OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 1, 2016

Via electronic mail
[redacted]

The Honorable Earl "Joe" Harness, Jr.
Mayor Pro Tempore
City of Carrollton
621 South Main Street
Carrollton, Illinois 62016

Re: OMA Request for Review 2015 PAC 38037

Dear [redacted] and Mr. Harness:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2015 Supp.)). For the reasons discussed below, this office concludes that the City Council (Council) of the City of Carrollton (City) violated section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2014)) by restricting public comment to City residents and to items listed on the agenda during the Council's October 13, 2015, meeting.

BACKGROUND

On October 14, 2015, [redacted] submitted a Request for Review alleging that the Council limited public comment at its October 13, 2015, regular meeting to matters on the agenda and prohibited attendees who were not City residents, including [redacted], from addressing the Council. On October 20, 2015, the Public Access Bureau sent a copy of the Request for Review to the Mayor Pro Tempore (Mayor), in his capacity as the head of the Council, and asked for a written response to the allegations therein. This office also requested a copy of any established and recorded Council rules governing public comment during meetings, and copies of the agenda, open session minutes, and any audio or video recordings of the October 13, 2015, meeting. On October 26, 2015, the City Clerk provided this office with a

copy of the agenda and an audio recording of the meeting. Additionally, on November 9, 2015, this office received the Mayor's written response to the allegations in which he confirmed that he had limited public comment to "subjects on the agenda" and prohibited non-residents of the City from addressing the Council "since these have been the people most disrupted [sic] in conducting a meeting for the past 4 mos."[1] On November 13, 2015, this office forwarded a copy of the Mayor's response to [redacted]. On November 16, 2015, she replied by emphasizing that Mayor's response acknowledged that the conduct she had alleged "did indeed take place."[2]

On November 18, 2015, the City Clerk confirmed to the Public Access Bureau via e-mail that on the date of the meeting in question the City did not have established and recorded rules concerning public comment during Council meetings. On December 8, 2015, the City Clerk provided the Public Access Bureau with a copy of the minutes of the Council's October 13, 2015, meeting.

DETERMINATION

Section 2.06(g) of OMA, which was added by Public Act 96-1473, effective January 1, 2011, provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body."

In its response to this office, the Council acknowledged that the Mayor restricted public comment at the October 13, 2015, meeting to residents of the City and to matters listed on the agenda. The meeting minutes corroborate that the Mayor announced that "comments would be limited to the agenda and would be limited to citizens of the city only."[3] To explain those extemporaneous restrictions, the Mayor asserted that non-residents were being prohibited from addressing the Council because they had been disruptive at past meetings. However, the Council did not cite any evidence that [redacted] or any other non-resident had been disruptive at any prior meeting, nor did it assert that any non-resident was disruptive during the October 13, 2015, meeting. In fact, [redacted] and other non-residents were given no opportunity to address the Council during the public comment portion of the meeting before or after the Mayor stated that they would be prohibited from speaking. Therefore, the Council did not establish that it was necessary or even reasonable to categorically prohibit all non-residents from commenting in order to maintain order at the meeting.

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[1]Letter from [Earl "Joe" Harness, Jr.] to Leah Bartelt, Ass't Attorney General, Public Access Bureau (undated).

[2]E-mail from [redacted] to Public Access and Leah Bartelt (November 16, 2015).

[3]City of Carrollton City Council, Regular Meeting, October 13, 2015, Minutes 5.

With respect to limiting public comment to agenda items, the Mayor stated in the Council's response that he imposed that restriction because "we must post [the agenda] 48 hrs in advance and once inside 48 hrs the agenda is cast in stone for the Council[.]"[4] Although section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2014)) does require a public body's posted agenda to "set forth the general subject matter of any resolution or ordinance that will be the subject of ***final action*** at the meeting[ ]" (emphasis added), that provision does not prohibit ***discussion*** of matters not on an agenda by the public body, nor does it prohibit members of the public from commenting on matters that do not appear on the agenda during the public comment portion of the meeting. *Rice v. Board of Trustees of Adams County, Ill.*, 326 Ill. App. 3d 1120, 1123 (4th Dist. 2002) (concluding that a public body may "consider" items not specifically set forth on an agenda by deliberation and discussion, but may not take final action without sufficient advance notice on the agenda). Further, it is undisputed that the Council had not established and recorded any rules limiting public comment to agenda items or excluding non-residents from addressing the Council. Accordingly, this office concludes that the Council violated section 2.06(g) of OMA during its October 13, 2015, meeting by extemporaneously imposing those restrictions.

Moreover, a rule purporting to limit the right to comment to residents of the City would run afoul of section 2.06(g) of OMA. Section 2.06(g) specifically provides that "***[a]ny person*** shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." (Emphasis added.) Although a public body may adopt reasonable rules governing the manner in which members of the public provide comments during open meetings, "a person's right to comment at an open meeting is not contingent upon where he or she resides." Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 7. Accordingly, this office concludes that a rule establishing a blanket prohibition on public comment by non-residents would impermissibly restrict the right to public comment guaranteed by section 2.06(g) of OMA.

Similarly, a rule limiting participants to speaking only on subjects listed on the agenda would also exceed the scope of permissible rulemaking authorized by section 2.06(g). As discussed above, OMA does not preclude members of a public body from "the consideration of items not specifically set forth in the agenda," (5 ILCS 120/2.02(a) (West 2014)), as long as the public body does not take final action on items not listed on the agenda. Given that the public body itself is able to discuss matters that are not specifically listed on the agenda, a rule that would prohibit members of the public from addressing matters that are not listed on the agenda would impermissibly restrict the right to public comment as outlined in section 2.06(g).

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[4]Letter from [Earl "Joe" Harness, Jr.] to Leah Bartelt, Ass't Attorney General, Public Access Bureau (undated).

In accordance with this determination, the Public Access Bureau suggests that the Council consider appropriate action to establish and record reasonable rules to govern public comment at its meetings.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at (312) 814-6437. This letter serves to close this matter.

Very truly yours,

[redacted]

LEAH BARTELT
Assistant Attorney General
Public Access Bureau

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