



December 20, 2024

Mayor Eric Enriquez (eenriquez@lascruces.gov)
Mayor Pro Tem, Johana Bencomo (jbencomo@lascruces.gov)
Brad Douglas, City Attorney (cityattorney@lascruces.gov)
City of Las Cruces
City Hall
700 N. Main St.
Las Cruces, NM 88004

Re: **Complaint No.:** NMDOJ-ECS-20240329-2493
Complaint Date: March 29, 2024
Filers: Algernon D’Ammassa
Respondent: City of Las Cruces City Council
Type: Open Meetings Act Complaint

Dear Mayor Enriquez and Mayor Pro Tem Bencomo:

The Government Counsel and Accountability Division (the “GCA”) of the New Mexico Department of Justice (the “NMDOJ”) recently completed a review of a complaint received regarding your public body. The allegations in the complaint raised concerns with your public body’s compliance with New Mexico’s government transparency laws – specifically, the Open Meetings Act (“OMA”), NMSA 1978, Sections 10-15-1 to –4. Public bodies across our state, at every level of government, are required to comply with both the written requirements and spirit and intent behind our sunshine laws, which provide the public a fundamental right to obtain information regarding the affairs and business of our representative government.

The Attorney General has statutory authority to enforce this law, and we rely on concerns brought forward by the public to help identify and resolve issues of noncompliance by means of informal resolution. Through this process, our agency clarifies explicit requirements as well as best practices and directs such action needed to cure violations and help ensure future compliance with the law. Serious issues of noncompliance, or repeated noncompliance, may result in further action from our agency.

The allegations raised in the complaint regard the City of Las Cruces City Council’s (“City Council”) process for recruiting and hiring a new city manager. For the reasons set forth in this letter, the GCA has concluded that that process lacked compliance with the OMA. The *only* open meeting at which the City Council ever discussed the selection of the new city manager was its April 1, 2024, meeting. At that meeting, the City Council had already selected its candidate and negotiated an employment agreement. The City Council’s opaque process deprived the public of

any opportunity to meaningfully participate in the selection of a new city manager. As a consequence of these violations, the city manager selection is invalid. As discussed further below, the GCA finds serious violations that require your immediate attention and correction.

I. MATERIALS REVIEWED

Our evaluation of the Complaint included a review of the following documents:

- a. Mr. D’Ammassa’s complaint, which included an email correspondence between Mandy Guss, Communications Director for the City of Las Cruces, and Mr. D’Ammassa, between March 21, 2024, and March 25, 2024. The Complaint is attached as Exhibit A.
- b. The meeting agendas for the two closed City Council meetings on March 18, 2024, and March 20, 2024, and the regular Council meeting on April 1, 2024.
- c. The video recording of City Council’s April 1, 2024, regular meeting. Las Cruces City Council, *Las Cruces Council Meeting - April 1, 2024*, YouTube (Apr. 1, 2024), https://www.youtube.com/live/2ulSz_tUPPQ?si=P1NGIYsrVgct03sM. (hereinafter “Videorecording”).
- d. Copies of press releases from the City of Las Cruces dated February 28, 2024, March 19, 2024, and March 21, 2024. The press releases are attached as Exhibit B.
- e. Resolution 24-100, City Council Action and Executive Summary, which is attached as Exhibit C.
- f. Article by Mr. D’Ammassa in the Las Cruces Bulletin: “City denies violating open meetings law,” dated March 28, 2024, a copy of which is attached as Exhibit D.
- g. Article by Mr. D’Ammassa in the Las Cruces Bulletin: “Las Cruces councilors approve contract for new city manager,” dated April 1, 2024, a copy of which is attached as Exhibit E.
- h. The City Council’s September 6, 2024, written partial response to the GCA’s First Letter of Inquiry sent on August 30, 2024, a copy of which is attached as Exhibit F.
- i. The City Council’s September 10, 2024, written supplemental response to the GCA’s First Letter of Inquiry sent on August 30, 2024, a copy of which is attached as Exhibit G.
- j. The City Council’s production of text messages from Ikani Taumoepeau to City Council Members and Mayor Pro Tem Bencomo. Copies of the text messages are attached as Exhibit H.
- k. The City Council’s October 29, 2024, written responses to the GCA’s Second Letter of Inquiry sent on October 22, 2024, a copy of which is attached as Exhibit I.
- l. The City Council’s Closed Meeting Statement for its March 18, 2024, closed meeting that was produced on October 22, 2024, a copy of which is attached as Exhibit J.

II. TIMELINE OF CITY COUNCIL'S ACTIONS ON HIRING NEW CITY MANAGER

The GCA has developed the following relevant timeline based on the materials we reviewed:

February 28, 2024: The City of Las Cruces issued a press release stating that former City Manager Ifo Pili was resigning, and that the City of Las Cruces was accepting “internal” applications beginning that day.

March 18, 2024: The City Council met in closed session, invoking the OMA’s “limited personnel matters” exception. The March 18, 2024, closed session is not reported out until April 1, 2024.

March 19, 2024: The City of Las Cruces issued a press release stating that the City Council selected three finalists for city manager at its March 18, 2024, closed session. The press release also stated that the City Council decided to select the new city manager from applicants already employed by the City of Las Cruces.

March 20, 2024: The City Council met in closed session, invoking the OMA’s “limited personnel matters” exception. The March 20, 2024, closed session is not reported out until April 1, 2024, at which Mayor Enriquez stated that the meeting lasted from 10:49 a.m. to 5:18 p.m. and included in attendance the three individuals who were presumably the finalists: David Sedillos, Sonia Delgado, and Ikani Taumoepeau.

After the closed session, according to text messages produced by the City Council, Ikani Taumoepeau texted Councilor McClure and Councilor Corran thanking them for their support and opportunity to serve the council.

March 21, 2024: The City of Las Cruces issued a press release stating that a “tentative offer” has been made to Ikani Taumoepeau for city manager and is to start on April 1, 2024. The press release stated that the “proposed contract will be voted on by City Council at its April 1, 2024, regular meeting.”

March 25, 2024: The City Council held a “work session” meeting, at which there was a quorum of the public body present and public business was discussed.

April 1, 2024: At a regular City Council meeting, the City Council votes on Resolution No. 24-100, which approved the employment agreement for Ikani Taumoepeau as city manager. Additionally, at the April 1, 2024, regular meeting, Mayor Enriquez reports out the two closed sessions the City Council held on March 18, 2024, and March 20, 2024.

III. OMA VIOLATIONS

After our review of the evidence provided, the GCA finds that the City Council’s decision process to limit the city manager to internal candidates was reached through a presumed rolling quorum, rather than in an open meeting. Specifically, the City Council engaged in closed and

informal, individual discussions between the outgoing city manager, Mr. Pili, Mayor Enriquez, and Councilors, instead through the open and transparent process required by OMA. For the reasons stated below, the City Council's process to select a new city manager raises serious concerns about the lack of adherence to legal requirements designed to ensure that public body's decisions are made in the public's view.

A. The City Council Failed to Decide the Scope of its City Manager Search in an Open Meeting and Appears to Have Engaged in a Rolling Quorum.

The City Council contends that its decision to limit its search scope to internal candidates was formally made at its March 18, 2024, closed meeting pursuant to the "limited personnel matters" exception. *See* Exhibit G; Exhibit I.

The exhibits and press release issued February 28, 2024, clearly show that the City Council held discussions among Mr. Pili, Mayor Enriquez, and the Councilors, that led to a private consensus to accept internal applications prior to March 18, 2024. In fact, there is no evidence to suggest that final action to only accept internal applications for city manager was made in an open meeting, only a decision that merely ratified an outcome that had already been determined outside of the public's view. As a result, the City Council did not comply with the OMA to limit its scope of city manager candidates by conducting the discussion of public business outside of a public meeting and initiating a "rolling quorum."

Pursuant to NMSA 1978, Section 10-15-1(B), *any* discussion of public business within the delegated authority of a public body *must* take place in an open meeting. This requirement is typically met when a quorum of a public body's members convene discuss public business or take final action in a properly noticed, public meeting. However, a quorum can exist for purposes of OMA even when the members are not physically present together at the same time and place. For example, if three members of a five-member board discuss public business in a series of telephone or email conversations, the discussion is a meeting of a quorum. This is referred to as a "rolling" quorum. The GCA highly advises public bodies to be cautious of engaging in a "rolling quorum", as it constitutes a meeting of a quorum of the public body's members outside of a properly noticed, public meeting, which is a violation of the OMA.

NMSA 1978, Section 10-15-1(B) requires that all meetings of a quorum of members of the City held for the purpose of formulating public policy, including the development of personnel policy or taking any action within the authority of the City must be in a public meeting open to the public. Public policy and the discussion of public business can have many meanings, but it is clear that OMA contemplates personnel matters within the authority of a public body to be the discussion of public business, regardless of whether a policy is being decided.

The City Council's decision to proceed with internal candidates for city manager was first mentioned in the City Council's press release on February 28, 2024, which announced, "[i]nternal applications for the City Manager's position began being accepted Wednesday, February 28, 2024." *See* Exhibit B. In its written response to the GCA's first inquiry requesting an explanation of how the City Council decided to limit its search for city manager to internal candidates, the City Council answered: "[u]pon information and belief, former City Manager Ifo Pili consulted with the mayor and informed him that he believed that the organization had enough strong internal candidates to merit an in-house hiring process." *See* Exhibit G. Additionally, Mandy Guss,

Communications Director for the City of Las Cruces, was quoted by the Las Cruces Bulletin, stating, “[t]he city manager hiring process was suggested by Ifo [Pili, the outgoing city manager], who spoke individually with the city council members and got their OK to move forward.” *See* Exhibit D. When asked by Mr. D’Ammassa via email how many councilors Mr. Pili consulted with regarding the internal hire, Ms. Guss replied that she did not know how many councilors Mr. Pili had spoken with, but she claimed that “there was no rolling quorum as no policy was voted on.” *See* Exhibit A.

It is the GCA’s opinion that the City Council’s decision to focus exclusively on internal candidates is the result of a presumed rolling quorum. According to the City Council’s February 28, 2024, press release, internal applications had begun to be accepted the same day, indicating that the decision to accept internal applications had already been made by that date. This is supported by the City Council’s response to the GCA’s first inquiry, that the outgoing city manager, Mr. Pili, consulted with Mayor Enriquez, who both believed there were sufficient internal candidates for the city manager position. *See* Exhibit G. This consensus led to Mr. Pili reportedly consulting with councilors individually to secure their approval. *See* Exhibit D. According to Section 10-15-1(B), any discussions to decide the scope of the applications should have decided in an open meeting, as it is public business. The fact there is no evidence to support there was an open meeting to discuss the scope of applications, the GCA presumes that the City Council engaged in a rolling quorum to come to this decision.

The Council’s decision to limit the scope to internal candidates is public business, as the city manager is the only position appointed by the City Council. Las Cruces, N.M., Mun. Code, § 2-170 (1988). As such, pursuant to NMSA 1978, Section 10-15-1(B), *any* discussion regarding the new city manager’s selection process should have been discussed in a properly noticed, public meeting. While Ms. Guss claimed that the City Council did not engage in a rolling quorum because no policy was voted on, *see* Exhibit A, her explanation fails to recognize that any discussions regarding the selection process should have been discussed in an open meeting, regardless of any formal votes occurring.

B. The City Council’s March 18, 2024, Closed Session to Narrow the Candidate Field to Three Internal Candidates Violated the OMA.

On March 18, 2024, the City Council held a closed meeting to discuss limited personnel matters regarding the hiring of the city manager, which was closed pursuant to NMSA 1978, Section 10-15-1(H)(2). *See* Exhibit J. In the City Council’s March 19, 2024, press release, the City Council stated that at its March 18, 2024, closed meeting, the City Council selected three finalists after reviewing applications of nine internal candidates. *See* Exhibit B.

Any discussion of public business within the delegated authority of a public body must take place in an open meeting. § 10-15-1(B). However, the OMA outlines exceptional situations in which certain public business can be discussed in a closed session outside of an open public meeting, including “limited personnel matters.” § 10-15-1(H)(2). According to OMA, “limited personnel matters” specifically means “the discussion of hiring, promotion, demotion, dismissal, assignment or resignation of or the investigation or consideration of complaints or charges against any *individual public employee*[.]” (emphasis added). *Id.*

After our review of the evidence provided, the GCA finds that the selection of the three finalists taken at the City Council's March 18, 2024, closed meeting did not comply with the OMA because the "limited personnel matters" provides only for discussion of matters under the exception and does "not exempt final actions on personnel from being taken at open public meetings." *Id.* The March 18, 2024, closed meeting intended to create a discussion of the city manager position but was instead created the decision on finalists and ultimately the final decision for the candidate for the city manager position. *See* Exhibit I. This is also evidenced during remarks the City Council's April 1, 2024, open meeting, which JC Borrego, City of Las Cruces Human Resources Assistant Director, stated that the closed meeting on March 18, 2024, involved a "discussion of the internal hiring process." Videorecording, *supra*, at 1:31:09. While the discussion of the City Council's internal hiring process could be in closed session, any selection of finalists or employee must have occurred in an open meeting, as these are matters of public business and affect the public. Accordingly, the GCA finds that the City Council improperly invoked the "limited personnel matters" exception and took improper action at its March 18, 2024, closed meeting.

C. The City Council's March 20, 2024, Closed Session to Select Ikani Taumoepeau as City Manager Violated OMA.

Out of the OMA violations discussed thus far, the most egregious is the City Council's decision on the city manager position during its closed session on March 20, 2024. The discussion on "limited personnel matters" can be discussed in a closed session outside of an open public meeting. § 10-15-1(H)(2). However, any final actions of "limited personnel matters" that were discussed in a closed session, must be taken in an open meeting. § 10-15-1(B).

In this case, there is substantial evidence that the City Council did not simply discuss the three finalists at its March 20, 2024, closed meeting; it took final action to select a candidate and take steps to move forward with that candidate outside of an open meeting. This evidence includes:

1. On March 20, 2024, Mr. Taumoepeau texted Councilor Corran (at 6:06 p.m.) and Councilor McClure (at 7:37 p.m.) thanking them for their support and opportunity to serve the council. *See* Exhibit H. The closed meeting adjourned at 5:18 p.m., according to the City Council's March 20, 2024, closed meeting statement. Videorecording, *supra*, at 1:28:19. The foregoing shows that a decision was made by the City Council to select Mr. Taumoepeau as city manager during the closed session.
2. On March 21, 2024, the City Council issued a press release with the headline "Las Cruces City Council Selects Ikani Taumoepeau to Serve as City Manager." The press release publicly announced that the City Council "has made a tentative offer" to Mr. Taumoepeau. Mayor Enriquez is quoted stating: "[t]he decision was not easy[.]" (emphasis added). *See* Exhibit B.
3. At the April 1, 2024, City Council meeting, it was clear that the employment agreement between the City Council and Mr. Taumoepeau (Resolution 24-100) had already been negotiated, as the contract was already drafted and ready for the City Council's approval. The City Council never publicly discussed the selection of Mr. Taumoepeau, only the employment agreement.

4. At the City Council’s April 1, 2024, meeting, J.C. Borrego, City of Las Cruces Human Resources Assistant Director, made a presentation that included a bullet point stating that “City Council’s candidate is Ikani Taumoepeau.” Videorecording, *supra*, at 1:31:41.

After the GCA’s review of the evidence, it is clear that during the March 20, 2024, closed session the City Council took an invalid final action to select Mr. Taumoepeau as the new city manager. The GCA’s concern is that the City Council never discussed or took any final action in an open meeting to select Mr. Taumoepeau as the final candidate for the city manager position, as required by Section 10-15-1(B). The City Council should have held an open meeting to take any final action related selecting its new city manager *before* publicly announcing an offer, either tentative or final, and certainly before any contract negotiations. The City Council’s lack of compliance deprived the public of information and the opportunity to participate in the affairs of government and the official acts of public officers and employees who represent them, in which they are entitled to. § 10-15-1(A).

As a result, the GCA finds that even though the City Council took a final action on April 1, 2024, to approve the employment agreement between the City and Mr. Taumoepeau, this was wholly insufficient to comply with the OMA. The GCA finds that ratifying a decision that stemmed from a selection process that was made in a closed session and shielded the public from any meaningful participation, seemingly does not cure these invalid final actions. It is also worth noting that there is no evidence to support that the City Council took final action to officially appoint Mr. Taumoepeau as city manager. Resolution 24-100 is approval of an *employment agreement*, not an appointment of a new city manager.

D. The City Council Failed to Properly Make the Statement Required by NMSA 1978, Section 10-15-1(J) for its March 18, 2024, and March 20, 2024, Closed Meetings.

At the City Council’s open meeting on April 1, 2024, Mayor Enriquez reported out the two closed sessions the City Council held on March 18, 2024, and March 20, 2024. According to NMSA 1978, Section 10-15-1(J), “[f]ollowing completion of any closed meeting, the minutes of the open meeting that was closed, or the minutes of the next open meeting if the closed meeting was separately scheduled, shall state that the matters discussed in the closed meeting were limited only to those specified in the motion for closure or in the notice of the separate closed meeting.”

On March 18, 2024, the City Council voted to enter closed session. Afterwards, the City Council voted to re-enter open session. Since an open session immediately followed the closed session, the required statement should have been made when the City Council entered back into open session on March 18, 2024, according to Section 10-15-1(J).

For the March 20, 2024, closed session, it is the GCA’s opinion that the required statement should have been made at the City Council’s “work session” that was held on March 25, 2024. The City Council has stated that there was a quorum present at the March 25, 2024, work session. *See* Exhibit I. Under OMA, all discussions of a public business by a quorum of members of a public body shall be in open, public meetings. § 10-15-1(B). At these meetings, the City Council receives updates from the City Departments on a variety of topics and the City Council

views the meeting as informational, with no action items on the agenda. *Id.* Action items are not required in the OMA for public meetings. The OMA simply requires that public bodies are subject to the OMA when a quorum is present and there is a discussion of public policy or business. It is clear that the City Council’s “work sessions” includes the discussion of public business (e.g., receiving updates for city departments) when a quorum is present, making them subject to the OMA. As such, the March 20, 2024, closed meeting required statement should have been made at the March 25, 2025, “work session” as it was the following open meeting after the closed session on March 20, 2024.

While it is clear the City Council has violated the OMA by failing to make the required statements properly for its March 18, 2024, and March 20, 2024, meetings, the City Council has acknowledged the error was due to a misinterpretation of the requirement by staff and that it will be corrected in the future. *See* Exhibit I. The GCA appreciates the City Council’s decision to address the misrepresentation and future corrective action regarding required statements.

IV. INVALID ACTIONS AND CURING UNDER THE OMA

After the GCA’s review of the evidence and for the reasons mentioned in Section III, it is our office’s opinion that the City Council engaged in closed deliberations and invalid final actions prior to the single, open public meeting held to discuss the hiring of a new city manager on April 1, 2024. These actions deprived the public of any meaningful opportunity to participate in, or even witness the deliberations on, a question of significant public importance.

The OMA states 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 Section 10-15-1 NMSA 1978.” § 10-15-3(A). Given the series of OMA violations outlined above, the final action taken by the City Council on the approval of Mr. Taumoepeau’s selection and hiring is currently not valid.

There are two alternative corrective actions available to the City Council. First, the OMA violations can be cured by holding an OMA-compliant public meeting, summarizing all the discussions and comments made outside of a public meeting in violation of OMA, and ratifying the actions by a public and open vote of a majority of the City Council. *Id.*; *see also* NMSA 1978, § 10-15-3(B) (1997). “[P]rocedural defects in [compliance with the OMA] may be cured by taking prompt corrective action.” *N.M. State Inv. Council v. Weinstein*, 2016-NMCA-069, ¶ 86 (quoting *Kleinberg v. Bd. of Educ.*, 1988-NMCA-014, ¶ 30, 107 N.M. 38) (alteration in original). Under this first alternative, the Commission’s ratification would have to address all the procedural defects that began when the City Council decided, on or around February 28, 2024, to limit its search for a new city manager to internal candidates until April 1, 2024, when City Council approved the employment agreement with Mr. Taumoepeau. Such corrective action is not retroactive in approval. All approvals from the curing open meeting and votes and approvals of the City Council are effective on the day of that meeting.

Second, the OMA violation can be cured by treating the violative action as invalid and recommencing the process through an OMA-compliant public meeting. This second alternative would require starting over, which includes the consideration and adoption by a majority of the Commission of a new resolution in a properly noticed, open meeting, with all discussions, deliberations, and votes on the new resolution occurring in an open meeting.

We advise the City Council to immediately address the OMA violations associated with the selection of the city manager and cure them with one of these two alternatives. Given the gravity of the subject matter, we recommend that the City Council address this matter either at a special meeting or at the next available City Council meeting. The NMDOJ also requests that the City Council alert the NMDOJ of any corrective action it chooses to take, notices of meetings, and any decision stemming from these violations.

The NMDOJ has authority to enforce the OMA through injunction, mandamus, or other appropriate order. We therefore reserve the right to enforce the provisions of the OMA through the commencement of a civil action, but we trust that our findings in this matter are sufficient to identify both the nature of the violations and, more importantly, the necessary corrective action that must be taken. To that end, please reach out to us should you have any questions about how to move this process forward in a manner that comports with New Mexico law.

Based on our analysis provided here, we will not consider this matter closed until all invalid actions addressed in this letter have been addressed and cured. However, if any issues raised in this complaint remain unresolved, we encourage the complainant, who is copied here, to contact our office or submit a new complaint on our website with any additional information. Future complaints related to your public body will be examined with increased attention, and further information regarding your public body's training and policies may be requested to determine what additional intervention may be needed and whether an enforcement action may be necessary to ensure government accountability.

Thank you for your attention to this important matter and for your commitment to promote government transparency through your public body. If our agency can answer any questions or be of further assistance, please do not hesitate to contact our Government Counsel and Accountability Division or visit our website for additional resources at <https://nm DOJ.gov/about-the-office/civil-affairs/#government-counsel-and-accountability>.

Sincerely,

A handwritten signature in black ink, appearing to read 'Blaine Moffatt', with a long horizontal flourish extending to the right.

Blaine Moffatt
Division Director
Government Counsel and Accountability Division

cc: Algernon D'Ammassa (algernon@lascrucesbulletin.com)