

OPEN
MEETING LAW
and ETHICS

Clark County Town
Advisory Boards and
Citizens Advisory
Council

January 7, 2023





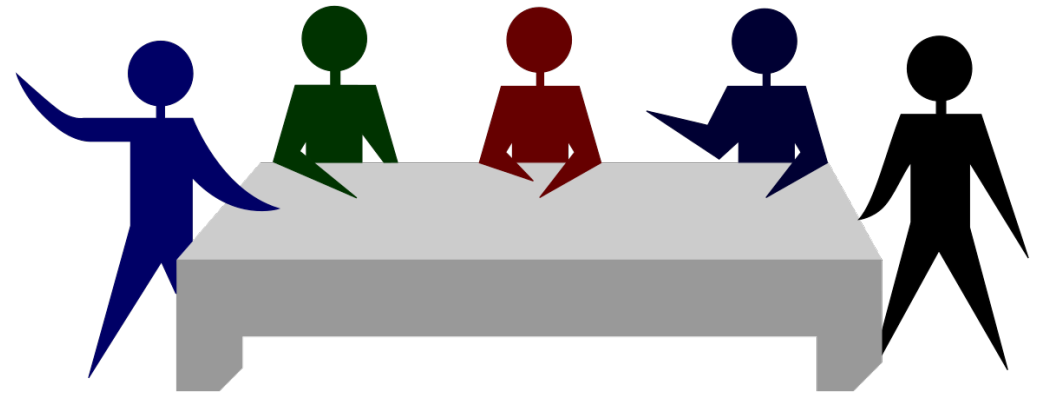
Nevada Revised Statutes
(NRS) Chapter 241

- Open Meeting Laws exist to conduct the people's business. Deliberations and actions taken by the public body are done openly..

NRS 241.010

Public Body defined:

- A public body includes “any ... advisory...body of the State or a local government entity of at least two persons which . . . advises or makes recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue...if the advisory, body is created by:
- A resolution or an action by the governing body of a political subdivision of this State.
- The Board of County Commissioners establishes TAB/CAC pursuant to Clark County Code 3.30 and 3.32, as allowed by the Nevada Revised Statutes section 269.576 and 244.1945.





Meeting defined:

- A gathering of members of a public body at which a quorum is present, in person, by use of a remote technology system or by means of electronic communication, and
- the members deliberate toward a decision or take action on any matter over which the public body has advisory power.
- Or
- A series of gatherings with less than a quorum where the collective number = quorum
- Intent to “avoid” OML requirements



Does not include...

- A social function as long as the members do not deliberate toward a decision or take action on any matter over which the public body has advisory power.
- For each TAB/CAC, a quorum equals half of the total number of seats, even if seats are empty, plus one.

Serial meetings

- A serial meeting may occur through email. For example, if a member sends out an email to a quorum of the public body regarding an issue over which the public body has Duties and Responsibilities, this action may be a violation.
- Or if a member sends an email to one member who then forwards it on to another member, and it continues to be forwarded from one member to the next until a quorum of the public body has received the email, this may also be a violation.



Social Media and Violations of OML

- While there are Attorney General opinions as to the use of emails in serial communications, social media is less clear.
- Best practices:
 - Do not “friend” or “follow” members of the board (might make a quorum)
 - Do not comment on or post about issues before your TAB/CAC (deliberation)
 - Be mindful what groups you belong to, what other members are in that group, if the group is small, it may indicate targeted communication
 - If you do post about an issue before your TAB/CAC or are friends with your fellow members, post generally and direct your message to the general public
 - If a fellow board member posts about an issue that is before the TAB/CAC, do not reply to it directly or indirectly
 - Randazzo and Goldberg examples from Massachusetts Attorney General

Duties and Responsibilities

- As authorized by the Board of County Commissioners (“BCC”), the duties of TAB shall be to assist, in an advisory capacity, the BCC in the government of their respective towns, and such other duties as may be assigned to them from time to time by the BCC. CCC 3.30.070.
- Duties of CAC shall be to assist the BCC by studying the needs of the residents within the area of the council and advising the board of those needs with respect to the BCC’s governing the affairs of that area of the county encompassed by that council.
- “Deliberate” 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)
- “Action” means a decision, commitment or promise made by a majority of the members present, whether in person or by means of electronic communication, during a meeting of a public body. NRS 241.015(1).



NRS 241.020

All meetings must be open and public and all persons must be permitted to attend any of the TAB/CAC meetings at a physical location. Reasonable efforts must be taken to assist and accommodate persons with physical disabilities who want to attend a meeting.

Upon request, provide copies of the agenda and supporting material at no charge and make at least one copy available to the public at the meeting.



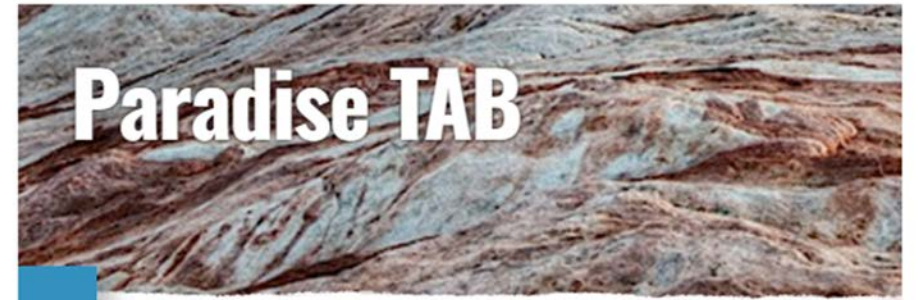
Written notice must be provided no later than 9 a.m. of the third working day before the meeting. (and on the Internet if online)

The notice must include:

the time, place and location of the meeting
a list of the locations where posted
the name, business address and contact information from whom a member of the public may request supporting material and a list of locations where material is available to the public or how the supporting material may be found on the Internet.

A clear and complete statement of the topics to be considered

a list describing the items on which action may be taken and placing the term “**for possible action**” by those items



2022

01/10/23 Regular Meeting	Agenda		
12/27/22 Regular Meeting	Agenda	Audio	
12/13/22 Regular Meeting	Agenda	Minutes	Audio
11/29/22 Regular Meeting	Agenda	Audio	
11/08/22 Regular Meeting	Agenda	Minutes	Audio
10/25/22 Regular Meeting	Agenda	Minutes	Audio
10/11/22 Regular Meeting	Agenda	Minutes	Audio
09/27/22 Regular Meeting	Agenda	Minutes	Audio

The notice must also include:

- Periods devoted to public comment periods (2 options) and any restrictions on comments as authorized by NRS 241.020(3)(d)(7)
- Notification that items may be taken out of order, may be combined, may be removed, or discussion on an item may be delayed
- Minimum public notice posting at the principal office of the public body; provide a copy of the notice to any person who has requested notice of the meetings posting on the official website of the Public Body pursuant to NRS 241.020



22

1/29/22 Regular Meeting-CANCELLED	Agenda
1/25/22 Regular Meeting	Agenda
1/27/22 Regular Meeting	Agenda
1/30/22 Regular Meeting	Agenda
1/26/22 Regular Meeting	Agenda
1/27/22 Meeting Cancelled	Agenda
1/27/22 Regular Meeting	Agenda



Stick to the
posted
agenda,
don't stray



Alternates NRS 241.025(1)

- “Unless the designation is expressly authorized by the legal authority pursuant to which a public body was created: (a) The public body may not designate a person to attend a meeting of the public body in the place of a member of the public body; and (b) A member of the public body may not designate a person to attend a meeting of the public body in his or her place.”
- The BCC did not authorize alternates for the TAB/CAC.

NRS 241.030(4)

- A person who willfully disrupts a meeting to the extent that its orderly conduct is made impractical may be removed from the meeting.



Meeting Records NRS 241.035

- a. must keep written minutes of each meeting including:
 - the date, time, and place
 - members present in person or by means of electronic communication and those absent
 - substance of all matters proposed, discussed or decided, and, at the request of any member, a record of each member's vote on any matter decided by vote. **STATE YOUR NAME EVERY TIME YOU SPEAK.**
 - substance of remarks made by the public, if requested to be included in the minutes, or a copy of the written remarks if the member of the public submits a copy for inclusion. **SPEAKER TO STATE THEIR NAME, ADDRESS. Board members do not get in discussions with public during public comment.**
 - any other information which a member of the public body requests to be included, such as a handout
- b. each meeting must be recorded on audiotape, or another means of sound reproduction, or be transcribed by a certified court reporter
- c. minutes or audiotape recordings of the meetings are public records and must be made available for inspection by the public
- d. a member of the public may record the meeting on audiotape or by other means so long as this in no way interferes with the conduct of the meeting
- e. unless good cause is shown, a public body shall approve the minutes of a meeting within 45 days after the meeting or at the next meeting of the public body, whichever occurs later.

Absolute Privilege NRS 241.0353

- – statements made by a member of the public body during the course of a public meeting are absolutely privileged and do not impose liability for defamation or constitute grounds for recovery in any civil action



got privilege?

Violations of OML and consequences



- a. The action of any public body taken in violation of any provision of this chapter is void. NRS 241.036.
- b. Corrective action may be taken in accordance with NRS 241.0365. If corrective action is taken, it is effective prospectively.
- c. NRS 241.037 authorizes the attorney general and any person denied a right conferred by OML to sue in court to declare the action void or to seek an injunction within 120 days of the alleged violation.
- d. NRS 241.039 authorizes the attorney general to investigate and prosecute any OML violation.
- e. NRS 241.040 addresses criminal and civil penalties for OML violations.



Ethics is knowing the difference between what you have a right to do and what is right to do

Dutton Stewart

- Members serve at the pleasure of the BCC and may be removed at the BCC's discretion.
- TAB/CAC Bylaws, Art. III, F.: requires all members to follow ethical standards.
- Acting ethically includes:
 - Being open, honest and fair
 - Not using your position to gain any personal or business advantage for yourself or your family or other persons with whom you have a close relationship.

NEVADA ETHICS IN GOVERNMENT LAW

- **NRS 281A.020 Legislative findings and declarations.**
 - 1. It is hereby declared to be the public policy of this State that:
 - (a) A public office is a **public trust** and shall be held for the sole benefit of the people.
 - (b) A public officer or employee must commit himself or herself to **avoid conflicts between the private interests of the public officer or employee and those of the general public** whom the public officer or employee serves.
 - 2. The Legislature finds and declares that:
 - (a) The increasing complexity of state and local government, more and more closely related to private life and enterprise, enlarges the potentiality for conflict of interests.
 - (b) **To enhance the people's faith in the integrity and impartiality of public officers** and employees, adequate guidelines are required to show the appropriate separation between the roles of persons who are both public servants and private citizens.

- **NRS 281A.400 General requirements; exceptions.** A code of ethical standards is hereby established to govern the conduct of public officers and employees:
- 1. A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity, for the public officer or employee or any person to whom the public officer or employee has a commitment in a private capacity, which would tend improperly to influence a reasonable person in the public officer's or employee's position to depart from the faithful and impartial discharge of the public officer's or employee's public duties.
- 2. A public officer or employee shall not use the public officer's or employee's position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for the public officer or employee, any business entity in which the public officer or employee has a significant pecuniary interest or any person to whom the public officer or employee has a commitment in a private capacity.
- 3. A public officer or employee shall not participate as an agent of government in the negotiation or execution of a contract between the government and the public officer or employee, any business entity in which the public officer or employee has a significant pecuniary interest or any person to whom the public officer or employee has a commitment in a private capacity.
- 4. A public officer or employee shall not accept any salary, retainer, augmentation, expense allowance or other compensation from any private source, for the public officer or employee or any person to whom the public officer or employee has a commitment in a private capacity, for the **performance of the public officer's or employee's duties** as a public officer or employee.

- 5. If a public officer or employee acquires, through the public officer's or employee's public duties or relationships, any information which by law or practice is not at the time available to people generally, the public officer or employee shall not use the information to further a significant pecuniary interest of the public officer or employee or any other person or business entity.
- 6. . . .
- 7. . . .a public officer or employee shall not use governmental time, property, equipment or other facility to benefit a significant personal or pecuniary interest of the public officer or employee or any person to whom the public officer or employee has a commitment in a private capacity.
- 8. . . .
- 9. A public officer or employee shall not attempt to benefit a significant personal or pecuniary interest of the public officer or employee or any person to whom the public officer or employee has a commitment in a private capacity through the influence of a subordinate.
- 10. A public officer or employee shall not seek other employment or contracts for the public officer or employee or any person to whom the public officer or employee has a commitment in a private capacity through the use of the public officer's or employee's official position.

FINAL THOUGHTS



- Attendance
 - CCC Chapter 3.01 – three unexcused absences during a calendar year are grounds for mandatory removal from the TAB/CAC for good cause or neglect of duty.
 - Regular attendance is vital. For one thing, meetings cannot be held without a quorum which means no action can be taken. Further, having full attendance is always preferable so that the important work of the TAB/CAC may advance with all members providing their expertise and insight.
- If in doubt ask, if you have an OML or ethics question ask Admin Services, can prevent a violation if relying on advice.
- Read the Clark County Code sections that apply to you and your bylaws.
- Questions?