



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

April 23, 2020

Via electronic mail

Via electronic mail

The Honorable Domingo Vargas
Mayor
City of Blue Island
13501 Greenwood Avenue
Blue Island, Illinois 60406
dvargas@cityofblueisland.org

RE: OMA Request for Review – 2018 PAC 53888

Dear [REDACTED] and Mr. Vargas:

This letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2018)). For the reasons that follow, the Public Access Bureau concludes that the City Council of the City of Blue Island (City Council) violated the requirements of OMA because it did not have established and recorded rules governing public comment at the time of its June 19, 2018, meeting, but the City Council did not improperly restrict public comment during that meeting.

On July 5, 2018, [REDACTED] submitted a Request for Review to the Public Access Bureau alleging that the City Council violated OMA during its June 19, 2018, meeting when it did not allow all interested members of the public to address the City Council during public comment. He stated that the meeting involved a hearing concerning the revocation of a bar's business and liquor licenses. [REDACTED] specifically alleged that "[e]ven though several members of the public that did get a chance to address the City Council about the [bar], there

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were many others waiting to speak on this issue. One of those waiting to speak was a legal representative of the owner."¹

On June 20, 2018, this office forwarded a copy of the Request for Review to the City Council and requested a written response to [REDACTED]'s allegation. On August 8, 2018, this office received the City Council's response. On August 14, 2018, this office forwarded a copy of the City Council's response to [REDACTED]. On August 23, 2018, this office received [REDACTED]'s reply.

DETERMINATION

Section 2.06(g) of OMA (5 ILCS 120/2.06 (West 2018)) provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." This provision "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. Under the plain language of section 2.06(g), a public body must establish and record rules governing public comment, 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 its response to this office, the City Council stated that it had an ordinance regarding the opportunity to be heard in a business license revocation appeal, but acknowledged that it did not have established and recorded rules governing public comment as required under section 2.06(g) of OMA. Thus, if it has not already done so, the City Council should establish and record such rules, which must tend to accommodate the right to address public officials. Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, at 6.

With respect to whether the City Council imposed an impermissible restriction on public comment at the June 19, 2018, special meeting,² the City Council explained what transpired as follows:

The City Council meeting was highly charged with persons opposed to the revocation Licensee calling those in favor of the

¹Letter from [REDACTED] to Sarah Pratt, Public Access Counselor, Office of the Attorney General (July 5, 2018).

²This office notes that although the City Council's response to this office discusses procedural issues related to business and liquor license revocations, this office's review is limited to the City Council's compliance with the requirements of OMA. See 15 ILCS 205/7(c)(3) (West 2018) (limiting the Public Access Counselor's authority to resolve disputes to alleged violations of OMA and the Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2018))).

revocation racist. After an hour of public comments and after a citizen was removed due to disruptive behavior as well as the disruptive behavior of the audience as a whole, a break was taken because the meeting had become disruptive to the agenda at hand. Upon return from the break, a member of the public asked we done talking- Mayor? The Mayor responded yes. Only one person asked to speak, the Licensee's attorney * * * . He asked to speak on behalf of the Licensee. The Mayor responded no.^[3]

The City Council contended that the mayor was justified in ending public comment for the evening because "given the contentious atmosphere of the meeting where the removal of a citizen occurred as well as the accusations being made at the public hearing and the reactions of the public, to allow further comment would have created a further breach of the peace or worse."⁴ The City Council further noted that "the plain language of the Open Meetings Act does not state every person who desires to speak must be allowed to do so."⁵

In his reply, ██████████ disputed the assertion that only the licensee's attorney asked to speak before the City Council stopped taking public comment, claiming that "[t]here were three other citizens standing and waiting to speak when public comment was ended."⁶ He alleged that the decision to deny public comment was arbitrary and based on the content of the speech rather than any disruption.

This office has reviewed a video of the City Council's June 19, 2018, meeting.⁷ Tensions rose during public comment. At the 59:20 mark, a member of the public loudly interrupts the person addressing the City Council and is guided out of the room by a uniformed officer. Intense shouting erupts across the room among multiple parties; the mayor keeps banging the gavel, to no avail. The back of the room is not visible, but the audio and reactions from the people who are visible in the meeting room indicate significantly disruptive


³Letter from Leslie Quade Kennedy, Attorney on behalf of the City of Blue Island, Odelson & Sterk, Ltd., to S. Piya Mukherjee, Assistant Attorney General, Public Access Bureau (August 8, 2018).


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⁵Letter from Leslie Quade Kennedy, Attorney on behalf of the City of Blue Island, Odelson & Sterk, Ltd., to S. Piya Mukherjee, Assistant Attorney General, Public Access Bureau (August 8, 2018).

⁶E-mail from ██████████ to AAG Mukherjee (August 23, 2018).

⁷Blue Island Television, CITY COUNCIL: June 19th, 2018 (Special Meeting), YouTube (June 22, 2018), https://www.youtube.com/watch?v=8SL_Gt_YjzA (last visited April 21, 2020).



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circumstances. The mayor says that the City Council is going to take a five-minute break as shouting by various members of the public continues. A second uniformed officer walks into the middle of the room and addresses the mayor, saying tensions are running high and he'd like to stop the meeting. There is a break in the video reflecting a recess of the meeting. After the meeting reconvenes, the mayor announces the City Council is moving on from public comment and seeks a vote to go into closed session. A member of the public calls out "are we done talking mayor?" to which he responds "yes." An individual identified by  as the licensee's attorney can be heard asking the mayor if he may speak on his client's behalf, to which the Mayor responds "no." The City Council then votes to enter closed session.

The video demonstrates that the public comment period during the City Council's June 18, 2019, meeting grew so disruptive that it threatened the City Council's ability to conduct public business and potentially the safety and security of attendees at the meeting. Even without public comment rules, the head of a public body has the authority and responsibility to run a civil and businesslike meeting, including the inherent authority to put a stop to conduct that interferes with the orderly conduct of a meeting. It is undisputed that the City Council heard approximately an hour of public comment before adjourning to closed session. Under these circumstances, the City Council did not violate OMA by ending the public comment period to preserve safety and order in the meeting room.

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, you may contact me by mail at the Chicago address listed on the first page of this letter, by phone at (312) 814-4461, or by e-mail at jsternecky@atg.state.il.us. This letter serves to close this file.

Very truly yours,


JANE STERNECKY
Assistant Attorney General
Public Access Bureau

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cc: *Via electronic mail*
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