



IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY, ILLINOIS

JOHN KRAFT,)
KIRK ALLEN,)
CHRISTOPHER HANSEN,)
)
Plaintiffs,)
)
v.)
)
CITY COUNCIL OF CITY OF URBANA,)
MAYOR OF URBANA, DIANE MARLIN,)
)
Defendants.)

2020CH000121

COMPLAINT

NOW COME Plaintiffs, JOHN KRAFT, KIRK ALLEN, and CHRISTOPHER HANSEN, by their undersigned attorneys, LOEVY & LOEVY, and bring this Open Meetings Act (OMA) suit to force Defendants CITY COUNCIL OF CITY OF URBANA and MAYOR OF URBANA, DIANE MARLIN to comply with OMA. In an affront to the long and proper tradition of robust public discussion and criticism of public officials that is vital to a well-functioning democracy, Defendants believe they can prohibit the public from criticizing public officials and employees on matters of public concern. Defendants apply their public comment policy in a deliberate attempt to silence criticism. They have even gone so far as to explicitly state that they were cutting off and muting a speaker for voicing her opinion. In support of the Complaint, Plaintiffs state as follows:

INTRODUCTION

1. Pursuant to the public policy of the State of Illinois, public bodies exist to aid in the conduct of the people’s business and the people have a right to be informed as to the conduct of their business. Under Illinois Open Meetings Act (“OMA”) Actions and deliberations of public

bodies must be taken openly in order to promote transparency and accountability at all levels of government. Such openness is crucial to democracy. 5 ILCS 120/1.

2. 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.” 5 ILCS 120/2.06(g).

3. Courts have long upheld the public’s right to criticize public officials.

PARTIES

4. Plaintiffs JOHN KRAFT, KIRK ALLEN, and CHRISTOPHER HANSEN reside in Illinois.

5. Defendant CITY COUNCIL OF CITY OF URBANA (“CITY COUNCIL”) is a public body under OMA. It located in Champaign County, IL.

6. Defendant MAYOR OF URBANA, DIANE MARLIN (“MAYOR MARLIN”) is sued in her capacity as MAYOR OF URBANA.

BACKGROUND

7. On September 14, 2020, at 7:00 P.M., Defendant CITY COUNCIL held a public meeting pursuant to OMA.

8. CITY COUNCIL met virtually as permitted by Section 7(e)(1) of in light of COVID-19.

9. CITY COUNCIL used “Zoom” and used its videoconferencing feature.

10. In regards to public participation, MAYOR MARLIN instructed:

The other thing I want to address is the tenor, the tone, and the nature of comments. I want to ask and I will insist that comments be addressed to the issues and to the City Council as a whole. You cannot direct comments towards individually elected officials, city staff, volunteer members of the boards and commissions, or other citizens. It’s just not appropriate. And if you engage in this behavior, particularly negative comments, I will mute [you] and we will move on, and you can finish your comments via email. We have increasing number of and intensifying number of comments that are personal

and really abusive, and they are very hurtful. That contributes to an increasingly hostile environment in our meetings...We need to be able to have a respectful and open discussions directed at the issues.

Urbana City Council 9-14-2020 Zoom Recording, YouTube (September 15, 2020) (at time stamp 53:30), available at <https://youtu.be/s-khowZJB80>.

11. As of September 14, 2020, Defendants had a policy of not allowing public comments to address or criticize individual public officials and employees by name.

12. Defendants allowed commenters to name public officials and employees when complimenting them.

13. 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.” 5 ILCS 120/2.06(g).

14. Defendants’ instructions and policy on public comment at the September 14, 2020 public meeting violated Section 2.06(g) of OMA.

OCTOBER 12, 2020, CITY COUNCIL MEETING AND PROBABLE CAUSE OF FUTURE VIOLATIONS

15. At the October 12, 2020, public meeting, Defendants adopted a written public comment policy. Ex. A. (Public Input Guidelines).

16. The Public Input Guidelines Defendants adopted suffer from multiple independent fatal flaws. *Id.*

17. In keeping with the policy announced at the September 14, 2020, meeting, the Public Input Guidelines do not allow comments about individual people, such as individual public officials and employees. *Urbana City Council 9-14-2020 Zoom Recording* (at time stamp 53:30); Ex. A (Public Input Guidelines) at “Verbal Input.”

18. In keeping with the policy announced at the September 14, 2020, meeting, the Public Input Guidelines engage in viewpoint discrimination by not allowing negative comments about public officials, but allowing positive ones. *Urbana City Council 9-14-2020 Zoom Recording* (at time stamp 53:30); Ex. A (Public Input Guidelines).

19. The Public Input Guidelines purport to prohibit any comments that “tend to harm a person’s reputation” or could cause “dislike” of a person. Ex. A (Public Input Guidelines).

20. Next, the Public Input Guidelines prohibit speakers from addressing or criticizing individual public officials and employees. *Id.*

21. At least one member of URBANA CITY COUNCIL expressed concerns that the policy would effectively implement “content” based restrictions on speech rather than time, place, manner restrictions. *Urbana City Council 10-12-2020 Zoom Recording*, YouTube (October 12, 2020), <https://youtu.be/s-khowZJB80>, (at time stamp 3:19:00).

22. This council member expressed concern that Defendants would apply the public comment policy in a discretionary manner, effectively silencing speakers based on “what they’re hearing” rather than “how they’re hearing it.” *Id.*

23. As stated by one of URBANA CITY COUNCIL’s members, a primary motivating reason for adopting the “Public Input Guidelines” at the October 12, 2020 meetings, and possibly the “*only*” reason, is that Defendants did not like that most public comments were critical of URBANA CITY COUNCIL and its members. *Id.* (emphasis added).

24. 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.” 5 ILCS 120/2.06(g).

25. Defendants' policy on public comment at the October 12, 2020 public meeting violated Section 2.06(g) of OMA.

**OCTOBER 26, 2020, CITY COUNCIL MEETING AND PROBABLE CAUSE OF
FUTURE VIOLATIONS**

26. At the October 26, 2020, meeting Defendants continued to use their public comment policy in violation of OMA.

27. During public comment, CHRISTOPHER HANSEN began his comment by stating and asking the following: "Hi Diane, I'd like to criticize specific Urbana City employees by name and it doesn't look like the new Public Input Guidelines allow me to do that. Am I allowed to do that?" *Urbana City Council 10-26-2020 Zoom Recording*, YouTube (October 27, 2020) (at time stamp 13:27 of the video recording), *available at* <https://www.youtube.com/watch?v=64F6b4QmUdo&feature=youtu.be>.

28. MAYOR OF URBANA, DIANE MARLIN replied, "No. We have asked that you not do that." *Id.*

29. In compliance with the MARLIN's instruction, HANSEN said nothing further. *Id.*

30. During public comment, JOHN KRAFT stated, "I'm here to criticize Curt Borman and L. Kay Meharry." *Id.* (at time stamp 20:00).

31. MAYOR OF URBANA, DIANE MARLIN immediately interrupted JOHN KRAFT and said, "Mr. Kraft, would you please refrain from calling out staff members by name." JOHN KRAFT continued on to criticize individuals by name, but was ultimately interrupted again for doing so. *Id.*

32. During public comment, Tracy Chong criticized individuals by name. MAYOR OF URBANAN, DIANE MARLIN interrupted her and warned her not to do so. When the speaker

continued with her criticism she was ultimately muted by DIANE MARLIN shortly before her allotted time expired. *Id.* (at time stamp 24:22).

33. 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.” 5 ILCS 120/2.06(g).

34. Defendants’ policy on public comment at the October 12, 2020 public meeting violated Section 2.06(g) of OMA.

35. There is probable cause to believe that Defendants will hold future meetings violating OMA by continuing to use its existing policies of not allowing public comments to address or criticize individual public officials and employees.

**NOVEMBER 9, 2020, CITY COUNCIL MEETING AND PROBABLE CAUSE OF
FUTURE VIOLATIONS**

36. At the November 9, 2020, meeting Defendants continued to enforce their public comment policy in violation of OMA.

37. During public comment, Tracy Chong criticized individuals by name. MAYOR OF URBANA, DIANE MARLIN interrupted her and warned her not to do so. When the individual attempted to continue DIANE MARLIN muted her well before her allotted time was up. *Urbana City Council 11-09-2020 Zoom Recording*, YouTube (November 9, 2020) (at time stamp 6:56), available at <https://www.youtube.com/watch?v=fFpAztoFbC4&feature=youtu.be>.

38. During public comment HANSEN criticized individuals by name. Among other things, he questioned whether it was appropriate to have a former Urbana police officer and his wife run the civilian police review board. He stated that it might be a conflict of interest. *Id.* (at time stamp 8:12).

39. DIANE MARLIN interrupted HANSEN and instructed him not to criticize current or former employees. HANSEN then continued to speak briefly before being cut off and muted by DIANE MARLIN well before his allotted time to speak was over. *Id.* (at time stamp 8:12).

40. During public comment, one speaker, Grace Wilken, explicitly stated that she was “intimidated by the manner of people being shut off,” in reference to DIANE MARLIN cutting off and muting others during their public comment. Wilken further noted that she almost did not speak at all due to the intimidation. *Id.* (at time stamp 18:14).

41. 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.” 5 ILCS 120/2.06(g).

42. Defendants’ policy on public comment at the November 9, 2020 public meeting violated Section 2.06(g) of OMA.

43. There is probable cause to believe that Defendants will hold future meetings violating OMA by continuing to use its existing policies of not allowing public comments to address or criticize individual public officials and employees.

**NOVEMBER 16, 2020, CITY COUNCIL MEETING AND PROBABLE CAUSE OF
FUTURE VIOLATIONS**

44. At the November 16, 2020, meeting Defendants continued to use their public comment policy in violation of OMA.

45. During public comment, Tracy Chong was explicitly cut off and muted well before her allotted time to speak expired for voicing her opinion that it appeared a public official’s goal was to improperly render certain types of complaints ineligible to go through an appeal process. *Urbana City Council Public Input (2020-11-16)*, YouTube (November 16, 2020) (at time stamp 10:20), available at <https://www.youtube.com/watch?v=82W4DdRM-LA&feature=youtu.be>.

46. Tracy Chong was not cut off for the time, place or manner of her speech. Rather, she was cut off because of the content of her speech. *Id.*

47. CITY COUNCIL even noted that Tracy Chong spoke with “civility.” *Id.*

48. Defendants apply their policy governing public comment in an arbitrary and discretionary manner.

49. 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.” 5 ILCS 120/2.06(g).

50. Defendants’ policy on public comment at the November 16, 2020 public meeting violated Section 2.06(g) of OMA.

51. There is probable cause to believe that Defendants will hold future meetings violating OMA by continuing to use its existing policies of not allowing public comments to address or criticize individual public officials and employees.

52. There is probable cause to believe that Defendants will hold future meetings violating OMA by continuing to engage in arbitrary and discretionary enforcement of its policies and by restricting speech based on its content rather than limiting restrictions to time, place and manner restrictions.

53. Defendants have established a trend of continuing to introduce further improper restrictions on public comment in violation of OMA.

COUNT I – OCTOBER 12, 2020, CITY COUNCIL MEETING: VIOLATION OF SECTION 2.06(g) OF OMA

54. The above paragraphs are incorporated by reference.

55. CITY COUNCIL OF CITY OF URBANA is a public body under OMA required to hold open meetings.

56. CITY COUNCL OF CITY OF URBANA and MAYOR OF URBANA, DIANE MARLIN, violated OMA Section 2.06(g), by restricting people from addressing or criticizing current or former individual public officials and employees.

COUNT II – NOVEMBER 9, 2020, CITY COUNCIL MEETING: VIOLATION OF SECTION 2.06(g) OF OMA

57. The above paragraphs are incorporated by reference.

58. CITY COUNCIL OF CITY OF URBANA is a public body under OMA required to hold open meetings.

59. CITY COUNCL OF CITY OF URBANA and MAYOR OF URBANA, DIANE MARLIN, violated OMA Section 2.06(g), by restricting people from addressing or criticizing current or former individual public officials and employees.

COUNT III – NOVEMBER 16, 2020, CITY COUNCIL MEETING: VIOLATION OF SECTION 2.06(g) OF OMA

60. The above paragraphs are incorporated by reference.

61. CITY COUNCIL OF CITY OF URBANA is a public body under OMA required to hold open meetings.

62. CITY COUNCL OF CITY OF URBANA and MAYOR OF URBANA, DIANE MARLIN, violated OMA Section 2.06(g), by restricting people from addressing or criticizing current or former individual public officials and employees, and by restricting people from voicing their opinions.

COUNT IV – PROBABLE CAUSE OF FUTURE VIOLATIONS OF SECTION 2.06(g) OF OMA

63. The above paragraphs are incorporated by reference.

64. CITY COUNCIL OF CITY OF URBANA is a public body under OMA required to hold open meetings.

65. There is probable cause to believe that CITY COUNCL OF CITY OF URBANA and MAYOR OF URBANA, DIANE MARLIN, will violate OMA Section 2.06(g) at future meetings by restricting people from addressing or criticizing current or former individual public officials and employees.

WHEREFORE, Plaintiffs ask that the Court:

- i. declare that Defendants violated OMA;
- ii. enjoin Defendants from restricting people from naming, addressing, or criticizing current or former public officials and employees;
- iii. enjoin Defendants from having or enforcing any content based restrictions on public comment;
- iv. award Plaintiffs reasonable attorneys' fees and costs; and
- v. award such other relief the Court considers appropriate.

Dated: November 20, 2020

RESPECTFULLY SUBMITTED,
/s/ Joshua Hart Burday

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PUBLIC INPUT GUIDELINES

The City of Urbana welcomes Public Input during open meetings of the City Council, the City Council's Committee of the Whole, City Boards and Commissions and other City-sponsored meetings. Our goal is to foster respect for the meeting process, and respect for all people participating as members of the public body, city staff, and general public. The City is required to conduct all business during public meetings. The presiding officer is responsible for conducting those meetings in an orderly and efficient manner.

Public Input will be taken in the following ways:

Zoom Webinar Participant

Click on the link listed in the agenda to join the Webinar. You must provide your name and email address in order to join the Webinar. If you wish to speak during Public Input, "raise your hand" and wait to be called on by the meeting host. You must state your first and last name for the meeting record. Participants will be muted except when they are called on to speak; video will remain off for all members of the public when speaking.

Telephone Participant

Call the phone number listed on the Agenda. Enter the Webinar ID followed by the # key. All callers are muted by default. If you wish to speak, "raise your hand" by pressing *9 once. When you are called on by the host or presiding officer you will be un-muted. You must state your first name and last name for the meeting record.

Email Input

Public comments must be received prior to the closing of the meeting record (at the time of adjournment unless otherwise noted) at the following: citycouncil@urbanaillinois.us. The subject line of the email must include the words "PUBLIC INPUT" and the meeting date. Your email will be sent to all City Council members, the Mayor, City Administrator, and City Clerk. Emailed public comments labeled as such will be incorporated into the public meeting record, with personal identifying information redacted. Copies of emails will be posted after the meeting minutes have been approved.

Written Input

Any member of the public may submit their comments addressed to the members of the public body in writing. If a person wishes their written comments to be included in the record of Public Input for the meeting, the writing should so state. Written comments must be received prior to the closing of the meeting record (at the time of adjournment unless otherwise noted).

Verbal Input

Protocol for Public Input is one of respect for the process, and respect for others. Ridicule, obscene or profane language, lack of respect for others, and personal attacks are not acceptable behavior. Public Input shall not be used to air personal grievances. Speakers should address all comments to the public body as a whole and not to individual members or City staff.

Public comment shall be limited to no more than four (4) minutes per person. The Public Input portion of the meeting shall total no more than one (1) hour, unless otherwise shortened or extended by majority vote of the public body members present. The presiding officer or the city clerk or their designee, shall monitor each speaker's use of time and shall notify the speaker when the allotted time has expired. All public comments should be addressed to the public body as a whole. A person may participate and provide Public Input once during a meeting and may not cede time to another person,

or split their time if Public Input is held at two (2) or more different times during a meeting. The presiding officer may give priority to those persons who indicate they wish to speak on an agenda item upon which a vote will be taken.

The presiding officer or public body members shall not enter into a dialogue with citizens. Questions from the public body members shall be for clarification purposes only. Public Input shall not be used as a time for problem solving or reacting to comments made but, rather, for hearing citizens for informational purposes only.

Accommodation

If an accommodation is needed to participate in a City meeting, please contact the City Clerk's Office at least 48 hours in advance so that special arrangements can be made using one of the following methods:

- Phone: 217.384.2366
- Email: CityClerk@urbanillinois.us

*In order to maintain reasonable decorum at a meeting, the presiding officer or any member of the public body may call a speaker "out of order". The presiding officer of the meeting shall have the authority to provide a verbal warning to a speaker who uses abusive, harassing, threatening, or defamatory language, or who engages in disorderly conduct that disrupts, disturbs, or otherwise impedes the orderly conduct of a meeting. If the speaker refuses to cease such remarks or conduct after being warned by the presiding officer, the presiding officer shall have the authority to mute the speaker's microphone and/or video presence at the meeting. The presiding officer will inform the speaker that they may send the remainder of their remarks via email to the public body for inclusion in the meeting record.

***Definitions of Types of Language and Conduct That May Warrant Verbal Warning:**

"Abusive" means harsh, violent, profane, or derogatory language which would demean the dignity of an individual or which is intended to humiliate, mock, insult or belittle an individual.

<https://www.lawinsider.com/dictionary/abusive-language>

"Harassing" means to annoy or bother someone in a constant or repeated way; to make repeated attacks on another person.

<https://www.learnersdictionary.com/definition/harass>

"Threatening" means to say that you will harm someone or do something unpleasant or unwanted especially in order to make someone do what you want.

<https://www.learnersdictionary.com/definition/threaten>

"Defamatory" means a statement or communication that tends to harm a person's reputation by subjecting the person to public contempt, disgrace, or ridicule, or by adversely affecting the person's business. A statement that is likely to lower that person in the estimation of reasonable people and in particular to cause that person to be regarded with feelings of hatred, contempt, ridicule, fear, or dislike.

Black's Law Dictionary (11th ed. 2019)

Citations that Authorize the Presiding Officer to Bar Offensive Language During Public Comment:

The following citations provide the legal basis for adopting UCC Section 2-5(b)(1)(d) that allows the presiding officer of a City Council, Committee of the Whole, or a City-sponsored board or commission regulate "abusive, harassing, threatening, or defamatory language" during public comment. The

following Attorney General binding opinions and case law essentially classify abusive, “harassing, threatening and defamatory language as “manner”, not “content”, of speech that can be reasonably regulated under the First Amendment. UCC Section 2-5(c) (Ordinance No. 2020-09-049. Attorney General binding opinion numbers 2019 PAC 59187, 2018 PAC 55462, 2016 PAC 45349; *Milestone v. City of Monroe, Wisconsin*, 665 F.3d 774, 783-784 (7th Cir. 2011); *Vega v. Chicago Board of Education*, 338 F.Supp.3d 806, 811 (N.D. Ill. 2018); *Sandefur v. Vill. of Hanover Park*, 862 F.Supp.2d 840, 847 (N.D. Ill. 2012); *I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F.Supp.2d 912, 920-923 (D.C. N.D. 2009).