OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

November 21, 2023

Via electronic mail
The Honorable Raymond Lopez
Alderman – 15th Ward
Raymond.lopez@cityofchicago.org

Via electronic mail
Mr. Jeff Levine
Deputy Corporation Counsel
Department of Law
City of Chicago
121 North LaSalle Street, Suite 600
Chicago, Illinois 60602
jeffrey.levine@cityofchicago.org

RE: OMA Request for Review – 2023 PAC 78458

Dear Alderman Lopez and Mr. Levine:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2020)). For the reasons stated below, this office concludes that the City of Chicago City Council (City Council) did not violate OMA in connection with its October 4, 2023, meeting.

On October 5, 2023, Alderman Raymond Lopez submitted a Request for Review on behalf of himself and ten other members of the City Council alleging that the City Council violated OMA. Specifically, the Request for Review alleged that the City Council changed the agenda of its October 4, 2023, meeting less than 24 hours before the meeting commenced to add an agenda item concerning the One Fair Wage ordinance which had been inadvertently omitted from the original agenda that was posted 48 hours before the meeting. The Request for Review also alleged that the City Council improperly took action on that agenda item by moving ahead with a motion to defer and publish the ordinance and scheduling an October 6, 2023, meeting to approve the ordinance.

On October 13, 2023, the Public Access Bureau sent a copy of the Request for Review to the City's Department of Law and requested copies of the original agenda of the October 4, 2023, meeting and any amended or altered version of the agenda along with any minutes and recording of the open session portion of the meeting. This office also requested a written response specifying when and where the original agenda and any amended or altered version of the agenda were posted. In addition, we requested a description of any discussions, deliberations, votes, or motions concerning the One Fair Wage ordinance and an explanation of whether any actions that were taken on the ordinance at the October 4, 2023, meeting constituted "final action" for purposes of OMA. On October 20, 2023, the Department of Law provided the requested materials on behalf of the City Council. On October 23, 2023, this office forwarded the written response to the members of the City Council who filed the Request for Review; we did not receive replies.

DETERMINATION

It is "the public policy of this State that its citizens shall be given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon in any way." 5 ILCS 120/1 (West 2020). "The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (1989).

Section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2022)) provides, in pertinent part:

> An agenda for each **regular meeting** shall be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting. A public body that has a website that the full-time staff of the public body maintains shall also post on its website the agenda of any regular meetings of the governing body of that public body. Any agenda of a regular meeting that is posted on a public body's website shall remain posted on the website until the regular meeting is concluded. The requirement of a **regular meeting agenda** shall not preclude the consideration of items not specifically set forth in the agenda. (Emphasis added.)

Section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2022)) further provides:

> The public body conducting a public meeting shall ensure that at least one copy of any requested notice and agenda for the meeting is **continuously available** for public review during the entire 48-hour period preceding the meeting. Any agenda required under this Section shall set forth the **general subject matter of any resolution or ordinance that will be the subject of final action** at the meeting. The public body conducting a public meeting shall ensure that at least one copy of any requested notice and agenda for the meeting is continuously available for public review during the entire 48-hour period preceding the meeting. " (Emphasis added.)

The plain language of section 2.02(a) of OMA does "not preclude the consideration of items not specifically set forth in the agenda[ ]" for a regular meeting. In other words, a public body may discuss—but not take final action—on topics that are not listed on a regular meeting agenda.[1] *Rice v. Board of Trustees of Adams County*, 326 Ill. App. 3d 1120, 1123 (2002) ("We find 'the consideration of' items not specifically set forth in the agenda to be in the nature of deliberations and discussion and not actions taken."). Because OMA permits discussion of topics that do not appear on regular meeting agendas, the Attorney General has issued a binding opinion concluding that a public body may revise a regular meeting agenda less than 48 hours before a meeting so long as the public body does not take final action on any matter that had not been properly noticed on the agenda for at least 48 hours. Ill. Att'y Gen. Pub. Acc. Op. No. 14-003, issued May 5, 2014, at 4-5 (public body did not violate OMA by deleting items and re-posting agenda less than 48 hours before meeting because it did not take final action on the deleted items).

The City Council attached to its October 4, 2023, meeting agenda various committee agendas and reports and incorporated them by reference by stating on the agenda that "[t]he committee agendas/reports posted on the Chicago City Council Calendar list the items that may be called for a vote at the City Council meeting and are considered to be part of the City Council meeting agenda."[2] The City Council's response to this office stated that the October 4, 2023, meeting agenda was posted more than 48 hours before the meeting, but staff subsequently determined that the Committee on Workforce Development report that listed the One Fair Wage

---

[1]Because the plain language of section 2.02(a) of OMA only authorizes consideration of items not set forth on a regular meeting agenda, a public body violates OMA by discussing matters during a special meeting which are not listed on the agenda. *E.g.*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 30368, issued December 17, 2014, at 4.

[2]Chicago City Council, Regular Meeting Agenda (October 4, 2023).

ordinance "had been inadvertently omitted from the agenda[.]"[3] The response also stated that this report was posted on October 3, 2023, "as a separate document entitled 'Amendment to Agenda.' The Department of Law acknowledges that this amendment to the agenda was not timely posted for purposes of enabling final action on the ordinance pursuant to section 2.02(c) of OMA."[4] In order to allow time to provide sufficient advance notice before the City Council acted on the ordinance at its October 6, 2023, meeting, the City Council's response stated, the chairman of the Workforce Development Committee along with two other members of the City deferred action on the ordinance pursuant to a provision of the Municipal Code[5] that provides: "Upon the request of any 2 alderpersons present, any report of a committee of the council shall be deferred for final action to the next regular meeting of the council after the report is made." According to the City Council, "what occurred at the Oct 4 City Council meeting, far from violating OMA, was a textbook example of compliance with OMA, in that an item which had not been publicly posted for the full 48 hours was simply deferred to a subsequent meeting."[6]

This office's review of a video of the meeting[7] is consistent with the description in the City Council's response. The Mayor agreed to allow an alderman to present the Workforce Development Committee's report concerning the One Fair Wage ordinance, with the intent that it be deferred and published for action at the next meeting. Another alderman objected because the item was added to the agenda less than 48 hours before the meeting. The Mayor stated that a City Council rule authorized him to exercise discretion to permit the report to be presented, subject to appeal. After the City Council voted to deny the appeal and uphold the Mayor's decision, the report was presented and deferred and published. Following that vote, a member of the City Council made a motion to hold an October 6, 2023, meeting to consider the One Fair Wage ordinance. Aldermen again argued that action concerning the One Fair Ordinance was not permitted pursuant to OMA, as well as City Council rules, because it did not appear on the agenda posted more than 48 hours before the October 4, 2023, meeting. An alderman stated: "Parliamentary procedure is sacred. * * *. My concern here is that using parliamentary

---

[3]Letter from Jeff Levine, Deputy Corporation Counsel, Department of Law, City of Chicago, to Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General (October 20, 2023), at 1.

[4]Letter from Jeff Levine, Deputy Corporation Counsel, Department of Law, City of Chicago, to Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General (October 20, 2023), at 1.

[5]65 ILCS 5/3.1-40-35 (West 2022).

[6]Letter from Jeff Levine, Deputy Corporation Counsel, Department of Law, City of Chicago, to Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General (October 20, 2023), at 2.

[7]City of Chicago City Council, *October 4, 2023, Regular Meeting*, Vimeo (October 4, 2023) https://vimeo.com/870787030 (23:25-49:48).

procedure to contort our rules to serve the pleasure of the day is a dangerous precedent for us."[8] After a motion to table the motion failed, the City Council approved scheduling a meeting for October 6, 2023; the City Council voted to approve the ordinance at that meeting.[9]

It is undisputed that the City Council altered the agenda of its October 4, 2023, meeting less than 48 hours before the meeting commenced by posting an amendment to the agenda containing the general subject matter of the One Fair Wage ordinance. Therefore, our determination in this matter hinges on whether the City Council violated section 2.02 of OMA by taking "final action" on the One Fair Wage ordinance at its October 4, 2023, meeting without providing advance notice on the original agenda that was continuously posted more than 48 hours before the meeting.

In *Gosnell*, 179 Ill. App. 3d at 176, the plaintiff alleged that a school board impermissibly took final action in closed session by making a request for mediation as an alternative to the negotiations it had been conducting with the secretaries' union. The Illinois Appellate Court rejected that allegation, holding that the school board took only an intermediate step toward resolving the dispute:

> [T]he request for mediation was part of the process of reaching a final action with the secretaries union. Mediation, similar to negotiating, is not an end in itself, but rather, a means to an end. Negotiations and mediations are made up of many "unilateral" decisions, such as what to offer or counteroffer, and to hold that each of the unilateral strategical decisions that make up the constituent parts of a negotiation is in and of itself a final action is unreasonable. *Gosnell*, 179 Ill. App. 3d at 176.

In accordance with that reasoning, this office has consistently determined that a component of a public body's process of reaching final action generally does not, itself, constitute final action for purposes of OMA. *See, e.g.*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 52804, issued July 31, 2018, at 5 (by reaching a consensus on jurisdictional issues concerning the scope of public body's review of a complaint, public body took an intermediate step in the process of resolving the complaint, rather than final action on the complaint); Ill. Att'y Gen. PAC Req. Rev. Ltr. 43111, issued August 4, 2016, at 3 (vote to reconsider whether to award a contract to the low qualified bidder

---

[8]City of Chicago City Council, *October 4, 2023, Regular Meeting*, Vimeo (October 4, 2023) https://vimeo.com/870787030 (41:40-41:56).

[9]Alice Yin, *Chicago becomes largest US city to independently abolish subminimum wage for tipped workers*, CHICAGO TRIBUNE (Oct. 6, 2023, 1:46 p.m.), https://www.chicagotribune.com/politics/ct-chicago-council-votes-eliminate-lower-tipped-minimum-wage-20231006-xg5vpkqcxnfqhe5fqogxrpbcua-story.html

was not final action because it "did not resolve the matter—final action on whether to in fact award the contract was held over until the next meeting.").

The City Council took two votes related to the One Fair Wage Ordinance at its October 4, 2023, meeting: (1) Upholding the Mayor's exercise of discretion, pursuant to a City Council rule, to permit the presentation of the Workforce Development Committee's report concerning the ordinance; and (2) approving a motion to hold a special meeting on October 6, 2023, to take action on the ordinance. These were intermediate steps in a process that culminated with the approval of the One Fair Wage ordinance at the October 6, 2023, meeting. The votes taken at the October 4, 2023, meeting did not bring the proposed ordinance to a resolution and, therefore, they were not forms of "final action" for purposes of OMA. Because the City Council was required to include only final action items on the agenda that was continuously posted at least 48 hours before the meeting commenced, this office concludes that the City Council did not violate section 2.02 of OMA.

With respect to parliamentary procedure and City Council rules, the Public Access Counselor's authority is limited to reviewing alleged violations of OMA and the Freedom of Information Act.[10] 15 ILCS 205/7 (West 2022). This office does not have jurisdiction to review whether the Council complied with its own rules and parliamentary procedure.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have questions, you may contact me at (312) 814-6756 or steven.silverman@ilag.gov. This file is closed.

Very truly yours,

[redacted]

STEVE SILVERMAN
Bureau Chief
Public Access Bureau

78458 o 202 notice proper mun

[10]5 ILCS 140/1 *et seq*. (West 2020).

cc: *Via electronic mail*
The Honorable Brian Hopkins
Alderman – 2nd Ward
Brian.hopkins@cityofchicago.org

Via electronic mail
The Honorable Peter Chico
Alderman – 10th Ward
peter.chico@cityofchicago.org

cc: *Via electronic mail*
The Honorable Scott Waguespack
Alderman – 33rd Ward
scott.waguespack@cityofchicago.org

Via electronic mail
The Honorable Nicholas Sposato
Alderman – 38th Ward
nicholas.sposato@cityofchicago.org

cc: *Via electronic mail*
The Honorable Anthony Napolitano
Alderman – 41st Ward
anthony.napolitano@cityofchicago.org

Via electronic mail
The Honorable Derrick Curtis
Alderman – 18th Ward
derrick.curtis@cityofchicago.org

cc: *Via electronic mail*
The Honorable Silvana Tabares
Alderman – 23rd Ward
silvana.tabares@cityofchicago.org

Via electronic mail
The Honorable Marty Quinn
Alderman – 13th Ward
marty.quinn@cityofchicago.org

cc: *Via electronic mail*
The Honorable Brendan Reilly
Alderman – 42nd Ward
brendan.reilly@cityofchicago.org

Via electronic mail
The Honorable Anthony Beale
Alderman – 9th Ward
anthony.beale@cityofchicago.org