

OPEN MEETING ACT ("OMA") COMPLAINT FORM
New Mexico Office of the Attorney General
Open Government Division

Your Contact Information:

First Name: Victor Last Name: Perez

Address: _____

City: Las Cruces State: NM Zip Code: 88001

Phone Number: _____

Email: CHRPEREZ67C@yahoo.com

Name of Public Body that is the Subject of this Complaint (including city/town, district, county or region, if applicable): City of Las Cruces, Doña Ana County

Specific date(s) of OMA violation(s): October 12, 2015, and January 29th 2016.

ALLEGED VIOLATIONS OF THE OMA BY THE PUBLIC BODY: Please select from the following list the violations you allege the public body committed. Check all that apply.

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
- Notice did not include date, time, and/or location of the meeting
- Notice was not published or posted in a place and manner accessible to the public
- Notice did not include an agenda or information on how the public may obtain a copy of the agenda
- A meeting was reconvened by the public body, but notice of the date, time, and place of the reconvened meeting was not placed on or near the door of the place where the original meeting was held or in at least one other location appropriate to provide public notice

AGENDA

- Agenda was not available seventy-two (72) hours prior to the meeting

- Agenda did not include a list of specific items the public body intended to discuss or transact at the meeting or the items listed and acted upon were not listed with reasonable specificity
- Public body took action on items that were not listed on the agenda
- In a reconvened meeting, the public body discussed or took action on items not appearing on the agenda of the original meeting

MINUTES

- The minutes did not contain the date, time, and/or place of meeting, the name of all members of the public body attending the meeting and those absent
- The minutes did not contain a description of the substance of all proposals considered during the meeting or a record of any decisions made and votes taken
- A draft copy of the minutes was not available within ten (10) working days of the meeting
- The minutes were not approved, amended, or disapproved at the next meeting where a quorum of the public body was present

CLOSED MEETINGS

- The public body did not follow the required closing procedures to close a meeting (e.g., did not list the items they were going to discuss in the motion to close, or the motion to close did not contain the provision of law permitting the closing of the meeting)
- The public body closed the meeting to discuss an issue not covered by one of OMA's exceptions
- Matters not stated in the motion to close were discussed in the closed session.
- Final action was taken by the public body in the closed meeting

CONDUCTING/DISCUSSING BUSINESS OUTSIDE OF AN OPEN MEETING

- A quorum of the public body formulated policy, discussed public business, or took action outside of an open meeting
- A "rolling quorum" was used to discuss public business (i.e., a quorum may exist even when the members are not physically present at the same place, such as discussing public business in a series of telephone or email conversations)

✓ A committee was created by the public body that constitutes a policymaking body that formulated recommendations that were binding on the public body or otherwise established policy for the public body, outside of an open meeting

DETAILED EXPLANATION OF ALLEGED OMA VIOLATIONS: Please provide a description of the actions taken by the public body that violated the OMA, including specific dates and times, and why you believe the OMA has been violated.

All information regarding OMA violations has been provided in a letter to the attorney general. Copies or references of this letter can be received by Laverne Roller as referenced in her call on February 17th, 2016.

ADDITIONAL INFORMATION: Please attach any documentation or evidence you have regarding the alleged OMA violation.

Additional information has already been provided and received by the NM attorney general's office, reference Laverne Roller.

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

TANIA MAESTAS
Deputy of Civil Affairs

SHARON PINO
Deputy of Criminal Affairs

CARLA MARTINEZ
Chief of Staff for Operations

SONYA CARRASCO-TRUJILLO
Chief of Staff for Policy & Public Affairs

July 14, 2016

Victor Perez
150 Hermosa St.
Las Cruces, NM 88001

RE: Open Meetings Act Complaint

Dear Mr. Perez:

The Office of the Attorney General is in receipt of your complaint alleging that the City of Las Cruces ("City") violated the New Mexico Open Meetings Act ("OMA"), NMSA 1978, Sections 10-15-1 to -4 (1974, as amended through 2013) as well as the Liquor Control Act, and the City's Codes and Ordinances. This determination letter addresses only the alleged OMA violation, as the Attorney General has the statutory authority to enforce violations of that Act. We have reviewed your complaint, its attachments and the response from the City's attorney. Based on the review, we conclude that the City did not violate the OMA.

You allege in your complaint to the Attorney General dated February 11, 2016, that "the public body formed a rolling quorum or a quorum for the purpose of deliberating toward a decision on a public policy by City Attorney, City Manager, Mayor, City Council, Director of Community Development, Senior Planner, Chief of Police, and Chief Codes Enforcement Officer." Your allegation is based on the October 12, 2015 letter you received from the City Attorney. In that letter, the City Attorney wrote that he was "asked by the City Manager, on behalf of the Mayor and City Council, to respond" to your letter. Nowhere, does the letter indicate that the City Councilors met to discuss your letter. In addition, in his letter to this Office, dated March 24, 2016, (copy of which is attached) the City Attorney indicates that it is "common for the City Attorney's Office to address correspondence from various citizens, particularly when the subject matter appears to be 'legal' in nature." There is no indication that the City Councilors engaged in a rolling quorum.

Therefore, based on the information available to us, it appears that the City of Las Cruces did not violate the Open Meetings Act.

Although we consider this matter closed, we thank you for bringing your concerns to our attention.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Valicenti", with a long horizontal flourish extending to the right.

Mona Valicenti
Assistant Attorney General

Encl. as stated.