

Re: OMA Request for Review — 2020 PAC 64787

Dear Assistant Attorney General Bartelt,

I am writing in response to Urbana City Attorney James Simon's letter dated October 2<sup>nd</sup>, 2020. I believe my original request for review, along with the September 14<sup>th</sup> Urbana City Council meeting video, offers plenty of evidence to establish a violation of the Open Meetings Act by Mayor Marlin (and Dennis Robert, and Julie Laut), but I will briefly respond to some of Mr. Simon's criticisms. For your review, I have also attached an email from another Urbana resident who was muted by Mayor Marlin at the same meeting.

My request made note of the fact that no physical access to the meeting existed, to demonstrate that participants had no choice but to use electronic means of participation, which ultimately allowed the Mayor to abuse the public input process by muting speakers. Had this been a physical meeting (as it normally would be), this abusive practice by the Mayor would not have been possible.

Mr. Simon is playing silly word games in regards to the language in UCC Section 2-4. The City of Urbana does not issue license for the public to attend and speak at public meetings, the State of Illinois and the First Amendment provides those rights. Mr. Simon supposes that the privilege to speak at public meetings is born from the City, and therefore it is the City that can, at any time and for any reason, deplete that privilege to whatever amount of time it wishes. By Mr. Simon's logic, the Mayor could have reduced speaking time to 5 seconds each and no more than a total of 1 minute (or zero...).

The bizarre corollary to Mr. Simon's logic is that since (according to Simon) the possibility for public speech is born only from the City, and it is only the presiding officer that determines how long a speaker speaks, then the presiding officer would have the power not only to reduce a person's speaking time, but also to force a participant to speak longer than they wished (up to 5 minutes). Perhaps the presiding officer even has the power to compel unwilling members of the audience to speak (up to 2 hours total).

Clearly, this is absurd. It not the City or the presiding officer, but the public themselves that compel public participation and input at meetings. The City can only establish reasonable rules for public input, given that the public does have the right to speak. The OMA reads:

"Any 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)

As Mr. Simon has clearly outlined, those established and recorded rules exist as UCC Section 2-4, and those rules indicate 5 minutes per speaker, and up to 2 hours in total. Mr. Simon has included numerous meeting agendas in an attempt to demonstrate that the 3 minute speaking time had been established. In fact, all of the Urbana boards and commissions, as well as some of the City Council meetings chaired by individuals other than Mayor Marlin, have remained in conformance with the recorded and established 5 minute speaking time (example, the August 17<sup>th</sup> City Council meeting:

<https://www.city.urbana.il.us/Scripts/CouncilVideo/Video.asp?v=/ Video/City Council/2020/20200817/04. Public Input.mp4>, and the September 21<sup>st</sup> City Council meeting:

<https://www.city.urbana.il.us/Scripts/CouncilVideo/Video.asp?v=/ Video/City Council/2020/20200921/02. Public Input and Presentations.mp4>). For many years, the Urbana City Council has always allowed 5 minutes of

speaking time. Only recently, after the City began using Zoom for meetings, did the Mayor attempt to alter the speaking rules.

Even if the Urbana City Council had established a practice of 3 minute speaking times, the OMA is clear and the PAC has held (Request for Review 2018 PAC 55462) that the speaking rules must also be recorded. The binding opinion issued in PAC 55462 directly addresses Mr. Simon's concerns about the OMA Section 2.06(g).

The Mayor's attempt to establish different speaking rules does not change the recorded speaking rules in the City Code which allow a speaker 5 minutes. The City Council had taken no formal action to adopt different policies. The violation is clear.

It should be noted that ever since the filing of this OMA complaint, Mayor Diane Marlin and other Urbana City Council members have strictly adhered to the 5 minute / 2 hour rules. Furthermore, Mayor Marlin brought forth new legislation at the following meeting (September 21<sup>st</sup>) to alter the rules in Section 2-4 to reflect her new limitations ([https://www.urbanailinois.us/sites/default/files/attachments/Ordinance\\_2020-09-049.pdf](https://www.urbanailinois.us/sites/default/files/attachments/Ordinance_2020-09-049.pdf)). At that meeting, the Urbana City Council voted not to move forward with the new rules. The Mayor again brought forth a different version of the same speaking rules on October 5<sup>th</sup> ([https://www.urbanailinois.us/sites/default/files/attachments/Ordinance\\_2020-09-049\\_all.pdf](https://www.urbanailinois.us/sites/default/files/attachments/Ordinance_2020-09-049_all.pdf)) and again on October 12<sup>th</sup> (<https://www.urbanailinois.us/node/8866>).

Mr. Simon has argued that it was entirely within the Mayor's power to reduce speaking times and provide speech restrictions on September 14<sup>th</sup>. This begs the question, why have Mayor Marlin and James Simon bothered to put forth new public input ordinances if these powers have always resided with the Mayor?

Mr. Simon has argued that Mayor Marlin has had difficulty using the Zoom conferencing application. By my count, the City has conducted about 140 public meetings using Zoom in the past 7 months. Mayor Marlin has personally chaired at least 30 public meetings via Zoom in that time. Likely, there have been hundreds more private Zoom meetings which the Mayor attended. There is little reason to think that the Mayor or the City is still in a learning curve regarding virtual meetings.

The potential issue of not knowing how many people wish to speak in a Zoom meeting is equally present in a physical meeting. It is always possible (and has happened many times) that additional speakers may enter the council chambers after the presiding officer has already made a determination about the number of speakers. The Mayor will not have violated any law or withheld from any person their rights if she accidentally fails to recognize 21 speakers. I have attended every Urbana City Council meeting in the past 12 months, and I cannot recall any instance when the Chair initially recognized fewer than 21 speakers, but later discovered that 21 or more people did wish to speak. Even if such a late realization did occur, it would not in any way damage the effectiveness or productivity of the meeting.

Mr. Simon has completely ignored the issue of time limitations being applied in a discriminatory fashion, largely based on the content delivered by individual speakers. This discriminatory application of time limits clearly represents content-based speech limitation.

Mr. Simon has made a wide variety of allegations regarding specific speech delivered at public meetings. It is my impression that this portion of Simon's letter is largely a personal attack upon me, and gives no integrity to his response. However, I will respond to some extent:

Mr. Simon has referenced the September 3<sup>rd</sup> CPRB meeting as an example of improper speech, but I will point out that after I spoke, the Chair thanked me for my input. Furthermore, that same Chair, Ricardo Diaz, has frequently thanked me and encouraged me to continue speaking at CPRB meetings over the past year.

Mr. Simon has alleged that a number of different accusations have been made at public meetings, but he has not demonstrated or even claimed that those accusations are untrue. Here, Mr. Simon is demonstrating, nicely, exactly why content-based speech restrictions are untenable – who is to be the arbiter of truth?

Mr. Simon has made a number of different claims about city staff and board and commission members, for all of which he appears to have no evidence beyond Mayor Marlin’s affidavit. Even if Marlin’s claims are true, it is not clear why Mr. Simon has assumed that changes in staff and board members is an unacceptable result of public input, or how the OMA provides for speech restrictions that would negate that possibility.

I am not aware of any member of the public that has been “attacked” for speaking at a public meeting. Mr. Simon has not provided any such evidence. All the same, the OMA does not allow for speech restrictions that would negate the possibility of strong criticisms of certain individuals (unless, by “attacked” Mr. Simon means a literal physical attack, or “fighting words”, which would seem to be impossible in a Zoom meeting).

Mr. Simon has not cited any instance of speech that violated the recorded and established public input rules of the City of Urbana, or any instance that violates the narrow constitutional limitations on speech.

Mr. Simon claims that “At no time did the Mayor or any City Council member attempt to control the content of any speaker’s speech.” I find this claim rather fantastic since Mayor Marlin specifically enumerated several content-based limitations that she intended to place upon speech at the September 14<sup>th</sup> meeting, then took specific actions to interrupt and mute people who encroached upon those limitations. One such example is mentioning public officials by name, or even vaguely mentioning “city staff”.

Speakers were also forced to choose between types of content by being forced to either speak about an “action item” or speaking about a different issue, but not both.

Mr. Simon has cited 2016 PAC 45349, yet this PAC opinion in no way supports any argument Mr. Simon has put forth. PAC 45349 does not deal with speech content, but with timing restrictions. In fact, PAC 45349 nicely points out the same absurdity that I detailed above while addressing Simon’s arguments in favor of arbitrary time limitations:

**“Section 2.06(g) of OMA cannot reasonably 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.”**

Mr. Simon has cited 2018 PAC 55462, emphasizing that “the right to address public officials is not without limits”. This citation is being used by Simon to support content-based speech limitations, but PAC 55462 was specifically and only about time limits. No component of PAC 55462 dealt with speech content. In fact, PAC 55462 only serves to support my previous claim that a public body must follow its formally recorded meeting rules, not just its established practice.

Mr. Simon has cited 2019 PAC 59187, yet no portion of this PAC opinion supports the content-based speech limitations put forth by Mayor Marlin. In fact, PAC 59187 nicely demonstrates an OMA violation by a Mayor who no longer wished to hear the comments of a particular individual. PAC 59187 only serves as further evidence that Mayor Marlin was also in the wrong.

Mr. Simon has referenced Vega v. Chicago Board of Education, which involved a member of the public repeatedly violating the recorded speaking rules, threatening to continue to do so, physically interrupting other speakers, and rushing up to the dais and shaking her fist at a board member. This case has no relevance to the September 14<sup>th</sup> Urbana City Council meeting, and does not in any way mimic or represent the actions of any person at any recent public meeting in Urbana.

Mr. Simon has not provided any compelling or even slightly compelling PAC opinions or case law which would support Mayor Marlin's actions. In fact, every PAC opinion cited by Mr. Simon actually demonstrates an OMA violation by a different public body, and each only serves to support my claims of similar violations by Mayor Marlin (and Dennis Roberts, and Julie Laut).

Thank you again for your attention to this matter.

Regards,



Christopher Hansen, October 15, 2020