

STATEMENT FROM THE CITY OF WELLS

The City of Wells desires to address and clarify recent statements regarding the Nevada Open Meeting Law and the rules governing communications between the City Council and City officials and the City Attorney.

The City of Wells is committed to open government and to compliance with Nevada's Open Meeting Law, and it is important to understand what the Open Meeting Law does and does not actually require.

Nevada's Open Meeting Law applies to a gathering of a quorum of a public body that deliberates toward a decision or takes action on a matter within that body's authority. NRS 241.015(4). The City Attorney is a public official, but not a member of the public body, and does not participate in deliberation, nor does the City Attorney take action on City Council matters.

Legal advice that is given by an attorney to a client is generally protected by attorney-client privilege, and is therefore protected confidential communication not subject to public view or disclosure. Attorney-client privilege exists to encourage clients to speak fully and honestly with their lawyers so lawyers can give informed legal advice and provide effective representation without fear that those confidential communications will be compelled or disclosed.

For that reason, a City official may consult with the City Attorney to obtain legal advice on City matters at any time, including during a public meeting. Nevada law protects confidential communications between a client or its representative and the client's lawyer that are made to facilitate the providing of professional legal services. NRS 49.095; NRS 49.055. The City will not disclose – and is not required to disclose -- the substance of an attorney-client privileged communication merely because that advice was sought or received during a public meeting.

For example, a consultation between the Mayor and the City Attorney to receive legal advice, outside of the earshot of the remaining members of the Council or the public and with the expectation that the communication is privileged, is a confidential attorney-client communication.

A confidential communication between the City Attorney and a City Official, whether at a City Council meeting or at any other time, does not constitute a closed City Council meeting, nor does it require an agendaized closed session or separate agenda notice. In fact, an attorney-client communication, whether between the attorney and a single Council member or the whole Council, is not a meeting subject to the Open Meeting Law at all. Under the Nevada Open Meeting Law, "a meeting does not include a gathering or series of gatherings of members of a public body at which a quorum is actually or collectively present, whether in person, by use of a remote technology system or by means of electronic communication, to receive legal advice from the attorney employed or retained by the public body regarding a matter over which the public body has supervision, control, jurisdiction or advisory power and to deliberate on the matter, provided such deliberation is limited to the legal advice." NRS 241.015(4)(c). Because of

this exception, a closed agenda meeting is not required if the purpose of the meeting is for the Council to receive legal advice from the City Attorney.

The City will continue to protect the public's right to observe Council deliberations and actions under the Open Meeting Law while also preserving the City's right to obtain confidential legal advice at any time in accordance with the attorney-client privilege and Open Meeting Law.

This statement is intended to clarify the applicable legal standards. It does not disclose, waive, or characterize the substance of any attorney-client communication.