

**What Every Municipal Attorney Needs to Know
About Public Comment Restrictions in 2025**

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In light of recent media coverage of the Village of Dolton's board meetings, there has been much discussion about public meeting policies. The media has reported that, among other things, the Dolton Village Board held meetings in a space too small for the crowd it anticipated, restricted access by blocking nearby streets and parking spots, and silenced and removed commentors.ⁱ PAC 24-010. These events highlight the need for municipal bodies to re-evaluate acceptable public comment policies for their meetings under the Illinois Open Meetings Act ("OMA"). 5 ILCS 120/2.06(g).

Public meetings provide a crucial means of communication between a public body and the community it serves. Public bodies need to navigate the delicate balance of conducting public business meetings smoothly while protecting the public's right to free speech. To do so, it is important that public officials understand what restrictions on free speech are allowed under the law. This article discusses: (1) the scope of the right to public comment under the Illinois Open Meetings Act; (2) examples of unreasonable public comment rules as determined by the Public Access Counselor; (3) an analysis of a recent First Amendment case applying Illinois law; and (4) recommendations to ensure that public meetings comply with the First Amendment and the OMA.

The First Amendment of the United States Constitution and Article I, Section 4 of the Illinois Constitution protect a person's freedom of speech. U.S. Const. amend. I; Ill. Const. 1970, art. I, sec. 4. These provisions encompass many forms of speech and action critical to our democratic nation. Yet their scope is not unlimited. The OMA implicates the right to free speech. It requires that during a public meeting, "any 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). This section guarantees the public right to speak but permits the public body to make limiting rules. How can municipal bodies best strike a balance between maintaining efficient, orderly meetings and upholding individuals' freedom of speech?

History and Purpose of the Illinois Open Meetings Act

In 1957, the General Assembly passed the Open Meetings Act in the spirit of full disclosure of government affairs to the public. 5 ILCS 120/1. At its most basic level, the OMA requires public body meetings to be open and accessible to the public – not held in secret. *People ex rel. Graf v. Vill. of Lake Bluff*, 321 Ill. App. 3d 897, 907 (2001). Other states have similar laws, generally referred to as "Sunshine Laws," which "are designed to limit corruption within the affected organization and increase public trust through willing transparency."ⁱⁱ

In 2011, the General Assembly amended the OMA to create a right for meeting attendees to formally address public bodies. The provision states: "Any 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). The addition essentially codified a practice that had already been in place for many public body meetings. Because the General Assembly added section 2.06(g), all public meetings must provide a time for comment under established rules.

Scope of the Right to Speak

The rules a government body can create for public comment may not violate the public's freedom of speech. Protection of speech comes not only from the First Amendment, but also from the Illinois Constitution's own freedom of speech provision in Article 1, Section 4. The relationship between state and federal protections is important for understanding the scope of the OMA's right to speak. This year, the First District Appellate Court held that for comments at public meetings, Article 1, Section 4 of the Illinois Constitution does not provide greater protection than the First Amendment. *Eberhardt v. Vill. of Tinley Park*, 2024 IL App (1st) 230139, ¶ 55. Accordingly, rules established for a period of public comment may not violate the First Amendment.

Public Forum Analysis

The extent to which public bodies can restrict speech without violating the First Amendment depends on the nature of the forum where the speech occurs. The United States Supreme Court recognizes four types of forums: traditional, designated, limited, and nonpublic. *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45-46 (1983) (establishing three types of forums: traditional, designated, and nonpublic); *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 106-07 (2001) (adding the fourth type of forum: limited). Restrictions on speech in traditional and designated forums must pass the highest level of scrutiny. *Perry Educ. Ass'n*, 460 U.S. at 45 ("The state may also enforce regulations of the time, place, and manner of expression which are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication."). Restrictions on speech in a limited and nonpublic forum must pass a lower level of scrutiny. *Good News Club*, 533 U.S. at 106-07 (stating that the restriction on speech must be viewpoint-neutral and reasonable in light of the purpose served by the forum). It is important that municipal attorneys understand the forum of public meetings so the municipal bodies can make and enforce appropriate rules regarding comments.

DISCUSSION

The OMA grants the public the right to address public officials under the rules established and recorded by the public body. 5 ILCS 120/2.06(g). Illinois courts and the Attorney General, acting as the Public Access Counselor (PAC), have been tasked with interpreting this section.ⁱⁱⁱ Their binding opinions articulate the types of rules a public body can create surrounding comments and interpret the scope of the right to speak in light of the First Amendment.

The PAC's Interpretation of Reasonable Restrictions

Beginning with the PAC's opinions, the PAC concluded that any rules that restrict the right to speak during a meeting must be reasonable and narrowly tailored to further a significant governmental interest. PAC 14-012. Maintaining order and promoting efficiency at public meetings are significant governmental interests. *Id.* Reasonable time, place, and manner restrictions may be made after balancing the public's statutory right to speak against the interests in order, decorum, and efficiency. *Id.* In 14-012, the PAC held that though a public body may require a speaker to sign up in advance to comment, requiring the speaker to obtain a recommendation of a board member or submit a request five days in advance was not a reasonable rule. *Id.*

Rules surrounding public comment must be enacted formally and documented in a policy or code that is accessible to the public. PAC 23-013. In PAC 23-013, a board told a speaker that a board policy restricted her from commenting on personnel matters. *Id.* However, the board only pointed to an unpublished, annotated agenda referencing the limitation; the PAC held that the agenda was not established and recorded within the meaning of the OMA. *Id.*

Furthermore, a commentator need not be a resident within the boundaries of the public body, nor could a public body require the speaker to state his or her home address. PAC 19-009; PAC 14-009. Public

bodies may impose reasonable time limits on public comments; this keeps comments from being too lengthy and ensures others have an opportunity to comment. 2011 PAC 12740; 2011 PAC 17388. The PAC upheld two- and three-minute time limits per comment so long as the public body properly established and recorded the time limit in its policy. 2011 PAC 1274; 2011 PAC 17388.

Severity of Restrictions on Speech Depend on the Type of Public Meeting

Municipal attorneys must ensure that a public body's meeting policy neither violates the OMA's right to speak nor the First Amendment. Where the PAC's opinions help articulate reasonable rules under the OMA's right to speak, case law helps determine how far a public body may go in restricting the right without violating the First Amendment. Specifically, Illinois courts have applied the First Amendment forum analysis to public meetings and hold that a public meeting can either be a designated or limited public forum depending on whether it is a regular or special meeting.

"Neither the Supreme Court nor the Seventh Circuit Court of Appeals has assigned a single forum label to all public-comment periods taking place during government bodies' meetings." *SEIU Loc. 73 v. Bd. of Trs. Of the Univ. of Ill.*, 2023 WL 3587534, at *4 (C.D. Ill. 2023). But the First District Appellate Court stated: "Generally, courts have treated the public comment portion of municipal council meetings, where any member of the public may talk on any subject, as a *designated* public forum, which is subject to strict scrutiny." *Eberhardt*, 2024 IL App (1st) 230139, ¶ 37 (emphasis added). Accordingly, municipalities, during *regular* meetings, must make reasonable time, place, and manner restrictions on public comment that are content-neutral.

A different level of scrutiny applies to *special* meetings held to discuss a particular topic. In *Eberhardt*, the First District Appellate Court discussed the nuances of public meetings and asked whether a village could restrict comments during a *special* Village Board meeting to only comments germane to the agenda items. *Id.* ¶ 7. This rule would be content-based. The court concluded that the special village board meeting was a *limited* public forum because the board intentionally restricted discussion to only the agenda topics rather than opening discussion up to all topics. *Id.* ¶ 42. Accordingly, in a limited public forum the restrictions on public comment only need to be *viewpoint-neutral* and reasonable; the court found the germaneness requirement satisfied that standard. *Id.* ¶ 56; *see Serv. Emps. Int'l Union Loc. 73*, 2023 WL 3587534, at *8 (finding that a university's board meeting was a limited public forum because it required speakers to obtain advance permission).

Recently, the Eleventh Circuit held that a regular city council meeting was a *limited* public forum rather than a *designated* public forum as Illinois courts have held. *McDonough v. Garcia*, 116 F.4th 1319, 1329 (11th Cir. 2024). The court determined that the council meetings were limited public forums because they restricted speech to matters "pertinent to the City." *Id.* at 1328–29. Under this analysis, the city council could create rules that were content-based so long as they were viewpoint-neutral. *Id.* Unlike the Eleventh Circuit's holding that even general city council meetings are limited public forums, Illinois case law currently holds that general city council meetings, which typically require that comments pertain to city matters, are *designated* public forums. *See Eberhardt*, 2024 IL App (1st) 230139, ¶ 37. Thus, in Illinois, public comment rules must be reasonable, content-neutral, and narrowly tailored to a significant government interest.

A Public Body May Prohibit Disruptive Behavior During Its Meetings

Efficiency, decorum, and order are all significant government interests for a public body. However, a public body must balance its own interest against the public's right to speak under the OMA and freedom of speech under the First Amendment. Generally, courts hold that prohibiting disruptive behavior in a meeting does not violate the First Amendment. But disruptive behavior that justifies removal from a public

meeting must actually impede the meeting's order of business. *Surita v. Hyde*, 655 F.3d 860, 871 (7th Cir. 2011). The Seventh Circuit wrote: "A speaker may disrupt a council meeting by speaking too long, being unduly repetitious, or by extended discussion of irrelevancies. The meeting is disrupted because the Council is prevented from accomplishing its business in a reasonably efficient manner." *Id.*

In *Vega v. Chicago Board of Education*, a woman was removed and subsequently banned until further notice after her angry and critical comments. 338 F. Supp. 3d 806, 809 (N.D. Ill. 2018). During the meeting she violated the time limit for comments, threatened to continue to do so at every meeting, interrupted another speaker, and rushed towards the dais yelling "BOOO! COWARD!" at the council members. *Id.* The woman violated the time limit for comments on several previous occasions. *Id.* The court held that because she continued to violate the time limit, interrupted another speaker, and acted in a threatening manner by rushing forward, she disturbed the meeting. *Id.* at 811-12. Removing the woman for her disruption was content-neutral and did not violate the First Amendment. *Id.*

In *Surita v. Hyde*, a mayor barred the plaintiff from speaking during a city council meeting until the plaintiff apologized for "g[etting] in [the mayor's] face" at a rally a few days prior. *Surita*, 655 F.3d at 871. The Seventh Circuit found that the mayor violated the plaintiff's First Amendment right because the speaker's prior actions did not actually disrupt the city council meeting, so barring his comment did not further a significant interest. *Id.* at 871-72.

If a member of the public acts disruptively, the consequence for the behavior must be proportional to the offense so that it is narrowly tailored towards the government's interest in maintaining order at the meeting. See *Ward v. Rock Against Racism*, 491 U.S. 781, 798-800 (1989) (explaining that the government's means should not be broader than necessary to achieve its interest). Depending on the extent of the disruption, it may be appropriate for a public official to cut the speaker off, remove the speaker, or prohibit the speaker from returning to meetings. See *Vega*, 338 F. Supp. 3d at 809 (banning the speaker until further notice was justified because the speaker repeatedly violated and threatened to continue to violate the time limit for comments at meetings).

APPLICATION

In Illinois, a regular public meeting is a designated public forum. Therefore, any rules established for the public comment period must be reasonable, narrowly tailored to a significant interest, and content-neutral. This standard of scrutiny protects the public's First Amendment rights. But, the First Amendment does not provide an unlimited right: speakers must not violate time limits or rules of order, cannot make comments that are unduly repetitious or irrelevant, or make comments or actions deemed threatening. A public body must permit all other comments because the OMA affords the public the right to address the governing body.

City of Surprise, Arizona

A compelling example of limiting freedom of speech occurred during a city council meeting in Surprise, Arizona.^{iv} During the public comment portion of the meeting, Rebekah Massie criticized the City Attorney's salary increase. In the middle of her comments, the mayor stopped Massie and told her that she could not orally complain about city employees during the public comment period pursuant to the city's "Criticism Policy" which prohibited public comments that criticized City employees.^v Massie continued her comments and was removed from the premises, arrested, and charged with trespassing. Following the heated confrontation, Massie sued the City of Surprise alleging that the city violated her First Amendment rights.

Applying Illinois law, the city's criticism policy, even though it was established and recorded as the OMA requires, would likely fail scrutiny. Prohibiting critical comments is a content-based restriction. Even if the lower level of scrutiny were to apply to the council meeting, the policy is not viewpoint-neutral because it only prohibits complaints and charges against City employees. Furthermore, it is unlikely that restricting all critical comments is narrowly tailored to the council's interests in efficiency and order as there are narrower and content-neutral ways to promote these interests. Finally, the council's action in removing Massie from the premises and citing her for trespassing is not a proportional response to her conduct because she was not violating any other rules of order or acting in a threatening manner.

Since the meeting, the City of Surprise repealed its criticism policy and a judge dismissed the city's case against Massie for trespassing, writing: "The Defendant should not have faced criminal prosecution once for expressing her political views."^{vi}

RECOMMENDATIONS

To uphold the spirit of the OMA and the First Amendment, public bodies should be slow to restrict comments during their meetings, even when restrictions may be legally permissible. If the government uses its maximum authority to restrict speech, it could undermine a relationship of trust between the public and the governing body. In 2011, the legislature amended the OMA to add a guarantee that public attendees can address the government body. The right to speak does not limit comments to only positive ones: it permits comments that express frustration, criticism, and complaints. Likewise, the First Amendment protects angry and critical speech. It is through this type of speech that a democratic government hears the concerns of its community and can act accordingly to serve the public's best interests.

But First Amendment freedoms are not unlimited and subsequently, neither is the right to speak at public meetings under the OMA. A public body maintains some ability to restrict speech during its meetings. Illinois courts hold that a regular public meeting, like a city council meeting, is a designated public forum. In this type of forum, a public body may create content-neutral rules that are narrowly tailored to the government's interest in order, decorum, and efficiency during its meeting. When a speaker violates rules of order at a meeting, the public body may silence the speaker, remove the speaker from the meeting, and prohibit the speaker from returning to future meetings, depending on the extent and nature of the disruptive behavior.

Public bodies must formally adopt their meeting policies, record them in writing, and make them publicly available. Public bodies can create rules of order including requiring speakers to sign up to comment. This promotes efficiency and organization, while not restricting the opportunity to comment on any subject. Any sign-up should be as accessible as possible; for example, the sign-up should be available in-person and online before the meeting and should occur within a reasonable amount of time before the meeting. To promote efficiency, public bodies may establish reasonable time limits for each comment: three minutes is common throughout Illinois. If hosting a special meeting, the public body may go further and restrict comments to those germane to agenda items.

Next, meeting policies should provide for circumstances in which the government can act to the full extent of its authority to restrict speech. A policy should first codify the rules of order for the meeting, including public comment procedures and individual comment time limits. Next, the policy should warn that a speaker who acts disruptively and disregards rules of order may forfeit her right to comment. Finally, the policy should enumerate the progressive steps that the public body will take if disruptive behavior occurs during a meeting.

A public body should take a progressive approach in responding to disruptive behavior. It should give multiple warnings to speakers before silencing them or removing them. Also, it should only ban speakers who repeatedly disrupt meetings – not just one-time offenders. Even a short-term ban must be narrowly tailored to the interests in efficiency and order. Of course, in extreme cases of threatening behavior, the governing body can act immediately and remove speakers to protect public safety.

Being slow to restrict speech will also protect public bodies from lawsuits and liability. Circuits are split about whether a city council meeting is a designated or limited forum which may signal upcoming changes in the law. Currently, the courts in Illinois hold that a regular city council meeting is a designated public forum. Accordingly, rules and actions restricting speech are subject to higher scrutiny than they would be in a limited public forum. There is a possibility that in the future Illinois courts and the Seventh Circuit will follow the Eleventh Circuit and hold that meetings are limited public forums and subject to lower scrutiny. Notwithstanding this possibility, public bodies should be cautious and conservative in their restrictions on public comment to best protect themselves against lawsuits.

CONCLUSION

Under both federal and state law, the public's freedom to speak to its government is protected because the right to free speech is necessary for democracy. Open meetings require the government to be open to the public's voices, meaning that a public body must oftentimes endure critical, angry, and harsh speech from its community members. In order to provide sound legal advice to their clients, municipal attorneys need to understand how to properly balance the governmental interest in efficient and orderly public meetings against the public's right to freedom of speech – a right that merits protection because, in the words of former Supreme Court Justice Anthony Kennedy, “[t]he right to think is the beginning of freedom, and speech must be protected from the government because speech is the beginning of thought.” *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 253 (2002).

ⁱ Jermont Terry, *Chaos Breaks Out at Dolton, Illinois Village Board Meeting with Mayor Under Fire*, CBS NEWS (June 4, 2024, 4:45AM), <https://www.cbsnews.com/chicago/news/chaos-dolton-illinois-village-board-meeting/>; Ben Bradley, *Dolton Meetings Devolve Into Chaos While Residents Decry Village Hall Lockdowns*, WGN9 (Last updated July 15, 2024, 8:26 AM), <https://wgntv.com/news/wgn-investigates/wgn-investigates-dolton-village-hall-meeting-lockdowns/>.

ⁱⁱ Adam Hayes, *What Are Sunshine Laws? Definition, Purpose, Examples*, INVESTOPEDIA (Sept. 13, 2023), [https://www.investopedia.com/terms/s/sunshinelaws.asp#:~:text=Key%20Takeaways%20*%20Sunshine%20laws%20stipulate%20that,and%20the%20Freedom%20of%20Information%20Act%20\(FOIA\).](https://www.investopedia.com/terms/s/sunshinelaws.asp#:~:text=Key%20Takeaways%20*%20Sunshine%20laws%20stipulate%20that,and%20the%20Freedom%20of%20Information%20Act%20(FOIA).)

ⁱⁱⁱ The OMA permits the Attorney General to mediate or resolve an alleged violation extrajudicially or issue a binding opinion after a review of the circumstances. 5 ILCS 120/3.5. Accordingly, the Attorney General has a powerful role in interpreting the OMA and determining its scope.

^{iv} Courtney P. Willits, *City's "Criticism Policy" Faces Uphill Legal Challenge Under the First Amendment*, ELROD FRIEDMAN LLP (Oct. 28, 2024), <https://www.elrodfriedman.com/news-and-insights/criticism-policy/>.

^v The [policy](#) states: “Oral communications during the City Council meeting may not be used to lodge charges or complaints against any employee of the City or members of the body, regardless of whether such person is identified in the presentation by name or by any other reference that tends to identify him/her. Any such charges or complaints should be submitted during normal business hours to the City Manager for appropriate action.”

^{vi} Jessica Johnson & FOX 10 Staff, *Surprise City Council Oks Repeal That Restricts Public Complaints Against City Employees at Meetings*, FOX 10 (Sept. 18, 2024, 9:31pm), <https://www.fox10phoenix.com/news/surprise-city-council-oks-repeal-restricts-public-complaints-against-city-employees-meetings>; Zach Buchanan, *Judge Dismisses Case Against Surprise Woman Arrested at Public Meeting*, PHOENIX NEW TIMES (Oct. 24, 2024), <https://www.phoenixnewtimes.com/news/arizona-judge-dismisses-case-against-woman-arrested-at-public-meeting-20420107>.