CITY OF ELKO
Planning Department

Website: www.elkocitynv.gov
Email: planning@elkocitynv.gov

1751 College Avenue · Elko, Nevada 89801 · (775) 777-7160 · Fax (775) 777-7219

PUBLIC MEETING NOTICE

The City of Elko Planning Commission will meet in a regular session on Tuesday, February 1, 2022 beginning at 5:30 PM in the Council Chambers at Elko City Hall, 1751 College Avenue, Elko, Nevada, and by utilizing **GoToMeeting.com.**

The public can view or participate in the virtual meeting on a computer, laptop, tablet or smart phone at: https://global.gotomeeting.com/join/129236797. You can also dial in using your phone at **+1 (872) 240-3212.** The **Access Code** for this meeting is **129-236-797.** Comments can also be emailed to planning@elkocitynv.gov.

Attached with this notice is the agenda for said meeting of the Commission. In accordance with NRS 241.020, the public notice and agenda were posted on the City of Elko Website at http://www.elkocitynv.gov/, the State of Nevada's Public Notice Website at https://notice.nv.gov, and in the following locations:

ELKO CITY HALL – 1751 College Avenue, Elko, NV 89801
Date/Time Posted: January 26, 2022 2:00 p.m.

Posted by: Shelby Knopp, Administrative Assistant
Name Title Signature

The public may contact Shelby Knopp by phone at (775) 777-7160 or by email at sknopp@elkocitynv.gov to request supporting material for the meeting described herein. The agenda and supporting material is also available at Elko City Hall, 1751 College Avenue, Elko, NV.

Dated this 26th day of January, 2022

NOTICE TO PERSONS WITH DISABILITIES

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify the City of Elko Planning Department, 1751 College Avenue, Elko, Nevada, 89801 or by calling (775) 777-7160.

Cathy Laughlin, City Planner

CITY OF ELKO
PLANNING COMMISSION
REGULAR MEETING AGENDA
5:30 PM, TUESDAY, FEBRUARY 1, 2022
ELKO CITY HALL, COUNCIL CHAMBERS
1751 COLLEGE AVENUE, ELKO, NV 89801

I. CALL TO ORDER

The Agenda for this meeting of the Elko City Planning Commission has been properly posted for this date and time in accordance with NRS requirements

II. ROLL CALL

III. PLEDGE OF ALLEGIANCE

IV. COMMENTS BY THE GENERAL PUBLIC

Pursuant to N.R.S. 241, this time is devoted to comments by the public, if any, and discussion of those comments. No action may be taken upon a matter raised under this item on the agenda until the matter itself has been specifically included on a successive agenda and identified as an item for possible action. **ACTION WILL NOT BE TAKEN**

V. APPROVAL OF MINUTES

A. January 4, 2022 - Regular Meeting **FOR POSSIBLE ACTION**

VI. NEW BUSINESS

A. MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS

1. Review, consideration, and possible action on the 2021 Annual Report of Planning Commission activities. **FOR POSSIBLE ACTION**

Pursuant to City Code Section 3-4-23, the Planning Commission is required to prepare and present an annual report of its activities to the City Council.

VII. REPORTS

A. Summary of City Council Actions

B. Summary of Redevelopment Agency Actions

C. Professional articles, publications, etc.

1. Zoning Bulletin

D. Miscellaneous Elko County

E. Training

VIII. COMMENTS BY THE GENERAL PUBLIC

Pursuant to N.R.S. 241, this time is devoted to comments by the public, if any, and discussion of those comments. No action may be taken upon a matter raised under this item on the agenda until the matter itself has been specifically included on a successive agenda and identified as an item for possible action. **ACTION WILL NOT BE TAKEN**

NOTE: The Chairman or Vice Chairman reserves the right to change the order of the agenda and if the agenda is not completed, to recess the meeting and continue on another specified date and time. Additionally, the Planning Commission reserves the right to combine two or more agenda items, and/or remove an item from the agenda, or delay discussion relating to an item on the agenda at any time.

ADJOURNMENT

Respectfully submitted,

Cathy Laughlin
City Planner

CITY OF ELKO
PLANNING COMMISSION
REGULAR MEETING MINUTES
5:30 PM, TUESDAY, JANUARY 4, 2022
ELKO CITY HALL, COUNCIL CHAMBERS
1751 COLLEGE AVENUE, ELKO, NV 89801

I. CALL TO ORDER

Jeff Dalling, Chairman of the City of Elko Planning Commission, called the meeting to order at 5:30 p.m.

II. ROLL CALL

Present:

Jeff Dalling
Stefan Beck
Gratton Miller
Mercedes Mendive
John Lemich

Absent:

John Anderson

City Staff Present:

Scott Wilkinson, Assistant City Manager
Cathy Laughlin, City Planner
Michele Rambo, Development Manager
Bob Thibault, Civil Engineer
Jamie Winrod, Fire Marshal
Shelby Knopp, Administrative Assistant

III. PLEDGE OF ALLEGIANCE

IV. COMMENTS BY THE GENERAL PUBLIC

There were no public comments made at this time.

V. APPROVAL OF MINUTES

A. December 7, 2021 - Regular Meeting **FOR POSSIBLE ACTION**

*****Motion: Approve the December 7, 2021 Regular Meeting Minutes as presented.**

Moved by Stefan Beck, Seconded by Gratton Miller

**** Motion passed unanimously. (5-0)***

VI. NEW BUSINESS

A. MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS

1. Review and consideration of Parcel Map 7-21, filed by Lynn and Penny Forsberg for the proposed division of approximately 0.988 acres of property into 2 lots for residential development within the R (Single-Family and Multiple-Family Residential) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

   Subject property is located on the south side of Fairway Drive between Hannah Drive and Keppler Drive. (APN 001-553-009) The Parcel Map includes a Modification of Standards for the width of Parcel 2, requiring Planning Commission and, ultimately, City Council approval.

Tom Ballew, High Desert Engineering, 640 Idaho Street, said that he was available to answer questions.

Michele Rambo, Development Manager, went over the City of Elko Staff Report dated December 09, 2021. Staff recommended conditional approval with the findings and conditions listed in the Staff Report, including a modification of standards.

Cathy Laughlin, City Planner, recommended approval as presented.

Bob Thibault, Civil Engineer, explained that he had a couple of conditions that were included in the Staff Report and read them into the record. He recommended approval with the conditions.

Jamie Winrod, Fire Marshal, had no comments.

Scott Wilkinson, Assistant City Manager recommended approval as presented. He requested that the Planning Commission's recommendation include approval of a modification of standards for the lot width of Parcel 2 for 30 feet, versus the required 60 feet on the street frontage. He added that they should include the finding that justifies the modification of standards, as mentioned by Ms. Rambo, that the topography across the entire exisitng parcel justifies the proposed division of the property. Mr. Wilkinson recommended that the Planning Commission include that in the motion if they chose to forward a recommendation to the City Council.

Commissioner John Lemich asked where the access was for Parcel 2.

Commissioner Gratton Miller pointed out that the access was on the east side of the lot.

Commissioner Lemich asked if it was a developed road.

Commissioner Miller said it would be a driveway.

Commissioner Lemich asked who would own the driveway.

Chairman Jeff Dalling asked Mr. Ballew if it would be an easement.

Mr.Ballew explained that the flag portion was all property owned by the owner of Parcel 2. There would be a driveway developed. There are also some easments for storm drainage and utilties.

Mr. Wilkinson pointed out that it wouldn't be an issue to put a driveway ontop of the easements.

*****Motion: Forward a recommendation to City Council to conditionally approve Parcel Map No. 7-21 with an approval of a modification of standards for the lot width of Parcel 2 for 30 feet on the street frontage, and subject to the conditions from the Staff Report dated December 9, 2021, listed as follows:**

Development Department:

1. **Any required public improvements installed at the time of development (including any off-site improvements) must be designed and constructed per current City of Elko code requirements in place at that time.**
2. **The Parcel Map shall be recorded by Elko County within two (2) years of this approval.**
3. **Curb and gutter to be installed prior to the issuance of a Certificate of Occupancy of any future development. Add a note to the Parcel Map.**
4. **No dirt may be moved (including import or export) without the approval of a grading plan.**
5. **Revise the street name in the southeast corner of the map from Fairway Drive to Skyline Drive.**

Engineering Department:

6. **The bearings along Fairway Drive for the frontage of each parcel differs between what is shown on the map and in the closure calculations. Please correct either the map or the calculations so they agree.**
7. **Additional water and sewer services to be constructed for the additional parcel prior to recordation of the map.**

Commissioner Miller's findings to support the recommendation were that the parcel map conforms to the City of Elko Master Plan Transportation and Land Use Components, the City of Elko Wellhead Protection Plan, and City of Elko Code Sections 8-21-3, 3-2-4, 3-2-5(E), 3-8, 3-3-25, 3-3-24, and 3-3-28. The topography across the entire existing parcel justifies the proposed division of property.

Moved by Gratton Miller, Seconded by Mercedes Mendive

**** Motion passed unanimously. (5-0)***

2. Review, consideration, and possible action to develop the Calendar Year 2022 Planning Commission Annual Work Program, and matters related thereto. **FOR POSSIBLE ACTION**

   Each year the Planning Commission reviews the Annual Work Program. The work program gives the Planning Commission direction on various issues to address throughout the year.

Ms. Laughlin explained that it is a requirement by City Code that this is done every year. Sometimes it is very successful, and sometimes things stay on it for a few years until it gets completed. She then went over the proposed work program that was included in the agenda packet.

*****Motion: Approve the Calendar Year 2022 Planning Commission Work Program as presented by staff.**

Moved by Gratton Miller, Seconded by John Lemich

**** Motion passed unanimously. (5-0)***

3. Election of officers, and matters related thereto. **FOR POSSIBLE ACTION**

   Pursuant to Section 3-4-3 A. of the City Code, the Planning Commission shall elect a Chairperson, Vice-Chairperson and Secretary in January every year.

***Commissioner Gratton Miller nominated Mercedes Mendive for Chairman. Commissioner Stefan Beck nominated Jeff Dalling for Chairman; a vote was taken and Jeff Dalling was elected as Chairperson.**

***Commissioner Jeff Dalling nominated Stefan Beck for Vice-Chairman; a vote was taken and passed,**

***Commissioner Stefan Beck nominated Gratton Miller for Secretary; a vote was taken and passed.**

VII. REPORTS

A. Summary of City Council Actions

Ms. Laughlin reported that there was an opening on the Planning Commission. The position was advertised in the paper for three weeks and one letter of interest was received. It will go to the City Council on January 11th. If the City Council appoints someone they will be sworn in before the February meeting and participate in the meeting. Ms. Laughlin reported that there was only one City Council meeting in December. At that meeting they conducted the first readings of Ordinance No. 866 and No. 867 for the McDonald's rezone and the Walsh Properties rezone. The second

readings of those ordinances will be on the January 11th City Council agenda. She added that the applicant for the apartments by Wendy's decided to do a parcel map for the property, so they will have to apply for a whole new CUP.

B. Summary of Redevelopment Agency Actions

Ms. Laughlin reported that there would be a Redevelopment Agency meeting on January 11th. They will be considering issueing final approval for the Block End Project, the annual report, and ratification of a $5,000 donation for the 2021 Mural Festival. There will be a Redevelopment Advisory Council Meeting at the end of the month. They will be discussing the remaining Storefront applications that are outstanding.

C. Professional articles, publications, etc.

1. Zoning Bulletin

D. Miscellaneous Elko County

E. Training

There was discussion regarding advertising for open Planning Commission positions and how it could be done better. It was suggest to explore different opoortunities to get the word out better.

VIII. COMMENTS BY THE GENERAL PUBLIC

There were no public comments made at this time.

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ADJOURNMENT

There being no further business, the meeting was adjourned

Jeff Dalling, Chairman

Gratton Miller, Secretary

Agenda Item # VI.A.1.

Elko City Planning Commission
Agenda Action Sheet

1. Title: **Review, consideration, and possible action on the 2021 Annual Report of Planning Commission activities, and matters related thereto. FOR POSSIBLE ACTION**

2. Meeting Date: **2/1/2022 5:30 PM - REGULAR MEETING**

3. Agenda Category: **NEW BUSINESS**

4. Time Required: **10 Minutes**

5. Background Information: **Pursuant to City Code Section 3-4-23, the Planning Commission is required to prepare and present an annual report of its activities to the City Council.**

6. Business Impact Statement: **Not Required**

7. Supplemental Agenda Information: **2021 Annual Report**

8. Recommended Motion: **Move to approve the 2021 Annual Report of Planning Commission Activities as presented, and forward a recommendation to City Council to approve the report.**

9. Findings:

10. Prepared By: **Cathy Laughlin, City Planner**

11. Agenda Distribution:

STAFF COMMENT FLOW SHEET
PLANNING COMMISSION AGENDA DATE: 2/1
Do not use pencil or red pen, they do not reproduce

Title: 2021 Annual Report of Planning Commission Activities
Applicant(s): City of Elko
Site Location: N/A
Current Zoning: N/A Date Received: N/A Date Public Notice: N/A
COMMENT: This is report of the activities by the Planning Commission in 2021.

If additional space is needed please provide a separate memorandum

Assistant City Manager: Date: 1/24/22
No Comment

SAW
Initial

City Manager: Date: 1/24/22
No comments/concerns

CC
Initial

City of Elko
Planning Commission
2021 Annual Report

Chairman Jeff Dalling
Vice-Chairman Giovanni Puccinelli
Secretary Tera Hooiman
Commissioner John Anderson
Commissioner Gratton Miller
Commissioner Stefan Beck
Commissioner Mercedes Mendive
Commissioner John Lemich

APPLICATIONS PROCESSED

A summary of the tasks and accomplishments of the City of Elko Planning Commission for the 2021 calendar year:

Application	2021	2020	2019
Annexations	0	0	1*
Boundary Line Adjustments (admin.)	2	5	6
Conditional Use Permits	5*	4	13*
Appeals (City Council)	0	1	1
Curb, Gutter, Sidewalk Waivers	1 (C.C.)	0 (C.C.)	2 (C.C)
Detachments	0	0	1*
Home Occupation Permits (admin.)	38	31	42
Land Sales/Leases/Acquisitions (C.C.)	1*	5	1
Parcel Maps (mostly administrative)	8	9	9
Parking Waivers	1*	0	0
Reversions to Acreage (City Council)	0	0	0
Revocable Permits (mostly City Council)	6	4	1
Rezones	2	6	5
Site Plan Reviews	0	0	0
Subdivisions			
Pre-Applications, Stage 1	2	3	7
Tentative Maps	1	3	5
Final Maps	3	6	4
Division of Large Parcels	2	0	0
Temporary Sign Clearances (admin.)	2	2	4
Temporary Use Permits	1	1	1
Vacations	5	4*	12*
Variances	5	4	4
Appeals (City Council)	1	0	0
* see next page TOTAL	86	88	119

APPLICATIONS PROCESSED Cont.

Application	
Annexations	**1 – 2019 Annexation application withdrawn by applicant**
Conditional Use Permits	**1 – 2019 Conditional Use Permit Transfer from 1995**
	1 – 2021 Conditional Use Permit Transfer from 2019
Detachments	**1 – 2019 Detachment application withdrawn by applicant**
Land Sales/Leases/Acquisitions	**1 – 2021 Application on Hold**
Parking Waivers	**1 – 2021 Refund issued – Applicant provided evidence that waiver was not needed.**
Vacations	**8 – 2019 applications for the City of Elko NO CHARGE**
	1 – 2020 application pending

INTERACTION WITH and SUPPORT OF the REDEVELOPMENT AGENCY and the REDEVELOPMENT ADVISORY COUNCIL

- **Analyzed applications within the Redevelopment Area for general conformance with the Redevelopment Plan.**

- **Cathy Laughlin, as Redevelopment Manager, keeps the Planning Commission informed of redevelopment happenings in her monthly reports. In addition, Commissioner Dalling is a member of the Redevelopment Advisory Council.**

CITY OF ELKO
MASTER PLAN and other
PROJECT PLANS

- **Zoning revisions or clarification on properties throughout the City of Elko. (Ongoing)**

- **Review zoning for the RMH districts, revise map. (In progress)**

- **Zoning Ordinance Amendment No. 1-21 – Ordinance No. 861. – Sections 3-2-4, 3-2-19, & 3-2-21 Amendments – Zone Changes**
- **Zoning Ordinance Amendment No. 2-21 – Ordinance No. 860. Sections 3-2-2, 3-2-5, 3-2-6, & 3-5-4 – Update Accessory Building Requirements**
- **Zoning Ordinance Amendment No. 3-21 – Ordinance No. 864 – Section 3-2-17 – Update Driveway Slope requirements, revise parking requirement table, and parking requirements within the Central Business District.**

PLANNING DEPARTMENT FILING FEES COLLECTED

	2021	2020
Annexations	$ 0	$ 0
Boundary Line Adjustments	$ 400	$ 800
Conditional Use Permits	$ 2,250	$ 3,325
Curb, Gutter and Sidewalk Waivers	$ 500	$ 0
Home Occupation Permits	$ 1,900	$ 1,550
Parking Waivers	$ 0	$ 0
Parcel Maps	$ 1,875	$ 2,275
Reversions to Acreage	$ 0	$ 0
Revocable Permits	$ 2,200	$ 1,600
Rezones	$ 1,000	$ 1,000
Subdivisions	$ 5,650	$ 11,450
Temporary Use Permits	$ 300	$ 300
Vacations	$ 600	$ 2,400
Variances	$ 2,250	$ 1,500

TOTAL FEES COLLECTED FOR 2021
$18,925

2020 - $26,200 (difference of -$7,275)

QUINLAN™

December 10, 2021 | Volume 15 | Issue 23

Zoning Bulletin

in this issue:

Variances

Cemetery association seeks approval to construct driveway and crematorium

Citation: *Old Tennent Cemetery Association v. Township of Manalapan Planning Board, 2021 WL 4888920 (N.J. Super. Ct. App. Div. 2021)*

The Township of Manalapan, New Jersey Planning Board denied Old Tennent Cemetery Association's (OTCA) preliminary and final site plan application to construct a driveway and crematorium on its property. The planning board contended it lacked jurisdiction because OTCA was required to seek a variance from the Zoning Board of Adjustment (ZBA).

The lower court agreed and dismissed OTCA's lawsuit against the planning board. OTCA appealed.

DECISION: Affirmed.

The cemetery on the grounds of the OTCA was a preexisting nonconforming use, and since a crematorium was an accessory use to the cemetery, the ZBA had exclusive jurisdiction.

The ZBA had to "exercise jurisdiction where an application for site plan approval [wa]s made for an accessory use . . . to a principal nonconforming use. In such a case, [the accessory use] would constitute the expansion of a nonconforming use and hence the [ZBA] . . . would have exclusive jurisdiction," the appeals court found.

A CLOSER LOOK

The cemetery was situated on a 12.5-acre parcel. Burial plots took up .68 acres of the property, while the rest remains undeveloped. The property was located near the intersection of Freehold-Englishtown Road and Tennent Road, and the main access to the property was "a paved driveway extending through adjacent Lot 3.011 to the north which contains improvements associated with the Old Tennent Church and Cemetery." The property was "situated within the R-E (Residential Environmental) Zone."

OTCA asked the planning board for preliminary and final site plan approval to construct an approximately 1,327 square-foot building addition to be used as a crematorium. This proposed addition would be on the "westerly side of the existing one-story office building" on the property. "An expansion of the existing driveway on-site is also proposed to provide vehicular access to the crematorium." Plaintiff also proposed "landscaping improvements."

A hearing ensued and a non-profit group, Stop the Manalapan Crematorium Inc. (SMC), objected to the application. Its president, a resident of Manalapan,

argued that the planning board didn't have jurisdiction to hear variances, and specifically those for expansion of nonconforming uses.

OTCA countered that all that was required was a site plan application not a variance.

Aggrieved Party

Property owner claims she has right to challenge decision concerning permits for nonconforming structures

Citation: *Kullenberg v. Township of Crystal Lake, 2021 WL 4929114 (Mich. Ct. App. 2021)*

Ann Kullenberg lived next to two parcels of land—parcel. Parcel 1 included a multifamily building that had been abandoned and unoccupied for at least a decade and parcel 2 had four additional buildings with seven rental units on it.

The Township of Crystal Lake, Michigan's zoning ordinance, which was first enacted in 1964, stated that the subject property was zoned as "commercial resort." In 1984 and 1994, changes to the zoning ordinance were made and the parcels were zoned agricultural/residential. While multifamily dwellings were not permitted under any of the ordinances, but records show that the owners constructed and rented out multiple rental units on the property starting in 1987.

In the early 2000s, Crystal Lake Township adopted the Benzie County Zoning ordinance, and subsequently repealed it effective March 31, 2010. Crystal Lake Township did not adopt a new zoning ordinance until May 2010. Under the new zoning ordinance, the parcels were again zoned agricultural/residential and multifamily units were not permitted on the property.

Peter Steenstra purchased the property in 2017, and Kullenberg lived next to his parcels since 1997. Over the years, she complained about overflowing dumpsters on the property and uncollected garbage. She also said there were loud vehicles, loud music, drunken parties, and domestic disturbances at all hours of the day and night.

In November 2018, Steenstra applied for a special land use permit to demolish and rebuild the abandoned blue building on parcel 1 to create eight new rental units. The Crystal Lake Township Planning Commission denied the application, citing the multiple complaints against the property and expressing concern about the possibility of adding 32 new residents.

In 2019, Steenstra applied for a zoning permit to remodel the blue building in its existing footprint. The zoning administrator (ZA) approved the permit later that month and determined that all the existing buildings on the Steenstra parcels were lawful nonconforming structures.

Kullenberg filed an appeal with the zoning board of appeals (ZBA). The ZBA found that because there had been a gap in the zoning ordinances between repealing the Benzie County Zoning Ordinance in March 2010, and the adoption of the Crystal Lake Township Zoning Ordinance on April 29, 2010 (which took effect in May of that year) all existing land uses at the time became lawful because no ordinance existed in effect to make the uses illegal.

Kullenberg appealed the ZBA's decision to the Benzie County Circuit Court which concluded that she wasn't an "aggrieved party." Thus, the court declined to decide the issue of whether the gap in zoning made the use of the Steenstra parcels lawful. Kullenberg then sought review by a Michigan appeals court.

DECISION: Reversed; case sent back for further proceedings.

Kullenberg satisfied the criteria for establishing she was an aggrieved party.

Michigan's Zoning Enabling Act gave local govern-

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ments the authority to regulate land development and use through zoning. "The decision of the zoning board of appeals shall be final. A party aggrieved by the decision may appeal to the circuit court for the county in which the property is located," the court explained.

To show she was aggrieved, Kullenberg had to "allege and prove that he or she has suffered some special damages not common to other property owners similarly situated. Incidental inconveniences such as increased traffic congestion, general aesthetic and economic losses, population increases, or common environmental changes are insufficient to show that a party is aggrieved. Instead, there must be a unique harm, dissimilar from the effect that other similarly situated property owners may experience." It wasn't enough just to own an adjoining parcel of land to prove one had been aggrieved. Also, it wasn't enough to show that one was entitled to notice.

The court's finding was based on a fact-specific inquiry. It noted that Kullenberg had cited several alleged specific harms that were "singular and unique to her." These included:

- being subjected to loud cars and drunken parties;
- garbage that piled over onto her property because animals had dragged it from the dumpsters on Steenstra's property;
- dogs ran loose onto her property; and
- neighbors had defecated on her land.

Her property was "both adjacent to and uphill from the Steenstra parcels which caused her to be constantly bombarded by the disturbances on the Steenstra parcels," the court noted. "By contrast, other neighbors were sufficiently separated from the Steenstra parcel by distance and dense forest which muffled the noise and provided a barrier to infiltration by the Steenstra parcel's residents' garbage and animals, and straying residents who apparently used [her] land as a toilet. The record reflects that [Kullenberg] alleged and attested to suffering unique harms dissimilar to similarly situated property owners," it added.

THE BOTTOM LINE

The court rejected the township's argument that Kullenberg's affidavit only discussed general harm that had been caused by disruptive residents of the Steenstra property. In the township's view none of the alleged harm stemmed directly from the ZA's decision to grant a zoning permit to Steenstra to rebuild the blue building. It also contended that 1) her complaints didn't relate to issues with parcel 1, for which the ZA had issued the zoning permit that the ZBA affirmed, and 2) the zoning permit hadn't changed the nature or character of the property's residential use.

But, Kullenberg "outlined the concerns with parcel 2 of the Steenstra property to show that the problems would only be exacerbated by the addition of more renters. The blue building on parcel 1 had been vacant for a period of at least 10 years, and the zoning permit allowed Steenstra to build eight new rental units, for a possible total of 32 additional people to live on the property," the court noted. "The presence of loud cars, unrestrained dogs, drunken parties, domestic altercations, and the already overflowing garbage very likely would be exacerbated by an increase in population. Overall, [she] . . . demonstrated harm unique from similarly situated property owners that would be worsened by the addition of more rental units on parcel 1. Therefore, the [lower] court erred by finding that [Kullenberg] was not an aggrieved party."

Practically Speaking:

According to the record, Kullenberg had alleged facts that if proven could establish the harm she would suffer from the ZBA's decision was singular and unique to her.

Signs

Was sign ordinance facially unconstitutional?

Citation: *Baldwin Park Free Speech Coalition v. City of Baldwin Park, 2021 WL 4846059 (C.D. Cal. 2021)*

The City of Baldwin Park, California's sign ordinance regulating permanent signs came under scrutiny when the Baldwin Park Free Speech Coalition, an association promoting transparency in local government, and one of its members (collectively BPFSC), filed suit. BPFSC claimed the ordinance were unconstitutional.

Specifically, BPFSC claimed the sign ordinance violated First Amendment rights by unlawfully restricting protected speech. It also claimed the ordinance was an unlawful prior restraint on protected speech and was an unlawful tax on protected speech.

BPFSC sought to enjoin the city from enforcing the ordinance, but the court denied the request. It then appealed, and while that appeal was pending the city asked for partial judgment on its constitutional claims on the grounds of standing.

The court granted the city's request in part but denied its request as to BPFSC's constitutional claims of the sign ordinance because the denial of the preliminary injunction had been appealed to the Ninth Circuit court. The only issue remaining for the time being before the U.S. District Court for the Central District of California was the city's municipal code was "facially constitutional as it relate[d] to permanent signs."

DECISION: City's request for judgment granted.

The sign ordinance was facially constitutional.

The City argued the sign ordinance regulated the size and quantity based on whether they were temporary or permanent, "and if permanent, the amount, type, and location based on the zone district and land use." It also stressed the ordinance didn't categorize signs based on their content. It also argued the sign issue was subject to

"intermediate scrutiny," which meant so long as the ordinance was "narrowly tailored to serve significant government interests" it would pass constitutional muster.

In the city's view the ordinance was "narrowly tailored to serve these safety and aesthetic interests." It allowed up to 15 permanent signs across a combined area of 45-square feet or less without needing a permit. The code required other permanent signs, such as monument, wall, and free-standing signs, to be permitted.

The court found that "similar to the permit requirements for temporary signs, the permit requirement for permanent signs [wa]s not an unconstitutional prior restraint." The sign ordinance requirement didn't give the city employees "the discretion to grant or deny applications based on the content of the proposed sign." Also, "the permit requirement impose[d] reasonable time limits for public officials to make a determination on the application." Further, "the sign ordinance provide[d] that a determination on a permanent sign permit w[ould] be completed within a maximum 63 days for a permanent sign permit. . . . This time limit, although longer than the 21-day time limit for temporary signs, [wa]s an adequate limit consistent with time limits upheld by other courts considering comparable speech licensing regimes." Therefore, the permit requirement for permanent signs wasn't "an unconstitutional prior restraint on speech."

Further, the city's "review and approval process [wa]s not arbitrary and capricious because the sign ordinance provide[d] for a non-discretionary review of the sign permit." For instance, the city planner had to approve the permit requests if the application fee was paid and the physical characteristics of the sign complied with the size, location, and number of signs detailed in the local code.

Practically Speaking:

The "sign ordinance provide[d] sufficient standards and guidelines for obtaining a permit for permanent signs and d[id] not violate the Due Process Clause as a matter of law."

Special Interest

Property owners appeal denial of their request to intervene in matter involving construction of a cell tower

Citation: *Biddle v. Public Service Commission of Kentucky, 2021 WL 4343656 (Ky. Ct. App. 2021)*

Corey Biddle and John Potts appealed a lower court's decision to deny their request to intervene in a Public Service Commission of Kentucky (PSCK) action to determiner whether Kentucky RSA #3 Cellular General Partnership (RSA #3) would be granted a certificate of public convenience and necessity (CPCN) to build and operate a permanent cell tower at property in Stephensport, Kentucky. The proposed site adjoined Biddle and Potts' respective residential properties. The land had been planted in 2003 and mostly remained undeveloped.

In 2008, RSA #3 leased lot 4 in the development and placed a cell tower on wheels (COW) on it to address a cellular service gap issue. After that, Biddle bought some additional lots in the area, including lot 5, which bordered lot 4.

In 2017, RSA #3 sought approval to construct a wireless communication facility (cell tower) at lot 4, and as adjoining landowners, Biddle and Potts, received notice of the requested CPCN.

In support of their request to intervene, they questioned the location of the proposed cell tower within a subdivision and expressed concerns over how a permanent and much taller cell tower would impact their property values. They suggested alternative sites they believed would be feasible as well as co-location on sites with existing cell towers, and they said that if they were allowed to intervene, they would provide expert testimony to support their position.

After Biddle and Potts' intervention request was denied, the CPCN was granted. PSCK found that only intervention by the attorney general was permissible under the law unless the person had a special interest in the case that wasn't otherwise represented or their intervention was likely to present issues or develop facts that assist PSCK with fully considering the matter without complicating or disrupting the proceedings.

In the end, PSCK found that "Biddle and . . . Potts [we]re unlikely to present issues or develop facts that will assist the Commission in fully considering this matter." It also discussed that the COW was a temporary solution to bolster cell phone coverage and coverage would be inadequate if the COW were to be removed and the permanent cell tower was not approved to replace it, opining that intervention was not warranted because Biddle and Potts only offered unsupported lay opinion that other sites were feasible.

PSCK added that it was unlikely that the arguments Biddle and Potts pursued—appropriateness of the cell tower location and concerns over property values—would be supported by facts that would assist the Commission in considering the matter.

Before the court, Biddle and Potts asked the court to set aside PSCK's decision. The lower court found PSCK hadn't committed any error because neither Biddle nor Potts had presented issues or facts that would assist the commission in deciding the matter. The only "presented lay opinion and general concerns that were unsupported." In addition, they didn't show they had a special interest in the matter. Then, they appealed.

DECISION: Reversed; case sent back for further proceedings.

PSCK's decision had to be reversed because Biddle and Potts had demonstrated a special interest in the proceedings and were entitled to a full hearing where they could present evidence, including expert testimony, as to why intervention should be granted.

The court stated that Biddle and Potts had attempted to share with PSCK additional information, including statements from experts, to support their position. "We are less troubled by the informal nature of the meeting held to consider their request to intervene as compared with the inappropriate requirements for what they had to demonstrate at that stage. It is unreasonable for persons requesting intervention to have to present their evidence in full at that juncture," the court wrote.

THE BOTTOM LINE

Under state law, when the site of a proposed cell tower was outside of an incorporated city, PSCK had to provide notice to anyone owning land that was contiguous to the property where the proposed site was going to be located by certified mail, return receipt requested as well as the opportunity to intervene.

One's right to intervene wasn't automatic, but if the resident could show they had made a timely request to intervene, they had a special interest not otherwise sufficiently represented, or their intervention was likely "to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings," then their request would generally be allowed.

CASE NOTE

The court cited case law from other states in support of its ruling here. For instance:

- *Caran v. Freda*— The Supreme Court of Rhode Island concluded that "adjoining property owners have a 'special interest' as to whether a zoning variance will be granted or a non-conforming use will be permitted on an adjoining piece of property."
- *Horton v. Meskill*—The Supreme Court of Connecticut ruled an abutting property owner had a "special interest" allowing them to intervene as their property interest would be directly affected if, "upon appeal of a cease and desist order and denial of a special permit, the other property owner was ultimately allowed to continue to maintain a dog boarding and grooming facility."

The cases cited are *Caran v. Freda, 108 R.I. 748, 279 A.2d 405 (1971)*; and *Horton v. Meskill, 187 Conn. 187, 445 A.2d 579, 4 Ed. Law Rep. 547 (1982).*

Adult Businesses

Adult novelty and video store claims definitions in local ordinance unconstitutional

Citation: *Cheshire Bridge Holdings, LLC v. City of Atlanta, Georgia, 15 F.4th 1362 (11th Cir. 2021)*

The Eleventh U.S. Circuit has jurisdiction over Alabama, Florida, and Georgia.

Cheshire Bridge Holdings LLC and Cheshire Visuals LLC (collectively, CBH), operated an adult novelty and video store known as Tokyo Valentino in Atlanta. CBH filed a lawsuit claiming the definitions of "adult bookstore," "adult motion picture theater," "adult mini-motion picture theater," "adult cabaret," and "adult entertainment establishment" in the Atlanta City Code were facially overbroad in violation of the First Amendment.

The lower court found in the city's favor, and CBH appealed. The appeals court reversed and sent the case back to the lower court, which again entered judgment in the city's favor. CBH appealed that ruling.

DECISION: Affirmed.

The lower court hadn't erred in providing a narrowing construction of the terms CBH challenged. Also, CBH failed to show that "any overbreadth in the provisions [wa]s 'substantial' as required by Supreme Court precedent," the Eleventh U.S. Circuit Court of Appeals ruled.

A CLOSER LOOK

The lower court didn't err in limiting the term "patron" to those who paid for commercial service. In addition, the lower court didn't err in finding that the zoning portions of the city's municipal code were meant to deal with principal or regular uses of land.

The appeals court did take issue with one of the lower court's findings, however. The lower court had found the city "could not . . . classify entertainment venues as 'adult businesses' based on isolated performances of works containing some amount of nudity or simulated sex." "Although we have indicated our general agreement with the [the] court's approach, in this instance we think [CBH was] correct that the 'adult cabaret' and 'adult entertainment establishment' provisions [in the municipal code were] overbroad in at least one respect," the Eleventh Circuit wrote.

But, the court found it didn't have to "choose between these two possible readings of 'adult entertainment establishment.' " That's because the lower court had "ruled that the risk of overbreadth to mainstream establishments was 'marginal when judged against the [provisions'] plainly legitimate scope,' and declined to strike down the 'adult cabaret' and 'adult entertainment establishment' provisions as substantially overbroad."

Case Note:

CBH contended the terms "adult cabaret" and "adult entertainment establishment" were overbroad because they included venues, which had been around for decades and featured some degree of nudity. In its view, the "adult cabaret" and "adult entertainment establishment" provisions in the municipal code didn't make any distinction as to the "nature of the performances," and reached all forms of semi-nude exotic dancing even when no sales of alcohol are involved.

Site Plan Development

Local zoning commission's denial of site plan application due to concerns over emergency access scrutinized in court

Citation: *2772 BPR, LLC v. Planning & Zoning Commission of the Town of North Branford, 207 Conn. App. 377, 2021 WL 4135028 (2021)*

2772 BPR LLC (2772) asked a Connecticut appellate court to review a lower court's decision to deny its appeal from the Planning & Zoning Commission (PZC) of the Town of North Blanford, Connecticut. The PZC had denied 2772's site development plan application concerning a proposed propane bulk storage facility it wanted to construct in the town.

2772 claimed that the court erred in upholding the PZC's consideration of off-site traffic concerns, the preparedness of municipal services, and the potential impact on property values when conducting an administrative review of its site development plan application.

DECISION: Judgment reversed; case sent back for further proceedings.

The lower court erred in concluding the PZC had properly considered off-site factors when denying 2772's site development plan application, and 2772 showed the error likely affected the judgment.

A CLOSER LOOK AT THE FACTS

2772 bought land at 40 Ciro Road in North Branford, which was located in an I-2 industrial district. In 2014, the PZC amended the town's zoning regulations to include as a permitted use in that district the "[b]ulk storage of propane on parcels of land south of Route 80, east of Ciro Road and bounded on all sides at the time of application by similarly zoned properties." This use was coded as "S" which, pursuant to the zoning regulations, "mean[t] a use permitted in the district as a matter of right, subject to administrative approval of a site development plan by the [c]ommission in accordance with . . . the zoning regulations."

2772 submitted a site development plan application to the PZC seeking approval to build on the property two 30,000 gallon propane storage tanks, a garage, a connector building, an office building, and canopies.

The PZC held a public hearing on the matter and determined it should set aside the application pending review of the inland wetlands portion of the application.

In 2017, the Department of Energy & Environmental Protection issued a final decision in favor of 2772, which allowed it to proceed with its application with the PZC.

Ultimately, the PZC denied the site plan application after several residents expressed concern over the potential safety hazards a bulk propane storage facility would pose in the event of an emergency, such as a leak, fire, or natural disaster. The PZC noted that residents had pointed out that the property, which was located at the end of a dead-end street, would be difficult to get to if emergency services had to respond to an incident there. In addition, the residents said they believed the presence of a propane storage facility near their homes would lower their property values.

BACK TO THE COURT'S RULING

The court found that the proper remedy would be to send the case back to the lower court to render judgment in favor of 2772's appeal and directing the PZC to approve the site plan application. But this might not be the end of the case. That's because shortly after the appeals court reached its decision, the PZC appealed to the state's highest court. It contends the ruling undermines a local municipality's ability to address emergency-access issues, which can only be addressed after a site-plan has been submitted, Zip06.com reported. As of print time, the high court was expected to rule on whether it would accept the case for review.

Source: *zip06.com*

Zoning News From Around The Nation

California

San Jose's city council studies impact SB 9 and 10 likely to have once they go into effect January 1, 2022

Following Gov. Gavin Newson's enactment of Senate Bills 9 and 10, the city council in San Jose held a study session to address questions the bills' passage has raised, *San Jose Spotlight* reported recently.

The city council has questions about how the bills, which effectively do away with single-family zoning, will interact with development laws, which cover guest homes, the news outlet reported.

In addition, there are questions about whether height limits are necessary for homes constructed under SB 9 and which neighborhoods will be eligible for exemptions, such as historic districts, it added.

In addition to SB 9, which permits multiple homes on single-family lots, SB 10 permits municipalities to address multifamily housing projects of up to 10 units in close proximity to urban and transit areas through streamlined rezoning, the news outlet reported.

Source: *sanjosespotlight.com*

Colorado

Denver City Council hears from community members about proposed zoning code change impacting group living

Recently, the Denver City Council (DCC) heard testimony from those in favor and opposed to a proposed change to the local zoning regulations concerning group homes, *The Gazette* reported recently.

The ballot measure—2F—will put the Group Living

Zoning Code Amendment before the voters, the news outlet reported. The push to put the issue to a vote on the ballot came after the DCC approved the amendment in early 2021. The amendment, which was approved by an 11-2 vote, increased the number of unrelated adults who can live together in a home from two to five. In addition, the amendment paved the way to make it easier for residential-care facilities, such as homeless shelters, sober-living homes, and halfway houses, to operate through the Mile High City, *Westword* reported.

To read the text of the amendment, visit denvergov.org/Government/Agencies-Departments-Offices/Community-Planning-and-Development/Denver-Zoning-Code/Text-Amendments/Group-Living. There you can also find links to the latest news, community feedback, and other related information.

Sources: *gazette.com*; *westword.com*

Illinois

CDPH releases interim guidance following city council's approval of air quality ordinance

In March 2021, Chicago's city council approved an air quality ordinance to regulate the construction and expansion of certain facilities creating air pollution. Those regulations require the city to conduct a formal review process and to "expand public engagement opportunities for the zoning, public health and transportation implications of many types of intensive manufacturing and industrial operations."

In response, in September 2021, the Chicago Department of Public Health (CDPH) released *Air Quality Impact Evaluation Interim Guidance*, which is available for download at chicago.gov/content/dam/city/depts/cdph/InspectionsandPermitting/Air%20Quality%20Impact%20Evaluation%20Interim%20Guidance.pdf. The guidance is designed to help site-plan review applicants with preparing air quality impact evaluation under the city's municipal code of Chicago. "A revised final guidance document will be released at the completion of three case studies, which will be included to provide further guidance," CDPH notes.

CDPH adds that projects associated with the following uses may potentially be subjected to the air quality requirement "if the subject site's net area meets or exceed 10 contiguous acres or if the subject site is located within 660 feet of any Residential (R), Business (B), Commercial (C), or Parks and Open Space (POS) zoning district."

Source: *chicago.gov*

Massachusetts

Proposed change to downtown zoning in Southborough goes before the voters

As of print time, voters in the town of Southborough were expected to voice their opinions at the ballot box on whether to amend zoning rules concerning the downtown area, MySouthborough.com reported recently.

This follows the release of a feasibility assessment by Weston & Sampson in June 2021 concerning the most appropriate sites for a wastewater treatment and disposal site, the future of the town's business village district, and more.

Visit southboroughtown.com/sites/g/files/vyhlif7351/f/pages/ws_southborough_feasibility_study_june_2021.pdf to learn more.

Sources: *mysouthborough.com*; *southboroughtown.com*

New Hampshire

New report explores why home prices and rents have risen so much in the Granite State

The Josiah Bartlett Center for Public Policy recently released a study on why home prices and rents have increased so much in New Hampshire. It concluded that residential land-use regulations are the key reason.

"Examples of local regulations that prevent people from building homes include: minimum lot sizes, frontages and setbacks, single-family-only requirements, bureaucratic requirements for accessory dwelling units, maximum heights and densities, minimum parking requirements, historic and village district requirements, municipal land ownership, subdivision regulations, impact fees, and simply the unwillingness of zoning boards to issue variances," the nonprofit thinktank wrote about the study.

Its research showed the state as being one of the most restrictive in the nation for residential development. "By suppressing building, land-use regulations drive up the price of housing as demand rises. Removing or relaxing these regulations would allow prices to rise more gradually," it stated.

Further, it categorized the housing scarcity consequences are being "significant." "This study finds that residential land use regulations are associated with growing socioeconomic segregation and slowing population growth," it added.

The center also looked at which cities and towns had the most "inelasticity of their housing supply, that is, by how much local conditions, especially building and land-use regulations, restrict the ability to build new housing in response to rising demand." It named the 10 "most inelastic" cities and towns statewide: New Castle, Rye, Portsmouth, Newington, New London, Hanover, North Hampton, Moultonborough, Hampton Falls, and Waterville Valley.

To download the study, Residential Land Use Regulations in New Hampshire, visit jbartlett.org/wp-content/uploads/Residential-Land-Use-Regulations-in-New-Hampshire-Report.pdf.

Source: *jbartlett.org*

New York

Open letter calls on governor to reject proposed zoning bill

In an open letter to Gov. Kathy Hochul, George Hoehmann, the supervisor of Clarkstown, said that a state assembly bill that was recently introduced is troubling because it could prevent his town and other municipalities from being able to enforce their own zoning regulations. The letter, which The Rockland Times republished, states that the "home rule" (NYS Assembly Bill 4854), which applies to residential accessory dwelling units, contains "a

number of deeply troubling issues . . . which would have tremendous negative impacts on health and safety, the environment, and quality of life." For instance, Hoehmann stated:

- "The proposed legislation completely bypasses the New York State Environmental Quality Review Act (SEQR). With 20,694 detached single-family homes, the Town of Clarkstown could easily double in density with zero environmental impact safeguards. Combined with the elimination of zoning provisions restricting Floor Area Ratio, setbacks, and lot coverage, passing this legislation is an environmental disaster in the making. With a median household of 2.9 persons, the Town of Clarkstown alone could grow by 60,000 additional people or a 70% increase in population without a single environmental Accessory Units under this proposed law do not count against density or Floor Area Ratio requirements."
- "Municipalities cannot require more than 1 exterior access by door. During a fire these apartments will only have one easy way out. For units in a basement, an egress window will likely derground, making it particularly difficult for anyone, especially the elderly and handicapped, to escape in an emergency."
- "This legislation stipulates that the primary homeowner only has to live in the house for 1 year. This short duration can easily lead to thousands of situations where a former single family home is converted into a 2 family apartment building with absentee landlords."

To read more about his constitutional and other concerns, visit rocklandtimes.com/2021/10/31/an-open-letter-supervisor-hoehmann-urges-governor-hochul-to-reject-new-state-zoning-bill-preserve-home-rule/.

Source: *rocklandtimes.com*

Ohio

Consultant concludes zoning overhaul needed in Columbus

Lisa Wise Consulting (LWC) of San Luis Obispo, California, has concluded that the City of Columbus' zoning code may be in need of an overhaul, *The Columbus Dispatch* reported recently. The city's zoning code hasn't had a major revamp in about 60 years, the news outlet noted. Part of the issue is that rezoning- and variance-related issues must go through several steps for approval, which takes too long and proves too costly for developers. And, as a result, often residents don't want the resultant developments, it added.

According to LWC, which the city hired for $200,000 to study the current state of zoning, found a comprehensive revision is in order. The news outlet also reported that since when the code was originally formulated in the 1950s the population has more than doubled to 905,748 in 2010.

On October 20, 2021, the city held public presentations on phase one of its assessment. Lead consultant Lisa Wise and her team spoke about the city's historic growth, the key initial findings of their assessment, and their recommendations for updating the 70-year-old code.

The city plans to move to phase two in 2022, which will build on lessons learned from phase one. At that time, city officials will "work with the community to develop, propose and undertake changes to the [z]oning [c]ode and process, including changes to the zoning map."

Visit columbus.gov/zoningupdate for more information.

Sources: *dispatch.com*; *columbus.gov*

Vermont

Report examines potential uses for Energizer industrial buildings in Bennington

The fate of Bennington, Vermont's former Energizer industrial facilities may be one step closer to being realized now that Camoin Associates has published the findings of its study on potential uses, the *Bennington Banner* reported. The consultancy concluded that the nine-plus acre factory site, which includes buildings with about 300,000 square feet of floor space, could be an attractive site for mixed-use development, as it's located close to Bennington's downtown.

Camoin noted that the town has been experiencing a housing shortage. It opined the biggest demand is for assisted and independent living facilities, owner-occupied condominiums and townhouses, income-restricted dwellings, and market-rate apartments.

Source: *benningtonbanner.com*

CHAPTER 5 – NEVADA'S OPEN MEETING LAWS

INTRODUCTION

Nevada Revised Statutes (NRS) Chapter 241, Meetings of State and Local Agencies, contains legislation governing how public meetings are conducted in Nevada. This chapter summarizes the key sections of NRS Chapter 241 for locally elected and appointed officials, government executives, and citizens who are interested in the state's open meeting laws. The information presented in this chapter includes the changes made to NRS Chapter 241 by the 27th session of the Nevada State Legislature in 2013 that took effect on Jan. 1, 2014. Future sessions of the Nevada State Legislature may choose to revise NRS Chapter 241, and elected and appointed officials are encouraged to consult their jurisdictions' legal counsel about any additional questions they may have regarding their responsibility to follow Nevada's open meeting law.

RESPONSIBLE ADMINISTRATION

Nevada's open meeting laws exist to aid elected and appointed officials in conducting the people's business. NRS Chapter 241 was designed to ensure that the actions of elected and appointed officials, including city councilmembers, county commissioners, planning commissioners, neighborhood and community advisory board members, and other elected and appointed officials, conduct the people's business openly. Nevada's open meeting laws exist to ensure accountability and responsibility in the policies and laws made by Nevada's elected and appointed officials.

Cooper (2012), in his book *The Responsible Administrator: An Approach to Ethics for the Administrative Role*, argues that, "...together we craft for ourselves, through discourse and deliberation, conventions such as values, beliefs, and ethical norms to give meaning and order to our lives. Collective decision making in the governance process, including public administration, works best in a postmodern society when it emerges out of an inclusive conversation about how to create order and meaning in our lives together. Hence, democratic governance provides mechanisms and arenas for this social process." Nevada's open meeting laws provide the legal and institutional structure by which Nevadans collectively craft our values, beliefs and ethical norms through the construction of public policy and law. This fact sheet provides a general outline of these open meeting laws for elected and appointed officials, government executives and the public in order to facilitate the transparent development of public policy and law that affects the everyday lives of Nevada's citizens.

DEFINITIONS, NRS 241.015

NRS Chapter 241 Section 015 provides several key definitions that elected and appointed officials, government executives and the public should know. Among these key definitions are action, meeting, public body and quorum.

"Action" means a decision, commitment or promise made by a majority of the members present at a meeting of a public body. In Nevada, a public body is made up of elected or appointed officials who have the authority to make a decision, commitment or promise.

"Meeting" means a gathering of members of a public body at which a quorum is present to deliberate on a matter over which the body has jurisdiction or supervisory authority. Even gatherings of members of a public body at which no quorum is present may constitute a public meeting if any deliberation or decision making by the members of the public body takes place. "Meeting" does not apply to social functions or meetings with legal counsel. For example, holiday parties hosted by a city government where the mayor and a majority of the elected city council are present would *not* constitute a public meeting *unless* the mayor and the elected city councilmembers engaged in the deliberation or discussion of issues that could be considered part of the public agenda.

"Public Body" means any administrative, advisory, executive or legislative body (other than the Nevada Legislature) of the State or local government consisting of at least two persons that expends or disburses or is supported in whole or in part by tax revenue or makes recommendations to any entity that expends or disburses or is supported in whole or in part by tax revenue. Any committee or subcommittee created by resolution or ordinance by the previously defined public bodies is subject to the statutory requirements of Nevada's open meeting laws. A city council or a county commission qualifies as a "public body" as do advisory committees, such as a neighborhood or community advisory board, a planning commission, a liquor license board or a historical preservation committee.

"Quorum" means a simple majority of the membership of a public body or other proportion established by law. Without the presence of a quorum, the elected or appointed officials are prohibited by law from conducting public business. Discussions regarding agendized topics can be held, but no decision can be made.

MEETINGS, NRS 241.020

NRS Chapter 241 Section 020 outlines the prescribed process of how public meetings should be conducted and how public meetings should be generally advertised and solicited to the public. Except in rare occasions, failure to follow this process is a violation of state law. Nine specific guidelines are provided in NRS Chapter 241 Section 020, including:

(1) All meetings of all public bodies in Nevada are to be open to the public. In some cases, certain exceptions can be made. If the elected or appointed board chooses to close a meeting of the elected or appointed board, the board may close the meeting only pursuant to a statute adopted by the board. The board must restrict its decision making to only those issues and items listed in the statute. For example, a city council may opt to hold a closed meeting to discuss a confidential personnel matter, such as the termination of a city manager for cause. Reasonable efforts to accommodate persons with disabilities must also be made for all public meetings.

(2) Written notice of any public meeting must be provided by 9 a.m. at least three working days prior to the meeting. The written notice must include:

(a) The time, place and location of the meeting.
(b) A list of the locations where the notice was posted.
(c) The posted agenda must include:
    i. a clear and complete statement of topics to be considered;
    ii. a notation of "for possible action" next to all items on which action may be taken;

iii. periods of time devoted to public comment, provided either at the beginning and end of the meeting *or* on each item before any action is taken, but must allow a period of time for the public to speak to issues not on the agenda.

(d) If any portion of the meeting is closed, the name of the person being considered is listed on the notice and agenda.
(e) If administrative action is possibly to be taken, the name of the person against whom administrative action may be taken must be listed on the notice and agenda.
(f) Notification that (1) items may be taken out of order; (2) items may be combined; and (3) items may be removed or delayed to a later time in the meeting.
(g) Any reasonable restrictions on general public comments must be listed on the notice and agenda, such as a time limit of three minutes for each public comment. However, no public body may limit a person from expressing a particular viewpoint.

(3) The legal standard for a minimum public notice includes:

(a) Posting the notice at the principal office or, if no office is used, the place where the meeting is to be held should be listed on the notice and agenda. The notice and agenda must be posted at three additional prominent places within the jurisdiction. Such places may include, but are not limited to, a library, post office or other public area within the jurisdiction.
(b) The jurisdiction must post a copy of the notice and agenda on the State of Nevada's official website no later than 9 a.m. of the third working day prior to the meeting date.
(c) The jurisdiction must provide a copy of the notice and agenda to any person who has requested the notice and agenda.
(d) Electronic notification by email by the jurisdiction is permissible only if agreed to by the requestor.

(4) The jurisdiction's website, if it is regularly maintained and updated, is to include a notice of all public meetings. However, use of the jurisdiction's website to post notices and agendas is *not* considered a substitute for the physical posting of the notice and agenda in prominent public locations.

(5) If requested, the jurisdiction must provide a free copy of any agenda, ordinance or regulation, and any supporting materials unless otherwise deemed confidential by the jurisdiction (for example, a copy of an employee's annual personnel evaluation) to any member of the public who has requested a copy.

(6) Supporting materials, such as a staff report or consultant's report, must be provided to any requester no later than the same material is being provided to the public body.

(7) For jurisdictions with a population of 45,000 or more residents, the elected or appointed board must post all supporting materials, such as a staff report or consultant's report, on its website within 24 hours of the meeting's recess if the material was provided to the elected or appointed officials at the time of the meeting.

(8) The jurisdiction may provide notification of any public meeting by electronic mail (email) if requested to do so by a member of the public.

(9) At times, elected and appointed officials may have to conduct an emergency meeting. "Emergency" means an unforeseen circumstance that requires immediate action and includes, but is not limited to, natural disasters caused by fire, flood, earthquake or other natural causes; or any impairment of the health and safety of the public due to an unforeseen occurrence.

In addition to these nine specific requirements, any agenda should provide a clear and concise list describing the individual items on which the elected or appointed board may take action on and clearly denote that action may be taken on those specific items. Elected and appointed boards should also provide a clear and complete description of each agenda item. Jurisdictions should avoid the use of generic descriptions whenever possible. Phrases such as 'reports by staff' and 'items for future meetings' should be avoided. The use of generic and unspecified categories on an agenda should only be used for items on which the jurisdiction cannot adequately anticipate what specific matters will be considered.

Elected and appointed boards may also develop any reasonable rules and regulations designed to ensure the orderly conduct of the public meeting in order to ensure that the board is able to complete its business in a reasonable period of time without improper interruption. These rules should be properly adopted by the public body and should be made available to the public. Elected and appointed boards are encouraged to post these rules on their agenda and in plain sight of the public in the physical location in which the elected or appointed board will conduct their meetings. These rules are often enforced by the Chair of the elected or appointed board or the acting Chair if the Chair is not present.

EXCEPTIONS TO OPEN MEETING LAW, NRS 241.030

There are several key exceptions to Nevada's open meeting law. These exceptions include:

(1) A public body may hold a closed meeting in order to address the following issues:

> (a) Personnel issues including a discussion about the competence and character of an employee.
>
> (b) To prepare, administer or grade examinations (most associated with civil service positions or employment positions within the jurisdiction that require a certain technical proficiency, such as marksmanship for a police officer).
>
> (c) The consideration of appeals for examinations required by the jurisdiction.

(2) A person who is subject to a closed meeting may request that it be open. Such a request must be honored by the appropriate elected or appointed board.

(3) If a public body chooses to close a meeting, the public body must, by a motion of the elected or appointed board members, state the specific nature of the business to be conducted during the closed meeting. The public body must list the statutory authority pursuant to the matter to be considered during the closed meeting to which the public body has been authorized to close the meeting.

(4) NRS Chapter 241 Section 030 does not prevent the public body from removing any person during the meeting who willfully disrupts a meeting to the extent that the public body is unable to conduct the public's business. A public body may also choose to exclude any witness from a public or closed meeting during the examination of any other witness. NRS Chapter 241 Section 030 also does not require that any meeting be closed to the public and does not allow an elected or appointed board in Nevada to discuss the appointment of any person to public office or to the membership of a publicly appointed board during a closed meeting. For example, when determining membership of a planning commission, the local city council or county commission must discuss the appointment during a public meeting.

Social gatherings, such as holiday parties, special events, and other meetings where no legislative activity will take place, which a quorum of the elected or appointed board is present either in person or by electronic means, are exempt from the state's open meeting laws. However, it is important that attending members of the elected or appointed board refrain from any discussion regarding legislative or administrative activities.

In other cases, specific actions taken by a jurisdiction or agency may be conducted as a closed meeting. In Nevada, many local governments have established local ethics committees. The deliberations and discussions of these local ethics committees, when rendering confidential opinions to elected officials, can be conducted as a closed meeting. Any subsequent action taken by an elected or appointed board regarding the recommendations or findings of a local ethics committee must be taken in an open session in full compliance with the state's open meeting laws. However, if the actions of the elected or appointed board lead to the discussion or discipline of a specific individual(s), the elected or appointed board may take that action in a closed meeting using the prescribed method outlined above in NRS 241.033.

Meetings between an elected and appointed public board and the board's or jurisdiction's legal counsel to discuss and deliberate an existing or threatened litigation may occur without public notice and have typically been conducted as a closed or non-meeting. While the deliberations conducted by an elected or appointed board in this fashion are protected by attorney-client privilege, the jurisdiction must notice the closed or non-meeting and any action taken by the elected or appointed officials as a result of the closed or non-meeting must be taken in an open session in full compliance with the state's open meeting laws.

CLOSED MEETINGS

CLOSED MEETINGS TO DISCUSS A MEMBER OF A PUBLIC BODY, NRS 241.031, AND CLOSED MEETINGS FOR PERSONNEL MATTERS OR AN APPEAL OF AN EXAMINATION, NRS 241.033

Elected boards, such as a city council or county commission, will routinely have to address matters pertaining to the character, misconduct or incompetence of an elected or appointed official. NRS Chapter 241 Section 031 and NRS Chapter 241 Section 033 outline several important steps any public body, elected or appointed, must take when discussing the potential removal or sanction of a fellow elected or appointed official.

(1) The public body with jurisdiction must provide written notice of the meeting and proof of service of the notice.

(2) Notice of the meeting is to be delivered in person to the elected or appointed official whose conduct will be discussed and deliberated at least five working days before the hearing, or sent by certified mail at least 21 working days prior to the hearing to the last known address of the elected or appointed official whose conduct will be discussed. The letter should indicate that administrative action may be taken as a result of the closed meeting. The notice must include a list of topics anticipated to be considered and a statement indicating the person's right to attend the meeting.

(3) The Nevada Athletic Commission is exempted from this procedure.

(4) The person who is the subject of a closed meeting must be allowed to attend, have representation if desired, and submit evidence, present witnesses and provide testimony relating to the subject being considered.

(5) The chair of the public body may make a determination of which persons should and are permitted to attend the closed session and/or allow the public body to make that decision by majority vote.

(6) The person subject to a closed meeting is entitled to a copy of the official record of the meeting.

(7) The casual or indirect mention of other persons in a closed meeting does not subject those persons to the law's provisions regarding notice.

ADMINISTRATIVE ACTION

ADMINISTRATIVE ACTION TAKEN AGAINST A PERSON OR ACQUISITION OF REAL PROPERTY BY EMINENT DOMAIN, NRS 241.034

NRS Chapter 241 Section 034 outlines the written notification any elected or appointed board in Nevada must follow if the meeting is held to take administrative action against a person or if the jurisdiction is considering the taking of real property through the power of eminent domain. These requirements include:

(1) A notice to the person or owner of the real property being considered during the meeting is required. The notice may be delivered personally (within five working days prior to the meeting) or by certified mail (21 working days prior to the meeting).

(2) The notification in this section is *in addition to* the requirements listed in NRS Chapter 241 Section 020.

(3) The notification in this section is *not* required if proper notice was provided pursuant to NRS Chapter 241 Section 033 and was provided with the indication that administrative action may be taken.

(4) For the purposed of this section, real property is defined as any property owned only by the natural person or entity listed in the records of the county in which the real property is located and to whom or which tax bills concerning the real property are sent.

RECORD OF PUBLIC MEETING, NRS 241.035

In addition to proper notification, a public body must properly document the process by which a public body, elected or appointed, arrives at a decision and the final decision made by the public body. NRS Chapter 241 Section 035 outlines this process that all public bodies must take.

(1) The jurisdiction must keep written minutes that must contain the date, time and place of the meeting; the names of all members present and absent; the substance of all matters considered and, if requested, an indication of the vote; and the substance of remarks made by any member of the general public or a copy of any prepared remarks.

(2) The minutes of any public meeting are public record and must be made available for inspection within 30 working days of the meeting. The jurisdiction must retain a copy of the minutes for at least five years and then archive them appropriately as required by law.

(3) The minutes of a public meeting may be recorded in any manner by a member of the general public as long as it does not interfere with the meeting.

(4) The jurisdiction must make any audio or videotape or transcripts of the meeting (including closed meeting) available to the public. The jurisdiction must keep any audio or videotape recordings of any meeting for at least one year.

(5) The same requirements that apply to tapes or transcripts collected at a public meeting apply to any closed meetings.

(6) The jurisdiction and public body must make a good faith effort to comply with the requirements of this section.

REQUIREMENT OF VOTE AND ACTION, NRS 241.0355

When elected or appointed to a public body, the public expects the elected or appointed official to conduct the public's business regardless of how controversial the item being considered might be. Although elected or appointed officials are expected to abstain from deliberation and decision making on items in which they have a conflict of interest, elected or appointed officials are not allowed to abstain from participation because they wish to avoid a controversial issue. NRS Chapter 241 Section 0355 states that abstention does not count as affirmative vote. Furthermore, if an elected or appointed official chooses to abstain, the official must seek the opinion of legal counsel stating that abstention is required and appropriate.

ENFORCEMENT BY THE ATTORNEY GENERAL OF THE STATE OF NEVADA, NRS 241.039

The Attorney General of the State of Nevada is responsible for enforcing Nevada's open meeting laws and the sections of NRS Chapter 241. The Attorney General is required to investigate and prosecute violations of this statute. The Attorney General may issue subpoenas for all documents, records or materials related to any reported violation. Willful failure or refusal by any

jurisdiction or elected and appointed official to comply with a subpoena issued by the Attorney General of the State of Nevada is considered a misdemeanor.

AGENDA TO INCLUDE ATTORNEY GENERAL FINDING, NRS 241.0395

If the Attorney General finds a willful failure to comply with Nevada's open meeting laws, the jurisdiction must include the opinion and findings of the Attorney General's Office on the next posted agenda of the elected or appointed board. Inclusion of the Attorney General's opinion and finding is not considered an admission of guilt.

CRIMINAL AND CIVIL PENALTIES, NRS 241.040

Willful failure to comply with Nevada's open meeting laws is considered a criminal act, and an individual elected or appointed official is subject to criminal and civil penalties as outlined in NRS Chapter 241 Section 040, including:

(1) Any member of a public body, participating with knowledge of a violation, is guilty of a misdemeanor.

(2) Wrongful exclusion of persons from a public meeting, open or closed, is a misdemeanor.

(3) Any member attending a public meeting, open or closed, in violation of Nevada's open meeting laws is not automatically considered an accomplice to other members who willfully violated the sections of this statute.

(4) Any member of a public body, participating with willful knowledge of a violation of this statute, is subject to a civil penalty of $500.

SUMMARY

Nevada's open meeting law, outlined in NRS Chapter 241, exists to ensure that the public's business is conducted in a transparent manner in which the public accountability and responsibility is maintained. The public meeting, be it a city council meeting, a county commissioners meeting, or a meeting of a local parks and recreation advisory board, is the institutional mechanism through which the public seeks to find agreement on the various public aspects of life. As members of the public, we often make decisions upon how public resources are allocated, which programs and projects are funded, what laws we should enact, and what we value as a society at our public meetings. According to Cooper (2012), "Agreement on these public aspects of life must be accomplished through broad participation in the governance debate if the institutions created are to have legitimacy through intersubjective reliability." Nevada's open meeting laws, outlined in NRS Chapter 241, exist to provide this legitimacy and reliability.

REFERENCES

Cooper, T. L. 2012. *The Responsible Administrator: An Approach to Ethics for the Administrative Role*. Sixth Edition. San Francisco, CA: John Wiley & Sons, Inc.

State of Nevada. 2013. *Nevada Revised Statutes Chapter 241 – Meetings of State and Local Agencies*. http://www.leg.state.nv.us/NRS/NRS-241.html#NRS241Sec030