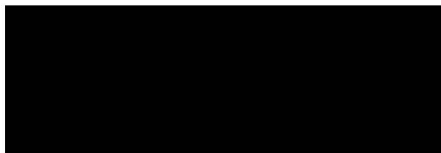


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

April 11, 2022

Via electronic mail



RE: OMA Request for Review – 2022 PAC 70527

Dear [REDACTED]

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2020)). For the reasons that follow, the Public Access Bureau has determined that no further action is warranted in this matter.

The Public Access Bureau received your Request for Review alleging that the Board of Trustees (Board) of the Village of Arlington Heights (Village) violated OMA between approximately February 28, 2022, and March 7, 2022, by taking a straw poll on "whether to list [a particular] agenda item at all and/or how the [Board] would vote on amending the Inclusionary Housing Ordinance (IHO) to include Senior Residential Communities in the affordable housing calculation."¹ You alleged that the Village Manager "regularly uses an informal straw poll process, outside of a [Board] meeting, to determine if an item should be included on a future agenda for public discussion and vote."² You asked this office to review this practice because you allege that it interferes with the public's right to be informed about the conduct of public business and prevents public participation.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2020)) provides that "[a] person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor[.]" and that the submission "must include a summary of the facts supporting the allegation."

¹E-mail from [REDACTED] to Leah Bartelt, Public Access Counselor, Office of the Illinois Attorney General (March 15, 2022).

²E-mail from [REDACTED] to Leah Bartelt, Public Access Counselor, Office of the Illinois Attorney General (March 15, 2022).

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The summary of facts you provided in your Request for Review is insufficient to indicate that the Board violated OMA by taking a straw poll about a potential agenda item between around February 28, 2022, and March 7, 2022. To the extent you allege that the Board improperly took final action outside of an open meeting by taking one or more straw polls, section 2(e) of OMA (5 ILCS 120/2(e) (West 2020), as amended by Public Act 102-558, effective August 20, 2021; 102-237, effective January 1, 2022) provides that: "No final action may be taken at a closed meeting. Final action shall be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted."

The term "final action" generally does not encompass intermediate steps taken by a public body. *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 176 (5th Dist. 1989) (concluding that a board's decision to authorize a request for mediation as an alternative to the negotiations it had been conducting with a union was merely a step towards reaching final action on the union's contract, rather than final action itself). "Final action" generally must resolve a distinct matter. A decision to consider or not consider a matter during a meeting typically does not bring that matter to a resolution. Further, the ability to conduct public business would be significantly hampered if OMA restricted members of public bodies from reaching an informal consensus between meetings about whether or not to place particular items on the agenda of an upcoming meeting. Consequently, the Public Access Bureau has previously determined that "a decision to place or not place items on the agenda is not final action—it is a procedural step needed to identify the substantive issues to be discussed or acted upon at a meeting." Ill. Att'y Gen. PAC Req. Rev. Ltr. 64798, issued February 4, 2021, at 3.

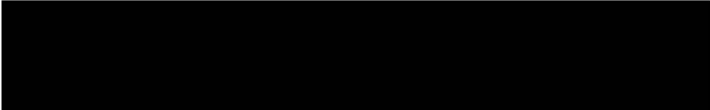
A public body could take final action on a topic such as a proposed amendment to a housing ordinance by choosing to omit it from a meeting agenda after reaching a private consensus on the substance of the proposal and rejecting it. Your submission, however, does not contain any facts indicating that the Board substantively considered and reached a consensus on the merits of the proposed amendment. Likewise, the information you submitted does not suggest that the Board held an improper private meeting, whether in person or electronically. There is no indication that a majority of a quorum of the Board engaged in "contemporaneous interactive communication" about the agenda item, which is necessary to constitute a "meeting" subject to OMA. 5 ILCS 120/1.02 (West 2020) (defining "meeting"). Because your Request for Review does not provide a summary of facts supporting the allegation that the Board potentially violated OMA, this office has determined that no further action is warranted in this matter.


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Please contact me by mail at the Chicago address listed on the first page of this letter or by e-mail at c.lucentemccullough@ilag.gov if you have questions or would like to discuss this matter. Thank you.

Very truly yours,


CHRISTINA LUCENTE-MCCULLOUGH
Assistant Attorney General
Public Access Bureau

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Enclosure

cc: *Via electronic mail*
The Honorable Thomas W. Hayes
Mayor
Village of Arlington Heights
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