

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

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Via U.S Mail

Dain Szafranski
[REDACTED]

**Re: Open Meeting Law Complaint, OAG File No. 13897-499
Boulder City Council and Boulder City Planning Commission**

Dear Mr. Szafranski:

The Office of the Attorney General (“OAG”) is in receipt of your complaint (“Complaint”) alleging violations of the Open Meeting Law, NRS Chapter 241, (“OML”) by the Boulder City Council (“Council”) and Boulder City Planning Commission (“Planning Commission”) regarding various meetings occurring in 2023.

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 Complaint included a review of the Complaint, the Response on behalf of the Council and Planning Commission, and the agenda, minutes and recordings of the Council’s September 21, 2023, and Planning Commission’s October 18, 2023, meetings. After investigating the Complaint, the OAG determines that the Council and Planning Commission did not violate the OML as alleged in the Complaint.

FACTUAL BACKGROUND

The Boulder City Council held a public meeting on September 21, 2023. It was a special meeting with only one substantive item on the agenda that read: “For possible action: Discussion and direction regarding a possible text amendment permitting short-term rentals and establishing regulations or to

continue prohibiting short-term rentals”. The minutes for the meeting list a motion to “continue prohibition of short-term rentals” that passed 4 to 1.

During the meeting, Mayor Hardy introduced the purpose of the meeting and stated that currently, short-term rentals were prohibited by city code. The Council accepted about an hour and twenty minutes of public comment on the issue and then a presentation from city staff. The Council took a recess to allow participants to watch the local high school’s parade and then continued with questions on the staff presentation and discussion of the issue. Discussion by members centered on what the city code currently said about short-term rentals, whether the city should allow them and the positives and negatives of such a decision. Councilmember Booth then stated “I can make a motion to leave Title 11 as it is and to not allow short-term rentals in Boulder City.” There was no further discussion on the issue prior to the Council voting and passing the motion.

The Boulder City Planning Commission held a public meeting on October 18, 2023. Agenda Item #3 of the public notice agenda read: “For possible action: AM-23-371 – Resolution No. 1245 – City of Boulder City: A public hearing and recommendation to the City Council on a proposed amendment to Sections 11-1-3.B, 11-29-3 and Chapter 11-36 of the City Code to clarify prohibition of Short Term Rentals and general enforcement”.

When Item #3 was called during the meeting, Commissioners expressed their view that a code amendment was needed to make it clearer that short-term rentals were prohibited because there seemed to be confusion amongst the residents of Boulder City. Public comment was accepted specific to the item and then the Planning Commission spent a few minutes further discussing the item. The discussion centered on why a code amendment was necessary and that if residents wanted to get the issue to a public vote, as had been suggested by a public commenter, then getting signatures for a ballot initiative was the correct path. A motion was then made to pass Resolution No. 1245 and it passed unanimously.

Complainant filed the instant complaint alleging (1) a City Council meeting on May 23, 2023, included an agenda item that did not meet the clear and complete requirement, (2) Item #1 on the City Council’s September 21 meeting agenda did not meet the clear and complete requirement, (3) the Council violated the OML by scheduling the September 21 meeting during the high school parade, (4) the minutes for the Council’s September 21 meeting were incorrect with respect to the action taken, (5) Item #3 on the Planning Commission’s October 18 agenda did not meet the clear and complete requirement, and (6) the City Council or Planning Commission must have

engaged in serial communications in order to put Item #3 on the Planning Commission's October 18 meeting agenda.

LEGAL ANALYSIS

The Boulder City Council, as the governing body of a city in Nevada, is a "public body" as defined in NRS 241.015(4) and is subject to the OML. The Boulder City Planning Commission, created by the City Council, is a "public body" as defined in NRS 241.015(4) and is subject to the OML.

As a preliminary matter, the OAG lacks jurisdiction to consider allegation #1 as the alleged violation occurred greater than 120 days prior to the filing of the Complaint. NRS 241.039(2). In addition, allegation #3 fails to state a claim under the OML. The OML does not include any prohibitions regarding dates and times for holding public meetings. *In re Nevada Department of Education*, OMLO 13897-272 (Jun. 28, 2018). As such, the OAG cannot find a violation of the OML for the Council's scheduling of a meeting during an event such as a high school parade.

A. Item #1 of the City Council's September 21 meeting agenda included a clear and complete statement of the topics considered and acted upon.

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 item at issue provided that the Council would consider a possible text amendment to permit short-term rentals in Boulder City. The discussion by the Council during the item fell clearly within this description as Councilmembers discussed the reasons for and against such a text amendment and ultimately voted not to make an amendment. The Complainant's primary

argument is that he disagrees with the Council and city staff's interpretation of the existing code language. Particularly, whether the existing language prohibited short-term rentals. The OAG is not opining on the meaning of the city code with respect to this issue. The Council listed a topic that it planned to discuss and potentially act on, discussed that very topic and ultimately voted not to act. Thus, the OAG does not find a violation of the OML in this respect.

B. The minutes of the September 21 City Council meeting adequately reflect the substance of the action taken.

Public bodies must keep written minutes of their meetings that include the “substance of all matters proposed, discussed or decided.” NRS 241.035(1)(c). The minutes of the September 21 meeting include a summary of all Councilmembers’ comments and then list that the motion was to “Continue Prohibition of Short-Term Rentals”. The actual motion made by Councilmember Booth was to leave Title 11 as it is and “to not allow short-term rentals in Boulder City.” It was clear from the discussion during the meeting and from the motion and it was the understanding of Councilmembers that short-term rentals were prohibited and that they were voting to continue that prohibition. Thus, the OAG finds the minutes to adequately reflect the action taken and does not find a violation of the OML.

C. Item #3 of the Planning Commission’s October 18 meeting agenda included a clear and complete statement of the topics considered and acted upon.

As discussed above, public bodies must include clear and complete statements of the topics scheduled to be considered on their public notice agendas. NRS 241.020(3)(d)(1). The agenda item at issue states that it is a resolution to change the city code to clarify the prohibition on short-term rentals. Complainant argues that this description is unclear because the proposed change would completely change the meaning of the code versus clarify it. Again, Complainant’s main argument is that he disagrees with the City’s interpretation of its code. Regardless of the interpretation of the code language, the agenda item clearly described the action discussed and taken—to approve a resolution to change the code and prohibit short-term rentals. Thus, the OAG does not find a violation of the OML.

D. The OAG possesses insufficient evidence that serial communications occurred between a quorum of the City Council or Planning Commission regarding the decision to place the potential code change on the Planning Commission's 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 Complaint alleges that the Board must have engaged in serial communications to reach its decision to place the potential code amendment on the Planning Commission's October 18 agenda because the September 21 action of the City Council was to leave the code the same.

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 response from the Council and Planning Commission indicates that it was staff's decision to place the code change on the Planning Commission's agenda due to confusion amongst residents as to the meaning of the existing code language and the City Council's clear indication that it wanted short-term rentals to be prohibited. The OAG does not possess any evidence to the contrary. Complainant's only allegation is that there "must have" been serial communications to reach the resulting agenda item. Comments from members of the Planning Commission during its meeting indicate their belief that the City Council had given direction that short-term rentals should be prohibited and there was clear

confusion amongst residents, necessitating a code change to clarify their understood meaning. Thus, the OAG does not find a violation of the OML.

CONCLUSION

Upon review of your Complaint 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: Brittany L. Walker, Esq., City Attorney
City of Boulder City
401 California Avenue
Boulder City, NV 89005