

**CITY COUNCIL WORK SESSION
SEPTEMBER 14, 2020**

**INFORMATION FOR ELECTED AND APPOINTED
OFFICIALS**



N.M. Constitutional Authority

- The City derives its home-rule authority from Article X of the New Mexico Constitution
- “A municipality which adopts a charter may exercise all legislative powers and perform all functions not expressly denied by general law or charter.” N.M. Constitution, Article X Sec. 6 (D)
- “The purpose of this section is to provide for maximum local self-government.” N.M. Constitution, Article X Sec. 6 (E)

N.M. Statutory Authority

- The laws governing municipalities can be found in NMSA Chapter 3
- NMSA 1978 §3-15-1, et seq. Municipal Charter Act

Charter Authority

- “The municipal corporation...shall remain and continue to be a body corporate and public and may exercise all legislative powers and perform all functions not expressly denied by general law or by this Charter.” *Las Cruces City Charter Article I, Sec. 1.01*
- “As the purpose of this Charter is to provide for maximum local self-government, a broad construction shall be given to the powers of the city granted by this Charter.” *Las Cruces City Charter Article I, Sec. 1.02*

Las Cruces Municipal Code

- **Sec. 1-4. - Exercise of home rule powers.**

“This Code is an exercise of the home rules powers granted by article X, section 6 of the state constitution and section 1.01 of the city Charter.”

The Most Common Laws and Issues Affecting Elected and Appointed Officials

- New Mexico Open Meetings Act (OMA)
- Anti-donation clause of the N.M. Constitution
- Ethical Considerations:
 - Conflicts of Interest
 - Ex-parte Communications
- City of Las Cruces Ethics Ordinance

NEW MEXICO OPEN MEETINGS ACT (OMA)



NEW MEXICO OPEN MEETINGS ACT §10-15-1, et. seq. NMSA 1978

- The NM Open Meetings Act is also known as the “Sunshine Law.”
- Sunshine laws require that public business be conducted in full public view, that actions of public bodies be taken openly, and that deliberations of public bodies be open to the public. (*See the N.M. Open Meetings Act Compliance Guide at pg. 1*)

WHAT DOES THE OMA REQUIRE?

- All meetings of a quorum of members of any board, commission, administrative adjudicatory body or other policymaking body are declared to be public meetings open to the public, unless the law specifically allows an exception.
- Open meetings are required when:
 - Formulating public policy;
 - Developing personnel rules, regulations, or ordinances;
 - Discussion of public business;
 - Taking any action within the authority of any board;

WHAT DOES THE OMA REQUIRE? (cont.)

- Boards, committees and other bodies that are delegated to formulate public policy and make recommendations to the Public Body, must also comply with OMA.
- The OMA prohibits members of the Public Body from conferring privately during meetings by passing notes, sending emails and texts, or other means.

WHAT DOES THE OMA REQUIRE? (cont.)

- Members of the public are generally permitted to record or video tape the proceedings.
- The OMA does not require the Public Body to allow members of the public to speak at its meetings.

NOTICE REQUIREMENTS UNDER OMA

- Meeting notices shall include:
 - An agenda with a list of specific items of business to be discussed or information on how the public can obtain an agenda;
 - Except in an emergency, at least 72-hours advance notice of the agenda shall be posted on the Public Body's web site;
 - Only items on the posted agenda are permitted to be discussed at the public meeting.

REQUIRED MEETING MINUTES

- The board, commission or other policymaking body shall keep written minutes of all meetings. ***At a minimum***, the minutes must include:
 - Date, time, and place of meeting;
 - Names of members in attendance and those absent;
 - The substance of the proposals considered;
 - A record of any decisions and votes taken that show how each member voted;
 - Minutes are subject to public inspection;
 - Draft minutes must be prepared within 10 working days after the meeting and shall be approved, amended or disapproved at the next meeting where a quorum is present.

ROLLING QUORUMS

- The OMA's requirement for open, public meetings applies to **ANY** discussion of public business among a quorum of a public body's members.
- A quorum may exist even when the members are not physically present together at the same time and place.
- The Attorney General gives the following example:
 - If three members of a five member board discuss business in a series of phone calls or email conversations, the discussion is a meeting of a quorum.
- Rolling quorums are a violation because they are not properly noticed public meetings.

“Public business is the public’s business. The people have the right to know. Freedom of information about public records and proceedings is their just heritage...Citizens...must have the legal right to ...investigate the conduct of their affairs.”

State ex rel. Newsome v. Alarid, 90 N.M. 790 (1977)

“The Arizona Supreme Court, examining a statute quite similar in language to our Section 10-15-1, stated that “[t]he intent of the legislature was to open the conduct of the business of government to the scrutiny of the public and to ban decision-making in secret. A meeting held in the spirit of this enunciated policy is a valid meeting.”

Gutierrez v. City of Albuquerque, 96 N.M. 398 (1981)

ANTI-DONATION CLAUSE OF THE NEW MEXICO STATE CONSTITUTION



- The New Mexico Constitution strictly prohibits donations to individuals by governmental entities.

- The provision provides in pertinent part:

“neither the state nor county, school district or municipality, except as otherwise provided for in the Constitution, shall directly or indirectly lend or pledge its credit or make any donation to or in aid of any person, association or public or private corporation.”

N.M. Const. art. IX, § 14.

- The law makes it clear that there are limitations on how public funds and assets can be used.
- The uses provided for in the constitution are:
 - care and maintenance of sick and indigent persons;
 - establishing a veterans' scholarship program;
 - a loan program for students of the healing arts;
 - providing land buildings or facility infrastructures to support new or expanding business;
 - providing for affordable housing.

- The constitution “makes no distinction as between ‘donations’, whether they be for a good cause or a questionable one. It prohibits them all.”

Sena v. Trujillo, 129 P. 2d 329, 333 (1942)

- Only donations made for public purposes are permissible, such as expenditures for public purposes on public property.
- The sick and indigent exception **does not** permit the state or local government to make donations to private or nonprofit organization that are used for organization's operating expenses.

Examples

- The N.M. Supreme Court held unconstitutional legislation that authorized counties and municipalities to provide financial aid to a non-profit corporation formed to promote a statewide celebration.
- No contributions to American Legion memorial allowed. County could not contribute \$500 to an American Legion war memorial erected on county property.

CITY CHARTER Section 1.05

“The City of Las Cruces, except as otherwise provided in the New Mexico Constitution, shall not directly or indirectly lend or pledge its credit or make any donation to or in aid of any person, association or public or private corporation. Nothing herein shall be construed to prohibit the city from making provision for the care and maintenance of sick and indigent persons.”

EHTHICAL CONSIDERATIONS



CONFLICT OF INTEREST

- A conflict of interest exists when a person is involved in multiple interests, financial or otherwise, and serving one interest could involve working against the other. A conflict of interest may exist when a personal interest or organizational interest might adversely affect a duty to make decisions in the best interest of a third party.

CONFLICT OF INTEREST (CONT.)

- A public official shall treat their government position as a public trust. The public official shall use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests.
- Public officials shall conduct themselves in a manner that justifies the confidence placed in them by the people and maintain the integrity and ethically discharge the high responsibilities of public service.

CONFLICT OF INTEREST (CONT.)

- Full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct. Reasonable efforts shall be made to avoid undue influence and abuse of office in public service.
- No public official may request or receive any money, thing of value or promise that is conditioned upon or given in exchange for promised performance of an official act.

EX-PARTE COMMUNICATIONS



- An ex-parte communication means a direct or indirect communication with a party or their representative, outside the presence of the other parties, about a pending matter that deal with substantive matters or issues on the merits of the proceedings
- Includes attachments to a written communication or documents shown in connection with a presentation that deals with matters or issues on the merits of the proceedings.
- This does not include communications regarding the status of a pending matter or providing administrative information.

ETHICS ORDINANCE

A stylized graphic at the bottom of the slide features a sun with wavy rays on the left, partially overlapping a mountain range silhouette. The sun's center is a square grid pattern. The mountains are represented by a dark blue silhouette against the lighter blue background.

PURPOSE AND INTENT LCMC SEC. 2-2

- To adopt an objective and enforceable standard of public behavior
- Applies to the governing body, city manager, members of boards and commissions, committees and policy advisory bodies
- Establishes due process procedure for investigating ethics complaints

DISCLOSURE & RETALIATION LCMC Section 2-4

- Upon declaration of candidacy, election or appointment each public official must provide information including:
 - Professional, occupation or business licenses;
 - Membership on other city boards, committees, commissions; boards of directors of public or private corporations, associations or organizations;
 - The nature of the public official's financial interest(s) in a business as defined in the definition section of this article.

PROHIBITIONS

- The ordinance prohibits retaliation against a public official who filed a complaint regarding an ethics violation.



PROHIBITIONS

- Private benefits or gifts (LCMC Section 2-5)
- Personal representation (LCMC Section 2-5)
- Disclosure of confidential information (LCMC Section 2-5)
- Use of City services (LCMC Section 2-5)
- Conflict of Interest/ Financial Interests (LCMC Section 2-5)
- Abuse of position (LCMC Section 2-7)
- Interference with or by administration (LCMC Sections 2-8 & 2-9)

INVESTIGATIONS LCMC SECTION 2-11

- Begins with complaint filed with the City Clerk.
- Referred to External Review Counsel. – If complaint is without merit it will be dismissed. – Otherwise, the Respondent will be informed of the complaint.
- Formal proceedings shall be initiated by filing a Specification of Charges with the Ethics Enforcement Board (Board).
- Respondent will have opportunity to answer Specification of Charges.
- Hearing within 30 day after expiry of time to answer Specification of Charges.
- Hearing will be adversarial with sworn witnesses. External Review Counsel will be the prosecutor. Board chair shall preside. Board members may question witnesses.
- Within 10 days parties may submit finding and conclusions.
- Board shall submit their own findings and conclusions in 30-60 days.

CONSIDERATION BY THE ETHICS ENFORCEMENT BOARD

- Appointment of a hearing panel. LCMC Section 2-12
- Submission of briefs or request for oral argument. LCMC Section 2-12
- Panel shall render decision within 30 days after oral arguments or briefs. LCMC Section 2-13
 1. Dismissal
 2. Public reprimand
 3. Suspension

HOTLINE

- The City is committed to accountability and ethical practices. Citizens and Employees may anonymously report possible fraud, waste, or abuse 24 hours a day:
 - www.lascruces.ethicspoint.com (employees)
 - 1-800-780-9554
 - www.lascrucespublic.ethicspoint.com (public)
 - 1-844-297-5947

- Follow-up training will include:
 - Inspection of Public Records Act (IPRA)
 - Elements of Due Process
- City Attorney's office will take your suggestions and requests for additional information 541-2128
Jvega-brown@las-cruces.org

QUESTIONS

