



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

October 6, 2020

Via electronic mail
Mr. Christopher Hansen
corruptcu@gmail.com

RE: OMA Request for Review – 2020 PAC 64787

Dear Mr. Hansen:

The Office of the Attorney General, Public Access Bureau, has received the enclosed response to your Request for Review from the City of Urbana City Council (Council). You may, but are not required to, reply in writing to the enclosed response. If you choose to reply, you must submit your reply to this office within 7 business days of your receipt of this letter. 5 ILCS 120/3.5(c) (West 2018). Please send a copy of your reply to Mr. Simon. If you have any questions, you may contact me at lbartelt@atg.state.il.us or (312) 814-6437.

Very truly yours,

A handwritten signature in black ink, appearing to read "Leah Bartelt", is written over the typed name.

LEAH BARTELT
Deputy Public Access Counselor
Public Access Bureau

Enclosure

cc: *Via electronic mail*
Mr. James L. Simon
City Attorney
City of Urbana
400 South Vine Street
Urbana, Illinois 61801
jlsimon@urbanaillinois.us



City of Urbana
Legal Division
400 South Vine Street
Urbana, Illinois 61801

October 2, 2020

Leah Bartelt
Deputy Public Access Counselor
Public Access Bureau

Re: OMA Request for Review – No. 2020 PAC 64787 – Further Action Letter.

Dear Assistant Attorney General Bartelt:

The City of Urbana (hereinafter, the “City”) is in receipt of the above-referenced “further action” letter dated September 24, 2020.

From the attachment to your letter, it appears that Mr. Hansen alleges that the Mayor and one or more City Council¹ members violated the Open Meetings Act (hereinafter, “OMA”) (5 ILCS 120/1 *et seq.*) Section 2.06(g) (5 ILCS 120/2.06(g)) regarding public comment in the following ways:

- Mr. Hansen and other members of the public had no physical access to the meeting site.
- The Mayor altered the City’s rules concerning public comment by limiting speakers to only three (3) minutes each in violation of the City’s “established” and “recorded” “rules” governing public comment.
- The Mayor and several City Council members sought to control speech “content” in violation of speakers’ First Amendment rights.
- One or more members of the public were denied their opportunity to provide public comment or were denied their full time to speak.

You have requested the City to provide the following:

- The City’s written response to Mr. Hansen’s allegations.
- The City’s “established” and “recorded” rules for public comment.

¹ The City Council normally meets four times per month. The City Council meets as City Council on the second and fourth Mondays of each month and as a Committee of the Whole on the first and third Mondays of every month. Whether or not the City Council meets on a Monday is dependent on whether a holiday during which the City Building is closed falls on a Monday meeting day. UCC Sec.2-25(a). For purposes of this response, however, reference to “City Council” meetings will be to both City Council and Committee of the Whole meetings.

- The video of the September 14, 2020 City Council meeting.
- The City Council agenda and minutes of the September 14, 2020 City Council meeting (in final approved or draft form, as the case may be).

This letter constitutes the City's response to Mr. Hansen's allegations. Further, the City is providing (i) the City's "rules" for public comment are quoted in this response; (ii) the minutes for the September 14, 2020 City Council meeting in unapproved form; (iii) an affidavit from the Mayor; (iv) transcripts of Mr. Hansen's public input at the September 14 and 28, 2020 City Council meetings and at the September 3, 2020 special meeting of the City's Civilian Police Review Board; and (v) the City Council meeting agendas for the period March 23, 2020 through September 14, 2020 that include instructions and rules for providing public input at remote meetings. The video/audio recording of the City Council's September 14, 2020 meeting can be found at the following hyperlink²:

[https://www.city.urbana.il.us/Scripts/CouncilVideo/Video.asp?v=/Video/City_Council/2020/20200914/02_Public Input and Presentations.mp4](https://www.city.urbana.il.us/Scripts/CouncilVideo/Video.asp?v=/Video/City_Council/2020/20200914/02_Public%20Input%20and%20Presentations.mp4)

For the reasons discussed below, the City complied with OMA Section 2.06(g) in all respects notwithstanding Mr. Hansen's allegations to the contrary.

A. OMA Section 2.06(g).

Section 2.06(g) provides: "Any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." OMA does not indicate what process is required in order for "rules" to be deemed "established" and "recorded."

A. The City Did Not Wrongfully Bar the Public from Access to City Council Meeting.

It is unclear whether Mr. Hansen complains that he and other members of the public were prevented from physically attending the September 14, 2020 City Council meeting. However, such an allegation has been addressed by your office on two prior occasions. See determination numbers 2020 PAC 63073 and 2020 PAC 63284 where your office concluded that the City's conducting of remote meetings during the pendency of the COVID-19 pandemic is proper. Thus, the City finds no further reason to address this particular allegation.

C. City's "Established" and "Recorded" "Rules" Governing Public Comment.

1. Urbana City Code Section 2-4.

Section 2-4 of the Urbana City Code ("UCC") provides:

² By opening the hyperlink, you will see that two public comment sessions were provided. Each public comment session can be retrieved by clicking on that item.

(a) Any person who seeks to address the members of a commission, committee, or other official body of the city at any public meeting will be permitted to speak on any matter listed on the agenda or on any other matter of public concern, subject to the following provisions:

(1) The presiding officer shall designate a time during the meeting at which the public may address the members. The presiding officer may require persons wishing to speak during any portion of a meeting to sign in before the start of the meeting and to provide their names, addresses,³ and topics to be discussed.

(2) Prior to speaking, each person must be recognized by the presiding officer and must state his or her name for the record.

(3) Subject to subsection (a)(4), public comment is limited to no more than five (5) minutes per person and to no more than two (2) hours per meeting, unless extended by consent of a majority vote of the members present. The presiding officer or his or her designee shall monitor each speaker's use of time and shall notify the speaker when the time allotted has expired.

(4) If the presiding officer recognizes that more than twenty (20) persons desire to speak, he or she may limit each speaker to comments of no more than three (3) minutes. Whenever any group of persons wishes to address the members on the same subject matter, the presiding officer may ask that a spokesperson be chosen from the group. If additional matters are to be presented by other persons in the group, the presiding officer may limit the number of such persons and may limit the presentation to information not already presented by the group spokesperson.

(5) Persons invited by the presiding officer to address the members are subject to such time limitations as the majority of the members present may prescribe.

(b) The city clerk shall post the provisions of subsection (a) on the city's website.

UCC Sec. 2-4, emphasis supplied.⁴

In *People v. Legoo*, the Illinois Supreme Court stated:

The cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature. ... The best indicator of legislative intent is the statutory language, given its plain and ordinary meaning. When the statutory language is

³ The City does not enforce the requirement that persons wishing to speak provide their addresses.

⁴ https://library.municode.com/IL/urbana/codes/code_of_ordinances?nodeId=COOR_CH2AD_ARTIINGE_S2-4PUME

clear and unambiguous, we will apply it as written without resort to aids of statutory construction.

People v. Legoo, 2020 IL 124965, ¶ 14, citations omitted. These rules apply to interpreting ordinances as well. *Henderson Square Condominium Association, v. Lab Townhomes, LLC*, 2015 IL 118139, ¶ 67.

The Mayor did not improperly change the rules governing public comment. The above rules state that a speaker will have “no more than five (5) minutes per person” and that public comment will last “no more than two (2) hours” unless the City Council approves more time. UCC Sec. 2-4(a)(3). Merriam-Webster’s Dictionary defines the phrase “no more” to mean “nothing more,” “no longer,” “not any more,” or “to no greater extent.”⁵ Therefore, by its plain language, UCC Section 2-4(a)(3) places an upper limits but not a lower limits on a speaker’s time and the total duration of public comment.

UCC Section 2-4(a)(3) does not state who has the authority to reduce a speaker’s time and/or the total amount time allocated to public comment. On the other hand, that section only addresses who has the authority to length a speaker’s time limit and the duration of public comment – i.e., the City Council by majority vote. In the absence of such guidance, the presiding officer at the meeting (in the case of the September 14, 2020 City Council meeting, the Mayor) would have the authority to shorten these time limits. It is also worth noting that UCC Section 2-27(1) has adopted *Robert’s Rules of Order* as “the law governing the deliberations of the city council.” Generally, *Robert’s Rules of Order* provide that the presiding officer generally controls the meeting. Likewise, nothing in OMA Section 2.06(g) or UCC Section 2-4(a)(3) guarantees that every member of the public will be able to speak within the overall time limit provided for public comment. Moreover, there is nothing in UCC Section 2-4(a)(3) that prohibits the Mayor from splitting public comment into two parts.

UCC Section 2-4(a)(4) states:

If the presiding officer recognizes that more than twenty (20) persons desire to speak, he or she may limit each speaker to comments of no more than three (3) minutes.

Emphasis supplied. Unfortunately, given the Mayor’s difficulties using Zoom teleconferencing, she has often been unable to “recognize” the number of members of the public who wish to provide public comment including at the September 14, 2020 meeting. In most meetings she chaired, the Mayor asked for a show of “hands” by using the “raise hand” feature of Zoom of those wishing to speak. However, as public comment progressed, additional members of the public often sought to speak as well.

The Mayor put a one (1) hour total limit on the two parts for public comment due to the number of items on the agenda. She also shortened each speaker’s time limit to three (3) minutes because she could not ascertain how many members of the public wanted to speak and to give as

⁵ <https://www.merriam-webster.com/dictionary/no%20more>.

many members of the public an opportunity to speak. The Mayor believed that UCC Section 2-4 allowed her to shorten the time for individual speakers and the overall time for public input. Marlin Aff. ¶¶ 12-17.

2. Additional City Council Rules for Public Comment.

Nothing in OMA Section 2.06(g) defines how “rules” must be “established” or “recorded” in order for them to govern public input. Starting with the first remotely conducted City Council meeting (March 23, 2020), the City has published additional rules for public comment on its agendas. See agendas for the period March 23, 2020 through September 14, 2020 included with this response (hereinafter, collective “Agendas”).

The agendas for the March 23, 2020 through June 7, 2020 City Council meetings cited to UCC Section 2-4 as governing public comment. However, starting with the June 22, 2020 City Council meeting and continuing through September 14, 2020, City Council agendas have included the following rules:

Zoom Webinar participant

Click on the link above to join the Webinar. You must provide your name and email in order to join the Webinar. If you wish to speak during the 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. You may speak for up to three minutes.

Telephone participant

Call the phone number shown 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, you will be un-muted. You must state your first and last name for the meeting record. When you are finished, the host will “lower your hand” and mute you. You may speak for up to three minutes.

Emphasis in original. See also Agendas; Marlin Aff. ¶ 17. Each of the agendas and the rules provided therein were posted on the City’s website. The agenda and rules for the September 14, 2020 meeting were posted on the City’s website on September 11, 2020.

D. Members of the Public Were Not Unlawfully Bar From Providing Public Input.

During many virtual City Council meetings over the past four or five months, a number of individuals (including Mr. Hansen) have used public input to personally attack, insult, abuse, threaten, harass, and defame the Mayor, one or more City Council members and a number of City staff members by name. Marlin Aff. 19. Typical examples of this abuse and hostility can be heard not only during public input at the September 14, 2020 City Council meeting (see link above p. 2)

but also during meetings of City boards and commissions. For example, during the September 3, 2020 special meeting of the Urbana Civilian Police Review Board,⁶ and the most recently during the September 28, 2020 City Council meeting Mr. Hansen and others can be heard abusing, attacking, threatening and defaming others by name.⁷ See also transcripts of Mr. Hansen's Public Input for the September 3, 2020 Urbana Civilian Police Review Board meeting and for the September 28, 2020 City Council meeting included with this response. At various times, Mr. Hansen and other members of the public have accused public servants by name of engaging in governmental corruption; conspiracy to corrupt government; deceptive practices; conspiracy to deceive the public; unlawful abuse of governmental powers unethical conduct; intentionally violating state statutes; knowing and intentional lies to cover up illegal activities; distorting the truth; and total incompetence. Marlin Aff. ¶ 19.

As a result of the abuse heaped on these public servants by a few members of the public, at least one employee and several appointees to City boards and commissions have resigned their positions. Marlin Aff. ¶ 20. When asked why they resigned, these individuals indicated that Mr. Hansen and the few other members of the public were creating a hostile, abusive and threatening environment during public input. *Id.* They express a desire not to speak about their concerns for fear that these few members of the public would target them for more abuse and harassment. *Id.*

The Mayor has also spoken with other members of the public who expressed concern about the hostile and abusive tone and tenor that a few public members have been creating during the public comment portion of City Council meetings. Marlin Aff. ¶ 21. These other members of the public advised that they did not wish to speak during public input out of fear of being attacked by the few abusive members of the public. *Id.*

Moreover, the Mayor has spoken with those City staff members who have been the targets of abuse and hostility by the few members of the public. Marlin Aff. ¶ 22. In addition to expressing concern about the tone and tenor of public input at City Council meetings, staff members expressed to the Mayor that their morale has suffered. *Id.* the Mayor has also spoken with most, if not all City Council members. A number of them have expressed concern about the tone, tenor, lack of civility, and lack of decorum during public input at their meetings. Marlin Aff. ¶ 23. As the foregoing demonstrates, a few members of the public have used their public input time to chill the rights of other members of the public to speak during public input and interfere with the City's efforts to conduct governmental business by City Council members and City staff.

As a result of months of abusive insulting, threatening, harassing, and defamatory speech heaped on the Mayor, several City Council members and City staff during public input at City Council meetings, the Mayor decided to try to restore at least some level of civility and decorum. Marlin Aff. ¶ 24. At the beginning of public comment at the September 14, 2020 meeting, the Mayor stated:

⁶ <https://www.urbanaininois.us/node/8833>. At 1 hour, 37 minutes, and 51 seconds into the meeting.

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<https://www.city.urbana.il.us/Scripts/CouncilVideo/Video.asp?v=/ Video/City Council/2020/20200928/06. Public Input.mp4>. At 21 minutes, 51 seconds into the public input portion of the meeting.

The other thing I want to address is the tenor, the tone, and the nature of the 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 toward individually elected officials, City staff, volunteer members of boards and commissions, or other citizens. It's just not appropriate. And if you engage in this behavior, particularly negative comments, I will, I will mute and we'll move on and you can finish your comments via email. We've had an increasing number of, an intensifying number of comments that are personal they're really abusive; they're really hurtful and that contributes to an increasingly hostile environment in our meetings to the point where people are telling me they are intimidated about joining a meeting they're intimidated about making a comment because they're afraid that they will be attacked. This is not, this is not the environment that we have encouraged at Urbana City Council and it is not the environment that we can have continue.

We need to be able to have respectful and open and discussions directed at the issues. And, and this time when we are all just buried under the layers of dealing with the pandemic and, and, working towards race and social justice and everything else we are dealing with today.

Marlin Aff. ¶ 24. See also transcript of Mayor Marlin's comments included with this response.

At no time did the Mayor or any City Council member attempt to control the content of any speaker's speech. Rather, they sought to restore civility and decorum by regulating the manner of speech during the public comment portion of the September 14, 2020 City Council meeting. Marlin Aff. ¶¶ 24, 27, 28.

As the agenda for the September 14, 2020 meeting indicates, members of the public who wished to provide public input on particular action items were given that opportunity to speak during the first part of public comment so the City Council could hear and consider their input before taking action on action on those agenda items. Those wishing to provide general commentary about items of public business not on the agenda were permitted to do so during the second part of public comment held at the end of the meeting. However, speakers were given only one opportunity to speak at the meeting. See agenda for September 14, 2020 City Council meeting and Marlin Aff. ¶ 25 included with this response.

1. Attorney General Binding PAC Opinions.

The Attorney General in binding PAC opinions has indicated that a public body can set reasonable place, time, and manner restrictions on public input in order to maintain order and decorum. In 2016, the Attorney General issued binding opinion number 2016 PAC 45349 that stated:

The Attorney General has opined that 'public bodies may generally promulgate reasonable' 'time, place and manner' regulations that are necessary to further a significant governmental interest. * * * [T]he primary purpose of adopting rules

governing public comment pursuant to section 2.06(g) of OMA is to accommodate the speaker's statutory right to address the public body, while ensuring that the public body can maintain order and decorum at public meetings.' Ill. Att'y Gen. Pub. Acc. Op. 14-012, issued September 30, 2014, at 5-6. ... Likewise, this office reviews the rule at issue here in terms of its reasonableness and the Council's asserted significant governmental interest.

2016 PAC 45349, p. 5, brackets in original, emphasis supplied. In 2018, the Attorney General issued binding opinion number 2018 PAC 55462 that stated:

Section 2.06(g) requires that all public bodies subject to the Act provide an opportunity for members of the public to address public officials at open meetings. Nonetheless, the right to address public officials is not without limits. Section 2.06(g) expressly provides that individuals are entitled to address a public body subject to 'the rules established and recorded by ... the public body.' Although OMA does not specifically address the nature of rules that a public body may enforce during the public comment portion of an open meeting, ordinarily only reasonable time, place and manner restrictions which are content-neutral are permissible in such a designated public forum under the first amendment to the United States Constitution. See, e.g., *I.A. Rana Enterprises, Inc. v. City of*, 630 F. Supp. 2d 912, 922-23 (N.D. Ill. 2009) examining whether the application of city council's rules for public comment violated plaintiff's first amendment rights). Such rules must be reasonably necessary to protect a significant governmental interest and must tend to accommodate, rather than to unreasonably restrict, the right to address public officials [citation omitted].

2018 PAC 55462 p. 5, emphasis supplied. In 2019, the Attorney General issued binding opinion number 2019 PAC 59187 that stated:

... 'ordinarily only reasonable time, place and manner restrictions' that are content-neutral are permissible in such a designated public forum under the first amendment to the United States Constitution. See e.g., *I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2d 912, 922-23 (N.D. Ill. 2009).

2019 PAC 59187 p. 5.

2. Court Opinions Deem Tenor and Tone of Speech Within "Manner" and Not Content.

Federal courts have determined that a speaker's tone and tenor constitutes "manner" and not content since speakers can convey their positions and information with the same level of fervor and passion but still in a civil and decorous way.

In *Milestone v. City of Monroe, Wisconsin*, the Seventh Circuit addressed a local government-operated senior citizen center's "Code of Rules" that prohibited the use of abusive, vulgar, or demeaning language, threatening conduct, and disrespectful behavior toward others at the center. *Milestone v. City of Monroe, Wisconsin*, 665 F.3d 774 (7th Cir. 2011). Given that the

center was a public body, First Amendment issues were raised. In placing the First Amendment issues in context, the court stated:

The [public body's] Code contains a mission statement, several objectives, and nine provisions comprising the actual 'Code of Conduct.' ... The Code is generally aimed at conduct not speech, but three of its provisions arguably touch upon speech or expression: the requirement that patrons treat everyone with respect and courtesy; the prohibition against abusive, vulgar, or demeaning language; and the requirement that patrons treat Center personnel with respect. In Milestone's view these provisions are viewpoint-based regulations in that they subject any person who disagrees with the director's decisions to permanent ejection from the Center.

We disagree. Government regulation of expressive activity is content neutral so long as it is 'justified without reference to the content of the regulated speech.' *Ward v. Rock Against Racism*, 491 U.S. 781, 791, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989) (quoting *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 293, 104 S.Ct. 3065, 82 L.Ed.2d 221 (1984)). That is, '[a] regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others.' *Id.* The Code's mission statement and objectives make it clear that the purpose of the Code is completely unrelated to the content of any speaker's message. Rather than focusing on what the Center's patrons say, the Code focuses on the manner in which they say it. Nothing in the Code provides a basis for punishing patrons for disagreeing with other visitors or the Center staff.

Id. at 783, brackets and emphasis supplied. The court went on to state:

The Code also satisfies the narrow tailoring requirement. In "time, place, or manner" cases, "narrow tailoring" does not mean that the government must use "the least restrictive or least intrusive means" to achieve its end; rather, in this context "the requirement of narrow tailoring is satisfied 'so long as the ... regulation promotes a substantial government interest that would be achieved less effectively absent the regulation.'" *Ward*, 491 U.S. at 798-99, 109 S.Ct. 2746 (quoting *United States v. Albertini*, 472 U.S. 675, 689, 105 S.Ct. 2897, 86 L.Ed.2d 536 (1985)). Rules requiring the Center's visitors to treat others with respect and to refrain from vulgar, abusive language easily satisfy this standard. The City's interest in maintaining a hospitable place for senior citizens to gather would be seriously undermined absent basic civility requirements.

Finally, the Code leaves open ample channels of communication. Regulations may fail this part of the analysis when they prevent speakers from reaching their target audiences. *Weinberg v. City of Chicago*, 310 F.3d 1029, 1040 (7th Cir.2002). The Code prevents Senior Center patrons from yelling at others or using abusive language, but it does not prohibit respectful disagreement or inhibit complaints. This is hardly a case in which a speaker's 'ability to communicate effectively is threatened.' *Id.* at 1042 (quoting *City Council v. Taxpayers for Vincent*, 466 U.S.

789, 812, 104 S.Ct. 2118, 80 L.Ed.2d 772 (1984)). Accordingly, the Code passes constitutional muster as a content-neutral and reasonable time, place, or manner regulation.

Id. at 784, emphasis supplied.

In *Vega v. Chicago Board of Education*, 338 F.Supp.3d 806 (N.D. Ill. 2018), the court reached similar conclusions as *Milestone*. *Vega* involved the type of public input that the Mayor sought to restrict during the September 14, 2020 City Council meeting. In *Vega*, the school board adopted rules stating that: “[c]ourteous, respectful and civil behavior is expected from all speakers and all persons attending a Board meeting.” *Id.* at 809, brackets supplied. When addressing the rule, the court opined that rules which regulate tone and tenor of speech are content neutral.

Thus, when a restriction, ‘[r]ather than focusing on what [an individual] say[s,] ... focuses on the manner in which [she] say[s] it,’ it is content-neutral. *Milestone*, 665 F.3d at 783. By contrast, ‘[g]overnment regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed.’ *Reed v. Town of Gilbert*, ___ U.S. ___, 135 S.Ct. 2218, 2227, 192 L.Ed.2d 236 (2015). ‘Restrictions that favor or disfavor the content of certain speech based on the speaker rather than the content of the message are ... content based.’ *Surita*, 665 F.3d at 870.’

Id. at 811. The court ultimately concluded that the school board’s removal of the offending public member did not infringe on that member’s First Amendment free speech rights. *Id.* at 812.

In *Sandefur v. Vill. of Hanover Park*, 862 F.Supp.2d 840, 847 (N.D. Ill. 2012), the court held that “[i]t is well-settled that a local government has a significant interest in maintaining order at its meetings.” *Id.* at 812-813.

In *I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F.Supp.2d 912 (D.C. N.D. 2009) (on which the Attorney General relied in the above-referenced binding PAC opinions), the court held that (i) time and relevance restrictions applied to public input at city council meetings are appropriate under First Amendment; (ii) time limits on public input, if reasonable, do not violate the First Amendment; and (iii) prohibitions on discussion of irrelevant topics to matters under consideration at a public meeting do not violate the First Amendment. *I.A. Rana Enterprises, Inc. v. City of Aurora*. In *Rana Enterprises*, the court stated:

The First Amendment does not, however, grant the right to communicate one’s views ‘at all times or in any manner that may be desired.’ *Heffron v. Int’l Soc’y for Krishna Consciousness*, 452 U.S. 640, 647, 101 S.Ct. 2559, 69 L.Ed.2d 298 (1981). Rather, it is permissible that some expression be subject to ‘reasonable time, place and manner restrictions.’ *Id.* The *Heffron* Court explained that such restrictions have been upheld ‘provided that they are justified without reference to the content of the regulated speech, that they serve a significant governmental interest, and that in doing so they leave open ample alternative channels for communication of information.’ *Id.* at 647-48, 101 S.Ct. 2559; see also *Horina v. City of Granite City*,

538 F.3d 624, 631 (7th Cir.2008); *Weinberg v. City of Chicago*, 310 F.3d 1029, 1040-41 (7th Cir.2002).

Id. at 920. The court also stated that:

A time limit for public participation at a council meeting is a reasonable time, place, and manner restriction that is narrowly tailored and serves a significant interest. ... Time limits serve 'a significant governmental interest in conserving time and in ensuring that others ha[ve] an opportunity to speak'

Id. at 922-923.

A review of the first part of public input during the September 14, 2020 meeting shows that the Mayor attempted to admonish speakers when they began engaging in personal attacks. In one or more instances, those speakers ignored the Mayor's admonishments.

As the Attorney General binding opinions and court opinions indicate, a public body has the lawful right to admonish speakers to refrain from attacking, abusing, harassing, threatening, and defaming individuals by name during public comment. Likewise, if speakers fail to tone down their speech after receiving such admonishment, a public body can lawfully stop the speaker from speaking any further. Such efforts are deemed regulation of "manner" and are content-neutral.

3. The City Provided At Least Two Ways of Providing Public Input.

Neither the Mayor nor any City Council member prevented individuals from providing civil and decorous public input. As noted in *Milestone*, "the Code leaves open ample channels of communication. Regulations may fail this part of the analysis when they prevent speakers from reaching their target audiences." 665 F.3d at 784. See also, *I.A. Rana Enterprises, Inc.*, where the court stated: "The First Amendment does not, however, grant the right to communicate one's views 'at all times or in any manner that may be desired.'" 630 F.Supp.2d at 920, citation omitted.

The Agendas for every City Council remote meeting convened between March 23, 2020 and September 14, 2020 provided at least two ways of providing public input – in-person (logging into the meeting webinar or calling in by telephone) and by e-mail. See Agendas. All public input received via e-mail was and is incorporated in the official record of the meeting. See Agendas. Clearly, there were and are "open ample channels of communication" with the City's elected and appointed officials and staff. *Milestone*, 665 F.3d at 784.

4. The Mayor's Interruptions Did Not Prevent Speakers from Speaking.

A review of the video for the first part of public input at the September 14, 2020 City Council meeting shows that the Mayor's interruptions requesting speakers to address agenda items did not prevent the speakers from speaking. The same can be said for any interruptions made by one or more City Council members. As the Attorney General has recognized:

Leah Bartelt
Deputy Public Access Counselor
October 2, 2020
Page 12

This office has previously determined that a temporary interruption that does not preclude a speaker from completing his or her public comment does not constitute an improper restriction on public comment. Ill. Att' y Gen. PAC Rev. Ltr. 37496, issued on December 11, 2015, at 3.

2017 PAC 49820, p. 8.

For the reasons stated above, neither the Mayor nor any City Council member violated OMA Section 2.06(g), notwithstanding Mr. Hansen's arguments to the contrary.

Sincerely,

James L. Simon

James L. Simon
City Attorney

cc: Diane Wolfe Marlin, Mayor
City Council members
Carol Mitten, City Administrator