



NEVADA'S OPEN MEETING LAW

Rosalie Bordelove
Chief Deputy Attorney General
Nevada Attorney General's Office

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What is the Open Meeting Law (OML)?



- 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(1).

When does the OML apply?

PUBLIC BODY

- The OML generally applies to all meetings of public bodies in the State of Nevada.
 - Includes subcommittees
 - Exceptions are strictly construed

MEETING

- Under the OML, a “meeting” requires a **Quorum + Deliberation or Action**
- Quorum means a simply majority of the total body or other proportion established by law.
- Deliberate means collectively to examine, weigh and reflect upon the reasons for or against an action.
- Action means a majority vote of the members present (all members for elected bodies).

When does the OML apply?

- A gathering of a quorum at a social function or for training is *not* a meeting *as long as* there is no deliberation or action.
- Exception: Attorney client conference regarding potential or existing litigation, can include deliberation
- Electronic communication between a quorum of members can constitute a meeting.
 - Email pitfall: “reply all”
- Serial communications or “walking quorums” constitute a constructive meeting.
 - A constructive quorum can exist with less than a quorum speaking together at any given time if opinions are relayed between members.



How do I
comply
with the
OML?

Meeting Notice and Agenda

- **Must include:**
 - Time, place and location (or information on remote technology system)
 - Name, contact and business address for supporting material, plus location (physical or electronic)
 - Clear and complete statements of topics
 - Action items denoted as “for possible action”
 - Public comment periods and restrictions
- Requirements can be found in NRS 241.020
- **Agenda posting requirements:**
 - Office of the public body or location of meeting
 - Public body website
 - Nevada notice website
- Posted no later than 9 AM of the 3rd working day before the meeting.
- Notice must be sent to persons who have requested notice of meetings.

Additional Requirements

- Public bodies shall make reasonable efforts to assist and accommodate persons with physical disabilities desiring to attend.
- Additional notice required for consideration of a person's character, misconduct or competence or to take administrative action against a person.
- Meetings must be recorded or transcribed.
- Minutes must be kept in conformance with NRS 241.035.
- Supporting material is required to be available to the public at the time it is provided to members of the public body.
- 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.

Public Comment

- Minimum requirement:
 - Two options—general or limited to agenda items prior to any action item or on each action item after discussion, but prior to vote
 - General public comment period at some time prior to adjournment
- Restrictions must be reasonable time, place, and manner restrictions. NRS 241.020(3)(d)(3)
- 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.”
- New in 2023: If using a remote technology system, must offer at least telephonic public comment.



How do I comply with the OML?

CLOSED SESSIONS

- Closed sessions may be held by a public body to consider the character, alleged misconduct, professional competence or physical or mental health of a person. NRS 241.030
 - May also be held to grade examinations.
- Exceptions:
 - Appointment of a member to the public body
 - Consider the chief officer of the body/agency
- Action must still occur during a public meeting.

VIRTUAL ATTENDANCE

- Members of public bodies may attend virtually so long as a physical location for public to attend and provide public comment is provided.
- Public must be able to hear and observe to the same level as members.
 - Pit-fall: chat function in remote technology system.

What happens when the OML is violated?



- Actions taken in violation of the OML are void.
- Attorney General's Office has authority to investigate and prosecute violations.
- Corrective action is recommended and while it may not eliminate the violation, it can mitigate severity and further ensure that the business of government is accomplished in the open.
 - Prospective only
 - Requires independent deliberative process

When do I
need to
disclose or
abstain?



Disclosure and Abstentions

- Disclosure is mandatory for **any interest** created by:
 - A gift or loan
 - A substantial pecuniary interest
 - A “commitment in a private capacity”
 - Representation of a private client
- Disclosure must be made at the time the matter is considered and prior to discussion.
- Disclosure must be sufficient to inform the public of the nature and scope.
- Abstention is **required** only in clear cases where the independence of judgment of a reasonable person in the public officer’s situation would be **materially** affected.
- This determination should be made by the public officer and explained on the record.
- Ok to vote if resulting benefit/detriment is no greater to public officer than to anyone else
- Quorum reduced under NRS 281A.420

2023 Updates

- “Quorum” Definition
 - Only voting members count
 - For appointed bodies, vacancies do not count
- “Meeting” Definition – Language changed to clarify existing meaning
 - Attorney-client conference is only true exception
- “Administrative Action Against a Person” Definition – An action that is uniquely personal to the person and includes the potential for a negative change in circumstances
- Notice to Individuals for administrative action against or considerations of character (previously 241.033 and 241.0333)
 - Personal service: 7 calendar days
 - Certified mail: 14 calendar days
 - Can serve attorney
 - Emergency exception
- All elected bodies may now take advantage of NRS 281A.420(5)’s quorum reduction

2023 Updates

- Public Comment During Multi-Day Meetings – If using the two-period public comment option, must have at least two periods *each day* of the multi-day meeting.
- Agenda Posting – Location of meeting is alternative posting location if there is a physical location
- Meetings to consider regulations or contested cases under NRS 233B must have a physical location for public
- Public Comment During Virtual Meetings:
 - Entirely virtual meetings must have clear and complete instructions on the agenda for how to call in for public comment
 - If offering virtual public comment, must read instructions for public comment prior to first public comment period
 - Must offer at least telephonic public comment if *any member* will make use of remote technology system

LINKS

- https://ag.nv.gov/Hot_Topics/Training_Materials/
- https://ag.nv.gov/About/Governmental_Affairs/OML_Opinions/
- https://ag.nv.gov/uploadedFiles/agnv.gov/Content/About/Governmental_Affairs/2019-03-26_OML_12TH_AGOMANUAL.pdf

