



November 19, 2021

**Via U.S. certified-mail and email to:**

Estancia Mayor Nathan Dial  
Members of the Estancia Board of Trustees  
513 Williams Ave.  
Estancia, NM 87016  
*U.S. certified-tracking # 70203160000033939396*  
ndial@townofestancia.com, jhall@townofestancia.com  
nsedillo@townofestancia.com, schavez@townofestancia.com  
alovato@townofestancia.com

**Re: “Legally Armed” Executive Proposal**

Dear Mayor Dial and Members of the Estancia Board of Trustees:

It has come to our attention that your town’s legislative body recently adopted an executive proposal that would require all individuals wishing to attend a Town of Estancia board meeting be “legally armed.” Upon information and belief, this rule will go into effect on December 7, 2021.

The First Amendment of the United States Constitution states that “Congress shall make no law...abridging...the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” U.S. Const. Amend. I. The rights enshrined in the First Amendment are fundamental rights that are applicable to states and localities via incorporation through the Fourteenth Amendment. The United States Supreme Court has consistently held that “only a compelling state interest... can justify limiting First Amendment freedoms.” *Nat’l Ass’n for Advancement of Colored People v. Button*, 371 U.S. 415, 438 (1963). There exists no compelling state interest that would justify a mandate that people be armed in order to exercise their First Amendment rights by attending a town council meeting or conducting other business with the town.

This new rule put forth by the Town of Estancia unequivocally violates the First Amendment. The law will deter community members from attending town council meetings to petition their local government, thus creating a chilling effect on the exercise of their fundamental rights under the First Amendment. There are myriad reasons for this. Some individuals may not own an “arm” and may not have a desire and/or the means to purchase one. Others will feel unsafe attending a meeting knowing that everyone in the room is carrying a gun, particularly if they are in attendance to raise a controversial or unpopular opinion. Finally, others may be fearful of repercussions, including prosecution, for failing to comply with the town’s law that requires them to be armed.

We understand that the Town of Estancia will argue that “legally armed” could mean anything, including an individual’s two fists. However, this does not make the new rule proper or legal. In

fact, it does quite the opposite as the language of the rule is unconstitutionally vague “because it subjects the exercise of the right of assembly to an unascertainable [sic] standard” in violation of community members’ constitutional due process rights. *Coates v. City of Cincinnati*, 402 U.S. 611, 614 (1971).

In addition to being unconstitutional, requiring community members to be armed in order to attend a council meeting is a violation of New Mexico’s Open Meetings Act. “No public meeting once convened that is otherwise required to be open pursuant to the Open Meetings Act shall be closed.” NMSA 1978 § 10-15-1 (B). Pursuant to the statute, a governmental entity such as the Town of Estancia must allow reasonable public access to those who wish to attend and listen to its proceedings. *Gutierrez v. City of Albuquerque*, 1981-NMSC-061, ¶ 15. While the doors to the meeting might not be physically *closed*, a mandate that people show up to a meeting with a gun (or otherwise “legally armed”) effectively closes that meeting to anyone who does not own an “arm” or who does not wish to carry one into a public meeting. The Open Meetings Act prescribes both civil and criminal penalties for those who violate it.

We ask that you immediately rescind the town’s rule that requires individuals to be armed in order to attend a council meeting or conduct business in a town building and inform the community of its rescission. It is an affront to the United States Constitution, the Open Meetings Act and common sense. And while it is clear that this was a publicity stunt in response to the legislature’s decision to ban weapons in the Capitol building, it has the potential to immerse the Town of Estancia in costly litigation that it will undoubtedly lose.

If the Board of Trustees does not rescind this rule prior to November 30, 2021, we will initiate a lawsuit against the town for constitutional and statutory violations and seek an order enjoining the town from enforcing this rule on and after its effective date of December 7, 2021.

If you wish to discuss this matter with us, please feel free to contact me at the contact information included in my signature below.

Sincerely,



Maria Martinez Sanchez  
Deputy Legal Director  
(505) 266-5915 Ext. 1004  
[msanchez@aclu-nm.org](mailto:msanchez@aclu-nm.org)

*cc via email:*

Town of Estancia Clerk/Treasurer Michelle Jones, [mjones@townofestancia.com](mailto:mjones@townofestancia.com)  
Town of Estancia Deputy Clerk Michelle Dunlap, [mdunlap@townofestancia.com](mailto:mdunlap@townofestancia.com)