

Open Meeting Law Training

Justin Taruc, Deputy Attorney General
Boards and Open Government
2020 Training

1

Applicability of the Open Meeting Law

- The Open Meeting Law (“OML”) applies to meetings of public bodies. NRS 241.016(1).
- A “public body” is defined as “Any administrative, advisory, executive or legislative body of a State or a local government consisting of at least two persons which expends or disburses or is supported in whole or in part by tax revenue. . . .” NRS 241.015(4).
 - Includes subcommittees created by public bodies. NRS 241.015(4).

2

NRS Chapter 241

- The OML is found in NRS Chapter 241.
- “In enacting this chapter, the Legislature finds and declares that all public bodies exist to aid in the conduct of the people’s business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.” NRS 241.010(1).
- “The spirit and policy behind the OML favors open meetings and any exceptions thereto should be strictly construed.” *McKay v. Board of Supervisors*, 102 Nev. 644, 730 P.2d 438 (1986).

3

What is a Meeting?

- NRS 241.015(3) defines “meeting” as :
 - “The gathering of members of a public body at which a **quorum** is present, . . . to **deliberate** toward a decision or to **take action** on any matter over which the public body has supervision, control, jurisdiction or advisory power.”
- **Quorum**: a simple majority of the membership of a public body. NRS 241.015(5).
- **Deliberation**: collectively examine, weigh, and reflect upon the reasons for or against an action. NRS 241.015(2).
- **Action**: a decision, commitment, or promise made by a majority of the members present during a meeting. NRS 241.015(1).

4

Serial Communications - NRS 241.015(3)

- A meeting also includes serial communications:
 - A series of gatherings of members of a public body;
 - At which less than a quorum is present at any individual gathering;
 - The members of the public body attend one or more of the gatherings collectively constitute a quorum; and
 - The series of gatherings was held with the specific intent to avoid the provisions of the OML

5

What is a Meeting? – Exceptions (NRS 241.015(3)(b))

- The definition of a meeting does not include:
 - **Social Functions** if the members do not deliberate or take action on any matter over which the public body has supervision, control, jurisdiction, or advisory power.
 - **Attorney-Client Litigation Sessions** – to receive information from the body's attorney regarding potential or existing litigation matter over which the public body has supervision, control, jurisdiction, or advisory power.
 - **Training Regarding Legal Obligations of the Public Body**

6

Meeting Notice and Agenda Requirements (NRS 241.020)

- Written notice must be given at least 3 working days before the meeting, which requires:
 - Time, place, and location of the meeting;
 - List of the locations where the notice was posted;
 - The name and contact information for the person from whom a member of the public may request supporting materials and a list of the locations where the supporting materials is available to the public; and
 - An agenda

7

Meeting Notice and Agenda Requirements

- Agenda must consist of a **clear and complete statement** of the topics scheduled to be considered
- Action items must be clearly denoted as "for possible action"
- Public comment, to be taken at the beginning/end of meeting or before any action item
- If any portion of the meeting will be closed to consider the character, alleged misconduct, or professional competence of a person, the name of the person
- If the public body will consider whether to take administrative action regarding a person, the name of the person
- Notification that items on the agenda may be taken out of order, may be combined for consideration, and may be removed from the agenda or delayed for discussion at any time

8

What Does it Mean to be “Clear and Complete”?

- Agenda items must be **clear and complete**. NRS 241.020(2)(d)(1).
- A **higher degree of specificity** is necessary for topics of **substantial public interest**. *Sandoval*, 119 Nev. at 154-55, 67 P.3d at 906. Factors to consider include:
 - Does the topic generate public comment?
 - Does the topic generate debate among the members of the body?
 - Does the topic generate media interest/coverage?
- Purpose of a clear and complete agenda is to give the public notice of what its government is doing, has done, or may do.

9

Minimum Public Notice NRS 241.020(4)

- Must post a copy of the notice at least at:
 - The principal office of the public body, or if no principal office, at the building in which the meeting is to be held **PLUS** three (3) other separate, prominent places within the jurisdiction of the public body
 - The public body’s official website
 - Provide a copy to any person who has requested notice of the meetings
- Notice must be posted no later than 9 a.m. of the third working day before the meeting.
- Additional notice requirements for consideration of character, misconduct, competence, or physical or mental health: 5 days personal service or 21 days certified mail. NRS 241.033.

10

Additional Requirements

- Must make reasonable efforts to ensure the facilities for the meeting are large enough to accommodate the anticipated number of attendees. NRS 2410.020.
- Must make reasonable efforts to assist and accommodate persons with physical disabilities desiring to attend. NRS 241.020(1).
- At least one copy of the notice, agenda, and supplemental materials must be made available to the public at the meeting. NRS 241.020(7).
- An emergency meeting may only be called where the need to act upon a matter is truly unforeseen and circumstances dictate that immediate action is required. NRS 241.020(9).

11

Exceptions

- Closed sessions may be held by any public body to consider character, alleged misconduct, professional competence, or the physical or mental health of a person, with some exceptions, or to prepare, revise, administer, or grade examinations administered on behalf of the public body, or to consider an appeal by a person of the results of an examination appeal by a person of the results of an examination administered on behalf of the public body. NRS 241.030.
- Closed sessions may not be held:
 - To discuss the appointment of any person to public office or as a member of a public body. NRS 241.030(4)(d); *see also City Council of City of Reno v. Reno Newspapers, Inc.*, 105 Nev. 886, 784 P.2d 974 (1989).
 - To consider the character, alleged misconduct, or professional competence of an elected member of a public body, or a person who is an appointed public officer or who serves at the pleasure of a public body as a chief executive or administrative officer or in a comparable position. NRS 241.031(1).

12

Public Comment

- Restrictions must be reasonable “time, place, and manner” restrictions. NRS 241.020(d)(7). This means NO:
 - Halting comment based on viewpoint of speaker;
 - Halting comment upon belief defamation is occurring; or
 - Halting comment critical of a public official.
- But, presiding officer may halt comments that become unduly repetitive or that stray from the scope of a specified agenda topic for which comment is offered, or halt conduct that is willfully disruptive. *See Kindt v. Santa Monica Rent Control Bd.*, 67 F.3d 266 (9th Cir. 1995); *White v. City of Norwalk*, 900 F.2d 1421, 1425-26 (9th Cir. 1990).
- The OML does not “[p]revent the removal of any person who willfully disrupts a meeting to the extent that its orderly conduct is made impractical.” NRS 241.030(4)(a).

13

Teleconferencing and Videoconferencing – NRS 241.023

- Public body may conduct a meeting via teleconference or videoconference if:
 - There is a quorum present either in person or by electronic means; and
 - There is a physical location where the public is permitted to attend and participate.
- Chair of the public body must make reasonable efforts to ensure that the members and the public can hear and observe each other

14

Meeting Records – NRS 241.035

- The public body shall keep written minutes of each meeting
 - Date, time, and place of the meeting
 - Roll call of members
 - Substance of all matters proposed, discussed, or decided
 - Substance of remarks made by the public if request is made that minutes reflect the remarks, or if written remarks are prepared, a copy of the remarks if submitted for inclusion in the minutes
- Public body shall approve the meeting minutes within 45 days after the meeting or at the next meeting
- Meeting minutes are public records

15

Violations

- Action taken in violation of the OML is void. NRS 241.036
- The OAG has statutory enforcement powers under the OML and the authority to investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS 241.040.
- When a violation of the OML occurs or is alleged, the OAG recommends that the public body made every effort to promptly correct the apparent violation. NRS 241.0365.
- Although it may not completely eliminate the violation, corrective action can mitigate the severity of the violation and further ensure that the business of government is accomplished in the open.
- Corrective action is prospective only. NRS 241.0365(4).

16

Violations

- Corrective action requires that the public body engage in an *independent deliberative action* in full compliance with the OML. *See, e.g., Page v. MiraCosta Community College Dist.*, 102 Cal. Rptr. 3rd 902, 930 (Cal. Ct. App. 2009).
- A public body must clearly denote that corrective action may be taken at a meeting by placing the term “for possible corrective action” next to the appropriate agenda item. NRS 241.020(2)(d)(2).
- If the OAG finds a violation, public body must include an item on its next agenda which acknowledges the OAG’s findings, and the OAG’s opinion must be treated as supporting material for the item. NRS 241.0395.

17

Violations – Criminal and Civil Penalties

- Each member of a public body who attends a meeting where any violation of the OML occurs, has knowledge of the violation, and participates in the violation, is guilty of a misdemeanor. NRS 241.040.
- In addition to any criminal penalty, members may be subject to administrative fines:
 - \$500 for first offense
 - \$1,000 for second offense
 - \$2,500 for third offense
- No criminal or civil penalty may be imposed against a member if reliance on legal advice provided by an attorney of the public body.

18

Governor's Emergency Directive 006

- Requirements suspended:
 - Physical location for meeting, NRS 241.023(1)(b)
 - Agendas posted at physical locations, NRS 241.020(4)(a)
 - Physical location where public can receive supporting material, NRS 241.020(3)(c)
 - Personal notice requirements for actions necessary to enforce Emergency Directives regarding business operations, NRS 241.033 & 241.034
- Additional Requirements (only apply if virtual meeting):
 - Electronic means for public comment
 - Electronic means for public to obtain agenda and supporting material
 - Ensure that any party entitled or required to appear is able to do so remotely
- Currently extended “for the duration of the current state of emergency, unless terminated prior to that date” per Governor’s Directive 029

19

Additional Points

- Parliamentary procedure is not addressed in the OML – Duties of the presiding officer, recognizing speakers, motions and voting, making a clear record. *See Robert’s Rules of Order* (11th ed. 2011).
- Disclosure and abstention **prior to consideration of a topic** in conformance with Ethics in Government Law (NRS Chapter 281A). Abstain only in a clear case where the independence of judgement of a reasonable person in your situation would be materially affected by the conflict of interest disclosed. *See* NRS 281A.420; *see also Carrigan v. Commission on Ethics*, ___ Nev. ___, 313 P.3d 880 (2013).

20

Questions?

- Nevada Open Meeting Law Manual:
http://ag.nv.gov/uploadedFiles/agnv.gov/Content/About/Governmental_Affairs/2019-03-26_OML_12TH_AGOMANUAL.pdf