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MEMORANDUM

Planning Commission meeting of April 22, 2009

TO: Planning Commission **Item H-1**

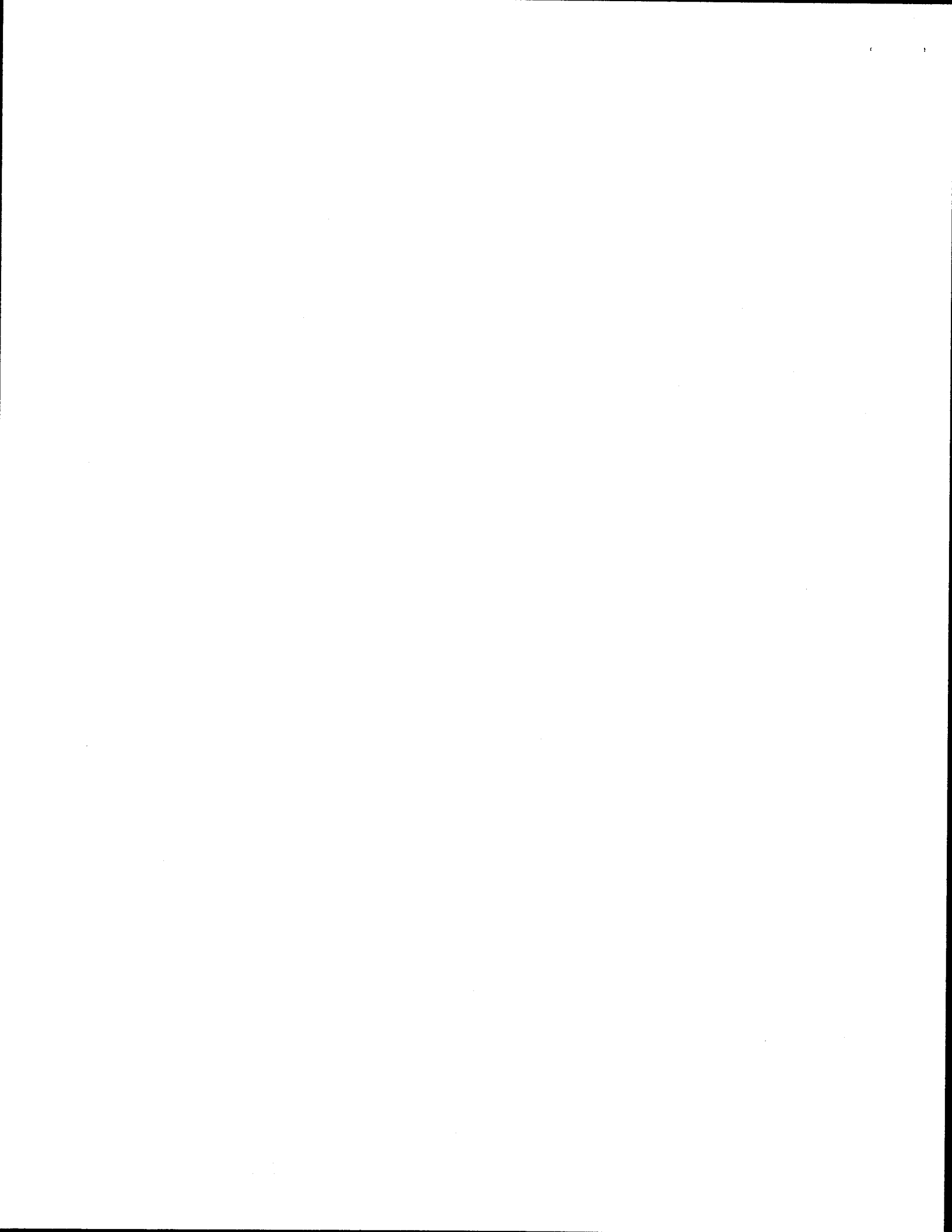
FROM: Lee Plemel, Director *LP*

DATE: April 13, 2009

SUBJECT: **MISC-09-021** – Presentation by the District Attorney's office regarding the Nevada Open Meeting Law. (DA's office)

Senior Deputy District Attorney Joel Benton will give a presentation on the Nevada Open Meeting Law, which addresses how meetings of various City boards and commission must be conducted. Mr. Benton will be available to answer any questions.

Attached for reference is a copy of the Nevada Open Meeting Law Manual published by the Attorney General's office.



NEVADA OPEN MEETING LAW MANUAL



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Reference is made throughout the manual to OMLO (Open Meeting Law Opinions), which are opinions rendered by the Office of the Attorney General as a guideline for enforcing the Open Meeting Law and not as a written opinion requested pursuant to NRS 228.150. OMLO opinions can be found at our website at ag.state.nv.us and will be published in all editions of the Official Opinions of the Attorney General beginning in 2000. Additional reference is made to (Op. Nev. Att'y Gen.) Attorney General Opinions, which are opinions rendered pursuant to NRS 228.150 and can be found at our website and in current editions of the Official Opinions of the Attorney General.

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Part 1 COMPLIANCE CHECKLIST

This is a checklist to reference when applying the Open Meeting Law. References in brackets are to the NRS and sections of this manual.

Does the Open Meeting Law apply?

- _____ Is the entity a public body? [NRS 241.015(3), §§ 3.01-3.09]
- _____ Is the activity exempt from the Open Meeting Law? [§§ 4.01-4.06]
- _____ Is a meeting going to occur? [NRS 241.015(2), §§ 5.01-5.12]
 - _____ Will a quorum of the members of the public body be present? [§ 5.01]
 - _____ To deliberate toward a decision or take action? [§ 5.01]
 - _____ On any matter over which the public body has supervision, control, jurisdiction, or advisory power? [§ 5.01]

Agenda (See Sample Form 1)

- _____ Has a clear and complete agenda of all topics to be considered been prepared? [NRS 241.020(2)(c), §§ 6.02, 7.02]
- _____ Does the agenda list *all* topics scheduled to be considered during the meeting? [§§ 6.02, 7.02]
- _____ Have all the topics been clearly described in the agenda in order to give the public adequate notice? [§§ 6.02, 7.02]
- _____ Does the agenda include a designated period for public comments? Does the agenda state that action may not be taken on the matters considered during this period until specifically included on an agenda as an action item? [§§ 6.02, 7.04, 8.04]
- _____ Does the agenda describe the items on which action may be taken and clearly denote that action may be taken on those items? [§§ 6.02, 7.01]
- _____ Has each closed session been denoted including the name of the person being considered in the closed session, and if action is to be taken in an open session after the closed session, was it indicated on the agenda? [§§ 7.02, 9.06, NRS 241.020(4)]

Notice, posting and mailing (See Sample Form 1)

_____ Has written notice of the meeting been prepared? [NRS 241.020(2), § 6.01]

_____ Does the notice include:

_____ The time, place, and location of the meeting? [§ 6.02]

_____ An agenda as prepared in accordance with the above standards?

_____ A list of places where the notice was posted? [§ 6.03]

_____ A statement regarding assistance and accommodations for physically handicapped people? [§ 6.02]

_____ Was the written notice [NRS 241.020(3)(a), § 6.03]

_____ Posted at the principal office of the public body (or if there is no principal office, at the building in which the meeting is to be held)? [§ 6.03]

_____ Posted at not less than three other separate, prominent places within the jurisdiction of the public body? [§ 6.03]

_____ Posted no later than 9 a.m. of the third working day before the meeting (don't count day of meeting)? [§§ 6.03, 6.05]

_____ Was the written notice [NRS 241.020(3)(b), § 6.04]

_____ Mailed at no charge to those who requested a copy? [§§ 6.04, 6.07]

_____ Mailed in the same manner in which the notice is required to be mailed to a member of the body? [§ 6.04]

_____ Delivered to the postal service used by the body no later than 9 a.m. of the third working day before the meeting? [§ 6.04]

_____ Have persons who requested notices of the meeting been informed with the first notice sent to them that their request lapses after six months? [NRS 241.020(3)(b), § 6.04]

_____ If a person's character, alleged misconduct, professional competence, or physical or mental health is going to be considered at the meeting, has that person been given written notice of the time and place of the meeting? [NRS 241.033(1), § 6.09]

Does the notice contain a list of the general topics concerning the person, inform the person that he/she may attend the closed session, bring a

representative, present evidence, provide testimony, and present witnesses?
[NRS §241.033(4)]

Does the notice inform the person that the public body may take administrative action against the person? If so, then the requirements of NRS 241.034 have been met. [NRS §241.033(2)(b)]

_____ Was the notice personally delivered to the person at least *five working days* before the meeting *or* sent by certified mail to the last known address of that person at least *21 working days* before the meeting? (Nevada Athletic Commission is exempt from these timing requirements.) [NRS 241.033(1)-(2)]

_____ Did the public body receive proof of service of the notice before holding the meeting? (Nevada Athletic Commission not exempt from this requirement.) [NRS 241.033(1)-(2)]

Agenda support material made available to public

_____ Upon request, have at least one copy of an agenda, a proposed ordinance or regulation that will be discussed at the meeting, and any other supporting material (except confidential material as detailed in the statute) been provided at no charge to each person who so requests? [NRS 241.020(4), §§ 6.06, 6.07]

Emergency Meeting

_____ Is this an emergency meeting? [NRS 241.020(2) and (5), § 6.08]

_____ Were the circumstances giving rise to the meeting unforeseen?

_____ Is immediate action required?

_____ Has the entity documented the emergency?

_____ Has an agenda been prepared limiting the meeting to the emergency item?

_____ Has an attempt been made to give public notice?

_____ While the notice and agenda requirements may be relaxed in an emergency, are other provisions of the Open Meeting Law complied with (e.g., meeting open and public, minutes kept, etc.)?

Closed Session (See Sample Form 3)

_____ Is a closed session specifically authorized by statute? [NRS 241.030(1), §§ 9.01-9.07]

_____ Have all the requirements of that statute been met?

_____ If a closed session is being conducted to consider character, misconduct, competence, or physical or mental health of a person under NRS 241.033:

_____ Is the subject person an elected member of a public body? If so, a closed session is not authorized. [NRS 241.031, § 9.04]

Is the closed session to consider the character, alleged misconduct or professional competence of an appointed public officer or a chief executive of a public body (i.e. president of a university or community college within the UCCSN system, county school superintendent, or city or county manager)? If so, a closed meeting is prohibited. [NRS §241.031(1)(b)]

_____ Is the closed session to discuss the appointment of any person to public office or as a member of a public body? If so, a closed session is not authorized. [NRS 241.030(3)(e), § 9.03]

_____ Has the subject been notified as provided above? Is there proof of service? [§ 6.09]

_____ If a recording was made of the open session, was a recording also made of the closed session? [§ 9.06]

_____ Was the subject person given a copy of the recording of the closed session if requested? [NRS 241.033(3), § 9.06]

_____ Have minutes been kept of the closed session? [§ 10.02]

_____ Have minutes and recordings of the closed session been retained and disposed of in accordance with NRS 241.035(2)? [§ 10.03]

_____ Was a motion made to go into closed session which specifies the nature of the business to be considered and the statutory authority pursuant to which the public body is authorized to close the meeting? [NRS 241.030(2), § 9.06]

_____ Was the discussion limited to that specified in the motion? [§ 9.06]

_____ Did the public body go back into open session to take action on the subject discussed (unless otherwise provided in a specific statute)? [§ 9.06]

Has the subject requested the meeting be open? If so, the public body must open the meeting unless another person appearing before the public body requests that the meeting remains closed. [NRS §241.020(2)(a) and (b)].

Meeting open to public; accommodations

- _____ Have all persons been permitted to attend? [NRS 241.020, § 8.01]
- _____ Was exclusion of witnesses at hearings during the testimony of other witnesses handled properly? [NRS 241.030(3)(c), § 8.06]
- _____ Was exclusion of persons who willfully disrupt a meeting to the extent that its orderly conduct is made impractical handled properly? [NRS 241.030(3)(b), § 8.05]
- _____ Have members of the public been given an opportunity to speak during the public comment period? [NRS 241.020(2)(c)(3), § 8.04]
- _____ Are facilities adequate and open? [§ 8.02]
- _____ Have reasonable efforts been made to assist and accommodate physically handicapped persons desiring to attend? [NRS 241.020(1), § 8.03]
- _____ If the meeting is by telephone or video conference, can the public hear each member of the body? [§ 5.05]
- _____ Have members of the general public been allowed to record public meetings on audiotape or other means of sound reproduction as long as it in no way interferes with the conduct of the meeting? [NRS 241.035(3), § 8.08]

Stick to agenda; emergency agenda items

- _____ Have actual discussions and actions at the meeting been limited to only those items on the agenda? [§ 7.03]
- _____ If an item has been added to the agenda as an emergency item: [NRS 241.020(2) and (5), § 6.08]
 - _____ Was it due to an unforeseen circumstance?
 - _____ Was immediate action required?
 - _____ Has the emergency been documented in the minutes?
- _____ Did the body refrain from taking action on discussion items or public comment items? [NRS 241.020(2)(c)(3), § 7.04]

Recordings

- _____ The public body must make its best efforts to record a public meeting: [NRS 241.035(4), § 10.04]
- _____ Have recordings been made of the closed session as well as open sessions? [NRS 241.035(5), § 9.06]
- _____ Have recordings of open sessions been made available to the public within 30 working days? [NRS 241.035(2)]
- _____ Have all recordings been retained for at least 1 year after the adjournment of the meeting? [NRS 241.035(4)(a)]
- _____ Have recordings of open sessions been treated as public records in accordance with public records statutes? [NRS 241.035(4)(b)]
- _____ Have recordings of closed sessions been made available to the subjects of those sessions, if requested? [NRS 241.033(3)]

Minutes (See Sample Form 2)

- _____ Have minutes been prepared of both the open and closed sessions? [NRS 241.035(1), § 10.02]
- _____ Do they include at a minimum the material required by NRS 241.035(1)? [§ 10.02]
- _____ Are minutes of open sessions kept as public records under the public record statutes and NRS 241.035(2)?
- _____ Have minutes of open sessions been made available for inspection by the public within 30 working days after the adjournment of the meeting, retained for at least five years, and otherwise treated as provided in NRS 241.035(2)?
- _____ Have minutes of closed sessions been made available to the subjects of those sessions if requested? [NRS 241.035(2)]

Noncompliance

- _____ Have any areas of noncompliance been corrected? [§§ 11.01, 11.02, 11.03, 11.04]
- _____ If litigation is brought to void an action or seek injunctive or declaratory relief, was it brought within the time periods in NRS 241.037(3)? [§ 11.07]

Part 2 **THE OPEN MEETING LAW, NRS CHAPTER 241**

Current copies of the statute should be consulted for legislative changes after 2005 and for current annotations. In order to assist public bodies and their legal counsels in detecting the most recent changes to the Open Meeting Law, the 2005 Legislative changes are provided herein as found in the ADVANCE SHEETS OF NEVADA STATUTES, Volumes I – VI.

CHAPTER 241

MEETINGS OF STATE AND LOCAL AGENCIES

- NRS 241.010 Legislative declaration and intent.**
- NRS 241.015 Definitions.**
- NRS 241.020 Meetings to be open and public; notice of meetings; copy of materials; exceptions.**
- NRS 241.030 Exceptions to requirement for open and public meetings.**
- NRS 241.031 Meeting to consider character, misconduct, competence or health of elected member of public body.**
- NRS 241.033 Closed meeting to consider character, misconduct, competence or health of person: Written notice to person required; exception; copy of record.**
- NRS 241.035 Public Meetings: Minutes; aural and visual reproduction.**
- NRS 241.036 Action taken in violation of chapter void.**
- NRS 241.037 Action by attorney general or person denied right conferred by chapter; limitation on actions.**
- NRS 241.038 Board of Regents to establish requirements for student governments.**
- NRS 241.040 Penalties; members attending meeting in violation of chapter not accomplices; enforcement by attorney general.**

NRS 241.010 Legislative declaration and intent. 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.

(Added to NRS by 1960, 25; A 1977, 1099)

(Act of June 17, 2005, ch. 267, §1, 2005 Nev. Stat. 2242-2243) Section 1. Chapter 241 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Any statement which is made by a member of a public body during the course of a public meeting is absolutely privileged and does not impose liability for defamation or constitute a ground for recovery in any civil action.

2. A witness who is testifying before a public body is absolutely privileged to publish defamatory matter as part of a public meeting, except that it is unlawful to misrepresent any fact knowingly when testifying before a public body.

NRS 241.015 Definitions. As used in this chapter, unless the context otherwise requires:

1. "Action" means:

(a) A decision made by a majority of the members present during a meeting of a public body;

(b) A commitment or promise made by a majority of the members present during a meeting of a public body;

(c) 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; or

(d) If all the members of a public body must be elected officials, an affirmative vote taken by a majority of all the members of the public body.

2. "Meeting":

(a) Except as otherwise provided in paragraph (b), means:

(1) 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.

(2) Any series of gatherings of members of a public body at which:

(I) Less than a quorum is present at any individual gathering;

(II) 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 provisions of this chapter.

(b) Does not include a gathering or series of gatherings of members of a public body, as described in paragraph (a), at which a quorum is actually or collectively present:

(1) Which occurs at a social function if 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.

(2) To receive information from the attorney employed or retained by the public body regarding potential or existing litigation involving a matter over which the public body has supervision, control, jurisdiction or advisory power and to deliberate toward a decision on the matter, or both.

3. Except as otherwise provided in this subsection, "public body" means any administrative, advisory, executive or legislative body of the State or a local government which expends or disburses or is supported in whole or in part by tax revenue or which advises or makes recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue, including, but not limited to, any board, commission, committee, subcommittee or other subsidiary thereof and includes an educational foundation as defined in subsection 3 of NRS 388.750 and a university foundation as defined in subsection 3 of NRS 396.405. "Public body" does not include the Legislature of the State of Nevada.

4. "Quorum" means a simple majority of the constituent membership of a public body or another proportion established by law.

(Added to NRS by 1977, 1098; A 1993, 2308, 2624; 1995, 716, 1608; 2001, 1123, 1836)

(Act of June 17, 2005, ch. 466, §2, 2005 Nev. Stat. 2243-2244) Sec. 2. NRS 241.020 is hereby amended to read as follows:

NRS 241.020 Meetings to be open and public; notice of meetings; copy of materials; exceptions.

1. Except as otherwise provided by specific statute, all meetings of public bodies must be open and public, and all persons must be permitted to attend any meeting of these public bodies. Public officers and employees responsible for these meetings shall make reasonable efforts to assist and accommodate physically handicapped persons desiring to attend.

2. Except in an emergency, written notice of all meetings must be given at least 3 working days before the meeting. The notice must include:

- (a) The time, place and location of the meeting.
- (b) A list of the locations where the notice has been posted.
- (c) An agenda consisting of:

(1) A clear and complete statement of the topics scheduled to be considered during the meeting.

(2) A list describing the items on which action may be taken and clearly denoting that action may be taken on those items.

(3) A period devoted to comments by the general public, if any, and discussion of those comments. No action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (2).

(4) 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 whose character, alleged misconduct or professional competence will be considered.

(5) If, during any portion of the meeting, the public body will consider whether to take administrative action against a person, the name of the person against whom administrative action may be taken.

3. Minimum public notice is:

(a) Posting a copy of the notice at the principal office of the public body or, if there is no principal office, at the building in which the meeting is to be held, and at not less than three other separate, prominent places within the jurisdiction of the public body not later than 9 a.m. of the third working day before the meeting; and

(b) Providing a copy of the notice to any person who has requested notice of the meetings of the public body. A request for notice lapses 6 months after it is made. The public body shall inform the requester of this fact by enclosure with, notation upon or text included within the first notice sent. The notice must be:

(1) Delivered to the postal service used by the public body not later than 9 a.m. of the third working day before the meeting for transmittal to the requester by regular mail; or

(2) If feasible for the public body and the requester has agreed to receive the public notice by electronic mail, transmitted to the requester by electronic mail sent not later than 9 a.m. of the third working day before the meeting.

4. If a public body maintains a website on the Internet or its successor, the public body shall post notice of each of its meetings on its website unless the public body is unable to do so because of technical problems relating to the operation or maintenance of its website. Notice posted pursuant to this subsection is supplemental to and is not a substitute for the minimum public notice required pursuant to subsection 3. The inability of a public body to post notice of a meeting pursuant to this subsection as a result of technical problems with its website shall not be deemed to be a violation of the provisions of this chapter.

5. Upon any request, a public body shall provide, at no charge, at least one copy of:

- (a) An agenda for a public meeting;
- (b) A proposed ordinance or regulation which will be discussed at the public meeting; and

(c) *Subject to the provisions of subsection 6, any other supporting material provided to the members of the public body for an item on the agenda, except materials:*

(1) Submitted to the public body pursuant to a nondisclosure or confidentiality agreement *which relates to proprietary information;*

(2) Pertaining to the closed portion of such a meeting of the public body; or

(3) Declared confidential by law, *unless otherwise agreed to by each person whose interest is being protected under the order of confidentiality.*
As used in this subsection, "proprietary information" has the meaning ascribed to it in NRS 332.025.

6. A copy of supporting material required to be provided upon request pursuant to paragraph (c) of subsection 5 must be:

(a) If the supporting material is provided to the members of the public body before the meeting, made available to the requester at the time the material is provided to the members of the public body; or

(b) If the supporting material is provided to the members of the public body at the meeting, made available at the meeting to the requester at the same time the material is provided to the members of the public body.

If the requester has agreed to receive the information and material set forth in subsection 5 by electronic mail, the public body shall, if feasible, provide the information and material by electronic mail.

7. A public body may provide the public notice, information and material required by this section by electronic mail. If a public body makes such notice, information and material available by electronic mail, the public body shall inquire of a person who requests the notice, information or material if the person will accept receipt by electronic mail. The inability of a public body, as a result of technical problems with its electronic mail system, to provide a public notice, information or material required by this section to a person who has agreed to receive such notice, information or material by electronic mail shall not be deemed to be a violation of the provisions of this chapter.

8. As used in this section, "emergency" means an unforeseen circumstance which requires immediate action and includes, but is not limited to:

(a) Disasters caused by fire, flood, earthquake or other natural causes; or

(b) Any impairment of the health and safety of the public.

(Added to NRS by 1960, 25; A 1977, 1099, 1109; 1979, 97; 1989, 570; 1991, 785; 1993, 1356, 2636; 1995, 562, 1608; 2001, 2395; 2003, 488)

(Act of June 6, 2005, ch. 277, §1, 2005 Nev. Stat. 977) Section 1. NRS 241.030 is hereby amended to read as follows:

NRS 241.030 Exceptions to requirement for open and public meetings.

1. Except as otherwise provided in NRS 241.031 and 241.033, a public body *may hold* a closed meeting to:

(a) Consider the character, alleged misconduct, professional competence, or physical or mental health of a person.

(b) Prepare, revise, administer or grade examinations that are conducted by or on behalf of the public body.

(c) Consider an appeal by a person of the results of an examination that was conducted by or on behalf of the public body, except that any action on the appeal must be taken in an open meeting and the identity of the appellant must remain confidential.

2. A public body may close a meeting pursuant to subsection 1 upon a motion which specifies the nature of the business to be considered.

3. This chapter does not:

(a) Apply to judicial proceedings.

(b) Prevent the removal of any person who willfully disrupts a meeting to the extent that its orderly conduct is made impractical.

(c) Prevent the exclusion of witnesses from a public or private meeting during the examination of another witness.

(d) Require that any meeting be closed to the public.

(e) Permit a closed meeting for the discussion of the appointment of any person to public office or as a member of a public body.

4. The exceptions provided by this section, and electronic communication, must not be used to circumvent the spirit or letter of this chapter in order to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory powers.

(Act of June 17, 2005, ch. 466, §3, 2005 Nev. Stat. 2244-2245) Sec. 3. NRS 241.030 is hereby amended to read as follows:

1. Except as otherwise provided in *this section* and NRS 241.031 and 241.033, a public body *may hold* a closed meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of a person.

2. *A person whose character, alleged misconduct, professional competence, or physical or mental health will be considered by a public body during a meeting may waive the closure of the meeting and request that the meeting or relevant portion thereof be open to the public. A request described in this subsection:*

(a) *May be made at any time before or during the meeting; and*

(b) *Must be honored by the public body unless the consideration of the character, alleged misconduct, professional competence, or physical or mental health of the requester involves the appearance before the public body of another person who does not desire that the meeting or relevant portion thereof be open to the public.*

3. A public body may close a meeting upon a motion which specifies:

(a) *The nature of the business to be considered; and*

(b) *The statutory authority pursuant to which the public body is authorized to close the meeting.*

4. This chapter does not:

(a) Apply to judicial proceedings.

(b) Prevent the removal of any person who willfully disrupts a meeting to the extent that its orderly conduct is made impractical.

(c) Prevent the exclusion of witnesses from a public or private meeting during the examination of another witness.

(d) Require that any meeting be closed to the public.

(e) Permit a closed meeting for the discussion of the appointment of any person to public office or as a member of a public body.

5. The exception provided by this section, and electronic communication, must not be used to circumvent the spirit or letter of this chapter *to act, outside of an open and public meeting*, upon a matter over which the public body has supervision, control, jurisdiction or advisory powers.

(Added to NRS by 1960, 25; A 1977, 1100; 1983, 331; 1993, 2637)

(Act of June 17, 2005, ch. 466, §4, 2005 Nev. Stat. 2245) Sec. 4. NRS 241.031 is hereby amended to read as follows:

NRS 241.031 Meeting to consider character, misconduct, competence or health of elected member of public body.

1. *Except as otherwise provided in subsection 2, a public body shall not hold a closed meeting to consider the character, alleged misconduct or professional competence of:*

(a) *An elected member of a public body; or*

(b) *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, including, without limitation, a president of a university or community college within the University and Community College System of Nevada, a superintendent of a county school district, a county manager and a city manager.*

2. *The prohibition set forth in subsection 1 does not apply if the consideration of the character, alleged misconduct or professional competence of the person does not pertain to his role as an elected member of a public body or an appointed public officer or other officer described in paragraph (b) of subsection 1, as applicable.*

A public body shall not hold a closed meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of an elected member of a public body.

(Act of June 17, 2005, ch. 466, §1, 2005 Nev. Stat. 2242-2243) Section 1. NRS 241.033 is hereby amended to read as follows:

NRS 241.033 Closed meeting to consider character, misconduct, competence or health of person: Written notice to person required; exception; copy of record.

1. A public body shall not hold a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of any person unless it has:

- (a) *Given* written notice to that person of the time and place of the meeting; and
- (b) *Received proof of service of the notice.*

2. *The written notice required pursuant to subsection 1:*

- (a) *Except as otherwise provided in subsection 3, must be:*

- (1) Delivered personally to that person at least 5 working days before the meeting; or
- (2) Sent by certified mail to the last known address of that person at least 21 working days before the meeting; and

- (b) *Must include:*

- (1) *A list of the general topics concerning the person that will be considered by the public body during the closed meeting; and*

- (2) *A statement of the provisions of subsection 4.*

3. The Nevada Athletic Commission is exempt from the requirements of *paragraph (a)* of subsection 2, but must give written notice of the time and place of the meeting and must receive proof of service of the notice before the meeting may be held.

4. *If a public body holds a closed meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of a person, the public body must allow that person to:*

- (a) *Attend any portion of the closed meeting during which the character, alleged misconduct, professional competence, or physical or mental health of the person is considered by the public body;*

- (b) *Have an attorney or other representative of his choosing present with him during the closed meeting; and*

- (c) *Present written evidence, provide testimony and present witnesses relating to his character, alleged misconduct, professional competence, or physical or mental health to the public body during the closed meeting.*

5. A public body shall provide a copy of any record of a closed meeting prepared pursuant to NRS 241.035, upon the request of any person whose character, alleged misconduct, professional competence, or physical or mental health was considered at the meeting.

(Act of June 6, 2005, ch. 277, §2, 2005 Nev. Stat.977-978) Sec. 2. NRS 241.033 is hereby amended to read as follows

1. A public body shall not hold a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of any person *or to consider an appeal by a person of the results of an examination conducted by or on behalf of the public body* unless it has given written notice to that person of the time and place of the meeting. Except as otherwise provided in subsection 2, the written notice must be:

- (a) Delivered personally to that person at least 5 working days before the meeting; or

- (b) Sent by certified mail to the last known address of that person at least 21 working days before the meeting.

A public body must receive proof of service of the notice required by this subsection before such a meeting may be held.

2. The Nevada Athletic Commission is exempt from the requirements of paragraphs (a) and (b) of subsection 1, but must give written notice of the time and place of the meeting and must receive proof of service of the notice before the meeting may be held.

3. A public body shall provide a copy of any record of a closed meeting prepared pursuant to NRS 241.035, upon the request of any person *who received written notice of the closed meeting pursuant to subsection 1.*

(Act of June 17, 2005, ch. 466, §5, 2005 Nev. Stat. 2246-2247) Sec. 5. NRS 241.033 is hereby amended to read as follows:

1. A public body shall not hold a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of any person unless it has:

- (a) *Given* written notice to that person of the time and place of the meeting; and

- (b) *Received proof of service of the notice.*

2. *The written notice required pursuant to subsection 1:*
 - (a) *Except as otherwise provided in subsection 3, must be:*
 - (1) Delivered personally to that person at least 5 working days before the meeting; or
 - (2) Sent by certified mail to the last known address of that person at least 21 working days before the meeting.
 - (b) *May include an informational statement setting forth that the public body may, without further notice, take administrative action against the person if the public body determines that such administrative action is warranted after considering the character, alleged misconduct, professional competence, or physical or mental health of the person.*
 3. The Nevada Athletic Commission is exempt from the requirements of *subparagraphs (1) and (2) of paragraph (a)* of subsection 2, but must give written notice of the time and place of the meeting and must receive proof of service of the notice before the meeting may be held.
 4. *If a public body holds a closed meeting or closes a portion of a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of a person, each person to whom notice is required to be given pursuant to paragraph (a) of subsection 1 must be allowed to:*
 - (a) *Attend the closed meeting or that portion of the closed meeting during which his character, alleged misconduct, professional competence, or physical or mental health is considered;*
 - (b) *Have an attorney or other representative of his choosing present with him during the closed meeting; and*
 - (c) *Present written evidence, provide testimony and present witnesses relating to his character, alleged misconduct, professional competence, or physical or mental health to the public body during the closed meeting.*
 5. *Except as otherwise provided in subsection 4, with regard to the attendance of persons other than members of the public body and the person whose character, alleged misconduct, professional competence, or physical or mental health is considered, the chairman of the public body may at any time before or during a closed meeting:*
 - (a) *Determine which additional persons, if any, are allowed to attend the closed meeting or portion thereof; or*
 - (b) *Allow the members of the public body to determine, by majority vote, which additional persons, if any, are allowed to attend the closed meeting or portion thereof.*
 6. A public body shall provide a copy of any record of a closed meeting prepared pursuant to NRS 241.035, upon the request of any person whose character, alleged misconduct, professional competence, or physical or mental health was considered at the meeting.
 7. *For the purposes of this section, casual or tangential references to a person or the name of a person during a closed meeting do not constitute consideration of the character, alleged misconduct, professional competence, or physical or mental health of the person.*
- (Added to NRS by 1993, 2636)

(Act of June 17, 2005, ch. 466, §6, 2005 Nev. Stat. 2247) Sec. 6. NRS 241.034 is hereby amended to read as follows:

NRS 241.034 Meeting to consider administrative action against person or acquisition of real property by exercise of power of eminent domain; written notice required.

1. *Except as otherwise provided in subsection 3:*
 - (a) A public body shall not consider at a meeting whether to:
 - (1) Take administrative action against a person; or
 - (2) Acquire real property owned by a person by the exercise of the power of eminent domain,
 unless the public body has given written notice to that person of the time and place of the meeting.
 - (b) The written notice required pursuant to *paragraph (a)* must be:
 - (1) Delivered personally to that person at least 5 working days before the meeting; or
 - (2) Sent by certified mail to the last known address of that person at least 21 working days before the meeting.