



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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ATTORNEY GENERAL

July 14, 2023

Via electronic mail

The Honorable Gary Manier
Mayor
City of Washington
301 Walnut Street
Washington, Illinois 61571
gmanier@ci.washington.il.us

Via electronic mail

Mr. Jim Snider
City Administrator
301 Walnut Street
Washington, Illinois 61571
jsnider@ci.washington.il.us

RE: OMA Request for Review – 2023 PAC 77191

Dear Mayor Manier and Mr. Snider:

The Public Access Bureau has received the attached correspondence in which [REDACTED] alleges that City of Washington City Council (City Council) meetings have not been sufficiently audible to the public. She asserts that the City should "be required to utilize technology to ensure all citizens can hear everything said during City meetings – regardless of the venue."¹

According to [REDACTED] submission, poor audio quality has been an ongoing problem at City Council meetings that have been held in a variety of venues. She stated that when a large turnout is anticipated, meetings are held in a ballroom without any audio amplification and it is difficult to hear the proceedings. She stated that the City Council recently moved its meetings to the training room of the Fire Station, where portions of its July 1, 2023,

¹E-mail from [REDACTED] to Public Access [Bureau, Office of the Attorney General] (July 5, 2023).

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meeting were inaudible due to background noise such as people whispering in the audience and an individual jiggling his keys. She requests that the City Council implement an audio amplification system by its July 17, 2023, meeting or, at a minimum, use tabletop microphones and Zoom to ensure that a fully audible recording of the meeting is available for the public. This letter is intended to provide guidance about the requirements of the Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2022)) for the City Council to consider in determining whether additional measures are necessary to ensure its meetings comply with OMA.

Section 1 of OMA (5 ILCS 120/1 (West 2022)) provides that "it is the intent of this Act to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." Members of the public have "the right to attend all meetings at which any business of a public body is discussed or acted upon in any way." 5 ILCS 120/1 (West 2022). Section 2.01 of OMA (5 ILCS 120/2.01 (West 2022)) provides that "[a]ll meetings required by this Act to be public shall be held at specified times and places which are convenient and open to the public." "By its plain terms, section 2.01 requires a venue that is not only 'open,' but 'convenient,' to the public." *Gerwin v. Livingston County Board*, 345 Ill. App. 3d 352, 359 (4th Dist. 2003).

In *Gerwin*, 345 Ill. App. 3d at 353, the plaintiffs appealed the dismissal of their lawsuit alleging a county board violated section 2.01 of OMA by holding a meeting at an inconvenient location. After an overflow crowd attended a meeting of a committee of the board, a board member asked whether the upcoming board meeting could be moved to a bigger room, but the meeting was not moved. In evaluating the allegation that holding the meeting in the smaller room violated OMA, the court construed section 2.01 as requiring "not 'absolute accessibility' but 'reasonable accessibility.'" *Gerwin*, 345 Ill. App. 3d at 362, quoting *State ex rel. Badke v. Village Board of the Village of Greendale*, 173 Wis. 2d 553, 579, 494 N.W.2d 408, 418 (Wis. 1993). The *Gerwin* court's analysis, however, primarily focused on whether the meeting location was physically accessible rather than whether the proceedings were sufficiently audible.

Although the Illinois Supreme Court and Illinois Appellate Court have not issued rulings that specifically address the extent to which proceedings must be audible to all attendees, courts in other jurisdictions have explained that compliance with their versions of OMA require more than allowing the public to be physically present at meetings. In *State ex rel. Bratenahl v. Village of Bratenahl*, 157 Ohio St. 3d 309, 313, 136 N.E.3d 447, 451 (Ohio 2019), the Ohio Supreme Court observed that "[t]he Act is not satisfied simply because the doors of a council meeting are open to the public. Rather, an open meeting requires that the public have meaningful access to the deliberations that take place among members of the public body[.]" *See also State ex rel. Ames v. Portage County Board of Commissioners*, 165 Ohio St. 3d 292, 297, 178 N.E.3d 492, 497 (Ohio 2021) (A public body "violates the Open Meetings Act when its members

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conceal their deliberations by whispering among themselves or secretly passing notes between one another during a public meeting." In *Goetschius v. Board of Education*, 281 A.D.2d 416, 417, 721 N.Y.S.2d 386, 387 (N.Y. App. Div. 2001), the New York Appellate Court held that a public body "engaged in a persistent pattern of deliberate violation of the letter and spirit of the Open Meetings Law by, *inter alia*, * * * conducting business in a manner inaudible to the public audience[.]" On the other hand, the Wisconsin Supreme Court rejected a plaintiff's claim that a public body violated OMA when portions of the proceedings were inaudible because "the record indicates that to the extent hearing was difficult, it was intermittent and due to some disruptive attendees." *State ex rel. Badke*, 173 Wis. 2d at 581, 494 N.W.2d at 419.

Collectively, these rulings are consistent with the principle articulated in *Gerwin* that OMA requires public bodies to provide reasonable access to their meetings, and that this obligation includes taking reasonable measures to ensure that the proceedings are audible to the public. Accordingly, this office recommends that the City Council review the concerns about sound quality raised in [REDACTED] submission and consider whether measures such as changing the location of its meetings or using microphones or speakers are necessary to ensure its meetings are sufficiently audible in compliance with section 2.01 of OMA. At the same time, this office notes that the concept of reasonable accessibility does not mean that a public body violates OMA if a discrete portion of an in-person meeting is not audible to all attendees, especially if the ability to hear the proceedings is impacted by outbursts or background noises in the audience that the public body cannot readily control.²

If you have any questions or would like to discuss this matter, please contact me at (312) 814-6756 or steven.silverman@ilag.gov.

Very truly yours,

[REDACTED]
STEVE SILVERMAN
Bureau Chief
Public Access Bureau

²Notably, the requirements for holding meetings remotely during public health emergencies include providing an alternative to in-person attendance that allows "any interested member of the public access to **contemporaneously hear all** discussion, testimony, and roll call votes, such as by offering a telephone number or a web-based link[.]" (Emphasis added.) 5 ILCS 120/7(e)(4) (West 2022). OMA does not contain a corresponding requirement to ensure the public may contemporaneously hear all discussions at in-person meetings. Section 5 ILCS 120/7(e)(7)(B) (West 2022) also requires public bodies to make verbatim recordings of the open session portions of remote meetings, but no provision in OMA requires in-person meetings to be recorded and made available to the public.

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Attachment

cc: *Via electronic mail*

