



Open Government Training

Caroline Bateman, Chief Deputy Attorney General

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TRAINING ROADMAP

- ▶ **What is Open Government?**
 - ▶ Access to government proceedings to allow for public oversight.
- ▶ **The Nevada Open Meeting Law (OML) (NRS 241)**
 - ▶ Pre-Meeting Requirements
 - ▶ Meeting Requirements
 - ▶ Post-Meeting Requirements
- ▶ **OML Violations**

The OML and the Presumption of Openness

In exacting the OML, the Legislature finds and declares the following:

“...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).

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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).

Does the OML apply?

- **The OML applies to Public Bodies.**
- **Definition of Public Bodies:** Any administrative, advisory, executive or legislative body of the 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 or which advises or makes recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue, including, but not limited to, any board, commission, committee, subcommittee or other subsidiary thereof . . . if the administrative, advisory, executive or legislative body is created by:
 - (1) The Constitution of this State;
 - (2) Any statute of this State;
 - (3) A city charter and any city ordinance which has been filed or recorded as required by the applicable law;
 - (4) The Nevada Administrative Code;
 - (5) A resolution or other formal designation by such a body created by a statute of this State or an ordinance of a local government;
 - (6) An executive order issued by the Governor; or
 - (7) A resolution or an action by the governing body of a political subdivision of this State; . . .

NRS 241.015(4)

Does the OML apply?

- ▶ **The OML applies to Meetings**
- ▶ **Definition of a Meeting:**
 - ▶ (1) The **gathering of members of a public body** at which a **quorum** (simple majority of members) is present, whether in person or by means of electronic communication, **to deliberate toward a decision or to take action on any matter** over which the public body has supervision, control, jurisdiction or advisory power.
 - ▶ (2) Any series of gatherings of members of a public body at which:
 - ▶ (I) Less than a quorum is present, whether in person or by means of electronic communication, at any individual gathering;
 - ▶ (II) The members of the public body attending one or more of the gatherings collectively constitute a quorum; and
 - ▶ (III) The series of gatherings was held with the specific intent to avoid the provisions of this chapter.

NRS 241.015(3) and NRS 241.015(5)

Does the OML apply?

- ▶ **Non-Meeting Exceptions:** a gathering or series of members of a public body at which

(1) Which occurs at a social function if the members do not deliberate toward a decision or take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.

(2) 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 supervision, control, jurisdiction or advisory power **and to deliberate toward a decision** on the matter, **or both**.

NRS 241.015(3)(b)

Does the OML apply?

▶ **Meeting Closures:** limited ability

(1) To consider the character, alleged misconduct, professional competence, or physical or mental health of a person.

(2) To prepare, revise, administer, or grade examinations that are conducted by or on behalf of a board.

(3) To consider an appeal by person of the results of an examination conducted by or on behalf of a public body.

NOTE: any action, by a public body, regarding the appeal must be taken in an open meeting and the identity of the appellant must remain confidential

NRS 241.030

OML Requirements – Pre-Meeting

▶ NOTICE OF MEETING

- ▶ At least 3 working days
- ▶ Time, Place, and Location of the Meeting
- ▶ Name and Contact Information from whom the public can obtain supporting materials
- ▶ Agenda

NRS 241.020(2)

OML Requirements – Pre-Meeting

▶ NOTICE OF MEETING – MINIMUM POSTING REQUIREMENTS

- ▶ Not later than 9:00 a.m. of the third working day before the meeting:
 1. Post a copy at the principal office of the public body OR if there is no principal office, at the building in which the meeting will take place AND at least 3 other separate, prominent places within the public body's jurisdiction
 2. Post the notice on the official State notice website (notice.nv.gov)
 3. Provide a copy of the notice to any person who requested notice of the public body's meetings.
 4. (If the public body maintains a website) post the notice on the website

NRS 241.020(3) and (5)

OML Requirements – Pre-Meeting

▶ AGENDA REQUIREMENTS

1. A “clear and “complete statement” of the topics scheduled to be considered during the meeting
2. A list of items on which the public body may take action
 - Denotation of “for possible action” next to the appropriate items
3. Periods devoted to **Public Comment**
4. If the public body will be closing a portion of the meeting to consider the character, alleged misconduct, or professional competence of a person, the name of the person.
5. If the public body will consider taking administrative action regarding a person, the name of the person.
6. Notification of the following:
 - Items on the agenda may be taken out of order
 - The public body may combine two or more agenda items for consideration
 - The public body may remove an item from the agenda or delay discussion relating to an item on the agenda at any time
7. Any restrictions on public comment

NRS 241.020(2).

OML Requirements – Pre-Meeting

- ▶ **AGENDA REQUIREMENT** – “Clear and Complete Statement”
- ▶ A clear and complete statement provides the public with adequate notice of the agenda topics that a public body will discuss.
- ▶ A **higher degree of specificity** is necessary for topics of **substantial public interest**. *Sandoval v. Bd. of Regents of Univ.*, 119 Nev. 148, 154-55 (2003). 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?

OML Requirements – Pre-Meeting

- ▶ **ADDITIONAL REQUIREMENTS:**
- ▶ **ACCOMMODATIONS:** Public bodies shall make reasonable efforts to assist and accommodate persons with physical disabilities desiring to attend. NRS 241.020(1).
- ▶ **SPECIAL NOTICE:** There are 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. This would not apply to passing remarks.
- ▶ 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).

OML Requirements – Meeting

▶ MEETING MATERIALS:

1. Upon request by a member of the public, the public body must provide the following at no cost:
 - ▶ One copy of the agenda;
 - ▶ A copy of any supporting materials; and
 - ▶ A copy of any proposed ordinances or regulations that will be discussed during the meeting
2. The public body must also have at least one copy of the above available to the public at the meeting

OML Requirements – Meeting

- ▶ MEETING MATERIALS: Supporting Materials
- ▶ Supporting materials are any written materials that are directly related to and necessary for members of the public body to consider to an agenda item.
- ▶ Supporting materials must be available to members of the public at the same time that they are provided to the members of the public body.

NRS 241.020

OML Requirements – Meeting

- ▶ **PUBLIC COMMENT**

- ▶ Two Options for Public Comment:

1. At the beginning of the meeting before any items on which action may be taken are heard by the public body AND again before adjournment of the meeting;
OR
2. After each item on the agenda on which action may be taken is discussed by the public body, but before the public body takes action on the item.

NRS 241.020(3)

OML Requirements – Meeting

▶ RESTRICTIONS ON 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.

- ▶ HOWEVER, the presiding officer of a public body 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).

OML Requirements – Meeting

▶ MINUTES

▶ Meeting Minutes are MANDATORY and must include:

1. The date, time, and place of the meeting;
2. The members of the public body who were present and those who were absent;
3. The substance of all matters proposed, discussed or decided (and a record of each member's vote if requested by any member)
4. The substance of remarks made by any members of the public if the member of the public requests that the minutes reflect his or her remarks (or a copy of the written prepared remarks)

NRS 241.035

OML Requirements – Post-Meeting

- ▶ **MINUTES**
- ▶ Public bodies must approve the minutes of their meetings within 45 days after the meeting OR at the next meeting of the body, whichever occurs later (absent good cause)
- ▶ Public bodies must make the minutes of their meetings available for inspection by the public within 30 working days after adjournment of the meeting.

OML Requirements – Post-Meeting

- ▶ **RECORDINGS AND TRANSCRIPTS**
- ▶ Each public body must either record its meeting on audio or video tape OR cause the meeting to be transcribed by a court reporter.
- ▶ Transcripts can act at the public body's meeting minutes

Questions

- ▶ **OAG OML Enforcement Unit:** available to answer questions from public bodies