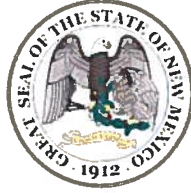


STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

July 8, 2019

Joe Craig
505 Calle del Pajarito NW
Los Ranchos, NM 87114

Re: Open Meetings Act Complaint – Eagle Nest

Dear Mr. Craig:

We have reviewed your complaint alleging that the Village of Eagle Nest violated the Open Meetings Act, NMSA 1978, §§ 10-15-1 to -4 (1974, as amended through 2013) (“OMA”). According to the complaint, the Village failed to comply with OMA’s notice and agenda requirements for the Village’s regular Council meeting held on April 18, 2017. We also have reviewed the Village’s response to our inquiry regarding the complaint. *See* letter to Dylan K. Lange, Assistant Attorney General from Lisa Sanchez, MMC, Village Clerk (Nov. 4, 2016) (“Response”). Based on our review, as discussed below, we conclude that the Village did not violate OMA as alleged in the complaint.

According to the complaint, the Village violated OMA by failing to provide the notice and agenda for the April 18, 2017 meeting to the public sufficiently in advance of the meeting. Specifically, the complaint alleges that the agenda, which included items for the approval of the Village’s solid waste ordinance and a resolution establishing solid waste rates, was not posted on Facebook until the day of the meeting and should have been published in local printed and online news publications.

OMA declares all meetings of any state or local government policymaking body “to be public meetings open to the public at all times, except as otherwise provided in the constitution of New Mexico or [OMA].” NMSA 1978, § 10-15-1(B). A public body may hold a meeting “only after reasonable notice to the public.” *Id.* § 10-15-1(D). At least once a year, a public body must “determine ... in a public meeting what notice ... is reasonable when applied to that body.” *Id.* Notice must be given to “broadcast stations ... and newspapers of general circulation that have provided a written request for such notice.” *Id.*

Meeting notices “shall include an agenda containing a list of specific items of business to be discussed or transacted at the meeting or information on how the public may obtain a copy of such an agenda.” *Id.* § 10-15-1(F). With certain exceptions not applicable here, “at least seventy-two (72) hours prior to the meeting, the agenda shall be available to the public and posted on the public body’s web site, if one is maintained.” *Id.* We understand that the Village does not maintain a website.

According to the Village’s Response, the notice of and agenda for the Council’s regular meeting scheduled on April 18, 2017 was posted on April 13, 2017 in five locations specified in the Village’s Open Meetings Resolution. The Resolution states that regular meetings shall be held each month at the Village Community Center on the third Tuesday of the month, and that the agenda for a regular meeting “will be available at least seventy-two hours prior to the meeting [f]rom the Village Clerk,” and will be posted at five locations listed in the Resolution. *See* Resolution 2016-31, “A Resolution Concerning Governing Body Meetings and Public Notice Required,” ¶¶ 1, 2 (adopted Dec. 20, 2016).

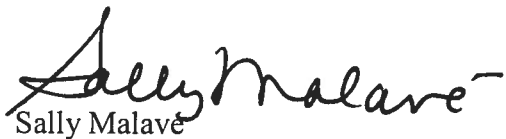
As described and documented in the Response, it appears that the notice and agenda for the Council’s regular meeting on April 18, 2017 complied with OMA. OMA requires a public body to provide “reasonable notice to the public” in advance of a meeting. NMSA 1978, § 10-15-1(D). Notice is “reasonable” for purposes of OMA if it “adequately, accurately, and sufficiently in advance inform[s] the public of the meeting’s time, place and date,” and is “published or posted in a place and manner accessible to the public.” Attorney General’s Open Meetings Act Compliance Guide, p. 12 (8th ed. 2015) (“OMA Compliance Guide”) (available on the Office of Attorney General website at www.nmag.gov). A public body that, like the Village, regularly meets each month on a specific day, time, and place complies with OMA if the public body provides the requisite information in its open meetings resolution and makes the resolution available to the public. *See id.*, p. 13. As quoted above, OMA does not require the Village to provide meeting notices to broadcast stations or newspapers without a written request. *See* NMSA 1978, § 10-15-1(D).

The Response states that the agenda for the April 18, 2017 meeting was available from the Village Clerk on April 13 and posted in the five locations specified in the Village’s Open Meetings Resolution. The copies of the agenda you and the Village provided state “Post: 4/13/17,” which is consistent with the Village’s claims. If the agenda was made available on April 13 as described in the Response, the Village complied with OMA. *See* NMSA 1978, § 10-15-1(F). Absent additional information showing definitively that the agenda was not actually available to the public on April 13, we will give the Village the benefit of the doubt. *See id.* § 10-15-3(A) (actions of a public body “shall be presumed to have been taken or made at a meeting held in accordance with [OMA’s] requirements”). *See also* OMA Compliance Guide, p. 38.

Mr. Joe Craig
July 8, 2019
Page 3

Although we did not determine that the Village violated OMA as alleged in the complaint, we appreciate your bringing this matter to our attention. If you have any questions regarding this determination or OMA in general, please let me know.

Sincerely,

A handwritten signature in black ink that reads "Sally Malave". The signature is written in a cursive style with a horizontal line at the end.

Sally Malave
Assistant Attorney General
Director, Open Government Division

cc: Lisa Sanchez, MMC, Village Clerk

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

Your Contact Information:

First Name: obe Last Name: GRAIS
Address: [REDACTED]
City: [REDACTED] State: 07 Zip Code: 07111
Phone Number: [REDACTED]
Email: [REDACTED]

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

Village of Eagle Nest

Specific date(s) of OMA violation(s): April 18, 2017

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.

- ① Agenda was dated 4/13/17, for a 4/18/17 meeting, and was not posted on Facebook till 4/18/17. The Village does not have a website.
- ② Mayor Richard Cordova stated that the Village posted a notice (at an unknown location). He also stated that the San Jose de Cristo Chronicle was not "a real newspaper" although it maintains a full website as an on-line newspaper and the Mayor stated that the Taos News was not a newspaper of general circulation. He said they did not have to post notices in either publication.
- ③ Mayor Cordova stated that if Idlewild did not like the increase, Eagle Nest could cancel Solid Waste Services. Rates for Idlewild are now listed as \$202 annually vs. \$192 for Eagle Nest Residential. Previous rates were \$108. Mayor Cordova stated that the Village Council had discussed terminating Idlewild Service. There is no "service" trash is hauled to dumpsters in Eagle Nest.

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

- ① Copy of Facebook page dated April 18 for April 18 meeting. Marked as Post 4/13/17 at bottom of page (NOT shown in copy)
- ② April 19, 2017 Notice of Rate Increase from April 18 meeting, received 4/25/17
- ③ Eagle Nest Pilot Prog. Annual Billing due 3/25/2017



Office of the Mayor

P.O. Box 168

Eagle Nest, New Mexico 87718

TELEPHONE (575) 377-2487
FAX (575) 377-2487

Regular Council Meeting
Tuesday, April 18, 2017 at 6:00 PM
Eagle Nest Community Center
151 Willow Creek Drive
Eagle Nest NM 87718

- I. Call to Order
- II. Pledge of Allegiance
- III. Roll Call
- IV. Approval of the Agenda
- V. Minutes
 - 1. Approval/Discussion of March 21, 2017, Regular Council Meeting Minutes.
- VI. Comments from the Public
- VII. Presentation - Eagle Nest School Projects
- VIII. Public Hearing - For Ordinance 2017-01, Residential and Commercial Solid Waste Ordinance
- IX. Old Business
 - 1. Approval / Discussion - For Ordinance 2017-01, Residential and Commercial Solid Waste Ordinance
 - 2. Approval / Discussion - Resolution 2017-06 Establishing Solid Waste Rates
 - 3. Approval / Discussion - 2017-12 GDBG Project Selection
- X. New Business
 - 1. Discussion/Approval - Resolution 2017-14 Clean and Beautiful
 - 2. Discussion/Approval - Approval to Proceed with FY 16/17 Audit Contract with Precision Accounting - 3rd Year
 - 3. Discussion/Approval - David & Cathy Bolsinger - 21 Frankies Place - New Construction - Garage - Zoning/Permit
 - 4. Discussion/Action Dan Rubenthaler - Lot 10 Smokey Bear Drive, Bear Mountain Estates - New Construction - Home - Zoning Permit
 - 5. Discussion/Approval - Memorial Bench in the Park
 - 6. Discussion/Approval - Appointment of Dave Bolsinger to Planning and Zoning Commission
- IX. Mayor/Administrator Reports
- X. Department Reports
- XI. Committee Reports
- XII. Items for Next Agenda
- XIII. Adjourn

Lisa Sanchez, MMC
Municipal Clerk

Post: 4/13/17

Village of Eagle Nest
Page Liked · April 18

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Write a comment...

Suggested Pages

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Jesree Spirit + Place Digital
Imaging
303 people like this.

Like

Office of the Mayor



P.O. Box 168

April 19, 2017

Eagle Nest, New Mexico 87718

TELEPHONE (575) 377-2486
FAX (575) 377-2487

Dear Eagle Nest Solid Waste Customers:

On April 18, 2017 following the public hearing for Ordinance 2017-01, the Eagle Nest Village Council approved by a vote of 4-0 Ordinance 2017-01, "Residential and Commercial Solid Waste Ordinance". Key elements to the ordinance include:

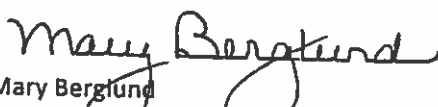
1. Items not permitted in the Village Trash dumpsters.
2. Items not permitted at Transfer Station.
3. Rates, Fees and Deposits
4. Penalties

Following the approval of Ordinance 2017-01, Eagle Nest Village Council approved Resolution 2017-06, "A Resolution Setting Solid Waste Rates Increase". The governing body of the Village of Eagle Nest established the Solid Waste rates as follows:

Residential	\$16.00
Small Commercial	\$50.00
As defined by section 2, Ordinance 2017-01	
Large Commercial	\$100.00
As defined by section 2, Ordinance 2017-01	
Annexed Residential	\$48.00 Quarterly
Idlewild	\$202.00 Annually
Additional Pickup Request	\$95.00 per request

Council noted that it has been nearly 28 years since the last rate increase. In addition to establishing the rates, Council eliminated the 6 free cubic yards per year at the Transfer Station. The Village Clerk will have the Ordinance and Resolution available for review at Village Hall during normal business hours. A copy may be purchased according to the normal copy rate of twenty five (25) cents per page. A scanned copy is available by email at no charge.

Sincerely,


Mary Berglund
Village of Eagle Nest Administrator

EAGLE NEST PILOT PROJ
P. O. Box 168
Eagle Nest, NM 87718
575-377-2486

PERMIT NO. 176
 29 DEC 16
 PM 3 L

FIRST CLASS MAIL
 U.S. POSTAGE
 PAID

TYPE OF SERVICE	METER READING		USED	CHARGES
	PRESENT	PREVIOUS		
Water	0	0	0	
Garbage				108.00
Sales Tax				8.12

EAGLE NEST PILOT PROJ.

CUSTOMER		PAY GROSS AMOUNT	
ROUTE	ACCOUNT	AFTER THIS DATE	
3	176	3/25/17	
NET AMOUNT TO BE PAID		GROSS AMOUNT TO BE PAID	
116.12		121.12	

MAIL T 45 STUB WITH YOUR PAYMENT

3

ANNUAL BILLING! DUE DATE 03/25/2017
ACCOUNT # 176 12/29/16

Joe D. Craig
505 Calle Del Pajarito NW
Albuquerque NM 87114

METER READ MONTH	METER READ DAY	CLASS	TOTAL DUE UPON RECEIPT	LATE CHARGE AFTER DUE DATE	PAST DUE AMOUNT
12	29	1	116.12	5.00	121.12

Happy New Year. Your annual fees are due on or before MARCH 25, 2017.

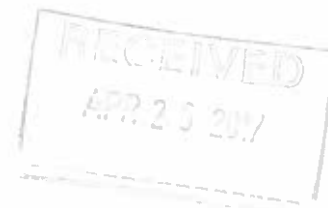


Questions? Contact Village Hall @ 575-377-2486.

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL



TANIA MAESTAS
Deputy of Civil Affairs

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

SHARON PINO
Deputy of Criminal Affairs

OPEN MEETING ACT COMPLAINT FORM

Under the Open Meetings Act ("OMA"), the Office of the Attorney General ("OAG") has the discretion and authority to enforce the OMA's provisions. NMSA 1978, § 10-15-3(B). Generally, the OAG reviews and issues determinations regarding whether public agencies have violated the OMA. All OMA complaints submitted to the OAG, including any attached materials and any correspondence regarding those complaints, are public records subject to public inspection. Additionally, OMA complaints and determinations from the OAG may be posted on our website.

All complaints submitted to the Office of the Attorney General will be reviewed for potential OMA violations. The OAG may dismiss those complaints that fall outside OMA's purview and those for which no remedy is available under OMA, or forward OMA complaints to another appropriate agency for resolution. Please note that the OAG does not represent complainants in suits against public bodies.

Thank you,
J.D. Gray