



CITY OF ELKO
CITY MANAGER
1751 COLLEGE AVENUE
ELKO, NEVADA 89801
(775) 777-7110/FAX (775) 777-7119

The Elko City Council will meet in regular session on Tuesday, November 12, 2019

Elko City Hall, 1751 College Avenue, Elko, NV 89801, at 4:00 P.M., P.S.T.

Attached with this notice is the agenda for said meeting of the Council.

In accordance with NRS 241.020, the public notice and agenda was posted on the City of Elko

Website, <http://www.elkocitynv.gov/>, the State of Nevada's Public Notice Website,

<https://notice.nv.gov>, and in the following locations:

ELKO CITY HALL

1751 College Avenue, Elko, NV 89801

Date: Time Posted: Wednesday, November 6, 2019 at 8:30 a.m.

ELKO COUNTY COURTHOUSE

571 Idaho Street, Elko, NV 89801

Date/Time Posted: Wednesday, November 6, 2019 at 8:40 a.m.

ELKO POLICE DEPARTMENT

1448 Silver, Elko NV 89801

Date/Time Posted: Wednesday, November 6, 2019 at 8:50 a.m.

ELKO COUNTY LIBRARY

720 Court Street, Elko, NV 89801

Date/Time Posted: Wednesday, November 6, 2019 at 9:00 a.m.

Posted by:

Name

Title

Signature

Diann Byington
Recording Secretary
Diann M. Byington

The public may contact Curtis Calder by phone at (775)777-7110 or email at ccalder@elkocitynv.gov to request supporting material for the meeting described herein. The agenda and supporting material is available at Elko City Hall, 1751 College Avenue, Elko, NV or on the City website at <http://www.elkocity.com>

Dated this 6th day of November, 2019

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 Elko City Council, 1751 College Avenue, Elko, Nevada 89801, or by calling (775) 777-7110.

Curtis Calder
Curtis Calder, City Manager
Elko, Nevada

CITY OF ELKO
CITY COUNCIL AGENDA
REGULAR MEETING
4:00 P.M., P.S.T., TUESDAY, NOVEMBER 12, 2019
ELKO CITY HALL, 1751 COLLEGE AVENUE, ELKO, NEVADA

CALL TO ORDER

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

ROLL CALL

PLEDGE OF ALLEGIANCE

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**

APPROVAL OF MINUTES:	September 27, 2019	Special Session
	October 22, 2019	Regular Session

I. PRESENTATIONS

- A. Presentation by Scott A. Gavorsky, U.S. Census Bureau, regarding the upcoming 2020 Census, and matters related thereto. **INFORMATION ITEM ONLY – NON ACTION ITEM**
- B. Reading of a proclamation by the Mayor declaring the week of November 16 – 22, 2019 as “Nevada Flood Awareness Week,” and matters related thereto. **INFORMATION ITEM ONLY – NON ACTION ITEM**

II. PERSONNEL

- A. Employee Introductions:
 - 1.) Ms. Stefanie Pattani, Part-Time HR Technician, Human Resources Department
 - 2.) Ms. Jan Baum, Financial Services Director, Finance Department
 - 3.) Mr. Anfernee Cota, Parks Maintenance Technician I, Parks Department
 - 4.) Mr. Jason Pepper, Lieutenant, Police Department
 - 5.) Mr. Bryan Drake, Detective Sergeant, Police Department

III. APPROPRIATIONS

- A. Review and possible approval of Warrants, and matters related thereto. **FOR POSSIBLE ACTION**
- B. Review and possible approval of Print n' Copy Warrants, and matters related thereto. **FOR POSSIBLE ACTION**
- C. Review, consideration, and possible authorization for Staff to solicit bids for the RBC Removal Project, and matters related thereto. **FOR POSSIBLE ACTION**

The RBC's are an outdated treatment process that has been taken out of service. The SDM basins replaced the RBC's over five years ago. The RBC's take up valuable land space in the center of the plant and should be removed. Engineering has been completed, and we are ready to go to bid. Tentative schedule is to advertise on November 11th, go out to bid on November 18th, mandatory pre-bid on November 21st, receive bids December 20th, and award in early January 2020. DJ

- D. Review, consideration, and possible approval for the Elko Police Department to purchase two (2) fully equipped police vehicles, one (1) Ford Utility Interceptor and one (1) Dodge Charger AWD sedan, through the Nevada State Purchasing Program, and matters related thereto. **FOR POSSIBLE ACTION**

As a political subdivision of the State of Nevada, the City of Elko is able to utilize the State of Nevada Purchasing Division for fleet acquisition and related equipment. The estimated purchase costs include the related equipment as follows: The cost of the Ford Interceptor is estimated to be sixty-seven thousand, two dollars and six cents (\$67,002.06) and the Dodge Charger AWD sedan is estimated to be fifty-four thousand, one hundred and twenty-four dollars and sixty-four cents (\$54,124.64). Both vehicles will be deployed as patrol vehicles in the Operations Division, Patrol Unit. This acquisition was included in the Fiscal Year 2019/20 Budget.

The Elko Police Department was allotted \$200,000.00 in the 2019/20 budget for three (3) vehicles. One Chevrolet Tahoe was purchased in August of 2019. The cost of the Tahoe was seventy-three thousand, eight hundred and ninety-two dollars and forty-one cents (\$73,892.41). TT

IV. UNFINISHED BUSINESS

- A. Status update on the Public Nuisance complaint regarding 403 Pine Street, and matters related thereto. **INFORMATION ITEM ONLY – NON ACTION ITEM**

Based upon City Council action on October 22, 2019, Staff is providing a status update with regard to 403 Pine Street. CC

V. NEW BUSINESS

- A. Review, consideration, and possible approval for the Fire Department to apply for an Assistance to Firefighters Grant (AFG) through the Department of Homeland Security to replace an Aerial Fire Truck Apparatus, and matters related thereto. **FOR POSSIBLE ACTION**

The City of Elko Fire Department Fire Department would like to apply for the 2019 FEMA Regional Assistance to Firefighters Grant. The application would apply for a new Aerial Ladder truck. The current Ladder 2 is 30 years old which is the National Fire Protection Association (NFPA) recommended maximum age for Aerial Apparatus to be in front line use. This apparatus will increase firefighter safety and health, emergency response and scene capabilities, provide greater storage and personnel carrying capacity and reduce rising maintenance cost. The AFG Program has listed this item as high priority for grant funding this year. Total amount of the grant would be around 957,242.00 with a 10% match by the City. JS

- B. Review, consideration, and possible approval for the Fire Department to apply for an Assistance to Firefighters Grant (AFG) through the Department of Homeland Security to Portable and Mobile radio communication devices, and matters related thereto. **FOR POSSIBLE ACTION**

The City of Elko Fire Department would like to apply for the 2019 FEMA Assistance to Firefighters Grant. The application would apply for 16 mobile radios and accessories and 50 portable radios and accessories utilizing Government pricing. These radios will enhance firefighter safety, emergency communications and interoperability with Elko PD, Elko Ambulance and our mutual aid partners. The AFG Program has listed this item as high priority for grant funding this year. Total amount of the grant would be around 353,207.53 with a 10% match by the City. JS

- C. Consideration and possible action to cancel the December 24, 2019 Elko City Council meeting, and matters related thereto. **FOR POSSIBLE ACTION**

VI. RESOLUTIONS AND ORDINANCES

- A. First reading of Ordinance No. 847, an ordinance amending Title 2, Chapter 7 of the Elko City Code entitled "Energy Conservation Code" by adding Section R402.4.1.2 of the 2018 International Building Code entitled "Testing," and matters related thereto. **FOR POSSIBLE ACTION**

In June 2019, the City passed Ordinance No. 839 adopting the 2018 International Building Code with corresponding amendments. The City worked with the consulting firm WC 3 on this. On November 5, Mr. Chris Kimball from WC 3 informed the City that adoption of Section R.402.4.1.2 of the International Building Code of 2018, entitled "Testing," is needed for the health and safety of the public. This section provides that a building or dwelling unit must be tested and verified as having an air leakage rate not in excess of five air changes per hour. Accordingly,

Chapter 7 of the Energy Conservation Code regarding leakage testing should be amended incorporate Section R.402.4.1.2 of the International Building Code of 2018. Mr. Kimball's letter to the City of Elko is attached. JF

VII. 5:30 P.M. PUBLIC HEARINGS

- A. Review and consideration of submitted data and/or arguments and determination as to whether the proposed Ordinance 846 "AN ORDINANCE AMENDING TITLE 9 CHAPTER ONE SECTION THREE ADDING A DEFINITION OF FIRE PROTECTION SERVICE LINE AND SECTION TWENTY NINE ADDING A FIRE PROTECTION SERVICE FEE," and proposed Resolution 19-18 "A RESOLUTION AMENDING WATER METER RATE FEES," and proposed Resolution 19-19 "A RESOLUTION AMENDING WATER FLAT RATE FEES," and proposed Resolution 19-20 "A RESOLUTION SETTING FIRE PROTECTION SERVICE LINE FEES" will impose a direct and significant burden upon a business or directly restrict the formation, operation, or expansion of a business, and matters related thereto. **FOR POSSIBLE ACTION**

Pursuant to NRS 237.080 the City of Elko notified owners and officers of businesses which may be affected by the ordinance and resolutions to determine if they will impose a direct and significant burden upon a business or directly restrict the formation, operation, or expansion of a business. Staff has prepared a Business Impact Statement for consideration. KW

VIII. REPORTS

- A. Mayor and City Council
- B. City Manager – Christmas Party: December 13, 2019
- C. Assistant City Manager
- D. Utilities Director
- E. Public Works
- F. Airport Manager
- G. City Attorney
- H. Fire Chief
- I. Police Chief
- J. City Clerk
- K. City Planner
- L. Development Manager
- M. Financial Services Director
- N. Parks and Recreation Director – Winter shutdown; SnoBowl Update
- O. Civil Engineer – Sports Complex Update
- P. Building Official

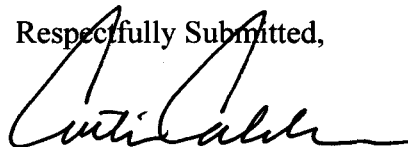
COMMENTS BY THE GENERAL PUBLIC

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NOTE: The Mayor, Mayor Pro Tempore, or other Presiding Officer of the City Council reserves the right to change the order of the agenda, and if the agenda has not been completed, to recess the meeting and continue on another specified date and time. Additionally, the City Council 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,

A handwritten signature in black ink, appearing to read "Curtis Calder", written in a cursive style.

Curtis Calder
City Manager

City of Elko)
County of Elko)
State of Nevada)

SS September 27, 2019

The City Council of the City of Elko, State of Nevada met for a special meeting beginning at 2:00 p.m., Tuesday, September 27, 2019.

This meeting was called to order by Mayor Reece Keener.

CALL TO ORDER

ROLL CALL

Mayor Present: Mayor Reece Keener

Council Present: Councilwoman Mandy Simons
 Councilman Robert Schmidtlein
 Councilman Chip Stone
 Councilman Bill Hance

City Staff Present: Curtis Calder, City Manager
 Scott Wilkinson, Assistant City Manager
 Kelly Wooldridge, City Clerk
 Bob Thibault, Civil Engineer
 Ben Reed Jr., Police Chief
 Ty Trouten, Police Captain
 Jacob Eisinger, Police Detective
 Tom Coyle, Deputy City Attorney
 Dave Stanton, City Attorney
 Diann Byington, Recording Secretary

PLEDGE OF ALLEGIANCE

COMMENTS BY THE GENERAL PUBLIC

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There were no public comments.

The following agenda item contains detailed testimony regarding an appeal to Council. Attention was given to include as much discussion on this item as possible, but the wording is not verbatim.

I. PETITIONS, APPEALS, AND COMMUNICATIONS

- A. Consideration of an appeal from Nualla LLC d/b/a Cabo and its members and principals, including but not limited to Acela Ceja and Carlos Nunez, of the City of Elko's notice of "Non-Renewal of Liquor License," which liquor license expires on September 30, 2019, and matters related thereto. **FOR POSSIBLE ACTION**

Nualla LLC d/b/a Cabo is currently on probation, resulting from prior Liquor Code violation(s). On August 29, 2019, the City of Elko provided a "Notice of Non-Renewal of Liquor License" to the members and principals of Nualla LLC d/b/a Cabo based on the grounds set forth therein. A copy of the notice has been included in the agenda packet for review. CC

Mayor Keener noted the appellant, Acela Ceja, was present. He asked her if she had legal counsel representing her.

Acela Ceja answered she did not.

Mayor Keener said she will be representing herself. He asked City Attorney Tom Coyle to begin the hearing.

Tom Coyle, Deputy City Attorney, said there were a few housekeeping items they needed to go through as they begin the hearing. Initially, the City will name three witnesses for the appeal hearing, Detective Jake Eisinger, City Clerk, Kelly Wooldridge and Police Chief, Ben Reed. Before the hearing could be held, we are required under NRS Chapter 241, to prove up, especially the 241 notices, proof of service. He handed that document to the Clerk at that time (Exhibit "A"). That document does show that the non-renewal notice was served on the licensee on August 30th of this year.

Mayor Keener asked Attorney Coyle to pull the microphone closer to him so that those listening on the internet can hear better.

Attorney Coyle continued the notice of non-renewal was served personally on August 30th of this year. The 241 notices that permit the City to discuss the character, competence, misconduct, etc., the person, was served on Acela Ceja on September 17, 2019, Carlos Nunez on September 17, 2019, and Danny Hoang, he's not one of the named licensees in this particular matter but his conduct would certainly be a potential for some testimony today so they served him as well. Prior to starting with the appellant's testimony, he asked Mr. Mayor that he would request from the appellant to name her perspective witnesses. He would put Mr. Mayor as the presiding officer of the appeal hearing on notice that the City intends to object to any disclosure of the confidential source that provided video evidence in this matter and to any discussions of the character, competence, or misconduct of individuals that were not served the 241 notices. Then finally, he was handing out at that time, which he had previously given to the appellant, an exhibit packet for each Councilmember (Exhibit "B"), which during the testimony they anticipate there will be many references to the documents contained therein, and thought it would be appropriate for each Councilmember to have that so they can follow along. At this point it is an appeal hearing and it's appropriate to hear from the appellant. He asked that she be sworn in as a witness and to provide her testimony from the seat designated for witnesses so she could be recorded.

Mayor Keener asked Ms. Ceja to sit at the furthest seat and Kelly Wooldridge swore her in.

Mayor Keener asked if people watching online could see the seat that Ms. Ceja was sitting in. If not they may want her to switch places.

Diann Byington, Recording Secretary, indicated that the camera did see Ms. Ceja.

Mayor Keener asked Ms. Ceja to state her name and address for the record.

Acela Ceja answered 449 Railroad Street.

Mayor Keener said, for the record, she will be representing herself.

Ms. Ceja answered she would.

Mayor Keener asked if she had any witnesses here with her that she would be calling.

Ms. Ceja answered she did not, no.

Mayor Keener said he knew in a hearing like this, it's really kind of an extraordinary circumstance to have a hearing to begin with of this nature, and it's even more extraordinary that to not have legal counsel to help represent you. Do you understand the charges that you are facing with respect to your business license and have you had a chance to review what the City Attorney has provided in terms of the evidence?

Ms. Ceja answered she did. Unfortunately it was just too close of a timeframe to get anything with a legal counsel.

Mayor Keener asked if she had a statement to make as it pertains to her appeal.

Ms. Ceja said that as of May he (Carlos Nunez) wasn't operating. He was supposed to buy her out and it wasn't happening so, in turn she bought him out. She does have a buyer but it has to be in a working process. He doesn't want it stopped if he is going to purchase it. The only reason Carlos was there was because he was working off a debt that he owes to her, so he was just playing for free. They had been separated for quite a while and he's been unable to pay on anything so that's the way he was working off some of the debt that he has on her. He is no longer, she sent a copy of the state business license where he's... He wouldn't sign off of it until he was completely paid off. Now that he's paid off, he signed off of it and he is no longer in it. In fact, he is not even allowed in the building. She wanted Council to hear her out and reconsider not giving the business license. This was his actions and not hers. She does not condone them. Until she saw the video, she did not believe it was true. She had questions of the identity but the video was clear. She could not deny that part. This is, essentially, the only way... She doesn't have another job other than this so this is the only way she provides for her children.

Mayor Keener thanked her for that. He asked if Council had some questions for the appellant.

Attorney Coyle had some questions. In Exhibit 1 was the appeal document. In that she admits that she was still on probation from the previous liquor license disciplinary matter, correct?

Ms. Ceja answered correct.

Attorney Coyle said, also in that exhibit, you admit that the actions asserted against Nuala are a violation of that probation agreement, correct?

Ms. Ceja answered correct.

Attorney Coyle asked if she would agree pursuant to the terms of the agreement that the fact of your prior discipline can be considered in a later disciplinary action for a period of five years.

Ms. Ceja answered she wasn't aware...

Attorney Coyle said if you look at exhibit 2 for the disciplinary agreement, page 7 paragraph 10, it describes the violation admitted here may be considered in determining the appropriate level of discipline in any subsequent business license or liquor license disciplinary action against the business or the license, or acts or omissions which occurred within 60 months of the Council approval of the agreement. Do you see that on page 9 of the packet?

Ms. Ceja answered yes she saw it. She saw some of the pictures and got sidetracked.

Attorney Coyle said the agreement was signed by Ms. Ceja, correct?

Ms. Ceja answered correct.

Attorney Coyle added, and also by Carlos?

Ms. Ceja answered correct.

Attorney Coyle said at that time he was a managing member of Nuala LLC?

Ms. Ceja answered on paper, yes.

Attorney Coyle said when you look at the factual basis set forth in the notice of non-renewal, which begins on page 11, exhibit number 3, paragraph A, Factual Basis, do you contest any of the factual basis that is set forth there?

Ms. Ceja asked number 11?

Attorney Coyle said yes, page 12, paragraph A, the Factual Basis sent out on the notice of non-renewal.

Ms. Ceja answered she does but she wants council to consider that these were not her actions.

Mr. Coyle said not hers individually?

Ms. Ceja said he is no longer anywhere in the business.

Attorney Coyle asked if she admits that she viewed the video evidence that the City references in that paragraph.

Ms. Ceja answered yes.

Attorney Coyle added and that it shows that Carlos Nunez engaged in possessing and using cocaine in another liquor license establishment in the City of Elko?

Ms. Ceja said it looked like cocaine. She wouldn't know.

Attorney Coyle said Nuala LLC is the owner of the business entity that runs the Cabo bar?

Ms. Ceja answered yes.

Attorney Coyle said, Cabo is a fictitious name for Nuala?

Ms. Ceja answered yes.

Attorney Coyle said at present, the members of Nuala are just herself?

Ms. Ceja answered yes.

Attorney Coyle asked have there been changes made to the members in the past one year.

Ms. Ceja answered Carlos was out. He's never been in Cabo but they were working on getting him out of Nuala since about late April. They currently have a new accountant, the new manager going on too.

Attorney Coyle said the document she attached to her appeal document shows she is the only manager.

Ms. Ceja answered correct.

Attorney Coyle asked if that is the only change that has happened.

Ms. Ceja answered yes, just changed their personnel altogether.

Attorney Coyle said that is dated September 6, 2019 if you look at page 4.

Ms. Ceja answered correct.

Attorney Coyle asked is that when it actually became official.

Ms. Ceja answered yes.

Attorney Coyle said that is approximately two weeks after she received the notice of non-renewal, correct?

Ms. Ceja answered yes. She went in to talk to Debbie (Henseler, Business License Technician) and that was when she received a copy. She was not aware of Carlos being served with a document until then.

Attorney Coyle asked, other than that attachment to the appeal document that she filed, she had given the City any notice of any changes with Nuala prior to that time.

Ms. Ceja answered she didn't. She was unaware that she needed to.

Attorney Coyle said she says she bought out Carlos.

Ms. Ceja answered correct.

Attorney Coyle asked what percentage of an owner was he when she bought him out?

Ms. Ceja answered he was 49(%).

Attorney Coyle said, in the appeal document she states that Mr. Nunez is removed from Nuala LLC by reason of that document that she filed.

Ms. Ceja answered yes.

Attorney Coyle asked what precisely does that mean to her if he has been removed.

Ms. Ceja answered that he has no place, no action, no reason to be in the business. He has zero to do, whatsoever, in running there, being there.

Attorney Coyle asked if he has an ownership interest.

Ms. Ceja answered no.

Attorney Coyle asked if she has fully paid him off.

Ms. Ceja answered he has been paid off, yes.

Attorney Coyle said if you look at page 78, which would be found in exhibit no. 10 that shows another filing with the Secretary of State that shows he was a manager or managing member at that time, correct?

Ms. Ceja answered correct. This was when she was still working on the paperwork.

Attorney Coyle said that continued in force and effect until you filed this new document on September 16, 2019.

Ms. Ceja said if you also could take into consideration that the Secretary of State did website changes at the end of July to early August so they are 6-8 weeks behind. It took about 7 weeks for this document to occur because she had to change the business lawyer as well.

Attorney Coyle asked when was it submitted to the Secretary of State.

Ms. Ceja answered she would have to go with her lawyer. She is dealing with Gerber now and not Katie McConnell. She is no longer the business lawyer. But they had to submit the registered agent first before they could do anything about it.

Attorney Coyle asked if there was a buyout agreement that she has with Carlos in writing.

Ms. Ceja answered no, not with her. She didn't bring it.

Attorney Coyle asked how about Nuala. Is there some sort of an agreement with Carlos on that in writing?

Ms. Ceja answered there is, in writing, but she didn't have it with her. But she could provide.

Attorney Coyle asked if there were any entity formalities that were entered, like resolutions or minutes of meetings where he was bought out.

Ms. Ceja said it's all in the folder but she didn't bring it. He has... We had to go through the proper procedure.

Attorney Coyle asked if she knew when the effective date of the buyout agreement was.

Ms. Ceja answered the date that they changed the... The date they removed it which would...

Attorney Coyle said the 9/16 date.

Ms. Ceja answered the 9/16. He wouldn't sign before then. He had already received payments for it but he wouldn't sign off completely he was 100% bought off.

Attorney Coyle asked while he was listed as a managing member, as they saw on page 78, he had management responsibilities for Cabo, is that correct?

Ms. Ceja answered not since August, no April. He was working as a DJ'ing to pay off the debt. Whatever she was going to pay for a DJ he was paying her. Or she wasn't paying the DJ, if that makes sense.

Attorney Coyle asked if that was reflected in anything in writing.

Ms. Ceja answered yes.

Attorney Coyle asked what that would be.

Ms. Ceja answered she would have to provide a letter and bring it later this afternoon. Just the DJ'ing contract. He was a contracted DJ. And that was all his operations were there.

Attorney Coyle asked prior to him becoming a contract DJ, he had management responsibilities? And the City was never advised of any change of his responsibilities when that occurred, correct?

Ms. Ceja answered no.

Attorney Coyle asked if she would agree he was the primary manager at Cabo from April 25, 2018 until they made that change.

Ms. Ceja answered yes.

Attorney Coyle asked when did he become an owner of the business.

Ms. Ceja answered when they started it in 2016. She believed it was April.

Attorney Coyle asked, in 2016, back when they had the license with her and Tino Ayala.

Ms. Ceja said yes.

Attorney Coyle asked if he had the 49% then.

Ms. Ceja answered no, they shared the 50%.

Attorney Coyle said on page 52, you made a liquor license application, and in Paragraph 6 it says to name all owners, partners, corporate officers, members, etc. He is not on that list on your application, correct?

Ms. Ceja asked if that was for the liquor license.

Attorney Coyle said this is page 52, your liquor license application.

Ms. Ceja answered ya, he wasn't going to be on the liquor license.

Attorney Coyle asked it says name all owners, correct? And members, correct?

Ms. Ceja answered correct.

Attorney Coyle said the same with page 84. This was the next time she applied for a liquor license for Cabo. This time it solely lists her but he was also an owner at that time, correct?

Ms. Ceja answered of the LLC, yes.

Attorney Coyle said the LLC is licensee, correct?

Ms. Ceja answered correct.

Attorney Coyle said since the change where he became a contract DJ, Mr. Nunez, how often was he permitted in the establishment.

Ms. Ceja answered now he is no longer permitted but before it was Thursday, Friday and Saturday.

Attorney Coyle said those were the only days of your operation.

Ms. Ceja indicated yes.

Attorney Coyle said she is saying sometime in April you made that change.

Ms. Ceja answered yes.

Attorney Coyle said and from April until September 16th of this year, he was allowed in as the DJ.

Ms. Ceja answered ya.

Attorney Coyle said when he was allowed on the premises, were you present at all times he was present.

Ms. Ceja answered no.

Attorney Coyle said as the contract DJ, what activities was he permitted to do with regard to the business.

Ms. Ceja answered play music.

Attorney Coyle asked if that was it.

Ms. Ceja answered that's it.

Attorney Coyle asked if she was aware of him performing any other duties?

Ms. Ceja answered no, just every once in a while he would help the girls with the ice machine for beverages but that is what the other guys do as well.

Attorney Coyle said other guys being?

Ms. Ceja answered securities.

Attorney Coyle said that ordinarily just a DJ wouldn't be doing that, correct?

Ms. Ceja answered correct but sometimes when she hires Arturo or anybody else, they will do the same. They will see the girls struggling with something heavy and they will help them out.

Attorney Coyle asked if she was aware of him performing any other activities, such as purchasing alcohol.

Ms. Ceja asked at the establishment?

Attorney Coyle said yes.

Ms. Ceja answered no.

Attorney Coyle asked are you aware that a licensee cannot sell alcohol purchased from other retailers; that they must obtain that from distributors?

Ms. Ceja answered yes.

Attorney Coyle asked if she recalled being involved in the liquor license for Cabo from April 2016 to July 2017.

Ms. Ceja answered yes.

Attorney Coyle said at that point you were listed as 50% owner with another individual.

Ms. Ceja answered yes.

Attorney Coyle asked if she recalled in November 2016, receiving a letter regarding complaints of cleanliness concerning the bar premises.

Ms. Ceja answered yes. It was outside by the garbages and they got that. And also about the cleanliness, they have been, even with the new garbage cans, establishing that lot, they are still having to clean it this weekend before the murals were painted. She has a couple of guys just help power wash the walls and everything for them. They cleaned up the whole alleyway. They have done that a few times.

Attorney Coyle asked if she was aware during that same timeframe, that the liquor license of Cabo was revoked on July 21 of 2017.

Ms. Ceja answered yes.

Attorney Coyle said that was due to failure to pay the license fee, is that correct.

Ms. Ceja answered correct.

Attorney Coyle asked do you recall during that timeframe, with that ownership, that there were late water and sewer payments a total of 12 times.

Ms. Ceja answered yes.

Attorney Coyle said that there were seven shutoff notices to Cabo during that timeframe.

Ms. Ceja answered yes.

Attorney Coyle said and at least one shutoff occurred.

Ms. Ceja answered yes.

Attorney Coyle said regarding the current license situation, where Carlos was this 49% owner, do you remember when you obtained that license.

Ms. Ceja answered yes.

Attorney Coyle asked when was that.

Ms. Ceja said she doesn't remember exact dates but she thought it was May 2018 when they finished doing the remodeling and all that stuff.

Attorney Coyle said since that time, would it be correct to say that you've had one late liquor license payment.

Ms. Ceja answered yes.

Attorney Coyle said and one prior liquor license disciplinary matter that resulted in the probation agreement.

Ms. Ceja answered yes.

Attorney Coyle asked if she recalled that they have had 12 late payments on water bills and sewer bills since July 2018.

Ms. Ceja answered yes.

Attorney Coyle said and the water has been shut off twice during that timeframe.

Ms. Ceja answered yes. It wasn't really supposed to be her responsibility. She was going to be bought out. That was the initial agreement that she was going to be bought out. So she dropped her responsibilities and she also had some medical issues she had to attend. She was hardly in Elko for that.

Attorney Coyle said there were two shutoffs.

Ms. Ceja said yes, there was. With the new accountant they have... They grabbed the computer and all the paperwork and they have the new accountant and he is going to be in charge of mailing out the payments and everything.

Attorney Coyle asked who is the new accountant.

Ms. Ceja said she forgot his name right now.

Attorney Coyle asked when was he hired.

Ms. Ceja answered he was hired 2 or 3 months ago.

Attorney Coyle said since she has been an owner/licensee of Cabo, did she recall how many times she has had meetings with the Chief of Police concerning issues at Cabo.

Ms. Ceja answered yes.

Attorney Coyle asked how many times would you estimate.

Ms. Ceja asked if he meant including when they were doing the liquor license.

Attorney Coyle answered no.

Ms. Ceja answered 2 or 3, then for the liquor license and then special events.

Attorney Coyle asked if she was aware that Cabo has some issues with the State Department of Taxation at this time.

Ms. Ceja answered yes and that is getting resolved as well.

Attorney Coyle said in looking at exhibit 4, which begins on page 14, do you know what is shown in exhibit 4?

Ms. Ceja answered she actually met with the guy last week and they are working with him, or he is working them to resolve this.

Attorney Coyle asked the person that this states?

Ms. Ceja answered yes.

Attorney Coyle asked would it be correct where he, in the September 26, 2019 letter, says there is an outstanding tax balance of \$10,000 plus dollars.

Ms. Ceja answered yes.

Attorney Coyle said and that returns have not been filed for sales tax for the periods ending August 31, 2018, October 31, 2018 and July 31, 2019.

Ms. Ceja answered yes and the agreement is that they are doing it monthly and every month they are doing the monthly payment plus a back payment, and if possible, more than one month at a time.

Attorney Coyle said they have actually filed a lien which is shown on page number 16, is that correct?

Ms. Ceja answered yes.

Attorney Coyle said there is an agreement to make the payments. Was there an agreement to actually file the returns that are missing?

Ms. Ceja answered yes. And when they received the documents back from Carlos and the person that was doing the books for him, it was basically all in a box. They have to do the separation of weeks, months and years. They are in the process and entering it all in because, for whatever reason, the computer they were using crashed and they didn't have any of the information in the computer.

Attorney Coyle said the lien is actually filed against Nuala, is that correct?

Ms. Ceja answered yes.

Attorney Coyle said on the following page, it looks like a sister lien that is filed but it is actually against your name, Acela Ceja.

Ms. Ceja asked where that was.

Attorney Coyle answered page 17. That is a lien against you personally, correct?

Ms. Ceja answered yes.

Attorney Coyle asked have you ever seen Carlos Nunez serve alcohol at Cabo.

Ms. Ceja answered no.

Attorney Coyle asked if that was never part of his duties.

Ms. Ceja answered no. They always have two to three bartenders there. And her. She hadn't been there for a long time. When they get their jump on the bar.

Attorney Coyle asked she hasn't been there for a long time.

Ms. Ceja answered no.

Attorney Coyle asked how long would she estimate.

Ms. Ceja answered she was there for a while. It's months at a time. A few weeks ago and then to check on the girls. But she is rarely there. She has to go to Salt Lake a lot for medical issues so she is hardly here in Elko.

Attorney Coyle asked since Carlos Nunez was changed to just a DJ, what is the arrangement for a manager there.

Ms. Ceja said, Danni, one of the bartenders. She is the one performing the managing duties, helping her to order stock and all that stuff. She's the manager.

Attorney Coyle said that was all he had, Mr. Mayor.

Mayor Keener asked if there were any questions, Council, for the appellant.

Councilman Schmidtlein stated he had a couple questions. Acela, what was the specific date that you filed with the Secretary of State on the change. This year you filed with the Secretary of State. You said you had seven weeks to file previous. So what was the specific date you filed?

Ms. Ceja answered that was the September date when they actually did that part. They couldn't change Kati because she was just too busy. She had to change the registered agent and to do that she went to Gerber. That's what they said, that there was going to be a six to eight week delay because they are behind due to their program change. The website change.

Councilman Schmidtlein asked if Carlos was still on the license as a managing member on May 16, 2019.

Ms. Ceja answered he was on there, yes.

Councilwoman Simons asked what license they are talking about. The liquor license or the business license?

Councilman Schmidtlein clarified the business.

Ms. Ceja said the LLC. The Nuala.

Attorney Coyle said just for clarification, that is the liquor license.

Mayor Keener said you do have a copy of the liquor license here in the packet. What page is that on?

Attorney Coyle answered it is on exhibit No. 7, which is page 33.

Councilwoman Simons said because there was a failure to list his name on the liquor license but he was on the business license, correct?

Attorney Coyle stated he didn't believe it was on the business license either. This is Cabo, which is Nuala and Acela.

Councilwoman Simons said the Cabo liquor license.

Attorney Coyle said yes.

Councilman Schmidtlein said he wanted to make himself clear. He had an understanding on one of the items. She mentioned Carlos never served alcohol in the establishment.

Ms. Ceja said no, he wasn't a bartender.

Councilman Schmidtlein said in 2018 or 2019, or both?

Ms. Ceja answered both.

Councilman Stone asked if he ever had a bar card.

Ms. Ceja answered she didn't believe so.

Councilman Stone asked if it would be appropriate for him to ask who the buyer is that is looking to buying the establishment, who would be a future owner.

Councilman Schmidtlein said it would be irrelevant at this time.

Councilwoman Simons asked what document is he on for this business. Ms. Ceja is on all the documents. Which documents is listed on for this business?

Ms. Ceja answered the LLC.

Councilwoman Simons repeated that he is listed on the LLC.

Ms. Ceja said no, not anymore but he was.

Councilwoman Simons said he has never been on the Cabo business license or liquor license.

Ms. Ceja said no.

Attorney Coyle said the business license application is found on page 73. The business license is found on page 81 if you want to review them.

Councilwoman Simons noted it says name all owners, partners but his name isn't on there. That was her question.

Councilman Schmidtlein said but he was a partner.

Councilwoman Simons restated that he was a partner in 2018.

Councilman Schmidtlein said and 2019 if he understood that correctly.

Councilman Hance had no questions at that time.

Mayor Keener said if there were no further questions for the appellant then they would move on with the City's witnesses, is that correct?

Attorney Coyle answered yes. He called Detective Jake Eisinger. Kelly Wooldridge swore him in.

Mayor Keener asked him to state his name and address of the Police Department for the record.

Mr. Eisinger stated Jacob Eisinger, 1448 Silver Street.

Attorney Coyle asked what is his occupation.

Mr. Eisinger answered he is a Police Detective for the City of Elko Police Department.

Attorney Coyle asked how long have you been so employed?

Mr. Eisinger answered since February 2012.

Attorney Coyle asked are you familiar with an individual named Carlos Nunez?

Mr. Eisinger answered yes he was.

Attorney Coyle asked is this person associated with a liquor license in the City of Elko.

Mr. Eisinger answered yes he is.

Attorney Coyle asked what establishment was that.

Mr. Eisinger answered that's the Cabo bar.

Attorney Coyle said directing your attention to May 16th of this year, did you initiate and investigation involving that individual?

Mr. Eisinger answered yes he did.

Attorney Coyle asked where was the location of the investigation.

Mr. Eisinger answered it originated out of Cowboys Bar.

Attorney Coyle asked if he went to Cowboys bar.

Mr. Eisinger answered yes he did.

Attorney Coyle asked what was observed there.

Mr. Eisinger answered a one dollar bill. Inside the one dollar bill was cocaine.

Attorney Coyle asked where was that one dollar bill found.

Mr. Eisinger answered it was located on a bar table inside the bar.

Attorney Coyle asked as far as saying that there was cocaine present, how is that confirmed.

Mr. Eisinger answered he used a presumptive narcotics identification kit to test the substance. And the presumptive tested positive for cocaine.

Attorney Coyle asked how is cocaine categorized in the Nevada Law.

Mr. Eisinger answered it is a schedule one controlled substance, meaning that it has no medical use and is highly addictive.

Attorney Coyle asked how is possession and use of cocaine treated in Nevada Law.

Mr. Eisinger answered it is a felony crime in the State of Nevada.

Attorney Coyle asked at some point did you observe video of how that substance came to be at that location.

Mr. Eisinger answered yes he did.

Attorney Coyle asked can you describe what you observed in the video.

Mr. Eisinger answered based on the appearance of the video, it appears that Carlos and another gentleman, specifically Carlos, produced the cocaine and throughout the contents of the video, consumed the cocaine.

Attorney Coyle asked how many persons were present.

Mr. Eisinger answered four.

Attorney Coyle asked did they all consume.

Mr. Eisinger answered yes.

Attorney Coyle asked did you provide to him any photographs of what you are describing.

Mr. Eisinger answered yes he did.

Attorney Coyle said if you would look at exhibit 5, beginning on page 18, can you describe what is being depicted in that exhibit.

Mr. Eisinger answered in this picture you see Carlos is sitting on a couch inside Cowboys bar. He has an object in his hand. It is believed to be cocaine. It appears that he is handing it off to another individual.

Attorney Coyle asked if that was on page 19.

Mr. Eisinger answered yes. Page 18 in his packet just says exhibit 5.

Attorney Coyle said page 20, what is depicted there.

Mr. Eisinger answered page 20 is Carlos opening the bindle or the package.

Attorney Coyle asked would that be the package containing the cocaine.

Mr. Eisinger answered yes.

Attorney Coyle asked what is depicted on page 21.

Mr. Eisinger answered page 21 would be a picture of Carlos using his pinkie finger to ingest cocaine through his nose.

Attorney Coyle asked what is depicted on page 22.

Mr. Eisinger answered page 22 would be all four of them around a circle. It's kind of hard to tell in this photograph, but Carlos has a one dollar bill in his hand.

Attorney Coyle said page 23.

Mr. Eisinger said page 23 would be the dollar bill found with the cocaine inside of it when he went to Cowboys.

Attorney Coyle asked, these still photographs, are they from the video.

Mr. Eisinger answered yes they are.

Attorney Coyle asked do they accurately depict what was shown in the video.

Mr. Eisinger answered yes.

Attorney Coyle asked did you contact any of the participants in the video to determine if what you were seeing was accurate.

Mr. Eisinger answered yes he did.

Attorney Coyle asked who he contacted.

Mr. Eisinger answered he contacted two of the individuals in there. One of them being Danny Hoang.

Attorney Coyle asked if he was a licensee or one of the licensees of Cowboys.

Mr. Eisinger answered yes he is.

Attorney Coyle asked if he confirmed the date and time in the video.

Mr. Eisinger answered yes he did.

Attorney Coyle asked did he confirm that it was showing cocaine use by him and others.

Mr. Eisinger answered yes he did.

Attorney Coyle asked did you contact one of the females in the video.

Mr. Eisinger answered yes he did.

Mr. Coyle asked did she confirm the same things basically.

Mr. Eisinger answered yes she did.

Attorney Coyle asked did you prepare a written report concerning this investigation and that interview with the female.

Mr. Eisinger answered yes he did.

Attorney Coyle asked is that accurately shown in exhibit 6. If you would look at that and the pages following. It is a redacted version.

Mr. Eisinger answered yes the interview with the female report would be an accurate depiction starting on page 30.

Attorney Coyle asked what about your investigative report. Is that also contained in exhibit 6?

Mr. Eisinger answered yes it is. That is an accurate depiction starting on page 25.

Attorney Coyle asked did you yourself serve Mr. Nunez with the notice of this meeting.

Mr. Eisinger answered he did not himself.

Attorney Coyle asked are you aware of which officer at the Police Department did.

Mr. Eisinger answered yes. Sergeant Locuson and Officer Bogden.

Attorney Coyle asked did he have a discussion with them of the circumstances of that service.

Mr. Eisinger answered yes, he spoke with Sergeant Locuson about the service.

Attorney Coyle asked what is your understanding as to how they were able to serve that individual.

Mr. Eisinger answered they had gone down to Cabo to catch Carlos at the bar. They were told by a bar employee that Carlos had to run to the store to purchase tequila for the bar and that he would be back within about 20-30 minutes. Sergeant Locuson had to go to another call. He came back after he finished that call. He was again told by a bar employee that Carlos had to go to Smiths to purchase more items for the bar and that he would be back relatively quickly. Sergeant Locuson waited an approximate 20 minutes. An individual approached Sergeant Locuson as he was parked in the downtown parking corridor and advised Sergeant Locuson that Carlos was at his place of residence. Sergeant Locuson then drove up to Carlos' place of residence where Carlos answered the door and he was served his notice.

Attorney Coyle said he would pass the witness.

Mayor Keener asked if there were any questions from the board. He asked Ms. Ceja if she had any questions of the witness.

Ms. Ceja indicated she did not have any questions.

Mayor Keener said the witness was excused.

Attorney Coyle called the City Clerk, Kelly Wooldridge.

Kelly Wooldridge took the witness stand and Diann Byington swore her in.

Mayor Keener asked her to state her name and address for the record.

Ms. Wooldridge stated Kelly Wooldridge, 1751 College Avenue.

Attorney Coyle asked what is your occupation.

Ms. Wooldridge answered she is the City Clerk for the City of Elko.

Attorney Coyle asked how long have you been so employed.

Ms. Wooldridge answered since June 2018.

Attorney Coyle asked what duties do you have under the City Code regarding liquor licenses.

Ms. Wooldridge answered for liquor licenses, the City Clerk is responsible to take the application once the liquor license is filed and then turn the application over to the Chief of Police for investigation. The City Clerk also may issue a temporary license for the liquor license application upon approval from the Chief during the investigation period. The City Clerk issues the license after the approval of the City Council. The City Clerk issues quarterly renewal notices and collects the quarterly fees. We also will send out late notices in certified mail if the liquor licenses are late. The City Clerk will issue a non-renewal notice according to code if the applicant licensee or licensed business is in violation of any provision of the code. The City Clerk can also take complaints regarding the business and follow-up regarding possible remedies.

Attorney Coyle asked with regards to the business licenses, you maintain the records and files for both the business license and the liquor license.

Ms. Wooldridge answered correct.

Attorney Coyle asked in this case, did you issue the notice of non-renewal to Nuala LLC, dba Cabo.

Ms. Wooldridge answered yes.

Attorney Coyle asked is a copy of that notice found in exhibit 3 of the exhibit packet.

Ms. Wooldridge answered yes.

Attorney Coyle asked can you describe for the Council what you based your decision on to issue this non-renewal notice.

Ms. Wooldridge answered the non-renewal notice was issued on information that she had received from Chief Reed regarding the violation of the agreement that was dated March 26, 2019. That Ms. Ceja was not actively participating in the management of the bar. That Mr. Nunez had provided a controlled substance on a different liquor licensee holder at the Cowboys bar after hours, and that Mr. Nunez was in possession of a controlled substance on another liquor licensee's premises and that Mr. Nunez was leaving the controlled substance remnants in the liquor license premises. Cabo had a pattern of late liquor license payments, as well as, a pattern of late water and sewer payments with shut off notices.

Attorney Coyle asked the liquor license for Nuala, is that found in exhibit 7.

Ms. Wooldridge answered yes.

Attorney Coyle asked were you aware of the members of Nuala LLC at the time the license was obtained.

Ms. Wooldridge answered yes because part of the business license application includes a printout from the Secretary of State's office for the state business application. It lists the members of the LLC.

Attorney Coyle asked if that was both Carlos Nunez and Acela Ceja.

Ms. Wooldridge answered yes.

Attorney Coyle asked if Nualla LLC dba Cabo operate with other members for a period of time prior to this.

Ms. Wooldridge answered yes they did. They operated from April 14, 2016 to July 21, 2017. On the application that had Florentino Ayala and Acela. They were both 50% members.

Attorney Coyle asked how long were they operating that business.

Ms. Wooldridge answered until July 21, 2017.

Attorney Coyle asked were you present when Ms. Ceja testified today.

Ms. Wooldridge answered yes.

Attorney Coyle said we went through late payments and shut offs and all of those things. Was that accurate testimony?

Ms. Wooldridge answered yes.

Attorney Coyle asked as far as documentation for those late payments and shut offs, etc., is that contained in exhibit 9 of the exhibit packet.

Ms. Wooldridge answered yes.

Attorney Coyle asked with regard to the water and sewer payments from April 2016 to 2017, it's accurate to say they had 12 late payments and 7 shut offs. Is that correct?

Ms. Wooldridge answered yes. She thought they had 7 shut off notices and 2 actual shut offs.

Attorney Coyle asked what happened at the end of July 2017 with regard to that prior ownership and license.

Ms. Wooldridge answered the quarterly liquor licenses are paid quarterly and the quarterly liquor license payment was not made. They were noticed by certified mail that it was late and the payment was not made. The Clerk's Office sent a letter indicating that the liquor license was being revoked on July 21, 2017 for non-payment.

Attorney Coyle asked was it in fact revoked then.

Ms. Wooldridge answered yes it was.

Attorney Coyle asked what happened with regard to Cabo after that revocation.

Ms. Wooldridge answered it was her understanding they were closed during that time and there were a couple of instances that they wanted to re-open but were unable to do so due to the issues with State tax payments.

Attorney Coyle asked how did they get to the current license.

Ms. Wooldridge answered it was her understanding they were able to make the appropriate amount of payments that the State Tax would issue them a tax identification number. They had to go through the application process again where they filled out the business license application and the liquor license application and went through the investigation with the Chief and they were issued a license.

Attorney Coyle asked upon obtaining that license, you heard the testimony of Ms. Ceja concerning additional late payments and shut offs, etc., in her testimony, was that accurate.

Ms. Wooldridge answered yes.

Attorney Coyle asked would it be correct to say from July 2018 to current, there have been 12 late payments and 2 shut offs.

Ms. Wooldridge answered correct.

Attorney Coyle asked if she was aware of any other problems of Cabo in that timeframe with regard to other utilities.

Ms. Wooldridge answered she had been told but did not have any documentation of it, that they are also late on their sanitation payments.

Attorney Coyle asked with regard to their liquor license payments during that same timeframe, have they paid those timely.

Ms. Wooldridge answered she believed there had been one late payment during that time.

Attorney Coyle said backup documentation for... This is for exhibit 10?

Ms. Wooldridge answered yes it is.

Attorney Coyle said he wanted to refer her to exhibit 4 concerning the Department of Taxation. Do you recognize the documents contained in that beginning on page 14.

Ms. Wooldridge answered yes she did.

Attorney Coyle asked what was shown there, if she could advise the Council.

Ms. Wooldridge answered this is a letter we received from Department of Taxation upon our request for documentation. They indicate that the Nevada Department of Taxation shows and outstanding sales tax balance of \$10,735.10. Returns have not been filed for 8/31/18, 10/31/18 through 7/31/19.

Attorney Coyle said he passed the witness.

Mayor Keener asked Ms. Ceja if she had any questions of the witness at all.

Ms. Ceja indicated she did not.

Mayor Keener asked if there was anything from Council. He knows Kelly's department is very busy, that she stretches a thin staff a long way, what kind of impact does it have on her day to day operations and overall efficiency when you have businesses that are deficient in the timely payment of their fees in terms of their water bills and business licenses. What kind of impact does that have on your staff?

Ms. Wooldridge answered it does take up quite a bit of staff time in order to send out the certified letters, which by code we are not required to do but we do send out a certified letter for late payments. Actually, the one time they were late this last time they were late she asked Debbie, our Business License Technician, to call Ms. Ceja. We called her that day at 3:00 letting them know they needed to get it there by 5:00 or we were going to have to shut her down. It takes quite a bit of staff time. Also on the water side, they have to send out late notices and they go out and post notices on the door of the business. Then they have to schedule the water guys to go out and do the actual shut off. If they come in, which usually happens at the last minute, and pay, we have to contact them and say you don't need to do this shut off anymore. It is time consuming for staff.

Mayor Keener asked if you look at just that sector alone, of ours, is that very common for operators to chronically be late with payments.

Ms. Wooldridge answered no, not on all of them.

Mayor Keener asked if anybody else had questions. He thanked Ms. Wooldridge and excused her from the stand.

Attorney Coyle called Chief Reed to the stand. Kelly Wooldridge swore him in.

Mayor Keener asked him to state his name for the record.

Chief Reed answered Ben Reed, the Police Chief for the City of Elko. His address is 1448 Silver Street.

Attorney Coyle asked how long had he been so employed,

Chief Reed answered approximately 6 years.

Attorney Coyle asked what duties do you have under the City Code relative to liquor licensees.

Chief Reed answered lots of them. He wrote a few notes. To summarize, duties will include investigating liquor license applicants. Last time he checked we had about 85 to 90 of those City wide. Provide recommendations to the City Council as to approval or disapproval of formal licenses. Inspect premises. Meet with licensees. Issue warnings. Coordinate with the Clerk over all kinds of disciplinary matters. He issues Special Event Liquor Licenses, roughly 50 or so of those annually for special event liquor. They will investigate, issue and discipline bartender work permits which are intertwined in all of this because those bartenders work for those liquor licensees. He and his staff enforce all various provisions of the Elko Liquor Control Code. That's it in a nutshell.

Attorney Coyle asked under the liquor control code, which is found in Title 4 Chapter 5, what type of license is a liquor license in the city.

Chief Reed answered it is a privileged license.

Attorney Coyle asked in your understanding, what distinguishes a privileged license.

Chief Reed answered examples would be the liquor license, a brothel license. They are a privilege. You are privileged to possess them. In other words, it is not automatic. You just don't come in and fill out a form and walk away with some license. It is a privilege to possess one. They require conditions which are spelled out in the code to even get one and to maintain one. A level of trust from that privilege licensee holder; that they are going to abide by the various codes applicable to those licenses. In this case we are talking about a liquor license specifically. Like you said, Title 4, Chapter 5, in which the liquor licensees are responsible to perform various duties to hold that privilege license.

Attorney Coyle asked are there special concerns for public safety and welfare concerning liquor licensees in the City of Elko.

Chief Reed answered there are a ton of them. They are illuminated in 4-5-2A, specifically about public safety, morals, welfare of the public and protection of the public. His concerns have to do with over service of patrons, public intoxication that leads to fights and disorderly conduct. They have experience with everything going on surrounding liquor licensees in general to include sexual assaults, off premises, on premises, drug use, drug sales, illegal gaming, illegal prostitution, DUIs, minors being in bars, minors consuming alcohol, you name it.

Attorney Coyle asked if he was present during the testimony of Detective Eisinger and City Clerk Wooldridge.

Chief Reed answered yes sir.

Attorney Coyle asked also during the testimony of Ms. Ceja.

Chief Reed answered yes sir.

Attorney Coyle asked are you recommending to the Council that the liquor license of Nuala, dba Cabo, not be renewed.

Chief Reed answered correct.

Attorney Coyle asked with regard to Nuala, when they made the application, the only one listed as an owner was Acela Ceja. Do you recall that?

Chief Reed answered correct. This most recent liquor license application, yes.

Attorney Coyle asked your duties to investigate, would they include investigating anyone with a financial interest in the business.

Chief Reed answered correct unless required per the code as pointed out earlier.

Attorney Coyle said in this case there was no investigation of Carlos Nunez.

Chief Reed answered correct.

Attorney Coyle asked was that because he was not listed as a owner.

Chief Reed answered primarily, yes.

Attorney Coyle asked would that be like a material misrepresentation on the application.

Chief Reed answered yes, it would be. If he could add, the only thing, he found Ms. Ceja's testimony to be accurate except for one area that he would disagree with. That was the involvement of Carlos Nunez in operation of the business. He can say that they have numerous occasions from his staff that have been on scene over the last couple of years, without calling out

exact dates, when they have responded to calls for service or they have been down there for fights, this that and the other, or they have been there proactively on walk-throughs and security checks, and Carlos has been the manager or head of security or on point for running the business many, many times. They could pull up crime reports if they needed to and that would be documented. Patrol Officer responded and contacted Carlos Nunez, etc...

Attorney Coyle asked it was probably accurate in her testimony that she is rarely present.

Chief Reed answered he can't say that himself. He has not heard of her being present many times down there. He knows she has been present at times but if he had to guess that has probably been sporadic. As far as the day to day operations of actually being there during the night when they are busy, he can tell them maybe they are going to get there but he has had meetings with both of them about concerns of operation of the bar over the last couple of years. He is definitely in the mix. He can tell them that he, regarding his involvement, he is a signatory and agreed to the probationary agreement.

Attorney Coyle said March of this year.

Chief Reed said earlier this year in March. It was March 26, 2019 and signed as an individual and as a member or component of Nuala. That document is notarized. He also appeared before the Council. By his recollection, they both did and he appeared at the microphone right over hear at the next Council Meeting the first part of April in which he, in a nutshell, agreed to abide by the probationary terms and that there wouldn't be any future problems. That was earlier this year again.

Attorney Coyle asked prior to the appeal document, were you advised that his role had changed or that his ownership had changed.

Chief Reed answered no.

Attorney Coyle asked going back to that March 26th agreement, do you recall the events leading to that, the prior disciplinary action.

Chief Reed answered they had information at the Police Department that there was a minor, juvenile, he believed he was 16, who went to the bar, was allowed to enter, was allowed to be there for several hours, consumed at least one alcoholic beverage. They investigated that and proved it to be accurate. Eventually brought a formal disciplinary action against the liquor licencees which were both Acela Ceja and Carlos Nunez. He and other representatives of the City met with them prior to bringing them forth in a hearing before the Council and actually worked out an agreement in which they stipulated to that violation of the code and were placed on a probationary status. There were a number of other disciplinary measures they had to meet. Those are in that document which he knows is in the exhibits. The Council ratified that agreement at their next meeting. That avoided a hearing such as this.

Attorney Coyle asked during that investigation of that particular event of the minor entering Cabo, had there ever been discussions with Cabo from law enforcement before that happened.

Chief Reed answered there had been. Those discussions were from him meeting with Acela and her previous business partner when she owned the business, when they were the liquor licensees the first time. And then later he met with her a couple more times in 2017 and 2018 about concerns and operations of the bar and one of those occasions was with Carlos as well.

Attorney Coyle asked going back to the events leading up to the admitted violation in the disciplinary agreement, had law enforcement advised Mr. Nunez he could not have a minor in there. Had he sought permission to get this minor in there?

Chief Reed answered in a roundabout way. He didn't know if it was that exact minor but he contacted the patrol lieutenant just prior to that incident. He believed the incident with the minor happened back in November of 2018. He asked if it would be okay if he had allowed minors into the bar if they were somehow involved in the band or playing music. He was told that was not allowed per the code. He also asked a patrol officer prior to that in the field on a bar check and was directed to the lieutenant. He later asked the lieutenant and got the same answer both times. Afterwards the incident happened and they became aware of it. He asked twice, was told no and then essentially did it anyway. He thought that particularly egregious at the time for the reason Attorney Coyle pointed out but also due to the age of the individual. They weren't talking about something that they unknowingly, accidentally had a 20 something year old who got through with a fake ID and didn't know and you claim innocence. This was a 16 year old boy who was allowed to enter, stay and then consume. That led to the probationary period they had been talking about earlier this year in March.

Attorney Coyle asked with regard to pending criminal matters concerning these appellants, did he have any knowledge of that.

Chief Reed asked the cocaine issue or others?

Attorney Coyle referred him to exhibit 11 and asked him to address what is reflected there.

Chief Reed said he was familiar with this. Exhibit 11 starts off with a copy of a warrant of arrest for Carlos Nunez. It is a bench warrant. This warrant was just recently served, in fact, last week, Thursday night of last week. He was arrested and booked at the jail on this warrant. This warrant is a bench warrant out of Elko Justice Court for failure to appear back in July 2017. The original charges are two counts of NRS 624.750.2A. He did review this. It is misdemeanor violations of Nevada Revised Statute for essentially operating as a building contractor without a license. He was not familiar with the back story on this warrant.

Attorney Coyle said that was fine.

Chief Reed said it was brought by the state. They considered it pretty egregious apparently.

Attorney Coyle asked were you aware of an open prosecution with regard to Ms. Ceja.

Chief Reed answered he was.

Attorney Coyle asked what would be that charge in that particular case.

Chief Reed answered she has a pending criminal case in Elko County for battery. This stemmed from an investigation of an incident last fall 2018. It occurred at Walmart.

Attorney Coyle asked if it had not been adjudicated then.

Chief Reed answered it had not been adjudicated. A warrant was issued through the DA's Office on their case. She was arrested on March 4, 2019 on a misdemeanor charge of battery. They checked on that just a few days ago and it does not have a final disposition and that case is still pending. In fact, the DA asked for additional information. It has not been fully adjudicated.

Councilwoman Simons told Ms. Ceja that she would have a chance to cross examine.

Attorney Coyle asked are you aware of this claim from testimony that Ms. Ceja provided about a separation or something going on between herself and Mr. Nunez.

Chief Reed answered he has heard that from her several times before.

Attorney Coyle asked how long have you heard that.

Chief Reed answered a rough estimate 1 to 2 years. She's told that to him before that they are divorcing or in the process of a divorce, or splitting up or separated or something. Maybe 2 or 3 times she's told that to him when they have talked over the last couple of years. All of their talks have been formal at scheduled meetings regarding issues with the liquor license or her as an applicant.

Attorney Coyle asked how long has he been in charge of enforcing the Elko Liquor Control Code.

Chief Reed answered all six years.

Attorney Coyle asked did you have similar enforcement responsibilities in other jurisdictions before that.

Chief Reed answered similar. A portion of it when he was a Police Captain in another jurisdiction. Ultimately the buck did not stop at his desk, it stopped with the Chief but he was involved in the process.

Attorney Coyle asked considering the totality of the evidence and circumstances, in your opinion, does Nuala LLC or the appellant have the good moral character or satisfactory business responsibility required under our Elko Liquor Control Code.

Chief Reed answered no.

Attorney Coyle asked is there a lack of fitness to be a liquor licensee.

Chief Reed answered there is.

Attorney Coyle asked would there be grounds for discipline for late payments and other violations of the City Code.

Chief Reed answered there would be, yes.

Attorney Coyle asked would there be grounds to deny a license if they were applying for one for lack of business responsibility or a likelihood to lead to further violations of the code.

Chief Reed answered yes.

Attorney Coyle asked also for insufficient good moral conduct and satisfactory business responsibility.

Chief Reed answered yes. In fact, he thought they demonstrated here today... Each and every one of these things in itself is sufficient. We have a large variety and numerous instances in every direction here. From our standpoint, and just speaking freely, to remind the Council, one of the things he does in particular and have done since he became the Chief, is when new applicants for liquor licenses come in, and in particularly when they are applying for a liquor license for something that he would describe as difficult or sometimes hazardous, such as a bar, he meets with them, all of them. He hands them a copy of the liquor control code. He points out common ways in which they can get sideways of the code. He tries to give them some guidance on how to comply and what we expect at the Police Department. He thinks it's a worthy conversation. He thinks it's a two-way street. He points out they can assist them when they are doing their security checks if they have problems in the bars as well. He does that and then when he becomes aware of problems he typically meets with and maybe issue a warning. That was done a couple of times with Acela because she is in a unique circumstance of being the licensee on two go-arounds here with two other different people, with a revocation brought by their non-payment in between. There has been opportunity after opportunity to get this right is this point. By the time we end up asking for assistance from the Council, and at this time the appellant did, its late in the game and we have lots of egregious violations. You can pick one here. We have water issues, public safety, fire safety, cocaine use by one of the licensees. All of this that we are bringing up today, the new stuff was done while the licensees are already on probation from back in March. He doesn't know what else staff could have done to assist them in their successful business practices, but we are way beyond that.

Attorney Coyle said he would pass the witness.

Mayor Keener asked if the board had any questions of Chief Reed. Does the appellant have any questions of Chief Reed?

Ms. Ceja said Carlos' involvement was up until the last week of April. Before then he was involved. On her issue, she was under the assumption that it was thrown out because, she contested it. It was something that wasn't true. She was going to court for that and the lawyer said it was thrown out. The witness never showed and there wasn't enough evidence. The reason she was arrested was the Sheriff's Department was looking for her at the previous address. That's where they took the paperwork and they couldn't find her. When they went to her place of business, she was in Salt Lake for another appointment. When she came back that

was when she went to ask what it was about. They arrested her then and she was released the same day.

Attorney Coyle asked if there were questions for the Chief.

Ms. Ceja answered no.

Chief Reed said, for the Council's benefit, there were other criminal violations on behalf of the business owner with that privilege license. The information they received from the court just last week showed that wasn't completed to adjudication yet. As far as he knows, it is still pending. Our agency did investigate the original case and then it went to warrant.

Mayor Keener said if there is nothing, he dismissed Chief Reed. He asked Ms. Ceja if would like to add anything. Is there was anything she would like to rebut. Would she like to provide some closing arguments?

Ms. Ceja answered no. She thought everything else had been said. She didn't know what else to say after hearing all of this.

Mayor Keener thanked her and asked if Mr. Coyle had anything to add or do they go directly into deliberation.

Attorney Coyle said he had prepared a lengthy recap of all of the evidence and testimony before the Council. One thing beforehand, he offered into evidence for the Council formally, the exhibit packet that should be made part of the record. He thought as the Chief summarized in his testimony, the overall pattern and the serious conduct here. This sort of thing speaks for itself. We have a situation where these licensees are not of satisfactory business responsibility. He asked the appeal be denied and the notice of non-renewal be upheld by the City Clerk.

Mayor Keener said he referenced the exhibit packet, and for the benefit of those that are tuning in online, that contains high resolution photos of the evidence. He just wanted to state that plainly. We have a recommendation by the Elko Police Department of non-renewal, by our City Attorney and also by our Clerk's Office. Given that recommendation, it's a very high hurdle for an applicant to overcome that, however, when you complicate it by the fact that you are already on probation, it becomes almost an impossible thing to overcome. He has heard the evidence. He has been tracking this as a liaison with the Elko Police Department for a number of months and he heard everything he needs to hear to convince him beyond a reasonable doubt that there is no basis to renew this liquor license. He felt like we will be in another special hearing like this again. Look at all the staff time this has consumed; a tremendous amount of staff time. It is a black eye for all of the operators out there of bars and liquor establishments that operate them in responsible ways. He probably said more than enough. Any other board comments?

Councilman Hance said in looking back at the paperwork, the business license should have never have been issued in the first place, back on 4/20/2018 because the business license application was incomplete. It only shows one of the two owners even listed on the business license application. It goes downhill from there if you go through the rest of the paperwork. There is a lot of non-compliance at that point. Then along with all of the other incidents that have happened in there, he agreed that it was too much for a privilege license. It's hard to get a

business license, much less a privilege license, and maintain it legally. There are way too many issues in his opinion.

Councilman Schmidtlein said he wanted to point out a few things, mainly to Acela. Back in March 26, he went ahead and re-copied the transcript of what was said at the meeting. He pulled that up today. He wanted to make sure the licensees understood what they were signing. Do you recall us having that conversation at the last Council Meeting? So he said Acela and Carlos both said they understood what the agreement was. You understood what you were signing, correct?

Ms. Ceja answered correct.

Councilman Schmidtlein said he also went on to mention, and it has been mentioned several times tonight, that a liquor license is a privileged license. And you totally understood that as well. We can take disciplinary action at any given moment. "I hope they don't come back to the Council because, if so, they will revoke the license." Here we are today at another hearing, during a probation period of time. Does that make sense?

**** A motion was made by Councilman Schmidtlein, seconded by Councilman Hance, with some of the findings in reference to a motion: a liquor license is a privilege license and the Elko Liquor Control Code is designated to require high standards to protect the public health, safety, morals and welfare, as the Chief indicated to today. Our code prohibits renewal of a license if there is any violation which impacts the licensed business or operation under 4-5-10G. Code does not permit an automatic renewal. There is not compliance with our Liquor Control Code. Licensees are required to be in a good moral character and satisfactory business responsibility under 4-5-6A and 4-5-13A. The licensees previously admitted violations of the Elko Liquor Control Code and entered into a probationary license status by stipulation as shown in the agreement regarding liquor licenses discipline dated March 26, 2019. Grounds for license discipline under 4-5-13A include late payments, violations of any Liquor Control Code or City Code or any law of the state or the United States regarding the sales, serving or dispensing of liquors, pertaining to the operation of the licensed business. Further grounds include a licensee unsatisfactory fitness and any ground that would be sufficient to deny a license, which includes business responsibilities and whether the issuance is likely to lead to further violations and good moral character and satisfactory business responsibilities. The evidence in testimony concerning past and present license payments, utility payments and shut-off history of the license, the cocaine incident wherein one member of the licensee at the time conducted such activities on a fellow liquor license premises, concerns regarding the composition of Nuala as licensee and the continued involvement of Nunez, and failures in delays in removing him from the licensed entity and activities, the unpaid state taxes, all of this, especially in light of a recent licensee discipline in March of this year, and that this license is currently on probation, are sufficient to show violations of our Liquor Control Code. A likelihood of further violations were the licensee be renewed and a lack of good moral character and/or satisfactory business responsibilities, and violations of the Liquor Control Code. The appeal is therefore denied and the decision of the City Clerk of not to renew the liquor license is upheld. The licensees' authority to conduct liquor license activities will end on Monday, September 30, 2019, at 11:59 p.m. and all liquor on the premises must immediately be removed from the premises at the time to be verified by the Elko Police Department.**

Mayor Keener asked if there was any public comment or would Ms. Ceja care to comment.

Ms. Ceja indicated she had no comment.

The motion passed unanimously. (5-0)

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**

There were no public comments.

There being no further business, Mayor Reece Keener adjourned the meeting.

Mayor Reece Keener

Kelly Wooldridge, City Clerk

City of Elko)
County of Elko)
State of Nevada)

SS October 22, 2019

The City Council of the City of Elko, State of Nevada met for a regular meeting beginning at 4:00 p.m., Tuesday, October 22, 2019.

This meeting was called to order by Mayor Reece Keener.

CALL TO ORDER

ROLL CALL

Mayor Present: Reece Keener

Council Present: Councilwoman Mandy Simons *left at 6:53 p.m.*
 Councilman Robert Schmidtlein
 Councilman Chip Stone
 Councilman Bill Hance

City Staff Present: Curtis Calder, City Manager
 Scott Wilkinson, Assistant City Manager
 Dale Johnson, Utilities Director
 Kelly Wooldridge, City Clerk
 Michele Rambo, Development Manager
 Bob Thibault, Civil Engineer
 Candi Quilici, Accounting Manager
 Dennis Strickland, Public Works Director
 Cathy Laughlin, City Planner
 Jim Foster, Airport Manager
 Jeff Ford, Building Official
 Pete Dondero, Golf Superintendent
 James Wiley, Parks and Recreation Director
 Matt Griego, Fire Chief
 Jack Snyder, Deputy Fire Chief
 John Holmes, Fire Marshal
 Ben Reed Jr., Police Chief
 Ty Trouten, Police Chief
 Tom Coyle, Deputy City Attorney
 Lauren Landa, Deputy City Attorney
 Diann Byington, Recording Secretary

PLEDGE OF ALLEGIANCE

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**

Debra Long, manager of Villas at Riverside, 1525 Opal Drive, said Oct 17, 2019, she found a homeless camp near where her residents live. She has found homeless rummaging through trash receptacles. On September 20, 2019, the police were notified that a homeless couple were living on the property. The police came out and told the couple to leave. The couple failed to comply with the police orders and remained on the property. On October 17, 2019, she called the police again and they moved the couple on but she had to clean up the mess they left behind. She asked that the City do something to help the homeless so they don't rummage through trash anymore.

Mayor Keener asked who was responsible for cleaning up vacated camps.

Scott Wilkinson, Assistant City Manager, said this is the first time he heard of this. If this occurs on City property then we would have to address it. If it happens on private property then the owner would address it. There are no dedicated resources for cleanups like this. Some years ago there was a large clean up along the river that Public Works and Parks both participated in.

Mayor Keener said camping is prohibited within the city limits except for the designated humanitarian camp.

APPROVAL OF MINUTES: October 8, 2019 Regular Session

The minutes were approved by general consent.

I. PRESENTATIONS

- A. Reading of a proclamation by the Mayor in recognition of "Extra Mile Day", and matters related thereto. **INFORMATION ITEM ONLY – NON ACTION**

Mayor Keener read the proclamation.

- B. Presentation of an appreciation plaque to Mr. Les Byrns, and matters related thereto. **INFORMATION ONLY –NON ACTION ITEM**

Mayor Keener presented Les Byrns with a plaque in appreciation for painting the engine and caboose in the Chilton Centennial Park.

Les Byrns said he was working on Bob Thibault's place and they started talking about looking for bids to paint the train. He decided to donate the work. Sherwin Williams donated the paint. It took his crew 160 hours to get it done.

II. PERSONNEL

- A. Employee Introductions:

- 1.) Mr. Dale Johnson, Utilities Director, Water Department

Present and introduced.

- 2.) Ms. Amber Huff, Domestic Violence Coordinator, Police Department
Present and introduced.

Mayor Keener pointed out to everyone that today was Chief Reed's last day in uniform. Today is a bittersweet day for him. He thanked him for all he has done for the community.

- B. Appointment of Captain Ty Trouten as the Police Chief for the City of Elko, effective October 22, 2019, and matters related thereto. **FOR POSSIBLE ACTION**

During the August 13, 2019 Council Meeting, Council selected Captain Ty Trouten for the position of Police Chief and authorized a formal job offer to be made. Staff is pleased to report that the job offer was accepted. SS

Mayor Keener administered the Police Chief Oath of Office to Tyler W. Trouten. His new badge was pinned on his uniform by his wife.

Chief Trouten thanked everyone for their confidence in him. He works hard and will continue to do so. He appreciates everyone that took the time to come here for this. He owes a great debt of gratitude to former Chief Reed and all the mentoring he has done. He thanked his family for being there. He looks forward to his new position.

- C. Review, consideration, and possible approval of an Agreement between the City of Elko, and the Elko Police Officers Protective Nevada Association of Public Safety Officer Communications Workers of America AFL/CIO Local 9110, July 1, 2019 – June 30, 2022, and matters related thereto. **FOR POSSIBLE ACTION**

The City of Elko has concluded negotiations for FY 2019/2020, FY 2020/2021 and FY 2021/2022. A redlined copy of the proposed Collective Bargaining Agreement has been included in the agenda packet for review. SS

Note: This portion of the meeting may be closed pursuant to NRS 288; therefore the Council may move to adjourn the meeting prior to consideration of this item.

Curtis Calder, City Manager, said this will finalize the agreement if approved (Exhibit "A"). There should be a copy of the spreadsheet (Exhibit "B"). He went over the fiscal impact of the new agreement.

Mayor Keener noted this is specifically for the Sergeants position.

Mr. Calder said up until a couple of years ago the Sergeants were included in the main collective bargaining agreement. There were some salary compaction issues. This contract addresses the bulk of the compaction. The biggest change to this particular contract was transitioning from the prior compensation program to a pay for performance compensation program. The union has ratified this agreement and it is just pending Council's approval.

**** A motion was made by Councilman Schmittlein, seconded by Councilman Stone, to approve an agreement between the City of Elko and the Elko Police Officers Protective Nevada Association of Public Safety Officer Communication Workers of America AFL/CIO Local 9110, Sergeants Unit, July 1, 2019 through June 30, 2022.**

The motion passed unanimously. (5-0)

III. APPROPRIATIONS

- A. Review and possible approval of Warrants, and matters related thereto. **FOR POSSIBLE ACTION**

**** A motion was made by Councilwoman Simons, seconded by Councilman Hance, to approve the general warrants.**

The motion passed unanimously. (5-0)

- B. Review and possible approval of Print n' Copy Warrants, and matters related thereto. **FOR POSSIBLE ACTION**

**** A motion was made by Councilwoman Simons, seconded by Councilman Stone, to approve the Print 'N Copy warrants.**

The motion passed. (4-0 Mayor Keener abstained.)

- C. Review, consideration, and possible direction to Staff to solicit bids for the Water and Water Reclamation Facility (WRF) Shop, and matters related thereto. **FOR POSSIBLE ACTION**

Revised final design is nearly complete for this project. The tentative schedule is to go to bid January 7th, leave open for 35 days, open bids February 11th, and bring back to Council for possible award on February 25th. Construction would commence late March. This project will overlap two fiscal years. DJ

Dale Johnson, Utilities Director, explained they are asking to solicit bids for the Water/WRF combined shop, as soon as the plans are received and approved by the building department.

Curtis Calder, City Manager, asked when they expect to see the final drawings.

Mr. Johnson answered they should be back by November 22.

**** A motion was made by Councilman Hance, seconded by Councilman Stone, to direct staff to solicit bids for the Water/WRF facility shop.**

The motion passed unanimously. (5-0)

IV. SUBDIVISIONS

- A. Review, consideration, and possible action to conditionally approve Final Map 9-19, filed by Bailey & Associates, LLC, for the development of a subdivision

entitled Cambridge Estates involving the proposed division of approximately 8.02 acres of property into 35 lots for residential development within the R1 (Single Family Residential) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located at the northeast corner of Celtic Way and El Armuth Drive (APN 001-660-041). The Planning Commission considered this item on October 1, 2019 and took action to forward a recommendation to conditionally approve Final Map 9-19. MR

Michele Rambo, Development Manager, explained this is for a Final Map approval for the Cambridge Estates subdivision. Planning Commission reviewed this and recommended conditional approval.

Mayor Keener called for public comment without a response.

**** A motion was made by Councilman Hance, seconded by Councilwoman Simons, to conditionally approve Final Map 9-19 for the Cambridge Estates subdivision, subject to the conditions as recommended by the Planning Commission.**

The motion passed unanimously. (5-0)

V. NEW BUSINESS

- A. Review, consideration, and possible approval of a Performance/Maintenance Agreement for subdivision improvements associated with the Cambridge Estates subdivision, and matters related thereto. **FOR POSSIBLE ACTION**

Elko City Code 3-3-21 requires the subdivider to have executed and filed an agreement between the subdivider and the City for the required subdivision improvements, including stipulations on the timeframe for when those improvements are to be completed, and to post a performance guarantee in accordance with Elko City Code 3-3-22. As part of the conditions of approval for Final Map 9-19, the Planning Commission recommended that the agreement be approved by the City Council and be entered into by the developer within 30 days of the City Council's approval of the Final Map. MR

Ms. Rambo explained this is the standard Performance/Maintenance agreement. Legal has reviewed and approved it. She recommended approval.

**** A motion was made by Councilwoman Simons, seconded by Councilman Stone, to approve the Performance/Maintenance agreement for subdivision improvements associated with Cambridge Estates subdivision, and require the developer enter into the agreement within 30 days.**

The motion passed unanimously. (5-0)

- B. Review, discussion, and possible action to extend the Golf Professional Agreement between the City of Elko, Nevada and Bradley John Martin DBA

Martin Creek Holdings, LLC, and matters related thereto. **FOR POSSIBLE ACTION**

The current Golf Professional Agreement between the City of Elko and Martin Creek Holdings, LLC expires on December 31, 2019 (unless an extension is agreed upon between the Golf Professional and the Elko City Council).

On September 10, 2019, the City Council tabled an item to request proposals from qualified individuals or firms to provide Golf Professional Services at Ruby View Golf Course. During the September 10, 2019 City Council meeting, Brad Martin indicated he was interested in extending the current Agreement between the parties. Per Article 16, the Agreement may be extended for up to two years past December 31, 2019 if both the Golf Professional and the Elko City Council so agree.

Options for City Council consideration include: 1) extending the Agreement for two (2) years; 2) extending the Agreement for one (1) year; or 3) not extending the Agreement, thereby allowing the original expiration to occur on December 31, 2019. If expiration occurs, Staff recommends requesting proposals from qualified individuals or firms as soon as possible.

A copy of the current Agreement, a Golf Enterprise Fund financial performance summary, and correspondence received by the City Manager has been included in the agenda packet for review. CC

Curtis Calder, City Manager, explained they received a letter from Ms. McConnell last night. It was distributed today and it was included in the agenda packet this morning.

Katie McConnell, Attorney, stated she was present to represent Mr. Brad Martin and Martin Creek Holdings LLC. They would like to address some inconsistencies that were brought up at the last meeting. Mr. Martin would like to extend the contract for two years. There are plenty of people present that would also like to see the contract extended. At the last meeting, there was a lot of discussion about the \$188,000 loss/deficit in the budget. That is a budgeted loss that Council approved in the 2019/2020 fiscal budget. That budgeted loss is not applicable to Mr. Martin in running the golf course. There is nothing in his contract that says he is responsible for the budget of the golf course; that lies with City Council and the City Manager. She requested Council extend the contract as it is.

Mr. Calder said he handed out some budget numbers earlier (Exhibit "C"). It is important when going through Ms. McConnell's letter, she was comparing budgeted numbers vs. actual numbers. He explained the difference and went over his handout. An enterprise fund is supposed to cover its expenses with its revenues. We are going to play it smart and try to keep the expenses close to the revenues. There has been a consistent reduction of play over the years. Any time a contract expires; he looks at them and tries to find a way to make it run better.

Ms. McConnell said Mr. Martin's contract and position has not been part of the budget process at all. She was sure he would be willing to discuss ways to increase revenues at the golf course but he has never been asked. How do we know there is a better golf pro that will come in for less

money? Maybe there is a lack of communication. She hasn't seen anything that says he is a bad golf pro other than an anonymous letter.

Mayor Keener called for public comment.

Will Moschetti, 312 Oak Street, Elko Golf Course Financial Advisory Committee, said he has expressed how ludicrous it would be to operate the golf course as an enterprise fund from the beginning. It was a shock for those that sit on the Financial Advisory Committee to hear there is such a large deficit. They were never told the golf course was struggling that much. Brad isn't everybody's friend but they are lucky to have him. Be glad with what you got.

Dana Pray, 2417 Puccinelli Pkwy, stated her family and some friends started a memorial golf tournament in memory of her son. The tournament is well attended. They bring a lot of young people to the tournament who would like to golf if they were treated respectfully. Arranging the tournament is very difficult. Dealing with Mr. Martin is difficult because he tries to change the dates and times and makes her feel inadequate. Other people have tried to mediate for her without success. As a resident of the City and a businessperson, it is her opinion that there are many business decisions made at the golf course that could be made better. It is difficult for her to stand because she knew she was the only one that was willing to speak up against Mr. Martin.

Chris Johnson, 123 Woods Court, said there are a lot of moving parts of a budget. When they negotiated the contract with Brad, the City made sure they had the cart rentals. With that, the ending fund balance went up every year. Elko has been smart in operating the golf course by utilizing resources such as effluent water from the WRF. You have to really look at the ending fund balance to see how well the golf course is doing. Everyone wants the play to go up at Ruby View. He encouraged Council to extend the contract another 2 years. We need to show our support for the golf course.

Mayor Keener closed public comments and moved to deliberations.

Councilman Schmidtlein said there are a lot of pros and cons that are associated with any facility. He didn't feel there were a lot of losses presented tonight. He was in favor of extending the contract. He felt he is doing a great job for the course and the community. He knows there are some people that are opposed to extending the contract with Mr. Martin.

Mayor Keener said he has heard predominately positive from Brad's supporters. He has also heard some negative. A lot of the people that have issues are afraid to say so publicly. He said, as a season pass holder, he doesn't feel welcomed when he goes into the club house.

Councilman Stone said he sat down and met with Brad after the last meeting. It was interesting just walking on the premises. The contract is a contract just like any other contract. It isn't personal. We are supposed to watch the City's funds and take care of those things. Brad agrees that there needs to be some changes there. There are a lot of things that are going to be pushed aside if we continue with this path. If we extended the contract a year or two, are there some things that Brad would do different to make the fund work out better? You can't please everyone all of the time. It is a challenge. At this time, he would agree to extend the contract but he wasn't sure for how long.

Councilwoman Simons said they weren't elected just to take care of the golfers. She doesn't golf so it is hard for her to look at this as a golfer. At this point, it would be very hard to tell Brad that as of January 1 he doesn't have a job. Brad is now aware of concerns and that some people don't feel welcomed. When we go out to get new proposals, there are some things that could cost less money, but there may be less service associated with the lower cost. The City does need to look at the bigger picture. Both parties need to work on communication and how we can work together better. At this point it will not be wise to just end the contract.

Councilman Hance stated he doesn't see any marketing of the golf course other than the sign across the street at the radio station. He has two sets of golf clubs for sale in his shop for the last two years. That tells him that people are not interested. There is no good advertising outreach in Elko. Something has to be done about the number of golfers that are out there. He agreed there should be an extension of the contract but there needs to be some improvement during the extension.

**** A motion was made by Councilman Schmidlein, seconded by Councilman Stone, to approve Martin Creek Holdings LLC to a two-year extension with his contract.**

After the motion and before the vote, Councilman Schmidlein mentioned that there are some changes that need to be made. He wants to see better communication. There needs to be some advertising. Maybe the ECVA and other community people should be making those advertising efforts. He would like to see some things turned around.

Mayor Keener said he was thinking of some conditions. If they were going to go for a two-year extension, it would be prudent to have a presentation to Council such as a Spring Action Plan and a Fall Summary. He would like to see Brad working with the Parks and Recreation Department to do a user satisfaction survey to make sure things are improving. Also a mid-season meeting between the Council liaison, Councilman Stone, the City Manager, Brad Martin, and the Parks staff.

Councilwoman Simons felt those should all be done independently of the motion. Those are all good ideas. She questioned those conditions being in the motion.

Councilman Schmidlein said he would like to add to the motion, the before and after presentation.

Councilman Hance felt they were getting away from the renewal of the contract. He didn't think they could add things to the agreement without reopening the agreement.

Mr. Calder agreed those conditions should not be part of a motion because you would be modifying the terms of the agreement. We can handle that at the staff level.

The motion passed unanimously. (5-0)

BREAK

VII. 5:30 P.M. PUBLIC HEARINGS

- A. Second reading, public hearing, and possible adoption of Ordinance No. 845, an ordinance amending Title 3, Chapter 4, Section 1 of the Elko City Code entitled "Planning Commission", filed and processed as Zoning Ordinance Amendment No. 2-19, and matters related thereto. **FOR POSSIBLE ACTION**

The Planning Commission held a public hearing on October 1, 2019, and took action to forward a recommendation to Council to adopt an ordinance, which approves the zoning ordinance amendment. City Council held the first reading of Ordinance No. 845 on October 8, 2019 and set the matter for second reading and public hearing. CL

Cathy Laughlin, City Planner, explained this is the provision they are changing so they can act in a public office as well as a planning commissioner. It will bring it in consistency with the NRS and making it so they can be on both. They just cannot be a City Council Member and Planning Commission or a County Commissioner.

Mayor Keener called for public comment without a response.

**** A motion was made by Councilman Hance, seconded by Councilwoman Simons, to conduct second reading, public hearing and adopt Ordinance No. 845.**

The motion passed unanimously. (5-0)

- B. Review, consideration, and possible action to adopt Resolution No. 21-19, a resolution and order vacating a portion of Commercial Street rights-of-way approximately 25.75 feet in width by 2 feet in depth abutting APN 001-343-001, which is located within the City of Elko, Nevada, to the abutting property owner, J. M. Capriola Co. Inc., filed and processed as Vacation No. 4-19 by City of Elko, and matters related thereto. **FOR POSSIBLE ACTION**

Council made a motion to vacate a portion of Commercial Street right-of-way at its regular meeting of September 24, 2019, and directed Staff to continue with the vacation process by referring the matter to the Planning Commission. The Planning Commission considered the vacation at its regular meeting of October 1, 2019, and took action to forward a recommendation to Council to adopt a resolution which conditionally approves Vacation No. 4-19 with findings in support of its recommendation. CL

Mayor Keener noted that all of these vacations are related and there was no general public present for these items.

Ms. Laughlin explained this vacation came about from a survey that was provided to them with a project that was going to be developed on Commercial Street. It required a survey to be submitted to the City and it showed us an encroachment of the front of the building onto City right-of-way. We hired a surveyor to survey the entire block and there is encroachment all the way from 5th Street to 6th Street, minus the very last property on the corner of 6th Street. That

one does not have an encroachment onto the right-of-way. The City of Elko is the applicant for all of these applications. What we are vacating goes to the property owners, and that is why they are individual applications. It is a two-foot section that goes all the way down the block. The last property, which does not require a vacation, she has reached out to them regarding a vacation but she has not heard from them yet.

Councilman Stone asked if it will change their taxes.

Ms. Laughlin answered it will add the property to their square footage of their property. It will be up to the assessor if they will change that or not.

Mayor Keener called for public comment without a response.

**** A motion was made by Councilman Schmidtlein, seconded by Councilman Stone, to adopt Resolution No. 21-19, which contains conditions as recommended by the Planning Commission.**

The motion passed unanimously. (5-0)

- C. Review, consideration, and possible action to adopt Resolution No. 22-19, a resolution and order vacating a portion of Commercial Street rights-of-way approximately 50.51 feet in width by 2 feet in depth abutting APN 001-343-002, which is located within the City of Elko, Nevada, to the abutting property owner, Jacques G. Errecart, Jennifer M. Anderson & Joan Anderson, filed and processed as Vacation No. 5-19 by City of Elko, and matters related thereto. **FOR POSSIBLE ACTION**

Council made a motion to vacate a portion of Commercial Street right-of-way at its regular meeting of September 24, 2019, and directed Staff to continue with the vacation process by referring the matter to the Planning Commission. The Planning Commission considered the vacation at its regular meeting of October 1, 2019, and took action to forward a recommendation to Council to adopt a resolution which conditionally approves Vacation No. 5-19 with findings in support of its recommendation. CL

Mayor Keener noted this item has the same background information. He called for public comment without a response.

**** A motion was made by Councilman Hance, seconded by Councilwoman Simons, to adopt Resolution No. 22-19, which contains conditions as recommended by the Planning Commission.**

The motion passed unanimously. (5-0)

- D. Review, consideration, and possible action to adopt Resolution No. 23-19, a resolution and order vacating a portion of Commercial Street rights-of-way approximately 25.01 feet in width by 2 feet in depth abutting APN 001-343-003, which is located within the City of Elko, Nevada, to the abutting property owner, Patray Assets, LLP., filed and processed as Vacation No. 6-19 by City of Elko, and matters related thereto. **FOR POSSIBLE ACTION**

Council made a motion to vacate a portion of Commercial Street right-of-way at its regular meeting of September 24, 2019, and directed Staff to continue with the vacation process by referring the matter to the Planning Commission. The Planning Commission considered the vacation at its regular meeting of October 1, 2019, and took action to forward a recommendation to Council to adopt a resolution which conditionally approves Vacation No. 6-19 with findings in support of its recommendation. CL

**** A motion was made by Councilwoman Simons, seconded by Councilman Stone, to adopt Resolution No. 23-19, which contains conditions as recommended by the Planning Commission.**

The motion passed unanimously. (5-0)

- E. Review, consideration, and possible action to adopt Resolution No. 24-19, a resolution and order vacating a portion of Commercial Street rights-of-way approximately 25.01 feet in width by 2 feet in depth abutting APN 001-343-004, which is located within the City of Elko, Nevada, to the abutting property owner, Ace Glass Co., filed and processed as Vacation No. 7-19 by City of Elko, and matters related thereto. **FOR POSSIBLE ACTION**

Council made a motion to vacate a portion of Commercial Street right-of-way at its regular meeting of September 24, 2019, and directed Staff to continue with the vacation process by referring the matter to the Planning Commission. The Planning Commission considered the vacation at its regular meeting of October 1, 2019, and took action to forward a recommendation to Council to adopt a resolution which conditionally approves Vacation No. 7-19 with findings in support of its recommendation. CL

**** A motion was made by Councilman Hance, seconded by Councilman Stone, to adopt Resolution No. 24-19, which contains conditions as recommended by the Planning Commission.**

The motion passed unanimously. (5-0)

- F. Review, consideration, and possible action to adopt Resolution No. 25-19, a resolution and order vacating a portion of Commercial Street rights-of-way approximately 25.01 feet in width by 2 feet in depth abutting APN 001-343-005, which is located within the City of Elko, Nevada, to the abutting property owner, Cowboy Arts and Gear Museum, filed and processed as Vacation No. 8-19 by City of Elko, and matters related thereto. **FOR POSSIBLE ACTION**

Council made a motion to vacate a portion of Commercial Street right-of-way at its regular meeting of September 24, 2019, and directed Staff to continue with the vacation process by referring the matter to the Planning Commission. The Planning Commission considered the vacation at its regular meeting of October 1, 2019, and took action to forward a recommendation to Council to adopt a resolution which conditionally approves Vacation No. 8-19 with findings in support of its recommendation. CL

**** A motion was made by Councilwoman Simons, seconded by Councilman Stone, to adopt Resolution No. 25-19, which contains conditions as recommended by the Planning Commission.**

The motion passed unanimously. (5-0)

- G. Review, consideration, and possible action to adopt Resolution No. 26-19, a resolution and order vacating a portion of Commercial Street rights-of-way approximately 26.70 feet in width by 2 feet in depth abutting APN 001-343-006, which is located within the City of Elko, Nevada, to the abutting property owner, Gremel Properties, Inc., filed and processed as Vacation No. 9-19 by City of Elko, and matters related thereto. **FOR POSSIBLE ACTION**

Council made a motion to vacate a portion of Commercial Street right-of-way at its regular meeting of September 24, 2019, and directed Staff to continue with the vacation process by referring the matter to the Planning Commission. The Planning Commission considered the vacation at its regular meeting of October 1, 2019, and took action to forward a recommendation to Council to adopt a resolution which conditionally approves Vacation No. 9-19 with findings in support of its recommendation. CL

**** A motion was made by Councilman Schmidlein, seconded by Councilwoman Simons, to adopt Resolution No. 26-19, which contains conditions as recommended by the Planning Commission.**

The motion passed unanimously. (5-0)

- H. Review, consideration, and possible action to adopt Resolution No. 27-19, a resolution and order vacating a portion of Commercial Street rights-of-way approximately 73.32 feet in width by 2 feet in depth abutting APN 001-343-007, which is located within the City of Elko, Nevada, to the abutting property owner, Shigamo Development, Inc., filed and processed as Vacation No. 10-19 by City of Elko, and matters related thereto. **FOR POSSIBLE ACTION**

Council made a motion to vacate a portion of Commercial Street right-of-way at its regular meeting of September 24, 2019, and directed Staff to continue with the vacation process by referring the matter to the Planning Commission. The Planning Commission considered the vacation at its regular meeting of October 1, 2019, and took action to forward a recommendation to Council to adopt a resolution which conditionally approves Vacation No. 10-19 with findings in support of its recommendation. CL

**** A motion was made by Councilman Hance, seconded by Councilwoman Simons, to adopt Resolution No. 27-19, which contains conditions as recommended by the Planning Commission.**

The motion passed unanimously. (5-0)

- I. Hearing and/or review of investigation and findings concerning alleged nuisance(s) regarding property located at 403 Pine Street due to unsafe or

hazardous conditions from extensive fire damage and dry landscaping, and possible declaration of a nuisance(s) and appropriate order(s)/actions for abatement of nuisance(s) regarding the property located at 403 Pine Street, Elko, Nevada, owned by William Armstrong and other actions, orders or matters related thereto. **FOR POSSIBLE ACTION**

This is the **second** nuisance hearing regarding the property located at 403 Pine Street, owned by William Armstrong, within the last year. On December 11, 2018, the City Council declared a nuisance at 403 Pine Street.

Subsequent to the previous nuisance being abated, the structure located on 403 Pine Street was extensively damaged by fire on or about April 10, 2019. The City of Elko Fire Department responded to the fire and initiated suppression efforts. As a result of the fire and related damage, the Building Department inspected the structure and determined it was unsafe for entry and occupancy.

Despite the Building Department placing placards on the structure and prohibiting entry into or occupancy of the structure, transients have trespassed and occupied the structure, thereby creating an attractive nuisance. Since April 12, 2019, the Police Department has received twelve (12) calls for service for 403 Pine Street. Additionally, the landscaping is dry and has not been maintained, thereby creating an additional fire hazard.

Since April 10, 2019, the City has received numerous complaints concerning the condition of the property located at 403 Pine Street. Accordingly, the complaints were forwarded to the City Clerk's Office as required under 5-1-5 of City Code. The City Clerk forwarded the complaints to the City Manager on August 13, 2019. The City Manager assigned the investigation to the Assistant City Manager on August 14, 2019. The Assistant City Manager completed an investigation and presented those findings to the City Manager on August 16, 2019. To date, no plans have been submitted to the City to address the condition of the structure and/or property.

The findings of the investigation confirm the existence of a public nuisance, thereby violating the following sections of City Code:

- a. Title 5 Chapter 1; 5-1-4(A) Business, premises and acts.
- b. Title 5 Chapter 1; 5-1-4(L) Vegetation which is a public nuisance.
- c. Title 5 Chapter 1; 5-1-4(N) Public nuisance further defined.
- d. Title 5 Chapter 1; 5-1-4(N)(1) Menace, threat, or hazard.
- e. Title 5 Chapter 1; 5-1-4(N)(2) Unsafe for occupancy.
- f. Title 5 Chapter 1; 5-1-4(N)(3) Lack of sufficient maintenance

The property owner has been properly noticed under the noticing provisions stipulated in Title 5 Chapter 1 of City Code, Title 9 Chapter 2, NRS Chapter 241 and NRS 268. The noticing was completed by the City's legal counsel. CC

Curtis Calder, City Manager, stated that summarized staff's position on this. Legal Counsel representing the City was present.

Lauren Landa, Deputy City Attorney, said the owner, William J. Armstrong, was represented by Bob Wines. His attorney-in-fact was present too, Madison Armstrong. They have presented the City with a Power of Attorney that reflects that William J. Armstrong has a general and durable Power of Attorney from Madison to act as his Attorney-in-Fact. The owner, by and through Mr. Wines, have made the following proposed offer and stipulation to the City in order to potentially resolve this issue for the Councils consideration (Exhibit "D"). The owner would stipulate that this property is a nuisance. The owner would have 60 days from today to find a potential buyer for the property and enter into a purchase and sale agreement or enter into a contract for sale. It may not be closed in the 60 days but there is a buyer and they are working towards closing within that time period. Within 7 days from today, the owner will double chain and lock all of the gates, and remove the awning over the carport to prevent further entry into the property. If a buyer cannot be ascertained within 30 days, the owner will stipulate the City could enter the premises and make an assessment and analysis as to the conditions of the premises and begin its own plan to abate the condition. If the property is sold within the 60 day period, the buyer would have to complete the abatement plan and provide a comprehensive abatement plan to the City no later than 15 days from the close of sale. If the City objects to the buyers abatement plan, the City may bring the matter before Council for approval or modification of the plan. In the event the property is under an acceptable contract within the 60 days, the potential buyer shall abate the nuisance as required by the City but it must be completed within 120 days from today, or in the event the buyer determines the property shall not be demolished then they would have to obtain the appropriate building permits to abate that nuisance by that time. In the event a buyer cannot be ascertained within the 60 day period and the property is not under contract, the City then may enter the property and conduct any abatement process that it deems appropriate and reasonable with its sole discretion, without further notice or authority from the owner. At that point, the owner agrees to waive any and all claims against the City for the City to conduct that procedure, and would waive any and all claims in regards to the entry on the premises, the scope of the abatement, the removal of any personal property which continues to remain on the premises at that time. The parties, her office, and Mr. Wines, have agreed this agreement may not be deemed to be comprehensive enough so they have agreed to enter into a more formal agreement to further clarify the proposal they presented to us. In the event the City must enter the premises, there are also procedures in this proposed stipulation, in order for the City to place a lien on the property and abate the nuisance and go forward that way.

Bob Wines, Attorney, clarified the first 30 days the City cannot go onto the property. Mr. Armstrong would have the ability to obtain a purchaser. That way they can do their due diligence, go into the house to see if it is worth rebuilding to them, and see if they can enter into a deal with them where they buy the property as is and take it over, and then either rebuild the structure or tear the structure down. For 30 days it is in our ballpark. If we enter into an agreement or get a letter of intent from the buyer that says they can do this but they want to do a bit more due diligence, we provide a copy of that letter of intent or pre-contract to the City. The City is still on hold for another 30 days. If that is not provided to the City then the City can send their inspectors in to see how bad the structural damage is to the interior of the property and start their own determination on whether the place has to be torn down or whether it can be reconstructed for a reasonable value. It can be confusing as to exactly how that works. They are talking to Mr. Ellison to look at the property to make an assessment. There may still be some

value in the land after the structure is torn down but they have not done an assessment themselves.

Mayor Keener said he would like to see something a bit more immediate. He asked legal to explain the difficulties of declaring a nuisance and having the City to the demolition.

Tom Coyle, Deputy City Attorney, said the City Code requires that the owner have an initial opportunity to do the abatement. They are required to commence the abatement within 5 days. There is a provision in the City Code that they shall have it abated within 30 days. That is tempered by further language that the abatement shall be done within a reasonable time. Going this process this way probably isn't extending the time. The benefit here is there are timeframes set in stone. They are waiving the contesting of the declaration of a nuisance. A problem for the City in this particular case is we don't have a structural analysis that says the building is a total loss. We will have to go in and do an assessment before we can even determine our own abatement plan. He felt this was reasonable.

Mayor Keener asked what was the best path for the neighbors of the property.

Mr. Coyle said Mr. Wines has offered to take some preliminary steps to secure the property. The Assistant City Manager will be watching over that process. As far as the neighbors go, it won't get to an end point any faster, and the City will have far more exposure, if we take as a contested matter and order a way as opposed to obtaining an agreement with the property owner.

Councilman Schmidlein asked if we condemn it as a nuisance, it would take 180 days. If we go through with what is proposed, it will be 60 days and there will be some action. Potentially within 120 days, they will either be rebuilding or tearing it down.

Mr. Coyle said initially they are going to have the right to propose their own abatement. They go in and make their own analysis. Then they come back to us with their own abatement plan that may include demolition or rebuilding the structure. We have to look at the abatement plan and determine if it is reasonable and if we are going to allow it or modify the plan. Initially it is their bite at the apple.

Mayor Keener asked if any of the neighbors would like to comment for the record.

Molly Keller, 437 Pine, said she spoke in December regarding the first nuisance. When they were reading the proposals, there was a 7-day thing that she didn't quite understand.

Mr. Wines said on the aerial view the little gray area was the garage. The big gray area was the house that doesn't look that way anymore because of the fire. His theory is that transients are jumping in on top of the roof of the garage, climbing across the awning and going onto the roof of the house and then getting into the house. His proposal was to remove the red awning so there is no longer a pathway to the house. The second part of the proposal is the gate is locked but now they will double chain them in an attempt to keep people out. If they do get in, unless they have a ladder they will not be able to get to the roof of the property.

Ms. Keller said she appreciates that they agree the house is a nuisance. She asked that within those 7 days that they are chaining up the fences, she also asked that they remove the noxious

weeds and remove the dead trees. They are concerned there will be another fire. When you go in there is a lot of loose wood and wood pallets, and would like for them to remove those fire hazards. She also felt strongly about the garbage bags on the property have all been ripped open and there is trash being spread out throughout the neighborhood. The garbage smells. Could they please clean up all of that garbage? It would mean a lot to the neighbors if they would. If they would be willing to do that in that 7-day window the neighbors would be thrilled. They are concerned about the drug users getting in, the rodents, the noxious weeds and the possibility of another fire.

Mr. Wines said they had planned to do some cleanup but he wasn't sure if it would get accomplished in the 7 days or not. He thought he had someone out there to take care of the weeds already but he would check on that.

Ms. Landa asked if they could add that to the agreement, that they would clean that up within 15 days and keep the house boarded up. It could be placed under A. 1. as a new item b, and move the current item b to c.

Mayor Keener asked if there would continue to be some negotiations between the parties.

Ms. Landa said this is the basics of the agreement. The proposal came in today and this was as quick as they could draft up the agreement. If the City needs a more formal agreement, the basic terms would stay the same, and include the terms we like to include in terms of waivers and release, we would bring that back to Council. The timeline and all that would stay the same and it would start today.

Lillian Seacrest, 390 Juniper, asked if Mr. Wines acquires this with stipulations of when things be done, will he have time limits of when he owns it for cleaning it up.

Ms. Landa said the buyer will be subject to the timeline included in this stipulation. She didn't believe that Mr. Wines was interested in buying the property.

Mayor Keener closed the public comment period. He felt this was the best path forward for all parties.

**** A motion was made by Councilwoman Simons, seconded by Councilman Stone, to approve the agreement presented to Council, with a change that we insert a new b, to insert that within 15 days the trust or William, the owner needs to remove the weeds, trash, any and all combustibles, including the wood pallets, and maintain the house in a boarded up condition. The current b will move to c.**

The motion passed unanimously. (5-0)

Molly Keller, 437 Pine, asked is it still declared a nuisance.

Councilwoman Simons said that was outlined in the agreement.

VI. PETITIONS, APPEALS, AND COMMUNICATIONS

- A. Review, consideration, and possible action to accept a petition for the vacation of approximately 1,979 square feet of the easterly portion of the terminus of Front Street, south of South 5th Street, adjacent to APN 001-422-002, filed by Ellison Properties and processed as Vacation No. 12-19, and matters related thereto. **FOR POSSIBLE ACTION**

The applicant is currently working on a proposed development of the property and is asking for a vacation of the excess right-of-way for additional parking, access and landscaping. CL

Cathy Laughlin, City Planner, explained the vacation request and recommended approval. The applicant was present to answer questions.

Mayor Keener said it is a funky access remnant. They are making a terrific development on the property. It will help revitalize the retail area there. He called for public comments without a response.

**** A motion was made by Councilman Schmidtlein, seconded by Councilwoman Simons, to accept the petition for vacation and direct staff to commence the vacation process by referring the matter to the Planning Commission.**

The motion passed unanimously. (5-0)

- B. Ratification of the Police Chief issuing a 30-day Temporary Retail Liquor License and issue a Regular Retail Liquor License, to Lori Ayala, DBA Cowboys Bar, located at 442 Idaho Street, Elko, NV 89801, and matters related thereto. **FOR POSSIBLE ACTION**

Chief Reed explained the applicant has completed the necessary steps and he recommended approval for the regular license. She was present to answer questions.

Councilman Schmidtlein explained to the applicant, Lori Ayala, it is very important that you understand the liquor code. In the past, there have been a lot of issues in the downtown area. This is a privilege license. The Police Chief has the right within the first 6 months to revoke your license if he feels it necessary. The more cooperative you are with law enforcement, the better your business will run. If something comes back to this Council, it will not be good. He wished them luck.

Ms. Ayala said she understood there had been some issues. There is a new camera system in there. She has been working with law enforcement officers and has no problem with that. She is still learning about the liquor code. They will be fixing up the exterior by taking advantage of the storefront grant. She owns other businesses in town and they are doing all that they can to change what goes on in that bar.

Mayor Keener said he was glad to hear that because that bar has been the go-to place for the last call for everyone. He repeated there is a 6-month probationary period for the liquor license. The

license can be pulled at the Police Chief's discretion. He was sure they will do a good job at operating the business.

**** A motion was made by Councilwoman Simons, seconded by Councilman Schmidlein, to ratify the Police Chief issuing a 30-day temporary retail liquor license and issue a Regular Retail Liquor License, to Lori Ayala, dba Cowboys Bar, located at 442 Idaho Street, Elko, Nevada.**

The motion passed unanimously. (5-0)

- C. Consideration of a request from Ms. Kim Boschetto, Accounts Payable Manager at Jacobs Entertainment, Inc., to forgive fees assessed for the delayed remittance of Transient Lodging Taxes for the Hampton Inn, and matters related thereto.
FOR POSSIBLE ACTION

A copy of the email from Kim Boschetto has been included in the agenda packet for review. CC

Bob Thibault, Civil Engineer, called Kim Boschetto on the conference phone.

Curtis Calder, City Manager, explained we get these requests from time to time. When the Room Tax doesn't come in there are late fees associated with it. In this instance, Ms. Boschetto has requested forgiveness of those fees due to late mail.

Kim Boschetto, Accounts Payable Manager Jacobs Entertainment, Inc., said she has been following along with the meeting online. They made their payment along with an additional payment to the City of Elko for their utility bill, using the same check run and one check number apart. The utility bill payment was received on time but the transient tax never arrived. She provided some documentation from Wells Fargo that shows they alert the bank of the checks that are out for payment. All other checks sent on the same run have been received and posted. They now pay by wire each month to avoid this happening in the future. She can't prove she walked that payment out to the mailbox but all other checks on the same run posted.

Mayor Keener asked if the payment was mailed in the same envelope.

Ms. Boschetto answered they were in separate envelopes.

Mayor Keener asked when was the last time one of these came up.

Mr. Calder answered maybe more than a year ago. We have assessed late fees for others over the course of time, but as far as an appeal, it has been over a year.

Kelly Wooldridge, City Clerk, said she has provided Council with the code that states when late fees are assessed. The Business License Technician has let her know that Council has never forgiven late fees. We haven't received their late payment yet because we told them to hold off until this was resolved.

Mr. Calder said there was a code change in 2018, but each case is judged on its own merits. They provided evidence to support their claim that they made a good faith effort to mail the payment to us.

Councilwoman Simons said things have gotten lost in the mail before and felt they had a good argument with the evidence presented.

Mayor Keener said he is inclined to support waiving the fees in this case.

**** A motion was made by Councilman Stone, seconded by Councilwoman Simons, to waive the late fee to Jacobs Entertainment that was assessed in the amount of \$3,787.45 for transient lodging.**

The motion passed unanimously. (5-0)

Councilwoman Simons left at 6:53 p.m.

VIII. REPORTS

A. Mayor and City Council

Mayor Keener will be out of town Wednesday through Friday. He congratulated Ty Trouten.

Councilman Stone said ECVA met this morning regarding the Festival of Trees and who will receive the money. That will be announced soon.

B. City Manager

Curtis Calder reported they canceled the November 1st ribbon cutting for the Sports Complex. He already spoke to Pennington Foundation regarding that. We will plan on a spring ribbon cutting. November 1st, we have Chief Reed's going away party at the museum. Please RSVP with Kim. We are in the final stages of hiring a Financial Services Manager. Jan Baum will be starting November 4th. They are in the final stages of the IT Director recruitment. They have done one round of interviews and hope to have that position filled mid to late November.

C. Assistant City Manager

D. Utilities Director

Dale Johnson reported Well 24 went down (total electrical failure) and they will be fixing it under emergency repairs. That is the only well on the south side of town and it feeds the Lamoille Tank. Hopefully, it costs less than \$50,000 to repair. He attended the hearing for the Pershing County Water Conservation District. Yesterday was the motion to intervene. It was granted. The judge also ruled that all waters in the Humboldt Basin need to be notified of the proceedings so they all have the chance to be in the case and intervene in it.

E. Public Works

F. Airport Manager

Jim Foster said they are finishing up the painting for AIP 50. They will be shutting down the project until the spring when they will come back and finish. Mountain West Aviation, this weekend, is hosting a Young Eagles Event through the Experimental Aircraft Association. There isn't a chapter in

this area but a chapter from Idaho will come down and host the event. There are about 40 kids signed up right now.

G. City Attorney

H. Fire Chief

Mayor Keener said he received an email from Cathy Laughlin regarding the UP demolition. Originally, they thought they would get the burned up building torn down for sure but Union Pacific will be tearing out eight buildings along Commercial Street.

Chief Griego said there was a small brush fire off Bluffs and across from Kelly Court. It didn't impact the houses nearby. It looks like it was a human caused fire but they will be investigating it.

I. Police Chief

Chief Reed clarified, regarding police encounters with homeless, code requires the first contact be a warning and the second contact there is formal action. Formal action was taken during the second contact and they were cited for illegal camping. The promotion ceremony for Ty Trouten and some other officer is scheduled for Thursday at 3pm. With him leaving the Police Department will be down five sworn officers. The next academy date is January. They have three candidates in background right now.

J. City Clerk

K. City Planner

Cathy Laughlin reported the CEDS meeting was a good workshop. There will be another workshop November 14th in Ely. They created a vision, goals and objectives, and strategies. Mayor Keener has an NNRDA meeting that he cannot attend. He asked Ms. Laughlin to attend in his place.

L. Development Manager

Michele Rambo reported that Cathy Laughlin and she spent part of last week in Sparks for the Annual Planning Association Conference. She felt they could use some of the information presented at the conference here in Elko.

M. Parks and Recreation Director

Mayor Keener stated he was at the Parks and Rec meeting last Thursday during the discussion of the Dog Park. James Wiley said the Trunk or Treat and the Pumpkin Bob are this weekend. There is a lot of work at the Snobowl. It is time for their annual inspections and there are some minor repairs that are being taken care of. There is about 150 head of goats at the Snobowl for weed abatement in undeveloped areas. Winterization at the parks and golf course is wrapping up. There is a busy schedule at the Sports Complex to finish up for the season. The fields will not be ready for play in the spring but he hopes to have them seeded and ready for a youth tournament around Father's Day.

N. Civil Engineer

Bob Thibault showed a pic of the Sports Complex lit up at night. The lighting is directed at the fields and should not bother the residents in the area. Granite Construction has substantially completed the projects. Lamoille Fencing is still finishing up their project. YESCO is in the process of completing the sign.

O. Building Official

Jeff Ford reported the hotel is still shooting for the 31ST and they could make that deadline. There is a Thursday walk-through for Komatsu for the first two phases. Mayor Keener asked about the new gravel pit out at the Trail Center. Mr. Ford said that is the new paving batch plant for NDOT.

COMMENTS BY THE GENERAL PUBLIC

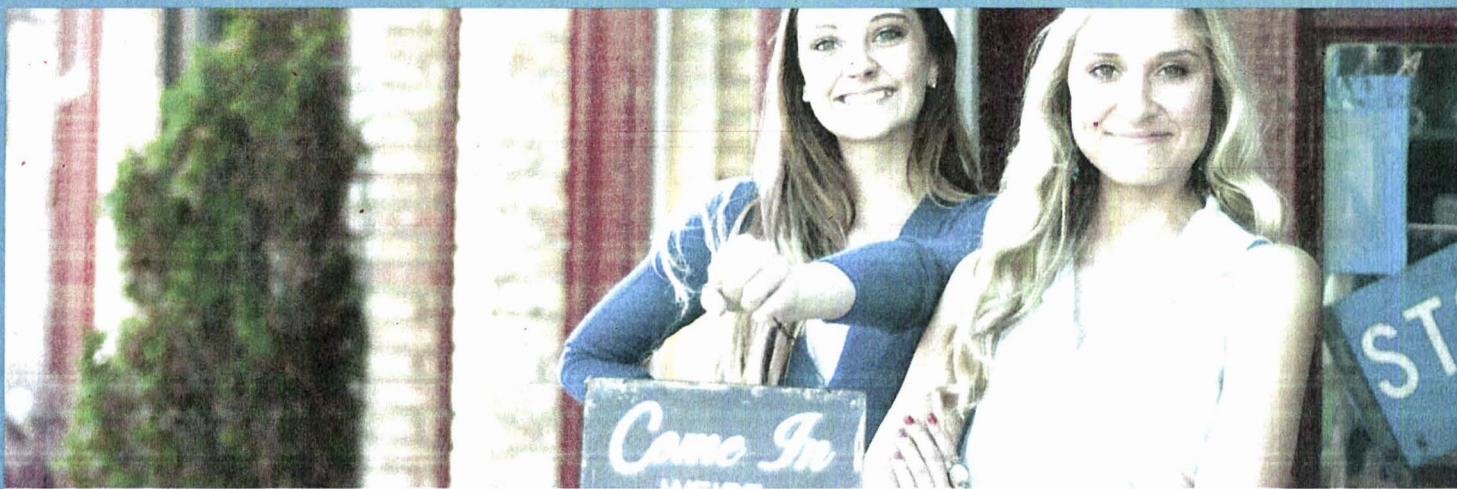
Pursuant to N.R.S. 241, this time is devoted to comments by the public, if any, and discussion of those comments. No action may be taken upon a matter raised under this item on the agenda until the matter itself has been specifically included on a successive agenda and identified as an item for possible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

There were no public comments.

There being no further business, Mayor Reece Keener adjourned the meeting.

Mayor Reece Keener

Kelly Wooldridge, City Clerk



Every town is an important part of the American story.

Make sure your town's story is told by responding to the 2020 Census—the count of everyone living in the United States. When you do, you'll also help your town get the most out of the American dream.

Responding Is Important for Your Community

Census responses provide data that can attract new businesses and the jobs that come with them. The data also informs where over \$675 billion in federal funding is spent each year in states and communities. That includes money for things like:

- > Medicare Part B
- > Special education
- > Supplemental Nutrition Assistance Program
- > Cooperative Extension Service
- > Substance Abuse Prevention and Treatment Block Grant
- > Water and waste disposal systems for rural communities

Responding Is Safe

Your personal information is kept confidential by law.

Responding Is Easy

To complete the census, answer a handful of questions online, by phone, or by mail. Choose the option that works best for you.

Every Person Counts

Whether it's funding in communities across your state or helping determine the number of seats your state will have in the U.S. House of Representatives—every count makes an equal impact.

For more information, visit:

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United States
Census
2020

2020 Census – Area Contacts and Operation Information

Prepared for: City of Elko, NV – 23 September 2019

➤ **Main 2020 Census Website:** www.2020census.gov

➤ **Main Census Bureau Website:** census.gov

➤ **New Census Data Portal:** data.census.gov

➤ **2020 Census Partnership Specialists (local)**

The local Partnership Specialists will be presenting on the Census to various local organizations, manning tables at events, etc. Point-of-contacts for brief questions; media interviews will need to be cleared.

Scott A. Gavorsky (Tribal Partnership Specialist)

Phone: 775.778.1928

E-mail: scott.a.gavorsky@2020census.gov

Yvonne M. Powers (Tribal Partnership Specialist)

Phone: 530.844.2895

E-mail: yvonne.m.powers@2020census.gov

➤ **Nevada State Complete Count Committee**

The Nevada State Complete Count Committee (SCCC) is run through the Lieutenant Governor's office. Meeting minutes can be accessed at the link below:

<http://ltgov.nv.gov/CCC/CCC-Meetings/>

➤ **Address Canvassing Operations**

Address Canvassing will be occurring through October 18th, 2019. This is the first major field operation for the 2020 Census. Elko County has numerous areas to be visited during this operation.

Video Link – Address Canvassing

<https://youtu.be/tOSl4sc3Ts4>

Address Canvassing Press Kit Link

<https://www.census.gov/newsroom/press-kits/2018/2020-adcan.html>

➤ **Census Takers in My Neighborhood**

At various points during the upcoming year, Census Bureau personnel will be working in Elko County. The "Census Takers in My Neighborhood" page contains information on why these personnel are around, how to identify them, and an 800-number the public can use if there are any concerns.

www.2020census.gov/en/census-takers.html

➤ **Upcoming 2020 Census Field Operations**

January 2020: Media Campaigns for 2020 Census start

February 2020: Group Quarters [nursing homes, hospitals, prisons, care facilities, etc.]

March 2020: Update Leave [dropping off questionnaires to homes without mailing addresses]

Homeless Canvassing

1 APRIL 2020: CENSUS DAY

May-June 2020: Nonresponse Follow-Up [door-to-door visits to those who have not self-responded]

**Elko City Council
Agenda Action Sheet**

1. Title: **Review, consideration, and possible direction to Staff to solicit bids for the RBC Removal Project, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **November 12, 2019**
3. Agenda Category: **APPROPRIATIONS**
4. Time Required: **5 Minutes**
5. Background Information: **The RBC's are an outdated treatment process that has been taken out of service. The SDM basins replaced the RBC's over five years ago. The RBC's take up valuable land space in the center of the plant and should be removed. Engineering has been completed, and we are ready to go to bid. Tentative schedule is to advertise on November 11th, go out to bid on November 18th, mandatory pre-bid on November 21st, receive bids December 20th, and award in early January 2020. DJ**
6. Budget Information:

Appropriation Required: **Unknown until bid opening. Target is 250K**
Budget amount available: **250K**
Fund name: **Sewer**
7. Business Impact Statement: **Not Required**
8. Supplemental Agenda Information: **N/A**
9. Recommended Motion: **Pleasure of the Council**
10. Prepared By: **Dale Johnson, Utilities Director**
11. Committee/Other Agency Review:
12. Council Action: *(to be completed by the City Clerk)*
13. Council Agenda Distribution: *(Please List the Recipient's Name, Email Address, Fax Number, or a Mailing Address)*

Elko City Council
Agenda Action Sheet

1. Title: **Review, consideration, and possible approval for the Elko Police Department to purchase two (2) fully equipped police vehicles, one (1) Ford Utility Interceptor and one (1) Dodge Charger AWD sedan, through the Nevada State Purchasing Program, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **November 12, 2019**
3. Agenda Category: **APPROPRIATIONS**
4. Time Required: **5 Minutes**

Background Information: As a political subdivision of the State of Nevada, the City of Elko is able to utilize the State of Nevada Purchasing Division for fleet acquisition and related equipment. The estimated purchase costs include the related equipment as follows: The cost of the Ford Interceptor is estimated to be sixty-seven thousand, two dollars and six cents (\$67,002.06) and the Dodge Charger AWD sedan is estimated to be fifty-four thousand, one hundred and twenty-four dollars and sixty-four cents (\$54,124.64). Both vehicles will be deployed as patrol vehicles in the Operations Division, Patrol Unit. This acquisition was included in the Fiscal Year 2019/20 Budget.

The Elko Police Department was allotted \$200,000.00 in the 2019/20 budget for three (3) vehicles. One Chevrolet Tahoe was purchased in August of 2019. The cost of the Tahoe was seventy-three thousand, eight hundred and ninety-two dollars and forty-one cents (\$73,892.41).

5. Budget Information:
 Appropriation Required: **\$121,126.70**
 Budget amount available: **\$126,107.59**
 Fund name: **General Fund, Capital Equipment Replacement**
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information: **Cost per unit itemization memo (see attached)**
8. Recommended Motion: **Authorize the Elko Police Department to purchase two (2) fully equipped police vehicles (one (1) Ford Utility Interceptor and one (1) Dodge Charger AWD sedan), through the Nevada State Purchasing Program for an estimated total cost of one hundred and twenty-one thousand, one hundred and twenty-six dollars and seventy cents (\$121,126.70).**
9. Prepared By: **Police Chief Ty Trouten**
10. Committee/Other Agency Review:

Agenda Item # III.D.

11. Council Action:

12. Agenda Distribution: **Lieutenant Jason Pepper**
jpepper@elkocitynv.gov



ELKO POLICE DEPARTMENT

Ben Reed, Jr.
Police Chief

1448 Silver Street
Elko, Nevada 89801
775.777.7310
775.738.1415 Fax
www.elkocity.com

2019-2020 VEHICLE REQUESTS

1) Chevy Tahoe Canine Unit (Patrol)

Vehicle	\$42,713.95
Radio	\$ 6,337.00
Install and Equipment	\$22,341.46
Cradle Point	\$ 1,000.00
Graphics	\$ 1,500.00
TOTAL (PURCHASED 8/2019)	\$73,892.41

2) Dodge Charger Interceptor Unit (Patrol)

Vehicle	\$31,193.00
Radio	\$ 3,412.12
Install and Equipment	\$17,893.45
Cradle Point	\$ 1,126.07
Graphics	\$ 500.00
TOTAL	\$54,124.64

3) Ford SUV Interceptor Unit (Patrol)

Vehicle	\$43,031.00
Radio	\$ 3,412.12
Install and Equipment	\$18,932.87
Cradle Point	\$ 1,126.07
Graphics	\$ 500.00
TOTAL	\$67,002.06

GRAND TOTAL **\$195,019.11**

Elko City Council

Agenda Action Sheet

1. Title: **Status update on the Public Nuisance complaint regarding 403 Pine Street, and matters related thereto. INFORMATION ONLY-NON ACTION ITEM**
2. Meeting Date: **November 12, 2019**
3. Agenda Category: **Unfinished Business**
4. Time Required: **5 minutes**
5. Background Information: **Based upon City Council action on October 22, 2019, Staff is providing a status update with regard to 403 Pine Street. CC**
6. Budget Information:
 Appropriation Required: **N/A**
 Budget amount available: **N/A**
 Fund name: **N/A**
7. Business Impact Statement: **Not Required**
8. Supplemental Agenda Information: **N/A**
9. Recommended Motion: **N/A**
10. Prepared By: **Curtis Calder, City Manager**
11. Committee/Other Agency Review: **N/A**
12. Council Action: **(to be completed by City Clerk)**
13. Agenda Distribution:

Elko City Council

Agenda Action Sheet

1. Title: **Review, consideration, and possible approval for the Fire Department to apply for an Assistance to Firefighters Grant (AFG) through the Department of Homeland Security to replace an Aerial Fire Truck Apparatus, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **November 12, 2019**
3. Agenda Category: ***New Business***
4. Time Required: **5 minutes**
5. Background Information: **The City of Elko Fire Department Fire Department would like to apply for the 2019 FEMA Regional Assistance to Firefighters Grant. The application would apply for a new Aerial Ladder truck. The current Ladder 2 is 30 years old which is the National Fire Protection Association (NFPA) recommended maximum age for Aerial Apparatus to be in front line use. This apparatus will increase firefighter safety and health, emergency response and scene capabilities, provide greater storage and personnel carrying capacity and reduce rising maintenance cost. The AFG Program has listed this item as high priority for grant funding this year. Total amount of the grant would be around 957,242.00 with a 10% match by the City. JS**
6. Budget Information:
 Appropriation Required: **\$95,724**
 Budget amount available: **N/A**
 Fund name: **Capital Equipment**
7. Business Impact Statement: **Not Required**
8. Supplemental Agenda Information: **N/A**
9. Recommended Motion: **Recommend approval for the Fire Department to apply for a Regional Assistance to Firefighters grant for \$957,242 through the Federal Emergency Management Agency Assistance to Firefighters Grant.**
10. Prepared By: **Jack Snyder, Deputy Fire Chief**
11. Committee/Other Agency Review: **N/A**
12. Council Action: **(to be completed by City Clerk)**
13. Agenda Distribution:

Elko City Council

Agenda Action Sheet

1. Title: **Review, consideration, and possible approval for the Fire Department to apply for an Assistance to Firefighters Grant (AFG) through the Department of Homeland Security to Portable and Mobile radio communication devices, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **November 12, 2019**
3. Agenda Category: ***New Business***
4. Time Required: **5 minutes**
5. Background Information: **The City of Elko Fire Department would like to apply for the 2019 FEMA Assistance to Firefighters Grant. The application would apply for 16 mobile radios and accessories and 50 portable radios and accessories utilizing Government pricing. These radios will enhance firefighter safety, emergency communications and interoperability with Elko PD, Elko Ambulance and our mutual aid partners. The AFG Program has listed this item as high priority for grant funding this year. Total amount of the grant would be around 353,207.53 with a 10% match by the City. JS**
6. Budget Information:
 Appropriation Required: **\$35,320.75**
 Budget amount available: **N/A**
 Fund name: **Capital Equipment**
7. Business Impact Statement: **Not Required**
8. Supplemental Agenda Information: **N/A**
9. Recommended Motion: **Recommend approval for the Fire Department to apply for the Assistance to Firefighters grant for \$353,207.53 through the Federal Emergency Management Agency Assistance to Firefighters Grant.**
10. Prepared By: **Jack Snyder, Deputy Fire Chief**
11. Committee/Other Agency Review: **N/A**
12. Council Action: **(to be completed by City Clerk)**
13. Agenda Distribution:

Elko City Council

Agenda Action Sheet

1. Title: **Consideration and possible action to cancel the December 24, 2019 Elko City Council meeting, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **November 12, 2019**
3. Agenda Category: ***New Business***
4. Time Required: **5 minutes**
5. Background Information: **N/A**
6. Budget Information:
 Appropriation Required: **N/A**
 Budget amount available: **N/A**
 Fund name: **N/A**
7. Business Impact Statement: **Not Required**
8. Supplemental Agenda Information: **N/A**
9. Recommended Motion: **Cancel December 24, 2019 City Council meeting due to Christmas Holiday.**
10. Prepared By: **Curtis Calder, City Manager**
11. Committee/Other Agency Review: **N/A**
12. Council Action: **(to be completed by City Clerk)**
13. Agenda Distribution:

**Elko City Council
Agenda Action Sheet**

1. Title: **First reading of Ordinance No. 847, an ordinance amending Title 2, Chapter 7 of the Elko City Code entitled “Energy Conservation Code” by adding Section R402.4.1.2 of the 2018 International Building Code entitled “Testing,” and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **November 12, 2019**
3. Agenda Category: **RESOLUTIONS AND ORDINANCES**
4. Time Required: **10 Minutes**
5. Background Information: **In June 2019, the City passed Ordinance No. 839 adopting the 2018 International Building Code with corresponding amendments. The City worked with the consulting firm WC 3 on this. On November 5, Mr. Chris Kimball from WC 3 informed the City that adoption of Section R.402.4.1.2 of the International Building Code of 2018, entitled “Testing,” is needed for the health and safety of the public. This section provides that a building or dwelling unit must be tested and verified as having an air leakage rate not in excess of five air changes per hour. Accordingly, Chapter 7 of the Energy Conservation Code regarding leakage testing should be amended incorporate Section R.402.4.1.2 of the International Building Code of 2018. Mr. Kimball’s letter to the City of Elko is attached. JF**
6. Budget Information:

Appropriation Required: N/A
Budget amount available: N/A
Fund name: N/A
7. Business Impact Statement: **Required/Not Required**
8. Supplemental Agenda Information: **Ord .847; Letter from Chris Kimball of WC 3.**
9. Recommended Motion: **Conduct First Reading of Ordinance No. 847 and direct City Staff to set the matter for Second Reading, Public Hearing and possible adoption.**
10. Prepared By: **Jeff Ford, Building Official**
11. Committee/Other Agency Review:
12. Council Action: *(to be completed by the City Clerk)*
13. Council Agenda Distribution: *(Please List the Recipient’s Name, Email Address, Fax Number, or a Mailing Address)*

ORDINANCE 847

AN ORDINANCE AMENDING TITLE 2, CHAPTER 7 OF THE ELKO CITY CODE, ENTITLED "ENERGY CONSERVATION CODE," BY ADDING SECTION R402.4.1.2 OF THE 2018 INTERNATIONAL BUILDING CODE ENTITLED "TESTING"

Whereas, The City of Elko adopted the 2018 International Building Code in June 2019;

Whereas, the City of Elko seeks to amend the Energy Conservation Code, codified at Title 2, Chapter 7 of the Elko City Code, to add Section R.402.4.1.2 of the International Building Codes of 2018 regarding air leak testing;

Whereas, the foregoing amendment will increase the minimum number of air changes in a building or dwelling unit from three to five per hour;

Whereas, the foregoing amendment is in the best interest of the health and safety of the public;

NOW THEREFORE, IT BE ORDAINED BY THE CITY COUNCIL OF THE CITY OF ELKO, NEVADA.

Section 1: Title 2, Chapter 7 of the Elko City Code is hereby amended to read as follows:

Chapter 7 ENERGY CONSERVATION CODE

2-7-1: ENERGY CONSERVATION CODE PROVISIONS:

- A. Title: This chapter shall be known as the *INTERNATIONAL ENERGY CONSERVATION CODE OF THE CITY OF ELKO*, hereinafter "code", including the adoption of the 2018 International Energy Conservation Code and necessary administrative provisions. Certain sections of the international energy conservation code and appendices may be added or deleted.
- B. Applicability: All construction of or the enlarging, altering, repairing, moving, demolishing, or changing the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any component, element or portion of a building or structure within the city shall be in compliance with, in addition to, the other applicable codes or amendments set forth by the city council and the latest edition of the international energy conservation code.
- C. Materials: These provisions are not intended to prevent the use of any material or method of construction not specifically prescribed herein, provided the city of Elko has approved any alternates.
- D. Supplements: All supplements to the international energy conservation code, issued by the International Code Council Inc., between editions are hereby not made a part of the then current edition of the international energy conservation code.
- E. Conflicts: In the event that any of the provisions of the latest edition of the international residential code conflict with any provision of this chapter, the provisions of this chapter shall govern and be controlling.

2-7-2: ENERGY CONSERVATION CODE AMENDMENTS:

Chapter 1 - Administration

Chapter 1 is deleted in its entirety except for sections 101 and 102.

Section 101 - Scope and General Requirements.

Revise section 101 as follows:

Section C102.1.1 Above code program

Amend Section C102.1.1 to read as follows:

C102.1.1 Above code programs. The code official or other authority having jurisdiction shall be permitted to deem a national, state or local energy efficiency program to exceed the energy efficiency required by this code. Programs seeking approval must submit all requested supporting documentation, including program guidelines, protocols, calculations and program simulation performance software, if applicable, to the NNICC and/or jurisdiction for review for use as acceptable software. Buildings approved in writing by such an energy efficiency shall be considered to be in compliance with this code. The requirements identified as "mandatory" in Chapter 4 shall be met.

SECTION C201.3 TERMS DEFINED IN OTHER CODES

Amend Section C201.3 to read as follows:

C201.3 Terms defined in other codes. Terms that are defined in this code but are defined in the International Building Code, International Fire Code, Uniform Mechanical Code, Uniform Plumbing Code, or the International Residential Code shall have the meanings ascribed to them in those codes.

SECTION C202 GENERAL DEFINITIONS

Amend Section C202 by adding the following definitions to read as follows:

C202 General Definitions

CASINO. A structure that houses a business with a Non-Restricted Gaming License from the Nevada Gaming Commission and State Gaming Control Board. It includes the gaming area(s) as well as the adjacent area(s) within the building envelope.

CASINO GAMING AREA. The space within a *casino* wherein gaming is conducted. The gaming area shall also include accessory uses within the same room(s) as, or substantially open to the gaming floor(s). Such areas shall include, but not be limited to lobbies, balconies, public circulation areas, assembly areas, restaurants, bars, lounges, food courts, retail spaces, mezzanines, convention pre-function areas, cashiers' cages, players' clubs, customer support, conservatories and promenades that share the same atmosphere, spillover lighting and theme lighting with the adjacent gaming floor area. For accessory areas situated on the perimeter of the gaming floor to be considered substantially open, the walls(s) or partitions(s) separating an accessory space from the gaming area must be a minimum of 50% open, as measured from the interior side of the accessory space, with no doors,

windows and other obstructions, other than roll up security grills, installed within the opening.

Chapter 4 - Residential Energy Efficiency

Section R402.4.1.2 Testing

Amend Section R402.4.1.2 to read as follows:

R402.4.1.2 Testing. The building or dwelling unit shall be tested and verified as having an air leakage rate not exceeding 5 air changes per hour. Testing shall be conducted with a blower door at a pressure of 0.2 inches w.g. (50 Pascal's). Where required by the Code Official, testing shall be conducted by an approved third party. A written report of the results of the test shall be signed by the party conducting the test and provided to the Code Official. Testing shall be performed at any time after creation of all penetrations of the building thermal envelope.

During testing:

1. Exterior windows and doors, fireplace and stove doors shall be closed, but not sealed, beyond the intended weatherstripping or other infiltration control measures;
2. Dampers including exhaust, intake, makeup air, backdraft and flue dampers shall be closed, but not sealed beyond intended infiltration control measures;
3. Interior doors, if installed at the time of test, shall be open;
4. Exterior doors for continuous ventilation systems and heat recovery ventilators shall be closed and sealed;
5. Heating and cooling systems, if installed at the time of testing, shall be fully open.
6. Supply and return registers, where installed at the time of the test, shall be fully open.

SECTION C402.5.3 ROOMS CONTAINING FUEL-BURNING APPLIANCES

Amend Section C402.5.3 to read as follows:

C402.5.3 Rooms containing fuel-burning appliances. In Climate Zones 3 through 8, where combustion air is supplied through openings in an exterior wall to a room or space containing a space-conditioning fuel-burning appliance, one of the following shall apply:

1. The room or space containing the appliance shall be located outside of the building thermal envelope.
2. The room or space containing the appliance shall be enclosed and isolated from conditioned spaces inside of the building thermal envelope. Such rooms shall comply with all of the following:
 - 2.1. The walls, floors and ceilings that separate the enclosed room or space from conditioned spaces shall be insulated to be not less than equivalent to the insulation requirement of below-grade walls as specified in Table C402.1.3 or C402.1.4.
 - 2.2. The walls, floors and ceilings that separate the enclosed room or space from conditioned spaces shall be sealed in accordance with Section C402.5.1.1.
 - 2.3. The doors into the enclosed room or space shall be fully gasketed.
 - 2.4. Water lines and ducts in the enclosed room or space shall be insulated in accordance with Section 403.

2.5. Where an air duct supplying combustion air to the enclosed room or space passes through conditioned space, the duct shall be insulated to an R-value not less than R-8.

Exception: Fireplaces and stoves complying with Section 911, 912, 913 of the Uniform Mechanical Code, and Section 2111.14 of the International Building Code.

SECTION 402.5.9 AIR CURTAINS

Amend Section 402.5 by adding 402.5.9 to read as follows:

C402.5.9 Air curtains. Where doorway, passageway or pass-thru openings in the building thermal envelope area intended to be normally opened to the exterior environment, an approved air curtain tested in accordance with ANSI/AMCA 220 shall be used to separate conditioned air from the exterior.

SECTION 403.2.2 VENTILATION (MANDATORY)

Amend Section C403.2.2 Ventilation (Mandatory) to read as follows:

C403.2.2 Ventilation (Mandatory). Ventilation, either natural or mechanical, shall be provided in accordance with Chapter 4 of the *Uniform Mechanical Code*. Where mechanical ventilation is provided, the system shall provide the capability to reduce the outdoor air supply to the minimum required by Chapter 4 of the *Uniform Mechanical Code*.

SECTION C403.6.1 VARIABLE AIR VOLUME AND MULTIPLE-ZONE SYSTEMS

Amend Section C403.6.1 to read as follows:

C403.6.1 Variable air volume and multiple-zone systems. Supply air systems serving multiple zones shall be variable air volume (VAV) systems that have zone controls configured to reduce the volume of air that is reheated, re-cooled or mixed in each zone to one of the following:

1. Twenty percent of the zone design peak supply for systems with DDC and 30 percent for othersystems.
2. Systems with DDC where all of the following apply:
3. The outdoor airflow rate required to meet the minimum ventilation energy source requirements of Chapter 4 of the Uniform Mechanical Code.
4. Any higher rate that can be demonstrated to reduce overall system annual energy use by offsetting reheat/re-cool energy losses through reduction in outdoor air intake for the system as approved by the code official.
5. The airflow rate required to comply with applicable codes or accreditation standards such as pressure relationships or minimum air change rates.

Exception: The following individual zones or entire air distribution systems are exempted are from the requirement for VAV control:

1. Zones or supply air systems where not less than 75 percent of the energy for reheating or for providing warm air in mixing systems is provided from a site-recovered, including

condenser heat, or site-solar

2. Systems that prevent reheating, re-cooling, mixing or simultaneous supply of air that has been previously cooled, either mechanically or through the use of economizer systems, and air that has been previously mechanically heated.

SECTION C403.6.6 MULTIPLE-ZONE VAV SYSTEM VENTILATION OPTIMIZATION CONTROL

Amend Section C403.6.6 to read as follows:

C403.6.6 Multiple-zone VAV system ventilation optimization control. Multiple-zone VAV systems with direct digital control of individual zone boxes reporting to a central control panel shall have automatic controls configured to reduce outdoor air intake flow below design rates in response to changes in system ventilation efficiency (E_v) as defined by the *Uniform Mechanical Code*.

Exception:

1. VAV systems with zonal transfer fans that recirculate air from other zones without directly mixing it with outdoor air, dual-duct dual-fan VAV systems, and VAV systems with fan-powered terminal units.
2. Systems where total design exhaust airflow is more than 70 percent of the total design outdoor air intake flow requirements.

SECTION 403.7.1 DEMAND CONTROL VENTILATION (MANDATORY)

Amend Section C403.7.1 to read as follows:

C403.7.1 Demand control ventilation (Mandatory). Demand control ventilation (DCV) shall be provided for spaces larger than 500 square feet (46.5m^2) and with an average occupant load of 25 people or greater per 1,000 square feet (93m^2) of floor area, as established in Table 402.1 of the *Uniform Mechanical Code*, and served by systems with one or more of the following:

1. An air-sided economizer.
2. Automatic modulating control of the outdoor air damper.
3. A design outdoor airflow greater than 3,000 cfm (1416 L/s).

Exceptions:

1. Systems with energy recovery complying with Section C403.7.4.
2. Multiple-zone systems without direct digital control of individual zones communicating with a central control panel.
3. Systems with a design outdoor airflow less than 1,200 cfm (566 L/s).
4. Spaces where the supply airflow rate minus any makeup or outgoing transfer air requirements is less than 1,200 cfm (566 L/s).
5. Ventilation provided only for process loads.

SECTION C403.7.2 ENCLOSED PARKING GARAGE VENTILATION CONTROLS (MANDATORY)

Amend Section C403.7.2 to read as follows:

C403.7.2 Enclosed parking garage ventilation controls (Mandatory). Enclosed parking garages used

for sorting or handling automobiles operating under their own power shall employ contamination-sensing devices and automatic controls configured to stage fans or modulate fan average airflow rates to 50 percent or less of design capacity, or intermittently operate fans less than 20 percent of the occupied time or as required to maintain acceptable contaminant levels in accordance with the applicable *Uniform Mechanical Code* provisions. Failure of contamination-sensing devices shall cause the exhaust fans to operate continuously at design airflow.

Exceptions:

1. Garages with a total exhaust capacity less than 22,500 cfm (10 620 L/s) with ventilation systems that do not utilize heating or mechanical cooling.
2. Garages that have a garage area to ventilation system motor nameplate power ratio that exceeds 1125 cfm/hp (710 L/kW) and do not utilize heating or mechanical cooling.

SECTION C403.7.4 ENERGY RECOVERY VENTILATION SYSTEMS (MANDATORY)

Amend Section C403.7.4 to read as follows

C403.7.4 Energy recovery ventilation systems (Mandatory). Where the supply airflow rate of a fan system exceeds the values specified in Tables C403.7.4(1) and C403.7.4(2), the system shall include an energy recovery system. The energy recovery system shall be configured to provide a change in the enthalpy of the outdoor air supply of not less than 50 percent of the difference between the outdoor air and return air enthalpies, at design conditions. Where an air economizer is required, the energy recovery system shall include a bypass or controls that permit operation of the economizer as required by Section C403.5.

Exception: An energy recovery ventilation system shall not be required in any of the following conditions:

1. Where energy recovery systems are prohibited by the *Uniform Mechanical Code*.
2. Laboratory fume hood systems that include not fewer than one of the following features:
 - 2.1. Variable-air-volume hood exhaust and room supply systems configured to reduce exhaust and makeup air volume to 50 percent or less of design value.
 - 2.2. Direct makeup (auxiliary) air supply equal to or greater than 75 percent of the exhaust rate, heated not warmer than 2°F (1.1°C) below room setpoint, with no humidification added, and no simultaneous heating and cooling used for dehumidification control.
3. Systems serving spaces that are heated to less than 60°F (15.5 °C) and that are not cooled.
4. Where more than 60 percent of the outdoor heating energy is provided from site-recovered or site-solar energy.
5. Heating energy recovery in Climate Zones 1 and 2.
6. Cooling energy recovery in Climate Zones 3C, 4C, 5B, 5C, 6B, 7, and 8.
7. Systems requiring dehumidification that employ energy recovery in series with the cooling coil.
8. Where the largest source of air exhausted at a single location at the building exterior is less than 75 percent of the design outdoor air flow rate.
9. Systems expected to operate less than 20 hours per week at an outdoor percentage covered by Table C403.7.4(1).
10. Systems exhausting toxic, flammable, paint or corrosive fumes or ducts.
11. Commercial kitchen hoods used for collecting and removing grease vapors and smoke.

SECTION C403.7.7 SHUTOFF DAMPERS (MANDATORY)

Amend Section C403.7.7 to read as follows:

C403.7.7 Shutoff dampers (Mandatory). Outdoor air intake and exhaust openings and stairway and shafts vents shall be provided with Class I motorized dampers. The dampers shall have an air leakage rate not greater than 4 cfm/ft² (20.3 L/s * m²) of damper surface area at 1.0inch water gauge (249 Pa) and shall be labeled by an approved agency when tested in accordance with AMCA 500D for such purpose.

Outdoor air intake and exhaust dampers shall be installed in automatic controls configured to close when the systems or spaces served are not in use or during unoccupied period warm-up and setback operation, unless the systems served require outdoor or exhaust air in accordance with the *Uniform Mechanical Code*, or the dampers are opened to provide intentional economizer cooling.

Stairway and shaft vent dampers shall be installed with automatic controls configured to open upon the activation of any fire alarm initiating device of the building's fire alarm system or the interruption of power to the damper.

Exception: Nonmotorized gravity dampers shall be an alternative to motorized dampers for exhaust and relief openings as follows:

1. In buildings less than three stories in height above grade plane.
2. In buildings of nay height located in Climate Zones 1,2or 3.
3. Where the design exhaust capacity is not greater than 300 cfm (142 L/s).

Nonmotorized gravity dampers shall have an air leakage rate not greater than 20 cfm/ft² (101 L/s*m²) where not less than 24 inches (610 mm) in either dimension and 40 cfm/ft² (203.2 L/s*m²) where less than 24 inches (610 mm) in either dimension. The rate of air leakage shall be determined at 1.0-inch water gauge (249 Pa) when tested in accordance with AMCA 500D for such purpose. The dampers shall be labeled by an approved agency.

SECTION C403.11.1 DUCT AND PLENUM INSULATION AND SEALING (MANDATORY)

Amend Section C403.11.1 to read as follows:

C403.11.1 Duct and plenum insulation and sealing (Mandatory). Supply and return air ducts and plenums shall be insulated with not less than R-6 insulation where located in unconditioned spaces and where located outside of the building with not less than R-8 insulation in Climate Zones 1 through 4 and not less than R-12 insulation in Climate Zones 5 through 8. Where located within a building envelope assembly, the duct or plenum shall be separated from the building exterior or unconditioned or exempt spaces by not less than R-8 insulation in Climate Zones 1 through 4 and not less than R-12 insulation in Climate Zones 5 through 8

Exceptions:

1. Where located within equipment.
2. Where the design temperature difference between the interior and exterior of the duct or plenum is not greater than 15°F (8°C).

Ducts, air handlers and filter boxes shall be sealed. Joints and seams shall comply with Section 603.10,

603.11 of the *Uniform Mechanical Code*.

Amend Section C403.11.2.1 to read as follows:

C403.11.2.1 Low-pressure duct systems (Mandatory). Longitudinal and transverse joints, seams and connections of supply and return ducts operating at a static pressure less than or equal to 2 inches water gauge (w.g.) (498 Pa) shall be securely fastened and sealed with welds, gaskets, mastics, (adhesives), mastic-plus-embedded-fabric systems or tapes installed in accordance with the manufacturer's instructions. Pressure classifications specific to the duct system shall be clearly indicated on the construction documents in accordance with the *Uniform Mechanical Code*.

Exception: Locking-type longitudinal joints and seams, other than the snap-lock and button-lock types, need not be sealed as specified in this section.

SECTION C403.11.2.2 MEDIUM-PRESSURE DUCT SYSTEMS (MANDATORY)

Amend Section C403.11.2.2 to read as follows:

C403.11.2.2 Medium-pressure duct systems (Mandatory). Ducts and plenums designed to operate at a static pressure greater than 2 inches water gauge (w.g.) (498 Pa) but less than 3 inches w.g. (747 Pa) shall be insulated and sealed in accordance with Section C403.11.1. Pressure classifications specific to the duct system shall be clearly indicated on the construction documents in accordance with the *Uniform Mechanical Code*.

SECTION C406.6 DEDICATED OUTDOOR AIR SYSTEMS

Amend Section C406.6 to read as follows:

C406.6 Dedicated outdoor air system. Buildings containing equipment or systems regulated by Section C403.3.4, C403.4.3, C403.4.4, C403.4.5, C403.6, C403.8.4, C403.8.5, C403.8.5.1, C403.9.1, C403.9.2, C403.9.3, C403.9.4 shall be equipped with an independent ventilation system designed to provide not less than the minimum 100-percent outdoor air to each individual occupied space, as specified by the *Uniform Mechanical Code*.

Section 2: All ordinances or parts of ordinances in conflict herewith are hereby repealed, but only to the extent of such conflict

Section 3: If any section, paragraph, clause or provision of this ordinance shall for any reason be held to be invalid, unenforceable, or unconstitutional by a court of competent jurisdiction, the invalidity, unenforceability or provision shall not affect any remaining provisions of this ordinance.

Section 4: Upon adoption, the City Clerk of the City of Elko is hereby directed to have this ordinance published by title only, together with the Councilman voting for or against its passage in a newspaper of general circulation within the time established by law, for at least one publication.

Section 5: This Ordinance shall be effective upon the publication mentioned in Section 4. The City of Elko will allow a grace period ending December 31, 2019.

PASSED AND ADOPTED this ____ day of ____, 2019 by the following vote of the Elko City Council.

AYES:

NAYS:

ABSENT:

ABSTAIN:

APPROVED this ____ day of _____ 2019.

CITY OF ELKO

BY: _____

REECE KEENER, Mayor

ATTEST:

KELLY WOOLDRIDGE, City Clerk



908 W. GORDON AVE., STE #3
LAYTON, UTAH 84041
OFFICE: (801) 547-8133
FAX: (801) 820-9089

November 5, 2019

Mr. Reece Keener, Mayor
Ms. Mandy Simons, Councilmember
Mr. Robert Schmidlein, Councilmember
Mr. Chip Stone, Councilmember
Mr. Bill Hance, Councilmember
City of Elko
1751 College Avenue
Elko, Nevada 89801

Subject: Recommended Revision to Ordinance 839 - Building Regulations

Dear Elko City Council:

West Coast Code Consultants, Inc. (WC³) appreciated the opportunity to assist the City with your recent adoption of the 2018 building codes. After reviewing the ordinance, we have realized that there is one amendment that we had discussed with the City that should have been included in the ordinance language but was not. This amendment was in relation the 2018 International Energy Conservation Code (IECC). Specifically, it is a simple but significant revision to Section R402.4.1.2 of the IECC. This section requires new residential dwellings to undergo an air leakage test. The IECC specifically requires the test to show that no more than 3 air changes per hour occur. That is highly restrictive, so the Northern Nevada Chapter of the ICC (this includes the Reno/Sparks region) have amended the section to allow up to 5 air changes per hour.

It is our recommendation that the City make a slight revision to Ordinance 839 to allow 5 air changes rather than require a maximum of 3 air changes as part of the leakage test. If you would like to know more about the actual test, here is a link to a video showing how it is performed: <https://vimeo.com/20529163>. The following is our suggested language to be added to Ordinance 839:

Section R402.4.1.2 Testing

Amend Section R402.4.1.2 to read as follows:

R402.4.1.2 Testing. The building or dwelling unit shall be tested and verified as having an air leakage rate of not exceeding 5 air changes per hour, ~~in Climate Zones 1 and 2, and 3 air changes per hour in Climate Zones 3 through 8.~~ Testing shall be conducted with a blower door at a pressure of 0.2 inches w.g. (50 Pascal's). Where required by the Code Official, testing shall be conducted by an approved third party. A written report of the results of the test shall be signed by the party conducting the test and provided to the Code Official. Testing shall be performed at any time after creation of all penetrations of the building thermal envelope.

During testing:

1. Exterior windows and doors, fireplace and stove doors shall be closed, but not sealed, beyond the intended weather-stripping or other infiltration control measures;



908 W. GORDON AVE., STE #3
LAYTON, UTAH 84041
OFFICE: (801) 547-8133
FAX: (801) 820-9089

2. Dampers including exhaust, intake, makeup air, backdraft and flue dampers shall be closed, but not sealed beyond intended infiltration control measures;
3. Interior doors, if installed at the time of test, shall be open;
4. Exterior doors for continuous ventilation systems and heat recovery ventilators shall be closed and sealed;
5. Heating and cooling systems, if installed at the time of testing, shall be fully open.
6. Supply and return registers, where installed at the time of the test, shall be fully open.

If approved by the City, the above noted language should be placed within the ordinance right after the amendment to "Section R401.3 Certificate (Mandatory)" and before "Section R403.3.3 Duct Leakage (Prescriptive)". Please feel free to call or email me (801-547-8133, chrisk@wc-3.com) with any questions that you might have in relation to this recommendation.

Sincerely,

Chris Kimball, S.E., M.C.P., C.B.O.
WC³ Vice President

**Elko City Council
Agenda Action Sheet**

1. Title: **Review and consideration of submitted data and/or arguments and determination as to whether the proposed Ordinance 846 “AN ORDINANCE AMENDING TITLE 9 CHAPTER ONE SECTION THREE ADDING A DEFINITION OF FIRE PROTECTION SERVICE LINE AND SECTION TWENTY NINE ADDING A FIRE PROTECTION SERVICE FEE,” and proposed Resolution 19-18 “A RESOLUTION AMENDING WATER METER RATE FEES,” and proposed Resolution 19-19 “A RESOLUTION AMENDING WATER FLAT RATE FEES,” and proposed Resolution 19-20 “A RESOLUTION SETTING FIRE PROTECTION SERVICE LINE FEES” will impose a direct and significant burden upon a business or directly restrict the formation, operation, or expansion of a business, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **November 12, 2019**
3. Agenda Category: **PUBLIC HEARINGS**
4. Time Required: **20 Minutes**
5. Background Information: **Pursuant to NRS 237.080 the City of Elko notified owners and officers of businesses which may be affected by the ordinance and resolutions to determine if they will impose a direct and significant burden upon a business or directly restrict the formation, operation, or expansion of a business. Staff has prepared a Business Impact Statement for consideration. KW**
6. Budget Information:

Appropriation Required: **N/A**
Budget amount available: **N/A**
Fund name: **N/A**
7. Business Impact Statement: **Required**
8. Supplemental Agenda Information: **Copy of the Business Impact Statement**
9. Recommended Motion: **Approve the business impact statement pursuant to NRS 237 and determine that Ordinance 846 and Resolutions 19-18, 19-19, and 19-20 do not impose a direct and significant economic burden on a business or directly restrict the formation, operation or expansion of a business.**
10. Prepared By: **Kelly Wooldridge, City Clerk**
11. Committee/Other Agency Review: **N/A**
12. Council Action:
13. Agenda Distribution:

**City of Elko
Business Impact Statement**

The following business impact statement was prepared pursuant to NRS 237.090 to address the proposed impact of the City of Elko Ordinance

ORDINANCE 846

**AN ORDINANCE AMENDING TITLE 9 CHAPTER ONE SECTION THREE ADDING A DEFINITION OF FIRE PROTECTION
SERVICE LINE AND SECTION TWENTY NINE ADDING A FIRE PROTECTION SERVICE FEE
And
RESOLUTION 19-18 A RESOLUTION AMENDING WATER METER RATE FEES
RESOLUTION 19-19 A RESOLUTION AMENDING WATER FLAT RATE FEES
RESOLUTION 19-20 A RESOLUTION SETTING FIRE PROTECTION SERVICE LINE FEES**

1. The following constitutes a description of the number and the manner in which comment was solicited from affected businesses, a summary of their response and an explanation of the manner in which other interested persons may obtain a copy of the summary. NRS 237.090(1)(a)

The City Council of the City of Elko desires to amend portions of the City Code pertaining to water rates by adding a definition for the term fire protection service line and authorizing the City Council to set fire protection service line fee by resolution in order to further promote orderly growth and development, and to protect the interest, health, safety and general welfare of the public.

The City Council of the City of Elko commissioned a water rate study and has deemed it necessary to increase the fees for flat rate water use and metered water use, as well as to set fees for the fire protection service lines. The following rates are proposed:

WATER METER RATES BEGINNING JANUARY 1, 2020				
Meter Size	Monthly Base Fee	Proposed Monthly Base Fee	Volume Usage Fee (\$/Kgal)	Proposed Volume Usage Fee (\$/Kgal)
¾ inch	\$13.98	\$14.49	\$1.02	\$1.095
1 inch	\$18.53	\$21.77	\$1.02	\$1.095
1 ½ inch	\$27.65	\$38.83	\$1.02	\$1.095
2 inch	\$36.76	\$58.38	\$1.02	\$1.095
3 inch	\$61.07	\$105.54	\$1.02	\$1.095
4 inch	\$91.44	\$170.72	\$1.02	\$1.095
6 inch	\$152.20	\$326.10	\$1.02	\$1.095
8 inch	\$212.96	\$506.48	\$1.02	\$1.095
10 inch	\$273.71	\$711.86	\$1.02	\$1.095
12 inch	\$334.47	\$1242.24	\$1.02	\$1.095

WATER METER RATES BEGINNING JANUARY 1, 2021		
Meter Size	Proposed Monthly Base Fee	Proposed Volume Usage Fee (\$/Kgal)
¾ inch	\$15.21	\$1.15
1 inch	\$22.85	\$1.15
1 ½ inch	\$40.77	\$1.15
2 inch	\$61.29	\$1.15
3 inch	\$110.81	\$1.15
4 inch	\$179.25	\$1.15
6 inch	\$342.40	\$1.15
8 inch	\$531.80	\$1.15
10 inch	\$747.45	\$1.15
12 inch	\$1304.35	\$1.15

RATES BEGINNING JANUARY 1, 2022		
Meter Size	Proposed Monthly Base Fee	Proposed Volume Usage Fee (\$/Kgal)
¾ inch	\$15.97	\$1.21
1 inch	\$23.99	\$1.21
1 ½ inch	\$42.80	\$1.21
2 inch	\$64.35	\$1.21
3 inch	\$116.35	\$1.21
4 inch	\$188.21	\$1.21
6 inch	\$359.52	\$1.21
8 inch	\$558.39	\$1.21
10 inch	\$784.82	\$1.21
12 inch	\$1369.56	\$1.21

PROPOSED FLAT RATE				
	CURRENT RATE	PROPOSED RATE 2020	PROPOSED RATE 2021	PROPOSED RATE 2022
Monthly Charge	\$0.4281 per fixture unit	\$0.45 per fixture unit	\$.48 per fixture unit	\$.51 per fixture unit
Minimum Monthly Charge – Assumes 66 fixture units	\$ 28.25	\$ 29.70	\$31.68	\$33.66

PROPOSED MONTHLY FIRE SERVICE LINE RATES			
DIAMETER	MONTHLY CHARGE 2020 \$5.38 Per inch of fire service line diameter	MONTHLY CHARGE 2021 \$5.64 Per inch of fire service line diameter	MONTHLY CHARGE 2022 \$5.92 Per inch of fire service line diameter
4 inch	\$21.52	\$22.59	\$23.71
6 inch	\$32.28	\$33.89	\$35.58
8 inch	\$43.04	\$45.19	\$47.44
10 inch	\$53.80	\$56.49	\$59.31
Unknown (will be treated as 4 inch)	\$21.52	\$22.59	\$23.71

Notice of Proposed Rule

- A notice was published in the Elko Daily Free Press on October 1, 2019.
- Letters were sent to over 1936 active businesses in the City of Elko. Names and addresses were obtained directly from the original license application.

Summary of Comments:

One written comment was received and it stated: "What I am concerned with is the percentage increase. Annual increases are proposed to be 5% in 2020, 7% in 2021 and 6% in 2022. Percentagewise, these are fairly hefty increases. We are unable to have our clients agree to that type of guaranteed percentage increase. We kindly ask that the city provide its citizenry the reasons for the increases and to advise if all other cost savings efforts have been undertaken before a service increase."

- The estimated economic benefit of the proposed rule on businesses, including, without limitation, both adverse and beneficial effects, and both direct and indirect effects. NRS 237.090(1)(b)

Adverse effects: Various changes in the ordinance and resolution may be considered adverse effects.

No adverse effects were noted.

Beneficial effects: Various changes in the ordinance and resolution may be considered beneficial.

The City of Elko has not raised water rates since 2007. Operating costs have increased an average of 6% per year over the last six years. The increase in water rates will reduce projected operating losses.

Direct effects: There is an increase in cost to businesses.

Indirect effects: Various changes in the ordinance do not appear to indirectly effect businesses.

- No indirect effects are known at this time.

- The following constitutes a description of the methods the local government considered to reduce the impact of the proposed ordinance on businesses and a statement regarding whether any, and if so which, of these methods were used: (include whether the following was considered: simplifying the proposed rule; establishing different standards of compliance for a business; and if applicable, modifying a fee or fine set forth in the rule so that business would pay a lower fee or fine).

The City is proposing raising the fees over a three year period in order to reduce the impact to businesses. The fee is consistent with fees of other comparable cities in the State.

- The governing body estimates the annual cost to the local government for enforcement of the proposed rule is: NRS 237.090(1)(d)

There is no increased cost to the City.

- The proposed rules provides for a new fee or increase in an existing fee and the total amount the local government expects to collect is: NRS 237.090(1)(e)

The increase in the water rates will reduce the deficit in the operating budget. See the table below:

Water Fund Statement of Net Position											
	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019 Projected	FY2020 Projected	FY2021 Projected	FY2022 Projected	
Operating Revenues											
Water User Fees	\$ 3,250,297	\$ 3,238,382	\$ 3,247,158	\$ 3,279,912	\$ 3,268,235	\$ 3,271,847	\$ 3,332,231	3,512,308	3,784,694	3,973,928	
Other	\$ 69,114	\$ 66,192	\$ 128,970	\$ 142,625	\$ 104,052	\$ 131,043	\$ 109,411	131,043	131,043	131,043	
Total Operating Revenues	\$ 3,319,411	\$ 3,304,574	\$ 3,376,128	\$ 3,422,537	\$ 3,372,287	\$ 3,402,890	\$ 3,441,643	\$3,643,350.63	\$3,915,736.69	\$4,104,971.37	
								5.90%	7.50%	4.80%	
Operating Expenses											
Salaries and Wages	\$ 635,655	\$ 689,257	\$ 741,453	\$ 783,945	\$ 829,328	\$ 818,290	\$ 938,173	858,050	900,953	946,000	
Employee Benefits	\$ 293,140	\$ 321,212	\$ 325,769	\$ 452,082	\$ 570,238	\$ 478,208	\$ 484,406	441,600	463,680	486,864	
Services and Supplies	\$ 1,387,171	\$ 1,429,448	\$ 1,410,253	\$ 1,616,237	\$ 1,608,342	\$ 1,753,160	\$ 1,943,148	1,813,830	1,904,522	1,999,748	
Depreciation	\$ 475,458	\$ 483,739	\$ 495,372	\$ 518,677	\$ 542,672	\$ 575,643	\$ 550,000	582,839	586,000	590,000	
Total Operating Expenses	\$ 2,791,424	\$ 2,923,656	\$ 2,972,847	\$ 3,370,941	\$ 3,550,580	\$ 3,625,301	\$ 3,915,728	\$3,696,319.00	\$3,855,154.00	\$4,022,611.70	
								-6.30%	4.30%	4.30%	
Operating Income	\$ 527,987	\$ 380,918	\$ 403,281	\$ 51,596	\$ (178,293)	\$ (222,411)	\$ (474,085)	(\$52,968.37)	\$60,582.69	82,359.67	
Nonoperating Revenues											
Investment Earnings	\$ 5,982	\$ 2,528	\$ 16,084	\$ 31,491	\$ 47,033	\$ 72,772	\$ 124,074	124,074	124,074	124,074	
Gain on disposal of capital assets	\$ 35,613	\$ 7,125	\$ -	\$ 4,361	\$ (22,405)	\$ -	\$ -	-	-	-	
Total Nonoperating Revenues	\$ 41,595	\$ 9,653	\$ 16,084	\$ 35,852	\$ 24,628	\$ 72,772	\$ 124,074	\$124,073.95	\$124,073.95	\$124,073.95	
Income Before Capital Contributions	\$ 569,582	\$ 390,571	\$ 419,365	\$ 87,448	\$ (153,665)	\$ (149,639)	\$ (350,011)	\$71,105.58	184,656.64	206,433.62	
Capital Contributions - Connection Fees	\$ 995,068	\$ 382,189	\$ 1,123,221	\$ 464,112	\$ 196,010	\$ 404,190	\$ 350,007	350,007	350,007	350,007	
Change in Net Position	\$ 1,564,650	\$ 772,760	\$ 1,542,586	\$ 551,560	\$ 42,345	\$ 254,551	\$ (29,245)	421,112.48	534,663.54	556,440.52	
Net Position, Beginning of Year, Previously Restatement	\$ 20,260,874	\$ 21,825,524	\$ 22,598,284	\$ 22,872,794	\$ 23,424,354	\$ 23,466,699	\$ 23,510,846	\$21,481,600.71	23,902,713.19	24,437,376.72	
Net Position, End of Year	\$ 21,825,524	\$ 22,598,284	\$ 22,872,794	\$ 23,424,354	\$ 23,466,699	\$ 23,510,846	\$ 23,481,601	\$23,902,713.19	\$24,437,376.72	\$24,993,817.24	

6. The money generated by the new fee or increase in existing fee will be used by the local government to: NRS 237.090(1)(e)

The fee will be used to balance the budget.

7. The proposed rule includes provisions that duplicate or are more stringent than federal, state or local standards regulating the same activity. The following explains when such duplicative or more stringent provisions are necessary: NRS 237.090(1)(f)

The proposed changes are not duplicative or more stringent than existing federal, state or local standards. These fees are comparable to other cities similar to Elko in Nevada.

Objection to adopted rule: petition; procedure

A business that is aggrieved by a resolution or ordinance adopted by the City Council may object to all or part of the resolution or ordinance by filing a petition with the Elko City Clerk within 30 days after the date on which the rule was adopted. Any petition filed must be based on the following grounds:

1. The City of Elko failed to prepare a business impact statement.
2. The business impact statement prepared did not consider or significantly underestimated the economic effect of the rule on business.

After receiving a petition filed by an aggrieved business, the Elko City Council shall determine whether the petition has merit.

If the governing body determines that the petition has merit, the Council may take action to amend the rule to which the business objected.

If the City Council finds that the petition does not have merit, the Council will take no action to amend the ordinance, resolution or regulation and such ordinance, resolution or regulation will remain in effect.

Conclusion: (complete after City Council Approval of BIS).

Certification:

CITY MANAGER CERTIFICATION REQUIRED PER NRS 237.090(2):

I, Curtis Calder, as City Manager for the City of Elko, Nevada, hereby certify that, to the best of my knowledge and belief, the information contained in this business impact statement was prepared properly and accurately.

Curtis Calder

Prepared By:

Kelly Wooldridge
City Clerk