

**STATE OF NEW MEXICO
BERNALILLO COUNTY
SECOND JUDICIAL DISTRICT**

RIO GRANDE FOUNDATION,

Plaintiff,

v.

No. _____

CITY OF ALBUQUERQUE,

Defendant.

COMPLAINT FOR DECLARATORY JUDGMENT AND

COMES NOW, Plaintiff Rio Grande Foundation, by and through undersigned counsel Western Agriculture, Resource and Business Advocates, LLP (A. Blair Dunn, Esq.) and states the following:

GENERAL ALLEGATIONS

1. Plaintiff Rio Grande Foundation is a Domestic Nonprofit Corporation operating in New Mexico providing information to New Mexico’s citizens, many of its members are citizens of Albuquerque, New Mexico that are directly affected by the governmental policy actions taken by the government officials comprising the City of Albuquerque.

2. Defendant City of Albuquerque is a local government body of the State of New Mexico.

3. This action is brought by Plaintiff against the Defendant to enforce the provisions of the New Mexico Open Meetings Act (“OMA”) NMSA 1978 § 10-15-1 *et seq.* to declare the enactment of new policy and the reenactment or re-ratification of existing ordinances void and to have the Court declare that certain provisions of the ordinance that Defendant acting through its

City Council sought to reenact without complying with the OMA are unconstitutional pursuant to N.M. Const. Art. II, § 6.

FACTS

1. The City Council of Albuquerque announced on Friday, March 13, 2020 that they would meet in a closed meeting on Monday, March 16, 2020 to consider amending a decades old emergency powers ordinance. The Ordinance as it was proposed and then adopted by the City of Albuquerque is attached hereto as EXHIBIT 1.
2. The Ordinance including the amendments that were adopted in closed meeting is a matter of policy that the citizens of Albuquerque were entitled to participate in considering with their elected representative on the City Council.
3. The Ordinance, which was in effect, re-adopted in its entirety with amendment contains a provision that allows the Mayor to regulate the sale and keeping of firearms in Albuquerque.

COUNT I - VIOLATION OF THE NEW MEXICO OPEN MEETINGS ACT

4. Plaintiff incorporates by reference the claims, facts, and allegations set forth in the above paragraphs.
5. Pursuant to NMSA 1978 § 10-15-2 "...all meetings of any committee or policy-making body of the legislature held for the purpose of discussing public business or for the purpose of taking any action within the authority of or the delegated authority of the committee or body are declared to be public meetings open to the public at all times."

NMSA 1978 § 10-15-2.

6. In addition, the New Mexico Open Meetings Act also provides that:

No 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.

Every resolution, rule, regulation, ordinance or action of any board, commission, committee or other policymaking body shall be presumed to have been taken or made at a meeting held in accordance with the requirements of Section 10-15-1 NMSA 1978.

NMSA 1978 § 10-15-3.

7. Defendant has violated the New Mexico Open Meetings Act by holding a City Council meeting March 16, 2020 without proper notice and without conducting such according to the provisions of the Open Meetings Act therein violating the Due Process owing to the citizens of Albuquerque.

8. Pursuant to NMSA 1978 § 10-15-4, Any person violating any of the provisions of the Act is guilty of a misdemeanor and shall be punished by a fine of five hundred dollars for each offense.

9. Pursuant to NMSA 1978 § 10-15-3, all actions taken by the City of Albuquerque at the March 16, 2020 meeting are illegal and should be declared null and void.

10. Plaintiff is entitled to attorney's fees and costs for the failure of the Defendant to follow the New Mexico Open Meetings Act.

COUNT II – DECLARATORY JUDGEMENT THAT THE ORDINANCE IS UNCONSTITUTIONAL AS TO REGULATING FIREARMS

11. Plaintiff incorporates by reference the claims, facts, and allegations set forth in the above paragraphs.

12. The City of Albuquerque, acting under the color of emergency powers, many decades in the past, adopted an ordinance purporting to convey to the Mayor of the City to regulate and prohibit the bearing of firearms in a crisis and on March 16, 2020 by amending that ordinance to grant the Mayor additional powers without removing the powers previously granted to the Mayor *ipso facto* ratified that the Mayor continued to have that power to regulate firearms, in clear

contravention of N.M. Const. art. II, § 6 which unequivocally provides that municipalities are prohibited from taking such an action, stating:

No law shall abridge the right of the citizen to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes, but nothing herein shall be held to permit the carrying of concealed weapons. No municipality or county shall regulate, in any way, an incident of the right to keep and bear arms.

N.M. Const. art. II, § 6.

13. Pursuant to N.M. Const. art. II, § 6 the City of Albuquerque is prohibited from all actions that **in any way** regulate any incident of the right to keep and bear arms.

14. Both the United States Constitution and the New Mexico Constitution protect the pre-existing fundamental liberty of the individual to keep and bear arms directing that the government shall not infringe upon that right.

15. It is understood that the right to keep and bear arms is not absolute but may only be limited by regulation in the state of New Mexico by state government.

16. The City of Albuquerque's amended and readopted ordinance violates Article II Section 6 of the New Mexico Bill of Rights in the New Mexico Constitution.

WHEREFORE, Plaintiff respectfully requests the Court exercise its jurisdiction and enter, pursuant to the Court's original jurisdiction under NMSA §44-6-1 *et. seq.*, and the New Mexico Open Meetings Act:

- A. A finding adjudicating that the Defendants are in violation of the New Mexico Open Meetings Act;
- B. Judgment in favor of Plaintiffs declaring that the Ordinance adopted by the City Council for the City of Albuquerque is null and void as a matter of law;

- C. Judgment in favor of Plaintiffs declaring that the portion of the Ordinance as previously adopted regarding regulation of firearms by the Mayor is unconstitutional and void as a matter of law
- D. An injunction to enforce the provisions of the New Mexico Open Meetings Act;
- E. An Order awarding Plaintiffs their costs and reasonable attorneys' fees as provided by law;
- F. Such other and further relief as the Court deems just.

WESTERN AGRICULTURE, RESOURCE,
AND BUSINESS ADVOCATES, LLP

/s/ A. Blair Dunn

A. Blair Dunn, Esq.
400 Gold Ave SW, Suite 1000
Albuquerque, NM 87102
(505) 750-3060
abdunn@ablairdunn-esq.com

1 lawful act in an unlawful, violent or tumultuous manner, which cannot be
2 controlled or stopped under existing conditions or authority.

3 (3) A natural disaster or a ~~manmade~~ human-caused calamity,
4 including but not limited to flood, conflagration, cyclone, tornado, earthquake
5 [technological disruption, cyberattack] or explosion occurring within or
6 affecting property within the city limits of the city which endangers life and
7 property to such extent that extraordinary measures must be taken to protect
8 the public health, safety and welfare.

9 (4) [An actual or eminent outbreak, or reasonable threat of an
10 actual or eminent outbreak, of any infectious disease that presents an unusual
11 threat to the health or safety of the residents of the City, or threatens to
12 unreasonably strain the medical or emergency service resources available in
13 the City.

14 (5) _____]Unlawful activities, such as looting, arson, fire bombing,
15 sniping, interference with emergency vehicles, widespread criminal damage to
16 property, which in the opinion of the Mayor based upon consultation with the
17 Chief of Police cannot be controlled nor stopped under existing conditions
18 and authority without unduly further endangering life or property.

19 CURFEW. That period of time as declared by the Mayor during which no
20 person or persons shall be upon the public streets, sidewalks, grounds or
21 semi-public property either on foot or in vehicles of any type within the city,
22 except, however, that persons authorized by the Mayor by administrative order
23 shall not be subject to the curfew.

24 MAYOR. The Mayor of the city or his designated representative.

25 MOLOTOV COCKTAIL. A bottle or other type container, containing
26 gasoline or any other inflammable matter to which has been inserted or
27 attached a fuse type wick or any similar contrivance.

28 § 2-9-1-2 BOMBS OR MISSILES PROHIBITED.

29 No person shall make, carry, possess or use any type of Molotov Cocktail,
30 gasoline or any other type of bomb within the corporate limits of the city.

31 § 2-9-1-3 [MAYORAL PROCLAMATION;] EMERGENCY POWERS.

32 Whenever the Mayor shall[,] after consultation with the [~~Chief of Police~~
33 Director of the City Office of Emergency Management,] find that a civil

1 emergency exists as defined herein and that invocation of the extraordinary
2 powers conferred herein is necessary to ensure or to restore the public peace,
3 [or to help preserve and maintain the health, safety, and welfare of the general
4 public,] he shall forthwith proclaim in writing the existence of such
5 emergency. Upon such determination the Mayor is hereby empowered to
6 invoke any or all of the following provisions:

7 (A) To declare hours of curfew upon all or any portion of the city thereby
8 requiring all persons in such designated curfew areas to forthwith remove
9 themselves from the public streets, alleys, parks or other public or semi-public
10 places. The curfew shall be declared by proclamation which shall be delivered
11 to the Chief of Police, who shall see that copies thereof are delivered to all
12 news media within the city and who shall also use public address systems to
13 notify the public of said proclamation and curfew hours and warn the public
14 that violation of said curfew constitutes a misdemeanor and violators are
15 subject to arrest.

16 (B) To close any and all streets, alleys and other public ways in the city
17 to the public whenever it is necessary for the preservation of life and property
18 and the maintenance of law and order.

19 (C) Order the closing of all retail package liquor stores and outlets.

20 (D) Order the closing of all bars and other establishments selling
21 intoxicating liquor or beer by the drink.

22 (E) Order the discontinuance of selling, distributing or giving away
23 gasoline or other liquid flammable or combustible products in any container
24 other than a gasoline tank properly affixed to a motor vehicle said sale to be
25 limited to not more than one gallon per motor vehicle, or in the alternative,
26 order the closing of gasoline stations and other establishments, the chief
27 activity of which is the sale, distribution or dispensing of liquid flammable or
28 combustible products.

29 (F) Order the discontinuance of selling, distributing, dispensing or
30 giving away of any firearms or ammunition of any character whatsoever, or in
31 the alternative, order the closing of all establishments or portions thereof
32 where arms and/or ammunition are kept for sale or distribution.

1 (G) Order the closing of places of mass assembly, including theaters,
2 clubs and performance and athletic venues.

3 (H) Order the closing of places of institutional childcare or education
4 such as daycares, preschools, and private educational institutions.

5 (I) Order that places of private employment take reasonable measures
6 (as determined by each employer) to minimize any exposures to unusual
7 infectious diseases or health risks to employees and customers by, for
8 example, additional cleaning and sanitization protocols, partial or full
9 closures, or authorizing non-essential employees to work from home or take
10 leave, or deploying social distancing protocols.

11 (J) Cancel city sponsored events and gatherings, cancel or impose
12 limitations or special protocols for the provision of City services and the use
13 of city facilities, and authorize the redistribution or rededication of city
14 resources and budgetary appropriations as necessary to help address or
15 combat the proclaimed emergency.

16 (K) Enter any agreements authorizing the use of City owned property by
17 third parties, or agreements for the City's use of non-city owned property,
18 outside of the usual requirements for City real property transactions
19 prescribed ROA 1994 § 5-2-1 et. seq. as necessary to help address or combat
20 the proclaimed emergency.

21 (L) Issue such other orders as are imminently necessary for the
22 protection of life and property.

23 § 2-9-1-4 PUBLICATION OF ORDERS.

24 ~~[All~~ The Mayor shall immediately deliver a copy of the declaration and all]
25 orders issued pursuant to authority contained in § 2-9-1-3 [regulating or
26 prohibiting the conduct of business shall be delivered] to the [Albuquerque]
27 Police Department [who shall forthwith, Albuquerque Fire and Rescue, all
28 major media outlets serving the City, and the President of the City Council.
29 The Mayor shall also post a copy of all such orders to the City's website,
30 distribute them through the City's primary social media accounts, and take
31 such additional reasonable measures necessary to] inform [the operator or
32 persons in charge of the business affected, advising them that failure to
33 comply with the order constitutes a violation of §§ 2-9-1-1 et seq. for which

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1 ~~they may be arrested~~ impacted persons and businesses of the emergency
2 declaration and associated emergency orders].

3 § 2-9-1-5 [DURATION AND] EXTENSION OF EMERGENCY PROCLAMATION.

4 Any emergency proclaimed in accordance with the provisions of §§ 2-9-1-1
5 et seq. shall [take effect immediately, and] terminate ~~[after 48 hours~~ upon the
6 date set forth by the proclamation, not to exceed seven (7) days] from the
7 issuance thereof, or [may terminate sooner] upon the issuance of a
8 proclamation [by the Mayor] determining an emergency no longer exists,
9 whichever occurs first; provided, however, that [such any] emergency
10 [proclamation] may be [sooner] terminated by [resolution of] the City Council
11 ~~[prior to the termination of 48 hours]~~ or may be extended [by resolution of the
12 Council as originally proclaimed or with amendments] for [any] such
13 additional periods of time as deemed necessary by the City Council [up to a
14 maximum of ninety (90) days per proclamation].

15 § 2-9-1-6 FAILURE TO OBEY.

16 Every person remaining present at the place of any riot or unlawful
17 assembly after they have been ordered to disperse by the police or any other
18 lawful authority, [or who fails to comply with any order or directive set forth
19 pursuant to this ordinance,] except those public officers and persons
20 assisting them in attempting to disperse the same [or comply with an order or
21 directive or administer emergency services], shall be deemed guilty of a
22 violation of §§ 2-9-1-1 et seq.

23 [§ 2-9-1-7 NON LIMITATION OR INTERFERENCE WITH OTHER AUTHORITY

24 Nothing herein is intended to limit the power or authority of the Mayor with
25 respect to the control and management of City resources and facilities that
26 generally exists even outside the existence of a civil emergency. However,
27 notwithstanding the emergency powers authorized herein, closures or
28 limitations for any office or place of gathering or meeting necessary for
29 carrying out the business of the City Council may occur only by order of the
30 President of the City Council.]”

31 SECTION 2. The City’s code of ordinances sections addressing the Office
32 of Emergency Preparedness is updated as follows:

33 “§ 2-9-2-1 OFFICE OF EMERGENCY [PREPAREDNESS MANAGEMENT].”

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1 (A) There is hereby established under the executive branch of the
2 government of the city in accordance with Section 12-10-5 NMSA 1978, an
3 Office of Emergency [~~Preparedness Management~~] consisting of:

4 (1) A [~~Coordinator~~ Director] of Emergency [~~Preparedness~~
5 Management], appointed by and responsible to the Mayor of the city.

6 (2) Such additional professional and administrative staff as may
7 be required to effectively carry out the city's emergency [~~preparedness~~
8 management] programs.

9 (3) During periods of emergency, all other city officers and
10 employees, together with those forces enrolled to aid the Office of Emergency
11 [~~Preparedness Management~~], shall be considered as part of the Office of
12 Emergency [~~Preparedness Management~~].

13 (B) The purpose of the Office of Emergency [~~Preparedness Management~~]
14 is to coordinate the efforts of all city agencies and employees, and non-
15 governmental agencies in the preparation of contingency plans for any
16 emergency endangering the lives and property of the [~~citizens~~ residents] of
17 the city. It shall be the duty of the Office of Emergency [~~Preparedness~~
18 Management] to coordinate the development of plans for the effective
19 employment of municipal resources to protect the lives and health of the
20 [~~citizens~~ residents] of the city, and the private and public property therein from
21 the effects of natural or [~~man~~ human]-caused disasters, including [~~any 'civil~~
22 emergency'] as defined within Section 2-9-1-1, above, and any] acts of war, and
23 to coordinate the implementation of said plans during periods of emergency.
24 Such plans shall be coordinated with those of Bernalillo County and the State
25 Office of Emergency Preparedness.

26 § 2-9-2-2 [~~COORDINATOR~~ DIRECTOR] OF EMERGENCY [~~PREPAREDNESS~~
27 MANAGEMENT].

28 (A) The [~~Coordinator~~ Director] shall be the executive head of the Office
29 of Emergency [~~Preparedness Management~~] and shall be responsible to the
30 Mayor for the organization, administration, and operation of the Office of
31 Emergency [~~Preparedness Management~~] and all of the city's emergency
32 [~~preparedness management~~] programs. The [~~Coordinator~~ Director] shall
33 coordinate the city's emergency [~~preparedness management~~] programs with

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1 programs of like kind placed into effect by the County of Bernalillo, private
2 [citizens persons], and all nongovernmental agencies, and shall act as a
3 liaison and fully cooperate with the emergency [~~preparedness~~ management]
4 agencies of the federal government and the State of New Mexico and its
5 political subdivisions.

6 (B) Subject to approval by the Mayor, the [~~Coordinator~~ Director] shall act
7 for the government of the city in all matters pertaining to emergency
8 [~~preparedness~~ management], including the obligation of such municipal funds
9 as may be appropriated for emergency [~~preparedness~~ management] purposes.

10 (C) The [~~Coordinator~~ Director] shall prepare and submit an annual
11 proposed budget for the Office of Emergency [~~Preparedness~~ Management]
12 expenditures to the Mayor.

13 (D) The [~~Coordinator~~ Director] shall perform such other duties as the
14 Mayor shall prescribe.”

15 SECTION 3. SEVERABILITY. If any section, paragraph, sentence, clause,
16 word or phrase of this Ordinance is for any reason held to be invalid or
17 unenforceable by any court of competent jurisdiction, such decision shall not
18 affect the validity of the remaining provisions of this Ordinance. The Council
19 hereby declares that it would have passed this Ordinance and each section,
20 paragraph, sentence, clause, word or phrase thereof irrespective of any
21 provision being declared unconstitutional or otherwise invalid.

22 SECTION 4. COMPILATION. Sections 1 and 2 of this Ordinance shall
23 amend, be incorporated in and compiled as part of the Revised Ordinances of
24 Albuquerque, New Mexico, 1994.

25 SECTION 5. EMERGENCY MEASURE; EFFECTIVE DATE. This ordinance
26 is passed and approved as an emergency measure and takes effect
27 immediately upon publication by title and general summary.

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