



# OPEN MEETING LAW

**PRESENTATION TO THE NEVADA STATE REHABILITATION COUNCIL**

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# APPLICABILITY OF THE OPEN MEETING LAW

The OML applies to meetings of public bodies.



“Public Body” is defined as “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. . .” NRS 241.015(5).

Includes subcommittees created by public bodies. NRS 241.015(5).



## OPEN MEETING LAW: NRS CHAPTER 241

“In enacting this chapter, the Legislature finds and declares that 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.

“The exceptions provided in this chapter, and electronic communication, must not be used to circumvent the spirit or letter of this chapter to deliberate or act, outside of an open and public meeting, upon a matter over which the public body has supervision, control, jurisdiction or advisory powers.” NRS 241.016(4).

# OPEN MEETING LAW: KEY REQUIREMENTS

Agenda: Must provide full notice and disclosure of discussion topics and any possible action.  
*Sandoval v. Board of Regents*, 119 Nev. 148, 67 P.3d 902 (2003).



Decisions: Deliberation and action(s) must be properly noticed and taken openly. NRS 241.010.

Note: Action is only taken by the body as a whole.

Subcommittees: To the extent a multimember group is appointed by a public body and given the task of making recommendations to that public body, that group is also a “public body” subject to the OML. NRS.015(5)(d)(2).

## WHAT IS A MEETING?

### Under NRS 241.015, a meeting occurs when:

- A quorum of members of a public body gathers; and
- There is either: Deliberation toward a decision, and/or action, which includes making a decision, commitment, or promise regarding a matter that falls within the public body's supervision, jurisdiction, control, or advisory authority.
- Action requires majority vote of members present (NRS 241.015(1)).
- A quorum is a simple majority of the total body (NRS 241.015(6)).
- A gathering of a quorum at a social function is not a meeting as long as there is no deliberation or action.
- An attorney-client conference on potential and existing litigation is not a meeting so long as there is no action.



## WHAT IS A MEETING?

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A constructive meeting occurs when a quorum of a public body deliberates on public business outside of a properly noticed meeting, even if they never all speak together at the same time.

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Email pitfalls – “Reply all” email chains can constitute a meeting. If members discuss how they’ll vote or share opinions on public matters, it may violate the OML.

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Example of a constructive quorum: Two members of a five-member public body discuss how they intend to vote on an issue and why. One of those members then has that same discussion with a third member, including how both the first two members intend to vote and why. A quorum (three members) has deliberated on an issue outside of a meeting.

# MEETING NOTICE AND AGENDA: NRS 241.020

Agenda items must be clear and complete. NRS 241.020(3)(d)(1)

Time, place and location of meeting

List of locations posted

Statement of the topics scheduled to be considered

Action items clearly denoted as “for possible action”

Public comment at beginning/end or before any action item

Posted at office of the public body or location of meeting

Posted at public body website and at [www.notice.nv.gov](http://www.notice.nv.gov)

Posted no later than 9 AM of the third working day before the meeting

# MEETING NOTICE AND AGENDA

## The Agenda must include:

If any portion of the meeting will be closed to consider the character, alleged misconduct or professional competence of a person, the name of the person whose character, alleged misconduct or professional competence will be considered.

If, during any portion of the meeting, the public body will consider whether to take administrative action regarding a person, the name of that person.

Notification that:

- (I) Items on the agenda may be taken out of order;
- (II) The public body may combine two or more agenda items for consideration; and
- (III) The public body may remove an item from the agenda or delay discussion relating to an item on the agenda at any time.

Any restrictions on comments by the general public. Any such restrictions must be reasonable and may restrict the time, place and manner of the comments, but may not restrict comments based upon viewpoint. NRS 241.020(7).

## ADDITIONAL REQUIREMENTS

Public bodies shall make reasonable efforts to assist and accommodate persons with physical disabilities desiring to attend. NRS 241.020(1).

Additional notice requirements for consideration of character, misconduct, competence, or physical or mental health: 7 days personal service or 14 days certified mail. NRS 241.033(2).

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(12). Circumstances include (1) Any impairment of the health and safety of the public (i.e., COVID) and (2) disasters caused by fire, flood, earthquake or other natural causes.

# ADDITIONAL REQUIREMENTS

One copy of the agenda, any supporting materials, and the recording of a public meeting must be provided at no cost to a member of the public requesting them and at least one copy made available at the meeting. NRS 241.020(7); NRS 241.035(2).



Meeting must be recorded or transcribed. NRS 241.035(4).



Minutes must be kept in conformance with NRS 241.035 and include:

- Date, time and place of meeting;
- Members in attendance;
- Substance of all matters proposed, discussed or decided; and
- Substance of remarks made by any member of public or their written remarks if requested.

# EXCEPTIONS- NRS 241.030

Closed sessions may be held by any public body to consider:

- Character or alleged misconduct;
- Professional competence;
- Physical or mental health of a person;
- Prepare, revise, administer, or grade examinations administered on behalf of the public body.

Closed sessions may **NOT** be held:

- To discuss the appointment of any person to public office or as a member of a public body.  
NRS 241.030(4)(d)
- To consider the character, alleged misconduct, or professional competence of an elected member of a public body, or a person who is an appointed public officer or who serves at the pleasure of a public body as a chief executive or administrative officer or in a comparable position.



# PUBLIC COMMENT PITFALLS

Restrictions must be reasonable “time, place, and manner” restrictions.

NRS  
241.020(3)(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, presiding officer 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 (9<sup>th</sup> Cir. 1995).

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).

# VIOLATIONS OF THE OML

Actions taken in violation of the law are void. NRS 241.036.



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.



When a violation of the OML occurs or is alleged, the OAG recommends that the public body make every effort to promptly correct the apparent violation. NRS 241.0365.



Although it may not completely eliminate the violation, corrective action can mitigate the severity of the violation and further ensure that the business of government is accomplished in the open.



Corrective action is prospective only. NRS 241.0365(5).



# USING TECHNOLOGY FOR A MEETING

Public bodies may use remote technology systems (e.g., videoconferencing) to conduct meetings. Members of the public body participating remotely count toward quorum if they can interact and be observed.

Public bodies must allow live public comment via remote technology or prerecorded messages.

## Key Rules for Remote Technology Use in Nevada Public Meetings:

If no physical location is provided, clear instructions (e.g., phone number, access codes) must be given before the first public comment period.

The chair or designee must ensure that remote participants are audible and visible to those at the physical location.

# ADDITIONAL POINTS

Meetings held to recognize or award positive achievements of a person are not subject to the notice requirements of NRS 241.033(7)(c).

The OAG will not investigate complaints about alleged violations that occurred more than 120 days before the complaint was filed, unless: (1) The violation was not discoverable at the time the violation occurred, **and** (2) The alleged violation did not occur more than 1 year prior to the complaint.

The OAG has authority to decline to investigate if it determines that the interests of the complainant are not significantly affected by the alleged violation, unless:

- Complainant would have standing in a court of law, and
- Complainant is (1) a natural person who resides in the jurisdiction of the public body; or (2) a non-governmental entity with a mission to foster or promote transparency in government.

If a member of public body relies on legal advice, no criminal penalty or administrative fine may be imposed.



**QUESTIONS?**