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555 E. Washington Ave. Suite 3900
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December 8, 2020

Via Certified Mail

Janice Williams
[REDACTED]
[REDACTED]

**Re: Open Meeting Law Complaint, O.A.G. File No. 13897-355
Reno City Council**

Dear Ms. Williams:

You filed three complaints on December 12, 2019, (Complaints) with the Office of the Attorney General (OAG) alleging violations of the Nevada Open Meeting Law (OML) by the Reno City Council (Council). The Complaints allege that the Council violated the OML by failing to have clear and complete statements of the topics to be considered on the Council's November 6, December 4, and December 11, 2019, agendas.

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 investigation of the Complaints included OAG review of the Complaints and supporting materials, the response to the Complaints from the Assistant City Attorney, and attachments thereto, and the agendas, minutes and recordings of the three meetings at issue.

FACTUAL BACKGROUND

The Council is a "public body" as defined in NRS 241.015(4) and is subject to the OML.

The Reno City Council and Redevelopment Agency Board held a joint meeting on November 6, 2019, and listed the following item on their agenda:

E.2 Staff Report (For Possible Action): **Ordinance Introduction - Bill No. _____** Case No. TXT20-00001 (Public Parks and Plaza Shading) Ordinance to amend Reno Municipal Code Title 18, "Annexation and Land Development" Chapter 18.12 "Site and Building Design Standards," Section 18.12.301 "Generally Applicable Site and Building Design Standards," regarding public parks and plaza shading; together with other matters properly relating thereto.

The Council received 16 minutes of public comment regarding the agenda item. Commenters expressed concern regarding the impacts of a proposed development on the community and the environment. Council staff then made a presentation regarding the purpose and details of the proposed ordinance and specified that it was not specific to any particular project and that many potential development projects may be affected by the proposed ordinance. Discussion under the agenda item included discussion regarding whether the ordinance pertained to any specific property and what notice the public would receive on any planned developments that might be affected by the ordinance. The Council did not discuss the details of any particular project. The Council voted to refer the ordinance for another review with changes.

The Council held a meeting on December 4, 2019, and listed the following item on its agenda:

- F.8 Staff Report (For Possible Action): **Ordinance Adoption - Bill No. 7105 Case No. TXT20-00001 (Public Parks and Plaza Shading)** Ordinance to amend Reno Municipal Code Title 18, "Annexation and Land Development" Chapter 18.12 "Site and Building Design Standards," Section 18.12.301 "Generally Applicable Site and Building Design Standards," regarding public parks and plaza shading; together with other matters properly relating thereto.

The Council received 28 minutes of public comment regarding the agenda item. Commenters expressed concerns regarding the impacts of a proposed development on the community. The Council asked questions of staff regarding whether the ordinance change targeted at any particular project and staff described various types of projects that the ordinance may affect. The Council largely discussed the general effects of the new ordinance and whether to include a requirement to apply for a special use permit, with a little discussion of the project that the public had repeatedly brought up being used as an example. The Council did not discuss the details of that project. The Council voted to continue the matter to the December 11, 2019 meeting and to remove the special use permit requirement.

The Council held a meeting on December 11, 2019, and listed the following on its agenda:

- F.1 Staff Report (For Possible Action): **Ordinance Adoption - Bill No. 7105 Case No. TXT20-00001 (Public Parks and Plaza Shading)** Ordinance to amend Reno Municipal Code Title 18, "Annexation and Land Development" Chapter 18.12 "Site and Building Design Standards," Section 18.12.301 "Generally Applicable Site and Building Design Standards," regarding public parks and plaza shading; together with other matters properly relating thereto.

The Council received 26 minutes of public comment regarding the agenda item. Commenters expressed concerns regarding the impacts of a proposed development on the community. Some Councilmembers expressed concern that

this ordinance was targeted toward one project, which they did not like. The Council largely discussed the general effects of the new ordinance and the difficulty of balancing community concerns. The Council voted to adopt the ordinance.

The Complaints allege that by omitting the terms “exemption”, “Downtown Regional Center Overlay District” and “Residential Shading”, the agenda items on the three meeting agendas failed to give the public clear notice of the topics to be discussed at the meetings. Additionally, the Complaints allege the use of the phrase “together with other matters properly relating thereto” in the agenda items violates the OML.

DISCUSSION AND LEGAL ANALYSIS

An agenda for a meeting of a public body must include a “clear and complete statement of the topics to be considered during the meeting.” NRS 241.020(2)(d)(1). The “clear and complete statement” requirement of the OML stems from the Legislature’s belief that “incomplete and poorly written agendas deprive citizens of their right to take part in government’ and interferes with the ‘press’ ability to report the actions of government.” *Sandoval v. Bd. Of Regents of Univ.*, 119 Nev. 148, 154 (2003). Strict adherence with the “clear and complete” standard for agenda items is required for compliance under the OML. *Id.* The OML “seeks to give the public clear notice of the topics to be discussed at public meetings so that the public can attend a meeting when an issue of interest will be discussed.” *Id.* at 155. Further, “a ‘higher degree of specificity is needed when the subject to be debated is of special or significant interest to the public.” *Id.* at 155-56. (*quoting Gardner v. Herring*, 21 S.W.3d 767, 773 (Tex. App. 2000)).

The agenda items at issue gave the public notice that the Council would be discussing an amendment to a specific provision of the Reno Municipal Code regarding public parks and plaza shading. Under the subject agenda items, the Council discussed why they were considering such a change, the potential impacts of that change, and their reasoning in voting for or against the change. While many public commenters raised a specific proposed development during their comments, the Council did not discuss the details of that project, beyond responding to the public’s comments. The Council and Council staff reiterated during each meeting that this proposed ordinance had implications beyond any particular project and that the proposed project brought up by public commenters was not before the Council to decide upon. Therefore, the OAG finds that the Council did not stray from the agenda topic during its discussion and thus did not violate the OML in this instance. However, the OAG recommends the Council consider adding additional detail to future agenda items of significant public interest, such as this one, to provide extra clarity to the public of what will be discussed and to prevent the Council from being restrained during the meeting of what it can discuss.

Further, inclusion of the phrase “together with other matters properly related thereto” in the agenda items does not cause the agenda items to be vague. However, such a phrase does not allow the public body to discuss matters beyond the clear and complete statements of the agenda item and does

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not broaden what can be discussed under the agenda item. Inclusion of the phrase, in and of itself, does not violate the OML.

CONCLUSION

The OAG has reviewed the available evidence and determined that no violation of the OML has occurred. The OAG will close the file regarding this matter.

Sincerely,

AARON D. FORD
Attorney General

/s/ Rosalie Bordelove
ROSALIE BORDELOVE
Chief Deputy Attorney General

cc: Jonathan D. Shipman, Assistant City Attorney

