



VOICE OF DETROIT <http://voiceofdetroit.net>

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November 26, 2012

**City Council President Charles Pugh, and members of the City Council
1340 Woodward Avenue
Detroit, Michigan 48226**

Dear Council President Pugh and City Council:

This letter is to notify you, President Pugh in particular, that I believe you committed egregious violations **of Michigan's Open Meetings Act, MCL 15.263, Sec. 3 (1) (2) (3) (5) and (6)** during the Council's Committee of the Whole session Tuesday, Nov. 20, 2012, notwithstanding the opinion rendered at the table by Law Department representative Dennis Mazurek. I also believe that you may be in violation of the OMA if you conduct a Special Committee of the Whole meeting today at 1 p.m. or later.

In its relevant sections, Michigan's OMA states as follows:

15.263 Meetings, decisions, and deliberations of public body; requirements; attending or addressing meeting of public body; tape-recording, videotaping, broadcasting, and telecasting proceedings; rules and regulations; exclusion from meeting; exemptions.

Sec. 3. (1) All meetings of a public body shall be open to the public and shall be held in a place available to the general public. All persons shall be permitted to attend any meeting except as otherwise provided in this act. The right of a person to attend a meeting of a public body includes the right to tape-record, to videotape, to broadcast live on radio, and to telecast live on television the proceedings of a public body at a public meeting. The exercise of this right shall not be dependent upon the prior approval of the public body. However, a public body may establish reasonable rules and regulations in order to minimize the possibility of disrupting the meeting.

(2) All decisions of a public body shall be made at a meeting open to the public.

(3) All deliberations of a public body constituting a quorum of its members shall take place at a meeting open to the public except as provided in this section and sections 7 and 8.

(4) A person shall not be required as a condition of attendance at a meeting of a public body to register or otherwise provide his or her name or other information or otherwise to fulfill a condition precedent to attendance.

(5) A person shall be permitted to address a meeting of a public body under rules established and recorded by the public body. The legislature or a house of the legislature may provide by rule that the right to address may be limited to prescribed times at hearings and committee meetings only.

(6) A person shall not be excluded from a meeting otherwise open to the public except for a breach of the peace actually committed at the meeting.

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As a journalist and a public citizen, I observed the entire session of the Committee of the Whole Nov. 20, 2012. President Pugh, you several times refused requests by Councilwoman JoAnn Watson and members of the public to move the meeting to the Erma J. Henderson auditorium, which had adequate seating capacity to accommodate the hundreds of people who showed up for the Council's last session of the year.

You stated there were two other meetings taking place in the auditorium, that of the Board of Zoning Appeals and an adoption ceremony. You were informed by several people that those bodies were willing to move to Council chambers to allow the Council to use the auditorium. I also have photos taken of those meetings which show that the attendance at them was far less than that at the Council session.

You still refused to take any action. On information and belief, I understand that members of the public wishing to attend the meeting were also prevented by security on the first floor from going upstairs to the 13th floor where the meeting was taking place.

Detroit police officers assigned to the City Council prevented hundreds of other members of the public from entering the meeting by barring the doorway to Council chambers. They stood outside in the outer hallway for hours, including senior and disabled citizens. There was no broadcast of the meeting available to them in the hallway, either visual or audio. They were thus aggrieved under MCL 15.263, Secs. 1, 2 and 3.

Attorney Dennis Mazurek, by the clear reading of the statute, gave blatant misinformation to the Council when he said you were in compliance with the OMA because you allowed members of the public entrance to make individual comments for one and a half minutes. **The statute says the public must be able to be present in the meeting to observe, hear, record, take pictures and videotape the entire session if so desired. They are not required to make public comment to attend. A public body is not allowed to prevent this.**

I will be filing a separate grievance with the state's Attorney Grievance Commission against Mr. Mazurek for providing this deliberate misinformation.

With regard to a meeting of the Committee of the Whole called for today at 1 p.m., the Act says:

15.265 Public notice of regular meetings, change in schedule of regular meetings, rescheduled regular meetings, or special meetings; time for posting; statement of date, time, and place; applicability of subsection (4); recess or adjournment; emergency sessions; meeting in residential dwelling; notice.
Sec. 5. (1) A meeting of a public body shall not be held unless public notice is given as provided in this section by a person designated by the public body.

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(2) For regular meetings of a public body, there shall be posted within 10 days after the first meeting of the public body in each calendar or fiscal year a public notice stating the dates, times, and places of its regular meetings.

(3) If there is a change in the schedule of regular meetings of a public body, there shall be posted within 3 days after the meeting at which the change is made, a public notice stating the new dates, times, and places of its regular meetings.

(4) Except as provided in this subsection or in subsection (6), for a rescheduled regular or a special meeting of a public body, a public notice stating the date, time, and place of the meeting shall be posted at least 18 hours before the meeting. The requirement of 18-hour notice shall not apply to special meetings of subcommittees of a public body or conference committees of the state legislature. A conference committee shall give a 6-hour notice. A second conference committee shall give a 1-hour notice. Notice of a conference committee meeting shall include written notice to each member of the conference committee and the majority and minority leader of each house indicating time and place of the meeting. This subsection does not apply to 26 a public meeting held pursuant to section 4(2) to (5) of Act No. 239 of the Public Acts of 1955, as amended, being section 200.304 of the Michigan Compiled Laws.

Fox 2 News announced this morning that a special Committee of the Whole meeting would be conducted today at 1 p.m. to re-consider items from the meeting of Nov. 20. There has been no 18-hour notice of such a meeting posted. Offices of the City Council were closed to the public for the Thanksgiving holidays Nov. 22 and 23, and for the weekend Nov. 24 and 25.

As of those days, there was no notice posted at City Council headquarters. There was no notice to the public usually provided through email by the City Clerk to those who request notice.

You are hereby put on notice that the rights of citizens when violations of the Open Meetings Act occur are spelled out in the Act as follows:

15.271 Civil action to compel compliance or enjoin noncompliance; commencement; venue; security not required; commencement of action for mandamus; court costs and attorney fees.

Sec. 11. (1) If a public body is not complying with this act, the attorney general, prosecuting attorney of the county in which the public body serves, or a person may commence a civil action to compel compliance or to enjoin further noncompliance with this act.

(2) An action for injunctive relief against a local public body shall be commenced in the circuit court, and venue is proper in any county in which the public body serves. An action for an injunction against a state public body shall be commenced in the circuit court and venue is proper in any county in which the public body has its principal office, or in Ingham county. If a person commences an action for injunctive relief, that person shall not be required to post security as a condition for obtaining a preliminary injunction or a temporary restraining order.

(3) An action for mandamus against a public body under this act shall be commenced in the court of appeals.

(4) If a public body is not complying with this act, and a person commences a civil action against the public body for injunctive relief to compel compliance or to enjoin further noncompliance with the act and succeeds in obtaining relief in the action, the person shall recover court costs and actual attorney fees for the action.

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You are also hereby put on notice that the following penalties may apply to public officials who violate the OMA as follows:

15.272 Violation as misdemeanor; penalty.

Sec. 12. (1) A public official who intentionally violates this act is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00.

(2) A public official who is convicted of intentionally violating a provision of this act for a second time within the same term shall be guilty of a misdemeanor and shall be fined not more than \$2,000.00, or imprisoned for not more than 1 year, or both.

15.273 Violation; liability.

Sec. 13. (1) A public official who intentionally violates this act shall be personally liable in a civil action for actual and exemplary damages of not more than \$500.00 total, plus court costs and actual attorney fees to a person or group of persons bringing the action.

(2) Not more than 1 action under this section shall be brought against a public official for a single meeting. An action under this section shall be commenced within 180 days after the date of the violation which gives rise to the cause of action.

(3) An action for damages under this section may be joined with an action for injunctive or exemplary relief under section 11.

As a public citizen who observed gross violations of the Open Meetings Act on Nov. 20, 2012, and may observe additional violations today, I hereby notify you, Council President Pugh, and others as may be applicable, that I will be filing complaint(s) in the appropriate court(s) regarding your actions with regard to the Open Meetings Act, and requesting the maximum penalties possible.

This letter is being sent to the applicable parties by email, fax, and will be hand-delivered shortly.

Sincerely,



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cc: All members of the City Council
Corporation Counsel Krystal Crittendon
Attorney Dennis Mazurek
Mayor Dave Bing
Members of the public and their representatives