

November 14, 2025

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RE: Violations of the Open Meetings Act

Dear Doña Ana Board of County Commissioners:

I write to provide notice of the following violations of the New Mexico Open Meetings Act (“OMA”), NMSA 1978, § 10-15-1 *et. seq.*, by the Doña Ana Board of County Commissioners’ (“Board”) at the September 19, 2025, regular meeting.

I. Violation of Section 10-15-1(I), failure to properly hold a closed meeting

The Board violated OMA by failing to properly provide the public with notice of the legal authority for its closed meeting on September 19, 2025, or specify the subject matter of that closed meeting. Section 10-15-1(I) of the OMA provides two options for a public body to enter a closed session: either by motion during an open meeting, or by advance public notice. In either instance, the announcement of the closed meeting must state with “reasonable specificity” both the authority for closure of the meeting and the subject to be discussed during the closed portion of the meeting. NMSA 1978, §§ 10-15-1(I)(1)-(2).

The Board failed to comply with OMA’s specificity requirements in both the notice to the public and in its motion to go into a closed session at the September 19, 2025, meeting. In the agenda posted on the Board’s website for the September 19, 2025 meeting – which presumably was the Board’s notice for the meeting – there is no announcement of a closed meeting, other than the agenda’s general statement that the Board “may convene in a closed session regarding a limited personnel matter, the purchase, acquisition or disposal of real property and water rights, to discuss information that is covered by attorney-client privilege pertaining to threatened or pending litigation, as authorized by the Open Meetings Act Section 10-15-1(H)(2), (7), and (8) (NMSA 1978).”

Board Chair Schaljo-Hernandez’s motion for a closed meeting was similarly vague and lacking in specificity. Approximately 52 minutes into the open meeting, Board Chair Schaljo-

Hernandez moved to enter a closed session, stating that the Board would discuss “a limited personnel matter, the purchase acquisition or sale of land, and discuss information covered by attorney-client privilege related to threatened or pending litigation.” Despite the utter lack of clarity of the motion regarding what matters the Board intended to discuss behind closed doors and under what authority, the Board approved the motion to enter closed session by a vote of 4-1.

Shortly after the vote, a Kacey Hovden, attorney with the New Mexico Environmental Law Center (NMELC) and a member of the public in attendance at the meeting, asked the Board to clarify the basis for Board Chair Schaljo-Hernandez’s motion to enter a closed session. Chair Schaljo-Hernandez deferred to County attorney Cari Neill, who told the public, “closed session means that we are going to discuss an attorney-client privileged matter, which, I’m sorry but the public does not get to comment on that,” and when pressed to clarify the subject of the matter to be discussed, Ms. Neill refused, simply stating, “No. We do not have to specify what kind of matter it is, thank you very much we are going into closed session.”

The New Mexico Attorney General’s OMA compliance guide is instructive. A public body complies with OMA’s reasonable specificity requirement if it

“provides sufficient information to give the public a general idea about what will be discussed without compromising the confidentiality conferred by the exception. For example, a motion might be stated: ‘I move that the commission convene in closed session as authorized by the limited personnel matters exception to discuss possible disciplinary action against an employee.’ Or, ‘I move that the board discuss the case of X vs. The County with the board’s attorney in executive session as authorized by Section 10-15-1(H)(7) of the Open Meetings Act.’”

New Mexico Open Meetings Act Compliance Guide, Eighth Edition, (2025) p. 31.

Both the Board’s public notice and motion to enter a closed session were deficient because neither specified the authority for the closed meeting or the subject to be discussed. In both the notice and motion, the Board listed various exceptions to OMA’s public meeting requirements but declined to state which one it relied on for that closed session, in violation of its obligations under OMA to inform the public of the nature and authority for its closed meeting. The Board did not even attempt to clarify the “subject to be discussed” in the closed meeting as it apparently misunderstands its obligation to inform the public of the nature of the meeting, as evidenced by Ms. Neill’s statement that it did “not have to specify what kind of matter” the Board would discuss in the closed meeting. This is a clear violation of OMA’s clear mandate that the Board provide the public with exactly that information, in either a public notice or motion to enter a closed session.

Following the unlawful closed session, the Board reconvened in an open meeting where it voted to adopt Ordinance No. 367-2025 and Ordinance No. 368-2025, Agenda Items 10 and 11, respectively. OMA is clear that “[n]o resolution, rule, regulation, ordinance or action of any board, commission, committee or other policymaking body shall be valid unless taken or made at a meeting held in accordance with the requirements of NMSA 1978, Section 10-15-1.” NMSA 1978 § 10-15-3(A). The Board’s blatant violations of OMA with respect to the closed meeting render any final action taken at the September 19, 2025, regular meeting, including the passage of these two Ordinances, invalid and without legal effect.

II. The Board's actions at the October 14, 2025, failed to cure the OMA violations October 14, 2025, Regular Meeting

New Mexico law is clear that a public body's actions taken in violation of OMA cannot be retroactively corrected. The Court of Appeals explains, "[t]o permit retroactive application not only removes incentive to comply with [OMA], it undermines [OMA] and essentially renders Section 10-15-3(A) meaningless." *Palenick v. City of Rio Rancho*, 2012-NMCA-018, ¶ 9, 270 P.3d 1281, *reversed on other grounds*, *Palenick v. City of Rio Rancho*, 2013-NMSC-029, 306 P.3d 447.

Nevertheless, the Board appears to believe it had the authority to retroactively cure the violations with respect to its unlawful closure of the meeting on September 19, 2025, by adopting a clarifying statement. At the October 14, 2025, regular meeting, Ms. Neil told the board it "could have been clearer" in its motion to close the September 19, 2025 meeting, and recommended that the Board adopt the following statement to clarify the purpose of the closed meeting: "I move to go into closed session to discuss information that is covered by attorney-client privilege pertaining to threatened litigation concerning Project Jupiter, as authorized by the OMA, 10-15-1(H)(7)." The Board moved to adopt this "clarifying statement" into the public record to show that the alleged violations of the OMA which had been submitted to the Board, had been addressed. Other than adopt this statement, it appears the Board took no steps to attempt to cure the violations of OMA it committed at the September 19, 2025, meeting.

This type of attempted retroactive ratification of a prior illegal action by a public body is prohibited by OMA, and the Board's violations of OMA with respect to the closed meeting on September 19, 2025, remain uncured.

In addition to the Board's discussion of the alleged OMA violations at the October 14, 2025, meeting, County Attorney Ms. Neill wrote a letter to NMECL in response to NMELC's notice of violation of the OMA to the Board. In that letter are statements that again, indicate the Board misunderstands its obligations under OMA. The letter suggests that because the Board had "already made a motion regarding Project Jupiter" earlier in the meeting, the public should have had "no actual question" as to what the closed meeting was about. The letter also describes the Board chambers as "very loud, with people calling out and reacting in such a way that continuation of the meeting – or reasonable conversation and discussion – was made impossible," and that the Board had difficulty understanding Ms. Hovden's question, but that regardless of what her question was, the Board was "not required to provide an explanation" of the closed session.

The Board's position on its obligations to inform and notify the public of the purpose and authority for a closed meeting is concerning. It is not the responsibility of the public to piece together the nature of and authority for the closed meeting; it is the Board's statutory obligation to clearly provide this information in advance of the closed meeting. Furthermore, a lively and engaged public audience is not grounds for the board to discontinue a public meeting and go into closed session. A public body may only meet behind closed doors for one of the limited purposes set forth in Section 10-15-1(H)(1)-(10). NMSA 1978, §10-15-1(H).

III. Violation of Sections 10-15-1(A) and (B), failure to provide the public with the greatest possible information and conduct public business in an open meeting

The Board further violated OMA at its September 19, 2025, meeting by taking final action on an item of business that was incomplete and requires further review and approval by the Board.

At the September 18, 2025, regular meeting, the Board approved in a 4-1 vote Ordinance No. 367-2025, which authorizes the sale of Taxable Industrial Revenue Bonds in the amount of \$165 billion dollars. However, the Ordinance the Board signed and approved at the meeting was incomplete and in draft form, as evidenced by the fact the ordinance had the word “draft” written across each page in gray type, including the signature page signed by all commissioners, and by Commissioner Susana Chaparro’s comment, “These are not the final documents. We’re voting on this very important issue with a draft.” Additionally, the draft ordinance signed by Commissioners included a clause on page 8, section 4 of that reads: “The Chair and the Vice Chair [of the County Commission] are each authorized to approve the final form.”

OMA entitles the public “to the greatest possible information regarding the affairs of government and the official acts” of the Board. The Board represents the public, and OMA requires that the Board’s actions in forming public policy and conducting its business be conducted in the open so that “all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings.” NMSA 1978, § 10-15-1 (A).

Although the Board gave its “final approval” of the draft Ordinance at the September 19, 2025 meeting, it appears final approval of the final draft of the Ordinance was or is yet to come and will occur outside of an open meeting, as the Board made clear there would be no further public discussion or vote on the Ordinance after September 19, 2025. Final approval of the final draft of the Ordinance outside of an open meeting violates OMA, as OMA requires that all meetings of a public body held for the purpose of formulating public policy, including the development of ordinances, be open to the public. NMSA 1978, § 10-15-1(B).

The Board’s failure to deliberate on and pass the final version of Ordinance No. 367-2025 in an open meeting violates OMA, and any and all final actions take by the Board at the September 19, 2025, including the passage of Ordinance No. 367-2025 and Ordinance No. 368-2025, are invalid.

Thank you for your attention to these matters. Please contact me with questions or concerns at (505) 289-0573, or amandalavin@nmfog.org.

Sincerely,



Amanda Lavin
NMFOG Legal Director

cc: Christine Barber, NMFOG Executive Director, director@nmfog.org