

1 only be taken on items noted as action items by the phrase “for possible action” and the
2 contemplated action must be clearly described on the agenda. NRS 241.020(2)(d)(2).
3 Strict adherence with the “clear and complete” standard for agenda items is required for
4 compliance under the OML. *Sandoval v. Bd. of Regents*, 119 Nev. 148, 154, 67 P.3d 902,
5 905 (2003). The OML “seeks to give the public clear notice of the topics to be discussed at
6 public meetings so that the public can attend a meeting when an issue of interest will be
7 discussed.” *Id.* at 155, 67 P.3d at 906. Further, “a ‘higher degree of specificity is needed
8 when the subject to be debated is of special or significant interest to the public.” *Id.* at
9 155–56, 67 P.3d at 906 (quoting *Gardner v. Herring*, 21 S.W.3d 767, (Tex. App. 2000)).
10 Accordingly, in *Sandoval*, the Court concluded that the respondents violated the OML
11 because the agenda was not clear and complete.

12 FINDINGS OF FACT

13 1. The Council is a “public body” as defined in NRS 241.015(4) and is subject to
14 the OML.

15 2. The November 16, 2016, Council meeting agenda contained item N.1 which
16 stated “Staff Report (For Possible Action): Presentation, discussion, and potential
17 direction to staff regarding the Park Lane site and infrastructure improvement offset;
18 including but not limited to approval of an agreement.”

19 3. While agenda item N.1 mentions an “offset,” it does not include the dollar
20 amount of any proposed offset.

21 4. The proposed agreement with the Developer for the Park Lane Project
22 (Agreement) was included with the supporting materials for the November 16, 2016,
23 meeting.

24 5. After discussion, the Council approved the Agreement.

25 6. Subsequently, on December 2, 2016, the Complainant complained that
26 agenda item N.1 was not clear and complete as required by NRS 241.020(2)(d) because it
27 failed to state that the Agreement provided a \$3.5 million subsidy to the Developer.

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1 7. The City Attorney's Office reviewed Complainant's allegations and issued a
2 memorandum to the Council on December 2, 2016, indicating that the Council did not
3 violate the OML, but in "the spirit of complete openness and transparency, the City
4 Attorney's Office recommends that the [Council] ratify the Agreement at the next
5 regularly scheduled [Council] meeting."

6 8. The December 14, 2016, Council meeting agenda contained item J.4 which
7 stated "Staff Report (For Possible Action): Ratification and approval of Infrastructure
8 Improvement Agreement between the City and Park Lane Associates, LLC dated
9 November 23, 2016, pursuant to direction given by City Council on October 12, 2016, and
10 subsequent City Council approval on November 16, 2016 (Park Lane Sit Development) in
11 conformance with NRS 241.0365(2)."

12 9. A note beneath this agenda item in italics read "No dollar amount is or was
13 included on this item because the City is not providing any financial subsidy to the
14 Project or waiving any fees. The plan for the Project requires the Developer to pay the
15 City's sewer fund \$7 million for sewer connection fees. The agreement allows the
16 Developer to pay half of the \$7 million dollar obligation in-kind by relocating and
17 dedicating \$3.5 million dollars' worth of sewer and [storm water] improvements to the
18 City's sewer fund."

19 10. After discussion, the Council voted to ratify the Agreement.

20 11. The Agreement and the City Attorney's December 2, 2016, memorandum to
21 the Council were both included with the supporting materials for the December 14, 2016,
22 meeting.

23 12. In its January 26, 2017, Response to the Complaint, the Council asserts that
24 the supporting materials for both meetings included the Agreement and implies that
25 because the dollar amount of the \$3.5 million offset or in-kind payment included in the
26 supporting materials for the November 16, 2016, meeting, the November 16, 2016,
27 meeting agenda satisfies the "clear and complete" standard.

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1 13. The Council also asserts that the Agreement does not waive any fees or
2 provide any financial assistance to the Developer but instead allows “the Developer to pay
3 (or offset) half of its sewer connection fee obligation in-kind by relocating, constructing
4 and dedicating \$3.5 million dollars’ worth of sewer and [storm water] improvements to
5 the City’s sewer fund.”

6 14. The Council further asserts that under the Agreement “the Developer still
7 pays the City \$7 million dollars—\$3.5 million in cash, and \$3.5 million in City owned
8 public sewer and [storm water] improvements.” (Emphasis omitted.)

9 15. The OML requires that the agenda contain a “clear and complete statement
10 of the topics scheduled to be considered at the meeting.” NRS 241.020(2)(d)(1).

11 16. The OML requires that the Council include the name and contact
12 information for the person designated to provide supporting materials for the meeting
13 upon request to the public and a list of the locations where the supporting material is
14 available to the public. NRS 241.020(2)(c).

15 17. The Council also must post its supporting material for each meeting on its
16 website not later than the time the material is provided to the members of the Council.
17 NRS 241.0202(8).²

18 18. The plain language of the OML does not authorize a public body to rely on
19 information contained in its supporting materials in order to meet the requirement that
20 its agenda include a “clear and complete statement of the topics scheduled to be
21 considered during the meeting.” See NRS 241.020(2)(d)(1).

22 19. All residents and businesses in the City with sewer access pay for sewer
23 services directly or indirectly.

24 20. Issues regarding sewer fees and sewer relocation and improvements are of
25 substantial public interest.

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² If supporting materials are made available to the members of the Council at the
28 meeting, those materials must be posted on the Council’s website not later than 24 hours
after the meeting ends.

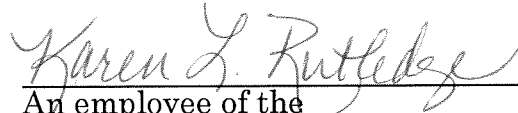
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CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 26th day of May, 2017, I caused to be deposited for mailing, a true and correct copy of the foregoing, **FINDINGS OF FACT AND CONCLUSIONS OF LAW**, to the following via U.S. Mail, with courtesy copies sent by e-mail:

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