]City of Carrollton City Council, Regular Meeting, October 13, 2015, Minutes 5.

office concludes that a rule establishing a blanket prohibition on public comment by non-residents would impermissibly restrict the right to public comment guaranteed by section 2.06(g) of OMA.

In accordance with this determination, the Public Access Bureau suggests that the Council consider appropriate action to establish and record reasonable rules to govern public comment at its meetings.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at (312) 814-6437. This letter serves to close this matter.

Very truly yours,

[redacted]

LEAH BARTELT
Assistant Attorney General
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 1, 2016

Via electronic mail
[redacted]

The Honorable Earl "Joe" Harness, Jr.
Mayor Pro Tempore
City of Carrollton
621 South Main Street
Carrollton, Illinois 62016

Re: OMA Request for Review 2015 PAC 38037

Dear [redacted] and Mr. Harness:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2015 Supp.)). For the reasons discussed below, this office concludes that the City Council (Council) of the City of Carrollton (City) violated section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2014)) by restricting public comment to City residents and to items listed on the agenda during the Council's October 13, 2015, meeting.

BACKGROUND

On October 14, 2015, [redacted] submitted a Request for Review alleging that the Council limited public comment at its October 13, 2015, regular meeting to matters on the agenda and prohibited attendees who were not City residents, including [redacted] from addressing the Council. On October 20, 2015, the Public Access Bureau sent a copy of the Request for Review to the Mayor Pro Tempore (Mayor), in his capacity as the head of the Council, and asked for a written response to the allegations therein. This office also requested a copy of any established and recorded Council rules governing public comment during meetings, and copies of the agenda, open session minutes, and any audio or video recordings of the October 13, 2015, meeting. On October 26, 2015, the City Clerk provided this office with a

copy of the agenda and an audio recording of the meeting. Additionally, on November 9, 2015, this office received the Mayor's written response to the allegations in which he confirmed that he had limited public comment to "subjects on the agenda" and prohibited non-residents of the City from addressing the Council "since these have been the people most disrupted [sic] in conducting a meeting for the past 4 mos."[1] On November 13, 2015, this office forwarded a copy of the Mayor's response to [redacted] On November 16, 2015, she replied by emphasizing that Mayor's response acknowledged that the conduct she had alleged "did indeed take place."[2]

On November 18, 2015, the City Clerk confirmed to the Public Access Bureau via e-mail that on the date of the meeting in question the City did not have established and recorded rules concerning public comment during Council meetings. On December 8, 2015, the City Clerk provided the Public Access Bureau with a copy of the minutes of the Council's October 13, 2015, meeting.

DETERMINATION

Section 2.06(g) of OMA, which was added by Public Act 96-1473, effective January 1, 2011, provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body."

In its response to this office, the Council acknowledged that the Mayor restricted public comment at the October 13, 2015, meeting to residents of the City and to matters listed on the agenda. The meeting minutes corroborate that the Mayor announced that "comments would be limited to the agenda and would be limited to citizens of the city only."[3] To explain those extemporaneous restrictions, the Mayor asserted that non-residents were being prohibited from addressing the Council because they had been disruptive at past meetings. However, the Council did not cite any evidence that [redacted] or any other non-resident had been disruptive at any prior meeting, nor did it assert that any non-resident was disruptive during the October 13, 2015, meeting. In fact, [redacted] and other non-residents were given no opportunity to address the Council during the public comment portion of the meeting before or after the Mayor stated that they would be prohibited from speaking. Therefore, the Council did not establish that it was necessary or even reasonable to categorically prohibit all non-residents from commenting in order to maintain order at the meeting.

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[1]Letter from [Earl "Joe" Harness, Jr.] to Leah Bartelt, Ass't Attorney General, Public Access Bureau (undated).

[2]E-mail from [redacted] to Public Access and Leah Bartelt (November 16, 2015).

[3]City of Carrollton City Council, Regular Meeting, October 13, 2015, Minutes 5.

With respect to limiting public comment to agenda items, the Mayor stated in the Council's response that he imposed that restriction because "we must post [the agenda] 48 hrs in advance and once inside 48 hrs the agenda is cast in stone for the Council[.]"[4] Although section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2014)) does require a public body's posted agenda to "set forth the general subject matter of any resolution or ordinance that will be the subject of ***final action*** at the meeting[ ]" (emphasis added), that provision does not prohibit ***discussion*** of matters not on an agenda by the public body, nor does it prohibit members of the public from commenting on matters that do not appear on the agenda during the public comment portion of the meeting. *Rice v. Board of Trustees of Adams County, Ill.*, 326 Ill. App. 3d 1120, 1123 (4th Dist. 2002) (concluding that a public body may "consider" items not specifically set forth on an agenda by deliberation and discussion, but may not take final action without sufficient advance notice on the agenda). Further, it is undisputed that the Council had not established and recorded any rules limiting public comment to agenda items or excluding non-residents from addressing the Council. Accordingly, this office concludes that the Council violated section 2.06(g) of OMA during its October 13, 2015, meeting by extemporaneously imposing those restrictions.

Moreover, a rule purporting to limit the right to comment to residents of the City would run afoul of section 2.06(g) of OMA. Section 2.06(g) specifically provides that "***[a]ny person*** shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." (Emphasis added.) Although a public body may adopt reasonable rules governing the manner in which members of the public provide comments during open meetings, "a person's right to comment at an open meeting is not contingent upon where he or she resides." Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 7. Accordingly, this office concludes that a rule establishing a blanket prohibition on public comment by non-residents would impermissibly restrict the right to public comment guaranteed by section 2.06(g) of OMA.

Similarly, a rule limiting participants to speaking only on subjects listed on the agenda would also exceed the scope of permissible rulemaking authorized by section 2.06(g). As discussed above, OMA does not preclude members of a public body from "the consideration of items not specifically set forth in the agenda," (5 ILCS 120/2.02(a) (West 2014)), as long as the public body does not take final action on items not listed on the agenda. Given that the public body itself is able to discuss matters that are not specifically listed on the agenda, a rule that would prohibit members of the public from addressing matters that are not listed on the agenda would impermissibly restrict the right to public comment as outlined in section 2.06(g).

[4]Letter from [Earl "Joe" Harness, Jr.] to Leah Bartelt, Ass't Attorney General, Public Access Bureau (undated).

In accordance with this determination, the Public Access Bureau suggests that the Council consider appropriate action to establish and record reasonable rules to govern public comment at its meetings.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at (312) 814-6437. This letter serves to close this matter.

Very truly yours,

[redacted]

LEAH BARTELT
Assistant Attorney General
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 12, 2016

Via electronic mail
[redacted]

Via electronic mail
Ms. Genevra Walters, Superintendent
Kankakee School District 111
240 Warren Avenue
Kankakee, Illinois 60901
genevra-walters@ksd111.org

RE: OMA Request for Review – 2016 PAC 44262

Dear [redacted] and Ms. Walters:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2015 Supp.)). For the reasons explained below, the Public Access Bureau concludes that the Kankakee School District 111 Board of Education (Board) violated the requirements of OMA in connection with its September 26, 2016, meeting by imposing a restriction on public comment that was not authorized by its established and recorded rules. This office further concludes that during the September 26, 2016, meeting, the Board did not adequately inform the public of its reason for going into a second closed session.

BACKGROUND

On September 28, 2016, [redacted] submitted this Request for Review alleging that during its September 26, 2016, meeting, the Board improperly interrupted his public comments and prevented him from using all of his allotted time to speak on one of the Board's agenda items. [redacted] also alleged that the Board did not accurately identify the subject of the Board's second closed session on the meeting's agenda or in a public recital before entering closed session. We construed the Request for Review as alleging

violations of sections 2.06(g) (5 ILCS 120/2.06(g) (West 2014), as amended by Public Act 99-515, effective June 30, 2016) and 2a (5 ILCS 120/2a (West 2014)) of OMA.

On October 11, 2016, this office sent a copy of the Request for Review to the Board and requested a written response to the allegations in the Request for Review, together with copies of the Board's established and recorded rules regarding public comment. This office also requested that the Board identify the specific exception in section 2(c) of OMA (5 ILCS 120/2(c) (West 2015 Supp.), as amended by Public Acts 99-642, effective July 28, 2016; 99-646, effective July 28, 2016) that it publicly cited and identified as its basis for entering the second closed session during the September 26, 2016, meeting, and provide an explanation of its applicability to the content of the closed session discussion. This office also requested copies of the meeting agenda, open and closed session minutes, and the verbatim recording of the closed session portion of that meeting. On October 21, 2016, the Board provided the requested materials. On October 28, 2016, [redacted] submitted a reply.[1]

DETERMINATION

Public Comment

Section 2.06(g) of OMA provides that "[a]ny person shall be permitted an opportunity to address public officials *under the rules established and recorded by the public body*." (Emphasis added.) Under the plain language of section 2.06(g), a public body must establish and record rules and may restrict public comment only pursuant to those rules. *See* Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 2, 2014 at 7.

In response to this office's request for a copy of the Board's established and recorded rules regarding public comment, the Board submitted Kankakee School District Number 111 School Board Policy 2:230, "Public Participation at Board of Education Meetings and Petitions to the Board" (Board Policy 2:230). Board Policy 2:230 lists five guidelines, which were adopted on November 14, 1994, and last amended on March 14, 2011, that require speakers to:

> 1. Address the Board only at the appropriate time as indicated on the agenda and when recognized by the Board President.
> 2. Identify oneself and be brief. Ordinarily, comments shall be limited to 5 minutes. In unusual circumstances, and when an individual has made a request in advance to speak for a longer

[1]In his reply, [redacted] raised several novel allegations regarding the September 26, 2016, meeting. He subsequently filed those allegations in a separate Request for Review which is addressed in Ill. Att'y Gen. PAC Req. Rev. Ltr. 44862, issued December 12, 2016.

period of time, the individual may be allowed to speak for more than 5 minutes.

3. Observe the Board President's decision to shorten public comment to conserve time and give the maximum number of individuals an opportunity to speak.

4. Observe the Board President's decision to determine procedural matters regarding public participation not otherwise covered in Board policy.

5. Conduct oneself with respect and civility toward others and otherwise abide by Board policy 8:30, *Visitors to and Conduct on School Property.*[2]

However, the open session recording of the September 26, 2016, meeting shows that the Board president recited a different set of guidelines before the public comment period. Specifically, the Board president stated:

> Please give your name and direct your comments to the President. Comments are limited to five minutes. No personal attacks upon Board members, staff, or other persons in attendance or absent will be permitted. In addition, discussion of matters which are currently under legal review will not be permitted.[3]

During [redacted] public comments, the Board president announced an additional guideline that was not listed in Board Policy 2:230 or in the rules recited by the Board president: that commenters "cannot speak of personnel issues." There is no evidence that the Board has established and recorded a rule restricting public comment on personnel matters. The rule appears to have been announced extemporaneously by the Board president in response to [redacted] comments. The open session recording shows that the Board president interrupted [redacted] remarks four times to assert that he could not speak of

[2]Kankakee School District 111 School Board Policy 2:230, "Public Participation at Board of Education Meetings and Petitions to the Board."

[3]Kankakee School District 111 Board of Education, Meeting, September 26, 2016, Audio File (on file with the Public Access Bureau). When asked to address whether the rules recited by the Board president were established and recorded pursuant to section 2.06(g) of OMA, the Board responded that the statement began appearing on Board meeting agendas in 1994, but it did not recall how the remarks evolved. Although this set of rules is beyond the scope of this Request for Review, this office recommends that the Board take appropriate steps to establish and record any rules regarding public comment. A public body may promulgate reasonable rules related to public comment in order to govern meeting decorum and procedure. *Timmon v. Wood*, 633 F. Supp. 2d 453, 465 (W.D. Mich. 2008). Notwithstanding the legitimate interest in establishing rules governing decorum, in order to withstand constitutional muster, any restrictions on public comment that are content-based must be narrowly drawn to serve the purpose of preserving decorum. *See I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2d 912, 922 (N.D. Ill. 2009).

personnel items. Although the Board allowed [redacted] to speak for slightly longer than five minutes and permitted him to stop speaking of his own accord, [redacted] contends that because of the Board's restriction on personnel issues, he "had to use the remainder of [his] time talking in allegories."[4] The Board argues that the Board president made a "request that [redacted] not mention [the employee]'s situation by name because the matter involved a personnel issue and was currently under review by the Board."[5]

Contrary to the Board's assertion, the open session recording establishes that the Board president did more than merely make a request of [redacted] rather, she imposed an ad hoc rule by interrupting him repeatedly and stating that "our public guidelines state that you cannot speak of personnel issues."[6] Although the Board president did not completely prohibit [redacted] comments, it does appear that the ad hoc rule caused him to refrain from fully expressing his views and required him to adopt indirect language to make his point. Accordingly, this office concludes that the Board violated section 2.06(g) of OMA by restricting [redacted] statutory right to address the Board based on a restriction that is not among its established and recorded rules governing public comment.

Second Closed Session

The Request for Review also alleged that the Board entered into a second closed session without citing an accurate basis under section 2(c) of OMA. Section 2(a) of OMA (5 ILCS 120/2(a) (West 2015 Supp.), as amended by Public Acts 99-642, effective July 28, 2016; 99-646, effective July 28, 2016) provides that "[a]ll meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a." Section 2a of OMA (5 ILCS 120/2a (West 2014)) requires that "a citation to the specific exception contained in Section 2[(c)] of this Act which authorizes the closing of the meeting to the public shall be publicly disclosed ***at the time of the vote*** and shall be recorded and entered into the minutes of the meeting." (Emphasis added.) Although a public body does not need to provide a specific citation to the OMA statute before going into closed session, it must "adequately identif[y] the exception" in section 2(c) on which it will rely to close the meeting. *Wyman v. Schweighart*, 385 Ill. App. 3d 1099, 1105 (2008). *See also* Ill. Att'y Gen. PAC Req. Rev. Ltr. 12658, issued July 7, 2011, at 2 (a public body's motion to close a meeting "must provide a sufficiently clear reference to each of the exception(s) it is relying on.").

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[4]Email from [redacted] to Laura Harter, Assistant Attorney General, Public Access Bureau (October 28, 2016).

[5]Letter from Brian P. Crowley, Franczek Radelet, to Laura S. Harter, Assistant Attorney General, Public Access Bureau (October 21, 2016), at 3.

[6]Kankakee School District 111 Board of Education, Meeting, September 26, 2016, Audio File (on file with Public Access Bureau).

Before entering its second closed session, the Board president stated "we are now on item I [of the agenda], I will ask for a motion to go back into closed session."[7] Item I of the September 26, 2016, Board meeting agenda provided that a second closed session would be convened concerning the "Appointment, Employment, Compensation, Discipline, Performance, or Dismissal of Specific Employees of the Public Body."[8] This language is a verbatim excerpt from the exception in section 2(c)(1) of OMA.[9] The Board, however, did not recite this language in its motion.

In its October 21, 2016, response to this office, the Board acknowledged that the "better practice" is "to expressly state the reason for the closed session in the motion for the public to hear" and indicated that it intends to do so in the future. Still, the Board claimed that the motion at issue "should not have caused any confusion for the public, as the reason for the closed session was clearly set forth in the agenda and the Board referenced the relevant agenda item in its motion."[10] This office disagrees. Even though the Board recited the statutory language of the 2(c)(1) exception in its agenda, merely stating the letter of the relevant agenda item did not adequately identify that exception "at the time of the vote" to go into closed session, as required by the plain language of section 2a. Accordingly, this office concludes that the Board violated section 2a of OMA by failing to publicly disclose the relevant exception in section 2(c) of OMA at the time of its vote to close the meeting.

Lastly, [redacted] appears to contend that the Board should have informed the public that the nature of the second closed session was a due process hearing for the employee at issue. The Board's response to this office, this office's review of the closed session minutes, and review of the closed session verbatim recording all confirmed that the subject of the closed session was a specific employee's employment and potential termination. Consideration

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[7]Kankakee School District 111 Board of Education, Meeting, September 26, 2016, Audio File (on file with the Public Access Bureau).

[8]Kankakee School District 111 Board of Education, Meeting, Agenda Item I. (September 26, 2016).

[9]Section 2(c)(1) of OMA provides that a public body may hold a closed meeting to consider:

> The appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee of the public body or against legal counsel for the public body to determine its validity. However, a meeting to consider an increase in compensation to a specific employee of a public body that is subject to the Local Government Wage Increase Transparency Act may not be closed and shall be open to the public and posted and held in accordance with this Act.

[10]Letter from Brian P. Crowley, Franczek Radelet, to Laura S. Harter, Assistant Attorney General, Public Access Bureau (October 21, 2016), at 3, n.1.

of a specific employee's employment and termination fall squarely within the scope of the section 2(c)(1) exception that the Board cited in item I of the agenda and in the open session minutes. Although OMA requires a citation to a specific exception contained in section 2(c), it does not require a public body also to articulate the specific subject matter of its closed session. To require a public recitation of the subject matter of the closed session would defeat the purpose of holding a session in private. The general language of section 2(c)(1) cited in the Board's agenda adequately identified the exception that authorized the Board to close the meeting. Had the Board verbally recited this language before voting to enter into a second closed session, it would have satisfied the requirements of OMA.

Because the Board's second closed session discussion was authorized by section 2(c)(1) even though it did not adequately identify that exception before closing the meeting and because there is no way to remedy its violation of section 2.06(g) at this time, no remedial action by the Board is necessary. However, this office cautions the Board to be mindful in the future of its obligation to adequately inform the public of the exceptions that authorize it to enter closed session at the time of its votes to do so, and to limit restrictions on public comment to reasonable rules that it has established and recorded.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at the Springfield address on the first page of this letter. This letter serves to close this file.

Very truly yours,

[redacted]

LAURA S. HARTER
Assistant Attorney General
Public Access Bureau

44262 o 206g pub comment improper 2a improper sd

cc: *Via electronic mail*
Mr. Brian P. Crowley
Franczek Radelet P.C.
300 South Wacker Drive, Suite 3400
Chicago, Illinois 60606
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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

March 16, 2017

Via electronic mail
[redacted]

Via electronic mail
Mr. Brian Day
Corporation Counsel
Town of Normal
11 Uptown Circle
Normal, Illinois 61761
bday@normal.org

RE: OMA Request for Review – 2016 PAC 45349

Dear [redacted] and Mr. Day:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2015 Supp.)). For the reasons that follow, the Public Access Bureau concludes that that the Town of Normal's (Town) rules governing public comment impermissibly restrict the right of members of the public to address public officials at public meetings, and that the Normal Town Council (Council) violated OMA by prohibiting members of the public from addressing it more often than once every forty-five days.

On December 6, 2016, [redacted] filed this Request for Review alleging that the Town's rules for public comment violated OMA in a number of ways. In particular, he stated that the Town implemented a rule limiting members of the public to one opportunity in a forty-five day period to address public officials at public meetings. He alleged that two individuals were denied the opportunity to address the Council at a December 6, 2016, meeting[1] because they had previously commented within the last forty-five days. He also stated that he

[1]As explained by the Council, the Council met on December 5, 2016, not December 6, 2016, and the reference to December 6, 2016 appears to be in error.

would have addressed the Council about a proposed tax incentive at that meeting, but did not do so because he wanted to comment at a hearing to be held on December 19, 2016.

On December 14, 2016, this office transmitted a copy of the Request for Review to the Town mayor via e-mail, and requested that the Council furnish a written response to the allegations together with copies of the records relating to the meeting at issue and the Town's public comment rules. This office re-transmitted the Request for Review to the Town corporation counsel on January 23, 2017. On February 2, 2017, this office received the Council's written response. This office forwarded a copy of the Council's response to [redacted] on February 10, 2017; he replied on February 17, 2017.

DETERMINATION

Purpose of Section 2.06(g)

Section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2014)) provides: "***Any person*** shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." (Emphasis added.)

Section 2.06(g) was added to OMA by Public Act 96-1473, and was effective as of January 1, 2011. The Council asserts that the language of 2.06(g) is unambiguous, and that "[n]othing in the text of this statute limits the authority of a public body to enact rules."[2] The Council argues, in effect, that a public body may regulate public comment in any manner so long as it has established and recorded rules. Under this argument, even a rule that categorically prohibits a member of the public from addressing public officials at certain public meetings would be acceptable.

A "statute should be evaluated as a whole, with each provision construed in connection with every other section." *Jackson v. Board of Election Commissioners*, 2012 IL 111928, ¶48, 975 N.E. 2d 583, 596 (2012). Section 2.06(g) is part of OMA. The intent of OMA, as well as the general policy of the State, is that the public "be given advance notice of and the right to attend all meetings at which any business of the public body is discussed or acted upon in any way." 5 ILCS 120/1 (West 2014); *see also* 735 ILCS 110/5 (West 2014) ("[I]t is declared to be the public policy of the State of Illinois that the constitutional rights of citizens and organizations to be involved and participate freely in the process of government must be encouraged and safeguarded with great diligence."). OMA therefore requires, among other things, proper posting of a notice and an agenda for *every* public meeting (5 ILCS 120/2.02 (West 2014)) and holding those meetings at specified times and places that are convenient and open to the public (5 ILCS 102/2.01(West 2014)). Section 2.06(g) of OMA cannot reasonably

[2]Letter from Brian Day, Corporation Counsel, Town of Normal, to Public Access Counselor, Office of the Attorney General (January 30, 2017), at 7.

be construed as granting members of the public a statutory right to address public officials on the one hand while permitting public bodies to unconditionally abridge that right. Such an interpretation would render section 2.06(g) meaningless and yield absurd results that are inconsistent with OMA's clear purpose of allowing members of the public to attend *every* public meeting and contrary to the public policy—articulated in section 5 of the Citizen Participation Act—that encourages public participation in government affairs. *See People v. Hunter*, 2013 IL 114100, ¶13, 986 N.E.2d 1185, 1189 (2013) (a reviewing body "presumes that the legislature did not intend to create absurd, inconvenient, or unjust results."); *Sylvester v. Industrial Comm'n*, 197 Ill. 2d 225, 232 (2001) (a reviewing body "must construe the statute so that each word, clause, and sentence, if possible, is given a reasonable meaning and not rendered superfluous [citation], avoiding an interpretation which would render any portion of the statute meaningless or void.").

The Council also asserts that the legislative history of Public Act 96-1473 supports its broad interpretation of the scope of permissible rulemaking. It points to a Senate amendment of the original bill that removed a provision that public comment is to be allowed at each public meeting, as well as statements during legislative debate that it claims demonstrate the intent was to provide public bodies with "the unfettered ability to create comment rules."[3] That history does not provide persuasive support for the Council's assertion that the General Assembly intended to allow a public body to promulgate any rules under OMA, no matter how much they restricted the statutory right to address public officials. As described above, the amendment to OMA must be read together with the purposes and other sections of OMA. Further, the amendment's own language, which provided members of the public with a statutory right to address public officials that had not existed previously, must also have meaning. *See People v. Woodward*, 175 Ill. 2d 435, 444 (1997) (a reviewing body "must consider the language of an amended statute in light of the need for amendment and the purpose it serves."). If public bodies have unlimited discretion to impose restrictive rules under section 2.06(g) of OMA, the right to address public officials articulated by that provision would be no right at all. The General Assembly could not have intended such a result.

The Attorney General has opined that "public bodies may generally promulgate reasonable 'time, place and manner' regulations that are necessary to further a significant governmental interest. * * * [T]he primary purpose of adopting rules governing public comment pursuant to section 2.06(g) of OMA is to accommodate the speaker's statutory right to address the public body, while ensuring that the public body can maintain order and decorum at public meetings." Ill. Att'y Gen. Pub. Acc. Op. 14-012, issued September 30, 2014, at 5-6. Because section 2.06(g) is intended to ensure that members of the public have an opportunity to address public officials at open meetings, this office has previously determined that rules adopted under 2.06(g) are invalid when they do not reasonably "accommodate a speaker's statutory right to

[3]Letter from Brian Day, Corporation Counsel, Town of Normal, to Public Access Counselor, Office of the Attorney General (January 30, 2017), at 8.

address the public body, while ensuring that the public body can maintain order and decorum at public meetings." *See* Ill. Att'y Gen. Pub. Acc. Op. 14-012, at 6 (rule requiring members of the public to provide five working days' advance notice of public comment unreasonably restricted their statutory right). Likewise, this office reviews the rule at issue here in terms of its reasonableness and the Council's asserted significant governmental interest.

The 45-Day Rule

In relevant part, the Town's rules governing public comment at Council and other Town meetings state: "Individuals shall be limited to address a public body no more than one time in a in a forty-five day agenda period." Town of Normal Resolution No. 4612 (adopted April 18, 2011) (45-day rule). The Council holds regular meetings twice a month. In practice, the 45-day rule often means that an individual may address the Council no more frequently than every third regular meeting.

The 45-day rule exceeds the scope of permissible rulemaking authorized by section 2.06(g). The Council's response to this office asserts that the 45-day rule is viewpoint neutral and that it furthers the significant public interest of "conserving time and ensuring that others have the ability to speak."[4] That response does not explain why this restriction is necessary to protect the significant governmental interest of conducting Council meetings in an efficient manner. Further, this office reviewed the minutes and recording of the December 5, 2016, meeting at issue here; only one person addressed the Council even though the Council extensively discussed a tax incentive proposal that appeared to be of significant public interest. There is no indication that the Council has been inundated with requests to address it at public meetings, or that the 45-day rule is necessary to advance a significant governmental interest such as conserving time so other members of the public have an adequate opportunity to address the Council.

In addition, it is likely that discussion of certain issues by the Council will continue across consecutive meetings. Moreover, multiple issues of public interest could be discussed over those same consecutive meetings. By limiting an individual's right to address the Council in consecutive meetings, the 45-day rule forces a member of the public to choose a meeting at which to address the Council and risk forfeiting the right to address the Council on subsequent occasions about that issue or another issue. Therefore, the 45-day rule could have a chilling effect on participation by the public in the public comment period and does not adequately accommodate the statutory right of "any person" to address the Council. [redacted] alleged that two individuals wanted to address the Council at a meeting and were

[4]Letter from Brian Day, Corporation Counsel, Town of Normal, to Public Access Counselor, Office of the Attorney General (January 30, 2017), at 11.

prohibited from doing so by the 45-day rule; the Council has not disputed this allegation.[5] Accordingly, this office concludes that the 45-day rule impermissibly restricts public comment and the Council violated section 2.06(g) of OMA.

Additional Complaints about Public Comment Rules

In addition to the 45-day rule, [redacted] Request for Review alleged that the Council's public comment rules violated OMA in five other ways, by: (1) stating that the rules "permit" rather than "allow" a person to speak; (2) requiring two hours' advance notice of intent to speak; (3) restricting public comment to topics on the agenda; (4) limiting speaking time to a total of ten minutes; and (5) requiring citizens to provide their address and affiliation. The Public Access Bureau generally reviews a particular rule governing public comment only if there is an allegation that a citizen has been prohibited from speaking at a meeting because of that rule, as opposed to evaluating the propriety of all rules absent a specific complaint that the rules prevented a citizen from addressing officials at a meeting. In this instance [redacted] and the others were prohibited from speaking because of the 45-day rule, which this office has addressed. This office will not address whether the word "permit" is proper in the Council's rules, nor will we review whether ten minutes allows sufficient time for public comment, since there has been no allegation that a person was prohibited from addressing the Council by this rule. We emphasize that a determination by this office that one of a public body's rules for public comment violates OMA cannot be extrapolated to mean that other rules that were not specifically addressed would pass muster.

Despite the statement above, the Public Access Bureau is charged with providing advice and education with respect to OMA. *See* 15 ILCS 205/7 *et seq* (West 2014). In addition, the Council's response in this case states that some of [redacted] complaints have been previously addressed by this office. Accordingly, we will provide some additional guidance with respect to advance registration, confining discussion to agenda items, and the requirement for speakers to provide their home addresses.

The Council's response states the 2 hour notification requirement was worked out through this office in a previous Request for Review, 2013 PAC 25965. This statement is inaccurate. In that case an Assistant Attorney General in the Public Access Bureau contacted Corporation Counsel for the Town of Normal and suggested that the Council's public comment policy be revised, in an effort to informally resolve the matter. There is no record that this office reviewed or approved any changes that the Council may have made in response to that Request

[5]The Council asserted in its response to this office that [redacted] would not have been prohibited from speaking at the December 19, 2016, hearing if he had chosen to address the Council on December 5, 2016, because the subsequent hearing was not a meeting falling within the scope of the Town's public comment rules.

for Review. Moreover, any rule enacted by the Council requiring *any* advance sign-up or notification to speak would still be subject to a request for review by any person who was denied the right to speak under that rule. The Public Access Bureau does not approve public comment rules in advance; rather this office reviews the specific facts of each allegation of an OMA violation that we receive.

Next, the Council's response states that the Town's authority to confine topics to be discussed while addressing the Council to matters "germane to the meeting agenda of the Town Council meeting"[6] was affirmed in 2016 PAC 37631 (Ill. Att'y Gen. PAC Req. Rev. Ltr. 37631, issued December 28, 2015). That letter concluded that the Council did not violate OMA when it refused to let a citizen comment on a matter that was not related to any subject on the meeting agenda. The Council should be aware, however, that since that time the position of the Public Access Bureau has evolved. In Ill. Att'y Gen. PAC Req. Rev. Ltr. 38037, issued August 1, 2016, this office determined that because a public body may discuss matters not listed on a meeting agenda, it would be unreasonable to limit the public's ability to comment to agenda items:

> OMA does not preclude members of a public body from "the consideration of items not specifically set forth in the agenda," (5 ILCS 120/2.02(a) (West 2014)), as long as the public body does not take final action on items not listed on the agenda. Given that the public body itself is able to discuss matters that are not specifically listed on the agenda, a rule that would prohibit members of the public from addressing matters that are not listed on the agenda would impermissibly restrict the right to public comment as outlined in section 2.06(g). Ill. Att'y Gen. PAC Req. Rev. Ltr. 38037, at 3.

Finally, the rules for addressing the Council provide that individuals are asked to clearly state their name, address, and whether or not they represent an organization. Please be aware that in binding opinion 14-009, the Attorney General concluded that requiring speakers to state their home addresses prior to addressing public bodies violates section 2.06(g) of OMA (Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 7).

In accordance with the conclusions of this letter, this office requests that the Council vote to amend the Town's public comment rules to remove the 45-day rule.[7] The Council may also wish to re-examine all of its rules governing public comment. As explained in

[6]http://www.normal.org/854/Addressing-the-Council (last visited March 15, 2017)

[7]The Council has informed this office that it intends to consider such an amendment to its public comment rules at its March 20, 2017, regular meeting.

this letter, the rules should accommodate a speaker's statutory right to address the Council while ensuring that a public body can maintain order and decorum at its meetings. Rules must be reasonable and necessary to further a significant governmental interest.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this file. If you have any questions, please contact me at (217) 782-9078 or nolson@atg.state.il.us.

Very truly yours,

[redacted]

NEIL P. OLSON
Deputy Public Access Counselor
Assistant Attorney General, Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

March 22, 2017

[redacted]

Mr. R. Lynn Dameron
Mayor
City of Fairbury
201 West Locust Street
P.O. Box 228
Fairbury, Illinois 61739

RE: OMA Request for Review – 2016 PAC 41083

Dear [redacted] and Mayor Dameron:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2015 Supp.). For the reasons discussed below, the Public Access Bureau concludes that the City of Fairbury City Council (City Council) violated OMA's public comment provision during the Council's February 17, 2016, regular meeting.

On March 20, 2016 [redacted] submitted a Request for Review to the Public Access Counselor alleging that the City Council violated OMA by prohibiting him from speaking during its public comment period because he intended to speak about a matter that was not on the City Council's meeting agenda and because he had not registered to speak prior to the meeting. [redacted] further alleged that the City Council's pre-registration requirement imposes an impermissible burden on public comment and that the City Council inconsistently enforces its rules concerning the content of comments and pre-registration, as it has allowed individuals to speak about non-agenda items without pre-registering in the past. In support of his Request for Review, [redacted] submitted audio recordings of the February 17, 2016, meeting and three other City Council meetings held in 2016. On April 8, 2016, this office forwarded a copy of [redacted] Request for Review to the Mayor, as representative of the City Council, and asked for a written response to his allegations, together with copies of the City Council's public comment policy and pre-registration form, and the agenda and minutes of the meeting.

On April 21, 2016, the City Council submitted a written response and provided this office with copies of the requested materials. The City's ordinance regulating public comment provides that the City Council is to hold two public comment sessions: the first for "Public Comment on agenda item(s) from the last City Council meeting[;]" and the second for "Public Comment on agenda item(s) for this City Council meeting."[1] The City's ordinance further provides, in pertinent part:

> (2) Any interested person wishing to speak at any public meeting shall register, in writing, prior to the beginning of the meeting, on a form provided by the City Clerk, giving his or her name, home or business address and the previous agenda topic on which the person wishes to speak. The registration form shall be submitted in person to the Clerk, or his/her designee. The presiding officer shall recognize speakers in the order in which their notice was received. A person who has not so registered shall not be permitted to address the public meeting, except upon motion approved by a majority vote of the public body. * * *
>
> (3) * * * Comments shall be limited to the topics listed on the agenda as consent agenda, old business or new business. * * * [2]

The City Council asserted that an individual who wishes to speak during the first public comment session may register and submit his or her form to the City Clerk at the meeting immediately prior to its start, and that "[a] form is not required for the second comment section."[3] The City Council explained that [redacted] raised his hand to speak during the second public comment session on February 21, 2016, and was asked whether his comment was on an item from the evenings' agenda. When [redacted] responded negatively, the Mayor notified him that he would not be allowed to make a comment. However, the Mayor also acknowledged that at two meetings in January 2016, [redacted] was permitted to make comments concerning matters that were not listed on the agenda. The City Council argued that its public comment ordinance is not particularly restrictive, and that it "allow[s] the public to comment while

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[1]City of Fairbury Ordinance No. 2014-7.

[2]City of Fairbury Ordinance No. 2014-7.

[3]Letter to Leah Bartelt, Assistant Attorney General, Public Access Bureau, from R. Lynn Dameron, Mayor, City of Fairbury (April 21, 2016), at 1.

maintaining the proper decorum for a council meeting."[4] Finally, the City Council asserted that the Public Access Bureau has previously reviewed its public comment ordinance.

In reply, [redacted] reasserted that the City Council applies its public comment policy inconsistently, and argued that the rule restricting comments to agenda items may prohibit individuals from commenting on matters of public and immediate importance that, for many reasons, would not be listed on the agenda as consent matters, old business, or new business. [redacted] further indicated that he was never notified that sign-up forms for the first public comment session were available and could be turned in at the start of the meeting, but acknowledged that he found this practice satisfactory.

DETERMINATION

Section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2014)) provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." The Attorney General has concluded that section 2.06(g) of OMA "requires that all public bodies subject to the Act provide an opportunity for members of the public to address public officials at open meetings." *See* Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 5; *see also* Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 4 ("The plain language of section 2.06(g) of OMA provides that individuals are entitled to address a public body subject only to a public body's established and recorded rules.").

Although OMA does not specifically address the types of public comment rules that a public body may adopt, courts have clarified that, under the First Amendment to the U.S. Constitution, public bodies may promulgate reasonable "time, place, and manner" restrictions that are narrowly-tailored and serve a significant governmental interest. *See I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2d 912, 923 (N.D. Ill. 2009). For example, a public body may adopt reasonable rules governing public comment in order to maintain decorum and ensure that meetings are conducted efficiently. *Timmon v. Wood*, 633 F. Supp. 2d 453, 465 (W.D. Mich. 2008); *see also* Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, at 4. However, such rules must tend to accommodate, rather than to unreasonably restrict, the right to address public officials. *See I.A. Rana Enterprises, Inc.*, 630 F. Supp. 2d at 923-25; *Timmon*, 633 F. Supp. 2d at 459.

As an initial matter, the City Council's response to this office appears to indicate that Public Access Bureau has reviewed its public comment ordinance. We are unaware of such a review prior to the February 17, 2016, meeting at issue in this matter. This office has addressed several Requests for Review concerning public comment at City Council meetings. In 2014 PAC

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[4]Letter to Leah Bartelt, Assistant Attorney General, Public Access Bureau, from R. Lynn Dameron, Mayor, City of Fairbury (April 21, 2016), at 2.

28839, this office determined that the City Council violated section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2014)) when it restricted an individual from providing public comment at a meeting in the absence of any established and recorded rules. Ill. Att'y Gen. PAC Req. Rev. Ltr. 28839, issued July 1, 2014, at 3. On three other occasions, this office rejected allegations that the City Council violated section 2.06(g); however, in each of those matters, this office determined that the requesters had not demonstrated that anyone was actually restricted from offering comment at the cited meetings. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 27735, issued March 13, 2014; Ill. Att'y Gen. PAC Req. Rev. Ltr. 32032, issued July 20, 2015; Ill. Att'y Gen. PAC Req. Rev. Ltr. 40206, issued March 9, 2016. The City Council neither identified, not did our research locate, a Binding Opinion issued by the Attorney General or a determination letter issued by the Public Access Counselor that approved the City Council's public comment ordinance, let alone, the specific section that restricts the subject matter of public comments.

However, since [redacted] submitted his Request for Review concerning the February 17, 2016, meeting, this office has reviewed the sections of the City Council's ordinance that restrict public comment to items listed on the consent agenda, as old business, or as new business. In 2016 PAC 40718, this office explained that because members of public bodies may discuss items that are not listed on meeting agendas,[5] a rule that limits public comment to subjects listed on the agenda "would impermissibly restrict the right to public comment as outlined in section 2.06(g)." Ill. Att'y Gen. PAC Req. Rev. Ltr. 40718, issued January 9, 2017, at 2-3 (quoting Ill. Att'y Gen. PAC Req. Rev. Ltr. 38037, issued August 1, 2016, at 3). We further found that the City Council's response to this office in 2016 PAC 40718 neither set out a legal rationale for limiting public comment to portions of the agenda, nor otherwise demonstrated that limiting public comment to portions of the agenda was permissible in that particular meeting. Ill. Att'y Gen. PAC Req. Rev. Ltr. 40718, at 2-3. Accordingly, this office concluded that the City Council violated section 2.06(g) of OMA by prohibiting an individual from participating in public comment during its March 2, 2016, meeting on the basis that she did not intend to limit her comments to the consent agenda, old business, or new business, even though the City Council did so pursuant to an established and recorded rule.

In this matter, it is undisputed that the City Council similarly restricted [redacted] from offering comment at the February 17, 2016, meeting because he stated that he intended to

[5]However, a public body must identify the general subject matter of final actions on its meeting agenda. *See* 5 ILCS 120/2.02(c) (West 2014).

speak concerning a matter that was not listed on the agenda.[6] The City Council's argument that its public comment ordinance "allow[s] the public to comment while maintaining the proper decorum for a council meeting" is conclusory as it does not explain why restricting the subject matter of public comment is necessary to maintain "proper decorum." Accordingly, this office concludes that the City Council violated section 2.06(g) of OMA by prohibiting [redacted] from commenting on a matter that was not listed on the consent agenda, old business, or new business. This office requests that the City amend its ordinance concerning public comment and City Council meetings consistent with the principles outlined in this letter and 2016 PAC 40718, if it has not already done so.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter closes this file. If you have any questions, you may contact me at (312) 814-6437 or at the Chicago address listed on the first page of this letter.

Very truly yours,

[redacted]

LEAH BARTELT
Assistant Attorney General
Public Access Bureau

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[6]Although [redacted] Request for Review raised concerns with the section of the City Council's public comment ordinance that requires pre-registration for the first public comment session, he noted in his reply to this office that he was satisfied with the City Council's clarification that he could pre-register at the start of the meeting. The audio recording of the February 17, 2016, meeting is consistent with the City Council's explanation that it restricted [redacted] from offering comment at the February 17, 2016, meeting based on the subject matter of his intended comment. Therefore, it is not necessary to reach a determination concerning the City Council's pre-registration requirement. However, this office notes that it has previously determined that a requirement that commenters list their names and the intended subject matter of their comments on a sign-up sheet that is available at the start of the meeting is a permissible rule regulating public comment. Ill. Att'y Gen. PAC Req. Rev. Ltr. 39640, issued June 22, 2016, at 3-4

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

July 27, 2017

Via electronic mail
[redacted]

Via electronic mail
Ms. Gina L. Madden
Law Office of Gina L. Madden
12255 Walker Road, Suite C
Lemont, Illinois 60439
gmaddenlaw@gmail.com

RE: OMA Request for Review – 2017 PAC 45844

Dear [redacted] and Ms. Madden:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2015 Supp.)). For the reasons explained below, the Public Access Bureau concludes that the Lemont Township High School District 210 Board of Education (Board) violated the requirements of OMA in connection with its November 21, 2016, meeting by imposing a restriction on public comment that was not authorized by its established and recorded rules.

On January 9, 2017, [redacted] submitted this Request for Review alleging that during its November 21, 2016, meeting, the Board improperly restricted the content of her public comment and prevented her from using all of her allotted time to speak. In particular, [redacted] asserted that the Board cut her off from speaking before the 5 minute mark. [redacted] also provided this office with a video recording of a portion of her public comment.

On January 11, 2017, this office sent a copy of the Request for Review to the Board and requested a written response to the allegations in the Request for Review, together with copies of the Board's established and recorded rules regarding public comment. On January 23, 2017, the Board provided the requested materials. On January 23, 2017, this office sent a

copy of the Board's response to [redacted] she replied on January 26, 2017. On April 5, 2017, [redacted] provided this office with a copy of a video recording of her entire public comment to the Board.

DETERMINATION

Section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2014), as amended by Public Act 99-515, effective June 30, 2016) provides that "[a]ny person shall be permitted an opportunity to address public officials *under the rules established and recorded by the public body*." (Emphasis added.) Under the plain language of section 2.06(g), a public body must establish and record rules and may restrict public comment only pursuant to those rules. *See* Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 2, 2014 at 7.

In response to this office's request for a copy of the Board's established and recorded rules regarding public comment, the Board submitted Lemont Township High School District 210 School Board Policy 2:230, "Public Participation at Board of Education Meetings and Petitions to the Board" (Board Policy 2:230). Board Policy 2:230 lists five guidelines, which were adopted on January 20, 2015, that require speakers to:

> 1. Address the Board only at the appropriate time as indicated on the agenda and when recognized by the Board President.
> 2. Identify oneself and their address and be brief. Ordinarily, comments shall be limited to 5 minutes. In unusual circumstances, and when an individual has made a request in advance to speak for a longer period of time, the individual may be allowed to speak for more than 5 minutes.
> 3. Observe the Board President's decision to shorten public comment to conserve time and give the maximum number of individuals an opportunity to speak.
> 4. Observe the Board President's decision to determine procedural matters regarding public participation not otherwise covered in Board policy.
> 5. Conduct oneself with respect and civility toward others and otherwise abide by Board policy 8:30, *Visitors to and Conduct on School Property.*[1]

[1]Lemont Township High School District 210 School Board Policy 2:230, "Public Participation at Board of Education Meetings and Petitions to the Board."

The Board also provided a copy of Lemont Township High School District 210 School Board Policy 8:30, "Visitors to and Conduct on School Property", which prohibits "vulgar or obscene language."[2]

Alleged Restriction of Content of Public Comment

This office has reviewed a copy of the open session recording of the November 21, 2016, meeting in which [redacted] provides her comments to the Board. At the beginning of [redacted] public comments she attempted to recite a passage from a novel which had been assigned as student reading in some District English classes before being removed from the curriculum due to concerns that certain sections of the novel contain subject matter that is not appropriate for students.[3] As [redacted] was finishing the first sentence of the passage, the Board president interrupted her and asked whether she was asking a question or making a comment. [redacted] stated that she was making a statement by reading something to the Board. The Board president stated "[w]e're not going to accept a reading of that transcript or that book here tonight[.]" [redacted] stated that she was there to speak to the Board about her concerns and that her concern is exactly what is in the book that was assigned. The Board president again refused to allow [redacted] to read from the passage stating "[w]e're not going to have a recital of that tonight please."[4] [redacted] stopped reading the passage and continued her comments to the Board about the content of the novel.

The Board stated [redacted] was permitted to speak, but not "read the verbatim language of the novel out loud[.]"[5] The Board asserted that the Board president prevented [redacted] from reading from the novel during her public comments pursuant to its established and recorded rules. Specifically, the Board cited subsections 4 and 5 of its public comment policy. Subsection 4 of the Board's policy requires speakers to comply with the Board president's decisions concerning procedural matters for public participation. Requiring a citizen to make a comment as opposed to reading a passage from a novel could be construed as the Board President enforcing a procedural rule about public comment. The Board president's decision, however, appears to directly relate to what he believed would be the content of [redacted] comments. Even if subsection 4 of the Board's rules authorized the Board president to make determinations concerning the content of public comments, which it does not, such a rule would

[2]Lemont Township High School District 210 School Board Policy 8:30, "Visitors to and Conduct on School Property."

[3]*See*, e-mail from Eric Michaelson, Principal, Lemont High School, to Lemont High School Parent/Guardian (November 2, 2016).

[4]Lemont Township High School District 210 Board of Education, Meeting, November 21, 2016, Audio File (on file with author).

[5]Letter from Gina L. Madden, Law Office of Gina L. Madden, to Matt Hartman, Assistant Attorney General, Public Access Bureau (January 23, 2017).

be "subject to strict-scrutiny, and must serve a compelling state interest and be narrowly drawn to achieve that purpose." *I.A Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2d 912, 922-23 (N.D. Ill. 2009). Because the Board president's decision prohibiting [redacted] from reciting the passage was not clearly related to a procedural matter, we conclude that the Board misapplied that rule to restrict the content of [redacted] comments.

The Board also asserted that the Board president was authorized to prevent [redacted] from reciting the passage pursuant to subsection 5 of the Board's public comment rules, which requires speakers to be respectful and civil to others. Subsection 5 also incorporates the Board policy 8:30 that prohibits vulgar or obscene language on school grounds. Although the Board's response does not specifically so state, based on a copy of the passage in question provided to this office by the Board, this office construes the Board's assertion of subsection 5 as asserting that portions of the passage contain vulgar or obscene language, and that the recital of those portions by [redacted] would upset the decorum of the meeting. The Public Access Bureau has previously held that a public body may adopt rules governing public comment that "accommodate the speaker's statutory right to address the public body, while ensuring that the public body can maintain order and decorum at public meetings." Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 6. Because the use of vulgar or obscene language may disrupt the order and decorum of a meeting, the Board's rule is not unreasonable.

However, unlike a speaker who attempts to upset the decorum of a meeting by using obscene language, the source of the alleged obscene language that [redacted] was intending to recite was a novel that had been assigned in the District's English classes. Further, [redacted] proposed recital of the passage was directly related to a recent e-mail sent by the principal of Lemont High School to parents notifying them of concerns with portions of the novel. In the context of the District's actions to remove the novel in question from the curriculum, [redacted] reading of the passage was directly relevant to the Board's public business. Thus, this office concludes that the Board unreasonably applied its rule in subsection 5 of its public comment policy, which incorporates the Board's policy prohibiting the use of vulgar or obscene language on school grounds, to prohibit portions of [redacted] comments based on their content. Accordingly, this office concludes that the Board violated section 2.06(g) of OMA by misapplying its rules to restrict [redacted] statutory right to address the Board.

Time Allowed for Public Comment

[redacted] also alleged that she was not permitted to speak for the full 5 minutes of public comment time for each speaker as provided in subsection 2 of the Board's rules. The Board asserted that [redacted] was allowed to continue speaking after the Board president prevented her from reciting the passage. The Board further states that "another speaker even

allotted the remainder of her time during public comment to [redacted].[6] In her reply, [redacted] disputes the District's assertion that she was provided additional time from another speaker's allotment. This office has reviewed the video recording of [redacted] public comments at the November 21, 2016, meeting that she provided to this office. The recording demonstrates that the Board president interrupted [redacted] at the 4:54 mark of the video[7] to inform her that she was at 5 minutes of speaking time. [redacted] asked that she be allowed additional time. She was allowed to continue her comments and stopped speaking at the 5:18 mark of the video.[8] Therefore, this office concludes that [redacted] was afforded over 5 minutes of comment time as provided in subsection 2 of the Board's public comment rules.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at the Springfield address on the first page of this letter. This letter serves to close this file.

Very truly yours,

[redacted]

MATT HARTMAN
Assistant Attorney General
Public Access Bureau

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[6]Letter from Gina L. Madden, Law Office of Gina L. Madden, to Matt Hartman, Assistant Attorney General, Public Access Bureau (January 23, 2017).

[7]We note that the video provided by [redacted] contains approximately 8-9 seconds of recording time before she began to speak. Thus, the Board president notified [redacted] that she was at the 5 minute mark 4:45 into [redacted] public comments.

[8]The Public Access Bureau's own timekeeping of [redacted] public comments, based on the recording provided, show that she spoke for approximately 5:09.