

# NEVADA'S OPEN MEETING LAW

May 4, 2021



# Legislative Intent of “OML”

NRS 241.010 sets forth a legislative declaration:

- Public bodies exist to aid in the conduct of the people’s business.
- It is the intent of the OML that board deliberations and board actions be conducted openly.

# When Does the OML Apply?

- ◆ In general, OML applies to all meetings of a public body at which deliberation takes place and/or action may occur.
- ◆ A subcommittee is a “public body.”  
NRS 241.015(4)(a)

# Pillars of the OML

- ◆ Public Body
- ◆ Meeting
- ◆ Notice
- ◆ Agenda
- ◆ Minutes

# Public Body

NRS 241.015(4)

- ◆ Any administrative, **advisory**, executive or legislative body of the state or local government
- ◆ which expends or disburses or is supported in whole or in part by tax revenue
- ◆ or which advises or makes recommendations to an entity which expends or disburses or is supported in whole or in part by tax revenue
- ◆ includes any board, commission, committee, **subcommittee** or other subsidiary thereof

# Subcommittees

- In its Open Meeting Law Manual, the Attorney General opined that open meeting law applies where a “subcommittee gathers to deliberate or make a decision including taking action to make a recommendation to the parent body.” Nevada Open Meeting Law Manual, §2.04 (2019).

# Who is NOT a “Public Body”?



- ◆ NRS 241.016(2) provides that a “public body” does not include the Nevada Legislature or the Parole Board
- ◆ Most private non-profit corporations

# Meeting

## NRS 241.015(3)(a)(1)

- ◆ In general, a “meeting” is:
  - The **gathering of members** of a public body at which a **quorum** is present to **deliberate** toward a decision or to take **action** on any matter over which the public body has supervision, control, jurisdiction or advisory power.





# What is a Quorum?

NRS 241.015(5)

- ◆ A simple majority of the public body's membership
- ◆ Or another proportion as required by specific statute

# Methods of Holding Meetings

- ◆ If properly noticed and open to the public, meetings may be held via:
  - Teleconference or Video conference

Qualification: As long as each board member can participate in the meeting; there is a physical location for members of the public to attend the meeting; & the public can hear/observe each board member attending

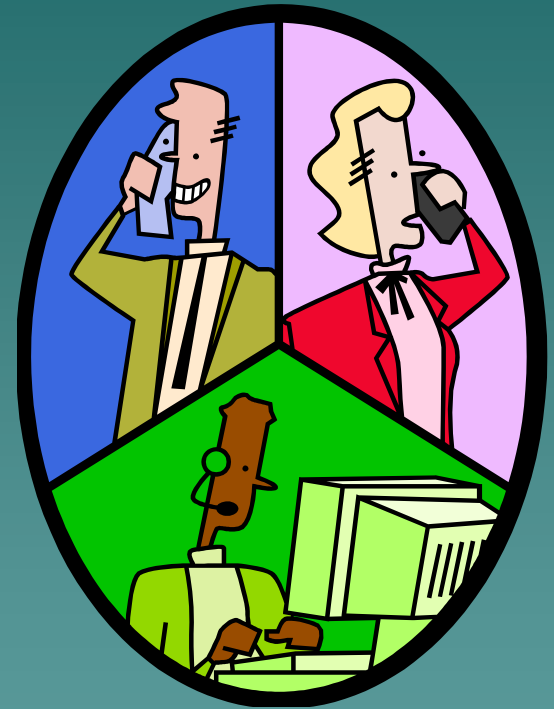


# Declaration of Emergency Directive 006 (Temporary Changes Due to Covid-19)

- Suspends requirement for physical location for members of public to attend. Public must still be able to attend virtually.

# Special Note

- ◆ Serial Electronic communication must not be used to circumvent the spirit or letter of the Open Meeting Law
  - (NRS 241.016(4))
- ◆ Be careful when communicating over email or text messages



# Watch Out for “Walking Quorum”

NRS 241.015(3)(a)(2)

- ◆ If a public body’s members engage in a **series** of gatherings at which:
  - (I) Less than a quorum is present at any individual gathering;
  - (II) But, the members of the public body attending one or more of the gatherings **collectively constitute a quorum**; and
  - (III) The **series** of gatherings was held with the **specific intent** to avoid the OML= **OML violation**

# Exception: Attorney-Client Communications

- ◆ Quorum of board members may gather to:
  - Receive information from the public body's attorney regarding potential or existing litigation, and to deliberate toward a decision=**NOT a meeting** (NRS 241.015(3)(b)(2))
  - Receive training from the public body's attorney regarding legal obligations, if public body does NOT deliberate toward a decision=**NOT a meeting**
- ◆ E-mail communication with the board's attorney= generally NOT a meeting
  - **But do not hit "Reply All"**

# Exception: Social Function

NRS 241.015(3)(b)(1)

- ◆ Even if a quorum is present, social functions are NOT meetings as long as the members do not deliberate toward a decision or take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.

Be careful not to turn a party into a "meeting."



# Notice of Meeting

## NRS 241.020

### ◆ Content

- Day, Time, Location (include room)
- Reasonable efforts to ensure meeting location is large enough to accommodate anticipated number of attendees (**Capacity limits O.K.**)
- Contact info for person who can provide supporting materials
  - ◆ (**Directive 006 suspends requirement for physical location to pick up supporting materials**)
- Means of providing public comment (options)
- Agenda





# Notice of Meeting cont...

## NRS 241.020

- ◆ Posting
  - Meeting location + 3 prominent places
  - Websites
    - ◆ (Directive 006 suspends posting requirements at physical locations)
- ◆ Mailing
  - Subscription- mail or email
- ◆ 3 Working Days prior to meeting (by 9 a.m.)

# Agenda

## NRS 241.020

- ◆ Clear and Complete statement of topics to be considered (stringent standard)
  - Could your neighbor or someone off the street understand what is going to happen at the meeting based on the information in the agenda?
  
- ◆ Notation “For Possible Action” if action item
  - Informational Discussion
  - Deliberation
    - ◆ Collectively examining, weighing and reflecting upon the reasons for or against an action.
    - ◆ Includes collective exchange of facts preliminary to ultimate decision.
  - Action
    - ◆ Decision, commitment or promise, affirmative vote

# Agenda cont...

## NRS 241.020

- ◆ Public Comment Periods
  - Block of time at beginning and end of meeting; or
  - During each action item
    - ◆ (After public body has discussed item, but before public body has taken any action on that item)
    - ◆ (Directive 006 requires real-time public comment, even if no physical location for meeting provided)
  - Cannot restrict a speaker's viewpoint
  - However, conduct that disrupts the meeting's order, efficiency or safety may be limited
  - Board cannot deliberate or take action in response to public comment, unless item is already on the agenda
- ◆ Notice that agenda items may be:
  - Taken out of order
  - Combined
  - Removed or delayed discussion

# Materials Available to the Public

- ◆ Agenda
- ◆ Supporting Materials
  - Must be posted on public body's website
  - Upon being **available** to the "public body" supporting materials must be made available to the public.
    - ◆ Can be before meeting or on the day of the meeting
    - ◆ If on day of meeting, post to website within 24 hours
- ◆ Can be made available by e-mail or emailed link if the requester approves

# Action—Voting Minimums

- ◆ If a public body may have a member who is **not an elected official**, an affirmative vote taken by a **majority of the members present** during a meeting of the public body
  - NRS 241.015(1)(c)
- ◆ If all the members of a public body are elected officials, an affirmative vote taken by a majority of all the members of the public body
  - NRS 241.015(1)(d)

# Minutes

## NRS 241.035

- ◆ Minutes must contain:
  - Date, time, location of meeting
  - Members present
  - Substance of all matters discussed or decided
  - Remarks made by member of public (if person requests minutes reflect remarks)
- ◆ Meetings must be audio-recorded or transcribed
- ◆ Minutes must be available within **30 working days** after meeting
- ◆ Minutes must be retained for 5 years (audio for 3 years)
- ◆ Approved w/in 45 days or at the next meeting (whichever later)

# Corrective Action

- ◆ If an OML violation occurs, the public body may take corrective action within 30 days
- ◆ If appropriate corrective action taken, Attorney General's Office may elect not to prosecute the OML violation.

# Enforcement

- ◆ Person may make OML complaint to Nevada Attorney General's Office
  - AG notifies public body of complaint w/in 14 days
  - If complaint submitted w/in 120 days of alleged violation, AG MUST investigate.
  - If complaint submitted after 120 days, AG will NOT investigate
    - ◆ Exception: Alleged violation not previously discoverable & complaint submitted w/in 1 year.
  - AG not required to investigate an alleged OML violation if person's interests are not "significantly affected" by alleged violation.
    - ◆ Example: Person doesn't live within public body's geographic area



# Enforcement, cont...

- ◆ If AG conducts investigation, it will inform public body
- ◆ After investigation complete, AG will issue:
  - A finding that NO violation occurred; OR
  - A finding that a violation occurred + an explanation for this finding
- ◆ Public body submits response w/in 30 days
- ◆ If AG finds an OML violation, public body must acknowledge finding on next agenda

# OML Violations

- ◆ AG may bring a legal proceeding to void an action taken in violation of the Open Meeting Law; or to obtain an injunction to prevent violations of the Open Meeting Law
- ◆ A private citizen may also bring a legal proceeding

# OML Violations

- ◆ Action taken in violation of the Open Meeting Law is **void** - NRS 241.036
- ◆ OML violations may result in administrative fines against board members
  - 1<sup>st</sup> offense: \$500; 2<sup>nd</sup>: \$1,000; 3<sup>rd</sup>: \$2,500
- ◆ Serious violations of the OML (member has knowledge of violation & participates in violation) can result in **misdemeanor** charges
- ◆ However, if a board member violates the OML because the board member is relying on legal advice of board counsel= no administrative fine or criminal penalty.

# Sources of Information

- ◆ NRS Chapter 241
- ◆ Open Meeting Law Manual published by the Attorney General's Office
  - Available online at <http://ag.state.nv.us>
- ◆ Opinions from the Attorney General's Office relating to the OML
  - Available online at <http://ag.state.nv.us>



# Pending Legislation

## AB 253

- ◆ Would clarify subcommittee definition
- ◆ Would make permanent the option for remote meetings