



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

March 26, 2019

Via electronic mail



Via electronic mail

Ms. Alexandra B. Ruggie
Assistant City Attorney
Law Department
City of Evanston
2100 Ridge Avenue
Evanston, Illinois 60201
aruggie@cityofevanston.org

Re: OMA Request for Review – 2018 PAC 55981

Dear [REDACTED] and Ms. Ruggie:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons discussed below, this office concludes that the Rules Committee (Committee) of the City of Evanston City Council (Council) violated OMA during its December 3, 2018, meeting by imposing restrictions on the public's right to address the Committee which were contrary to its established and recorded rules.

On December 4, 2018, [REDACTED] filed a Request for Review with the Public Access Bureau alleging that the Committee violated OMA when the Committee's chair allowed each speaker only one minute of public comment. In particular, [REDACTED] asserted that the Committee's allotment of public comment time did not comply with its rules, which "provide[] for three minutes per person during public comment, allocated over a period of 45 minutes."¹ [REDACTED] also alleged that the Committee violated OMA when it permitted the

¹E-mail from [REDACTED] to Public Access, Office of the Attorney General (December 4, 2018).

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attorney for an alderman to speak for eight minutes after the public comment period ended without notifying petitioners beforehand that their attorneys would be granted a similar opportunity to address the Committee.

On December 10, 2018, the Public Access Bureau sent a copy of the Request for Review to the Committee and requested that it provide a detailed written answer to [REDACTED] allegation concerning public comment time, together with a copy of the Committee's established and recorded rules for public comment. This office did not receive a response to our December 10, 2018, letter. On December 27, 2018, this office sent the Committee a second letter requesting that it respond to [REDACTED] Request for Review. On January 2, 2019, counsel for the Committee provided this office with a written answer, a copy of the sign-up sheet for public comment at the December 3, 2018, meeting, a copy of the Committee's rules for public comment, and a link to a video recording of the meeting. On January 2, 2019, this office forwarded a copy of the Committee's answer to [REDACTED]; she did not reply.

DETERMINATION

It is "the public policy of this State that its citizen shall be given advance notice of and 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 2016). "The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business, and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989).

Rules for Public Comment

Section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 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." 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." 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, rules designed to maintain order and decorum are permissible to ensure that meetings are conducted efficiently. *See I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2d 912, 923-25 (N.D. Ill. 2009); *see also* Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 5 (a public body may promulgate reasonable "time, place and

manner" rules aimed at preserving order and decorum which are necessary to further a significant government interest). 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 (N.D. Ill. 2009).

A rule that promotes order and decorum, such as a rule specifying the amount of time members of the public have to address public officials, does not violate the first amendment to the United States Constitution provided that it is reasonable in time and scope. *Wright v. Anthony*, 733 F.2d 575, 577 (8th Cir. 1984) (finding that because a five-minute time limit for speakers at a public hearing served a significant governmental interest in conserving time and in ensuring that others had an opportunity to speak, the time limit did not violate the speaker's rights under the first amendment to the United States Constitution); *see also Shero v. City of Grove*, 510 F. 2d 1196, 1203 (10th Cir. 2007) (concluding that in a public forum, a city council could impose a three-minute time limitation on public comment because it was "appropriately designed to promote orderly and efficient meetings.").

The Committee is a standing committee of the Council.² The Council's established and recorded rules concerning public comment provide:

6.2 The Council shall provide a period for Citizen Comment. Interested persons shall sign their name, address and the agenda item or other topic to be addressed on a designated citizen participation sheet. A speaker may address the Council for no more than three minutes, and only once per Council meeting. The maximum time period for citizen participation is forty-five minutes. If there are more than 15 speakers, the Mayor will allocate time among the speakers to ensure that citizen comment does not exceed forty-five (45) minutes. The business of the City Council shall commence no later than forty-five (45) minutes after the beginning of Citizen Comment.^[3]

Although authorizing the Mayor to allocate time among more than 15 speakers during a public comment period capped at 45 minutes could facilitate the running of a timely and orderly meeting while maximizing the opportunity for those speakers to address the Committee,

²City of Evanston, Rules and Organization of the City Council of the City of Evanston, §9.2 (July 12, 2018).

³City of Evanston, Rules and Organization of the City Council of the City of Evanston, §6.2 (July 12, 2018).

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the information provided to this office indicates that the Committee instead used its rules to limit the public's ability to address the members of the Committee. In this instance, 19 members of the public signed-up on the citizen participation sheet that was circulated at the beginning of the December 3, 2018, meeting. The chair of the Committee reviewed the sheet and determined that, because more than 15 speakers had signed-up to speak, the amount of public comment time to be allotted would be one minute per speaker. A total of 16 speakers chose to address the Committee, and the public comment portion of the meeting lasted less than 23 minutes. The Committee chair informed several speakers that their one minute of public comment time had expired and requested that those speakers cease their speech.

██████████ Request for Review asserted that the chair chose to limit public comment time to one minute per speaker because she was aware of the probable content of the speakers' speech in light of a recent recommendation from the Board of Ethics. The Committee countered that the chair exercised her discretion under the Council's rules to limit comment to one minute per speaker because a Human Services Committee meeting was scheduled immediately following the Committee meeting. The Committee stated that the Human Services Committee meeting was delayed by nearly an hour and a half from its scheduled start time.

The Committee has not provided an explanation for why the chair's application of its rules to limit public comment to one minute per speaker was necessary to promote order and decorum at the meeting or to further any significant governmental interest. The rule appears to be intended to provide an opportunity for all members of the public who wish to address the Committee to do so within a public comment period that is not to exceed 45 minutes. The manner in which the Committee applied its rule limited the public comment period to less than 23 minutes. Although public bodies have an interest in conserving time and ensuring that all interested parties have an opportunity to speak, the Committee may not unreasonably restrict public comment to accommodate its meeting schedule, particularly where a need for additional time between meetings may have been foreseeable. As an example, suppose 14 members of the public had signed-up on the citizen participation sheet at the Committee meeting instead of 19. Under this scenario, each member would have been entitled to speak for up to three minutes, which means that the public comment period for the meeting may have exceeded 40 minutes. It is unreasonable that, through the use of its rules, the Committee afforded less total time for public comment because more members of the public wished to speak.

Further, it is unclear why it was necessary for the chair to deviate from the 45-minute maximum of public comment time set forth in its rules and limit public comment time to only one minute of comment per speaker when a less restrictive option was available. Because 19 members of the public signed up to speak, the chair could have elected to provide each speaker with 2 minutes of public comment time, which would not have exceeded the 45-minute maximum of public comment time. That the chair chose a more restrictive public comment time

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limitation than was necessary to adhere to its rules indicates that the Committee's application of the rules was intended to restrict comment from members of the public. Because the Committee's use of its rules served to unreasonably restrict rather than to accommodate the public's right to address the members of the Committee, this office concludes that Committee violated section 2.06(g) of OMA by enforcing its public comment rules to limit public comment to one minute per speaker at its December 3, 2018, meeting.

██████████ second allegation is that the Committee allowed the attorney for an alderman to comment for an extended time outside of the public comment period. This allegation, however, is outside the scope of OMA. As discussed above, section 2.06(g) of OMA is intended to ensure that members of the public have the opportunity to address public officials at public meetings. The Committee's decision to hear comment by the attorney outside of public comment period does not implicate OMA. Because the Public Access Bureau's authority is limited to resolving disputes concerning OMA and the Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2016)), this office will not address this portion of ██████████ complaint.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, please contact me at (217) 782-9054.

Very truly yours,

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MATT HARTMAN
Assistant Attorney General
Public Access Bureau

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