

# Open Meeting Law Training

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# Legislative Intent

- ▶ “In exacting 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 exceptions provided in this chapter, and electronic communication, must not be used to circumvent the spirit or letter of this chapter to deliberate or act, outside of an open and public meeting, upon a matter over which the public body has supervision, control, jurisdiction or advisory powers.” NRS 241.016(4).
- ▶ “A statute promulgated for the public benefit such as a **public meeting law should be liberally construed and broadly interpreted** to promote openness in government.” *Dewey v. Redevelopment Agency of Reno* 119 Nev. 87, 94, 64 P.3d 1070, 1075 (2003)

# Applicability of the Open Meeting Law

- ▶ All **meetings** of **public bodies** must be open and public, and all persons must be permitted to attend any meeting of these public bodies. NRS 241.020(1)
- ▶ Administrative, legislative, and executive organizations may all be “public bodies.” (the Legislature is not-NRS 241.16(2)(a))
- ▶ Public bodies working on behalf of Nevada citizens must conduct open meetings in conformity with the statutory requirements of the OML including the requirement to publish an agenda that provides full notice and disclosure of discussion topics and any possible action.
- ▶ The definition of a “public body” is found at NRS 241.015(4)(a).
- ▶ Includes subcommittees created by public bodies. NRS 241.015(4).

# What is a Public Body?

- ▶ NRS 241.015(4)(a):
  - ▶ Any administrative, advisory, executive or legislative body of the State or a local government
  - ▶ Consisting of 2 or more people,
  - ▶ Expends or disburses or is supported in whole or in part by tax revenue, or makes recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue,
  - ▶ Make collective decisions or recommendations (staff meetings within an agency or interagency meetings with no independent legal authority, budget, and formal mission or purpose will not fall within the definition of a public body)  
OMLO 2004-04
- ▶ Created by the Constitution, statute, city charter, The Nevada Administrative Code, an executive order from the Governor, resolution or formal action from a body created by statute or local ordinance or a resolution or action by a political subdivision

# What is a Meeting?

- ▶ NRS 241.015 says:
  - ▶ **Quorum** of members of a public body *gathering* together with:
  - ▶ **Deliberation** toward a decision; **and/or**
  - ▶ **Action**: which means making a decision, commitment or promise over a matter within the public body's supervision, jurisdiction, control or advisory power.
- ▶ A quorum is a simple majority of the total body (NRS 241.015(5)); action requires majority vote of members present (NRS 241.015(1)).
- ▶ **Quorum + (Deliberation or Action) = Meeting**

# Common Issues

- ▶ Serial communications or “walking quorums” can constitute a constructive meeting.
- ▶ A constructive quorum can exist with less than a quorum speaking together at any given time if opinions are relayed between members.
- ▶ Email pitfalls - “Reply all” email chains can constitute a meeting.
- ▶ Example of a constructive quorum: Two members of a five member public body discuss how they intend to vote on an issue and why. One of those members then has that same discussion with a third member, including how both the first two members intend to vote and why. A quorum (three members) has deliberated on an issue outside of a meeting.

# Requirements and Exceptions

- ▶ Requirements
  - ▶ Notice and Agendas
  - ▶ Decisions
  - ▶ Public Comment
  - ▶ Materials and Minutes
- ▶ Exceptions
  - ▶ Character Competence or Misconduct
  - ▶ Non-Meetings
  - ▶ Emergency Meetings

# Key Requirements

- ▶ **AGENDA:** Must provide full notice and disclosure of discussion topics and any possible action. NRS 241.020(2)(D)(1)
- ▶ **DECISIONS:** Deliberation and action must be properly noticed and taken openly. NRS 241.020(2)(d)(2)
- ▶ **DECISIONS:** Action is only taken by the body as a whole.
- ▶ **PUBLIC COMMENT:** at beginning/end or before any action item. NRS 241.020(2)(d)(3)
- ▶ **MATERIALS:** Supporting materials must be available to the public when provided to public body members. NRS 241.020(7).
- ▶ **MINUTES:** Minutes must be approved within 45 days or at the next meeting (whichever is later) and must be made available to the public. NRS 241.035
- ▶ **FACILITIES:** Must make reasonable efforts to ensure that the facilities are large enough to accommodate the anticipated number of attendees. NRS 241.020(2)



# Meeting Notice and Agenda: NRS 241.020

- ▶ Time, place and location of meeting
- ▶ List of locations posted
- ▶ Agenda consisting of a **clear and complete** statement of the topics scheduled to be considered
- ▶ Action items clearly denoted as “for possible action”
- ▶ Public comment at beginning/end or before any action item
- ▶ Posted at office of the public body *or* location of meeting *and* 3 other separate, prominent places within Nevada
- ▶ Posted at public body website *and* at [www.notice.nv.gov](http://www.notice.nv.gov)
- ▶ Posted no later than 9 AM of the third working day before the meeting

# What is “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?
- ▶ Agenda items such as “member comments” and “reports” are problematic in that these invite discussion and possible deliberation on topics that are not set forth on the agenda. Any topic that is raised should be included on a future agenda before any discussion can ensue.

# Meeting Notice and Agenda Contents

- ▶ RECORDS REQUEST CONTACT: Name and contact information for person the public may request supporting materials from and locations where the supporting material is available NRS 241.020(2)(c)
- ▶ ITEMS FOR CLOSED SESSION: 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 NRS 241.020(2)(d)(4)
- ▶ ADMINISTRATIVE ACTIONS: If the public body will consider whether to take administrative action regarding a person, the name of the person NRS 241.020(2)(d)(5)
- ▶ ACCOMMODATIONS: Public bodies shall make reasonable efforts to assist and accommodate persons with physical disabilities desiring to attend. NRS 241.020(1).

# Additional Requirements (Accommodations and Notice)

- ▶ Notice to persons who have requested notice of meetings pursuant to NRS 241.020(3)(c).
- ▶ 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. (See also NRS 233B.121)
- ▶ One copy of the agenda, any supporting materials must be provided at no cost to a member of the public requesting them and *at least* one copy made available at the meeting. NRS 241.020(6); NRS 241.035(2).
- ▶ Supporting materials must be available to the public when provided to public body members. NRS 241.020(7).
- ▶ Meeting must be recorded or transcribed. Recording/Transcription must be made available to the public. NRS 241.035(4).

# Exceptions

- ▶ Closed sessions may be held by any public body to consider:
  - ▶ Character; Alleged misconduct; Professional competence; Physical or mental health of a person (NRS 241.030)
- ▶ Non-Meeting (NRS 241.015(3))
  - ▶ Social functions if the members do not deliberate toward a decision or take action on any matter over which the public body has jurisdiction.
  - ▶ To receive information from the attorney employed or retained by the public body regarding potential or existing litigation involving a matter over which the public body has **jurisdiction and to deliberate toward a decision on the matter, or both.**
  - ▶ Training as long as there is no **deliberation or action** on any matter within the public body's **jurisdiction and control.**
  - ▶ Meeting held to recognize or award positive achievements of a person.
- ▶ An emergency meeting may only be called to address truly unforeseen circumstance. Disasters and health/safety emergencies. NRS 241.020(10).

# Public Comment Pitfalls

- ▶ 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).

# Violations

- ▶ Actions taken in violation of the law are 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.
- ▶ The OAG has subpoena authority to investigate from NRS 241.039(4)
- ▶ The OAG typically will not investigate complaints regarding alleged violations which occurred more than 120 days before.
- ▶ The OAG may decline to investigate if it determined that the interests of the complainant are not significantly affected by the alleged violation with some exceptions. NRS 241.039(3)
- ▶ When a violation of the OML occurs or is alleged, the OAG recommends that the public body make every effort to promptly correct the apparent violation. NRS 241.0365. But corrective action is prospective only. NRS 241.0365(4).

# Violations Cont.

- ▶ Any person denied a right conferred by this chapter may sue to have an action declared void, to require compliance with or prevent violations of this chapter. **The court may order payment of reasonable attorney's fees and court costs to a successful plaintiff in a suit brought under this subsection. NRS 241.037(2)**
- ▶ Criminal and Civil Penalties may apply if violation is knowing. NRS 241.040
- ▶ If a member of the public body relies on legal advice, no criminal penalty or administrative fine may be imposed. NRS 241.040(6)



# Using Technology for a Meeting

- ▶ Quorum of a public body using serial electronic communication to deliberate toward or make a decision violates law. NRS 241.016(4); *Del Papa v. Board of Regents*, 114 Nev. 388, 956 P.2d 770 (1998).
- ▶ If technology is used to convene a quorum for a public meeting:
  - ▶ There must always be a physical location for members of the public to attend the meeting. NRS 241.020(1); AB 70.
  - ▶ All the members of the public body and the members of the public who are present at the meeting must be able to hear or observe and participate in the meeting. NRS 241.010(2); AB 70.
  - ▶ That technology must not be used to circumvent the spirit or letter of the OML. NRS 241.016(4).

# Governor's Emergency Directives Update

- ▶ The requirement that there be a physical location for the meeting of the public body is suspended.
- ▶ If a public body holds an online meeting, the public body must provide a means for the public to provide public comment, and post that means on the public notice agenda posted.
- ▶ The requirement that agendas must be posted at physical locations within the State of Nevada is suspended. Public bodies must still post agendas to Nevada's notice website and the public body's website, if it maintains one along with providing a copy to any person who has requested one via U.S. mail or electronic mail.
- ▶ The requirement that physical locations be available for the public to receive supporting material is suspended.

# Governor's Emergency Directives Update Cont.

- ▶ If a public body holds an online meeting, the public body must provide on its agenda the contact information for the public to request supporting material electronically and must post supporting material to the public body's website if it maintains one.
- ▶ A public body must ensure that any party entitled to or required to appear before it shall be able to do so through remote means and fully able to participate in the agenda items that pertain to them.

# Further Resources

- ▶ OAG's Open Meeting Law Manual(12<sup>th</sup> ed., Updated March 2019)
  - ▶ Statutory provisions
  - ▶ Explanation of requirements
  - ▶ Examples
  - ▶ Compliance checklists
  - ▶ Sample Forms: agenda, minutes and notice of meeting to consider a person's character, etc.
- ▶ Available on the Attorney General's website at:  
[http://ag.nv.gov/About/Governmental\\_Affairs/OML/](http://ag.nv.gov/About/Governmental_Affairs/OML/)
- ▶ OAG has an on call DAG to answer questions, Phone (775) 684-1100 or (702) 486-3420

# Q & A

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