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Memorandum

DATE: December 7, 2006
TO: Bruce Walden
FROM: Jim Gitz
CC: Mayor and Council Members
RE: Electronic Attendance at Public Meetings

Pursuant to Senate Bill 585 (Public Act 94-1058), the Council must adopt rules of electronic attendance and participation in order to comply with the Open Meetings Act definition of a “public meeting.” The Act is optional. A municipality can adopt rules; such adoption is not mandatory.

The new State law restricts the reasons for electronic attendance to: (1) personal illness or disability; (2) employment purposes or the business of a public body; or (3) a family or other emergency. A copy of the Public Act is attached.

Please note that while the new law restricts the reasons considered valid for electronic participation, it does not specify what kinds of events fall within each category. Personally, I am unsure what constitutes a “family or other emergency.” However, rather than attempt to give definition to such terms, I think the best course of action is to leave interpretation to the Mayor and Council and see whether any real problems arise. My hope is that everyone will use good judgment, but if that fails to be the case, we can amend the rules at a future date.

I have reviewed our City Code and the Council Rules of Procedure. I believe it is appropriate to amend our Code in Article II, Chapter 2, in regard to electronic attendance to provide for general authority. I have then reviewed and modified the Illinois Municipal League draft rules to implement the provisions of the new Section 2-31.

One of the changes I have made in the IML draft rules relates to the public’s ability to hear the member’s communication and votes. I have massaged this language to provide that this is a part of the ground rules, but that the Council is the sole judge of adequacy. My fear is that absent such qualifying language, a member of the public who is disappointed with the result of a particular vote could challenge the validity of the Council’s action citing this rule. I would like to limit the opportunity for mischief while retaining the spirit of the draft IML rules. I have also made other minor changes throughout.

Some members of the Council have expressed an interest in changing or adding to other Council rules and procedures. While there may be good reason to do so, I believe the electronic attendance and participation issue is best handled as a stand alone provision.

Although Public Act 94-1058 permits any public body to utilize electronic voting as provided therein, the attached Ordinance and suggested rules setting out a procedure governing electronic voting are tailored to city council members only because at this time I do not recommend that the various boards and commissions utilize electronic voting. Before considering extending electronic voting to boards and commissions, we need some experience with the electronic voting procedures set forth in the attached Ordinance and Rules to discover where the unintended consequences are lurking. Furthermore, I have concerns regarding due process considerations about "absentee voting" when the body involved is making an adjudicative decision affecting only one person (or a small number of persons) as opposed to legislating affecting everyone. Most of what our boards and commissions do are adjudicative hearings. In adjudicative type hearings, if electronic voting were allowed, while the absent member and interested party could hear each other, the visual element would be absent. Naturally at this time, there are no cases discussing this point.

Feel free to call me if there are any questions.

Public Act 094-1058

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AN ACT concerning government.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Open Meetings Act is amended by changing Sections 1.02, 2.01, 2.05, and 2.06 and by adding Section 7 as follows:

(5 ILCS 120/1.02) (from Ch. 102, par. 41.02)

Sec. 1.02. For the purposes of this Act:

"Meeting" means any gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, of a majority of a quorum of the members of a public body held for the purpose of discussing public business.

"Public body" includes all legislative, executive, administrative or advisory bodies of the State, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees or commissions of this State, and any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees which are supported in whole or in part by tax revenue, or which expend tax revenue, except the General Assembly and committees or commissions thereof. "Public body" includes tourism boards and convention or civic center boards located in counties that are contiguous to the Mississippi River with populations of more than 250,000 but less than 300,000. "Public body" includes the Health Facilities Planning Board. "Public body" does not include a child death review team or the Illinois Child Death Review Teams Executive Council established under the Child Death Review Team Act or an ethics commission acting under the State

Officials and Employees Ethics Act.

(Source: P.A. 92-468, eff. 8-22-01; 93-617, eff. 12-9-03.)

(5 ILCS 120/2.01) (from Ch. 102, par. 42.01)

Sec. 2.01. All meetings required by this Act to be public shall be held at specified times and places which are convenient and open to the public. No meeting required by this

Act to be public shall be held on a legal holiday unless the regular meeting day falls on that holiday.

A quorum of members of a public body must be physically present at the location of an open meeting. If, however, an open meeting of a public body (except one with jurisdiction limited to a specific geographic area that is less than statewide) is held simultaneously at one of its offices and one or more other locations in a public building, which may include other of its offices, through an interactive video conference and the public body provides public notice and public access as required under this Act for all locations, then members physically present in those locations all count towards determining a quorum. "Public building", as used in this Section, means any building or portion thereof owned or leased by any public body. The requirement that a quorum be physically present at the location of an open meeting shall not apply, however, to State advisory boards or bodies that do not have authority to make binding recommendations or determinations or to take any other substantive action.

A quorum of members of a public body that is not a public body with statewide jurisdiction must be physically present at the location of a closed meeting. Other members who are not physically present at a closed meeting of such a public body may participate in the meeting by means of a video or audio conference.

(Source: P.A. 88-621, eff. 1-1-95.)

(5 ILCS 120/2.05) (from Ch. 102, par. 42.05)

Sec. 2.05. Recording meetings. Subject to the provisions of

Section 8-701 of the Code of Civil Procedure "An Act in relation to the rights of witnesses at proceedings conducted by a court, commission, administrative agency or other tribunal in this State which are televised or broadcast or at which motion pictures are taken", approved July 14, 1953, as amended, any person may record the proceedings at meetings required to be open by this Act by tape, film or other means. The authority holding the meeting shall prescribe reasonable rules to govern the right to make such recordings.

If a witness at any meeting required to be open by this Act which is conducted by a commission, administrative agency or other tribunal, refuses to testify on the grounds that he may not be compelled to testify if any portion of his testimony is to be broadcast or televised or if motion pictures are to be taken of him while he is testifying, the authority holding the meeting shall prohibit such recording during the testimony of the witness. Nothing in this Section shall be construed to extend the right to refuse to testify at any meeting not subject to the provisions of Section 8-701 of the Code of Civil Procedure "An Act in relation to the rights of witnesses at

~~proceedings conducted by a court, commission, administrative agency or other tribunal in this State which are televised or broadcast or at which motion pictures are taken", approved July 14, 1953, as amended.~~

(Source: P.A. 82-378.)

(5 ILCS 120/2.06) (from Ch. 102, par. 42.06)

Sec. 2.06. Minutes.

(a) All public bodies shall keep written minutes of all their meetings, whether open or closed, and a verbatim record of all their closed meetings in the form of an audio or video recording. Minutes shall include, but need not be limited to:

- (1) the date, time and place of the meeting;
- (2) the members of the public body recorded as either present or absent and whether the members were physically present or present by means of video or audio conference;

and

(3) a summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken.

(b) The minutes of meetings open to the public shall be available for public inspection within 7 days of the approval of such minutes by the public body. Beginning July 1, 2006, at the time it complies with the other requirements of this subsection, a public body that has a website that the full-time staff of the public body maintains shall post the minutes of a regular meeting of its governing body open to the public on the public body's website within 7 days of the approval of the minutes by the public body. Beginning July 1, 2006, any minutes of meetings open to the public posted on the public body's website shall remain posted on the website for at least 60 days after their initial posting.

(c) The verbatim record may be destroyed without notification to or the approval of a records commission or the State Archivist under the Local Records Act or the State Records Act no less than 18 months after the completion of the meeting recorded but only after:

- (1) the public body approves the destruction of a particular recording; and
- (2) the public body approves minutes of the closed meeting that meet the written minutes requirements of subsection (a) of this Section.

(d) Each public body shall periodically, but no less than semi-annually, meet to review minutes of all closed meetings. At such meetings a determination shall be made, and reported in an open session that (1) the need for confidentiality still exists as to all or part of those minutes or (2) that the minutes or portions thereof no longer require confidential treatment and are available for public inspection. The failure of a public body to strictly comply with the semi-annual review

of closed session written minutes, whether before or after the effective date of this amendatory Act of the 94th General Assembly, shall not cause the written minutes or related

verbatim record to become public or available for inspection in any judicial proceeding, other than a proceeding involving an alleged violation of this Act, if the public body, within 60 days of discovering its failure to strictly comply with the technical requirements of this subsection, reviews the closed session minutes and determines and thereafter reports in open session that either (1) the need for confidentiality still exists as to all or part of the minutes or verbatim record, or (2) that the minutes or recordings or portions thereof no longer require confidential treatment and are available for public inspection.

(e) Unless the public body has made a determination that the verbatim recording no longer requires confidential treatment or otherwise consents to disclosure, the verbatim record of a meeting closed to the public shall not be open for public inspection or subject to discovery in any administrative or judicial proceeding other than one brought to enforce this Act. In the case of a civil action brought to enforce this Act, the court, if the judge believes such an examination is necessary, must conduct such in camera examination of the verbatim record as it finds appropriate in order to determine whether there has been a violation of this Act. In the case of a criminal proceeding, the court may conduct an examination in order to determine what portions, if any, must be made available to the parties for use as evidence in the prosecution. Any such initial inspection must be held in camera. If the court determines that a complaint or suit brought for noncompliance under this Act is valid it may, for the purposes of discovery, redact from the minutes of the meeting closed to the public any information deemed to qualify under the attorney-client privilege. The provisions of this subsection do not supersede the privacy or confidentiality provisions of State or federal law.

(f) Minutes of meetings closed to the public shall be available only after the public body determines that it is no longer necessary to protect the public interest or the privacy

of an individual by keeping them confidential.

(Source: P.A. 93-523, eff. 1-1-04; 93-974, eff. 1-1-05; 94-28, eff. 1-1-06; 94-542, eff. 8-10-05; revised 8-19-05.)

(5 ILCS 120/7 new)

Sec. 7. Attendance by a means other than physical presence.

(a) If a quorum of the members of the public body is physically present as required by Section 2.01, a majority of the public body may allow a member of that body to attend the

meeting by other means if the member is prevented from physically attending because of: (i) personal illness or disability; (ii) employment purposes or the business of the public body; or (iii) a family or other emergency. "Other means" is by video or audio conference.

(b) If a member wishes to attend a meeting by other means, the member must notify the recording secretary or clerk of the public body before the meeting unless advance notice is impractical.

(c) A majority of the public body may allow a member to attend a meeting by other means only in accordance with and to the extent allowed by rules adopted by the public body. The rules must conform to the requirements and restrictions of this Section, may further limit the extent to which attendance by other means is allowed, and may provide for the giving of additional notice to the public or further facilitate public access to meetings.

(d) The limitations of this Section shall not apply to (i) closed meetings of public bodies with statewide jurisdiction or (ii) open or closed meetings of State advisory boards or bodies that do not have authority to make binding recommendations or determinations or to take any other substantive action. State advisory boards or bodies and public bodies with statewide jurisdiction, however, may permit members to attend meetings by other means only in accordance with and to the extent allowed by specific procedural rules adopted by the body.

Effective Date: 1/1/2007

Floor Actions

Date	Action
7/31/2006	Public Act094-1058

**CITY OF URBANA COUNCIL RULES
ELECTRONIC ATTENDANCE AT MEETING RULES**

Section 1. **Rules Statement.** It is the policy of the City of Urbana corporate authorities that any member of the City Council may attend any open or closed meeting of the Urbana City Council via electronic means (such as by telephone, video or internet connection) provided that such attendance is in compliance with these rules and any applicable laws.

Section 2. **Prerequisites.** A member of the City Council may attend a meeting electronically if the member meets the following conditions:

(a) The member shall notify the City Clerk at least six (6) hours before the meeting, unless impractical, so that necessary communications equipment can be arranged. Inability to make the necessary technical arrangements shall result in denial of a request for remote attendance.

(b) The member must assert one of the following three reasons why he or she is unable to physically attend the meeting.

(1) The member cannot attend because of personal illness or disability; or

(2) The member cannot attend because of employment purposes or the business related to their duties with the City of Urbana; or

(3) The member cannot attend because of a family or other major emergency.

(c) Personal trips, vacations, or personal convenience shall not constitute a valid reason for electronic attendance, such actions being at variance with the intent of Public Act 94-1058.

Section 3. **Authorization to Participate.**

(a) The City Clerk, after receiving the electronic attendance request, shall promptly inform the mayor or person expected to be the presiding officer at such meeting of the request for electronic attendance.

(b) After establishing that there is a quorum physically present at a meeting where a member of the City Council desires to attend electronically, the presiding officer shall state and the minutes shall record that a notice was received by a member of the City Council in accordance with these Rules.

- (c) The member will be deemed authorized to attend the meeting electronically unless a motion objecting to the member’s electronic attendance is made, seconded, and approved by two-thirds of the members of the City Council physically present at the meeting. If no such motion is made and seconded, or if any such motion fails to achieve the required vote by the members of the City Council physically present at the meeting, then the request by the member to attend the meeting electronically shall be deemed approved by the City Council and the presiding officer shall declare the requesting member present. After such declaration by the presiding officer, the question of a member’s electronic attendance may not be reconsidered.

Section 4. **Adequate Equipment Required.** The member participating electronically and other members of the City Council must be able to communicate effectively. Further, the City shall make a reasonable effort to insure that members of the audience are able to hear all communication and votes of the member. Before allowing electronic attendance at any meeting, the council shall provide equipment adequate to accomplish this objective at the meeting site, but the City Council shall be the sole judge of such adequacy.

Section 5. **Minutes.** Any member attending electronically shall be considered an off-site attendee and counted as present electronically for that meeting, if the member is allowed to attend. The meeting minutes shall also reflect and state specifically whether each member is physically present or present by electronic means. In accordance Sec. 2-31 of the Urbana City Code, a member actually attending electronically, shall not count towards a quorum.

Section 6. **Rights of Remote Member.** A member permitted to attend electronically shall be entitled to express his or her comments during the meeting and participate in the same capacity as those members physically present, subject to all general meeting guidelines and procedures previously adopted and adhered to. The member attending electronically shall be heard, considered, and counted as to any vote taken. Accordingly, the name of any member attending electronically shall be called during any vote taken, and his or her vote counted and recorded by the City Clerk and placed in the minutes for the corresponding meeting. A member attending electronically may leave a meeting and return as in the case of any member, provided the member attending electronically shall announce his or her leaving and returning.

Section 7. **Application to the Mayor.** To avoid any ambiguity in interpretation, these rules shall apply to the mayor as well as to members of the City Council, regardless of whether the section in these rules uses the term “corporate authorities” “City Council,” “Council,” or “member.”

Section 8. **Attendance Form.** The council hereby adopts the attached Attendance Form for use as a request for Electronic Participation and/or for a record of the member's e-mail, telefax, or telephone request.

These rules are effective this _____ day of
_____, 2007.

ATTEST:

City Clerk

ELECTRONIC ATTENDANCE REQUEST

I hereby request to electronically attend the meeting of the City of Urbana Council or Committee on _____, 200_____, at _____ p.m.

I am eligible to participate electronically because of [check one]:

- _____ (1) personal illness or disability
- _____ (2) employment purposes or business of the public body
- _____ (3) a family or other emergency

During the meeting, I will be at the following location:

And reachable at the following phone number: _____

Signature of Member

Date

OR

Request received by _____ phone _____ e-mail _____ fax _____ other

Signature of City Clerk

Date

ORDINANCE NO. _____

AN ORDINANCE CODIFYING COUNCIL VOTING PROCEDURES FOR ELECTRONIC ATTENDANCE AND ADOPTING RULES OF PARTICIPATION

WHEREAS, Public Act 94-1058, amends the Open Meetings Act and provides for electronic participation in lieu of physical presence at a public meeting as defined by the Act, provided that there is a quorum physically present at the meeting;

WHEREAS, to permit attendance by a means other than physical presence, the City of Urbana must adopt procedures that conform to the requirements and restrictions of the Open Meetings Act, 5 ILCS 120/7, as amended by Public Act 94-1058;

WHEREAS, the corporate authorities of the City of Urbana believe the public interest is served by allowing council members to attend public meetings other than by physical presence in compliance with the Open Meetings Act;

WHEREAS, the purpose of this Ordinance is to amend the Urbana City Code to conform with the intent expressed in these recitals by amending Article II, Chapter 2. Administration of the Urbana City Code to include electronic participation within “meetings” as defined in Section 120/1.02 of the Open Meetings Act, and to adopt rules for such participation;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF URBANA as follows:

Section 1. Recitals. The preliminary paragraphs set forth above are incorporated herein as part of this Ordinance.

Section 2. City Code Amendment. Article II. Elected Officials of Chapter 2. Administration of the Urbana City Code is hereby amended by inserting a new Section 2-31, which shall read as follows:

“Sec. 2-31 Electronic Attendance at Meetings.

(a) A member of the City Council may participate and vote electronically at public meetings, including Council meetings and Committees of the Whole, if the member is unable to physically attend because of: (1) personal illness or disability; (2) employment purposes or business related to the City of Urbana; (3) family or other major emergency. In order for such participation to be valid, the member must provide notice sufficiently in advance of the meeting for the City to be able to provide the technical means necessary to fulfill such a request. A member may vote on motions and issues coming before the body, but his or her vote shall not count towards a quorum.

(b) For the purpose of this section, electronic participation means participation by telephone, video, or internet connection as provided by rules adopted by the council consistent with the provisions of Public Act 94-158 amending the Illinois Open Meetings Act, SILCS 120/7. The electronic participation shall not be valid unless it provides means for the member to hear and participate in the discussion preceding any action of the council.

(c) For the purposes of this section, the mayor shall be treated as a member of the council and accorded the same rights of electronic participation.”

Section 3. Electronic Participation Rules. The corporate authorities hereby adopt the Electronic Attendance at Meetings Rules attached hereto. The mayor and council retain the right to change or modify these rules at their discretion, provided such changes are in accordance with the Public Act 94-1058, or as hereafter amended. Upon adoption, the attached rules shall become a part of the Urbana City Council Procedures.

Section 4. Severability. In the event that any section, clause, provision, or part of this Ordinance shall be found and determined to be invalid by a court of competent jurisdiction, all valid parts that are severable from the invalid parts shall remain in full force and effect.

Section 5. Effective Date. This Ordinance shall be in full force and effect after its passage and approval and publication according to law.

This Ordinance is hereby passed by the affirmative vote, the “ayes” and “nays” being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

PASSED by the corporate authorities this _____ day of _____,
_____.

AYES:

NAYS:

ABSTAINS:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this _____ day of _____,
_____.

Laurel Lunt Prussing, Mayor