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**DATE: April 5, 2016**  
**TO: City Council Members**  
**CC: Mayor Prussing**  
**FROM: James Simon, City Attorney**

**RE: Open Meetings Act – Communication Among and Between City Council Members.**

The City Council has requested clarification regarding the contours of the Open Meetings Act (ILCS 120/1 *et seq.*, hereafter, the “OMA”) in its application to certain means and methods of communication between and among the City’s elected officials – i.e., Alderpersons and Mayor (hereinafter, collectively, “Elected Officials”). This memorandum will discuss face-to-face, telephone conference and video conference (hereinafter, collectively, “verbal”) communications and e-mail and instant messaging (hereinafter, collectively, “e-mail”) communications.

**ISSUES:**

1. When can the City’s Elected Officials communicate verbally other than in a duly noticed and convened public meeting and still remain in compliance with the OMA?
2. Does the OMA apply to Elected Officials’ e-mail communications and, if so, when and how?
3. Does the OMA apply any differently to communications by and among Elected Officials when one or more constituents/citizens participate or initiates such communications?

**ANSWERS:**

1. Any verbal communication between or among three (3) or more of the City’s Elected Officials regarding City business is deemed a public meeting for OMA purposes and, therefore, such communication must comply in all respects with the OMA.
2. Any e-mail communications which involve an interactive exchange between or among three (3) or more of the City’s Elected Officials regarding City business is deemed a public meeting for OMA purposes and, therefore, such communication must comply in all respects with the OMA.
3. The OMA applies to communications in which three (3) or more Elected Officials participate in an interactive exchange regarding City business whether or not one or more constituents participate in those communications.

The OMA will apply if all of the following elements are present:

Element 1: The verbal or e-mail communication involves some aspect of City business.

Element 2: At least three (3) Elected Officials (i.e., a majority of a quorum of elected officials) participate in the verbal or e-mail communication.

Element 3: The communication between and among the Elected Officials, regardless of who else may participate, can be deemed or construed as a contemporaneous interactive communication.

If any one or more of the above elements is missing, then the OMA does not apply to the verbal or e-mail communication.

### **EXAMPLES OF LIKELY COMMUNICATIONS:**

Below are likely scenarios how communications might occur among City's Elected Officials. Each scenario is followed by a statement whether or not the OMA would apply. These examples are followed by a discussion of why the OMA applies.

- Four Alderpersons attend a party or some public gathering. They talk about their families and the vacations they have planned. They also exchange interesting experiences they have had at their "day jobs." *This communication is not governed by the OMA since Element 1 (discussion of City business) is not present.*
- Two Alderpersons happen to meet on the street or at a party. They begin to discuss some aspect of City business. A few minutes later, a third Alderperson appears on the scene and all three join in the discussion. *At the point the third Alderperson joins the discussion the OMA applies since all three Elements stated above are present.*
- Alderperson D telephones Alderperson E and begins a discussion regarding some aspect of City business. After a few minutes into the discussion, they decide to have the Mayor join the discussions and she does. *At the point the Mayor joins the telephone conference the OMA applies since all three Elements stated above are present.*
- Alderperson F sends an e-mail to Alderperson A regarding a resolution which the Committee of the Whole has sent on to the City Council for adoption. The two Alderpersons agree that they will propose the resolution when it comes before the City Council. *This communication is not governed by the OMA since Element 2 (majority of a quorum) is not present.*
- Alderperson A sends an e-mail to Alderpersons B and C regarding a resolution which the Committee of the Whole has forwarded to the City Council for adoption. Through several e-mail exchanges, they discuss the resolution but do not agree as to how any of them plan on voting on the resolution. *This communication is governed by the OMA since all three Elements stated above are present.*
- Alderperson A sends an e-mail to Alderperson B about some aspect of City business. Alderperson B forwards Alderperson A's e-mail onto the Mayor. The Mayor sends an e-

mail to Alderperson A with her comments on the matter. Alderperson A passes the Mayor's e-mail comments on to Alderperson B. ***This communication is governed by the OMA since all three Elements stated above are present.***

- Alderperson B sends an e-mail to the six other Alderpersons as well as the Mayor in which Alderperson B provides information regarding some aspect of City business. Alderperson B asks the recipients not to reply in any fashion whatsoever to Alderperson B's e-mail. ***This communication is not governed by the OMA Element 3 (contemporaneous interactive communication) is not present.***
- Alderperson B sends an e-mail to five Alderpersons in which Alderperson B provides information regarding some aspect of City business. Alderperson B asks the five other Alderpersons not to use the "reply all" feature of their e-mail system. Alderperson B also asks the other five Alderpersons not to discuss the matter among themselves but, rather, simply reply directly to Alderperson B with any comments or thoughts they may have about what Alderperson B said in his e-mail. ***This communication is governed by the OMA since all three Elements stated above are present since Alderperson B clearly solicited responses from two or more other Alderpersons.***
- Alderperson F sends an e-mail to Alderpersons B, C and D about some aspect of City business. Alderperson F marks her e-mail "for information purposes only" and asks that they do not reply to Alderperson F in any fashion. However, Alderperson B, C and D discuss Alderperson F's e-mail in their own e-mail exchanges without including Alderperson F on any of those e-mails. ***This communication is governed by the OMA since all three Elements stated above are present.***
- Alderperson A sends an e-mail to Alderperson B regarding some aspect of City business. Alderperson B forwards the e-mail on to Alderperson C who, in turn, forwards the e-mail on to Alderperson D, who in turn, forwards the e-mail on to Alderperson E. Alderperson E responds to Alderperson B and Alderperson B shares E's response with Alderperson C. ***This communication is governed by the OMA since all three Elements stated above are present.***
- The Director Community Development sends an e-mail to all seven Alderpersons and the Mayor regarding some aspect of City business. The Director requests in the e-mail that the recipients do not reply to the Director using the "reply all" e-mail system feature. Four Alderpersons and the Mayor respond individually to the Director's e-mail advising that they have received his e-mail. ***This communication is not governed by the OMA since Element 3 (contemporaneous interactive communication) is not present.***
- A constituent e-mails all seven Alderpersons and the Mayor in which the constituent asks for their respective stances on a hotly debated matter pending before the City Council or the Committee of the Whole. No Alderperson confers with any other Alderperson or the Mayor about the inquiry. Three Alderpersons respond directly to the constituent (without copying any other Alderperson on their respective e-mail responses) about their individual respective views. ***This communication is not governed by the OMA since Element 3 (contemporaneous interactive communication among Elected Officials) is not present.***

- The Director of Public Works e-mails all seven Alderpersons and the Mayor about the City's need to purchase certain real estate for right-of-way purposes. Several constituents who have learned about the possible contact three Alderpersons and the Mayor expressing strong opposition to any City purchase of the property. The constituents also speaks face-to-face with the three Alderpersons in a group. *The Director's sending e-mails to all the Elected Officials is not governed by the OMA since Element 3 (contemporaneous interactive communication among Elected Officials) is not present. However, the communication between the constituents and the three Alderpersons in a group is governed by the OMA since all elements stated above are present. The fact that the matter could be discussed in a closed session of the City Council or Committee of the Whole does not eliminate the City's obligation to comply with the OMA. A duly noticed and convened meeting of the City Council or Committee of the Whole would have to be notice and convened in accordance with the OMA and the body would have to follow the OMA's procedures for going into closed session.*
- Alderpersons C and D confer prior to a meeting of the City's Historic Preservation Commission about their support for preserving an old house within the City. Both plan on providing support during the "public input" portion of the Commission's meeting. Alderperson F also attends the meeting for the purpose of providing support during the same "public input" portion of the meeting. Prior to the meeting, neither Alderperson C nor D communicates in any way with Alderperson F. Likewise, no communication occurs between Alderperson F and the other two Alderpersons during the meeting. All three Alderpersons offer support and explain their reasons for doing so during the "public input" portion of the meeting. *The initial pre-meeting communication is not governed by the OMA since Element 2 (majority of a quorum) is not present. The offer of information by the three Alderpersons during the "public input" portion of the Commission meeting is not governed by the OMA since Element 3 (contemporaneous interactive communication) is not present. In the latter instance, no majority of a quorum engaged in a contemporaneous interactive communication.*

The explanation for why a particular scenario described above is or is not governed by the OMA must start with a discussion of the statute itself.

#### **OMA RELEVANT LANGUAGE:**

Any application of the OMA must commence with consideration for the strong overarching public policy statement provided at the beginning of the statute. Section 1 states:

It is the public policy of this State that public bodies exist to aid in the conduct of the people's business and that the people have a right to be informed as to the conduct of their business. In order that the people shall be informed, the General Assembly finds and declares that it is the intent of this Act to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly.

The General Assembly further declares it to be 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. Exceptions to the public's right to attend exist only in those limited circumstances

where the General Assembly has specifically determined that the public interest would be clearly endangered or the personal privacy or guaranteed rights of individuals would be clearly in danger of unwarranted invasion.

To implement this policy, the General Assembly declares:

- (1) It is the intent of this Act to protect the citizen's right to know; and
- (2) The provisions for exceptions to the open meeting requirements shall be strictly construed against closed meetings.

5 ILCS 120/1, emphasis supplied.

The part of the OMA relevant to the City defines “public body” as –

all legislative, executive, administrative or advisory bodies of the ... cities, ... and all other 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.

5 ILCS 120/1.02. The OMA defines “meeting” as –

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 or, for a 5-member public body, a quorum of the members of a public body held for the purpose of discussing public business.

*Id.* A “meeting” is deemed to occur whenever the three elements stated above are present.

There is no doubt that the City Council and Committee of the Whole are public bodies and that three Alderpersons constitute a majority of a quorum. Likewise, there is no doubt what constitutes City business.

### **DISCUSSION:**

At the outset, it must be noted that the Public Access Counselor (“PAC”) in the Illinois Attorney General’s office aggressively enforces the OMA in favor of open meetings and construes the exemptions provided in the statute very narrowly.

The far more difficult issue when considering what constitutes a “meeting” under the OMA is - what is a “contemporaneous interactive communication.” In order to determine whether e-mails constitute “contemporaneous interactive communication” one would ordinarily start with the OMA itself. Unfortunately, the OMA neither defines the phrase nor any of the three words used in it. Likewise, there is no Illinois court opinion which addresses the phrase.

Clearly, face-to-face, telephonic, and video communications regarding City business constitute “contemporaneous interactive communication.” On the other hand, the exchange of letters over a period of several days, if not a week, and which are delivered by the U.S. Postal Service (i.e., “snail-mail”) do not constitute “contemporaneous interactive communication” since the letter exchange may not be “contemporaneous.” However, given that e-mail, electronic chat, and instant messaging fall somewhere between telephone/video communications and “snail-mail” communication, it becomes difficult to determine whether such electronic communication is “contemporaneous interactive communication.” Many commentators have sought to provide direction insofar as what does and does not constitute “contemporaneous interactive communication.” E.g., see, *Social Media and Park Districts*, a presentation of the Ancel Glink law firm on January 29, 2016;<sup>1</sup> Riverside School District No. 96, *Guidance for Board Member Communications, Including Email Use*.<sup>2</sup> However, in fact, no clear guidance has been given. In short and as a very general guide, what constitutes “contemporaneous interactive communication” turns on how quickly members of the public body respond to one another. The quicker the response, the more likely the exchange will be deemed a “contemporaneous interactive communication.”

In the absence of a statutory definition and a court opinion which discusses the issue, one must look to (i) the legislative history of the OMA; (ii) any analogous Illinois court opinions, (iii) other jurisdictions insofar as how they define and use the phrase or a substantially similar phrase, (iv) other secondary source information such as journals and articles, and (v) parsing the definitions of the individual words comprising the phrase.

i. Legislative History:

During pendency of SB 585 (P.A. 94-1058) which included an amendment to the language defining “meeting” in the OMA, the following colloquy occurred in the Senate.

Senator Cullerton: What it [SB 585] does is to expand the definition of meeting under the Open Meetings Act so as to include the presence whether by telephone calls, video or audio conferences, electronic means -- it could be an email, chat room, instant messaging or any other means of contemporaneous interactive communication as an acceptable gathering of a majority of a quorum.

Senator Roskam: If one member of a local unit of government is emailing another member of a local unit of government and it's a one-on-one, and then they were to forward that email on to another member -- a third person in other words - - that is not a contemporaneous communication, correct?

Senator Cullerton: That is correct. There's only two people who are contemporaneously interacting, not three because the third person ... is not in contact with the one who initiated the email. So, for the purposes of a quorum, there would only be two people in that gathering, not three.

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<sup>1</sup> <http://www.ilparksconference.com/wp-content/uploads/2016/02/123-Park-District-Social-Media.pdf>

<sup>2</sup> <http://www.district96.org/wp-content/uploads/2013/12/Policy-2140-Guidance-for-Board-Member-Communications-Including-Email-Use.pdf>

Senator Roskam: And just so that we're clear, even if you're a very quick swish on your email forwarding button, the fact that it is not contemporaneous ... and it is a very quick forward ... wouldn't trigger the statute, is that right?

Senator Cullerton: Well, I don't believe it would be interactive under the description that you gave me -- the hypothetical that you gave me.

Senate floor debate, April 6, 2006. Thus, according to Senator Cullerton, if Alderperson A sends an e-mail to Alderperson B and Alderperson B forwards the e-mail on to Alderperson C, no “contemporaneous interactive communication” would be deemed to have occurred because Alderperson C did not engage in any discussion but merely received Alderperson A’s e-mail merely as information without more. In short, at least according to Senator Cullerton, the only “contemporaneous interactive communication” which may have occurred would have involved Alderpersons A and B, but not C and, thus there would be no majority of a quorum (Element 2 stated above (p. 2) present. Unfortunately, the exchange between Senators Cullerton and Roskam does not provide insight regarding how the OMA would apply to any other scenario than the one discussed.

ii. An Analogous Illinois Court Opinion:

In *City of Champaign v. Madigan*, the Fourth District Appellate Court considered a case involving exchanges of instant messages between and among Champaign City Council members during an otherwise properly noticed and convened meeting of the Council. *City of Champaign v. Madigan*, 2013 WL 3704619 (4th Dist. 2013). The messages clearly discussed city business. Patrick Wade of the News-Gazette submitted a Freedom of Information Act (“FOIA”) (5 ILCS 140/1 *et seq.*) request to Champaign which asked for copies of all the electronic communications exchanged during the City Council meeting. Champaign partially denied the FOIA request on grounds that the text messages were exempt because council members used their personal electronic devices did not constitute public records of the City of Champaign. *Id.*, at p. 4, ¶ 28. While this case was decided under FOIA, language in the case is instructive on the issue of what might constitute “contemporaneous interactive communications.”

In commencing its analysis, the court stated –

Our primary objective in construing a statute is to ascertain and give effect to the legislative intent, and the surest and most reliable indicator of that intent is the plain and ordinary meaning of the statutory language itself. [Citation.] Where the language is clear and unambiguous, this court will apply the statute without further aids of statutory construction. [Citation.] In determining the plain meaning of the statutory terms, we consider the statute in its entirety, keeping in mind the subject it addresses and the apparent intent of the legislature in passing it. [Citation.]” *People v. Chapman*, 2012 IL 111896, ¶ 23, 965 N.E.2d 1119.

*Id.* at p. 5, ¶ 29. In short, courts must give words used in a statute, absent definition in the statute, “their plain and ordinary meanings” or their “ordinary and popularly understood meanings.” *Id.* at p. 6, ¶ 31, 32. In the Champaign case, the court resorted to a dictionary to define what “public” and “business” mean. (See below for a discussion of dictionary definitions of the individual words which comprise the phrase “contemporaneous interactive communication.”)

The court expressly discussed electronic communications (texting, e-mail) between alderpersons.

...once the individual city council members have convened a city council meeting (or “study session”), it can reasonably be said they are acting in their collective capacity as the “public body” during the time the meeting is in session. Indeed, the city council cannot act unless it acts through its individual members during a meeting. As a result, it is not unreasonable to conclude communications “pertaining to the transaction of public business,” which are sent to and received by city council members' personal electronic devices during a meeting are in the possession of the public body. Put another way, communications from an individual city council member's personal electronic devices do not qualify as “public records” unless they (1) pertain to public business, and were (2) prepared by, (3) prepared for, (4) used by, (5) received by, (6) possessed by, or (7) controlled by the “public body.” Thus, if the communication, which pertains to the transaction of public business, was sent or received during the time a city council meeting was in session, i.e., during the time the individual city council members were functioning collectively as the “public body,” then the communication is a “public record” and thus subject to FOIA.

*Id.* at p. 9, ¶ 42. In concluding its opinion, the court stated –

Finally, we note the language in the statute's preamble recognizes “technology may advance at a rate that outpaces its ability to address those advances legislatively.” 5 ILCS 140/1 (West 2010). The instant cause of action presents just such a situation. If the General Assembly intends for communications pertaining to city business to and from an individual city council member's personal electronic device to be subject to FOIA in every case, it should expressly so state. It is not this court's function to legislate. Indeed, such issues are legislative matters best left to resolution by the General Assembly.

*Id.* at p. 10, ¶ 44.<sup>3</sup>

The legal precedent articulated in the *City of Champaign* court opinion can be applied to the issues addressed in this memorandum. Clearly, the Champaign Council members engaged in contemporaneous interactive electronic communications regarding city business which involved a majority of a quorum. Without expressly stating so, the court essentially found that the text messaging, itself, constituted a public meeting without providing the public with the “right to be informed as to the conduct of their business.” 5 ILCS 120/1. The only reason why the court dealt with the matter as a FOIA issue is due to the News-Gazette’s request for copies of the text messages pursuant to FOIA.

iii. *Other Jurisdictions:*

Illinois public bodies and courts are not bound by how other jurisdictions address the issue of what constitutes “contemporaneous interactive communications” for open meetings act

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<sup>3</sup> The court could have treated the texting as conducting closed session meeting without complying with the OMA.



purposes. However, surveying how other jurisdictions consider this phrase may provide guidance insofar as how Illinois might define the phrase when a court is called upon to do so. (Often, when an Illinois court or administrative agency such as the Illinois Attorney General's Public Access Counselor is called upon to address an issue for the first time, the court or administrative agency looks to other jurisdictions for guidance.)

A Washington appellate court decision held that “[t]he active exchange of information and opinions in ... e-mails, as opposed to the mere passive receipt of information, suggests a collective intent to deliberate and/or to discuss [public] business.” *Wood v. Battle Ground School District*, 107 Wash.App. 550, 564-566, 27 P.3d 1208 (2001), brackets supplied. That court noted that it must be the intent to discuss or transact public business which determines whether e-mail communications constitute a “meeting” to which that state’s open meetings law applies. The court found that the mere dissemination of information about public business via e-mail would not constitute a meeting.

A California appellate court held that a “meeting” occurred for purposes of that state’s open meetings law when a city attorney conducted a one-on-one telephone poll of each city council member to obtain a consensus to approve a sale of city-owned real estate. Each telephone conference was conducted between the attorney and one board member with no other board members present or listening. *Stockton Newspapers, Inc. v. Redevelopment Agency of the City of Stockton*, 171 Cal.App.3d 95, 99 (3<sup>rd</sup> Dist. 1985). The court essentially found that a “meeting” occurred for purposes of the state’s open meetings law because the communications were conducted in serial fashion for the purpose of transacting city business. Likewise, a Florida court found that a school superintendent’s one-on-one conferences with individual board members at which only one board member was present at each such meeting constituted a “meeting” for Florida’s open meeting law. *Blackford v. School Board of Orange County*, 374 S.2d 578, 580-81 (Fla. Dist. Ct. App. 1979). However, a Texas court found that such communications did not constitute a meeting under Texas law. *Harris County Emergency Service Dist. No. 1 v. Harris County Emergency Corps*, 999 S. W.2d 163, 169 (Tex. Ct. App. 1999).

The Virginia Supreme Court held that e-mail exchanges between city council members did not constitute a “meeting” for that state’s open meetings law since the e-mails did not involve virtually simultaneous interaction. *Beck v. Shelton*, 267 Va. 482, 593 S.E.2d 195, 197-199 (2004). The court recognized that e-mail communication could constitute a “meeting” for that state’s open meetings act. However, the court found that the e-mails in question could not meet the contemporaneous element since the shortest interval between one e-mail to the next was more than four hours while the longest interval was well over two days. 267 Va. at 489-490, 593 S.E.2d at 198-199. It must also be noted that Virginia law prohibits local government bodies from conducting meetings to discuss or transact public business via telephonic, video, electronic, or other means where members of the body are not physically assembled. Va. Code Ann. § 2.2-3708, emphasis supplied.

Kansas’ open meetings law defines “meeting” to mean “any gathering or assembly in person or through the use of a telephone or any other medium for interactive communication by a majority of the membership of a body ... for the purpose of discussing the business or affairs of the body ...” Kan. Stat. Ann. § 75-4317a, emphasis supplied. The Kansas Attorney General has opined that communications which are conducted in series to be “interactive communications” thereby bringing them within the state’s open meetings law. See, Kansas Legislative Research

Department, *Kansas Legislator Briefing Book 2012*, p.3 ([skyways.lib.ks.us/ksleg/KLRD/.../R-1-KansasOpenMeetingsAct.pdf](http://skyways.lib.ks.us/ksleg/KLRD/.../R-1-KansasOpenMeetingsAct.pdf)). See also, *Kansas Open Meetings Act (KOMA) Guidelines*, p. 3, prepared by the Kansas Attorney General (Aug. 2009); Kan. Op. Atty. Gen. 95-13; Kan. Op. Atty. Gen. 98-49, *synopsis*.

iv. Secondary Sources:

An Illinois Bar Journal article discusses the issue of what constitutes “contemporaneous interactive communication” for OMA purposes. E-Mail and the Open Meetings Act, J.H. Brechin, 94 ILBJ 666 (Dec. 2006). In discussing the phrase, the author relies on dictionary definitions for “contemporaneous” and “interactive” stating –

According to Garner's Modern American Usage, “contemporaneous does not precisely mean ‘simultaneous’; rather, it means ‘belonging to the same time or period; occurring at about the same time.’” “Interactive” is defined by Merriam-Webster's Collegiate Dictionary as “1: mutually or reciprocally 2: involving the actions or input of a user; esp. of, relating to, or being a two-way electronic communication system (as a telephone, cable television, or a computer) that involves a user's orders (as for information or merchandise) or responses (as to a poll).”

At p. 667. The author concludes, the mere dissemination of information by e-mail without response or further e-mail exchanges does not constitute a “meeting” for OMA purposes. *Id.* The author also cites the debate by the legislature quoted above and suggests that it would be good practice to include a statement in Council members’ e-mails to the effect that any e-mail concerning public business be discussed in conformance with the requirements of the OMA. *Id.* at p. 668.

v. Parsing the Meaning of “Contemporaneous Interactive Communication”:

Absent a definition of “contemporaneous interactive communication” in the OMA, an Illinois court opinion which discusses the phrase, and clarity from the General Assembly, one is left to parsing the words which comprise the phrase to derive its definition.

“Contemporaneous” is defined as “existing, occurring, or originating during the same time.” [merriam-webster.com/dictionary/contemporaneous](http://merriam-webster.com/dictionary/contemporaneous). This word has also been defined at [dictionary.reference.com/browse/contemporaneous](http://dictionary.reference.com/browse/contemporaneous) as “living or occurring during the same period of time.” The *American Heritage Dictionary of the English Language* (1975, at p. 287) defines “contemporaneous” as “originating, existing, or happening during the same period of time.” (“Period of time” is defined as “an amount of time.” [Dictionary.reference.com/browse/period+of+time](http://dictionary.reference.com/browse/period+of+time).)

“Interactive” is defined as “1. mutually or reciprocally active; 2. Involving actions or input of a user, especially: of, relating to, or being a two-way electronic communication system (as a ... computer) that involves a user’s orders (as for information or merchandise) or responses (as to a poll).” [merriam-webster.com/dictionary/interactive](http://merriam-webster.com/dictionary/interactive). “Interactive” is defined by [dictionary.reference.com/browse/interactive](http://dictionary.reference.com/browse/interactive) as “1. acting one upon or with the other; 2. Of or pertaining to a two-system of electronic communications, as by means of ... computer.” The *American Heritage Dictionary of the English Language* (1975) contains no definition for

“interactive” but defines “interact” as “to act on each other” (noting “interactive” as an adjective. At p. 683.

“Communication” is defined as “1. An act or instance of transmitting; 2. a: information transmitted or conveyed; b: a verbal or written message; 3.a: a process by which information is exchanged between individuals through a common system of symbols, signs, or behavior; ... 4. a: a system (as of telephones) for transmitting or exchanging information; ... 5. b: the technology of the transmission of information (as by print or telecommunication).” *merriam-webster.com/dictionary/communication*. *dictionary.reference.com/browse/communication* defines “communication” as “... 2. the imparting or interchange of thoughts, opinions, or information by speech, writing, or signs. 3. Something imparted, interchanged, or transmitted.” The *American Heritage Dictionary of the English Language* (1975) defines “communication” in the same manner as *dictionary.reference.com/browse/communication*. See, p. 269.

### **CONCLUSION**

Under the OMA, a “meeting” is deemed to occur whenever (i) three (3) or more Elected Officials participate in a communication; (ii) the communication concerns one or more aspects of City business; and (iii) the communication is contemporaneous and interactive. The OMA uses the term “communication” in its broadest form to include any face-to-face, telephone, and video conferencing communications as well as all other forms of electronic communications such as e-mail, chat rooms, instant messaging, etc. The mere circulation of information without any discussion will not constitute a “meeting” under the OMA.