

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

June 23, 2021

VIA ELECTRONIC MAIL ONLY

Mr. Jason Morris Barker
8708 Palomar Ave. NE
Albuquerque, NM 87109
Email: jasonbarkerform@gmail.com

Re: Open Meetings Act Complaint – Albuquerque City Council

Dear Mr. Barker:

The Office of the Attorney General, Open Government Division (“OGD”) has received your complaint alleging violations of the Open Meetings Act (“OMA”), NMSA 1978, Sections 10-15-1 to -4 (2013) by the Albuquerque City Council (the “Council”). The OGD is charged with enforcement of the OMA and in that capacity has reviewed the facts and allegations in your complaint. *See* NMSA 1978, § 10-15-3(B).

In New Mexico, “any board, commission, administrative adjudicatory body or other policymaking body of any state agency or any agency or authority of any county, municipality, district or political subdivision” is subject to the provisions of the Open Meetings Act. Section 10-15-1(B). The OMA governs all meetings consisting of at least a quorum of such entities and is intended to provide the public with access to “the *greatest possible information* regarding the affairs of government.” Section 10-15-1(A) (emphasis added). In accordance with the public policy behind the statute, OMA is broadly construed in favor of transparency. *See* Attorney General’s Open Meetings Act Compliance Guide, p. 7 (8th ed. 2015) (“OMA Guide”) (noting that “doubt as to the proper course of action should be resolved in favor of openness whenever possible”).

Your complaint alleges that the Council violated OMA by meeting virtually rather than in person on June 7, 2021.¹ We understand you to contend that OMA required the Council to meet in person

¹ We have reviewed the minutes from the Council’s meeting on June 7, 2021 and confirmed that it did, in fact, meet virtually on that date. *See* <https://cabq.legistar.com/View.ashx?M=M&ID=868274&GUID=15F9F11A-B3A5-40F9-91E7-B4A24DD6F2A0>.

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rather than virtually due the State's relaxation of certain social distancing limitations. Preliminarily, we note that our Office has previously determined that public bodies may remain in substantial compliance with OMA while abiding by prevailing social distancing mandates issued in the interest of public health. To that end, in the early days of the pandemic in New Mexico, we issued an advisory to the public as to the permissibility of and best practices for permitting remote public attendance. *See* N.M. Att'y Gen. Advisory, Mar. 17, 2020.²

We disagree that the Council violated OMA by meeting virtually on June 7, 2021. While you are correct that social distancing limitations have been relaxed in recent months, the fact remains that, on June 7, 2021, the Public Health Order issued by the Department of Health specifically advised all New Mexico citizens to "stay at home and undertake only those outings absolutely necessary for their health, safety, or welfare." That same Public Health Order also advised the public to "[a]void crowds." Thus, the Council's decision to meet virtually was entirely consistent with the social distancing limitations in effect on June 7, 2021. Given that the Council permitted the public to "attend and listen" to the meeting by teleconferencing or videoconferencing means, we find no merit to support the allegation in your complaint. As a result, we consider this matter closed.

The Office of the Attorney General appreciates you bringing possible violations to this office and will welcome any further complaints you may submit. If you have any concerns in the future, please do not hesitate to contact us. Additionally, the OMA Guide is available on the website of the Office of the Attorney General at www.nmag.gov.

Sincerely,


John Kreienkamp
Assistant Attorney General

Enclosure

cc: Esteban Aguilar, Jr.
eaj@cabq.gov

² Available at

https://www.nmag.gov/uploads/PressRelease/48737699ae174b30ac51a7eb286e661f/AG_Balderas_Guidance_to_Public_Entities_Regarding_OMA_and_IPRA_Compliance_During_COVID_19_State_of_Emergency.pdf.