



Confidentiality waived 8/27/2013

STATE OF NEVADA
BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Requests
for Opinion Concerning the Conduct of
DONALD PARSONS, Former City Councilman,
City of Fernley, State of Nevada,

Requests for Opinion Nos. 12-50C
12-54C

Subject. /

CONFIDENTIAL STIPULATED AGREEMENT

1. **PURPOSE:** This confidential¹ stipulated agreement resolves Third-Party Requests for Opinion ("RFOs") Nos. 12-50C and 12-54C before the Nevada Commission on Ethics ("Commission") concerning Donald Parsons ("Parsons"), Former City Councilman, City of Fernley, Nevada, and serves as the final opinion in this matter.

2. **JURISDICTION:** At all material times, Parsons served as a City Councilman for the City of Fernley ("City"). 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 Parsons in these RFOs.

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¹ Due to the confidential private health insurance information described herein, this draft of the stipulation will remain confidential and the Commission will prepare an abstracted or redacted version of the stipulation to serve as the public opinion.

3. **FINDINGS OF FACT:**

a. Parsons was elected to the office of City Council in 2008 and began his term in 2009. Parsons held the office until December 2012.

b. The following events are relevant to RFO 12-50C (Health Insurance Premiums):

- 1) Shortly after taking office in February 2009, Parsons requested an item to be placed on the City Council agenda for consideration during the March 18, 2009 meeting to authorize the City to provide health insurance to the Mayor and City Council members through the City's policy of health insurance offered to all City employees.
- 2) The City Council approved the provision of health insurance to City Council members under the condition that the City would not incur any direct costs and each City Council member would pay 100 percent of his/her monthly premiums for the elected coverage through payroll deductions.
- 3) The coverage became effective July 1, 2009. City staff deducted the monthly premium payments directly from the City Council members' paychecks.
- 4) Parsons elected full medical, dental and vision coverage for himself and his spouse.
- 5) Between July 1, 2009 and December 18, 2009, the City inadvertently withheld insufficient funds from Parsons' payroll checks to cover his insurance premium costs. On December 18, 2009, the City issued a memorandum to Parsons informing him of the error and billing him for

- the balance. After December 18, 2009, the City began deducting the correct amount from Parsons' payroll checks to cover his premium costs.
- 6) From December 18, 2009 until June 30, 2010 Parsons' City salary was sufficient to cover the costs of his elected health insurance premium.
 - 7) Effective July 1, 2010, the cost of Parsons' insurance premium increased and his monthly payroll salary was no longer sufficient to cover the total costs of the monthly premium. The City notified Parsons of the deficiency on July 14, 2010 and August 13, 2010. The notifications advised Parsons that he would be required to make monthly payments in addition to his payroll deduction to reimburse the City for the costs of his elected insurance coverage or the City would cancel the insurance coverage. Parsons made several lump sum payments to the City on or about August 16, 2010, November 5, 2010 and April 2011. These payments reimbursed the City for the extra premium costs through September 2011.
 - 8) After September 2011, the City staff endured significant turnover in its Finance Department and other administrative departments and did not notify Parsons of the delinquency in his payments until December 2011.
 - 9) On December 8, 2011 Acting City Manager Daphne Hooper sent a letter to Parsons advising him that he owed a balance for his insurance premiums from September 2011 through December 2011. Parsons denies receipt of this notification.

- 10) Parsons made no further payments for his insurance premiums after September 2011. By June 30, 2012, Parsons' outstanding balance to the City for his insurance premiums had increased to \$446.48. The City did not provide Parsons with additional notification of any deficiency after December 8, 2011, and it did not cancel his insurance coverage.
 - 11) As of July 1, 2012, Parsons' monthly salary increased and was sufficient to cover the cost of his insurance premiums. The City deducted the appropriate amount from his payroll checks and Parsons no longer accrued an additional balance after June 30, 2012.
 - 12) At the time the RFO was filed on August 14, 2012, Parsons' health insurance premium reimbursement shortfall from September 2011 to June 2012 amounted to \$446.48.
 - 13) Parsons' term as a City Council member expired in December 2012.
 - 14) On April 23 and April 24, 2013, City Finance Director Denise Lewis notified Parsons of his final health insurance premium balance owed to the City and requested reimbursement to the City in the amount of \$446.48.
 - 15) On April 30, 2013 Parsons reimbursed the City for the costs of his elected coverage in the amount of \$446.48.
- c. The following events are relevant to RFO 12-54C (Water/Sewer Bill):
- 1) Parsons owns a rental property at 245 Front Street in Fernley, Nevada. During September and October 2011, Parsons' tenant for the property accrued a past due water/sewer bill owed to the City. In mid-October,

the tenant made a partial payment to the City of her past due balance along with arrangements to pay the remaining balance.

- 2) On or about October 24, 2011, Parsons evicted the tenant and contacted the City to request that the water/sewer service and billing for the property be changed from an account in the tenant's name (Account No. 1.1286.06) to a new account his name (Account No. 1.1286.07). The City issued a final bill to the tenant on or about October 26, 2011 in the amount of \$158.52. On or about the same date, the City issued a letter to Parsons advising him of his legal responsibilities as the owner of the property to pay the tenant's outstanding balance ("owner's letter"). The City had a common practice of issuing an owner's letter and switching/opening an account into an owner's name after a tenant's departure. The letter informed Parsons that the City would attempt to collect payment from the tenant for 60 days (approximately the end of December 2011) and if it could not collect the debt, Parsons would be legally required to make the final payment within 90 days of the final bill issued to the tenant (on or about January 31, 2012). Without final payment, the City could shut off the water/sewer service to the property.
- 3) Parsons assisted the City in its efforts to contact the former tenant for final payment. During November 2011, City staff contacted Parsons on at least three occasions to coordinate efforts to collect the payment from the former tenant. The City staff kept records of the conversations with Parsons informing him of its efforts to collect the debt and reminding

Parsons of his obligation to pay the debt if the City was unsuccessful in collecting the debt from the former tenant.

- 4) By the end of December 2011, the City was unable to collect the payment from the tenant.
- 5) Parsons did not make final payment to the City for his former tenant's outstanding balance of \$158.52 and sought to collect the debt from the tenant, along with other damages to his property during the tenancy, through a private, civil complaint. Parsons prevailed in the lawsuit, but was unable to collect the judgment from the former tenant.
- 6) Parsons maintained the water/sewer service to the property in his account (Account No. 1.1286.07) between October 24, 2011 and December 31, 2011. The City billed his account during this period for the total amount of \$156.38.
- 7) On or about January 1, 2012, Parsons leased the property to a new tenant. The City issued a new account to the new tenant for the water/sewer service at the property.
- 8) Despite receiving monthly billing statements with his account (Account No. 1.1286.07) balance between October 24, 2011 and December 31, 2011, Parsons failed to pay the balance. Parsons continued to receive billing statements outlining the outstanding balance on this account between January 1, 2012 and June 30, 2012. The final statement included a notation that the water/sewer service to the property would be shut off on July 24, 2012 without a full payment (despite the fact that a

new tenant occupied the property). To avoid shut off of the water/sewer service to the property occupied by his new tenant, Parsons paid off the outstanding balance of \$156.38 from his account (Account No. 1.1286.07) on July 10, 2012.

- 9) Although Parsons remained legally liable for the outstanding balance of \$158.32 from his former tenant's account (Account No. 1.1286.06), he did not make the payment and the City never issued a follow-up statement or notification of the outstanding balance after the initial owner's letter.
- 10) On June 6, 2012 the Fernley City Council considered Consent Agenda Item No. 5.L. entitled "*Possible Action to Write Off Water and Sewer Accounts in Collections.*" The agenda item was approved by a unanimous vote with no disclosure or abstention by Parsons regarding his outstanding balances on Account No. 1.1286.06 and Account No. 1.1286.07.
- 11) On June 6, 2012 the Fernley City Council also considered Agenda Item No. 13 entitled "*Discussion and Possible Action to Implement a Temporary Reduction in the Water Reconnection Fee.*" Based on the poor economic conditions in the City, the City staff recommended a temporary reduction in the water reconnection fees from \$50 for the first occurrence and \$100 for subsequent occurrences to \$25 for the first occurrence and \$50 for subsequent occurrences. During City Council discussion of the agenda item, Parsons recommended an indefinite

decrease to \$25. A motion to immediately implement a temporary reduction to \$25 for the first two occurrences and \$50 for subsequent occurrences passed unanimously without disclosure or abstention by Parsons regarding his two past due account balances.

12) At the time of the filing of the RFO in this matter, the City had not issued a final billing statement and/or notification of Parsons' outstanding balance owed for his former tenant's account and Parsons had not yet made a final payment.

13) After Parsons' term as Councilman expired, on or about April 23, 2013, City Finance Director, Denise Lewis, sent Parsons a letter requesting payment of his former tenant's outstanding water and sewer balance in the amount of \$158.52.

14) On April 30, 2013 Parsons paid the former tenant's past due water and sewer bill in the amount of \$158.52.

4. **PROCEDURAL HISTORY BEFORE COMMISSION**

- a. On or about August 14, 2012, the Commission received a Third-Party Request for Opinion ("RFO") from a private citizen alleging that Parsons requested an agenda item for the City Council to offer health insurance coverage to the Mayor and City Council Members and then used his official position to secure unwarranted privileges and used governmental resources for his personal financial interests by continuously failing to make required reimbursement payments for the shortfall in his insurance premiums while the City maintained the payments without cancelling his insurance coverage.

- b. On or about September 26, 2012, the Commission received another Third-Party RFO from the same private citizen alleging that Parsons used his official position to secure unwarranted privileges and used governmental resources for his personal financial interests by continuously failing to make required payments for his water/sewer service to his private property without payment to the City for past-due balances and failed to disclose and abstain on various City agenda items related to water/sewer bills and fees.
- c. The Commission consolidated these RFOs for purposes of investigation and hearing.
- d. As required by NAC 281A.410, the Commission provided Parsons with notice of the RFOs by mail. Pursuant to NRS 281A.440(3), Parsons was provided an opportunity to respond to the RFOs and submitted a written response through his counsel, Brent T. Kolvet, Esq., of Thorndal, Armstrong, Delk, Balkenbush & Eisinger law firm in Reno, Nevada.
- e. 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:

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1) RFO 12-50C:

- (a) Parsons' alleged use of his public position to secure unwarranted privileges, preferences and exemptions for himself implicating NRS 281A.400(2);
- (b) Parsons' alleged use of governmental resources to benefit his personal and financial interests implicating NRS 281A.400(7);

2) RFO 12-54C:

- (a) Parsons' alleged failure to avoid conflicts between his private interests and those of the public he represents implicating NRS 281A.020(1)(b);
 - (b) Parsons' alleged use of his public position to secure unwarranted privileges, preferences and exemptions by failing to make payments on water/sewer bills implicating NRS 281A.400(2);
 - (c) Parsons' alleged use of government resources to benefit his personal and financial interest in failing to make payments on water/sewer bills implicating NRS 281A.400(7);
 - (d) Parsons' alleged failure to adequately disclose a conflict of interest, implicating NRS 281A.420(1); and
 - (e) Parsons alleged failure to abstain from voting in light of his conflict of interest, implicating NRS 281A.420(3).
- f. Pursuant to NRS 281A.440, on March 20, 2013, a two-member Investigatory Panel of the Commission consisting of Commissioners Cheryl Lau and Keith Weaver reviewed the RFOs, Parsons' response, the Executive Director's report and recommendation and other evidence. The Panel adopted the

Executive Director's recommendations described in paragraph "e" herein and forwarded the matter to the Commission to hold a hearing and render an opinion in the matter.

- g. In lieu of a full hearing regarding these alleged violations of NRS 281A, Parsons now enters into this stipulation acknowledging his duty as a former public officer to commit to avoid conflicts between his private interests and those of the public he served by ensuring proper payment for private benefits received through his public office versus allowing the governmental entity (public) to incur the expenses on his behalf, and properly disclosing certain conflicts. See NRS 281A.020, 281A.400(7) and 281A.420. The Commission dismisses allegations implicating NRS 281A.400(2); no evidence exists to suggest or prove that Parsons used his official position as a City Councilman to secure unwarranted preferences for his personal, pecuniary interests in his insurance coverage or water/sewer service.

5. **TERMS / CONCLUSIONS OF LAW:** Based on the foregoing, Parsons 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. Parsons formerly held a public office which constituted 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 Fernley).
 - c. The Commission dismisses all allegations regarding NRS 281A.400(2). No evidence exists to suggest or prove that Parsons used his official position as

a member of the City Council to influence any City decisions regarding his health insurance premiums and/or water/sewer bills.

- d. Parsons' failure to timely reimburse the City for the shortfall in health insurance premium payments and his failure to timely pay the past due balances on two separate water and sewer accounts was a course of conduct representing a single non-willful violation of NRS 281A.400(7). The Commission emphasizes that the City expended significant public funds and resources over a period of time for a significant and valuable health insurance benefit provided to Parsons because of his position as a City Council member. He was aware of his obligation to make the reimbursement payments, and the City's failure to regularly notify him of this obligation or cancel his insurance coverage did not alleviate Parsons' responsibility as a public officer who was entrusted with public funds and resources to ensure that his private benefit through the City was properly managed. While the Commission is concerned about Parsons' failure to pay his former tenant's outstanding water/sewer balance or to pay his own water/sewer account balance for more than 6 months, the Commission does not suggest that a public officer who is late or delinquent on a utility bill owed to the governmental entity will amount to the use of governmental resources in all circumstances. No evidence exists to suggest that Parsons used his official position to influence City staff or to alter his debts in any way. Based on the totality of circumstances respecting the City's deficient accounting/notification procedures and the lack of any bad faith or intention by Parsons to use

governmental resources for these purposes, his violation of NRS 281A.400(7) is not willful.

- e. Parsons' failure to disclose his pecuniary interests/obligations in his former tenant's water/sewer account (Account No. 1.1286.06) in collections and his outstanding balance on his personal account (Account No. 1.1286.07) during the City Council's June 6, 2012 consideration of Consent Agenda Item No. 5.L. regarding the write-off of water and sewer accounts in collections and Agenda Item No. 13 concerning a temporary reduction in water reconnection fees constitutes a willful violation of NRS 281A.420(1).
- f. Although Parsons' failure to disclose constitutes a willful violation of the Ethics in Government Law, the Commission acknowledges various mitigating circumstances concerning the agenda items considered by the City Council and Parsons' interests in the accounts. First, the balance owed for his former tenant involved significant cooperation by Parsons to assist the City in collecting the debt. Parsons was actively pursuing private claims against his former tenant to recover the outstanding water/sewer balance in addition to significant other damages to the rental property. Second, after the initial owner's letter, the City did not provide any additional billing statement and Parsons' failure to pay the City was delayed by his efforts to collect from the tenant. Third, the City had a policy to send past-due accounts to a collection agency for collection. Those agencies would pursue collections, retain a percentage of the amount actually collected and remit the remaining portion to the City. The City would write off any portion of the debt amount not

otherwise collected by the agency. Parsons understood the agenda item related to the write-off of accounts in collection to be related to those accounts and not any of his accounts. In fact, his accounts were not written off and eventually paid in full. Finally, the City had a policy of charging fees for disconnection/reconnection of water/sewer services for unpaid bills. At the time of the agenda item, the City was enduring a significant economic crisis with a 25 percent unemployment rate and numerous residents were delinquent on their water/sewer payments or subject to disconnection/reconnection fees. Likewise, the City had recently developed a controversial water treatment facility costing the City approximately \$70 million through various bonds. The City anticipated paying off those bonds through new development/new users and when the economy suffered a downturn, the new development never occurred. The current water users/residents were asked to pay increased prices for their water/sewer services to help the City pay the bonds. Accordingly, the City Council acknowledged the economic difficulties and the agenda item was an attempt to alleviate significant or unnecessary fees such as water reconnection fees. The City Council's goal was to provide a reasonable fee for any reconnection services and was not directed specifically to help Parsons or any other resident avoid disconnection. Regardless, at the time of the agenda items, Parsons' accounts were delinquent and subject to disconnection/reconnection fees and because of the potential effect the agenda item may have had on Parsons' interests at the time of the vote, he should have disclosed his pecuniary interests. Because

the amount of the outstanding balance was minimal and the potential for disconnection remote considering he had a new tenant leasing the property, abstention would not have been required.

- g. Parsons also had an outstanding balance of 2 months of water/sewer service in his own account that were delinquent in payment and owed at the time of his vote on the matter. He had been notified for more than 6 months of the outstanding debt and he knew about the potential shut-off for failure to pay the debt.
- h. For the willful disclosure violation with mitigating factors, Parsons will pay a total civil penalty of \$500.00 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 these RFOs. 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 Parsons.

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6. **WAIVER:**

- a. Parsons knowingly and voluntarily waives a full hearing before the Commission on the allegations in these RFOs (No. 12-50C and 12-54C) 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. Parsons 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 May 15, 2013.

DATED this 17 day of July, 2013.


Donald Parsons, Former Councilman
City of Fernley

DATED this 19th day of June, 2013.²

By: /s/ Paul Lamboley
Paul Lamboley
Chairman

By: /s/ Magdalena Groover
Magdalena Groover
Commissioner

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

By: /s/ James Shaw
James Shaw
Commissioner

By: /s/ Timothy Cory
Timothy Cory
Commissioner

² Commissioners Lau and Weaver served on the Investigatory Panel and did not participate in this Opinion. Commissioner Carpenter did not participate in the consideration and approval of this Opinion.

The above Stipulated Agreement is approved by:

DATED this 17 day of July, 2013.


Brent T. Kolvet, Esq.
Counsel for Donald Parsons

DATED this 22ND day of July, 2013.


Yvonne M. Nevarez-Goodson, Esq.
Commission Counsel