

AARON D. FORD
Attorney General

CRAIG A. NEWBY
First Assistant Attorney General

CHRISTINE JONES BRADY
Second Assistant Attorney General



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

555 E. Washington Ave. Suite 3900
Las Vegas, Nevada 89101

TERESA BENITEZ-
THOMPSON
Chief of Staff

LESLIE NINO PIRO
General Counsel

HEIDI PARRY STERN
Solicitor General

June 5, 2024

Via U.S Mail

Kendra Wong
[REDACTED]

**Re: Open Meeting Law Complaint, OAG File No. 13897-484
Incline Village General Improvement District Board of Trustees**

Dear Ms. Wong:

The Office of the Attorney General (“OAG”) is in receipt of your complaints (“Complaints”) alleging violations of the Open Meeting Law, NRS Chapter 241, (“OML”) by the Incline Village General Improvement District Board of Trustees (“Board”) regarding its May 25, 2023, meeting and events leading up to and during its June 14, 2023, meeting.

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’s investigation of the Complaints included a review of the Complaints, the Response on behalf of the Board, and the agenda, minutes and recording of the Board’s May 25, 2023, meeting. After investigating the Complaints, the OAG determines that the Board did not violate the OML as alleged in the Complaints.

FACTUAL BACKGROUND

The Board held a public meeting on May 25, 2023. Agenda Item G.4 of the public notice agenda read:

SUBJECT: Discussion of Resolution 1902: A Resolution Approving the Report for Collection of Recreation Standby and Service Charges for Fiscal Year 2023/2024 (Requesting Staff Member: Director of Finance Paul Navazio)

Agenda Item G.7. of the public notice agenda read:

SUBJECT: Discussion of Incline Village General Improvement District Final Budget for FY2023-24, State of Nevada Form 4404LGF, and related FY2023-24 Central Service Cost Allocation, Recreation Facility Fee and Beach Facility Fee, Authorized Staffing Levels, and Fiscal Year 2023-24 Capital Improvement Project Budget (Requesting Staff Member: Director of Finance Paul Navazio)

During the meeting, the Board heard presentations on both items along with various alternatives regarding how to structure the Recreation and Beach Facility Fees for the upcoming year and how much to charge. Included in this information was the fact that the way the County collects the fees did not match the specific language in the handout for Resolution 1902. After much discussion and public comment, the Board voted to approve a plan for the Recreation and Beach Facility Fees. The Board also voted to approve Resolution 1902 with a modification to the report correcting the language from “dwelling unit” to the language that is actually implemented when the County collects the fees.

The Board held a public meeting on June 14, 2023. The original agenda posted for the meeting included an item to conduct the General Manager’s performance evaluation. At the start of the meeting, the Chair of the Board announced that the performance evaluation was being removed from the agenda and a special meeting would be held later to consider a separation agreement.

The Complaints allege that the Board violated the OML by (1) changing the language from “dwelling unit” to “parcel” in assessing Recreation and Beach Facility Fees without it being on the agenda for the May 25 meeting, and (2) conducting serial meetings regarding the removal of the General Manager’s performance evaluation from the June 14 meeting.

LEGAL ANALYSIS

The Incline Village General Improvement District Board of Trustees is a “public body” as defined in NRS 241.015(4) and is subject to the OML.

- 1. The action taken under Items G.4 and G.7 on the Board’s May 25, 2023, agenda did not go beyond the clear and complete**

statements of the topics scheduled to be considered for the meeting.

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(3)(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 to 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. However, the OAG applies a reasonableness standard in determining whether an agenda item is clear and complete. *In re Board of Veterinary Medical Examiners*, OMLO 13897-363 at 5 (Jan. 8, 2021).

Here, the agenda items at issue provided that the Board would consider approving a report regarding the collection of “Recreation Service and Standby Charges” for the upcoming fiscal year and that the Board would be setting the Recreation and Beach Facility Fees. The Board’s action to change a term in the report appears to have been a correction in the term to reflect actual collection procedures and not a change to how the fees would be assessed or collected. However, even if the change in term did change the way the fees would be assessed or collected, it fit within the setting of the fees agenda item. The public was on notice that the fees for the upcoming fiscal year would be set at the meeting and that the Board would be discussing what to set the fees at. Inherent in setting a fee is determining who the fee applies to, to the extent that it is not a new fee or completely outside of reasonable expectations. *In re Carson City School District Board of Trustees*, OMLO 13897-444 at 3 (Jul. 3, 2023). Thus, the OAG does not find a violation of the OML in this respect.

2. The OAG possesses insufficient evidence that serial communications occurred between a quorum of the Board regarding the removal of an item from the June 14, 2023, agenda.

The OML was enacted to ensure public access to government as it conducts the people’s business. NRS 241.010. The spirit and policy behind the OML, as with other so-called “sunshine laws” favors meetings to be as open as possible. *McKay v. Board of Supervisors of Carson City*, 102 Nev. 644, 651, 730 P.2d 438, 443 (1986); *Chanos v. Nevada Tax Com’n*, 124 Nev. 232, 239, 181

P.3d 675, 680 (2008) (“[M]eetings of public bodies should be open ‘whenever possible’ to comply with the spirit of the Open Meeting Law.”).

The Complaints allege that the Board must have engaged in serial communications to reach its decision to remove the General Manager’s performance evaluation from its June 14 meeting.

Pursuant to NRS 241.015(3), a meeting means “the gathering of members of a public body at which a quorum is present, whether in person, by use of a remote technology system 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.” Deliberation means “collectively to examine, weigh and reflect upon the reasons for or against the action. The term includes, without limitation, the collective discussion or exchange of facts preliminary to the ultimate decision.” NRS 241.015(2). The OML is not intended to prohibit every private discussion of a public issue. *Dewey v. Redevelopment Agency of City of Reno*, 119 Nev. 87, 94 (2003). Instead, the OML only prohibits collective deliberations or actions where a quorum is actually or collectively present. *Id.*

The OAG does not possess evidence of serial communication or “collective deliberation” in violation of the OML. The Chair of the Board submitted a signed declaration stating that he alone made the decision to remove the item from the agenda and that he did not discuss this removal with any other trustees. Indeed, the Complaints allege that at least one other trustee was not aware the item would be removed ahead of time. Removal of an agenda item is expressly permitted by the OML and discussions regarding that removal do not implicate the OML. NRS 241.020(3)(d)(6)(III); *Schmidt v. Washoe County*, 123 Nev. 128, 135, 159 P.3d 1099, 1104 (2007). As such, the OAG does not possess sufficient evidence to find a violation of the OML in this respect.

CONCLUSION

Upon review of your Complaints and available evidence, the OAG has determined that no violation of the OML has occurred. The OAG will close the file regarding this matter.

Sincerely,

AARON D. FORD
Attorney General

By: /s/ Rosalie Bordelove
ROSALIE BORDELOVE
Chief Deputy Attorney General

cc: Joshua Nelson, Esq.,
Best Best & Krieger LLP
500 Capitol Mall, Suite 1700
Sacramento, CA 95814