



STATE OF NEVADA
COMMISSION ON ETHICS

<http://ethics.nv.gov>

AMENDED NOTICE OF PUBLIC MEETING

NAME OF ORGANIZATION: NEVADA COMMISSION ON ETHICS
DATE & TIME OF MEETING: Wednesday, March 19, 2014 at 8:30 a.m.
PLACE OF MEETING: This meeting will be held at the following locations:

**Nevada Legislative Building
Room 3143
401 S. Carson Street
Carson City, NV 89701**

and via video-conference to:

**Grant Sawyer State Building
Room 4401
555 E. Washington Avenue
Las Vegas, NV 89101**

Members of the public may attend any open session at the above locations.

The open session of this public meeting will be available via the Internet at
<https://www.leg.state.nv.us/App/Calendar/A/>

AGENDA

NOTES:

- Two or more agenda items may be combined for consideration.
- At any time, an agenda item may be taken out of order, removed, or delayed.
- Public comment will be accepted at the beginning of the open session and again before the conclusion of the open session of the meeting. Comment and/or testimony by the public may be limited to three (3) minutes. No action may be taken on any matter referred to in remarks made as public comment.

CLOSED SESSION:

These matters are exempt from the provisions of NRS Chapter 241, the Open Meeting Law.

*	1. Closed Session pursuant to NRS 281A.440(7) to hear testimony, receive evidence, deliberate and render an advisory opinion regarding Confidential First-Party Request for Advisory Opinion No. 14-09A , submitted pursuant to NRS 281A.440(1). This agenda item will not be available to the public.
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*	2. Closed Session pursuant to NRS 281A.440(15) for discussion and consideration of a proposed Stipulation concerning Third-Party Request for Opinion No. 13-68C regarding Dale Derbidge, City Councilman, City of Ely , submitted pursuant to NRS 281A.440(2).
*	3. Closed Session pursuant to NRS 281A.440(7) to consider jurisdictional matters regarding First-Party Requests for Opinion Nos. 14-14A and 14-18A , submitted pursuant to NRS 281A.440(1).
	4. Closed Session to discuss potential or pending litigation.

OPEN SESSION:

To be held upon completion of the closed session.

	1. Call to Order , Roll Call, and Pledge of Allegiance to the Flag.
	2. Open Session for Public Comment. Comment and/or testimony by any member of the public will be limited to three (3) minutes. No action will be taken under this agenda item.
*For Possible Action	3. Open Session pursuant to NRS 281A.440(8) for discussion and consideration of a proposed Stipulation concerning Third-Party Request for Opinion No. 13-68C regarding Dale Derbidge, City Councilman, City of Ely , submitted pursuant to NRS 281A.440(2).
For Possible Action	4. Open Session for consideration and approval of Minutes of the January 15, 2014 and February 12, 2014 Commission meetings.
For Possible Action	5. Open Session to consider proposed regulatory amendments to Nevada Administrative Code Chapter 281A for submission to the Legislative Counsel Bureau.
	6. Open Session for report by Executive Director and Commission Counsel on agency status and operations.
	7. Open Session for Commissioner comments on matters including, without limitation, future agenda items, upcoming meeting dates and meeting procedures.
	8. Open Session for Public Comment. Comment and/or testimony by any member of the public will be limited to three (3) minutes. No action will be taken under this agenda item.
	9. Adjournment.

*A meeting or hearing held by the Commission pursuant to NRS 281A.440 to receive information or evidence regarding the conduct of a public officer or employee, and deliberations of the Commission regarding such a public officer or employee, are exempt from the provisions of NRS Chapter 241, known as The Open Meeting Law. As a result, these agenda items, or any portion of them, may be heard in closed session.

NOTES:

- ❖ The Commission is pleased to make reasonable accommodations for any member of the public who has a disability and wishes to attend the meeting. If special arrangements for the meeting are necessary, please notify the Nevada Commission on Ethics, in writing at 704 W. Nye Lane, Ste. 204, Carson City, Nevada 89703; via email at ncoe@ethics.nv.gov or call 775-687-5469 as far in advance as possible.
- ❖ To request an advance copy of the supporting materials for any open session of this meeting, contact Executive Director Caren Cafferata-Jenkins, Esq. at ncoe@ethics.nv.gov or call 775-687-5469.
- ❖ This Agenda and supporting materials are posted and are available not later than the 3rd working day before the meeting at the Commission's office, 704 W. Nye Lane, Ste. 204, Carson City, Nevada, or on the Commission's website at www.ethics.nv.gov. A copy also will be available at the meeting location on the meeting day.

This Amended Notice of Public Meeting and Agenda was posted in compliance with NRS 241.020 before 9:00 a.m. on the third working day before the meeting at the following locations:

- Nevada Commission on Ethics, 704 W. Nye Lane, Suite 204, Carson City
- Nevada Commission on Ethics' website: <http://ethics.nv.gov>
- Nevada Public Notice Website: <http://notice.nv.gov>
- State Library & Archives Building, 100 North Stewart Street, Carson City
- Blasdel Building, 209 E. Musser Street, Carson City
- Washoe County Administration Building, 1001 East 9th Street, Reno
- Grant Sawyer State Office Building, 555 E. Washington Ave., Las Vegas

AGENDA ITEM NO. 3

AGENDA ITEM NO. 3

AUG 05 2013

COMMISSION ON ETHICS

Nevada Commission on Ethics
REQUEST FOR OPINION

NEVADA COMMISSION ON ETHICS
THIRD-PARTY REQUEST FOR OPINION

NRS 281A.440(2)

No. 13-68C

1. Provide the following information for the public officer or employee you allege violated the Nevada Ethics in Government Law, NRS Chapter 281A. (If you allege that more than one public officer or employee has violated the law, use a separate form for each individual.)

NAME: <small>(Last, First)</small>	Derbidge, Dale	TITLE OF PUBLIC OFFICE: <small>(Position: e.g. city manager)</small>	Ely City Council
PUBLIC ENTITY: <small>(Name of the entity employing this position: e.g. the City of XYZ)</small>	City of Ely and White Pine County (WP Hospital Board)		
ADDRESS: <small>(Street number and name)</small>	PO Box 151854	CITY, STATE, ZIP CODE	Ely, NV 89315
TELEPHONE:	<small>Work:</small>	<small>Other: (Home, cell)</small>	E-MAIL:
		(775) 289-4689	dlderbidge@gmail.com

2. Describe in specific detail the public officer's or employee's conduct that you allege violated NRS chapter 281A. (You must include specific facts and circumstances to support your allegation: times, places, and the name and position of each person involved.)

Check here if additional pages are attached.

See attached.

3. Is the alleged conduct the subject of any action currently pending before another administrative or judicial body? If yes, describe:

None known.

4. What provision(s) of NRS Chapter 281A are relevant to the conduct alleged? Please check all that apply.

Statute	Essence of Statute:
<input checked="" type="checkbox"/> NRS 281A.020(1)	Failing to hold public office as a public trust; failing to avoid conflicts between public and private interests.
<input type="checkbox"/> NRS 281A.400(1)	Seeking or accepting any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties.
<input type="checkbox"/> NRS 281A.400(2)	Using his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person.
<input type="checkbox"/> NRS 281A.400(3)	Participating as an agent of government in the negotiation or execution of a contract between the government and any business entity in which he has a significant pecuniary interest.
<input type="checkbox"/> NRS 281A.400(4)	Accepting any salary, retainer, augmentation, expense allowance or other compensation from any private source for the performance of his duties as a public officer or employee.

Mr. Derbidge failed to avoid conflicts of interest between his private relationships/ business interests and public duties and violated the Ethics in Government Law by failing to abstain from voting during the May 9, 2013 and June 13, 2013 Ely City Council (Ely, Nevada) meetings. He violated NRS 281.A.020(1) and NRS 281.A.420(3).

During the Ely City Council meeting of May 9, 2013 the agenda item was: Approval, Acceptance and Completion of the Center Street Water and Sewer Project. The project was done by JCR Construction Company, which is owned by Jerry Jones – a business partner of Mr. Derbidge in Sagebrush 66 and Jones Derbidge Development. This relationship has been established by Mr. Derbidge’s admission. Mr. Derbidge and Mr. Jones have substantial and continuing business relationships. The Center Street Water and Sewer construction project received favorable consideration (without penalty) from the Ely City Council for a completion date which was originally scheduled for fall of 2012. The vote to accept completion at the May 9 meeting was unanimous, including Mr. Derbidge. A copy of these Minutes is included. Refer to page 15.

During the Ely City Council meeting of June 13, 2013 the agenda item was: Payment of Bills. Mr. Derbidge disclosed that he is a partner with one of the members of JCR Construction. Then he moved to pay the bills, and the motion carried unanimously, again with Mr. Derbidge’s vote. A copy of the Minutes is included. Refer to page 20.

At the time of the May 9 and June 13, 2013 meetings, Mr. Derbidge was under investigation by the Ethics Board for failure to avoid conflicts of interest, failure to disclose and failure to abstain. He admitted guilt on these three charges. A copy of the Stipulated Agreement for RFO No. 13-05C is included. The investigation began in January 2013. By continuing to vote in violation of the Nevada Revised Statutes when he had been placed on notice were blatant and willful violations.

According to NRS 281A.170, the two failures to abstain from voting on May 9 and June 13, 2013 were “Willful violations”.

“Willful violation” means a violation where the public officer or employee:

1. Acted intentionally and knowingly; or
2. Was in a situation where this chapter imposed a duty to act and the public officer or employee intentionally and knowingly failed to act in the manner required by this chapter.

<input type="checkbox"/>	NRS 281A.400(5)	Acquiring, through his public duties or relationships, any information which by law or practice is not at the time available to people generally, and using the information to further the pecuniary interests of himself or any other person or business entity.
<input type="checkbox"/>	NRS 281A.400(6)	Suppressing any governmental report or other document because it might tend to affect unfavorably his pecuniary interests.
<input type="checkbox"/>	NRS 281A.400(7)	Using governmental time, property, equipment or other facility to benefit his personal or financial interest. (Some exceptions apply).
<input type="checkbox"/>	NRS 281A.400(8)	A State Legislator using governmental time, property, equipment or other facility for a nongovernmental purpose or for the private benefit of himself or any other person, or requiring or authorizing a legislative employee, while on duty, to perform personal services or assist in a private activity. (Some exceptions apply).
<input type="checkbox"/>	NRS 281A.400(9)	Attempting to benefit his personal or financial interest through the influence of a subordinate.
<input type="checkbox"/>	NRS 281A.400(10)	Seeking other employment or contracts through the use of his official position.
<input type="checkbox"/>	NRS 281A.410	Failing to file a disclosure of representation and counseling of a private person before public agency.
<input type="checkbox"/>	NRS 281A.420(1)	Failing to sufficiently disclose a conflict of interest.
<input checked="" type="checkbox"/>	NRS 281A.420(3)	Failing to abstain from acting on a matter in which abstention is required.
<input type="checkbox"/>	NRS 281A.430	Engaging in government contracts in which public officer or employee has interest.
<input type="checkbox"/>	NRS 281A.500	Failing to timely file an ethical acknowledgment.
<input type="checkbox"/>	NRS 281A.510	Accepting or receiving an improper honorarium.
<input type="checkbox"/>	NRS 281A.520	Requesting or otherwise causing a governmental entity to incur an expense or make an expenditure to support or oppose a ballot question or candidate during the relevant timeframe.

5. Identify all persons who have knowledge of the facts and circumstances you have described, as well as the nature of the testimony the person will provide.

Check here if additional pages are attached.

NAME and TITLE: (Person #1)			
ADDRESS:		CITY, STATE, ZIP	
TELEPHONE:	<i>Work:</i>	<i>Other: (Home, cell)</i>	E-MAIL:
NATURE OF TESTIMONY:			
NAME and TITLE: (Person #2)			
ADDRESS:		CITY, STATE, ZIP	
TELEPHONE:	<i>Work:</i>	<i>Other: (Home, cell)</i>	E-MAIL:
NATURE OF TESTIMONY:			

6. YOU MUST SUBMIT EVIDENCE TO SUPPORT YOUR ALLEGATIONS PURSUANT TO NRS 281A.440(2)(b)(2). Attach all documents or items you believe provide credible evidence to support your allegations. [NAC 281A.435\(3\)](#) defines credible evidence as any reliable and competent form of proof provided by witnesses, records, documents, exhibits, minutes, agendas, videotapes, photographs, concrete objects, or other similar items that would reasonably support the allegations made. A newspaper article or other media report will not support your allegations if it is offered by itself.

State the total number of additional pages attached (including evidence) 65.

1 + 27 + 28 + 9

7. REQUESTER'S INFORMATION:

YOUR NAME:	Keith Carson		
YOUR ADDRESS:	3 Marietta Way	CITY, STATE, ZIP:	Ely, NV 89301
YOUR TELEPHONE:	Day: (775) 289-4240	Evening: (775) 289-3665	E-MAIL: carsonun@mwpower.net

By my signature below, I do affirm that the facts set forth in this document and all of its attachments are true and correct to the best of my knowledge and belief. I am willing to provide sworn testimony if necessary regarding these allegations.

I acknowledge that, pursuant to NRS 281A.440(8) and NAC 281A.255(3), this Request for Opinion, the materials submitted in support of the allegations, and the Commission's investigation are confidential until the Commission's Investigatory Panel renders its determination, unless the Subject of the allegations authorizes their release.

Keith E. Carson
Signature:

7-31-2013
Date:

Keith Carson
Print Name:

You must submit an original and two copies of this form bearing your signature, and three copies of the attachments to:

Executive Director
Nevada Commission on Ethics
704 W. Nye Lane, Suite 204
Carson City, Nevada 89703



Forms submitted by facsimile will not be considered as properly filed with the Commission.

[NAC 281A.255\(3\)](#)

TELEPHONE REQUESTS FOR OPINION ARE NOT ACCEPTED.



CITY OF ELY

501 Mill Street Ely, Nevada 89301
City Hall (775) 289-2430 - Fax (775) 289-1463

MEETINGS OF THE:

- ELY CITY COUNCIL
- NEVADA NORTHERN RAILWAY BOARD OF TRUSTEES
- ELY REDEVELOPMENT AGENCY
- ELY LIQUOR LICENSING BOARD

PLEASE NOTE: THE COUNCIL/BOARD MEMBERS MAY ADDRESS AGENDA ITEMS OUT OF SEQUENCE, COMBINE TWO OR MORE AGENDA ITEMS FOR CONSIDERATION, REMOVE AN ITEM OR DELAY DISCUSSION AT ANY TIME TO ACCOMMODATE PERSONS APPEARING BEFORE THE COUNCIL/BOARD OR TO AID IN THE EFFICIENCY AND EFFECTIVENESS OF THE MEETINGS.

May 9, 2013 4:00 p.m. – Ely Volunteer Fire Hall - 499 Mill Street - Ely, Nevada.

Mayor Hickman called the Regular Meeting of the Ely City Council to order at 4:00:07 PM. Dale Derbidge led in the Pledge of Allegiance, Norma Engberg offered the Invocation and Mayor Hickman asked for Roll Call.

Members present:

Mayor Jon Hickman
Councilman Robert Sedlacek
Councilman Dale Derbidge
Councilman Rom DiCianno
Councilman Marty Westland
Councilman Shane Bybee

City Staff present:

City Clerk James Alworth
City Attorney Kevin Briggs
City Treasurer Janette Trask
City Fire Chief Ross Rivera
City Engineer B.J. Almberg
City Water/Sewer Supervisor Ron Jenkins
City Landfill/Street Supervisor Rick Stork
City Park/Animal Control Supervisor Mike Cracraft
City Minutes Clerk Jennifer Lee

City Staff absent:

City Building Inspector Brad Christiansen

Regular Meeting of the Ely City Council May 9, 2013

Also in attendance: Members of the public were asked to sign in and the sign-in sheet appears below.

~~PLEASE PRINT NAME~~

Please print your FIRST & LAST name clearly for the attendance list.

<u>Margaret Ouellette</u>	<u>Don Purinton</u>
<u>Doreen Parilla</u>	<u>Peggy Romero</u>
<u>Melody VanCamp</u>	<u>Genevieve Nelson</u>
<u>Maek / Present</u>	<u>Belicia Frenati</u>
<u>Berna Gowder</u>	<u>Ricki Rice</u>
<u>Lakia Byers</u>	_____
<u>Norma Engberg</u>	_____
<u>Scott Husbands</u>	_____
<u>Bruce Setterstrom?</u>	_____
<u>Jim Aortkies</u>	_____
<u>Sharon Porter</u>	_____
<u>Beechelle Dayton</u>	_____
<u>Robert Porter</u>	_____
<u>Lisa Friedman</u>	_____
<u>Sto PAVLAKIS</u>	_____
<u>D. Tinson</u>	_____
<u>George Velichko</u>	_____
<u>Man Chung</u>	_____
<u>Rick Thompson</u>	_____

2. PUBLIC COMMENT: Comments not exceeding three (3) minutes in length will be accepted from the general public in attendance. If any are made, there may be discussion upon those comments. No vote, decision, or action may be taken upon matters raised under this item until it is formally placed on the agenda. **Comments during Discussion Items will not be accepted from the General public.** "Section 8.04, of the Nevada Open Meeting Law Manual indicates that the Public Body may prohibit comment if the content of the comments is a topic that is not relevant to or within the authority of the Public Body or if the content of the comments is willfully disruptive of the meeting by being irrelevant, repetitious, slanderous, offensive, inflammatory, irrational or amounting to personal attacks or interfering with the rights of other speakers".

Bruce Setterstrom stated two weeks ago in a letter to the paper I brought up the internet service, what a problem it was in the town. Today I see you took action and are making it a priority; I think that's great, but I am confused. In a letter from Councilman Sedlacek, he states there's been an ongoing effort by previous Councils, as well as the present Council, to bring high speed internet to the City. I haven't missed very many meetings in the last three years and I've never once heard the Council talk about high speed internet. So, I'm putting in a request for public information for any time the Council has discussed high speed internet. To my knowledge, this Council hasn't discussed it.

Mayor Hickman stated AT & T did their presentation here and they were trying to merge with T Mobile.

Scott Husbands stated I am appearing here on behalf of the City of Ely Corral Association; they are on your agenda under New Business, Item B-3. Our office was contacted by the Corral Association and there is a discussion on the table for what they're supposed to be doing with their manure in the Corrals. The current concern is 1. With respect to the fence that was put up and how it was put up; 2. The current solution to the problem makes it more difficult for the lessees to comply with their leases, in terms of keeping the individuals corrals free from the manure; moving it out to where it's been

currently moved makes it difficult for them to do that, which makes it very difficult to comply with the terms of their lease. I ask that they be given a reasonable opportunity to participate in coming up with a solution to the problem.

Jan Criner, Corral Association President and Corral Boss stated I have thought about things that might help with our attitudes and our dissatisfaction about how things have been handled up to this point. I would appreciate a chance to work with the City Council and our Mayor in resolving these issues concerning our manure stockpile at the Ely City Corrals when we are not time limited.

Don Purinton stated I wanted to discuss Item No.10 under New Business and give you an update. I work for AT & T and a few days ago I got some information from my boss. What we call the M6 Project is going forward. When it got stopped, they were building the system between Lovelock and Winnemucca. It's going to be coming all the way to Eureka and then going down the Highway 50 corridor back to Silver Springs. He said, hopefully, by the 3rd quarter of this year, we will start on Phase 3, which is to bring it from Eureka to Ely, Baker, Delta and Alamo. Once we get that equipment up and working, they will be installing what we call the IPD Slam, which will then open everything up for high speed internet. On the letter that Bruce put in, I was curious about telemedical because that is something that cannot be used on high speed internet; you have to have secured systems. I know because I've helped build and repair T1 circuits that go to the Hospital. I've been keeping Randy Brown, who is our director of External Regulatory Affairs, abreast of what's going on.

Robert Pope stated some months ago we attended one of the Council meetings to get a trailer put on 7th Street; you guys said it wasn't zoned for a single wide. You told us if we got a modular home or a double-wide that there would be no problem of putting one of those up there if we made it into real property. We were given a modular home and would like to put it up on 7th Street, but the Building inspector said I have to have a blue print; there's no blue prints on these homes. The homes were inspected by the government before they came down here. The Building Inspector said he wouldn't look at the home behind the gas station. We'd like to put the home up there – we've always wanted that - before we lose it. I've been trying to get my business license renewed. My wife made a payback agreement with the City on 646 Stevens Avenue; I owed \$100.00 and something dollars before it was shut off; when I got the final bill, it came out to \$200.00 and something dollars. I owed \$87.00 on my past business license; all of a sudden that doesn't exist any more. My wife was told I have to have a Nevada State license.

Patricia Prenatt stated I've talked to several of them about the horse corrals. It is not a horse corral; it's a livestock corral and if people can afford horses, they can afford manure removal. Dollars are very crucial for most of the members down there. We have sheep, goats, pigs and chickens, not just horses.

George Chachas stated ongoing concerns regarding the White River Museum's fees; Senator Pete Goicoechea's landfill bill; and City Code 1-6B-6C. I'd like the most recent Home Occupation/Special Use permits list; in reviewing older lists, I still do not see City Clerk Alworth's business *Got Water*. I've given you the ads that Mr. Alworth has put in before; if you look at the phone number, it matches up with his home address. The 500 block of Lyons is developing a depression; you may have a huge leak and I've seen it repaired three times. Your Street Supervisor is installing new bases for drop inlets; however they seem to be two inches higher than the road. The depression left where the water leak was repaired on the corner of Campton and Great Basin needs to be filled; there's a sharp drop and it's very jarring. Your Street Supervisor needs to pound sand where it's needed, not on the *Copper Queen's* dirt lot; I don't believe the City may work on private property. Near 2341 Campton, it appears you allowed City crews to work on private property to repair a leak; the location of the valve blows a hole in Mr. Stork's statement claiming that Campton is not fifty-five foot wide.

Dale Tyson stated about five years ago I submitted pictures of chewed up sidewalks, 9th and Lyons. As I walk around town, a lot of these sidewalks in the City limits are chewed up or gone. Is there a program in place with the City where somebody could call in and

say this sidewalk needs repairing? If not, there should be something. You do have a large retired community here who like to walk.

Mayor Hickman asked Rick, what is our [policy] on the sidewalk?

City Street Supervisor Stork stated it is the homeowners' responsibility to maintain the sidewalk in front of their residence.

Dale Tyson stated on the backside of Lyons on the Middle School, that sidewalk's all chewed up.

City Street Supervisor Stork stated School District then.

Dale Tyson asked so every sidewalk in this town has to be maintained by the property owners?

City Street Supervisor Stork stated yes, that's the way it's set.

Dale Tyson stated on that corner of 9th and Lyons, it's supposed to have wheel chair accessibility and it doesn't; it is just a broken curb with a water-type shut-off device and has been that way since I've lived here, nine and a half years. I have submitted pictures of that and have told the City Council.

3. CITY DEPARTMENT REPORTS

- FIRE CHIEF

City Fire Chief Rivera stated early Monday morning we had a past Volunteer pass away; it was Leo Curto, who had over forty years service with the Ely Volunteer Fire Department.

- POLICE CHIEF

Police Chief Watt's blotters are on file at City Hall.

- CITY CLERK

City Clerk Alworth stated just a reminder to the Council and the public that on Tuesday, May 21st, there will be a public hearing on the tentative budget. The City Staff is putting together a list of surplus material that we'll bring before the Council for approval to put it out for bid; we want to get that accomplished before the end of the fiscal year. Voter registration starts this Saturday here at City Hall and continues on Monday and Tuesday. Early voting starts on the 18th through the 31st at City Hall. There's rampant rumors going around that the City of Ely sent a letter to a business owner telling him to remove some recycling bins; totally false.

- CITY ATTORNEY

City Attorney Briggs stated he had no report.

- CITY ENGINEER

City Engineer Almborg stated your Water Department Supervisor got with us this past week and we took some elevation measurements between the Court House tank and homes in low areas of pressure in the community to see if there was something wrong with the system; based on our field calculations and pressure checks at those homes, we were within 1 PSI of what I was estimating it should be in that area. During high demand usage, their average pressure starts going down. We may be able to look at something down the road to make that better.

Councilman Westland asked where is it?

City Engineer Almberg stated Morley.

Councilman Bybee asked what is that average pressure running there?

City Engineer Almberg stated we're between 28 and 30. I was out of town last week, but Rick got with Dave in our office and went to 9th and H because they're looking at putting curb and gutter up there; Dave and myself swung by there earlier this week and I think that will all come in front of the Council.

FIRST OF THE MONTH REPORTS

- CEMETERY SEXTON



CITY OF ELY

501 Mill Street Ely, Nevada 89301
City Hall (775) 289-2430 • Fax (775) 289-1467

TO: Mayor Hickman and City Council
FROM: Brian W. Bainbridge, Cemetery Sexton
DATE: April 30, 2013
SUBJECT: Monthly Report

For the month of April, the Cemetery had five services.

The Cemetery is ready for spring; the water is all charged and the system is de-winterized. We replaced bad lines, sprinklers, hoses, etc. Winter burials are compacted and seeded; we hope grass has had time to grow in.

The lawn mowers have been serviced and they are ready for summer. We mowed for the first time this year on 5-1-12.

We will be busy trying to get ready for Memorial Weekend. We are trying to line up a regular summer helper, through the JOIN program.

Any questions, don't hesitate to call or stop in

Brian Bainbridge
Cemetery Sexton

Regular Meeting of the Ely City Council May 9, 2013

- WATER/SEWER SUPERVISOR



CITY OF ELY

501 Mill Street Ely, Nevada 89301
City Hall (775)289-2400

Water Sewer, Wastewater Treatment Plant / Certified Laboratory (775) 289-2150 - Fax (775) 289-1463

Date: May 3, 2013
To: Mayor, Council and Board Members
From: Bob Jenkins, Water Sewer and Wastewater Treatment Plant
Subject: Monthly Report

Water Sewer Department:

During the month of February the following water service was replaced

- 11&B Terminated
- Orson & South
- 9th & Ave D
- 121 Bell Ave
- 2341 Campton St
- 34 Nth Ave
- 582 Murry St Relocated Meter pit

Valves Replaced:

- 4" valve in the intersection of Bell Ave & Campton. The old one was broken closed.
- 4" valve in the intersection of Bell Ave & South St. Broken open.
- 6" Valve in the intersection of South St & Orson Ave. Leaking

Wastewater Treatment Plant:

The centrifuge is still out of service being rebuilt. We are continuing with weed control. The rest of the plant is running in compliance with all violations.

If anyone has any questions or concerns, feel free to contact me anytime.

• LANDFILL/STREET SUPERVISOR



CITY OF ELY

501 Mill Street Ely, Nevada 89301
City Hall (775) 289-2430 - Fax (775) 289-1463

Date: May 1, 2013
To: Mayor Hickman
City Council Members
Utility Board Members
From: Rick Stork- Landfill/Street Supervisor
Subject: Monthly Report - Landfill/Street Department

Landfill

We conducted daily operations and maintenance of the equipment during the month of April. We have received 2,420.18 tons of garbage in the class 1 site, for the year averaging 20.34 tons per day. We have received 1,227.83 tons of waste in the class 3 site, for the year averaging 10.32 tons per day. We did the daily operations and maintenance of the equipment. We serviced the equipment as needed. We worked on the new pond on the North side of the Landfill. We have the pond completed and just need to rip and level the floor. We helped clean up the horse manure at the corrals and hauled it to the Lockawanna Mill tailing ponds. We bladed the roads at the corrals and helped put up a fence to stop the dumping of more horse manure.

During the month of May we will do daily operations and maintenance of the equipment as usual and handle anything else that may come up. We will continue to work on the pond when time permits.

Equipment Status:

All of the equipment is up and running.

Street Department:

During the month of April we built new drain inlets and poured cement around them at 10th & High and 10th & Lyons. We helped the Landfill haul dirt out of the new pond. We helped clean up the horse manure at the corrals and helped put up a new fence to stop further dumping of horse manure. We ordered and have received the signs for Veterans BLVD & Great Basin BLVD that the wind blew down and we will install them the first week of May. We filled in potholes with sand as needed.

During the month of May we will stay busy working on equipment as needed. We will start washing and sweeping on the 6th of May. As soon as the asphalt plant is up and running we will order our cold mix asphalt for this year's patching season. We will also handle anything else that comes up.

Equipment Status:

All of the equipment is up and running.

• PARKS/ANIMAL CONTROL SUPERVISOR



CITY OF ELY

501 Mill Street Ely, Nevada 89301
City Hall (775) 289-2430 - Fax (775) 289-1463

TO: ELY CITY COUNCIL
FROM: MIKE CRACRAFT PARKS & ANIMAL CONTROL SUPERVISOR
RE: MONTHLY REPORT

During the month of April, we've been working on sprinkler systems in all three parks. Many sprinkler heads were broken and had to be replaced. We've been mowing, fertilizing and thatching. All the parks are in good shape now. The manufacturer made the additional Broudbent Park fencing black instead of white, so they are redoing that now. They have assured me it will be done May 15th, so we will get it picked up and installed. We also cleaned the quonset hut at the City yard with help from the Street and Water departments. We are continuing to repair and replace street lights through town. If you know of any, please contact me and we will get after it.

Animal Control has been business as usual. Todd does a good job.

If there are any concerns or comments, please feel free to contact me.

Animal Control Monthly Report
05

Month APRIL

Date 2013

Moneys collected:

Adoptions: _____

Work done: 75⁰⁰

Owner Surrender: _____

Owner Relinquished: _____

Number of Animals Impounded: WAT WAT WAT WAT WAT

Number of Animals Released to owners: 1

Number of Animals Adopted: _____

Number of City Earthcontrol: WAT 1 WAT 2
WAT WAT WAT WAT WAT 5

Notes:

City of Ely: 111 111

County of Esmeralda: 111 111

Other: _____

4. THE MAYOR WILL RECESS THE REGULAR CITY COUNCIL MEETING FOR A MEETING OF THE NEVADA NORTHERN RAILWAY BOARD OF TRUSTEES.

1. Executive Report

NEVADA NORTHERN RAILWAY

A NATIONAL HISTORIC LANDMARK



1100 Avenue A • PO Box 150040 • Ely, Nevada 89315
Toll Free: (866) 407-8326 • Voice: (775) 289-2085 • Fax: (775) 289-8284
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Executive Director's Report -- May 3, 2013

- 1 Locomotive Status – No Change
 - a. Locomotives in service: #40, #93, #204, #109, #310, Wrecking Crane A & Rotary B.
 - b. Locomotives out of service needing moderate repairs: #105, #45
 - c. Locomotives waiting funding for restoration. Steptoe Valley Smelting and Milling #3, #81 and Rotary Snowplow B (for boiler overhaul)
 - d. Locomotives out of service needing heavy repairs #801, #802, #81, #80 and the military locomotives
- 2 Rolling Stock Status – No Change
 - a. Passenger equipment in service: #07, #08, #09, Flatcar #23, Coach #5, Baggage Car/RPO #20, Outfit Car #06
 - b. Passenger equipment out of service: #10, #2 and #05 needing heavy repairs.
 - c. Caboose in service: #3 #6 and #22 are operational.
 - d. Caboose out service #5
 - e. Nevada Northern Rotary B in service
- 3 Track Status – No change
 - a. Keystone Branch is open
 - b. The mainline to MP 132 is open
 - c. Adverse Branch is open
 - d. One of our crossings, just before the J & M siding on the mainline, was destroyed by heavy equipment needed to put out the Range Fire. We have a repair plan. We are waiting for the government to send us the money to do the repairs.
4. Building Status – Update
 - a. CCA Grant 10-23 Rehabilitation of Nevada Northern Railway Complex - \$180,000
 - i. Grant funds were released in December. The plan is as follows for the remaining funds.

1) Ice House Exterior Rehabilitation The building has been patched, pressure washed, primed and it has been painted



The upper photo is the Ice House as it is now. Due to CCA Grants we were able to repair all of the doors and windows. Bring electricity to the building, install lights both inside and outside. The building has a new roof and new paint job. it is now useable.

CCA Funds have allowed us to turn an eyesore into a useable building that supports our activities.

Regular Meeting of the Ely City Council May 9, 2013

- 2) Carpenter Shop Window Rehabilitation – will be completed by May 31.
- 3) Wash House Roof - will be completed by May 31.
- 4) Master Mechanics Building Platform will be completed by May 31.

5. Ridership and Ticket Sales – Updated

Ridership in April was 683 passengers. This is a 3% increase over the previous year.
Ridership year to date is 1,118, an 5% increase over the previous year .

6. Membership – No changed

Members p program/level	Fee	Members
NNRy Membership-Active	\$30	1,311
NNRy Membership-Contributing	\$50	572
NNRy Membership-Centennial	\$100	558
NNRy Membership-Sustaining	\$250	81
NNRy Membership-Patron	\$500	40
NNRy Membership-Friend	\$1,000	14
NNRy Membership-Lifetime	\$1,000	163
NNRy Membership-Supporter	\$2,500	0
NNRy Membership-Benefactor	\$5,000	0
NNRy Membership-Leader	\$10,000	1
NNRy Membership-Donor	Misc	6
NNRy Membership Total		2,746

7. Silver Anniversary Fund – No change

At its February 29th meeting the Management Board voted to create the Silver Anniversary Fund. The goal of this initiative is to raise \$1,250,000 by May 31, 2013 the end of our 25th Anniversary Celebration
Raised to date: \$87,500

8. Grants – Updated

- a. Grants Written - \$87,902
 - i. Web Marketing, Fulfillment and Database Grant - \$7,500
 - ii. Nevada Northern Railway Television Episode - \$30,000
 - iii. Expanded Lonellest Road Billboard Campaign – \$39,805
 - iv. Nevada Northern Railway Billboard Campaign - \$10,597
- b. Grants Awarded - \$13,800
 - i. Daily Foundation - \$13,800 to install the Wig-Wag Signals
- c. Grants Pending - \$0
- d. Grants Under Administration - \$1,552,585
 - i. PE-13-50 Nevada Northern Railway Special Event and Services Marketing - \$25,000
 - ii. PE-13-51 Social Media Project – \$11,928
 - iii. PE-13-49 Auto Club initiative - \$7,500
 - iv. GBHP Plaza Improvements - \$70,000
 - v. GBHP American Restoration Grant - \$10,000

Regular Meeting of the Ely City Council May 9, 2013

- vi. White Pine Tourism & Recreation - \$20,000
 - vii. Web Marketing, Fulfillment & Database Grant - \$7,500
 - viii. Rack Cards and Distribution - \$6,400
 - ix. Highway 50 Survival Guide Kiosks Software - \$28,000
 - x. Smart Phone App for Nevada Northern Railway, National Historic Landmark - \$8,845
 - xi. AT & T Mobile Phone App - \$6,000
 - xii. Great Basin Heritage Area - \$25,000
 - xiii. CCA 10-25 Urgent Building Repair and Dormitory Project - \$180,000
 - xiv. NPLMA – Wa King Trail, parking and lighting in conjunction with EDC \$588,464
 - xv. NDOT McGill Track Restoration - \$497,076
 - xvi. NCOT PRT 12-21 Ely Community Tourist Radio - \$16,000
 - xvii. Samuel Freeman Charitable Trust - \$85,000
9. Funding Raising Program – No change
- a. The 2013 Nevada Northern Railway coin series continues with Wrecking Crane A
 - b. The Nevada Northern Railway Locomotives coin series continues in 2012 celebrating our 25th year of operation.
 - c. I am approaching Businesses and Corporations on becoming members.
 - d. We need to make a push for local members.
10. Earmark Funds - \$1,710,945 – Updated
The track rehabilitation plan has been submitted to both the PUC and NDOT. Work is continuing to on having the money available for the 2013 construction season
- I was informed that the City of Ely can submit an invoice for the purchase of the railroad and the \$750,000 will be released to payback the loans
11. Promotion and Marketing – No change
- a. Ghost Tracks is in development.
 - b. The 2013 Brochure has been printed
 - c. The 2013 Calendar is printed and in distribution.
12. Upcoming Events – Updated
- a. Members' Weekend Open House - May 24-27
13. The American Restoration episode with the Wig-Wag Signals is done and will air in April
The next step is to install the signals on the private road crossing that goes through the East Ely Yard.
2. Board Members – Executive Director Bassett – Discussion/For Possible Action – Consideration to direct the Executive Director, in conjunction with the Railroad Enterprise Fund TIGER Grant Committee, to apply for a TIGER grant to rehabilitate Nevada Northern Railway from Shafter (MP 18.5) to Keystone (MP 146.5) and the McGill Branch from McGill Junction (MP 128.5) to McGill Depot (MP 3.9)

Executive Director Bassett presented the TIGER Grant information appearing below and stated I talked about the rehabilitation of the Railroad with Senator Reid in March and he said that would be an excellent TIGER grant project; I told him the TIGER grants weren't funded and Senator Reid smiled, saying we'll have to work on that.

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TIGER Grant Opportunity

The Federal Department of Transportation (DOT) is accepting applications for TIGER Grants. The opportunity opened on April 29 and closes on June 3, 2013. There is a very short window to create and apply for a TIGER Grant

The funding announcement was unexpected and is of a short duration. Normally, as a rural area, we would only be eligible to apply for \$1 million through \$10 million with no match requirement. But because of the short application period, the upper limit no longer exists. It is unclear if there is a match requirement for rural grants higher than \$10 million

The Foundation is not eligible to apply for a TIGER Grant but we can apply with the City of Ely to access the TIGER Grant funds. There is precedent for this partnership. The \$750,000 EDA grant was in the City of Ely's name and the Foundation did the administration of the grant. The reports were sent in by the City and the funds were received by the City and disbursed to the Foundation to pay the contractors.

At its May 2, Management Board meeting, the board voted to pursue a TIGER Grant to rehabilitate the railroad. The board also voted to hire a grant writer with specific knowledge and experience to write a TIGER Grant. Ms. Becket's resume is attached.

Ms. Becket's fee for doing the grant including the Cost Benefit Analysis will be roughly \$10,000. Because the Foundation is a non-profit it can receive donations to pay for the grant application. We will be out fund raising to cover the cost of the grant.

The Railroad Enterprise Fund does have \$5,000 in its account. Could some of this money be used to help pay to have the grant written?

The grant is for the following items

1. Open the Currie Railroad Crossing - \$2.5 million
2. Open the Pole Line Highway Crossing - \$1.25 million
3. Rehabilitate the Cherry Creek Crossing - \$½ million
4. Rehabilitate the Prospector Highway Crossing - \$1 million
5. Rehabilitate the railroad to Class 2 standards with heavier rail - \$59.75 million

Given to City of Ely & the Foundation 1/30/1987
 Track Miles: Mainline 28.8 miles, Yard 6.7 miles; Total 35.5 miles

Track Status
 Cobna MP 0 – Shafter MP 18.5
 Out of Service - Track Miles 18.5

Shafter MP 18.5 – Curie MP 63
 In Service - Track Miles 44.5

Curie MP 63 – McGill Junction MP 128.8
 Out of Service - Track Miles 65.8

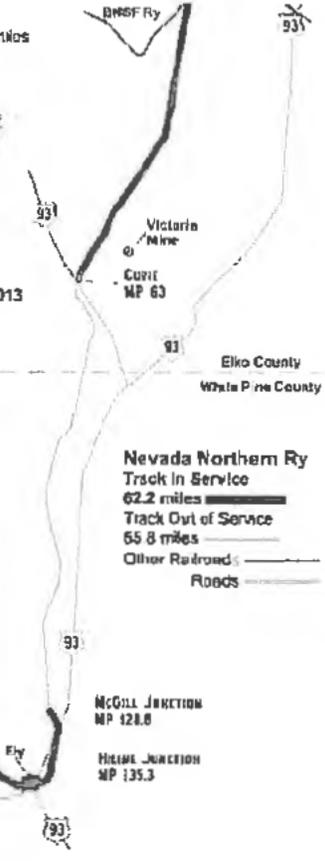
McGill Junction MP 128.8 – Hillino Junction MP 135.3
 Out of Service - Track Miles 6.5 Scheduled for Rehab 2013

Hillino Junction MP 135.3 – Keystone MP 146.5
 In Service - Track Miles 11.2

Keystone MP 146.5 – Sunshine (Loadout) MP 148.3
 Out of Service - Track Miles 1.8 (Owned by the mine)



Last used by BHP Nevada Railway
 From 1996 through 2000
 Average Train - 60 cars



Executive Director Bassett stated we should ask for as high as twenty million dollars. There's an odd sentence in the grant instructions that says if not all grant funds are awarded, USDOT will either hold another grant cycle or award additional funds to people who successfully received a grant on the first go-away. The strategy we're coming up with is to put together a principal grant to get the line open and then present an additional phase to re-rail the line with heavier rail. The grant writer the Management Board hired wrote a ten million dollar TIGER grant that was awarded and our June 3rd deadline did not scare her.

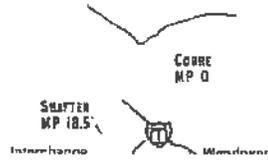
Trustee DiCianno asked we've got to have \$10,000.00 to pay her?

Executive Director Bassett stated it looks like we're going to be at \$8,000.00. I would request the Council on their next agenda to ask the Railroad Enterprise Fund to help pay for the grant writer. Since the Management Board is convinced this is an incredibly important project, we will go out and find the money. The other thing on the next City Council agenda is to get a letter of support from them on the grant.

Trustee DiCianno moved to direct the Executive Director, in conjunction with the Railroad Enterprise Fund TIGER Grant Committee, to apply for a TIGER grant to rehabilitate Nevada Northern Railway from Shafter (MP 18.5) to Keystone (MP 146.5) and the McGill Branch from McGill Junction (MP 128.5) to McGill Depot (MP 3.9). Trustee Sedlacek seconded the motion. The motion carried unanimously.

Nevada Northern Railway Track Map

Cobre MP 0 – McGill Junction MP 128.8
Purchased 9/27/2005 by City of Ely & the Foundation
Track Miles 128.8



Chairman Bybee adjourned the meeting of the Nevada Northern Railway Board of Trustees and turned the gavel back to the Mayor to reconvene the Regular City Council Meeting.

5. ITEMS FOR DISCUSSION/POSSIBLE ACTION OF THE ELY CITY COUNCIL AS RECOMMENDED BY THE UTILITY BOARD.

1. Board Members – *Robinson Nevada Mining Company (RNMC)* representative – Discussion/For Possible Action – Update to the Utility Board on the *Robinson Nevada* Development, Ruth Pit Development and water mitigation efforts within the City of Ely.

Lisa Friedman of *Robinson Nevada Mining Company* stated we are actively mining in the Ruth and Kimberly pits. We are not yet dewatering in the Kimberly pit; we're still waiting on permits for that. Gleason Creek has been dry because of the expansion of the Ruth pit; we had to disconnect some of our dewatering wells and we're needing the water we normally send down Gleason Creek, to run through the mill for our process. You won't be seeing Gleason Creek water coming down until we hook up another one of our wells on site, hopefully by the end of next week.

2. Board Members – City Engineer Almberg – Discussion/For Possible Action – Consideration to award bid for the Waste Water Treatment Plant Screw Pump Replacement.

City Engineer Almberg stated that item was tabled. There were some questions from the vendors, so we sent out an addendum. We'll bring that back for the Utility Board.

Councilman Westland moved to table this item. Councilman Derbidge seconded the motion. The motion carried unanimously.

3. Board Members – City Engineer Almberg – Discussion/For Possible Action – Approval, Acceptance and Completion of the Center Street Water and Sewer Project.

City Engineer Almberg stated the Utility Board voted unanimously to complete this project. The original contract amount for this project was \$450,925.00. The total paid out to date on the project is \$397,293.22. Total retention to be paid to contractor upon Notice of Completion is \$17,417.28. This comes up to a total savings to the City of \$35,584.50. The extension date for that project was February 15th. The final underground sewer pipe was put in on February 4th. *JCR* was given a preliminary punch list February 5th. We walked with *JCR* and City Staff to create a final punch list April 9th; we did the final review on that April 24th with ourselves, City Staff, the Mayor and some Council Members. The last item on that list – raising one of the fire hydrants – was completed last Friday.

Councilman Sedlacek moved to declare the Center Street Water and Sewer Project complete. Councilman Bybee seconded the motion.

Councilman Derbidge disclosed he is in business with one of partners of *JCR* in another business, but stated he does not own any part of *JCR*.

The motion carried unanimously.

4. Chairman Norcross – Discussion/For Possible Action – Final Determination from the City Engineer when and if the Center Street Water and Sewer Project was considered complete and accepted by the City of Ely. Page C-2 of the contract, in the paragraph that sets forth the \$300.00 liquidated damages, specifically states: "The City Engineer has the sole discretion to determine when the project has been completed."

City Engineer Almberg stated the Utility Board didn't do anything because Item 46 in the contract defines "Substantial Completion" as "the time at which the work as specified

thereof has progressed to the point where, in your opinion, is substantially complete in accordance with contract documents, so that the work can be utilized for the purpose for which it was intended." The last underground pipe work was completed February 4th; it had been up and functioning in the City since that point in time. Everything else was clean up.

5. Chairman Norcross – Discussion/For Possible Action – Recommendation to City Council whether or not liquidated damages of \$300.00 per day will be assessed.

City Attorney Briggs stated this item is moot based on the prior item.

6. Councilman Derbidge – Discussion/For Possible Action – Consideration of procedure and billing for filling water trucks until the water fill station is up and running.

Councilman Derbidge stated we talked about this in the Utility Board meeting yesterday and after reviewing the City policy, we just need to follow the City policy that's in place. Everybody using a fire hydrant has to have a meter and the Utility Board decided they need to have back-flow prevention with the meters; it was their idea that the City purchase the back-flow preventers. We talked about changing our fee schedule to incorporate the use of back-flow preventers and sending a letter reminding contractors they need to use meters. We'll put it back on when we get the meters because we'll have to change the monthly fee.

7. Board Members – City Attorney Briggs – Discussion/For Possible Action – Review and recommendation to the Ely City Council with regards to proposed Ordinance No. 658, Bill No. 2013-04: An Ordinance Establishing Cross Connection Control for Commercial Users of the City of Ely's Water System to Prevent Backflow and Backsiphonage into the City of Ely Water System.

Councilman Derbidge stated the Utility Board voted to table this because Ron had information from the State that didn't get disseminated, so Kevin can incorporate what we've gotten. I move to table this item until it comes back from the Utility Board. Councilman Westland seconded the motion. The motion carried unanimously.

8. Councilman Derbidge – Discussion/For Possible Action – Consideration of possible contract solutions between the City of Ely and *Basin Engineering* for Engineering and Surveying services.

Councilman Derbidge stated Janette sent out minutes from yesterday's Utility Board meeting and they talked about comparing what we have now and what we had before. *Basin Engineering* would provide our monthly engineering service as we need it; they would write the capital improvement projects and that would be part of their monthly fee. If the grant was given to the City, that engineering would be incorporated in the contract fee. It should just be the department heads and Jim talking to the Engineer; we don't want someone else asking *Basin Engineering* to do services and encumber the City for costs that we don't have set. B.J. wanted all originals to stay with City Hall and he would get copies. The Utility Board offered B.J. a three-year contract with a monthly fee of \$4,200.00 for the year 13-14 and increase it \$200.00 a month . . .

City Clerk Alworth stated . . . each of the two next years.

Mayor Hickman stated there was a thing in here about ten percent, but then you determined the \$4,200.00, \$4,400.00 and \$4,600.00. It sounds like you agreed to all this?

City Engineer Almberg stated yes.

Councilman Derbidge moved to approve the agreement with *Basin Engineering* with a three-year contract with \$4,200.00; \$4,400.00; and 4,600.00 per month with the other terms we talked about. Councilman Sedlacek seconded the motion.

City Clerk Alworth stated you should mention fifteen percent on the capital.

Councilman Derbidge stated we also talked about that if there's a capital funded, his percentage would be capped at fifteen percent (15%).

City Engineer Almberg stated it would be T and M, but not to exceed.

Councilman Derbidge stated that's right.

City Engineer Almberg stated some projects are heavy engineering design oriented. Other projects are coordinated with the manufacturers, like the screw pump. We did the screw pump under our basic service because there wasn't a lot of engineering involved. If we run into a design project, we would cap it there and go into T and M; if things go great, hopefully it would be less than that.

City Attorney Briggs asked what is T and M?

City Engineer Almberg stated Time and Material.

Councilman Derbidge amended his motion to include the fifteen percent cap on capital improvement projects. Councilman Sedlacek amended his second to reflect the same. The motion passed unanimously.

6. ITEMS FOR DISCUSSION/POSSIBLE ACTION ONLY OF THE ELY CITY COUNCIL.

A. CONSENT AGENDA (These items may be approved in one motion by the Council as its first action of business under For Discussion/Possible Action items.) Approval of the Consent Agenda approves each of these items. Council Members may remove any item from the Consent Agenda by notifying the Mayor or Mayor pro tem.

MOTION: Move to approve the Consent Agenda items 6A-1 Minutes; 6A-2 Payment of Bills.

Moved by: Councilman Bybee Second by: Councilman DiCianno Vote: Unanimous

1. Discussion/For Possible Action --Minutes.
2. Discussion/For Possible Action - Payment of Bills.

The Ely City Council Minutes of March 26, 2013 and April 11, 2013 were approved. The bills are on file at City Hall.

B. NEW BUSINESS

1. Council Members – Executive Director Bassett – Discussion/For Possible Action – Consideration to direct the Executive Director, in conjunction with the Railroad Enterprise Fund TIGER Grant Committee, to apply for a TIGER grant to rehabilitate Nevada Northern Railway from Shafter (MP 18.5) to Keystone (MP 146.5) and the McGill Branch from McGill Junction (MP 128.5) to McGill Depot (MP 3.9).

Councilman Bybee moved to direct the Executive Director, in conjunction with the Railroad Enterprise Fund TIGER Grant Committee, to apply for a TIGER grant to rehabilitate Nevada Northern Railway from Shafter (MP 18.5) to Keystone (MP 146.5) and the McGill Branch from McGill Junction (MP 128.5) to McGill Depot (MP 3.9). Councilman Derbidge seconded the motion. The motion carried unanimously.

2. Councilman Sedlacek – Councilman Derbidge – Discussion/For Possible Action – Approval of Recommendation from the combined White Pine County/City of Ely Inter-Local Agreement Team for consolidation of City of Ely and White Pine County Fire Protection Services and/or Emergency Medical Services.

Councilman Sedlacek stated it amounts to the cooperation between the City and the County; they would move their paid people, with their ambulances, up to our Fire Department and be dispatched out of there. I see a lot of advantages. One of the major advantages I see is a better response for the public; you've got two people up there and if you've got a heart attack or car wreck, instead of waiting for an EMT to be called in and come, you can leave immediately. Also, you can continue with running with a volunteer a good share of the time because if we cut our volunteers out we'll lose them.

Councilman Derbidge stated the County approved this at their meeting yesterday; so if the City Council approves it today, the people can come up with a plan on how to do it. There's so many advantages. In our little valley we have two fire departments and two ambulance services; it's quite a waste of time, money and equipment.

Councilman DiCianno asked did the County Attorney approve this?

Councilman Derbidge stated yes.

Councilman DiCianno asked are you talking about Kelly Brown?

Councilman Derbidge stated I don't know. I wasn't at the meeting.

Councilman Sedlacek stated I think he was questioned about it, there were some answers given and evidently it was alright.

Mayor Hickman asked Donna Bath, were you there at that County meeting? Could you give us an answer on that?

Donna Bath stated I was there as a member of the public and they voted on it with a 3 to 2 vote to move forward and look at the options that were being presented on how they could work with the City to enhance the program. The County Attorney was not there yesterday. The Deputy District Attorney was there; I don't know if she looked at the agreement or if she didn't.

Councilman Derbidge stated once we both get in agreement we're going to do it, then we can figure out how it's going to go and come back to the County and City to approve the agreement.

Councilman Westland stated there's some concern this would affect outlying areas and their fire districts; this would not in any way dismantle what's there.

Councilman Sedlacek stated absolutely no affect on any volunteer organizations outside of the City of Ely. The one thing that will change for them is they're going to have a better second response from Ely than what they had before.

Councilman Bybee stated we're coming up to the close of Budget and we still don't have an approval of our Police and Fire agreement as it exists now. I would support this, but it would be contingent upon an approval of the negotiated agreement for Police and Fire protection.

Councilman Derbidge asked don't you think that would come in with the agreement when we settle with the County?

Councilman Sedlacek stated we're just asking to put together a plan to do it; then the final approval will have to come back here.

Councilman Bybee stated from what I understood, we had a negotiated agreement for Police/Fire; then it came time to throw the budgets together and I find out we didn't have an agreement. I would like to see these two tied together; that as soon as that agreement is handled for this year, then this agreement would go along with it.

Councilman Derbidge stated I'd rather do it the way it's on the agenda.

City Attorney Briggs stated it may take a good portion of the year to work out all the details.

Councilman DiCianno stated they weren't unanimous at the County Commission.

Councilman Derbidge moved to move forward with the consolidation of the City of Ely and White Pine County Fire Protection Services and EMS. Councilman Sedlacek seconded the motion. The motion passed 3 to 2, with Councilmen Bybee and DiCianno voting Nay.

3. Councilman Derbidge – Discussion/For Possible Action – Direction from the Council to the owners of the City Corrals as to where they are to deposit the manure produced from their animals.

Jan Criner, Ely City Corral Association President and Corral Boss stated I'd like to make a correction in the description of Number 3. We are not owners of our corrals; we lease the land, from the City. We do own the improvements and that was agreed upon in 1963.

Scott Husbands of *Gianoli Husbands PLLC Attorneys & Counselors at Law* stated we're trying to come up with a resolution of the issues and hope to be involved.

Mayor Hickman stated we did have a meeting with Councilman Westland, Jim Alworth, myself and some of your group. Kevin was out of town. That was mostly on not what to do with the manure. We did remove the big manure piles.

Jan Criner stated which was approved.

Mayor Hickman stated and we put up a fence, opening the section where the manure can be placed on a temporary basis because we didn't want that big area taken up. As I said at our little meeting, it's going to be up to the City Council whether they're going to remove the manure or not.

Jan Criner stated our City Clerk's office and the Landfill department should have waited until they got City approval to put the barrier fence up. I thought the barrier fence was a good idea. There should be some consideration as to where the barrier fence might be opened, if the Council decides we are going to be allowed to continue to put our manure stockpile in the area in which it's been for fifty years. Our Landfill Supervisor provided a place on the south end, where he bowled it out on the bank of Lackawanna Road; this did not allow any drainage off of the manure piles to go down into the Creek. On the north end, he did not bowl out an area and those folks did not have a clear understanding of what was required of them. The posted "NO DUMPING" signs from the U.S. Forest Service were small and insufficient, so three years went by and a huge stockpile was produced. There's no cooperation between the two entities. I have some suggestions on what a City of Ely order sign might say if the Council chooses to allow manure stockpiling in the designated areas on the property. The City Corral Lessees need two designated facility manure stockpiles, areas dug out against the bank of Lackawanna Road at both the north and south ends. The Lessees need the City of Ely Landfill equipment operators to load and haul the manure stockpiles from the designated area. Lessees are not able to comply with the mandate given on May 2nd – without Council approval – from the City Clerk's office due to the fact no one has the equipment.

Scott Husbands stated the resolution needs to be one that works for the Lessees. What the City has done by moving the area to where it's been moved is placed the Lessees into a situation where they're unable to comply with the terms of the lease.

Councilman Sedlacek asked what was hard to comply with, taking it out to Lackawanna or where the dump site is now at the Corrals?

Jan Criner stated the dump site needs to be moved where it was before on the south end because then it's down in the hole; where it's at now if two dump trucks load accumulate and it rains hard, it will run off down into the Creek. Hauling off the manure twice a year wouldn't be ridiculous; it took them five and a half hours to remove three years worth. A dump site on the property is close enough to where we can clean our corrals daily; we

cannot do that with what is being proposed at this time and it would have to be stockpiled in our corrals, which breaks our lease agreement. It is difficult to have one designated area for fifty-eight corrals; pushing wet manure is hard.

Mayor Hickman asked does the lease agreement say the City will remove?

City Attorney Briggs stated no.

Jan Criner stated it needs to be amended.

Councilman Westland stated these people are leasing a situation. Because the Mines did not remove those manure piles the past three years, there was three years of accumulation. I want to thank any of the City crews involved for removing that.

Jan Criner stated yes and they did an excellent job and the grading of the roads happened.

Councilman Westland stated what the Corral Lessees are asking for is simple and absolutely necessary. It is not practical to clean those corrals on a daily basis and remove the manure to a point two miles away, not even on a road. There should be at least two manure piles where the people can be expected to place their manure. It needs to be specified in the lease what the City's responsible for doing and what the Lessees are responsible for doing. It's not asking too much to have the City keep the manure piles and roads maintained; and provide safety signage and drainage, so we're not running water off of Lackawanna Road across the public areas.

Councilman Sedlacek asked have we ever had two spots to dump manure before?

Jan Criner stated yes.

City Clerk Alworth said they dumped in two at north and south. In the meeting with the Mayor, Councilman and six members of the Corral Association, we came to an agreement to wait. I'd prepared a letter and Councilman Derbidge said to put it on the agenda. We sent an email to Jan to say how we were doing this; we designated that area as being cleaned every Monday by the Landfill department. The meeting before the Lessees wanted the City to maintain the City's property and that is our property where the manure is being piled. We tried to control where it was being dumped on the public's property. I understand the people with the hardship of getting the manure removed and Robert, one of the Lessees at the meeting, said if we have corral owner that needs assistance, we will help. We gave them the option, if they had the chance to haul it, to please dump it down the road. When the Landfill equipment is busy, we will work out a deal with the Parks Department.

Jan Criner stated it would be to the benefit for your office to consult with someone who has a knowledge of horse management. People don't haul their manure in a truck; they haul it with wheelbarrows and most of them don't have the ability to put that into a truck without a loader. I put out a message that if Lessees hire a contractor to clean out their corrals, that they need to take it two miles down the road.

Scott Husbands stated I looked at the lease yesterday and I don't think the duties and responsibilities with respect to this aspect of the Corrals is covered in the lease agreement; whatever solution the Council comes up with needs to be included in the lease agreement so it's clear who is responsible for what and what the duties are.

Mayor Hickman stated the train of thought of a lot of people is they're your animals; it should be the owners' responsibility to clear the manure out of the corral. The City is responsible for taking it out?

Councilman Derbidge stated they also do pay \$7,000.00 a year in rent. In the past, I don't think they've gotten \$7,000.00 worth of work from the City. Have Scott and Kevin come up with an amended lease and bring it back to the City Council.

Councilman Bybee asked there needs to be a cost analysis done and once we delineate these responsibilities, what are our costs? We need to make sure the \$7,000.00 does cover that.

Councilman Westland stated Jim had the numbers for what it cost to remove the three years accumulation.

City Clerk Alworth stated roughly, \$5,650.00.

Councilman Westland stated it would take about a third of what we bring in per year to keep those corrals maintained.

Councilman Bybee stated but we also handle billing, grading the roads and other issues down there. We need to do a cost analysis of what it costs us to run the Corrals twelve months a year.

Councilman Derbidge stated there are taxes people pay to run the City and we do a lot of things that we don't cost analysis. We have three parks and we don't say 'if I take my grandkids up there, is it going to cost me how much to play up there?' Some things we've done; they've done these corrals for fifty years. We need an agreement that would satisfy both parties and actually delineate what is required of each one, so we wouldn't have arguments.

City Clerk Alworth stated we did that; we're hauling it every Monday.

Councilman Derbidge stated they want their lease amended.

Councilman Westland moved to delineate two manure piles that the City will maintain that are acceptable to the Lessees. Councilman Derbidge seconded the motion.

Councilman DiCianno stated I would like to have Pat Maestes' opinion.

Pat Maestes stated I'm confused what the deal is between the City and the Corral Owners, what we're supposed to do and how you can help us. I agree with Jan on what we need. We just need something set in stone, so as Lessees we know what we can do and what we have to do. Not many corral owners have enough equipment to haul it clear out and it's not year round.

Mayor Hickman called for the vote; the motion passed 4 to 1, with Councilman Bybee voting Nay.

City Attorney Briggs stated with regards to any amendments to the lease, the new leases are signed by July 1st, so we're running up against a deadline if we want to change those leases.

4. Councilman Derbidge – Reconsideration of and update concerning plans for Broadbent Park.
5. Councilman Derbidge – Discussion/For Possible Action – Consideration to purchase portable backstops for Broadbent Park in place of the old backstop, which on February 14, 2013 the City Council voted to remove.

Councilman Derbidge stated taking down the old backstop was approved by the City Council in a meeting February 14th; we talked about the concession stand not being usable and accessible with the big fence to have functions. There are a lot of parks that have portable backstops; we could have as many as we could afford and make that park more usable than it is now.

Peggy Romero stated I want to make sure portable backstops are equipped for the bigger kids and not just the little ones.

Regular Meeting of the Ely City Council May 9, 2013

Genevieve Nelson stated I talked to the Parks Director a couple weeks ago and he had the idea to take the backstop that's up now and move it to the very back corner.

Councilman Derbidge stated I talked to Mike about this. That backstop is big, ugly and old; let's put up something new and nice.

Councilman Sedlacek stated let's get the maximum use out of the park.

Mayor Hickman asked do you remember the sizes?

City Parks Supervisor Cracraft stated anywhere from \$300.00 to \$3,000.00.

Councilman Derbidge stated we would like to replace that old backstop with how ever much is in our budget or maybe we can get other people to help with backstops for the City.

Councilman Westland asked does anyone in this room have an idea of what the types of backstops you want would cost?

Peggy Romero stated the ones I looked up on line were running \$4,000.00.

City Treasurer Trask stated aren't there grant possibilities through the Fair and Rec.? I would like to do that as our first approach and see if they will fund the backstops.

Councilman Derbidge moved to consider various ways to purchase a minimum of two portable backstops for the park. Councilman Bybee seconded the motion.

Councilman Westland stated I want to make a commitment to these people that we won't be taking down what we have until we have something to replace it with.

Councilman Sedlacek stated we're not taking it down before this season and then you've got all the way until next season.

Genevieve Nelson asked will there be backstops for next season?

City Clerk Alworth stated yes.

Councilman Derbidge stated somewhere I want in my motion "... a commitment to purchase two by seeking various ways of funding."

Minutes Clerk Lee asked you want it to say "Commit to purchase or receive donations for a minimum of two portable backstops for the park"?

Councilman Derbidge stated yes.

Councilman Bybee stated "... whatever steps are necessary to acquire."

Councilman Derbidge stated yes.

Councilman Derbidge's amended his motion to take whatever steps are necessary to acquire a minimum of two portable backstops for the park. Councilman Bybee amended his second. The motion passed unanimously.

6. Councilman Derbidge – Discussion/For Possible Action – Consideration to donate large green bleachers to White Pine Little League.

Councilman Derbidge stated Mike Cracraft had some people from the Little League ask if the City would donate those bleachers. I move to donate the large green bleachers to White Pine Little League.

Councilman DiCianno asked can we get a letter from the chairman of the White Pine Little League?

Councilman Derbidge stated asking for them?

Councilman DiCianno stated yes.

City Clerk Alworth stated didn't you report Mike, one of their members said no, they don't want them now.

City Parks Supervisor Cracraft stated yes.

Councilman Derbidge stated I would make the offer to them and if they don't want it . . .

Councilman Westland stated I second that we should make the offer.

The motion passed unanimously.

7. Council Members – City Attorney Briggs – Discussion/For Possible Action – Approval of First Reading of Ordinance 658, Bill No. 2013-04: An Ordinance Establishing Cross Connection Control for Commercial Users of the City of Ely's Water System to Prevent Backflow and Backsiphonage into the City of Ely Water System.

Councilman Derbidge stated we tabled that in the Utility Board part, so I move to table this. Councilman Westland seconded the motion. The motion passed unanimously.

8. Councilman Derbidge – Discussion/For Possible Action – Review of City Code 8: "Public Ways and Property", specifically Sections 8-1-1 through 8-1-11 for possible modifications, deletions or additions.

Councilman Derbidge stated I brought this up before about systematically reviewing our policies and Jim brought this up as the first one, which is a start.

City Clerk Alworth stated 8-1-1, Item C dealing with excavations mentions the City Engineer; since this was put into place, we've included the City Street Supervisor to be involved in inspecting excavations.

Councilman Derbidge stated there are three or four places where it says application is prepared by the City engineer.

City Clerk Alworth stated a lot of this stuff can get reviewed by the City Street Supervisor. A pavement patch needs to be added to the Excavations section. I'd like to draft something on this Excavation section and bring it back.

Councilman Derbidge stated I think you should redraft the whole thing.

City Clerk Alworth stated I'll take that challenge.

Councilman Derbidge moved to let City Clerk Alworth redraft City Code 8 and bring it back when he has it done. Councilman DiCianno seconded the motion. The motion passed unanimously.

City Attorney Briggs stated Jim, once you get it rewritten, I'll have to put it in ordinance format.

9. Councilman Sedlacek – Discussion/For Possible Action – Affirmation of City of Ely Letter of Support, signed by Mayor Hickman, for Nevada Wildfire Awareness Week May 4 – May 11, 2013.

Councilman Sedlacek moved to affirm the City of Ely Letter of Support, signed by Mayor Hickman, for Nevada Wildfire Awareness Week May 4 – May 11, 2013. Councilman Derbidge seconded the motion. The motion carried unanimously.

City Clerk Alworth stated the League of Cities appreciated that letter and sent back a 'thank you'.

10. Mayor Hickman – Discussion/For Possible Action – Consideration to send letter of inquiry to *AT & T* regarding their future business plans in the City of Ely.

Bruce Setterstrom stated my name was brought up about this issue; I was wondering if I could respond.

Mayor Hickman stated go ahead, Bruce.

Bruce Setterstrom stated somebody informed me about the internet medicine. Would fiber optic cable enhance the medical? It was one of the doctors that told me they need faster service.

Councilman Derbidge stated the Hospital is trying to get fiber optic to the Hospital.

Bruce Setterstrom asked would it enhance the medicine?

Councilman Derbidge stated immensely.

Councilman Bybee stated I would like to talk to Bruce about one of the statements he made in his letter to the public, that the City did not work with them or get access to that line in 2000 when fiber optic was brought through town. That line was brought through the City. The City negotiated out two access points for those lines; one is behind the *Bank of America* building and one is at the community college. Of all of those lines that were run, there's two fibers that are lit. I did some investigation this week and two fibers have been purchased by independent businesses; they're having to pay for the maintenance and using them for their own purposes, not for the development of internet. Should those lines all be lit eventually, the City does have access in lieu of a franchise fee for breaking into our streets and running those lines through town. I wish before you go public with something like that, you'd investigate it a little further.

Bruce Setterstrom stated I was just reporting what I was told.

Councilman Bybee stated that's happened a lot.

Bruce Setterstrom stated when you're trying to get answers from the City, it's hard to get answers and they don't give you the full story.

Councilman Westland moved to send a letter of inquiry to *AT & T* regarding their future business plans in the City of Ely. Councilman DiCianno seconded the motion. The motion carried unanimously.

11. Mayor Hickman – Discussion/For Possible Action – Consideration to send a letter of support for Brenlon Dillard's efforts to have the Nevada Legislature designate the Blue Weimaraner as the Nevada State Dog.

Councilman Westland stated I like all dogs. I would have a hard time picking out one to be the Nevada State Dog.

Councilman Sedlacek stated I've heard this issue is not going anywhere in the Legislature.

7. REPORTS

CITY COUNCIL

Councilman Westland did not have a report.

Councilman Derbidge did not have a report.

Councilman Bybee stated I am very troubled about some of issues I see coming up because I don't see a lot of research going into it. I see a lot of inaccurate statements being made to cast a bad light on the City and its day-to-day operations. This posting on the internet this morning about the recycle bins being forced off by the City wasn't true and yet, it's not been taken back off the internet. Bruce Setterstrom stated yes it has.

Councilman Bybee stated I printed it off there today.

Bruce Setterstrom stated I went in, talked to Jim this morning and asked him. The owner of that building stated that Jim Alworth sent him a letter saying . . .

Councilman Bybee stated right and the website that showed that . . .

Bruce Setterstrom stated you'll have to talk to the owner of that building to say that he lied. Jim had the phone call with him, so ask Jim about it.

Councilman Bybee stated I understand that. I see the owner of that website hasn't done anything to change an untruthful statement about those recycling bins. I think the City needs to take action to answer these accusations because they're not true.

Mayor Hickman stated it was posted by Wyatt Cox on *White Pine News*; I think it would be up to him to print a retraction.

Councilman Bybee stated on the next agenda, we need to come up with a public response.

Councilman Westland stated Shane brings up a good point, but so much of this is because people don't know. We have policies in place that might indicate something; we were just looking at one about the sidewalks that wouldn't allow things being put out on the street. We should encourage people to come to this forum and I don't see anything that prevents us from being able to have discussions at these Council meetings. Yes, it lengthens the meeting, but I think it would go a long way to restoring some public trust.

Councilman Bybee stated that's backhanded when one of the letters I printed off the internet full of misinformation came from you, your "Open Letter to the Ely Voters". You made some misinformed statements in there to create an inflammatory response from the public.

Councilman DiCianno stated I agree.

Councilman DiCianno did not have a report.

Councilman Sedlacek stated that a previous Council that was talking about the fiber optics and leaving some opening for internet services for Ely. I'm just answering Setterstrom's. Recently, *Beehive* requested we let them bury cable down Center Street so they could put in some high speed internet. My statement's one hundred percent true.

City Clerk Alworth stated it came out in the paper about the outside watering and I sent an email to everybody how that's calculated. Once again I'd back up what Councilman Bybee said. Bruce has come into my office numerous times and emails me; I wish he would have come to City Hall and asked about the outside watering because City Hall is flooded now with people believing that they don't have to pay for outside watering.

MAYOR

Mayor Hickman stated I approved Special Events licenses for the annual White Pine Little League Breakfast at Broadbent Park May 18th and the White Pine Friends of NRA to conduct a fundraiser June 15th at the Convention Center. I went down to Arbor Day; Mike and Bill Wolf planted one tree and relocated another at Bianchi Park.

8. AGENDA ITEMS FOR THE NEXT REGULARLY SCHEDULED CITY COUNCIL MEETING.

Councilman Bybee stated this was brought to my attention awhile back and I've spoken with an attorney: I believe we have three ethics violations by Councilman Westland. I'd like to see it agendaed to consider hiring independent counsel to look into these accusations.

Councilman Sedlacek stated don't forget the gentleman that wants to discuss the speeders.

9. PUBLIC COMMENT: Comments not exceeding three (3) minutes in length will be accepted from the general public in attendance. If any are made, there may be discussion upon those comments. No vote, decision, or action may be taken upon matters raised under this item until it is formally placed on the agenda. "Section 8.04, of the Nevada Open Meeting Law Manual indicates that the Public Body may prohibit comment if the content of the comments is a topic that is not relevant to or within the authority of the Public Body or if the content of the comments is willfully disruptive of the meeting by being irrelevant, repetitious, slanderous, offensive, inflammatory, irrational or amounting to personal attacks or interfering with the rights of other speakers".

Bruce Setterstrom stated I brought internet service up in an open letter in the newspaper May 2nd. I've never heard anything from this or previous Councils about bringing faster internet service to the City until that letter was printed. Then the Mayor responds with a letter to *AT & T*. Mr. Purinton gets up and talks about internet. It wasn't brought up by any Council until I brought it up. This is the letter I got from Jim Alworth concerning the outside water: "Outside water is calculated on the square footage of one's yard, so if the calculation requires you to pay \$200.00 per year for outside water, the person has a few options. \$200.00 divided by twelve months equals an average billing of \$16.67 a month. If a person wants, he can pay one time." You're talking about you don't like the letters in the newspaper, listen to this one. This is the letter in today's paper: "As far as outside water fee, it is calculated on a square footage for one's yard. Example: If the calculation requires you to pay \$200.00 per year, you can pay it one of three ways. \$200.00 divided by twelve months equals . . ." How much, Jim?

City Clerk Alworth stated \$16.67.

Bruce Setterstorm asked how do you know? Those words are Mr. Sedlacek's; that's his letter. It's kind of funny how your letter from two weeks ago is exactly his words.

City Clerk Alworth stated he got the same email; everybody got the same email.

Councilman Sedlacek I asked him permission to use it.

Jim Northness stated I've been posting on that *Facebook* page. There's a lot of people who don't know what's going on and some of the people are trying to give information to educate these people. I have a solution. I have seen some accusations that could be very serious. I would like to see a Grand Jury petition in White Pine County, using the City of Ely as a focal point. Let's find out what's right and what's wrong. If these accusations are false, then you will be exonerated.

Maureen Otzelberger stated I live on Lyons Street and yesterday the street was cleaned; all the sidewalks are full of gravel and it is a mess. I was here when that man came over here and asked if you people would support his recycling program and you said no.

George Chachas stated ongoing concerns regarding a Home Occupation update; money due from the Golf Course; and the \$270,000.00 from the County. At a previous meeting City Clerk Alworth stated the City is in fine shape; now I understand Treasurer Trask is asking the County for \$268,000.00.

Mayor Hickman stated that's the same amount. You got it wrong. It's \$268,000.00 and some change.

George Chachas stated make up your mind. You did get the money?

Mayor Hickman stated we haven't got the money.

George Chachas stated there is no qualification for that money. If you're in fine shape, you're stealing from the County; there are entities in the County that need that money. Did the County apply for a Special Use permit for the swimming pool on school property? I understand they're going to need a tremendous amount of power - 1.5 megawatt - to cover the approximate \$400,000.00 electric bill for heating the water. I've been to all your meetings and haven't seen one request for a Will Serve for the swimming pool; they're on the verge of breaking ground. There were comments in the County packet that some of that may be horse traded. I can't get my water on and you guys are 'horse trading' on an item that has never come on an agenda that I know of. The railing around the *Mt. Wheeler* substation site appears to be thirty feet short on the north side, with nothing done on the south side. I want to give you my information again regarding Mr. Alworth's business and I expect an answer within a reasonable amount of time.

Don Purinton stated Dale, it would be great if we could get stuff, but we had two engineers here for three days surveying this M6 project we've got coming to bring us more bandwidth. Fiber is just a transport; how you break it down and give it to the customer is another thing. Fiber is cheap; it's what you hang on the ends of it that costs a lot of money. It would be great if we could bring a fiber service into the Hospital, like we did for *Mt. Wheeler Power*; all they bought from us was a T3 system. We have fiber that goes close by the Hospital, but I found out from the engineers that we have IOF - Inner Office Facility - and Loop. A cable in the ground or on a pole is designated either IOF or Distribution; what you get your dial tone on at the house is Distribution on copper. Radio is IOF. This cable that goes by the Hospital and goes out to the Industrial Park is a twelve-fiber IOF; it would mean having to put more fiber in there unless they could split the cable up. Almost everything we have here is ATM, but ethernet will be a hand-off protocol that we will be able to provide customers. Hopefully in the third quarter, we will have the equipment here, turned on.

10. THE MAYOR WILL RECESS THE REGULAR CITY COUNCIL MEETING FOR A CLOSED SESSION.

Councilman DiCiaro moved to go into Closed Session. Councilman Bybee seconded the motion. The motion carried 4 to 1, with Councilman Westland voting Nay.

1. Council Members - City Attorney Briggs - Discussion Only - Consideration of Union Contract Negotiation Guidelines.

Upon appropriate motion, the Mayor adjourned the Closed Session of the Ely City Council and reconvened the Regular City Council Meeting.

11. ADJOURNMENT: THE MEETING MAY BE ADJOURNED BY APPROPRIATE MOTION OF THE CITY COUNCIL.

Councilman DiCiaro moved to adjourn the Regular Meeting of the Ely City Council at 7:04:31 PM. Councilman Sedlacek seconded the motion. The motion carried unanimously.

MAYOR

ATTEST



CITY OF ELY

501 Mill Street Ely, Nevada 89301
City Hall (775) 289-2430 - Fax (775) 289-1463

MEETINGS OF THE:

- ELY CITY COUNCIL
- NEVADA NORTHERN RAILWAY BOARD OF TRUSTEES
- ELY REDEVELOPMENT AGENCY
- ELY LIQUOR LICENSING BOARD

PLEASE NOTE: THE COUNCIL/BOARD MEMBERS MAY ADDRESS AGENDA ITEMS OUT OF SEQUENCE, COMBINE TWO OR MORE AGENDA ITEMS FOR CONSIDERATION, REMOVE AN ITEM OR DELAY DISCUSSION AT ANY TIME TO ACCOMMODATE PERSONS APPEARING BEFORE THE COUNCIL/BOARD OR TO AID IN THE EFFICIENCY AND EFFECTIVENESS OF THE MEETINGS.

June 13, 2013 4:00 p.m. – Ely Volunteer Fire Hall - 499 Mill Street - Ely, Nevada.

Mayor Jon Hickman called the Regular Meeting of the Ely City Council to order at 4:00:07 PM, Rom DiCianno led in the Pledge of Allegiance, Norma Engberg offered the Invocation and Mayor Hickman asked for Roll Call.

Members present:

Mayor Jon Hickman
Councilman Robert Sedlacek
Councilman Dale Derbidge
Councilman Rom DiCianno
Councilman Marty Westland
Councilman Shane Bybee
Councilman Elect Bruce Setterstrom
Councilman Elect Randy Lee
Councilman Elect Sam Hanson

City Staff present:

City Clerk James Alworth
City Attorney Kevin Briggs
City Treasurer Janette Trask
City Fire Chief Ross Rivera
City Engineer B.J. Almberg
City Water/Sewer Supervisor Ron Jenkins
City Assistant Landfill/Street Supervisor Thomas

Lawrence

City Parks/Animal Control Supervisor Mike Cracraft
Minutes Clerk Jennifer Lee

City Staff absent:

City Building Inspector Brad Christiansen

June 13, 2013

Dear Friends,

I want to begin by extending to all of you my most sincere "thank you" for the out-pouring of kindness and support that was given to me during my medical crisis. I am extremely humbled. Your thoughtfulness meant more than I can ever explain or repay. Thank you!

However, I am outraged by the actions of three cowards at the May 23rd City Council meeting. Three weeks ago today, this body voted (apparently against the opinion of our City attorney) to hire an outside attorney to go after me on ethics violations. They voted to spend our money, public money, with NO LIMIT specified on that expenditure, to pursue vague and undefined charges against me. And no one even bothered to talk with me. To see what the truth might be. To see if there is even a basis for charges. But that is every person's right. In Nevada, if you suspect the ethics of a public official, all it takes is a letter to the proper agency and an investigation will be conducted. You don't need to hire an attorney. Just name your charges. But three Councilmen voted to spend YOUR money, and that is what has me so upset. One or all of those men could have personally filed charges, and I am happy to answer, but to vote as a Council to spend public money on an election-eve smear campaign is mis-use of public funds.

Thank God, in this country the voters have the final authority, and today we have three new men on the Council. I urge each of you freshman Councilmen to pursue the best interests of the people of Ely. Spend our money wisely. Treat everyone fairly. Just do the right thing, and everything will come out fine.

Congratulations to the new Councilmen, and "Thank You" to the public for all your support.

Sincerely, Marty Westland

George Chachas stated ongoing concerns regarding the White River Museum rates; Senator Goicoechea's landfill billing; City Code 1-6B-6C; whether the County paid for water used at the Golf Course; and an updated Home Occupation/Special Use permit list. In reading the Sherriff Blotter report dated May 2, 2013, the City filed a complaint regarding theft of a City utility; I'd like to know who filed the complaint, who was the person or entity that was cited, when did the Board address the issue and what was the outcome. The County is about to break ground on the new pool on property belonging to the County; they have yet to apply for a building permit or Water/Sewer Will Serve. I believe it would be illegal for them to tap into the High School connections. You guys claim to be strapped; as a taxpayer, I want you to collect every dime. Please table Items 7B-1 and 7B-2 on your agenda today to give the new Council Members time to make a thoughtful vote on those items.

3. SWEARING IN OF NEW CITY OFFICERS

1. Council Members – City Clerk Alworth - Discussion/For Possible Action - Swearing in of new Councilman to Seat 1 for a four-year term.
2. Council Members – City Clerk Alworth - Discussion/For Possible Action - Swearing in of new Councilman to Seat 3 for a four-year term.
3. Council Members – City Clerk Alworth - Discussion/For Possible Action - Swearing in of new Councilman to Seat 5 for a four-year term.

City Attorney Briggs stated from somewhere I've heard that there was a possibility the three Councilmen that won't still be on the Council weren't going to be here today, so I was concerned about quorum to get this meeting started and contacted the Attorney General's office; he indicated to me that because this is not an action of the City Council, there was nothing preventing us from having them sworn in early, so we would make

sure we had quorum. I sent that message out and two of the City Councilmen were sworn in by Judge Steven Bishop. We have asked Lin Burleigh if she would take care of the public swearing in.

White Pine County Clerk Burleigh thanked Councilman Sedlacek, Councilman DiCianno and Councilman Bybee for their service.

White Pine County Clerk Burleigh swore in Bruce Setterstrom, Randy Lee and Marion J. Sam Hanson as Councilmen to Seats 1, 3 and 5 respectively.

Councilman Setterstrom, Councilman Lee and Councilman Hanson took their seats at the City Council table.

4. CITY DEPARTMENT REPORTS

- FIRE CHIEF

City Fire Chief Rivera stated I'll be taking a couple days of vacation Tuesday and Wednesday of next week; Thursday and Friday I'll be in Mesquite for Nevada's Fire Fighter's Association Training Conference. If you need anything, you can always contact me by cell phone.

Councilman Derbidge asked how's your 5th man working out?

City Fire Chief Rivera stated great! Hopefully next week, he'll be pulling some full shifts.

Fire Chief Rivera's blotters are on file at City Hall.

- POLICE CHIEF

Police Chief Watts' blotters are on file at City Hall.

- CITY CLERK

City Clerk Alworth thanked White Pine County Clerk Lin Burleigh for stepping in.

- CITY ATTORNEY

City Attorney Briggs stated I would like to thank the three outgoing Councilmen for their service and look forward to working with the new City Councilmen. Janette sent out some information with regards to training put on by the Local Leaders Institute from the University of Nevada Reno in Eureka this weekend; it's going to be talking about local government, the Open Meeting law and budgetary things.

Councilman Hanson stated they're having another session in Las Vegas in mid-August.

- CITY ENGINEER

City Engineer Almborg stated congratulations; I look forward to working with you guys. The plans for the BLM's water line extension to their new seed warehouse at the Industrial Park came across my desk and I hadn't seen them. The burial depth on the plans called for four feet and our City Code calls for five feet. I didn't see a backflow prevention and cross connection on the plans. I called the engineer and he adjusted his plans to require five foot of depth. The engineer also provided additional plans showing cross connection/ backflow located inside of the building. I signed a Will Serve for the Shoshone Tribe; they're doing some additional lots on their property. To do the length of that extension requires State approval and I told him they could not proceed with construction until we get the letter back from the State. *Mt. Wheeler* came to our office regarding their easement for an electrical line coming off their substation towards the Cemetery heading down to Aultman Street; as they come across the hillside there's some washouts and deep ditches, so they've proposed putting in twenty-four inch (24") culverts with headwalls to protect their utilities as they cross these washouts. Based on

preliminary information they provided me, I felt that would be adequate; we anticipate being able to use those same utility facilities when we pipe that water. Our Building Inspector called me onto High Street because of an undesirable situation where two neighbors are sharing the same sewer lateral; these neighbors are working through that issue, but sometimes neighbors don't. The Water Supervisor and I drove around today looking at future improvements; one is at the 10th and M well in order to flush it through a pipe to a different location, so as not to affect neighboring properties.

FIRST OF THE MONTH REPORTS

- CEMETERY SEXTON



CITY OF ELY

301 Mill Street Ely, Nevada 89301
City Hall (775) 289-3400 • Fax (775) 289-1403

TO: Mayor Hickman and City Council
FROM: Brian W. Bainbridge, Cemetery Sexton
DATE: May 31, 2013
SUBJECT: Monthly Report

For the month of May, the Cemetery had seven services.

We mowed and used weed eaters to get the entire Cemetery ready for the Memorial Day Holiday Weekend.

Any questions, don't hesitate to call or stop in.

Brian Bainbridge
Cemetery Sexton

Regular Meeting of the Ely City Council June 13, 2013

• WATER/SEWER SUPERVISOR



CITY OF ELY

501 Main Street Ely, Nevada 89301
City Hall (775) 289-2900

Water Sewer, Wastewater Treatment Plant • Certified Laboratory (775) 289-2150 • Fax (775) 289-1466

Date: June 6, 2013
To: Mayor, Council and Board Members
From: Ron Jenkins, Water Sewer and Wastewater Treatment Plant
Subject: Monthly Report

Water Sewer Department:

During the month of May the following water services was replaced.

- 265 H St was terminated
- 1313 Ave H
- 996 Pine St. Patched

Main Breaks:

- 1250 Ave L

A total of ten days was spent on Center St. Replacing seven water services and extending meter pits to the proper depth

Wastewater Treatment Plant:

The centrifuge should be back in service by mid June. The rest of the plant is running in compliance with no violations.

If anyone has any questions or concerns, feel free to contact me anytime

• LANDFILL/STREET SUPERVISOR



CITY OF ELY

501 Mill Street Ely, Nevada 89301
City Hall (775) 289-2430 - Fax (775) 289-0463

Date: May 31, 2013
To: Mayor Hickman
City Council Members
Utility Board Members
From: Rick Stork - Landfill/Street Supervisor
Subject: Monthly Report - Landfill/Street Department

Landfill

We conducted daily operations and maintenance of the equipment during the month of May. We have received 3,150.08 tons of garbage in the class 1 site, for the year averaging 21 tons per day. We have received 1,797.08 tons of waste in the class 3 site, for the year averaging 11.98 tons per day. We did the daily operations and maintenance of the equipment. We serviced the equipment as needed. We worked on the new pond on the North side of the Landfill. We have the pond completed and still need to rip and level the floor. We have been cleaning up the horse manure at the corrals and hauling it to the Lackawanna Mill tailing ponds. We had a fire shipment shipping 19.71 tons. We also are in the middle of a metal shipment. We hope to ship around 140 tons.

During the month of June we will do daily operations and maintenance of the equipment as usual and handle anything else that may come up. We will continue to work on the pond when time permits.

Equipment Status:

All of the equipment is up and running.

Street Department:

During the month of May we washed and swept all of Central Ely, the Terrace, all of the downtown area, all of Murry Canyon and lower East Ely from 7th Street East to 11th Street East. We are currently working from 11th Street East to the City Limits on Ave C. We filled in potholes with sand as needed. We should get our cold mix asphalt the first part of June. By then we should be done cleaning streets and go right into patching potholes. The Johnston Street sweeper went down for about a week, but is back up and running again.

During the month of June we will stay busy working on equipment as needed. We will finish washing and sweeping the rest of East Ely. We will haul our cold mix asphalt as soon as the plant is up and running and start patching potholes. We will also handle anything else that comes up.

Equipment Status:

All of the equipment is up and running.

Councilman Derbidge asked what do we have to pay for a shipment of tires?

City Assistant Landfill/Street Supervisor Lawrence stated tonnage.

Councilman Derbidge asked where do they go?

City Assistant Landfill/Street Supervisor Lawrence stated *Salt Lake Tire Recycling*.

- PARKS/ANIMAL CONTROL SUPERVISOR



CITY OF ELY

501 Mill Street Ely, Nevada 89301
City Hall (775) 289-2430 • Fax (775) 289-1463

TO: ELY CITY COUNCIL
FROM: MIKE CRACRAFT, PARKS & ANIMAL CONTROL SUPERVISOR
RE: MONTHLY REPORT

During the month of May, we've been working on all three parks, cleaning and mowing. We installed the additional Broadbent Park fencing on 1st Street. I met with *Sunrise Engineering* regarding the SNPLMA upgrades to our parks; a contractor will be here June 12th, with construction to start soon after on Broadbent and Bianchi. SNPLMA upgrades to North Park will be completed next year. Our grant applications to the Tour and Rec Board have been turned in for portable backstops, more flags for the decorative light poles and enough fencing to finish Broadbent Park.

Animal Control has been running good.

If there are any concerns or comments, please feel free to contact me.

Animal Control Monthly Report
08

Month May

Date 5-31-13

Moneys collected:

Adoptions: 25-25-25-25

Went home: 75

Owner Surrender: _____

Owner Euthanized: 10-10

Number of Animals Impounded: ~~THL THL THL THL THL THL THL THL~~

Number of Animals Released to owners: 1

Number of Animals Adopted: 1111

Number of City Euthanized: ~~THL THL THL THL THL THL THL THL~~ CATS
THL 111 2695

Notes:

City- / dogs-	<u>THL</u>	Cats-	<u>THL THL 1</u>
County- / dogs-	<u>THL 111</u>	Cats -	<u>THL THL 1</u>
Other-			

City Parks Supervisor Cracraft stated the County Commission awarded the bids for the Broadbent, Bianchi and Jack Caylor park projects yesterday; Jim Wilkin was the low bid on all of it. As soon as I get more on the bids from *Sunrise*, I'll give it to you. After talking to Councilman Derbidge, we need to put on the agenda for the next meeting how we want to process the toys outside here.

City Attorney Briggs asked have we ever received a response from *Sunrise*? They were going to contact to see if SHIPO was okay with this.

City Parks Supervisor Cracraft stated I was told yesterday that everything is good.

5. THE MAYOR WILL RECESS THE REGULAR CITY COUNCIL MEETING FOR A MEETING OF THE NEVADA NORTHERN RAILWAY BOARD OF TRUSTEES.

Chairman Derbidge opened the meeting for the Northern Nevada Railway Board of Trustees.

1. Executive Report

NEVADA NORTHERN RAILWAY

A NATIONAL HISTORIC LANDMARK



1100 Avenue A • PO Box 150040 • Ely, Nevada 89315
Toll Free 888) 407-8326 • Voice: (775) 289-2085 • Fax: (775) 289-6284
Web www.nnry.com • e-Mail info@nnry.com

Executive Director's Report – June 7, 2013

1. Locomotive Status – Updated
 - a. Locomotives in service #40, #93 #204, #310, Wrecking Crane A & Rotary B
 - b. Locomotive #109 is out of service
 - c. Locomotives out of service needing moderate repairs: #105, #45
 - d. Locomotives waiting funding for restoration: Sleptoe Valley Smelting and Milling #3, #81 and Rotary Snowplow B (for boiler overhaul.)
 - e. Locomotives out of service needing heavy repairs #801, #802, #81, #80 and the military locomotives
2. Rolling Stock Status – No Change
 - a. Passenger equipment in service: #07, #08, #09, Flatcar #23, Coach #5, Baggage Car/RPO #20, Outfit Car #06.
 - b. Passenger equipment out of service: #10, #2 and #05 needing heavy repairs.
 - c. Caboose in service #3 #5 and #22 are operational.
 - d. Caboose out service #5
 - e. Nevada Northern Rotary B in service
3. Track Status – No change
 - a. Keystone Branch is open
 - b. The mainline to MP 132 is open.
 - c. Adverse Branch is open.
4. Building Status – Update
 - a. CCA Grant 10-23 Rehabilitation of Nevada Northern Railway Complex this grant is completed.
 - 1) Ice House Exterior Rehabilitation: The building has been patched, pressure washed, primed and it has been painted.
 - 2) Carpenter Shop Window Rehabilitation completed.
 - 3) Wash House Roof completed
 - 4) Master Mechanics Building Platform completed
5. Ridership and Ticket Sales – Updated

Ridership in May was 1,370 passengers. This is a 10% increase over the previous year. Ridership year to date is 2,545, an 8% increase over the previous year. In May we were visited by two major car clubs, Classic Cars of America and the Bentley Drivers Club.

Award Winning Destination

Nevada State Treasure • Best Preservation Effort in the West • Attraction of the Year - 2012
Best Place to Take the Kids in Rural Nevada - 2011, 2010, 2009, 2008 & 2007
Best Museum - Special Recognition - 2010
Best Museum in Rural Nevada - 2009
Favorite Nevada Attraction • Best Rural Museum in Nevada - 2008

Regular Meeting of the Ely City Council June 13, 2013

6. Membership – No change

Program/Level	Fee	Members
NNRy Membership-Active	\$30	1,311
NNRy Membership-Contributing	\$50	572
NNRy Membership-Centennial	\$100	558
NNRy Membership-Sustaining	\$250	81
NNRy Membership-Patron	\$500	40
NNRy Membership-Friend	\$1,000	14
NNRy Membership-Lifetime	\$1,000	163
NNRy Membership-Supporter	\$2,500	0
NNRy Membership-Benefactor	\$5,000	0
NNRy Membership-Leader	\$10,000	1
NNRy Membership-Donor	Misc	6
NNRy Membership Total		2,746

7. Grants – Updated

- a. Grants Written - \$87,902
- b. Grants Awarded - \$13,800
- c. Grants Pending - \$87,902
 - i. Web Marketing, Fulfillment and Database Grant - \$7,500
 - ii. Nevada Northern Railway Television Episode - \$30,000
 - iii. Expanded Loneliest Road Billboard Campaign – \$39,805
 - iv. Nevada Northern Railway Billboard Campaign - \$10,597
- d. Grants Under Administration - \$1,552,585
 - i. PE-13-50 Nevada Northern Railway Special Event and Services Marketing - \$25,000
 - ii. PE-13-51 Social Media Project – \$11,928
 - iii. PE-13-49 Auto Club Initiative - \$7,500
 - iv. GBHP Plaza Improvements - \$70,000
 - v. GBHP American Restoration Grant - \$10,000
 - vi. White Pine Tourism & Recreation - \$20,000
 - vii. Web Marketing, Fulfillment & Database Grant - \$7,500
 - viii. Rack Cards and Distribution - \$6,400
 - ix. Highway 50 Survival Guide Kiosks Software - \$28,000
 - x. Smart Phone App for Nevada Northern Railway, National Historic Landmark - \$8,645
 - xi. AT & T Mobile Phone App - \$6,000
 - xii. Great Basin Heritage Area - \$25,000
 - xiii. CCA 10-26 Urgent Building Repair and Dormitory Project - \$180,000
 - xiv. NPLMA – Walking Trail, parking and lighting, in conjunction with EDC \$586,464
 - xv. NDOT McGill Track Restoration - \$497,076
 - xvi. NCOT PRT 12-21 Ely Community Tourist Radio - \$16,000
 - xvii. Daily Foundation - \$13,800 to install the Wig-Wag Signals.
 - xviii. Samuel Freeman Charitable Trust - \$65,000

9 Funding Raising Program – No change

- a. The 2013 Nevada Northern Railway coin series continues with Wrecking Crane A
- b. The Nevada Northern Railway Locomotives coin series continues in 2012 celebrating our 25th year of operation

10. Earmark Funds - \$1,710,945 – Updated

The track rehabilitation plan has been submitted to both the PUC and NDOT. Work is continuing to go on having the money available for the 2013 construction season

I was informed that the City of Ely can submit an invoice for the purchase of the railroad and the \$750,000 will be released to payback the loans.

11. Promotion and Marketing – No change

- a. Ghost Tracks is in development.
- b. The 2013 Brochure has been printed
- c. The 2013 Calendar is printed and in distribution.

12. Upcoming Events – Updated

- a. Father's Day – All Dads Ride Free
- b. 4th of July Fireworks Train

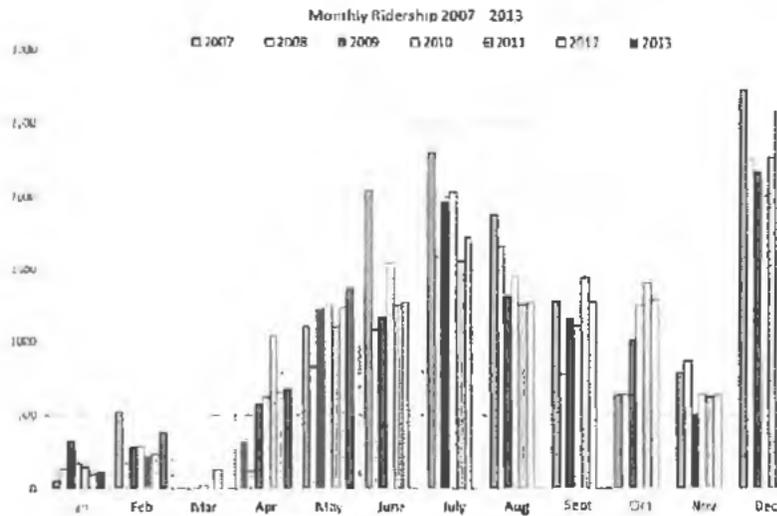
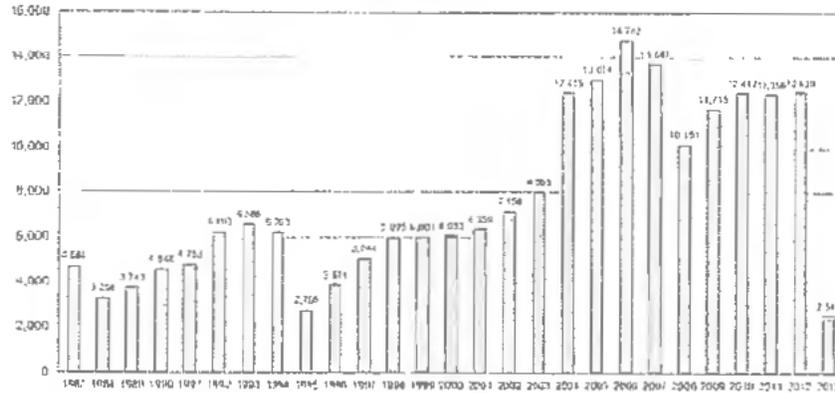
13. TIGER Grant – The TIGER Grant was successfully submitted. It was for \$14,893,289 in addition there was a match of \$4,750,000. Total amount of the project is \$19,643,289. This will open the tracks from Shafter to Keystone.

Ridership

1987 - 2013

206,687 Passengers

Through May 31, 2013



Executive Director Bassett stated the Bentley Drivers Club from London, England shipped their cars to Los Angeles and drove to Ely; their Bentleys were from the late 20's and early 30's. I got a news release that the TIGER grant has four hundred fifty million (\$450,000,000.00) to give away and received nine billion dollars (\$9,000,000,000.00) in requests. We received letters of support from Senator Reid; Nevada DOT; Representative Horsford; the Governor's Commission on Economic Development; Elko, Eureka and White Pine Counties; and the mines.

Chairman Derbidge stated we didn't get a list of the outstanding loans; it should be on there monthly.

Executive Director Bassett stated okay. They haven't changed much.

Chairman Derbidge stated your report says you were informed on the purchase of the railroad; do you know anything about that Kevin?

City Attorney Briggs stated yes, I'm working on that. I submitted one invoice and they sent it back, saying they needed additional information.

Chairman Derbidge stated so we still don't have the money yet.

City Attorney Briggs stated no.

Chairman Derbidge asked was the rock that the Mine donated part of their four million (\$4,000,000.00)?

Executive Director Bassett stated yes it was.

Chairman Derbidge asked it's been tested and approved by the Railroad?

Executive Director Bassett stated the Railroad approves and tests it; there is no federal standard for ballast. *Union Pacific* and *BNSF* have standards; we get to elect the standard and are looking for is a rock that gets the track up out of the mud, with angular sides promoting drainage.

Chairman Derbidge asked will the *Union Pacific* run their cars on tracks with ballast that they don't approve.

Executive Director Bassett stated all railroads enter into interchange agreements and we will be able to tell the *Union Pacific* that our track matches FRA Class II standards.

Trustee Westland asked has that rock been tested, such as hardness?

Executive Director Bassett stated right now it's just rock.

Trustee Westland stated the reason I ask is I remember two years ago the statement was made that there was going to be a commitment to testing that rock and that indeed, it had been; I'm wondering if we have any of those results.

Executive Director Bassett stated there are no tests for the rock. Ideally, I would like to go to the *Union Pacific* quarry. The question becomes, what can you afford. For the past hundred years the Nevada Northern Railway has not used ballast on their track. Shafter to McGill Junction is the original 1905-06 construction. In all the years that *Kennecott* ran on that track, they never put ballast underneath those ties. The grant that we submitted is one phase; the next phase is to put heavier rail in that track, which is around twenty-five million dollars (\$25,000,000.00) from Shafter to Currie and forty-five million dollars (\$45,000,000.00) from Currie all the way into town.

Trustee Westland stated I applaud your efforts, Mark and there's no one that wants this open more than I do. My concern is we've applied for this grant, but we are relying for almost the entire match on this rock.

Executive Director Bassett stated yes.

Trustee Westland stated I do not want to get in a situation where that might be rejected.

Executive Director Bassett stated if you would like, I will bring you the CFR. The only person who can reject this rock is us.

Trustee Westland asked there's no government oversight over how we use this money?

Executive Director Bassett stated no.

Trustee Westland stated or what the match is?

Executive Director Bassett stated no.

City Attorney Briggs stated there is government oversight and they approve the value of the match; they don't look at quality of the rock, though.

Executive Director Bassett stated when I said no, the government can't say 'that rock isn't good enough', because the Code of Federal Regulations – which the FRA, PUC and Northern Nevada Railway all have to follow - is silent on the type of rock.

Regular Meeting of the Ely City Council June 13, 2013

Trustee Hanson asked what's the timeframe on this project?

Executive Director Bassett stated if the grant is approved, they want us to start construction September of next year.

Trustee Hanson asked it would be completed . . . ?

Executive Director Bassett stated if we have cooperative weather, you're looking at a six-month job.

Trustee Setterstrom asked do you foresee any problems with DOT allowing you to put a crossing at Currie?

Executive Director Bassett stated the DOT would prefer that we didn't put a crossing there, but we have senior land rights and a customer. DOT will not accept what we had there in the past; they want the Currie crossing to be four lanes with extra long gates, additional gates and a remote signal on Currie Hill.

Trustee Setterstrom stated I would hate to see this money spent on new track and then stopped by the DOT.

Executive Director Bassett stated absolutely. The DOT will have to sign off on this.

City Attorney Briggs stated didn't you say the DOT submitted a letter of support?

Executive Director Bassett stated yes. People with the State Transportation and Rail plans all want to see that track in service. There was a study with the State Highway Preservation plan showing fifty percent (50%) of the roads that the Mine uses from here to Wendover are in fair condition, so NDOT wants to see trucks off of the highway to extend the life of the road from here to Wendover. The Mine wrote a very strong letter of support for this.

Trustee Hanson asked but we don't have any document committing them to this?

Executive Director Bassett stated no, we do not have a contract.

Trustee Hanson stated so they could back out of it.

Executive Director Bassett stated there is no cheaper way of transporting their copper concentrate than by rail.

City Attorney Briggs stated the Mine has also agreed to pay around \$8,000.00 to do this TIGER grant application.

Executive Director Bassett stated yes. The Mine also uses a million gallons of fuel a month, so you have that rolling through our City. Rehabilitating the line takes hazardous material off the street and extends the life of the Mine because their transportation costs will go down on their in- and out-bound loads.

Mayor Hickman stated hopefully, we'll have freight coming in with goods and products.

Executive Director Bassett stated exactly. One of the letters we received was from *Bath Lumber*; they built a spur into their business. We received twenty-three letters of support. Four Hundred carloads of hay a year leaves Eureka County.

Trustee Hanson stated so there's no prospect for passenger service?

Executive Director Bassett stated Class II meets the standards if there was an economic need.

Mayor Hickman stated otherwise, the McGill line would be open.

Executive Director Bassett stated yes. The advantage to using the McGill line over Keystone is we have a destination of the station in McGill, more visibility – as we cross US 93 three times - and plans for a museum on *Kennecott Copper* and immigration in the McGill Depot.

2. Board Members – Executive Director Bassett - Discussion/For Possible Action – Consideration to extend a formal Thank you to *Robinson Nevada Mining Company* for donating payment for the TIGER Grant application grant writer, rail line rehabilitation cost/benefit analysis and four million dollars (\$4,000,000.00) worth of rock as a TIGER Grant match.

Trustee Hanson moved that the Board send a Thank You letter to *Robinson Mine*. Trustee Westland seconded the motion The motion carried unanimously.

Chairman Derbidge stated Jennifer will write the letter.

Trustee Westland asked so we do have the commitment for four million dollars worth of rock?

Executive Director Bassett stated correct.

Trustee Westland stated if you could get the paperwork to us on how many tons of rock that is, it would be great.

Chairman Derbidge adjourned the meeting of the Nevada Northern Railway Board of Trustees and turned the gavel back to the Mayor to reconvene the Regular City Council Meeting.

6. ITEMS FOR DISCUSSION/POSSIBLE ACTION OF THE ELY CITY COUNCIL AS RECOMMENDED BY THE UTILITY BOARD.

1. Board Members –*Robinson Nevada Mining Company (RNMC)* representative – Discussion/For Possible Action – Update to the Utility Board on the *Robinson Nevada* Development, Ruth Pit Development and water mitigation efforts within the City of Ely.

Lisa Friedman, *Robinson Mine* Senior Environmental Engineer, stated I'm excited about the prospects for the Railroad and am glad you can put our rock to good use. We're mining primarily in the Ruth pit, a little bit in the Kimberly pit and mostly moving dirt around in the Liberty pit. We're mainly dewatering in the Ruth pit with a lake from the Liberty pit that we're dewatering. The Mill was down for normal maintenance the past few days and will be back up tonight.

Councilman Derbidge asked what happened with RW 6-P?

Lisa Friedman stated RW6-P dropped in pumping capacity and we wanted to make sure there was nothing going wrong with that well or pump and pulled the pump today. I haven't gotten an update yet from the drillers, but will have that tomorrow morning.

2. Board Members – City Engineer Almberg – Discussion/For Possible Action – Consideration to award bid for the Waste Water Treatment Plant Screw Pump Replacement.

City Engineer Almberg stated we received two bids back (appearing below), one from *O'Flaherty Plumbing and Heating* and *Yerba Buena* out of San Francisco. We analyzed the bids and recommend you award the project to *O'Flaherty Plumbing & Heating*, as they are the lowest responsive, responsible bidder.



CITY OF ELY
 WWTB SCREW PUMP REPLACEMENT
 BID TAB

6/11/2013

Bid Items	O'FLAHERTY	YERBA BUENA
Removal of Existing Gearw Pump	\$ 11,000.00	\$ 25,000.00
New Screw Pump	\$ 73,538.00	\$ 147,000.00
New Handrail	\$ 3,920.00	\$ 6,000.00
	\$ 88,458.00	\$ 178,000.00

NOTES:

1. The final engineering estimate was \$180,000, done by the previous City Engineer
2. Yerba Buena is a construction company from San Francisco, California
3. The screw pump vendor prices ranged from \$15,000 to \$82,000 (resortPump)

Councilman Westland moved to award the project to *O'Flaherty Plumbing & Heating*.

Councilman Derbidge stated the Utility Board did not give a recommendation, as they only had two Members and one of the Members is John O'Flaherty from *O'Flaherty Plumbing*.

Councilman Hanson seconded Councilman Westland's motion. The motion carried unanimously.

3. Member O'Flaherty – Tom Bath – Discussion/For Possible Action - Consideration of a residential billing and a commercial billing belonging to Tom Bath.

Councilman Derbidge stated Mr. Bath had a problem with his billing at *Bath Lumber*; he had a meter that was bad, *O'Flaherty* replaced the line, but the meter was still reading wrong.

City Clerk Alworth stated when the condensation was gone around the meter, the Water Department got a gallonage adjustment which came out on his May bill; he's square on that one.

Councilman Derbidge stated he had some atrocious bills for his house on the hill; the Utility Board thought it was a bad meter. Also, his Capital Improvement was charged as a percentage, as a business instead of a house; some months it was \$450.00, so the City was going to correct that. The Utility Board wanted to adjust his bills that were wrong to the highest . . .

City Clerk Alworth stated . . . month for the past year.

City Engineer Almborg stated what also came out of that recommendation is that myself and Ron were going to get with him and see how his system was set up there.

Councilman Derbidge stated the Utility Board thought it would be better to move the meter past the two fire hydrants he has.

City Engineer Almborg stated his fire hydrants are being serviced off of a two inch line; there is an eight inch line, but that valve's closed to force the water through the meter.

Hopefully, we can remedy that situation so the Fire Department doesn't have to worry about a valve off site they have to open to fight a fire there.

City Fire Chief Rivera asked has that hydrant been certified?

City Engineer Almborg stated maybe Ross should go with us.

Councilman Hanson asked what does Mr. Bath want us to do?

Councilman Derbidge stated he was agreeable to the Utility Board's suggestion.

Councilman Hanson moved to accept the Utility Board's recommendation. Councilman Setterstrom seconded the motion. The motion carried unanimously.

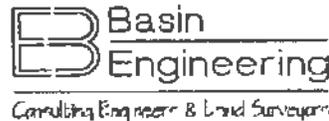
4. Chairman Norcross – Discussion/For Possible Action – Consideration of the water testing rates the City of Ely charges the McGill-Ruth Consolidated Sewer and Water General Improvement District.

Councilman Derbidge stated the Utility Board wanted to have Ron come back with a price that he could do it for. It would be a benefit to help Ruth-McGill, so they wouldn't have to fly the samples out. The Utility Board tabled it to come back next month.

Councilman Westland moved to table. Councilman Hanson seconded the motion. The motion carried unanimously.

5. Board Members – City Water/Sewer Supervisor Jenkins – Discussion/For Possible Action – Approval to replace and upgrade a section of the water main on Stevens Avenue prior to paving.

City Engineer Almborg stated we're doing an RTC repaving project on Center Street and had leftover funds to pave additional areas; however, there's an old four inch (4") water line in Steven's Avenue.



CITY OF ELY
 STEVENS AVENUE RTC PROJECT
 WATER MAIN EXTENSION
 PRELIMINARY ENGINEERING ESTIMATE

6/11/2013

CONSTRUCTION	UNIT	AMOUNT	COST	TOTAL
8" Water Main	LF	150	\$ 25.00	\$ 11,250.00
Type II Base	CY	10	\$ 18.00	\$ 180.00
6" Run Gravel	CY	90	\$ 10.00	\$ 900.00
3/4" Meter Box	EA	1	\$ 2,200.00	\$ 2,200.00
3/4" Water Service	LS	60	\$ 30.00	\$ 1,800.00
			\$	\$ 16,330.00

Councilman Derbidge stated the previous Council did not want to pave any street with old utilities underneath them; with that in mind, the Utility Board wanted to proceed with it.

Councilman Setterstrom asked can Ron do it 'in house'.

City Water Supervisor Jenkins stated in the amount of time that it needs to be done, I don't think we could.

Councilman Westland stated there would be approximately \$2,000.00 in engineering in addition to the cost of \$16,330.00?

City Engineer Almborg stated yes.

Councilman Derbidge moved to replace and upgrade a section of the water main on Stevens Avenue prior to paving. Councilman Hanson seconded the motion. The motion carried unanimously.

6. Board Members - City Engineer Almborg – Discussion/For Possible Action – Approval to replace the sewer main on 1st Street and Sage Street.

City Engineer Almborg referenced the Estimate appearing below and stated I was called to the site of a property owner replacing his sewer lateral; the sewer comes underneath a rock wall at 1st Street connecting to a manhole near the entrance of the Armory and there's multiple residences connected. They can't work underneath the wall, so we recommend extending the lateral from Sage Street, back North towards Aultman a hundred feet and put in a manhole; this would allow each residence to tie into the main without paralleling our roadway.



CITY OF ELY 6/11/2013
 SOUTH FIRST STREET
 SEWER MAIN EXTENSION
 PRELIMINARY ENGINEERING ESTIMATE

CONSTRUCTION	UN	AMOU	TOTAL
8" Sewer Main		100	7,500.00
48" Sewer Manhole	E	1	4,000.00
Tyax II Base		10	18.00
Pit Run Gravel	C	90	900.00
AC Pavement Patch	SF	300	8.00
			\$ 14,980.00

Councilman Derbidge stated the Utility Board voted to approve this project.

Councilman Hanson moved to replace the sewer main on 1st Street and Sage Street. Councilman Lee seconded the motion. The motion carried unanimously.

7. Councilman Derbidge – Discussion/For Possible Action – Consideration to assign values to the Hydrant and Back Flow with Meter Rental agreement.

Councilman Derbidge stated the City of Ely passed a clean water policy and part of it is backflow preventers. The meters with backflow preventers cost us \$1,600.00, so we needed to change our pricing. The Utility Board wanted to change it to a \$1,600.00 deposit – which is refundable when they bring it back in working order – a monthly meter fee of \$100.00 and a daily fee of \$5.00.

Councilman Hanson asked do we know how this compares with charges from other communities our size in Nevada?

City Clerk Alworth stated the cost of the meter is \$1,507.00, so we're just replacing that. As far as the rental rates, I don't think it's ever been compared.

Councilman Westland moved to accept the Utility Board's recommendations of a \$1,600.00 deposit for the meter, a monthly meter fee of \$100.00 and a daily fee of \$5.00. Councilman Derbidge seconded the motion. The motion carried unanimously.

8. Board Members – City Attorney Briggs – Discussion/For Possible Action – Review and recommendation to the Ely City Council with regards to proposed Ordinance No. 658, Bill No. 2013-04: An Ordinance Establishing Cross Connection Control for Commercial Users of the City of Ely’s Water System to Prevent Backflow and Backsiphonage into the City of Ely Water System.

City Attorney Briggs stated I’ve incorporated comments from the State and the Bureau of Safe Drinking Water. At the Utility Board meeting yesterday there was a recommendation that I better define under the “Hydrant Use”, paragraph D, that I clarify “. . . or a Department approved and inspected air gap system is properly installed” to read “or an Ely Municipal Water Department approved and inspected air gap system is properly installed.” They recommended accepting this as a First Reading.

Councilman Setterstrom moved to approve the First Reading of Ordinance 658 Establishing Cross Connection Control for All But Residential Users of the City of Ely’s Water System. Councilman Derbidge seconded the motion.

Councilman Westland stated with the caveat that we accept the change recommended by the Utility Board.

Councilman Setterstrom stated yes.

Councilman Derbidge stated yes.

The motion carried unanimously.

9. Member O’Flaherty – Discussion/For Possible Action – Clarification of responsibility for water and sewer patches.

Councilman Derbidge stated no action was taken, but during discussion it was clarified that the Street Department would come behind the Water Department and patch after they dig when they have the time and the weather is appropriate.

Councilman Setterstrom stated I think the Street Department should be responsible for fixing the street after the Water Department gets done fixing.

Councilman Derbidge stated right, that’s what they said. The Street Department said they were getting there as fast as they could, but they had . . .

City Assistant Street Supervisor Lawrence stated twenty-eight.

Councilman Derbidge stated . . . that they’re behind. They just got the cold mix . . .

City Clerk Alworth stated . . . two days ago.

City Water/Sewer Supervisor Jenkins stated the equipment’s free on Fridays, so in the summertime we try to do the rough patching until they come.

Councilman Setterstrom asked wouldn’t it be better for them to take full responsibility for it?

City Water/Sewer Jenkins stated if you threw it out there, I would . . . we’re going to do a dig next week; we could leave it to four inches and call them.

Councilman Derbidge stated I think that was what John wanted done.

City Assistant Street Supervisor Lawrence stated some of them are going back in the hot mix, which *Reck Bros.* usually follows up with the thin patches.

7. ITEMS FOR DISCUSSION/POSSIBLE ACTION ONLY OF THE ELY CITY COUNCIL.

1. Discussion/For Possible Action –Minutes.

Minutes Clerk Lee stated I've listened to the audio for the Council meetings of April 3rd, May 9th and May 23rd and the minutes are an accurate representation of what took place. Councilman Hanson moved to approve the April 3, 2013, May 9, 2013 and May 23, 2013 Ely City Council Minutes. Councilman Derbidge seconded the motion.

Councilman Westland abstained from the May 23, 2013 Ely City Council Minutes due to his absence.

The motion carried unanimously.

2. Discussion/For Possible Action - Payment of Bills.

Councilman Derbidge disclosed he is a partner with one of the members of JCR Construction in another business, but I don't own any of JCR.

Councilman Derbidge moved to pay the bills. Councilman Westland seconded the motion. The motion carried unanimously.

The bills are on file at City Hall.

B. NEW BUSINESS

1. Council Members – City Attorney Briggs – Discussion/For Possible Action - Finalization of land swap between Mike Lemich and the City of Ely for property near the Railroad.

City Attorney Briggs stated there are two small triangular pieces Mike Lemich would like and he's transferring much more than that to the City of Ely. In researching the NRS that pertains to this I discovered that, even though these two small pieces would not have a viable commercial interest for any other purchaser, the Statute indicates we have to pass a resolution indicating that this is in the best interests of the City. I would request that the Council table this until the next agenda.

Councilman Westland moved to table this item. Councilman Hanson seconded the motion. The motion carried unanimously.

2. Council Members – City Attorney Briggs – City Engineer Alberg – Discussion/For Possible Action – Approval of Agreement between the City of Ely and White Pine County for the transfer of land relating to the Golf Course well.

City Attorney Briggs stated B.J. and I met with Mike Lemich a couple weeks ago and we put together two options for the County Commission to address. I attended the County Commission meeting yesterday and they tabled this issue because they want to appoint a committee – which they're going to do at their next meeting – so that they can meet with myself and B.J., as directed by the City Council to work this out with the County. I suggest we hold off on passing the agreement I prepared until we find out what the County wants to do.

Councilman Hanson moved to table this item until the City hears from the County. Councilman Derbidge seconded the motion. The motion carried unanimously.

3. Council Members – Discussion/For Possible Action – Consideration of the White Pine County Commission's request that the City of Ely pay Nineteen Thousand Additional Dollars (\$19,000.00) for Police Protection under the proposed FY 2014 Interlocal Agreement for Police/Fire/Animal Control –

Councilman Derbidge moved to table this item until the new Councilmen meet with the City Treasurer and go over the budgets. Councilman Hanson seconded the motion. The motion carried unanimously.

4. Council Members – City Attorney Briggs – Discussion/For Possible Action – Approval of Consulting Services agreement between the City of Ely and *Basin Engineering*.

City Attorney Briggs stated we did some changes to B.J.'s standard contract and it does indicate the monthly fee is \$4,200.00; \$4,400.00 the second year; and \$4,600.00 the third year for his services.

Councilman Derbidge stated **6.1 Ownership . . . of Work Product**; I thought if we paid for the work, it should be ours.

City Engineer Almborg stated you will; you'll get copies of everything we do. It's just that I will also have a copy.

City Attorney Briggs stated do we make that "Co-Owners"?

City Engineer Almborg stated "Co-Owners" would be fine.

City Clerk Alworth stated *Summit Engineering* sent over the Landfill stuff to you; will the City still be part of it?

City Engineer Almborg stated yes, anything we do for the City will . . .

Councilman Derbidge stated **9.2 . . . LIABILITY**: it's only \$50,000.00. I think that's low.

City Engineer Almborg stated we carry a liability insurance of a \$1,000,000.00, a \$2,000,000.00 aggregate; you've been provided a copy.

Councilman Derbidge stated to me it should be listed in the contract that he has a \$1,000,000.00 insurance policy with a \$2,000,000.00 aggregate.

City Attorney Briggs asked rather than limiting the liability to \$50,000.00?

Councilman Derbidge stated right.

City Attorney Briggs stated despite how much insurance he has, you can still limit that liability to the maximum amount that would be paid on any potential claim.

City Engineer Almborg stated how about if we put "the insurance we've provided has this amount of liability."

City Attorney Briggs asked and take out the \$50,000.00 limit?

City Engineer Almborg stated you could put a liability that's relative to the project.

Councilman Westland stated certainly. How about wording to the effect: "The consultant shall maintain a liability insurance policy of no less than \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate."

City Engineer Almborg stated yes, exactly. We will give you an insurance certificate that you guys are named on.

City Attorney Briggs does that include your Errors and Omissions insurance?

City Engineer Almborg stated I'm not sure.

Councilman Hanson stated Errors and Omissions would be good considering the recent discussion you've had considering an installation on the Terrace.

City Attorney Briggs stated we'll take out the limitation of liability and put in "Insurance required."

City Engineer Almborg stated yes.

Councilman Derbidge moved to approve with the contract between the City of Ely and *Basin Engineering*, with the two amendments regarding Ownership of Work Product and Liability. Councilman Hanson seconded the motion. The motion carried unanimously.

5. Council Members – City Attorney Briggs – Discussion/For Possible Action – Approval of First Reading of Ordinance 658, Bill No. 2013-04: An Ordinance Establishing Cross Connection Control for Commercial Users of the City of Ely's Water System to Prevent Backflow and Backsiphonage into the City of Ely Water System.

City Attorney Briggs stated this is a duplicate.

6. Council Members – City Attorney Briggs – Discussion/For Possible Action – Approval of First Reading of Ordinance 659, Bill No. 2013-05: An Ordinance Amending Ely City Code 4-2-5 to indicate a property owner who takes his refuse to another landfill and provides proof of payment to another landfill will be relieved of his obligation to pay landfill fees to the City of Ely.

City Attorney Briggs stated a year ago an ordinance was created establishing that a person living in the County taking his trash to an adjoining County's landfill – if he provided proof of payment – would be given credit for that amount of payment. However a couple meetings ago, the City Council thought they ought to receive full credit for their landfill fees; this reflects that decision.

Councilman Setterstrom moved to accept the First Reading of Ordinance 659. Councilman Lee seconded the motion. The motion carried unanimously.

7. Council Members – City Attorney Briggs – Discussion/For Possible Action – Approval of First Reading of Ordinance 660, Bill No. 2013-06: An Ordinance Amending the C-2 Zone to allow for hospitals and other related medical facilities without a Special Use Permit.

City Attorney Briggs stated we discovered when they came in to get approved for the dialysis center that we had no zoning area for medical facilities without a special use permit. We thought we should have a zone where those things could happen without spending money to get a Special Use permit. Ultimately, we will be changing the zoning for the entire hospital area to a C-2 zone; we've been working with the hospital.

Councilman Hanson moved to approve the First Reading of Ordinance 660. Councilman Derbidge seconded the motion.

Councilman Westland stated I'm in full agreement with this. Mayor, you wrote a letter on June 10th to Debra Tannenbaum about this issue. I think you meant to say "Residential zoning does not allow for etc."; what you said was "does allow". I don't know if you want to follow up with her.

Mayor Hickman stated I'll check.

The motion carried unanimously.

Mayor Hickman asked Dale, do you have an idea what the time schedule on the dialysis center is going to be?

Councilman Derbidge stated they haven't got the plans to us, so we can go out to bid. As soon as we go out to bid, it will be quick.

8. Council Members – City Clerk Alworth – Discussion/For Possible Action –
Approval to sell Surplus Vehicles, Equipment and Material to the highest bidder.

City Clerk Alworth stated supervisors put together the list of unused items in their respective areas.

**DRAFT
FOR SALE**

The City of Ely is selling the following vehicles, equipment and material to the highest bidder. Vehicles, equipment and material are where is, as is, with no implied warranties or guarantees. Successful bidder must remove vehicles, equipment, and material within five (5) days of acceptance unless other arrangements are made.

<u>Description</u>	<u>Location</u>	<u>Minimum Bid</u>
1986 GMC Single Axle Dump Truck with attached snow plow	City Yard on 1 st Street	\$ 1,250.00
1997 Ford Ranger Pickup	City Yard on 11 th Street	\$ 725.00
Kubota Tractor with Implements	City Yard on 1 st Street	\$ 500.00
Honda Generator EM2500	Fire Station	\$ 200.00
Air Pressure Storage Tank (10' tall x 108" dia.)	City Yard on 11 th Street	\$ 400.00
Corrugated 8' x 8' Storage Shed	Broadbent Park	\$ 100.00
Used 4" High Chain Link Fence	Burn Tower Yard	\$.25 per foot
Plastic Conduit Pipe 1-1/2" dia x 8' long	Landfill (40 bundles/22 pcs per bundle)	\$ 10.00 per bundle

Inspection of equipment/material shall be June 13, 2013 between the hours of 9 a.m. and 11 a.m.

All bids must be in writing and delivered in a sealed envelope with description of item bidding upon written on the outside of envelope. Name, phone number and address of bidder to be included with bid. Deliver to City Hall, 501 Mill Street by 5:00 p.m. PST, June 20, 2013. The Council reserves the right to accept or reject any bid. Bids will be opened and read June 27, 2013 at the regular scheduled City Council Meeting.

Successful bid must be paid within 48 hours of acceptance by cashier's check, money order or cash. Failure to pay within 48 hours will result in voiding of the bid and the next highest bidder will be contacted.

For more details contact:
Jim Alworth, City Clerk
775-289-2430

Councilman Setterstrom asked have they been offered to any of the other departments?

City Clerk Alworth stated yes; it's been around the table in the Staff meeting.

Councilman Westland moved to accept City Clerk Alworth's list of Surplus Vehicles, Equipment and Material for sale. Councilman Lee seconded the motion. The motion carried unanimously.

9. Council Members – City Treasurer Trask - Discussion/For Possible Action –
Approval of Resolution 2013-02 For the purpose of augmenting the CITY OF ELY Redevelopment Fund for unbudgeted engineering expenses from the fund balance.

City Treasurer Trask stated we had never budgeted any expense in this fund, but we incurred some engineering expense; to make it right, we have to augment the Budget.

CITY OF ELY

RESOLUTION NO. 2013-02

For the purpose of augmenting the CITY OF ELY Redevelopment Fund for unbudgeted engineering expenses from the fund balance:

WHEREAS, the CITY OF ELY is an incorporated City within White Pine County, State of Nevada; and,

WHEREAS, augmented expenses will be used for engineering expenses, and,

WHEREAS, the Nevada Revised Statutes 354.598005 sets forth the procedure to augment the budget of a City fund;

NOW, THEREFORE, be it resolved, that the CITY OF ELY, through its City Council, hereby authorize augmentation of the Redevelopment Fund expense in the amount of One Hundred Sixty Eight Dollars (\$168.00) for engineering expenses.

Resolved by the following vote by the Ely City Council on June 13, 2013.

AYES:

NAYS:

ABSENT:

APPROVED:
CITY OF ELY

ATTEST:

Jon Hansen

James D. Alworth, City Clerk

Councilman Derbidge moved to approve Resolution 2013-02. Councilman Hanson seconded the motion. The motion carried unanimously.

10. Council Members – City Treasurer Trask - Discussion/For Possible Action – Approval of Resolution 2013-03 For the purpose of augmenting the CITY OF ELY Capital Project Fund using revenue generated by the Ely Fire Department for responding to out of County persons who are involved in accidents in White Pine County, Nevada, on which the Fire Department must respond. The funds will be applied towards the payments of the Fire Station.

City Treasurer Trask stated this is done on a yearly basis. The monies that the Fire Department brings in on responding go into the General Fund; we then augment it into the Capital Improvement Fund, which makes the payments for the Fire Department.

CITY OF ELY

RESOLUTION NO. 2013-03

For the purpose of augmenting the CITY OF ELY Capital Project Fund using revenue generated by the Ely Fire Department for responding to out of County persons who are involved in accidents in White Pine County, Nevada, on which the Fire Department must respond. The funds will be applied towards the payments of the Fire Station.

WHEREAS, the CITY OF ELY is an incorporated City within White Pine County, State of Nevada; and,

WHEREAS, the CITY OF ELY has received Seven Thousand Seven Hundred Twenty Dollars (\$7,720.00), from responding to out of county persons who are involved in accidents in White Pine County, Nevada; and,

WHEREAS, augmented revenue will be used for making payments on the Fire Station; and,

WHEREAS, the Nevada Revised Statues 354.598005 sets forth the procedure to augment the budget of a City fund;

NOW, THEREFORE, be it resolved, that the CITY OF ELY, through its City Council, hereby authorize augmentation of the Capital Project Fund from revenue generated for out of County persons involved in accidents in the amount of Seven Thousand Seven Hundred Twenty Dollars (\$7,720.00), to be applied towards the payments on the Fire Station.

Resolved by the following vote by the Ely City Council on June 13, 2013.

AYES: _____

NAYS: _____

ABSTAIN: _____

APPROVED:
CITY OF ELY

ATTEST:

Jon Hickman, Mayor

James D. Alworth, City Clerk

Councilman Derbidge asked do we pay an extra \$7,700.00 on the principal?

City Treasurer Trask stated no, we just put it in there because they don't generate enough to make the full payment.

City Clerk Alworth stated there's not a penalty for early payoff on that loan. We've kept a three-year reserve in there; if something drastic happens to the City, we'd be able to pay on the Fire Station for three years. This helps build up that fund.

Councilman Derbidge stated look and see if there's a penalty to pay down the principal.

Councilman Derbidge moved to approve Resolution 2013-03. Councilman Hanson seconded the motion. The motion passed unanimously.

- 11. Council Members – Discussion/For Possible Action – Consideration to extend a formal Thank you to *Robinson Nevada Mining Company* for donating payment for the TIGER Grant application grant writer, rail line rehabilitation cost/benefit analysis and four million dollars (\$4,000,000.00) worth of rock as a TIGER Grant match.

Councilman Derbidge moved to direct Jennifer to write a similar Thank You letter to *Robinson Mine*. Councilman Hanson seconded the motion.

Councilman Westland stated I am in favor of this, but I want to stress again that we need to get it clearly defined what that \$4,000,000.00 worth of rock is. There's an implication that's been made that this would be crushed and suitable for ballast when we received it.

City Attorney Briggs stated from discussions with people at the Mine, I don't believe they have the capability to crush the rock for us.

Councilman Westland stated we need to quantify exactly what we're accepting.

The motion carried unanimously.

8. REPORTS

CITY COUNCIL

Due to his recent heart attack, Councilmen Westland stated I'm alive.

Councilman Derbidge did not have a report.

Councilman Hanson stated I attended the meeting two nights ago about Cummins Lake and the mercury contamination there. I was impressed by the amount of tourism dollars that we've lost because of the signage there, which is indicating you have to be careful about what you eat when in reality, fish there probably aren't any worse than what is pulled out of the ocean, such as albacore, etc. The proposals to mitigate that problem were varied and very expensive; the majority of the people there want to move ahead with them and I think we ought to support that because it does have a direct impact on our tourism dollars. They are hoping to get some grants.

Mayor Hickman stated twelve years ago, Cummins Lake was the 4th largest fishing lake in Nevada.

Councilman Lee stated it is nice to be here.

Councilman Setterstrom stated he had no report.

MAYOR

Mayor Hickman stated we have been talking about internet service before. I invited Sam Hanson, Jim Alworth and Kevin Briggs to meet with myself and Stephanie Tyler and Chris both of *AT & T* on June 6, 2013. *AT & T* is not abandoning the City and has plans. We all emphasized how important the internet is to our City. Stephanie reminded us there is wireless here and also said if a local business is having trouble getting internet, to give her a call. Sam, what would you like to add?

Councilman Hanson stated the wireless option is state of the art. Stephanie mentioned broadband "Exhausts", since they don't have any more room for service line. I asked what does it take to run a profit? It needs to be in the 22,500 population range for them to make a profit, so we're grateful they do what they can for us. I inquired about the security features of wireless and they assured us it is encrypted on both ends and *AT & T* corporately uses this.

Mayor Hickman stated Stephanie said fiber optics that's been sitting without being used for two years is worthless and that technology is ten years old. The company that put it in went bankrupt.

9. AGENDA ITEMS FOR THE NEXT REGULARLY SCHEDULED CITY COUNCIL MEETING.

There were no agenda items presented for the next meeting.

10. PUBLIC COMMENT: Comments not exceeding three (3) minutes in length will be accepted from the general public in attendance. If any are made, there may be discussion upon those comments. No vote, decision, or action may be taken upon matters raised under this item until it is formally placed on the agenda. "Section 8.04, of the Nevada Open Meeting Law Manual indicates that the Public Body may prohibit comment if the content of the comments is a topic that is not relevant to or within the authority of the Public Body or if the content of the comments is willfully disruptive of the meeting by being irrelevant, repetitious, slanderous, offensive, inflammatory, irrational or amounting to personal attacks or interfering with the rights of other speakers".

George Chachas stated I'd like to have a copy of any disclosure that former Councilmen Rom DiCianno or Shane Bybee gave on anything that they voted in the last couple of years. They were concerned about one other Councilman and in the past, they were concerned about me.

City Attorney Briggs asked are you wanting us to research that for you?

George Chachas stated you should have it on file.

City Attorney Briggs stated it would just be reflected in the minutes. You can come and look at the minutes if you'd like.

George Chachas stated I just said it's not in the minutes.

City Attorney Briggs stated I think there have been some disclosures in the minutes in the last couple of years. Make sure he gets a copy of the minutes that are in writing, indicating that I am telling him as far as I know Mr. Bybee . . .

George Chachas said I'm addressing the Mayor, Counselor; I don't want to hear from you.

City Attorney Briggs stated it is my job to provide legal advice to the Mayor and City Council.

George Chachas stated ongoing concerns regarding the most recent Home Occupation/Special Use permit list; City Clerk Alworth's business *Got Water*; and meeting scheduling. At the last meeting I gave you a copy of some old advertising and a copy of a phone book listing Mr. Alworth's phone number; I'm curious to see if it was in the minutes. The minutes are 'so-called' accurate; that should be in there because it was presented at a meeting. The Water Board ran over by a half hour yesterday; the Planning Commission started its meeting thirty-five minutes late, with no proper notice. I believe that's an Open Meeting violation.

Mayor Hickman stated if there's anything that Mr. Chachas has that you want to put on the agenda, that's up to you guys.

Jim Northness stated I'd like to welcome the new Councilmen. I've been told by more than one City employee that they've been told by the Staff not to talk to any Councilmen, to go through the chain of command. You are the boss of the City Staff. You should have an open door policy. If I was you, I would have a mass meeting with all the City employees, tell them what your policies are, let them know they're welcome to work for the City and that you guys should be contacted if they have an issue.

Councilman Hanson asked could we get Jennifer to get that on the agenda for next meeting?

Minutes Clerk Lee stated yes.

Councilman Setterstrom stated I've been meeting with each individual supervisor and letting them know if they've got a problem, to come and see me.

City Attorney Briggs stated I would suggest you get a copy of our Personnel Policy Handbook.

Regular Meeting of the Ely City Council June 13, 2013

Councilman Hanson stated I already have.

City Attorney Briggs stated if there is a problem an employee has, you want the supervisor to try to address it and if they can't, then they go to the next step up.

Councilman Hanson stated I think we want to hear what the employees have to tell us.

11. THE MAYOR WILL RECESS THE REGULAR CITY COUNCIL MEETING FOR A CLOSED SESSION.

1. Council Members – City Attorney Briggs – Discussion Only – Consideration of Union Contract Negotiation Guidelines.

City Attorney Briggs stated we don't have any updates in regards to our negotiations yet.

There was no motion to go into Closed Session.

12. ADJOURNMENT: THE MEETING MAY BE ADJOURNED BY APPROPRIATE MOTION OF THE CITY COUNCIL.

Councilman Derbidge moved to adjourn the Regular Meeting of the Ely City Council at 6:11:56 PM . Councilman Hanson seconded the motion. The motion carried unanimously.

MAYOR

ATTEST



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Request
for Opinion Concerning the Conduct of
Dale Derbidge, Councilman, City of Ely,
and Chair, William Bee Ririe Hospital
Board of Trustees, State of Nevada,

Request for Opinion No. 13-05C

Subject. /

STIPULATED AGREEMENT

1. **PURPOSE:** This stipulated agreement resolves Third-Party Request for Opinion ("RFO") No. 13-05C before the Nevada Commission on Ethics ("Commission") concerning Dale Derbidge ("Derbidge"), Councilman, City of Ely, and Chair, William Bee Ririe Hospital Board of Trustees, State of Nevada, and serves as the final opinion in this matter.

2. **JURISDICTION:** At all material times, Derbidge served as a member of the Ely City Council in Ely, Nevada and the Chair of the William Bee Ririe Hospital Board of Trustees ("Board"). Pursuant to Nevada Revised Statute ("NRS") 266.015, the government of all incorporated cities is vested in a mayor and city council. NRS 281A.280 gives the Commission jurisdiction over current elected and appointed public officers for conduct which occurred within two years preceding the filing of the RFO. Accordingly, the Commission has jurisdiction over Derbidge in this matter.

3. **FINDINGS OF FACT:**

The following events are relevant to the matter:

- a. Derbidge was elected to the City Council in 2011.
- b. Derbidge owns and/or operates several private business ventures in the City of Ely. Derbidge co-owns the Sagebrush 66 Investment Company, Inc. ("Sagebrush 66"), a local gas station/convenience store, with Lyle Norcross ("Norcross") and Jerry Jones ("Jones"). Derbidge and Jones also co-own Jones Derbidge Development LLC ("JDD"). At all times relevant to this matter, JDD was not an active business.
- c. In his public capacity, Norcross serves as the Chairman of the Ely Municipal Utility Board.
- d. Jones owns JCR Development ("JCR"), a private development company operating in Ely. Derbidge has no legal or employment interests in JCR.
- e. In August, 2012, JCR submitted a bid for approximately \$450,000 on a construction contract for the City of Ely to complete a portion of Ely's "Center Street Water and Sewer Project" ("Water Project"). Under the City's open, competitive bidding process, the City must award such a contract to the lowest competitive bidder. JCR submitted the lowest bid for the contract in accordance with the City's open, competitive bidding process.
- f. On August 23, 2012, the City Council held a Joint Special Meeting with the City's Municipal Utility Board and together they considered an agenda item for the "Consideration to award bid for the Center Street Water and Sewer Project." Although the contract award was conducted under the City's open,

competitive bidding process, Norcross, in his capacity as the Chairman of the Municipal Utility Board, disclosed his business relationship in Sagebrush 66 with one of the contractors (Jones/JCR) who submitted a bid for the Water Project and abstained from participating and voting on the matter. Derbidge did not disclose his business relationships with Jones in Sagebrush 66 and JDD, and he voted with the remaining members of the City Council and Municipal Utility Board to approve the contract award to JCR.

- g. In October 2012, JCR sought, and the City Council granted, an extension of time to complete the Water Project with no financial penalty. The contract authorized the City to impose a financial penalty if the Water Project was not timely completed. The City Council, including Derbidge, voted unanimously to approve the October 25, 2012 contract deadline extension.
- h. Before the October 25, 2012 City Council vote to approve the Water Project deadline extension, the Ely City Attorney, Kevin Briggs, Esq., advised Derbidge to disclose his business relationships with Jones and abstain from voting on any City Council matters involving JCR.
- i. During the October 25, 2012 meeting at which the City Council voted to extend JCR's deadline to complete the contracted services without incurring a financial penalty, Derbidge failed to make a public disclosure of his business relationships with Jones and voted to approve the matter. Although the City Attorney had previously advised him to disclose and abstain on matters involving JCR, Derbidge expected the City Attorney to remind him of the advice at the time of any such vote. The City Attorney did not remind

Derbidge of the advice at the time of the vote on October 25, 2012, and Derbidge forgot to make the appropriate disclosure and abstention.

4. **PROCEDURAL HISTORY BEFORE COMMISSION**

- a. On or about January 14, 2013, the Commission received a Third-Party Request for Opinion ("RFO") from a private citizen alleging that Derbidge had a conflict of interest in voting on matters affecting JCR, used his official position to secure unwarranted benefits for JCR and failed to appropriately disclose his business relationship with Jones and abstain from voting on matters affecting Jones/JCR.
- b. As required by NAC 281A.410, the Commission provided Derbidge with notice of the RFO by mail. Pursuant to NRS 281A.440(3), Derbidge was provided an opportunity to respond to the RFO and submitted a written response.
- c. Based on the facts developed from the Commission's investigation, the Commission's Executive Director provided a report to an Investigatory Panel pursuant to NRS 281A.440(4) recommending that credible evidence established just and sufficient cause for the Investigatory Panel to forward the following allegations implicating various provisions of NRS 281A to the full Commission for a hearing and opinion:
 - (1) Derbidge's alleged failure to commit himself to avoid conflicts between his private interests (his relationships to Jones and Jones' private interests) and those of public whom he serves, implicating NRS 281A.020(1)(b);

- (2) Derbidge's alleged failure to adequately disclose his commitment in a private capacity to the interests of Jones, his business associate, before voting on a public matter affecting Jones, implicating NRS 281A.420(1); and
- (3) Derbidge's alleged failure to abstain from voting on public matters affecting Jones, implicating NRS 281A.420(3).

- d. The Executive Director further recommended that the Investigatory Panel dismiss the allegation that Derbidge violated NRS 281A.400(2) by using his official position to secure unwarranted benefits for Jones/JCR, a person to whom he has a commitment in a private capacity as a substantial and continuing business associate, albeit an associate in enterprises separate from JCR. The Executive Director noted that the open, competitive contract bidding process and award requirements inherently prevented any member of the City Council from influencing decisions respecting the contract award or creating unwarranted benefits for any bidder and that no evidence was presented or found that the contract extension was unwarranted.
- e. Pursuant to NRS 281A.440, on April 22, 2013, a two-member Investigatory Panel of the Commission consisting of Commissioners Magdalena Groover and James Shaw reviewed the RFO, Derbidge's response, the Executive Director's report and recommendation and other evidence. The Panel adopted the Executive Director's recommendations described in paragraphs "c" and "d" herein and forwarded the surviving allegations to the Commission to hold a hearing and render an opinion.

- f. The Commission notified Derbidge of the time and place set for a Commission hearing in this matter, and Derbidge retained Richard W. Sears, Esq. as his legal counsel in this matter.
- g. In lieu of a full hearing regarding the outstanding allegations, Derbidge now enters into this stipulation acknowledging his duty as a public officer to commit to avoid conflicts between his private interests and those of the public he serves and properly disclose his private commitments and relationships to his business associates who may be affected by matters before the City Council, and abstain from voting when appropriate. See NRS 281A.020 and 281A.420(1) and (3).

5. **TERMS / CONCLUSIONS OF LAW:** Based on the foregoing, Derbidge and the Commission agree as follows:

- a. Each of the findings of fact enumerated in section 3 is deemed to be true and correct.
- b. Derbidge holds public office which constitutes a public trust to be held for the sole benefit of the people of the State of Nevada (in particular, the people of the City of Ely).
- c. Derbidge has a commitment in a private capacity to the interests of Jones, as a relationship/commitment to a person with whom he shares substantial and continuing business relationships as shareholders, officers and directors in Sagebrush 66 and JDD. See NRS 281A.420(8)(a)(4).
- d. Derbidge failed to avoid conflicts of interest between his private relationships/interests and public duties and violated the Ethics in

Government Law by failing to disclose and abstain during the August 23, 2012 and October 25, 2012 City Council meetings regarding the City's Water Project contract issues with JCR, which affected Jones' interests, albeit in business ventures unrelated to the Sagebrush 66 or JDD.

- e. As he was advised by the Ely City Attorney, Derbidge should have disclosed sufficient information regarding his business relationships with Jones via Sagebrush 66 and JDD, a person to whom he had a commitment in a private capacity as a substantial and continuing business associate, to inform the public of the nature and extent of his relationship with Jones and Jones' interests in the Water Project. The disclosure should have also included information regarding the potential effect of Derbidge's public action or abstention on Jones' interests. *See In re Woodbury*, Comm'n Opinion No. 99-56, (1999).
- f. Derbidge likewise should have abstained from voting on matters with respect to which the independence of judgment of a reasonable person in Derbidge's situation would be materially affected by his commitments in a private capacity to the interests of others, including matters affecting Jones' private interests in the substantial Water Project contract.
- g. Derbidge's actions during the August 23, 2012 and October 25, 2012 meetings constitute a single course of conduct, resulting in one willful violation of the Ethics in Government Law, implicating NRS 281A.020 and NRS 281A.420(1) and (3).

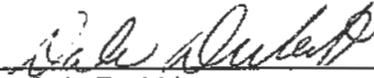
- h. For the willful violation, Derbidge will pay a total civil penalty of \$1,000.00 pursuant to NRS 281A.480 on or before December 31, 2013, in one lump sum payment or in monthly installment payments as negotiated with the Commission's Executive Director.
- i. This agreement applies only to the specific facts, circumstances and law related to this RFO. Any facts or circumstances that are in addition to or differ from those contained in this agreement may create a different resolution of this matter.
- j. This agreement applies only to these matters before the Commission and is not intended to be applicable to or create any admission of liability for any other proceeding, including administrative, civil, or criminal regarding Derbidge.

6. **WAIVER:**

- a. Derbidge knowingly and voluntarily waives a full hearing before the Commission on the allegations in this RFO (No. 13-05C) and of any and all rights he may be accorded pursuant to NRS Chapter 281A, the regulations of the Commission (NAC Chapter 281A), the Nevada Administrative Procedures Act (NRS Chapter 233B), and the laws of the State of Nevada.
- b. Derbidge knowingly and voluntarily waives his right to any judicial review of this matter as provided in NRS 281A, NRS 233B or any other provision of Nevada law.

7. **ACCEPTANCE:** We, the undersigned parties, have read this agreement, understand each and every provision therein, and agree to be bound thereby. The parties orally agreed to be bound by the terms of this agreement during the regular meeting of the Commission on June 19, 2013.

DATED this 16 day of July, 2013.



Dale Derbidge

DATED this 19th day of June, 2013.

By: /s/ Paul Lamboley
Paul Lamboley
Chairman

By: /s/ Cheryl Lau
Cheryl Lau
Commissioner

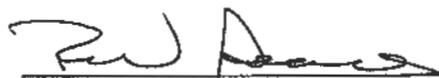
By: /s/ Gregory Gale
Gregory Gale
Vice-Chairman

By: /s/ Keith Weaver
Keith Weaver
Commissioner

By: /s/ Timothy Cory
Timothy Cory
Commissioner

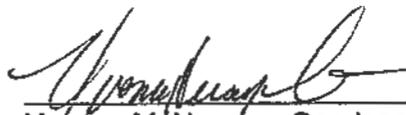
The above Stipulated Agreement is approved by:

DATED this 16th day of July, 2013.



Richard W. Sears, Esq.
Counsel for Dale Derbidge

DATED this 22nd day of July, 2013.



Yvonne M. Nevarez-Goodson, Esq.
Commission Counsel

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AGENDA ITEM NO. 4

AGENDA ITEM NO. 4



**STATE OF NEVADA
COMMISSION ON ETHICS**
<http://ethics.nv.gov>

**MINUTES
of the meeting of the
NEVADA COMMISSION ON ETHICS**

January 15, 2014

These minutes constitute a summary of the above proceedings of the Nevada Commission on Ethics. Verbatim transcripts of the open sessions are available for public inspection at the Commission's office in Carson City.

The Commission on Ethics held a public meeting on
Wednesday, January 15, 2014, at 9:00 a.m. at the following locations:

**Nevada Legislative Building
Room 3143
401 S. Carson Street
Carson City, NV 89701**

and via video-conference to:

**Grant Sawyer State Building
Room 4412
555 E. Washington Avenue
Las Vegas, NV 89101**

OPEN SESSION:

1. Call to Order, Roll Call and Pledge of Allegiance to the Flag.

Chairman Paul H. Lambolely, Esq. called the meeting to order at 9:00 a.m.

Present in Carson City, Nevada were Chairman Paul H. Lambolely, Esq., Commissioner James M. Shaw, Commissioner Cheryl A. Lau, Esq., Executive Director Caren Cafferata-Jenkins, Esq., Commission Counsel Yvonne Nevarez-Goodson, and Executive Assistant Valerie Carter. Present in Las Vegas, Nevada were Vice-Chairman Gregory J. Gale, CPA, Commissioner Tim Cory, Esq., Commissioner Keith A. Weaver, Esq., Associate Counsel Jill C. Davis, Esq. and Senior Investigator, Michael E. Lawrence, MPA.

Commissioners John C. Carpenter and Magdalena Groover were excused from this meeting.

The pledge of allegiance was conducted.

2. Open Session for Public Comment.

No public comment.

3. Open Session for consideration and approval of Minutes from the November 20, 2013 Commission meeting.

Commissioner Lau moved to approve the minutes of the November 20, 2013 Commission meeting. Commissioner Shaw seconded the motion. The motion was put to a vote and carried unanimously.

4. Open Session for report by Executive Director and Commission Counsel on agency status and operations.

Executive Director Cafferata-Jenkins reported the Senior Legal Researcher (SLR) position has been filled by Darci Hayden who is currently a Legal Research Analyst at the PUC. She reported that Darci seems quite adept at the tasks required for the SLR position and everyone looks forward to having her join the staff. She will be at the next meeting to introduce herself.

Commission Counsel discussed the quarterly RFO log and the contents of the same. She reported the backlog currently consists of 10 opinions which still need to be written and published.

5. Open Session for Commissioner comments on matters including, without limitation, future agenda items, upcoming meeting dates and meeting procedures.

No commissioner comments.

6. Open Session for Public Comment.

No public comment.

CLOSED SESSION:

(These matters are exempt from the provisions of NRS Chapter 241, the Open Meeting Law.)

7. Closed Session pursuant to NRS 281A.440(7) to hear testimony, receive evidence, deliberate and render an advisory opinion regarding Confidential First-Party Request for Advisory Opinion No. 13-86A, submitted pursuant to NRS 281A.440(1). This agenda item will not be available to the public.

This agenda item was held in closed session and will not be available to the public.

8. Closed Session pursuant to NRS 281A.440(8) for discussion and consideration of proposed Stipulations regarding Confidential Third-Party Requests for Opinion Nos. 13-82C and 13-83C, submitted pursuant to NRS 281A.440(2).

This agenda item was held in closed session and will not be available to the public.

9. Closed Session pursuant to NRS 281A.440(8) for discussion and consideration of proposed Stipulations regarding Confidential Third-Party Requests for Opinion Nos. 14-01C and 14-02C submitted pursuant to NRS 281A.440(2).

This agenda item was held in closed session and will not be available to the public.

10. Closed Session to discuss potential or pending litigation. This portion of the meeting will not be available to the public.

This agenda item was held in closed session and will not be available to the public.

11. Adjournment.

Vice-Chairman Gale adjourned the meeting at 11:45 a.m.

Minutes prepared by:

Minutes approved: March 19, 2014:

Valerie Carter
Executive Assistant

Paul H. Lamboley, Esq.
Chairman



STATE OF NEVADA
COMMISSION ON ETHICS
<http://ethics.nv.gov>

**MINUTES
of the meeting of the
NEVADA COMMISSION ON ETHICS**

February 12, 2014

These minutes constitute a summary of the above proceedings of the Nevada Commission on Ethics. Verbatim transcripts of the open sessions are available for public inspection at the Commission's office in Carson City.

The Commission on Ethics held a public meeting via telephone on Wednesday, February 12, 2014, at 11:00 a.m. with public access at the following location:

**Commission on Ethics
704 W. Nye Lane, # 204
Carson City, Nevada 89703**

CLOSED SESSION:

1. Closed Session to discuss potential or pending litigation.

This agenda item was held in closed session and will not be available to the public.

2. Closed Session pursuant to NRS 281A.440(8) for discussion and consideration of proposed Stipulations regarding Third-Party Requests for Opinion Nos. 13-82C (Erin Cranor, Trustee, Clark County School District), 13-83C (Deanna Wright, Trustee, Clark County School District), 14-08C (Lorraine Alderman, Former Trustee, Clark County School District), 14-11C (Dr. Rene Cantu, Jr., Former Trustee, Clark County School District) and Consolidated Third-Party Requests for Opinion Nos. 14-01C and 14-06C (Chris Garvey, Trustee, Clark County School District) and 14-02C and 14-07C (Linda Young, Trustee, Clark County School District), submitted pursuant to NRS 281A.440(2).

This agenda item was held in closed session and will not be available to the public.

OPEN SESSION:

1. Call to Order, Roll Call, and Pledge of Allegiance to the Flag.

Chairman Paul H. Lamboley, Esq. called the meeting into open session at 11:50 a.m.

Present in Carson City, Nevada were Executive Director, Caren Cafferata-Jenkins, Esq., Commission Counsel Yvonne Nevarez-Goodson, Esq., Associate Counsel Jill C. Davis, Esq., and Senior Legal Researcher Darci Hayden.

Appearing telephonically were Chairman Paul H. Lamboley, Esq., Vice-Chairman Gregory J. Gale, CPA, James M. Shaw, Keith A. Weaver, Esq., Magdalena Groover, John Carpenter, and Cheryl A. Lau, Esq.

Commissioner Tim Cory was excused from this meeting.

Also appearing via telephone was Carlos McDade, Esq., counsel for Clark County School District.

The pledge of allegiance was conducted.

2. Open Session for Public Comment.

Executive Director Cafferata-Jenkins, Esq. stated that she had received comments from Mr. Joe Spencer to be read into the record under this agenda item. The Executive Director read Mr. Spencer's comments urging the commission not to enter into a stipulated agreement with the Clark County School Board Trustees (agenda Item No, 3).

3. Open Session pursuant to NRS 281A.440(8) for discussion, consideration and adoption of proposed Stipulations regarding Third-Party Requests for Opinion Nos. 13-82C (Erin Cranor, Trustee, Clark County School District), 13-83C (Deanna Wright, Trustee, Clark County School District), 14-08C (Lorraine Alderman, Former Trustee, Clark County School District), 14-11C (Dr. Rene Cantu, Jr., Former Trustee, Clark County School District) and Consolidated Third-Party Requests for Opinion Nos. 14-01C and 14-06C (Chris Garvey, Trustee, Clark County School District) and 14-02C and 14-07C (Linda Young, Trustee, Clark County School District), submitted pursuant to NRS 281A.440(2).

Commission Counsel Yvonne Nevarez-Goodson, Esq. summarized the six proposed Stipulated Agreements for the Commission and discussed changes to the proposed Stipulations as agreed upon and approved by the Commission's Associate Counsel Jill C. Davis, Esq., the Commission's Executive Director Caren Cafferata-Jenkins, Esq., and counsel for Clark County School District Carlos McDade, Esq.

Commission Counsel Yvonne Nevarez-Goodson, Esq. stated that, as a result of the decision by the Commission in *Edwards* and through the Commission's investigation in the matter, information that other Trustees had sent similar emails was revealed. That information prompted additional RFOs regarding these Trustees. She reported that each of the Subjects had waived their right to a panel hearing and the right to confidentiality of their names pre-panel, and therefore, this agenda item could be held in open session. Commission Counsel assured the Commission that these procedural issues are set forth in the terms of the Stipulations.

Commission Counsel summarized the terms and conclusions of law set forth in the Stipulations.

Commissioner Lau moved to adopt the proposed Stipulations, as modified, regarding Trustees Cranor, Wright, Young, Garvey and former Trustees Cantu and Alderman.

Commissioner Carpenter seconded the motion.

The motion was put to a vote and carried unanimously.

4. Open Session for Commissioner comments on matters including, without limitation, future agenda items, upcoming meeting dates and meeting procedures.

No commissioner comments.

5. Open Session for Public Comment.

No public comment.

6. Adjournment.

Commissioner Lau moved to adjourn the meeting. Commissioner Shaw seconded the Motion. The motion was put to a vote and carried unanimously. The meeting was adjourned at 12:29 p.m.

Minutes prepared by:

Minutes approved: March 19, 2014:

Valerie Carter
Executive Assistant

Paul H. Lamboley, Esq.
Chairman

AGENDA ITEM NO. 5

AGENDA ITEM NO. 5



**STATE OF NEVADA
NEVADA COMMISSION ON ETHICS**

PROPOSED REGULATORY CHANGES – 2014

NAC CHAPTER 281A - ETHICS IN GOVERNMENT

GENERAL PROVISIONS

- [281A.010](#) Definitions.
- [281A.020](#) “Chair” defined.
- [281A.023](#) “Commission” defined.
- [281A.025](#) “Commission Counsel” defined.
- [281A.033](#) “Executive Director” defined.
- [281A.034](#) “First-party request for an opinion” defined.
- [281A.035](#) “Hearing” defined.
- [281A.040](#) ~~["Information related to the third party request for an opinion" defined.]~~
- [281A.045](#) “Investigate” defined.
- [281A.047](#) “Investigatory panel” and “panel” defined.
- [281A.050](#) “Opinion” defined.
- [281A.060](#) “Party” defined.
- [281A.065](#) “Presiding officer” defined.
- [281A.070](#) “Principal office of the Commission” defined.
- [281A.075](#) “Proceedings of an investigatory panel” defined.
- [281A.080](#) “Proper form” defined.
- [281A.085](#) ~~["Record of the proceedings of an investigatory panel" defined.]~~
- [281A.090](#) “Requester” defined.
- [281A.100](#) “Subject” defined.
- [281A.103](#) “Third-party request for an opinion” defined.
- [281A.105](#) “Vice Chair” defined.
- [281A.110](#) Severability.

COMMISSION ON ETHICS

Administration

- [281A.150](#) Election of Chair and Vice Chair.
- [281A.155](#) Duties of Chair; delegation of assignments.
- [281A.160](#) Duties of Vice Chair.
- [281A.165](#) Vacancy in office of Chair.
- [281A.170](#) Vacancy in office of Vice Chair.
- [281A.175](#) Appointment of temporary Acting Chair or Vice Chair in certain circumstances.
- [281A.180](#) Duties of Executive Director.
- [281A.185](#) Preparation of written opinions by Commission Counsel.

- [281A.190](#) Principal office of Commission: Designation; primary location for conduct of business.
- [281A.195](#) Participation of member of Commission in ex parte communication.
- [281A.200](#) Meetings of Commission: Majority required; necessary quorum reduced for ineligible member.

General Practice and Procedure Before Commission

- [281A.250](#) Provisions governing practice and procedure: Applicability; construction; deviation.
- [281A.255](#) Written communications and documents: Form and contents; date and manner of filing.
- [281A.260](#) Consolidation of matters.
- [281A.265](#) Motions.
- [281A.270](#) Discovery.
- [281A.275](#) Stipulations of fact; resolution of matter without hearing.
- [281A.280](#) Oaths.
- [281A.285](#) Subpoenas.
- [281A.290](#) Testimony in person required; exception.
- [281A.295](#) Conduct of persons at meetings and hearings; consequences of improper conduct.
- [281A.300](#) Representation of subject by legal counsel.
- [281A.310](#) Determination of relationships within third degree of consanguinity or affinity.

First-Party Requests for Opinions

- [281A.350](#) Proper form required.
- [281A.353](#) Hearings.
- [281A.355](#) Withdrawal.
- [281A.360](#) Determination of jurisdiction: Duties of Executive Director; request for review.
- [281A.365](#) Conduct of hearings; action by Commission; effect of opinion; confidentiality.

Third-Party Requests for Opinions

- [281A.400](#) Proper form required; submission; contents; withdrawal.
- [281A.XXX](#) ***NEW SECTION: Preliminary Inquiries.***
- [281A.403](#) Recommendation to initiate request upon motion of Commission.
- [281A.405](#) Duties of Executive Director; review of determination regarding jurisdiction.
- [281A.410](#) Notification of subject; filing of response.
- [281A.415](#) Investigation of additional issues and facts by Executive Director; provision of additional notice to subject.
- [281A.420](#) Confidentiality and availability of information.
- [281A.425](#) Confidentiality of proceedings of investigatory panel.
- [281A.430](#) Considerations of investigatory panel.

- [281A.435](#) Basis for finding by investigatory panel; unanimous finding required for determination that there is not just and sufficient cause to render opinion.
- [281A.440](#) Recording and contents of determination by investigatory panel that there is just and sufficient cause to render opinion.
- [281A.445](#) Record of proceedings of investigatory panel.
- [281A.450](#) Hearings: Advance written notice.
- [281A.455](#) Hearings: Continuance.
- [281A.460](#) Hearings: Conduct; action by Commission.
- [281A.465](#) Hearings: Admission and exclusion of evidence.
- [281A.470](#) Failure of subject to appear at hearing or reply to notice.

Opinions Concerning Employment of Certain Former Public Officers or Employees by Regulated Businesses

- [281A.475](#) Proper form required for requests.
- [281A.480](#) Hearings.
- [281A.485](#) Withdrawal of request.
- [281A.490](#) Determination of jurisdiction: Duties of Executive Director; request for review.
- [281A.495](#) Conduct of hearings; action by Commission; confidentiality.

General Procedures for Hearings

- [281A.500](#) Executive Director to provide information to Commission.
- [281A.505](#) Motion to disqualify member of Commission for good cause.
- [281A.510](#) Commission to determine order of proceedings.
- [281A.515](#) Testimony: Oath or affirmation required.
- [281A.520](#) Participation by subject of hearing; questioning of witnesses.

Miscellaneous Provisions

- [281A.550](#) Written opinions: Contents; dissemination.
- [281A.555](#) Petitions to adopt, file, amend or repeal regulations.
- [281A.560](#) Obtaining copies of public records or transcripts; payment of costs of public records.
- [281A.615](#) Filing of certain documents in proper form; availability of form.

REVISER'S NOTE.

[NAC 281.005](#) to [281.242](#), inclusive, have been renumbered and moved to [chapter 281A](#) of NAC in accordance with chapter 195, Statutes of Nevada 2007, at page 641, which required the related provisions of [chapter 281](#) of NRS to be renumbered and moved to [chapter 281A](#) of NRS.

GENERAL PROVISIONS

NAC 281A.010 Definitions. ([NRS 281A.290](#)) As used in this chapter, unless the context otherwise requires, the words and terms defined in [NAC 281A.020](#) to [281A.105](#), inclusive, have the meanings ascribed to them in those sections.

(Added to NAC by Comm'n on Ethics by R038-98, eff. 4-17-98; A by R102-00, 8-28-2000; R111-03, 10-30-2003; R186-05, 5-4-2006; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.005)

NAC 281A.020 “Chair” defined. ([NRS 281A.290](#)) “Chair” means the Chair of the Commission.

(Added to NAC by Comm'n on Ethics by R038-98, eff. 4-17-98)—(Substituted in revision for NAC 281.011)

NAC 281A.023 “Commission” defined. ([NRS 281A.290](#)) “Commission” means the Commission on Ethics.

(Added to NAC by Comm'n on Ethics by R084-08, eff. 9-18-2008)

NAC 281A.025 “Commission Counsel” defined. ([NRS 281A.290](#)) “Commission Counsel” means the legal counsel to the Commission appointed by the Commission pursuant to [NRS 281A.250](#).

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000)—(Substituted in revision for NAC 281.0151)

NAC 281A.033 “Executive Director” defined. ([NRS 281A.290](#)) “Executive Director” means the Executive Director appointed by the Commission pursuant to [NRS 281A.230](#).

(Added to NAC by Comm'n on Ethics by R084-08, eff. 9-18-2008)

NAC 281A.034 “First-party request for an opinion” defined. ([NRS 281A.290](#)) “First-party request for an opinion” means a request for an opinion filed pursuant to subsection 1 of [NRS 281A.440](#).

(Added to NAC by Comm'n on Ethics by R134-10, eff. 10-26-2011)

NAC 281A.035 “Hearing” defined. ([NRS 281A.290](#)) “Hearing” means a hearing concerning:

1. The merits of a third-party request for an opinion;
2. A first-party request for an opinion; or
3. A request for an opinion filed pursuant to subsection 6 of [NRS 281A.550](#).

(Added to NAC by Comm'n on Ethics by R038-98, eff. 4-17-98; A by R102-00, 8-28-2000; R111-03, 10-30-2003; R186-05, 5-4-2006; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.016)

~~[**NAC 281A.040** “Information related to the third party request for an opinion” defined. (NRS 281A.290) “Information related to the third party request for an opinion” includes, without limitation:~~

- ~~— 1. A third party request for an opinion;~~
- ~~— 2. All investigative materials and information related to the third party request for an opinion, including, without limitation, any investigation report;~~
- ~~— 3. Each document in the possession of the Commission or its staff related to the third party request for an opinion; and~~
- ~~— 4. The record of the proceedings of an investigatory panel related to the third party request for an opinion.~~

~~□ The term does not include any confidential information unless the confidentiality of the information has been expressly or impliedly waived.~~

~~— (Added to NAC by Comm’n on Ethics by R102-00, eff. 8-28-2000; A by R084-08, 9-18-2008; R134-10, 10-26-2011)— (Substituted in revision for NAC 281.0162)}~~

This Section may be deleted. The phrase is only used in NAC 281A.420 which is being amended. It also referred to provisions of former NRS 281A.440(8), which were amended in SB 228.

NAC 281A.045 “Investigate” defined. (NRS 281A.290) “Investigate” means to examine and inquire into a matter and to marshal evidence according to those methods and employing those services that the Executive Director determines are reasonable and necessary under the relevant facts and circumstances presented by the matter.

(Added to NAC by Comm’n on Ethics by R102-00, eff. 8-28-2000)—(Substituted in revision for NAC 281.0163)

NAC 281A.047 “Investigatory panel” and “panel” defined. (NRS 281A.290) “Investigatory panel” or “panel” has the meaning ascribed to it in [NRS 281A.108](#).

(Added to NAC by Comm’n on Ethics by R186-05, eff. 5-4-2006; A by R134-10, 10-26-2011)—(Substituted in revision for NAC 281A.055)

NAC 281A.050 “Opinion” defined. (NRS 281A.290)

1. “Opinion” means an oral or written quasi-judicial decision rendered by the Commission pursuant to [NRS 281A.440](#) or [281A.550](#).

2. The term includes, without limitation, the disposition of a third-party request for an opinion by stipulation, agreed settlement, consent order or default as authorized by [NRS 233B.121](#).

(Added to NAC by Comm’n on Ethics by R102-00, eff. 8-28-2000; A by R186-05, 5-4-2006; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.0167)

NAC 281A.060 “Party” defined. ([NRS 281A.290](#)) “Party” means the subject or his counsel, Commission staff which investigates a third-party request for opinion and any other person who the Commission reasonably determines will be treated as a party in a matter before the Commission.

(Added to NAC by Comm’n on Ethics by R038-98, eff. 4-17-98; A by R102-00, 8-28-2000; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.017)

Does the Commission want to identify Commission staff (Executive Director and/or Associate Counsel and Investigator) which investigates a Third-Party RFO as a party? Other similarly situated administrative agencies identify such agency staff as parties; i.e., Public Utilities Commission.

NAC 281A.065 “Presiding officer” defined. ([NRS 281A.290](#)) “Presiding officer” means a member of the Commission appointed by the Chair to preside over a hearing.

(Added to NAC by Comm’n on Ethics by R186-05, eff. 5-4-2006)—(Substituted in revision for NAC 281.0173)

NAC 281A.070 “Principal office of the Commission” defined. ([NRS 281A.290](#)) “Principal office of the Commission” means the office of the Commission designated by the Commission pursuant to [NAC 281A.190](#) as the office in which the business of the Commission must be primarily conducted.

(Added to NAC by Comm’n on Ethics by R186-05, eff. 5-4-2006)—(Substituted in revision for NAC 281.0177)

NAC 281A.075 “Proceedings of an investigatory panel” defined. ([NRS 281A.290](#)) “Proceedings of an investigatory panel” means:

1. A review and determination by an investigatory panel pursuant to [NAC 281A.405](#) as to whether the Commission has jurisdiction over a third-party request for an opinion.
2. A review pursuant to [NAC 281A.430](#) and determination by an investigatory panel as to whether there is just and sufficient cause for the Commission to render an opinion on a matter presented in a third-party request for an opinion.

For the purposes of this chapter, the proceedings of an investigatory panel do not constitute a hearing.

(Added to NAC by Comm’n on Ethics by R102-00, eff. 8-28-2000; A by R111-03, 10-30-2003; R186-05, 5-4-2006; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.0182)

NAC 281A.080 “Proper form” defined. ([NRS 281A.290](#)) “Proper form” means a form, available from an office or website of the Commission, which is:

1. Created by the Commission for the intended purpose of the form; and
2. Submitted to the Commission at the principal office of the Commission with all required information clearly and legibly printed or typed on the form.

(Added to NAC by Comm’n on Ethics by R102-00, eff. 8-28-2000; A by R186-05, 5-4-2006)—(Substituted in revision for NAC 281.0184)

~~[**NAC 281A.085** “Record of the proceedings of an investigatory panel” defined. **(NRS 281A.290)** “Record of the proceedings of an investigatory panel” means written or audio documentation memorializing the deliberations of an investigatory panel during the proceedings of the investigatory panel.
—(Added to NAC by Comm’n on Ethics by R102-00, eff. 8-28-2000; A by R084-08, 9-18-2008; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.0189)]~~

This section may be deleted because we deleted NAC 281A.040 and this term now only appears in NAC 281A.445. The language is now replaced in NAC 281A.445.

NAC 281A.090 “Requester” defined. (NRS 281A.290) “Requester” means a person ~~[or group of persons]~~ who files s with the Commission a third-party request for an opinion.

(Added to NAC by Comm’n on Ethics by R102-00, eff. 8-28-2000; A by R111-03, 10-30-2003; R186-05, 5-4-2006; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.0192)

NAC 281A.100 “Subject” defined. (NRS 281A.290) “Subject” means a public officer or public employee:

1. With respect to whom a third-party request for an opinion has been filed;
2. Who files a first-party request for an opinion; or
3. Who files a request for an opinion pursuant to subsection 6 of [NRS 281A.550](#).

(Added to NAC by Comm’n on Ethics by R102-00, eff. 8-28-2000; A by R186-05, 5-4-2006; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.0198)

NAC 281A.103 “Third-party request for an opinion” defined. (NRS 281A.290) “Third-party request for an opinion” means a request for an opinion:

1. Filed with the Commission pursuant to paragraph (a) or (b) of subsection 2 of [NRS 281A.440](#); or
2. Initiated by the Commission on its own motion pursuant to paragraph (c) of subsection 2 of [NRS 281A.440](#).

(Added to NAC by Comm’n on Ethics by R134-10, eff. 10-26-2011)

NAC 281A.105 “Vice Chair” defined. (NRS 281A.290) “Vice Chair” means the Vice Chair of the Commission.

(Added to NAC by Comm’n on Ethics by R038-98, eff. 4-17-98)—(Substituted in revision for NAC 281.021)

NAC 281A.110 Severability. (NRS 281A.290)

1. The provisions of this chapter are hereby declared to be severable.
2. If any provision of this chapter is held invalid, or if the application of any such provision to any person, thing or circumstance is held invalid, such invalidity does not affect any other provision of this chapter that can be given effect without the invalid provision or application.

(Added to NAC by Comm’n on Ethics by R038-98, eff. 4-17-98; A by R102-00, 8-28-2000; R111-03, 10-30-2003; R186-05, 5-4-2006)—(Substituted in revision for NAC 281.024)

COMMISSION ON ETHICS

Administration

NAC 281A.150 Election of Chair and Vice Chair. ([NRS 281A.290](#)) The Commission will elect a Chair and a Vice Chair from among its members at its first meeting of each new fiscal year.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R111-03, 10-30-2003)—(Substituted in revision for NAC 281.0245)

NAC 281A.155 Duties of Chair; delegation of assignments. ([NRS 281A.290](#))
The Chair:

1. Shall preside over the meetings and hearings of the Commission.
2. May delegate assignments of work to the staff of the Commission as necessary and appropriate, including, without limitation, the scheduling of investigatory panels.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R084-08, 9-18-2008; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.0246)

NAC 281A.160 Duties of Vice Chair. ([NRS 281A.290](#)) The Vice Chair shall perform the duties of the Chair during the absence of the Chair.

(Added to NAC by Comm'n on Ethics, eff. 12-24-85; A by R038-98, 4-17-98; R102-00, 8-28-2000)—(Substituted in revision for NAC 281.027)

NAC 281A.165 Vacancy in office of Chair. ([NRS 281A.290](#)) If the office of Chair becomes vacant, the Vice Chair shall serve as the Acting Chair until the next meeting of the Commission, at which time the Commission will elect a successor to fill the unexpired term of the Chair.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000)—(Substituted in revision for NAC 281.029)

NAC 281A.170 Vacancy in office of Vice Chair. ([NRS 281A.290](#)) If the office of the Vice Chair becomes vacant, a successor will be elected by the Commission at its next meeting to fill the unexpired term of the Vice Chair.

(Added to NAC by Comm'n on Ethics, eff. 12-24-85; A by R102-00, 8-28-2000)—(Substituted in revision for NAC 281.035)

NAC 281A.175 Appointment of temporary Acting Chair or Vice Chair in certain circumstances. ([NRS 281A.290](#)) If both the Chair and Vice Chair are disqualified or recused from participating in a matter, the Commission may appoint a temporary Acting Chair or Vice Chair, or both, for the matter.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000)—(Substituted in revision for NAC 281.038)

NAC 281A.180 Duties of Executive Director. ([NRS 281A.290](#)) In addition to any other duties of the Executive Director required by this chapter or [chapter 281A](#) of NRS, or as otherwise imposed by the Commission, the Executive Director shall:

1. Pursuant to paragraph (e) of subsection 1 of [NRS 281A.240](#), create a curriculum for training and conduct training for public officers and employers of public employees on the requirements of this chapter, [chapter 281A](#) of NRS and previous opinions of the Commission that have been determined by the Commission to have broad educational value.

2. At the first meeting of the Commission of each new fiscal year, report to the Commission on the state of the fiscal, regulatory and legislative matters and any other business matters of the Commission for the prior fiscal year and on the goals for the Commission for the new fiscal year.

3. Adhere to the policies and procedures adopted by the Commission for its internal governance and external dealings.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R111-03, 10-30-2003; R186-05, 5-4-2006; R084-08, 9-18-2008)—(Substituted in revision for NAC 281.053)

NAC 281A.185 Preparation of written opinions by Commission Counsel. ([NRS 281A.290](#)) In addition to any other duties imposed on him or her by the Commission, the Commission Counsel shall, in a timely manner, prepare a written opinion for each third-party request for an opinion, first-party request for an opinion and request for an opinion filed pursuant to subsection 6 of [NRS 281A.550](#) that is heard by the Commission.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R186-05, 5-4-2006; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.056)

NAC 281A.190 Principal office of Commission: Designation; primary location for conduct of business. ([NRS 281A.290](#))

1. The Commission will designate which office of the Commission will serve as the principal office of the Commission.

2. The business of the Commission must be primarily conducted in the principal office of the Commission, including, without limitation, the submission of any documents and any requests for an opinion from the Commission.

(Added to NAC by Comm'n on Ethics by R186-05, eff. 5-4-2006)—(Substituted in revision for NAC 281.066)

NAC 281A.195 Participation of member of Commission in ex parte communication. ([NRS 281A.290](#))

1. If any member of the Commission participates in an ex parte communication, the member ~~must~~ **shall** disclose to the Commission that he or she participated in an ex parte communication.

2. If a member of the Commission discloses that he or she participated in an ex parte communication or the Commission otherwise determines that a member of the Commission participated in an ex parte communication, the Commission may require the member to abstain from participating with the Commission in any hearing or determination to be made by the Commission concerning the matter that was the subject of the ex parte communication.

3. As used in this section, “ex parte communication” means any written or oral communication between a party ~~[a person who has any matter pending before the Commission, or any agent of such person,]~~ and a member of the Commission which:

- (a) Is communicated outside the presence of the entire Commission;
- (b) Is not communicated during a formal proceeding of the Commission; and
- (c) Includes any comment, response or argument regarding any:
 - (1) Ongoing investigation by the Commission; or
 - (2) Matter that is pending before the Commission.

(Added to NAC by Comm’n on Ethics by R186-05, eff. 5-4-2006)—(Substituted in revision for NAC 281.076)

Does Commission want to preclude ex-parte communication with Commission staff (ED and/or Associate Counsel/Investigator) as a Party? See also amendment to definition of “party” to include Commission staff which investigates a matter. Other administrative agencies which have staff that investigate contested matters have similar provisions; i.e., Public Utilities Commission.

NAC 281A.200 Meetings of Commission: Majority required; necessary quorum reduced for ineligible member. ([NRS 281A.290](#))

1. A meeting of the Commission will not proceed without a majority of the appointed and sworn members of the Commission present. Except as otherwise provided in this chapter, a majority vote of the members present and eligible to vote at a meeting is sufficient to carry out all business of the Commission.

2. If the Commission is considering a matter on which a member of the Commission is ineligible to participate pursuant to subsection 4 of [NRS 281A.220](#), subsection 3 of [NRS 281A.420](#) or [NAC 281A.505](#), the necessary quorum to act upon and the number of votes necessary to act upon the matter is reduced as though the member who is disqualified is not a member of the Commission.

(Added to NAC by Comm’n on Ethics, eff. 12-24-85; A by R038-98, 4-17-98; R102-00, 8-28-2000; R111-03, 10-30-2003; R186-05, 5-4-2006; R084-08, 9-18-2008)—(Substituted in revision for NAC 281.085)

General Practice and Procedure Before Commission

NAC 281A.250 Provisions governing practice and procedure: Applicability; construction; deviation. ([NRS 281A.290](#))

1. Except as otherwise provided in subsection 3, the provisions of [NAC 281A.250](#) to ~~[281A.290](#)~~ [281A.310](#), inclusive, govern all practice and procedure before the Commission.

2. The Commission will liberally construe the provisions of [NAC 281A.250](#) to ~~[281A.290](#)~~ [281A.310](#), inclusive, to determine all matters before the Commission in a just, speedy and economical manner.

3. For good cause shown, the Commission may deviate from the provisions of [NAC 281A.250](#) to ~~[281A.290](#)~~ [281A.310](#), inclusive, if the deviation will not materially affect the interests of the party who is the subject of the request.

(Added to NAC by Comm’n on Ethics by R038-98, eff. 4-17-98; A by R102-00, 8-28-2000; R111-03, 10-30-2003)—(Substituted in revision for NAC 281.093)

NAC 281A.255 Written communications and documents: Form and contents; date and manner of filing. (NRS 281A.290)

1. Each written communication or document filed with the Commission must:

(a) Be in proper form as provided pursuant to the relevant provisions of this chapter;

(b) Be clearly and legibly typed or printed on 8 1/2- by 11-inch paper~~[-, on one side only]~~;

(c) Be addressed to the principal office of the Commission; ~~and~~

(d) Include any duplicate copy required to be included with the form, as specified on the form~~[-]~~; and

(e) Include any necessary exhibits in a form and format reasonably accessible to the Commission, including digital or electronic media.

2. Except as otherwise provided in NRS 281A.410 and 281A.500, the Commission will consider a written communication or document which is required to be filed with the Commission to have been filed with the Commission on the date on which the communication or document is received at the principal office of the Commission.

3. A written communication or document that is ~~required to be~~ filed with the Commission, other than a first-party request for opinion, a request for opinion filed pursuant to subsection 6 of NRS 281A.550 and a third-party request for opinion, may ~~not~~ be submitted via facsimile transmission.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R111-03, 10-30-2003; R186-05, 5-4-2006; R084-08, 9-18-2008; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.097)

SB 228 amended NRS 281A.410(6) and 281A.500(6) to authorize transmission of agency representation forms and acknowledgment forms by facsimile. No reason why other documents may not be filed by fax except for Requests for Opinions.

NAC 281A.260 Consolidation of matters. (NRS 281A.290) The Commission may consolidate, in whole or in part, two or more matters into one hearing if the Commission determines that the matters share common facts and issues.

(Added to NAC by Comm'n on Ethics by R038-98, eff. 4-17-98; A by R102-00, 8-28-2000)—(Substituted in revision for NAC 281.101)

REVISER'S NOTE.

Section 36 of LCB File No. R102-00 duplicated former NAC 281.101 (cf. NAC 281A.260) with minor changes. Thus, former NAC 281.101 (cf. NAC 281A.260) has been amended during codification to reflect this new language.

NAC 281A.265 Motions. (NRS 281A.290)

1. Motions related to a third-party request for an opinion may only be made:

(a) After an investigatory panel has made a determination that there is just and sufficient cause for the Commission to render an opinion pursuant to NRS 281A.220; and

(b) Before the hearing on the matter unless the cause for the motion arises for the first time during the hearing on the matter.

2. A motion that is made before the hearing on the matter must be in writing and must be filed at the principal office of the Commission ~~not later than 15 days before~~

~~the date of the hearing.]~~ before the close of business on a date to be designated by the Commission after the investigatory panel has made a determination.

3. A written motion must contain:
 - (a) A brief statement of the facts and the points and authorities upon which the motion is based;
 - (b) A description of the relief sought; and
 - (c) A certificate of mailing which indicates that the motion was served upon all other parties to the matter.
4. The Commission, in its discretion, may allow a party making a motion to argue the motion before the Commission.
5. The Commission, in its discretion, may allow a party or any other person to respond to a motion.
6. The Chair, in his or her discretion, may accept and rule upon a motion on a matter, except a motion for disposition of a matter, at any time before, during or after the hearing by the Commission on the matter.
7. A motion for rehearing or for the reconsideration of an opinion on a third-party request for an opinion issued by the Commission must be filed with the Commission not later than 15 days after the date on which the opinion of the Commission is served.

(Added to NAC by Comm'n on Ethics by R038-98, eff. 4-17-98; A by R102-00, 8-28-2000; R111-03, 10-30-2003; R186-05, 5-4-2006; R084-08, 9-18-2008; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.103)

Given our scheduling demands and meeting dates as well as the new processes with Associate Counsel which require written responses to motions and an opportunity for Commission Counsel to review the materials, it is better to provide deadlines for motions in the Scheduling Order issued with the Notice of Hearing.

NAC 281A.270 Discovery. ([NRS 281A.290](#)) The provisions for civil discovery set forth in [N.R.C.P. 26](#) to [37](#), inclusive, do not apply to matters before the Commission. Upon the request of a party, for good cause shown, the Chair may allow discovery on a matter before the Commission to the extent which he or she deems appropriate.

(Added to NAC by Comm'n on Ethics by R038-98, eff. 4-17-98; A by R102-00, 8-28-2000; R111-03, 10-30-2003)—(Substituted in revision for NAC 281.106)

NAC 281A.275 Stipulations of fact; resolution of matter without hearing. ([NRS 281A.290](#))

1. A party in a matter before the Commission may stipulate to any fact in issue. The stipulation must be in writing or made by oral statement on the record.
2. At its discretion and with the agreement of the subject of a third-party request for an opinion, the Commission may, in lieu of holding a hearing, resolve a matter before the Commission with a stipulation, agreed settlement, consent order or default as authorized pursuant to [NRS 233B.121](#). Such a resolution must be in writing or made by oral statement on the record.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R134-10, 10-26-2011)—(Substituted in revision for NAC 281.109)

NAC 281A.280 Oaths. (NRS 281A.290)

1. The Chair and Vice Chair, including an Acting Chair and Acting Vice Chair, if any, may administer oaths.
2. A court reporter present at meetings and hearings may administer oaths.
(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R111-03, 10-30-2003)—(Substituted in revision for NAC 281.112)

NAC 281A.285 Subpoenas. (NRS 281A.290)

1. A subject of a third-party request for an opinion may request that a subpoena be issued by filing a written request for a subpoena at the principal office of the Commission.
2. A subject of a third-party request for an opinion who requests the issuance and service of a subpoena pursuant to this section shall serve the subpoena in accordance with NRS 281A.300(2) and pay [all expenses] the costs related to the ~~[issuance and]~~ service of the subpoena.

~~[2. Service of a subpoena issued pursuant to this section or NRS 281A.300 must be made in the manner provided by Rule 45 of the Nevada Rules of Civil Procedure.]~~

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R186-05, 5-4-2006; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.1125)

Consistent with the SB 228 amendment to NRS 281A.300(2), the Commission may issue a subpoena to the Subject of an RFO (if appropriate). Upon the request, the Commission staff drafts the subpoena for the Chair's approval and issues it to the Subject. The Subject then has the obligation to serve the subpoena and pay costs related to the service. The statute doesn't require Subject to pay the Commission for the issuance of the Subpoena. Unless we want to provide specifics and deadlines for requesting a subpoena, this regulation is redundant to NRS 281A.300 and unnecessary.

NAC 281A.290 Testimony in person required; exception. (NRS 281A.290) A subject or witness before the Commission shall testify in person, except that the Commission may, for good cause shown, allow a witness to testify by telephone or videoconference.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R186-05, 5-4-2006)—(Substituted in revision for NAC 281.1127)

NAC 281A.295 Conduct of persons at meetings and hearings; consequences of improper conduct. (NRS 281A.290)

1. All persons appearing before, or attending a meeting or hearing of, the Commission shall conduct themselves in a polite, respectful and orderly manner. Smoking is not allowed at any meeting or hearing of the Commission.
2. The Commission will require a person who does not comply with subsection 1 to leave the room where the meeting or hearing is being held, and the person will be barred from attending the remainder of the meeting or hearing.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000)—(Substituted in revision for NAC 281.1129)

NAC 281A.300 Representation of subject by legal counsel. ([NRS 281A.290](#))

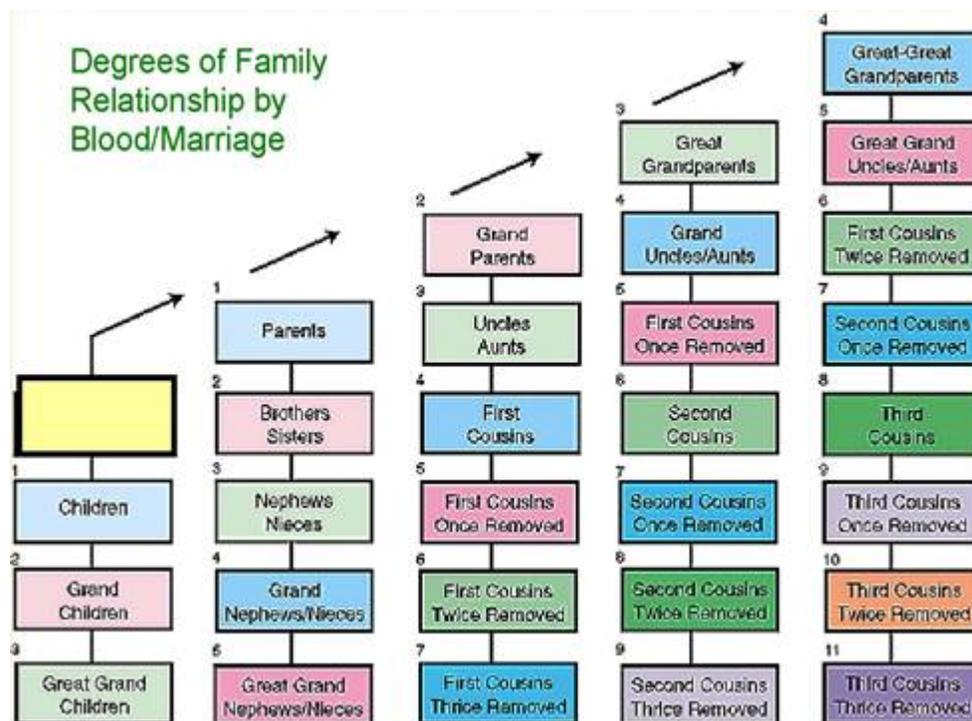
A subject may retain legal counsel to represent him or her during:

1. Any investigation of a third-party request for an opinion; or
2. Any hearing.

(Added to NAC by Comm'n on Ethics by R186-05, eff. 5-4-2006; A by R134-10, 10-26-2011)—(Substituted in revision for NAC 281.1131)

NAC 281A.310 Determination of relationships within third degree of consanguinity or affinity. ([NRS 281A.290](#)) For the purposes of ~~[NRS 281.571 and 281A.420,]~~ [281A.065](#), the Commission will determine relationships within the third degree of consanguinity or affinity pursuant to the following chart and instructions:

Consanguinity/Affinity Chart



INSTRUCTION:

For Consanguinity (relationship by blood) calculations:

Place the public officer/employee for whom you need to establish relationships by consanguinity in the blank box. The labeled boxes will then list the relationship by title to the public officer/employee and the degree of distance from the public officer/employee.

Anyone in a box numbered 1, 2, or 3 is within the third degree of consanguinity. Nevada Ethics in Government Law addresses consanguinity within the third degree by blood, adoption or marriage.

For Affinity (relationship by marriage *or domestic partnership*) calculations:

Place the spouse *or domestic partner* of the public officer/employee for whom you need to establish relationships by affinity in the blank box. The labeled boxes will then list the relationship by title to the spouse *or domestic partner* and the degree of distance from the public officer/employee by affinity.

A husband and wife *and domestic partners* are related in the first degree by marriage *or domestic partnership*. For other relationships by marriage *or domestic partnership*, the degree of relationship is the same as the degree of underlying relationship by blood.

As used in this chart, “domestic partner” has the meaning ascribed to it in NRS 281A.085 and “domestic partnership” has the meaning ascribed to it in NRS 281A.086.

(Added to NAC by Comm’n on Ethics by R084-08, eff. 9-18-2008)

First-Party Requests for Opinions

NAC 281A.350 Proper form required. (NRS 281A.290) The Commission will only consider a first-party request for an opinion filed by a public officer or public employee that is submitted to the Commission ~~[in proper]~~ on the form prescribed by the Commission.

(Added to NAC by Comm’n on Ethics by R102-00, eff. 8-28-2000; A by R134-10, 10-26-2011)—(Substituted in revision for NAC 281.1135)

The section does not identify what constitutes the proper form. The Commission has forms for first-party RFOs which are required to be filed by a requester.

NAC 281A.353 Hearings. (NRS 281A.290)

1. Except as otherwise provided in subsection 2, a first-party request for an opinion will be heard by the Commission within 45 days after receipt of the first-party request for an opinion by the Commission.

2. If a public officer or public employee who files a first-party request for an opinion cannot appear before the Commission for a hearing on the first-party request for an opinion within 45 days after receipt of the first-party request for an opinion by the Commission, the public officer or public employee may submit a written statement acknowledging that he or she cannot appear before the Commission for the hearing and, if applicable, requesting a waiver of the 45-day period within which the hearing must be held. A request for a waiver must be received not later than 7 business days before the expiration of the 45-day period.

3. If the public officer or public employee does not request a waiver pursuant to subsection 2 and fails to appear at the hearing scheduled by the Commission within 45 days after receipt of the first-party request for an opinion, the first-party request for an opinion will be deemed withdrawn by the public officer or public employee making the request.

(Added to NAC by Comm’n on Ethics by R084-08, eff. 9-18-2008; A by R134-10, 10-26-2011)

NAC 281A.355 Withdrawal. ([NRS 281A.290](#)) At any time before the Commission renders an opinion relating to a first-party request for an opinion, the public officer or public employee who filed the first-party request for an opinion may withdraw the first-party request for an opinion by providing a notice of withdrawal to the Commission.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R111-03, 10-30-2003; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.1145)

NAC 281A.360 Determination of jurisdiction: Duties of Executive Director; request for review. ([NRS 281A.290](#)) The Executive Director shall confer with the Commission Counsel to determine jurisdiction concerning a first-party request for an opinion. If the Commission Counsel determines that the Commission lacks jurisdiction in the matter, the Executive Director shall so notify the requesting public officer or public employee. A public officer or public employee who receives a notice pursuant to this section may request the Commission to review the determination regarding jurisdiction. Such a request must be submitted to the principal office of the Commission in writing not later than 10 days after the date on which the public officer or public employee received notification.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R111-03, 10-30-2003; R186-05, 5-4-2006; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.1155)

NAC 281A.365 Conduct of hearings; action by Commission; effect of opinion; confidentiality. ([NRS 281A.290](#))

1. The Chair or presiding officer of a hearing concerning a first-party request for an opinion shall:

(a) Ascertain whether the subject of the first-party request for an opinion and all persons requested by the subject to testify are present and whether all documents, books, records and other evidence under subpoena are present in the hearing room before the hearing begins.

(b) Ensure that an oath is administered, in accordance with [NAC 281A.280](#), to the subject of the first-party request for an opinion and all persons whose testimony will be taken.

2. The subject of the first-party request for an opinion ~~{must}~~ shall be present at the hearing.

3. The Chair or presiding officer shall allow the subject of the first-party request for an opinion to:

(a) Present opening comments;

(b) Present any evidence on his or her own behalf; and

(c) Examine any witnesses on his or her own behalf.

4. The subject of the first-party request for an opinion, any witnesses or any counsel retained by the subject may be questioned by any member of the Commission at any time during the proceeding.

5. Upon the conclusion of the presentation of evidence by the subject of the first-party request for an opinion and the examination of any witnesses, the Chair or presiding officer shall allow the subject to present closing comments.

6. Upon the conclusion of the closing comments by the subject of the first-party request for an opinion, the Commission will:

- (a) Deliberate the issues of fact presented at the hearing, make a final determination of the findings of fact and apply the applicable law to the findings of fact;
- (b) Render an opinion on the matter; and
- (c) Submit a copy of the opinion to the subject.

7. The opinion rendered by the Commission shall be binding upon the subject of the first-party request for an opinion as to his or her future conduct pursuant to subsection 1 of [NRS 281A.440](#).

8. The Commission may waive any provision of this section if the Commission determines that such a waiver is necessary to expedite the hearing or is in the interest of justice.

9. The first-party request for an opinion and the information presented during the proceedings set forth in this section must be kept confidential, unless the subject of the opinion acts in a manner set forth in subsection 7 of [NRS 281A.440](#) to waive the confidentiality of such information.

(Added to NAC by Comm'n on Ethics by R186-05, eff. 5-4-2006; A by R134-10, 10-26-2011)—(Substituted in revision for NAC 281.1175)

Third-Party Requests for Opinions

NAC 281A.400 Proper form required; submission; contents; withdrawal. **([NRS 281A.290](#))**

1. The Commission will only consider a third-party request for an opinion filed pursuant to paragraph (a) or (b) of subsection 2 of [NRS 281A.440](#) which is submitted ~~in proper~~ **on the** form **prescribed by the Commission** ~~[with the Executive Director]~~ at the principal office of the Commission.

2. A third-party request for an opinion filed pursuant to paragraph (a) or (b) of subsection 2 of [NRS 281A.440](#) must contain:

- (a) The original completed form for a third-party request for an opinion in the format required by the Commission;
- (b) Two copies of the completed form; and
- (c) Three copies of all supporting documents and evidence.

3. A third-party request for an opinion filed pursuant to paragraph (a) or (b) of subsection 2 of [NRS 281A.440](#) must be accompanied by evidence which supports the allegation that the subject has violated a statutory ethical standard set forth in the third-party request for an opinion and demonstrates that the alleged conduct of the subject would constitute a violation of [chapter 281A](#) of NRS.

4. Once a third-party request for an opinion has been filed with the Commission pursuant to paragraph (a) or (b) of subsection 2 of [NRS 281A.440](#), the requester may only withdraw the third-party request for an opinion with the consent of the Executive Director.

5. A request to withdraw a third-party request for an opinion filed pursuant to paragraph (a) or (b) of subsection 2 of [NRS 281A.440](#) must be in writing and set forth the specific reasons for requesting the withdrawal of the third-party request for an opinion.

6. As used in this section, “evidence which supports the allegation” means any reliable and competent form of proof provided by witnesses, public and private records,

audio or visual recordings, documents, exhibits, concrete objects and other such forms of proof that support a reasonable belief in the truth of the allegation made in the third-party request for an opinion. The term includes any evidence which is offered that corroborates a newspaper article or other media report. The term does not include a newspaper article or other media report if the article or report is offered as the only evidence to support the allegation.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R186-05, 5-4-2006; R084-08, 9-18-2008; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.186)

The section does not identify what constitutes the proper form. The Commission has forms for third-party RFOs which are required to be filed by a requester and which contain instructions on where and how to file the form.

NEW REGULATION:

1. Except as otherwise provided in this section, any commissioner, with the consent of the Chair, or the Executive Director, with the consent of the Chair and one other Commissioner who is not a member of the same political party as the Chair, may authorize a preliminary inquiry regarding the conduct of a public officer or employee to determine whether there is sufficient credible evidence for the Commission to initiate a third-party request for opinion on its own motion pursuant to subsection 2 of NRS 281A.440. The Chair, with the consent of the Vice-Chair, or in the absence of the Vice-Chair as described in subsection 3, a Commissioner who is not a member of the same political party as the Chair, may authorize a preliminary inquiry pursuant to this section.
2. Except as otherwise provided in subsection 3, if the consent of the Chair is required by subsection 1, a commissioner or the Executive Director seeking consent to authorize a preliminary inquiry shall instead obtain the consent of the Vice-Chair if the Chair:
 - (a) Is a member of the same political party as the commissioner seeking consent to authorize a preliminary inquiry;
 - (b) Is absent or unavailable;
 - (c) Abstains from participating as a result of a conflict of interest pursuant to NRS 281A.420; or
 - (d) Is disqualified pursuant to this chapter.
3. If the consent of the Vice-Chair is required by subsection 1 or 2, a commissioner seeking consent to authorize a preliminary inquiry may instead obtain the consent of any other commissioner who is not a member of the same political party as the commissioner and the Executive Director may instead obtain the consent of any two commissioners who are not members of the same political party if the Vice-Chair:
 - (a) Is a member of the same political party as the commissioner seeking consent to authorize a preliminary inquiry, as applicable;
 - (b) Is absent or unavailable;

- (c) Abstains from participating as a result of a conflict of interest pursuant to NRS 281A.420; or
- (d) Is disqualified pursuant to this chapter.
4. In the absence of consent required by this section, the Commission may authorize a preliminary inquiry in a closed, confidential meeting of the Commission pursuant to subsections 8 and 15 of NRS 281A.440.
 5. Upon notification that a preliminary inquiry has been authorized pursuant to subsection 1, the Executive Director shall conduct the preliminary inquiry to determine whether any evidence supports a reasonable belief by the Executive Director that the public officer or employee may have committed a violation of the Nevada Ethics in Government Law set forth in chapter 281A of NRS. The preliminary inquiry may include, without limitation, a request of the public officer or employee to respond to questions or produce documents.
 6. The Executive Director shall notify the Commissioners or the Commission, as applicable, which authorized the preliminary inquiry pursuant to subsection 1 regarding any evidence discovered during the preliminary inquiry and the belief of the Executive Director concerning whether the public officer or employee may have committed a violation of the Nevada Ethics in Government Law set forth in chapter 281A of NRS.
 7. If the Executive Director reasonably believes that the evidence discovered during a preliminary inquiry supports a finding that the public officer or employee may have committed a violation of the Nevada Ethics in Government Law set forth in chapter 281A of NRS, the Executive Director, in accordance with the requirements set forth in NAC 281A.403, shall recommend to the Commission that the Commission initiate a third-party request for opinion upon its own motion pursuant to subsection 2 of NRS 281A.440.
 8. If the Executive Director does not reasonably believe that the evidence discovered during a preliminary inquiry supports a finding that the public officer or employee may have committed a violation of the Nevada Ethics in Government Law set forth in chapter 281A of NRS:
 - (a) If the preliminary inquiry was authorized by the consent of commissioners pursuant to subsection 1, the Commissioners who authorized the preliminary inquiry may review the findings and recommend to the Commission that the Commission initiate a third-party request for opinion upon its own motion pursuant to subsection 2 of NRS 281A.440 or close the matter; or
 - (b) If the preliminary inquiry was authorized by the Commission pursuant to subsection 1, the Commission may initiate a third-party request for opinion upon its own motion pursuant to subsection 2 of NRS 281A.440 or close the matter.
 9. Upon receiving a recommendation from the Executive Director pursuant to subsection 4 or the Commissioners who initiated the preliminary inquiry pursuant to subsection 5, the Commission shall:
 - (a) Reject the recommendation without prejudice; or

- (b) Accept the recommendation and initiate a third-party request for an opinion upon its own motion pursuant to paragraph (c) of subsection 2 of NRS 281A.440.
- 10. A preliminary inquiry regarding the conduct of a public officer or employee pursuant to this section:
 - (a) May be based on information received by the Commissioner which leads the Commissioner reasonably to conclude that a public officer or public employee may have committed a violation of the Nevada Ethics in Government Law as set forth in chapter 281A of NRS;
 - (b) May be based on information provided in a newspaper article or other media report or otherwise available public information; and
 - (c) Must not be based solely upon an anonymous complaint.
- 11. A preliminary inquiry pursuant to this section is confidential pursuant to subsection 8 of NRS 281A.440 and any evidence received pursuant to the preliminary inquiry is part of the confidential investigatory file of the Commission pursuant to NRS 281A.440.

The Commission has previously discussed the process by which the Commission may initiate a third-party RFO on its own motion and the possibility of initiating activities just shy of a formal investigation to determine whether a formal investigation is necessary or warranted. Although the Executive Director may not rely solely upon a newspaper article or other publicly available information to recommend a third-party complaint, there are many publicly asserted allegations of misconduct by a public officer or employee regarding which a private person is not willing to file a request for opinion and be drawn into the process. The Commission may wish to have a process by which it can determine whether any readily available public information; i.e., documents or responses by a public officer, support a determination by the Commission to initiate an RFO on its own motion and conduct a formal investigation. This language attempts to strike a balance which allows a confidential preliminary inquiry of public allegations of misconduct and otherwise follows the strictures of NAC 281A.403.

NAC 281A.403 Recommendation to initiate request upon motion of Commission. (NRS 281A.290)

1. If the Executive Director receives evidence that leads the Executive Director reasonably to conclude that a public officer or public employee may have committed a violation of the Nevada Ethics in Government Law as set forth in [chapter 281A](#) of NRS, the Executive Director ~~may~~ **shall** recommend to the Commission that the Commission initiate:

(a) a third-party request for an opinion upon its own motion pursuant to paragraph (c) of subsection 2 of [NRS 281A.440](#); **or**

(b) [A preliminary inquiry pursuant to NAC 281A.XXX \(new section\).](#)

2. A recommendation **or request** from the Executive Director pursuant to subsection 1 must:

(a) Be submitted on a form prescribed by the Commission;

(b) Contain a written statement setting forth the information that supports the recommendation or request; and

~~[(c) Include any reliable and competent form of proof provided by witnesses, public and private records, audio or visual recordings, documents, exhibits, concrete objects and other such forms of proof that support the recommendation. Such forms of proof may include, without limitation, any evidence which is offered that corroborates a newspaper article or other media report but may not include a newspaper article or other media report if the article or report is offered as the only evidence to support the recommendation.]~~

3. ~~[The Executive Director shall not submit a]~~ **A** recommendation submitted to the Commission pursuant to paragraph (a) of subsection 1 :

(a) Must not be based solely upon:

~~[(a)]~~ 1. A statement other than a sworn statement; or

~~[(b)]~~ 2. An allegation submitted to the Commission with the intent to avoid disclosure of the identity of the person making the allegation.

(b) Must include any reliable and competent form of proof provided by witnesses, public and private records, audio or visual recordings, documents, exhibits, concrete objects and other such forms of proof that support the recommendation. Such forms of proof may include, without limitation, any evidence which is offered that corroborates a newspaper article or other media report but may not include a newspaper article or other media report if the article or report is offered as the only evidence to support the recommendation.

4. Upon receiving a recommendation from the Executive Director pursuant to subsection 1, the Commission will:

(a) Reject the recommendation without prejudice; or

(b) Accept the recommendation and initiate a third-party request for an opinion upon its own motion pursuant to paragraph (c) of subsection 2 of NRS 281A.440 or a preliminary inquiry pursuant to NAC 281A.XXX (new section).

5. A recommendation by the Executive Director and the Commission's decision to reject or accept the recommendation pursuant to this section are confidential pursuant to NRS 281A.440(8).

(Added to NAC by Comm'n on Ethics by R084-08, eff. 9-18-2008; A by R134-10, 10-26-2011)

NAC 281A.405 Duties of Executive Director; review of determination regarding jurisdiction. (NRS 281A.290)

1. The Executive Director shall confer with the Commission Counsel to determine whether:

(a) The Commission has jurisdiction concerning a third-party request for an opinion filed pursuant to paragraph (a) or (b) of subsection 2 of NRS 281A.440; and

(b) The third-party request for an opinion was properly filed with the Commission in accordance with NAC 281A.400.

2. If the Executive Director and Commission Counsel determine that the Commission has jurisdiction concerning the third-party request for an opinion and that the third-party request for an opinion was properly filed pursuant to NAC 281A.400, the Executive Director shall notify the requester and the subject pursuant to NAC 281A.410 and investigate and proceed in the matter pursuant to NRS 281A.440.

3. The Executive Director shall notify the requester if the Executive Director and Commission Counsel determine that:

(a) The Commission lacks jurisdiction concerning the third-party request for an opinion pursuant to subsection 1; or

(b) The third-party request for an opinion was not properly filed with the Commission in accordance with [NAC 281A.400](#).

4. A person who receives a notice pursuant to [subsection 2 or](#) paragraph (a) of subsection 3 may request a review of the determination regarding jurisdiction by an investigatory panel. Such a request must be submitted to the principal office of the Commission in writing not later than 10 days after the date on which the person received notification. The Chair will appoint an investigatory panel to conduct the review of the determination regarding jurisdiction.

5. If an investigatory panel appointed pursuant to subsection 4 determines that the Commission :

(a) Does not have jurisdiction concerning a third-party request for opinion filed pursuant to paragraph (a) or (b) of subsection 2 of NRS 281A.440, the Executive Director shall notify the requester and the subject of the determination; or

(b) ~~has~~ Does have jurisdiction concerning a third-party request for an opinion filed pursuant to paragraph (a) or (b) of subsection 2 of NRS 281A.440, the Executive Director shall notify the requester and the subject of the determination and investigate and proceed in the matter pursuant to [NRS 281A.440](#). Upon conclusion of the investigation, the Executive Director shall, to the extent possible, submit his or her recommendation regarding whether there is just and sufficient cause for the Commission to render an opinion to the same investigatory panel that determined that the Commission has jurisdiction concerning the third-party request for an opinion.

6. A person who receives a notice pursuant to subsection 5 may request a review by the Commission of the determination regarding jurisdiction by investigatory panel. Such a request must be submitted to the principal office of the Commission in writing not later than 10 days after the date on which the person received notification. A determination regarding jurisdiction by the Commission is final.

12. If the Commission reviews a jurisdictional determination pursuant to subsection 6 and determines that it:

(a) Does not have jurisdiction concerning a third-party request for opinion filed pursuant to paragraph (a) or (b) of subsection 2 of NRS 281A.440, the Executive Director shall notify the requester and the subject of the determination and conclude the matter; or

(b) Has jurisdiction concerning a third-party request for an opinion filed pursuant to paragraph (a) or (b) of subsection 2 of NRS 281A.440, the Executive Director shall notify the requester and the subject of the determination and investigate and proceed in the matter pursuant to NRS 281A.440. Upon conclusion of the investigation, the Executive Director shall, to the extent possible, submit his or her recommendation regarding whether there is just and sufficient cause

[for the Commission to render an opinion to the same investigatory panel that determined that the Commission has jurisdiction concerning the third-party request for an opinion.](#)

(Added to NAC by Comm'n on Ethics by R111-03, eff. 10-30-2003; A by R186-05, 5-4-2006; R084-08, 9-18-2008; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.1865)

Previously, the Subject has not been authorized to appeal a jurisdictional determination of the ED/CC to an investigatory panel. The Commission has therefore received a few “jurisdictional” motions from the Subjects circumventing this regulatory oversight. If a panel could review the determination it may avoid additional proceedings before the entire Commission. However, the determination to overturn staff’s assertion of jurisdiction to investigate is often a significant legal question that may be better left for the entire Commission. In the alternative, the Commission may wish to include an appeal process to the Commission of the panel’s determination. The proposed language above provides for 2 appeal processes: the first to a panel and the second to the Commission.

NAC 281A.410 Notification of subject; filing of response. (NRS 281A.290)

1. Once a third-party request for an opinion has been properly filed with the Commission by a requester or initiated on the motion of the Commission and the Commission has determined that the Commission has jurisdiction over the matter presented in the third-party request for an opinion, the Executive Director shall forthwith notify the requester and the public officer or public employee who is the subject of the third-party request for an opinion and provide the public officer or public employee an opportunity to respond to the allegations contained in the third-party request for an opinion. Such a notification must be in writing and sent to the subject of the third-party request for an opinion by:

- (a) Personal delivery;
- (b) Certified mail, return receipt requested; or
- (c) Overnight delivery service in which proof of delivery is documented.

2. A notice of a third-party request for an opinion to the Subject made pursuant to this section must include, without limitation:

(a) All information filed by the requester or information upon which the Commission based its motion, as appropriate;

(b) ~~[A copy of chapter 281A of NRS;~~

~~—(c) A copy of this chapter;~~

~~—(d)]~~ An outline of the process used by the Commission to resolve third-party requests for opinions; and

~~[(e)]~~ (c) A form prescribed by the Commission for waiving the time limits set forth in subsections 4, 5 and 6 of [NRS 281A.440](#).

3. The subject of a third-party request for an opinion may, within the time limit set forth in subsection 3 of [NRS 281A.440](#), file with the Commission a written response to the allegations contained in the third-party request for an opinion. If the subject of a third-party request for an opinion files with the Commission a waiver of the time limits set forth in subsections 4, 5 and 6 of [NRS 281A.440](#), the Executive Director may, for good cause

shown, authorize one or more extensions, of not more than 30 days each, of the time limit set forth in subsection 3 of [NRS 281.440](#) for the subject to file a written response to the allegations contained in the third-party request for an opinion.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R111-03, 10-30-2003; R186-05, 5-4-2006; R084-08, 9-18-2008; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.188)

The Commission should be able to refer the Subject to the provisions of NRS 281A and NAC 281A on its Website and reduce the cost of providing hard copies.

NAC 281A.415 Investigation of additional issues and facts by Executive Director; provision of additional notice to subject. ([NRS 281A.290](#))

1. The Executive Director may investigate relevant issues and facts beyond those presented in a third-party request for an opinion in determining his or her written recommendation of whether there is just and sufficient cause for the Commission to render an opinion on the third-party request for an opinion.

2. If the Executive Director includes issues and facts beyond those presented in the third-party request for an opinion in his or her written recommendations which are not included in the notice issued to the subject pursuant to [NAC 281A.410](#), the Executive Director ~~must~~ **shall** provide additional notice to the subject of the additional issues and facts and provide the subject with the same opportunity to respond to such issues and facts that is set forth in subsection 3 of [NRS 281A.440](#).

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R186-05, 5-4-2006; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.189)

NAC 281A.420 Confidentiality and availability of information. ([NRS 281A.290](#))

1. Except as otherwise provided in [this section and NRS 281A.440](#), until the conclusion of the proceedings of an investigatory panel to determine whether there is just and sufficient cause for the Commission to render an opinion in the matter:

(a) The Commission will not confirm or deny whether a third-party request for an opinion has been filed by a requester, or initiated upon the motion of the Commission, against a public officer or public employee; and

(b) All information related to the third-party request for an opinion in the possession of the Commission and its staff is confidential.

2. Upon the conclusion of the proceedings of an investigatory panel on a third-party request for an opinion, ~~the~~ **any** information related to the third-party request for an opinion [other than the investigatory file of the Commission](#) is a public record available for public review during normal business hours at the principal office of the Commission.

[3. As used in this section, "investigatory file" has the meaning ascribed to it in subsection 16 of NRS 281A.440.](#)

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R111-03, 10-30-2003; R186-05, 5-4-2006; R084-08, 9-18-2008; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.191)

NRS 281A.440(8) and (9) now protect the Commission's Investigative File as confidential.

NAC 281A.425 Confidentiality of proceedings of investigatory panel. (NRS 281A.290) The proceedings of an investigatory panel to determine whether there is just and sufficient cause for the Commission to render an opinion on a third-party request for an opinion are confidential and closed to all persons except the ~~[parties to the third-party request for an opinion and any other person the investigatory panel deems necessary to the proceedings of the investigatory panel.]~~ Commission staff.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R134-10, 10-26-2011)—(Substituted in revision for NAC 281.192)

The Investigatory Panel has the duty of “concluding” the investigation. Upon receiving a report and recommendation from the ED, the panel may require the ED to engage in additional investigation before issuing its decision. NRS 281A.440(5) Because this process may still involve confidential investigation now protected by NRS 281A.440, the panel proceeding should not be available to the Subject.

NAC 281A.430 Considerations of investigatory panel. (NRS 281A.290) At the proceedings of an investigatory panel on a third-party request for an opinion, the investigatory panel shall consider:

1. The results of the investigation of the Executive Director and the recommendation of the Executive Director regarding whether there is just and sufficient cause for the Commission to render an opinion;
2. The third-party request for an opinion and all related information and material filed with the Commission by the requester or submitted on the motion of the Commission; and
3. The response, if any, of the public officer or public employee who is the subject of the third-party request for an opinion.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R111-03, 10-30-2003; R186-05, 5-4-2006; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.193)

NAC 281A.435 Basis for finding by investigatory panel; unanimous finding required for determination that there is not just and sufficient cause to render opinion. (NRS 281A.290)

1. A finding by an investigatory panel as to whether there is just and sufficient cause for the Commission to render an opinion on a third-party request for an opinion must be based on credible evidence.
2. A finding by an investigatory panel that there is not just and sufficient cause for the Commission to render an opinion on a third-party request for an opinion must be unanimous.
3. As used in this section, “credible evidence” means the minimal level of any reliable and competent form of proof provided by witnesses, records, documents, exhibits, concrete objects, and other such similar means, that supports a reasonable belief by an investigatory panel that the Commission should hear the matter and render an opinion on the third-party request for an opinion. **The term does not include a newspaper article or other media report if the article or report is offered as the only evidence to support the allegation.**

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R134-10, 10-26-2011)—(Substituted in revision for NAC 281.194)

NAC 281A.440 Recording and contents of determination by investigatory panel that there is just and sufficient cause to render opinion. ([NRS 281A.290](#)) A determination issued by an investigatory panel pursuant to [NRS 281A.220](#) which specifies that there is just and sufficient cause for the Commission to render an opinion on a third-party request for an opinion must be recorded in writing and include, without limitation:

1. The findings of the investigatory panel; and
2. The statutes upon which the investigatory panel based its determination that there is just and sufficient cause for the Commission to render an opinion.

(Added to NAC by Comm'n on Ethics by R186-05, eff. 5-4-2006; A by R134-10, 10-26-2011)—(Substituted in revision f

or NAC 281.1945)

NAC 281A.445 Record of proceedings of investigatory panel. ([NRS 281A.290](#)) The Executive Director shall provide and make arrangements for a record to be made of any proceedings of an investigatory panel~~;~~ [by written or audio documentation memorializing the deliberations of the investigatory panel during the proceedings of the investigatory panel.](#)

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R134-10, 10-26-2011)—(Substituted in revision for NAC 281.195)

This language is taken from earlier definition in NRS 281A.085 that was deleted.

NAC 281A.450 Hearings: Advance written notice. ([NRS 281A.290](#))

1. Before the Commission holds a hearing concerning a third-party request for an opinion, the Commission ~~[must]~~ **shall** serve the subject with advance written notice of the hearing at least 10 days before the date on which the hearing is scheduled to commence which includes the date, time and location of the hearing.

2. The written notice required pursuant to this section must comply with:

- (a) The requirements for notice set forth in subsection 10 of [NRS 281A.440](#); and
- (b) Except as otherwise provided in this chapter and [chapter 281A](#) of NRS, the requirements for notice set forth in provisions concerning the adjudication in contested cases in [chapter 233B](#) of NRS.

3. A written record of the final determination of the investigatory panel issued pursuant to [NAC 281A.440](#) may serve as the written notice required pursuant to this section if it includes the date, time and location of the hearing and otherwise complies with the requirements set forth in this section.

4. Notice shall be deemed complete upon delivery personally to the subject or by mailing the notice by certified mail or overnight delivery service to the last known address of the subject.

(Added to NAC by Comm'n on Ethics by R186-05, eff. 5-4-2006; A by R134-10, 10-26-2011)—(Substituted in revision for NAC 281.197)

NAC 281A.455 Hearings: Continuance. ([NRS 281A.290](#)) The procedures for obtaining and granting a continuance of a hearing concerning a third-party request for an opinion are as follows:

1. The date or time of the hearing may be continued for a reasonable time by the Executive Director:

(a) Upon the written petition of the subject for good cause shown; or

(b) By stipulation of the subject and the Commission, acting through the Executive Director.

2. A continuance will not be granted unless it is made in good faith, is reasonably necessary and is not sought merely for delay or by reason of inexcusable neglect of the subject.

(Added to NAC by Comm'n on Ethics by R186-05, eff. 5-4-2006; A by R084-08, 9-18-2008; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.199)

NAC 281A.460 Hearings: Conduct; action by Commission. ([NRS 281A.290](#))

1. The Chair or presiding officer of a hearing concerning a third-party request for an opinion shall:

(a) Ascertain whether all persons commanded to appear under subpoena are present and whether all documents, books, records and other evidence under subpoena are present in the hearing room before the hearing begins.

(b) Ensure that an oath is administered in accordance with [NAC 281A.280](#) to all persons whose testimony will be taken.

(c) Exclude from the hearing all witnesses scheduled to testify except during the testimony of the witness. To preserve the integrity of the process and the evidence presented during a proceeding, the Chair or presiding officer may request all witnesses not to discuss the case with any person during the pendency of the proceeding.

(d) Hear and rule on any procedural motions, approve any stipulations and address any administrative details.

(e) Designate a member of the staff of the Commission to present the third-party request for an opinion, the response to the third-party request for an opinion by the subject and the determination of the investigatory panel concerning whether there is just and sufficient cause for the Commission to render an opinion in the matter.

(f) Allow the subject to present opening comments.

(g) Call and question any witnesses, present any evidence on behalf of the Commission concerning the third-party request for an opinion, and allow any member of the Commission to question such witnesses.

2. The subject may remain present during the hearing.

3. The subject may question any witnesses.

4. Upon the conclusion of the presentation of any evidence and the examination of any witnesses on behalf of the Commission, the Chair or presiding officer shall request the subject to proceed with the introduction of evidence and calling of witnesses on his or her behalf.

5. The subject, any witnesses or any counsel retained by the subject may be questioned by any member of the Commission at any time during the proceeding.

6. Upon the conclusion of the presentation of evidence by the subject and the examination of any witnesses, the Chair or presiding officer shall allow the subject to present closing comments.

7. Upon the conclusion of the closing comments by the subject, the Commission will deliberate the issues of fact presented at the hearing, make a determination of the findings of fact, apply the applicable law to the findings of fact and render an opinion concerning whether the subject has violated any of the provisions of [chapter 281A](#) of NRS.

8. Upon a finding of a willful violation of any of the provisions of [chapter 281A](#) of NRS, the Commission may impose any civil penalties authorized pursuant to [NRS 281A.480](#) and will impose any other statutory remedies required pursuant to [NRS 281A.480](#).

9. The Commission may waive any provision of this section if necessary to expedite or ensure the fairness of the hearing.

(Added to NAC by Comm'n on Ethics by R186-05, eff. 5-4-2006; A by R084-08, 9-18-2008; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.201)

NAC 281A.465 Hearings: Admission and exclusion of evidence. ([NRS 281A.290](#))

1. In conducting any hearing concerning a third-party request for an opinion, the rules of evidence of the courts of this State will be followed generally but may be relaxed at the discretion of the Commission.

2. The Chair or presiding officer may exclude immaterial, incompetent, cumulative or irrelevant evidence or order that the presentation of such evidence be discontinued.

3. A subject may object to the introduction of evidence if the subject:

(a) Objects to such evidence promptly; and

(b) Briefly states the grounds of the objection at the time the objection is made.

4. If an objection is made to the admissibility of evidence, the Chair or presiding officer may:

(a) Note the objection and admit the evidence;

(b) Sustain the objection and refuse to admit the evidence; or

(c) Receive the evidence subject to any subsequent ruling of the Commission.

(Added to NAC by Comm'n on Ethics by R186-05, eff. 5-4-2006; A by R134-10, 10-26-2011)—(Substituted in revision for NAC 281.203)

NAC 281A.470 Failure of subject to appear at hearing or reply to notice. ([NRS 281A.290](#)) If a subject fails to appear at a hearing concerning a third-party request for an opinion which is scheduled by the Commission and a continuance has not been requested or granted, upon an offer of proof by the Executive Director that the subject was given proper notice and upon a determination by the Commission that proper notice was given, the Commission may proceed to consider the case without the presence of the absent subject and may dispose of the matter on the basis of the evidence before it. If the subject fails to appear at the hearing or fails to reply to the notice provided pursuant to [NAC 281A.410](#), the alleged violations specified in the determination of the investigatory panel that there is just and sufficient cause for the Commission to render an opinion may be considered as true.

(Added to NAC by Comm'n on Ethics by R186-05, eff. 5-4-2006; A by R134-10, 10-26-2011)—(Substituted in revision for NAC 281.205)

Opinions Concerning Employment of Certain Former Public Officers or Employees by Regulated Businesses

NAC 281A.475 Proper form required for requests. ([NRS 281A.290](#)) The Commission will only consider those requests for an opinion filed pursuant to subsection 6 of [NRS 281A.550](#) that are submitted to the Commission in proper form.

(Added to NAC by Comm'n on Ethics by R134-10, eff. 10-26-2011)

NAC 281A.480 Hearings. ([NRS 281A.290](#))

1. Except as otherwise provided in subsection 2, a request for an opinion filed pursuant to subsection 6 of [NRS 281A.550](#) will be heard by the Commission within 45 days after receipt of the request by the Commission.

2. If a public officer or public employee who requests an opinion pursuant to subsection 6 of [NRS 281A.550](#) cannot appear before the Commission for a hearing on the request within 45 days after receipt of the request by the Commission, the public officer or public employee may submit a written statement acknowledging that he or she cannot appear before the Commission for the hearing and, if applicable, requesting a waiver of the 45-day period within which the hearing must be held. Such a request must be received not later than 7 business days before the expiration of the 45-day period.

3. If the public officer or public employee does not request a waiver pursuant to subsection 2 and fails to appear at the hearing scheduled by the Commission within 45 days after receipt of the request for an opinion, the request for an opinion will be deemed withdrawn by the public officer or public employee making the request.

(Added to NAC by Comm'n on Ethics by R134-10, eff. 10-26-2011)

NAC 281A.485 Withdrawal of request. ([NRS 281A.290](#)) At any time before the Commission renders an opinion on a request for an opinion filed pursuant to subsection 6 of [NRS 281A.550](#), the public officer or public employee who filed the request for the opinion may withdraw the request by providing a notice of withdrawal to the Commission.

(Added to NAC by Comm'n on Ethics by R134-10, eff. 10-26-2011)

NAC 281A.490 Determination of jurisdiction: Duties of Executive Director; request for review. ([NRS 281A.290](#)) The Executive Director shall confer with the Commission Counsel to determine jurisdiction concerning a request for an opinion filed pursuant to subsection 6 of [NRS 281A.550](#). If the Commission Counsel determines that the Commission lacks jurisdiction in the matter, the Executive Director shall so notify the requesting public officer or public employee. A public officer or public employee who receives a notice pursuant to this section may request the Commission to review the determination regarding jurisdiction. Such a request must be filed to the principal office of the Commission in writing not later than 10 days after the date on which the public officer or public employee received notification.

(Added to NAC by Comm'n on Ethics by R134-10, eff. 10-26-2011)

NAC 281A.495 Conduct of hearings; action by Commission; confidentiality.
(NRS 281A.290)

1. The Chair or presiding officer of a hearing concerning a request for an opinion filed pursuant to subsection 6 of [NRS 281A.550](#) shall:

(a) Ascertain whether the subject of the request for an opinion and all persons requested by the subject to testify are present and whether all documents, books, records and other evidence under subpoena are present in the hearing room before the hearing begins.

(b) Ensure that an oath is administered, in accordance with [NAC 281A.280](#), to the subject of the request for an opinion and all persons whose testimony will be taken.

2. The subject of the request for an opinion ~~must~~ **shall** be present at the hearing.

3. The Chair or presiding officer shall allow the subject of the request for an opinion to:

(a) Present opening comments;

(b) Present any evidence on his or her own behalf; and

(c) Examine any witnesses on his or her own behalf.

4. The subject of the request for an opinion, any witnesses or any counsel retained by the subject may be questioned by any member of the Commission at any time during the proceeding.

5. Upon the conclusion of the presentation of evidence by the subject of the request for an opinion and the examination of any witnesses, the Chair or presiding officer shall allow the subject to present closing comments.

6. Upon the conclusion of the closing comments by the subject of the request for an opinion, the Commission will:

(a) Deliberate the issues of fact presented at the hearing, make a final determination of the findings of fact and apply the applicable law to the findings of fact;

(b) Render an opinion on the matter; and

(c) Submit a copy of the opinion to the subject.

7. The Commission may waive any provision of this section if the Commission determines that such a waiver is necessary to expedite the hearing or is in the interest of justice.

8. The request for an opinion and the information presented during the proceedings set forth in this section must be kept confidential, unless the subject of the request for an opinion acts in a manner set forth in subsection 7 of [NRS 281A.550](#) to waive the confidentiality of such information.

(Added to NAC by Comm'n on Ethics by R134-10, eff. 10-26-2011)

General Procedures for Hearings

NAC 281A.500 Executive Director to provide information to Commission.
(NRS 281A.290) At least 1 week before the date on which the Commission is scheduled to hold a hearing on a matter, the Executive Director shall provide to the Commission:

1. A statement of the matter that sets forth the issues to be determined at the hearing;

2. A list of any witnesses and their expected testimony; and

3. Any other information which the Executive Director deems necessary to assist the Commission in hearing the matter.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000)—(Substituted in revision for NAC 281.213)

NAC 281A.505 Motion to disqualify member of Commission for good cause. ([NRS 281A.290](#))

1. A subject may submit a motion to disqualify a member of the Commission from participating in a hearing for good cause.

2. Except as otherwise provided in this subsection, a motion to disqualify a member of the Commission must comply with the procedures concerning motions before the Commission which are set forth in [NAC 281A.265](#). A motion to disqualify a member of the Commission which is submitted pursuant to subsection 1 must be ruled upon by the Commission as a whole.

3. In considering a motion to disqualify a member of the Commission, the Commission will consider any grounds that would justify the disqualification of a judge pursuant to Canon 3E of the Nevada Code of Judicial Conduct.

4. If the Commission approves a motion to disqualify a member of the Commission, the necessary quorum to act upon and the number of votes necessary to act upon a matter before the Commission is reduced as though the member who is disqualified was not a member of the Commission.

(Added to NAC by Comm'n on Ethics by R186-05, eff. 5-4-2006)—(Substituted in revision for NAC 281.214)

NAC 281A.510 Commission to determine order of proceedings. ([NRS 281A.290](#)) Except as otherwise provided in [NRS 281A.440](#) and [NAC 281A.365](#), [281A.460](#) and [281A.495](#), the Commission will determine, as it deems appropriate, the order of proceedings for a hearing and will inform the parties thereof before the hearing commences.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R186-05, 5-4-2006; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.215)

NAC 281A.515 Testimony: Oath or affirmation required. ([NRS 281A.290](#)) All testimony received at a hearing before the Commission must be given under oath or affirmation.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000)—(Substituted in revision for NAC 281.217)

NAC 281A.520 Participation by subject of hearing; questioning of witnesses. ([NRS 281A.290](#))

1. Except as otherwise provided in [NRS 281A.440](#) and [NAC 281A.365](#), [281A.460](#) and [281A.495](#), the Commission will provide the subject of a hearing before the Commission with the opportunity to appear and testify before the Commission and participate in the hearing. The subject of the hearing may be represented by counsel, hear the evidence presented to the Commission, respond and present evidence and testimony on his or her own behalf, examine and cross-examine witnesses, and make arguments.

2. The Commission will question witnesses at the hearing.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R186-05, 5-4-2006; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.219)

Miscellaneous Provisions

NAC 281A.550 Written opinions: Contents; dissemination. ([NRS 281A.290](#))

1. [Pursuant to NRS 281A.260, the Commission may direct the Commission Counsel to prepare:](#)

[\(a\) A written opinion of the Commission regarding a first-party request for opinion, third-party request for opinion or request for opinion submitted pursuant to subsection 6 of NRS 281A.550; and](#)

[\(b\) An abstract opinion of any written opinion which is confidential pursuant to subsection 7 of NRS 281A.440 or subsection 7 of NRS 281A.550. As used in this paragraph, an "abstract opinion" means a written opinion which redacts or amends information provided in a confidential written opinion to protect the identity of the requester.](#)

2. A written opinion [and abstract opinion](#) of the Commission must plainly state:

(a) If the opinion concerns a third-party request for an opinion, each violation alleged against the public officer or public employee who is the subject of the third-party request for an opinion;

(b) Except as otherwise provided in subsection 7 of [NRS 281A.440](#), if the opinion concerns a first-party request for an opinion, each question for which the public officer or employee seeks guidance concerning the interpretation of a statutory ethical standard;

(c) If the opinion concerns a request for an opinion filed pursuant to subsection 6 of [NRS 281A.550](#), the relevant facts in the case that do or do not justify relief from the strict application of the provisions of subsection 3 or 5 of [NRS 281A.550](#), as applicable;

(d) The determination of the Commission with regard to each allegation, question or fact, as applicable; and

(e) The applicable findings of fact and conclusions of law and any specific guidance concerning the interpretation of a statutory ethical standard provided by the Commission to a public officer or public employee who is the subject of a first-party request for an opinion.

~~2.~~ 3. Each written opinion [and abstract opinion](#) must be numbered, dated and signed by the Chair or presiding officer.

~~3.~~ 4. The Commission ~~will~~ [shall](#):

(a) Provide a copy of each written opinion [and abstract opinion](#) to each person who is a party;

(b) Post a copy of each written opinion [which is not confidential and abstract opinion](#) on the website of the Commission at <http://ethics.nv.gov>; [and]

(c) Deliver a copy of a written opinion to any person who requests such a copy[.]; and

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R186-05, 5-4-2006; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.223)

It has been the practice of the Commission to abstract all confidential opinions for publication. There is no statutory requirement for the same. SB 228 removed the requirement that abstract opinions be included in its manual. If the Commission desires to maintain this practice, we can include a requirement in the Regulations.

NAC 281A.555 Petitions to adopt, file, amend or repeal regulations. ([NRS 233B.100](#), [281A.290](#))

1. Any person may submit a written petition to the Commission at the principal office of the Commission to adopt, file, amend or repeal any regulation of the Commission.
2. A petition submitted pursuant to subsection 1 must include, without limitation:
 - (a) The name and address of the petitioner;
 - (b) A clear and concise statement of the regulation to be adopted, filed, amended or repealed, including, without limitation, the text of the proposed language of the regulation to be adopted, filed, amended or repealed;
 - (c) The reason for the adoption, filing, amendment or repeal of the regulation; and
 - (d) The statutory authority for the adoption, filing, amendment or repeal of the regulation.
3. The Commission may decline to act upon a petition submitted pursuant to this section if the petition does not contain the information required pursuant to subsection 2.
4. The Commission will:
 - (a) Review and make a decision concerning the petition at the next scheduled meeting of the Commission in which consideration of the petition is feasible following the receipt of the petition; and
 - (b) Notify the petitioner in writing of the decision of the Commission concerning the petition within 30 days after the petition is considered by the Commission.(Added to NAC by Comm'n on Ethics by R186-05, eff. 5-4-2006)—(Substituted in revision for NAC 281.236)

NAC 281A.560 Obtaining copies of public records or transcripts; payment of costs of public records. ([NRS 281A.290](#))

1. Except as otherwise provided in this section, to obtain copies of public records from the Commission, a person ~~[must]~~ **shall**:
 - (a) File a written request at the principal office of the Commission or appear personally at an office of the Commission; and
 - (b) Before the copies are made, pay the actual cost of the copies or an estimate of the actual cost, as determined by the Commission's staff, unless the Commission's staff, in its discretion and based upon its experience with the person requesting the copies, allows the person to pay the actual cost of the copies when the copies are provided to the person.
2. Except as otherwise provided in this section, the cost of obtaining copies of public records from the Commission is 25 cents for each page of the public record that is copied.
3. Except as otherwise provided in this section, to obtain copies of a transcript concerning a matter that was recorded by the Commission, a person ~~[must]~~ **shall** file a written request at the principal office of the Commission and make arrangements directly with the court reporter.
4. ~~[A]~~ **The Commission shall not authorize any** person ~~[may not]~~ to obtain copies of a transcript concerning a matter that was recorded by the Commission unless the contents of the proceedings concerning that matter may be disclosed to that person pursuant to the provisions of [chapter 281A](#) of NRS and [NAC 281A.250](#) to [281A.290](#), inclusive.

5. A court reporter ~~may~~ shall not provide to a person copies of a transcript concerning a matter that was recorded by the Commission or any other documents unless the court reporter has received written permission from the Commission ~~to do so~~.

6. The Commission may waive all or a portion of the cost of obtaining copies of public records if the person requesting the copies files a written request for such a waiver at the principal office of the Commission and the Commission determines that:

(a) The copies requested are reasonable in quantity; and

(b) The person requesting the copies is a party to a matter before the Commission and does not have the financial ability to pay for all or a portion of the cost of the copies.

(Added to NAC by Comm'n on Ethics by R038-98, eff. 4-17-98; A by R102-00, 8-28-2000; R111-03, 10-30-2003; R186-05, 5-4-2006)—(Substituted in revision for NAC 281.242)

NAC 281A.615 Filing of certain documents in proper form; availability of form. ([NRS 281A.290](#))

1. The following documents must be filed in proper form:

(a) A disclosure of representation and counseling required pursuant to [NRS 281A.410](#); and

(b) An acknowledgment of the statutory ethical standards required pursuant to [NRS 281A.500](#).

2. The form for each document specified in subsection 1 is available at the principal office of the Commission and on the website of the Commission.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R111-03, 10-30-2003; R186-05, 5-4-2006; R084-08, 9-18-2008; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.227)