

**MINUTES
TOWN OF EDGEWOOD
SPECIAL MEETING OF THE GOVERNING BODY
APRIL 9, 2020 @ 2:00 PM
TOWN OF EDGEWOOD COUNCIL CHAMBERS – 171A STATE ROAD 344
THIS WILL BE A TELECONFERENCE MEETING**

We encourage members of the public to listen in and participate by calling:
1(646)749-3112, Access Code 173-680-757#



GoToMeeting

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The Independent's Facebook Page <https://www.facebook.com/news.ind.llc/>

CALL TO ORDER.

Mayor Bassett called the meeting to order at 2:00 p.m.

Councilors Present (*Telephonically*): Sherry Abraham, John Abrams, Linda Holle, Audrey Jaramillo

Also Present: Clerk/Treasurer Juan Torres and Attorney William Zarr (*Telephonically*)

PLEDGE OF ALLEGIANCE.

I. APPROVAL OF AGENDA

MOTION: Councilor Abrams made a motion to approve the Agenda. Councilor Holle seconded the motion.

VOTE: Councilor Jaramillo voted aye. Councilor Abraham voted aye. Councilor Holle voted aye. Councilor Abrams voted aye.

II. PUBLIC COMMENT: Use the GoTO Meeting phone number and access code. Your phone will be muted until Public Comment and then unmuted so you may speak. Also, if you wish to send in public comment by email you can do so up until noon on April 9th by emailing your comments to clerk@edgewood-nm.gov. Your comments will be distributed to the members of the Governing Body prior to the meeting and become a part of the record.

The Governing Body entertained Public Comment from the following Residents:

Thomas McGill
Jerry Powers
Adrian Terry
Sabine Price
Linda Sperling

III. ACTION ITEMS

A. Approval of Town of Edgewood Resolution No. 2020-06: An election resolution calling for a question to be added to the ballot for the New Mexico General Election to be held Tuesday, November 3, 2020 on the question of whether the Town of Edgewood should form as a Commission/Manager Form of Government

Or

B. Approval of Town of Edgewood Resolution No. 2020-06: An election resolution calling for a question to be added to a special election to be held on a date certain on the question of whether the Town of Edgewood should form as a Commission/Manager Form of Government

 Initials

MOTION: Councilor Abrams made a motion to approve Resolution No. 2020-06: An election resolution calling for a question to be added to the ballot for the New Mexico General Election to be held Tuesday, November 3, 2020 on the question of whether the Town of Edgewood should form as a Commission/Manager Form of Government. Councilor Holle seconded the motion.

Councilor Abrams stated that the timeline to hold the election in August is just too tight and it is in the best interest of the public and the Town to hold the election during the General Election in November.

Councilor Holle stated that on December 19, 2018 Council voted unanimously to opt into the new election cycle outlined in the Local Election Act and that holding the election in November will save the Town the cost of a special election and a potentially larger voter turnout.

Councilor Jaramillo stated that the majority of the public is in favor of having the election in August and Council should listen to the public and let the voters decide on this issue. She also stated that she is concerned about the health and safety of the public and that due to the possibility of the virus coming back in the winter, the safest option would be to do a mail-in ballot in August. Councilor Jaramillo is in favor of having the special election in August. She also pointed out that the language in the Resolution should match exactly with the letter from the attorney.

Councilor Abraham stated that she did not have the opportunity to vote on the Local Election Act that extended their terms because she left due to her being verbally attacked during the meeting of December 19, 2018. She also stated that having the election in August is not rushing because originally, there was supposed to be an election in March of 2020, so it is past due. She read directly from NM One Source, Chapter 3 for Municipalities section 3-14-2 Commission-Manager Special Election for Adoption. She also stated that this meeting is difficult to hear and understand what everyone else is saying and she stated that it is unfair that Councilor Abrams jumped in and made the motion before discussing the second option and she did not agree with the agenda was laid out. She stated that we should listen to the public. Councilor Abraham is in favor of having the special election in August.

Mayor Bassett stated that the agenda was formatted at the discretion of legal and that is why it was laid out this way. He spoke about the Local Election Act and the meetings that lead up to the vote and at that time the public that spoke to the issue were in favor of opting into the Local Election Act due to the cost savings.

Councilor Jaramillo asked about the ballot language not matching exactly to the attorney's letter. Attorney William Zarr stated that the language on the Resolution substantially complies with subsection B. He stated that the ballot question will read as "For" or "Against" the proposition.

VOTE: Councilor Jaramillo voted nay and wanted the record to reflect that this is real time. Councilor Abraham voted nay and wanted the record to reflect that she prefers a special election. Councilor Holle voted aye. Councilor Abrams voted aye. Mayor Bassett voted aye. The motion carried.

Councilor Jaramillo stated that she was upset that Council did not have the opportunity to discuss this prior and requested a meeting.

IV. ADJOURN


 Initials

MOTION: Councilor Abrams made a motion to adjourn the meeting. Councilor Holle seconded the motion.

VOTE: Councilor Abrams voted aye. Councilor Holle voted aye. Councilor Abraham voted nay. Councilor Jaramillo voted nay. Mayor Bassett voted aye.

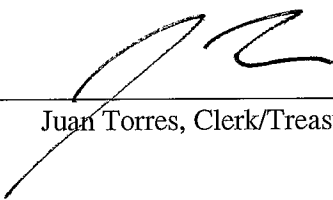
Mayor Bassett adjourned the meeting of April 9, 2020 at 2:59 p.m.

PASSED, APPROVED, and ADOPTED this 22nd day of April 2020.



John Bassett, Mayor

ATTEST:



Juan Torres, Clerk/Treasurer

Mayor and Councilors,

Tomorrow, at the Special Meeting on April 9, 2020 you will each make a monumental decision. I believe that it will either be a monumental milestone for Edgewood or it will be a monumental mistake for each of you and your constituents, depending on your vote.

The attached letter from our attorney, Adrian Terry, clearly shows that the law requires an election in August of this year.

However, even if you believe that have two options, one in August and one in November, let me outline the consequences of each:

1. Postpone the ballot question to November:

The hundreds of Edgewood citizens and voters who attended our Public Forums and the hundreds more who participate in CORE's efforts by social media have all expressed outrage that their constitutional rights to vote their elected leaders into office every four years was taken from them by you extending your own terms to November 2021 instead of shortening them three months to November of 2019, thereby robbing them of their voice in their own government

Having received feedback from many of them on this issue, I can assure you that they will see this as the final nail in the coffin of democracy in Edgewood. They will demand that we file a legal challenge to this action and it will fire them up to take even more actions to finally have their voices heard and have a say in their own town government. Voting for this option would also trigger a constitutional challenge of the extension of your terms beyond the four years for which you were legitimately elected.

This option would also expose the voters to health risks from attending the polls to vote at the November 3, 2020 election. The news is full of stories of how Coronavirus is upending democracy in the primary elections because people don't want to go to the polls and risk exposure, so turnout is low. Citizens are losing their right to vote because of the risk to their health of standing in lines at the polls. The only safe option is the August Special Election because it requires mail-in ballots and no visit to the voting booth is required to vote.

In short, this option would trigger a wave of outrage from the citizens who you are supposed to represent, more conflict, legal challenges and expense, and the well-deserved ill-will of the people who are your constituents and neighbors and expose them to needless health risks. To what end?

2. Hold the Special Election in August 2020.

This is the best and only option without controversy. We agree with your attorney that this is a legal and proper option and we contend, the only lawful option. This option would comply with the only timeline in the statute (an August election) and would restore some measure of faith of the residents in their town democratic process and they are not being gamed out of their right to a timely election.

This option would prevent conflict and expensive legal challenges.

This option would eliminate the risk of exposure to Coronavirus because it is a mail-in ballot election while preserving the principles of democracy because everyone could vote without risking their health.

I have heard some rumors that the town government is arguing that the election costs money. I checked with the Santa Fe County Clerk's office who told me it will cost approximately \$2.45 per voter or approximately \$9,000 in total. How much is the restoration of the faith of citizens in their local government worth? How much is democracy worth in dollars when compared with the sacrifices our ancestors made in blood to preserve these rights? And is it worth \$2.45 per voter to protect our health from exposure to Coronavirus? Seems like a bargain to me.

I ask that you vote for option 2., the August Special Election which appears to be the only win-win scenario for the Governing Body, the residents, and the future of Edgewood.

Jerry Powers
C.O.R.E.

The Terry Firm

April 7, 2020

U.S. Mail and Email

Juan Torres, Clerk
Town of Edgewood
P.O. Box 3610
Edgewood, NM 87015

Copy via U.S. Mail and Email to:

Governing Body
Town of Edgewood
P.O. Box 3610
Edgewood, NM 87015

John Bassett, Mayor
mayorbassett@edgewood-nm.gov

Sherry Abraham, Councilor
sabraham@edgewood-nm.gov

Linda Holle, Councilor
lholle@edgewood-nm.gov

John Abrams, Councilor
jeabrams@edgewood-nm.gov

Audrey Jaramillo, Councilor
ajaramillo@edgewood-nm.gov

Re: Timing of Special Election under NMSA 1978, § 3-14-2
Petition to Change the Form of Government to the Commission-Manager Model
Town of Edgewood, New Mexico

Mr. Torres:

I am in receipt of your email, dated April 1, 2020, which:

- (1) encloses a copy of your certification of the petition for a ballot question to change the form of government for the Town of Edgewood to the commission-manager model; and
- (2) acknowledges the Governing Body's requirement to adopt a resolution for a special election within ten (10) days from the date of certification (on or before April 11, 2020) in accordance with the New Mexico Municipal Code.

A copy of your email is enclosed for your reference and convenience. See **Exhibit 1**.

Yesterday, April 6, 2020, I obtained a copy of the Agenda Packet for the Governing Body's special meeting scheduled for Thursday, April 9, 2020, which contains information suggesting that the Town is considering calling for the election on this ballot question at the November 2020

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general election, rather than in July or August of 2020 as required by the Article 14, Chapter 3 NMSA 1978 of the Municipal Code.

The purpose of this correspondence is to advise you and the Governing Body of the relevant timelines provided by State law for the Town to call for and hold the special election on this ballot question.

The relevant portion of the Municipal Code governing a change in the form of government for municipalities to the commission-manager model provides as follows:

- A. Upon petition signed by qualified electors, not less in number than fifteen percent of the votes cast for the office of mayor at the last regular municipal election, filed with the municipal clerk and verified by the municipal clerk to contain a sufficient number of legal signatures, *the governing body shall, within ten days of verification, adopt an election resolution calling for the holding of a special election on the question of organizing the municipality under the commission-manager form of government*, or the governing body may submit to the qualified electors of the municipality the question of organizing the municipality under the commission-manager form of government. The election shall be held in June or July in odd-numbered years or July or August in even-numbered years in accordance with the provisions of the Local Election Act [Chapter 1, Article 22 NMSA 1978].
- B. The question to be placed shall read substantially as follows:
 - "For the commission-manager form of government and providing for the election of five commissioners ____; and
 - Against the commission-manager form of government and providing for the election of five commissioners ____".

See NMSA 1978, § 3-14-2 (emphasis supplied).

Upon review of the opinion of counsel from the Town's attorney, as enclosed in the Agenda Packet, the Governing Body has been advised that Subsection A of the forgoing statute allows the Town the option or choice of when to hold the election on the ballot question.

Under the Town attorney's interpretation, either:

- (1) a special election can be held in July or August of even-numbered years (2020); or
- (2) the ballot question can be submitted to the Town voters at the November 2020 general election.

The law, as outlined below, is clear and unequivocal that the Town does not have an option as to when the election on the ballot question shall be held.

The express and plain language of the applicable statute requires a special election to be held on the question to change the form of government to the commission-manager model in July or August of 2020 – this being an even-numbered calendar year.

The question presented is a matter of statutory construction and interpretation of NMSA 1978, § 3-14-2(A). See *Key v. Chrysler Motors Corp.*, 1996-NMSC-038, ¶ 13, 121 N.M. 764 (“In interpreting statutes, we seek to give effect to the Legislature’s intent, and in determining intent we look to the language used and consider the statute’s history and background”) (internal citation omitted); see also *TexasFile LLC v. Lea County*, 2019-NMCA-038, ¶ 16.¹

“Rules of statutory construction dictate that when a statute’s language is clear and unambiguous and it conveys a clear and definite meaning, the statute must be given its plain and ordinary meaning.” See *Key v. Chrysler Motors Corp.*, 1996-NMSC-038, ¶ 13 (internal citations omitted).

Generally, “[a]ny municipality having a population of three thousand or more persons... may be organized and governed as a commission-manager municipality if the qualified electors of the municipality elect to be governed under the commission-manager form of government.” See NMSA 1978, § 3-14-1.

Thereafter, Section 2 of Article 14, Chapter 3 NMSA 1978 outlines the process and procedure by which a change in the form of government is adopted, including the timelines for a special election.

NMSA 1978, § 3-14-2(A) includes the word “or,” suggesting two alternatives for adopting the commission-manager form of government.

Upon receipt of a valid petition supported by the required number of signatures, “the governing body *shall*, within ten days of verification, adopt an election resolution calling for the holding of *a special election* on the question of organizing the municipality under the commission-manager form of government[.]” (emphasis supplied).

¹ In *TexasFile LLC v. Lea County*, the New Mexico Court of Appeals was presented with the question of whether a request for public records to Lea County, and the County’s response, was governed by the Inspection of Public Records Act (IPRA), or the State’s Recording Act where the Plaintiff was requesting electronic copies of documents recorded with the County Clerk’s Office. The Court of Appeals noted that “IPRA and the Recording Act establish statutory schemes with distinct scopes and objectives[.]” and “various statutory provisions [may be] at play” and subject to interpretation under a given set of facts. 2019-NMCA-038, ¶¶ 12, 15 (finding that “IPRA’s electronic production directives are at odds with the Recording Act, which contains no requirement that records be produced in electronic form under any circumstances”).

“*IO*”, the governing body may submit to the qualified electors of the municipality the question of organizing the municipality under the commission-manager form of government.”

See NMSA 1978, § 3-14-2(A) (emphasis supplied).

In either case, “[t]he election shall be held in... July or August in even-numbered years in accordance with the provisions of the Local Election Act.” *Id.*

Under a plain reading of the applicable law, NMSA 1978, § 3-14-2(A) creates two methods whereby a municipality may change its form of government to the commission-manager model. Either:

- (1) by citizen petition; or
- (2) as proposed by a municipality’s governing body.

In either case, a determination of whether the change is made must be submitted to the voters by way of special election in July or August of 2020 because no other timelines are prescribed by law to hold an election to change a municipality to the commission-manager form of government.

The Town attorney’s assertion that the Governing Body is not required to hold a special election on the ballot initiative in July or August of this year, and that such question can be submitted to the Town voters in the November 2020 general election, is based on a misapprehension of the Municipal Code.

The Town attorney interprets the word “or” in NMSA 1978, § 3-14-2(A) to permit the Town to alter the timelines for the special election despite the fact this statutory section mandates the time for which any election provided thereunder shall be held.

A plain reading and interpretation of the word “or” in this portion of the Municipal Code provides an alternative *method* by which the question on the change of government can be posed to the Town electorate, not an alternative time period.

Whereas, the Town attorney asserts that the Governing Body has a choice as to the timing of the election, the law actually provides that the choice afforded to the Town under the Municipal Code is whether to pose the question to the voters upon a voter petition, or upon action by the Governing Body.

The question presented, therefore, is whether the term “or” as used in Subsection A creates of a choice or option as to “how” a change in the form of government is presented, as opposed to “when.”