



Governing Board Meeting

May 24, 2023

AGENDA ITEM VIII.B

TRPA's Open Meeting Law, Ethics and
Ex Parte Requirements

Compact Article III(d)

The governing body of the agency shall meet at least monthly. **All meetings shall be open to the public to the extent required by the law of the State of California or the State of Nevada, whichever imposes the greater requirement, applicable to local governments at the time such meeting is held.**

Nevada OML - NRS Chapter 241

- Legislature intent: public bodies take action openly and that their deliberations be conducted openly. NRS 241.010(1).
- "The spirit and policy behind the OML favors open meetings and any exceptions thereto should be strictly construed."
McKay v. Board of Supervisors, 102 Nev. 644, 730 P.2d 438 (1986).

Applicability of the Open Meeting Law

- The OML applies to meetings of public bodies. NRS 241.016(1).
- A “public body” is “[a]ny administrative, advisory, executive or legislative body of a State or a local government consisting of at least two persons” NRS 241.015(4).

What is a "Meeting"?

- NRS 241.015(3) defines “meeting” as “[t]he 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.”
 - **Quorum:** a simple majority of the membership of a public body or another proportion set by law. NRS 241.015(5).
 - **Deliberation:** collectively examine, weigh, and reflect upon the reasons for or against an action. NRS 241.015(2).
 - **Action:** a decision, commitment, or promise made by a majority of the members present during a meeting. NRS 241.015(1).

Serial Communications

- A meeting also includes serial communications or “walking quorums”.
- What is serial communication?
 1. A series of gatherings of members of a public body;
 2. Less than a quorum is present at any individual gathering;
 3. The members of the public body attend one or more of the gatherings collectively constitute a quorum; and
 4. The series of gatherings was held with the specific intent to avoid the provisions of the OML
- Email pitfalls – “Reply all” email chains can constitute a quorum

What is a Meeting?

Exceptions (NRS 241.015(3)(b))

- The definition of a "meeting" does not include:
 - **Social Functions** where there is no deliberation or action taken on any matter over which the public body has supervision, control, jurisdiction, or advisory power
 - **Attorney-Client Litigation Sessions** to receive information from the body's attorney regarding potential or existing litigation matter over which the public body has supervision, control, jurisdiction, or advisory power.
 - **Training Regarding Legal Obligations of the Public Body**

Meeting Notice and Agenda Requirements (NRS 241.020)

- Written notice must be given at least **3 working days [Compact 7 calendar days]** before the meeting, which requires:
 1. Time, place, and location of the meeting;
 2. List of the locations where the notice was posted;
 3. The name, contact information, and business address for the person from whom a member of the public may request supporting materials and a list of the locations where the supporting materials is available to the public or information about how to find supporting material on the Internet; and
 4. An agenda

Meeting Notice and Agenda Requirements

- Agenda must consist of a **clear and complete statement** of the topics scheduled to be considered
- Action items must be clearly denoted as "for possible action"
- Public comment, to be taken at the beginning/end of meeting or before any action taken on an item
- 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
- If the public body will consider whether to take administrative action regarding a person, the name of the person
- Notification that items on the agenda may be taken out of order, may be combined for consideration, and may be removed from the agenda or delayed for discussion at any time

What Does it Mean to be "Clear and Complete"?

- Agenda items must be **clear and complete**. NRS 241.020(2)(d)(I).
- A **higher degree of specificity** is necessary for topics of **substantial public interest**. *Sandoval*, 119 Nev. at 154-55, 67 P.3d at 906. Factors to consider include:
 - Does the topic generate public comment?
 - Does the topic generate debate among the members of the body?
 - Does the topic generate media interest/coverage?

Does the notice provide enough information to the public of its government is doing, has done, or may do?

Minimum Public Notice – NRS 241.020(4)

- Must post a copy of the notice at least the following:
 1. Principal office of the public body;
 2. If meeting is held using a remote technology system and no physical location, post on the public body's Internet website;
 3. Provide a copy to any person who has requested notice of the meetings
- Must be posted no later than 9 a.m. of the third working day before the meeting.
- Additional notice requirements for consideration of character, misconduct, competence, or physical or mental health: 5 days personal service or 21 days certified mail. NRS 241.033.

Additional Requirements

- Must make reasonable efforts to assist and accommodate persons with physical disabilities desiring to attend. NRS 241.020(1).
- Must make reasonable efforts to ensure the facilities for the meeting are large enough to accommodate the anticipated number of attendees. NRS 2410.020(2).
- At least one copy of the notice, agenda, and supplemental materials must be made available to the public at the meeting. NRS 241.020(7).

Closed Meetings – NRS 241.030

- Closed sessions may be held by any public body to:
 1. Consider character, alleged misconduct, professional competence, or the physical or mental health of a person, with some exceptions;
 2. Prepare, revise, administer, or grade examinations administered on behalf of the public body;
 3. Consider an appeal by a person of the results of an examination administered on behalf of the public body.

Closed Meetings – NRS 241.030

- Closed sessions may not be held:
 - To discuss the appointment of any person to public office or as a member of a public body.
 - 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

- Restrictions on public comment must be specified on the Notice
- Restrictions must be reasonable "time, place, and manner" restrictions. NRS 241.020(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.

Public Comment

- A 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 (9th Cir. 1995); *White v. City of Norwalk*, 900 F.2d 1421,1425-26 (9th Cir. 1990).
- 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).

TRPA Rules of Procedure 2.16 -

TELECONFERENCE/VIDEOCONFERENCE MEETINGS AND PARTICIPATION

- Remote participation from any location
- Remote participation capped at 5 times per year
- Roll call votes for substantive items
- Public may participate remotely

Violations

- Action taken in violation of the OML is void. NRS 241.036
- If a violation is found, the public body must include an item on its next agenda which acknowledges the OAG's findings, and the OAG's opinion must be treated as supporting material for the item. NRS 241.0395.

Ethics -- Compact Article III(a)(5)

(5) Each member and employee of the agency shall disclose his economic interests in the region within 10 days after taking his seat on the governing board or being employed by the agency and shall thereafter disclose any further economic interest which he acquires, as soon as feasible after he acquires it. As used in this paragraph, “economic interests” means:

- (A) Any business entity operating in the region in which the member or employee has a direct or indirect investment worth more than \$1,000.
- (B) Any real property located in the region in which the member or employee has a direct or indirect interest worth more than \$1,000.
- (C) Any source of income attributable to activities in the region, other than loans by or deposits with a commercial lending institution in the regular course of business, aggregating \$250 or more in value received by or promised to the member within the preceding 12 months; or
- (D) Any business entity operating in the region which the member or employee is a director, officer, partner, trustee, employee or holds any position of management.

Ex Parte Contacts

- Quasi-Legislative Matters: OK; Need Not Disclose
- Quasi-Adjudicative Matters: OK; Must Disclose

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Board Member

Questions/Comments