

1 OFFICE OF THE ATTORNEY GENERAL
2 STATE OF NEVADA

3 In the matter of:

4 RENO CITY COUNCIL

OAG FILE NO.: 13897-373

5 **FINDINGS OF FACT AND**
6 **CONCLUSIONS OF LAW**

7
8 **BACKGROUND**

9 Lori Wray, of Scenic Nevada, filed a complaint with the Office of the Attorney
10 General (“OAG”) alleging violations of the Nevada Open Meeting Law (“OML”) by the Reno
11 City Council (“Council”), alleging that the Council violated the OML as follows:

12 **ALLEGATION NO. 1:** The general public was not able to provide live public
13 comment at the Council’s July 22, 2020 teleconference meeting.

14 **ALLEGATION NO. 2:** The discussion held on Agenda Item E.2 at the Council’s
15 July 22, 2020 meeting violated the OML’s clear and complete standard.

16 The OAG has statutory enforcement powers under the OML and the authority to
17 investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS
18 241.040. The OAG’s investigation of the Complaint included a review of the following:

- 19 1. The Complaint filed by Ms. Wray and all attachments thereto;
20 2. The response filed on behalf of the Council and all attachments thereto;
21 3. The Agenda for the May 20, 2020 Regular Meeting of the Reno City Planning
22 Commission, as well as the agenda packet materials for Agenda Items 5.1 and
23 5.2;¹
24 4. The video recording of the July 22, 2020 Regular Meeting of the Reno City
25 Council;²

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27 ¹ These items were retrieved and viewed at:
http://renocitynv.iqm2.com/Citizens/Detail_Meeting.aspx?ID=1898.

28 ² These items were retrieved and viewed by the OAG at:
http://renocitynv.iqm2.com/Citizens/Detail_Meeting.aspx?ID=1873.

- 1 5. The Revised Agenda for the July 22, 2020 Regular Meeting of the Reno City
2 Council;³ and
- 3 6. The Staff Report and Presentation at the July 22, 2020 Council meeting and
4 all attachments thereto, including:
- 5 a. Exhibit A – Public Comment – Skyway Text Amendment;
- 6 b. Exhibit B – May 20th Planning Commission Staff Report and
7 Presentation;
- 8 c. Exhibit C – Draft Planning Commission Meeting Minutes (May 20,
9 2020);
- 10 d. Item E.2 Public Comment (6-10-2020 Monday Distribution);
- 11 e. Item E.2 (6-10-2020 Tuesday Distribution) public comment;
- 12 f. E.2 Presentation from UNR – Heidi Gansert;
- 13 g. E.2 Skyway Presentation – PC Presentation (6 10 20) ver. 2;
- 14 h. E.E.2 TXT20-00005 Skyway Staff Presentation; and
- 15 i. 7-22-2020 E.2 Skyway Committee (Tuesday Dist) Public Comment.⁴

16 After investigating the Complaint, the OAG determines that the Council violated
17 the OML by failing to comply with the “clear and complete statement” requirement for its
18 July 22, 2020 Council meeting, as set forth below.

19 **FINDINGS OF FACT**

20 1. The Reno City Council is a “public body” as defined in NRS 241.015(4) and
21 therefore is subject to the OML.

22 2. On March 12, 2020, Governor Steve Sisolak declared a State of Emergency to
23 facilitate the State’s response to the COVID-19 pandemic.

24 3. On March 22, 2020, Governor Sisolak issued Declaration of Emergency
25 Directive 006, which suspended certain OML requirements. Directive 006 provided, among
26 other things, “If a public body holds a meeting by means of teleconference or video

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28 ³ *Id.*

⁴ *Id.*

1 conference and a physical location where members of the public can attend is not provided,
2 the public body must provide a means for the public to provide public comment, and post
3 that means on the public notice agenda posted in accordance with NRS 241.020. Public
4 comment options may include, without limitation, telephonic or email comment.”

5 4. On July 22, 2020, the Council held a teleconference meeting.

6 5. The Revised Agenda for the Council’s July 22, 2020 meeting provided:

7 **Public Comment:** No action may be taken on a matter raised under
8 general public comment until the matter is included on a subsequent
9 agenda as an action item. Public comment is limited to three (3) minutes
10 per person. Pursuant to Section 2 of Directive 006, members of the
11 public may submit public comment by leaving a voicemail at (775) 393-
12 4499. Messages received prior to 4:00 p.m. on the day before the meeting
13 will be transcribed, provided to City Council for review, and entered into
14 the record. During the meeting, members of the public may submit
15 public comment without being physically present via online Public
16 Comment Form (Reno.gov/PublicComment), or emailing
17 cityclerk@reno.gov. Public comment received during the meeting will be
18 provided to City Council for review prior to adjournment, and entered
19 into the record. Members of the public may also view the meeting
20 virtually by pre-registering using the following link:
21 https://zoom.us/webinar/register/WN_wRftCk8WStKM_A_JSPyu1Q.

22 6. Public comment was agendized as Items A.3 and J for the Council’s July 22,
23 2020 meeting.

24 7. At the time the Council called for the first period of public comment, the
25 Council attempted to afford members of the public to provide live public comment.
26 However, due to several public members’ comments of a racially inflammatory nature and
27 lack of decorum to the Council, the Council stopped receiving live public comment.

28 8. Agenda Item E.2 of the Council’s July 22, 2020 meeting provided:

E.2 Staff Report (For Possible Action): **Ordinance Introduction –
Bill No. _____ Case No. TXT20-00005 (Skyway Design Guidelines
Text Amendment)**. Ordinance to amend Reno Municipal Code Title 18,
“Annexation and Land Development” Appendix B – Skyway Design
Guidelines,” to amend the Skyway Design Guidelines by adding criteria
that exempts certain projects from review by the Design Review
Committee; together with matters which pertain to or are necessarily
connected therewith.

1 9. After the matter was called, Vice Mayor/At-Large Reno City Councilmember
2 Devon Reese asked the City Clerk whether any public comment was received on the agenda
3 item. The City Clerk noted that they had received three (3) letters in support and forty-
4 seven (47) letters in opposition, and two (2) letters of concern, copies of which were all
5 provided to the Council and were made a part of the record.

6 10. Thereafter, Angela Fuss provided a presentation on behalf of staff. Ms. Fuss'
7 presentation provided a history of the text amendment and summarized the proposed
8 criteria that would exempt skyway projects from review by the Design Review Committee.

9 11. After Ms. Fuss' presentation, Councilmember Neoma Jardon asked whether
10 a representative from the University of Nevada, Reno ("UNR") was available.

11 12. The City Clerk notified the Council that Heidi Gansert, Executive Director of
12 External Relations of the University of Nevada, Reno, was present to answer any questions.

13 13. Councilmember Jardon then proceeded to ask Ms. Gansert questions
14 regarding a specific pending UNR skyway project, including "who the contractor was, the
15 architect, and the need for ADA compliance, and the beneficiaries." Ms. Gansert provided
16 details of the UNR skyway project to the Council and the reasons for the location of the
17 proposed bridge.

18 14. Councilmember Jardon moved to refer the proposed ordinance for a second
19 reading, and Councilmember Weber seconded the motion. Ultimately, the Council passed
20 the motion 4-3.

21 15. During the second period for public comment, the Council did not take any
22 live public comment. However, the Clerk's Office notified the Council that it had received
23 public comments and that those public comments were submitted to the Council and were
24 made a part of the record.

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1 **LEGAL STANDARDS AND CONCLUSIONS OF LAW**

2 **1. The Council violated the “clear and complete” standard under the**
3 **OML for allowing consideration of the specific UNR skyway project.**

4 The OML defines a “meeting” to include “[t]he gathering of members of a public body
5 at which a quorum is present . . . to deliberate toward a decision or to take action on any
6 matter over which the public body has supervision, control, jurisdiction or advisory power.”
7 NRS 241.015(3)(a)(1). In turn, the OML defines the term “deliberate” as “collectively to
8 examine, weigh and reflect upon the reasons for or against the action. The term includes
9 without limitation, the collective discussion or exchange of facts preliminary to the ultimate
10 decision.” NRS 241.015(2).

11 Under the OML, an agenda of a public body must consist of “a clear and complete
12 statement of the topics scheduled to be considered during the meeting.” NRS
13 241.020(3)(d)(1). The clear and complete requirement of the OML stems from the
14 Legislature’s belief that “incomplete and poorly written agendas deprive citizens of their
15 right to take part in government’ and interferes with the press’ ability to report the actions
16 of government.” *Sandoval v. Bd. Of Regents of Univ.*, 119 Nev. 148, 154 (2003). Strict
17 adherence with the “clear and complete” standard for agenda items is required for
18 compliance under the OML. *Id.* The OML “seeks to give the public clear notice of the topics
19 to be discussed at public meetings so that the public can attend a meeting when an issue
20 of interest will be discussed.” *Id.* At 155. Further, a “higher degree of specificity is needed
21 when the subject to be debated is of special or significant interest to the public.” *Id.* At 155-
22 56 (*quoting Gardner v. Herring*, 21 S.W.3d 767, 773 (Tex. App. 2000)).

23 Here, the OAG first finds that this matter appears to be a matter of special or
24 significant interest to the public, which triggers the requirement that the agenda provide
25 a higher degree of specificity under *Sandoval*. According to the Staff Report for Agenda
26 Item E.2, the item related to a proposed text amendment to remove the requirements for
27 certain skyway projects to be reviewed by a Design Review Committee, which had been in
28 the City’s zoning codes since 2000. The Staff Report further notes that all skyway proposals

1 were to be reviewed by both the Reno Planning Commission and the Reno City Council, as
2 part of the special use permit. As indicated in the Staff Report, removing the requirement
3 for the Skyway Design Review Committee would eliminate an existing step in the design
4 review process. Given that the requirement for a Design Review Committee had been in
5 the City's zoning codes for approximately 20 years, and given that there were
6 approximately 50 public comments garnered related to Agenda Item E.2, the OAG finds
7 this matter as being of special or significant interest to the public and thus requiring a
8 higher degree of specificity in the agenda item.

9 In this case, based on the plain text of the Council's Agenda Item E.2, the clear and
10 complete standard was violated, as there was no indication that the Council would consider
11 the specific UNR skyway project. Additionally, by way of comparison, prior to the Council's
12 July 22 meeting, a similar text amendment was introduced at the Reno City Planning
13 Commission's May 20, 2020 meeting, which provided:

14 5.1 Staff Report (For Possible Action – Recommendation to City Council):
15 Case No. TXT20-00005 (Skyway Design Guidelines Text Amendment) –
16 A request has been made to amend the Reno Municipal Code Title 18,
17 “Annexation and Land Development”, “Appendix B – Skyway Design
18 Guidelines”. This amendment will specifically remove the Skyway
Design Review Committee regulations, together with matters which
pertain to or are necessarily connected therewith.

19 However, unlike the Council's July 22 meeting, the Reno City Planning Commission's May
20 20, 2020 agenda also included a separate agenda item for the following item:

21 5.2 Staff Report (For Possible Action – Recommendation to City Council):
22 Case No. LDC20-00047 (Gateway Parking Complex – Skyway) – This is
23 a request for a special use permit to construct a covered open air Skyway
24 (pedestrian bridge) over 9th Street, connecting the UNR Gateway
25 Parking Garage to the UNR Campus. The skyway crosses East 9th
26 Street and spans between two parcels located to the west of Lake Street
27 and east of North Center Street. The site is located within the Mixed
28 Use/University of Nevada Regional Center/Academic and Research
(MU/UNRC/AR), Mixed Use/University of Nevada Regional
Center/Open Space and Mixed Use/University of Nevada Regional
Center/Commercial (MU/UNRC/C) zoning districts. The site has a
Master Plan land use designation of Public Quasi-Public (PQP).

1 Were it the Council's intention to consider the specific UNR skyway project, the Council
2 should have included an item on its agenda to consider the same, similar to the May 20,
3 2020 agenda of the Reno City Planning Commission meeting.

4 Moreover, while the supporting materials for Agenda Item E.2 included a copy of the
5 Presentation from UNR related to the specific skyway project, the OAG reiterates that the
6 language of the OML generally does not authorize a public body to rely on information
7 contained in its supporting materials in order to meet the clear and complete standard. *See*
8 NRS 241.020(2)(d)(1). While previous cases have allowed public bodies to rely on
9 supporting materials in order to meet the clear and complete standard, this case is
10 distinguishable. Specifically, in *Schmidt v. Washoe Cty.*, 123 Nev. 128, 159 P.3d 1099
11 (2007), the Supreme Court concluded that it was not a violation of the OML's clear and
12 complete standard where the Washoe County Board of Commissioners ("WBCC") posted an
13 agenda that stated, "Legislative Update – this item may involve discussion by [WBCB] and
14 direction to staff on various bill draft requests (BDRs)". *Id.* The agenda instructed
15 interested party that they could obtain a list of specific bills to be discussed on the County's
16 website. *Id.* The Court reasoned that the WBCC met the clear and complete standard
17 because it gave notice that it was going to discuss certain BDRs at its meeting, and while
18 it did not list the specific BDRs on its agenda, the WBCC provided the accessible list to the
19 public three days before the meeting. *Id.*

20 Here, unlike *Schmidt*, the Council did not provide notice to the public that the
21 Council would consider the specific details of the UNR skyway project on July 22. While
22 the Council asserts that the basis of the agendized proposed text amendment was spurred
23 by a pending special use permit application filed by UNR for a skyway project, the Council's
24 consideration of the UNR special use permit at the July 22 Council was not related to the
25 proposed text amendment itself, but on wholly separate topics, namely the identity of the
26 UNR skyway project's contractor and architect, the need for ADA compliance, and the
27 beneficiaries thereof. As such, by straying away from a discussion focused on the proposed
28 text amendment and by allowing Ms. Gansert to address the Council regarding details of

1 the specific UNR skyway project, the Council violated the OML’s clear and complete
2 standard.

3 **2. The Council did not violate the OML when it did not afford members
4 of the public the ability to provide live comment.**

5 In general, the OML requires that public comment be taken either: (1) “at the
6 beginning of the meeting before any items on which action may be taken are heard by the
7 public body and again before the adjournment of the meeting” or (2) “after each item on the
8 agenda on which action may be taken is discussed by the public body, but before the public
9 body takes action on the item.” NRS 241.020(3)(d)(3). However, because of the pandemic
10 currently faced by the State, on March 22, 2016, the Governor issued Declaration of
11 Emergency Directive 006, which suspended certain OML requirements, including the
12 requirement for live public comment. In particular, the Governor’s Declaration of
13 Emergency Directive 006 provides, “If a public body holds a meeting by means of
14 teleconference or video conference and a physical location where members of the public can
15 attend is not provided, the public body must provide a means for the public to provide public
16 comment, and post that means on the public notice agenda posted in accordance with NRS
17 241.020. Public comment options may include, without limitation, telephonic or email
18 comment.”

19 In this case, the Council afforded the public an alternative manner in which to
20 provide public comment. The Council’s Revised Agenda noted that public comment may be
21 submitted by leaving a voicemail, via an online Public Comment Form, or by email. The
22 Council’s Revised Agenda further noted that public comment received during the meeting
23 would be provided to the Council for review prior to adjournment and entered into the
24 record.

25 The record reflects that Ms. Wray submitted written public comment to the Council
26 via email.⁵ During the meeting, Vice May/At-Large Reno City Councilmember Reese asked

27 ⁵ In reviewing this Complaint, the OAG located a letter from Scenic Nevada dated July 20,
28 2020 providing its opposition to the text amendment to eliminate the Design Review
Committee. The letter further discusses Scenic Nevada’s position on the UNR skyway
project relative to Design Review Committee.

1 the City Clerk whether there were public comments submitted on Agenda Item E.2. In
2 response, the City Clerk noted that the public submitted three (3) letters in support, forty-
3 seven (47) letters in opposition, and two (2) letters of concern. Accordingly, there is no
4 finding of an OML violation for the Council’s refusal to allow members of the public to
5 provide live public comment, as the public was afforded alterative avenues to provide public
6 comment to the Council.

7 **SUMMARY**

8 Upon investigating the present Complaint, the OAG makes findings of fact and
9 conclusions of law that the Reno City Council violated the OML by failing to comply with
10 the “clear and complete statement” requirement for its July 22, 2020 Council meeting, as
11 set forth above.

12 If the Attorney General investigates a potential OML violation and makes findings
13 of fact and conclusions of law that a public body has taken action in violation of the OML,
14 “the public body must include an item on the next agenda posted for a meeting of the public
15 body which acknowledges the findings of fact and conclusions of law.” NRS 241.0395. The
16 public body must treat the opinion of the Attorney General as supporting material for the
17 agenda item(s) in question for the purpose of NRS 241.020. *Id.* Accordingly, the Council
18 must place an item on its next meeting agenda in which it acknowledges the present
19 Findings of Fact and Conclusions of Law (“Opinion”) resulting from the OAG’s investigation
20 in this matter. The Council must also include the OAG Opinion in the supporting materials
21 for its next meeting.

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1 Lastly, NRS 241.037 confers upon the OAG the power to bring suit “in any court of
2 competent jurisdiction to have an action taken by a public body declared void or for an
3 injunction against any public body or person to require compliance with or prevent violation
4 of [NRS 241].” Upon investigation of this file, no action was taken by the Council specific
5 to the University of Nevada, Reno skyway project at the Council’s July 22, 2020 meeting,
6 and therefore, the OAG will abstain from bringing suit at this time.

7 Dated: December 8, 2020

8 AARON FORD
9 Attorney General

10 By: /s/ Justin R. Taruc
11 Justin R. Taruc
12 Deputy Attorney General

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 8th day of December, 2020, I served the foregoing
3 **FINDINGS OF FACT AND CONCLUSIONS OF LAW** by depositing a copy of the
4 same in the United States mail, properly addressed, postage prepaid, **CERTIFIED MAIL**
5 addressed as follows:

6 Lori Wray
7 Scenic Nevada

8 [Redacted]
[Redacted]

9 **Certified Mail No.:** [Redacted]

10 Karl S. Hall, Esq., City Attorney
11 Reno City Attorney's Office
12 1 East First Street, 3rd Floor
13 Reno, Nevada 89505

14 **Certified Mail No.:** 7020 0640 00007651 9920

15
16 /s/ Debra Turman
17 An employee of the Office of the
18 Nevada Attorney General
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