

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

July 9, 2019

VIA ELECTRONIC MAIL ONLY

Dr. Colleen K. Aycock
1743 Soplo Rd. SE
Albuquerque, NM 87123
Email: cka13705@aol.com

Re: Open Meetings Act Complaint – Albuquerque City Council

Dear Dr. Aycock:

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).

The Open Meetings Act is intended to provide the public with access to “the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them.” Section 10-15-1(A). The OMA is applicable to any action taken by “any board, commission, committee or other policymaking body.” Section 10-15-3(A). However, it does not necessarily apply to all actions taken by every public employee or governmental agency; it must be a decision made by a public body. *See* § 10-15-1(B) (providing that all meetings “of a *quorum* of members of any board, commission, administrative adjudicatory body or other policymaking body” are subject to the requirements of the OMA).

Based on the facts you have provided to us, this case involves an email by the Clerk of the Council informing the interested public that public testimony would not be allowed at an appeal involving a building permit. However, OMA affords members of the public the right to attend and listen. *See* Section 10-15-1(A). It does not contain any provision mandating that a public body afford members of the public the opportunity to provide public testimony or otherwise be allowed to speak at a meeting. For this reason, we conclude that your complaint has not identified a violation of the OMA, and we consider this matter closed.

Dr. Colleen K. Aycok

July 9, 2019

Page 2

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,

A handwritten signature in blue ink, appearing to read "John Kreienkamp", is written over a light blue rectangular background.

John Kreienkamp
Assistant Attorney General

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

Electronic Complaint Submission

Submission Detail

ECS Reference Number NMOAG-ECS-20190328-dc6b

Final Submit Date 3/28/2019 10:36:57 AM

Disclosure of your complaint: This complaint is a public record, thus available under provisions of the NM Inspection of Public Records Act.

Disclosure to other entities: This complaint, its content, and other information may be disclosed to other law enforcement and regulatory agencies.

I understand this complaint and any submitted documents are public record and may be shared with other law enforcement and regulatory agencies.

DECLARATION: By submitting this form, I attest that the information in this complaint is true and accurate to the best of my knowledge. I further understand that by submitting this form I may be called to testify as a witness in this matter.

I understand declaration statement.

The New Mexico Office of the Attorney General cannot give legal advice regarding this complaint and will not act as your personal attorney. If you have questions regarding your rights please contact a private attorney.

Submission of this complaint is not confirmation that an investigation will be initiated.

Complaint Detail

Complaint Type Open Meetings (OMA) Complaint

Retained Attorney

Parties

Complainant

[Dr. Colleen k. Aycock cka13705@aol.com](mailto:cka13705@aol.com)

Person

Address

[REDACTED]

Contact information

[REDACTED]
[REDACTED]

Complaint against

[Albuquerque City Council - Cynthia Ortega, Clerk of the Council](#)

Public Body (Government Entity)

Address

P.O.Box 1293
ALBUQUERQUE, New Mexico 87103

Contact information

(505) 768-3100
cabq.gov/council

Complaint Specifics

Specific date(s) of OMA violation(s)	March 15, 2019 - April 1, 2019
Deficiencies in notice of the meeting	Notice did not comply with the deadlines or procedures for meeting notices adopted by the public body, or with the reasonable notice requirement in the OMA
Other Violation	Ms. Ortega, sent "To all interested parties:" a letter stating that there would be no "public testimony" at the City Council meeting April 1, 2019 regarding AC-19-2 Project @2018-001760 SI2018-00223 in the council's vote for or against the EPC's Approveal for a Site plan that would issue a building permit on a state and National historic property listed in both registers.

Transaction

Documents

*** END OF COMPLAINT ***



Salazar, Patricia <psalazar@nmag.gov>

Re: (Follow-up) Open Meetings Act Complaint – City of Albuquerque

4 messages

cka13705@aol.com <cka13705@aol.com>
To: PSalazar@nmag.gov

Fri, May 3, 2019 at 10:09 PM

Ms. Salazar:

Attached and below you will find 2 pictures of documents; 2 documents; and 1 video of testimony that are germane to the issue that attorney (Mr. Chris Melendrez) and Crystal Ortega, Clerk of the Council for the Albuquerque City Council denied my constitutional rights to free and open meetings and contact with my city's elected officials on a matter that was extremely important to my neighborhood: in which the City Council was to vote April 1, 2019 to allow the site plan for putting a \$5.5-million building over the remainder of the 16-acre public park at Singing Arrow Park in SE ABQ that may permanently mar or destroy an important archeological site donated to the city for safe-keeping.

Facts of the case: On Tues. March 26, 2019, during the week before the City Council was to meet on April 1, 2019, to vote on the EPC Hearing Officer's recommendation to pass the site plan for the building in the Singing Arrow Park (12-AC-19-2), I went to the City Council offices with 10 copies of my written report titled "Citizens' Report to the Albuquerque City Council, April 1, 2019, Reasons to Vote Against", where I asked Crystal Ortega, City Clerk if my report could be given to each individual City Council Member. (I did not provide a copy for Councilor Harris in that he had previously recused himself from all communications in that the park is in his district.) That morning, I watched the City Clerk put the copies in each of the Councilor's mailboxes and I asked her to date stamp each one which she did. However, when I asked her to stamp them, she proceeded to remove the copies from the box and phone attorney Chris Melendrez who told her that they could not accept them. At that time, I requested that Mr. Melendrez call me on my cell phone which he did. I told him that according to **Crystal Ortega's letter written March 15, 2019** (copy attached, see last page), I had four days to provide written testimony to the City Council. When he couldn't give me a coherent, specific legal reason explaining why I couldn't leave my written statements, he agreed to let me leave one copy which he promised to scan and personally and electronically send to each Councilor and prove that I had delivered a copy to Consensus Planning. I did that. (Please ascertain if Mr. Melendrez did send those copies to each Councilor on March 26 by email distribution as he promised--I do NOT believe he distributed these copies and thus failed to allow my work to be distributed to the City Councils when there was adequate time to do so.) At first, he said that my document was giving new evidence to the matter and it was too late for that. I told him I was NOT--that I was *clarifying the evidence* that was already presented at the hearings. I pointed specifically to Moises Gonzalez' testimony on the history of the site and its archeological importance and the disagreement among archeologists (including the state's archeologist) regarding the importance of the site. Mr. Melendrez agreed that such was already in the record and that he would allow my report to be distributed. My point has been all along that I didn't want to see the site permanently damaged with disparate and unsound statements from the various hearings that City Councilors did not attend nor heard. (City Rules of Procedure and regulations below allow me to address such

clarifications See Section 5-f *even when* "New evidence which is offered which clarifies evidence already in the record may be allowed."). In view of all the differing opinions on the site already in the record, I felt that the City Council needed to do additional, in-depth, more definitive archeological research on the historically significant site (which all archeologists agree is needed) before we destroy it, especially since the site is listed on the state and national historic registers. My statement pointed to this importance, but it appears that the City Council was denied hearing that. I asked for my written document to be time and date-stamped so that there would be no disagreement as to when my written statement was submitted to the City Council in the approved timeframe which Mr. Melendrez agreed I had: four days prior to the meeting.

In addition, City Clerk Crystal Ortega's **letter "To All interested parties" which I am on, dated March 15, 2019**, states that "public testimony is not taken at this time," referring to the City Council meeting on April 1, 2019. I could not find any reference to such fact anywhere in the City's rules and regulations. If not for public testimony, how can the City Councilors know what they are voting for when they have NOT attended any of the hearings to the matter and the site plan proposal does NOT take into account any financing issues or archeological infringements because the Hearing Officer said that was not his job?

On April 1, 2019, at the **City Council meeting**, when I approached the person taking names for public comment at 4:30 pm, I was told that I could NOT talk, without the attendant ever asking my name. I asked to speak to the attorney. Chris Melendrez told me on the phone that he would be down to speak to me in person about the matter. He never showed up although I waited at the sign-up sheet to meet with him until the official meeting began. I did sign up to speak and my testimony can be seen on the video recording below of the meeting where I was denied the ability to speak on the subject to the Councilors. My testimony occurs from approximately 1:28 - 1:34 on the tape. As you will see, during that public comment when I pressed Chris Melendrez to point directly to the legal language that prevented me from giving the City Council my oral two-minute comment or the one-page handout I had prepared, he could not identify the legal rule. Another City attorney at the meeting, Mr. Avila, replied for him that it came from the City of Albuquerque City Council Rules of Procedure, Section 8-B6 (which does not apply.) Later after my testimony, Mr. Avila corrected himself saying that the rules that applied to that situation were either rules 5 or 6 (see videotape below--however, neither of those two rules apply either.) In short, I was denied my due rights to speak to my elected officials regarding information important to our self-governance and for the future of our city's parkspace and archeological treasure--that this now public property not be harmed by the City's improper hearings, meetings where constituents cannot speak, questionable evidence, and bullying attorneys, whose actions and outcomes seem uninformed, heavy-handed, and predetermined.

Thank you for examining the rules that I believe these attorneys and others used to thwart and unlawfully deny my civil rights to speak to city leaders in an open, public meeting, representatives who may, in effect, without such edifying information, be destroying valuable city cultural assets which should be protected under the law.

See (1) Attachment above: City council meeting April 1, 2019 pdf Written Agenda

See (2) 2 photographed pages from Crystal Orteta's letter to me dated March 15, 2019

See (3) Video of City Council proceeding with my testimony denied April 1, 2019 (see minutes of video at website below, testimony beginning 1:28 through 1:34 minutes of the video during public comment:

http://cabq.granicus.com/player/clip/256?view_id=2

See (4) The City of Albuquerque City Council Rules of Procedure: (website below which allows for public comment)

<https://www.cabq.gov/council/documents/rules.pdf>

Please acknowledge that you received this response with 3 attachments and website addresses for viewing the occurrences. Let me know if you need anything else such as witnesses to these occurrences.

Thank you,

Colleen Aycock

-----Original Message-----

From: Salazar, Patricia <PSalazar@nmag.gov>

To: cka13705 <cka13705@aol.com>

Sent: Tue, Apr 23, 2019 4:02 pm

Subject: (Follow-up) Open Meetings Act Complaint – City of Albuquerque

Good Afternoon,

Please provide a copy of the agenda, notice and meeting minutes for the specific meeting date(s) you allege the violations occurred. You may also want to include a detailed narrative with your submission.

In order to proceed, we must receive this information. If we do not hear from you on or before Friday, May 24, 2019, we will close the matter until we hear from you. Thank you and have a great day. Please feel free to contact us if you have any questions or concerns.



Patricia M. Salazar

Office of the New Mexico Attorney General

P.O. Drawer 1508

Santa Fe, New Mexico 87504

Office Phone: (505) 490-4863

Fax Number: (505) 717-3600

Email: psalazar@nmag.gov

"Independence is happiness." -Susan B. Anthony

On Tue, Apr 16, 2019 at 9:52 AM Salazar, Patricia <PSalazar@nmag.gov> wrote:

VIA ELECTRONIC MAIL ONLY

Dr. Colleen K. Aycock
[1743 Soplo Rd SE](#)

Albuquerque, NM 871423
Email: cka13705@aol.com

Re: Open Meetings Act Complaint – City of Albuquerque

Dear Dr. Aycock:

The Office of the Attorney General ("OAG"), 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 between March 15, and April 1, 2019.

We are currently in the process of reviewing your complaint. Please provide a copy of the agenda, notice and meeting minutes for the specific meeting dates you allege the violations occurred. You may also want to include a detailed narrative with your submission. Our office may further contact you to clarify issues or concerns raised in your complaint. In the meantime, if you may have any questions or concerns, please feel free to contact me.

Sincerely,

Patricia M. Salazar

Patricia M. Salazar
Open Government Division



Patricia M. Salazar

Office of the New Mexico Attorney General
P.O. Drawer 1508
Santa Fe, New Mexico 87504
Office Phone: (505) 490-4863
Fax Number: (505) 717-3600
Email: psalazar@nmag.gov

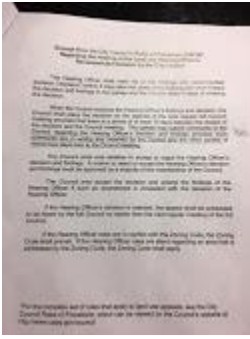
"Independence is happiness." -Susan B. Anthony

3 attachments



First page letter C. Ortega, Mar. 15, 2019.JPG
63K

Last page letter Crystal Ortega, March 15, 2019.JPG
70K



City council Mtg. April 1, 2019
215K

Agenda (2).pdf

Salazar, Patricia <PSalazar@nmag.gov>
To: cka13705@aol.com

Mon, May 6, 2019 at 9:47 AM

Received, thank you.

[Quoted text hidden]

[Quoted text hidden]

Colleen Aycock <cka13705@aol.com>
To: "Salazar, Patricia" <PSalazar@nmag.gov>

Mon, May 6, 2019 at 10:32 AM

I would add to S B Anthony: so is retirement! 😊 thanks for acknowledging. c.

Sent from my iPhone

[Quoted text hidden]

Salazar, Patricia <PSalazar@nmag.gov>
To: Colleen Aycock <cka13705@aol.com>

Mon, May 6, 2019 at 1:59 PM

Haha, thanks!

[Quoted text hidden]

[Quoted text hidden]



NHOAG-ECs
20190328 delld
3/28/2019 10:36 AM

CITY OF ALBUQUERQUE

City Council

P.O. Box 1293
Albuquerque, NM 87103
Tel: (505) 768-3100
Fax: (505) 768-3227
www.cabq.gov/council

President Klarissa J. Peña
District 3

Vice President Cynthia D. Borrego
District 5

Stephanie M. Yara
Council Director

Ken Sanchez
District 1

Isaac Benton
District 2

Brad Winter
District 4

Patrick Davis
District 6

Diane G. Gibson
District 7

Trudy E. Jones
District 8

Don Harris
District 9

March 15, 2019

To all interested parties:

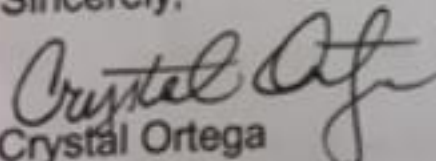
The following appeal is on the agenda of the **Monday, April 1, 2019** City Council meeting, which will begin at 5:00 p.m. in the Vincent E. Griego Chambers, Basement Level, 1 Civic Plaza NW:

AC-19-2 Project #2018-001760 SI-2018-00223: Judy Young on behalf of other property owners, appeal the decision of the Environmental Planning Commission (EPC) to Approve a Site Plan for Building Permit for all or a portion of Tract A Singing Arrow Park, Canada Village Second Unit, zoned NR-PO-A, located at 13,001 Singing Arrow Ave. SE, between Dorado Pl. SE, and Four Hills Rd. SE, containing approximately 16 acres. (L-22)

The City Council will be voting to either "Accept" or "Reject" the Land Use Hearing Officer's recommended Decision, therefore, public testimony is not taken at this time. Should the City Council reject the Land Use Hearing Officer's recommended Decision, the appeal will then be scheduled for a full hearing before the City Council at a date no earlier than the next regular meeting of the full Council.

If you have any questions, I can be reached at 768-3100.

Sincerely,


Crystal Ortega
Clerk of the Council

Attachments:
Land Use Hearing Officer's Recommendation
Excerpt from the Council's Rules of Procedure



NHOAG-ECs
20190328 delld
3/28/2019 11:36 AM

CITY OF ALBUQUERQUE

City Council

P.O. Box 1293
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March 15, 2019

To all interested parties:

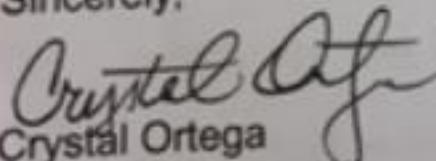
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If you have any questions, I can be reached at 768-3100.

Sincerely,


Crystal Ortega
Clerk of the Council

Attachments:
Land Use Hearing Officer's Recommendation
Excerpt from the Council's Rules of Procedure

**Excerpt from the City Council's Rules of Procedure (5/2016)*
Regarding the Hearing of the Land Use Hearing Officer's
Recommended Decision by the City Council**

The Hearing Officer shall enter his or her findings and recommended decision ("decision") within 5 days after the close of the hearing and shall forward the decision and findings to the parties and the Council within 5 days of entering the decision.

When the Council receives the Hearing Officer's findings and decision, the Council shall place the decision on the agenda of the next regular full Council meeting provided that there is a period of at least 10 days between the receipt of the decision and the Council meeting. The parties may submit comments to the Council regarding the Hearing Officer's decision and findings provided such comments are in writing and received by the Council and the other parties of record four days prior to the Council meeting.

Note

The Council shall vote whether to accept or reject the Hearing Officer's decision and findings. A motion to reject or accept the Hearing Officer's decision and findings must be approved by a majority of the membership of the Council.

The Council may accept the decision and amend the findings of the Hearing Officer if such an amendment is consistent with the decision of the Hearing Officer.

If the Hearing Officer's decision is rejected, the appeal shall be scheduled to be heard by the full Council no earlier than the next regular meeting of the full Council.

If the Hearing Officer rules are in conflict with the Zoning Code, the Zoning Code shall prevail. If the Hearing Officer rules are silent regarding an area that is addressed by the Zoning Code, the Zoning Code shall apply.

*For the complete set of rules that apply to land use appeals, see the City Council Rules of Procedure, which can be viewed on the Council's website at <http://www.cabq.gov/council>