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By: AM

*Susan W. McGee*  
CLERK OF THE CIRCUIT COURT  
CHAMPAIGN COUNTY, ILLINOIS

15948-24  
KEF/tlp

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

JOHN KRAFT, KIRK ALLEN, )  
CHRISTOPHER HANSEN, )

Plaintiffs, )

v. )

No.: 2020-CH-000121

CITY COUNCIL OF CITY OF URBANA, )  
MAYOR OF URBANA, DIANE MARLIN, )

Defendants. )

**ANSWER TO COMPLAINT**

NOW COME the Defendants, CITY OF URBANA, ILLINOIS (improperly named and referred to as CITY COUNCIL OF CITY OF URBANA) and MAYOR OF URBANA, DIANE MARLIN, by Keith E. Fruehling of Heyl, Royster, Voelker & Allen, their attorneys, and for their Answer to the Complaint of the Plaintiffs, JOHN KRAFT, KIRK ALLEN, and CHRISTOPHER HANSEN, 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.

**ANSWER: Defendant allows the language of the statute cited to speak for itself; all other allegations are denied.**

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).

**ANSWER: Defendant allows the language of the statute cited to speak for itself; Defendant admits this language appears in the statute cited.**

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

**ANSWER: Objection – this is a vague, legal conclusion, not a fact and therefore improper. To the extent it is deemed otherwise, Defendants deny the allegations as alleged.**

#### **PARTIES**

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

**ANSWER: Defendants do not have sufficient information with which to admit or deny the allegations of this paragraph; and, therefore deny the same.**

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

**ANSWER: Admit that the “City Council” is the legislative component of the City of Urbana, IL and that the City of Urbana, Illinois is located within the confines of Champaign County, Illinois. The remaining allegations are legal conclusions and therefore improper. To the extent they are deemed otherwise, Defendants deny all remaining allegations.**

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

**ANSWER: Defendant acknowledges that Plaintiff has named Mayor Diane Marlin in her official capacity – the Office of the Mayor of Urbana, Illinois.**

**BACKGROUND**

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

**ANSWER: Admit.**

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

**ANSWER: Admit.**

9. CITY COUNCIL used "Zoom" and used its videoconferencing feature.

**ANSWER: Admit.**

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>.*

**ANSWER: Admit.**

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.

**ANSWER: Admit.**

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

**ANSWER: Denied.**

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).

**ANSWER: Defendants allow the statute cited to speak for itself.**

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

**ANSWER: Denied.**

**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).

**ANSWER: Admit.**

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

**ANSWER: Denied.**

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.”

**ANSWER: Admit as to “verbal input” comments, denied as to as to others and the remaining allegations.**

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).

**ANSWER: Denied as alleged.**

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).

**ANSWER: Denied as alleged.**

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

**ANSWER: Denied as alleged.**

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).

**ANSWER: Defendants admit that one member of the URBANA CITY COUNCIL expressed a concern that someone might or could attempt to construe the subject policy as a “content” based restriction rather than manner-related restrictions. Defendants deny the remaining allegations.**

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.*

**ANSWER: Defendants admit that one council member expressed a concern about the subject policy and related action being potentially construed as impacting the content of public input based on “what they’re hearing” rather than “how they’re hearing it.” Defendants deny the remaining allegations.**

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).

**ANSWER: Denied as alleged.**

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).

**ANSWER: Defendants allow the statute cited to speak for itself.**

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

**ANSWER: Denied.**

**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.

**ANSWER: Denied as alleged.**

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>.

**ANSWER: Admit the quoted language and identity of the speaker's name provided but deny all remaining allegations.**

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

**ANSWER: Admit the quoted language and speaker but deny all remaining allegations.**

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

**ANSWER: Defendants have no information as to the speaker's intent and therefore have insufficient information with which to admit or deny the related allegation. Therefore, Defendants deny the allegations as alleged. Moreover, Defendants deny the allegations' assertion that Mayor Marlin's statement or the City's policies prevented the referenced speaker from speaking any further.**

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

**ANSWER: Denied as alleged.**

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.*

**ANSWER: Defendants admit the quoted language but deny the remaining allegations as alleged.**

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

**ANSWER: Admit that an individual that identified herself as Tracy Chong identified other individuals by name in violation of the subject policy. Admit the second sentence. Defendants deny the remaining allegations as alleged.**

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).

**ANSWER: Defendants allow the statute cited to speak for itself.**

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

**ANSWER: Denied.**

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.

**ANSWER: Denied.**

**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.

**ANSWER: Denied.**

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>.

**ANSWER: Denied as alleged.**

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).

**ANSWER: Admit that an individual that self-identified himself as “Hansen” identified other individuals by name in violation of the policy. Admit the second sentence. Defendants deny the alleged time stamp alleged.**

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).

**ANSWER: Admit but deny the time stamp alleged.**

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).

**ANSWER: Admit the first sentence. Deny the remaining allegations as alleged.**

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).

**ANSWER: Defendants allow the statute cited to speak for itself.**

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

**ANSWER: Denied.**

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.

**ANSWER: Denied.**

**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.

**ANSWER: Denied.**

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>.

**ANSWER: Denied as alleged.**

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.*

**ANSWER: Denied as alleged.**

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

**ANSWER: Denied as alleged.**

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

**ANSWER: Denied.**

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).

**ANSWER: Defendants allow the statute cited to speak for itself.**

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

**ANSWER: Denied.**

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.

**ANSWER: Denied.**

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.

**ANSWER: Denied.**

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

**ANSWER: Denied.**

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

54. The above paragraphs are incorporated by reference.

**ANSWER: Defendants hereby adopt and incorporate their answers to Paragraphs 1 through 54 above as and for their answers to this paragraph as though they were set forth completely here.**

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

**ANSWER: Admit.**

56. CITY COUNCIL 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.

**ANSWER: Denied.**

WHEREFORE, the Defendants pray that judgment be entered in their favor and against the Plaintiffs, and that Defendants recover their costs of suit.

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

57. The above paragraphs are incorporated by reference.

**ANSWER: Defendants hereby adopt and incorporate their answers to Paragraphs 1 through 56 above as and for their answers to this paragraph as though they were set forth completely here.**

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

**ANSWER: Admit.**

59. CITY COUNCIL 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.

**ANSWER: Denied.**

WHEREFORE, the Defendants pray that judgment be entered in their favor and against the Plaintiffs, and that Defendants recover their costs of suit.

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

60. The above paragraphs are incorporated by reference.

**ANSWER: Defendants hereby adopt and incorporate their answers to Paragraphs 1 through 59 above as and for their answers to this paragraph as though they were set forth completely here.**

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

**ANSWER: Admit.**

62. CITY COUNCIL 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.

**ANSWER: Denied.**

WHEREFORE, the Defendants pray that judgment be entered in their favor and against the Plaintiffs, and that Defendants recover their costs of suit.

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

63. The above paragraphs are incorporated by reference.

**ANSWER: Defendants hereby adopt and incorporate their answers to Paragraphs 1 through 62 above as and for their answers to this paragraph as though they were set forth completely here.**

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

**ANSWER: Admit.**

65. There is probable cause to believe that CITY COUNCIL 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.

**ANSWER: Denied.**

WHEREFORE, the Defendants pray that judgment be entered in their favor and against the Plaintiffs, and that Defendants recover their costs of suit.

CITY OF URBANA, ILLINOIS and MAYOR OF  
URBANA, DIANE MARLIN, Defendants

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**CERTIFICATE OF FILING AND PROOF OF SERVICE**

I certify that on January 18, 2021, before 5:30 p.m., I electronically filed and transmitted the foregoing ANSWER TO COMPLAINT with the Clerk of the Court for the Sixth Judicial Circuit, Champaign County, Illinois by using the Odyssey eFileLL system.

I further certify that on January 18, 2021, the individuals named below have been served by transmitting a copy from my e-mail address to all primary and secondary e-mail addresses of record designated by those individuals.

Matthew Topic, Esq.  
Joshua Burday, Esq.  
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Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure [735 ILCS 5/1-109], I certify that the statements set forth in this **Certificate of Filing and Proof of Service** are true and correct, except as to matters therein stated to be on information and belief and as to such matters I certify as aforesaid that I verily believe the same to be true.

/s/ Tammy Parker  
Heyl, Royster, Voelker & Allen, PC

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