

# *The Open Meetings Act*

*NMSA 1978, Chapter 10, Article 15*



CITY OF SANTA FE  
CITY ATTORNEY

# *The Charter Commission as a Public Body*

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- *Any “administrative adjudicatory body or other policymaking body” of any state or local government agency, including municipalities*

*See NMSA 1978, Section 10-15-1(B)*

- "A charter review commission shall be appointed as needed, but not less frequently than every ten years... The commission shall hold no less than two meetings in each of the city's council districts, for the purpose of taking input from the public. The commission shall recommend Charter amendments to the governing body on or before the first week of April, prior to the election when any such amendments are to be considered."

# *The Open Meetings Act (OMA): Public business is to be conducted in public.*

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- *The purpose of the OMA is to provide rules that public bodies follow to ensure that public business is conducted in public.*
- *To accomplish this goal, the OMA requires that:*
  - *Public business be conducted in full public view,*
  - *Actions of public bodies be taken openly, and*
  - *Deliberations of public bodies be open to the public.*

# *Public Meetings Subject to the Act: Quorum*

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- *All meetings of a **quorum** of the Commission members are to be **public meetings open to the public at all times, unless the meeting qualifies for an exception***
- "A majority of the members of the governing body currently serving is a quorum for the purpose of transacting business. All members of the governing body present at a meeting are counted toward a quorum."
- "Unless otherwise provided by law, a question before the governing body shall be decided by a majority vote of the members present."
- NMSA 1978 § 3-12-2

# *“Rolling” or “Walking” Quorums*

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*Decisions among public body members are subject to OMA requirements any time a decision includes a quorum of public body members.*

# Rolling Quorums

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- *Five councilors, including the mayor pro tempore, all volunteer for the same organization that provides free meals during the holidays. These five councilors are part of a text message chain in which they discuss schedules for the volunteer organization and share recipes. Does this violate the OMA?*
  - *No, as long as the five councilors do not discuss public business in the text chain.*

# *Public's Right to "Attend and Listen"*

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- ... **“all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings.”**

*New Mexico Open Meetings Act NMSA 1978, § 10-15-1 (A)*

- *Reasonable public access required*
- *OMA not intended to be so strictly construed as to impair or impede the effective workings of government*

# *Remote Appearance*

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- *Remote appearance at public meetings not prohibited under OMA, public body just must have own authority allowing it. NMSA 1978, § 10-15-1(C)*
- *The City of Santa Fe does allow remote appearance under City Code Section 1-9, when it is “difficult or impossible” to attend a public meeting in person*
- **Advisory committees** *are permitted to meet remotely when the advisory committee determines it is in the best interests of the public to do so, in person appearance does not have to be difficult or impossible. Resolution 2022-38*

# Notice Requirements

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- *A public body must give notice of all public meetings of a quorum of the public body.*
- *Notice must include licensed broadcast stations and newspapers of general circulation that have made a written request for notice of the public body's meetings.*
- *Body to determine "reasonable notice" annually*

*NMSA 1978, § 10-15-1 (D)*

# *72-Hour Requirement*

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- *A public body must make the agenda available to the public at least 72 hours before a meeting.*
- *The 72-hour requirement applies regardless of whether it includes a Saturday, Sunday or holiday. For example, a public body holding a meeting on a Monday at 9:00 a.m. would meet the 72-hour requirement if it made the agenda available on Friday by 9:00 a.m.*

*NMSA, 1978 § 10-15-1(F)*

# Minutes

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- *All public bodies are required to keep written minutes of all open meetings.*
- *Minutes of open meetings shall record at least the following information:*
  - *(a) the date, time and place of the meeting;*
  - *(b) the names of all members of the public body in attendance and a list of those members absent;*
  - *(c) a statement of what proposals were considered; and*
  - *(d) a record of any decisions made by the public body and of how each member voted.*

# Minutes

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- *Must contain a description of the subject of all discussions had by the body, even if no action is taken*
- *A draft copy of the minutes to be prepared within ten working days of the meeting.*
- *Draft copies of minutes must be available for public inspection*
- *The public body must approve, amend or disapprove draft minutes at the next meeting of a quorum, and the minutes are not official until they are approved.*

# *Exceptions to the OMA*

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- *Certain types of discussions by a quorum of public body members are not subject to the open meetings and minute-taking requirements of the Open Meetings Act.*

# Exceptions to the OMA

## *Likely to come up:*

- 1. Certain personnel matters*
- 2. Deliberations in connection with an administrative adjudicatory proceeding*
- 3. Meeting with the public body's attorney pertaining to threatened or pending litigation in which the public body is or may become a participant*
- 4. Negotiations and discussions related to collective bargaining with employee unions*
- 5. Discussion of a sole source purchase that exceeds \$2,500 or of the contents of competitive sealed proposals during the contract negotiation process*
- 6. Discussion of the purchase, acquisition or disposal of real property or water rights*

## *Unlikely to come up or will not come up:*

- 1. Deliberations related to licensure for an individual*
- 2. For boards of public hospitals only, discussion of strategic or long-range business plans or trade secrets*
- 3. Personally identifiable information about an individual student*
- 4. Information made confidential by the Gaming Control Act*

## *Exceptions to the OMA: Deliberations related to administrative adjudicatory proceedings*

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- *Ok to go into executive session to discuss the evidence that you heard at an adjudicatory proceeding, how to apply the law, or anything else related to your decision on one of these hearings*
- *Actual hearing and final action must be public*

## *Exceptions to the OMA: Attorney/Client Privilege*

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- *Meetings subject to the attorney-client privilege pertaining to threatened or pending litigation in which the public body is or may become a participant.*

*Questions?*