OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

February 10, 2017

*Via electronic mail*
Mr. Craig Stimpert
5 Crestwood Court
Normal, Illinois 61761
craig.stimpert@spreadtruth.com

RE: OMA Request for Review – 2016 PAC 45349

Dear Mr. Stimpert:

The Public Access Bureau has received the attached response letter to your Request for Review from the Town of Normal. You may, but are not required to, reply in writing to the public body's response. If you choose to reply, you must submit your reply to this office within 7 working days of your receipt of this letter. 5 ILCS 120/3.5(c) (West 2015 Supp.). Please send a copy of your reply to Mr. Day as well.

Please contact me at (217) 782-9078 if you have any questions or would like to discuss this matter. Thank you.

Very truly yours,

NEIL P. OLSON
Deputy Public Access Counselor
Assistant Attorney General, Public Access Bureau

Attachment

cc: *Via electronic mail*
Mr. Brain Day
Corporation Counsel
Town of Normal
11 Uptown Circle
Normal, Illinois 61761
bday@normal.org

Town of
Normal

January 30, 2017

*Delivered via U.S. Mail and email: spratt@atg.state.il.us.*

Public Access Counselor
Office of the Attorney General
500 S. 2nd Street
Springfield, Illinois 62701

RE: OMA Request for Review: 2016 PAC 45349
Town of Normal Response

Dear Public Access Counselor:

The Town of Normal has received a Request for Review for 2016 PAC 45465. This Request for Review is about the Town of Normal's public-comment rules.

Mr. Craig Stimpert filed a request for review, alleging that the Town's public comment rules violate §2.06(g) of the Open Meetings Act.[1] The notice of the review was apparently sent by your office via email on December 14, 2016. The email was sent to the Mayor's email account. For whatever reason, that email did not reach the Mayor. When the Town became aware of the pending action, I contacted your office, and a second notice was sent by email to me on January 23, 2017. This correspondence is in response to that second notice. Further correspondence on this matter may be sent to me at bday@normal.org or at the address on this letterhead.

Stimpert's request for review is a general catalogue of complaints against the Town's public-comment rules.

1. 5 ILCS 120/2.06(g).

Some of these matters have been addressed in prior cases. He lists six items of complaint:

1. He challenges the wording of the rules where a person is "permitted" rather than "allowed" to speak. (The Town is unsure of the semantic difference between "permitted" and "allowed" or how that wording could violate the Open Meetings Act.[2])

2. He complains that the 2-hour registration requirement is unduly burdensome. (This notification requirement was worked out through your office in 2013 PAC 25965.)

3. He challenges the requirement that comments are restricted to agenda items. (In 2016 PAC 37631, your office affirmed the Town's authority to restrict public comments to agenda items.)

4. He challenges the time limits. (In *I.A. Rana Enterprises, Inc. v. City of Aurora*,[3] the United States District Court for the Northern District of Illinois upheld reasonable time limits on public speaking.)

5. He challenges the 45-day rule, which allows speakers to comment at a meeting not more than once every 45 days.

6. He challenges the requirements to provide an address. (This is not a rule that has been adopted nor enforced by the Town. The mayor might ask for an address from speakers as a courtesy, but nobody has ever been denied, nor would anybody be denied, the opportunity to speak after refusing to provide an address.)

Stimpert's allegations contain various factual misstatements. First, there was no Council meeting on December 6, 2016. There was a meeting on December 5, 2016; we presume that is

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2. Particularly in light of the fact that the Open Meetings Act uses the word "permitted." See, 5 ILCS 120/2.06(g).

3. *I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F.Supp.2d 912 (N.D. Ill. 2009).

the meeting that Stimpert intended to discuss. Second, nothing in the Town's comment rules would have precluded Stimpert from speaking during the Truth in Taxation hearing. That hearing was open to all members of the public and fell outside of the Town's general public-comment rules. To my knowledge, Stimpert has never been denied the opportunity to comment at a Town of Normal meeting.

This response focuses primarily on the Town's 45-day rule. That is the only rule that Stimpert alleges was enforced against him or a member of the public to restrict comment[4] or that has not been addressed by prior actions of your office. The defense of the 45-day rule, however, would apply equally to any other of the Town's comment rules.

The Town asserts that its comment rules are a valid exercise of its authority under §2.06(g). Both the text and the legislative history of §2.06(g) grant public bodies very broad discretion in adopting comment rules. And the public-comment rules are viewpoint neutral, so they do not conflict with any constitutional restrictions.

## 1. The Town's 45-Day Rule.

In 2011, the Board of Trustees passed the public-comment rules. The Town's rules for public comments are available to the public on the Town's website.[5] The rules were in response to a change in the Open Meetings Act concerning the ability of individuals to address public officials.[6]

The purpose of the 45-day rule is to effectively conduct Town business. Courts have recognized that the effective and efficient conduct of public business is, in and of itself, a significant

4. *See*, 2016 PAC 37631, FN2 (declining to address complaints about Town rules where there are no allegations that the rules were enforced).
5. http://www.normal.org/854/Addressing-the-Council.
6. Public Act 96-1473.

government interest.[7] At any given meeting, there may be limited time available for public comment, and allowing one individual to monopolize the comment time will reduce the time available to other commenters. The 45-day rule is intended to provide more access to public comment among a broader range of citizens.

The 45-day rule is applied to all individuals equally without regard to the potential commenter's identity or to the contents of his or her message.

The Town's comment rules provide that the Mayor may suspend the 45-day rule (and other regulations) in order to provide additional comment as may be appropriate. This happened, for instance, during the meeting of December 12, 2016, where the Council considered a redevelopment agreement for the purchaser of the prior Mitsubishi Plant. The rule also does not apply to any public hearings that the Town conducts. This recently occurred on December 12, 2016, where all members of the public were allowed to comment during the public hearing concerning the Town's property-tax levy.

The Town provides alternate means for an individual to address public officials through written comment. Written comments may be submitted to the Town Council at any time, and in any frequency, without limitation. The Town website provides the email addresses and phone numbers of the Mayor, Councilmembers, the City Manager, and the Deputy City Manager.[8] The website also sets forth the contact information of Department Heads, Supervisors, and other Town Staff.[9] Written comments are copied and distributed to all elected officials, upon request of the commenter.

The 45-day rule—along with all of the Town's comment rules—is a local legislative enactment. Such an enactment is

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7. *See e.g., I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F.Supp.2d 912, 924 (N.D. Ill. 2009) and *White v. City of Norwalk*, 900 F.2d 1421, 1425 (9th Cir. 1990).
8. Available at http://www.normal.org/index.aspx?NID=97.
9. See generally, http://www.normal.org/index.aspx?NID=8.

presumed valid, and the burden of establishing invalidity rests upon those who challenge it.[10]

In 2014, the Town amended its public-comment rules.[11] This amendment was made in consultation with your office after a request for review was filed over the Town's comment rules.[12] Your office mediated the matter, and the Town agreed to amend its rules to shorten the pre-notification period to two hours. The 45-day rule was left intact after that consultation.

## 2. The Town's Public Comment Rules do not conflict with any requirement of §2.06(g).

### 2.1. The background of §2.06(g).

The Open Meetings Act contains only one sentence about addressing public officials: "Any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body."[13] That is all that the Act has to say on the matter. To date, no court has interpreted the scope of this Section.[14]

Section 2.06(g) was passed by the General Assembly in 2010. The bill, House Bill 5483, was introduced by Representative Renée Kosel. After passing the House, the bill was sponsored in the Senate by Sen. Susan Garrett. Senator Garrett amended the bill. The amendment removed the requirement that the address had to occur at a public meeting. The Senate approved the amended version of the bill and sent it back to the House

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10. *Forest Pres. Dist. Loren & Gisela Brown Family Trust*, 323 Ill. App.3d 686, 692 (2d Dist. 2001).
11. Resolution No. 4954.
12. 2013 PAC 25965.
13. 5 ILCS 120/2.06(g).
14. In *Roxana Cmty. Unit Sch. Dist. No. 1 v. EPA*, 2013 IL APP (4th) 120825, 958, the Fourth Dist. Appellate Court held that the Pollution Control Bd. violated §2.06(g)by not allowed any comments at a public quasi-judicial hearing, but nothing in that case examined the scope or application of the Board's rules, and it appears that the Board admitted a violation. *See id.* at 957

for concurrence. The House concurred with the amended version. The Governor signed the bill in August of 2010, and the bill became effective on January 1, 2011.[15]

The purpose of the bill, as amended, was not to require public comment, but to make sure that the regulation of any such comments were done through a formal process.[16] This advances two important policies. First, it lets the public know what the rules are, leading to a better understanding as to how to participate in the democratic process. Second, the rules help ensure a more consistent and equitable treatment between individuals, thus reducing the potential for constitutional violations.

2.2. The Text of §2.06(g) allows for the Town's rule.

Courts (and the Attorney General) must give statutory language its plain and ordinary meaning; they are not free to construe a statute in a manner that alters the plain meaning of the language adopted by the legislature.[17] The primary objective in interpreting a statute is to give effect to the legislative intent—and the best indicator of that legislative intent is the text of the statute, itself.[18]

If the text of the Open Meetings Act is unambiguous, then it must be applied as written. The Attorney General is not entitled to any deference in the interpretation of unambiguous

15. *See*, 96 HB5483 Bill Status, available at http://www.ilga.gov/legislation/billstatus.asp?DocNum=5483&GAID=10&GA=96&DocTypeID=HB&LegID=50537&SessionID=76.
16. *See*, 96th General Assembly Senate Transcription Debate, May 4, 2010, pg. 118-19 (Statement of Sen. Garrett)("Basically, what this amendment does is to make sure that the municipality has procedures in place for public testimony").
17. *Murray v. Chicago Youth Center*, 224 Ill.2d 213, 235 (2007).
18. Board of Educ. of Springfield Sch. Dist. No. 186 v. Attorney General, 2017 IL 120343, ¶24.

text.[19] The Attorney General may not impose additional requirements beyond those imposed by the Open Meetings Act.[20]

A statute is ambiguous only if it is susceptible to more than one equally reasonable interpretation. In examining the statute, one must construe the statute so that no part is rendered meaningless or superfluous.[21]

The text of §2.06(g) is one sentence consisting of two clauses: (i) Any person shall be permitted an opportunity to address public officials (ii) under the rules established and recorded by the public body. The second clause is a prepositional phrase, which modifies the predicate ("shall be permitted to address") of the first clause. Therefore, the permission to address officials is dependent on the public body's rules. There is no other grammatically valid way to read this statute. Any other reading would require the interpreter to add, subtract, or rearrange the words of the sentence.

Under the text of §2.06(g), a public body may regulate the address of public officials—including comment at meetings—only in accordance with its adopted rules. Nothing in the text of this statute refers to "public comment." Nothing in the text of this statute mandates the forum or manner in which the address may be made. Nothing in the text of this statute limits the authority of a public body to enact rules. To impose limits or restrictions on the Town's ability to adopt rules would be to impose additional requirements beyond those imposed by the plain language of the statute. That would be improper.[22]

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19. *Id.* at ¶23.
20. *Id.* at ¶47 ("Because the Attorney General would read into this phrase additional requirements that are not supported by the text, we give no deference to her interpretation of this phrase").
21. *Id.* at ¶25.
22. *Id.* at ¶47.

2.3. The legislative history of §2.06(g) validates the Town's rule.

The plain language of the §2.06(g) is unambiguous, and it allows the Town's rule. But on top of that, the Town's rule-making authority is validated by the statute's history.

The legislative history indicates that (i) §2.06(g) does not require public comment at meetings and (ii) public bodies have extremely broad discretion in crafting rules for addressing officials.

First is the amendment to remove the requirement that "addressing public officials" occur at a meeting. As originally introduced, the legislation would have stated that the address to officials must occur at a public meeting.[23] But the General Assembly struck that requirement.[24] That strike-out cannot be classified as a mistake or "clean-up" because the amendment only did one thing—it removed the public-comment requirement. The General Assembly expressly and purposefully removed the requirement that the address to public officials must occur at a public meeting. It would be inappropriate for the Attorney General to reinsert what the General Assembly purposefully omitted.

Not only did the General Assembly delete the public-comment requirement of §2.06(g), but the bill's sponsors said on the record that the reason for this deletion was to ensure the public bodies had the unfettered ability to create comment rules. In explaining the amendment, the House sponsor indicated that it "clarifies that *local governing bodies are able to create whatever rules they would like to create for open meeting comment.*"[25] This sentiment is echoed in the statement of the Senate sponsor, who stated that the statute "gives any person the opportunity to address public officials *as long as it is done according to the public body's rules.*"[26]

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23. 96 HB 5483, House Amendment No. 1
24. 96 HB 5483, Senate Amendment No. 2.
25. 96th General Assembly House of Representatives Transcription Debate, May 26, 2010, pg. 157 (Statement of Rep. Kosel)(emphasis added).
26. 96th General Assembly Senate Transcription Debate, May 4, 2010, pg. 119 (emphasis added) (Statement of Sen. Garrett).

The General Assembly amended its legislation to clarify that §2.06(g) did not require public comment at meetings. The bill's sponsor stated that the intent was to ensure that local governments could create whatever public-comment rules that they wanted. It is hard to get much clearer than that. Any restriction on the Town's authority to craft public-comment rules would directly contravene the stated intent of the legislators who enacted the statute.

### 3. The Town's Rule conforms to Constitutional requirements because it is viewpoint neutral.

First Amendment principles apply to all government meetings, from Congress, to state legislatures, to city halls. The requirements of the First Amendment predate—and are distinct from— the requirements of the Open Meetings Act. While the Attorney General has the authority to decide violations of the Open Meetings Act, nothing grants authority to decide constitutional issues that fall outside of the scope of the Act.[27]

The determination of whether certain rules are reasonable is one that is not within the purview of the Public Access Counselor's Office. The Open Meetings Act does not concern itself with the reasonableness of the public body's regulations, it merely states that a resident shall be "permitted an opportunity to address public officials *under the rules established and recorded by the public body*."[28]

The Constitution does not convey any right to speak at a public meeting; a public meeting may be completely closed to public comment.[29] But once it is opened to public comment,

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27. 5 ILCS 120/3.5.
28. 5 ILCS 120/2.06(g) (emphasis added).
29. *Minnesota State Bd. for Community Colleges v. Knight*, 465 U.S. 271, 283 (1984)("The Constitution does not grant to members of the public generally a right to be heard by public bodies making decisions of policy"); *see also, Madison School Dist. v. Wisconsin Employment Relations Comm'n*, 429 U.S. 167, 175 (1976).

then that meeting becomes a limited or designated public forum.[30] Generally, any restrictions on speech in a public forum are limited to time, place, and manner restrictions, prohibiting the public body from content-based limitations.[31] The courts, however, have recognized the unique nature of council meetings and have allowed some restrictions that could be classified as "content based."[32]

A council meeting is a governmental process with a governmental purpose, which is to address the items on its agenda.[33] Because of this special nature of a public meeting, "the usual first amendment antipathy to content-oriented control of speech cannot be imported into the Council chambers intact."[34] To protect the integrity dignity of public proceedings, courts have consistently allowed restrictions for relevancy, time, and redundancy.[35] Courts have upheld generally applicable rules about public comments. Where courts have found violations is where the comments were restricted because of disagreement with the speakers' viewpoint or enmity against a certain speaker.[36]

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30. *See, e.g., Rowe v. City of Cocoa*, 358 F.3d 800, 803 (11th Cir. 2004)(holding that a city council meeting is a limited public forum); *White, supra* note 2; *Jocham v. Tuscola County*, 239 F. Supp. 2d 714, 728 (E.D. Mich. 2003)("A city council meeting is the quintessential limited public forum, especially when citizen comments are restricted to a particular part of the meeting").
31. *See, White v. City of Norwalk*, 900 F.2d 1421, 1425 (9th Cir. 1990).
32. *Id.*
33. *Id.*
34. *Id.*
35. *Id.*; *I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp.2d 912, 923-25 (upholding city's comment restrictions for time, germaneness, and relevance); *see generally, Zapach v. Dismuke*, 134 F. Supp. 2d 682, 692 (E.D. Pa. 2001) (collecting cases).
36. *See e.g., Perry Educ. Ass'n v. Perry Local Educator's Ass'n*, 460 U.S. 37, 60-61 (1983) (Brennan,J., dissenting); *Surita v. Hyde*, 665 F.3d 860, 869 (7th Cir. 2011)(finding a violation where mayor would not let speaker comment until he apologized for prior comments).

Constitutional requirements can be satisfied if a commenter is allowed to submit written comment in lieu of oral comments.[37]

A public body has a significant government interest in conserving time and ensuring that others have the ability to speak.[38] The Town's 45-Day Rule furthers this interest. It is intended to prevent individuals from monopolizing comment opportunities and fosters broader participation among the citizens.

The 45-Day Rule is viewpoint neutral. The regulation is not based on the Town's agreement or disagreement with anything that a potential commenter may say.

**4. Conclusion.**

The 45-Day Rule is part of the Town's comment rules, which have been properly passed and recorded as required by §2.06(g) of the Open Meetings Act. Under both the text and the history of the statute, the Town has broad authority to create public-comment rules. The 45-day rule falls within that broad authority.

The 45-day rule is viewpoint neutral and does not discriminate between speakers. It is rationally related to the significant government interest of the effectively and efficiently conducting public business.

37. *I.A. Rana Enterprises, Inc.*, 630 F. Supp.2d at 924 (*citing, Wright v. Anthony*, 733 F.2d 575, 577 (8th Cir. 1984)).
38. *I.A. Rana Enterprises, Inc.*, 630 F. Supp.2d at 924 (*citing, Wright v. Anthony*, 733 F.2d 575, 577 (8th Cir. 1984)).

Thank you for your consideration on this matter. I look forward to your response.

B. D. Day

Brian Day
Corporation Counsel
Town of Normal

cc: President of the Board of Trustees
City Manager
Town Clerk