



# NEVADA'S OPEN MEETING LAW

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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).

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# When does the OML apply?

## PUBLIC BODY

- The OML generally applies to all meetings of public bodies in the State of Nevada.
  - Includes subcommittees
    - Ex: State Plan Subcommittee
  - 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.
  - NSRC has 16 members, so 9 members = Quorum\*
- 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.

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# 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.
  - Ex: Tuesday meeting requires posting by prior Thursday at 9 am
- 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.
  - Pitfall: chat function in remote technology system.

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# 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

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# 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
    - NSRC has 4 vacant positions, so 7 members = Quorum
- “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/Hot_Topics/Training_Materials/)
- [https://ag.nv.gov/About/Governmental\\_Affairs/OML\\_Opinions/](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](https://ag.nv.gov/uploadedFiles/agnv.gov/Content/About/Governmental_Affairs/2019-03-26_OML_12TH_AGOMANUAL.pdf)

